

This Practice Note supersedes an earlier version which contained minor inaccuracies

CRIMINAL COURTS

PRACTICE NOTE NO 2 OF 2019

Case management in Summary Criminal Cases Project

Dundee, Hamilton and Paisley sheriff courts

This Practice Note takes effect from 2 December 2019

It applies to cases in which the first calling (pleading diet) occurs on or after 6 January 2020.

Introduction

Proper judicial control over the use of court time is an important part of the entitlement to a fair and public hearing within a reasonable time. Sheriffs therefore have a duty to manage actively all stages of summary criminal proceedings.

The objective of this Practice Note is to pilot, in three sheriff courts, measures designed to promote greater efficiency and the better use of available resources. It provides guidance on the practices which the Crown and the defence will be expected to adopt, to enable the sheriff to perform an active case management role, at both the first calling (pleading diet) and the intermediate diet. An evaluation of the effectiveness of the measures will be carried out at the end of the pilot, which is expected to last a minimum of 18 months.

Service of Complaint

In cited cases, sufficient time will be provided before the first calling (or pleading diet) to allow:

- the complaint to be served on the accused;
- intimation of the disclosable summary of evidence to the defence by the Crown; and
- meaningful discussion between the agent and accused.

First calling (Pleading diet)

In order to maximise the effectiveness of the pilot, letter pleas of not guilty are discouraged.

In cases where the accused appears at first calling from custody, it is acknowledged that the opportunity for meaningful discussion between the defence solicitor and accused is limited. However, it is expected that, in cited cases, solicitors will take advantage of the longer period between service of the complaint and first calling to take full instructions from their clients. Sheriffs (who will be provided in advance with a copy of the disclosable summary of evidence) will ask solicitors to confirm they have discussed the summary with their clients. If they have not, sheriffs will expect solicitors to explain why that has not happened. If, following discussion with the Crown and the defence solicitor, the sheriff is satisfied that partial and specific further disclosure

may assist in the agreement of a plea in any case, the sheriff will allow the case to be continued without plea. Such a continuation will only be allowed if the sheriff is satisfied that this further disclosure can be produced within a four week timescale. A plea of guilty tendered at such a continued calling of the case will ordinarily be regarded as having been tendered at the first opportunity. The sheriff who granted the continuation will, ordinarily, conduct the continued calling.

In all cases the sheriff will enquire at the first calling whether identification of the accused is in dispute.

Intermediate Diet Preparation

Intermediate diets are most effective when parties have addressed their minds to the state of preparation before the day of the diet. The Crown and the defence should make every effort to have productive discussions in advance, identifying clearly, for the benefit of the court, both those matters which are capable of agreement and those which remain in dispute.

To encourage this, both the Crown and the defence will, as a matter of good practice, be expected to complete and lodge with the sheriff clerk (either physically or electronically) the form set out in the schedule to this Practice Note at least 2 clear working days prior to the intermediate diet. A copy is also to be sent by the Crown and defence to all other parties.

If, in a case which commenced prior to the pilot starting, the trial and intermediate diet are adjourned and new dates fixed, for dates on or after 27th April and 30th March 2020, both the Crown and defence will be expected to comply with this practice note in respect of the new intermediate diet.

Intermediate diets shall be programmed to allow sufficient time for the sheriff to explore with the Crown and the defence the information contained within the forms with the aim of focusing the trial on the issues in dispute and evidence required to resolve those issues.

Signed

Lord Justice General

Edinburgh

4 November 2019

SCHEDULE

Procurator Fiscal against [A.B.]

P.F.Reference []

CROWN

1. Is the Crown case fully prepared?

YES/ NO – If not, why not?

2. Has the Crown fully disclosed all evidence to the defence?

YES/ NO - If not, why not?

3. What are the matters in dispute which require to be resolved at trial?

4. On what date were the Crown and defence last in communication with each other?

5. Witnesses

- Number of police and civilian witnesses envisaged
- Have all necessary witnesses been cited?

YES/NO – If not, why not?

6. What steps have been taken to seek agreement of evidence?

If “none” specify the reason

7. Are there any requirements for special measures (children or vulnerable witnesses)?

YES/ NO – If yes, please specify

8. CCTV evidence

- Disclosed to Defence?

YES/ NO – If not, why not?

- Any problems envisaged?

YES/ NO - If yes, please specify

- Playable on court equipment?

YES/ NO - If not, what arrangements are in place?

9. Photographic evidence

- Disclosed to Defence?

YES/ NO – If not, why not?

- Can the photographs be agreed?

YES/ NO - If not, why not?

10. Has any expert evidence been instructed and report received?

YES/ NO/NA - If no, why not?

11. How long is the trial expected to take?

12. What productions will be required in court?

13. Will an interpreter be required for trial?

YES/NO – If yes, please provide details

PROCURATOR FISCAL DEPUTE (Signed).....

DEFENCE

1. Is the accused in receipt of legal aid, or has the defence solicitor been put in funds?

YES/ NO – If no, what is the impact on preparation for trial?

2. Have the defence had full disclosure?

YES/ NO

3. Is the defence fully prepared?

YES/ NO - If not, why not?

4. On what date were the Crown and defence last in communication with each other?

5. What are the matters in dispute which will require to be resolved at trial?

6. Has identification of the accused been agreed?

YES/ NO - If not, why not?

7. Is a statutory or special defence to be pled and has the Crown been given notice?

YES/ NO/ NA – If notice has not been given, why not?

8. Witnesses

- Number of defence witnesses envisaged.
- Have any defence witness been cited and intimated to the Crown?

YES/ NO/NA – If no, why not?

9. What steps have been taken to seek agreement of evidence?

If “none” specify the reason

10. Are there any requirements for special measures (children or vulnerable witnesses)?
YES/ NO – If yes, please specify

11. Are there any witnesses on the Crown list the defence require to be in attendance?
YES/ NO – If yes, please specify

12. Has any expert evidence been instructed and report received?
YES/ NO/NA – If no, why not?

13. How long is the trial expected to take?

14. What productions will be required in court?

15. Will an interpreter be required for trial?
YES/NO – If yes, please provide details

LEGAL REPRESENTATIVE OF [A.B.] (signed)