Judicial College

# Adult Court Bench Book

April 2025

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# Section 1: Sentencing

1. The Sentencing Council Magistrates' Court Sentencing Guidelines (MCSG) introduced sentencing guidelines specifically for use in the magistrates' court. The guidelines are not reproduced here but can be accessed using the above link. Further information and supplementary information can be accessed via a tab on each offence guideline page.
2. The following notes are intended to provide you with explanatory information that supplements the pronouncements which can be found on the Judicial College Pronouncement Builder hosted on the Sentencing Council website.

## Community order

3. A pre-sentence report (PSR) can help the court decide whether to impose a community or custodial sentence and, where relevant, what requirements or combination of requirements are most suitable for an offender. Where appropriate and a report is requested, consideration should be given to whether it can be prepared on the same day, or whether an adjournment is required to enable the Probation Service to collect information, liaise with third parties where necessary eg to assess suitability for a treatment requirement and carry out a full risk assessment.
4. The defendant must be aged 18 years or over.
5. A court cannot impose a community order unless it is of the opinion that the offence is serious enough to warrant such a sentence and the offence is punishable with imprisonment.
6. A community order will include one or more of the following requirements:
    a. Alcohol abstinence and monitoring.
    b. Alcohol treatment.
    c. Attendance centre requirement (if defendant under 25 years).
    d. Curfew requirement.
    e. Drug rehabilitation requirement.
    f. Exclusion requirement.
    g. Foreign travel prohibition.
    h. Location and attendance monitoring requirement.
    i. Mental health treatment.
    j. Prohibited activity.
    k. Programme.
    l. Rehabilitation activity (often referred to as RAR).
    m. Residence.
    n. Unpaid work requirement.
7. The requirement(s) must be the most suitable for the offender and the restriction of liberty imposed by the order must be commensurate with the seriousness of the offence(s).
8. Before making an order with two or more requirements, the court must consider whether, in the circumstances of the case, the requirements are compatible with each other.

9. The decision as to the nature and severity of the requirements to be included in the order should be guided by:
    a. the assessment of offence seriousness (low, medium or high)
    b. the purpose(s) of sentencing the court wishes to achieve
    c. the risk of reoffending
    d. the ability of the offender to comply, and
    e. the availability of requirements in the local area.
10. In deciding the restriction of liberty to be imposed under the order, the court may have regard to any time the defendant has been remanded in custody for that case.
11. The order cannot be for longer than three years in the first instance, but may be extended on one occasion for up to six months in order to allow for any requirements to be completed.
12. When imposing a community order, the court must include at least one requirement for the purpose of punishment and/or a fine, unless there are exceptional circumstances which relate to the offender that would make it unjust in all the circumstances to do so.

# Community order and/or a suspended sentence order requirements

## Alcohol abstinence and monitoring requirement

- This can be imposed as a requirement of a community order or a suspended sentence.
- It requires the defendant, during a period specified in the order, to abstain from consuming alcohol, or not to consume alcohol above a specified level in the defendant's body and the defendant must, in ascertaining whether they are complying with the order, submit during the specified period to monitoring in accordance with specified arrangements.
- Before imposing an alcohol abstinence and monitoring requirement, the court must be satisfied that:
    - consumption of alcohol by the defendant is an element of the offence **or** consumption of alcohol was a factor that contributed to the offence being committed
    - the defendant is not dependent on alcohol
    - arrangements for the monitoring of the kind specified are available in the local justice area to be specified.
- An alcohol treatment requirement cannot be imposed with an alcohol abstinence and monitoring requirement.
- An electronic monitoring requirement cannot be imposed with this requirement to secure the electronic monitoring of a defendant's compliance with an alcohol abstinence and monitoring requirement but may be imposed to monitor compliance with any other requirement.

## Alcohol treatment requirement

- It requires the defendant to submit, during a period specified in the order, to treatment by or under the direction of a specified person having the necessary qualifications or experience, with a view to the reduction or elimination of the defendant's dependency on alcohol.
- Before imposing an alcohol treatment requirement, the court must be satisfied that:

  - the defendant is dependent on alcohol
  - this dependency is such as requires treatment, and may be susceptible to treatment, and
  - arrangements have or can be made for the treatment to be specified, including for the reception of the defendant if treatment as a resident is to be specified.
- An alcohol treatment requirement cannot be imposed unless the defendant has expressed a willingness to comply with the requirements.
- An alcohol treatment requirement cannot be imposed with an alcohol abstinence and monitoring requirement.
- The treatment required must be one of the following:
  - treatment as a resident in a specified institution or place
  - treatment as a non-resident patient in or at such institution or place, and at such intervals as may be specified in the order
  - treatment by or under the direction of such person having the necessary qualifications or experience as may be specified.
- The detail as to the nature of the treatment is not to be specified in the order.

## Attendance centre requirement

- It is available only for defendants aged under 25 years.
- It requires the defendant to attend an attendance centre for a specified number of hours.
- The court does not specify a particular attendance centre. It will be identified by the responsible officer as being available for a person of the offender's description and accessible to the offender.
- The aggregate number of hours specified must not be less than 12 or more than 36.
- The attendance centre must be reasonably accessible to the defendant, having regard to available means of access and any other circumstances.
- The defendant will be notified of the first attendance date and time by the responsible officer. Subsequent hours will be fixed by the officer in charge of the attendance centre, taking account of the defendant's circumstances.
- A defendant may not be required to attend an attendance centre on more than one occasion on any one day, or for more than three hours on any occasion.

## Curfew requirement

- It requires the defendant to remain for the periods specified in the order at a place(s) specified in the order.
- The curfew periods can be ordered to apply from one to seven days per week. Different lengths of time can be specified for different days.
- For offence(s) where the offender was convicted before 28 June 2022, the periods of curfew specified in the order can be between two and 16 hours in any 24-hour period, for a maximum of 12 months.

- For offence(s) where the offender was convicted on or after 28 June 2022, the periods of curfew can be between two and 20 hours in any 24-hour period, with a maximum of 112 hours in any period of seven days, beginning with the day of the week on which the requirement first takes effect, and for a maximum term of two years. Before imposing a curfew requirement, the court must obtain and consider information about the place proposed to be specified in the order, including information as to the attitude of persons likely to be affected by the enforced presence of the defendant.
- The court must order electronic monitoring of the curfew requirement unless electronic monitoring is not available in the area where the place specified in the order is situated.
- However, if there is a person without whose co-operation it will not be practicable to secure monitoring, the electronic monitoring may not be included in the order without their consent.
- Where electronic monitoring is ordered, the court must identify the person responsible for the monitoring.

## Drug rehabilitation requirement

- It requires the defendant to:
  - submit to treatment by or under the direction of a specified person having the necessary qualifications or experience with a view to the reduction or elimination of the defendant's dependency on or propensity to misuse drugs, and
  - provide samples for the purpose of ascertaining whether there are drugs in their body.
- Before imposing a drug rehabilitation requirement, the court must be satisfied that:
  - the defendant is dependent on or has a propensity to misuse drugs
  - this dependency or propensity is such as requires and may be susceptible to treatment, and
  - arrangements have or can be made for the treatment to be specified, including for the reception of the defendant if treatment as a resident is to be specified.
- The requirement can only be imposed if it has been recommended to the court as being suitable for the offender by the Probation Service.
- The requirement cannot be imposed unless the defendant has expressed a willingness to comply with the requirements.
- The treatment required must be one of the following:
  - treatment as a resident in a specified institution or place, or
  - treatment as a non-resident patient in or at such institution or place, and at such intervals, as may be specified in the order.
- The detail as to the nature of the treatment is not to be specified in the order.
- If the treatment and testing period is longer than 12 months, the order must provide for periodical review hearings at not less than one-month intervals at which the defendant must attend. The responsible officer will prepare a report for the hearing detailing the defendant's progress, including details of test results. If the treatment and testing period is shorter than 12 months, the court may order periodical review hearings.

## Exclusion requirement

- It prohibits the defendant from entering a specified place or area for the period specified in the order.
- An exclusion requirement in a community order cannot be for more than two years.
- The exclusion requirement may provide for the prohibition only to apply for certain periods and may specify different places for different periods or days.
- The court must order electronic monitoring of the exclusion requirement, unless electronic monitoring is not available in the area where the place specified in the order is situated.
- However, if there is a person without whose co-operation it will not be practicable to secure monitoring, the electronic monitoring may not be included in the order without their consent.
- Where electronic monitoring is ordered, the court must identify the person responsible for the monitoring.

## Foreign travel prohibition requirement

- It prohibits the defendant from travelling on a day or days, or for a specific period specified in the order, to any country outside the British Islands specified in the order.
- A day specified in a foreign travel prohibition requirement cannot be a day which falls outside the period of 12 months, beginning with the day the order was made.
- A foreign travel prohibition requirement cannot be for more than 12 months, starting with the day the order was made.

## Location and attendance monitoring requirement

- This can be imposed as a requirement of a community order or a suspended sentence; either to secure the defendant's compliance with another requirement, or as a requirement in its own right.
- The defendant is fitted with an electronic tag and monitored by GPS, which can be used for:
  - prohibiting the defendant from entering a specified place or area for the period specified in the order
  - monitoring attendance at a particular activity or appointment
  - monitoring the defendant's location.
- The defendant must have a fixed address with an electricity supply.
- The exclusion requirement may provide for the prohibition only to apply for certain periods and may specify different places for different periods or days.
- Probation will produce a map defining the exclusion/inclusion zone, usually as part of the recommendation within a pre-sentence report (PSR).

## Mental health treatment requirement

- It requires the defendant to submit, during a period or periods specified in the order, to treatment by or under the direction of a registered medical practitioner or a chartered psychologist (or both for different periods), with a view to the improvement of the defendant's medical condition.

- The treatment required must be one of the following:
  - treatment as a resident patient in an independent hospital or care home (but not in hospital premises where high-security psychiatric services are provided), or
  - treatment as a non-resident patient at such institution or place as may be specified in the order, or
  - treatment by or under the direction of such registered medical practitioner or chartered psychologist (or both) as may be specified in the order.
- The detail as to the nature of the treatment is not to be specified in the order.
- Before imposing a mental health treatment requirement, the court must be satisfied that:
  - on the evidence of a medical practitioner, the mental condition of the defendant requires, and may be susceptible to, treatment but is not such as to warrant the making of a hospital or guardianship order, and
  - arrangements have been or can be made for the treatment to be specified, including for the reception of the defendant if treatment as a resident patient is to be specified, and
  - the defendant has expressed a willingness to comply with the treatment requirement.

## Prohibited activity requirement

- It requires the defendant to refrain from participating in the activities specified in the order:
  - on a specified day or days, or
  - during a specified period.
- Before including an activity requirement in an order, the court must consult the Probation Service and must be satisfied that it is feasible to secure compliance with the requirement. This will usually require some form of report from the Probation Service.
- The prohibited activity requirement may forbid the defendant having contact with a named person(s), or from participating in certain activities. It can include a requirement that the defendant does not possess, use or carry a firearm.

## Programme requirement

- It requires the defendant, in accordance with instructions from the supervising officer, to participate in an accredited programme at a specified place and for a specified number of days. While at that place, the defendant must comply with instructions given by, or under the authority of, the person in charge of the programme.
- A programme requirement may be ordered alongside a rehabilitation activity requirement. This enables the supervising officer to arrange pre-programme work sessions, post-programme follow-up and motivational activities for the defendant before, during and after the programme.
- If the activity requires the co-operation of a third party (other than the defendant and the responsible officer), their consent must be obtained.

## Rehabilitation activity requirement (RAR)

- The court will decide whether a rehabilitation activity requirement is appropriate and specify the maximum number of days the offender must undertake any activities. The court will set

the timeframe for the activities to be undertaken but will not specify the activities (this will be a matter for the responsible officer).

- The responsible officer will decide who the offender should attend appointments with and how frequently, where any appointments and activities will take place and what activities are appropriate.
- The activities that responsible officers may instruct offenders to participate in include:
  - activities forming an accredited programme
  - activities with a reparative purpose, such as restorative justice activities.
- There is no maximum limit to the number of days of activities which can be imposed, however they cannot exceed the overall length of the community order or suspended sentence order.
- Activities must "promote the offender's rehabilitation" but can also serve other purposes, such as reparation.
- The court must give an end date for the overall community order, and this will normally be stated by the court as also being the end date for the rehabilitation activity requirement.
- The defendant must comply with the instructions of the responsible officer to participate in activities on specified days, and must comply with instructions given by or under the authority of the person in charge of the activities.
- If the activity requires the co-operation of a third party (other than the defendant and the responsible officer), their consent must be obtained.

## Residence requirement

- It requires the defendant to reside at a specified place during the period specified in the order.
- The order can provide that, with prior approval of the responsible officer, the defendant is not prohibited from residing at a place other than that specified in the order.
- Before imposing a residence requirement, the court must consider the home surroundings of the defendant.
- The court cannot specify a hostel or other institution as the place where the defendant must reside, except on the recommendation of a probation officer.

## Unpaid work requirement

- It requires the defendant to perform unpaid work at such times as instructed by the responsible officer.
- The court must be satisfied that the defendant is suitable to perform work under such a requirement. This will usually require some form of report from the Probation Service.
- The requirement can be for a minimum of 40 hours and a maximum of 300 hours in aggregate. The hours must be completed within 12 months.
- A community order with an unpaid work requirement will remain in force until the hours have been completed.

## Criminal behaviour orders (CBO)

13. Criminal behaviour orders (CBO) replaced anti-social behaviour orders (ASBO) with effect from 20 October 2014.
14. This can be made as an order ancillary to a criminal conviction.
15. Any application will be made by the prosecuting authority. In a majority of cases, this will be the Crown Prosecution Service (CPS) and/or the police. However, it also includes local councils. A court cannot make an order of its own volition.
16. An offender must be sentenced to at least a conditional discharge for the criminal offence(s). An order cannot be made where the offender is sentenced to an absolute discharge.
17. It is an order designed to tackle the most serious and persistent anti-social individuals who are convicted before criminal courts. The anti-social behaviour to be addressed does not need to be connected to the criminal behaviour which led to the conviction, although if there is no link, the court will have to consider whether making an order is appropriate.
18. A CBO may prohibit the offender from doing anything described in the order ("a prohibition") and/or require the offender to do anything described in the order ("a requirement").
19. The court may only make a CBO if it is satisfied, beyond reasonable doubt, that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to one or more persons and that making an order will help in preventing the offender from engaging in such behaviour.
20. There is no test of necessity as there was with ASBOs.
21. Any order must be reasonable and proportionate.
22. The minimum duration for a CBO is two years. An order may be for a specified or indefinite period (ie until further order). An order may specify different periods for which particular prohibitions or requirements have effect.
23. A CBO takes effect on the day it was made, unless the offender is already subject to a CBO, in which case it may take effect on the day on which the previous order expires.
24. Where the court thinks it just to do so, it may order an interim CBO where an offender is convicted but the proceedings are adjourned for sentence. Where the offender does not attend the adjourned hearing: the proceedings may be further adjourned; the court may issue a warrant for the offender's arrest; or the court may proceed to hear the case in the offender's absence.
25. Where an offender is sentenced, the court may adjourn the application for a CBO. However, it cannot hear any application once sentence has taken place.

## Custodial sentences

26. The legal adviser should be consulted before any custodial sentence is imposed, in order to clarify statutory requirements such as duration, reasons and concurrent/consecutive imprisonment.
27. A PSR must be obtained before the court reaches a decision to impose a custodial sentence, unless the court gives reasons as to why a PSR is unnecessary.
28. The defendant should be legally represented (seek advice from the legal adviser if they are not).

29. The court must not pass a custodial sentence, unless it is of the opinion that the offence, or a combination of the offence and one or more offences associated with it, is so serious that neither a fine alone nor a community sentence can be justified for the offence. Magistrates' court powers are restricted to a maximum six months' imprisonment for a single summary offence but increase to 12 months where there is more than one either-way offence. However, if the court is dealing with a single either-way offence which was committed after 2 May 2022 and the defendant was convicted before 30 March 2023, or where the conviction is on or after 18 November 2024, the maximum sentence is 12 months as magistrates were granted increased sentencing powers.

30. The above paragraph does not, however, prevent the court from imposing a custodial sentence if:

    a. the defendant fails to express a willingness to comply with a requirement that the court proposes to include in a community order and which requires an expression of willingness, or

    b. the defendant fails to comply with an order for pre-sentence drug testing.

31. The approach to imposing a custodial sentence should be as follows:

    a. Is it unavoidable that a custodial sentence be imposed?

    b. What is the shortest term commensurate with the seriousness of the offence?

    c. Can the sentence be suspended?

    The court must explain in open court its reasons for imposing a custodial sentence.

32. Where the court imposes a custodial sentence and the offender has spent time on bail with a qualifying bail curfew and an electronic monitoring condition (at least nine hours in any given day) for that offence or a related offence, the court must announce the credit period which counts towards time served.

33. The legal adviser will assist with the calculation, but the court must announce the number of days which the offender was subject to the relevant conditions, any period to be deducted and the final credit period which is to count as time served by them as part of the sentence. Any errors in the calculation can be resolved administratively without the offender coming back to court.

34. The court no longer has the same responsibility in respect of time spent on remand in custody. This will be calculated administratively.

35. When a magistrates' court passes a custodial sentence, the offender will be supervised in the community for a maximum period of 12 months after their release from custody. This will initially be on licence and then may be on post-sentence supervision (PSS). The dates of the licence, any period of PSS and any requirements attached to the licence or PSS are set administratively on behalf of the Secretary of State. They are not within the remit of, nor can they be amended by, the court. Breaches of licence can only be dealt with by way of administrative recall and the court has no jurisdiction over this. Breaches of PSS are dealt with by the magistrates' court, irrespective of whether the original sentence was imposed by the magistrates' court or the Crown Court.

## Suspended sentence order (SSO)

36. An SSO is a custodial sentence. A suspended sentence must not be imposed as a more severe form of community order. A court should be clear that they would impose an immediate custodial sentence if the power to suspend were not available. If not, a non-

custodial sentence should be imposed. The legal adviser should be consulted before any custodial sentence is imposed, in order to clarify statutory requirements.

37. A PSR must be obtained before imposing a suspended prison sentence, unless the court gives reasons as to why a report is unnecessary.

38. Only available for defendants aged 18 and over.

39. A court cannot impose a custodial sentence unless it is of the opinion that the offence(s) is so serious that neither a fine alone nor a community sentence can be justified for the offence(s). A custodial sentence must be for the shortest term that is, in the opinion of the court, commensurate with the seriousness of the offence. The custodial sentence must be at least 14 days, but no more than two years.

40. When sentencing for a single imprisonable summary-only offence or an either-way offence which was committed prior to 2 May 2022, magistrates' sentencing powers are restricted to six months' imprisonment.

41. For either-way offences that were committed after 2 May 2022 and the defendant was convicted before 30 March 2023, and either-way offences committed on or after 18 November 2024, the magistrates' increased maximum powers of 12 months apply. It remains 12 months even where there is more than one either-way offence. Sentences of between 12 months and two years are only available in the Crown Court.

42. The custodial sentence can be suspended for a period of between six months and two years (the operational period). Any requirements imposed by the court must be completed during the supervision period. The supervision period can be between six months and two years but cannot last longer than the operational period.

43. A suspended prison sentence may include one or more of the following requirements:

    a. Alcohol abstinence and monitoring.

    b. Alcohol treatment.

    c. Attendance centre requirement (if defendant under 25 years).

    d. Curfew requirement.

    e. Drug rehabilitation requirement.

    f. Exclusion requirement.

    g. Foreign travel prohibition.

    h. Location and attendance monitoring requirement.

    i. Mental health.

    j. Prohibited activity.

    k. Programme.

    l. Rehabilitation activity (often referred to as RAR).

    m. Residence.

    n. Unpaid work requirement.

    See Community order and/or a suspended sentence order requirements

44. Before making an order with two or more requirements, the court must consider whether the requirements are compatible with each other.

45. The order can provide for periodical review hearings at specified intervals at which the defendant must attend. The responsible officer will prepare a report for the hearing detailing the defendant's progress in complying with the community requirements of the order.
46. A defendant who fails to comply with the community requirements of the order, or is convicted of any offence during the operational period of the order, can be ordered to serve the whole or part of the prison sentence originally suspended. The starting point where an SSO has been breached is activation of the sentence.
47. Where the court is satisfied that it would be unjust to activate the sentence, it may allow the SSO to continue. Where the original order included one or more requirements, the court has the following options:
    a. Make the order more onerous.
    b. Extend the supervision period.
    c. Extend the operational period (up to the maximum two-year period).
    d. Impose a fine up to £2,500.
48. Where the original order did not include any requirements, option a. above is not available.

## Minimum mandatory custodial sentences

49. The legal adviser should be consulted before any custodial sentence is imposed in order to clarify statutory requirements.
50. Where a defendant aged 18 or over is convicted of an offence of threatening with a bladed article or offensive weapon in public or on school premises, the court must impose a custodial sentence of at least six months' imprisonment unless it is of the opinion that there are particular circumstances that relate to the offence or offender which would make it unjust to do so in all the circumstances.
51. A community order cannot be imposed where the mandatory minimum sentence criteria is met.

## Statutory aggravating factors which increase sentences for hate crimes

52. Where a court is considering the seriousness of an offence (other than any offence charged as a racially or religiously aggravated offence) and it was racially or religiously aggravated, the court must treat that as an aggravating factor and state this in open court.
53. Where a court is considering the seriousness of an offence and any of the following circumstances apply, the court must treat that as an aggravating factor and state this in open court:
    a. at the time of the offence, or immediately before or after, the offender demonstrated towards the victim of the offence hostility based on the sexual orientation (or presumed), or disability (or presumed) of the victim, or the victim being (or being presumed to be) transgender, or
    b. the offence was motivated (wholly or partly) by hostility towards persons who are of a particular sexual orientation, or who have a disability, or a particular disability, or who are transgender.
54. References to being transgender include references to being transsexual, or undergoing, proposing to undergo, or having undergone a process, or part of a process, of gender reassignment.

55. The prosecution should bring such offences to the court's attention as the victim may have completed a victim personal statement (VPS). This may be read out in court as part of the sentencing exercise.

## Deferment of sentence

56. This sentencing option should be rarely imposed now as the more serious offences may be dealt with by way of a community order, with or without requirements.
57. The court must be satisfied that it is in the interests of justice to defer sentence having regard to the nature of the offence and the character and circumstances of the defendant.
58. The purpose of deferment is to allow the court to have regard to:
    a. the defendant's conduct after conviction (including, where appropriate, the making of reparation for the offence), and
    b. any change in the defendant's circumstances.
59. The defendant must consent to the deferment and must undertake to comply with any requirements as to their conduct that the court considers appropriate during deferment. The requirements can include a requirement as to residence (for the whole or part of the deferment period) and to make appropriate reparation.
60. The court can appoint a supervisor to monitor the defendant's compliance with the requirements. The supervisor can be an officer of the local probation board or anyone else the court considers appropriate. The person must consent to appointment as supervisor.
61. The court cannot defer for more than six months.
62. The court cannot remand the defendant when deferring sentence.
63. When subsequently sentencing the defendant, the court can have regard to the extent to which the defendant has complied with any requirements imposed by the court.
64. If the defendant fails to attend on the deferment date, the court has power to issue a summons or arrest warrant.
65. The court can deal with the offender before the end of the period of deferment if:
    a. they are convicted of another offence during the deferment period, or
    b. they fail to comply with one or more of the requirements with which they have undertaken to comply.
66. If the court wishes to deal with the defendant before the end of the deferment period (because they have either been convicted of another offence during deferment or reported to have failed to comply with the requirements), the court has power to issue a summons or arrest warrant.

## Discharges

### Absolute discharge

67. The court may make an order if it thinks it is inappropriate to punish given the nature of the offence and the character of the offender.
68. The court can make orders ancillary to sentence – endorsement, penalty points, disqualification, compensation and costs, etc.

69. The offender is not required to consent to the order.
70. It differs from “no separate penalty”, which is used to dispose of a case where a penalty is imposed on the same occasion for other offences.

### Conditional discharge

71. The court may make a conditional discharge if it thinks that it is inappropriate to punish given the nature of the offence and the character of the defendant.
72. The one condition of the order is that the defendant stays out of trouble. If they are convicted of an offence committed during the life of the order, they may be sentenced for the original offence. No other conditions may be ordered.
73. An order can be for up to a maximum of three years. There is no minimum term.
74. The court can make ancillary orders to sentence – endorsement, penalty points, disqualification, compensation and costs, etc.
75. The order must be explained in plain language so it is understood. The offender is not required to give consent.
76. A conditional discharge cannot be ordered for breach of a CBO or on a youth who has been given a final warning less than two years before.

## Financial orders

### Fine and ancillary orders of compensation and costs

77. The amount of the fine fixed by the court reflects the seriousness of the offence and is the punitive element of the sentence.
78. For offences punishable on summary conviction by a maximum fine of £5,000 (level 5) there is now no statutory upper limit on the amount that can be ordered in a magistrates’ court. Limits on fines on conviction by the magistrates' court, in such cases, are therefore removed. However, there are some exceptions. These include, but are not restricted to, summary proceedings under the Environmental Protection Act 1990, where the maximum was previously expressed as one-tenth of level 5, and some offences under the Anti-social Behaviour Act 2003, where the maximum was previously a fine not exceeding £20,000. Where the offence is triable either-way and certain criteria apply, you will be advised by your legal adviser as these should be dealt with by a district judge.
79. The court must give priority to the payment of compensation. It can be a sentence in its own right or ordered as ancillary to another sentence. See Compensation as a sentence in its own right below for notes relating to compensation orders.
80. When assessing what can be paid, the order of priority is:
    a. compensation
    b. surcharge
    c. fine
    d. costs.
81. In fixing the amount, the court must take into account the circumstances of the case, including the financial circumstances of the offender. The defendant should have completed a statement of means form, if not, the court should order that one be completed.

82. The correct approach to imposing fines is detailed in the Fines and financial orders section of the Explanatory Material in the MCSG.

83. The court has discretion as to whether to order costs and how much to order. The court must take account of the defendant's means and ability to pay before making an order.

84. For wasted costs or costs from central funds, seek legal advice.

85. Effective fine enforcement begins at the date the fine is imposed. See Section 8: Effective fine enforcement for more guidance on enforcement options.

## Compensation as a sentence in its own right

86. Compensation has priority over the surcharge, fines and costs.

87. It can be used as a sentence in its own right or as an ancillary order to another sentence.

88. There is no statutory limit on the amount of compensation that can be ordered in a magistrates' court.

89. Starting points when calculating compensation for personal injury are given in the Suggested starting points for physical and mental injuries section of the Explanatory Materials in the MCSG.

90. The court must consider making a compensation order in every case where loss, damage or injury has resulted from the offence, whether or not an application is made.

91. The court must give reasons if it decides to make no order.

92. Compensation should only be ordered in clear, uncomplicated cases. If it is difficult to assess the claim or if it is complex, seek legal advice.

93. Different rules apply where compensation is sought in road traffic cases, and legal advice should be sought.

94. The financial means of the defendant must be taken into account. Common practice is to look to the defendant to pay the total financial penalty within 12 months.

95. The compensatee must be named and the order must be for a specified amount.

96. Whenever compensation is payable (whether as a sentence in its own right or as an ancillary order) the court must, where applicable, make an attachment of earnings order or a deduction from the defendant's benefit. See Section 8 – Effective fine enforcement for further guidance.

97. The court must make a collection order unless it is impractical or inappropriate. This enables the fines officer to impose enforcement sanctions if the defendant fails to pay as ordered.

98. Where the court makes both a collection order and an order that deductions be made from a defendant's benefit or earnings, the court must also fix reserve terms for payment if the attachment of earnings order/deductions from benefits order is not successful.

## The surcharge

99. With effect from 1 October 2012, payment of a surcharge has been extended to sentences other than just financial penalties. Revenue raised from this surcharge is used to fund victim services through the Victim and Witness General Fund.

100. The amount payable is dependent on when the offence(s) were committed, the offender's age and the sentence imposed. The amounts payable increased for offences committed on or after 16 June 2022. As a result of a Court of Appeal decision, with effect from 8 April

2020, where there are several disposals of the same type, the correct method of calculating the total surcharge payable is to base the sum on the total of all impositions, not the highest single imposition. Where there is more than one type of sentence, the total surcharge payable is based on the higher amount of the two.

| **Offenders aged 18 and above** | **Surcharge applicable for offences committed on or after 14 April 2020** | **Surcharge applicable for offences committed on or after 16 June 2022** |
|---|---|---|
| Conditional discharge | £22 | £26 |
| Fine | 10% of the fine but subject to a minimum of £34 and a maximum of £190. | 40% of the fine with a maximum of £2,000 |
| Community order | £95 | £114 |
| Suspended sentence order and immediate custodial sentences | Where the sentence is six months or less, £128.<br>Where the sentence is over six months, £156. | Where the sentence is six months or less, £154.<br>Where the sentence is over six months, £187. |

| **Person not an individual (eg corporations)** | **Surcharge applicable** | **Surcharge applicable** |
|---|---|---|
| Conditional discharge | £22 | £26 |
| Fine | 10% of the fine but subject to a minimum of £34 and a maximum of £190. | 40% of the fine with a maximum of £2,000. |

| **Offenders aged under 18** | **Surcharge applicable** | **Surcharge applicable** |
|---|---|---|
| Conditional discharge | £17 | £20 |
| Fine, referral order, youth rehabilitation order or community order. | £22 | £26 |

## Hospital order

101. The legal adviser should be consulted if a hospital order is being considered.
102. This is available for adults charged with an offence punishable with imprisonment.
103. The defendant must be convicted or the court satisfied that the defendant committed the act or omission alleged.

104. The court needs to be satisfied on the evidence from two registered medical practitioners that the defendant is suffering from mental illness, psychopathic disorder, severe mental impairment, or mental impairment, and that:
    a. the mental disorder from which the defendant is suffering is of a nature and degree which makes it appropriate for them to be detained in a hospital for medical treatment and, in the case of psychopathic disorder or mental impairment, that such treatment is likely to alleviate or prevent a deterioration in the condition, and
    b. that having regard to all the circumstances, including the nature of the offence and the character and antecedents of the offender, and to other available methods of dealing with them, that the most suitable method of disposing of the case is by means of a hospital order.
105. The court must be satisfied that arrangements have been made for the defendant's admission to the hospital within 28 days of the making of the order.
106. The initial order will be for up to six months. This can be renewed.
107. The date of release is a matter for the hospital authorities and therefore if the case is serious and the public needs to be protected from serious harm from the defendant, the court should commit to the Crown Court so that an order that places restrictions on the discharge of the defendant (restriction order) can be considered.

## Referral order

108. Available for youths aged 10 to 17 years. The advice of the legal adviser should be sought when dealing with youths in the adult court.
109. This is an order referring the youth to a Youth Offender Panel, which will agree a programme of behaviour with the youth, with the aim of preventing further offending behaviour.
110. The referral order provisions apply where the court is not considering imposing a custodial sentence, hospital order, absolute or conditional discharge. In some circumstances, a referral order is compulsory.
111. The adult court shall make the order if the compulsory conditions apply. It may make the order if the discretionary conditions apply. It is not necessary to remit to the youth court but seek the advice of your legal adviser.
112. Referral is compulsory if the youth pleads guilty to an imprisonable offence and to any associated offence and has never been found guilty, bound over, or given a conditional discharge on a previous occasion.
113. The order lasts for between three and 12 months. The order runs from the date that the referral contract is signed.
114. The parent/guardian must be ordered to attend the meetings of the Youth Offender Panel where the youth is aged 10 to 16 years. For 17 year olds, the court may order parental attendance at the meetings.

## Ancillary orders

### Bind over

115. A bind over is an order whereby a person enters into a recognisance (ie a sum of money) to keep the peace for a period fixed by the court.

116. A court may bind over any person appearing before it, whether as a defendant or as a witness, although most commonly it will be the defendant.
117. A defendant can be bound over either following the laying of a complaint (usually by the police) or as an order ancillary to sentence.
118. A bind over is not a punishment but is to prevent apprehended danger of a breach of the peace. There should therefore be information before the court to justify the conclusion that there is a real risk of a breach of the peace unless action is taken to prevent it.
119. A breach of the peace must involve violence or the threat of violence, which may be from the defendant or from a third party as a natural consequence of the conduct of the person the court intends to bind over. The court must be satisfied that in all the circumstances the conduct of the person it intends to bind over was unreasonable. In considering future conduct, it must be shown that there is a real risk, not a mere possibility, of such conduct continuing and of a breach of the peace occurring.
120. The court must inform the person it intends to bind over of the court's intention and allow them an opportunity to make representations.
121. The court must have regard to the defendant's means before fixing the amount of the recognisance.
122. The defendant's consent is required.
123. The bind over must be for a fixed period and should specify the conduct or activity to be refrained from.
124. In addition to a requirement to keep the peace, the bind over can name a person(s) for whose special protection it is made.
125. If the defendant fails to agree to the bind over, they may be committed to custody. Legal advice should be sought before imposing a period in custody.

## Exclusion order – licensed premises

126. This can only be made as an ancillary order to a sentence of the court.
127. It can only be made if the offence that is being sentenced was committed on licensed premises and in committing the offence the defendant resorted to violence or offered or threatened to resort to violence.
128. The court cannot make a blanket order – each of the licensed premises where the order applies must be named in the order.
129. An exclusion order can be for a minimum of three months and a maximum of two years.

## Football banning order

130. Football banning orders can be made as ancillary orders when the defendant is convicted and sentenced for a "relevant offence". The legal adviser will be able to advise as to what constitutes a relevant offence.
131. The court must make such an order if it is satisfied that making the order would help to prevent violence or disorder at or in connection with any regulated football matches. If the court is not so satisfied, it must give the reasons for this in open court.
132. If the defendant receives a custodial sentence, the maximum order is 10 years and the minimum six years. For other sentences, the maximum is five years and the minimum is three years.

133. Football banning orders can also be applied for by the police on complaint.
134. Before making an order on complaint, the court must be satisfied that the respondent has at any time caused or contributed to any violence in the UK or elsewhere and that there are reasonable grounds to believe that making a banning order would help prevent violence or disorder at or in connection with any regulated football matches.
135. An order made on complaint can be for a maximum of three years and a minimum of two years.
136. The effect of the order must be explained in ordinary language and must require the person to report to a police station in England and Wales within five days of the making of the order.

## Parenting order

137. Seek advice from the legal adviser when dealing with youths in the adult court.
138. A parenting order is made in respect of a parent or guardian with a view to providing help and support from the Youth Justice Service (YJS), including attendance at counselling or guidance sessions.
139. Otherwise, when a child or young person is sentenced, the court should consider making a parenting order. If the defendant is under 16 years old, then the court must make an order unless it gives reasons as to why an order is not appropriate.
140. The order can have two elements:
    a. To attend counselling or guidance sessions for a period not exceeding three months.
    b. Any requirements which are considered desirable in the interests of preventing a further offence.
141. The maximum length of an order is 12 months.
142. The court should, as far as is practicable, avoid any conflict with the parent's or guardian's religious beliefs, work or education.
143. If the parent or guardian breaches the order, they commit a criminal offence punishable by a fine up to level 3 (£1,000).

## Restraining order

144. This order is available where the defendant is convicted of any offence (not just offences under s.2 (harassment) or s.4 (putting a person in fear of violence) of the Protection from Harassment Act 1997).
145. If the defendant is acquitted of an offence, the court may make a restraining order if it considers it necessary to do so to protect a person from harassment by the defendant.
146. It cannot be a sentence in its own right but is imposed as an ancillary order.
147. It may only be imposed upon sentence or acquittal and not while on remand.
148. It can be for a fixed period or until further order.
149. The order will name the persons subject to the order and clearly set out the behaviour that is prohibited.
150. The prosecutor, defendant or any other person named in the order can apply at a subsequent date for the order to be varied or discharged.

## Contingent destruction orders

151. The court must order the immediate destruction of a dog where the defendant is convicted of certain offences relating to dangerous dogs bred for fighting (the “prohibited type”) and where the defendant is convicted of not keeping a dog under proper control and it injures any person (the “aggravated offence”).

152. A court is not required to order the destruction if it is satisfied that the dog does not constitute a danger to public safety.

153. When determining if the dog is a danger to public safety, the court must have regard to the temperament of the dog, its past behaviour and whether the person in charge of the dog is a fit and proper person. In deciding whether the person is a fit and proper person, the court should take into account:

    a. whether the person has any relevant previous convictions or cautions

    b. any previous breaches of court orders, including contingent destruction orders made in relation to the same or a different dog

    c. any failure to comply with conditions if the prohibited dog was released by the police under an interim exemption scheme pending final court determination.

    The court may also have regard to any other relevant factors, such as the nature and suitability of the premises that the dog is to be kept at by the person or whether there are other animals present at the premises. If the court is not satisfied that the person in charge of the dog is a fit and proper person, it should order the destruction of the dog.

154. If the immediate destruction is not ordered and the dog is a prohibited type, the court must make a contingent destruction order. A certificate of exemption must be obtained within two months of the contingent destruction order being made. Failure to do so may result in the dog being seized and destroyed. The certificate will require that the dog must be micro-chipped, insured and neutered and, when in public, the dog must be muzzled and held securely on a lead. The agency responsible for issuing the certificate may also attach additional conditions to the certificate.

155. Failure to obtain the certificate or to comply with any condition attached to the certificate may result in the dog being seized and destroyed and is a separate offence.

156. If the immediate destruction is not ordered and the dog is not a prohibited type, the court may make a contingent destruction order.

157. Where the dog is not a prohibited type, the court may make an order that the dog is kept under proper control. The court may specify the measures to be taken for keeping the dog under proper control (eg muzzling, keeping it on a lead, etc). Failure to keep the dog under proper control may result in the dog being seized and destroyed.

158. Where a destruction order is made, the court may also order the defendant to pay the reasonable expenses of destroying the dog and of keeping it pending its destruction.

## Disqualification orders (animal-related)

159. Where a person is convicted of an offence under the Dangerous Dogs Act 1991, offences relating to hare coursing under the Police Crime Sentencing and Courts Act 2022 or one to which the Animal Welfare Act 2006 applies, the court may disqualify them from having custody of dogs or from owning and/or keeping animals respectively.

160. A disqualification under the Animal Welfare Act 2006 may be a sentence in its own right and can specify all animals or a particular type.

161. Under the Animal Welfare Act, the court may also disqualify a person from:

    a. participating in the keeping of animals

    b. being party to an arrangement under which they are entitled to control or influence the way in which animals are kept

    c. dealing in animals

    d. being involved with the transportation of animals.

162. If you are considering this type of order, consult your legal adviser.

163. Breach of any disqualification order is an offence.

# Section 2: Road traffic

## Penalty point endorsement and disqualification

1. Where an offence is endorsable, the court must order that the defendant's driving licence be endorsed with particulars of the offence and the points appropriate to that offence.
2. Where a person is convicted of two or more offences committed on the same occasion, points will only be imposed for one offence.
3. In certain limited circumstances, the court can find special reasons for not ordering endorsement. The court must give its reasons and these must be recorded in the court register. Seek legal advice if special reasons are raised.

### Obligatory disqualification

4. A group of offences, most notably drink-drive offences, carry obligatory disqualification for a minimum of 12 months. This mandatory minimum period may be extended to two or three years if earlier convictions or disqualification(s) are relevant. The legal adviser will be able to provide additional advice.
5. In certain limited circumstances, the court can find special reasons for not disqualifying or for disqualifying for a shorter period. The court must give its reasons. Seek legal advice if special reasons are raised. Special reasons are not the same as finding exceptional hardship reasons.

### Discretionary disqualification

6. The court has discretion to order disqualification for any endorsable offence. Penalty points and disqualification cannot be imposed for the same offence.

### Totting up disqualification

7. The defendant is a "totter" if they have 12 or more points endorsed on their licence for offences committed within a span of three years.
8. The minimum period of disqualification is six months but may be longer if earlier disqualifications are relevant. The legal adviser will be able to provide additional advice.
9. The court may decide not to disqualify or to order a reduced period if it finds, after hearing evidence, that to do so would cause the defendant "exceptional hardship". These are strict and clearly defined, and the advice of the legal adviser should be sought if this matter is raised.

### Drink-driving disqualification and rehabilitation courses

10. A group of offences carry obligatory disqualification for a minimum of 12 months. These include:
    a. driving or attempting to drive a motor vehicle when unfit through drink or drugs
    b. driving or attempting to drive a motor vehicle with excess alcohol
    c. driving or attempting to drive a motor vehicle and then failing to provide a specimen for analysis.

11. The mandatory minimum disqualification period will be three years when the defendant has, within 10 years preceding the commission of the current offence, been convicted of one of these offences.
12. In certain limited circumstances, the court can find special reasons for not disqualifying or for disqualifying for a shorter period. The court must give its reasons and these must be recorded in the court register. Seek legal advice if special reasons are raised.
13. If the defendant agrees to participate in a rehabilitation course, the court can order that the drink-drive disqualification be reduced by a minimum of three months, up to a maximum of one quarter of the original disqualification.
14. A scheme must be available in the area.
15. The effect of the order and the fees payable must first be explained to the defendant. The fees are payable by the defendant.
16. The defendant needs to give their consent to the making of the order and identify their chosen course provider.
17. The course must be completed at least two months before the end of the reduced disqualification period.
18. If the course is not completed, the full disqualification will continue to run.

## Interim disqualification

19. The court can order interim disqualification after conviction if the offence carries disqualification.
20. This can be used when adjourning for reports or for other reasons, such as:
    a. committing to the Crown Court for sentence
    b. remitting to another court for sentence, or
    c. when deferring sentence.
21. The order lasts for six months or until sentence, whichever is sooner.
22. The length of disqualification imposed at sentence will be reduced by the length of the interim disqualification served.

## Disqualification until test passed

23. Where the sentencing court has power to order obligatory or discretionary disqualification, it can order disqualification until a driving test is taken and passed.
24. This provision may be ordered in addition to any order of disqualification or as an order in its own right.
25. Where the defendant is not otherwise disqualified, they may drive subject to complying with the provisional licence conditions.
26. The prime reason for making an order is in the interests of road safety. It is not intended to be used as an additional punishment.
27. If the offence is one that carries obligatory disqualification, any re-test ordered will be an extended driving test; otherwise it will be an ordinary re-test. Some offences carry an obligatory extended re-test, eg dangerous driving.

### Non-endorsable driving disqualification

28. The court may order a disqualification from driving when a defendant is convicted of any offence, instead of or in addition to dealing with them in any other way.

29. Although a disqualification can be imposed in respect of any offence, it is suggested that there should be a link between the offending behaviour and use of vehicle. Examples of offences where a disqualification order of this type might therefore be appropriate are: kerb crawling, misuse of vehicles off-road, abandoned vehicles and offences involving “road rage”.

30. The disqualification can be made for any period that the court considers appropriate.

31. There is no power to order a re-test at the end of the disqualification.

32. The defendant will need to apply for a new photocard licence at the end of the disqualification period.

33. The court should explain the reasons for the disqualification as part of the reasons given for sentence.

### Extension of disqualification period – immediate custodial sentence

34. Where a disqualification is imposed at the same time as an immediate custodial sentence, the period of disqualification must be extended to take into account the period that the offender will serve in custody. This means that any disqualification will not expire or be reduced while the offender is in custody. For sentences of less than 12 months, the period is equal to the custodial period to be served.

## New drivers – revocation of licence by the Driver and Vehicle Licensing Agency (DVLA)

35. New drivers are in effect on a probationary period for two years. The DVLA is required to revoke the licence of a new driver who gets six or more points on their licence within the two years following passing their test. In these circumstances, the driver reverts to being a provisional licence holder.

36. Although the court does not order the revocation, good practice requires that the court advise the defendant of what will happen.

37. The court should consider the impact that ordering six or more points will have on a new driver. Ordering less than six points or a disqualification will not lead to a DVLA revocation of the driving licence.

### High-risk offenders

38. Where a defendant is a high-risk offender, they will need to satisfy the DVLA doctors that they are medically fit to drive again. A defendant will have to complete, and pay for, a medical assessment including blood tests before their licence is returned.

39. A defendant is in the high-risk offender category if:

    a. a disqualification was imposed for driving, or being in charge of, a vehicle with excess alcohol and the reading was equal to, or more than, 87.5mg in breath, 200mg in blood or 267.5mg in urine

    b. there are two disqualifications within 10 years for driving a vehicle with excess alcohol or being unfit to drive

c. a disqualification was imposed for failing to provide a specimen for analysis

d. a disqualification was imposed for refusing to allow analysis of a blood sample taken due to incapacity.

# Section 3: Adjournments, bail and remands

## Adjournments and remands

### Applications to adjourn

1. All adjournments are a matter for the court. Each application requires a judicial decision and should be considered carefully.
2. The court needs to be satisfied that any adjournment has a clear objective and is for the shortest period necessary. It must ensure that the case proceeds as expeditiously as is consistent with the interests of justice and the right to a fair trial. Therefore, before deciding on the remand status of the defendant, consider whether the case needs to be adjourned at all.

### Is a remand required?

3. At each hearing, the court must consider whether or not the defendant ought to be remanded. A remand can be on bail or in custody.
4. In some cases a simple adjournment, which places no restrictions on the defendant, will be sufficient. However, the court must remand:
   a. on the adjournment of committal proceedings, or
   b. if the defendant is at least 18, and is charged with an either-way offence and on their first appearance appeared from custody or in answer to bail, or
   c. has previously been remanded in the proceedings.

### What are the preliminary issues?

5. How old is the defendant?

   Defendants under 18 years of age may sometimes appear before the adult court.

   If the defendant is under 18 years old, different considerations apply and you should seek legal advice (see the flow charts in Section 9: Checklists).
6. Is the defendant legally represented?

   The issue of legal representation should be dealt with at an early stage in the hearing. A defendant should not be remanded in custody unless they are legally represented or have been given the opportunity to apply for a representation order and have failed or refused to do so.

## Bail applications

### Is there a right to apply for bail?

7. Defendants do not have an unfettered right to make repeated bail applications. The legal adviser should advise on whether a “full” bail application has been made previously and whether the defendant has a right to make a further application or whether one may be made, eg where there has been a change in circumstances.

## Obtain sufficient information

8. Adjournment and bail hearings are inquisitorial and the court should not decide any issue until satisfied it has been provided with all relevant information from the following people:
    a. The legal adviser – will provide details of the case history, including the results of any previous bail hearings and the reasons given for those decisions.
    b. The prosecution – will provide details of the allegation(s), any previous convictions, the results of any drug tests, and their representations as to bail.
    c. The defence – will provide details of the defence version of the allegation(s), the defendant's circumstances and their representations as to bail.
9. The court should listen to the representations of the prosecution and defence, but is not restricted by what they say. The court has a right and a duty to ensure that it has all the information needed to make the decision. Therefore, the court can ask questions to ensure that it has all the information required.

## Does the right to bail apply?

10. The starting point for most bail decisions is that the defendant has a right to unconditional bail.
11. The presumption does not apply:
    a. in extradition proceedings (relevant only in the City of Westminster Magistrates' Court) or in connection with a warrant issued in the Republic of Ireland)
    b. following committal to the Crown Court for sentence or for breach of a Crown Court order
    c. after conviction, unless the proceedings are adjourned for enquiries to be made or a report to be prepared for sentence
    d. on appeal against conviction or sentence
    e. where the defendant has tested positive for heroin, cocaine or crack cocaine and is unwilling to undergo an assessment into their drug misuse and/or any proposed follow-up treatment.

## Can the court grant bail?

12. **Drug intervention programme – restriction on bail** – Where the defendant meets the criteria in paragraph 11e above, special rules apply. In this situation, the defendant cannot be granted bail unless the court is satisfied that there is no significant risk of an offence being committed on bail. The onus is on the CPS to bring the drug test result to the attention of the court, whether positive or negative, along with any other relevant information, to enable the court to decide whether restriction on bail conditions should apply.
13. **Murder** – The power of magistrates to consider bail in murder cases, whether at the first hearing or after a breach of an existing bail condition, no longer exists. The defendant must appear before the Crown Court, within the period of 48 hours (excluding Saturdays, Sundays, Christmas Day, Good Friday and bank holidays) beginning with the day after the day on which the person appears or is brought before the magistrates' court.

14. Bail may only be granted in **exceptional circumstances** where a defendant is charged with or convicted of an offence of:
    a. attempted murder, or
    b. manslaughter, or
    c. rape, or
    d. attempted rape, and
    e. the defendant has been previously convicted in the UK of any such offence or of culpable homicide (if the previous conviction was manslaughter or culpable homicide, the provision only applies if they received a sentence of imprisonment/long-term detention).
15. On granting bail, the court must explain the basis for the finding of exceptional circumstances.

## Is unconditional bail appropriate?

16. The starting point is the general presumption that the defendant has a right to bail without conditions, unless:
    a. this is a case where bail may only be granted in exceptional circumstances
    b. grounds exist for imposing bail conditions
    c. grounds exist for refusing bail and remanding in custody.
17. Unconditional bail imposes an obligation on the defendant to attend court on the correct date and time, it does not impose any further restrictions on them.
18. Does the court have any concerns? What are the risks in granting unconditional bail?

## Is conditional bail appropriate?

19. Conditions may be added to the defendant's bail only if **necessary**:
    a. to ensure attendance at court
    b. to prevent offending on bail
    c. to prevent interference with witnesses or obstruction of the course of justice
    d. for their own protection (or, if a youth, their own welfare or in their own interests)
    e. to ensure they are available for enquiries or reports
    f. to ensure they attend an appointment with their legal representative before the next hearing.

    **"Necessary" means a real, not fanciful, risk of one of the above occurring.**

## Imposing bail conditions

20. Any conditions must be:
    a. designed solely to achieve one or more of the above (conditions cannot be imposed simply because the defendant may agree to them being imposed)
    b. clear, precise, unambiguous and easily understood
    c. practical

d. enforceable

e. reasonable.

21. On granting bail with conditions, the court must explain the purpose of imposing conditions and the specific reasons for applying conditions.

22. Examples of frequently used bail conditions and the risk they are designed to address:

a. Residence (absconding).

b. Curfew – with or without electronic tagging or police checks (further offences). This is usually used as a direct alternative to custody. Where the defendant receives a custodial sentence, they are entitled to credit for any time spent whilst electronically tagged.

c. Reporting to a police station (absconding).

d. Non-contact with named witnesses (interference with witnesses/obstructing the course of justice).

e. Surety – ie the promise of money being paid should the defendant abscond. The person putting forward the money would be required to attend court and provide evidence that they have the required means.

f. Security – ie the deposit of money to ensure the defendant's attendance at court, usually taken at a local police station prior to the defendant's release.

g. Location monitoring – (absconding, further offences and interference with witnesses). NB: This should only be used where the court is satisfied that without it the defendant would not be granted bail. Depending on when bail was granted, the police, defence or the Crown Prosecution Service (CPS) will produce a map defining the exclusion/inclusion zone. The defendant should be given a written "description of the zone" or a map which will be attached to their bail sheet and handed and/or posted to them.

23. Any other condition may be imposed provided it addresses one of the risks under the Bail Act 1976, is in proportion to the risk and can realistically be enforced, eg a condition not to drink alcohol may be both disproportionate and unenforceable, whereas a condition not to go to on-licensed premises may be appropriate.

## Special considerations where the defendant has tested positive for certain class A drugs

24. In addition to any other conditions, where:

a. the defendant has tested positive for heroin, cocaine or crack cocaine, and

b. a link is established between the defendant's drug misuse and offending, and

c. the defendant:

i. agrees to undergo a drug assessment and comply with any follow-up proposed, or

ii. following an assessment, has had follow-up treatment proposed, and agrees to participate in the relevant follow-up treatment.

25. The court granting bail must impose a bail condition that the defendant undergoes a drug assessment and/or participates in any relevant follow-up treatment.

26. If the defendant does not agree to a drug assessment and/or follow-up, bail cannot be granted unless the court is satisfied that there is no significant risk of the defendant offending whilst on bail.

### Breach of bail conditions

27. Breach of bail conditions is not an offence. However, the Bail Act confers power upon a police officer to arrest a defendant if they have reasonable grounds for believing that the defendant is likely to break any of the conditions of their bail or has reasonable grounds for suspecting that the defendant has broken any of those conditions.
28. Once arrested, they must be brought as soon as practicable, and in any event within 24 hours of their arrest, before the magistrates' court for the area in which they were arrested.
29. If the breach is admitted or proved, the court may:
    a. readmit the defendant to bail on the same conditions
    b. readmit the defendant to bail with varied conditions, or
    c. remand the defendant in custody.
30. If the breach is not admitted or proved, the defendant must be released on the same terms as before.

### Are the exceptions to the right to bail made out?

31. The exceptions to bail are slightly different depending on whether the defendant is charged with an indictable offence, a summary-only offence or a non-imprisonable offence. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) places additional restrictions on the exceptions to the right of bail and creates some new exceptions. "Associated person" is defined in existing family legislation and includes relatives, spouses and co-habitants and those usually in a domestic setting (this list is not exhaustive).

## Exceptions to the right to bail for non-imprisonable offences

32. A remand in custody for a non-imprisonable offence will be comparatively rare and the grounds on which bail may be withheld are much more limited than those for imprisonable offences. Bail need not be granted to the defendant if:
    a. they have been convicted and have previously been granted bail, have absconded and the court believes, in view of that failure to attend, that if they were released on bail they would fail to surrender to bail, or
    b. it is for their own protection (or welfare if a child or young person), or
    c. they are serving a custodial sentence, or
    d. they have been convicted and have been arrested in breach of bail conditions and there are substantial grounds for believing they would:
        i. fail to surrender
        ii. commit an offence
        iii. interfere with witnesses or obstruct the course of justice, or
    e. they have been arrested in breach of bail conditions and there are substantial grounds for believing the defendant would commit an offence on bail by engaging in conduct that would cause or be likely to cause physical or mental injury to an associated person.

## Exceptions to the right to bail for summary-only offences

33. In July 2008, the Bail Act was amended, introducing more stringent exceptions to the right to bail in summary, albeit imprisonable, offences. This clearly impacts on offences such as common assault, harassment (s.2 Protection from Harassment Act 1997), threatening behaviour (s.4 and 4A Public Order Act 1996), disqualified driving and taking a vehicle without the owner's consent, amongst others.

34. A court cannot remand in custody under paragraphs 35a, b and f below, where the defendant is aged 18 and over, has not been convicted and there is no real prospect the defendant will be sentenced to a custodial sentence (the "no real prospect test").

35. The exceptions to bail in imprisonable, summary-only offences are:

    a. having previously been granted bail, the defendant has absconded and the court believes, in view of that failure to attend, that if they were released on bail they would fail to surrender to bail (subject to the "no real prospect test"), or

    b. the defendant was already on bail when the new offence was committed and the court has substantial grounds for believing that if released on bail they would commit an offence (subject to the "no real prospect test"), or

    c. there are substantial grounds for believing that if bailed, the defendant would commit an offence on bail by engaging in conduct that would cause or be likely to cause physical or mental injury to an associated person or cause an associated person to fear such injury, or

    d. for the defendant's own protection (or welfare if a child or young person), or

    e. if the defendant is serving a custodial sentence, or

    f. the defendant has been arrested in breach of bail conditions and there are substantial grounds for believing they would:

        i. fail to surrender (subject to the "no real prospect test")

        ii. commit an offence (subject to the "no real prospect test")

        iii. interfere with witnesses or obstruct the course of justice (subject to the "no real prospect test"), or

    g. there has been a lack of time to obtain sufficient information to make a decision on bail.

## Exceptions to the right to bail for either-way and indictable-only offences

36. A court cannot remand in custody under paragraphs 37a, c or g below, where the defendant is aged 18 and over, has not been convicted and there is no real prospect the defendant will be sentenced to a custodial sentence (the "no real prospect test").

37. Bail need not be granted to the defendant if:

    a. there are substantial grounds for believing they would:

        i. fail to surrender (subject to the "no real prospect test"), or

        ii. commit an offence (subject to the "no real prospect test"), or

        iii. interfere with witnesses or obstruct the course of justice (subject to the "no real prospect test")

b. there are substantial grounds for believing that if bailed, the defendant would commit an offence on bail by engaging in conduct that would cause or be likely to cause physical or mental injury to an associated person or cause an associated person to fear such injury

c. they have committed an indictable or either-way offence and they were already on bail for other matters at the time (subject to the "no real prospect test")

d. it is for their own protection (or welfare if a child or young person)

e. they are serving a custodial sentence

f. there has been a lack of time to obtain sufficient information to make a decision on bail

g. they have been arrested for failing to surrender to custody or breach of bail conditions in the same proceedings (subject to the "no real prospect test")

h. they have tested positive for heroin, cocaine or crack cocaine, and refused to agree to a drug assessment and/or follow-up treatment. In this situation, the defendant may not be granted bail unless the court is satisfied that there is no significant risk of the defendant committing an offence whilst on bail.

## What are the reasons for finding an exception to the right to bail?

38. In deciding whether or not to grant the defendant bail, the court is required to have regard to the following:

    a. the nature and seriousness of the offence

    b. the likely sentence

    c. how the defendant has responded to bail in the past

    d. the strength of the prosecution evidence

    e. the defendant's character, antecedents, associations and community ties

    f. any other relevant considerations.

39. Where bail is withheld, the court must announce the statutory exceptions to bail that have been found and give specific reasons for finding each exception.

40. The legal adviser will be able to provide advice on matters including maximum remand periods, human rights issues and assist with the preparation of reasons.

## Reasons and pronouncement

41. The court should use the pronouncements contained in the Judicial College Pronouncement Builder as the basis for the pronouncement.

42. Reasons must be given and recorded where:

    a. conditions of bail are imposed

    b. bail is withheld

    c. bail is granted and the prosecutor has made representations against the granting of bail.

43. A defendant who is remanded in custody should be informed of their right to appeal against that decision.

## Additional considerations if the defendant has committed a Bail Act offence in the proceedings

44. When a defendant has been convicted of a Bail Act offence during the proceedings, the court should review the remand status of the defendant. This will include consideration of the conditions of their bail or whether they should be remanded in custody.

45. Failure by the defendant to surrender, or a conviction for failing to surrender to bail, will be a significant factor weighing against the re-granting of bail, subject to the restrictions imposed by LASPO where the defendant is aged 18 and over, has not been convicted and there is no real prospect the defendant will be sentenced to a custodial sentence.

## Prosecution right of appeal

46. The prosecution has a right of appeal against the grant of bail to a defendant who is charged with an imprisonable offence.

47. Where these provisions apply, the prosecutor can serve oral notice of an intention to appeal to the Crown Court against the decision to grant bail. Where such a notice is served, the magistrates must remand the defendant in custody. The prosecutor then has two hours in which to serve a written notice of appeal on the court and the defendant. If a written notice is not served, the defendant will be bailed on the terms originally decided by the magistrates. If the written notice is served, the defendant will be remanded in custody and an expedited bail hearing will be arranged at the Crown Court.

## Police bail

48. Where the police have arrested somebody on suspicion of an offence, there are limits on the length of time they may be detained without being charged. Where the police are not ready to charge, they may release the suspect while they continue their enquiries. An officer of the rank of inspector or above may authorise that person to be subject to bail, with or without conditions, provided that it is necessary and proportionate. The most common circumstances are on release from custody at a police station and “street bail”, ie when bail is granted anywhere other than at a police station, to attend a police station at a later date.

## Time limits on police bail

49. The initial time limit for a person released from custody or arrested and released on street bail is 28 days, starting from the day after their arrest (the bail start date).

50. Where certain criteria are met, a senior police officer (superintendent or above) may extend that period up to three months. The three-month period is effective from the original bail date.

## Applications to extend police bail

51. The police, HM Revenue and Customs (HMRC), the Serious Fraud Office (SFO) and the Financial Conduct Authority (FCA) can apply to a magistrates’ court to extend the bail period. The applicant must serve a copy of the application on the suspect as well as on the court, and the suspect should be given five working days in which to respond in writing to the application.

52. Normally, the suspect must be served with all of the information that the applicant provides to the court. However, sometimes the applicant will ask the court for permission to withhold

sensitive information from the suspect. This application should be considered first. Always consult your legal adviser.

53. Application may be made to extend the period by a further three months, and in some cases a further six months. Applications are decided by a single magistrate and on written evidence, unless:

    a. in a case where the application would not extend the applicable bail period beyond 12 months (can be 12 months or less) and a single magistrate considers that the interests of justice require an oral hearing, or

    b. in a case where the application would extend the applicable bail period beyond 12 months and the suspect or the applicant requests an oral hearing.

    If either of these criteria apply, the application must be heard by two or more magistrates sitting in private.

54. Where an application is made for an extension of the limit (either first or subsequent) before the end of the applicable bail period and it is not practicable for the court to determine the application before the end of that period, it must be determined as soon as practicable. The bail period is treated as extended until the application is determined. However, if it appears to the court that it would have been reasonable for the application to have been made in time for it to be determined before the end of the applicable bail period, the application may be refused.

## Remand to local authority accommodation (LAA)

55. Consider first whether an adjournment is necessary. See Section 7: Case Management for further guidance.

56. This is only available for youths, ie defendants under the age of 18. Seek the advice of the legal adviser when remanding a youth in the adult court. For further guidance on youth remand provisions, see the flow charts in Section 10: Checklists.

57. A remand to local authority accommodation is a refusal of bail/remand in custody and therefore the court must find exceptions to the right to bail.

58. Youths will be remanded to local authority accommodation unless certain stringent criteria apply, in which case they are remanded to youth detention accommodation. This may be a secure children's home, a secure training centre or a Young Offender Institution. However, the nature of the accommodation is not determined by the court.

59. Conditions can be imposed on the defendant in addition to the remand. These are like bail conditions and render the youth liable to arrest if they are breached. Any conditions should be precise, enforceable and effective.

60. Requirements can also be imposed on the local authority to ensure that the defendant complies with any conditions imposed and to direct that the defendant is not to be placed with a named person.

## Remand to youth detention accommodation (YDA)

61. This applies when the risks to granting bail cannot be sufficiently addressed by the use of bail conditions or a remand to LAA and certain conditions, as set out in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, are satisfied. These are reproduced below. The Youth Justice Service (YJS)/local authority should always be consulted.

62. The first set of six conditions are:
    1. The court must consider the interests and welfare of the child **(Step 1 – the welfare condition)**.
    2. The defendant is aged 12 or over **(Step 2 – the age condition)**.
    3. It must appear to the court that it is very likely that the child will be sentenced to a custodial sentence for the offence, or one or more of those offences, with which the child is charged or convicted **(Step 3 – the sentencing condition).**
    4. The defendant is charged with or convicted of a violent or sexual offence or an offence punishable in the case of an adult with 14 years or more **(Step 4 – the offence condition).**
    5. The court must be of the opinion that, after considering all of the options for the remand of the child that only remanding the child to youth detention accommodation would be adequate to:
        i. protect the public from death or serious personal injury (physical or psychological) occasioned by further offences, or
        ii. prevent the commission by the child of imprisonable offences and that the risks posed by the child cannot be managed safely in the community **(Step 5 – the necessity condition)**.
    6. The defendant is legally represented or, if the child was represented but the representation was withdrawn (due to the child's conduct or their financial resources), or if the child applied for representation but was refused (on the grounds of financial resources), or if the child (having been informed of the right to apply for representation) refused or failed to apply **(Step 6 – the legal representation condition)**.

63. The second set of seven conditions are:
    1. The court must consider the interests and welfare of the child **(Step 1 – the welfare condition)**.
    2. The defendant is aged 12 or over **(Step 2 – the age condition)**.
    3. It must appear to the court that it is very likely that the child will be sentenced to a custodial sentence for the offence, or one or more of those offences, with which the child is charged or convicted **(Step 3 – the sentencing condition)**.
    4. The offence must be an imprisonable offence **(Step 4 – the offence condition)**.
    5. The child has a recent and significant history of absconding while subject to a custodial remand, and it appears to the court that the history is relevant in all the circumstances of the case, and at least one of the offences they now face is alleged to have been committed while the child was remanded to local authority accommodation or youth detention accommodation **or** the offence or offences now faced, together with any other imprisonable offences of which the child has been convicted, would amount to a recent and significant history of committing imprisonable offences while on bail or subject to a custodial remand, and this appears to the court relevant in all the circumstances of the case **(Step 5 – the history condition)**.
    6. The court must be of the opinion that, after considering all of the options for the remand of the child, that only remanding the child to youth detention accommodation would be adequate to:

i. protect the public from death or serious personal injury (physical or psychological) occasioned by further offences, or

ii. prevent the commission by the child of imprisonable offences and that the risks posed by the child cannot be managed safely in the community. **(Step 6 – the necessity condition)**.

7. The defendant is legally represented or, if the child was represented but the representation was withdrawn (due to the child's conduct or their financial resources), or if the child applied for representation but was refused (on the grounds of financial resources), or if the child (having been informed of the right to apply for representation) refused or failed to apply **(Step 7 – the legal representation condition)**.

64. Once a youth is remanded to LAA or youth detention accommodation, they fall within the definition of a "looked after child". The court must specify the designated local authority that is to be responsible for the youth once remanded. This will be the local authority where the youth habitually resides or where the offence was committed.

# Adjournment for reports

## Pre-sentence reports (PSR)

65. Pre-sentence report is the term used to describe all reports from probation which are intended to assist the court in sentencing. It includes oral reports, written reports prepared on the day of conviction and those which require an adjournment.

66. There is a presumption in favour of an oral report being prepared on the same day as the defendant is convicted. If this is not possible, establish the reasons why not.

67. Always consider whether a recent PSR is available to the court instead of ordering a new report.

68. The court which orders a PSR is not giving any indication of the sentence which may be imposed by the sentencing court. The court may only form an opinion of whether an offence is serious enough for a community penalty, or so serious that only custody can be justified, once all the information about the circumstances of the offence has been considered. This may include the PSR.

69. The Senior Presiding Judge has issued a form which may be used to assist probation in the preparation of a PSR. The court is not required to use the PSR request form, but it cannot use any other form in its place.

70. Before imposing custody or a community order, a PSR will normally be required unless the court considers that one is unnecessary. Reasons must be given.

71. When requesting a PSR the court may, making it plain that it is not an indication of the sentence which will be imposed, indicate the following to probation:

a. any specific requirements in a community order that probation should consider the defendant's suitability for

b. whether the report should cover community sentences within the low, medium or high range

c. a short outline of significant facts in the event of a conviction following trial.

## Remand for medical reports

72. A remand to hospital for a medical report can only be done if certain conditions are fulfilled. You should seek the advice of the legal adviser.

73. The provisions of the Bail Act apply in the usual way when considering whether the remand should be on bail or in custody.

74. This is available when an adult is charged with an offence punishable with imprisonment.

75. The court must be satisfied:

    a. that the defendant did the act or omission alleged, and

    b. that an enquiry ought to be made into their physical or mental condition before the method of dealing with them is decided.

76. The case must be adjourned to enable an examination and report to be made. The adjournment must not exceed three weeks at a time if the remand is in custody, or four weeks if the remand is on bail.

77. Where the defendant appears to be mentally disordered, the court must obtain and consider a medical report before passing a custodial sentence, unless the court thinks this is unnecessary.

78. Bail, if granted, must include the following conditions:

    a. to undergo medical examination by a qualified medical practitioner, or if the enquiry is into their mental condition and the court so directs, two medical practitioners, and

    b. to attend for that purpose at such institution or place, or such practitioner as the court directs, and

    c. to comply with any other directions that may be given to them (if the enquiry is into their mental condition).

# Section 4: Cases to be heard in the Crown Court

## Committal for sentence

1. This applies when the court is dealing with either-way offences that can be dealt with in the magistrates' court or Crown Court.
2. This only applies to adult defendants aged 18 years or over.
3. The court can commit for sentence if it is of the opinion that:
    a. the offence (or a combination of the offence and one or more associated offences) is so serious that the Crown Court should, in the court's opinion, have the power to deal with the offender in any way it could deal with them if they had been convicted on indictment, or
    b. the court is of the opinion that the defendant is a dangerous offender.
4. Where a court determines that summary trial is more suitable, and an indication of a non-custodial sentence is given, there is limited power to commit for sentence. Where no indication is given and the defendant is subsequently convicted or pleads guilty, a court may commit for sentence, but this would be rare as any previous convictions would be known about when deciding venue. It would have to be based on information that has since come to light.
5. An offender is a dangerous offender if they have been convicted of a specified sexual or violent offence and the court considers that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences. The legal adviser will be able to advise on the factors the court should consider when assessing dangerousness. These include the court being of the opinion that the offence merits a sentence of at least four years, or the offender has relevant previous convictions for certain offences.
6. The court can also commit offences for sentence to the Crown Court where they are related to offences that court has committed for trial to the Crown Court.
7. Summary-only offences can be committed for sentence with the either-way offence(s), provided they are imprisonable or can attract a driving disqualification.
8. The court will remand the defendant to the Crown Court. If a defendant answered bail in the magistrates' court, the court would normally grant bail to the Crown Court, unless there is evidence that the defendant may abscond now that they are facing a long prison sentence.

## Sending for trial – either-way offences

9. This now applies to either-way offences where either the defendant has elected to be tried at the Crown Court or the court has directed a Crown Court trial, as well as offences that are indictable only.
10. If the defendant does not consent to summary trial or the court decides the offence appears more suitable for trial on indictment, the defendant is sent forthwith to the Crown Court. Committal proceedings have been abolished.
11. The court will remand the defendant to the Crown Court either in custody or on bail.
12. The court will make directions for the conduct of the case in the Crown Court. There are standard directions for the conduct of the case in the Crown Court that take effect after

sending, unless varied by the magistrates' court on application by the prosecution or defence.

## Sending for trial – indictable-only offences

13. This applies to offences that are indictable only.
14. The prosecution does not need to prepare committal papers for these offences.
15. The defendant will usually be sent to the Crown Court on first appearance.
16. The first hearing date at the Crown Court will be either a preliminary hearing (PH) or a plea and trial preparation hearing (PTPH).
17. The court will deal with applications for legal representation orders for the Crown Court proceedings.
18. The court will remand the defendant to the Crown Court either in custody or on bail.
19. The court has power to send any related either-way offences to the Crown Court. Related summary-only offences can also be sent to the Crown Court if they are imprisonable or can attract a disqualification from driving.
20. The court will make directions for the conduct of the case in the Crown Court. There are standard directions for the conduct of the case in the Crown Court that take effect after sending, unless varied by the magistrates' court on application by the prosecution or defence.

## Ordering PSRs on committal and sending

21. Where a case is being committed to the Crown Court for sentence, the court should consider if a PSR should be requested to allow the Probation Service as much time as possible to prepare a quality report to minimise delay and reduce the risk of the need to adjourn at the first hearing.
22. The same approach should be taken where the defendant indicates a guilty plea to all offences, on being sent for trial to the Crown Court.

## Case management on sending for trial

23. Where a case is being sent to the Crown Court for trial, the purpose of the sending hearing should be to:
    a. confirm that the initial details of the prosecution case (IDPC) has been served by the prosecutor
    b. establish who has ownership of the case from the prosecution and defence, and exchange contact details
    c. facilitate and set out clear expectations regarding engagement between the prosecution and defence, and between the defence and their client
    d. elicit a firm/unambiguous indication of any guilty plea
    e. ensure that the defendant understands that credit begins to reduce after the first hearing for any offence for which there is not an indication of a guilty plea
    f. identify the issues and areas of agreement between the parties

g. establish a timetable giving directions for the case to progress in the time before the Plea and Trial Preparation Hearing (PTPH), and

h. ensure the Better Case Management (BCM) form is completed as comprehensively as possible to assist all parties, the court and the Crown Court judge. (This form is completed digitally on Common Platform).

# Section 5: Sex offenders

## Notification requirements

1. Specific advice should be sought from the legal adviser before making an order under the Sexual Offences Act 2003.
2. Although not an order, the requirement to notify certain details to the police is mandatory where an offender is convicted of a specified sexual offence; although some offences are only specified if the sentence passes a certain threshold.
3. The defendant must provide the information to the police in person after conviction (except where registration is only triggered by a sentence threshold) and, if the case is adjourned, again after sentence. Where a disposal threshold has to be met before the notification requirements are triggered for a specific offence, then the offender will not have to comply with notification requirements unless they receive a sentence that meets that threshold.
4. The defendant must attend a specified police station within three days of the requirement being made (or within three days of release, if sentenced to custody).
5. The defendant must inform the police of the following information:
    a. their name, date of birth and home address
    b. their National Insurance number
    c. details of their bank account, credit and debit card, passport and any identity documents.
6. They must also notify the police of any change of name or address, and if they are away from the home address for more than a total of seven days in a year, they must tell the police within three days of it happening. If the defendant has no main address, every seven days they must provide an address or location in the UK where they can regularly be found. They must also notify the police if they stay at an address where anyone under the age of 18 lives. If the defendant intends to travel abroad, regardless of the length of the trip, they must give the police seven days' advance notice of their plans.
7. The length of the registration period differs according to the sentence imposed. Always confirm the appropriate length of the requirement with the legal adviser. Those relevant to the magistrates' court are:
    a. custodial sentence of more than six months – 10 years
    b. custodial sentence of six months or less – seven years
    c. hospital order – seven years
    d. any other sentence – five years.
8. The registration periods for defendants aged under 18 are half those of adults.
9. Failing to comply with the registration requirement or giving false details is an either-way offence.
10. Before leaving the court, the defendant must be given a written notice explaining the registration requirements.

## Sexual Offences Act – notification order (offences committed outside the UK)

11. Specific advice should be sought from the legal adviser before making a notification order.
12. Application may be made on complaint by the chief officer of police where a person who is in, or intends to come to, their police area fulfils the following conditions:
    a. the individual has been convicted, cautioned etc for a relevant sexual offence committed overseas
    b. the conviction, caution etc occurred on or after 1 September 1997, or before that date if on 1 September 1997 the offender had yet to be dealt with in respect of that offence, and
    c. the notification period would not have expired if the offence had been committed in the UK.
13. If it is proved that the above conditions are satisfied, then the court must make a notification order. It is not necessary to show that the offender poses a risk to the public or that an order is necessary to protect the public from harm.
14. The effect of the order is to make the offender subject to the notification requirements as if they had been convicted, cautioned etc in the UK.
15. Interim orders can be made if an application is adjourned.
16. Breach of an order is an either-way offence.

## Sexual Offences Act orders

17. As a result of the Anti-social Behaviour, Crime and Policing Act 2014, the Sexual Offences Act has been amended. Sexual offences prevention orders and foreign travel orders are repealed and replaced with sexual harm prevention orders (SHPO). Risk of sexual harm orders are repealed and replaced by sexual risk orders (SRO). Specific advice should be sought from the legal adviser before making an SHPO or an SRO.
18. The new provisions provide that the repeal does not apply to existing orders or any applications relating to such orders prior to the commencement provisions. In addition, such orders may still be varied, renewed or discharged and any breaches prosecuted.

## Sexual Offences Act – sexual harm prevention orders (SHPO)

19. Specific advice should be sought from the legal adviser before making an SHPO.
20. An SHPO may be made where a court deals with a person in respect of a relevant offence, or by a magistrates' court, when an application is made to it by a chief officer of police or the director general of the National Crime Agency (NCA) in respect of a person.
21. The court will need to be satisfied that:
    a. the person has been dealt with by a court in respect of a relevant offence or has been dealt with by a court abroad in respect of an act which was an offence under the law of that territory and which would, if committed in any part of the United Kingdom, have constituted a relevant offence, and
    b. the person's behaviour, since the date on which they were first dealt with in this way, means it is necessary to make the order for the purpose of protecting the public (or any particular members of the public) from sexual harm from the defendant or protecting any

or particular children or vulnerable adults from sexual harm from the defendant outside the United Kingdom.

22. The order can include any prohibition the court considers necessary for this purpose, including the prevention of foreign travel to the country or countries specified in the order. Where the order prevents the person from any travel outside the UK, they must surrender their passport to the police for the duration of this prohibition.
23. The order can also include positive requirements which require the offender to do anything described in the order.
24. The minimum duration of an SHPO will be five years and there is no maximum period (with the exception of any foreign travel restriction which, if applicable, has a maximum duration of five years but may be renewed).
25. The police can apply for an interim SHPO.
26. Breach of an order will be a criminal offence with a maximum penalty of five years' imprisonment or an unlimited fine, or both.
27. A court can vary, renew or discharge an order upon the application of the person in respect of whom the order was made or the police. An order cannot be discharged before the end of five years from the date the order was made without the consent of the defendant and the police, with the exception of an order containing only foreign travel prohibitions.
28. The defendant may appeal against the making of an order.

## Sexual Offences Act – sexual risk orders (SRO)

29. Specific advice should be sought from the legal adviser before making an SRO.
30. This is a civil preventative order designed to protect the public from sexual harm. The defendant may or may not have a conviction for a sexual (or any other) offence.
31. The order will be available to the police and NCA on application in relation to a defendant who has done an act of a sexual nature and, as a result, the police or NCA have reasonable cause to believe that an order is necessary to:
    a. protect the public or any particular members of the public from harm from the defendant, or
    b. protect children or vulnerable adults generally, or any particular children or vulnerable adults, from harm from the defendant outside the United Kingdom.
32. The police or NCA may apply for an interim SHPO where an application has been made for a full order.
33. The court may make an order if satisfied that the defendant has done an act of a sexual nature, as a result of which, it is necessary to make the order for one or both of these purposes. The SRO differs from the existing risk of sexual harm order (RSHO) in that it can be made after the defendant has committed one such act, whereas an RSHO may only be made following two acts.
34. A defendant subject to an order or an interim order is required to notify to the police, within three days, their name and address (including any subsequent changes to this information).
35. An SRO can include any prohibition the court considers necessary for this purpose, including the prevention of foreign travel to the country or countries specified in the order. Where the

order prevents the defendant from any travel outside the UK, they must surrender their passport to the police for the duration of this prohibition.

36. It can also include positive requirements, which require the offender to do anything described in the order.

37. An SRO will last a minimum of two years and has no maximum period (with the exception of any foreign-travel restriction, which expires after a maximum of five years, unless renewed).

38. Breach of an order will be a criminal offence with a maximum penalty of five years' imprisonment or an unlimited fine, or both. Breach of an order also results in the defendant becoming subject to the notification requirements for registered sex offenders.

39. A court can vary, renew or discharge an order upon the application of the defendant or the police. An order cannot be discharged before the end of two years from the date the order was made without the consent of the defendant and the police, with the exception of an order containing only foreign-travel prohibitions.

40. The defendant may appeal against the making of an order.

# Section 6: Reporting restrictions

Note: Where reference is made to the media, this includes the press, radio, television and online media. Where reference is made to publication, this applies to printed and broadcast media as well as information published online, including social media sites such as Facebook and X (formerly Twitter).

## General rule

1. In recognition of the open justice principle, the general rule is that justice should be administered in public. To this end:
    a. proceedings must be held in public
    b. evidence must be communicated publicly
    c. fair, accurate and contemporaneous media reporting of proceedings should not be prevented by any action of the court unless strictly necessary.
2. Therefore, unless there are exceptional circumstances laid down by statute law and/or common law, the court must not:
    a. order or allow the exclusion of the press or public from court for any part of the proceedings
    b. permit the withholding of information from the open court proceedings
    c. impose permanent or temporary bans on reporting of the proceedings or any part of them, including anything that prevents the proper identification, by name and address, of those appearing or mentioned in the course of proceedings.
3. In recognition of the open justice principle, the courts and Parliament have given particular rights to the press, so that they can report court proceedings to the wider public, even if the public is excluded.

## The open justice principle

4. The general rule is that the administration of justice must be done in public. The public and the media have the right to attend all court hearings and the media are able to report those proceedings fully and contemporaneously.
5. Any restriction on these usual rules will be exceptional. It must be based on necessity.
6. The need for any reporting restriction must be convincingly established and the terms of any order must be proportionate – going no further than is necessary to meet the relevant objective.
7. Whenever the court is considering excluding the public or the media, or imposing reporting restrictions, or hearing an application to vary existing conditions, it should hear representations from the media. Likewise, the court should hear any representations made by the media for the variation or lifting of an order, in order to facilitate contemporaneous reporting.

## Automatic reporting restrictions in the magistrates' court

8. There are several automatic reporting restrictions which are statutory exceptions to the open justice principle.

9. Victims of sexual offences are given lifetime anonymity, which does not apply if they consent in writing to their identity being published. Their anonymity can also be lifted by the court in other limited circumstances.
10. Committal and other similar proceedings – s.8 Magistrates' Court Act 1980 prevents media reports of the proceedings, except certain specified facts such as the name, address, age and occupation of the accused, the charges they face, identity of the court, magistrates, legal representatives, whether or not bail has been granted, the date and place of any adjournment and whether the accused was committed for trial.
11. Similar restrictions apply in cases which are sent or transferred to the Crown Court for trial.
12. Reports of special measures directions and directions prohibiting the accused from conducting cross-examination cannot be published until the trial(s) of all accused are over, unless the court orders otherwise.
13. Youth court – the media are prohibited from publishing the name, address or school or any matter likely to identify a child or young person involved in youth court proceedings whether as a victim, witness or defendant. (Note: when a youth appears in the adult court, the reporting restrictions are not automatic.)
14. Always seek the advice of the legal adviser when considering imposing press reporting or public-access restrictions to the court to ensure that the law permits the court to do so before considering whether the court ought to do so.
15. The Reporting restrictions checklist in Section 10: Checklists is taken directly from 'Reporting restrictions in the Criminal Courts', a joint publication by the Judicial College, the Newspaper Society, the Society of Editors and the Media Lawyers Association, which was updated in July 2023.

### Relevant sexual offences

16. The right to anonymity of alleged victims of certain sexual offences is automatic. No court order is required, but a reminder to the press may be appropriate.
17. Automatic anonymity applies to alleged victims of many sexual offences including rape, sexual assault, child sex offences and attempts and conspiracy to commit these offences.
18. The legal adviser will be able to advise whether these provisions apply in the case.
19. The prohibition relates to publication of the name, address or any still or moving picture of the alleged victim during their lifetime, if it is likely to lead to the identification of that person as the person against whom the offence is alleged to have been committed. In addition, no matter likely to lead members of the public to identify the person as the alleged victim of the offence shall be published during the lifetime of the alleged victim.
20. Breach – if any matter is published or included in a TV or radio programme in contravention of such an order, then the editor or publisher shall, on summary conviction, be liable to a fine not exceeding level 5 on the standard scale.

## Children and young people – criminal proceedings (s.45 Youth Justice and Criminal Evidence Act 1999)

21. An order can be made under this section in respect of a child or young person under 18 years of age appearing in criminal cases other than in a youth court.
22. This applies whether the child or young person is a defendant, a complainant or a witness.

23. Unlike in the youth court, the prohibition is not automatic; there must be a good reason to make an order.
24. The parties and/or the media should be invited to make representations to the court.
25. If the making of an order is contested, seek advice from the legal adviser as to the extent of the reasons the court is required to give.
26. It must be made clear in court that a formal order has been made and what the precise terms of the order are. Any order will last until the young person is 18 years of age or another order is made.
27. A written copy of the order will be drawn up soon after the case and copies will be made available for media inspection.
28. Breach – if any person publishes any matter in contravention of such an order, they shall, on summary conviction, be liable to a fine not exceeding level 5 on the standard scale.

## Children and young people – non-criminal proceedings (s.39 Children and Young Persons Act 1933)

29. An order can be made under this section in respect of a child or young person under 18 years of age appearing in non-criminal cases such as criminal behaviour orders.
30. This applies whether the child or young person is a defendant, a complainant or a witness.
31. Unlike in the youth court, the prohibition is not automatic; there must be a good reason to make an order.
32. The parties and/or the media should be invited to make representations to the court.
33. If the making of an order is contested, seek advice from the legal adviser as to the extent of the reasons the court is required to give.
34. It must be made clear in court that a formal order has been made and what the precise terms of the order are. Any order will last until the end of the proceedings unless another order is made.
35. A written copy of the order will be drawn up soon after the case and copies will be made available for media inspection.
36. Breach – if any person publishes any matter in contravention of such an order, they shall, on summary conviction, be liable to a fine not exceeding level 5 on the standard scale.

## Lifetime restriction for victims and witnesses under the age of 18 (s.45A Youth Justice and Criminal Evidence Act 1999)

37. An order can be made under this section in respect of a child or young person under 18 years of age in criminal proceedings.
38. This applies whether the child or young person is a complainant or a witness but not if they are the defendant.
39. The prohibition is not automatic; the court must be satisfied that the fear and distress on the part of the complainant or witness in connection with being identified by members of the public as a person concerned in the proceedings is likely to diminish the quality of their evidence or the level of the cooperation they give to any party to the proceedings in connection with that party's presentation of its case.

40. The parties and/or the media should be invited to make representations to the court.
41. If the making of an order is contested, seek advice from the legal adviser as to the extent of the reasons the court is required to give.
42. It must be made clear in court that a formal order has been made and what the precise terms of the order are. The order will last for the lifetime of the person concerned.
43. A written copy of the order will be drawn up soon after the case and copies will be made available for media inspection.
44. Breach – if any person publishes any matter in contravention of such an order, they shall, on summary conviction, be liable to a fine not exceeding level 5 on the standard scale.

## Avoiding a substantial risk of prejudice to the administration of justice (s.4 Contempt of Court Act 1981)

45. This order can be made in committal proceedings in the magistrates' court.
46. An order can be made where it appears necessary to avoid a substantial risk of prejudice to the administration of justice in the current proceedings (or in any other proceedings pending or imminent). The court can order that the publication of any report of the proceedings, or any part of the proceedings, be postponed for such a period as the court thinks necessary for that purpose.
47. Only limited matters can be reported in committal proceedings; therefore the court should be slow to make an order imposing additional reporting restrictions.
48. The parties and/or the media should be invited to make representations to the court.
49. Seek advice from the legal adviser as to relevant case law and the extent of the reasons the court is required to give.
50. It must be made clear in court that a formal order has been made and what the precise terms of the order are.
51. A written copy of the order will be drawn up soon after the case and copies will be made available for media inspection.

## Withholding information from the public in the interests of the administration of justice (s.11 Contempt of Court Act 1981)

52. Where the court has power to allow a name or other matter to be withheld from the public, it can give directions prohibiting the publication of the name or matter in connection with the proceedings. The circumstances where it is appropriate to withhold a name or other matter will be rare.
53. An order should not be made if motivated solely by sympathy for the defendant's wellbeing or because of the risk of damage to the defendant's business but should be for reasons to do with the administration of justice. The hearing on this matter should be heard in camera.
54. The parties and/or the media should be invited to make representations to the court.
55. Seek advice from the legal adviser as to relevant case law and the extent of the reasons the court is required to give.
56. It must be made clear in court that a formal order has been made and what the precise terms of the order are.

57. A written copy of the order will be drawn up soon after the case and copies will be made available for media inspection.

# Section 7: Case management

## Introduction

1. Effective case management occurs at every hearing whether adjourned or not. It is the responsibility of the court to ensure progress is made at each hearing.
2. The practice and procedures to be followed in court are governed by the Criminal Procedure Rules 2020 (CrimPR). Anyone who is involved in any way with a criminal case has case management obligations under the CrimPR. The participants clearly include the advocates but also include legal advisers and administrative court staff, the CPS, police, magistrates and judges as well as the defendant. Where relevant, rule references have been included alongside the appropriate text.
3. Compliance with the CrimPR is compulsory.
4. In October 2019, the Senior Presiding Judge issued guidance on applying them. Since that date the CrimPR have been updated by the Lady Chief Justice (LCJ), most recently in October 2024, and whilst the principles remain valid, some rule references in the original guidance have changed. The guidance is now the responsibility of the Judicial College, and a revised 2024 version can be found in Section 10: Checklists – Essential case management – applying the Criminal Procedure Rules (CrimPR).
5. The CrimPR are supplemented by Criminal Practice Directions (CrimPD) made by the LCJ. The CrimPD 2023 were most recently updated in July 2024.

## The overriding objective

6. The overriding objective of the CrimPR is to deal with cases justly (r.1.1). This includes:
    a. acquitting the innocent and convicting the guilty
    b. treating all participants with politeness and respect
    c. dealing with the prosecution and the defence fairly
    d. recognising the rights of a defendant, particularly those under Article 6 of the European Convention on Human Rights
    e. respecting the interests of witnesses, victims and jurors and keeping them informed of the progress of the case
    f. dealing with the case efficiently and expeditiously
    g. ensuring that appropriate information is available to the court when bail and sentence are considered, and
    h. dealing with the case in ways that take into account:
        i. the gravity of the offence alleged
        ii. the complexity of what is in issue
        iii. the severity of the consequences for the defendant and others affected, and
        iv. the needs of other cases.
7. Each case presents different issues. However, when making case management decisions or when giving directions, magistrates must take into account the seriousness and complexity

of the offence, the consequences of their decisions and the needs of other cases before the court.

## The court's case management duties

8. The court is required to further the overriding objective of managing cases justly by actively managing the case (r.3.2). This involves making appropriate directions as early as possible. Active case management includes:
   a. the early identification of the real issues
   b. the early identification of the needs of witnesses
   c. achieving certainty as to what needs to be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case
   d. monitoring the progress of the case and compliance with directions
   e. ensuring that the evidence, whether disputed or not, is presented in the shortest and clearest way
   f. discouraging delay, dealing with as many aspects of the case as possible on the same occasion and avoiding unnecessary hearings
   g. encouraging participants to co-operate in the progression of the case
   h. making use of technology.

## The court's case management powers

9. The court has long had an inherent discretion in how it manages proceedings. In addition, it has a duty to further the overriding objective of dealing with cases justly by actively managing the case and giving appropriate directions (which includes varying or revoking such directions). Particular attention should be paid to r.3.5, which sets out specific case management powers. These enable the court to:
   a. nominate a judge, magistrate, or justices' legal adviser to manage the case
   b. give a direction on its own initiative or on application by a party
   c. ask or allow a party to propose a direction
   d. for the purpose of giving directions, receive applications and representations by letter, by telephone or by any other means of electronic communication, and conduct a hearing by such means
   e. give a direction without a hearing
   f. fix, postpone, bring forward, extend or cancel a hearing
   g. shorten or extend (even after it has expired) a time limit fixed by a direction
   h. require that issues in the case should be determined separately, and decide in what order they will be determined
   i. specify the consequences of failing to comply with a direction.

## The first hearing

10. The court must take the defendant's plea unless there is an exceptional reason for not doing so. Reasons for not taking a plea are rare but examples may include where an interpreter

has not been arranged and the court is not satisfied that the defendant can follow or understand the proceedings.

11. If any exceptional reason is identified, the reasons for not taking a plea must be announced in open court and recorded on the court register.

12. If no plea can be taken, the court should find out whether the defendant is likely to plead guilty or not guilty (r.3.8).

13. The court should ask if the defendant has been advised of credit for a guilty plea.

## Guilty pleas

14. If the defendant pleads guilty, sentence should take place the same day wherever possible. There is a presumption that the Probation Service will provide a fast delivery oral report on the day. However, consideration should be given to whether a report can be prepared on the same day or, where the offender has complex needs or may find the court environment overwhelming for whatever reason, consideration should be given to whether an adjournment is required to enable the Probation Service to collect the necessary information, liaise with third parties where necessary, and carry out a full risk assessment.

## Not guilty pleas

15. If the plea is not guilty, the hearing becomes the first case management hearing, and the parties should complete a preparation for effective trial (PET) form. Where a defendant is not legally represented, the legal adviser will assist them in completing the form.

## Applications to adjourn

16. All applications to adjourn require a judicial decision and must be considered carefully. Applications to adjourn may be made to the court, a legal adviser or an authorised court officer. They should consider:

    a. who is making the application

    b. why the application is being made

    c. the history of the case

    d. whether the decision to grant or refuse the application will have a prejudicial effect on the overriding objective of dealing with the case justly?

17. Some adjournments may be unavoidable, eg an adjournment for trial or reports, or where a medical certificate which states the defendant is not fit to attend court has been received.

18. If an adjournment is necessary, the court should give clear directions as to the purpose of the adjournment and the expectations of the parties for the next hearing and adjourn for the shortest period possible. At every hearing, if a case cannot be concluded there and then, the court must give directions so that it can be concluded at the next hearing or as soon as possible after that (r.3.8).

19. Applications to adjourn for further evidence should be rigorously scrutinised. The prosecution is only required to provide the defence with initial details to enable them to consider plea and choice of venue. The initial details must include a summary of the case or a copy of/extracts from the key statements and the defendant's previous convictions (r.8.3). This is deemed sufficient for the defendant to decide on plea and venue.

## The preparation for effective trial (PET) form

20. To ensure all of the court's case management duties set out above are addressed, when dealing with a not guilty plea and fixing a trial date, the court and the parties must complete a PET form and must give directions for an effective trial (r.3.16).

21. Part one of the PET form records the contact details for the parties. Part two is completed by the prosecutor and includes information on the evidence they intend to rely on, practical matters such as any equipment required and any applications for directions. Part three is for the defendant to complete. HMCTS have published notes of guidance to assist unrepresented defendants when completing the form. They may also be assisted by the legal adviser. Part four sets out details of the witnesses. Part five is a record of the court's decision. The final page of the form sets out standard trial preparation time limits.

22. Parts one to three should be completed before the case is called on. As part of the pre-court briefing, the bench and legal adviser should agree who will take responsibility for checking the parties have completed the form adequately and for completing the remainder of the PET form during the hearing.

### Identifying the issues in dispute

23. Parties are required to state what the issues in the case are. They should do this voluntarily, but, if necessary, make a direction compelling them to do so whilst making clear what the consequences will be if they fail to do so. For example, on a charge of common assault, if a defendant admits hitting a person but is alleging self-defence, the defendant and/or their representative should make this clear. Or, if the issue on a drink-driving offence is that the correct procedure at the police station was not followed, this should be stated at the first case management hearing (ie the date on which the plea was entered). It is not acceptable for these, or any other known issues from either the prosecution or the defence, to be raised for the first time at the trial.

24. It is not sufficient for the issues in the case to be described as "factual" or a simple denial of the offence. This is self-evident if the defendant has pleaded not guilty.

25. In the case of *Malcom v DPP* (2007), the court said that "Criminal trials were no longer to be treated as a game in which each move was final and any omission by the prosecution led to the trial's failure. It was the duty of the defence to make its defence clear to the prosecution and the court at an early stage. That duty was implicit in the Criminal Procedure Rules 2005 r.3.3". In this particular case, the issue was raised for the first time during closing speeches and this was described as "a classic and improper defence ambush of the prosecution".

26. A further consequence may be an order for wasted costs if it can be shown that such costs were incurred by a party "as a result of any improper, unreasonable or negligent act or omission on the part of any representative or any employee of a representative".

## Needs of the witnesses

27. Needs of the witnesses include such matters as whether the witnesses will give evidence behind a screen or by live television link as well as, where appropriate, their availability to attend court. Also, the need for interpreters, disabled access or the wish to give evidence through an intermediary (a person appointed to assist victims and witnesses with communication difficulties, autism, learning difficulties or hearing impairments) and other needs.

28. Be aware of the specific guidance when dealing with children, young people and other vulnerable witnesses. Further information can be found in Chapter 2 of the Equal Treatment Bench Book.

## What must be done, by whom and when, and fixing a timetable for the case

29. The PET form makes reference to standard directions. These are directions that have specific time limits and that must apply in every case, unless the court orders otherwise. Your court should have a list of its standard directions, which may include such matters as:
    a. hearsay evidence (r.20.2)
    b. bad character evidence (r.21)
    c. evidence by way of special measures (r.18)
    d. prosecution's duty of initial disclosure (r.1)
    e. expert evidence (r.19).
30. Some cases may require the making of directions in addition to standard directions. Non-standard directions may include, but are not restricted to, directions as to the filing and service of skeleton arguments for points of law or abuse of process arguments.
31. You should consult with your legal adviser in respect of the making and timetabling of non-standard directions.
32. All directions should further the overriding objective.
33. Setting the timetable for the progress of the case includes specific timetabling for the trial itself. Part four of the PET form sets out details of the witnesses. Only those witnesses who give evidence relating to the issue in dispute should be called to attend court. For those giving live evidence, the court should calculate realistic time estimates for each witness to give evidence in chief and be cross-examined together with the prosecution's opening submissions, the defence's closing speeches and any legal arguments that are known at this stage. Time should also be allocated for advice from the legal adviser and any matters from the bench. These timings will be used on the day of trial and should not be varied without the court's agreement.
34. Be prepared to challenge and support your legal adviser in challenging advocates in respect of timetabling to ensure maximum use of court time.

### Monitoring progress and compliance with directions

35. The CrimPR requires all parties (including the court) to nominate and exchange contact details of the individuals who are responsible for progressing the case (r.3.4). Only by doing this can there be effective early communication of information which may affect progress of the case and for that information to be acted upon promptly by all sides. This may involve making additional directions, varying directions already made or fixing or amending a hearing date (r.3.5).

### Ensuring evidence is presented in the shortest and clearest way

36. Live evidence at a trial should generally be limited to those issues which are in dispute.
37. Ensure that effective use is made of written statements being read at trial in accordance with s.9 Criminal Justice Act 1967 (CJA 1967). This does not prevent the witness from being

called but it can mean the statements are agreed and simply read or it may shorten the length of time the witness is required to give evidence. It is not necessarily conclusive evidence but is treated as if the witness had been called. If a witness is central to the case, it is still desirable that they are called to give evidence rather than relying on a written statement.

38. If certain facts are admitted, these can be proved conclusively by a formal admission under s.10 CJA 1967. Such admissions avoid the need for live evidence to be given on agreed facts.

### Discouraging delay and avoiding unnecessary hearings

39. There will rarely be a need to adjourn the case for a further case management hearing. If a case is adjourned, the court must give directions so that the case can be concluded at the next hearing or as soon as possible after that.

### Encouraging participants to co-operate in the progression of the case

40. Complying with the CrimPR is compulsory and the parties are obliged to actively assist the court in actively managing the case. However, there may still be occasions when this is a challenge and failures to comply will occur.

41. By encouraging the parties to co-operate in case progression, potential problems can be identified at an early stage and action taken, eg by applying to vary the directions especially if the parties can be assured that this will not necessarily result in an additional court hearing (r.3.6). The court can also encourage the side who has experienced a breach to inform the court of this immediately rather than wait until the next hearing, thus allowing the court to take positive action to remedy the problem.

42. On the day of trial all participants should be reminded of, and review where appropriate, any timetable set for the hearing with reference to the PET form and the directions and/or timings agreed at the case management hearing. Once the trial has started, the court must actively manage the trial, keeping an eye on the progress of the case in relation to that timetable to ensure the case can be concluded within its time estimate – *Drinkwater v Solihull Magistrates' Court* (2012).

## Non-compliance with case management orders and directions

43. If a party fails to comply with a rule or direction, the court may:

    a. fix, postpone, bring forward, extend, cancel or adjourn a hearing

    b. exercise its powers to make a costs order

    c. impose such other sanctions as may be appropriate.

### Making a costs order

44. Always take the advice of the legal adviser before imposing an order for costs. The rules governing the making of costs orders can be very complex.

45. The making of an order, other than the usual contribution to prosecution costs when the defendant is sentenced, should be rare. The sanctions are not intended to be a punishment for failing to comply but instead a sanction that furthers the overriding objective.

46. Parties must be given an opportunity to make representations in respect of any proposed order for costs. Conduct which justifies an order for costs must be recorded and identified.

47. Orders for costs, which may be made in exceptional circumstances are:
    a. Costs against a party – where a party has incurred costs as the result of "an unnecessary or improper act or omission by or on behalf of another in those proceedings".
    b. Wasted costs order – against the legal representative where costs have been incurred by a party "as a result of any improper, unreasonable or negligent act or omission" on the part of the legal representative.
    c. Costs against third parties – ie against someone who is not a party who has been guilty of "serious misconduct".

### Other sanctions

48. The CrimPR does not define or suggest what other sanctions may be appropriate. There is case law to support the view that there is often no meaningful sanction that furthers the overriding objective. For example, if the prosecution fails to comply with the time limits for service of notices or evidence, or there is some other procedural mistake, it will not usually result in the failure of the prosecution case as a whole. Likewise, failures on the part of the defence cannot be allowed to affect the defendant's right to a fair trial to the extent that it is unlikely a direction that prevented the defendant from giving evidence or calling witnesses in support of his case would be upheld.
49. The legal adviser can advise on whether some other legislation, including Parts 19 (expert evidence), 20 (hearsay evidence) and 21 (evidence of bad character) of the CrimPR, permits the imposition of a sanction if a party fails to comply with a rule or a direction. In some circumstances:
    a. the court may refuse to allow that party to introduce evidence
    b. evidence that that party wants to introduce may not be admissible
    c. the court may draw adverse inferences from the late introduction of an issue or evidence.

## Should the court proceed in the defendant's absence?

50. The presumption is that for an offender aged 18 or over, the court shall proceed in absence unless it appears to the court to be contrary to the interests of justice to do so (s.11 Magistrates' Courts Act 1980). If the offender is under 18, it may proceed in absence.
51. CrimPD 5.4.12 states 'If the defendant is aged 18 or over:
    a. the court may draw adverse inferences from the late introduction of an issue or evidence
    b. the court shall proceed in the defendant's absence unless it appears to the court to be contrary to the interests of justice to do so
    c. proceeding in the absence of a defendant is the default position where the defendant is aware of the date of trial and no acceptable reason is offered for that absence. The court is not obliged to investigate if no reason is offered
    d. the court will take into account all factors, including:
        i. such reasons for absence as may be offered
        ii. the reliability of the information supplied in support of those reasons

iii. the date on which the reasons for absence became known to the defendant and what action the defendant thereafter took in response

iv. that trial in absence can and sometimes does result in acquittal

v. that if convicted the defendant can ask that the conviction be re-opened in the interests of justice, for example if absence was involuntary

vi. if convicted, the defendant has a right to a re-hearing on appeal to the Crown Court.

e. where the defendant provides a medical note to excuse non-attendance, the court must assess the provenance and reliability of the information contained therein and, if necessary, summons the author to attend court. The court must give reasons explaining why it has decided to proceed or not to proceed with the trial on the date it is listed. The reasons must be specific to the case.'

52. CrimPD 5.4.13 states 'If the defendant is aged under 18:

a. there is no presumption that the court should proceed in absence

b. the potential for an acquittal may still be a relevant factor

c. the potential for an application to re-open or appeal may also be a relevant matter

d. the age, vulnerability, or experience of the defendant should be taken into account

e. whether a parent or guardian is present, whether a parent or guardian ordinarily would be required to attend and whether such a person has attended a previous hearing

f. the court should consider the interests of any co-defendant in the case proceeding

g. the interests of any young and/or vulnerable witnesses who have attended.'

## Disclosure

53. There is often misunderstanding of the provisions relating to disclosure and the service of evidence. In legal terms, disclosure is a very specific procedure and the use of incorrect terminology by parties leads to confusion and may result in the court entertaining and allowing applications for specific disclosure in contravention of the statutory framework.

54. When a defendant is charged with an offence and prior to entering a plea, the prosecution are obliged to provide initial details of the prosecution case (IDPC). This is not the same thing as disclosure.

55. IDPC will usually include a summary of the circumstances of the offence and the defendant's criminal record, if any. It may also include any account given in interview and any evidence the prosecution has available which the prosecutor considers material to a defendant's decision on plea, allocation or sentence. There is no obligation for the prosecution to provide copies of witness statements; a summary is sufficient.

56. Where a not guilty plea is entered, there is often a misapprehension that the prosecution will provide copies of the evidence they intend to rely on at trial. This is not a statutory requirement however; it is consistent with the common law expectation that the defendant will be given adequate time to prepare for and to receive a fair hearing.

57. "Disclosure" is where the prosecution provides a summary of any unused material, ie material collected by the prosecution during the investigation of an alleged offence that they are not intending to reply on at trial. It does not include material which is not in the prosecution's possession.

58. In deciding whether unused material should be disclosed to the defence, the prosecution will apply a “disclosure test”, ie whether any unused prosecution material might reasonably be considered capable of undermining the case for the prosecution against the accused or assisting the case for the defendant. If material meets the test, it must generally be disclosed to the defence.

59. There are two stages to the process:

    1. The first stage requires the prosecution to comply as soon as reasonably practicable following a not guilty plea. Initial disclosure is usually served alongside a certificate listing the unused material together with any unused material that the prosecution has determined meets the disclosure test. If it has not done so, this should be addressed at the first case management hearing and recorded on the PET form.
    2. The second stage is a continuing duty of the prosecution to disclose. This requires the prosecution to keep its unused material under continual review to determine whether material should be disclosed. This duty must be complied with also as soon as reasonably practicable.

60. The court cannot direct service of unused material unless the prosecution has refused to provide it following service of a defence statement; and on application by the defence the court has decided that must be disclosed to the defence.

61. Where the defence consider that the prosecution have not served material that would meet the disclosure test, they can apply to the court for an order requiring the prosecution to make further disclosure. Before they make an application to the court, they must serve a defence case statement.

62. The defence statement must include details of what the defence case is and what is disputed in the prosecution case to enable the prosecution to decide whether material should be disclosed under the test and must be served on the prosecutor not more than 14 days of the prosecution’s confirmation that they have complied with their initial duty of disclosure. The prosecution must then review the unused material and decide whether it meets the test and should be disclosed.

63. If the prosecution decline to disclose material, the defence can make what is known as a “section 8 application” after the relevant statutory provision under which it is made; s.8 Criminal Procedure and Investigations Act 1996.

64. The application must describe the material being sought; and say why the defence believe that the prosecution have it and that it should be disclosed.

## Evidential matters

65. There are too many categories of evidence for them all to be outlined here. However, the following are matters which are often referred to when dealing with case management and completing the PET form.

66. You should always take advice from your legal adviser, who will be able to refer you to the relevant parts of the CrimPR, CrimPD and any case law on the relevant subject.

### Bad character

67. Bad character is defined as “evidence of, or of a disposition towards, misconduct on his part, other than evidence which has to do with the alleged facts of the offence with which the defendant is charged or is evidence of misconduct in connection with the investigation or prosecution of that offence”. (s.98 Criminal Justice Act 2003) (CJA).

68. There are seven gateways under which defendants' bad character will be admitted as evidence in a trial:

    1. all parties to the proceedings agree to the evidence being admissible
    2. the evidence is adduced by the defendant or is given in answer to a question asked by the defendant in cross-examination and intended to elicit it
    3. it is important explanatory evidence
    4. it is relevant to an important matter in issue between the defendant and the prosecution
    5. it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant
    6. it is evidence to correct a false impression given by the defendant; or
    7. the defendant has made an attack on another person's character.

### Hearsay

69. Hearsay evidence is defined as "a statement not made in oral evidence that is evidence of any matter stated." (s.114 CJA).

70. It occurs when a witness is asked to give evidence about something that they heard about but did not witness personally. As a general rule, a witness can only give evidence of something they have direct knowledge of.

71. Hearsay evidence is inadmissible in criminal proceedings, except where there is some statutory provision which renders it admissible or where a common law rule making it admissible is preserved by law or by agreement of all parties to the proceedings, or where the court is satisfied that it is in the interests of justice for it to be admissible.

72. In *R v Twist* (2011), the Court of Appeal suggested a three-stage approach when considering whether the hearsay rules applied:

    1. Step one – What is the relevant fact which the party calling the evidence is seeking to prove?
    2. Step two – Is there a statement of that matter or fact?

       If the answer to these two questions is no, then no question of hearsay arises.
    3. Step three – If there was such a statement, did the maker of the communication intend that the recipient, or any other person, should believe that matter or act upon it as true.

       If yes, it is hearsay. If no, it is not.

## Expert evidence

73. Expert witnesses can be of great assistance to the court in helping them to determine issues on matters outside the court's experience, understanding and knowledge. They can provide the court with a statement of opinion on any admissible matter calling for expertise by the witness if they are qualified to give such an opinion.

74. Their duty is to help the court to achieve the overriding objective by giving opinion, which is objective and unbiased, in relation to matters within their expertise.

75. Expert evidence is admissible in criminal proceedings if:

    a. it is relevant to a matter in issue in the proceedings

b. it is needed to provide the court with information likely to be outside the court's own knowledge and experience

c. the witness is competent to give that opinion.

## Special measures

76. The idea of attending to give evidence in court may cause many witnesses to suffer anxiety and distress. This can affect the quantity and quality of the evidence they provide and impact the proceedings.

77. Witnesses may feel in fear or distress owing to:

a. the nature and circumstances of the offence

b. their age

c. their social and cultural background and ethnic origins

d. their domestic and employment circumstances

e. their religious beliefs or political opinions

f. behaviour towards them by the defendant, or associates of the defendant.

78. Parliament has recognised that children and other vulnerable witnesses need assistance in order to give their best evidence and legislation has been introduced to help achieve this aim, specifically in relation to two groups: vulnerable witnesses, which includes children under the age of 18; and intimidated witnesses, those likely to suffer in giving evidence because of fear or distress.

79. The Youth Justice and Criminal Evidence Act 1999 (YJCEA) introduced a range of measures that can be used to facilitate the gathering and giving of evidence by vulnerable and intimidated witnesses by alleviating some of that stress. The measures are collectively known as "special measures".

80. Vulnerable witnesses include, but are not restricted to, those under the age of 18 and/or those who suffer from a mental disorder within the meaning of the Mental Health Act 1983, or otherwise have a significant impairment of intelligence and social functioning or have a physical disability or are suffering from a physical disorder.

81. Intimidated witnesses include, but are not restricted to, those who are the victims of sexual offences or domestic abuse, modern slavery.

82. If the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings, they are eligible for special measures. Some witnesses are automatically eligible for special measures.

### Eligibility for special measures

83. Being eligible for special measures does not mean that the court will automatically grant them. The court must satisfy itself that the special measure, or a combination of special measures, is likely to maximise the quality of the witness's evidence before granting an application.

84. Where a court has determined a witness is eligible, it must then consider which special measure is likely to maximise the quality of the evidence provided. Any witness under the age of 18 is automatically eligible for special measures.

85. Any special measure is subject to certain limitations, such as the availability of equipment and the wishes of the child.

## Special measures available

This list is not exhaustive:

- **Screening a witness from the accused**

  Screens will be placed either around the witness box or around the dock to prevent the witness from having to see the defendant and the defendant from seeing the witness. The witness will still be seen by other parties in the courtroom.

- **Giving of evidence via a live link**

  The witness will give evidence via a live video link outside the courtroom (either within the court centre, from another court centre or from a remote location). Usually, the witness will only see the judge and the lawyer asking questions. On occasion, witnesses may see other people in the courtroom. Unless the court can also screen the defendant, it is likely that the defendant will be able to see the witness on the screens in the court.

- **Evidence in chief being video recorded and played to the court**

  The witness's evidence in chief is recorded and played to the court. However, at the hearing, a live link or screen can be used when the witness is being cross-examined.

- **Use of an intermediary**

  Intermediaries are communication specialists who support people participating in a court hearing. They can support the person at a court hearing, including helping to rephrase any questions the person does not understand to get the best response, and making sure the person can understand and follow what is happening.

# Section 8: Effective fine enforcement

## Introduction

1. Imposition of a fine is the most common punishment imposed by magistrates. Payment is due on the day on which the fine is imposed. Presiding justices should not invite an application for time to pay.
2. Schedule 5 Courts Act 2003 provides a framework for the enforcement of financial penalties.
3. This section explains the processes for enforcing new and pre-existing financial penalties. There is now a wide range of enforcement options, which are dealt with administratively by fines officers. As a result, the number of enforcement cases listed in the court has reduced significantly to the extent that many areas now choose not to hold specific fines enforcement courts and many magistrates have limited recent experience of it.

## On the day of imposition

4. Effective fine enforcement starts on the day on which it is imposed.
5. The level of fine imposed must reflect the seriousness of the offence. The court must also take into account the defendant's financial circumstances and calculate the defendant's relevant weekly income (RWI), which is the defendant's actual income less tax and National Insurance. If the defendant's sole source of income is benefits (or in cases where there is a small amount of income earned in addition to the benefits) and the total received is £120 or less, the RWI is deemed to be £120.
6. Defendants are obliged to complete a statement of means and it is an offence if they fail to do so. If there is no reliable information about a defendant's means, perhaps because they are absent from court, the assumed RWI is £440.
7. The Sentencing Council's Magistrates' Courts' Sentencing Guidelines (MCSG) sets out individual offences and examples of activity that will guide magistrates when determining the level of fine, and the court must have regard to the MCSG and must give reasons when imposing a sentence outside the range. Refer to the MCSG for a full explanation of the approach to be taken when imposing fines.
8. The following chart shows the MCSG starting point and ranges based on RWI.

| | Starting point | Range |
|---|---|---|
| **Fine Band A** | 50% of RWI | 25 to 75% of RWI |
| **Fine Band B** | 100% of RWI | 75 to 125% of RWI |
| **Fine Band C** | 150% of RWI | 125 to 175% of RWI |
| **Fine Band D** | 250% of RWI | 200 to 300% of RWI |
| **Fine Band E** | 400% of RWI | 300 to 500% of RWI |

## Collection orders

9. The Courts Act 2003 **requires** a court to impose a collection order when a financial penalty (other than confiscation and forfeiture) is imposed, unless it is impracticable or inappropriate to do so. The most common reason for not imposing a collection order is because payment is made immediately. Reasons must be given if a collection order is not made.

10. Effective enforcement under the Courts Act 2003 is based on three principles:

    a. A wide range of enforcement methods become primarily administrative functions with only those requiring judicial intervention coming before the court.

    b. There should be much less opportunity for persistent defaulters to avoid paying.

    c. There should be a distinction between those who can't pay and those who won't pay.

## Existing defaulters

11. If the defendant is already in default of a previous order to pay the court must:

    a. consolidate all accounts

    b. make a collection order

    c. impose an attachment of earnings order (AEO) or a deduction from benefits order (DBO).

## Fines officers

12. The making of a collection order means that a fines officer takes enforcement action without the need for a court hearing in many cases. The process is a national one but has some flexibility included which allows for some local variations in practice. There is a strong reliance on using positive fine enforcement techniques.

### The fines officer's duties in the enforcement process

13. **On first default** – the making of an AEO or DBO (if not already made) unless impracticable or inappropriate. Reasons must be given and entered onto the account notes for future reference during the enforcement process.

14. **On subsequent default** – if there is a further default the case must either be referred back to the court or the defaulter must be issued with a **further steps notice**, listing the powers that may be adopted by the fines officer. These are:

    a. The issue of a warrant of control.

    b. Registering the sum in the Register of Judgments and Orders.

    c. Making an AEO.

    d. Making a DBO.

    e. Making a clamping order.

    f. Taking proceedings to enforce payment in the County Court or High Court (provided that the defaulter has the means to pay forthwith).

    g. Referring the matter back to court (and issuing a summons to ensure attendance if necessary).

## Distress warrant (warrants of control)

15. Distress warrants became known as warrants of control from 6 April 2014. A warrant of control authorises seizure of the defaulter's goods so that they may be sold to settle monies due to the court.

16. Where the court has power to issue a warrant of control, it may postpone the issue for such time and on such conditions as it thinks just.

17. If the warrant is executed but the defaulter has no goods or insufficient goods to satisfy the sum due, the court will need to consider enforcing in some other way.

18. Most bailiffs, now known as enforcement agents, will only accept payment of the total outstanding for magistrates' fines, therefore there is little scope for accepting reduced instalments. They can charge for a number of things, including administration costs, handling fees and making visits to the defaulter's property, all of which is deducted before the fine is paid.

19. **Issuing a warrant of control is one of the options that must be considered before commitment to prison for non-payment.**

## Registration

20. The details of the defaulter are added to a Register of Judgments and this information may affect the defaulter's ability to obtain credit in the future.

21. It is likely that by the time registration is a realistic option, the defaulter has already had several warnings of the consequences of failing to co-operate with the enforcement process.

22. Defaulters are given a period of grace during which prompt payment will result in the fine being removed from the register. If such payment is not made, it will remain on the register for five years.

23. If registration does not result in payment, the fines officer must decide what further action to take.

## Attachment of earnings order (AEO)

24. An AEO directs an employer to deduct money from the defaulter's pay and to send it to the court. If the defaulter is defined as an existing defaulter, an AEO must be made unless the default can be disregarded, or it is inappropriate or impracticable to make an order, eg if the defaulter will lose their job if the order is made.

25. A collection order must be made unless it is impractical or inappropriate. This enables the fines officer to impose enforcement sanctions if the defendant fails to pay as ordered. They will also fix reserve terms for payment if the AEO is not successful.

26. If it is not possible for deductions to be made, the defaulter will be informed of this and that they should pay in accordance with the reserve terms.

27. The amount deducted is fixed by law and not determined by the court. The amount is a percentage of the defendant's income. There is no discretion to amend the amount (see the deductions from AEO table below).

28. The order is unlikely to be effective unless the defaulter is in regular work. It may be inappropriate if the fine is small or if the employer's business is unlikely to ensure that regular payments are made.

29. Sufficient information is required from the defaulter in respect of their employer and their employment to implement the order successfully. This includes, as a minimum, the company name, address and payroll number.
30. The defaulter's consent is not required if the offender is an existing defaulter.
31. **The court must consider the making of an AEO before it can commit a defaulter for non-payment.**

## Deductions from AEO table

### Weekly earnings

| Attachable earnings | Percentage rate deducted |
|---|---|
| £55 or less | 0% |
| £56 to £100 | 3% |
| £101 to £135 | 5% |
| £136 to £165 | 7% |
| £166 to £260 | 12% |
| £261 to £370 | 17% |
| More than £370 | 17% for the first £350, 50% for the remainder |

### Monthly earnings

| Attachable earnings | Percentage rate deducted |
|---|---|
| £220 or less | 0% |
| £221 to £400 | 3% |
| £401 to £540 | 5% |
| £541 to £660 | 7% |
| £661 to £1040 | 12% |
| £1,041 to £1,480 | 17% |
| More than £1,480 | 17% for the first £1,480, 50% for the remainder |

### Daily earnings

| Attachable earnings | Percentage rate deducted |
|---|---|
| £8 or less | 0% |
| £9 to £15 | 3% |
| £16 to £20 | 5% |
| £21 to £24 | 7% |
| £25 to £38 | 12% |
| £39 to £53 | 17% |
| More than £53 | 17% for the first £53, 50% for the remainder |

## Deduction from benefits order

32. After enquiry into a defaulter's means, the court has power to order deductions to be made from their state benefits. Deductions can only be made if the defaulter is in receipt of a deductible benefit such as Income Support (IS) or Income-Based Jobseeker's Allowance (JSA), Employment Support Allowance (ESA), or Pension Credit. If the defaulter has other deductions being made for housing, utilities or council tax, a DBO may not be possible. The amount to be deducted is fixed by the Department for Work and Pensions (DWP) and is currently set at £5 per week. The National Insurance number should be obtained.
33. If the defaulter is defined as an existing defaulter, the order must be made unless the default can be disregarded, or it is inappropriate or impracticable to make an order. A reason for not making the orders could be that the defaulter is already having priority deductions from benefit, eg rent and utilities. A crisis loan is not a priority deduction.
34. Reserve terms for payment in the event of failure of the order must be made. If, for any reason deductions cannot be made, DWP will inform the court. The defaulter will be advised that they must pay in accordance with the reserve terms.
35. The defaulter's consent is not required if the offender is an existing defaulter.
36. **The court should consider the making of a DBO before it commits a defaulter for non-payment.**

## Clamping order

37. A fines officer may make a clamping order only where the defaulter has defaulted payment terms previously set by the fines officer (or court). The clamp may remain in place for up to 24 hours, after which time the vehicle is removed to secure storage.
38. Before an order is made, the fines officer must be satisfied that:
    a. the defaulter has the means to pay
    b. the value of the vehicle would be likely to be more than the outstanding fine after sale costs and charges (including storage) are deducted.

39. The vehicle may be stored for up to one month. Should this not result in the fine being paid the fines officer will remit the case back to the court to request the vehicle be sold at auction. If sold, the proceeds are distributed in the following order:
    1. The clamping contractor to cover costs of clamping, removal and storage.
    2. The court to clear the outstanding amount.
    3. If there is any surplus, a cheque is sent to the defaulter with a written statement of account.
40. In the event of insufficient monies being raised, the fines officer will consider the next appropriate enforcement action to take.

## Enforcement in the County Court or High Court

41. The Magistrates' Courts Act 1980 permits a sum adjudged to be paid on conviction to be enforced in the County Court or High Court if there has been a means enquiry and the defaulter appears to have sufficient means to pay forthwith.
42. This is an unusual step because it is slow, expensive and HMCTS must meet the cost of such applications. It is rare that a defaulter has sufficient assets but, if they do, the following remedies are available:
    a. **Garnishee/attachment of debts** – a procedure by which the court can collect what a debtor owes by reaching the debtor's property when it is in the hands of someone other than the debtor. The defaulter's own debtors are ordered to pay the fines.
    b. **A charging order** – a procedure which places a "charge" on the defaulter's property, such as a house, a piece of land or stocks and shares. The charge will be the exact amount owed. Therefore, any payments made by the defaulter during the enforcement process must be notified to the County Court or High Court before the order is made. If the defaulter sells the property, the charge usually has to be paid first before any of the proceeds of the sale can be given to the defaulter.

       (Note: a charging order does not compel the defaulter to sell the property. If there is already a charge on the property when the charge is registered, eg arising from a mortgage, that charge will be paid first.)
    c. **Appointment of a receiver** – a procedure by which the County Court or High Court appoints a receiver who receives monies from the sale of land or rent and profit on behalf of the court to offset the outstanding amount.
43. **The court must consider enforcement in the County Court or High Court before committing a defaulter for non-payment.**

## Magistrates' powers of enforcement – non-custodial

44. Where a fines officer refers a defaulter on a collection order to the court, magistrates may, in addition to all the options listed above, use the following options (listed in alphabetical order) to secure payment of the outstanding sums.

### Attendance centre order

45. A defaulter who is under 25 years can be required to attend an attendance centre in default of the payment of any sum of money. The order must be for a period of between 12 and 36 hours. A centre must be available and reasonably accessible to the defaulter.

46. Any payments made after an attendance centre order has been imposed reduce the number of hours the defaulter is required to attend in direct proportion to the amount outstanding. Therefore, if they pay half the amount outstanding, the hours they are required to attend will be reduced by half.

47. **It is a step that must be tried or considered impracticable before imposing imprisonment in default.**

## Increasing the fine

48. Where there is default on a collection order that includes a fine, the court may increase the fine (but no other part of the financial penalty) by 50%. **The court must establish wilful refusal or culpable neglect** on the part of the defaulter who is otherwise at risk of imprisonment in default, ie the "won't pay" category.

## Local detention

49. The court can order detention for one day within the courthouse or any police station in lieu of payment. The order is not imprisonment, therefore the court need not find wilful refusal or culpable neglect before imposing it.

50. The order should specify the time when the detention ends (often expressed as "until court rises") but no later than 8pm. In fixing the time of the order, the court must not deprive the defaulter of a reasonable opportunity of returning home that day.

51. This power may be suitable when only small sums of money are outstanding, or for defaulters of no fixed abode.

## Money payment supervision order

52. An order placing a defaulter under supervision in respect of any sum shall remain in force while all or part of the sum remains payable, unless it ceases to have effect or is discharged.

53. The court appoints a person to act as supervisor. This could be a fines officer or in some cases a probation officer. The duty of the supervisor is to advise and befriend the defaulter with a view to inducing them to pay and thereby avoid imprisonment. It is most appropriate in cases where the defaulter is willing to pay but would respond to advice to managing their finances.

54. The defaulter need not consent to the making of the order. An order will cease to have effect on a transfer of fine order.

55. **It is a step that must be tried or considered impracticable before imposing imprisonment in default** and, if such an order has been made, the court should obtain up-to-date information from the supervisor on the defaulter's conduct and means.

## Remission of a fine

56. **Change of circumstances** – the court may remit all or part of a fine if there has been a change of circumstances and it is just to do, eg where the defaulter's income has reduced significantly or where essential outgoings have increased and the defaulter provides evidence of the change of circumstances.

57. **No information as to means available** – the court may also remit where a fine was imposed in absence but if the defendant's financial circumstances had been known the fine would not have been imposed or would have been smaller. Reasons for remitting the fine

must be given. Note that costs, compensation, surcharge and excise penalties cannot be remitted.

### Varying payment terms

58. A reduction in the amount to be paid periodically, or extending the date by which the amount must be paid in full, may be a useful tool for those defaulters who fall into the "can't pay" rather than "won't pay" category. The purpose is to ensure payment is made and so will be inappropriate if there have been previous failures to comply with payment terms. This power may be used in conjunction with other enforcement methods.

## Magistrates' powers of enforcement – custodial

59. Committal to prison is the ultimate sanction for non-payment of financial penalties. The defaulter should be offered legal representation. The duty solicitor scheme included non-payment of fine if the defaulter is at risk of custody.

60. Custodial terms are imposed in accordance with the following scale:

| | |
|---|---|
| Up to £200 | 7 days |
| £200.01 to £500 | 14 days |
| £500.01 to £1,000 | 28 days |
| £1,000.01 to £2,500 | 45 days |
| £2,500.01 to £5,000 | 3 months |
| £5,000.01 to £10,000 | 6 months |
| Over £10,000 | 12 months |

These are the maximum periods. The court may impose a shorter period if it feels appropriate. The minimum period of custody in default is five days.

### Committal to prison on the day of imposition

61. This is rare and can only be ordered if the defendant is:
    a. convicted of an imprisonable offence and is capable of paying sum forthwith, or
    b. unlikely to remain at an address in the UK long enough to make other methods of enforcement feasible, or
    c. already serving a custodial sentence, or
    d. is being sentenced to custody on this or another offence at the same time.

### Committal to prison on default

62. This is the final stage in the enforcement process and requires a full means enquiry to take place. The court must be satisfied that:
    a. the default is due to culpable neglect or wilful refusal, and

b. all other methods of enforcement (see a. to e. below) have been tried or considered and reasons given if an alternative method is not used, and

c. the defaulter has the means to pay.

(Note: Culpable neglect cannot be found where the defaulter has no income or capital with which to pay the fine.)

63. The other methods referred to above are:

a. attachment of earnings order

b. attendance centre (if the defaulter is under 21)

c. warrant of control

d. enforcement in the County Court or High Court

e. money payment supervision order.

When ruling out any of these non-custodial options the court must exercise its discretion judicially and on sufficient evidence.

### Meaning of wilful refusal and culpable neglect

64. Both require the defaulter to be to blame for the non-payment and the court must be satisfied of this beyond reasonable doubt.

65. **Wilful refusal** – a deliberate defiance of a court order and will include situations where the defaulter will not pay on a point of principle.

66. **Culpable neglect** – a reckless disregard of a court order and will include situations where the defaulter has chosen to use their available income for non-essential items in preference to paying the fine.

### Part payments

67. If the defaulter makes some payments towards the fine, the period of custody will be reduced in direct proportion to the amount paid. The legal adviser will calculate the necessary reduction based on a set formula. If the whole amount is paid, the defaulter is entitled to be released.

## Suspending the term of imprisonment on payment terms

68. Imposing custody is intended to result in payment rather than punishment. If culpable neglect or wilful refusal is established and the court is intending to commit the defaulter, it may instead suspend the term of custody and impose payment terms. This means that the defaulter is not at risk of serving the custodial term, provided they pay exactly as ordered. They should still be offered legal representation and advised that any payment missed is likely to result in immediate custody.

## Consequences of failing to comply with payment terms on a suspended committal

69. The defaulter is required to attend court for a further means enquiry. It should be an unusual step to further suspend the committal, however before the warrant is issued the court must still be certain that the defaulter has:

a. the means to pay forthwith, or

b. wilfully refused or culpably neglected to pay, and

c. other methods of enforcement have been tried or are inappropriate.

## Conducting a means enquiry

70. The following process should be followed whether sitting in a dedicated fines enforcement court, a fines officer has referred a case to the court or a defaulter has been arrested and appears in custody.

71. It is usual practice for the legal adviser to ask questions of the defaulter to assist the court. This is something that should be agreed as part of the pre-court briefing. The legal adviser must remain impartial throughout.

### Role of the legal adviser

72. The following is an extract from the Practice Direction:

> "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. With the agreement of the justices a legal adviser may ask questions of the defaulter to elicit information which the justices will require to make an adjudication, for example to facilitate his explanation for the default. A legal adviser may also advise the justices in the normal way as to the options open to them in dealing with the case. It would be inappropriate for the legal adviser to set out 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 duty of impartiality is the paramount consideration for the legal adviser at all times, and this takes precedence over any role he may have as a collecting officer."

73. Before enquiring into the defaulter's means, the legal adviser should give the following information:

a. Whether the defaulter was present when the fines were imposed.

b. The amount of the original penalty, the date it was imposed, the offence(s) and whether the defaulter was present at the time.

c. The outstanding balance and a breakdown of how this is made up, eg fines costs, compensation, surcharge.

d. Whether there are other fines accounts outstanding and what these are for.

e. Whether accounts have been consolidated.

f. The current payment terms.

g. The enforcement action that has been taken so far, including whether a collection order has been made.

h. Any findings or expectations of previous enforcement hearings.

74. The legal adviser (or presiding justice) may confirm with the defaulter:

a. That the information contained within their means form is correct, clarifying any points where necessary.

b. Whether they agree with the details provided by the legal adviser.

c. Whether they are able to pay in full today (the defaulter can be asked to turn out their pockets or, if in custody, the cell staff should be able to provide details of whether the defaulter's possessions included any cash or other means to pay).

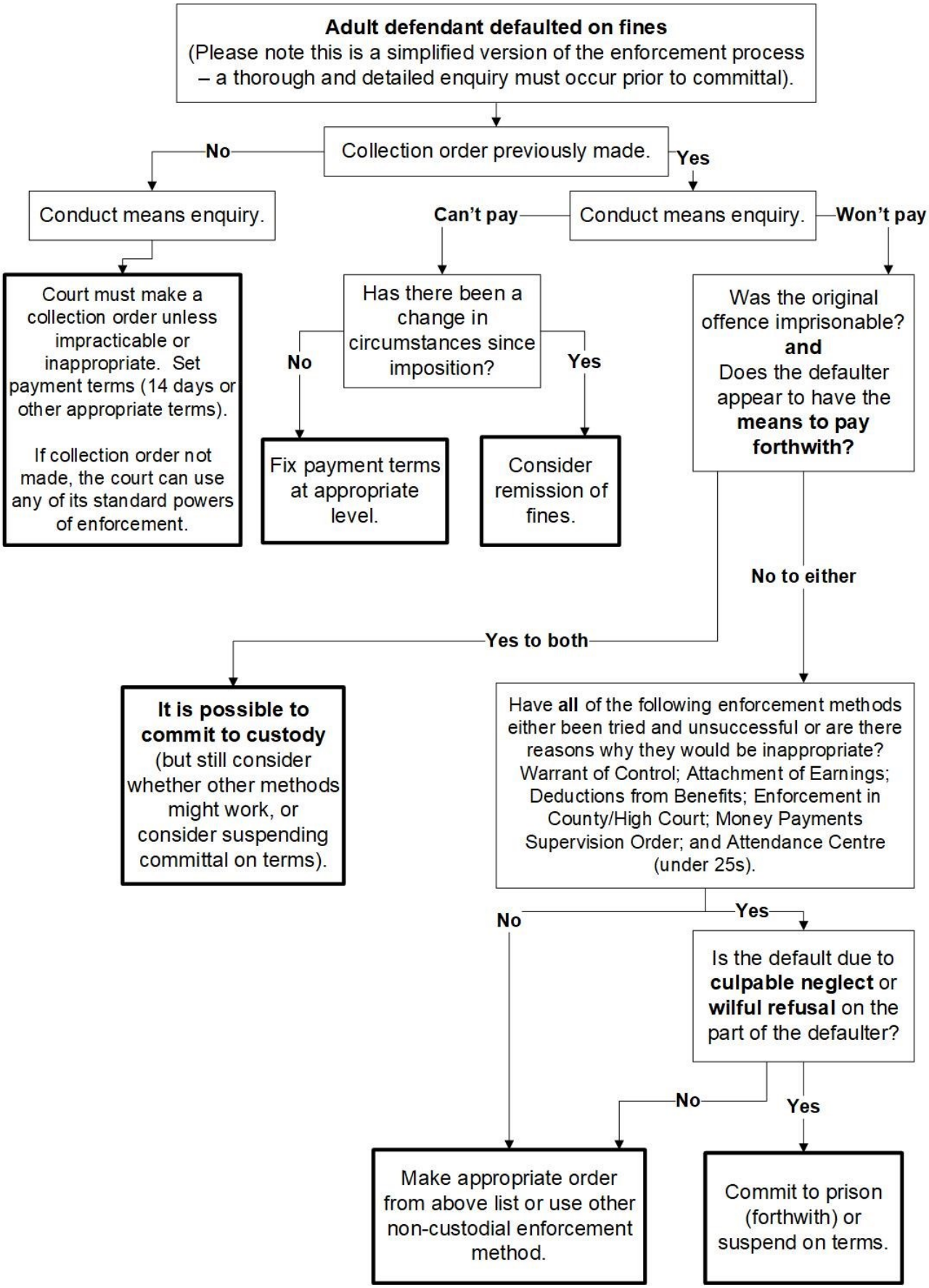
d. Why they have not complied with previous payment terms.

e. Whether there has been a change in their circumstances since the fines were imposed.

75. The presiding justice will ask additional questions to obtain further evidence or clarify any details with a view to obtaining as much information as possible before deciding on the most appropriate method of enforcement. This may be carried out by a fines officer who "prosecutes" the case, but this service is not available in every court.

76. A fine enforcement flow chart appears on the following page.

# Fine enforcement – flow chart



# Section 9: Civil orders

## Introduction

1. Magistrates' courts have an extensive civil jurisdiction. Most cases relate to disputes between individuals and local authorities. For example, appeals against licensing decisions, or council tax enforcement.
2. Most civil proceedings are commenced by a 'complaint' and are governed by the specific legislation creating the order. Civil proceedings are usually adversarial, so the complainant or applicant must prove their case on the balance of probabilities.
3. The Magistrates Court Rules 1981 make provision for case management in civil proceedings, which are similar to those for criminal proceedings.
4. Most civil proceedings can be conducted by live link. Limited exceptions include committal for default. Unlike criminal proceedings, there is no requirement for a direction to be made. Parties should be allowed to appear by live link provided the court is satisfied it is in the interests of justice to conduct proceedings that way.

## Council enforcement liability orders (council tax, non-domestic rates, land drainage rates, community infrastructure levy)

5. These are the most common orders made by any court in England and Wales. Very few of them are contested and there are limited defences.
6. There is separate legislation and regulations for each type of rate or tax, but the procedure for enforcement by liability order is the same.
7. Council tax is claimed from the occupiers of domestic premises. Appeals lie against the claim, and they amount to a Valuation Tribunal. If the tax is not paid, the council can apply to a magistrates' court for a liability order, which is a declaration that the defendant is liable to pay the tax, and which allows the council to take enforcement action, in most cases, without further reference to the court.
8. The proceedings begin by the applicant council sending to the court office a complaints list containing each application. Unusually, complaints can be made against more than one defendant, typically the joint owners of a house.
9. If a legal adviser is satisfied that the complaint is within time, ie six years or less from the billing date, and is for a matter known to law, a summons can be issued. The council prints and serves the summonses; service must be at least 14 days before the hearing date.
10. At the hearing, the council will usually be represented by a presenting officer. They are entitled to represent the council provided they have been expressly authorised and should be able to present their written authority. The presenting officer will provide the court with an updated complaint list. Some cases will be marked up for withdrawal. This may be because the case has been settled in advance or the defendant has attended court, spoken to a council officer and reached agreement that a liability order will be made but not enforced, provided they pay the debit in instalments and through deduction from benefit or wages. These defendants do not usually come into court for the hearing.
11. Very occasionally a defendant will apply for an adjournment. This should be addressed as any other adjournment, ie the court should identify the grounds and give reasons for the decision. Where a defendant has appealed to the Valuation Tribunal and is awaiting the

result, the High Court has said it is appropriate to adjourn as the debt may be settled as a result. Similarly, an adjournment may be appropriate where the defendant has an application for council tax benefit pending.

12. For the remaining cases where the council is still seeking a liability order, their presenting officer must prove the following on the balance of probabilities:
    a. The council tax has been set by resolution of the council.
    b. A sum due has been demanded in accordance with the regulations, ie a demand notice was served on the liable person as soon as practicable after the day the tax was set.
    c. The authority has served either a reminder notice, and payment was not made within seven days of the issue of the reminder a.notice, or a final notice.
    d. The amount stated in the reminder notice or final notice, including costs, is wholly or partly unpaid seven days after the notice.
    e. The summons has been served and that at least 14 days has elapsed since service of the summons.
13. To prove these matters, the council's representative will produce evidence, by way of a certified copy by the appropriate officer, showing the council's resolution setting the amount of the council tax for the local authority area and computer-generated documents. These are admissible if the officer produces a certificate confirming the computer was operating properly. In addition, the officer will give evidence on oath as to the issue of the complaint and summons, the service of the demand notices and summons, and that the sums for each complaint are due, have been demanded in accordance with the regulations and remain outstanding.
14. As the evidence is the same in each case (ie in each case the tax has been set and remains unpaid as set out in the complaint list) where cases are uncontested, the presenting officer is able to give the evidence once for all cases on the complaint list for the court to consider. There is no need to go through every individual case; the court will either be satisfied with regard to all the cases or none.
15. If a defendant does not attend, the court should hear the case in absence. There is no power to issue a warrant.
16. If the council's representative proves these matters on a balance of probabilities, the court must make the liability order and order costs.
17. The liability order is a declaration that the defendant is liable to pay a sum of tax (or rates) and the costs. It is not a declaration as to the precise sum, so the council is entitled, when collecting on the liability order, to vary the amount. For example, the sum to be collected may be reduced if the defendant is successful in a claim for council tax benefit or has made a payment in the interim.
18. If the court makes a liability order it must order reasonable costs. The only decision the court has to make is whether the costs claimed by the council are reasonable. A schedule of costs will be presented to the court. This should set out the total cost of enforcing council tax in the previous year divided by the total number of defaulters in the previous year, and the resulting sum will be reasonable costs. The council does not need to present an individualised schedule for each defendant. The court cannot refuse to make a costs order, or reduce the reasonable sum claimed, because of the defendant's ability to pay.
19. Where the defendant attends and contests the case, the presenting officer must give evidence in their case in their presence. The defendant is entitled to cross-examine the

presenting officer and give evidence. It may be possible to hear the case on the day, but the court should investigate what defence the defendant will put forward, in order to decide whether an adjournment to a specific contested hearing slot is necessary.

20. There are limited defences to an application for a liability order. Some matters must be raised in the Valuation Tribunal, not the magistrates' court and vice versa.

21. The defences to an application for a liability order are:

    a. The sum has been paid; this is the over-arching defence.

    b. Council tax has **not** been demanded in accordance with the regulations as set out above.

22. Defendants may well believe that they have a defence even when though they don't. While the court should discourage time wasting and direct both parties to the key issues, defendants should be given the same opportunity as the council to outline their case and present their defence. They should be afforded the same facilities as the council's presenting officer, for example to sit at a bench where they can take notes and put out their papers.

23. Where the court makes an adverse finding, the court should give oral reasons which should be recorded.

24. Once the court has made a liability order, the council is empowered to take further enforcement action without further reference to the magistrates' court. This includes collection by instalments, seizure of goods under a warrant of control, deduction from benefit and/or an attachment of earnings. They can also apply to the County Court for a range of orders including a charging order on property or bankruptcy. Finally, if other steps have failed, they can apply to the magistrates' court for commitment to prison (please refer to the Council Tax Committal paragraphs).

## Council tax commitment

**[NB: Courts in Wales** – as of 1 April 2019, legislation does **not** allow committal of an individual for non-payment of council tax. Commitments which were postponed before 1 April 2019 are still enforceable and these notes will apply to those breaches. However, given the passage of time, it is highly unlikely that it would ever be appropriate to commit on such an aged order.]

25. The legal adviser should always be consulted.

26. Where a local authority has not been able to secure payment using other methods under a liability order, they may apply for commitment to prison.

27. A committal order should coerce payment of the debt and should not be used as punishment for non-payment.

28. The council tax defaulter must be present at the hearing so the court may issue a summons or where the individual does not attend, a warrant with or without bail.

29. The individual has the right to be legally represented so they must either have declined to appoint their own solicitor or have been offered the services of the court duty solicitor.

30. These are adversarial proceedings between the council and the debtor, so the council must show a prima facie case before the court conducts a means enquiry.

31. The court must be satisfied on the balance of probabilities that:

    a. a liability order was imposed in relation to the debt

    b. the individual has failed to pay, and a sum remains outstanding, and

c. the local authority tried to collect using a warrant of control and failed.

If those facts are found, you **must** conduct a means enquiry.

32. The means enquiry must cover:
    a. income and outgoings for each liability order separately
    b. future ability to pay
    c. alternative means of collection (other than commitment), eg deduction from earnings or benefit, and
    d. vulnerability of debtor and any dependents who would be affected by an order of commitment.
33. The grounds to order commitment, whether immediate or postponed, must all be present and are:
    a. liability order
    b. default
    c. failure of warrant of control
    d. wilful refusal, ie a deliberate refusal to pay or culpable neglect (ie neglect sufficiently blameworthy to justify imprisonment)
    e. a commitment order will be effective in encouraging payment.
34. When ordering commitment, either immediate or postponed, the court must give and record full reasons.
35. Reasons must be intelligible to a third party without needing to read between the lines and should include:
    a. why the court found wilful refusal or culpable neglect
    b. the reason for imprisonment, ie why imprisonment is likely to result in payment, and
    c. if there are dependents, why the court imposed a forthwith commitment.

## Postponed (or suspended) commitment

36. The reasons must be as cogent for a postponed commitment as they would be for an immediate commitment. In addition:
    a. the rate of payment must be realistic
    b. the order should be capable of being paid within three years
    c. a period of up to five years is possible with additional reasons but should be rare
    d. if the rate of payment is subsequently varied because of a change of circumstances, it is acceptable (indeed inevitable) for the period to be longer as a result.

## Remittal

37. There is a power to remit arrears. In general, courts should be thinking about remittal if the court's instalment order means it will take more than three years to pay off.
38. The regulations do not permit remittal and committal in the same hearing or after a postponed commitment has been ordered. The court must consider remittal first.

## Period of imprisonment

39. Courts should normally impose a lower term than the maximum based on the amount, as this is an order for non-payment of a civil debt, not a fine. The term should be further reduced where the court finds culpable neglect rather than wilful refusal.

40. Legal advisers will calculate the term using a calculator which makes allowance for both these factors. Justices should then determine the precise term based on the circumstances, but in the interests of consistency should not depart far from the recommended term, save in exceptional circumstances.

# Section 10: Checklists

## Human rights

- ☐ As a public authority, **the court has a duty to act compatibly with the European Convention on Human Rights.**
- ☐ The practices, procedures and decisions of the court should be carried out in such a way so as not to breach an individual's human rights. This applies to all those affected, eg defendants, victims, witnesses, etc.
- ☐ **Article 6 is the right to a fair trial** and should always be at the forefront of your mind – a full list of the articles is provided at the end of this checklist.
- ☐ The magistrates' court has not seen many human rights challenges. However, it can be a complex area of law and you should always seek the advice of the legal adviser if a Convention point is raised.
- ☐ A party wishing to raise a Convention point should be required to **provide a written outline of their argument including supporting case law**. This enables the parties, magistrates and legal adviser to consider the point fully.
- ☐ **Is the Convention engaged?**
- ☐ **If so, which right is engaged?** The articles that are most likely to be raised in court are:
  - Article 5 – Right to liberty and security (limited right).
  - Article 6 – Right to a fair trial (part absolute right, part limited right).
  - Article 8 – Right to respect for private and family life (qualified right).
  - Article 10 – Right to freedom of expression (qualified right).
  - Article 11 – Right to freedom of assembly (qualified right).
  - Article 14 – Prohibition of discrimination (qualified right).
- ☐ **Has the right been breached?** The fact that a right is interfered with does not necessarily mean that it has been breached.
- ☐ **Establish the type of right that is engaged:**
  - **Absolute right** – has there been an interference with the individual's Convention right?

    If the answer is yes, then there has been a breach of the right – there are no circumstances when such behaviour would be acceptable under the Convention.
  - **Limited right** – does the interference fall within one of the lawful exceptions within the article?

    Each limited article contains an exhaustive list of the exceptions to the right – if the exception is not in the list, there is a breach. Seek advice from the legal adviser.
  - **Qualified right** – you need to ask three questions:
    i. Is the interference prescribed by clear and accessible UK law?
    ii. Does it pursue one of the legitimate aims set out in the article?
    iii. Is it no more than is necessary to secure that legitimate aim?

If the answer is no to any of these three questions, there is a breach.

☐ **Identify the source of the breach and determine how you deal with it.**

- **Primary legislation** – can you find a possible interpretation that will give effect to the Convention right?

  If the answer is yes, then the law must be applied in this way. If the answer is no, then apply national law as it is.

- **Secondary legislation** – can you find a possible interpretation that will give effect to the Convention right?

  If the answer is yes, then the law must be applied in this way. If the answer is no, disregard national law so as to give effect to the Convention right.

- **Practice or precedent** – can you find a possible interpretation that will give effect to the Convention right?

  If the answer is yes, then the law must be applied in this way. If the answer is no, disregard national law so as to give effect to the Convention right.

☐ Explain why you have reached the conclusion you have – this structure will provide a basis for your reasons.

☐ Seek the assistance of the legal adviser in preparing your pronouncement and reasons.

## List of convention articles

- **Article 2 –** Right to Life (limited)
- **Article 3 –** Prohibition of Torture (absolute)
- **Article 4 –** Prohibition of Slavery (absolute) and Forced Labour (limited)
- **Article 5 –** Right to Liberty and Security (limited)
- **Article 6 –** Right to a Fair Trial (absolute and limited)
- **Article 7 –** No Punishment without Lawful Authority (absolute)
- **Article 8 –** Right to respect for Private and Family Life (qualified)
- **Article 9 –** Freedom of Thought and Conscience and Religion (qualified)
- **Article 10 –** Freedom of Expression (qualified)
- **Article 11 –** Freedom of Assembly and Association (qualified)
- **Article 12 –** Right to Marry (limited)
- **Article 13 –** Right to an Effective Remedy (not incorporated in HRA)
- **Article 14 –** Prohibition of Discrimination
- **Article 15 –** Derogation in times of Emergency
- **Article 16 –** Restrictions on the Political Activity of Aliens
- **Article 17 –** Prohibition of Abuse of Rights
- **Article 18 –** Limitation on use of restriction of rights
- **1st Protocol –** Article 1 Protection of Property (fair balance test)
- **1st Protocol –** Article 2 Right to Education (UK reservation)
- **1st Protocol –** Article 3 Free Elections
- **6th Protocol –** Article 1 Abolition of the Death Penalty
- **6th Protocol –** Article 2 Death Penalty in Time of War.

# Plea before venue and allocation (adult defendants)

## Plea before venue

- ☐ **This procedure only applies to defendants aged 18 years and over charged with offences triable either-way** – ie cases which may be dealt with in the magistrates' court or the Crown Court. However, some repeat either-way offences become indictable only due to the minimum sentence that must be imposed on conviction, eg third conviction for domestic burglary, class A drug trafficking and certain firearm offences. In addition, the prosecution, in particular cases which involve serious or complex fraud or crimes against children, may serve notice on the court which means the court must send them to the Crown Court forthwith. The legal adviser will be able to advise you if these circumstances apply.
- ☐ **Have initial details of the prosecution case under part 8 Criminal Procedure Rules (CrimPR) been served?** It is important to ensure that a defendant, particularly if they are unrepresented, is aware of this right. Initial details usually comprise of a summary of the case, which may include copies of any statements which assist a defendant to decide where the case should be dealt with and what their plea will be. The CrimPR requires these details to be served at or before the first court hearing.
  - If initial details have not been served where it is on file or available electronically and can be provided, the court should consider putting the case back to avoid an unnecessary adjournment.
  - If the initial details are not available or are extensive the court may, after hearing representations, consider an adjournment for the shortest period, stating the expectations of the court of all parties during the adjournment and at the next court hearing.
- ☐ **The legal adviser will read the charge(s) and explain the plea before venue procedure to the defendant.** The defendant may indicate a guilty or not guilty plea or give no indication. They will also be warned that they may be committed to the Crown Court for sentence if they are convicted of the offence and the court considers that its sentencing powers are insufficient.
- ☐ **When the defendant indicates a guilty plea,** the court:
  - should proceed to sentence forthwith (with a recent PSR and oral update if necessary) and hear representations from the prosecution and defence, **or**
  - if it cannot sentence forthwith, may order a report to be prepared for either later the same day or if necessary, adjourn for the shortest period possible, **or**
  - may commit the defendant to the Crown Court for sentence if the court decides its powers are not sufficient or is a dangerous offender.
- ☐ Refer to any sentencing guidelines for the approach to be taken when considering sentence.
- ☐ **Where the defendant indicates a not guilty plea or gives no indication of plea,** the court should proceed to the allocation procedure.

## Allocation

The Sentencing Council published a revised Allocation guideline in March 2016.

- ☐ **This procedure applies where the defendant has indicated a not guilty plea or has given no indication of plea.**

- ☐ The decision should be made in accordance with the revised Sentencing Council Allocation Guideline, effective from March 2016:

  **"In general, either-way offences should be tried summarily unless** the outcome would clearly be a sentence in excess of the court's powers for the offence concerned or for reasons of unusual legal, procedural or factual complexity […] in cases with no factual or legal complications the court should bear in mind its **power to commit for sentence after a trial** and **may retain jurisdiction** notwithstanding that the likely sentence might exceed its powers."

- ☐ Ensure you have adequate information to make a decision. The hearing is inquisitorial, and if you believe that you do not have sufficient information you should obtain further information from either party.
  - What guidance is available? The court should refer to definitive guidelines to assess the likely sentence for the offence.
  - **Where there is a definitive guideline** these provide categories of offences identifying factors which indicate higher or lower levels of culpability and harm with associated starting points and sentencing ranges.
  - **Where there is no definitive guideline** assistance can be found in Court of Appeal sentencing decisions and advice from the legal adviser.
- ☐ **Decide which venue is more appropriate.**
- ☐ **Where the court decides the case is more suitable for Crown Court trial**, the defendant will be sent forthwith to the Crown Court.
- ☐ **Where the case is more suitable for summary trial** the court will explain to the defendant that:
  - the case appears most suitable for summary trial
  - they can consent to be dealt with in the magistrates' court or choose to be dealt with at the Crown Court
  - if they consent to be dealt with in the magistrates' court and are later convicted, they may be committed for sentence if the court is of the opinion that:

    "the offence or the combination of the offence and one or more offences associated with it was so serious that the Crown Court should, in the court's opinion, have power to deal with the offences in any way it could with him if he had been convicted on indictment."
- ☐ **At this stage, the defendant may request an indication of sentence**, ie whether a custody or a non-custodial sentence would be imposed if they consented to summary trial and pleaded guilty. It should not be more specific and the court may decline to give any indication. Note: a court can only give an indication on request, not of its own motion.
- ☐ **Where the defendant makes a request and the court gives an indication of sentence**, the defendant should be asked if they wish to reconsider their earlier indicated plea.
  - **If they indicate a guilty plea**, they will be treated as if their case has been dealt with summarily and must be sentenced in the magistrates' court in accordance with any indication given. Where a non-custodial sentence was indicated, a court cannot impose custody. An exception is where the defendant may be committed for sentence because they fall within the dangerousness provisions, or they had other related offences which

have been sent to the Crown Court. There is no longer a power to commit for sentence because the court's powers are insufficient.

- **If they do not indicate a guilty plea,** any indication of sentence is not binding.

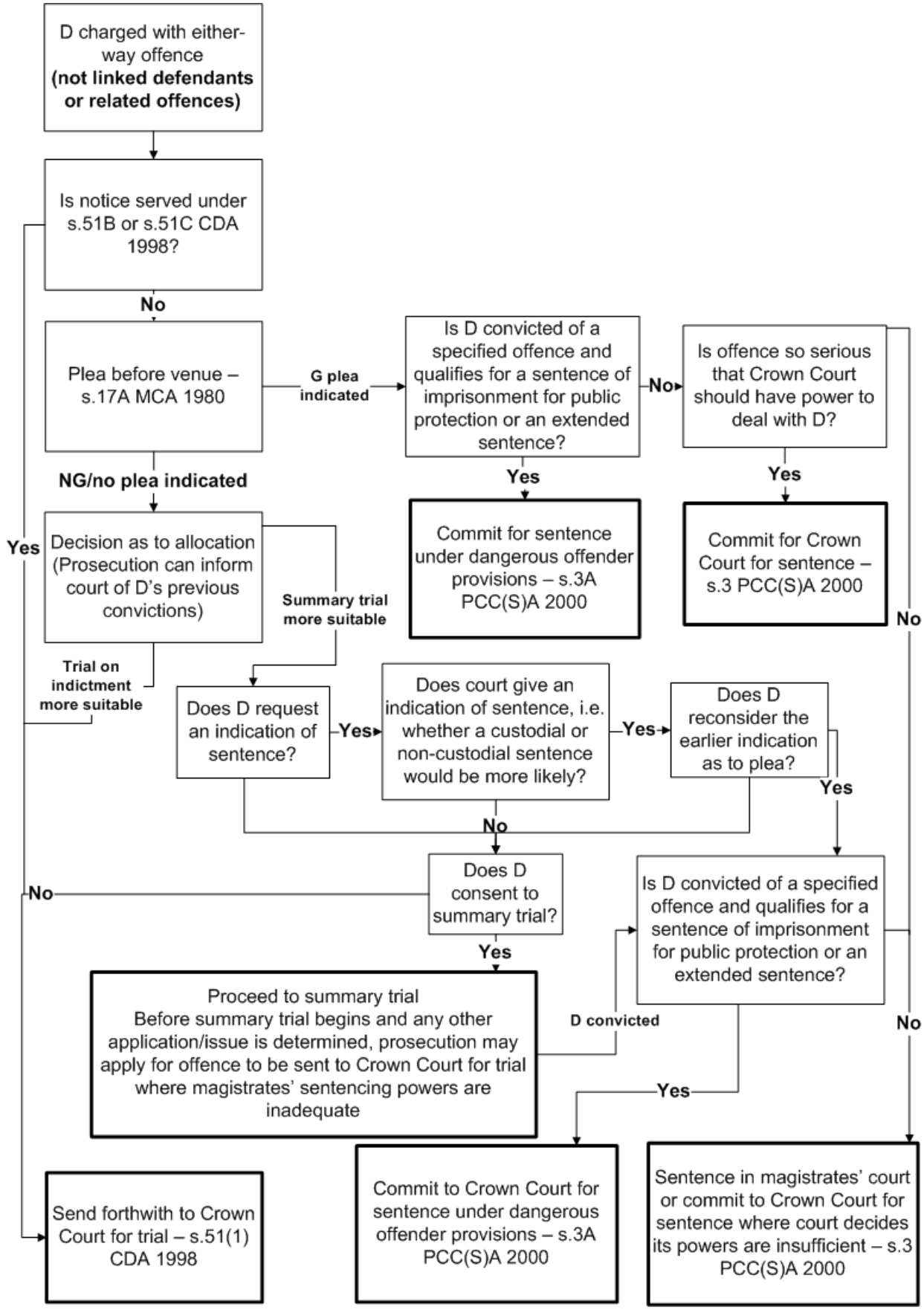
☐ **Where the defendant makes no request, or the court declines to give an indication of sentence and the defendant indicates no plea or one of not guilty,** the defendant should be asked where they wish to be dealt with.

- **Where the defendant elects Crown Court trial**, the defendant will be sent forthwith to the Crown Court.
- **Where the defendant agrees to summary trial**, the case will proceed in the magistrates' court. Once summary trial begins, the powers to send the matter to the Crown Court are limited. In certain circumstances, the prosecution may make an application that the matter is sent for trial. This is likely to be rare and where additional information comes to light that makes the offence more serious and thus outside the magistrates' court powers of sentence. Remember when deciding which court is the most appropriate, magistrates will now be made aware of any previous convictions. The prosecution can only make this application before any summary trial begins and this includes any issue in relation to the summary trial such as an application for special measures or bad character evidence to be admitted. The court may commit for sentence if the defendant is convicted after trial, falls within the dangerousness provisions or they had other related offences which have been committed. The court may still commit for sentence where:

  "the offence or the combination of the offence and one or more offences associated with it was so serious that the Crown Court should, in the court's opinion, have power to deal with the offences in any way it could with him if he had been convicted on indictment."[1]

[1] Section 3 Powers Criminal Court (Sentencing) Act 2000.

# Adult defendants – either-way offence procedure flow chart



## Plea before venue and allocation (youth defendants)

☐ **In any of the following cases a youth shall be sent forthwith to the Crown Court for trial.** The legal adviser will inform you if the relevant criteria are met.

- Where they are jointly charged with an adult defendant and the adult co-accused has been sent for trial and the court considers it necessary in the interests of justice. However, the youth will be asked to indicate a plea. If that is one of guilty, sending the case to the Crown Court will be avoided.
- Where they are jointly charged with an offence capable of being a "grave crime" and the youth indicates a not guilty plea or gives no indication and the court is of the opinion that the powers of the youth court would be insufficient. In such cases, the adult must then also be sent to the Crown Court.

## Plea before venue and allocation (adult and youth defendants jointly charged)

☐ **It is important to determine the category of offences charged as this will dictate the court's powers.** Depending on the offences faced and by which defendant, the procedure will differ. It will depend on whether the offence charged by the youth defendant falls within the dangerousness provisions or is capable of being a grave crime. On some occasions, the adult defendant will be dealt with first; on other occasions it will be the youth defendant. There are numerous combinations so it is impossible to outline them all. You should **always seek the advice of your legal adviser.**

☐ **Where the youth is charged with an offence which falls within the dangerousness provisions, the court must make a preliminary decision (based on the information available), if convicted, should the youth be sentenced as a dangerous offender? If yes, the case must be sent forthwith to the Crown Court**. A youth is a dangerous offender if:

- they are found guilty of certain serious violent or sexual offences committed after 4 April 2005, and
- the court is of the opinion that there is a significant risk to the public of serious harm caused by the child or young person committing further specified offences, and
- the Crown Court would specify the appropriate determinate sentence of at least four years.

Examples of specified violent offences include grievous bodily harm (GBH) with intent, wounding, actual bodily harm (ABH) and robbery. Examples of specified sexual offences include rape, sexual assault and possession of indecent photographs of children.

If the court does not send the youth defendant for trial, but the youth subsequently pleads guilty, or is convicted of an offence which would make them a dangerous offender, the court has the power to commit to the Crown Court for sentence.

☐ **Where the youth is charged with an offence which is capable of being a grave crime, and indicates a not guilty plea, the court must decide the appropriate venue. If the court decides, if convicted, the youth should be sentenced to an extended period of detention, the case must be sent forthwith to the Crown Court**. The Crown Court may impose a period of detention on any youth. A grave crime is defined as:

- any offence which in the case of an adult carries 14 years or more imprisonment, eg burglary of a dwelling, handling stolen goods or possession of drugs with intent to supply
- any offence of sexual assault
- child sex offences committed by a child or young person
- sexual activity with a child family member
- inciting a child family member to engage in sexual activity.

Where a youth has been sent for trial for an offence which is a grave crime, and an adult co-accused appears on the same day, charged with a related either-way offence the court **must** send the adult defendant forthwith to the Crown Court. Where an adult co-accused appears on a different day, the court **may** send the adult defendant forthwith to the Crown Court.

If the youth pleads guilty to an offence which is capable of being a grave crime the court has the power to commit to the Crown Court for sentence.

- ☐ **Where both defendants are charged with either-way offences, which in the case of the youth defendant do not fall within the dangerousness provisions or are not capable of being a grave crime and the adult co-accused has been sent for trial, the court must consider if it is necessary in the interests of justice to send the youth forthwith to the Crown Court.** However, the youth will be asked to indicate a plea. If that is one of guilty, sending the case to the Crown Court will be avoided.
- ☐ **Where the adult defendant consents to summary trial and pleads not guilty and the youth pleads not guilty** the court must decide if the youth should stand trial in the magistrates' court with the adult co-accused, or if they should be remitted to the youth court for trial (this would of course mean two separate trials, which is unlikely to be in the interests of justice).
- ☐ **Where the adult defendant consents to summary trial and pleads guilty and the youth pleads not guilty** the court will remit the youth defendant to the youth court for trial.
- ☐ **Where the adult defendant consents to summary trial and pleads guilty and the youth pleads guilty** the court must decide to sentence in the magistrates' court (where the powers are limited to a discharge, referral order, fine or parental bind over) or to remit to the youth court for sentence.
- ☐ You may wish to refer to the relevant chapters in the 'Youth Court Bench Book' on dangerous offenders and grave crimes
- ☐ In addition, in the online Judicial College Pronouncement Builder, using the Youth Court tab, Youth Court Pronouncement Builder there are relevant pronouncements for sending dangerous offenders and grave crime offences to the Crown Court for trial and committals for sentence.

## Guilty or not guilty

- ☐ **Every element of the offence must be proved before the defendant can be convicted.**
- ☐ **The prosecutor should outline each element of the offence they intend to prove before the trial starts.** If this does not happen, ask for it to be done.
- ☐ **The burden of proof rests with the prosecution and the standard of proof is "beyond reasonable doubt"**. This means that you have to be satisfied so that you are sure that the accused is guilty. If you are not sure, you will find the accused not guilty.

- ☐ **Occasionally, the burden of proof is reversed and rests with the defendant. The standard of proof is "on a balance of probabilities"**, ie more likely than not. For example, once the prosecution has proved that a defendant was using a motor vehicle on a road, the burden shifts to the defendant to prove, on a balance of probabilities, that they had valid insurance.
- ☐ **It is advisable to make notes of the evidence**, but you can also seek clarification from the legal adviser's notes.
- ☐ **Consider what admissible evidence has been adduced.** Evidence does not include the prosecution opening speech nor the defence closing submissions. However, these may help you analyse the evidence. Evidence comes in a number of forms, including:
  - oral testimony from witnesses
  - written (section 9) statements
  - statement of formally agreed facts (section 10 admission)
  - exhibits and documents
  - video or tape recordings
  - admissible hearsay.
- ☐ **You must exclude from consideration:**
  - anything heard which is not covered by admissible evidence, eg assertions by advocates not supported by the evidence
  - evidence which is excluded as a result of a successful application under s.76 PACE 1984 (confessions) or s.78 PACE (exclusion of unfair evidence)
  - your personal views, opinions or prejudices
  - consideration of possible consequences of conviction or acquittal.
- ☐ **Identify what facts are not in dispute,** eg that the defendant was present at the scene of the alleged crime or that the defendant took goods out of the store without paying.
- ☐ **Identify the facts in dispute that are issues that need to be determined,** eg they relate to an element of the offence.
- ☐ **Decide what weight to attach to the admissible evidence from both sides.** Remember that all witnesses for the prosecution and defence are entitled to equal consideration.
- ☐ **Are there any inferences to be drawn from the accused's silence?** It may be possible to draw inferences from the:
  - silence of the accused at arrest/charge
  - failure of the accused to give evidence at trial
  - failure of the accused to account for presence of self at scene
  - failure of the accused to account for objects, substances or marks.

  This is a complex area of law where you will need to seek advice from the legal adviser.
- ☐ **Evaluate the evidence on the disputed facts and make findings of fact.**
  - Who do you believe?

- Who do you not believe?
- Is there any independent supporting evidence?

☐ **Do the facts you have found proved establish all the elements of the offence to the required standard?** If you reach a majority decision, this will be the collective decision of the bench and no dissenting judgement will be given.

☐ **Inform the accused whether you find them guilty or not guilty.**

☐ **Give reasons for your decision.** The legal adviser can assist you with the preparation of reasons.

☐ **You should make a written record of your verdict** (ideally on a form provided by the court) and hand this to the legal adviser to keep with the court papers.

## Reporting restrictions checklist

- ☐ Magistrates should seek legal advice.
  - Magistrates should seek the advice of the clerk/legal adviser on the circumstances in which the law allows the court to exclude the media, withhold information, postpone or ban reporting before considering whether it would be a proper and appropriate use of that power in the case before the court.
- ☐ Check the legal basis for the proposed restriction.
  - Is there any statutory power which allows departure from the open justice principle? What is the precise wording of the statute? Is it relevant to the particular case?
  - Or is the applicant suggesting that the power for the requested departure from the open justice principle is derived from common law and the court's inherent jurisdiction to regulate its own proceedings? If so, does the case law actually support that contention?
- ☐ Is action necessary in the interests of justice?
  - Automatic restrictions upon reporting might already apply, or there may be restrictions on reporting imposed by the media's codes, or as a result of an agreed approach.
  - The burden lies on the party seeking a derogation from open justice to persuade the court that it is necessary on the basis of clear and cogent evidence. Has the applicant produced clear and cogent evidence in support of the application?
  - Is any derogation from the open justice principle really necessary? Always consider if there are any less restrictive alternatives available.
- ☐ If restrictions are necessary, how far should they go?
  - Where the court is satisfied that a reporting restriction pursues a legitimate aim and is truly necessary, it must carefully consider the terms of any order. The principle of proportionality requires that any order must be narrowly tailored to the specific objective the court has in mind and must go no further than is necessary to achieve that objective. Over-broad orders are liable to be set aside.
- ☐ Invite media representations.
  - Invite oral or written representations by the media or their representatives, as well as legal submissions on the applicable law from the prosecution, in addition to any legal submissions and any evidence which the law might require in support of an application for reporting restrictions from a party.
  - Before imposing any reporting restriction or restriction on public access to proceedings the court is required to ensure that each party and any other person directly affected (such as the media) is present or has had an opportunity to attend or to make representations.
  - Where, exceptionally, the court makes an order where advance notice has not been given, the court should invite the media to make representations as soon as possible.
  - In 'The Crown Prosecution Service Instructions for Prosecuting Advocates', the Director of Public Prosecutions (DPP) has highlighted the role of the prosecution in respect of safeguarding open justice, including opposition to reporting restrictions, where appropriate.

- ☐ As soon as possible after oral announcement of the order in court, the order should be committed to writing.
  - If an order is made, the court must make it clear in court that a formal order has been made and its precise terms. Magistrates should seek the advice of the clerk/legal adviser on the drafting of the order and the reasons for making it. It may be helpful to suggest at the same time that the court would be prepared to discuss any problems arising from the order with the media in open court, if they are raised by written note.
  - The reporting restrictions order should be in precise terms, giving its legal basis, its precise scope, its duration and when it will cease to have effect if appropriate. The reasons for making the order should always be recorded in the court record.
- ☐ Notifying the media.
  - The court should have appropriate procedures for notifying the media that an order has been made. Copies of the written notice must be provided to the media and members of staff should be available and briefed to deal with media inquiries, inside and outside court hours.
- ☐ Review.
  - The court should exercise its discretion to hear media representations against the imposition of any order under consideration or as to the lifting or variation of any reporting restriction as soon as possible.

# Essential case management – applying the Criminal Procedure Rules (CrimPR)

## Generally

- ☐ Compliance with the CrimPR is compulsory.
- ☐ The court must further the Overriding Objective of the Rules by actively managing each case (CrimPR 3.2(1)).
- ☐ The parties (including the defendant) must actively assist the court in this without being asked and should communicate with each other throughout the life of the case to ensure hearings needed are effective (CrimPR 3.3(1)(a)).
- ☐ Unnecessary hearings should be avoided and the court should deal with as many aspects of the case as possible on the same occasion (CrimPR 3.2(2)(f)).
- ☐ Service of documents, exchange of information and completion of forms should be made by electronic arrangements where possible (CrimPR 4.2(2), 5.1(2)(a)).

## The first hearing: taking plea

- ☐ At every hearing (however early), unless it has been done already, the court must take the defendant's plea (CrimPR 3.8(2)(b)). This obligation does not depend on the extent of the initial details of the prosecution case, service of evidence, disclosure of unused material, or the grant of legal aid.
- ☐ If a plea is not taken (the exceptional reason for not doing so must be recorded), or if the alleged offence is indictable only, the court must find out what the plea is likely to be (CrimPR 3.8(2)(b)) and the anticipated issues.

## If the case is to be sent to the Crown Court

- ☐ The court must be robust in its case management by completing the better case management form in as much detail as possible, to assist the Crown Court with the identification of the likely plea and issues. Particular attention should be paid to the support required by the defendant, such as interpreters.
- ☐ Where a guilty plea is entered, or indicated, the relevant sentencing guidelines should be followed to decide if a pre-sentence report should be ordered.

## If the plea is guilty

- ☐ The court should pass sentence on the same day, if at all possible (CrimPR 24.11(9)(a)).
- ☐ If information about the defendant is needed from probation, a report prepared for earlier proceedings may well be sufficient or a "fast delivery" report (oral or written) may be prepared that day.
- ☐ If a "Newton" hearing is requested, the court, with the active assistance of the parties, must identify the disputed issue (CrimPR 3.3(1)(a)) and if possible, determine it there and then or, if it really cannot be decided, give directions specifically relating to that disputed issues so that the next hearing is the last.

## If the plea is not guilty

- ☐ The key to effective case management is the early identification by the court of the relevant disputed issues (CrimPR 3.3(2)(a)). From the start, the parties must identify those issues and tell the court what they are (CrimPR 3.3(1)(a)). If the parties do not tell the court, the court must require them to do so.
- ☐ The relevant disputed issues must be explicitly identified and the case must be managed by the court so that "live" evidence at trial is confined to those issues.
- ☐ The parties must complete the prescribed preparation for effective trial (PET) form (Criminal Practice Direction (CrimPD) 5.1.2) The court must rigorously consider each entry on the form in order to comply with its duty to actively manage the case.
- ☐ Only those witnesses who are really needed in relation to genuinely disputed and relevant issues should be required to attend. As far as possible, uncontentious evidence should be agreed at trial fixing in the form of section 10 admissions. The court must take responsibility for this and not simply leave it to the parties, in order to comply with the Overriding Objective of the Rules (CrimPR 1.1(2)(d),(e)).
- ☐ The court should require the parties to provide:
  - A timed, "batting order" of live witnesses (CrimPR 3.13(c)(i) and (ii)).
  - Details of any admissions/written evidence/other material to be adduced (CrimPR 3.13(c)(vi) and (vii)).
  - Warning of any point of law (CrimPR 3.13(c)(viii)).
- ☐ The court must require the parties to consider whether to apply for special measures or a live link direction for any witness and should, where possible, consider the application forthwith.
- ☐ Where possible, hearsay and bad character applications should be determined at trial fixing.
- ☐ The court may must require a timetable for the whole case (CrimPR 3.13(b)).
- ☐ The time estimate, which will be used for managing the trial, should be made by considering, individually, how long each live witness will take, having regard to the relevant disputed issue(s), other evidence to be adduced, opening/closing submissions, and time for decision-making and recording reasons.
- ☐ The court must make it clear to the parties what is expected of them to ensure that the trial is able to commence on the due date and at the due time.

## The parties' obligations to prepare for trial include:

- ☐ Complying with directions given by the court and getting witnesses to court (CrimPR 3.12(2)(a) and (b)).
- ☐ Making arrangements for the efficient presentation of written evidence and any other material, including multimedia. (CrimPR 3.12(2)(c)).
- ☐ Promptly warning the court and other parties of any significant problems (CrimPR 3.12(2)(d)).
- ☐ Making any application to vacate promptly with the required information (CrimPD 5.4.7 and 12.5.4).

## At trial

- ☐ Before the trial begins, the legal adviser must summarise for the court the agreed and disputed issues and the timetable, as identified in the PET form (CrimPR 24.14(2)).
- ☐ Consistent with the overriding objective the court must, with the assistance of the parties, seek to ensure the trial proceeds and is managed within the timetable set. At the beginning of the case the parties and court should identify and address any unavoidable departure from the timetable.
- ☐ During the trial the court must ensure that the live evidence, questions, and submissions are strictly directed to the relevant disputed issues. The court should normally limit the time of examination to that settled at trial fixing.
- ☐ Where a party seeks to raise an issue not identified in advance, the court must ensure that another party is not disadvantaged. This may include refusing to admit evidence, curtailing cross-examination, allowing hearsay evidence to be given to address a missing element, and where necessary allowing an adjournment and an order for inter-partes or wasted costs.

# Case management hearing checklist

## Not guilty pleas

The court should:

- ☐ Ask the defendant if they have been advised of credit for a guilty plea and inform them that credit for a guilty plea will be reduced if they plead guilty later.
- ☐ Identify the basis for the not guilty plea. The court may make reference to the initial details of the prosecution case but should exercise caution as it is likely to be only a summary of the prosecution case. The defence should be given an equal opportunity to put forward their version of events. Where the defendant is not legally represented, the legal adviser will assist them.
- ☐ Identify the disputed issues and agree those that are not disputed.
- ☐ Identify the necessary witnesses to be called, the nature of their evidence and ensure their specific needs are noted including dates to avoid. Consider whether a witness summons is required?
- ☐ Note whose statements can be agreed under s.9 CJA 1967. These statements will be read to the court.
- ☐ Identify which facts can be admitted under s.10 CJA 1967. This requires the parties to agree and sign an appropriate form in court.
- ☐ Note any practical arrangements necessary for the trial, eg interpreters, tape-playing facilities, disabilities, secure court, availability of video-link facilities etc.
- ☐ Ask if either party wishes to introduce evidence of bad character, hearsay evidence or apply for special measures. Make the necessary (standard) directions for parties to comply with the time limits in the CrimPR.
- ☐ The court may make a direction that if notice in writing opposing the application is not given within 14 days, the application will be deemed to be unopposed.
- ☐ If the application is not opposed, deal with it at first hearing. Otherwise, you may need to fix a separate hearing to deal with these applications, or you may have specific arrangements to consider them on the basis of written submissions only.
- ☐ Where necessary, make directions that are necessary to ensure effective case management. The court may make general directions as contained in the PET form but should not single out specific evidence items such as CCTV. If there is evidence the prosecution seek to rely on, despite directions of the court, there is no legal obligation for it to be served on the defence prior to the day of trial.
- ☐ Fix a trial date and establish a realistic time estimate for the hearing. Further case management hearings (pre-trial reviews) are only necessary in exceptional cases.
- ☐ If applicable, bail the defendant using the relevant pronouncement from the Judicial College Pronouncement Builder.

## On the day of trial

- ☐ The PET form should be discussed as part of the pre-court briefing so the bench are aware of the issues in dispute, the details of any live witnesses and the time estimates for the hearing.
- ☐ The court should enter the court at 10am ready to start the hearing on time.
- ☐ Check that the advocates are ready to start. If further time is required, the onus is on the party to identify why and how it will progress the case.
- ☐ Check compliance with all pre-trial directions. The parties must actively assist the court in establishing what disputed issues they intend to explore.
- ☐ Confirm the names of the witnesses in attendance, those witnesses whose statements are agreed under s.9 CJA 1967 and those facts agreed under s.10. Establish whether the statements can be summarised.
- ☐ What enquiries have been made about absent witnesses? Are they essential witnesses and what would be the prejudicial effect of their non-attendance?
- ☐ If an adult defendant is absent, the starting point is that the trial should proceed in their absence.

## Applications to adjourn on the day of trial

- ☐ Parties and other participants must further the overriding objective and prepare cases so that they can proceed on the date set. Any change that may affect the listing of a case must be communicated between the parties and to the court as soon as reasonably practicable. Any communication must clearly identify the issue and any direction sought and should be referred to the court, a legal adviser or an authorised officer (CrimPD 5.4.1).
- ☐ The starting point is that a trial should proceed (*DPP v Petrie* (2015)).
- ☐ The circumstances in which an adjournment should be properly granted are very limited and must be subjected to rigorous scrutiny, even where both parties are in agreement with the application – *CPS v Picton* (2006). Applications to adjourn should be refused unless necessary and just, eg where witnesses are unable to attend through no fault to their own.
- ☐ Ensure that enquiries are specific and tailored to the issue in the case. Appeal courts will be slow to interfere with a decision to grant an adjournment unless they are not satisfied that the magistrates had taken into account all relevant considerations, including the next available trial date, and excluded all irrelevant ones.
- ☐ Neither party is entitled to ambush the other (eg by raising known issues for the first time at trial and opposing reasonable applications for necessary adjournment). “The days when the defence could ambush the prosecution are over” – *R v Taylor* (2008). Completion of the PET form should prevent this.
- ☐ There is an obligation to ensure fairness on both sides. The court should examine the likely consequences of the proposed adjournment, its likely length and the need to decide the facts while witnesses’ recollections are still fresh.

## Examples of when an adjournment could properly be granted

This is not an exhaustive list but offers examples of when it may be appropriate to adjourn. However, each case should be dealt with on its own merits.

- ☐ Where the defendant (D) through no fault of their own, was unable to contact or secure attendance of a witness whose evidence went to the heart of the matter when the prosecution (P) refused to provide contact details.
- ☐ A refusal to grant D an adjournment when P had failed to make full disclosure (when the material was so obviously disclosable) was unreasonable.
- ☐ A decision by a magistrates' court to refuse an application for an adjournment had been incorrect as it had presented a clear risk of prejudice to a D’s case by forcing them to defend themself and give evidence when they had suffered a traumatic ordeal shortly before the hearing. D should have had every opportunity to put their defence in its best form without being distracted by events that were outside of their control.
- ☐ A magistrates' court's decision to refuse a defence application to adjourn a trial where P had failed to make full disclosure was so unreasonable that no properly directed court could have reached it.

## Examples when an adjournment could properly be refused

This is not an exhaustive list but offers examples of when it is not appropriate to adjourn. However, each case should be dealt with on its own merits.

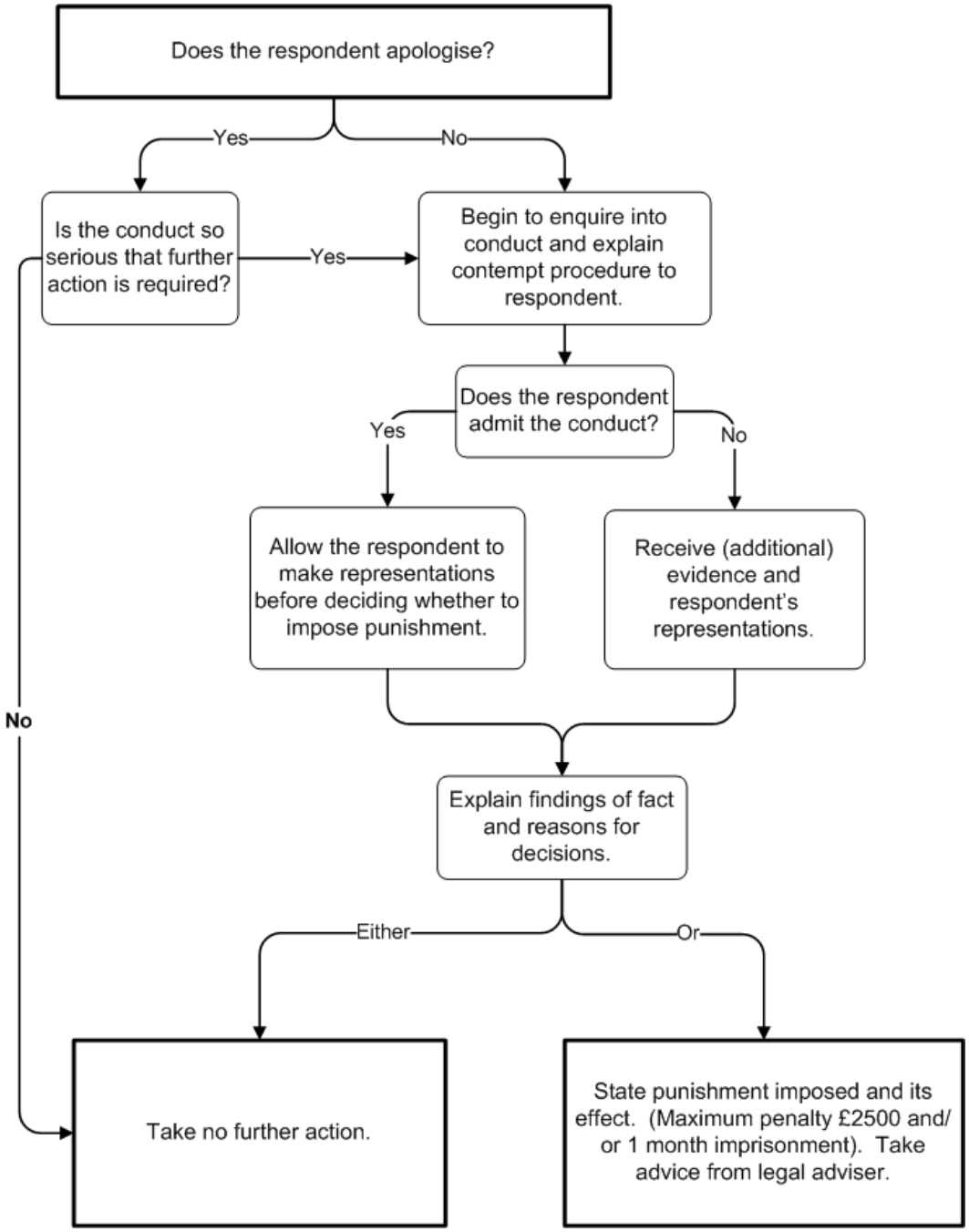
- ☐ Where a case depends on the evidence of very young children, it is essential that the trial takes place very soon.
- ☐ Inconvenience is not a ground for an adjournment.
- ☐ Where amendments to the charges results in a lengthy delay to the hearing.
- ☐ Delays in serving of evidence or securing the attendance of a witness.

## Contempt of court – section 12 Contempt of Court Act 1981

- ☐ **Does the behaviour amount to a contempt?** A contempt of court occurs when someone who is present in court (for these purposes, the respondent) wilfully insults the magistrates, advocates, witnesses or any court officer, or wilfully interrupts or disrupts court proceedings or otherwise misbehaves in court.
- ☐ **Remain calm and in control, take care not to act in haste when dealing with a contempt**.
- ☐ **Be aware that the behaviour may be due to mental health issues, learning difficulties or disabilities, or medical issues**.
- ☐ **Explain in terms that the respondent understands the conduct that is in question, that the respondent can be fined or imprisoned for it or subject to immediate temporary detention.**
- ☐ **Give the respondent an opportunity to explain their conduct and to apologise for it. The respondent may take legal advice.**
- ☐ **Consider whether one or more of the following options (listed in no particular order) may be appropriate before taking further action:**
  - Ignore the misbehaviour if it is minor.
  - Explain, clearly, the need for quiet to allow the court to conduct its business.
  - Seek an apology.
  - Require the respondent to leave the court.
  - Where it is the defendant's conduct that is called into question, require the defendant to leave. This should be used rarely and only when the defendant has been previously warned. It is generally undesirable to continue in the defendant's absence, therefore give some time for the defendant to calm down and receive advice, if they have a solicitor.
  - Allow a cooling-off period.
  - Clear the public gallery. This should be rarely used and only when absolutely necessary to ensure proper administration of justice.
  - Retire – particularly if the misbehaviour is serious.
- ☐ **If further action is required, retire, consult your legal adviser. If you are considering immediate temporary detention, see the** Contempt of court – flow chart **overleaf.**

# Contempt of court (procedure where action is required) – flow chart

- ☐ Is the respondent to be temporarily detained immediately?
- ☐ Respondent "cools off" in the cells. The respondent should have the opportunity to be legally represented.
- ☐ Bring the respondent back into court. Review the case and repeat explanation of possible consequences.
- ☐ Allow the respondent time to reflect, seek advice, explain and apologise.



# Youths appearing in the adult court

- ☐ **Youths are those persons between 10 and 17 years of age**. They will normally appear in the youth court before magistrates who have received specialist training.
- ☐ **The advice of the legal adviser should be sought** if a person in court appears to be under 18 years of age, as different provisions cover most aspects of the proceedings.
- ☐ **All youths should be addressed by their first/given name**.
- ☐ **A press restriction may be required** – if a youth appears before the youth court, they will receive automatic anonymity. This is not the case in the adult court. Therefore, an order under s.45 Youth Justice and Criminal Evidence Act 1999 may be made to prevent publication of information relating to their identity, address and school. (Refer to Reporting restrictions – checklist)
- ☐ **If the youth is under 16, they must be accompanied by a parent/guardian or by a carer if the youth is in the care of the local authority**. If the youth is unaccompanied, consideration should be given to adjourning the case and ordering the parent/guardian to attend – unless this would not be in the interests of justice.
- ☐ **If the youth is 16 or 17,** the presence of an adult is optional.
- ☐ The adult should be seated close to the youth so that they can advise and assist the youth with the proceedings.
- ☐ **A member of the youth justice service (YJS) should be in attendance** – This is particularly important if the youth is in custody. The YJ is responsible for the provision of youth justice services locally. Their role includes:
  - providing bail support
  - preparing reports to assist the court in sentencing
  - supervising youths who receive community and custodial penalties.
- ☐ **Establish why the youth is before the adult court.** There will be two circumstances when a youth could appear before an adult court.
  1. No youth court is available.

     If a youth must be produced before the court (eg they have been arrested and are in custody) and no youth court is sitting, then:

     i. before conviction, remand the youth to the local youth court, or

     ii. after conviction, remit the youth to the youth court covering the area in which the youth lives.
  2. Youth is co-charged with one or more adults. The table below gives the options for dealing with youths co-charged with adults. In all cases, the adult remains in the adult court unless committed to the Crown Court.

## Adults and youths jointly charged and appearing before the adult court (you should seek the advice of the legal adviser)

The Sentencing Council Revised Allocation Guideline 2016 states “The proper venue for the trial of any youth is normally the youth court. Subject to statutory restrictions, that remains the case where a youth is charged jointly with an adult.”

It is important to determine the category of offences charged as this will dictate the court's powers. Depending on the offences faced and by which defendant, the procedure will differ. It will depend on whether the offence faced by the youth falls within the dangerousness provisions and/or is capable of being a grave crime (see below). On some occasions the adult defendant will be dealt with first; on other occasions it will be the youth defendant. There are numerous combinations so it is impossible to outline them all.

The table on the next page outlines the basic options when dealing with a summary-only offence or an either-way offence which is not capable of being a grave crime or a specified dangerous offence.

## Summary of options – for offences that are not a grave crime

| Class of offence | Adult pleads guilty and youth pleads not guilty | Adult pleads guilty and youth pleads guilty | Adult elects or jurisdiction declined and youth pleads guilty | Adult elects or jurisdiction declined and youth indicates not guilty | Adult pleads not guilty and youth pleads not guilty | Adult pleads not guilty and youth pleads guilty |
|---|---|---|---|---|---|---|
| Summary only | Remit youth to youth court for trial. | Consider limited options for sentence in adult court or remit youth to home youth court for sentence. | | | Youth remains in the adult court for joint trial. | Consider limited options for sentence in adult court or remit youth to home youth court for sentence. |
| Either-way offence NOT a grave crime or specified dangerous offence | Remit youth to youth court for trial. | Consider limited options for sentence in adult court or remit youth to home youth court for sentence. | Consider limited options for sentence in adult court or remit youth to home youth court for sentence. | Consider committing youth for joint trial with adult (interests of justice test*) or remit to local youth court for trial. | Youth remains in the adult court for joint trial. | Consider limited options for sentence in adult court or remit youth to home youth court for sentence. |

*Sentencing Council Revised Allocation Guideline 2016

## Grave crime

Some either-way offences may be **grave crimes**. A grave crime is one that carries 14 years or more imprisonment in the case of an adult, and certain sexual offences. The court is required to determine that, if the youth is convicted, a sentence substantially beyond the powers of the youth court (ie a two-year detention and training order) should be available. This is usually a decision made by the youth court. However, on rare occasions, the adult court may be asked to make such a decision. The test to apply varies according to the offender's age and antecedents and it is important to seek advice from the legal adviser in every case.

Following the case of *R v Sheffield Youth Court* [2008], the venue must be decided before the plea is taken. If a guilty plea is taken in the adult court and the case remitted to the youth court, summary jurisdiction is deemed to be accepted.

## Specified dangerous offences

Some either-way offences may be **specified dangerous offences**. A youth will be categorised as a dangerous offender if they are found guilty of certain specified violent or sexual offences **and** the court is of the opinion that there is a significant risk to the public of serious harm caused by the child or young person committing further specified offences, **and** the Crown Court would impose an extended sentence of at least four years.

☐ **There are very limited options for sentencing youths in the adult court** – always seek the advice of the legal adviser before sentencing a youth in the adult court. Youths will normally be remitted to their home youth court for sentence. However, certain orders can be made in the adult court.

1. **Referral order**

   This is an order referring the youth to a Youth Offender Panel, which will agree a programme of behaviour with the youth with the aim of preventing further offending behaviour. The referral order provisions apply where the court is not considering imposing a custodial sentence, hospital order, absolute or conditional discharge. In some circumstances, a referral order is compulsory.

   Compulsory referral order conditions – referral orders must be imposed on all youths with **no previous convictions** who are **pleading guilty** to any **imprisonable** offence, unless the court is considering an **absolute** or **conditional discharge, Mental Health Act order** or **custody**. Previous bind overs and discharges (absolute or conditional) are not previous convictions for these purposes, so do not have any impact on the mandatory referral order provisions. The order lasts for between three and 12 months. The order runs from the date that the referral contract is signed.

2. **Absolute or conditional discharge**

   The provisions in relation to an absolute discharge are as for an adult. A conditional discharge of up to three years can be imposed. However, if the defendant committed the offence within two years of receiving a final warning for another offence, a conditional discharge cannot be imposed unless the court is satisfied there are exceptional circumstances.

3. **Fine**

   The maximum fines available for youths are limited as follows: £250 for youths aged 10 to 13 years; £1,000 for youths aged 14 to 17 years. If the maximum fine for an adult is less than this, the lower figure will apply.

Where a youth under 16 years is fined, the parent/carer must be ordered to pay. When the youth is aged 16 or 17, the youth or the parent/carer can be ordered to pay.

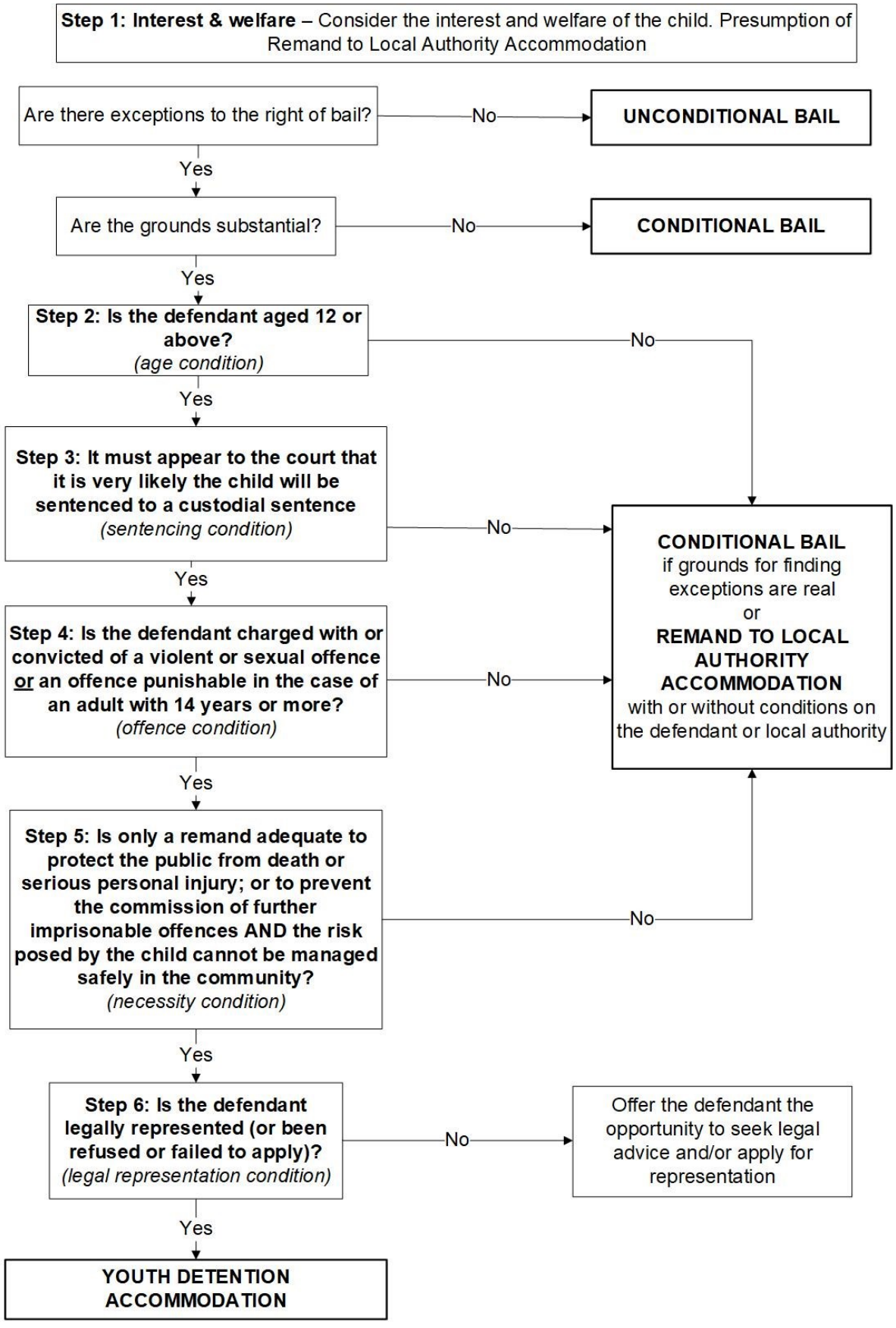
4. **Ancillary orders**

   Many of the ancillary orders available for adults are also available for youths, eg disqualification, compensation. In addition, there are other orders that the court must consider making in respect of youths: parental bind over and parenting order (see Ancillary orders in this bench book).

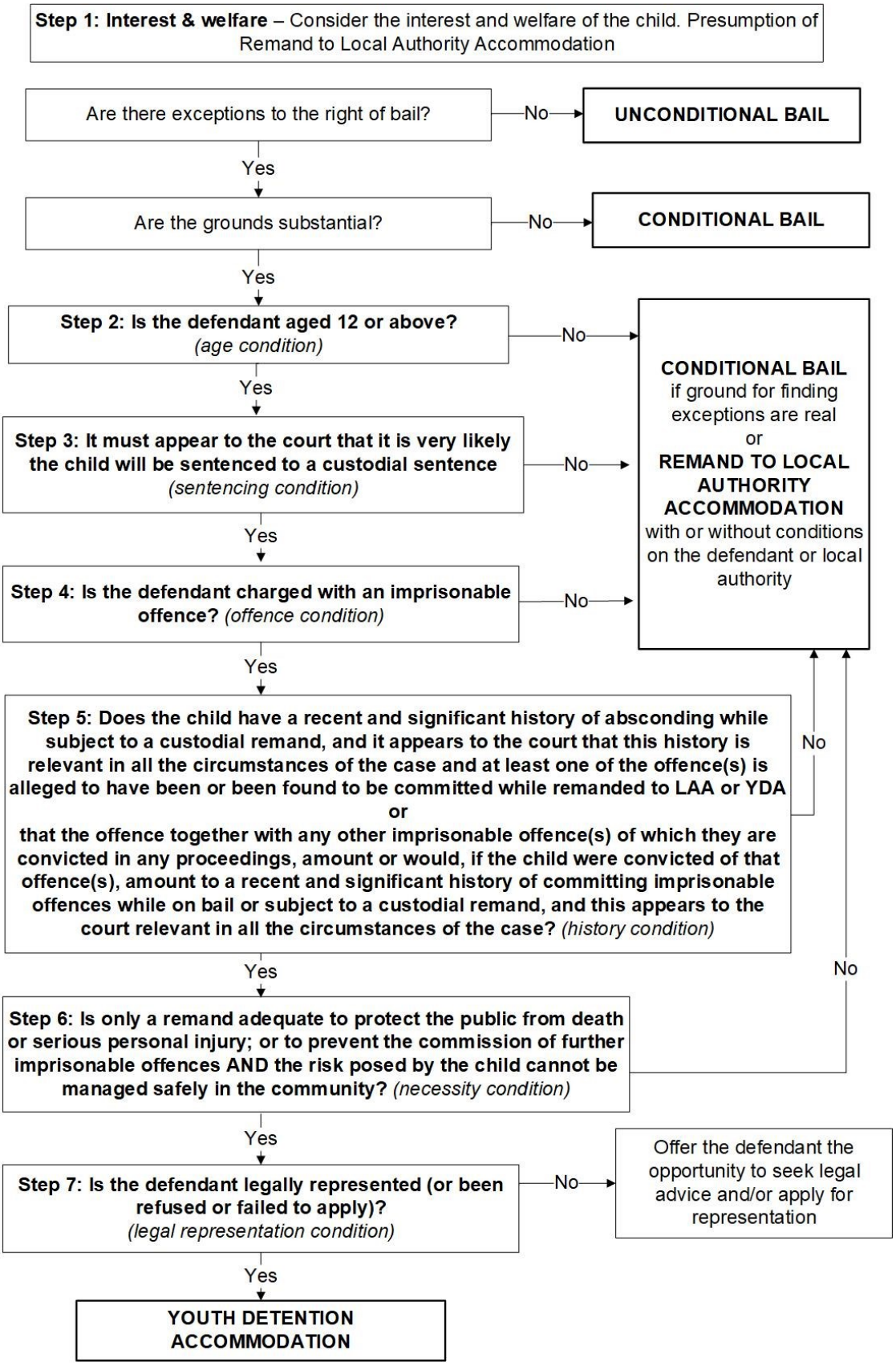
☐ **Different remand criteria apply to youths**

Always seek the advice of the legal adviser.

# 1. Youth remand criteria Section 98 LASPO – The first set of conditions



## 2. Youth remand criteria Section 99 LASPO – The second set of conditions



## General mode of trial considerations

**Section 19 of the Magistrates' Court Act 1980** requires magistrates to have regard to the following matters in deciding whether an offence is more suitable for summary trial or trial on indictment:

1. The nature of the case.
2. Whether the circumstances make the offence one of a serious character.
3. Whether the punishment which a magistrates' court would have power to inflict for it would be adequate.
4. Any other circumstances which appear to the court to make it more suitable for the offence to be tried in one way rather than the other.
5. Any representations made by the prosecution or the defence.

Certain general observations can be made:

a. The court should never make its decision on the grounds of convenience or expedition.

b. The court should assume, for the purpose of deciding mode of trial, that the prosecution version of the facts is correct.

c. The fact that the offences are alleged to be specimens is a relevant consideration; the fact that the defendant will be asking for other offences to be taken into consideration, if convicted, is not.

d. Where cases involve complex questions of fact or difficult questions of law, including difficult issues of disclosure of sensitive material, the court should consider committal for trial.

e. Where two or more defendants are jointly charged with an offence each has an individual right to elect their mode of trial. (This follows the decision in *R v Brentwood Justices ex parte Nicholls*.)

f. In general, except where otherwise stated, either-way offences should be tried summarily unless the court considers that the particular case has one or more of the features set out in the following pages **and** that its sentencing powers are insufficient.

g. The court should also consider its power to commit an offender for sentence, under ss.3 and 4 Powers of Criminal Courts (Sentencing) Act 2000, **if information emerges during the course of the hearing which leads them to conclude that the offence is so serious, or the offender such a risk to the public, that their powers to sentence them are inadequate.** This amendment means that committal for sentence is no longer determined by reference to the character or antecedents of the defendant.

Features relevant to the individual offences.

(Note: Where reference is made in these guidelines to property or damage of "high value", it means a figure equal to at least twice the amount of the limit (currently £5,000) imposed by statute on a magistrates' court when making a compensation order.)

# Section 11: Other useful information

## Introduction

1. It is anticipated that there will be documents with local application that can be filed within this section. These items might include:
    a. local police station opening times
    b. local bail hostel details, eg address, bail condition requirements
    c. details of the Probation Service Accredited Programmes that are available locally
    d. a list of current benefit rates.
    e. local protocols in relation to, eg listing practices, out of office applications, ordering reports, etc.

## 'Equal Treatment Bench Book' ('ETBB')

2. The '**Equal Treatment Bench Book**' is a key work of reference for issues dealing with equal treatment and an invaluable resource for each and every judicial office holder. It provides guidance on how to achieve good communication and to demonstrate fairness which, together, will ensure that the interests of justice are served in relation to every individual who comes before the court.

3. The 'ETBB' is a living document, constantly updated and amended to reflect changing circumstances and to incorporate the most up-to-date legislation, cases and Practice Directions. To ensure you are accessing the most up to date information, the content has not been reproduced in this publication. Magistrates may find the appendices of particular value, especially those dealing with naming systems and oath-taking requirements. Below is a list of the chapter and appendix headings:
    1. **Litigants in person (LIP) and lay representatives** – this chapter aims to identify the challenges both faced – and caused – by LIPs before, during and after the court process, and to provide guidance to courts with a view to ensuring that all parties receive a fair hearing where one or more is not represented by a lawyer.
    2. **Children, young people and vulnerable adults** – this chapter focuses primarily on ways to adapt criminal proceedings to accommodate children and other vulnerable witnesses and defendants, but much of it is also relevant to civil and family cases, and to tribunal hearings with a vulnerable witness, party or LIP.
    3. **Physical disability** – this chapter is concerned to ensure appropriate adjustments are made for any individuals who have a physical impairment which might interfere with their ability to have a full and fair hearing.
    4. **Mental disability** – this chapter is concerned to ensure appropriate adjustments are made for any individuals who have a mental disability which might interfere with their ability to have a full and fair hearing.
    5. **Capacity (mental)** – this chapter seeks to provide a practical resource as to what to do, where to look for further guidance and suggest practical steps that should be considered where the capacity of a party before you is called into question by you or another. It deals specifically with mental capacity. Where an individual has a mental disability, but does not lack capacity, see the chapter on mental disability.

6. **Sex** (previously gender) – this chapter provides information and practical guidance regarding women and the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings. Men can suffer from gender discrimination too and it should not be assumed that men do not have caring responsibilities towards children and elderly or disabled relatives. Nor should it be assumed that men have not experienced abuse or sexual violence.
7. **Modern slavery** – this chapter sets out assistance that can be offered to those impacted by modern slavery.
8. **Racism, cultural/ethnic differences, antisemitism and Islamophobia** – this chapter gives information about the experience and perceptions of people from various ethnic minority groups. It gives a general context which should be supplemented by local circumstances and the particular facts relevant to the case and the individuals before the court.
9. **Religion** – this chapter seeks to inform about the various religious practices of those who may access courts and tribunals. It provides guidance about the sort of adjustments that might be needed and general guidance around wearing the veil in court.
10. **Sexual orientation** – this chapter sets out what is meant by sexual orientation and includes acceptable terminology to use when dealing with lesbian, gay and bisexual people.
11. **Social exclusion and poverty** – this chapter identifies the difficulties and challenges that people from socially excluded backgrounds may face when dealing with the court process. It also sets out practical guidance for courts to help enable those from socially excluded backgrounds to fully and fairly participate in the court/tribunal process.
12. **Trans people** – this chapter covers those people who have adopted a social or legal gender different from their birth sex. It is a guide for courts, to help them ensure all court users give their best evidence and can fairly participate in any hearing.

**Appendix A: The Equality Act 2010** – this is an introduction to the Equality Act 2010. It provides more detail on the meaning of each of the nine protected characteristics, and the application of the definitions of discrimination.

- Age
- Being married or a civil partner
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation.

**Appendix B: Disability glossary** – impairments and reasonable adjustments. This is an alphabetical list of some of the more common forms of impairment or disability, and provides suggestions of possible adjustments during proceedings.

**Appendix C: Naming systems** – this gives some key features of traditional naming systems in various societies; it is not a definitive guide.

**Appendix D: Glossary of religions** – religious practices and oath-taking requirements. This is a glossary of the many forms of religion followed in the UK.

**Appendix E: Remote hearings** – this sets out guidance when dealing with remote hearings. "Remotely" refers to the use of video platforms such as MS Teams and Cloud Video Platform (CVP); or audio platforms, such as telephone conferencing. These hearings may be fully remote, or hybrid hearings where some of the participants attend remotely.

# The magistrate at home

4. You may be asked to deal with some judicial business outside of court hours and away from the courtroom. The purpose of these notes is to provide a brief reference guide to assist in dealing with such applications.

5. This guide is not exhaustive and cannot cover all of the applications that can be made and may be dealt with by a single justice. Many statutes contain provisions for search warrants and rights of entry applications that can be made and some of these may, by necessity, have to be considered outside of normal court hours because they are required urgently. This document provides some guidance on the most common applications.

## All applications

**You should not deal with any application without obtaining legal advice from a member of your legal team.**

6. For applications, other than search warrants and warrants of entry, there may be locally agreed practices and procedures for dealing with out of hours applications – you should therefore refer to any local protocols or guidance before dealing with any applications.

7. Where required, and on invitation, any oath must be taken on the appropriate holy book or the applicant must affirm. Details of the appropriate wordings can be found in the 'ETBB'.

8. Most applications are made by police officers, but warrants may also be requested by the local authority, animal welfare inspectors, HM Revenue and Customs, National Crime Agency, immigration officers, Trading Standards, and various other bodies.

9. The application must contain the following information:

   a. The Act and section under which the application is being made.

   b. The name of the person making the application.

   c. The premises to which it relates and are to be entered (including reference to any vehicles, adjoining land etc. These must be clearly defined.).

   d. The object of the search, ie the items or person sought.

   e. The grounds on which the application is made.

   f. The applicant's signature and/or authorising officer's details (if applicable).

   g. The date and time (if applicable).

# Search warrants

**You must not deal with any warrant application unless you are a member of the search warrant panel and without obtaining legal advice from a member of your legal team.**

10. Search warrants are some of the most important orders magistrates can make. It is essential that they are dealt with efficiently, expeditiously and confidentially, and that the justices and legal advisers dealing with them are appropriatelytrained and competent.
11. HMCTS and the judiciary have agreed a standard national procedure to ensure a dedicated trained panel of magistrates, supported by a legal adviser, deal with all applications either at court or out of hours.
12. Only members of the search warrant panel should deal with search warrant applications. In exceptional and emergency circumstances, a magistrate who is not a member of the search warrant panel may hear an application, but they must be advised by a suitably trained legal adviser.
13. Applicants are expected to schedule their own application and all applications must be submitted by secure email; no hard copies are retained. Only approved legal advisers and senior legal managers will have access to this mailbox to restrict the number of people who access potentially sensitive information.

## Common types of applications

- **Stolen goods – s.26 Theft Act 1968:** You must be satisfied that there is reasonable cause to believe that any person has in their possession, or custody, or on the premises any stolen goods. When considering an application for a warrant to search for stolen goods, the applicant must have reasonable grounds to believe that the items sought are on the premises at the time you grant the application.
- **Controlled drugs – s.23 Misuse of Drugs Act 1971:** You must be satisfied that there are reasonable grounds for suspecting that illegal drugs are in the possession or custody of a person on the premises. An application cannot be made in advance, eg where the applicant believes items may be at the premises later.
- **Firearms – s.46 Firearms Act 1968:** You must be satisfied that there are reasonable grounds for suspecting that an offence under the Firearms Act has been, is being or is going to be committed, or there is a danger to the public safety or the peace.
- **Mental health – s.135(1) Mental Health Act 1983:** You must be satisfied that there is reasonable cause to suspect that a person believed to be suffering from mental disorder: (a) has been, or is being, ill-treated, neglected, or kept otherwise than under proper control; (b) being unable to care for themself, is living alone in any such place.
- **Mental health – s.135(2) Mental Health Act 1983:** You must be satisfied there is reasonable cause to believe that the patient is to be found on premises and that admission to the premises has been refused or that a refusal of such admission is apprehended.
- **Immigration – Immigration Act 1971:** You must be satisfied there are reasonable grounds for suspecting that a person is liable to be arrested under the Act and is to be found on any premises.
- **Evidential – s.8 Police and Criminal Evidence Act (PACE) 1984:** You must be satisfied that there are reasonable grounds for believing that an indictable offence has been committed, that there is material on the premises which is likely to be of substantial value to the investigation of the offence, is likely to be relevant evidence and are not items subject to “legal privilege”, “excluded material” or “special procedure”. In addition, you must be satisfied that it is not practicable to communicate with any person entitled to grant entry or access to the evidence or that entry to the premises will not be granted without a warrant, or that any search would be frustrated/prejudiced without immediate entry.

This search warrant may authorise search of specific premises or any premises occupied/controlled by the person specified in the warrant. The warrant may authorise entry to and search of premises on more than one occasion.

Extra care should be taken with these applications because they may only be applied for in certain cases and limited circumstances and in some cases, the application must be made to the higher courts.

## In-hours applications

14. Applications are made by the applicant using the online booking system to obtain a dedicated listing at the appropriate courthouse via a digital calendar booking system, which the legal adviser will access.
15. Prior to the application being heard, the legal adviser will have received a copy of the application and a copy of the search warrant(s).
16. During the court session, applications will be allocated by the legal adviser who is approved to deal with search warrant applications. Allocation of applications are subject to local practices.
17. The magistrate will only be provided with a copy of the application. They will not be given a copy of the warrant(s).
18. At the start of the session, the magistrate should review the application with the legal adviser. This discussion should set out the expectations of all parties and is an opportunity to raise concerns and/or issues regarding any application(s).
19. On reviewing the application, particular attention should be paid to the following:
    a. The alleged offence committed.
    b. When the warrant is being executed.
    c. Vulnerability of the person’s named in the warrant.
    d. Vulnerability of any person’s living at the property.
    e. Human rights.
    f. The categorisation of the intelligence.
20. All hearings will be dealt with via Cloud Video Platform (CVP), MS Teams call, or three-way telephone calls. Local arrangements may apply; however, all hearings are audio only.
21. At the beginning of each application, the applicant must take an oath or make an affirmation.
22. The applicant may be asked to give a brief outline of their application. The magistrate will then ask any questions to obtain additional information required in order to satisfy themselves that the relevant grounds for the application are made out. The legal adviser may also ask questions regarding the law and legality of the application.
23. Where the magistrate is satisfied that the necessary grounds exist, the legal adviser will complete the necessary paperwork.
24. Reasons must be given for the granting or refusing of a search warrant decision. These will be recorded on the application, which is a form prescribed by the Criminal Procedure Rules.

## Out-of-hours applications

25. These applications are dealt with by search warrant panel members who are assigned to cover out-of-hours applications. Out of hours usually refers to applications made when the court is not sitting, ie between 6pm and 6am, and can be made 365 days of the year. Local practices will apply.
26. Dealing with search warrant application out of hours counts as a court sitting; the length of which depends on whether a magistrate is on standby and has not dealt with any applications or if they have dealt with at least one application. No more than 12 sittings (six days) can be credited against a magistrate's annual sitting requirement.
27. There is a presumption that applications will be dealt with during normal working hours via the digital calendar booking system. However, on occasions it may be necessary to make applications for warrants outside working hours, where:
    a. there is danger to life, limb, or health of an individual
    b. an offence will be committed if urgent action is not taken
    c. property/evidence will be lost if no action is taken and there is no other authority available.
28. In the first instance, the legal adviser will consider such applications and assess them. If the legal adviser considers there is no urgency, then the applicant may be denied access to a magistrate and directed to the "in hours" process.
29. If the legal adviser does consider the application to be urgent, they will contact the on-call magistrate to notify them of the application and to arrange a time for a remote hearing. This will include time for the magistrate to view the application prior to the hearing.
30. The procedure for the application will be the same as set out in the "in hours" application paragraphs.

## The hearing

31. The magistrate and legal adviser must be satisfied that they are speaking with the applicant and that no one else is present, unless leave has been granted for another identified person to attend, ie a trainee police officer.
32. The applicant must answer any questions the magistrate may have in relation to the application. If they do not, or the magistrate is not satisfied with any answer, then they should refuse the application and invite the applicant to attend court.
33. Appropriate questions may include:
    a. How reliable is the information?
    b. What grading is the information?
    c. Has the information been corroborated, eg police observations?
34. The legal adviser must record on the application any additional information not contained in the application.
35. The magistrate and the legal adviser should agree the reasons for grant or refusal and enter them on the application.
36. The legal adviser must complete the warrant with the date and certify copies, including the individual booking reference. The warrant must also show the email address of the relevant office where the occupier can seek disclosure.

37. From April 2024, the warrant template will have the original warrant and two certified copies in a single document.
38. There is no requirement for a signature on the warrant.
39. The legal adviser will save and file the warrant. The warrant is saved to a secure location by a member of the administrative staff. Only approved administrative staff will have access to this location to restrict the number of people who access potentially sensitive information.
40. The legal adviser will send the dated warrant and application to the applicant from a secure email address. The application is shared with the officer, for information only.
41. Once the application has been dealt with, any details must be deleted from the email address used. This includes the inbox and trash folders. Any documents must also be deleted from the relevant eJudiciary OneDrive, in accordance with the Data Protection Act and Judicial Responsibilities for Data.
42. The legal adviser and/or administrative staff will update and save the applications register, which maintains a record of every application dealt with on the day.

### Time limit and entry restrictions

43. Warrants allow for a single entry to premises (save those made under s.8 Police and Criminal Evidence Act 1984) and must be executed within three months of being granted.
44. Warrants relating to searches for drugs (s.23 Misuse Drugs Act 1971) are valid for one month.

### Human rights

45. Before a search warrant can be issued, the magistrate must be satisfied that the application complies with the Human Rights Act 1998. A search warrant involves entry into a person's home, business and potentially access to their possessions. Article 1 – protection of property and Article 8 – right to private and family life, must be satisfied.
46. In addition to the statutory criteria for the specified warrant, the application must pursue one of the following aims:
    a. Interests of national security.
    b. Interests of public health.
    c. Economic wellbeing of the country.
    d. Prevention of disorder and crime (this will usually be relevant).
    e. Protection of health and morals.
    f. Protection of the rights and freedoms of others.
47. The magistrate must also be satisfied that the granting of the warrant is necessary and a proportionate response to the perceived risk.

## Utility and right of entry warrants

48. Representatives of utility companies may apply to a magistrates' court for warrants of entry to premises to inspect/read a meter, install pre-payment meters and/or to disconnect a supply.
49. The key questions for the court are whether the operator has a right of entry under the relevant legislation and whether admission is reasonably required to exercise it.

## For all applications

50. Where a contested hearing is requested, the applicant will contact the relevant court listing office to fix a hearing with reference to any case management information provided by the occupier.

51. All unopposed applications, where the occupier has not requested a court hearing, are dealt with by centralised hearings via live link, using the digital service through the applications register. There is no requirement for these applications to be heard in open court.

52. Magistrates will receive a copy of the list of applications to be made but will not receive any other paperwork. Details of the applications are placed on the applications register to create a formal record and the court also retains a copy of the information laid in each case.

53. The applicant will take the oath and outline the details of the applications. It is not necessary for each application to be dealt with individually; the applicant will give evidence of matters which is generic to all applications. Scrutiny should take the form of an examination of a dip sample of cases (see Dip sampling to scrutinise applications).

54. When considering any application, the court must be satisfied:

    a. that the applicant acts on behalf of the supplier as employee or agent

    b. their evidence has been obtained from computer systems which were operating normally when the data was obtained

    c. the supplier provides energy to the occupier, and

    d. that the applicant and supplier have complied with the industry codes of practice.

## For debt applications

55. Where the application to enter relates to debt, the court must also be satisfied:

    a. that there has been a demand in writing for payment and payment in full has not been made within 28 days of that demand

    b. the sums owing are not genuinely in dispute and the debt exceeds £200 and no pre-payment plan is being arranged, and

    c. that a Human Rights notice has been sent to the occupier at least 21 days before the hearing, notifying the occupier of the applicant's intention to apply for a warrant and advising them of their right to ask for a court hearing.

## Domestic customers – additional requirements

56. For domestic properties, the court must also be satisfied:

    a. that no pre-payment plan has been arranged nor is there any debt moratorium under the Breathing Space scheme, and

    b. the application is for installation of a pre-payment meter and not for disconnection. The applicant should also confirm that the installation for pre-payment meter will be stopped for assessment, or be withdrawn, if any occupier is found to be vulnerable.

## For applications relating to theft, meter tampering or safety issues

57. Where the application to enter relates to matters such as theft, meter tampering or safety issues, the court must also be satisfied:

a. that a Human Rights notice has been sent to the occupier at least 14 days before the hearing, notifying the occupier of the applicant's intention to apply for a warrant and advising them of their right to ask for a court hearing. This notice is not required if either it is an urgent application or notice would defeat the object of entry because the occupier would have the opportunity to remove any evidence

b. there are grounds to believe the supply or meter has been tampered with or damage has occurred, and

c. that a member of staff has sought permission to enter, giving at least 24 hours' notice and entry was not granted.

## Dip sampling to scrutinise applications

58. In April 2024, the senior district judge (chief magistrate) issued Directions as to the listing and conduct of applications for warrants of entry by utility suppliers, their servants and agents. This requires en bloc applications to be dip sampled. The court should sample five applications for lists of under 100 cases and 10 for lists over that. Five dip sampled cases must include pre-payment meters where those are applied for. The Directions include questions magistrates should ask, which differ depending upon the type of application the court is hearing. Answers to these questions will be recorded by the legal adviser. If the court is not satisfied with any of the answers, it can dip sample additional cases and where it is still not satisfied, can refuse the whole application.