PROPOSAL FOR A PILOT SCHEME TO TACKLE THE CROWN COURT BACKLOG

Table of Contents

1. Executive Summary

This paper recognizes the significant backlog in the Criminal Justice System and in particular the Crown Court on which it is focussed.

The paper analyses various schemes which are being used in Crown Courts and elsewhere and seeks to identify whether there are areas of good practice or tried and tested solutions which might help reduce the backlog.

We identify a number of schemes, and are of the view that ensuring early guilty pleas where appropriate is the key to reducing the backlog. We assess that there are a number of barriers to early guilty pleas:

(a) Procedural issues including:
    a. Lack of disclosure of sufficient evidence at an early enough stage;
    b. Unhelpful timescales including BCM timescales which do not provide sufficient time for an assessment of the papers, and advice in conference especially on serious and complex matters
    c. A lack of Court involvement in the management of cases beyond initial directions at PTPH
    d. Poor uptake, and ineffective use of Goodyear indications as to likely sentence
(b) Practical issues including:
    a. fee schemes which focus resources at the wrong stage, and create perverse incentives for matters to proceed to trial
    b. Lack of defence resources to engage in cases at an early stage.

We propose a time-limited 6 month national pilot which would have a twin approach of tackling the procedural bars as well as some straightforward amendments to LGFS to better reflect the wider policy aim of early guilty pleas where appropriate:

(a) Service of Stage 1 at an early stage:
    a. By the first appearance in cases which have been subject to the full code test (c. 85% of all CC cases) so that the equivalent of 'Stage 1' will be received before the first hearing in the MC in accordance with the TSJ timescales.
    b. The use of 'standard directions' at the first appearance where a not-guilty plea is entered. Standard directions could be made for the provision of Stage 1 and Stage 2 before the PTPH. This would ensure a more effective PTPH, better focussed on the true issues.
    c. Where standard directions are not made, we would suggest a return to the use of Preliminary Hearings where stage dates can be set. New funding will need to be in place for this hearing (see below).
(b) Ensuring PTPHs are more effective by delaying them to at least 12 weeks after the 1st appearance where there has been no Preliminary Hearing.
(c) Introducing a new hearing post PTPH and before trial where the parties are expected to be able to identify to a Judge seized of the matter the true issues, ensure the matter is trial ready, and if need be allow the Court to express views on the parties' position and likely sentence.
(d) Amendments to LGFS to allow solicitors to front load their work to ensure they are in a position to advise earlier in proceedings, and also to attend court and take part in the post PTPH hearing.

2. The problem: a backlog

One of the major issues facing the criminal justice system is a massive backlog of cases. Adjusted for complexity of cases, the backlog as at October 2023 stood at 89.940[1] in the Crown Court alone, up from 37,000 pre-pandemic. It is self-evidence that the backlog would be reduced should it be possible to remove ineffective trials from the figures and by securing more guilty pleas in appropriate cases.

For a number of reasons many cases which could be resolved in guilty pleas do not do so in a timely manner or before the first day of trial. Some of those reasons are as a result of procedural changes and reduced contact with the Court when more active case management can take place. It appears that the government at least in part now recognise that a case may resolve more quickly if the parties are brought together before the Court (see for example the Criminal Justice Bill in the Kings Speech 2023, below).

It is also necessarily the case that solicitors' firms struggling to recruit and retain staff have limited resources which they must ration and as such will devote time and resources to cases that are likely to be properly remunerated, and conversely are unlikely to undertake work on a case at a point in time when that work is likely to end up being unpaid. Changes in behaviour can easily be observed for example, by a simple observation that before LGFS when fees were paid for a litigator to attend court it was commonplace for counsel and solicitor or clerk to attend most Crown Court hearings. Since LGFS, it is notable that it is rare to see a litigator at Court at all for most cases. Similarly after the introduction of a fixed fee for either way cases where a Crown Court trial was elected there was a dramatic fall in the number of matters where the defendant elected. As well as procedural changes therefore, it is essential that the issue of fee schemes be tackled if there is to be any progress on clearing the backlog.

3. Barriers to progress: procedural

In recent years there have been a number of initiatives aimed principally at reducing costs by saving court time and in particular CPS time. Initiatives such as Transforming Summary Justice, Better Case Management, 'Speedy Summary Justice' and various reforms together with changes in the Court's approach to credit have meant the role of a legal advisor, and in particular litigators have evolved.

Consider for example the below typical historic journey through an either way case:

1. Service of prima facie case
2. Time for consideration by legal advisors
3. Time for advice to defendant on evidence and plea
4. A hearing when a guilty plea, if offered, would still attract maximum credit.

[1] https://www.instituteforgovernment.org.uk/publication/performance-tracker-2023/criminal-courts

Alongside this structure was a fee regime which paid for time spent working on a matter, and so fees were paid for hearings as well as time considering the papers, and time in conference with the client, both of which were often outside of the Court environment.

The modern approach to case management dramatically reduced the number of hearings, often to just one or two and saves the CPS substantial resources and allows the CPS to 'front load' case preparation. The idea is that resources are spent on cases likely to lead to trials and not those which will result in a guilty plea. However, under this approach plea for example is expected often before the evidence is received. It also means there is less time to enable the evidence to be considered and instructions taken. In effect this approach puts the cart before the horse, because those guilty pleas are less likely to be forthcoming without the CPS having undertaken the work.

4. Barriers to progress : the fee schemes

Alongside the above procedural structure, the fee structure, following changes made as part of the pre-CLAIR 'Accelerated Items', so that a 'sending fee' is paid to solicitors. This fee is £208.61 post CLAIR. For guilty pleas that have been committed for sentence a committal for sentence fee of £255.32 payable rather than any LGFS fee.

There are 'milestones' within LGFS based on plea (whether it is a guilty plea, cracked trial or trial). It will be noted that those milestones do not align with the hearings or stages when work is expected to be done: by way of example where at PTPH Stage Dates are set for the service of papers, at this stage a guilty plea fee is paid. If following receipt of the evidence and detailed instructions are taken and the matter prepared for trial, only for new disclosure to be served at Stage 3 such as to change the defendant's prospects so that that they now wish to enter a guilty plea, the fee payable is a cracked trial, which is a fraction of a trial fee.It is the same if the defendant decided to plea guilty having had second thoughts 24 hours after the PTPH or 1 day before a trial 2 years later after multiple conferences with counsel and 100s of hours of defence preparation. As presently constituted the scheme takes no account of the fact that by the day before the trial starts the litigator has almost completed all of their work for the matter, and yet it is the advocate for whom the bulk of their work takes place during the trial who now receives the larger trial fee if the matter cracks.

In 2022/23, there were 76,359 claims on LGFS and 73,753 claims on AGFS with a total spend of £316m and £218m respectively[2]. 53% of Crown Court fee spend is made up of LGFS payments to solicitors. 13.5% of cases are paid as a guilty plea, and 14.2% as cracked trials. By spend, 59% of Crown court spend is for trials, split between LGFS and AGFS. In the same period £257,427,215 was spent on lower crime. It follows that firms derive more income on average from Crown Courts than they do for police station and magistrates court work combined.

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2 https://app.powerbi.com/view?r=eyJrIjoiMGQwNzY5MjQtYTUyZS00NWUzLWE4NzItYWFhN2U3ZDJlMzE1IiwidCI6ImM2ODc0NzI4LTcxZTYtNDFmZS1hOWUxLTJlOGMzNjc3NmFkOCIsImMiOjh9&chromeless=1&filter=true/ecf&pageName=ReportSectiond36ebef3ca4514744d8b

LGFS is not without its criticism. As we understand it, the present govt. position is the proxies now lead to perverse outcomes and as such insist reform of fee structures is necessary before any additional investment can be considered.[3] In practice the only 2 proxies of note are (1) whether a case is a guilty plea, trial or cracks; and (2) the number of pages of served evidence.

The effect of the 'milestones' on a case can be seen in the below table which shows average fees per case that were paid out for the last year of full data is below. Some fees are extremely low, whereas others are higher. Many firms rely on being instructed in a trial on the higher paid cases (dishonesty over £100,000) to remain profitable and subsidise the other work.

57% claims would pay less than £1500 for a guilty plea. 97% would pay less than £2000.

Below is a table showing the average fee paid per case type based on 2022/23 data.

Average fees paid per case type[4]	**(A) Guilty Plea**	**(B) Cracked**	**(C) Trial**
Murder etc	4,466.00	9,590.00	48,710.00
Serious violence/drugs	1,602.00	3,905.00	26,407.00
Less serious violence/Drugs	798.00	1,181.00	4,751.00
Sexual offences/children	1,390.00	3,012.00	4,858.00
Burglary	389.00	783.00	2,603.00
Dishonesty	517.00	1,433.00	3,747.00
Dishonesty 30k +	1,170.00	3,124.00	8,222.00
Misc	475.00	776.00	1,945.00
Offences against public justice	571.00	1,612.00	15,406.00
Serious sexual offences	1,708.00	4,313.00	9,386.00
Dishonesty 100k+	8,814.00	22,911.00	75,335.00
TOTAL (and averages)	1,276.17	3,208.34	18,542.43

Figure 1 - Average spend per case type, 2022/23

The structure financially penalises firms for early preparation if that work results in a cracked trial, guilty plea or discontinuance, as a lower graduated fee will be paid (note the cliff edge between columns B and C for example). There is no provision for wasted preparation unlike with AGFS. The CLSA and Law Society have advocated the same payments as Crown Court Advocates received in the pre-CLAIR 'accelerated items' reforms whereby a trial fee is paid if the case cracks to reflect the wasted preparation.

CLAIR made a number of recommendations in relation the structure of the Crown Court fee schemes.

Work is ongoing to reform LGFS much of which is beyond the scope of this paper, which merely seeks to highlight the issues involving initiatives to tackle the backlog and offer a potential solution. Across a number of meetings of the Advisory Board the Legal Aid Agency's

[3] See for example the response the CLAIR.

[4] 2022/23 - https://app.powerbi.com/view?r=eyJrIjoiMGQwNzY5MjQtYTUyZS00NWUzLWE4NzItYWFhN2U3ZDJlMzE1IiwidCI6ImM2ODc0NzI4LTcxZTYtNDFmZS1hOWUxLTJlOGMzNjc3NmFkOCIsImMiOjh9&chromeless=1&filter=true/ecf&pageName=ReportSectiond36ebef3ca4514744d8b

position is that it simply does not have enough data to model such a scheme based on the CLAIR recommendations[5], and should it embark on a data collection exercise, it would take several years to collect data, analyse it, design a scheme and then consult on it. Work has been ongoing in the LGFS sub-group of the Advisory Group but to date no suitable alternative scheme has been identified.

It follows therefore that substantive LGFS change to bring it inline with wider policy aims including reducing the backlog is likely to take too long to have an impact this Parliament.

5. Review of attempted solutions

The CLSA and Law Society agree entirely with the MOJ in believing it is advantageous to all those involved that those who are guilty enter their guilty pleas early. With the defence profession shrinking by a third in a decade many firms do not have the resources to devote to preparing trials which will never take place and would prefer to prioritise resources in the same way the CPS have been allowed to. It is therefore notable that some courts have looked to introduce their own schemes aimed at ensuring guilty pleas can be offered early by ensuring as much time as possible for the provision of evidence by the CPS and for advisors to attend their clients.

a. The Snaresbrook Pilot

In an email dated 23rd August 2023, HHJ Rosa Dean set out details of a pilot:

> *Dear Defence Community,*
>
> *There have been concerns for some time that the completion of the BCM form can be perfunctory in the magistrates' court. To some extent this is not a surprise. Many of these cases will be dealt with in heavily listed courts, the prosecutor may have had little time to prepare, and the defence may have limited papers, or time, upon which to take instructions.*
>
> *The BCM Revival Handbook notes that experience has shown that where the BCM form is completed fully as part of an engaged and considered hearing, they are valuable to both the parties and the Crown Court. In some areas judges review cases before the PTPH but it's not feasible to do so in London. Instead, I've agreed with HMCTS, and with the approval of the Senior Presiding Judge, that we will test legal adviser led case progression between the sending hearing and the PTPH for adult defendant cases sent for trial at Snaresbrook Crown Court by Thames Magistrates' Court. This, of course, supports the Transforming Summary Justice Refresh which you are no doubt familiar with.*
>
> *In the first instance it will be limited to police threshold test cases and cases where the defendant elects Crown Court trial. We anticipate that it will be between 5 and 10 cases a week. In those cases, at the point of sending the case, the magistrates' court will also book a case management conference about two weeks before the PTPH. A form will be sent to both parties, which will seek to confirm that the case was properly sent, what evidence will be served before the PTPH, the real issues in the case, whether a guilty plea is anticipated and other information that will improve the quality of the PTPH.*

The conference will be in the absence of the defendant and by Teams. It may not be necessary at all if both parties complete the form satisfactorily and do not want a meeting. The legal adviser will have the power to order a pre-sentence report if a guilty plea is indicated. They will also have the power to adjourn the PTPH for up to 7 days and recommend a longer period, in appropriate cases, which will then be considered by a judge at Snaresbrook.

The conference should last for no more than 30 minutes and could be considerably shorter if the form is largely complete. It will be arranged towards the end of a day and, where possible, will be on a date which suits both parties. CPS support this initiative and will be represented by the allocated Crown Court reviewing lawyer. It's hoped that the case management will improve the quality of the PTPH and help it to focus upon the real issues in the case.

It will run in the first instance from 26 September until Christmas, as we would like to see at least 50 cases fall within its scope. If it's successful we will consider extending it to other cases sent to Snaresbrook.

I hope that the defence community will engage with the proof of concept. I believe it could make a real difference with your support.

Yours Sincerely

HHJ Rosa Dean
Snaresbrook Crown Court

The aim of the pilot is clear, and the reader might observe some similarity between the proposed hearing before the PTPH and after the sending of case with the 'Preliminary Hearing' that at one time was commonplace. The aim clearly is to identify issues as early as possible.

What this pilot perhaps highlights is the flaw with BCM, requiring the identification of plea and trial issues often in advance of the service of a full set of papers, and in a busy magistrates court when the defendant and advisors have had limited time to discuss it. Whilst we acknowledge that there will be cases where the identification of a guilty plea may be relatively straight forward, it is still the case that before giving advice on plea the legal advisor must be satisfied that there exists sufficient evidence to prove the case against the defendant., It is not simply a matter of the defendant knowing if they committed the crime, and whilst in the past it was said that such an approach was a matter for the defendant if they want "to play the game" as some would have it, and risk credit. Moreover, the lawyer does *not* know whether the defendant did or did not commit the crime, and if the defendant is denying it, must advise accordingly, which crucially requires the lawyer to advise whether the evidence is sufficient to prove the offence. Now with such a huge backlog it is imperative for all in the system to ensure the correct pleas are entered as early as possible. This must now be a higher priority than penalising defendants who are perceived as "gaming the system".

Focus on early guilty pleas has been in our view too myopic and restrictive, focussing on a guilty plea <u>at the first hearing</u>, often at the expense of a plea at a later (but still early) stage, such as at PTPH when it is surely preferable that a trial be avoided even if the plea is offered after the 1st appearance but months (or indeed currently sometimes years) before the matter is listed for trial.

It is our view that a successful and efficient system securing the right pleas (having regard to the presumption of innocence) and thus avoiding trials and ineffective trials requires a number of key ingredients :

1. Proper provision of evidence at an early stage
2. Time for that evidence to be considered, analysed and for any defence enquiries and if appropriate expert evidence
3. Time for advice on that evidence, plea and the taking of detailed instructions
4. Funding to reflect the work needed

b. The Woolwich scheme

Solicitors instructed in matters before Woolwich Crown Court now routinely receive the below email:

> *Woolwich Crown Court, like most, has a backlog of trials. It is in the interests of all the parties, particularly where a defendant may be in custody, that cases are listed as expeditiously as possible. This means it is imperative that court time is utilised efficiently.*
> *We are reluctant to overload fixed / warned lists as this often results in too many cases not being reached.*
> *However, we are finding that far too many trials are ineffective or they crack on the first day for reasons that could and should have been addressed in advance. If cases cracked before they were listed, it would mean that effective trials could be called on sooner.*
> *In order to ameliorate this, Woolwich will now be listing all fixed / warned list cases three weeks in advance of the warned list period for a Pre-Trial Hearing. Each and every case will be listed, and all parties, including the defendant(s) will be directed to attend in person. There will be no CVP available.*
> *Woolwich CPS and reviewing lawyers will be expected to be available for discussion as20436 to acceptable pleas, if offered. The OIC should be encouraged to attend or at least to be available by telephone.*
> ***A plea at this hearing, even though close to trial, will still attract a 20% reduction.***
> *Advocates, where not instructed for trial, will be expected to deal with all the issues. Anything that may cause a delay to an effective trial will be dealt with at this hearing. The COTR must have been completed as ordered beforehand.*
>
> ***His Honour Judge Mann KC***
> ***Woolwich Crown Court***

What this scheme clearly seeks to resolve are the first of our 3 ingredients above, by ensuring a hearing takes place after PTPH when credit is still afforded, but there has been a proper service of evidence, time to consider and take instructions etc.

Unfortunately like the Snaresbrook scheme, where this scheme falls down is that alongside the attempted procedural changes there is (as it is not within the Court's powers) no similar adjustment of fee schemes to remove any perverse incentive to allow a case to proceed to trial,

nor is there any fee for the extra work involved in engaging with the scheme. As Figure 1 above shows, the *cracked trial* fee is a fraction of the trial fee, and any case which was to resolve in the Pre-Trial hearing will attract a cracked trial fee rather than a trial fee for the litigator (but a full fee for the advocate, who is unlikely at this stage to have prepared the case fully for trial). As a result financially there is a penalty imposed on litigators who advise clients (and often persuade them) that their case is doomed to failure and that even at a late stage, a guilty plea with some credit would be to their benefit. The result of this disincentive is twofold; (1) litigators are not able to devote additional resources to a matter and (2) that any such investment in time will result on their fee being reduced, and a substantial amount of wasted preparation.

c. Wasted Preparation

Where a case results in a guilty plea at any stage after PTPH, the litigator will receive a cracked trial fee. That fee is on average under 18% of a trial fee (see Figure 1 above), but varies by case type.

In the Pre-CLAIR Accelerated Items reforms[6], litigators and advocates both asked the government to look at this issue. The result of the review was that advocates are now remunerated for their wasted preparation by payment of a fee that is reflective of the trial fee (less of course any refreshers). Unfortunately, whilst accepting the logic of such a change, a similar reform for litigators was deferred to form part of what at that stage was referred to as 'sustainability work' that became CLAIR. It then was not dealt with in CLAIR and there is no indication that it is under active consideration anywhere.

d. Triage

At the height of the Covid pandemic Courts adopted a number of different schemes. One such scheme was a 'triage' scheme that involved Judges identifying cases that were at least potentially better resolved as a guilty plea and requiring it to be listed. This concept was one that was previously adopted ad-hoc in many courts usually as a result of Resident Judges seeking to reduce their own Court's backlogs.

e. Split PTPH

Another innovation that occurred during Covid was some courts adopted a 'split PTPH' approach. Under this split approach, the first listing of a PTPH dealt with stage dates and directions, and the matter was adjourned for a further hearing which in effect acted as the 'plea' portion of the PTPH, whereby maximum credit was still available for guilty pleas, but buy this time it was likely the defence had received the evidence and had advised the defendant as to their prospects and plea.

f. King's Speech and proposed reforms

The Criminal Justice Bill which had its first reading on 14th November 2023 proposes a number of changes to the Confiscation Regime (see schedule 4, part 5, which creates 'Early Resolution

[6] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/910942/clar-consultation-govt-response.pdf

Meetings' and 'Early Resolution Hearings'[7]), the aim of which is to bring the parties together and before the Court so that matters can be resolved before the final hearing.

g. Lessons from the family Court

A similar concept to the above already exists in the Family Courts – 'Financial Dispute Resolution Hearings' The FDR process is designed to help the parties reach an agreement on how to divide their assets and finances without the need for a costly and time-consuming trial. During the FDR process, the parties and their legal representatives attend a hearing before a judge. The judge (who should not be the trial judge) acts as a mediator and tries to facilitate a negotiation between the parties to reach a financial settlement. The parties will typically present their financial positions to the Court and may also provide evidence such as bank statements, valuations of assets, and other financial documents. The judge may provide a non-binding opinion on what they believe would be a fair settlement, based on the evidence presented. Public funding is available for eligible persons at these hearings.

6. Proposal for a pilot scheme

Historically it had been commonplace for Crown Court judges to informally case manage in a way that no longer takes place, for example by seeing counsel for all parties in chambers and in many ways acting in the same way as a family court judge in encouraging parties to resolve the issues, suggesting a potential outcome (in terms of sentence) and commenting on their views on the strengths and weaknesses of the Crown and defence's cases. Whilst such 'behind closed doors' justice might now be considered unfashionable and potentially inappropriate, we would observe that they are further examples of the types of schemes we have analysed above; put simply, there is no substitute for properly prepared parties being before the Court to resolve issues. Having reviewed all of the above schemes, we suggest there are common themes in line with our '4 ingredients' :

1. Proper provision of evidence at an early stage
2. Time for that evidence to be considered, analysed and for any defence enquiries
3. Time for advice on that evidence, plea and the taking of detailed instructions
4. Funding to reflect the work needed

The inescapable conclusion is the current procedural structure is not conducive to early resolution of cases in many situations, and it is clear there are lessons to be learned from other jurisdictions such as the family courts, pilot schemes and indeed from historic practice. We therefore propose a time-limited pilot scheme which will serve 5 objectives:

1. Reduce the backlog
2. Ensure cases that should resolve as guilty pleas do so
3. Provide a window of data collections for the Legal Aid Agency[8]
4. Ensure litigators are paid for work done; and

[7] https://publications.parliament.uk/pa/bills/cbill/58-04/0010/230010.pdf

[8] Amongst other things, whilst it appears trite that payment for wasted preparation will mean more guilty pleas, it is difficult to know by what proportion this will occur, and whether there are case types more susceptible to being 'nudged' towards pleas.

5. Removes some of the perverse incentives in LGFS

In assessing the various schemes in place, we suggest that there are 2 complementary elements to successfully maximising the chance of resolution of matters before trial:

1. A truly effective PTPH; and
2. A hearing post PTPH and before trial.

a. A truly effective PTPH

In order to maximise the effectiveness of the PTPH, there are several pieces of the jigsaw which must fall into place:

(i) Early provision of evidence

We understand that the CPS are presently working towards improving the quality of early service of their case in cases which have been subject to the full code test (c. 85% of all CC cases) so that the equivalent of 'Stage 1' will be received before the first hearing in the MC in accordance with the TSJ timescales. This may go some way towards addressing one of the '4 ingredients', however, it is also noted that for example in summary trials the Court make a number of 'standard directions' at the first appearance where a not-guilty plea is entered. This includes directions for the service of evidence. One further solution therefore might be that where matters are sent to the Crown Court (whether indictable only or either way), standard directions are made for the provision of Stage 1 and Stage 2 before the PTPH. This would ensure a more effective PTPH, better focussed on the true issues. Where standard directions are not made, we would suggest a return to the use of Preliminary Hearings where stage dates can be set. New funding will need to be in place for this hearing (see below).

(ii) Time

The second and third ingredients we have identified involve time. The use of standard directions or a preliminary hearing will plainly require a greater gap between 1st appearance in the magistrates court and the PTPH, which should have regard to those in custody as well as those in bail. Whilst it is desirable to ensure custodial cases are dealt with quickly, it is also of note that it is often difficult to obtain prison visits (or video links, which may not always be suitable for example CVP does not allow the sharing of moving images) and those visits can often be truncated by the prisons themselves. Such visits also have to fit in around a shrinking pool of litigators' other professional commitments. As such, a defendant being remanded often adds significant delay to the preparation of a case, and so in order to ensure the PTPH is effective we believe, on balance, a delay before PTPH to be advantageous. We would suggest the PTPH take place no sooner than 12 weeks after the 1st appearance, but the defence should be under an obligation to inform the court that a PTPH can take place earlier if it becomes apparent the plea will be one of guilty (for example before Stage 2 is due). Effectively, where a plea has not been indicated in the Magistrates Court, the presumption will become that the matter will be a contested trial.

(iii) Remuneration of frontloading of preparation

In order ensure the PTPH is effective, and particularly given that under the above proposal it is likely a great deal of work will have been done considering papers and taking instructions, as well as preparing a defence statement. The defence will be required to frontload much of the preparation. As such, these matters should be remunerated as 'cracked trials' and not guilty pleas, unless a guilty plea has been indicated earlier, in which case a guilty plea fee should still attract.

b. Post PTPH Case Management Hearing

In many cases, particularly the complex ones, the Crown cannot provide all of its evidence by Stage 1, for example if there is complex cell site, mobile, or computer analysis, or expert evidence. Equally, it may be the case the defence require longer to analyse large quantities of evidence, or obtain funding and instruct experts. There will therefore, even in the case of the provision of Stage 1 and 2 before PTPH, be cases where it is after the PTPH the matter can resolve itself. In many respects this is reflective of the 'Woolwich' scheme, FDR or the proposed 'early resolution' hearings in the Criminal Justice Bill 2023. A plea at this early stage, even after PTPH must be preferable to an ineffective trial.

Our proposal therefore is that there be a further hearing during the pilot phase, a Covid Recovery Case Management Hearing sufficiently after the service of evidence that all parties are trial ready. At this hearing the parties should be ready to explain to the Court what their cases is and the issues, and the Court may express a 'non-binding' view in a similar way to the FDR hearings. An indication on potential sentence, and even whether POCA proceedings should follow could be given. These hearings, unlike those of the distant past, should be in public.

In order to ensure the hearing is effective, it is essential both parties are prepared. The Crown should provide a note summarizing their case and the trial issues and if necessary a core bundle, and the defence must have served a defence statement and a reply to the Crown's note. We also believe there is merit in ensuring the litigator attend the hearing with trial counsel. As such, a bolt-on fee for the hearing should be paid where the litigator does attend to encourage attendance. That fee must be set at a level that makes it commercially viable (based on the opportunity cost of attending), which for a solicitor might well be the equivalent of two standard police station attendance fees (c£450) which the litigator might otherwise attend in the same time.

A case that resolves with a guilty plea at the CRCMH should be remunerated at a higher rate than a cracked trial as it will have involved a great deal of wasted preparation, and as such having regard to the model adopted for AGFS, we would suggest a fee equivalent to 75% of the trial fee be paid. This would represent a fee less than a trial fee but also remunerate for the work done.

The hearing should also be used to case manage and ensure matters are on track for trial.

c. Costing the pilot

The LAA will be best placed to cost the above pilot scheme.

However, it is clear the pilot will involve investment, but should substantially reduce the backlog and also free up CPS, police and court resources. We have suggested a 6 month national pilot to see if there is any impact.

Notwithstanding the above, we note that the current spend on average per case type is as follows:

(A) Guilty Plea	Volume	(B) Cracked	Volume	(C) Trial	Volume
1,276.17	21,647	3,208.34	22,920	18,542.43	11,549

Figure 2 - Case volumes by type

Based on the above model, we believe that a conservative assumption that 60% of guilty pleas would fall within the proposed new fee at the PTPH. The balance would be paid as guilty pleas as is the case now, but in all likelihood due to the better provision of evidence, earlier, the overall volume of guilty pleas may well increase, leading to greater savings.

Equally, for the new 'wasted prep' fee payable after a Covid Recovery Case Management Hearing, we have modelled that 1/3 of trials will result in a guilty plea being entered at the new hearing, with the new fee rather than a full trial fee. The below table shows, based on the 2022/23 data, our modelled costs for 12 months (the pilot is to run for 6 months). We believe that the longer more complex cases are most likely to benefit from such hearings.

Guilty Plea (average claim)	Volume	Cracked Trial (average claim)	New Volume	New 'wasted prep' fee	Volume	Trial (average claim)	Volume
£1,276.17	8,859	£3,208.34	35908	£13,907	3849	£18,542	7,700

Figure 3 - Modelled volumes for pilot (yearly)

The total costs for the above would be as follows :

Guilty Plea (£)	Cracked Trial (£)	New 'wasted prep' fee (£)	Trial (£)
11,050,102	115,205,073	53,527,773	142,638,111

Figure 4 - Modelled costs per case type

Comparison between schemes

Old Guilty Plea (£)	New Guilty Plea Costs (£)	Old Cracked Trial Costs (£)	New Cracked Trial Costs (£)	Old Wasted prep	New 'wasted prep' fee costs (£)	Old Trial Costs (£)	New Trial Costs (£)
27,625,256	11,050,102	73,535,069	115,205,073	N/A	53,527,773	214,146,518	142,638,111

Figure 5 - Comparison of scheme costs

The impact of the above involves a decrease in the number of cases paid as a guilty plea from 21647 to 8,659, reducing spend by £16,575,153 from £27,625,252 to £11,050,100.

There would be an increase in the number of cracked trials in the same number, from 22920 to 35,908, increasing spend from £73,535,070 to £115,205,073 (+£41,670,003)

The new wasted prep fee would on our assumptions apply to around 1 in 3 cases, totalling 3849 cases at a total cost of £53,527,773 (+£53,527,773).

Finally, trial volume should fall to 7700 from 11,549, resulting in a fall in spend from £214,146,519 to £142,776,711 (saving £71,369,808).

The total annual spend on such a model would therefore be to add an extra £7,252,815 to spend based on 2022/23 data, and hence over a 6 month pilot would be around £3.6m.

For comparison, in 2022/23 the total LGFS spend was £322,250,604[9]

In addition, there would be an additional bolt on fee for the CRCM hearings where the litigator attends. Based on approx. 23,000 cases at CRCM being heard in 6 months, a fee of around £500 per hearing would add another £10-12m. The bolt in remains an important part of the scheme since it provides an encourage for a litigator to attend court, thus spending time on a case which might result in them overall receiving a reduced fee.

7. Conclusion

Our proposal is a time limited pilot and is not intended at this stage to result in permenant procedural changes or be in lieu of proper fee scheme reform. It involves cultural change, procedural change and fee structure changes, as well as investment by the government, but potentially involves significant benefits for the the public, victims and witnesses. It ensures those who should plead guilty to so before the trial, frees up court time, CPS and police time, and remunerates for work done. The CLSA will shortly be presenting a separate paper with proposals for savings which could be deployed to offset much of the extra investment, which in any event is relatively small for the pilot.

During the pilot the LAA could ask for time recording data thus also allowing data collection. Certainly, it has the potential to reduce some of the perverse incentives – the most significant of which is to reach day one of trial. Law Society analysis of HMCTS data suggest each day in court costs around £2,692. Our modelling above suggests almost 4000 fewer trials per year, which based on an average of 2-3 days per case (which is conservative)[10] is saving in the 6 months of the pilot of £10,768,000 in court time, and makes now allowance for reductions in savings for police and CPS time, or prison time. The net result is a saving to the CJS.

Should the pilot be successful it could be adopted permanently and would also allow a proper review and reform of LGFS based on the data and experiences gathered during the pilot.

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9 https://app.powerbi.com/view?r=eyJrIjoiMGQwNzY5MjQtYTUyZS00NWUzLWE4NzItYWFhN2U3ZDJlMzE1IiwidCI6ImM2ODc0NzI4LTcxZTYtNDFmZS1hOWUxLTJlOGMzNjc3NmFkOCIsImMiOjh9&chromeless=1&filter=true/ecf&pageName=ReportSectiond36ebef3ca4514744d8b

10 https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-july-to-september-2023/criminal-court-statistics-quarterly-april-to-june-2023