

LONDON GROUP CROWN COURTS

PROTOCOL OUTLINING THE PROCESS TO SUPPORT THE EARLY GUILTY PLEA SCHEME AND WORK SENT UP FROM MAGISTRATES' COURTS FROM 28 MAY 2013

Introduction

1. From 28 May 2013 all cases (with the exception of paragraph 9 below), sent from the Magistrates' Courts will be subject to a preliminary hearing (PH) in the appropriate Crown Court. The PH will be heard between ten and fourteen working days from the date of the Magistrates' Court hearing. Homicide cases will have a PH within 48 hours of appearing in the Magistrates' Court. Terrorism cases will have a PH date set by the Terrorism Case Management Judge.
2. This process will support the Early Guilty Plea Scheme (EGP) as it will afford an additional opportunity for the parties to consider the appropriateness of an EGP hearing (EGPH), with active case management from the court.
3. Where there will not be an EGP, the addition of a PH for all cases gives an opportunity for the Crown Court to grip cases early, setting clear directions and timetables, so that the parties have a clear understanding of what is expected and by when.
4. (A) There are, usually, three circumstances in which the maximum available discount for a guilty plea can be given (see also *R v Caley* [2012] EWCA Crim 2821):
 - i. where the case has proceeded in accordance with paragraph 9 below
 - ii. where a full fact plea is indicated at a PH and sentence then takes place
 - iii. where at a PH the Court orders a report and adjourns for that or any other reason to an EGP hearing

(B) In all other circumstances, discount for plea will be reduced pursuant to the Sentencing Council Guidelines, which should be read in the light of relevant authorities.
5. In view of the importance of an early guilty plea to the defendant, it is vital that there is early communication between the defence and the prosecution so as to explore the options for inclusion into the EGP scheme. Further, given the short timescales, legal aid applications should be submitted at the earliest opportunity so that, wherever possible, it is in place by the time of the PH.

Service of Papers

6. In all cases the CPS will serve on the court and the defence no later than the beginning of the day of the first Magistrates' Court hearing, Initial Details of the Prosecution Case (IDPC) (Criminal Procedure Rule 21.2); in either-way

cases this will inform the decision in relation to allocation of trial. The Magistrates' Court must forward the IDPC to the Crown Court within four working days of the Magistrates' Court hearing.

Cases identified as suitable for EGP scheme at the Magistrates' Court and agreed by the CPS and defence

7. Cases coming before the Magistrates' Courts will be reviewed by the CPS to establish whether the strength of the case is such that the CPS believes an EGPH is appropriate. Reports (a PSR) can be ordered by the Magistrates' Courts in such agreed cases, but only in line with the guidance at Annex A.¹
8. Where the Defence request an EGPH and no PSR is ordered the Magistrates' Court will fix an EGPH in the Crown Court (between ten and fourteen working days time), indicating that the case has been identified as an EGPH. No PCMH date will be fixed.
9. Where the defence request an EGPH and a PSR is ordered, the Magistrates' Court will fix an EGPH at the Crown Court approximately 4 weeks thereafter, as directed locally.

Non EGP cases

10. Unless a case is an agreed EGP matter (see above), the Magistrates' Court will simply set a date for a Preliminary Hearing in the Crown Court at a date between ten and fourteen working days from the date of the Magistrates' Hearing.

Preliminary Hearings

11. The PH will be conducted on the basis of the IDPC served at the Magistrates' Court and forwarded up (see paragraph 6 above). The CPS will bring any additional material to court. A draft Indictment will be brought in appropriate cases.
12. The court will hear, inter alia, argument and submissions on the following matters:
 - a. The court will take any Guilty Pleas offered, will resolve any issues concerning any basis of plea, and will either sentence the matter or set a timetable for sentence, service of any further prosecution material and service of reports if appropriate. If a case is likely to be a Guilty Plea, but further evidence is required, an adjournment, ordinarily for 2 weeks, for service of this material will be granted, subject to representations to the court where more time is required.
 - b. Where there are no guilty pleas and the matter is likely to proceed to trial, then the court will give orders to take the matter forward, including setting the PCMH and a trial date (taking into account CTL timescales where appropriate) and service of the prosecution case. It is

¹ See s. 156 CJA 2003.

important that the prosecution have as much information about witness availability as possible.

- c. **Any bail application.** Bail applications should be made on notice, the defence serving any application on the Court and the prosecution preferably at least four working days before the PH, but in any event not less than 2 business days before the PH (Criminal Procedure Rule 19.7(2)(c)).

Timelines

- 13. The following timelines will be in place in all London Courts, unless otherwise agreed on a case by case basis.

	Mags Hearing to PH	PH to Papers / Initial Disclosure	Papers / Initial Disclosure to Defence Case Statement	Defence Case Statement to PCMH	Total
EGP where report requested	4 weeks				
EGP where no report requested	10-14 working days				
All other cases	10-14 working days	6 weeks	4 weeks	1 week	13 weeks

- 14. Once it has been established that there is to be no guilty plea and that trial is likely, one of the main purposes of the PH is to identify cases which may benefit from either a shortened or a lengthened timeline. Those cases which require little further preparation may be allocated by agreement an accelerated timeline through to an early trial. Those which will need extended timetables to allow more extensive than normal preparation (for instance where forensic evidence is sought e.g. cell site etc or where further defendants are to be added through ongoing investigations) may be granted a lengthened timeline. Custody Time Limits will form the back drop to these time tabling discussions and decisions.

Forms

- 15. The London Courts will conduct hearings and record the decisions and orders made at hearings on the forms prescribed by the Criminal Procedure Rules and set out in the Consolidated Practice Direction. These are available online and will be available in courtrooms in hard copy format. The forms are to be ready for use, e.g. advocates will have completed the appropriate parts of the form before the start of a hearing.

Preliminary Hearing

[CrimPR Part 3 Crown Court Preliminary Hearing \(PDF 210.6kb. 4 pages\)](#)

PCMH

CrimPR Part 3 - Plea & Case Management Hearing (PCMH) form (PDF
288kb. 12 pages)

Case readiness checks

16. Each court will decide in consultation with its appropriate CPS Unit and defence community what mix of Trial readiness measures to employ. Each court will decide when and which cases are called into court for a Pre-trial Readiness Hearing (PTR). The prosecution and courts are expected to attend case progression meetings, able to make progress on cases, in line with the agreed procedures.

Annexes

Annex A: Guidance on the need for reports and on ensuring their timely production

Annex B: Sentence Reductions

Annex C: Observations on communication between the parties

Annex A to the London Crown Courts Preliminary Hearing and Early Guilty Plea Protocol

Guidance on the need for reports and on ensuring their timely production

This guidance should be considered at magistrates and crown courts when ordering an EGP hearing.

2. The following questions may assist the decision process.
 - Is a report necessary at all?
 - If a report is necessary should it be a PSR or an FDR?
 - If a report is necessary has there been a PSR or FDR on this Defendant in the last 12 months?
 - If there has been any report in the last twelve months is there any need for either a fresh report or and update?
3. To assist in answering these questions the following factors are set out.
 - a. Wherever a Report has been written within the last 12 months, it will usually be appropriate to ask for a copy to be available.
 - b. Where the Defendant has completed a previous prison sentence of more than 1 year within the previous 12 months, it may be appropriate to ask for an FDR or stand-down report to consider response to post-release supervision.

It will usually be appropriate to order a report where: (In some of these cases, a recent report may be sufficient)

- The Defendant is 17 and under
- The Defendant is under 21 and is a first time offender/has not served a prison sentence
- The Defendant falls to be assessed for “dangerousness” (Schedule 15 cases)

It will not usually be appropriate to order a report in the cases where:

- The Defence have asked for report to assist in determining the “length of sentence”
- Supply of Class A offences
- False passport/ID docs
- 3rd Strike Burglary
- Cultivation of Cannabis
- Offences in Breach of a Suspended Sentence Order where a Breach Report is available
- High Level Frauds (in excess of £100K)
- “Custody inevitable” cases where dangerousness is not a consideration and Defendant is not under 18 (cf “length of sentence” cases)

4. The timely preparation of reports, when reports are essential, is central to the EGP scheme. If ordered reports are not available at EGP hearing much of the benefit of the system is lost. Accordingly, when Magistrates’ Courts consider the need for reports they should record their decision as "PSR" or "FDR" or "No Report". This will ensure, at later hearings, that it is clear that the court did indeed consider the need

for a report and what its decision was. In like manner CPS and Defence should assume a duty to assist the magistrates by ensuring that the decision is addressed and should note their files. Where a report has been ordered, Defence solicitors should be alert to check with and ensure that Probation has indeed been made aware of the need for the report and that they have the Defendants details. Solicitors will also be aware of the ability to make representations to the appropriate Crown Court in any particular case where a decision has been made that no report is required or where court has not been asked to make such a decision.

Annex B to the London Crown Courts Preliminary Hearing and Early Guilty Plea Protocol

Sentence Reductions

As a result of the introduction of the EGP scheme the Sentencing Guidelines Council Definitive Guideline for “Reduction in Sentence For a Guilty Plea” (hereafter the Guideline) will be applied as follows:

- (i) Any defendant who does not plead guilty at the EGP hearing or who cancels an EGP hearing but who pleads guilty at a later hearing will not receive maximum credit for that Plea unless a successful submission is made that the EGP hearing was not the first reasonable opportunity for the defendant to have pleaded guilty.
- (ii) There is a presumption that a plea of guilty at the EGP hearing is the first reasonable opportunity to enter a guilty plea and a one third reduction in sentence. Cases that are indicated as guilty pleas either at the sending hearing or PH will qualify for one third reduction.
- (iii) The one third reduction may be itself be reduced to 20% where Para 5.2 to 5.5 of the Guideline applies (The "overwhelming prosecution case" provision).
- (iv) The one third reduction may be affected by the considerations set out in Annex 1 of the Guideline. This Annex gives guidance as to identifying the “first reasonable opportunity for the defendant to have indicated a willingness to plead guilty”, but must now be read in the light of *R v Caley* [2012] EWCA Crim 2821.
- (v) A plea of guilty at PCMH will receive a reduction of 25%. Later pleas of guilty will have lesser reduction see the Guidelines Paras. 4.1 to 4.3.

Annex C to the London Crown Courts Preliminary Hearing and Early Guilty Plea Protocol

Observations on communications between the parties

The experience of the EGP pilots is that early communication between the defence and CPS is paramount. Thereafter, communications between all parties, including probation and the courts should be timely and, wherever possible, those individuals with responsibility for making progress should be identified at an early stage and easily contactable. Where individuals are not named, there must be robust methods of communication in place, for example email inboxes must be monitored regularly and contact numbers kept up to date.

The use of post, DX and to a lesser extent fax, requires post to be collected and sorted, for administrators to link correspondence to files and for files to be allocated for consideration of the correspondence. Letters are more formal so take longer to draft and there is a lack of certainty of receipt which encourages duplicate correspondence to be sent. Duplicate correspondence also has to be linked and processed, wasting finite resources and thus slowing the process still further. In EGP cases, where timetables are demanding, slow, wasteful or ineffective communications will impede the scheme.

The CPS will provide contact details at an early stage so that the defence can discuss the case prior to the PH taking place. The CPS will also allocate an office-based Crown Advocate full-time to EGP cases. The most effective way of ensuring that EGP cases are identified, that any essential evidence to facilitate a plea is gathered and that any proposed bases of pleas are considered is for the defence to speak direct to the Crown Advocate by telephone.

If the Crown Advocate cannot be contacted and/or where an audit trail is necessary the CPS would ask that **secure email** is used. Emails should be marked with the defendant's name, the CPS URN and 'Early Guilty Plea' in the subject title. Please note that agreement to use secure email will not be taken as agreement to receive electronic papers.