



**Criminal Law Solicitors' Association**

**PROTOCOL**

## **CLSA protocol on prosecution inadequate or late disclosure**

**Issued 06 June 2016**

1. This protocol is adopted due to the repeated failure of the prosecution to serve adequate initial details of their case (IDPC) under CPR 2015 rule 8. (3) and also to deal with late disclosure by the prosecution or failure to comply with time limits for service of evidence.

2. This protocol is also adopted so that defence solicitors and counsel or agents instructed by them are fully compliant with the Law Society Practice Note warning of the professional implications of advising on a plea without seeing adequate evidence (See extract below).

3. Where the prosecution has clearly failed in its duty to disclose evidence, whether at the first hearing or later, making proper advice impossible without sight thereof, the defence advocate will, having first advised the defendant beforehand and **where it is in the client's best interests to do so, adopt** the next steps of this protocol:

Step 1. Inform the court of the predicament faced by the defence due to the lack of information and evidence. Ask for the case to be adjourned to enable the prosecution to comply with its disclosure obligations. Where the defence solicitor has other commitments which would make it problematic to put the case back in the list on that day, - then to request an adjournment to another date all together.

Step 2. Should the court fail to accede to the request to adjourn, the defence advocate, having complied with his/her professional duty to the client in advising as to early credit on early plea, relying on the Law Society's Practice Note, will advise a not guilty plea / pleas or no plea to be entered. Inevitably, this will involve serious difficulties in completing the defence part of the case management form including the agreement of witnesses and time estimates.

Step 3. Under the terms of the Law Society Practice Note, the defence advocate will ask the court to make a note of the circumstances and the reasons for so pleading.

4. To help the defendant retain the maximum credit for any subsequent guilty plea, the defence advocate will inform the court that, on receipt of the missing information and in order to preserve credit for a guilty plea, we will take urgent instruction and further advise the defendant on the issue of the plea in the light of that new information.

5. If the client decides to plead guilty after late service of Prosecution evidence, the defence advocate shall notify the court as soon as possible. This is necessary in order to fulfil our duty to actively assist the court to manage the case under the Criminal Procedure Rules 2015 and to protect the defendant's right to the appropriate credit for an early guilty plea.

*Zoe*

Zoe Gascoyne  
Chairman CLSA

## **Extracts**

### **1. Content of IDPC**

CPR 8.3. Initial details of the prosecution case must include—

*a) where, immediately before the first hearing in the magistrates' court, the defendant was in police custody for the offence charged— (i) a summary of the circumstances of the offence, and (ii) the defendant's criminal record, if any;*

*(b) where paragraph (a) does not apply— (i) a summary of the circumstances of the offence, (ii) any **account given by the defendant in interview**, whether contained in that summary or in another document, (iii) **any written witness statement or exhibit that the prosecutor then has available** and considers material to plea, or to the allocation of the case for trial, or to sentence, (iv) the defendant's criminal record, if any, and (v) any available statement of the effect of the offence on a victim, a victim's family or others.*

<https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Protocols/applying-crim-procedure-rules-dec-2009.pdf>

### **2. The Law Society practice note**

Under paragraph 3.1 (please read the full paragraph) the practice note says:

*'If you advise the client to enter a not guilty plea, or to enter no plea, to protect his or her position due to the lack of information, you should ask the court to make a note of the circumstances and the reasons for pleading so.*

*To help your client retain the maximum credit for any subsequent guilty plea, you should both:*

- *advise your client about the situation*
- *inform the court of the predicament you face due to the lack of information.'*

<http://www.lawsociety.org.uk/support-services/advice/practice-notes/criminal-plea-without-disclosure/>

*Chair: Zoe Gascoyne, CLSA, Suite 2 Level 6, New England House, New England Street, Brighton BN1 4GH. DX 2740 Brighton. Email: [admin@clsa.co.uk](mailto:admin@clsa.co.uk) Tel: 01273 676725.*

<http://www.clsa.co.uk/>