



SENIOR PRESIDING JUDGE
FOR ENGLAND AND WALES

Guidance for Magistrates involved in scrutiny of out of court disposals

Introduction

1. Out of court disposals are often criticised for a lack of consistency and transparency, and because there is a perception that they are used in cases that should have gone to court. To help to address these concerns, police forces in many areas have established arrangements to scrutinise their use of out of court disposals.
2. The Senior Presiding Judge supports, in principle, magistrates' involvement in retrospective arrangements to scrutinise the decisions of police forces in dealing with offenders through the use of out of court disposals to enhance consistency, transparency, and public confidence.
3. The guidance sets out the basis on which magistrates should engage with police forces in scrutinising their use of out of court disposals. It is intended to ensure that magistrates' involvement is appropriate in light of their status as independent judicial office holders.
4. **Scrutiny will always be retrospective and will not involve magistrates endorsing, rescinding, or otherwise changing individual out of court disposals in any way.**

The purpose of scrutiny

5. Scrutiny arrangements are there to provide generalised feedback to local police forces about whether their use of out of court disposals appears to be consistent and appropriate based on a detailed consideration of an anonymised sample of cases. Feedback provided by the group will not endorse, rescind or change individual disposals in any way.
6. Police forces will use the feedback to ascertain whether policy changes, further guidance, or officer training, are required to improve their use of out of court disposals, and individual decision making.
7. Consideration will always be retrospective, and will be undertaken by a broad cross-section of criminal justice practitioners, such as magistrates, Probation Service, Crown Prosecution Service, and Youth Offending Teams, taking into account the nature of the wrongdoing alleged and the circumstances of the individuals concerned. Arrangements will need to be made for the members of the group to be familiarised with the details of the case, ordinarily by providing or utilising the case file. Appropriate records should be kept of the meetings and the groups' findings.

How magistrates should be engaged in scrutiny arrangements

8. Magistrates should only enter into scrutiny arrangements in accordance with this guidance.

9. Magistrates should be clear that their role in scrutiny arrangements is to enhance the delivery of criminal justice within their areas. To that end, individuals who participate should take care to maintain both the substance and appearance of the separation between police operations and the role of the independent judiciary.
10. When police forces establish scrutiny arrangements, they should initially engage with the magistracy through the office of the justices' clerk responsible for the area in which the scrutiny will be taking place. The appropriate bench chairman, acting on the advice of the justices' clerk, will ensure that this guidance is reflected in any scrutiny arrangements.
11. Bench chairmen will decide, with the support of their deputies, and through engaging with appropriate local governance mechanisms as necessary, which of the local magistrates would be best able to provide the experience and knowledge required.
12. Bench chairmen and justices' clerks should periodically review any scrutiny arrangements to ensure that they remain consistent with this guidance. Such reviews may be undertaken in conjunction with the police.

Responsibilities of magistrates who are involved in scrutiny arrangements

13. Magistrates' involvement in scrutiny of out of court disposals stems from their position as judicial office holders. As such, when participating in the process of scrutiny, magistrates should be particularly mindful that impartiality and independence is essential to the proper discharge of judicial office; for example, it is not envisaged that magistrates would directly engage on an individual basis with Police and Crime Commissioners (PCCs) about local policing priorities, or policy, under these arrangements. Feedback to police forces or PCCs should always be through the proper local scrutiny arrangements.
14. Any concerns on the part of participating magistrates about the arrangements in a particular area should be raised through the police's own internal routes with the appropriate involvement of the relevant bench chairman and justices' clerk.
15. On the rare occasion where a magistrate may have considered, as part of scrutiny arrangements, a matter that is subsequently to come before them in court; for example, non-compliance with an out of court disposal, the magistrate should recuse themselves from the case. (Different matters involving the same defendant do not create a similar requirement for recusal.)

Confidentiality and transparency

16. Discussions that take place as part of scrutiny arrangements, and the details of individual cases should be confidential. However, in the interests of transparency, local areas may publish information about the outcomes of their discussions. It is for each area to decide what it is appropriate to publish.
17. A summary of the work by local scrutiny arrangements should be presented to the Annual General Meeting of the relevant bench(es) each year.

Lord Justice Gross

Senior Presiding Judge

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