

Chester Crown Court (and satellite courts)

A consistent and effective approach to using the Digital Case System for PTPH's, Sentence Hearings and in the period leading up to any Trial

Summary of the correct approach detailed below in this document

- (i) All parties must use the digital case system to provide information at all stages in the trial/sentence process.*
- (ii) Widely shared comments must follow each other in a chronological order – by the use of the “Add Comment” icon – and not by creating a new colour bar.*
- (iii) The Prosecution, Defence and Probation Service must provide full information – and upload all relevant documents – with additional widely shared comments of explanation placed on DCS – in good time prior to each hearing.*
- (iv) If a not guilty plea is anticipated prior to PTPH, the PTPH form must be as fully completed as possible by the parties in advance of the hearing.*
- (v) If a guilty plea is anticipated prior to PTPH it is imperative that the defence inform all parties – including the probation service – in good time – and place a widely shared comment of explanation on DCS.*
- (vi) All directions made at PTPH – following a not guilty plea – must be adhered to. If directions are not followed by any party, the court and the other parties must be informed the reason for this – or the case may be brought back to court, with the parties having to attend – for explanations to be given.*

Overview

- (1) The digital case system is a useful tool to allow all parties to access the case material in any prosecution.
- (2) Additionally, all parties are able to use DCS as a quick and easy method to pass on information to other parties and to the court. In order to achieve this, all parties – be it the CPS, Defence Solicitors/HCA's, the Bar or the Probation Service – must be prepared to use the system to provide information – by the use of widely shared comments.
- (3) All parties who are involved in the process – where a criminal case is tried in the Crown Court – must adhere to the Criminal Procedure Rules. If there has been a failure to carry this out, the parties (i.e. for the prosecution and the defence) should ensure that the court is informed as soon as possible – to allow any such issue to be resolved.

Practical use of the DCS to achieve a consistent and effective approach when dealing with criminal cases

- (4) A practical drawback in using DCS concerns the difficulty that widely shared comments placed on it do not always follow chronologically. At Chester Crown Court it has been decided that, in order to achieve chronological continuity of all widely shared comments placed on DCS, the court staff will

place the first widely shared comment on the system – opposite this notice at A2 – with a purple colour bar. **All parties who then place widely shared comments on the case file are asked to do so by clicking on the “Add Comment” icon** at the foot of this first (and any subsequent) widely shared comment – and not to open a comment with a new colour bar. This will ensure chronological continuity of all comments – which is much easier to follow. **Please do not add any comments to the widely shared comments which are produced automatically under a yellow colour bar – indicating any defendant’s plea on arraignment.**

(5) NB – all parties will see that, at A1, is a page that should only be used by the judiciary – who will only use it to place private messages on. Please do not place a message onto DCS whilst viewing this page.

When should a widely shared comment be placed on DCS?

(6) If you are a reviewing lawyer or advocate for the prosecution, or; case manager/lawyer or advocate for any defendant, or probation officer who has prepared a pre-sentence report, you are asked to **provide information at every relevant stage of the case** – such as the PTPH or sentence hearing or if, for any reason, there is a difficulty in complying with any order made by the court – e.g. in relation to stages 1 and 2 following directions made at PTPH.

(7) All parties – including the judiciary – will be greatly helped by the posting of a widely shared comment **at least 24 hours prior to any relevant hearing** of the case. Therefore, the relevant lawyer in any particular case (be it for the prosecution or the defence) is requested to look at the DCS in the period leading up to any hearing – for example the PTPH/sentence – and assist other parties and the court by putting a short widely shared comment on the case file – indicating the up-to-date position of the party who the lawyer is representing – be it the prosecution or any defendant. In other words, everybody is invited and encouraged to engage with DCS prior to every hearing. **NB – please note that, if you wish other parties to act on your widely shared comment, it is not sufficient to simply place it onto DCS. You will have to contact other parties by additional means – e.g. by email – to inform them of the fact that you have placed a widely shared comment onto DCS.**

Duties of the prosecution prior to PTPH/sentence

(8) **Prior to PTPH or any sentence hearing, the prosecution should ensure that all relevant material to assist the court is placed on DCS.** This includes: – (1) the final indictment; (2) an acceptable case summary (and not just relying on the police case summary); (3) any relevant witness statements in the possession of the prosecution; (4) any relevant exhibits in the possession of the prosecution – [*e.g. (a) photographs of injuries (together with any relevant medical evidence) in a case involving an alleged assault – (b) an accurate summary of drugs recovered from a defendant in a case involving alleged possession of drugs with intent to supply – (c) a pen picture schedule of material in a case of alleged making of indecent images of children – (d) any relevant and helpful CCTV footage*]; (5) the defendant’s up-to-date antecedents; (6) a victim personal statement, if any; (7) provisional drafts of any other orders which are to be requested on behalf of the prosecution – [*e.g. suggested SHPO’s or restraining orders – which must be carefully considered by the prosecuting advocate and not simply relying on any draft order prepared by the police*].

(9) If it appears that a defendant is likely to plead not guilty to any charge on the indictment, the **PTPH form should be filled in, in advance, on behalf of the prosecution, by entering as many details as possible** – including the details of; the relevant case lawyer/officer; the trial advocate; names of prosecution witnesses, where known; whether applications are to be made for any special measures (including for a section 28 pre-recorded cross examination), hearsay and bad character

evidence (in the boxes under the heading for stage 1), and ; also by filling in all suggested dates for stages 1-4.

(10) **Prior to any such hearing the prosecution advocate should always place a widely shared comment on DCS** – indicating whether any further information is being sought or whether, as far as the prosecution is concerned, the case is ready for that hearing.

Duties of the defence prior to PTPH/sentence

(11) The relevant representative of any defendant is also requested **to ensure that all relevant information is placed before the court** – on DCS – by uploading any relevant material – [*e.g. character references in a sentence hearing or any relevant medical evidence to be relied on*].

(12) It is imperative that such information is given **in advance of any specific hearing**.

(13) If, prior to a PTPH, a defendant indicates that he/she is going to plead guilty to the indictment, a **widely shared comment must be placed on DCS informing the court** and other parties of this. This will allow a judge to consider, in advance, whether sentence can take place at PTPH or whether the case should be adjourned for reports. If the defendant's representative believes that a pre-sentence report would be of assistance he/she should inform the probation service as soon as possible in advance of the court hearing. This should also happen where any defendant indicates a guilty plea in the magistrates' court, prior to any case being sent to the Crown Court.

(14) (see paragraphs 9 and 10 above) – **The defendant's representative must also play a part in the filling in of any PTPH form where a not guilty plea is to be entered**. He/she should ensure that the details of the case manager and trial advocate are placed in the appropriate section of the PTPH form – and also what the issues are likely to be in the case. He/she should ensure that the defendant is given all warnings consistent with CPR (e.g. credit for plea and the consequences of failure to provide a defence statement, attend for trial or not giving evidence at trial).

(15) If a case is listed for sentence or likely to proceed to sentence – and there is likely to be a **basis of plea** – this must be uploaded to DCS in good time prior to the sentence hearing – and the prosecution informed of it.

(16) **All defence representatives should understand that a widely shared comment must always be placed on DCS prior to PTPH** – explaining the up-to-date position concerning the defendant's instructions – even where it has been impossible to take instructions from the defendant – e.g. because the defendant has not co-operated with his representatives or there are difficulties in obtaining a representation order. The court and prosecution are entitled to know matters such as these in advance of any PTPH.

The duty of the Probation Service prior to a sentence hearing

(17) If a pre-sentence report has been prepared prior to a sentence hearing – and is available to be uploaded to DCS – the Probation Service is asked to ensure that this is carried out at least 24 hours prior to the sentence hearing – to give all parties adequate time to read it.

The response by the judiciary in relation to PTPH's/sentences

(18) If at all possible, the judge who is dealing with any particular PTPH/sentence will endeavour to read the case material on the day before the hearing. He/she may decide to place a widely shared

comment, giving a judicial view of the case, in advance of the hearing. This will be placed, chronologically, in the widely shared comments column which under the purple colour bar described in paragraph (4) above – and will not be placed on the Judge’s Comments Page. Consequently, all parties should ensure that they check DCS, in advance of any hearing, to ascertain whether the judge has expressed a view.

(19) During the PTPH the judge will complete the remaining part of the PTPH form – in the event of a not guilty plea.

(20) Following any PTPH – whether a case has been adjourned for trial, sentence or further PTPH – the judge will enter a brief widely shared comment – following on chronologically from previous widely shared comments under the purple colour bar – outlining what occurred during the PTPH. In particular, if a case has been adjourned for trial, the judge will place a widely shared comment detailing the dates of: the trial; stages 1-4, and; when certificates of readiness must be placed on DCS. He/she may also express other views, in appropriate cases, for the prosecution/defence to consider in preparing for the trial.

Responsibilities of all parties between PTPH and trial

(21) **All parties must adhere to directions given at PTPH – in particular concerning the service of material at the appropriate dates on stages 1-4 and service of certificates of readiness.** Other than for the service of defence statements (for which see paragraphs (24)-(26) below) if any directions given at PTPH have not been followed, an application must immediately be made for an extension of time for service. A judge will then consider the application and give a written direction which will be uploaded to DCS – and the parties informed accordingly. If any party does not adhere to stage dates (other than in relation to the service of defence statements), and does not inform the court of failure to do so, the opposing party must inform the court – and a decision will be taken by a judge whether to list the case for mention, with the parties having to attend, for any explanation to be given, or issue to be decided.

(22) In relation to stage 1 – concerning service of primary disclosure – the prosecution is asked to ensure that it observes the **requirement to serve a disclosure document**.

(23) Further, the prosecution is also asked to ensure that, whenever it uploads witness statements to be relied on, **any copies of those statements which have been previously uploaded – e.g. as part of advance disclosure – are deleted from DCS**. This will enable all parties to concentrate on one bundle of documents only.

(24) **Previously, a major cause of additional unnecessary administration, and time-consuming work for the court, related to the failure by some defence representatives to adhere to stage 2 – by failing to serve a defence statement** or, alternatively failing to inform the prosecution and the court that it is intended that no such defence statement is going to be served. This is an important stage of the case which must be observed. Consequently, in the future, if stage 2 is not adhered to – and no explanation is given by the defence as to why this has not been done – it will be taken as read that no defence statement is to be served – and the relevant defendant may face adverse comment in front of a jury in any subsequent trial – unless the defence obtain the prosecution’s agreement for service of a defence statement out of time.

(25) **Consequently, the prosecution should not waste the time of the court by contacting the court to indicate that a defence statement has not been served on time; nor should the defence waste the time of the court by asking for an extension of time for service of a defence statement.** If a

defence statement is likely to be served late, or is served later than the date ordered at PTPH, the defence representative should contact the prosecution and ask for an agreement that no adverse comment will be made if the defence statement is served by a new date to be agreed between the parties. The court will not get involved in this exchange between the prosecution and defence – and the court’s only involvement will be if the trial judge is asked to decide whether an adverse comment in front of a jury is allowed – where the prosecution makes an application at trial for this to take place – as a result of late service of a defence statement.

(26) Keeping in mind the approach detailed in paragraphs (24) and (25) above, **if a defence statement is not served the prosecution does not need to ask the court for permission not to serve stage 3 material.** The service of stage 3 material is not required until stage 2 has been completed by the service of a defence statement. If a defence statement is served late, the time for service of material consistent with stages 3 and 4 will automatically be amended to later dates without need to inform the court.

His Honour Judge Everett
His Honour Judge Berkson
His Honour Judge Leeming
His Honour Judge Thompson
April 2021