



Thank you for the opportunity to comment on the two documents referred to below.

1. Draft on Defence Representations

We consider the Guidance on Defence Representations to be very sensible and workable. However, may we take the opportunity of commenting on paragraph 3.3 which currently reads (emphasis as in the original):

"Evidential issues: usually, where the evidential stage of the Full Code Test is met on the material provided by the police [and the public interest stage of the Code test is also met], the case should proceed to charge and trial unless the information provided by the defence is so compelling that it changes the prosecutor's assessment of the case. **However, little or no weight should be given to evidential factors that have not been put forward or tested in an interview under caution.**"

We are concerned that the final paragraph is liable to be considered in an overly prescriptive manner. May we suggest the following in place of "**However, little or no weight... interview under caution**" ?

"Particular care should be taken in considering evidential factors that have not been put forward or tested in interview. There may be occasions when such matters properly bear on the decision to charge or prompt further enquiries. However at other times they may have little or no weight."

2. In the Protocol on Extensions of CTLs

We have found an area that we consider deserves comment.

At Paragraph 2.10 we read:

"At a Plea and Case Management Hearing (PCMH) in the Crown Court where the earliest possible date for trial is fixed beyond the expiry of the CTL and it is not possible, due to the

circumstance of the case, to try the case within the original CTL period, it will ordinarily be appropriate for the prosecution to apply to the court to extend the CTL before the conclusion of the PCMH."

The suggestion that "it will ordinarily be appropriate for the prosecution to apply to extend the CTL before the conclusion of the PCMH" appears to ignore the need for written notice of an application (5 days in the Crown Court) unless such need for notice is waived.

Waiver is a judicial function involving the exercise of a discretion and is amenable to submissions from both sides.

The need for written notices is recognised elsewhere in the Protocol, specifically at Paragraph 5.2 and following.

The proposal in paragraph 2.10 seems to envisage matters being dealt with on the hoof and without for example the preparation of a proper chronology to assist the Court.

Additionally and importantly, given how early the date of the PCMH may be relative to the date of the expiry of the CTL, such early and on the hoof extensions of the CTL without notice may remove the incentive for the CPS/Crown to act with due expedition in relation to any orders made at the PCMH or with regard to further case preparation generally.

We would suggest that Paragraph 2.10 is either removed in its entirety or altered to read:

Paragraph 2.10 "At a Plea and Case Management Hearing (PCMH) in the Crown Court where the earliest possible date for trial is fixed beyond the expiry of the CTL and it is not possible, due to the circumstance of the case, to try the case within the original CTL period, the Prosecution should announce in open Court their intention to serve notice of an application to extend the CTL."

We believe this reflects current practice.

Adrian Chaplin

Secretary,

Criminal Bar Association.

7th May 2009.