

## THE SUMMARY CASE MANAGEMENT PILOT

### The Transition from EPR and Way Forward

August 2022

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## FOREWORD *by the Lord Justice General*

The Scottish Courts and Tribunals Service paper on the Pre-Intermediate Diet Meeting Procedure, "*The Journey to Date, Early Impact and Way Forward*<sup>1</sup>", was published almost exactly a year ago. In it, I referred to the collaborative spirit so frequently demonstrated between defence agents and the procurators fiscal depute.

It is that spirit which underlies the aims of the Summary Case Management Pilot. The pilot builds upon the foundations of the earlier Evidence and Procedure Review Pilots. It identifies a new and improved model which is based upon valuable lessons learned. PIDMs continue to play an important part in the new model. Co-operation between defence and Crown is still crucial, but an added aspect of the SCM pilot is that the sheriff will take on a more prominent role in supporting that approach. The new pilot encourages early disclosure of evidence, in certain cases automatically. This, along with the summary of evidence prepared by the Crown, should facilitate meaningful dialogue between parties at an early stage of proceedings. In turn this should result in the earlier satisfactory resolution of cases.

A key difference between the EPR Pilot and the current model is that the sheriff's case management powers are more extensive. From the first hearing, the sheriff takes on a pro-active role in case management. Each party's position will be recorded, using a specially designed note. There is an expectation that both defence and Crown will engage positively with the aims of the pilot. To reiterate my previous sentiments, the success or failure of these pilots, and their eventual part in the remodelling and modernisation of our summary criminal justice system, are contingent on the willing participation of all of those involved. In the context of the SCM model, the role played by the sheriffs in ensuring that participation will be a crucial one. It is key that sheriffs, in fulfilment of their heightened case management role, are able to steer cases in a manner consistent with the aims of the pilot from the very first hearing with a view to ensuring, so far as is possible, that there is meaningful engagement. It is only by adopting this approach that the pilot can achieve its intended purpose. That purpose will be measured against key performance indicators. Participation in the pilot represents an exciting opportunity to be at the forefront of the transformation of our summary criminal justice system. I therefore encourage defence agents, the Crown and sheriffs to work together to achieve the desired outcome. It is only with a collective approach that we will be able to reap the benefits of the hard work which has gone into creating the SCM model.

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<sup>1</sup> Available at: [https://www.scotcourts.gov.uk/docs/default-source/default-document-library/coronavirus-docs/report-on-pidms-\(003\).pdf?sfvrsn=7588646\\_2](https://www.scotcourts.gov.uk/docs/default-source/default-document-library/coronavirus-docs/report-on-pidms-(003).pdf?sfvrsn=7588646_2)

As will be clear from the content of this paper, identifying and implementing a robust and efficient model for the processing of summary crime is a considerable achievement. I thank Sheriff Principal Anwar in particular for her work on this project and for the judicial leadership demonstrated in creating these remodelled schemes.

## INTRODUCTION

The Summary Case Management (SCM) Pilot will commence at Dundee, Hamilton and Paisley Sheriff Courts on Monday 5 September 2022.

This paper sets out the background to the design of the new pilot and its development. The design of the new pilot takes account of lessons learned from the early EPR pilots and the introduction of the Pre-Intermediate Diet Meeting (PIDM) process. A key feature of the new model is the focus on early disclosure. Part 2 explains the need for early disclosure, the types of cases where early disclosure should be automatic, and the point at which that process can take place.

Part 3 introduces the SCM Pilot. It provides the details of the new model for disclosure, outlining the key differences from the early pilot and explains how early disclosure, along with judicial case management at first calling, is intended to support the early resolution of cases, or identification of issues in dispute. The SCM Pilot, together with a refreshed approach to PIDMs, seeks to ensure that only those cases which cannot be resolved and are ready for trial, proceed to the trial diet.

Cross justice collaboration has been essential to the design and development of the new pilot. Part 4 of the report reflects on that collaboration and recognises the importance and value in adopting a similar approach to support the implementation and development of the SCM pilot at local level. Finally, Part 5 sets out how the success of the Pilot will be monitored and evaluated.

Annex 1 is a flowchart explaining the design of the SCM Pilot. In summary, while the practice of serving the Crown's summary of evidence with the complaint will continue:

- Where an accused appears from custody,
  - (i) in any domestic abuse matter, key evidence will be received by the Crown from the police, automatically, prior to the first appearance. That key evidence will be available to be released to the defence prior to or at the first appearance upon receipt of a letter of engagement.
  - (ii) in any non-domestic abuse matter, specified disclosure material (e.g. CCTV) can be requested where it is considered that such early disclosure may make a material difference to a plea or the early resolution of issues in the case. Specified disclosure material will be

made available within 3 weeks of first appearance, subject to confirmation of engagement in court or receipt of a letter of engagement;

- Where an accused appears on an undertaking,
  - (i) in any domestic abuse matter, key evidence should be received by the Crown from the police, automatically, within 7 days of caution and charge. That key evidence will be available to be released to the defence within 3 days of receipt of a letter of engagement.
  - (ii) in any non-domestic abuse matter, specified disclosure material (e.g. CCTV) can be requested where it is considered that such early disclosure may make a material difference to a plea or the early resolution of issues in the case. Specified disclosure material will be made available within 3 weeks of first appearance, subject to confirmation of engagement in court or receipt of a letter of engagement.
  
- Where an accused is cited to attend court,
  - (i) in any domestic abuse matter, key evidence should be received by the Crown from the police, automatically, within 14 days of caution and charge. That key evidence will be available to be released to the defence within 3 days of receipt of a letter of engagement.
  - (ii) in any non-domestic abuse matter, specified disclosure material (e.g. CCTV) can be requested where it is considered that such early disclosure may make a material difference to a plea or the early resolution of issues in the case. Specified disclosure material will be made available within 3 weeks of first appearance, subject to confirmation of engagement in court or receipt of a letter of engagement.
  
- Judicial case management will take place at first appearance (if a plea of not guilty is tendered in a domestic abuse case) or at any subsequent pleading diet, facilitated and supported by a pro forma case management note to promote a consistent approach (see Annex 2);

- PIDMs will continue to represent a further opportunity for constructive dialogue with a view to a resolution without the need for further judicial case management.

While domestic abuse cases have been highlighted for this distinct approach as Phase one of the pilot, it is anticipated that the lessons learned may lead to the same approach being adopted in other types of summary sheriff court criminal business, as part of Phase two.

## **Part 1 - THE BACKGROUND TO THE SUMMARY CASE MANAGEMENT PILOT**

1.1 Owing to the pandemic, the EPR Pilots which had commenced early in 2020 in Hamilton, Paisley and Dundee Sheriff Courts, required to be paused. As restrictions began to ease, the Piloting the New Summary Criminal Model Project Board (the Board) was reconvened to consider how and when the EPR Pilots might be recommenced.

1.2 Building on the early progress made in the limited timeframe when the pilot courts were in operation (January-March 2020), the Board recognised that with advances in technology, the approach could be adjusted to allow an earlier, wider, and more structured system for disclosure of case material to the defence. It was acknowledged that, any assessment of the impact of the early EPR pilot courts was limited by their duration but the principle of earlier disclosure was sufficiently tested to confirm its potential benefits. Extending the scope of disclosure (and its timing) should help to ensure more effective case management from the outset and reduce the number of cases proceeding to a trial diet. The volume of witnesses cited would also be reduced as well as the overall time from a summary complaint first calling in court to its disposal.

1.3 The Board also recognised the need to take account of the Pre-Intermediate Diet Meeting (PIDM) procedure, introduced in December 2020 by Criminal Courts Practice Note No 4 of 2020. One of the aims of Practice Note 4 was to ensure that only those cases which could not be resolved and were ready to go to trial, proceeded to the assigned trial diet. It emphasised the importance of thorough and effective preparation and meaningful engagement between Crown and defence in advance of intermediate diets.

1.4 Systems were designed and developed to support the PIDM process and it was recognised that the learning since its implementation, would be useful in developing the approach. PIDMs would continue to play an important role in this pilot.



## Part 2 - DISCLOSURE CONSIDERATIONS

### *Why should there be more early disclosure?*

2.1 Based on the data for the last full pre-pandemic year (2019/20), around 67% of sheriff summary cases pled not guilty initially, and therefore required a trial diet. That rate has increased in the last year and is now around 71%. An initial plea of not guilty automatically triggers (i) the disclosure process and (ii) the citation of witnesses. A significant amount of work is then undertaken, much of which is ultimately unnecessary if the trial does not proceed. The data suggests that there is less than a 20% chance that the trial will proceed.<sup>2</sup>

2.2 Notwithstanding the initial plea, the eventual overall guilty plea rate is around 63% with the majority of these pleas being entered after a trial diet has been set. On average, there is only one evidence led case per “summary trial court” each day across the summary trial courts in Scotland. In 2019/20, over 320,000 witness citations were issued for attendance at sheriff court trials; the vast majority of those witnesses cited never gave evidence. Less than one officer in every 10 cited, gave evidence at trial. This has a significant impact on police operational capability<sup>3</sup>. It also affects public confidence in the criminal justice system.

2.3 Although the defence now always have the benefit of the Crown’s summary to understand the nature and extent of the evidence, the opportunity to look at it in more detail post disclosure (through the provision of the supporting witness statements and productions), can protract the process and the prospects of resolution. In the meantime, following on the plea of not guilty, not only is the full disclosure process invoked, but the witnesses are expected to make arrangements to attend the trial.

2.4 Attempts by the Crown to engage with the defence on the issues in the case, the prospects of resolution, and the agreement of witnesses, are less likely to be effective until the conclusion of the disclosure process. The expectation of an opportunity to discuss resolution, or agreement of evidence, at the intermediate diet, or even later, adds to the current inefficiencies and has a potentially adverse impact for a range of individuals and agencies, as witnesses will by then have made plans and trial preparation should have been substantially completed.

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<sup>2</sup> In the current year, the figure is considerably less, due to the impact of the pandemic

<sup>3</sup> The very large numbers of police witnesses cited also impacts upon annual leave and overtime costs for Police Scotland.

2.5 If disclosure is required, it will be more efficient that it is undertaken earlier. That should increase the prospect of earlier resolution and reduce witness citation and abstraction, as well as producing greater efficiencies across agencies, and being of broader public benefit, if the process can be substantially completed before a trial date is set. That would be dependent on a more structured approach to disclosure and also to case management.

*In what cases should advanced disclosure be made automatically?*

2.6 Early disclosure is clearly beneficial, but it would be unrealistic, and possibly unnecessary and therefore inefficient, to aim to disclose evidential material in all cases automatically prior to a plea being entered. Whilst it is always better to have a single process, it is considered preferable to focus, at this stage, on those cases where early disclosure would make a difference, either because of the type of case, the likelihood of it being contested or the type of material involved.

2.7 It would also have to be reasonably practical to do so. The extra initial demand on policing involved with early disclosure requires to be proportionate; this was a relevant factor in determining which case types might fall within the pilot. If evidential material is to be provided by the police to the Crown on or after the submission of the police report, that would be before the marking decision had been taken i.e before the Crown has decided if to prosecute and whether to do so on summary complaint. For that reason, the early automatic supply of material requires to be targeted to focus on sheriff summary cases, especially those that are likely to be contested<sup>4</sup>.

2.8 Domestic abuse cases represent the most significant percentage of trials, by case type, in the sheriff summary court. There is also a strong and accepted case for prioritising domestic abuse cases. Such cases are already routinely treated as having relative priority in terms of their investigation, reporting, and processing through court. They also have the benefit of immediate and digital capture of evidence since the introduction of police smartphones. Quite apart from facilitating early resolution, early disclosure will serve to clarify the relevant issues for any trial and make it more likely that a trial will not be adjourned for disclosure purposes. Domestic abuse cases

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<sup>4</sup> In the last pre-pandemic year 19/20, COPFS prosecuted just over 50% of reports received, and about a third of these were not prosecuted at sheriff summary level. A marking decision is dependent on many factors which are for the prosecutor to consider, rather than the police, e.g. the extent of any injury/impairment, value, an assessment of culpability and harm, and critically the accused's record. Common law offences are especially problematic as, on the face of it, they can be prosecuted at any level (or dealt with by direct measures or no action at all).

are also most commonly prosecuted at sheriff summary level. It is therefore the most appropriate case type to pilot the automatic early disclosure of evidential material.

2.9 It would be possible in due course to focus on other case types, where the automatic supply of material may add value. This will be explored following a review of the effect of automatic disclosure in domestic abuse cases. The types of cases where such an approach may be merited, will again be subject to the same considerations namely (a) is it an offence type which is commonly contested (b) is it the type of offence which is routinely prosecuted in the summary sheriff courts and (c) is the type of material involved likely to be capable of being disclosed early in the process?

2.10 On the other hand cases that only involve police witnesses (where they are not victims), such as traffic or public order cases, are specific examples where the evidence is usually sufficiently clear from the summary of evidence that will be routinely available to the defence, and to the court for case management purposes.

2.11 In non-domestic abuse cases, early disclosure can still be sought through a targeted request for specified material (for example for CCTV evidence which captures the incident) with the case continued without plea for that purpose, as had been the case in the original EPR pilot. In those scenarios, the early provision of material may well influence an early plea or reduce the number of cited witnesses, however the early provision of evidential material by the police would not be automatic.

#### *At what point could advanced disclosure take place?*

2.12 This is the most challenging issue. The timing of disclosure is influenced by a number of factors, including the technical ability to do so, whether the accused has been initially held in custody, released on an undertaking, or released for report. Critically, it will also depend upon confirmation that a defence agent has been formally engaged. It is worth examining how disclosure was trialled in the early pilot courts, albeit on a limited basis, and comparing that with the proposed approach.

#### *The EPR Model*

2.13 The EPR pilot introduced two fundamental changes in practice. Firstly, targeted disclosure of material could take place if the case was continued without plea for that purpose, based on joint or individual representations by the parties. Secondly,

the sheriff was provided with a copy of the same Crown summary of evidence that the defence had, in every case. This was to assist with early case management. The procedure and timescales are set out below. It assumes that all custody cases were granted bail.

*Table 1: The EPR Model*

|                               | <b>Custody</b>   |               | <b>Undertaking</b> |               | <b>Report</b>   |               |
|-------------------------------|------------------|---------------|--------------------|---------------|-----------------|---------------|
| Police decision               | C and C          |               | C and C            |               | C and C         |               |
| Report to PF                  | On or before NLD |               | +2 from C and C    |               | +4 from C and C |               |
| Marked                        | On or before NLD |               | Before appearance  |               | +4 from receipt |               |
| First appearance              | NLD              |               | +4 from C and C    |               | +6 from marking |               |
| <b>Outcome</b>                | <b>CWP/PNG</b>   |               | <b>CWP/PNG</b>     |               | <b>CWP/PNG</b>  |               |
| Specified Disclosure received | N/A              |               | + 2                |               | + 2             |               |
| Specified Disclosure served   | N/A              |               | +3                 |               | +3              |               |
| <b>CWP Hearing</b>            | <b>N/A</b>       |               | <b>+4</b>          |               | <b>+4</b>       |               |
| Witness citation              | Automatic        |               | Automatic          |               | Automatic       |               |
| Disclosure* received          | +4 from CWP      |               | +4 from CWP        |               | +4 from CWP     |               |
| Disclosure served             | +1 from receipt  |               | +1 from receipt    |               | +1 from receipt |               |
|                               | <i>DA</i>        | <i>Non-DA</i> | <i>DA</i>          | <i>Non-DA</i> | <i>DA</i>       | <i>Non-DA</i> |
| Intermediate Diet             | + 6              | + 12          | + 6                | + 12          | + 6             | + 12          |
| Trial                         | + 10             | + 16          | + 10               | + 16          | + 10            | + 16          |

\* This represents any material not submitted previously.

2.14 As noted, the EPR pilot courts operated with a modest variation in relation to disclosure, namely the possibility of a continuation without plea for the purpose of resolution, usually for the disclosure of specified material in cases where resolution was considered to be possible. Cases would only be continued where either party suggested to the court that this would be beneficial, and the court agreed. There was no automatic process.

2.15 During the EPR pilots, the Crown attempted to facilitate that early resolution through the marking depute identifying cases suitable for resolution on a particular basis e.g., relevant CCTV, admissions, forensic/DNA/fingerprints, or compelling independent evidence. If the case was not suitable for early resolution, this would be recorded in the COPFS casework system.

2.16 This practice did not necessarily guarantee a path to resolution, it only confirmed it as a possibility, and that was dependent on defence engagement and the extent to which the court probed the issues, as well as the Crown being clear about its position. There was no structured record of any subsequent consideration of the matter in court, although there was a minute which recorded the purpose of any continuation.

2.17 There was no targeted disclosure in cases where the accused was unrepresented. Where the accused was remanded in custody at the first hearing, intermediate diets and custody trial diets would be fixed in the usual way.

2.18 The capacity to case manage through targeted disclosure was limited where the accused's first appearance was from custody and the accused was granted bail, as a trial diet would usually be fixed immediately, rather than the case being continued. Where time pressures permitted, the court was able to inquire as to the possible agreement of evidence or the prospects of resolution, but no further hearing was set with any regularity for that purpose, save the intermediate diet.

2.19 Letter pleas of not guilty were discouraged during the EPR pilot although, even when received, some sheriffs would make further inquiry in relation to the plea and would continue the case for that purpose.

2.20 There was an important flexibility built into the procedure operating in the pilot courts. It was agreed that where the indicative timescales for diets (set out in Table 1 above) may be unrealistic because of specific requirements for forensic, computer, telephone, text or social media analysis, the Crown would estimate the additional period required for disclosable material. In the majority of cases, this would extend the period from plea to intermediate diet to avoid unnecessary adjournments which could be readily predicted. This proved to be valuable.

## Part 3 - THE SUMMARY CASE MANAGEMENT PILOT

### *The new model*

3.1 Taking current experience (and data) into account, together with the learning from the pilots, the following model has been developed. The model again assumes that bail is granted in custody cases. It would not apply to unrepresented accused.

*Table 2: The Summary Case Management Pilot Model*

|                         | Custody                            |                            | Undertaking                                      |                            | Report   |                            |
|-------------------------|------------------------------------|----------------------------|--|----------------------------|--|----------------------------|
|                         | DA                                 | Non-DA                     | DA   | Non-DA                     | DA   | Non-DA                     |
| Police decision         | C & C                              |                            | C & C  |                            | C & C  |                            |
| Report to PF            | On or before NLD                   |                            | +7 days from C & C                               | +14 days from C & C        | +14 days from C & C                              | +28 days from C & C        |
| Marked                  | On or before NLD                   |                            | +3 days from receipt                             | +3 days from receipt       | +7 days from receipt                             | +28 days from receipt      |
| First appearance        | NLD                                |                            | +14 days from C & C                              | + 28 days from C & C       | 4 weeks from marking                             | 6 weeks from marking       |
| <b>Outcome</b>          | CWP/PNG                            |                            | CWP/PNG  |                            | CWP/PNG  |                            |
| <b>Early Disclosure</b> | <i>Key evidence</i>                | <i>Targeted Disclosure</i> | <i>Key evidence</i>                              | <i>Targeted Disclosure</i> | <i>Key evidence</i>                              | <i>Targeted Disclosure</i> |
| Received                | By first appearance                | + 3                        | + 7 days from C & C                              | + 3                        | + 28 days from C & C                             | + 3                        |
| Served                  | On receipt of Letter of engagement | + 3                        | Within 3 days of receipt of Letter of engagement | + 3                        | Within 3 days of receipt of Letter of engagement | + 3                        |
| <b>Case management</b>  | + 2                                | +4                         | +4   | +4                         | + 4  | +4                         |
| Witness citation        | Automatic                          |                            | Automatic  |                            | Automatic  |                            |
| PIDM                    | + 4 weeks                          | + 10 weeks                 | + 4 weeks  | + 10 weeks                 | + 4 weeks  | + 10 weeks                 |
| Intermediate Diet       | + 6 weeks                          | + 12 weeks                 | + 6 weeks  | + 12 weeks                 | + 6 weeks  | + 12 weeks                 |
| Trial                   | + 10 weeks                         | + 16 weeks                 | + 10 weeks                                       | + 16 weeks                 | + 10 weeks                                       | + 16 weeks                 |

### *What will be the scope and timing of early disclosure?*

3.2 As to scope, early disclosure will focus on the “key”, or “determinative” evidence in domestic abuse cases, i.e. the evidence required for proof of the offence, including any victim statement, other eye-witnesses, photographs, video evidence and any forensic evidence that may be immediately available. Taken together with the summary of evidence, this material should put the defence in a significantly different position from the early stage of the case and allow them to engage more meaningfully with the Crown on both plea and resolution, failing which, on the

agreement of evidence. The court should also be better able to discharge its case management function. This should significantly reduce the burden on the trial courts.

3.3 As to timing, disclosure will be on or before the first appearance in domestic abuse cases, depending on the stage at which the complaint has been served and whether a letter of engagement has been provided. The expectation is that disclosure will take place before the first hearing in both undertaking and cited cases, although it is acknowledged that the timing of defence engagement will have an impact upon this.

3.4 In custody cases, there are practical challenges of identifying the agent before the case calls, serving any material, and allowing the defence sufficient time to take instructions however, that should not prevent or discourage early automatic disclosure.

3.5 In domestic abuse cases, the key statements of the victim and civilian witnesses should be available at the point the police are able to submit a report to the fiscal. They will be retained on hand-held devices. These devices also allow the police to take images (for example of the injury or the locus) and they are specifically enabled to do so in domestic abuse cases. The police will submit the evidential material immediately following submission of the report (the case has to be reported and registered before any further material can be submitted). Significant changes to digital systems have been introduced by the police and the Crown to ensure this works effectively and without significant additional manual processing. Where there is any outstanding material to be disclosed at the first hearing, the aim is to disclose it as soon as possible; a short continuation may be required where this occurs.

3.6 Whilst the change in practice in domestic abuse cases to automatic disclosure may be achievable, the challenge of providing material earlier in other cases is greater. In non-domestic abuse cases, the police will, however, be in a position to facilitate the disclosure of specified material within 3 weeks of first appearance if the case is continued for that purpose and for subsequent case management, as per the early pilots. The court expects the parties to engage at or before first appearance to consider that option.

3.7 The pilot may subsequently expand to introduce early disclosure in accordance with the timescales indicated above, in further case types, if the pilots demonstrate that to be an effective way of reducing the level of trials that are set in domestic abuse cases. Comprehensive early disclosure without any reduction in the current resolution rates may simply lead to process change that has no material benefit.

3.8 Following early disclosure, and case management, the balance of any relevant disclosure, and any new evidence that becomes available, will be served shortly after receipt<sup>5</sup>.

3.9 As in the EPR pilot, there will be no disclosure in cases where the accused is unrepresented. Where the accused is remanded in custody at the first hearing, intermediate diets and trial diets will be fixed in the usual way.

### *What will be different?*

3.10 There are a number of differences between the SCM Pilot and the EPR pilot/and the current procedure. The new pilot will be more extensive and structured. In particular,

- It will provide substantial relevant material routinely in domestic abuse cases rather than upon request. This approach is justified given the existing high level of disclosure.
- It will assume that in every such case there is either scope for resolution of the case or the agreement of evidence. Again, such an approach is justified given what eventually happens, i.e. cases are resolved, and evidence is agreed, but often at the trial diet.
- In all other cases, there will be a more pro-active approach than in the previous pilot, facilitated by enhanced engagement, and more routine selection of cases for case management and targeted disclosure. The categories of cases in which material will be supplied and disclosed automatically will gradually increase, if the concept is proved.
- Case management will be more extensive, and the parties' positions will be formally recorded at any diet continued for the purpose of disclosure/resolution (see Paragraph 3.18 below).

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<sup>5</sup> It should be noted that the Crown is under no obligation to supply statements of police witnesses whose evidence is adequately summarised in the police report. Further, they are also under no statutory obligation to supply further civilian witness statements in summary cases although, as a matter of practice they do.



- This approach will align with and complement the PIDM process which was not in place during the EPR pilot. It will change the character of PIDMs, particularly in domestic abuse cases or targeted disclosure cases as they will be proceeded by a hearing at which case management has already been undertaken. The PIDM will effectively become the opportunity for the Crown and the Defence to certify their readiness for trial, with most Intermediate Diets being dealt with administratively.

### *Is this feasible and what will the impact be?*

3.11 A shift to early disclosure represents a major business process change for both the Crown and the police, and a new way of working for the defence in what may ultimately be a very significant number of cases. It is recognised that, ideally, in order to be at its most effective, disclosure should take place as close as possible to the first appearance. Whilst most witness statements may be available for transmission to the Crown at that point, others may not. The bulk of the key or determinative evidence should, however, have been obtained as the investigation will have been completed by the time the report is submitted. But that does not necessarily mean that it can be sent.

3.12 In domestic abuse cases, the key statements of the victim and civilian witnesses should be available at the point the police are able to submit a report to the fiscal and the police are confident that they can submit the material, immediately following submission of the report.

3.13 It is not just the disclosure process itself that will require to change. The current reporting/marking rhythm in undertaking cases is inconsistent across the country and is being reviewed to support the indicative timescales in the Pilot. Cases will be reported and marked earlier than at present. This will be crucial to allow the defence to engage before the first hearing.

3.14 The Crown and the police have reviewed and progressed the changes required across a range of specific issues from receipt of material other than statements, including non-documentary productions such as CCTV evidence; integration into casework systems; the earlier review of material; and the sharing with the defence. Similarly, issues such as how and when victims and witnesses are contacted and updated have been reviewed.

### *When and how can material be shared with the defence?*

3.15 It is the Crown's established practice that a letter of engagement must be submitted by a defence agent prior to disclosure being made. Defence agents must notify the court and the prosecutor of their appointment in any given case under the Criminal Procedure (Scotland) Act 1995. COPFS also has a responsibility under the Data Protection Act 1998 (DPA) to ensure that adequate provisions are put in place to protect private information from being lost or misused. Disclosure of material to the defence requires an adequate audit trail to ensure compliance with the DPA.

3.16 The Crown cannot readily depart from its now established practice of requiring a letter of engagement from the instructed agent. The provision of the letter of engagement is an essential part of the process by which COPFS satisfies itself that it is adhering to Data Protection Principles by ensuring that information is properly and safely provided to the correct person. A letter must be provided in each case in order for an audit trail to be available. Such letters can be signed immediately in the custody court, or prior to first appearance in undertaking and cited cases. The Crown and the police continue to explore with the defence how their engagement can be intimated from an early stage of the proceedings e.g. following caution and charge.

3.17 The Crown is working towards to a position where all evidential material is shared with the defence through its disclosure website, rather than have any partial reliance on email or physical collection. That process will be substantially easier when DESC is introduced. It will bring benefits to this pilot project. In the meantime, the success of this pilot is not dependent upon the availability of DESC as the Crown has made arrangements to share the relevant evidential material with the defence through email, including making video material accessible through a link.

### *Case Management*

3.18 The SCM Pilot will involve case management at the first hearing for domestic abuse cases (if a plea of not guilty is tendered) and perhaps more meaningful case management at the CWP for domestic abuse cases and for cases in which targeted disclosure has been requested before a plea is tendered. To support effective and consistent case management, a pro forma case management note has been designed, in consultation with members of the judiciary, the defence and the Crown, for completion by sheriffs at such hearings. The case management note will be retained with the complaint and minutes. The pro forma case management note is appended to this paper as Annex 2.

3.19 The PIDM will represent a final opportunity for resolution of a case by way of a constructive dialogue with the Crown and the defence but without the need for further judicial case management. Given the extent of the proposed case management during the early stages of the case in the pilot courts, the default position will be that intermediate diets will be dealt with administratively with no parties present, with a strong presumption that an intermediate diet will not be required to call (unless a plea is to be tendered and accepted), other than in a limited class of cases such as those where a PIDM has not been held, there is a contentious issue to be resolved, a virtual trial or remote evidence is proposed, or multi-accused cases involving 4 or more accused. Any exceptional reasons for a case calling will require to be set out in a revised PIDM report.

3.20 In the pilot, there will be an expectation of the Crown that it will be decisive in its approach to preparation at PIDM stage, and of the defence that they will not treat the intermediate diet as the most convenient time and location at which their position can be clarified.

## Part 4 - COMMUNICATION AND ENGAGEMENT

### *The Tulliallan Workshop*

4.1 Recognising the importance of early cross justice engagement on the proposals, a judicially led workshop was held at Tulliallan on 9 February 2022. The workshop provided the opportunity to set out the principles behind the development of the new pilot. Invitations were extended to all key justice partners who would be involved in the implementation of the pilot at the early stage. The workshop was attended by representatives from the Judiciary, SCTS, COPFS, Police Scotland and defence faculties from each pilot court. SLAB was also represented.

4.2 The workshop was also intended to promote consistency across the three pilot courts and allow each of the justice partner agencies the opportunity to work through the details, identify problems and most importantly identify solutions to those problems. The discussions covered key issues including Legal Aid, PIDMs, Case Management, Intermediate and Trial Diets and how the pilot would be evaluated.

4.3 At the conclusion of the workshop, the key outcomes were summarised and there was unanimous agreement for a follow-up workshop. It was explained that the collective workshops would be supported by three local implementation groups who would lead the implementation of the pilot in their respective courts.

4.4 In response to concerns raised on the part of defence agents on the timing of availability of legal aid funding to support the Pilot, SLAB engaged closely with Scottish Government on arrangements to secure a change in Regulations. As a result, "The Advice and Assistance (Summary Criminal Proceedings) (Miscellaneous Amendment) (Scotland) Regulations 2022 were laid before the Scottish Parliament on 22 June 2022. Subject to the approval of the Scottish Parliament, the Regulations will come into force on 4 November 2022.

### *Local Implementation Groups*

4.5 A Local Implementation Group has now been established in each of the pilot courts, comprising representation from the Judiciary, SCTS, COPFS, Police Scotland and Defence agents. The purpose of the Group is to support the Sheriff Principal in the preparation for and implementation of the pilot. The Group will work collaboratively to resolve any local operational barriers that may arise, monitor the

effectiveness of the pilot once it is operational and support its rollout and continued progression. The Group will be accountable to and report to the Sheriff Principal and will be chaired by the lead Sheriff in each court.

### *Local Workshops*

4.6 Arrangements have also been made for a local workshop to be held in each pilot court. Invitations are being extended to the range of key local interests, with Board members from SCTS, COPFS and SLAB in attendance. The workshop will provide an opportunity to set out the aims and objectives of the pilot and to raise awareness of how it will operate. This will be facilitated by a presentation from Police Scotland, COPFS and the Judiciary along with a session on the legal aid changes being put in place to support the pilot led by SLAB. Q&A sessions have been built into the programme. The digital systems developed by the Crown and the police to share disclosure material with the defence will also be demonstrated.

## Part 5 - MEASURING SUCCESS

### *Key Performance Indicators*

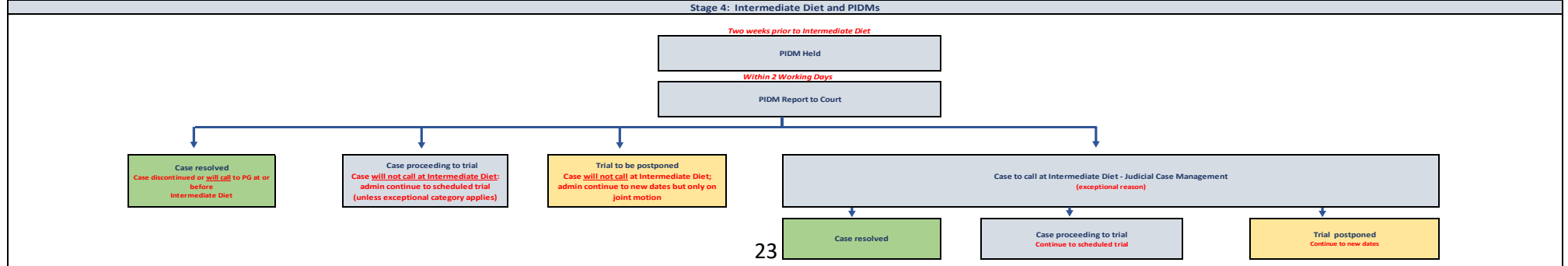
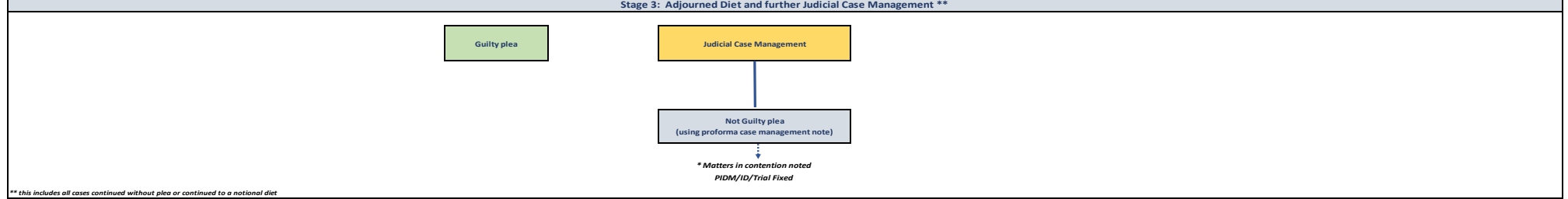
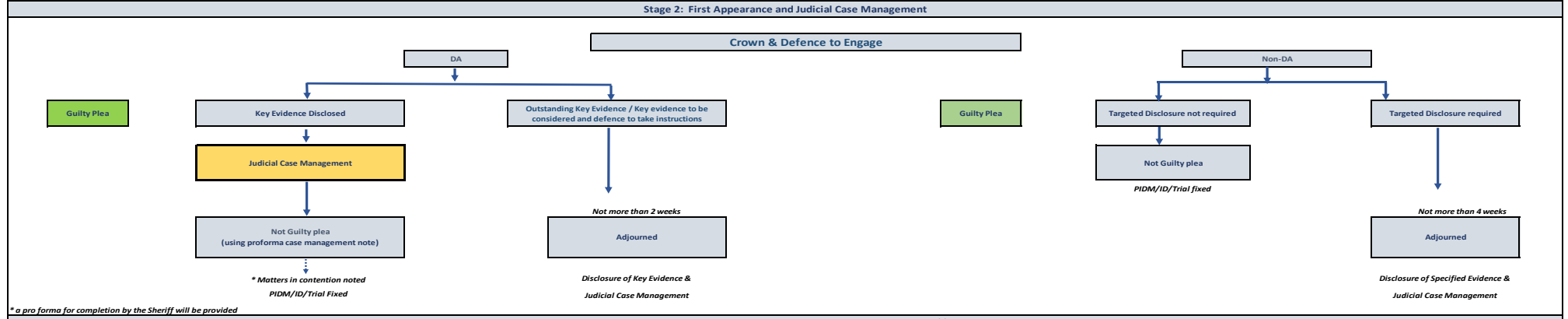
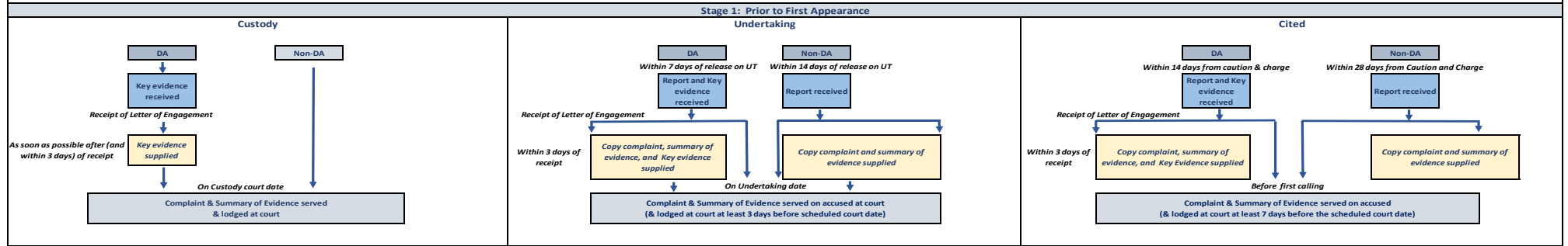
5.1 Key Performance Indicators (KPIs) have been developed to measure the success of the pilot and are attached at Annex 3. These were a key feature of the discussion at the Tulliallan workshop.

5.2 The indicators focus on performance in relation to automatic and targeted disclosure, witness citation volumes and trial outcomes. The indicators will be reviewed and developed as the pilot progresses and new processes embed, with measures fixed once sufficient data is available.

### *Reporting on Performance*

5.3 SCTS and COPFS are developing Management Reports which will be used to report to the Board and Local Implementation Groups, every three months, on performance against KPIs.

5.4 The Pilot will run for 18 months and be subject to ongoing monitoring and review. It will be evaluated at 6 monthly intervals, with a final evaluation and report by end of March 2024. Regular interim evaluations will allow consideration to be given to whether the pilot can be rolled out to other courts before a full final evaluation.



## Annex 2: Pro forma Case Management Note

PF v

### CASE MANAGEMENT NOTE

Sheriff: \_\_\_\_\_

(TO BE COMPLETED IN CAPITAL LETTERS)

| Issue  | Crown | Defence |
|--|-------|---------|
| <b>PART 1 - PREPARATION</b>  |       |         |
| 1. Are there any disclosure issues? If so, provide details.  |       |         |
| 2. Are there any further inquiries? If so, provide details.  |       |         |
| 3. Do the defence wish to record any plea of guilty which has not been accepted by the crown to preserve any potential sentence discount?  |       |         |
| <b>PART 2 - FOCUSING ISSUES</b>  |       |         |
| 1. What can be agreed and joint minuted?<br><br>- Identification?<br>- Police Interviews?<br>- Police and other witnesses?<br>- Medical evidence?<br>- SOUE? (Hearing required?)<br>- Other? |       |         |
| 2. Issues in dispute?<br><br>- Identity?<br>- Actus reus?<br>- Mens rea?<br>- Special defence?<br>- Statutory defence?   |       |         |
| <b>PART 3 – PRACTICAL ISSUES</b>   |       |         |
| Are there any practical issues to be addressed:-<br><br>- Vulnerable witnesses?<br>- Equipment required?<br>- Interpreters?<br>- Length of Trial?<br>- Dates to avoid?<br>- Other?           |       |         |
| Any other relevant matters:  |       |         |
| [Please use reverse to record any additional notes as required]  |       |         |



**HOW WILL WE MEASURE SUCCESS?  
KEY PERFORMANCE INDICATORS**

At the commencement of the pilot, it is recognised that the data gathered should be examined for trends, relative to the existing position, pre-EPR pilot courts.

These KPIs will be reassessed following a review of the data in three months.

- That disclosure of the key material is available, within 3 days of receipt of a letter of engagement from the defence, in all domestic abuse cases at the first calling (custody, undertaking, cited);
- That targeted disclosure, where requested in non-domestic cases is provided to the defence at least one week in advance of a CWP;
- That the number of witness citations issued decreases;
- That the percentage of cases resolved at the first appearance increases;
- That the percentage of cases resolved at the CWP diet increases;
- That the percentage of domestic cases requiring to call at an intermediate diet reduces;
- That the percentage of domestic abuse trials in which evidence is led at the trial diet increases.