

## **Criminal Practice Directions 2015: retained directions**

CrimPD 2023 1.1.1 retains these paragraphs of the Criminal Practice Directions 2015:

CrimPD I 3Q Failure to comply with requirement to give name, date of birth and nationality

CrimPD I 5C Issue of medical certificates

CrimPD II 7A First court attendance after charge and detention,

CrimPD III 14C.11 Failure to surrender to bail: consequences and penalties

CrimPD VI 24A Role of the justices' clerk/legal advisor

CrimPD VII J Bind over orders and conditional discharges

CrimPD XI 48A Contempt in the face of the magistrates' court,

This document contains the text of those directions. Those directions will be replaced by Criminal Procedure Rules in October, 2023.

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The Criminal Practice Directions 2023 are available at these addresses:

<https://www.gov.uk/guidance/rules-and-practice-directions-2020>

<https://www.judiciary.uk/guidance-and-resources/message-from-lord-burnett-lord-chief-justice-of-england-and-wales-new-criminal-practice-directions-2023/>

## **CrimPD I GENERAL MATTERS 3Q: FAILURE TO COMPLY WITH REQUIREMENT TO GIVE NAME, DATE OF BIRTH AND NATIONALITY**

3Q.1 Section 86A of the Courts Act 2003 requires a magistrates' court and the Crown Court to require a defendant to provide his or her name, date of birth and nationality in the circumstances and at the times set out in CrimPR 3.13(5) and 3.27(5). Section 86A(3) of the Act makes it an offence for the defendant without reasonable excuse to fail to comply with such a requirement, whether by providing false or incomplete information or by providing no information. A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding 6 months, or to a fine, or both. It follows that a prosecution for failure to comply with a section 86A requirement may be brought by any of the procedures for which CrimPR Part 7 provides (Starting a prosecution in a magistrates' court) in the same way as any other allegation of a summary offence.

3Q.2 It does not follow, however, that every such allegation first must be reported to the police. Where the defendant's conduct evinces guilt, especially if the defendant refuses altogether to give the information required, such conduct undermines the administration of justice and the authority of the court. In principle, it should be dealt with at once. Section 86A(6) of the Act provides that, 'The criminal court before which a person is required to provide his or her name, date of birth and nationality may deal with any suspected offence under subsection (3) at the same time as dealing with the offence for which the person was already before the court'. In such a case, therefore, a magistrates' court may invite the prosecutor to institute proceedings orally, there and then, pursuant to section 1 of the Magistrates' Courts Act 1980 and CrimPR Part 7, and may there and then try the alleged offence in accordance with the rules in CrimPR Part 24 (Trial and sentence in a magistrates' court). A defendant should be allowed a reasonable opportunity to reflect and to take legal advice, from a duty solicitor if the defendant has no legal representative in the prosecution for the main offence. After that, unless the defendant then pleads guilty the prosecutor must call such evidence as may be convenient and sufficient, in the prosecutor's view, formally to prove the allegation; and the defendant may present evidence, for example of reasonable excuse, and may make representations in accordance with those rules.

3Q.3 Given that the Act expressly contemplates a prompt determination by the court before which there occurs an ostensible failure to comply with a section 86A requirement, rarely will it be necessary or appropriate to adjourn the trial of that allegation to a differently constituted court unless there emerges such a dispute of fact about what has occurred in the sight and hearing of the court as to disqualify the first bench from determining that dispute with perceived impartiality. In that rare event the trial of the allegation must be heard, the same day, by a different bench.<sup>1</sup> In any other event the constitution before whom the alleged offence under section 86A(3) has occurred usually should try the allegation, usually the same day.

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<sup>1</sup> The risk is that a constitution which witnesses a defendant's refusal to give the information required will not be perceived to adjudicate impartially on a contention that, as a matter of fact, and against the prosecution evidence, the defendant was not asked for the information or did not refuse to give it. If that were the defence then the court would, of course, offer the defendant a renewed opportunity to comply with the requirement and only if that further opportunity were declined would the prosecution for the section 86A(3) offence be adjourned to a different bench. Such circumstances may be expected to arise only wholly exceptionally.

3Q.4 If in the circumstances contemplated in the preceding paragraph a different bench convicts the defendant of the section 86A(3) offence, and if the defendant is convicted by the first bench of the offence for which the defendant was already before the court, then the court which passes sentence for that main offence should pass sentence also under section 86A(3). However, an offence under section 86A(3) is one that stands apart from the proceedings in the course of which it was committed the seriousness of which can be reflected by an appropriate and, generally, separate penalty.

3Q.5 Whether an alleged contravention of a section 86A requirement is dealt with the same day or later, after investigation by the police, no member of the court before whom the alleged contravention occurs should participate in the proceedings as the complainant or as a witness. Nor will it be appropriate to invite the defendant's representative, if any, to give evidence of what that representative may have witnessed in the court room. It is unexceptionable for court staff, including a legal adviser in a magistrates' court, to be asked to give evidence of what has taken place.

3Q.6 The offence contrary to section 86A(3) of the 2003 Act is one to which the time limit imposed by section 127 of the Magistrates' Courts Act 1980 applies, namely that a magistrates' court may not try an information unless that information was laid within 6 months from the time when the offence was committed. Where the court does not adopt the procedure described in paragraphs 3Q.2 and 3Q.3 above the alleged offence must be reported promptly to allow it to be investigated and, if appropriate, prosecuted in time.

## **CrimPD I GENERAL MATTERS: 5C ISSUE OF MEDICAL CERTIFICATES**

5C.1 Doctors will be aware that medical notes are normally submitted by defendants in criminal proceedings as justification for not answering bail. Medical notes may also be submitted by witnesses who are due to give evidence and jurors.

5C.2 If a medical certificate is accepted by the court, this will result in cases (including contested hearings and trials) being adjourned rather than the court issuing a warrant for the defendant's arrest without bail. Medical certificates will also provide the defendant with sufficient evidence to defend a charge of failure to surrender to bail.

5C.3 However, a court is not absolutely bound by a medical certificate. The medical practitioner providing the certificate may be required by the court to give evidence. Alternatively the court may exercise its discretion to disregard a certificate which it finds unsatisfactory: *R v Ealing Magistrates' Court ex p. Burgess* [2001] 165 J.P. 82.

5C.4 Circumstances where the court may find a medical certificate unsatisfactory include:

- (a) where the certificate indicates that the defendant is unfit to attend work (rather than to attend court);
- (b) where the nature of the defendant's ailment (e.g. a broken arm) does not appear to be capable of preventing his attendance at court;
- (c) where the defendant is certified as suffering from stress/anxiety/depression and there is no indication of the defendant recovering within a realistic timescale.

5C.5 It therefore follows that the minimum standards a medical certificate should set out are:

- (a) the date on which the medical practitioner examined the defendant;
- (b) the exact nature of the defendant's ailments
- (c) if it is not self-evident, why the ailment prevents the defendant attending court;
- (d) an indication as to when the defendant is likely to be able to attend court, or a date when the current certificate expires.

5C.6 Medical practitioners should be aware that when issuing a certificate to a defendant in criminal proceedings they make themselves liable to being summonsed to court to give evidence about the content of the certificate, and they may be asked to justify their statements.

## **CrimPD II PRELIMINARY PROCEEDINGS 7A: FIRST COURT ATTENDANCE AFTER CHARGE AND DETENTION**

7A.1 A defendant who has been kept in police detention after being charged with an offence must be brought before a magistrates' court as soon as practicable and in any event no later than the first subsequent court sitting: section 46 of the Police and Criminal Evidence Act 1984. If no magistrates' court is due to sit on the day on which the defendant is charged, or on the next day which is not a Sunday, Christmas Day or Good Friday, then the Act requires the police custody officer to inform the court's designated officer of the defendant's detention, and requires the designated officer to arrange for a magistrates' court to sit.

7A.2 The 1984 Act thus imposes duties on the police and on HM Courts and Tribunals Service. In *R (on the application of H (A Child)) v Clerk to Teesside Justices* [2000] 10 WLUK 532 the High Court observed, "it is incumbent on justices and their clerks, however busy their courts may be, to ensure that they are able to receive persons in custody up to the end of normal court hours, at least, in order to comply with section 46 ..., unless some exceptional circumstance intervenes to make that impossible in any particular case".

7A.3 To comply with those duties arrangements must be made to allow courts to receive such defendants during the course of a sitting day if the available time allows for the hearing of all cases to be concluded by 4.30pm, or later if, and only if, some disability or vulnerability of the defendant so requires. In practice, to allow sufficient time for consultation with a legal representative and for the subsequent hearing, the defendant must have been brought to the court building, or given access to a live link to the court, by no later than 3.30pm. To that end, Judicial Business Groups must ensure that effective practical arrangements have been made between police forces, HMCTS, the Crown Prosecution Service and prisoner escort contractors for the prompt transmission of information about defendants held for production before the court.

7A.4 On a Saturday or bank holiday normal court hours may differ from court to court based on likely caseload. Those hours must be determined by the HMCTS Head of Legal Operations in consultation with the judiciary and other agencies. In accordance with the court's observations in the *Teesside Justices' Clerk* case, all magistrates' courts should sit until at least 11.30 a.m. to receive defendants to whom these directions apply unless arrangements have been made for such defendants to be dealt with by another court, either by attendance in person or by live link.

7A.5 For the purposes of section 46 of the 1984 Act the designated officer is the HMCTS Director of Operations, by whom the exercise of that statutory function is delegated to members of court staff. When informing such a delegate of a defendant's detention the police custody officer must at the same time supply the following, usually by electronic means:

- (a) confirmation that:
  - (i) the defendant has been charged,
  - (ii) the case file is complete and available,
  - (iii) any interpreter required is available,
  - (iv) any appropriate adult or local authority officer responsible for the defendant's care has been notified and is available,
  - (v) the defendant's legal representative has been notified and is available, and

- (vi) the CPS or other relevant prosecuting authority has been notified;
- (b) the custody officer's proposal for the means by which the defendant should attend court, whether by live link or in person, and, if the latter, then whether by police transport or by prisoner escort contractor transport; and
- (c) details of:
  - (i) any physical or mental disability or other vulnerability (whether by reason of age or other circumstance) of the defendant of which police officers are aware, in particular where any such might be thought to make the use of live link inappropriate, and
  - (ii) the expected time of arrival at court, if the defendant is to be brought to court in person.

No court should be expected to hear a case in respect of which such information is missing or incomplete, or in respect of which such arrangements have not been made.

7A.6 The designated officer's delegates must liaise with staff at the court buildings to which defendants in police detention may be brought. Each such delegate must be sufficiently experienced to be able to assess, swiftly and accurately, the availability of courts sitting in those buildings, and of sufficient seniority to take the decisions required by these directions. Each must be in a position to assess (i) the availability of court members, of legal advisers, of prosecutors and of the other staff needed to deal with an unexpected case, (ii) the potential effect of an unexpected case on other cases awaiting hearing that day, including the risk of a less urgent case being adjourned, perhaps not for the first time, in consequence of accommodating the unexpected hearing, (iii) the likely length of the unexpected hearing, and (iv) the significance of the age and any disability or other vulnerability of the unexpected defendant.

7A.7 The delegate to whom a police custody officer reports a defendant's detention must decide whether, and if so how, when and where, to accommodate that defendant's case within the period to which paragraph 7A.3 or 7A.4 refers, having regard to the availability and content of the information to which paragraph 7A.5 refers and to the considerations listed in paragraph 7A.6. The decision must be informed by the views of those court members and legal advisers who may be affected, as listing is a judicial responsibility and function. It may be necessary for the delegate to take such steps as arranging for the unexpected case to be heard by live link; reorganising courts sitting in the court building to which the defendant is due to be brought; adjourning other cases; calling upon additional resources; or making arrangements with the delegate at another court building for the unexpected case to be heard by a court sitting there, by live link if appropriate. It may be necessary for the court that hears the unexpected case to impose a timetable for representations or to restrict the decisions that will be taken immediately. If it will not be possible to hear within the period to which paragraph 7A.3 or 7A.4 refers every case due to be heard that day at the court building to which the defendant is to be brought then every effort must be made to ensure that the cases of all defendants in custody, whether in that court building or attending by live link, still can be heard within that period. The delegate for that building must ensure that the police, the staff responsible for the court's own cells and the relevant prisoner escort contractor all are aware of the arrangements that have been made. If the prosecuting authority is not the CPS then that delegate must ensure that that other authority will arrange for a representative to attend, in person or by live link, to assist the court.

7A.8 If after conducting the assessment required by paragraph 7A.6 and taking the steps to which paragraph 7A.7 refers the designated officer's delegate finds it impossible to accommodate an unexpected case within the period to which paragraph 7A.3 or 7A.4 refers then arrangements must be made to hear the case on the next sitting day and the police custody officer must promptly be so informed.

## **CrimPD III CUSTODY AND BAIL 14C: FAILURE TO SURRENDER TO BAIL: CONSEQUENCES AND PENALTIES**

### **Arrest for breach of bail**

14C.11A defendant who has been released on bail but subsequently arrested for breach of a bail condition, or for failure to surrender to the court, actual or anticipated, must be brought before a magistrates' court (or a Crown Court judge, if the defendant is charged with murder) as soon as practicable and in any event within 24 hours of arrest. This does not apply to a defendant who is arrested within 24 hours of the next court hearing which that defendant is due to attend: such a defendant must be produced at that hearing instead. The period of 24 hours does not include Sunday, Christmas Day or Good Friday: see section 7 of the Bail Act 1976.



## **CrimPD VI TRIAL 24A: ROLE OF THE JUSTICES' CLERK/LEGAL ADVISER**

24A.1 The role of the justices' clerk/legal adviser is a unique one, which carries with it independence from direction when undertaking a judicial function and when advising magistrates. These functions must be carried out in accordance with the Bangalore Principles of Judicial Conduct (judicial independence, impartiality, integrity, propriety, ensuring fair treatment and competence and diligence). More specifically, duties must be discharged in accordance with the relevant professional Code of Conduct and the Legal Adviser Competence Framework.

24A.2 A justices' clerk is responsible for:

- (a) the legal advice tendered to the justices within the area;
- (b) the performance of any of the functions set out below by any member of his staff acting as justices' legal adviser;
- (c) ensuring that competent advice is available to justices when the justices' clerk is not personally present in court; and
- (d) ensuring that advice given at all stages of proceedings and powers exercised (including those delegated to justices' legal advisers) take into account the court's duty to deal with cases justly and actively to manage the case.

24A.3 Where a person other than the justices' clerk (a justices' legal adviser), who is authorised to do so, performs any of the functions referred to in this direction, he or she will have the same duties, powers and responsibilities as the justices' clerk. The justices' legal adviser may consult the justices' clerk, or other person authorised by the justices' clerk for that purpose, before tendering advice to the bench. If the justices' clerk or that person gives any advice directly to the bench, he or she should give the parties or their advocates an opportunity of repeating any relevant submissions, prior to the advice being given.

24A.4 When exercising judicial powers, a justices' clerk or legal adviser is acting in exactly the same capacity as a magistrate. The justices' clerk may delegate powers to a justices' legal adviser in accordance with the relevant statutory authority. The scheme of delegation must be clear and in writing, so that all justices' legal advisers are certain of the extent of their powers. Once a power is delegated, judicial discretion in an individual case lies with the justices' legal adviser exercising the power. When exercise of a power does not require the consent of the parties, a justices' clerk or legal adviser may deal with and decide a contested issue or may refer that issue to the court.

24A.5 It shall be the responsibility of the justices' clerk or legal adviser to provide the justices with any advice they require to perform their functions justly, whether or not the advice has been requested, on:

- (a) questions of law;
- (b) questions of mixed law and fact;
- (c) matters of practice and procedure;
- (d) the process to be followed at sentence and the matters to be taken into account, together with the range of penalties and ancillary orders available, in accordance with the relevant sentencing guidelines;
- (e) any relevant decisions of the superior courts or other guidelines;
- (f) the appropriate decision-making structure to be applied in any given case; and

(g) other issues relevant to the matter before the court.

24A.6 In addition to advising the justices, it shall be the justices' legal adviser's responsibility to assist the court, where appropriate, as to the formulation of reasons and the recording of those reasons.

24A.7 The justices' legal adviser has a duty to assist an unrepresented defendant, see CrimPR 9.4(3)(a), 14.3(2)(a) and 24.15(3)(a), in particular when the court is making a decision on allocation, bail, at trial and on sentence.

24A.8 Where the court must determine allocation, the legal adviser may deal with any aspect of the allocation hearing save for the decision on allocation, indication of sentence and sentence.

24A.9 When a defendant acting in person indicates a guilty plea, the legal adviser must explain the procedure and inform the defendant of their right to address the court on the facts and to provide details of their personal circumstances in order that the court can decide the appropriate sentence.

24A.10 When a defendant indicates a not guilty plea but has not completed the relevant sections of the Magistrates' Courts Trial Preparation Form, the legal adviser must either ensure that the Form is completed or, in appropriate cases, assist the court to obtain and record the essential information on the form.

24A.11 Immediately prior to the commencement of a trial, the legal adviser must summarise for the court the agreed and disputed issues, together with the way in which the parties propose to present their cases. If this is done by way of pre-court briefing, it should be confirmed in court or agreed with the parties.

24A.12 A justices' clerk or legal adviser must not play any part in making findings of fact, but may assist the bench by reminding them of the evidence, using any notes of the proceedings for this purpose, and clarifying the issues which are agreed and those which are to be determined.

24A.13 A justices' clerk or legal adviser may ask questions of witnesses and the parties in order to clarify the evidence and any issues in the case. A legal adviser has a duty to ensure that every case is conducted justly.

24A.14 When advising the justices, the justices' clerk or legal adviser, whether or not previously in court, should:

- (a) ensure that he is aware of the relevant facts; and
- (b) provide the parties with an opportunity to respond to any advice given.

24A.15 At any time, justices are entitled to receive advice to assist them in discharging their responsibilities. If they are in any doubt as to the evidence which has been given, they should seek the aid of their legal adviser, referring to his notes as appropriate. This should ordinarily be done in open court. Where the justices request their adviser to join them in the retiring room, this request should be made in the presence of the parties in court. Any legal advice given to the justices other than in open court should be clearly stated to be provisional; and the adviser should subsequently

repeat the substance of the advice in open court and give the parties the opportunity to make any representations they wish on that provisional advice. The legal adviser should then state in open court whether the provisional advice is confirmed or, if it is varied, the nature of the variation.

24A.16 The legal adviser is under a duty to assist unrepresented parties, whether defendants or not, to present their case, but must do so without appearing to become an advocate for the party concerned. The legal adviser should also ensure that members of the court are aware of obligations under the Victims' Code.

24A.17 The role of legal advisers in fine default proceedings, or any other proceedings for the enforcement of financial orders, obligations or penalties, is to assist the court. They must not act in an adversarial or partisan manner, such as by attempting to establish wilful refusal or neglect or any other type of culpable behaviour, to offer an opinion on the facts, or to urge a particular course of action upon the justices. The expectation is that a legal adviser will ask questions of the defaulter to elicit information which the justices will require to make an adjudication, such as the explanation for the default. A legal adviser may also advise the justices as to the options open to them in dealing with the case.

24A.18 The performance of a legal adviser is subject to regular appraisal. For that purpose the appraiser may be present in the justices' retiring room. The content of the appraisal is confidential, but the fact that an appraisal has taken place, and the presence of the appraiser in the retiring room, should be briefly explained in open court.

## **CrimPD VII SENTENCING J: BINDING OVER ORDERS AND CONDITIONAL DISCHARGES**

J.1 This direction takes into account the judgments of the European Court of Human Rights in *Steel v United Kingdom* (1999) 28 EHRR 603, [1998] Crim. L.R. 893 and in *Hashman and Harrup v United Kingdom* (2000) 30 EHRR 241, [2000] Crim. L.R. 185. Its purpose is to give practical guidance, in the light of those two judgments, on the practice of imposing binding over orders. The direction applies to orders made under the court's common law powers, under the Justices of the Peace Act 1361, under section 1(7) of the Justices of the Peace Act 1968 and under section 115 of the Magistrates' Courts Act 1980. This direction also gives guidance concerning the court's power to bind over parents or guardians under section 150 of the Powers of Criminal Courts (Sentencing) Act 2000 and the Crown Court's power to bind over to come up for judgment. The court's power to impose a conditional discharge under section 12 of the Powers of Criminal Courts (Sentencing) Act 2000 is also covered by this direction.

### **Binding over to keep the peace**

J.2 Before imposing a binding over order, the court must be satisfied so that it is sure that a breach of the peace involving violence, or an imminent threat of violence, has occurred or that there is a real risk of violence in the future. Such violence may be perpetrated by the individual who will be subject to the order or by a third party as a natural consequence of the individual's conduct.

J.3 In light of the judgment in *Hashman*, courts should no longer bind an individual over "to be of good behaviour". Rather than binding an individual over to "keep the peace" in general terms, the court should identify the specific conduct or activity from which the individual must refrain.

### **Written order**

J.4 When making an order binding an individual over to refrain from specified types of conduct or activities, the details of that conduct or those activities should be specified by the court in a written order, served on all relevant parties. The court should state its reasons for the making of the order, its length and the amount of the recognisance. The length of the order should be proportionate to the harm sought to be avoided and should not generally exceed 12 months.

### **Evidence**

J.5 Sections 51 to 57 of the Magistrates' Courts Act 1980 set out the jurisdiction of the magistrates' court to hear an application made on complaint and the procedure which is to be followed. This includes a requirement under section 53 to hear evidence and the parties, before making any order. This practice should be applied to all cases in the magistrates' court and the Crown Court where the court is considering imposing a binding over order. The court should give the individual who would be subject to the order and the prosecutor the opportunity to make representations, both as to the making of the order and as to its terms. The court should also hear any admissible evidence the parties wish to call and which has not already been heard in the proceedings. Particularly careful consideration may be required where the individual who would be subject to the order is a witness in the proceedings.

J.6 Where there is an admission which is sufficient to found the making of a binding over order and / or the individual consents to the making of the order, the court should nevertheless hear suffi-

cient representations and, if appropriate, evidence, to satisfy itself that an order is appropriate in all the circumstances and to be clear about the terms of the order.

J.7 Where there is an allegation of breach of a binding over order and this is contested, the court should hear representations and evidence, including oral evidence, from the parties before making a finding. If unrepresented and no opportunity has been given previously the court should give a reasonable period for the person said to have breached the binding over order to find representation.

### **Burden and standard of proof**

J.8 The court should be satisfied so that it is sure of the matters complained of before a binding over order may be imposed. Where the procedure has been commenced on complaint, the burden of proof rests on the complainant. In all other circumstances, the burden of proof rests upon the prosecution.

J.9 Where there is an allegation of breach of a binding over order, the court should be satisfied on the balance of probabilities that the defendant is in breach before making any order for forfeiture of a recognisance. The burden of proof shall rest on the prosecution.

### **Recognisance**

J.10 The court must be satisfied on the merits of the case that an order for binding over is appropriate and should announce that decision before considering the amount of the recognisance. If unrepresented, the individual who is made subject to the binding over order should be told he has a right of appeal from the decision.

J.11 When fixing the amount of recognisance, courts should have regard to the individual's financial resources and should hear representations from the individual or his legal representatives regarding finances.

J.12 A recognisance is made in the form of a bond giving rise to a civil debt on breach of the order.

### **Refusal to enter into a recognizance**

J.13 If there is any possibility that an individual will refuse to enter a recognizance, the court should consider whether there are any appropriate alternatives to a binding over order (for example, continuing with a prosecution). Where there are no appropriate alternatives and the individual continues to refuse to enter into the recognisance, the court may commit the individual to custody. In the magistrates' court, the power to do so will derive from section 1(7) of the Justices of the Peace Act 1968 or, more rarely, from section 115(3) of the Magistrates' Courts Act 1980, and the court should state which power it is acting under; in the Crown Court, this is a common law power.

J.14 Before the court exercises a power to commit the individual to custody, the individual should be given the opportunity to see a duty solicitor or another legal representative and be represented in proceedings if the individual so wishes. Public funding should generally be granted to cover representation. In the Crown Court this rests with the Judge who may grant a Representation Order.

J.15 In the event that the individual does not take the opportunity to seek legal advice, the court shall give the individual a final opportunity to comply with the request and shall explain the consequences of a failure to do so.

### **Antecedents**

J.16 Courts are reminded of the provisions of section 7(5) of the Rehabilitation of Offenders Act 1974 which excludes from a person's antecedents any order of the court "with respect to any person otherwise than on a conviction".

### **Binding over to come up for judgment**

J.17 If the Crown Court is considering binding over an individual to come up for judgment, the court should specify any conditions with which the individual is to comply in the meantime and not specify that the individual is to be of good behaviour.

J.18 The Crown Court should, if the individual is unrepresented, explain the consequences of a breach of the binding over order in these circumstances.

### **Binding over of parent or guardian**

J.19 Where a court is considering binding over a parent or guardian under section 150 of the Powers of Criminal Courts (Sentencing) Act 2000 to enter into a recognisance to take proper care of and exercise proper control over a child or young person, the court should specify the actions which the parent or guardian is to take.

### **Security for good behaviour**

J.20 Where a court is imposing a conditional discharge under section 12 of the Powers of Criminal Courts (Sentencing) Act 2000, it has the power, under section 12(6) to make an order that a person who consents to do so give security for the good behaviour of the offender. When making such an order, the court should specify the type of conduct from which the offender is to refrain.

## **CrimPD XI OTHER PROCEEDINGS 48A: CONTEMPT IN THE FACE OF THE MAGISTRATES' COURT**

### **General**

48A.1 The procedure to be followed in cases of contempt of court is given in CrimPR Part 48. The magistrates' courts' power to deal with contempt in the face of the court is contained within section 12 of the Contempt of Court Act 1981. Magistrates' courts also have the power to punish a witness who refuses to be sworn or give evidence under section 97(4) of the Magistrates' Courts Act 1980.

### **Contempt consisting of wilfully insulting anyone specified in section 12 or interrupting proceedings**

48A.2 In the majority of cases, an apology and a promise as to future conduct should be sufficient for the court to order a person's release. However, there are likely to be certain cases where the nature and seriousness of the misconduct requires the court to consider using its powers, under section 12(2) of the Contempt of Court Act 1981, either to fine or to order the person's committal to custody.

### **Imposing a penalty for contempt**

48A.3 The court should allow the person a further opportunity to apologise for his or her contempt, and should follow the procedure at CrimPR 48.8(4). The court should consider whether it is appropriate to release the person or whether it must exercise its powers to fine the person or to commit the person to custody under section 12 (2) of the 1981 Act. In deciding how to deal with the person, the court should have regard to the period for which he or she has been detained, whether the conduct was admitted and the seriousness of the contempt. Any period of committal to custody should be for the shortest period of time commensurate with the interests of preserving good order in the administration of justice.