

PRACTICE DIRECTION No 5/2011

PROTOCOL FOR CASE MANAGEMENT IN THE CROWN COURT

1 THE OVERRIDING OBJECTIVE

The overriding objective of this protocol is that criminal cases be dealt with justly.

1.2 Dealing with a criminal case justly includes:-

- (a) acquitting the innocent and convicting the guilty;
- (b) dealing with the prosecution and defence fairly;
- (c) recognising the rights of a defendant, particularly those under Article 6 of the European Convention on Human Rights;
- (d) respecting the interests of witnesses and victims and keeping them informed of the progress of the case;
- (e) dealing with the case efficiently and expeditiously;
- (f) ensuring that appropriate information is available to the court when issues of bail and sentence are considered; and
- (g) considering any need for non-statutory reporting restrictions, and
- (h) dealing with the case in ways that take into account:-
 - (i) the gravity of the offence alleged;
 - (ii) the complexity of what is in issue;
 - (iii) the severity of the consequences for the defendant and others affected; and
 - (iv) the needs of other cases.

2 THE OBLIGATIONS OF PARTICIPANTS IN PROCEEDINGS IN THE CROWN COURT

2.1 Each participant, in the conduct of each case, must:-

- (a) prepare and conduct the case in accordance with the overriding objective;
- (b) be fully acquainted with the facts, issues and history of the case and be in a position to respond in detail to any queries raised by the court;
- (c) communicate effectively and in a timely manner with the other parties, witnesses, experts and the court;
- (d) ensure clients and witnesses (where appropriate) are acquainted with Crown Court procedure;
- (e) ensure that all applications (whether made before or during the trial)

- (i) are made at the earliest possible opportunity; and
 - (ii) are communicated to the other parties and to the court at the earliest possible opportunity;
- (f) comply with any directions by a judge that any correspondence, skeleton argument, written submission, agreed statement of facts, expert's report, or any other document or exhibit be lodged in court and served on any party in a particular way and by a specified date and time;
 - (g) lodge in court a legible and complete copy of any report to be relied upon by that participant no later than five working days from receipt of the report if the trial has not commenced, or immediately upon receipt if the trial has commenced or is due to commence within five working days, unless a judge extends the time for doing so;
 - (h) have in court sufficient copies of any exhibits for the judge, the court clerk, the jury, the other parties and the witness;
 - (i) promptly inform the court and the other parties of anything that may affect the date of any interlocutory hearing or the trial or significantly affect the progress of the case in any other way.

2.2 It is the duty of the legal advisers for every defendant to consider:-

- (a) whether each witness relied upon by the prosecution is required to attend in person to give evidence, or whether some or all of the witnesses' evidence can be read by agreement, or placed before the court by way of an agreed statement of fact(s); and
- (b) to respond to any request from the prosecution to agree a witness or witnesses in writing in a timely manner, or by the date and time fixed by a judge, and
- (c) when advising a defendant before arraignment (or at any other time) to explain to the defendant the impact of a late plea of guilty upon any credit that may be allowed for such a plea.

3 COMMITTAL AND ARRAIGNMENT

3.1 Before the committal the prosecution must obtain sufficient copies of the following:-

- (a) all CCTV footage and still photographs taken from such footage;
- (b) copies of all still photographs of witnesses, scenes or exhibits;
- (c) any maps that are to be relied upon as exhibits by the prosecution.

- 3.2 At the committal the prosecution must provide:-
- (a) one copy of each such film, photograph or map for the court file and one for the judge, these should be handed to the court clerk;
 - (b) one copy for the legal representative of each defendant.
- 3.3 In a jury case prior to the commencement of the trial the prosecution must obtain sufficient copies of such films, photographs or maps for use by the jury (six copies will usually be sufficient).
- 3.4 Whilst the copies to be provided at 3.1 and 3.2 above are to be provided free of charge, if they are lost the prosecution will be entitled to charge a reasonable fee for additional copies. It is the responsibility of a legal representative going off record to transfer the papers to the new representative or to meet the cost of replacing these.
- 3.5 The defence representative must consider what expert witnesses may be required, and no later than ten working days before the date fixed for the arraignment must contact every such witness to find out:-
- (a) the earliest date when the witness can examine the defendant, or perform such tests or carry out any inspections required to report;
 - (b) the date by which the witness can produce a report; and
 - (c) what notes, records or other documents, exhibits or inspection the witness may require to prepare a report.
- 3.6
- (a) The defence solicitor must send a set of papers to counsel, together with the defendant's instructions, no later than ten working days before the date fixed for the arraignment unless a judge extends the time for doing so. The instructions must include the information required under 3.5 above.
 - (c) Before arraignment the defendant's solicitor must take all reasonable steps to obtain written consent from the client to make available to any expert instructed by the prosecution to examine the defendant any medical notes and records that the expert requires to conduct an examination, or provide an opinion on any aspect, of the defendant's psychiatric or physical condition at any material time should the prosecution require an examination of the defendant in response to an expert's report relied upon by, or on behalf of, the defendant. If the defendant refuses to provide such written consent, the defendant's solicitor must inform the defendant that such a failure to give consent may have an adverse effect upon the admissibility of any expert report relied upon by the defendant at the trial.

- (d) Counsel must arrange to consult with, and advise, the defendant before the date fixed for the arraignment.

3.7 At the arraignment the prosecution's legal representatives must be in a position to tell the judge:

- (a) what applications will have to be made for interlocutory orders such as special measures, bad character, hearsay, anonymity, live links, change of venue;
- (b) whether any additional evidence will be served that may affect the ability of the defence representatives to prepare their client's defence, and if so when it will be served;
- (c) that a list of witnesses whose evidence the prosecution suggest can be agreed has been sent to the defendant's solicitor;
- (d) in the event that the defendant pleads not guilty how long the trial is expected to take.

3.8 If the defendant intends to make an application that has to be heard before the arraignment can take place, such as a No Bill, fitness to plead, or quashing the indictment, the defendant's solicitor must inform the court, the prosecution and the legal representatives of any other defendant in writing of the nature of the application, and the estimated length of the hearing, no later than five working days before the date fixed for the arraignment.

3.9 If the defendant pleads guilty at arraignment the judge will proceed to fix a date for the hearing of the plea in mitigation, and will fix a date and time by which the following are to be lodged in court and served on the other parties:

- (a) any victim impact report or statement;
- (b) the defendant's criminal record (if not already produced);
- (c) any pre-sentence report;
- (d) any documentary evidence relied upon by the defendant such as character witness statements or letters, and experts' reports (if not already lodged in court and served on the prosecution);
- (e) a list of any sentencing authorities relied upon by the parties;
- (f) if appropriate, an agreed statement of facts;
- (g) all relevant information required before the court can make any orders ancillary to sentence, e.g. compensation, costs.

3.10 If the defendant wishes the court to conduct a *Newton* hearing the defendant must notify the court and the prosecution in writing of those facts or inferences that are in dispute no later than five working days before the date fixed for the hearing of the plea to enable that any necessary witnesses are available.

4. FIXING TRIAL DATES

- 4.0 Where a defendant enters a not guilty plea at arraignment the judge will determine whether or not the case is:
- (a) suitable for an early trial; or
 - (b) not suitable for an early trial as there are issues which could require time to resolve (for example screening, PII, disclosure, expert witness issues), and
 - (c) ascertain from the parties their best estimate as to how long the trial will last.
 - (d) Ascertain what expert witnesses may be required, who they are, what facilities (if any) they require to prepare their report(s), and when the report(s) will be received by the defendant's solicitor.
 - (e) A judge may direct that if a report is to be relied upon by a defendant it is to be served on the prosecution it must be served upon the prosecution by a certain date and time.
 - (f) If the defendant's solicitor fails without reasonable cause to serve any report by the time directed at (e) a judge may rule that report inadmissible at the trial.
 - (g) A copy of any expert report served by any party must be lodged with the court at the same time.

CASES SUITABLE FOR EARLY TRIAL

- 4.1 Where the case is suitable for early trial the judge will, at arraignment, fix the stand by and trial dates for a date within the next 12 weeks.
- 4.2 The judge will, at arraignment, ask the defence which witnesses, from the list which they have already received from the PPS or otherwise, can be agreed.
- 4.3 Following arraignment, both the PPS and the solicitor(s) for the defendant(s) will **immediately** notify all witnesses whose attendance is required at trial of the stand by and trial dates. The initial contact will be by telephone call or email on the day of arraignment, or the following working day at the latest. This initial contact will be followed up, for prosecution witnesses, by:
- (a) in the case of civilian witnesses by a requirement to attend served by the PSNI;
 - (b) in the case of expert witnesses contact by the PPS or the PSNI as appropriate; or
 - (c) in the case of police witnesses by the PPS or PSNI as appropriate.

- 4.4 Where a witness does not confirm within five working days of the delivery of the requirement to attend, or in respect of defence witnesses within five working days of being notified, that they will attend court, an application for a witness summons will be made **immediately** by the party requiring the attendance of the witness(es).
- 4.5 Confirmation of attendance at court will be on the basis of receipt of a proforma reply or direct contact with the witness from civilian prosecution witnesses, or in the case of defence witnesses direct contact with the witness to confirm their attendance.
- 4.6 The judge will list the case for a review hearing 2 weeks after the arraignment where the stand by and trial dates will be confirmed or varied in light of the PPS and defence information about witness availability.
- 4.7 Where it becomes apparent that the date may have to be varied, both the prosecution and the defence will come to the review hearing with witness availability for a further 12 week period starting with the original trial date, or will have furnished the witness availability to the case progression officer in advance of the first review hearing if possible.

5.0 CASES NOT SUITABLE FOR EARLY TRIAL

- 5.1. At arraignment, when a judge is determining whether or not a case is suitable for an early trial, the judge will determine this on the basis that the case involves issues which could require time to resolve, for example screening, PII, disclosure, expert witness issues etc.
- 5.2 At arraignment, the judge will ask the defence which witnesses, from the list which they have already received from the PPS or otherwise, can be agreed.
- 5.3 The judge will determine which issues require resolution, and get indicative timescales from the representatives when the issues are likely to be resolved.
- 5.4 The judge will then timetable a hearing for all issues to be resolved. This hearing should be within 4 - 6 weeks of arraignment. The parties should attend with the availability of the witnesses required for trial, and, if possible, the judge will fix the stand-by and trial dates at that hearing.
- 5.5 If it has not been possible to fix the stand by and trial dates at arraignment, then once the issues in the case have been resolved, or the judge is satisfied that they can be resolved by the trial, the judge will fix the stand by and trial dates for a date within the next 12 weeks.

- 5.6 Once the dates have been fixed the PPS and the solicitor(s) for the defendant(s) will **immediately** notify all witnesses whose attendance is required at trial of the stand by and trial dates. The initial contact will be by telephone call or email on the day on which the date is fixed, or the following working day at the latest. This initial contact will be followed up, for prosecution witnesses by:
- (a) in the case of civilian witnesses by a requirement to attend served by the PSNI;
 - (b) in the case of expert witnesses contact by the PPS or the PSNI as appropriate; or
 - (c) in the case of police witnesses by the PPS or PSNI as appropriate.
- 5.7 Where a witness does not confirm within five working days of the delivery of the requirement to attend, or in respect of defence witnesses within five working days of being notified, that they will attend court, an application for a witness summons will be made **immediately** by the party requiring the attendance of the witness(es).
- 5.8 Confirmation of attendance at court will be on the basis of receipt of a proforma reply or direct contact with civilian prosecution witnesses, or in the case of defence witnesses direct contact with the witness to confirm their attendance.
- 5.9 Where it becomes apparent that the date may have to be varied, both the prosecution and the defence will come back before the court with witness availability for a further 12 week period starting with the original trial date, or will have furnished the witness availability to the case progression officer in advance, if possible.
- 5.10 Whether the trial is or is not suitable for an early trial, at arraignment the legal representatives for the prosecution and the defendant must be in a position to give the judge their best estimate of the likely length of the trial.

6 PRE-TRIAL MATTERS

- 6.1 As far as possible all pre-trial matters will be dealt with at the same time at the arraignment, or if that is not possible, on a date fixed by the judge at the arraignment. The parties will therefore be expected to be prepared to deal with all such matters at the same time, for example disclosure, abuse of process, special measures and anonymity. If necessary the judge will fix dates by which any skeleton arguments are to be exchanged by the parties and lodged in court.

PROSECUTION DISCLOSURE

- 7.1 If the defence statement has not been lodged by the time the defendant pleads not guilty, and the time for doing so has expired, the defendant must seek an extension of time from the judge, who has a discretion whether to grant an extension.
- 7.2 If the prosecution has not made full disclosure within 15 working days of receipt of defence statement the prosecution must immediately apply to the judge in writing for an extension of time with an explanation why full disclosure has not been made.
- 7.3 If the defendant has not received full disclosure within the specified time the defendant's solicitor must immediately email the prosecution specifying the disclosure that is claimed to be outstanding, and if a satisfactory reply is not received within five working days of that email, immediately lodge and serve an application under s. 8 of the Criminal Procedure and Investigations Act, 1996. The judge will then fix a date for the hearing of the application.

8 THIRD PARTY DISCLOSURE

- 8.1 Third party disclosure applications must be made promptly and well in advance of scheduled trial dates so that trial dates are not vacated by reason of late applications. These provisions apply to the following types of cases:
- (a) Rape and any other category of sexual offence;
 - (b) serious cases of violence to the person; and
 - (c) attempting, inciting or conspiring to commit any of the offences listed above.
- 8.2. The defendant's legal representatives must address the issues of third party disclosure early and obtain the relevant information from the prosecution to enable them to draft applications. The procedure provided for in this protocol is designed to ensure that the necessary information is available at an early stage.
- 8.3. In those cases to which this protocol applies the officer in charge of the case should, at an appropriate time, which in any event should be no later than the service of the committal papers, inform the complainant (for children less than 14 years old this information should be provided to their parents). However, in the case of children who are 14 but not yet 18 years old the

officer should provide the information to the young person as well as to his/her parents.

- 8.4. The officer should explain to the complainant that the defendant's legal advisers may make an application to the court to see their medical notes, and any records from any counsellor they are attending as a result of the incident(s) that are the subject of the charge(s). The complainant should be asked to provide their date of birth (so that the correct medical notes and records can be obtained); the name of the General Practitioner; the hospital (if any) he or she attended; the name of any psychiatrist, psychologist or counsellor and the name and address of the counselling organisation he or she attended. The complainant should also be asked to provide the address of the relevant office of the Health and Social Services Trust in question if he or she has been involved with social services. The officer should ascertain whether the injured party has made a criminal injury application and whether there has been any social services intervention with the complainant. It should be explained that the purpose of obtaining this information at this stage is only to identify the persons or bodies who might have such material. If the complainant is unwilling to provide the information sought at this stage no pressure should be exerted but it should be tactfully explained that this information may be obtained by other means for the judge to determine if it is relevant to the case.
- 8.5. Having obtained the names and addresses of those persons or agencies that may hold material which might be the subject of an application, the officer in charge should proceed as follows: -
- (a) The officer should explain to the complainant that he or she is not obliged to agree to the release of material from these sources but that if the court concludes that it is necessary that the defence should have access to that material in order to ensure a fair trial its release will be ordered.
 - (b) The complainant should be informed that the court will only order the disclosure of such material as is necessary to enable a fair trial to take place and that, in deciding whether to order the release of the material, the court will take into account the complainant's rights under article 8 of the European Convention on Human Rights and Fundamental Freedoms (the right to respect for private and family life).
 - (c) The complainant should then be asked whether he or she is agreeable to the release of the material to the legal representatives of the defendant. He or she should be informed that if they are not agreeable to the disclosure of this material an application might be made by the defendant's legal advisers for

an order of third party disclosure. The complainant should be told that they are entitled to make representations to the court on such an application. These representations can be made in writing or in person at the time that the application to the court is made

- 8.6. The prosecution should then inform the district judge and the defendant's solicitor at the committal stage (or the judge at first hearing in the Crown Court) (all in writing) of the complainant's date of birth (so that the correct medical notes and records can be obtained); the name of the General Practitioner; the hospital (if any) he or she attended; the name of any psychiatrist, psychologist or counsellor and the name and address of the counselling organisation he or she attended, together with the address of the relevant Health and Social Services Trust office if the complainant has been involved with social services. The court should also be informed if the complainant has made a criminal injury application at this stage.
- 8.7. The solicitor seeking a third party disclosure order on behalf of a defendant should, in the first instance, write to the third party indicating clearly the category of documents sought and the reasons why disclosure is being sought. He or she should ask for confirmation that the proposed third party holds such documents. The letter should then state that an application will be made to the judge, who if he or she makes an order will direct the production of the documents to the court, and not to the solicitor for the defendant, and that only documents which are relevant to the trial will be disclosed by the judge. The third party against whom the order is sought should be informed that they are entitled to appear and object to any disclosure being made.
- 8.8 The defence should lodge and serve their application:
 - (a) in cases where the trial is to be dealt with by a High Court judge no later than ten working days from arraignment; and
 - (b) in all other cases no later than ten working days prior to the arraignment.

In either situation the date of arraignment is included within the ten working days

- 8.9 Third parties should be informed of the time and date of the third party application by the applicant. The applicant should send a copy of the notice and supporting affidavit to the Public Prosecution Service for transmission to the complainant(s) via the officer in charge of the case.
- 8.10 Third party disclosure applications shall be heard at the arraignment or as soon thereafter as the court directs.

- 8.11. The order, if made, will then issue with a court return date, which will be at least seven clear working days after the making of the third party disclosure order.
- 8.12 The third party disclosure order should be drawn up by the court. The party applying for the order should then obtain a copy of the order and serve it on the third party. Each court office should have and maintain a register recording the date that third party documents are lodged with the court and the date when they are returned to the third parties.

9 REVIEWS AND DIRECTIONS

- 9.1 (a) A judge may review the case at any time after arraignment and before trial to ensure that the parties are taking, or have taken, all the necessary steps to prepare the case for trial.
- (b) A judge shall give all necessary directions to ensure that the parties take any step necessary to ensure that the case proceeds to trial as expeditiously and efficiently as possible consistent with the trial being a fair one to the prosecution and the defence.
- (c) Such directions may be given at any time, whether in or out of court, and may be given orally or in writing. The parties and witnesses shall comply with any such directions.

10 PRACTICE DIRECTIONS

- 10.01 This Protocol comes into effect on 6/1/2012, and from that date the following Practice Directions are revoked.

No 6 of 2007 (Production of photographic and related material)
No 3 of 2011 (Pilot Scheme applying only to the Divisions of Belfast and Antrim)

Lord Chief Justice – the Right Honourable Sir Declan Morgan

Date: 8 December 2011

