

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 1 March 2016.

It also applies to allocation decisions made in the Crown Court pursuant to Schedule 3 of the Crime and Disorder Act 1998. It will not be applicable in the youth court where a separate statutory procedure applies.

Venue for trial

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 clearly be a sentence in excess of the court's powers for the offence(s) concerned after taking into account personal mitigation and any potential reduction for a guilty plea; or
- for reasons of unusual legal, procedural or factual complexity, the case should be tried in the Crown Court. This exception may apply in cases where a very substantial fine is the likely sentence. Other circumstances where this exception will apply are likely to be rare and case specific; the court will rely on the submissions of the parties to identify relevant cases.

2. 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.

3. Cases may be tried summarily even where 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 (if any) 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, including any personal mitigation to which the defence wish to refer.

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, if the defendant consents to summary trial and is convicted by the court or pleads guilty, 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.

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 the 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 the Crown Court for sentence.³

The court should refer to any definitive guideline to arrive at the appropriate sentence taking into account all of the circumstances of the case including personal mitigation and the appropriate guilty plea reduction.

In borderline cases the court should consider obtaining a pre-sentence report before deciding whether to commit to the Crown Court for sentence.

Where the offending is so serious that the court is of the opinion that the Crown Court should have the power to deal with the offender, the case should be committed to the Crown Court for sentence even if a community order may be the appropriate sentence (this will allow the Crown Court to deal with any breach of a community order, if that is the sentence passed).

Youths jointly charged with adults – interests of justice test

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.

This guideline does not provide information on the complex statutory framework for dealing with a youth jointly charged with an adult: consult your legal adviser for advice.

The following guidance must be applied in those cases where the interests of justice test falls to be considered:

1. If the adult is sent for trial to the Crown Court, the court should conclude that the youth must be tried separately in the youth court unless it is in the interests of justice for the youth and the adult to be tried jointly.
2. Examples of factors that should be considered when deciding whether it is in the interests of justice to send the youth to the Crown Court (rather than having a trial in the youth court) include:
 - whether separate trials will cause injustice to witnesses or to the case as a whole (consideration should be given to the provisions of sections 27 and 28 of the Youth Justice and Criminal Evidence Act 1999);
 - the age of the youth: the younger the youth, the greater the desirability that the youth be tried in the youth court;
 - the age gap between the youth and the adult: a substantial gap in age militates in favour of the youth being tried in the youth court;
 - the lack of maturity of the youth;
 - the relative culpability of the youth compared with the adult and whether the alleged role played by the youth was minor;
 - the lack of previous convictions on the part of the youth.

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

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

3. The court should bear in mind that the youth court now has a general power to commit for sentence following conviction pursuant to Section 3B of the Powers of Criminal Courts (Sentencing) Act 2000 (as amended). In appropriate cases this will permit the same court to sentence adults and youths who have been tried separately.

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.”