

Allocation guideline

Determining whether cases should be dealt with by a magistrates' court or the Crown Court

Applicability of guideline

In accordance with section 122(2) of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all defendants in the magistrates' court (including youths jointly charged with adults) whose cases are dealt with on or after [tbc]. It will not be applicable in the youth court where a separate statutory procedure applies.

Guidance

It is important to ensure that all cases are tried at the appropriate level.

1. In general, either way offences should be tried summarily unless:

- the outcome would result in a sentence in excess of the court's powers for a single offence after taking into account personal mitigation and any reduction for a guilty plea; or
- the case involves complex questions of fact or difficult questions of law, including difficult issues of disclosure of sensitive material, in which case the court should consider sending for trial notwithstanding that its powers may be sufficient.

2. However, in **straightforward cases** the court should bear in mind its **power to commit for sentence after a trial** and may **retain jurisdiction** notwithstanding that the likely sentence would exceed its powers.

3. In addition, straightforward cases should be tried summarily even when it is apparent from the list of previous convictions that the defendant is subject to a Crown Court Suspended Sentence Order or Community Order.¹

4. All parties should be asked by the court to make representations as to whether the case is suitable for summary trial. The court should refer to definitive guidelines to assess the likely sentence for the offence in the light of the facts alleged by the prosecution case, taking into account all aspects of the case including those advanced by the defence to include personal mitigation.

Where the court decides that the case is suitable to be dealt with in the magistrates' court, it must warn the defendant that all sentencing options remain open and, that if the defendant consents to summary trial and is convicted by the court, the defendant may be committed to the Crown Court for sentence.

1. The power to commit the case to the Crown Court to be dealt with under para 11(1) of Schedule 12 or para 22 of Schedule 8 to the Criminal Justice Act 2003 can be exercised if the defendant is convicted.

Linked Cases

Where a youth and an adult are jointly charged, the youth must be tried summarily unless the court considers it to be in the interests of justice for both the youth and the adult to be sent to the Crown Court for trial. Examples of factors that should be considered when deciding whether to separate the youth and adult defendants include:

- whether separate trials can take place without causing undue inconvenience to witnesses or injustice to the case as a whole;
- the age of the youth, particularly where the age gap between the youth and adult defendant is substantial;
- the immaturity of the youth;
- the relative culpability of the youth compared with the adult and whether or not the role played by the youth was minor; and the lack of previous convictions on the part of the youth.

Committal for sentence

There is ordinarily no statutory restriction on committing an either way case for sentence following conviction. The general power of the magistrates' court to commit to the Crown Court for sentence after a finding that a case is suitable for summary trial and/or conviction continues to be available where the court is of the opinion 'that the offence or the combination of offence and one or more offences associated with it was 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 him if he had been convicted on indictment'.²

However, where the court proceeds to the summary trial of certain offences relating to criminal damage, upon conviction there is no power to commit to Crown Court for sentence.³

2. Powers of Criminal Courts (Sentencing) Act 2000, s.3.

3. Magistrates' Courts Act 1980, s.3(4) and s.22.

Statutory Framework

Section 19 of the Magistrates' Courts Act 1980 provides that:

- (1) "The court shall decide whether the offence appears to it more suitable for summary trial or for trial on indictment.
- (2) Before making a decision under this section, the court –
 - (a) shall give the prosecution an opportunity to inform the court of the accused's previous convictions (if any); and
 - (b) shall give the prosecution and the accused an opportunity to make representations as to whether summary trial or trial on indictment would be more suitable.
- (3) In making a decision under this section, the court shall consider –
 - (a) whether the sentence which a magistrates' court would have power to impose for the offence would be adequate; and
 - (b) any representations made by the prosecution or the accused under subsection (2)(b) above, and shall have regard to any allocation guidelines (or revised allocation guidelines) issued as definitive guidelines under section 122 of the Coroners and Justice Act 2009.
- (4) Where –
 - (a) the accused is charged with two or more offences; and
 - (b) it appears to the court that the charges for the offences could be joined in the same indictment or that the offences arise out of the same or connected circumstances, subsection (3)(a) above shall have effect as if references to the sentence which a magistrates' court would have power to impose for the offence were a reference to the maximum aggregate sentence which a magistrates' court would have power to impose for all of the offences taken together."

Section 125(1) of the Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

"Every court –

- (a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender's case, and
 - (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so."
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