

Practice Direction No 1 of 2012

PROTOCOL ON CRIMINAL CASE MANAGEMENT IN THE MAGISTRATES' COURT

1.0 THE OVERRIDING OBJECTIVE

- 1.1 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;
 - (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.

2.0 THE DUTY OF PARTICIPANTS IN A CRIMINAL CASE

- 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, any experts etc and the court;
 - (d) ensure clients and witnesses (where appropriate) are acquainted with Magistrates' 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.

2.2 In addition, in a Youth Court each participant must seek to comply with the Youth Court guidelines.

3.0 GUILTY PLEA CASES PROSECUTION

3.1 The prosecution in presenting a case, in which a plea of “guilty” is entered, must:-

- (a) be in a position to present all the relevant facts, including aggravating and mitigating factors to enable the court to pass the appropriate sentence or make the appropriate order;
- (b) be in a position to advise the court by drawing attention to any statutory provisions that govern the court’s sentencing powers and to any relevant sentencing guidelines;
- (c) be in a position to assist the court of any aggravating factors including facts which would lead the court to conclude that an offence is aggravated by hostility as defined by Article 2(3)(a) of the Criminal Justice (No 2) (NI) Order 2004;
- (d) be in a position to advise the court of any essential facts in dispute of which they are aware, so as to enable the court to decide if a Newton Hearing is required;
- (e) ensure, where appropriate, that any necessary witnesses are available for a Newton Hearing or a special reasons hearing;
- (f) furnish to the court all up-to-date criminal records, including the criminal records of members of the European Union in their own countries, where appropriate;
- (g) ensure all relevant information is before the court to make any orders ancillary to sentence, eg compensation, costs;
- (h) have sufficient copies of documents which need to be drawn to the court’s attention, and, in particular, in a Youth Court ensure that a copy of any document is available for each member of the panel;
- (i) provide, upon request, either orally or in writing, a summary of the facts of the case to the defence either prior to or on the morning of the plea being entered;
- (j) in the event that a defendant does not appear in answer to a summons charging an indictable offence triable summarily, ensure that an officer, who can connect the defendant with the charge is present at the next hearing.

4.0 GUILTY PLEA CASES DEFENCE

4.1 The defence solicitor/counsel shall:-

- (a) take sufficient instructions in relation to the prosecution case as contained in available statements or as made known otherwise (including a PACE interview) so as to be in a position to inform the court of a plea of “guilty” at the earliest opportunity. (McDonald, McDonald and Maternaghan refers - Attorney General’s Ref. No 1 of 2006).
- (b) Obtain the current address, home, work and mobile telephone numbers of the defendant in order to facilitate communication.

4.2 Immediately upon receipt of instructions the solicitor/counsel shall:-

- (a) write to the defendant to confirm the date, time and venue of the court appearance and request the defendant to inform him of any change of address or telephone number. In road traffic cases he shall advise the defendant to bring his driving licence to court, irrespective of which jurisdiction or country has issued the licence;
- (b) advise the court and the prosecution if an interpreter will be required and, if so, in what language;
- (c) be in a position to present all the relevant facts in mitigation to enable the court to pass the appropriate sentence or make the appropriate order;
- (d) be in a position to advise the court of any essential facts in dispute to enable the court to decide if a Newton Hearing is required;
- (e) ensure, where appropriate, that any necessary witnesses are available for a Newton Hearing or for a special reasons hearing;
- (f)
 - (i) be in a position to assist the court by drawing attention to any statutory provisions that govern the court’s sentencing powers and to any relevant sentencing guidelines;
 - (ii) be familiar with and aware of the relevant sentencing guidelines as approved by the Lord Chief Justice which appear on the Judicial Studies Board website;
- (g) have sufficient copies of documents which need to be drawn to the court’s attention and, in particular, in a Youth Court ensure that a copy of any document is available for each member of the panel;
- (h) advise the court of any special requirements (with regard to access or other arrangements) of the defendant or any defence witness;
- (i) advise the court (well in advance) of the Form of Oath required by any defence witness.

5.0 NOT GUILTY PLEA CASES

PROSECUTION

- 5.1 Upon a plea of not guilty being entered, the prosecution must ensure that, within such time as is allowed by the court:-
- (a) a disclosure schedule together with a copy of all material to be disclosed is delivered to the defendant's solicitor;
 - (b) a schedule of witness availability is obtained for a period of at least 3 months ahead. Contact details for all prosecution witnesses should be compiled;
 - (c) All CCTV footage and still photographs taken from such footage is delivered to the defendant's solicitor.
- 5.2 Prior to a case being fixed for hearing, the prosecutor must be able to advise the court if any application for bad character, hearsay, special measures, expert evidence or other matters is to be made, whether an interpreter will be required, and the likely duration of the trial.
- 5.3 Prior to a hearing, the prosecutor must check whether the witnesses have confirmed that they will be in attendance, and, if not, or where otherwise appropriate, apply for a witness summons to be issued to ensure the attendance of a witness at court. The PPS letter inviting witnesses to attend should have a reply date and if this is missed other steps should be taken to ensure attendance, including, ultimately, a witness summons.
- 5.4 The prosecutor should promptly inform the court and the other parties promptly of anything that may:-
- (a) affect the date or duration of the trial, including, in particular, any proposed application for an adjournment;
 - (b) significantly affect the progress of the case in any other way.
- 5.5 In advance of the day of hearing, the prosecutor must ensure, in co-operation with court staff, that, where necessary, facilities for live television links or to play video and/or audio recordings are available.
- 5.6 In addition, the prosecutor must have sufficient copies of documents eg maps or photographs for the defence, witnesses and the court. In particular, in a Youth Court, sufficient copies of any documentation must be available for each member of the panel.
- 5.7 In advance of the day of hearing the prosecutor must advise the court of any requirements (in relation to access or other arrangements) of any prosecution witnesses.
- 5.8 In advance of the day of hearing the prosecutor, if he/she becomes aware of any particular requirement as to the Form of Oath required by any prosecution witness should inform the court accordingly.

5.9 On a finding of guilty or a change of plea to guilty the points in paragraphs 3 and 4 apply.

6.0 NOT GUILTY PLEA CASES DEFENCE

6.1 Upon a plea of not guilty being entered, within such time as is allowed by the court, the defence solicitor/counsel must be in a position to advise the court:-

- (a) as to the availability of the defendant and his witnesses for a period of 3 months. Contact details for the defendant and all defence witnesses should be compiled;
- (b) if any application for bad character, hearsay, special measures, expert evidence, abuse of process or other matters is to be made;
- (c) 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). In particular, a special effort should be made to agree the statements of medical witnesses and officers whose only role is to attend a PACE interview, whether neither the admissibility nor the content of the interview is in dispute. Where possible this information should be communicated to the prosecution after instructions have been taken and in advance of the first hearing;
- (d) respond to any request from the prosecution to agree a witness or witnesses in writing in a timely manner, or by the time fixed by the court;
- (e) the likely duration of the trial.

6.2 Following primary disclosure, where a defence statement is to be served, the defence solicitor must ensure that it is served within the time limits set out in The Criminal Procedure and Investigations Act (Defence Disclosure Time Limits) Regulations 1997.

6.3 The defence solicitor/counsel must also:-

- (a) ensure that the defence witnesses are available and willing to attend the trial. If not, an application should be made for a witness summons;
- (b) advise the court in advance of the day of hearing if facilities to play video and/or audio recordings will be required;
- (c) promptly inform the court and the other parties of anything that may affect the date or duration of the trial or significantly affect the progress of the case in any other way;
- (d) have sufficient copies of documents eg maps, photographs for the defence, witnesses and the court. In particular, in a Youth

Court, ensure that a copy of any documentation is available for each member of the panel;

- (e) advise the court and prosecution if an interpreter will be required and, if so, in what language;
- (f) advise the court in advance of the hearing of any requirements (in regard to access or other arrangements) of the defendant or any defence witness;
- (g) advise the court in advance of the hearing of the Form of Oath required by the defendant or any defence witness.

7.0 **FIRST REMANDS**

7.1 At a first remand, the prosecutor should:-

- (a) ensure that an officer sufficiently acquainted with the facts of the case is available to connect a defendant to a charge; to deal with any issues arising from a bail application,
- (b) be in a position to present the facts in any case where a plea of guilty is entered and can be accepted;
- (c) bring the defendant's criminal record to court;
- (d) be in a position to furnish a certificate of suitability for summary trial in appropriate cases;
- (e) where a full file is required in a case which will clearly be tried summarily, be in a position to advise the court of the timescale for submission of the file to the PPS;

7.2 A case should not be called by any party unless satisfied the papers have been lodged in court, are with the court clerk and that any necessary witness is present in court.

7.3 The defence should consider in advance the availability of sureties and an appropriate address for the defendant.

8.0 **THE COURT**

8.1 The court will seek to ensure that cases are dealt with justly and efficiently and will seek:-

- (a) to identify the real issues at an early stage including which witnesses may be agreed and to ensure that only those witnesses whose evidence is in dispute are required to attend court.;
- (b) to identify the needs of witnesses, and their availability;
- (c) to consider the impact on the victim;
- (d) to set a timetable for the progress of the case;
- (e) to monitor the progress of the case and compliance with directions;
- (f) to ensure that evidence, whether disputed or not, is presented in the shortest and clearest way;

(g) to discourage delay, by dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary adjournment.

8.2 In order to manage the trial the court may require a party to identify:-

- (a) which witnesses he intends to give oral evidence;
- (b) the order in which he intends those witnesses to give their evidence;
- (c) whether he requires an order compelling the attendance of a witness;
- (d) what arrangements, if any, he proposes to facilitate the giving of evidence by a witness;
- (e) what arrangements, if any, he proposes to facilitate the participation of any other person, including the defendant;
- (f) what written evidence he intends to introduce;
- (g) what other material, if any, he intends to make available to the court in the presentation of the case;
- (h) whether he intends to raise any point of law that could affect the conduct of the trial.

8.3 The Court must actively manage the case by giving directions appropriate to the needs of that case as early as possible.

PROTOCOL ON CRIMINAL CASE MANAGEMENT IN THE MAGISTRATES' COURT - 2007

9.0 The Protocol on Criminal Case Management in the Magistrates' Court issued in 2007 is revoked.

COMMENCEMENT

10.0 This Protocol comes into operation on 1st March 2012.

Dated this 22nd day of February 2012

The Right Honourable Sir Declan Morgan
Lord Chief Justice