

PROTOCOL ON DEFENCE STATEMENTS
AND PLEA AND CASE MANAGEMENT HEARINGS

AS AMENDED FOLLOWING
CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996 (DEFENCE
DISCLOSURE TIME LIMITS) REGULATIONS 2011

1. As Resident Judges of the three Crown Courts in Greater Manchester we are anxious to do what we can to improve case management so that , if trials are to take place, they are conducted fairly and efficiently. We also wish to reduce the number of ineffective trials, and reduce as far as we can the number of cracked trials, which waste resources and cause inconvenience and in some cases distress to witnesses.
2. Attached to this note is a summary of the statutory provisions relating to Defence Statements and disclosure. As perusal will reveal, the law actually requires that the defence statement should follow not more than 28 days after primary disclosure has taken place.
3. We have therefore decided that we should decline to allow PCMHs to be conducted in the absence of a signed defence statement, unless good reason is shown, or unless a Defendant indicates to the court that there will not be a defence statement. Further, unless persuaded that there are exceptional reasons to do so, we will not permit time to be granted for the filing of a defence statement at some future date.
4. If primary disclosure has taken place in accordance with the Act, but a defence statement has not been provided before the PCMH, the judge will consider adjourning it for a short period for one to be put in: an adjournment of an hour or so for instructions to be taken will often achieve results. The judge will not consider adjourning it to another day unless there are exceptional circumstances.
5. If no Defence Statement is provided as required under the statutory provisions, then the provisions relating to a potential adverse inference will take effect.

6. We have informed the CPS that it is expected to comply with its duties of primary disclosure.
7. The responsibility rests with the Solicitor to ensure that the Defendant provides sufficient instructions to enable the Defence Statement to be drafted on his behalf. If for any reason that cannot be done then an extension must be sought within the 28 day period. If counsel are instructed to appear at the PCMH the papers must be sent to Counsel in sufficient time to enable him/her to see the Defendant in conference if felt necessary and to draft the document ready for signing and submission at the PCMH.
8. This amended protocol will come into force on 12th April 2011, and apply to all PCMHs listed on and after that date.

7th December 2010

Amended 1st February 2011

Amended 5th April 2011

Judge Andrew Gilbert QC

Hon Recorder of Manchester

Resident Judge

Crown Court

Crown Square

Judge Peter Lakin

Resident Judge

Crown Court

Minshull Street

Judge William Morris

Hon Recorder of Bolton

Resident Judge

Crown Court

Bolton

THE LAW ON DEFENCE DISCLOSURE

- 1 Once the Crown purports to serve its case, there is a duty on a Defendant to serve a defence statement. (see CPIA 1996 ss 3, 5). The annotations to the latest Criminal Procedure Rules summarise the state of the law. They are to the following effect:
- (a) The defendant's duty to serve a defence statement in a case in the Crown Court is imposed by section 5 of the 1996 Act.
.....
 - (b) The time for service of a defence statement is prescribed by section 12 of the 1996 Act and by The Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 2011. In the Crown Court, it is not more than 28 days after the prosecutor complies or purports to comply with section 3 (initial duty of the prosecutor to disclose)
 - (c) The requirements for the content of a defence statement are set out in—
 - (i) section 5 of the 1996 Act, where the investigation began between 1st April, 1997 and 3rd April, 2005;
 - (ii) section 6A of the 1996 Act, where the investigation began on or after 4th April, 2005. See also section 6E of the Acts.
 - (d) Where the investigation began between 1st April, 1997 and 3rd April, 2005, the defence statement must—
 - (i) set out in general terms the nature of the defence;
 - (ii) indicate the matters on which the defendant takes issue with the prosecutor, and, in respect of each, explain why;
 - (iii) if the defence statement discloses an alibi, give particulars, including—
 - the name and address of any witness whom the defendant believes can give evidence in support (that is, evidence that the defendant was in a place, at a time, inconsistent with having committed the offence),
 - where the defendant does not know the name or address, any information that might help identify or find that witness
 - (e) Where the investigation began on or after 4th April, 2005, the defence statement must—
 - (i) set out the nature of the defence, including any particular defences on which the defendant intends to rely;
 - (ii) indicate the matters of fact on which the defendant takes issue with the prosecutor, and, in respect of each, explain why;
 - (iii) set out particulars of the matters of fact on which the defendant intends to rely for the purposes of the defence;
 - (iv) indicate any point of law that the defendant wants to raise, including any point about the admissibility of evidence or about abuse of process, and any authority relied on; and
 - (v) if the defence statement discloses an alibi, give particulars, including—

- the name, address and date of birth of any witness whom the defendant believes can give evidence in support (that is, evidence that the defendant was in a place, at a time, inconsistent with having committed the offence),
- where the defendant does not know any of those details, any information that might help identify or find that witness.

- (f) Under section 11 of the 1996 Act, if a defendant—
- (i) fails to disclose what the Act requires;
 - (ii) fails to do so within the time prescribed;
 - (iii) at trial, relies on a defence, or facts, not mentioned in the defence statement; or
 - (iv) at trial, introduces alibi evidence without having given in the defence statement—
 - particulars of the alibi, or
 - the details of the alibi witness, or witnesses, required by the Act,

then the court or another party at trial may comment on that, and the court may draw such inferences as appear proper in deciding whether the defendant is guilty.

- (g) Under section 6E(2) of the 1996 Act, if before trial in the Crown Court it seems to the court that section 11 may apply, then the court must warn the defendant.

- 2 There is no power to extend the time for filing a defence statement, unless the application is made within the time allowed for filing the statement (see Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 2011 (No. 209) Reg 3(3)).