

# LCCSA

## LCCSA SUMMARY OF COURT PROTOCOL

- I. Access to Justice is not a game and Solicitors and their clients should be entitled to certainty in the provision of initial funding prior to undertaking substantial work in the Criminal Justice system. Solicitors' goodwill has long been taken for granted and is now withdrawn after having been subject to a further 8.75 % cut in payment for the service we provide
- II. Solicitors will illustrate the fact that courts are able to run effectively only with the goodwill of defence practitioners, who repeatedly make allowances for court and prosecution failings.

This is a brief summary of the full protocol which can be accessed on the LCCSA web site. We recommend you print out both and have these with you at court.

Solicitors will now work according to the Criminal Procedure Rules (CrPR). This means that we will no longer tolerate failure by the Crown not to do so. This may involve applications for adjournments which will play havoc very quickly with all the statistical targets set by the Government as the courts begin to grind to a halt. The solution lies in the hands of the courts as they should enforce the rules which they notably fail to do thus bringing the CrPR into disrepute. We shall campaign daily and volubly in court for rigorous adherence to the CrPR. See the full protocol for significant examples of commonplace breaches by the Crown and the recommended responses we suggest to deal with these breaches.

Our view is that a stripped down defence service is something the court and Government will have to become accustomed to if the threatened cuts are fully implemented and few firms survive. This protocol (to be reviewed on a monthly basis) is a taste of things to come. Locally firms and areas can add or amend as they feel appropriate in their own locality. There is nothing we suggest that is inimical to a proper working Justice System and nothing that involves any breach of professional or court rules.

Areas where similar protocols are in place report no collapse in client loyalty as a result of these steps and actually there is some relief in not potentially working for nothing  
Failure to fight back will be fatal to many of us. Let us show them all (including the Bar) how defence solicitor's fight.



## Protocol short version at a glance

### The protocol invites Duty Solicitors to:

- Insist on private interviewing facilities to see client.
- Take as much time as required to complete CRM 14 and 15 in full.
- Take such time as is required to complete instructions, provide advice and make a written note of the same in presence of client.
- Insist on a list being provided of all those who have previously had the duty solicitor
- insist on interpreters attending. Interpreters are necessary for clients whose English is a second language to understand court proceedings, even if they "made do" in police interview.
- insist that intermediaries where called for ought to be used and the court notified of the need for funding if there is no legal aid granted.
- Insist that the prosecution notify the defence if an appropriate adult was required in police stn. The Duty Solicitor is then to assess whether they need help understanding Court process.
- Any potential conflict between defendants ought to require a second duty solicitor be called in immediately.
- Ensure the initial disclosure is CrPR compliant
- Take an adequate lunch break between 1 and 2, and not any less simply because the court needs to be ready to start by 2pm.
- Not work beyond normal hours. Another duty solicitor would have to be brought in to take over after 5pm to defeat fatigue and potential miscarriages as a result of tired advice being given.

### Working to the Criminal Procedure Rules

Rule 1.2.1(c) - requires each participant in a criminal case to inform the court and all parties of any significant failure to take any procedural step required by the rules, any practice direction or any direction of the court.

- Failure to contact re plea negotiation
- Failure to serve unused material
- Failure to notify name of case progression officer
- Failure to serve witness statements within 28 days.
- Object to bad character and hearsay not served within 28 days
- Absent witnesses, obligation to inform court as soon as known.

### General Guidance

- In order to ensure that the duty solicitor's file is appropriate for peer review (s)he ought not to give up any of the served documents for use by the court in dealing with the case against the defendant. This also undermines the trust the defendant will have in the advocate (this might be the first time the defendant has met this advocate and the defendant may not be totally comfortable using a solicitor who

appears to be supplied by the court). All Magistrates' Courts should accept that it is inappropriate and undermining of the solicitor/client relationship for the Court to ask the Defence to give up, even temporarily, its copies of documents served upon them in accordance with the Crown's obligations. The Crown should be required to prepare documents for hearings in a sufficient and professional manner. The court must accept that it is not part of the defence role to help to present any part of the Crown's case.

- If dealing with directions on case management consider making representations concerning:

A shorter time for the Crown to deal with disclosure pursuant to the CPIA which requires the Crown to deal with disclosure as soon as possible. As they expected a not guilty plea and it has taken such a period to reach this stage they could deal within 14 days max. (This ignores the fact that the CPS ought to in fact have dealt with unused material on this first hearing.) The CPIA does not allow a period, it insists on matters being dealt with as soon as possible and a fixed date that is too far away is contrary to CPIA and a breach of the CrPRs.

- Insist on the Crown nominating the case progression officer.
- Insist on the contact details and name of the court progression officer.
- If the crown asks for a direction to deal with special measures, hearsay, bad character or the court makes a direction that will take the period beyond that allowed by the rules, insist on the direction including a direction that the crown also deals with reasons why the application is out of time if it goes beyond the permitted period.
- Obtain a direction that any application to be made by the Crown must be served in English and in the defendants first language.
- Ensure the court supplies a copy of any order made, directions given or bail form served in the language the client understands if English is not their first language.

## Part II. Withdrawal of Goodwill throughout the case full referencer

1. This part of the protocol, where adopted, will illustrate the fact that courts are able to run effectively only with the goodwill of defence practitioners, who repeatedly make allowances for court and prosecution failings.
2. The importance of the Protocol is that it does not involve any breach of professional or court rules. In effect, it amounts to working to rule, withdrawing the 'give and take' approach of the conduct of proceedings and endeavouring to hold the prosecution to account in terms of its failings.
3. Finally, the approach is underpinned by our professional duties under the Solicitors' Code of Conduct.
4. This protocol will be reviewed one month from inception, and thereafter as appropriate. However, it should not be seen as a temporary measure rather a permanent return to proper compliance with defence obligations.
5. At this time the essential and headline characteristics of this protocol amount to a strict adherence to the Criminal Procedure Rules and the SRA Solicitors Code of Conduct 2011. (these are set out in the CLSA briefing attached)

### 1. Working to the Criminal Procedure Rules

Rule 1.2.1(c) - requires each participant in a criminal case to inform the court and all parties of any significant failure to take any procedural step required by the rules, any practice direction or any direction of the court.

As a result, each time the Crown fails to comply with a matter of substance a solicitor is obliged to inform the Court and the CPS.

**Our response:** In each case where the Crown is overdue in compliance it is proposed that separate emails are sent to the Court and the CPS pointing out the failure and requesting remedy. Further emails as appropriate may be sent that same day, but certainly the matter is pursued the following day and every day thereafter, with the matter escalating to the matter being listed for Mention.

In this regard the solicitor will simply be ensuring compliance is properly policed by the relevant court. It will no doubt necessitate a number of additional hearings in any given case,

### 2. Common Breaches of the Criminal Procedure Rules

Rule 10.2 - The prosecution must serve initial details of its case in summary as soon as is practicable and in any event no later than the beginning of the day of the first hearing.

If the prosecution fail to comply then they are in breach of this rule and are also in breach of the overriding objective requirement of dealing with a case expeditiously and efficiently.

**Our response:** Subject to any issues relating to funding it may be helpful to make early contact with the Crown through secure email to request the summary be served. If served and you are busy then apply for an adjournment pointing out the CPS breach of rule 10.2 unless the matter was only charged the night before and no prior opportunity for the CPS to serve.

Overriding Objective 1.1 (e) dealing with the case efficiently and expeditiously; It is arguable that the Crown are similarly in breach of the duty to deal with matters expeditiously and efficiently by failing to provide an advocate who has no authority to take a decision in any given case or negotiate a plea. This may be of equal importance in the Magistrates' and Crown Courts.

**Our response:** An appropriate argument would be that a matter be put down the list to allow an appropriate lawyer to make a decision, rather than the matter be adjourned, even where that may mean delay in the rest of the court list.

### 3. Unused Material in the Magistrates' Court

There is no prescribed time limit for service of unused material within the rules, subject to the obligation to serve the schedule as soon as reasonably practicable after the defendant has entered his not guilty pleas (notes to Part 22 CPR).

A direction should be sought in such cases that the schedule is served by an appropriate date to allow for additional preparation and a defence statement if necessary.

**Our response:** Aside from identifying any failure with the court and Crown as set out above, we should escalate our reaction in cases where the schedule is served late which ought to include applications to vacate the trial, being particularly mindful of a solicitor's core duties imposed by the Code of Conduct. (See appendix A). Outside of the CrPR's there is also an obligation on the Crown to serve material at this stage if it might assist the defence with a bail application or to give information that is necessary for essential early investigation by defence]

### 4. Failure to Identify a Case Progression Officer by the Crown

Rule 3.4 requires the Court and the Crown to nominate a case progression officer. This involves providing a name and contact details. These details should be insisted upon in order to ensure that an individual is responsible for the case. You are entitled to expect a prompt response on any enquiry.

**Our response:** A case progression officer who fails to reply promptly and reasonably in response to communications about the case is in breach of the rules, justifying a further communication about that fresh breach in addition to any original breach complained of.

NOTE. Finally, any unavailability of a case progression officer is dealt with by a duty to appoint a substitute and inform the other case progression officers of that fact.

## 5. Service of Witness Statements

It appears that the provisions relating to the service of witness statements are capable of generating any number of arguments before the court, rather than a simple acceptance of lateness as being part of the system.

Rule 27.4 – written witness statements to be relied upon to be provided in advance of the hearing.

Rule 33.3 – Expert evidence and compulsory information within any such statements

Rule 33.4 – Expert evidence to be served on the other side and the court as soon as is reasonably practicable (check date of statement). This is amended by the new Magistrates' Preparation for Effective Trial form which is specific as to service within 28 days.

**Our response:** Possible application to adjourn where delay causes real prejudice to the defence with a need to take instructions on lengthy material or to check out matters revealed therein.

## 6. Hearsay/Bad Character in the Magistrates' Court

Rule 34.2 and 35.4 – service of notice within 28 days of not guilty plea.

**Our response:** Object to their use and consider adjournment if felt appropriate to consider such matters if time does not permit this to be done at the hearing.

## 7. Absent Witnesses

Rule 3.9 – parties must take every reasonable step to ensure that the witnesses will attend when needed. There is an obligation to inform the Court promptly of anything that may affect the duration or length of the trial or significantly affect progress of the case in any way. When the CPS make the application.

**Our response:** In order for a court to fully consider any application to adjourn by the CPS due to an absent witness it may be of assistance to the court to insist it has sight of witness warning letters, any response, and a general chronology.

## 8. Costs

It is suggested that the Crown be given every opportunity to demonstrate that it is able to comply with the Criminal Procedure Rules before any additional protocol is issued

relating to applications for costs. Such applications may, in due course, demonstrate clearly where waste is to be found in the system locally.

**Our response:** There is discretion within the Rules allowing costs to be ordered in appropriate cases where there has been a failure to comply with a rule or direction. Individual solicitors may wish to consider this power now when dealing with privately funded matters.

## 9. Defence Statements

Defence Case Statements are not mandatory in summary trials, and nothing in the CPR allows a Judge to mandate one to be prepared and or served.

However, in some cases it is advantageous to the defence case to serve a DCS, and in those cases consideration should be given to early service of a statement, identifying the issues and identifying further disclosure. In such cases, solicitors should ensure that the Crown complies with secondary disclosure within the required time period, or earlier if the trial is fixed for a date before the statutory period. Failure to comply should result in the case being listed for a disclosure hearing (CPIA s8), and where the failure arises by negligent omission accompanied by an application for costs

## 10. Suggested standard paragraphs to include in communications regarding breaches of the CrPRs.

Reporting defaults of CrPRs by the CPS and others dealing with matters is a problem as complaint can be costly for the defence in some circumstances. The defence situation may be summarised by the following headings with sample letters included. The contents should be self-explanatory.

## Standards texts of letters

### Magistrates' Court cases

#### Private paying

*We are writing to advise you pursuant to Rule 3.4(4) of the Criminal Procedure Rules that the Crown has not complied with the requirement to Deal with disclosure/Answer correspondence/Supply CCTV/Respond to Defence Statement/Some other*

*In order to prevent further delay in the case preparation (Part 1.1(2)(e)) and possible prejudice to the interests of justice the court is asked to list this matter as soon as possible to consider what sanction if any is needed to ensure compliance with the rules and/or the court's directions.*

*The Court is asked to direct the crown to appear (with)in 3 working days and further to serve a typed explanation at least one working day before the hearing on our office and, if required, upon the court to explain fully their default and set out their firm proposals to remedy the default and state why they ought not be ordered to pay costs thrown away to our firm.*

*If the Court decides having seen the typed explanation from the Crown that our attendance is not required and if we are advised in time to avoid an attendance we would ask the court to consider making a nominal costs thrown away order of £60 inclusive of VAT to be paid by the prosecutor to this firm within 14 days.*

*We will of course be in attendance if we are of the view that the Court will be assisted by this.*

*In the event of a non-attendance by the defence the Court is further requested to order the Crown to serve a typed, full and fair account of the proceedings upon us and the court within 7 days of the hearing and to be ordered to notify us of any new court directions in writing within 24 hours of the hearing.*

*We look forward to hearing from you.*

#### Fixed fee case

*We are writing to advise you pursuant to Rule 3.4(4) of the Criminal Procedure Rules that the Crown has not complied with the requirement to Deal with disclosure/Answer correspondence/Supply CCTV/Respond to Defence Statement/Some other*

*In order to prevent further delay in the case preparation (Part 1.1(2)(e)) and possible prejudice to the interests of justice the court is asked to list this matter as soon as possible to consider what sanction if any is needed to ensure compliance with the rules and the court's directions. The Court is asked to proceed in the absence of the defence as to require attendance by the defence will penalise the defence lawyers in costs as this is a fixed fee matter.*



*In order that the Court is properly assisted we also request that the Court directs the Crown to appear (with)in 3 working days and to serve a full typed explanation at least 1 full working day before the hearing on our office and, if required, upon the court to explain fully their default and set out their firm proposals to remedy the default. We can then fax to the court any important information to assist the Court at the hearing.*

*In the event of a non-attendance by the defence the Court is further requested to order the Crown to serve a typed, full and fair account of the proceedings upon us and the court within 7 days of the hearing. We would also ask that if the court is unable to advise us immediately of the outcome of the proceedings that the Crown be directed to report the outcome in brief to us within 24 hours.*

*We look forward to hearing from you.*

### **CRM7**

*We are writing to advise you pursuant to Rule 3.4(4) of the Criminal Procedure Rules that the Crown has not complied with the requirement to deal with disclosure/Answer correspondence/Supply CCTV/Respond to Defence Statement/Some other*

*In order to prevent further delay in the case preparation (Part 1.1(2)(e)) and possible prejudice to the interests of justice the court is asked to list this matter as soon as possible to consider what sanction if any is needed to ensure compliance with the rules[and the court's directions.*

*The Court is asked to direct the crown to appear (with)in 3 working days and in the meantime to serve a full typed explanation at least one full working before the hearing on our office and, if required, upon the court to explain fully their default and set out their firm proposals to remedy the default. 1*

*As we have not caused this difficulty we would ask the court to ensure we receive the maximum possible notice of the hearing date.*

*We look forward to hearing from you.*

### **Crown Court**

#### **Fixed Fee/Legal Aid**

*We are writing to advise you pursuant to Rule 3.4(4) of the Criminal Procedure Rules that the Crown has not complied with the requirement to Deal with disclosure/Answer correspondence/Supply CCTV/Serve evidential bundle/Some other  
[The following for most.]*

*In order to prevent further delay in the case preparation (Part 1.1(2)(e)) and possible prejudice to the interests of justice the court is asked to list this matter as soon as possible to consider what sanction if any is needed to ensure compliance with the rules and the court's directions. The Court is asked to proceed in the absence of the defence as to*

*require attendance by the defence will penalise the defence lawyers in costs as this is a fixed fee matter.*

*In order that the Court is properly assisted we also request that the Court directs the Crown to appear (with)in 3 working days and to serve a full typed explanation at least 1 full working day before the hearing on our office and, if required, upon the court to explain fully their default and set out their firm proposals to remedy the default. We can then fax to the court any important information to assist the Court at the hearing.*

*In the event of a non-attendance by the defence the Court is further requested to order the Crown to serve a typed, full and fair account of the proceedings upon us and the court within 7 days of the hearing. We would also ask that if the court is unable to advise us immediately of the outcome of the proceedings that the Crown be directed to report the outcome in brief to us within 24 hours.*

*We look forward to hearing from you.*

#### **Failure to serve its evidential bundle.**

*We have not received any explanation or indication when the bundle will be served. In the circumstances the court might wish to bear in mind that action by the defence will now be delayed to a time later than previously expected.*

*In order to prevent further delay in the case preparation (Part 1.1(2)(e)) and possible prejudice to the interests of justice the court is asked to list this matter as soon as possible to consider what sanction if any is needed to ensure compliance with the rules and the court's directions. The Court is asked to proceed in the absence of the defence as to require attendance by the defence will penalise the defence lawyers in costs as this is a fixed fee matter. In order that the Court is properly assisted we also request that the Court directs the Crown to appear (with)in 3 working days and to serve a full typed explanation at least 1 full working day before the hearing on our office and, if required, upon the court to explain fully their default and set out their firm proposals to remedy the default. We can then fax to the court any important information to assist the Court at the hearing.*

*In the event of a non-attendance by the defence the Court is further requested to order the Crown to serve a typed, full and fair account of the proceedings upon us and the court within 7 days of the hearing. We would also ask that if the court is unable to advise us immediately of the outcome of the proceedings that the Crown be directed to report the outcome in brief to us within 24 hours.*

*We look forward to hearing from you.*

#### **Private Paying**

*We are writing to advise you pursuant to Rule 3.4(4) of the Criminal Procedure Rules that the Crown has not complied with the requirement to Deal with disclosure/Answer correspondence/Supply CCTV/Serve evidential bundle/Some other*



*In order to prevent further delay in the case preparation (Part 1.1(2)(e)) and possible prejudice to the interests of justice the court is asked to list this matter as soon as possible to consider what sanction if any is needed to ensure compliance with the rules and/or the court's directions.*

*The Court is asked to direct the crown to appear (with)in 3 working days and further to serve a full typed explanation at least one working day before the hearing on our office and, if required, upon the court to explain fully their default and set out their firm proposals to remedy the default and state why they ought not be ordered to pay costs thrown away to our firm.*

*We look forward to hearing from you.*