

# WHERE WILL MY CRIMINAL CASE BE DEALT WITH AND WHAT HAPPENS?

**This factsheet relates to those who are 18 or over. If you are 17 or under, please see our separate factsheet for the Youth Court.**

## **Where will my first court hearing be?**

In every case your first court hearing will take place at the Magistrates' Court local to where your offence was committed. What happens then depends on whether it is a summary only offence, an either way offence or an indictable only offence. Depending on what offence/s you have been charged with your case will either stay in the Magistrates' Court or be committed or sent to the Crown Court for trial or sentence.

## **What is the Magistrates' Court?**

It is the court where all cases start off. Roughly 95% of cases stay in this court. Your case will either be heard by lay Magistrates or a District Judge. Lay Magistrates are not qualified lawyers and are unpaid. Usually three Magistrates will hear your case and this is known as the bench. The Magistrates can decide on matters of fact and law. They are guided on matters of law by a qualified legal adviser or court clerk as they are also known.

Alternatively your case may be heard by a District Judge who is qualified and is a solicitor or barrister with at least 7 years post qualification experience. The District Judge also decides on both fact and law.

The Magistrate or District Judge sits at the front of the court room facing the back of the court and the legal advisor sits in front of them. The prosecution and defence solicitors/ barristers sit in the main body of the court facing the Magistrates. You will sit in the dock which is either at the side of the court or towards the back also facing the Magistrates. In most cases members of the public and the press can sit in and listen to your case and the press can report your case.

The maximum sentence the Magistrates or District Judge can give you is a six month custodial sentence for one offence or a twelve month custodial sentence if you have been convicted of two or more either way offences.

## **What is the Crown Court?**

The Crown Court generally deals with more serious cases such as serious assaults, supply of drugs and rape. It also deals with appeals from the Magistrates' Court.

If you have a trial in the Crown Court your case will be heard by a Judge and jury. A jury is made up of 12 members of the public. The jury decide on the facts of your case and the Judge decides on the law. If you have pleaded guilty you will be dealt with by the Judge alone.

In terms of the court layout it is much the same as the Magistrates' Court. The Judge sits at the front of the court facing towards the back. A court clerk sits in front of the Judge but in the Crown Court the court clerk is not legally qualified and can't give legal advice. The jury sits in the jury box which is to the side of the court. The solicitors and barristers sit in the main body of the Court facing the Judge and you will sit in the dock which is to the back of the Court or at the side.

Depending on what you have been charged with and the maximum sentence that is applicable for that offence, the maximum sentence in the Crown Court is one of life imprisonment.

## **What is a summary offence?**

A summary offence is an offence which has a maximum punishment of six months imprisonment. Examples of summary offences are: common assault; drink driving/driving whilst unfit through drugs; low level public order allegations; criminal damage where the value of the damage is under £5,000

If you are appearing in court charged with a summary only offence(s) your case will be heard throughout at the Magistrates Court, it can't be dealt with at the Crown Court and this means you will not have a trial by jury.

If you are appearing in court on a summary only offence that is linked to an offence that will ultimately be dealt with at the Crown Court (see below), in certain circumstances the summary offence will also be dealt with at the Crown Court.

## **What is an either way offence?**

An either way offence is an offence that can be dealt with at either the Magistrates Court or the Crown Court. Examples of either way offences are: theft; assault occasioning actual bodily harm; burglary; possession of drugs; possession of drugs with intent to supply.

Where your case will end up depends on a number of factors including: your plea; the nature and seriousness of the offence; whether the Magistrates' sentencing powers are sufficient and in some cases where you choose to have your case dealt with.

If you have been charged with an either way offence and you are pleading not guilty, it is your right to elect to have a jury trial at the Crown Court.

## **What is an indictable only offence?**

An indictable only offence is one that can only be dealt with at the Crown Court. Examples of indictable offences are: murder; rape; causing grievous bodily harm with intent; robbery; perverting the course of justice.

If you are charged with an indictable only offence, at your first hearing at the Magistrates Court your case will be simply be sent to the Crown Court, and either a preliminary hearing or plea and case management hearing listed. You will not be asked to enter a plea at the Magistrates Court although you can indicate what your plea is likely to be.

## **What will happen at the first court hearing in the Magistrates' Court?**

At the first court hearing you will be given a copy of the papers. Please note that this isn't necessarily all of the evidence that will eventually be served by the prosecution if you plead not guilty and your case proceeds to trial. The papers you'll be given are called advanced information and usually contain: a summary of the case; your charge sheet; prosecution witness statements; your tape of interview; a list of your previous convictions.

If you have a solicitor he or she will go through the papers with you, take your instructions on them and advise you whether you should plead guilty on the full facts, guilty on a basis of plea or not guilty. If you don't have a solicitor you can have limited legal advice from the court clerk. If you have been charged with an imprisonable offence you are entitled to see the duty solicitor who can represent you for free.

When you go into court you will be asked to go into the dock. You should remain standing until you are asked to be seated. The legal advisor will ask you to give your name, address and date of birth. They will then ask your solicitor or you if you are unrepresented whether you are ready to enter your plea. If you're not then your solicitor or you if unrepresented will have to ask the court for an adjournment. Beware, the courts do not adjourn cases easily and there must be a good reason for doing so. If you are ready to enter you plea you will be asked whether you are pleading guilty, not guilty or indicating no plea.

## **What happens about bail?**

Your bail position will also be dealt with at the first hearing.

If you have been remanded into custody by the police or appear in custody on a warrant without bail, the prosecutor will tell the court about

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the facts of the case, your previous convictions and will make representations about whether you should be remanded into custody by the court or released on bail, conditionally or unconditionally. Your solicitor will then make representations for bail on your behalf. The Magistrates or District Judge makes the final decision about whether you are bailed or remanded into custody. If you have been remanded into custody your case will be adjourned for a maximum of seven days for a further bail application to be made on your behalf. If you have been remanded into custody you also have the right to make an application for bail to the Crown Court. This will be dealt with by a Crown Court Judge in chambers.

If you are on conditional bail, your solicitor can make representations to the court that some or all of the conditions should be varied or lifted.

If you have attended court in answer to a summons or unconditional bail, the likelihood is you will be released on unconditional bail by the court.

If you have attended court on bail but have been charged with a very serious offence for example rape or supply of drugs, in some cases the court could revoke your bail and instead remand you into custody. This happens rarely but is something you should be aware of.

If you have been released on bail with conditions it is very important you comply with those conditions. If you don't you are at risk of being arrested for breach of bail which means you would then be taken to the police station and kept in a cell to be brought before the first available court. At that court hearing the question of bail is reconsidered and if you have breached your bail conditions you could then be remanded into custody until your next court date.

It is very important that you re-attend court at the time and date to which you have been bailed. If you fail to do so without reasonable excuse you may be committing a further offence under the Bail Act. If you have a genuine reason for not attending court for example you are ill, you must obtain medical evidence which states that you are unfit to attend court, the reason why you are unfit and also specifying when you will be fit to attend. It is important you notify your solicitor if you are unable to attend or if unrepresented, the court. If you simply fail to turn up, in most cases a warrant without bail will be issued for your arrest which means you are at risk of being arrested on that warrant at some unearthly hour and kept in a police cell waiting to be brought before the first available court. In short, make sure you attend. Not having the bus fare to get to court is not a good reason!

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If you have been bailed to attend for a trial date you must be aware that if you fail to attend your trial without good reason the likelihood is that your trial will proceed in your absence which will deprive you the opportunity of giving evidence in your defence.

## **What happens if I plead guilty at the Magistrates' Court will I be sentenced there and then?**

If you have pleaded guilty to a summary only offence you will be sentenced at the Magistrates' Court. The Magistrates will hear an outline of the facts from the prosecutor including what you said in police interview and will hear details of your previous convictions if you have any. If you have a solicitor your solicitor will then mitigate for you. This means they will tell the court the reason why you committed the offence and will address any aggravating or mitigating features relating to the offence. They will ask the court to give you credit for your guilty plea and tell the court about your personal circumstances and mitigation. Your solicitor will also make representations to the court about what sentence you should receive.

If you are unrepresented you then have the opportunity to speak to the Magistrates directly to mitigate on your own behalf. This can be stressful for you and a good tip if you think you'll struggle to express yourself, is to write it down in advance and then just read it out.

In some cases the Magistrates will be able to sentence you there and then.

In other cases they will require a report from the probation service known as a pre-sentence report. If the Magistrates only ask for a basic pre-sentence report in most cases your hearing will be put back to later in the Court list for sentence and in the interim you will speak to a probation officer who will ask you about the offence and your personal circumstances and will make recommendations about how you should be sentenced.

The Magistrates are not bound by this recommendation but are often guided by it and it is therefore important that you fully co-operate with the probation service in the preparation of the report. Also you should be aware that what you tell the probation officer isn't confidential and good or bad, will go in their report and be heard by the Magistrates. Once your

report is ready your solicitor will then be given a copy of that report or a verbal update from the probation officer. Your case will then be called back on and the Magistrates will hear from the probation officer about what you have said and the probation officer will outline their recommendations for sentence. Your solicitor or you if unrepresented will then have the opportunity to address the Magistrates on the report and make representations about your sentence. Unless anything more complicated has arisen out of your interview with probation, you will be sentenced there and then. If something more complex has arisen out of your interview with probation, your case will be adjourned for the preparation of a full pre sentence report.

If you are sentenced that same day, that is the end of your case and you are no longer on bail for it.

If you have been charged with multiple offences and have pleaded guilty to some but not others, in most cases your sentence will be adjourned pending the outcome of your not guilty matters.

## **What happens if the Magistrates adjourn my case for sentence?**

If either the Magistrates or the probation service thinks that a more detailed pre-sentence report is needed for example you have issues with drink or drugs, there are domestic violence issues or mental health problems the court will adjourn your case for the preparation of a full pre-sentence report.

The adjournment for sentence will generally be three weeks if you are in custody or four if you are on bail. You will then receive an appointment for you to attend the probation service and at that appointment you will be interviewed by a probation officer who much as above will take details of you and your offence but in more detail.

Two things you should note

1. If you don't attend your appointment (or attend late) you may not be given another chance. This is not in your best interests as it can restrict the Court's options when sentencing you and also the fact that you have failed to co-operate with probation is not going to impress your future sentencing bench or necessarily persuade them that you would be willing to cooperate with a community sentence. If you have a genuine reason

for not attending your appointment always tell the probation service and your solicitor and if you can, obtain evidence of it.

2. As above, what you say to probation is not confidential and will go in your report and will be read by those who sentence you. It is important that you put your case and circumstances across to probation and that you accept responsibility for your actions and assuming you are remorseful, that you get that across to the probation officer.

If you haven't received a date for your probation appointment it is your responsibility to chase one up.

If you are in custody, the probation officer will come and see at the prison in person or via a video link. Just because you've been remanded in custody does not necessarily mean you will receive an immediate custodial sentence for the offence and in most cases it's still in your best interests to co-operate with the probation officer.

You will then have to re-attend court on the date and time given to you on the last occasion to be sentenced.

At that hearing the Magistrates will hear the facts of the case and details of any previous convictions; they will read your pre-sentence report and then hear from you if unrepresented or your solicitor by way of mitigation. You will then be sentenced unless the Magistrates take the view that your case is too serious in which case they will commit your case to the Crown Court for sentence (unless it is a summary only offence).

Please note that if you saw the duty solicitor on the first occasion you will not be entitled to representation by the duty solicitor on this occasion and if you want legal representation you should arrange for a solicitor to attend court with you to represent you.

### **What happens if the Magistrates refuse to sentence me?**

If you have been convicted of an either way offence and the Magistrates consider their sentencing powers are insufficient they can commit your case to the Crown Court for you to be sentenced there. This means they think you could or should receive a sentence of more than six months imprisonment or twelve months if you have been charged with two or more either way matters.

This means your case will be adjourned and you will be given a date to attend the Crown Court to be sentenced. If the Magistrates order a pre sentence report you will see the probation service as outlined above.

If your case is committed to the Crown Court for sentence you shouldn't necessarily panic, in some cases you can actually receive a better sentence in the Crown Court.

If your case is committed to the Crown Court and you haven't already got a solicitor, you should instruct one now. A duty solicitor is not available at the Crown Court.

In terms of timescale, your committal for sentence hearing will usually take place between four and six weeks of the date your case was committed by the Magistrates.

### **What happens if I plead not guilty in the Magistrates' Court to a summary only offence?**

If you plead not guilty to a summary only offence your trial will take place at the Magistrates court but not at the first hearing. Your case will be adjourned for a trial date usually within two to three months of your first hearing. (for an outline of trial procedure and what you should do next please see our separate factsheet)

At the first hearing your solicitor and the prosecutor will fill out a form which sets out the likely trial issues, which witnesses are required to attend court and why and any directions that are required in your case. You will then be given a trial date and either released on bail, conditionally or unconditionally or remanded into custody.

### **What happens if I plead not guilty to an either way offence?**

If you plead not guilty or don't indicate a plea the Magistrates will then decide if they can accept jurisdiction of your case, meaning they will consider whether their sentencing powers are sufficient if you are convicted. This is called mode of trial.

For most offences the Magistrates will be guided by any mode of trial guidelines available for your offence/s. These guidelines help the

Magistrates to decide whether your case should be heard at the Magistrates Court or the Crown Court. Whether the Magistrates accept jurisdiction of your case depends on for example: the charge; the nature of the offence; any aggravating features; any relevant sentence guidelines. At this stage in the hearing the prosecutor will make representations to the Magistrates about where your case should be dealt with as will your solicitor or you if unrepresented. The legal advisor will also address the Magistrates about any relevant guidelines and the Magistrates will then make their decision.

If the Magistrates accept jurisdiction of your case, you will then be asked where you want your trial. It is your right to choose trial by jury at the Crown Court if you wish to do so but you should take advice from a solicitor on this.

### **What happens if the Magistrates accept jurisdiction of my case and I want a Magistrates' Court trial?**

If you choose to have your trial at the Magistrates' Court your case will remain in the Magistrates' Court and the procedure will be the same as for a summary offence as outlined above. Please note; even if the Magistrates accept jurisdiction of your trial, in some cases if you are convicted of the offence/s they can still commit your case to the Crown Court for sentence.

### **What happens if the Magistrates accept jurisdiction of my case but I want my case in the Crown Court?**

As long as you've been charged with an either way offence this is your right.

If you elect Crown Court trial your case will be adjourned for the Prosecution to prepare the case papers (meaning the evidence they propose to rely upon at your trial), and your case will be listed for what is called a Committal hearing at the Magistrates Court. This hearing usually takes place six weeks after you enter your plea.

## **What happens at the committal hearing?**

At the committal hearing, provided that the case papers are ready, you will be asked if you consent to your case being committed to the Crown Court.

If on the papers there is a case for you to answer, then either you if unrepresented or your solicitor will consent to your case being committed to the Crown Court. This hearing is very quick and usually takes five minutes or so. What can take the time is waiting to get called on.

If you/your legal representative considers that on the case papers there is no case for you to answer then you shouldn't consent to the committal and you/your solicitor should ask for your case to be adjourned for a 'read out committal' whereby all of the evidence is read to the Magistrates. If after this hearing the Magistrates conclude there is sufficient evidence against you then they must commit your case for trial to the Crown Court. If they conclude there is insufficient evidence they must discharge you meaning the case would end.

It is rare to have a read out committal, the reason for this is that the standard of proof on the prosecution at this stage is simply that there is a prima facie case against you, i.e. that it is more likely than not that you committed the offence. In short it is only that there is a case against you for you to answer, not that you are necessarily guilty of it.

If you consent to the committal or the Magistrates find that on the papers there is case for you to answer, your case will be formally committed to the Crown Court for trial and a Plea and Case Management hearing (PCMH) listed at the Crown Court.

## **What happens if the Magistrates decline jurisdiction of my case but I want my trial at the Magistrates Court?**

If the Magistrates decline jurisdiction of your case, you have no choice, your case will be committed to the Crown Court for trial.

## **What happens if the Magistrates decline jurisdiction of my case?**

The procedure is exactly the same as outlined above where you have elected to have your trial at the Crown Court, your case will be adjourned for a committal hearing.

## **What is a plea and case management hearing and what happens if I plead not guilty?**

The purpose of your plea and case management hearing is for you to formally enter your plea(s) at the Crown Court. At this hearing you will either be represented by a solicitor advocate or a barrister. You should always opt for legal representation in the Crown Court.

Before the hearing you will have an opportunity to discuss your case with your solicitor or barrister and they will advise you about how you should plead. If you are pleading not guilty they will then fill out a plea and case management form which sets out for example, the nature of your defence, what you dispute, what you agree, how long your trial will take, what witnesses you require to attend court to give live evidence and why and any directions that are needed in your case.

When your case is called on you will go into court and remain standing in the dock. You will be asked to confirm your identity and then the indictment will be read out to you by the court clerk and you will be asked whether you plead guilty or not guilty. You may then sit down.

If you plead not guilty your case will be adjourned for trial and either a trial date fixed or your case will be placed in a warned list for trial which is generally a week long period, during which your trial could be listed. Your solicitor will not get notified of your trial date until approximately 4pm the day before you are required to attend for your trial so it is very important that you keep in contact with your solicitor during that week to find out if your case has been listed. If your trial does not get listed in that warned period it will either go into a new warned period or at that stage, will be fixed for trial. If you are in custody awaiting your trial, you will automatically be produced for your trial.

During the plea and case management hearing the Judge will also make directions as to how your case should proceed; for example, when your

defence case statement should be served if you haven't already done so, dates for service of experts reports and dates for the prosecution to serve any further evidence.

If you are released on bail it is again very important that you comply with the conditions and attend court as required for the same reasons stated above.

It is also very important that you stay in contact with your solicitor.

### **What happens if I plead guilty at the plea and case management hearing?**

If you plead guilty, you will either be sentenced there and then or your case will be adjourned for the Probation Service to prepare a Pre-Sentence report. With regards to the sentence procedure in the Crown Court and the preparation of a pre-sentence report, it is much the same as for the Magistrates Court. The main difference is that you will be sentenced by a Crown Court judge and that their sentencing powers are greater than the Magistrates. That being said, sentence still has to be proportionate to the offence and just because you are in the Crown Court does not necessarily mean you will in fact get a greater sentence.

### **If I have the choice, should I choose to have my trial in the Magistrates Court or at the Crown Court?**

There are advantages and corresponding disadvantages of both venues:

Advantages of Magistrates Court trial

- Your trial is likely to be sooner than if you have a Crown Court trial
- If you are found guilty, normally the Prosecution applies for their costs, and these will normally be lower than if you are found guilty by a jury at the Crown Court
- The Magistrates sentencing powers are lower than the Crown Court (albeit on an either way offence, as stated above, they can still commit your case to the Crown Court for sentence)

- Some people find this venue less stressful than having to attend the Crown Court before a jury and Judge
- If you are funding your representation privately, your defence costs are likely to be lower

#### Advantages of Crown Court trial

- It is proven that there are higher acquittal rates at the Crown Court when compared to the Magistrates Court. The reason for this is that at the Crown Court the prosecution needs to persuade the twelve members of the jury (or at least ten of them if a majority verdict direction is given) of your guilt, whereas in the Magistrates Court there will only be two to three Magistrates or the District Judge hearing your case.
- For members of the jury, it is often the first time that they will have seen a criminal trial and the whole idea of a jury is that they are everyday people who come to your case fresh and try you on the evidence. Contrast this to Magistrates, many of whom have sat for years and have heard the same old defences day in, day out and perhaps could become a little hardened to your defence because of this.
- In the Magistrates Court you may be financially ineligible for legal aid (please see other separate factsheet on how my case can be funded available in the download section). For the Crown Court whatever your financial status in most cases you will be granted legal aid, albeit you may have to make a contribution towards your defence costs. Note if you are on a high income your contribution order could be expensive for example £2000 pcm for six months. It is worth discussing this with your solicitor before making the final decision.

If you are found not guilty or your case is discharged in either Court, you or your solicitor can make an application for a defence costs order which means your legal costs will in most cases be refunded to you.

**Please note that this is only intended as a basic outline for you. If you have been charged or summonsed with an offence we would always recommend you seek full legal advice.**

**FOR A GUIDE AS TO WHAT HAPPENS AT TRIAL, PLEASE SEE OUR SEPERATE FACTSHEET.**