

Work entailed in 'sending fee' - currently proposed to be paid as two hours work

New work since the fee cut

1. Both Transforming Summary Justice (2015) and Better Case Management (2016) have been introduced since the cut. Both require (in theory at least) detailed papers before the first appearance. They also require proper engagement, and an end to adjournments on the first appearance for proper papers etc.
2. The Criminal Procedure Rules were altered to require early engagement, imposed new duties on the defence and also on the CPS in terms of material we should now get before the first appearance (see Rules 8.2 and 8.3).
3. The impact of court closures is also significant with some courts now significantly further away from offices than they were. Many are also now overloaded with cases (one court that we are aware of never finishes its morning list before 3pm, and regularly sits very late, meaning a lot of time waiting.)
4. The move to electronic IDPC also means rather than get the papers at 9:30am solicitors often wait several hours for them to arrive.
5. All of this means a first appearance can often take all day which means other appointments cannot be taken. This was never the case before.
6. The court now uses a Case Management form even on indictable only cases. This must be completed by the solicitor and requires proper information on the issues and plea.
7. Finally the new sentencing guidelines on reduction in sentence for guilty plea and the change of judicial culture mean that if you don't indicate a plea at that first appearance (even if you are not asked) you will lose credit. Previously on pure 'sending' cases under Section 51 there was very little to do as you were not asked for a plea. Now you have to go through the evidence and advice on that and potential other evidence and be in a position to enter a plea and identify issues. This is all new work.

Work that has always been required in most cases

Custody cases:

1. Obtain the papers from the prosecution. For overnight charge custody cases these are generally 20-30 pages. Where the defendant is appearing in custody on a warrant having failed to attend upon a summons the papers could be significantly more voluminous; sometimes in excess of 100 pages.
2. Read the papers.

3. Speak to the prosecutor to find out their views on bail/alternative charges/sentencing category.
4. Conference with the client:
 - a. If the defendant is not known to the advocate this will include an introduction, which entails a confidence / relationship building discussion, noting the issues identified in the Lammy Report¹, and the need to understand that some defendants have mental health issues which may not have been highlighted or are not apparent but are relevant to their case and to the defendant's understanding of the issues.
 - b. Complete a legal aid application form obtaining details of the defendant's financial circumstances and those of his partner if she/he has one.
 - c. The allegations will need to be discussed in detail with an explanation of the relevant law and instructions taken on the defendant's account.
 - d. There will need to be a discussion on the strength of the evidence, plea, any basis of plea and possibility of a Newton Hearing, potential defences and possible witness for the defendant.
 - e. A discussion will be required about credit for a guilty plea referencing the sentencing guidelines and giving an estimate of the potential sentence the defendant could face. This is extremely important given the Court of Appeal / Crown Court will routinely not give full credit unless there has been a suitable indication in the Magistrates Court.
 - f. An explanation of the court process in both the magistrates' court and Crown Court.
 - g. A discussion about bail will be required, including alternative addresses where the defendant could stay and the impact of any exclusion conditions.
5. It is likely that having taken instructions a further discussion with the prosecutor will be necessary regarding bail issues and/or alternative pleas or basis for the plea.
6. With regard to bail, if an alternative address to where the defendant was living prior to his arrest is needed, phone calls may be required to relatives/friends. Probation will often have to be spoken to as well if the defendant is known to them or a guilty plea is anticipated.
7. The defendant will then need to be spoken to again to discuss the information from 5 and 6 above.
8. The hearing will then need to be prepared for, including bail application, mitigation etc.
9. There may then be a considerable period of waiting until the case is called.
10. The advocate will then represent the defendant at the hearing; make representations in relation to bail; deal with the information needed on the Better Case Management form if the case is going to the Crown Court or possibly case manage the matter if there is to be a summary trial.
11. After the hearing the solicitor will need to see the client again to discuss next steps and if relevant an appeal on bail to the Crown Court.

¹ <https://www.gov.uk/government/publications/lammy-review-final-report>

Bail Cases:

1. Obtain the papers from the prosecution. These can be voluminous; sometimes in excess of 100 or even 200 pages.
2. Read the papers.
3. Contact the client in the hope that they may attend for an appointment in advance of the first hearing.
4. Complete a legal aid application form, including obtaining details of the defendant's financial circumstances and those of his partner if he has one.
5. The allegations will need to be outlined frequently with an explanation of the relevant law and instructions taken on the defendant's account.
6. There will need to be a discussion on the strength of the evidence, plea, potential defences, possible witness for the defendant. A discussion about credit for a guilty plea referencing the sentencing guidelines and giving an estimate of the potential sentence the defendant could face. An explanation of the court process in both the magistrates' court and Crown Court.
7. Contact the CPS to discuss the case, outstanding issues and any offers of alternative pleas or basis of plea.
8. Prepare for the court hearing.
9. Where the papers are not provided in advance or the client fails to make an appointment the above will all need to be done at court
10. Attend court, speak to the prosecutor to confirm their position regarding alternative pleas and basis of pleas.
11. Represent the defendant at the hearing, make representations in relation to bail, deal with the information needed on the Better Case Management form.
12. After the hearing see the client again to discuss next steps.