

Harrow Crown Court

Defendants and Mental Health Concerns

We are seeing a sizable number of cases where there is a concern for the defendant's mental health.

This form will be uploaded to any case which the court identifies as having a potential mental health concern. Please read this document in any case where there is a mental health issue and where appropriate please take advantage of the excellent support available via our Liaison and Diversion team at Court.

The key references in this area are the CrimPRS and CrimPDs and the BCM handbook. Please also see chapter 4 of the Equal Treatment Bench Book and of course there are new sentencing guidelines in force from October 2020. Links to the relevant parts of each document are provided within this document.

The MH concerns most commonly raised with the court can be broken down into three broad categories

1. Fitness
2. MH concerns short of fitness which impact trial process
3. Sentence

Fitness - When a case is sent to the Crown Court and a concern about fitness to participate in the trial process is raised at the PTPH, the court should not simply adjourn pending the obtaining of reports. Instead, the court will give full directions for the resolution of the case, to include dealing with the issue of fitness and identifying a trial date, whether it will turn out to be a conventional trial or a trial of an issue. There may be cases where that timetable has to be adjusted, but always with identified dates and never with an open-ended adjournment.

The BCM Handbook says at para 3.9:

"Where it is not possible to arraign the defendant, for example, because an abuse of process or a fitness to plead issue or a possible dismissal application is anticipated, the best way forward is to give full PTPH directions towards a trial but to make provision for a FCMH at around the time of Stage 2 to resolve these issues ... It is not appropriate simply to postpone giving PTPH directions pending the outcome of such matters."

Once raised, fitness is an issue for the defence to establish by the service of expert evidence (which the defence is responsible for obtaining).

In circumstances where the issue of fitness clearly needs to be explored – for example if there is a history of mental disorder or a concern raised at the lower court by the L&D team there, then it is vital that funding is sought and experts are identified at the earliest opportunity. Any assessment produced while the defendant was at the police station or the Magistrates Court should be uploaded to the CCDCS as early as possible. In that way the court can set a timetable for such evidence to be served and the issue resolved.

Where the circumstances are less clear for example where a defendant is volatile or eccentric but no mental health background is known, practitioners may consider that an early initial screening assessment conducted by the L&D team at Court would help to establish whether fitness is a live issue or whether the defendant may be fit to plead but may need adjustments to the trial process.

Where a defendant is found unfit to plead, please note [CrimPR 25.10](#) regarding representation. The court will need to ensure that the right advocate is chosen for the case, and so please be ready to deal with the issues raised.

Defence expert reports

The new (October 18) CrimPRs for court commissioned reports do not apply to situations where the defence are seeking their own reports, nor are they intended to encourage the court to order reports that would currently be left to the defence. [CrimPD VII R.1 and R.2](#) both emphasise that the new rules are not a substitute for the prompt commissioning of reports by the defence. They do, however, require that, if the defence are commissioning their own reports, the court should set a timetable for the reception of those reports, and it is always valuable for the court to identify the issues that the court regards as important.

Court-ordered psychiatric reports

There will be very rare occasions when the court orders its own psychiatric report for a defendant whether before or after conviction or plea. This will usually be where the defence have expressly declined to obtain and/or serve a report. In those cases, then the strict guidance in CrimPRs and CrimPDs will be followed. The basic obligation on the Court in CrimPR 3.2 is of “achieving certainty as to what must be done, by whom, and when”. The L&D services and/or the consultant psychiatrist may well be able to help the court in identifying the need for a report and in identifying who might do that report. The court may well commission the L&D psychiatrist, in which case he/she will be acting as an expert outside of the diversion scheme.

NOTE: the forms where the court has asked for a report are available on the MoJ forms web page, <https://www.justice.gov.uk/courts/procedure-rules/criminal/forms>, which can be reached easily via Google or by link from the DCS.

MH concerns which impact trial process - Where a defendant is fit, but has a mental health issue which will have an impact on the trial process or indeed any hearing, the defence will need to consider what practical arrangements and/or adjustments need to be made. Where an intermediary is sought, then ideally the application needs to be made before the PTPH with the intermediary’s dates available. Please see [Part 18 CrimPRs](#) and [CrimPD V 18A](#) . The more information the court can be provided with, the better able it will be to assist the defendant in their circumstances.

Sentence – within the sentencing process, it may be necessary for the court to order comprehensive psychiatric reports and the process for doing so is set out below.

Where such a report is not ordered but the defence consider information about the defendant’s MH would assist the court, the L&D service may be of help in providing information relevant to sentence. The court may ask for input as to what level of information is needed and where a pre-sentence report is sought, probation do discuss options with the L&D team and defence counsel/solicitor may wish to encourage this. It is hoped that at some point in the future the L&D may be able to assist with mental health treatment requirements.

Court-ordered reports for sentencing

[CrimPR 28.8](#) applies when a medical report, or information about a hospital or guardianship order, is required by the court for sentencing. In such an instance the court must:

- identify each issue on which the opinion is required (and applicable legislation);
- specify the nature of the expertise required;

- identify who is to commission the report (i.e. whether a court officer is to do it, or a party on behalf of the court, or the party on its own behalf);
- give directions about the supply of medical records, information about the offence and information about payment (and the CrimPD also reminds us that it is necessary to be clear as to who is to pay);
- set a timetable to provide for:
 - a date by which the commission is to be delivered;
 - a date by which any failure to accept the commission must be communicated to the court;
 - a date on which a court officer must review progress; and
 - a date by which the report is to be received; and
 - identify who is to get a copy of the report on completion.

[CrimPR 28.8](#) specifies what must be in the commission to the expert, including requesting confirmation that the commission is accepted, and that the expert will adhere to the timetable. [CrimPD VII R.10](#) provides further guidance on the commissioning of the report and refers to the HMCTS “Good Practice guidance: commissioning, administering and producing psychiatric reports for sentencing” of 2010, which has a range of standard-form letters of instruction and other documents. More up-to-date HMCTS guidance is being distributed to staff to draw attention to the new provisions and to provide staff with the forms and letter templates devised to support the new rules and practice direction.

CrimPD VII R.16 says that, where a defendant is in custody, then the prison (custodian) must also be notified that a report has been ordered to ensure that the preparation can be facilitated.

Harrow’s Liaison and Diversion Practitioners

The Central Northwest Foundation NHS Trust have been commissioned by NHSE to provide L&D Services to the Harrow Crown Court effective 1st April 2022. A practitioner will be based at the court during the hours of 9am-5pm from Monday to Friday. The service will also be supported by a Consultant Forensic Psychiatrist one day a week. At present, this is every Tuesday.

It is important to note that the L&D team are completely independent of the court and are funded by the NHSE. The service is therefore completely impartial. This is why defendants will be asked to provide consent to the sharing of their otherwise confidential information. The aim is for defendants to provide informed consent as soon as possible. Where there are concerns about risk to self or others or issues around capacity, material may be disclosed without consent.

L&D service providers will focus on identification, screening and assessment of individuals, advice, referral, short-term interventions, data-collection, monitoring and safeguarding, to achieve:

- All-age services (children, young people and adults).
- Identification and referral of a wide range of mental health, disability, substance misuse and social vulnerabilities.
- Coverage of the justice pathway, including police custody and court settings, with hours of operation to reflect service need.

Attached is a referral form for the diversion team. This may change, so use the form attached to this document, not an old form you have used before.

Contact details for the Harrow Crown Court L&D services: cnwl.harrowcrowncourtliasion@nhs.net

All referrals can be sent to the inbox which will be looked at throughout the day and respond in a timely way. The L&D services does not have access to the DCS. Do note that assessments can be provided before the PTPH, and the court will agree to the production of defendants at court to be seen in appropriate cases. Our L&D team do not have access to the CCDCS and therefore it is a vital part of the referral process that they are provided with necessary case papers **by the defence prior to any assessment or screening appointment**. Solicitors will need to check what reports there have been in the past, whether consent is given for medical notes to be reviewed etc.

In all cases, it is for the L&D services to determine the level of support which can be offered and how to support the court or the defence when a request is made for assistance.

Further information about their role, including in the courts, can be found at:

<https://www.england.nhs.uk/commissioning/health-just/liaison-and-diversion/ld-faqs/#q7>.

When to seek input from L&D?

The key areas are:

- (a) *Bail* – The court may ask for L&D input for assistance when considering a bail application for a defendant and or bail conditions. The more information that the defence can provide about a defendant's background, the better. Are there concerns and risks? What practical steps can be taken? Solicitors may well wish to contact the L&D Service in advance of any bail application and seek their input and assistance in providing the appropriate information to the court. The L&D Service cannot of course give an opinion about suitability for bail, and the decision is always for the court.
- (b) *Custody to hospital transfers* – The court will often ask the L&D Service for an update about a defendant in custody where there is a mental health concern. The L&D Service speaks to the team at Wormwood Scrubs on a very regular basis and will be able to alert the court to any concerns about a defendant. They can contact other prisons as well. If the defence fear that a defendant may have slipped under the radar, they should contact the L&D Service and seek their assistance. The L&D Service can call on the Consultant Psychiatrist if appropriate, and psychiatrist can decide if an urgent assessment is needed. The psychiatrist can do this assessment him/herself or arrange for reports to be done.
- (c) *Fitness* – The L&D Service are not able to assist in preparing reports about fitness however they can provide an invaluable service early in proceedings by providing a screening assessment to indicate whether concerns around fitness need to be pursued with a full forensic psychiatric report or not.

And finally ...

Where a defendant is in custody and there are psychiatric reports, then the parties will need to consider whether the reports should be sent to the prison to ensure that they have all the relevant information. Reports can easily be attached to the covering email for the warrant.

Vanessa Francis
Mental Health Liaison Judge for Harrow CC

Harrow Crown Court Liaison and Diversion Team

Assessment Referral Form

HOURS: Monday to Friday 09:00 to 17:00

- 1 This referral form should be filled out in full and emailed to email to L&D service inbox:
cnwl.harrowcrowncourtliasion@nhs.net
 - Referrer to contact the Liaison and Diversion (**L&D**) Team either by calling an L&D practitioner into court (by tannoy or phone) or by coming to office to check appointment availability. The L&D team has limited resources and so may be unable to respond to all requests made by referrers on the day of referral.
 - Good practice is to ask the L&D practitioner to attend court in person before the referral submitted so that this can be discussed.
 - If defendant is on court bail, the court would need to allow for up to two weeks for assessment. The L&D service reserves the right to decline an assessment that has not been pre-arranged with the L&D team.
 - A completed referral form is required before an assessment is undertaken. The L&D service reserves the right to decline referrals if this form is not completed with the minimum information required.
- 2 The case bundle must be attached in all instances in order to make a full assessment of any risk to self, others and/or practitioners.
- 3 Once a referral is received, the L&D team will consider the appropriateness of the referral and how best to respond to the request.
 - The L&D practitioner assigned to the assessment will review all collateral information provided by the referrer to determine suitability for assessment, as well as any risk-management considerations when engaging with a defendant.
 - The L&D practitioner requires consent from the defendant in order to offer an assessment and to liaise / to share or request information on their behalf. As such, referrers are asked to complete a consent form (as attached to this information sheet) at the time of referral. Where possible, referrers should support the L&D practitioner to explain the process to the defendant.
 - Provided that consent is given, health and social care records held on the defendant can be sought by the L&D practitioner to inform the assessment.
 - For defendants remanded into custody by the court, the assessment will take place in the custody cells. If the defendant is remanded into custody, L&D assessments cannot be undertaken via video link; so please arrange for the defendant to be produced at Harrow Crown Court as soon as practicable, but first check L&D Team's availability before organising this.
 - Bail assessments are an opportunity to provide information on a defendant's presenting needs, as well as any management plans which can inform sentencers. Mental Health

Treatment Requirements can be explored by the L&D team with a service user's consent and availability of the required information and treatment options.

Please email case bundle to the secure email address provided above

Reason for referral			
Referral type (please tick relevant type)	Abnormal behaviour in court <input type="checkbox"/>	Previous psychiatric history <input type="checkbox"/>	Nature of offence <input type="checkbox"/>
	Psychiatric screening assessment <input type="checkbox"/>	Advised to refer by family <input type="checkbox"/>	Referral for input into pre-sentence report <input type="checkbox"/>
1. Provide additional details of reason for referral and known risks e.g. <ul style="list-style-type: none"> • FITNESS TO PLEAD (psychiatric screening assessment) • RISK TO SELF (self-harm or suicidal ideation) • RISK TO OTHERS (physical/verbal/financial/psychological/emotional/sexual/neglect/risk to staff) • VULNERABILITIES (learning disability/veteran/homelessness/LGBTQ+/female/BAME) 			
2. Details of service user			
Full name:		First language:	
Usual address:		Date of birth:	
Bail address:		URN No:	
		Gender:	
		Ethnicity:	
Telephone no:			
Does this person require an interpreter? <input type="checkbox"/>		If so, has one been booked by the court? <input type="checkbox"/>	
3. Referrer information			
Name and job title of referrer:			
Signature of referrer (written or electronic):		Contact tel no:	
		Contact email:	
4. Solicitor details			
Solicitor name:			
Solicitor firm:			
Contact details:			
5. Date due back in court for assessment			
Date and time:		Appointment agreed with L&D team <input type="checkbox"/>	