



Better Case Management (BCM) Newsletter

13 JULY 2016

Issue 9

Welcome to the ninth newsletter which, as promised, provides feedback on key issues arising out of BCM following national implementation on 5 January 2016.

Feedback on BCM

It is clear that everyone in the criminal justice system – the judiciary and all the agencies and practitioners who are involved – has been working hard to ensure BCM and the DCS are given the best possible chance of becoming an enduring success. I cannot overemphasise the positive effort by all involved right across the country, for which I extend my heartfelt thanks. However, inevitably with such large-scale changes, there are teething issues which need to be addressed.

The BCM National Implementation Team (NIT) has been reviewing progress to date, and gathering feedback. Much of what we have been told is positive but some important concerns have been expressed. I have set out some of the main difficulties below, together with progress to date in finding satisfactory answers.

Engagement between the parties: *The parties clearly understand the culture change required by BCM, but a particular difficulty remains in identifying a named individual – be it prosecution or defence – with whom to make contact.*

- The comment may be an obvious one, but please time your call so as to afford the best chance of getting through to the relevant person. Depending on the precise role of the individual concerned, often outside court hours (before court, over lunch or after court) will be the most sensible time;
- It is critical that systems are established to ensure that messages that are left reach their intended recipient, and that there is a swift response to emails and telephone messages etc. (this has been far too hit-and-miss in the past);
- Particularly given the historical problems, the CPS must regularly monitor generic email addresses;
- Any enduring problems should be addressed through the Local Implementation Teams (LITs).

The prosecution's provision of Initial Disclosure of the Prosecution Case (IDPC): *There have been considerable concerns expressed by defence practitioners regarding the adequacy of the IDPC, leading to difficulties in providing advice to the defendant, and – on occasion – a consequential inability to make progress at the first hearing or at the Plea and Trial Preparation Hearing (PTPH).*

- I note that the new National File Standard (NFS) introduced last year is starting to bring about a marked improvement in the quality and timeliness of the files when they are transferred from the police to the CPS.
- A new File Quality Review mechanism is being piloted which will, for the first time, provide a standard national methodology for assessing and improving police file quality. It is intended that it will be implemented nationally during the course of this summer.
- The new CPS Compliance and Assurance Team is keeping performance on an area basis under review.
- Early and continued engagement will assist in identifying any material which the defence considers is necessary in order to enable proper instructions to be taken.
- It goes without saying that both the Prosecution and Defence **must** adhere to the Crim PR and Crim PD.
- Whilst I note that the Criminal Law Solicitors Association (CLSA) have recently issued a protocol setting out how they consider issues in this context should be addressed, I firmly believe these concerns are best resolved at a local level through the LITs, particularly when specific examples can be given that demonstrate the suggested problem. I, therefore, encourage defence practitioners to participate at their LITs (I have seen this in action, and the discussions with all those involved can work extremely effectively in securing a sensible outcome).

Time scale before the PTPH: *It has been suggested that the period of 28 days between the case being sent from the magistrates' court to the PTPH at the Crown Court is too short for the defence to take their client's instructions.*

- When a defendant is on bail it is important to utilise the additional 28-day period between the charge and the first hearing in the magistrates' court. The CPS is only able to provide the IDPC when it is requested by a defence solicitor. However, between 50-70% of defendants fail to arrange representation until they appear at court, and 75% of Legal Aid Applications are made on or after the first hearing. Therefore, from the outset it is necessary for all those involved to explain the new culture to defendants in order for them to understand the need to cooperate at the earliest stage with their lawyers.
- The National Implementation Team (NIT) has investigated ways of encouraging defendants to give timely instructions to their lawyers. Suggestions have ranged from displaying posters in police stations through to text reminders sent to the defendant's mobile telephone. This is a particularly problematic area and any views and suggestions would be very welcome. A prize of a guided tour of the Royal Courts of Justice by my clerk for the most inventive idea (it beats Blenheim Palace any day!).
- The NIT is closely monitoring performance and will make any necessary amendments to the processes that underpin BCM.

Flexibility when listing the PTPH: *On occasions courts have arguably failed to focus sufficiently on the availability of the trial advocate when fixing the PTPH.*

- It is important to remember that the **Guidance on Exceptions to National Processes** contained in the LIT Guidance (updated in January 2016) provides that one of the reasons to allow the PTPH to be listed up to 35 days from sending is to enable the trial advocate to attend. This is to ensure the PTPH is effective.

The PTPH Form: *Comments from judges and practitioners are to the effect that the form is excessively long and unduly complex.*

- The content of new ONLINE PTPH form (available since 14 March 2016) has been re-ordered to reflect more satisfactorily the sequence in which issues are considered during the PTPH. Some fields are now “populated” automatically. Critically, it can now be completed within the DCS (it no longer needs to be downloaded) and as a result the original PDF version should not now be used.
- There is a long list of proposed amendments to the online form, and it is hoped that we will be able to expand the extent to which it is “auto-populated” and that an “Orders” button will be provided to assist judges to complete and “post” or send written orders.
- Piecemeal amendments to the form are unhelpful, and therefore a full review is about to commence to consider all the suggestions we have received to improve the form, subject to a costs’ assessment. Suggestions for changes are most welcome.

Access to prisoners: *The CBA’s Monday Message has highlighted the difficulties that still confront defence representatives when visiting defendants in prisons, in particular when carrying a laptop.*

- These problems have, to a significant extent, been resolved at a local-prison level, aided by the intervention of the senior hierarchy within NOMs. The LITs provide an excellent forum for these difficulties to be aired and resolved.
- The NIT is aiming to secure a national agreement that all prisons must accept the standard template letter currently in use in London which authorises defence representatives to take laptops into prisons.
- The parties and the courts are to be encouraged to make better use of the Prison-to-Court Video Links, and to discuss any difficulties at the local LIT.

Legal Aid Applications: *Concern continues to be expressed at the time taken to grant legal aid applications, particularly when defendants who are in custody are self-employed or they are paid by way of cash-in-hand.*

- Once an application has been accepted by the Legal Aid Authority (LAA) as correctly completed, it normally takes no more than 2 days for it to be processed (excluding the day of receipt), albeit it is to be acknowledged that a complex assessment of means may take longer. More extensive delays are usually because the application has been rejected.
- Use of the CRM14 (on-line) eForm became mandatory on 4 July 2016. A process of automatic validation will assist practitioners, before the form is submitted, to ensure that the compulsory fields have been completed.

- The LAA regularly monitors the data for rejected applications, and provides (via its Contract Managers) tailored advice to those firms with consistently high rejection rates.
- A series of ‘masterclasses’, focusing on complex scenarios (for instance when the defendant is self-employed), has been delivered via webinar to enable practitioners to hone their knowledge of criminal legal aid applications, with more to follow.
- Additional support and training is being provided to caseworkers within the LAA who have rejected unusually high levels of applications. Furthermore, internal guidance in this area has been updated to ensure it remains effective.
- A “hotline” has been set up for the judiciary, when they need speedily to resolve legal aid issues in order, most particularly, to ensure the PTPH is effective. This is proving very successful.
- The courts have also been provided with a direct line to each of the LAA Crime Applications Teams so that they may escalate legal aid issues when appropriate. Details of this can be found in the Crown Court Manual.
- I am delighted there is a Legal Aid representative who attends each of the circuit-level LITs; practitioners are encouraged to raise specific examples at these meetings so that the LAA can investigate and resolve them, if warranted.

“On-the-day” Probation reports: *There are difficulties for the National Probation Service (NPS) in providing “on-the-day” reports, particularly if there is a change of plea before the PTPH.*

- The NPS are working to develop their processes in the Crown Court in order to meet these new demands. Old style Pre-Sentence Reports should only be used in those cases when they will materially assist the judge in passing sentence.
- Similarly, reports should only be ordered at the Magistrates Courts for truly appropriate cases, namely when there is a basis for concluding they will materially assist the sentencing judge, based on the LIT guidance to ensure it is the "right report on the right case".
- Crown Court Probation teams are working with Resident Judges to develop processes to secure a greater availability of reports on the day of the PTPH, thereby enabling the court to sentence on the same day.
- The NPS are also working with defence lawyers to develop processes whereby if a report is requested after the case is sent to the Crown Court, there is agreement on the part of the court and the probation service, and it is prepared in time for the PTPH.

Case progression: *There is concern that there are insufficient processes in place to ensure that all BCM/DCS trials will be effective.*

- Some Crown Courts, for example in London, have introduced a case-progression regime to ensure compliance with the orders made at the PTPH, ahead of HMCTS issuing guidance on compliance and the role of the Case Progression Officer, in the wake of digitalisation and the changes to court resources.

- It is essential that the parties have up-to-date information at the PTPH to ensure the judge is able to establish a realistic timetable.
- On 24 June 2016 HMCTS published a Case Progression Framework which identifies relevant “trigger points” and the processes court staff – depending on the case – may have to undertake for it to be effectively managed prior to the PTPH and thereafter to trial. HMCTS Heads of Crime will use this framework to build on the case progression structures already in place in their regions.

Despite the difficulties and concerns identified above, there has been considerable success in implementing BCM, with cases being properly considered by the police and reviewed by the CPS at an appropriately early stage. The defence are increasingly receiving timely information, enabling them to engage promptly in the process.

I have considerable confidence in this new way of dealing with cases, and we must all work together to ensure that this excellent new system, which enables us to deliver effective and speedy justice, does not wither and ultimately fail because it was not implemented in a responsive and resolute manner.

Lord Justice Fulford

Senior Presiding Judge for England and Wales

Further Information

More information on BCM can be found at Judiciary.gov.uk