

SUMMARY CASE MANAGEMENT PILOT FREQUENTLY ASKED QUESTIONS

What cases will be covered by the pilot?

All summary complaints calling for the first time on or after 5 September 2022 at Dundee, Hamilton, and Paisley sheriff courts.

Will this pilot be different from the “EPR” pilot that started in early 2020 but was halted because of the pandemic?

There will be the same focus on early case management but there will be new features to assist case management, especially in domestic abuse cases where there will be automatic earlier disclosure of evidence.

What is the purpose of the pilot?

The overall aims are (a) to reduce the number of cases that are set down for trial unnecessarily and (b) reduce the volume of late pleas of guilty and late decisions on discontinuation. This will reduce the adverse impact these have on complainers, other civilian witnesses, and the police.

The pilot will test specifically the extent to which

- resolution is possible at the beginning of the case, avoiding unnecessary trial preparation and witness attendance; and
- contested issues can be identified, and evidence agreed, in those cases which require to go to trial.

Why is it necessary?

In the 12 months to March 2022, there were over 36,000 not guilty pleas in summary sheriff court cases; that represents over 70% of pleas entered. But, in the same period, only 5503 complaints were called where evidence was led.

Every plea of not guilty involves not only the provision of intermediate diets, trial diets, and PIDMs, but the automatic citation of witnesses for every case.

Over 400,000 witness citations were issued for sheriff summary trials during 2021/22, over half of which were for police officers. Civilian witnesses, professional witnesses, health care professionals and scientists were also impacted.

What are the main changes from the EPR pilot?

The central feature of the revised pilot is a twin track system of

- (a) automatic disclosure of the key evidential material in domestic abuse cases as early as possible in the proceedings; this is new;

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(b) “targeted disclosure” of material in any other cases where the Crown/defence consider that would be of value in resolving the issues in the case; this is the same as the “EPR” pilot.

All cases will be reviewed to see whether targeted disclosure may be worthwhile.

How long is the pilot scheduled to run for?

The pilot is currently scheduled to run until the end of March 2024 but it will be subject to interim reviews.

Will it be extended to other courts?

If, following evaluation (or interim evaluations), the pilot aims have been/are being achieved, the expectation is that this new summary process would be extended to further locations; the exact timing and locations would be considered at that point.

What activity is expected before the first calling?

There is an expectation of increased pre-appearance activity in all cases, not only by the police and the Crown, but also by the defence.

In domestic abuse cases, the police will provide the key evidence to the Crown with the police report, or as soon as possible thereafter.

Wherever possible the Crown and defence should engage at or before the first calling to confirm if there is scope for resolution and whether it may be necessary to continue the case for that purpose.

What are the benefits for defence agents and accused?

The automatic provision of key evidence in domestic abuse cases and “targeted disclosure” of material in any other case where that may assist in discussions, should put the defence in a significantly different position from the early stage of the case. It will allow the defence to engage more meaningfully with the Crown on both plea and resolution, failing which, on the agreement of evidence. It will prevent attendance and preparation for unnecessary intermediate and trial diets and should lead to more efficient working practices for defence agents. For accused persons, there is the opportunity for matters to be resolved at the earliest possible stage in the process.

What will happen at the first calling?

If the accused pleads guilty the matter will be dealt with in the usual way.

In domestic abuse cases, the court will proceed to case management, if the key evidence has been provided, and the defence have instructions.

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What is the “key evidence” the defence should expect to receive by way of “early disclosure” in Domestic Abuse cases?

Key evidence is the evidence the Crown expects to lead to prove the charge. The nature and extent of that evidence will vary from case to case but will usually include the statements of the complainant and any other civilian witnesses, the police officer(s) who attends the scene, and any images or video footage that may be available.

What if some of the “key evidence” has still to be provided at the first hearing, or the defence have been unable to obtain full instructions?

The case may be continued for up to 2 weeks to enable the police to supply the material or for the defence to take instructions.

What will happen at the first calling in non-domestic abuse cases?

In all other cases, the parties are expected to have engaged and must consider whether

- (i) there is scope for resolution, whether of the case itself, or any other issues if it is proceeding to trial, and
- (ii) the provision of specified material, such as a statement or video evidence, would assist any discussions; in that event the case will be continued without plea for such material to be disclosed.

What happens if there is scope for resolution in non-domestic abuse cases?

If the case cannot be resolved immediately, it may be continued for up to 4 weeks for a case management hearing, allowing the specified material to be supplied and further engagement to take place in the meantime.

What will happen if, following engagement, neither party considers that there is any prospect of resolution, or agreement of evidence?

The court will note that position and fix intermediate and trial diets in the usual way.

What will happen at a case management hearing?

In accordance with the aims of the pilot, the sheriff will review the parties' position and, in particular, explore whether the issues in the case can be identified, or any evidence agreed, and address any practical issues that may affect the trial. The sheriff will complete a “Case Management Note” that will reflect the representations that are made.

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Will there be any changes to the PIDM and intermediate diet stages?

Contested cases will have been subject to greater scrutiny in pilot cases, as a result of earlier engagement and judicial case management. There will therefore be a clearer expectation that trial preparation will have been completed before the intermediate stage and that will be reflected in the PIDM report.

As a result, it is expected that fewer cases will need to call at intermediate diet, thereby ensuring that valuable court time is not taken up with procedural hearings, and that the trial will be ready to proceed on the date fixed.

Will there be any changes to Legal Aid coverage?

The existing Advice and Assistance, Assistance by Way of Representation (ABWOR) and Summary Criminal legal aid applications can be used for pilot cases using the SLAB online system.

New regulations have now been laid in the Scottish Parliament and, subject to Parliamentary approval, are due to come into force on 4 November 2022. These regulations will extend the situations where the Sheriff Court fixed fee of £550.76 can be paid to solicitors in cases which can be resolved at the early stages without a court appearance. They will allow the fixed fee to be paid under Advice and Assistance or ABWOR prior to the first court appearance, once the complaint has been issued, or where the PF has decided to prosecute the case, and the solicitor has confirmed they are acting in the case, before the complaint is formally issued.

While the new early disclosure arrangements will be concentrated in the three pilot court areas, these regulations will apply to all cases across the country, so solicitors in other areas will also benefit from being able to claim the fixed fees in cases which can be resolved at these early stages.

SLAB are working on changes to the Advice and Assistance and ABWOR online systems to allow solicitors to claim for these fees in these cases, and full details of the changes will be provided nearer the time of implementation.