

Cardiff, Newport and Merthyr Tydfil Crown Courts

Early Guilty Plea Protocol – Practice Note

EARLY GUILTY PLEA HEARINGS

Aims and Objectives

- 1) The aim and objective of an “Early Guilty Plea Hearing” is for a defendant to plead guilty in the Crown Court at the first reasonable opportunity and to be sentenced at that hearing.
- 2) A defendant who indicates an intention to plead guilty at the hearing will be arraigned.
- 3) A defendant who indicates an intention to plead not guilty at the hearing will not be arraigned and the case will be adjourned for a PCMH. No provisional trial date will be set because the prosecution will not have obtained witness availability dates.
- 4) Any defendant who does not plead guilty at the hearing, and pleads guilty at a later hearing, will not be afforded maximum credit for that guilty plea unless a successful submission is made that the “Early Guilty Plea Hearing” was not the first reasonable opportunity for the defendant to have pleaded guilty.

Procedure

- 5) In a case which has been **sent** to Cardiff, Newport or Merthyr Tydfil Crown Court under the provisions of section 51, Crime & Disorder Act, 1998, any party may request the court to list the case for an “Early Guilty Plea Hearing”. Upon such request being made, the preliminary hearing date will be vacated and the case shall be listed for hearing at least **20** working days after the date of the receipt of the request.

- 6) The prosecution shall serve on the defence as soon as possible or at least **10** working days before the EGP hearing, such evidence/material as is available.*
- 7) In any case to be **committed for trial** to Cardiff, Newport or Merthyr Crown Court, where the defence have had at least **10** working days prior to committal to consider the committal papers, and the prosecution or defence has identified the case as a likely guilty plea, any party may request the Magistrates, at the committal hearing, to fix an “Early Guilty Plea Hearing” at the Crown Court.
- 8) In such circumstances, the Magistrates shall fix a date for an “Early Guilty Plea Hearing” at the Cardiff Crown Court the date for such a hearing shall be the first Wednesday after 15 working days, at the Newport Crown Court the date for such a hearing shall be the first Friday after 15 working days and at the Merthyr Tydfil crown Court shall be the first available day after 15 working days.
- 9) Even after the committal for trial, it is open to either party to request an EGP hearing before the date fixed for the PCMH.
- 10) Any request to the court shall be made by email:

Cardiff/Newport:

Cardiff.CaseProgression@cardiff.crowncourt.gsi.gov.uk

Merthyr Tydfil:

Merthyrttydfil.CaseProgression@merthyrttydfil.crowncourt.gsi.gov.uk

- 11) At the same time as the request is made, the party making the request shall notify all other parties in the case. The notification shall preferably be

* *The prosecution will produce and serve a proportionate file, following discussion with the defence, including the key evidence needed to produce a compelling case, such as eye-witnesses, CCTV, and summary of interview record, and where appropriate, fingerprints, scientific evidence, VIPER forms, etc*

given by e-mail, the particulars of which will be available from the standard Magistrates' Automatic Directions Form provided to the parties at the time of sending the case to the Crown Court. Alternatively, the notification may be faxed to the other parties. It should not be sent by post or the DX system which will delay its receipt. All parties will be expected to provide a secure e-mail address.

Defence Request

12) The defence shall:

- a) Notify the prosecution of the details of the offence(s) in respect of which the defendant intends to plead guilty and of any proposed basis of plea.
- b) At the same time, notify the probation service or Youth Offending Service (by e-mail or fax) of its request for an EGP hearing and include details of the offence(s) in respect of which the defendant intends to plead guilty and of any basis of plea and of the defendant's current address and telephone number(s).
- c) Within five working days of receipt of the written basis of plea from the defence, the prosecution shall notify the defence and the probation service whether the basis of plea is accepted by the prosecution.
- d) If the basis of plea proposed by the defence is not acceptable to the prosecution and no agreement can be reached between the parties, the case should still be listed for an EGP hearing, in order that a judge can decide whether a trial of issue is necessary before sentence. In such circumstances, the probation service will not be expected to prepare a report unless so advised by the court.

Prosecution Request

13) The prosecution shall:

- a) within 2 working days of the sending, determine whether a guilty plea is anticipated, or in light of the apparent strength of the evidence (as initially disclosed) against the accused, should reasonably be anticipated.
- b) If a guilty plea is anticipated, the lawyer will telephone the defence solicitor and ascertain whether his client will plead guilty on the full facts or on a basis or whether he will plead guilty to a lesser charge which may be acceptable to the Prosecution. The parties will discuss what further material/ evidence may be required.
- c) If a Guilty plea is still anticipated, the lawyer will draft an indictment and serve it forthwith on the defence and request the Court to list the case for an Early Guilty Plea Hearing.
- d) Following receipt of a prosecution request, any defendant who intends to plead guilty shall forthwith give notice of the intention to all other parties in the case. The notice to the prosecution and the probation service shall include details of the offence(s) in respect of which the defendant intends to plead guilty and of any written basis of plea. The notice to the probation service additionally shall include details of the defendant's current address and telephone number(s).
- e) Within five working days of receipt of the basis of plea the prosecution shall notify the defence and the probation service whether the basis of plea is accepted by the prosecution.

- f) At any time up to two working days before the date of the hearing, the defence may serve notice on the prosecution and the court to amend the hearing from an EGP hearing to a preliminary hearing, if the notice includes:
 - i) confirmation that the defendant has provided instructions that will result in a not guilty plea, and details of the defence witness requirements; or
 - ii) details of some other good reason satisfactory to the court.

14) The Probation Service may seek the assistance of the Crown Court as to whether an addendum to an existing report or a stand down report may suffice instead of a full report and any such request will be referred to a Circuit Judge.

Court Listing

15) Either party may invite the court to postpone the EGP administratively, if the extension of time would facilitate the resolution of issues between the prosecution and defence or to allow time for a full conference with the client.

Sentencing

16) In applying the Sentencing Guidelines Council Definitive Guideline for “Reduction in Sentence For A Guilty Plea”, by reason of the fact that the “Early Guilty Plea” scheme is now in existence, the following principles will apply

17) In relation to all offences (sent or committed) there will be a presumption that the first reasonable opportunity to enter a guilty plea and to obtain a 33% reduction in sentence will be at an “Early Guilty Plea Hearing”, and thereafter, there will be a smaller reduction, namely a 25% reduction at the PCMH, a smaller reduction thereafter, and a maximum of 10% reduction when a guilty plea is entered at the door of the court or after a trial has begun.

18) In relation to all offences (sent or committed) the presumption referred to above will be subject to:

- a) The Court being satisfied that the defendant (and any legal adviser) has had sufficient information about the allegations;
- b) Paragraphs 5.2 – 5.5 of the Guideline (the recommended one-third reduction being reduced to a recommended reduction of 20% where the prosecution case is overwhelming);
- c) Paragraph 3(b) of Annex 1 of the Guideline (the Court may consider that, in circumstances where the defendant [and any legal adviser] would have had sufficient information about the allegations, it would be reasonable to have expected an indication of willingness to plead guilty even earlier, perhaps whilst under interview or at a preliminary hearing).

19) In relation to an offence triable either way which is committed to the Crown Court for trial, the presumption referred to above will also be subject to paragraph 3(c) of Annex 1 of the Guideline (recommended reduction at the first hearing in the Crown Court of 33% being reduced to 30% if no plea is indicated at the Magistrates' Court). For the avoidance of doubt, *to obtain the maximum reduction a defendant must either plead at the Plea before Venue, request the Magistrates' Court to fix an "Early Guilty Plea Hearing" at the Crown Court or agree with the prosecution request for such a hearing by indicating that a guilty plea will be entered at such a hearing.*

20) In relation to an offence which is triable only on indictment which is sent to the Crown Court for trial, *to obtain the maximum reduction a defendant must request the Magistrates' Court to fix an "Early Guilty Plea Hearing" at the Crown Court or agree with the prosecution request for such a hearing by indicating that a guilty plea will be entered at such a hearing.*

The presumption referred to above will also be subject to paragraph 3.(d) of Annex 1 of the Guideline (it may well be that the first reasonable

opportunity would have been during the police station stage; where it is not the case, the first reasonable opportunity is likely to be at the preliminary or EGP hearing in the Crown Court.)