**FAO: Alison Aedy**

[**www.lccsa.org.uk**](http://www.lccsa.org.uk)

**08 January 2019**

Dear Alison

We welcome the initiative taken by HCMTS to prioritise the needs of vulnerable prisoners. We have been calling for such defendants to be treated with fairness, empathy and dignity for decades.

Although it is suggested in your letter that the initiative was implemented in August 2018 it appears that none of the defence community was aware of it and it would have helped to have consulted us so that we could input as stakeholders and advise as to any obstacles to successful implementation.

We would, had we been consulted, have made the following observations:

1. Detention starts at the police station. Many vulnerable detainees have spent over 24 hours in police custody by the time they are brought to court, often longer than they need to because they are not prioritised by the interviewing officers /case progression officers on duty . Often detainees can be arrested one day and not be charged until after the cut off for the next day’s court.  This is often because of lack of appropriate adults and interpreters, but usually because cuts to police resources mean that they do not employ enough officers to conduct interviews.

2. When we attend court we are provided with a list of detainees requiring the duty solicitor. We write to the CPS to request IDPC and will see clients in the order that the material is provided to us. If it is received simultaneously of course we will see vulnerable defendants first. Sometimes we do not receive the IDPC until the afternoon and often are delayed waiting for an interpreter who has not been booked or has to leave to go to another appointment.

3. Frequently a vulnerable defendant is not seen until later on in the day because he or she has told the gaoler (or the gaoler erroneously believes that they have an “own solicitor”), possibly the one who represented them the night before. That solicitor might not be able to get to court for one of many reasons but the court cannot establish this until later on. We would suggest that the gaolers contact the solicitors if known no later than 930 rather than wait until they realise no one has attended at 12.00.

4. The duty solicitor wants all of his or her clients to be dealt with as quickly as possible. Contrary to popular belief they don’t want to be waiting around until 4pm before their cases are brought into court because they know they have pressing other demands on their time. In much the same way that the bench prefers a seamless stream of cases it is much more efficient for the duty solicitor to deal with as many as possible in one sitting in the cells. This enables them to speak to the CPS about a number of cases without having to keep returning to the cells for each separate case, to make calls to family members and for the court to hear back to back cases together.  If the system was more efficient, most duty solicitors would be ready to deal with all of their cases in court by 11.30.

Further delays are caused by being needlessly called up into court to explain why more time is needed or having to break off and return to the cells to find the interview rooms are occupied.

5. In some courts in London it has been known for clients who were to be dealt with by the duty solicitor to be diverted to solicitors who may or may not be able to “offer their services “while the duty solicitor is otherwise occupied. Therefore the duty solicitor may be reluctant to leave the cells until he has taken some instructions from those that have asked for the services.

6. Often the vulnerable clients need to be seen by the court psychiatric team this takes time and causes further delay if they cannot prepare a report until later in the day.

7 Often vulnerable individuals are confused and make it difficult to apply for legal aid. They are often adjourned paragraph 5. The duty solicitor scheme prohibits duty solicitor representation on a second occasion. Until the rules are changed this will continue.

8. This scheme appears to be predicated on the fact that the police / gaolers have recognised vulnerability whereas it is often not identified until there has been a provisional consultation with a solicitor.  Therefore, the scheme should include some provision for the defence to be able to flag a defendant as vulnerable so that they do not end up waiting longer than is necessary.

We suggest an agreed collective approach to the appearance of vulnerable defendants in custody at court agreed at round table discussions with the police, the custodial team (both escort and gaolers), the court diversion team, HMCTS/MOJ lead interpreting, Probation, the defence, the CPS, court staff, legal advisors and Judges- lay and professional.

That would ensure that all stakeholders differing considerations are fully understood and a workable protocol arrived at which prioritises the needs of the vulnerable in court custody.

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