



SENIOR PRESIDING JUDGE
FOR ENGLAND AND WALES

Speech by Lord Justice Fulford for NPCC
National Criminal Justice Performance Conference
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Introduction

1. I am delighted to have the opportunity of following in the footsteps of my predecessor – Lord Justice Gross – who addressed your conference entitled “*Criminal Justice Reform and its Effects on the Police Service*” last October. In that speech, he set out the key principles and processes of Better Case Management (another CJS initiative, regrettably another acronym to remember). This is proving to be such a transformational development that I will trespass on your patience today by updating you on progress thus far and providing my views on its progress and the challenges it will face in the future.

The role of SPJ

2. However before doing so, I would like to spend a moment sharing some initial views on my first 2 months as the Senior Presiding Judge (SPJ). Having been the Deputy for a year before taking over at the stroke of midnight on 1 January, I unsurprisingly had at least some slight insight into the role I was to inherit. But nothing could really have prepared me for what was waiting, and most particularly the sheer the number of boards and meetings I have to attend. The extent of them and their variety are eye-watering – something in the region of 86 separate and regular commitments. Many repeat on a monthly basis, and they cover a large portfolio of at least 24 different areas such as justice as it is administered across all the jurisdictions: civil, family, criminal and tribunals; each and every aspect of court performance; the many different judicial associations; judicial appointments (for instance, the resident judge at each crown court and the designated civil and family judges); tickets for judges to try serious crime such as murder and manslaughter; and – perish the thought –

disharmony in the ranks, for instance when things start to unravel in the lives of judges or in their dealings with each other or the court staff. Mercifully, these latter events are few and far between, but the judiciary – like I am sure even senior police officers – are not immune to the pressures that are the consequence of the cuts, along with the dramatic reorganisation with which we are presently engaged as to how we deliver justice in this county. The latter revolution is most dramatically reflected in the HMCTS Reform Programme, which will transform beyond recognition the way in which our courts operate. In essence, a system that would have been wholly recognisable to the Georgians in the late 18th century is being transformed so that it is fit for the digital age, an age in which much of what we do will be determined by algorithms and delivered by robots. I may yet live to see Robocop and his counterpart on a virtual bench: Algojudge.

3. I have now nearly completed my first Circuit visit on the South East, travelling to the Crown Courts at Wood Green, Harrow, Blackfriars and Kingston, as well as Lavender Hill Magistrates' Court and some civil and family courts. This week I will be visiting Woolwich Crown Court. With all sincerity - without any reservation - I can say that at all the courts I have visited thus far I have been impressed by the dedication, commitment and hard work of the judges, court staff, the practitioners and the various agencies with which we work such as probation, the witness service and, critically, the police.
4. However, I need to stress that I am not seeking sympathy for the deluge that has descended on my head – I knew in general terms the commitment I was taking on and self pity is such an unappealing character trait – and I will instead focus on one of the most interesting and exciting projects with which we are currently engaged – the national launch of BCM which began in earnest at the beginning of my term as SPJ on 5 January.
5. The national launch was the culmination of months of preparation and hard work on the part of all the agencies within the criminal justice system and I am not being sycophantic with a significant part of this audience to say that the police have played a key role, for which we are very grateful.
6. The introduction of this transformational new scheme has been deeply challenging, not least as a result of the tight time scale we set ourselves. The National Implementation Team (which has the unhappy acronym of the "NIT") and which provides strategic oversight for the entire project, only met for the first time last summer.
7. There are a good deal of critical decisions that are required on a seemingly never ending basis in order to develop the processes that make BCM function successfully.

The police forces of England and Wales (in the person ACC Simmons who has been your lead on the NIT) have assisted us in determining a number of critical issues, such as whether we should allow some flexibility vis-a-vis the 28-day time scale from when the case is sent by the Magistrates through to the Plea and Trial Preparation Hearing (PTPH) in the Crown Court, and, moreover, which cases should be treated as “exceptional” thereby enabling them to be dealt with in a different way from the run of the mill. For instance, allegations of terrorism are exempt from BCM and continue to be dealt with in accordance with the Practice Direction that has governed these cases for the last decade. The exceptions also include those cases involving witnesses under 10 years of age and murder trials. Although the underlying principles of BCM (e.g. robust case management and early engagement) will apply with full rigour to every case going through our courts, the timescales and some of the processes - as a matter of necessity - have been adapted to take into account the special nature of these difficult cases.

8. The launch of BCM additionally required us to provide national guidance and to ensure that appropriate training was provided to all those involved (many old dogs have needed to learn some very interesting new tricks) and again you have been a key player in this regard. First, not only have you been fully committed to providing the training that officers on the ground need for this new way of working, but also given the helpful police representation on the NIT Working Groups, with your assistance we have been able to produce the comprehensive and, in my view, excellent, guidance which is available for a wide and diverse audience – the judiciary and the magistracy, defence practitioners, all those who prosecute, Probation officers and, it goes without saying, the police.

Early Adopter Courts

9. Bitter experience has shown that new initiatives usually need to be piloted in order to iron out wrinkles and to identify elephant traps, and BCM has been no exception to this eternal rule. National implementation was greatly assisted by this new procedure being given a head start in seven carefully selected courts in October last year. This enabled the NIT to stress test the new processes, and most particularly the new Plea and Trial Preparation Hearing Form (the PTPH form). I can say unashamedly that those Early Adopter Courts were a real success. Given the extensive communication between the CPS, the defence and the police in advance of the PTPHs, the hearings were nearly always effective, and they produced a significantly larger number of guilty pleas than we had every dared hope or expect, in some instances including serious offences, such as attempted murder and rape.

10. Another key element, indeed, an essential precondition, of this early success is ensuring the quality of the information provided by the prosecution to the defence. I appreciate that this involves a fine balancing act as regards valuable police resources: you need to supply sufficient evidence to enable the defence to take instructions and to make properly informed decisions without expending unnecessary resources by over-building the IDPC, but when the right balance is struck (as has often been the case so far), the results have been dramatic. When, for instance, a damning streamlined forensic report or a key video clip has been served, the result frequently has been a metaphorical rueful shrug by the defendant who has accepted the game is up, and after a quick exchange with his brief, he has pleaded guilty on the spot, with all the obvious benefits to everyone involved, but most particularly the victims and witnesses.
11. Although it is as yet too early to have received comprehensive and appropriately verified data, the feedback from the Early Adopter Courts has been impressive. For example, some courts are reporting a guilty plea rate of over 40% at the PTPH, rising to as high as 56% at one stage at Liverpool Crown Court! We need to be cautious about this - an ancient expression that involves the dangers of counting chickens before they are hatched comes to mind - but if full implementation follows the experience of the early adopter courts and if, in consequence, we are able to demonstrate that we can dispose of half of all Crown Court cases at the first hearing (the PTPH), that will free up our over-stretched and extremely valuable resources to focus properly on the contested cases.

A word next about Full implementation

13. Obviously we are some way off replicating these dramatic results from the early adopter courts on a national basis, but the initial indications are positive. Whilst, as I have already said, it is too early for any formal statistics I have been advised that recently 9 out of 9 PTPHs at a court in the South West and 10 out of 10 PTPHs at a court in Wales resulted in guilty pleas as a result of BCM. This is pretty breath-taking stuff. However, we need to ensure that we do not apply undue pressure. One defence wag has dubbed the PTPH the "Pressure to Plead Hearing" and although I expect judges to manage these cases with vigour and real enthusiasm, we must not become overbearing.
14. But I particularly want to emphasise that national roll out has gone smoothly because all the parties within the CJS have worked assiduously together in their Local Implementation Teams (LITS), which have been superbly led by the Resident Judges.
15. Counterintuitively, feedback consistently indicates that the most significant changes brought about by BCM are not those that take place in court (fantastic though those are) but instead it is all the work that has taken place before the defendant arrives in the Crown Court that has been the most dramatic development. For this we have been dependent on the police and the CPS in their management of the cases, well in advance of them arriving at court. Changes in file preparation and the supervision of that process by the police have resulted in greatly improved MG5s, and, as a consequence, the provision of relevant and focused evidence at a necessary early stage. Additionally, changes by the CPS in the way they give advice to the police on charging decisions; by providing better information to the defence; and by the identification of an identified case owner who is obliged to respond to telephone calls, have all resulted in much improved engagement between all the parties in the period before the case reaches the Crown Court.
16. Another key piece of support that the police can, and indeed have, provided to BCM is at the PTPH, either in person or (often equally usefully) by telephone. Again, I understand the resource implications of asking officers to attend at court – but the ability to contact the police when an issue arises, such as checking witness availability, ensuring that realistic orders are made for the service of additional evidence or in order to discuss proposed pleas – can, in the long run, lead to very considerable savings. Judges frequently observe that the input of the officer in the case, even if only by telephone, can make the difference between the PTPH being effective or a complete waste of time.

Next Digitalisation

17. Not only is the CJS implementing BCM, but we are digitalising the entire court process via the Digital Case System (DCS). All Crown Courts will be paperless by the end of this month. This is a monumental change, which will see the end of practices that have endured for hundreds of years. In future, all the documents relied on in criminal cases such as the indictment, statements, paper exhibits, applications and written orders will be uploaded onto the DCS, and will be accessible on any computer, tablet or smartphone anywhere in the world so long as the person seeking access is authorised to view the papers. I was involved in selecting the software and I say without hesitation that it is extremely impressive.
18. The feedback from all the courts who have used the DCS is, effectively without exception, very positive. The judges are receiving new touch screen laptops and a classic assessment has been “the standard of the equipment is excellent and it is easy to use”.
19. Whilst BCM is not strictly dependant on the DCS, we are fortunate that the two have near-miraculously coincided. The DCS greatly assists BCM in the sense that it makes pre-hearing preparation so much easier than before, and the revised PTPH form is now available online, embedded within the DCS, and it is very easy to use, even in multi-defendant cases. We have reacted to the comments from the judges and the practitioners and many changes have been made to improve the form.
20. The key changes are:
 - The judge and the parties no longer need to download and upload the form. The parties and the court can easily provide information in the PTPH form, with everyone completing the relevant parts at the same time. It is now, therefore, a truly collaborative, on-line document.
 - Furthermore, it will be auto-populated with information held by the CPS computers, which self-evidently improves speed and accuracy.
 - While the DCS regrettably does not hold multi media material such as video clips, both the Crown and magistrates courts are in the process of receiving a product called Barco Clickshare. By connecting a "dongle" to the judge's or the advocate's laptop they are able to display evidence such as CCTV footage straight onto large new screens that have been installed in every courtroom. This will remove the all-too-familiar sight of a police officer having to attend the court before a hearing in order to ensure that the DVD or CD is compatible with the court's equipment, only to discover the machinery is broken, has disappeared or only recognises a different format.

21. As the members of many police forces are acutely aware, particularly as body worn video is rolled out across all forces, there needs to be a fail-safe method of presenting multi media evidence. This will be secured by the Common Platform, and a team within this programme is currently working on an Electronic Direct Access to Multi Media Programme (another acronym, EDAMM). This was previously known as the CPP Repository project and the Home Office CDIS. Through this project, an Automated Programming Interface (API) has been developed to enable access to material held in police digital repositories. A pilot carried out by Hampshire Police has successfully tested the concept, and now a reference group comprising several forces and the Police Digital First Programme has developed the initial technical requirements which can be implemented and tested by forces. The Hampshire pilot (using third party cloud storage) will allow automated direct access from the common platform by the CPS, the court and the defence (when authorised) thereby enabling streaming or downloading. While further piloting is ongoing and all the understandable security concerns will be addressed, this is an important step for the critical requirement of enabling early service of core prosecution material, with potential results being earlier guilty pleas and swifter justice.

Future Challenges

22. BCM has seen excellent cross agency collaboration and a truly positive start has been made. We cannot, however, be complacent. For those of us who have been involved in the CJS for some time, we know well the syndrome of initiatives that are launched to a great fanfare and the skies full of confetti, that start so well but then fade away as focus is directed at other enthusiasms. Do some of you remember the now forgotten CJSSS? Or the initiative called Stop Delaying Justice? And even further back, the “Narey” courts? BCM must not be allowed to go the same way.
23. For this reason, I am committed to promoting BCM in every way open to me, including regular news letters from my office, the next of which will include feedback from the key agencies (including the police) as well as from the judiciary. This will help instruct us as to what works well, and we will be able to share best practice and to identify and understand the continuing issues, such as the need to ensure that the Prison to Court Video Link is used effectively for PTPHs, thereby reducing the need to transport prisoners to court, with all the high cost involved.
24. In addition, the NIT will continue to provide strategic oversight and it will review performance. That performance is being measured by way of a monthly “dashboard”.
25. Four key measures have been set out as the key reporting requirements in order to assess the success of BCM. These are -

- The early guilty plea rate (% of guilty pleas taken at or before the PTPH);
- The effective trial rate;
- The average number of hearings per case for guilty pleas; and
- The average number of hearings per case for not guilty pleas.

26. I also want to encourage the LITs to thrive and prosper. They have proved themselves to be effective and they are best placed to resolve local difficulties such as inadequate disclosure, any problems in obtaining access to defendants in custody and instances of inappropriate listing.

27. Finally, I want to emphasize that the judiciary will continue to play an active role in trying to ensure the success of BCM. Indeed, this initiative is led by the judiciary - nationally by me and locally through the Resident Judges who chair the LITs. Judges have a central role at the PTPHs – and by robust case management those who plead guilty at the PTPH can be sentenced on the day, and trials can be properly managed so as to ensure that only essential witnesses are called to give evidence and that the prosecution does not have to conduct unnecessary pre-trial preparation.

Conclusion

28. I am a convert - a true and unashamed apostle - of BCM. Its light is shining very brightly, and it is helping to guide us to a more effective, a fairer and a considerably less expensive criminal justice system. I am truly grateful for your support thus far and I urge you to give every encouragement to your officers, persuading them to engage early with their cases, so as to ensure that decisions can be made at the outset, thereby consigning to history all of the inefficiencies and delays that have blighted our criminal justice system, as has been so eloquently described recently in the National Audit Office Report. With your support, we can - and I do not intentionally exaggerate - transform the way in which criminal cases are conducted, for the benefit of everyone involved, from the complainant right through to the defendant and all the professionals in between. And thank you for having been such a patient and uncomplaining audience during this rant, delivered by a true zealot.

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