

Allocation guideline

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 11 June 2012. It will not be applicable in the youth court where a separate statutory procedure applies.

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.”

Statutory framework

In accordance with section 19 of the Magistrates' Courts Act 1980, where a defendant pleads not guilty or has not indicated an intention to plead guilty to an offence triable either way, a magistrates' court must decide whether the offence should be sent to the Crown Court for trial.

When deciding whether an either way offence is more suitable for summary trial or trial on indictment, section 19 of the Magistrates' Courts Act 1980 provides that the court shall give the prosecutor and the accused the opportunity to make representations as to which court is more suitable for the conduct of the trial.¹

The court must also have regard to:

- a) the nature of the case;
- b) whether the circumstances make the offence one of a serious character;
- c) whether the punishment which a magistrates' court would have the power to inflict for the offence would be adequate; and
- d) any other circumstances which appear to the court to make the offence more suitable for it to be tried in one way rather than the other.²

¹ s.19(2) Magistrates' Courts Act 1980

² s.19(1) *ibid*

Guidance

It is important to ensure that all cases are tried at the appropriate level. **In general, either way offences should be tried summarily unless it is likely that the court's sentencing powers will be insufficient.** Its powers will generally be insufficient if the outcome is likely to result in a sentence in excess of six months' imprisonment for a single offence.

The court should assess the likely sentence 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.

The court should refer to definitive guidelines to assess the likely sentence for the offence.

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 (and any associated offences) is so serious that greater punishment should be inflicted than the court has power to impose.³ Where the court decides that the case is suitable to be dealt with in the magistrates' court, it should remind the defendant that all sentencing options remain open, including committal to the Crown Court for sentence at the time it informs the defendant of this decision.

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.⁴

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 committed 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 young age of the defendant, particularly where the age gap between the adult and youth offender 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.

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

⁴ s.2 and s.33 Magistrates' Courts Act 1980