

PLEA AND TRIAL PREPARATION HEARINGS



Introduction and Guidance
Revised December 2015

**All cases sent to the Crown Court after 5th January 2016
will be sent to a Plea and Trial Preparation Hearing**

This Introduction and Guidance note has been revised to include the information published by the SPJ's office and draws on the experience of the six early adopter courts.

Why the Change?

There has been a widely held perception that Preliminary Hearings in cases where not guilty pleas are expected have been held too early in the process for the court to give more than perfunctory orders and that Plea and Case Management Hearings are either unnecessary or not held at a time when active case management could be most effective. The result has been a multiplicity of hearings.

There have also been differing local practices and protocols, and differing methods of recording court orders. The result has been failings of compliance when orders made have not always been communicated clearly to those who must act upon them.

The new Plea and Trial Preparation Hearing (PTPH) and related procedures will provide a single national process to be used in all Crown Courts. It builds on the Transforming Summary Justice initiative in the Magistrates' Courts.

The PTPH:

- Takes place a little later in the process than Preliminary Hearings, generally 28 days after sending unless, in individual cases, the Resident Judge orders otherwise;
- Occurs after the prosecution will have provided available information about the case and obtained details of the availability of likely prosecution witnesses. In all but complex cases this should be sufficient to enable the court to case manage effectively without the need for a Further Case Management Hearing (FCMH) before trial.
- Presumes that the parties will have communicated with each other prior to the PTPH in accordance with the duty of engagement now found in CrimPR 3 and will continue to do so thereafter.

The overarching aims

The overarching aims are:

- A single national process
- Robust case management
- A reduced number of hearings
- The earlier resolution of pleas and the identification of the issues in the case
- The maximum participation and engagement by every participant within the system
- Effective compliance with the Criminal Procedure Rules (CrimPR); Practice and Court Directions.

The CrimPR and CrimPD are available to view at:

<http://www.justice.gov.uk/courts/procedure-rules/criminal/>

Implementation

All cases sent after 5th January 2016 will be sent to a PTPH hearing. The chain of implementation is this. There is a National Implementation Team setting national requirements reflected in this Guidance. Each circuit has a Circuit Implementation Team (the South Eastern Circuit has two) and most Crown Courts will need to establish their own Crown Court Implementation Team (Local LITs) chaired by the Resident Judge as a means to inform court users and respond to their questions and to liaise with the Circuit Implementation Team so as to ensure continuity across the Circuit.

The judicial leads for the Circuits Implementation Teams are:

London: HHJ Hilliard QC supported by HHJ Kinch QC

Midlands: HHJ Dean QC

North East: HHJ Collier QC

Northern: HHJ Goldstone QC

South East: HHJ Holt supported by HHJ Cutts QC

Wales: HHJ Rees

Western: HHJ Ford QC.

National guidance and resources is available for the Circuit Implementation Teams and the Court Implementation teams.

Digital Case System

Parallel with the introduction of the PTPH is the provision of the Digital Case System (DCS) to all Crown Courts before the end of March 2016. The DCS is already operating in Leeds, Southwark, Portsmouth, Liverpool, and Merthyr Tydfil. Reading, Isleworth and Leicester will commence using DCS in November.

When the DCS is fully rolled out there will be **no paper files in the Crown Court**. The documents relied on in criminal cases such as the indictment, statements, paper exhibits, defence statement, applications and written orders will be uploaded onto the DCS and will be accessible on computers, tablets and even smartphones. Paper copies will continue to be required for unrepresented parties and jurors.

Documents will be “served” when they are uploaded onto the system AND a notification is sent, by e mail, to the other party or parties.

Thus any paperwork handed over during a hearing will only be deemed to have been “filed” when it is uploaded onto the DCS. These elements of the new approach are reflected in the new CrimPR 4.6.

More information about DCS may be found At:

<http://www.justice.gov.uk/about/criminal-justice-system-efficiency-programme>

PTPH and the DCS

Therefore some courts will have DCS before 5th January and others will only start DCS after 5th January.

- Whilst the PTPH and DCS are complementary to each other the key message is that courts do not need to have the DCS up and running to implement BCM or to use the PTPH form effectively.
- The PTPH does centre around the PTPH form as the primary record of the hearing and the orders made. Arrangements are in hand to put the PTPH form on the DCS so that it can be completed by the parties online. This will be of particular assistance in multi-defendant cases. Those arrangements are not expected to be in place by 5th January so all courts will be starting without that element.

The early adopter courts

There are six early adopter courts using the PTPH. They are Isleworth; Leicester; Merthyr Tydfil; Portsmouth; Reading and Woolwich. Liverpool and Leeds start soon after. Some started with cases sent from 5th October. Their reports indicate that the system is working. At each court there was effective engagement with the court users and, whilst not everything has gone smoothly at all times, the hearings are constructive and legal representatives have embraced the prospect of reducing the number of pre-trial hearings by making effective use of the PTPH. Early and effective engagement with court users and court staff at all levels seems to be the key to success. Whilst it is too early for a statistical analysis more guilty pleas have occurred than might have been expected at Preliminary Hearings.

The experiences of the early adopter courts identify problems and will inform decisions on national implementation.

The Expedited Case Management Initiative

It was recognised that the move to BCM would result in a bulge of work where the two systems overlapped. As a result the CPS has had in place an Expedited Case Management Initiative (“the Blitz”) at all Crown Courts from October to December 2015 to review cases of assault, theft, fraud and drugs to confirm whether or not they should proceed; whether further work is required; and whether they might be resolved by guilty pleas.

The duty of engagement

The new CrimPR 3.3 requires the parties to communicate at the first available opportunity, and in any event no later than the beginning of the day of the first hearing, and then thereafter until the conclusion of

the case. By that communication the parties are required to establish whether the defendant is likely to plead guilty or not guilty, what is agreed and what is likely to be disputed, what information, or other material, is required by one party or another and why; and what is to be done, by whom and when.

The parties are required to report on that communication to the court at the first hearing and then thereafter as directed by the court.

The role of Magistrates on Sending

When a case is to be sent for PTPH to the Crown Court the Magistrates should expect the parties to provide information on any relevant communications between them in accordance with the duty of engagement (CrimPR 3.3).

Where **guilty pleas** are indicated the Magistrates should consider ordering a PSR. Separate guidance on this has been published.

Where **not-guilty pleas** are indicated the magistrates should explore with the parties:

- Whether the defendant is prepared to plead to other offences?
- In brief terms what are the issues in the case, what evidence and issues are agreed and what is likely to be disputed?
- What information, or other material, is required by either of the parties to facilitate an effective PTPH?

In most cases, it is very unlikely that the magistrates will need to make any directions. The duties of the parties are already clear and set out in the rules. Standard directions will not be appropriate or necessary at this stage.

Where directions are sought by the parties, magistrates should expect an explanation as to why such directions would be necessary and appropriate in the circumstances.

It is anticipated that directions will usually only be sought where one party considers that the other has not complied with their duties under the rules, or it is likely to assist in ensuring that the PTPH is effective.

If either party objects to the direction being made, the magistrates should not make the order, but refer the matter to the Crown Court, for the judge to resolve at the PTPH.

A copy of any order made must be given to the parties.

The BCM questionnaire will be completed to record the outcome of the magistrates' court hearing, and sent to the Crown Court and parties by E mail. It is very important to identify linked cases or linked defendants.

When Common Platform (the stage beyond DCS) is available, all relevant information will be passed from the magistrates' court to the

Crown Court digitally. In the meantime the magistrates' court will continue to use LIBRA in order to send information such as the case details, the Notice of Sending, and, from 16 November 2015, whether a PSR was ordered. Work is ongoing to establish the most efficient way to advise the Crown Court of any issues identified and directions given by the magistrates to assist the PTPH.

The role of the Crown Court at PTPH

At an effective PTPH the defendant will be arraigned unless there is good reason not to.

In the event of a guilty plea the defendant should, if possible, be sentenced on that day.

In the event of a not guilty plea the court will;

- set the trial date;
- identify, so far as can be determined at that stage, the issues for trial;
- Consider with the parties the witness requirements that can be determined at that stage.
- provide a timetable for the necessary pre-trial preparation and give appropriate directions for an effective trial;
- make provision for any Further Case Management hearing that is actually required to take place at the time when it can be of maximum effectiveness. A FCMH will only be needed in complex cases.

Engagement between the parties and with the court should ensure that these elements can be achieved.

If the parties indicate that there is an issue that prevents arraignment such as a prospective application to dismiss or doubt as to fitness to plead the court will expect nevertheless to give directions to a trial date if it is needed but catering by way of a FCMH for the resolution of the issue – usually timed at around Stage 2 (see below)

What is the timing of the PTPH?

Cases sent to the Crown Court should be listed for PTPH within 28 days.

When cases have to be listed to take into account Saturdays, Bank holidays and court closure days then they should be adjourned beyond 28 days as opposed to being listed earlier than 28 days. This will give the prosecution maximum opportunity to ensure the case is properly prepared and the PTPH effective.

The National Implementation Team (NIT) has agreed that each Circuit may establish listing practices which result in the listing of a PTPH exceeding 28 days, so long as it is not more than 35 days from the sending provided that any such arrangements are consistent across the Circuit.

This will:

- accommodate smaller courts by allowing them to group their newly sent cases into hearings on only one or two days per week; or
- accommodate the listing patterns of larger court centres where the volume of sent cases are better handled if they

can list a similar number of cases per day across the week;
or

- enable the trial advocate to attend the PTPH.

BCM timescales and processes **do not apply** to these exceptional cases:

- Witnesses under 10 years;
- Section 28 hearings (pre recorded video cross examination of vulnerable witnesses being piloted in certain courts);
- Terrorism cases;
- Murder cases.

With the exception of terrorism cases which have their own specific process and expectations the other exceptional cases listed above should still be subject to BCM principles.

The NIT Working Group will produce detailed guidance to explain how these exception cases should be dealt with in the magistrates' court to avoid confusion with BCM.

Why the form?

The form must be used for all cases sent to the Crown Court after 5th January 2016 where not guilty pleas are anticipated unless expressly exempted by the CrimPR or CrimPD.

The form is to be regarded as the primary record of orders made so that there is no room for error or dispute The form is intended to:

- gather necessary information from the parties;
- monitor the extent to which the prosecution provide information prior to the PTPH;
- Obtain a clear early indication of the prosecution witnesses likely to be required for trial.
- allow the court to make, record and distribute clear orders timetabling the preparation of the case for trial. This is particularly important as it will address the need for those who have to act upon the orders to know exactly what the judge ordered.
- allow the court to provide for further hearings when they are going to be necessary and most useful.

Judges are invited to make standard orders within a single national process. This is of great assistance to court users. Judges remain free to make bespoke orders where it is considered they are required as long as they are made within the PTPH structure. Time spent ensuring a clear set of case management orders at PTPH should allow the case to proceed without the need for additional hearings.

Using the PTPH form prior to DCS

No less than 7 day before the PTPH the prosecution should prepare a form tailored to the number of defendants and send it electronically to the defence representatives. In single defendant cases the Defence should complete the information required and send it electronically to the Court AND the prosecutor in time that it can be available in electronic form for the Judge on the day of the hearing.

In multi-handed cases the parties are encouraged to pass the form sequentially but it is accepted that this process can be complex. Therefore if the process would be less complex and more timely then it may be convenient for advocates to co-operate at court to complete a single form electronically or in exceptional cases the form can be completed on paper. If it is completed on paper please keep in mind that the document will be scanned for distribution. After the hearing the court will make copies available to the parties (either electronically or on paper).

A form on the DCS

This is in preparation. This will enable the PTPH form to be edited within the system but will not be available until around **February 2016**.

The key features of this improved functionality will be:

- The PTPH form will be completed by the parties within the DCS, and it will be possible to do this simultaneously and collaboratively, thereby producing a single composite version. This is particularly helpful for multi-handed cases.
- The DCS will automatically record the time, date and the reason for any amendments to the form, thereby providing an audit trail.
- Any earlier versions of the form will be retained and can be viewed, if required.
- The final completed form may be viewed on the DCS.

It will be necessary to enable the system to deal with:

- A single case with multiple defendants
- A single defendant with many cases
- Merging and splitting cases.

The Officer in the Case will not have access to the DCS so a form completed on the DCS will have to be copied to the OIC by the CPS.

Until the editable PTPH form is available in the DCS the following process has been adopted by some early adopter areas:

- CPS complete their sections of the PTPH form and upload into Section S – PTPH Form. An email is sent to the defence advising the form has been uploaded, this should take place no later than 7 days prior to the PTPH hearing.
- Defence download the PTPH Form from DCS, complete their sections and upload into Section S – PTPH Form. There will be 2 versions of the form at this time, for assurance purposes both should be retained. It is recommended this is uploaded at least 1 day prior to the PTPH.
- The Judge will download the latest version of the PTPH Form and complete the necessary sections and at the end of the case will upload into Section S – PTPH Form for all parties to access.
- For more details see PTPH- Use in DCS – Interim Guidance.

Unrepresented Defendants Unrepresented defendants will not have access to the DCS. The prosecutor should provide a paper form with the usual prosecution materials and after the hearing the court must provide a paper copy of the final completed form.

Contact Information This follows on the requirement that prosecution and defence seek to identify case owners who will engage with each other at the earliest opportunity. The provision of contact information is vital to allow proper communication between participants. The form expressly reminds participants of their duties under the CrimPR. Individual names are required but it is acceptable to provide group email addresses provided they are properly monitored and acted upon. Parties must ensure effective cover for sickness or absence.

What the Prosecution will serve prior to the PTPH The usefulness of the PTPH depends on:

- The lodging no less than seven days prior to the PTPH of a draft indictment; and
- service prior to the hearing of the principal parts of the prosecution case then available. The summary required will, in police cases, usually be the MG5. The prosecution material is to be served:
 - If the defendant is on bail – by the sending hearing in the Magistrates' Court;
 - If the defendant is in custody – no less than seven days before the PTPH.

Details of what is expected to be served are set out in the CrimPD 3A.12 and 3A.20 and a breakdown appears in the form so that compliance can be monitored.

There may be good reasons why the prosecution has not served all the materials listed prior to the PTPH but the court will usually expect to proceed with the hearing rather than adjourn it.

What if the Defendant decides to plead guilty? The form is intended for those who will be pleading not guilty. If, after sending, the defendant decides to plead guilty the defendant should not wait for the PTPH but instead inform the court and, if so advised, apply for the preparation of a Fast Delivery Pre-sentence report, or a Standard Delivery Pre-sentence report and/or a DRR assessment. In each case reasons why a report is justified are required. The court will consider that request administratively and may adjourn the case for a Plea and Sentence hearing on a date by which any report that has been ordered will be available. A court ordering the preparation of a Pre-sentence Report will usually direct a short format report unless good reason for a full report has been identified.

Four Stages In most cases the court will be able to set just four dates for the parties to complete their pre-trial preparation and therefore the Judge or court will need only to insert the dates for the four stages

and, if it would be useful, delete any orders that are not required. The draft orders have been grouped in a way intended to facilitate such an approach.

The setting of a multiplicity of dates is recognised as the enemy of compliance but where necessary individual dates can be set.

The four stages are:

- **Stage 1** – for the service of the bulk of prosecution materials. This date will ordinarily be 50 days (custody cases) or 70 days (bail cases) after the sending. This is in line with the timetable for the service of the prosecution case provided in the Crime and Disorder Act (Services of Prosecution Evidence) Regulations 2005. The court does not have power to abridge this time (without consent) but does have power to extend it.
- **Stage 2** – for the service of the defence response. This date will ordinarily be 28 days after Stage 1 reflecting the time provided for the service of a Defence Statement
- **Stage 3** – for the prosecution response to the Defence Statement and other defence items. This date will ordinarily be 14 or 28 days after Stage 2 depending on the anticipated date of trial.
- **Stage 4** - for the defence to provide final materials or make applications that will commonly arise out of prosecution disclosure.

In cases involving witnesses aged under 10 a different timetable will be required to conform to the Protocol to Expedite Cases of 19th Jan 2015.

The Court's Directions

The form includes standard directions. These have been approved by the Lord Chief Justice and will apply unless the Court expressly orders otherwise.

Directions are numbered and a two or three letter code appears alongside the directions as a visual prompt, and, following the re-numbering exercise this year, there are references to the Criminal Procedure Rules 2015.

In individual cases the court may revise the standard directions or make other bespoke orders as necessary. However the form is designed so that the numbering of standard orders will not alter.

It is accepted that individual courts have developed systems that have, for them, worked well and may find that not all of the elements of their current systems are present in this form. However the use of a national form with standard directions will greatly assist both prosecution and defence in developing systems to respond to them. This is why local forms and protocols can no longer continue to be used.

Non-contentious orders

There will be considerable savings of resources for all parties if non-contentious orders, such as some special measures orders, are made at the PTPH without further formality. At the early adopter

courts such orders have been made frequently.

Witness Requirements at PTPH

In most cases it will be possible for the defence to provide details of witness requirements at the PTPH and that is the experience of the early adopter courts. Therefore parties should expect to do so within the PTPH form. **It is important that the Judge considers with the parties which witnesses are required. It will not normally be acceptable for the defence to say “all witnesses at this stage”.** The experience of the early adopter courts is that some time spent considering the witness requirements is very useful.

Standard Witness List

Since the prosecution will be ordered to serve its full case by Stage 1 it follows that final witness requirements cannot be provided at PTPH. Therefore a defendant's final witness requirements (with considered estimates of the time required) must be given at a later stage using the Standard Witness List. Unless otherwise ordered it must be served by the defence on the prosecution at Stage 2 - the same time that the Defence Statement is due (whether or not a Defence Statement is also actually served). Completed Standard Witness Lists should be uploaded to the DCS (PTPH Section) and email notification given to the other parties.

Live link witnesses

When considering witness requirements at the PTPH the court should consider whether it would be appropriate for certain witnesses such as police officers or experts to give evidence over a live link (if available) rather than in person.

When will a Further Case Management Hearing (FCMH) be required?

After the PTPH there will be no Further Case Management Hearing (FCMH) before the trial unless:

- The court is informed that a guilty plea is to be entered;
- It is necessary to give directions for an effective trial; or
- A Ground Rules hearing is required - CrimPR 3.9(7);

And the court directs a FCMH is necessary to further the overriding objective.

When a Further Case Management Hearing (FCMH) is required the judge will consider with the parties the stage at which the FCMH will be most effective, in order to resolve any outstanding issues in the case. It follows that there is no automatic timescale for such a hearing. However, in most cases where a FCMH is required it will be most effective if it is listed for a date after the completion of the Stage 4 directions and it may well be appropriate to order a combined FCMH/PTR/Ground Rules Hearing.

The Defendant will not usually be required to attend FCMHs unless a good reason is provided or statute requires it. Unless a good reason is provided a defendant in custody will not be produced, nor will an interpreter be booked for a Defendant on bail who wishes to attend.

The CrimPD provides that at the PTPH the court may order a FCMH

but usually will do so only in one of the following cases:

- Class 1 cases¹;
- Class 2 cases which carry a maximum penalty of 10 years or more;
- Cases involving death by driving (whether dangerous or careless), or death in the workplace;
- Cases involving a vulnerable witness;
- Cases in which the defendant is a child or otherwise under a disability, or requires special assistance;
- Cases in which there is a corporate defendant or an unrepresented defendant;
- Cases in which the expected length of the trial is such that a FCMH is desirable and any case in which the trial is likely to last longer than four weeks;
- Cases in which expert evidence is to be introduced;
- Cases in which there are likely to be linked criminal and care directions in accordance with the 2013 Protocol.

The Court may also order a FCMH:

- Where the defendant requests a hearing to enter a guilty plea;
- Cases in which an application to dismiss or stay has been made;
- Cases in which arraignment has not taken place for any reason.

See CrimPD I. 3A.21

Issues such as Abuse; Fitness to Plead; Dismissal; Joinder and Severance

Where there is an abuse of process or fitness to plead issue or a possible dismissal application it will not be possible to arraign the defendant at PTPH. Experience at the early adopter courts is that the best way forward is to give full PTPH directions towards a trial but to make provision for a FCMH at the time of Stage 2 to resolve these issues. A similar approach may also be appropriate to resolve issues of joinder or severance.

Certificates of Readiness

Unless otherwise ordered the prosecution and each defendant must file a Certificate of Readiness (in standard form) no less than 28 days before the day set for trial (or the beginning of the warned list). The certificate is available on the MoJ Criminal Procedure Forms page.

This Certificate is of considerable importance to a structure which aims to minimise the number of court hearings. It follows that parties will be expected to give it careful thought.

The Certificates should be completed by each party (outside of DCS in MS Word format), then simply uploaded to the DCS (PTPH Section) and email notification given to the Court.

¹ For classification of cases see Criminal Practice Direction XIII Listing B: Classification.

Compliance Parties are expected to comply with the timetables set. If, exceptionally, an element required by a particular stage is not available that is not to be regarded as a reason for not serving the remainder.

If a party had been directed to serve, for example, a special measures application by a certain date but later decides not to pursue such an application it is not necessary to file any formal notice that the matter will not be pursued.

Parties are reminded that all participants have a duty to prepare and conduct the case in accordance with the overriding objective; to comply with the Criminal Procedure Rules, Practice Directions and directions of the Court; and at once to inform the court and all parties of any significant failure (CrimPR1.2)

Generally parties are expected to resolve issues of compliance by engagement to resolve matters between themselves.

Administrative Directions Where the parties have not succeeded in resolving matters between themselves and further directions are required from the court pre-trial the court will usually expect to give administrative directions without the need for an oral hearing.

Compliance Courts If a party fails to comply with a case management direction then that party may be required to attend the court to explain the failure. This should be used when other means to gain compliance have failed and/or a pattern of failure is identified. Unless otherwise directed a defendant and other parties to the case will not usually be expected to attend such a hearing (CrimPD I 3A.23; 26-28)

The future – The Common Platform The introduction of the PTPH and this form is a step towards electronic case management and the electronic monitoring of compliance which will be possible with the introduction of the Common Platform. This will have huge advantages for all. The use of a single national process with largely standard directions is essential to the future development of systems for the court, prosecution and defence that work one with another.

Improving the Form Court users who would like to propose adjustments to the form or to suggest additional, or re-phrased, standard directions are encouraged to make suggestions to BCM.info@judiciary.gsi.gov.uk.

Signed: Lord Chief Justice
Senior Presiding Judge
President