

A Short Guide

Making the decision about where trials are heard (Allocation)

- This guide describes how it is decided whether a trial should take place in the magistrates' court or the Crown Court (the allocation decision).
- The guide has been designed to complement the Sentencing Council's consultation on a draft guideline on allocation (15 September 2011 to 8 December 2011) and provides a more general explanation of the issue.

What is the difference between the magistrates' court and the Crown Court?

Almost all criminal cases start in a magistrates' court, and more than 90 per cent will be completed there. In the magistrates' court, cases are either heard by a District Judge (who is a qualified lawyer) sitting alone, or by three magistrates (volunteers from the community) sitting together and sometimes known as 'the bench'.

The more serious offences are passed to the Crown Court, either for sentencing after the defendant has been found guilty in the magistrates' court, or for full trial with a judge and jury.

The sentencing powers of the two courts are different:

- In the **magistrates' courts**, the magistrate can sentence offenders to a maximum of six months' imprisonment for a single offence and, in most cases, a maximum fine of £5,000.
 - Magistrates sit without juries and will listen to evidence provided by the prosecution and the defence, along with any recommendations from the probation service before reaching a decision about what the sentence should be.
- In the **Crown Court**, the judge can sentence more serious offenders to anything up to and including life imprisonment and/or an unlimited fine.
 - Crown Court trials have juries made up of 12 members of the public who will decide if a defendant is guilty or not guilty. If a defendant is found guilty, or has admitted their guilt, the judge will decide on the appropriate sentence, having considered a report from the Probation Service if this is relevant.

Why are some trials heard in the magistrates' court and others in the Crown Court?

There are three types of criminal offence and the venue for trial often depends on the type of offence.

Summary offences

These are less serious cases such as motoring offences, disorderly behaviour, TV licence payment evasion and minor assaults. They can only be dealt with in the magistrates' court.

Either-way offences

These are cases which can be heard in either the magistrates or Crown Court, such as theft, burglary and harassment. Magistrates make the initial decision about whether a case is sufficiently serious to be heard in the Crown Court or can remain in the magistrates' court. If they decide that it is suitable for trial in the magistrates' court, the defendant is then given the opportunity to choose whether their trial should take place in the Crown Court or the magistrates' court (often known as the right to elect trial).

Indictable-only offences

These are the most serious cases such as murder, rape and robbery. These cases can only be tried in the Crown Court but start with an appearance in the magistrates' court which makes the first decision about whether the defendant should be granted bail.

How is it decided where a trial will be heard?

A decision is only required in cases which are either-way offences. In such cases the magistrates must first decide whether an offence is more suitable for trial in the magistrates' court or the Crown Court. This is known as **the allocation decision** (sometimes called the mode of trial decision).

When deciding where cases should be heard, magistrates must take account of the facts of the case and any legal complexities that might arise. They must also decide whether, if the defendant was to be convicted in the magistrates' court, their sentencing powers would properly reflect the seriousness of the case. The maximum penalty the magistrates' court can impose is six months' in prison.

There are currently no formal guidelines for magistrates to follow when making allocation decisions and the Sentencing Council is now proposing to introduce these in order to make the decision-making more consistent.

Does this guideline affect the right of an offender to choose trial by jury?

A defendant has the right to elect trial by jury in the Crown Court under section 20 of the Magistrates' Courts Act 1980. This right will remain unchanged by any allocation guideline issued by the Sentencing Council.

More information

The Sentencing Council is currently consulting on a draft guideline on the allocation decision. The consultation document contains further detail on the topic and responses are welcome from all. The documents can be found at:

www.sentencingcouncil.org.uk

This Sentencing Council website also contains a range of information about sentencing. Alternatively, you may wish to visit the sentencing area on the Directgov website, which can be accessed at:

www.sentencing.cjsonline.gov.uk

The Ministry of Justice publishes both a quarterly and annual statistical publication on sentencing data which focuses on national level trends in sentencing for all offences. Publications can be accessed via the Ministry of Justice statistics homepage at:

www.justice.gov.uk/publications/statistics-and-data/index.htm

About the Sentencing Council

The Sentencing Council for England and Wales aims to:

- promote a clear, fair and consistent approach to sentencing;
- produce analysis and research on sentencing; and
- work to improve public confidence in sentencing.

One of its main functions is to produce sentencing guidelines. The courts have a duty to follow the Sentencing Council's guidelines unless it is in the interests of justice not to do so.

The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice and replaced the Sentencing Guidelines Council and the Sentencing Advisory Panel.

You can find out more about the Sentencing Council, the guidelines it produces and sentencing more generally on the Sentencing Council's website:

www.sentencingcouncil.org.uk