

Dunn & Baker

4.5 INFORMATION RELATING TO "EITHER WAY" OFFENCES

1. Type of Case

This is a case which can be dealt with either by the Magistrates Court or the Crown Court ("Either way"). Before any decision is made as to where the case will be tried, the Magistrates will need to have an indication of the likely plea.

If a "**not guilty**" plea is indicated, the Court Clerk will ask the Prosecutor to make representations regarding the complexity and/or seriousness of the offence(s), to enable the Magistrates to decide whether they are able to deal with the case themselves. This is called "mode of trial" (see below). If they decide that they are unable to deal with it, then the case will be committed to the Crown Court. Even if they decide that they can deal with the matter themselves, you still have the option to choose to go before a Crown Court. Where there are Co-Defendants, if one of the Defendants elects Crown Court trial, then it is likely that all the Defendants will be committed to the Crown Court, although it is possible, in certain circumstances, to have Co-Defendants dealt with separately in different Courts.

If a "**guilty**" plea is indicated, then the Magistrates will deem you to be convicted of the offence(s), and will simply have to decide whether or not they have the power to impose an appropriate sentence. This decision will be based upon an outline of the facts of the case made by the Prosecutor, together with an indication of any previous convictions you may have, and a plea in mitigation made on your behalf. Where the case is to be committed to the Crown Court, then a decision as to bail will also have to be made.

If the case is appropriate for committal, I will advise you in more detail at the appropriate time.

2. Time Scale

On the first hearing date, the charge will be read out, but you will not normally be required to enter a plea. Since this is a case where the Crown Prosecution Service are required to provide advance disclosure documentation, if the paperwork has not been received by this date, then an adjournment will be necessary. The case will be adjourned for two to three weeks to allow CPS to provide the documentation and to give time for consideration, but on the next occasion the Magistrates will normally expect an indication of plea to be given and to make decisions as to venue.

Where the case is to be committed to the Crown Court, an adjournment of four to six weeks will be ordered to allow the Prosecutor to prepare Committal Papers (a bundle of Prosecution Witness Statements and Exhibits). Following committal, a date will be fixed for a Plea and Directions hearing in the Crown Court, normally about a month after the committal hearing. If a not guilty plea is entered at the Crown Court, then the case goes into the system and waits for a listing.

Where a guilty plea has been entered, the Judge may sentence there and then, or he may decide that a pre-sentence report should be obtained and the case will be adjourned for this purpose for a period of four weeks. Pre-sentence reports are prepared by Probation Officers and will set out your background and the type of sentence which they consider would be most suitable.

Where it has been decided that the case is suitable for hearing in the Magistrates Court and a guilty plea has been entered, the Magistrates may sentence there and then, or they may decide that a pre-sentence report should be obtained and the case will be adjourned for this purpose for a period of four weeks.

If a not guilty plea is entered, the case will be adjourned for a period of four weeks for a pre-trial review, at which a trial date will be fixed, taking into account the availability of all the witnesses and the likely length of the trial. Most trials will take place between one to two months after the pre-trial review, though this will depend on how busy the particular Court is, and the dates when all witnesses are available to attend.

3. Mode of Trial and Plea Before Venue

In any case where the offence is one of the type known as "either way" there is a procedure which must be carried out by the Court in order to decide whether the case is suitable to be dealt with by Magistrates or whether it must be committed to the Crown Court. This is called "mode of trial" procedure, and it is also now combined with a procedure known as "plea before venue".

Mode of trial procedure should normally take place in your presence, although there are a few special occasions when it may be carried out in your absence.

Before the Magistrates take a decision as to which Court will deal with the case, you will be asked to indicate whether you intend to plead guilty or not guilty if the offence went to trial (plea before venue). **Please note** that if you indicate that you intend to plead guilty, you will be convicted of the offence as from that moment. In those circumstances, the Magistrates will then consider how to sentence you, if the case is one which they have the power to deal with, and they may either sentence you at that hearing, or put the case off for a pre-sentence report to be prepared by the Probation

Service. If they decide that you deserve a more severe sentence than they have power to give you, they may commit you to the Crown Court for sentence, either on bail or in custody, but you will still have been convicted of the offence.

If you indicate that you will be pleading not guilty, or you fail to indicate a plea at all, then the Magistrates must consider whether they can deal with the case, or whether you should be tried by the Crown Court. In order to do this, they will listen to what both the Prosecution and Defence have to say. They will also take into account the type of offence, whether the circumstances make the offence more serious, (e.g. in an assault case, whether weapons were used), whether the punishment which they could inflict would be adequate and any other circumstances which they feel are relevant.

If the Magistrates decide that the case is suitable for them to deal with, they must ask you whether you consent to this. You may still decide that you want to be dealt with by the Crown Court, and the Court will have to agree. However, if the Magistrates decide that the case should go to the Crown Court, you cannot ask for a summary trial in the Magistrates Court.

The procedure is carried out as follows:-

- (1) The charge will be written down and read out to you by the Clerk.
- (2) The Clerk, or Magistrate, will explain the procedure to you.
- (3) You will be asked whether, if the offence went to trial, you would plead guilty or not guilty.
- (4) If you say that you would plead guilty, then the case proceeds as though you have entered a guilty plea (see above).
- (5) If you say you would plead not guilty, it is then the turn of the Prosecution and the Defence to tell the Magistrates whether they think the case is suitable for trial in the Magistrates Court or the Crown Court.
- (6) The Magistrates then consider which type of trial is more suitable (see above).
- (7) If the Magistrates decide that summary trial is more suitable, the Clerk will explain to you that you can agree to this, or you can choose to be tried in the Crown Court. He will also explain that the Magistrates have the power to commit you to the Crown Court for sentence (see above).
- (8) You tell the Magistrates whether you agree to a summary trial or wish to go up to the Crown Court. (If the Magistrates have decided that the

case should be committed to the Crown Court, then you have no choice).

4. The Court

a) Arriving at Court

You should arrive at Court at least 15 minutes before the hearing time and should report to the Court Usher at the Reception Desk on arrival, otherwise the case may go ahead in your absence, or other cases may be taken in its place.

Court Ushers usually wear black gowns so that they can be easily recognized. They can answer queries, e.g. where to wait, identifying solicitors, and are also responsible for telling Defendants when it is time for them to go into the courtroom.

b) At the hearing

You must always stand (unless physically disabled) when the Magistrates come in or go out of the courtroom, as a mark of respect. Similarly, you must stand when the charge is read out. You should also stand up when spoken to or when wishing to speak, as this will mean that the Magistrates will give you their full attention. When speaking, you should face the Magistrates and speak directly to them, and, if possible, also speak loudly enough for everyone in the room to be able to hear. The Magistrates should be addressed as "Sir" or "Madam".

The Court Clerk will introduce the case to the Magistrates and will read out the charge(s). He/she is also there to advise the Magistrates on points of law, and to advise Defendants who are not represented by a solicitor. The representative from the Crown Prosecution Service is responsible for presenting evidence that the offence has been committed by the Defendant.

c) The Youth Court

The Youth Court deals with children and young people under the age of 18. The public are not allowed into this Court, although members of the Press may be present. However, the Press are not allowed to reveal the names and addresses of young people coming before the Court, unless specific permission is given by the Magistrates. If you are aged under 18, an "appropriate adult", e.g. parent, guardian etc., is expected to be present to help explain to you what is happening and to give information to the Court, if necessary, about you.

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