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What happens at a Magistrates' Court trial?

This factsheet is only intended as a guide as to what is likely to happen at your trial. Criminal trials are all unique and it would be impossible to advise you about everything that could happen in your case as it is often dependent on the facts of your individual case. We hope however that you find this useful as an overview of trial procedure. If you have pleaded not guilty to a criminal offence we would always recommend that you seek legal advice.

Please note that if your trial is in the Magistrates' Court you can be represented by a legal executive (if they have obtained criminal advocacy rights of audience), a solicitor or an independent barrister. For the purpose of this fact-sheet we will refer only to a solicitor to avoid repetition.

Who will deal with my trial in the Magistrates' Court?

At the Magistrates' Court, your trial will be heard either by a District Judge or by a bench of lay Magistrates. A legal advisor sits in front of the Magistrates and their job is to advise them on issues of law and also to take notes of the evidence. The Magistrates or the District Judge decides on matters of law (for example whether evidence is admissible) and fact (for example have you done what the prosecution say you have done?). Your case will not be dealt with by a jury.

How do I address the Magistrates or the District Judge?

If you are addressing a District Judge, you call him or her – Sir or Madam.

If you are addressing lay Magistrates collectively, you call them – Your Worships or Sir or Madam if addressing one individually.

What happens if I do not attend for my trial?

The presumption is that it will go ahead in your absence and subject to the prosecution proving the case to the requisite standard i.e satisfying the Justices/District Judge so that they are sure; you could be convicted in your absence. If you have legal representation in some cases your solicitor can stay at court for the trial and cross examine the witnesses on your behalf but they are unable to do so, for example; if they don't have adequate instructions from you on the case. Your solicitor can't give evidence for you or read out a statement of your evidence on your behalf. If you don't attend you will be therefore be deprived the opportunity of giving evidence on your own behalf. Consequently, it is very important that you attend.

It is also likely that the court would issue a warrant without bail for your arrest, meaning that you would then be at risk of being arrested for failing to answer court bail, kept in a police cell waiting to be brought before the first available court.

Failing to answer Court bail without reasonable excuse is a separate offence, the maximum sentence for which in the Magistrates' Court is a three month custodial sentence.

If you are unable to attend because for example you are ill, you will need a medical certificate specifically stating that you are not fit to attend court, why and for how long. Please remember that a doctor's certificate stating that you are unfit to attend will not be sufficient. To be unable to carry bricks because of a pulled muscle in your shoulder will not and does not excuse you from attending court. Doctors are very familiar with what is required so please make sure you make it clear to them the purpose of the certificate.

If you have a genuine reason for not attending court the trial will not go ahead in your absence but will instead be adjourned to a new trial date. It is therefore very important you get evidence and advise your solicitor what is going on or if unrepresented, the court.

It is crucial in such situations that you stay in contact with your solicitors who will be at court trying to persuade the Justices not to proceed in your absence and/or issue a warrant. Simply turning your mobile 'phone off and hoping for the best will not help your solicitors to achieve this.

What happens if I want to change my plea to guilty – is it too late?

No. You can change your plea at any time, either at the beginning of your trial or during it. The consequence of doing so is that any credit you can expect to receive for a guilty plea is substantially reduced if entered at a very late stage. In most cases you will only be entitled to a 1/10th discount in sentence if you plead guilty on the day of trial and if you wait until the witnesses have given evidence and then plead guilty, it is unlikely that you will be afforded any credit at all.

Credit is given to any defendant who pleads guilty and especially those who do so in a timely fashion. In other words, the earlier you plead guilty the more credit you can expect to receive. If you delay your plea of guilty until the morning of the trial, you will have caused the victim to attend court, unnecessarily delayed the conclusion of your case and put the tax payer to the expense of paying for the process. These are all the reasons that will reduce the credit that any defendant can expect to receive should his/her plea be entered at a very late stage.

If you are thinking of changing your plea you should speak to your solicitor about this immediately as it is generally advisable to notify the court and the prosecution of your change of plea as soon as possible.

I am maintaining my not guilty plea – what happens?

At the start of your trial the legal advisor will ask you to give your name and address and will ask you whether you are maintaining your not guilty plea(s).

Who goes first, the prosecution or defence?

The prosecution case is always dealt with first. Your case will be dealt with at the conclusion of the prosecution case. If you are jointly charged with another then your case may be dealt with after your co-defendant or vice versa.

The prosecution start their case by making an opening speech to the court. This is an outline of the charge(s) you face, what the prosecution has to prove and an outline of the prosecution evidence. In essence, this sets out the crown's case against you. The prosecution will then call their evidence.

How will the evidence be heard?

In a number of ways, for example:

- A witness will attend court to give live evidence.
- A witness's evidence may be agreed and read to the court.
- CCTV or video evidence may be played to the court, for example; of the incident.
- Audio evidence can be played to the court, for example; a recording of the victim's 999 call to the police.
- Your police interview tape recording may be played to the court or a transcript of it read.
- Documents may be agreed and read to the Court.
- Admissions may be agreed between you/your solicitor and the prosecutor and they are read to the court as facts agreed by both the prosecution and the defence.

Will the prosecution witnesses be in court to give their evidence?

Generally yes. In most cases the witness will give their evidence from the witness box which is positioned at the front of the court where you can see them and they can see you.

In some cases however the witness may give their evidence from behind a screen so that you can't see them, via a video link, via an intermediary, via a pre-recorded video interview or in private in the absence of members of the public. This is called special measures and happens for example if the witness is a youth or where they are vulnerable or in fear of you. This is something that ordinarily will have been decided on well in advance of your trial and if the prosecution are applying for special measures in respect of one or any of their witnesses, either you or your solicitor will have been sent a copy of that application and had the opportunity to respond in advance of your trial. If the witness is a child then the presumption is that the court will grant special measures. If the witness is an adult, the test is whether the quality of their evidence will be improved by special measures. If you are unrepresented and have received a special measures application and are not sure what to do, you should consult a solicitor.

What happens if a prosecution witness doesn't attend court for my trial?

A number of things can happen.

- The prosecution may be able to proceed without that witness in which case your trial will go ahead without that witness's evidence and it will no longer form part of the case against you providing that you do not want this witness at court to cross examine them. in which case the crown are under a duty to ensure that all witnesses that you were expecting to attend, do so.

- The prosecution may not be able to proceed without that witness's evidence and will therefore have to ask the Magistrates to adjourn your trial so that they can get the witness to court. You can object to this.

- The prosecution may take a view on your case and offer no evidence against you because without that witness, they are unable to prove their case against you. In short, that would be the end of the case against you.

- You or your advocate may agree that the witness's evidence can be read in which case their statement will either be read to the Magistrates in full or an edited version read by agreement with you or your solicitor.

- The court could issue a witness summons for that witness.

- If you or your advocate doesn't agree that the witness's evidence can be read and there is no realistic prospect of that witness ever being located or being brought to court then the Crown may make a hearsay application to enable them to read the evidence.

Are the Magistrates likely to allow an adjournment of my trial if a prosecution witness hasn't attended?

That depends on a number of things, for example:

- The reason why the witness hasn't attended. If for example it's because the witness is seriously ill, then yes, the court is likely to adjourn your trial.

- What efforts the Crown has made to contact that witness.

- Whether the court and the defence could have been notified sooner.

- Whether your case will be prejudiced by the delay in adjourning the proceedings.

- Overall they will consider the interests of justice for both sides.

When would I agree to the statement being read?

Again this depends on a number of things and you should always seek legal advice on this but generally speaking you could agree to the statement being read if there is nothing in it that you dispute and the statement is at least in part helpful to your case. If you dispute the statement and the prosecution do not agree to edit out the areas you dispute, you should not agree to it being read.

What happens when the prosecution 'calls' their witnesses?

The witness will be called into court by the court usher and will go and stand in the witness box. They will be asked to swear or affirm before giving their evidence. Whichever they choose they are effectively promising to tell the truth when giving evidence.

After they have taken the oath, the prosecutor will ask the witness questions, in general terms asking for their account of what happened and what they saw. Unless by agreement, the prosecutor is unable to lead the witness and therefore the evidence must come from the witness. An example of a leading question would be 'so its right isn't it, the defendant attacked you using a knife?' Instead they have to ask open questions, such as 'can you tell the court what happened?' In some situations the witness may be allowed to refer themselves to their original witness statement. This is permissible when the court is satisfied that it is likely that at the time the statement was drafted events were fresher in the mind of the maker than at the time of the trial. It is often said that giving evidence is not a memory test.

Unless the witness is an expert, they are not able to give opinion evidence. This means they should not give evidence based on what they think or believe unless it comes from their personal knowledge of the facts. Generally speaking they can only give evidence of things that they are personally aware of and not what they have been told.

Can I ask the witness questions?

Yes either in person or through your solicitor if you are represented. This is called cross examination. Once the prosecution have asked their questions of the witness, you or your solicitor will then have the opportunity to cross examine them.

If you are represented, you must leave the questions to your solicitor no matter how tempted you are to shout out. Shouting out at a witness will not help your case. If there is something you want your solicitor to ask of the witness you should ask to speak to him/her and allow your solicitor to put the question.

The purpose of cross examination in general terms is to undermine the crown's case, to challenge any disputed facts with the witness and to put your case to the witness. This is very important; even if it becomes obvious that the witness is never going to agree with you, you must still put your case.

Cross examination can be very difficult and it is often a tactical decision as to what questions you should ask of the witness. Sometimes asking the wrong questions can make it worse and the least said the better. If your case is anything other than very straightforward you should always seek legal advice and preferably have representation at your trial.

Can I or my solicitor cross examine prosecution witnesses on their previous convictions?

Yes but only in limited circumstances and upon an application drafted within the statutory timeframe.

Such evidence is only admissible it goes to an important matter in issue in the case and it is of substantial importance in the context of the case as whole, it is of important explanatory evidence to the case or all parties agree to it.

If it is not agreed between the parties or the court has not agreed to admit it, neither you nor your solicitor can cross examine on it.

You should also be aware that if you introduce the bad character of the witness, yours if you have any may be introduced. Again the decision about whether to do this is often a tactical one.

If this applies in your case you should seek advice from a solicitor about what to do.

What happens next?

Once you or your advocate has cross examined the witness the prosecution are allowed to re-examine them on any matters that have arisen out of your cross examination and the Magistrates or District Judge can then ask them questions.

At the end of their evidence the witness will then be released which means they are free to either leave the court or to sit in the public gallery and watch the remainder of your trial.

This procedure will apply until the prosecution have called all their live witnesses to give evidence.

Some evidence has been agreed – how is that dealt with?

If you or your solicitor has agreed any of the prosecution's statements, those statements will normally be read out at this stage of your trial. Common examples of evidence that can be agreed would be evidence of your interview and charge. In short, any evidence that you do not dispute.

How is audio or video evidence dealt with?

This can be produced either by a live witness in court or by agreement between the prosecution and defence. By whichever means it is produced, it will then be played to the court.

How is my police interview dealt with?

If the prosecution are relying on your police interview as part of their case, your interview will either be read or played to the court. This is usually done at the end of the prosecution's evidence.

What happens at the end of the prosecution case if they have failed to make a case against me?

At the end of the Crown's case either you or your solicitor if you are represented can make a legal submission that you have no case to answer. The test for this is whether no reasonable court would convict you on the evidence that they have heard. Just because you don't accept or agree with the Crown's case does not mean that a submission should routinely be made. One example of when a submission of no case to

answer should be made is where the Crown's evidence does not prove a crucial element of the offence.

If an application of no case to answer is successful a formal verdict of not guilty will be entered against you. This means that is the end of your case.

If you face multiple charges and an application of no case to answer succeeds only in respect of one or some of them, your trial will proceed only on the remaining charge/s.

What is the defence case?

This is your case and your opportunity to present your case to the Magistrates. Remember, you do not have to prove that you are innocent. The prosecution have to prove that you are guilty.

Will the Magistrates know about my previous convictions?

In certain cases, yes. This is called bad character evidence. There are two main ways your previous convictions can be introduced.

1 By you - Either by your admission or by creating a false impression or by making imputations on the character of another witness in the case: OR

2 If it is relevant to an important matter in issue and the prosecution or any co-defendant has made a successful application to the Court to adduce it in your trial.

The law relating to bad character is complex and outside of the focus of this factsheet. If you have previous convictions and are worried about how they will be dealt with at your trial, you should always speak to a solicitor about this.

Do I have to give evidence?

No. However if you don't the court can be directed that they can draw an inference, (which means a common sense conclusion) from you choosing not to do so (one obvious inference being that you don't want your account to be subjected to cross examination).

You can't be convicted on an inference alone. Generally speaking if you have a positive defence to raise you should give evidence. Whether you

should give evidence or not is something you should always take legal advice on, again there may be tactical reasons for not doing so.

Giving evidence in court has become a far easier experience than it used to be. Many fears people have about giving evidence prove to be exaggerated. Don't believe everything you see on television.

I answered no comment in police interview – is this a problem?

The short answer is yes it can be and the court can draw an inference from your silence.

What is an inference?

At your police interview you would have been given the following caution: 'You do not have to say anything .But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence'.

It is at your trial that the impact of that caution comes into play. An inference can only be drawn if you didn't say something in interview that you later rely on in trial. If you are not giving evidence an inference can't be drawn from your silence at the police station although it can be drawn from your silence at trial.

If you do give evidence in your defence about something that you didn't say in police interview the court can ask themselves 'why didn't you say that at the first opportunity?' and they can draw their own conclusions as to why you didn't. The most obvious conclusion being that you have subsequently made up your defence having had some time to think about it and consider the evidence. This in essence is an inference. Again, you cannot be convicted on an inference alone but a no comment interview followed by a lengthy explanation in court can be very powerful evidence against you in the absence of a good explanation for not giving that explanation at the police station.

Will an inference be drawn in my case from my silence at the police station?

It very much depends on the reason why you answered no comment and your personal circumstances including your mental and physical health at the time of your interview.

But my solicitor told me to go no comment.

Relying on the advice of your solicitor to answer no comment will not necessarily stop an inference being drawn. It depends on whether you genuinely believed that you were entitled to rely on that advice and whether it was reasonable for you to rely on that advice.

If you told your solicitor the account that you are now intending to give at your trial, a possible way to overcome the inference and the suggestion that you have subsequently made up your defence is to call the solicitor or legal representative who represented you for your interview to give evidence on your behalf at trial. You can do this even if that solicitor is no longer representing you. However this is not a straightforward process and may result in the prosecution being entitled to examine the contents of the solicitors file in detail.

If you answered no comment in interview and want advice about the implications on this for your trial you should speak to a solicitor.

What happens when I do give evidence?

The procedure is much the same for you as it is for the prosecution witnesses (as described above). You will be asked to leave the dock and will go into the witness box to give your evidence. You will remain standing whilst you give your evidence unless you have permission to sit down. You will also be asked to swear or affirm at the beginning of your evidence. There is no prejudice to you if you decide to affirm, it is entirely your choice. The Magistrates will not think badly of you just because you have declined to swear on the bible.

You will then be asked non-leading questions by your solicitor. They will first ask you to give the court your name and address. Whilst it is your solicitor who is asking you the questions you should direct your answers to the Magistrates. You should speak slowly and clearly. The Magistrates, legal advisor and prosecutor will be taking a note of what you say and a good tip to judge whether you should pause to allow them to catch up with you is to periodically watch their pens to see if they are still writing.

Your solicitor can't lead you in your evidence. This means the evidence has to come from you. If you don't say it, the Magistrates will not hear it!

How should I give my evidence?

Giving evidence can be very stressful and you will understandably be nervous. That being said it is important to try and stay calm and most importantly to listen to the questions being asked of you. Try not to make jokes when giving your evidence, sometimes people do this as much out of nerves as anything else but it looks terrible. A criminal trial is a serious matter and you should treat it as such. If you don't understand a question, don't be afraid to say so. You're not allowed to stop your evidence half way through to speak to your solicitor. You will not be allowed to refer to your statement so it is important that you know it. It is what your solicitor will be expecting you to say.

If you can't remember something, say you can't remember, it is better than making something up as this will undermine your credibility as a witness. If you have previous convictions and the court doesn't already know about them, be careful what you say as you could end up introducing them anyway. For example, if you have been charged with an assault and you have a previous conviction or caution for an assault and in your evidence you say 'I am not a violent person' – your previous conviction or caution for assault will go in to correct the false impression that you have just given the court.

Will I be cross examined?

Almost certainly, yes. You will be cross examined by the prosecutor and the solicitor for any co-defendant/s who have been charged with you. The Magistrates can also ask you questions. Try not to let your demeanour change when you are giving evidence. If you have been polite when answering your solicitor's questions and in cross examination become immediately hostile, again this looks terrible. If you don't agree with what is being put to you, be firm in your denial but not rude. Also do not answer the questions being asked of you with questions. It is the prosecutor's job to ask you questions and yours to answer them. Answering back with questions just makes you look cocky and the court does not like it.

Also try and remember that the prosecutor or co-defendant solicitor is just doing their job. It is not personal and you should try and avoid making it so. Again try and stay calm and consider each question carefully. Once you have said something it is very difficult to unsay it. Take time to think about your answer before saying it. If you have forgotten the question or don't understand it, say so. It is also very important not to try and fill the silence. One of the oldest tricks in the book when cross-examining a defendant is to ask a question, wait for the answer and after the defendant has given the answer, say nothing. Many defendants including

those who have given the very best answer possible, think that they need to say something else because the prosecutor hasn't asked the next question. Don't be tempted to do so as your additional answer maybe something unhelpful to your case.

What happens next?

Once you have been cross examined your solicitor can ask you questions in re-examination but only in relation to matters arising out of your cross examination, for example, if something needs clarifying.
You will then be asked to go back to the dock where you will remain for the duration of your trial.

Can I call witnesses in my defence?

Yes. You have the right to call any defence witnesses. In terms of procedure, any defence witness details should have been notified to the Crown in advance (normally within fourteen days from when the Crown served on you their unused material in the case). If you haven't served your defence notification within the time limit or at all, the court may decide that you are not allowed to call that witness at trial. It is therefore very important that you comply with this and if you are represented pass full details of your proposed witnesses to your solicitor. Always remember if you have a nervous, timid or vulnerable witness whose evidence would be improved by special measures, the same facilities are available for them as for prosecution witnesses.

How will my witnesses be dealt with at my trial?

In exactly the same way as described above the prosecution witnesses.

I am have no previous convictions or cautions, how is that dealt with?

If you are of good character the Magistrates will be given a direction about how they should treat this. The direction is twofold. It goes firstly to your propensity to act as alleged, i.e. it makes it less likely that you have acted as alleged. Secondly, it goes towards your credibility as a witness, i.e. it makes it more likely that you are telling the truth. This forms as much a part of the Magistrates considerations of your guilt as any other piece of evidence before them. However do remember that good character alone cannot amount to a defence.

If you have no previous convictions it is generally a good idea to have character witnesses to give evidence at your trial. Beware though if you are calling character witnesses they must know what it is you have been charged with.

I do have previous cautions/convictions, can I call character witnesses?

Any defendant can call a character witness in any case however there may be implications of doing so. If you are a man who has ten convictions for offences of violence it may be considered unwise to call your mother to say you are a non-violent person. This is for two reasons, firstly your mother's evidence is worthless in those circumstances but also and perhaps more importantly, your ten convictions for violence will then, on application, go before the Justices to correct the false impression you were trying to create in calling your mother as a witness.

However, if you are charged with a common assault and have one conviction for driving with excess alcohol dating back twenty years, then to call your mother or anyone else to say that you are a non-violent person will have far more credibility. Additionally, it maybe in your best interests to admit into evidence by agreement your solitary conviction so the Justices have the full picture about you lessening the impact of any bad character application the Crown may make against you in the circumstances.

Can defence evidence be read or do all my witnesses have to attend court to give evidence?

If the prosecution agrees the evidence of a defence witness, that witness's evidence can be read to the court and the witness does not need to attend your trial. If there is anything at all controversial about what your witness says in your defence it is very unlikely the prosecution will agree it and you will have to call them to attend court to give evidence for you.

Character evidence is far more likely to be agreed than evidence as to the facts.

Can my witnesses sit in court and listen to my trial?

No, not until they have given their evidence. Once your trial has started you should not speak to them about your case until they have given their evidence. Tactically it is better not to speak to them at all whilst in the

court building as you don't want any suggestion that you have been updating them about your trial or tipping them off as to what to say.

If your witness is an expert then in some cases they are able to sit in court to listen to the evidence as it unfolds at your trial so that they can then give their expert evidence/opinion it.

What happens at the end of my case?

If you have been charged with another person and your case has been dealt with first, their case will then proceed in exactly the same way as described for yours. You or your solicitor if you are represented will be able to cross examine them if they choose to give evidence and also their witnesses.

What happens at the end of the defence case?

After all of the evidence has been heard the Prosecutor may make a closing speech to the Magistrates. You or your solicitor if represented will then make a closing speech.

The legal advisor will then advise the Magistrates about any points of law or legal directions that they should be aware of in your case. This should be done in open court and not in the privacy of their retiring room.The Magistrates or District Judge will then usually retire to reach their verdict.

In order to convict you the crown must have proved their case beyond all reasonable doubt. If there is any doubt in the mind of the District Judge or Magistrates' as to your guilt you will be acquitted. Remember, you do not have to prove your innocence. When the Magistrates give their decision they must tell you their reasons for coming to that decision.

What happens if the Magistrates find me not guilty?

If you are found not guilty of the charge(s), that is the end of the matter. If you have incurred travel costs for coming to court for the trial and any previous hearings, you can make an application to recover these costs. If you have funded your representation privately, again an application can be made to recover your defence costs.

What happens if I have been found guilty?

The Magistrates will either:

- Sentence you there and then.
- Put your case back to later in the day for you to speak to a probation officer in the interim and will then sentence you later that day.
- Adjourn your case for 3-4 weeks for the preparation of a full pre-sentence report.
- If you have been convicted of an either way offence (one which could have been heard either in the Magistrates' court or the Crown Court) and then having heard the evidence the Magistrates feel their sentencing powers are insufficient; commit your case to the Crown Court for sentence.

For full details about this please see our 'Where will my criminal case be dealt with and what is likely to happen?' factsheet. The procedure for sentence once you have been convicted of an offence is identical to that which is set out in that factsheet following a guilty plea.