JUDICIAL COLLEGE

Adult Court Bench Book

June 2020

Amendment – September 2018

- Page 178. Paragraph 119 (Energy Disconnection Warrant) has been removed.

Amendment – April 2020

- Page 25 Information on location monitoring has been included.
- Page 55 The Surcharge amounts payable were increased for offences committed on or after 14 April 2020. In addition, from 8 April 2020, where there are several disposals of the same type or more than one type of sentence, the method of calculating the total surcharge payable has changed.
- Page 221 Information on the approach to council tax enforcement has been amended.

Amendment – June 2020

- Page 110 Blank paragraphs 289 and 290 have been removed and subsequent paragraphs renumbered. Additional stylistic amendments have been made.

Foreword

BY THE HONOURABLE MRS JUSTICE DOBBS DBE

Since the last Adult Court Bench Book was updated in 2008, the JSB has received considerable feedback from magistrates on its content and format. This feedback has been carefully considered, and it was concluded, that the Bench Book should be in a new format, which would supplement the new *Adult Court Pronouncement Cards*. It is with this in mind, that this new edition is a reference tool, to be used primarily in the retiring room, and for training purposes.

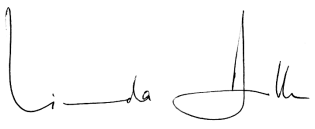
The JSB is grateful to all those who took part in surveys, focus groups and who were members of the working party, including the Magistrates' Association, National Bench Chairman's Forum, Justices' Clerks' Society, Equal Treatment Advisory Committee, legal advisers and magistrates. Particular thanks are extended to those Areas which took part in a pilot study of the pronouncement cards.

Two notable amendments to the Bench Book are: the inclusion of separate chapters on Effective Case Management, which supplements the paper recently

published by the Senior Presiding Judge's office, and Effective Fine Enforcement, which details enforcement action taken by fines officers and orders to be made by magistrates, together with the relevant pronouncements.

A particular request from the Magistrates' Association was the inclusion of guidance on dealing with applications to adjourn on the day of trial. As a result therefore, section 2 includes comprehensive reference to case law, giving examples of when it is and is not appropriate to adjourn. For the first time, the Criminal Case Management Framework has been reproduced, in order to assist magistrates in applying the Criminal Procedure Rules effectively.

I hope that this publication will be as well received as previous editions, and trust that those who use it, continue to find it helpful.



Mrs Justice Dobbs
Chairman of the Magisterial Committee
February 2010

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SECTION 1 – NOTES TO SUPPLEMENT PRONOUNCEMENT CARDS

Sentencing

The Sentencing Council *Magistrates' Court Sentencing Guidelines Definitive Guideline* (MCSG) introduced sentencing guidelines specifically for use in the magistrates' court. When sentencing on or after 4 August 2008 the court is required to have regard to the guideline.

The guidelines are not reproduced here. These notes are intended to provide you with explanatory information which supplements the pronouncements in the *Adult Court Pronouncement Cards*.

Criminal behaviour orders (CBO)

1. Criminal behaviour orders (CBO) replaced antisocial behaviour orders (ASBO) with effect from 20 October 2014.

2. This can be made as an order ancillary to a criminal conviction.

3. Any application will made by the prosecuting authority. In a majority of cases this will be the CPS and/or the police. However, it also includes local councils. A court cannot make an order of its own volition.

4. An offender must be sentenced to at least a conditional discharge for the criminal offence(s). An order cannot be made where the offender is sentenced to an absolute discharge.

5. It is an order designed to tackle the most serious and persistent anti-social individuals who are convicted before criminal courts. The anti-social behaviour to be addressed does not need to be connected to the criminal behaviour which led to the conviction although, if there is no link, the court will have to consider whether making an order is appropriate.

6. A CBO may prohibit the offender from doing anything described in the order ('a prohibition') and/or require the offender to do anything described in the order ('a requirement').

7. The court may only make a CBO if it is satisfied, beyond reasonable doubt, that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to one or more persons **and** that making an order will help in preventing the offender from engaging in such behaviour.

8. There is no test of necessity as there was with antisocial behaviour orders.

9. Any order must be reasonable and proportionate.

10. The minimum duration for a CBO is two years. An order may be for a specified or indefinite period (i.e. until further order). An order may specify different periods for which particular prohibitions or requirements have effect.

11. A CBO takes effect on the day it was made unless the offender is already subject to a CBO, in which case it

may take effect on the day on which the previous order expires.

12. Where the court thinks it just to do so, it may order an interim CBO where an offender is convicted but the proceedings are adjourned for sentence. Where the offender does not attend the adjourned hearing: the proceedings may be further adjourned; the court may issue a warrant for the offender's arrest; or the court may proceed to hear the case in the offender's absence.

13. Where an offender is sentenced, the court may adjourn the application for a CBO. However, it cannot hear any application once sentence has taken place.

Individual support order (ISO)

14. The court must consider making an ISO after it makes an ASBO against a child or young person aged 10 to 17 years.

15. The court must make an ISO in respect of such a child or young person if all of the following conditions are fulfilled:

a. an ISO would be desirable in the interests of preventing any repetition of the kind of behaviour that led to the making of the ASBO,

b. the defendant is not already subject to an ISO, and

c. the court has been notified that arrangements for implementing ISOs are available in the area where the defendant resides/will reside.

16. If the court is not satisfied that the ISO conditions are fulfilled, it must state in open court why it is not satisfied.

17. Before making an ISO, the court must obtain from the Youth Offending Team (YOT) or Social Services any information it considers necessary in order to determine whether the ISO conditions are met or to determine what requirements should be imposed.

18. An ISO requires a defendant to comply, for a period not exceeding six months, with the requirements specified in the order and to comply with any directions given by the responsible officer with a view to the implementation of those requirements.

19. An ISO will end if the ASBO, as a result of which it was made, ceases to have effect.

20. The court can include any requirements in an ISO that the court considers desirable in the interests of preventing a repetition of the behaviour that led to the ASBO.

21. Requirements can include directing the defendant to participate in activities; to present themselves to person(s) at specified place(s) and times; and to comply with educational arrangements.

22. The defendant cannot be required to attend on more than two days in any week and directions must, as far as practicable, avoid conflict with the defendant's religious beliefs or work or education.

23. The court must explain to the defendant in open court the effect of the ISO, the consequences of breach and the power to review the order on application.

Community order

24. The court will usually order a report from the Probation Service before making a community order. Consideration should be given to whether a report can

be prepared on the same day, or whether a longer adjournment is required to enable the Probation Service to carry out a full risk assessment.

25. The defendant must be aged 18 years or over.

26. A court cannot impose a community order unless it is of the opinion that the offence is serious enough to warrant such a sentence and the offence is punishable with imprisonment.

27. A community order will include one or more of the following requirements:

    a. Alcohol abstinence and monitoring (**pilot areas only**).

    b. Alcohol treatment.

    c. Attendance centre requirement (if defendant under 25 years).

    d. Curfew requirement.

    e. Drug rehabilitation requirement.

    f. Exclusion requirement.

    g. Foreign travel prohibition.

    h. Mental health.

i. Prohibited activity.

j. Rehabilitation activity.

k. Residence.

l. Unpaid work requirement.

28. The requirement(s) must be the most suitable for the offender and the restriction of liberty imposed by the order must be commensurate with the seriousness of the offence(s).

29. Before making an order with two or more requirements, the court must consider whether, in the circumstances of the case, the requirements are compatible with each other.

30. The decision as to the nature and severity of the requirements to be included in the order should be guided by:

a. the assessment of offence seriousness (low, medium or high)

b. the purpose(s) of sentencing the court wishes to achieve

c. the risk of reoffending

d. the ability of the offender to comply, and

e. the availability of requirements in the local area.

31. In deciding the restriction of liberty to be imposed under the order, the court may have regard to any time the defendant has been remanded in custody for that case.

32. The order cannot be for longer than three years in the first instance but may be extended on one occasion for up to six months in order to allow for any requirements to be completed.

33. For offences committed on or after 11 December 2013 when imposing a community order the court must include at least one requirement for the purpose of punishment and/or a fine unless there are exceptional circumstances which relate to the offender that would make it unjust in all the circumstances to do so.

Requirements that may be attached to a community order

Rehabilitation activity requirement

- This can be imposed as a requirement of a community order or a suspended sentence order.

- The court will decide whether a rehabilitation activity requirement is appropriate and specify the maximum number of days the offender must undertake any activities. The court will set the timeframe for the activities to be undertaken but will not specify the activities (this will be a matter for the responsible officer).
- The responsible officer will decide who the offender should attend appointments with and how frequently, where any appointments and activities will take place and what activities are appropriate.
- The activities that responsible officers may instruct offenders to participate in include:
    a. activities forming an accredited programme (see section 202(2));
    b. activities whose purpose is reparative, such as restorative justice activities.
- There is no maximum limit to the number of days of activities which can be imposed, however they cannot exceed the overall length of the community order or suspended sentence order.

- Activities must 'promote the offender's rehabilitation' but can also serve other purposes such as reparation.
- The court must give an end date for the overall community order and this will normally be stated by the court as also being the end date for the rehabilitation activity requirement.
- The defendant must comply with the instructions of the responsible officer to participate in activities on specified days, and must comply with instructions given by or under the authority of the person in charge of the activities.
- If the activity requires the co-operation of a third party (other than the defendant and the responsible officer), their consent must be obtained.

Alcohol treatment requirement

- This can be imposed as a requirement of a community order or a suspended sentence.
- It requires the defendant to submit, during a period specified in the order, to treatment by or under the direction of a specified person having the necessary

qualifications or experience with a view to the reduction or elimination of the defendant's dependency on alcohol.

- Before imposing an alcohol treatment requirement, the court must be satisfied that:
  - the defendant is dependent on alcohol
  - this dependency is such as requires treatment, and may be susceptible to treatment, and
  - arrangements have or can be made for the treatment to be specified, including for the reception of the defendant if treatment as a resident is to be specified.
- An alcohol treatment requirement cannot be imposed unless the defendant has expressed a willingness to comply with the requirements.
- An alcohol treatment requirement cannot be imposed with an alcohol abstinence and monitoring requirement.
- The treatment required must be one of the following:
  - treatment as a resident in a specified institution or place

  - treatment as a non-resident patient in or at such institution or place, and at such intervals, as may be specified in the order
  - treatment by or under the direction of such person having the necessary qualifications or experience as may be specified.

- The detail as to the nature of the treatment is not to be specified in the order.

Attendance centre requirement

- This can be imposed as a requirement of a community order or a suspended sentence.
- It is available only for defendants aged under 25 years.
- It requires the defendant to attend an attendance centre for a specified number of hours.
- The court does not specify a particular attendance centre. It will be identified by the responsible officer as being available for a person of the offender's description and accessible to the offender.
- The aggregate number of hours specified must not be less than 12 or more than 36.

- The attendance centre must be reasonably accessible to the defendant, having regard to available means of access and any other circumstances.
- The defendant will be notified of the first attendance date and time by the responsible officer. Subsequent hours will be fixed by the officer in charge of the attendance centre, taking account of the defendant's circumstances.
- A defendant may not be required to attend an attendance centre on more than one occasion on any one day, or for more than three hours on any occasion.

Curfew requirement

- This can be imposed as a requirement of a community order, or a suspended sentence.
- It requires the defendant to remain for the periods specified in the order at a place(s) specified in the order.
- The requirement can last for a maximum of 12 months.
- The curfew periods can be ordered to apply from one to seven days per week. Different lengths of time can be specified for different days.

- The periods of curfew specified in the order can be between 2 hours and 16 hours in any one day.
- Before imposing a curfew requirement, the court must obtain and consider information about the place proposed to be specified in the order, including information as to the attitude of persons likely to be affected by the enforced presence of the defendant.
- The court must order electronic monitoring of the curfew requirement unless electronic monitoring is not available in the area where the place specified in the order is situated.
- However, if there is a person without whose co-operation it will not be practicable to secure monitoring, the electronic monitoring may not be included in the order without their consent.
- Where electronic monitoring is ordered, the court must identify the person responsible for the monitoring.

Drug rehabilitation requirement

- This can be imposed as a requirement of a community order or a suspended sentence.
- It requires the defendant to:

  - submit to treatment by or under the direction of a specified person having the necessary qualifications or experience with a view to the reduction or elimination of the defendant's dependency on or propensity to misuse drugs, and
  - provide samples for the purpose of ascertaining whether there are drugs in their body.

- Before imposing a drug rehabilitation requirement, the court must be satisfied that:
  - the defendant is dependent on or has a propensity to misuse drugs
  - this dependency or propensity is such as requires and may be susceptible to treatment, and
  - arrangements have or can be made for the treatment to be specified, including for the reception of the defendant if treatment as a resident is to be specified.
- The requirement can only be imposed if it has been recommended to the court as being suitable for the offender by the Probation Service.

- The requirement cannot be imposed unless the defendant has expressed a willingness to comply with the requirements.
- The treatment required must be one of the following:
  - treatment as a resident in a specified institution or place, or
  - treatment as a non-resident patient in or at such institution or place, and at such intervals, as may be specified in the order.
- The detail as to the nature of the treatment is not to be specified in the order.
- If the treatment and testing period is longer than 12 months, the order must provide for periodical review hearings at not less than one month intervals at which the defendant must attend. The responsible officer will prepare a report for the hearing detailing the defendant's progress including details of test results. If the treatment and testing period is shorter than 12 months, the court may order periodical review hearings.

Exclusion requirement

- This can be imposed as a requirement of a community order or a suspended sentence.
- It prohibits the defendant from entering a specified place or area for the period specified in the order.
- An exclusion requirement in a community order cannot be for more than two years.
- The exclusion requirement may provide for the prohibition only to apply for certain periods and may specify different places for different periods or days.
- The court must order electronic monitoring of the exclusion requirement unless electronic monitoring is not available in the area where the place specified in the order is situated.
- However, if there is a person without whose co-operation it will not be practicable to secure monitoring, the electronic monitoring may not be included in the order without their consent.
- Where electronic monitoring is ordered, the court must identify the person responsible for the monitoring.

Mental health treatment requirement

- This can be imposed as a requirement of a community order or a suspended sentence.
- It requires the defendant to submit, during a period or periods specified in the order, to treatment by or under the direction of a registered medical practitioner or a chartered psychologist (or both for different periods) with a view to the improvement of the defendant's medical condition.
- The treatment required must be one of the following:
  - treatment as a resident patient in an independent hospital or care home (but not in hospital premises where high security psychiatric services are provided), or
  - treatment as a non-resident patient at such institution or place as may be specified in the order, or
  - treatment by or under the direction of such registered medical practitioner or chartered psychologist (or both) as may be specified in the order.
- The detail as to the nature of the treatment is not to be specified in the order.

- Before imposing a mental health treatment requirement the court must be satisfied that:
  - on the evidence of a medical practitioner, the mental condition of the defendant requires, and may be susceptible to, treatment but is not such as to warrant the making of a hospital or guardianship order, and
  - arrangements have been or can be made for the treatment to be specified, including for the reception of the defendant if treatment as a resident patient is to be specified, and
  - the defendant has expressed a willingness to comply with the treatment requirement.

Programme requirement

- This can be imposed as a requirement of a community order or a suspended sentence.
- It requires the defendant, in accordance with instructions from the supervising officer, to participate in an accredited programme at a specified place and for a specified number of days. While at that place, the defendant must comply with instructions given by, or

under the authority of, the person in charge of the programme.

- A programme requirement may be ordered alongside a rehabilitation activity requirement. This enables the supervising officer to arrange pre-programme work sessions, post-programme follow-up and motivational activities for the defendant before, during and after the programme.
- If the activity requires the co-operation of a third party (other than the defendant and the responsible officer), their consent must be obtained.

Prohibited activity requirement

- This can be imposed as a requirement of a community order or a suspended sentence.
- It requires the defendant to refrain from participating in the activities specified in the order:
  - on a specified day or days, or
  - during a specified period.
- Before including an activity requirement in an order, the court must consult the Probation Service and must be

satisfied that it is feasible to secure compliance with the requirement. This will usually require some form of report from the Probation Service.

- The prohibited activity requirement may forbid the defendant having contact with a named person(s), or from participating in certain activities. It can include a requirement that the defendant does not possess, use or carry a firearm.

Residence requirement

- This can be imposed as a requirement of a community order or a suspended sentence.
- It requires the defendant to reside at a specified place during the period specified in the order.
- The order can provide that, with prior approval of the responsible officer, the defendant is not prohibited from residing at a place other than that specified in the order.
- Before imposing a residence requirement, the court must consider the home surroundings of the defendant.
- The court cannot specify a hostel or other institution as the place where the defendant must reside except on the recommendation of a probation officer.

Unpaid work requirement

- This can be imposed as a requirement of a community order or a suspended sentence.
- It requires the defendant to perform unpaid work at such times as instructed by the responsible officer.
- The court must be satisfied that the defendant is suitable to perform work under such a requirement. This will usually require some form of report from the Probation Service.
- The requirement can be for a minimum of 40 hours and a maximum of 300 hours in aggregate. The hours must be completed within 12 months.
- A community order with an unpaid work requirement will remain in force until the hours have been completed.

Alcohol abstinence and monitoring requirement

- This can be imposed as a requirement of a community order or a suspended sentence.
- It requires the defendant, during a period specified in the order, to abstain from consuming alcohol, or not to consume alcohol above a specified level in the

defendant's body and the defendant must, in ascertaining whether they are complying with the order, submit during the specified period to monitoring in accordance with specified arrangements.

- Before imposing an alcohol abstinence and monitoring requirement, the court must be satisfied that:
  - consumption of alcohol by the defendant is an element of the offence **or** consumption of alcohol was a factor that contributed to the offence being committed.
  - the defendant is not dependent on alcohol.
  - arrangements for the monitoring of the kind specified are available in the local justice area to be specified.
- An alcohol treatment requirement cannot be imposed with an alcohol abstinence and monitoring requirement.
- An electronic monitoring requirement cannot be imposed with this requirement to secure the electronic monitoring of a defendant's compliance with an alcohol abstinence and monitoring requirement but may be imposed to monitor compliance with any other requirement.

Foreign travel prohibition requirement

- This can be imposed as a requirement of a community order or a suspended sentence.
- It prohibits the defendant from travelling on a day, days or for a specific period specified in the order to any country outside the British Islands specified in the order.
- A day specified in a foreign travel prohibition requirement cannot be a day which falls outside the period of 12 months beginning with the day the order was made.
- A foreign travel prohibition requirement cannot be for more than 12 months starting with the day the order was made.

Location and attendance monitoring requirement

- This can be imposed as a requirement of a community order or a suspended sentence; either to secure the defendant's compliance with another requirement, or as a requirement in its own right.
- The defendant is fitted with an electronic tag and monitored by GPS which can be used for:

  - prohibiting the defendant from entering a specified place or area for the period specified in the order
  - monitoring attendance at a particular activity or appointment
  - monitoring the defendant's location.

- The defendant must have a fixed address with an electricity supply.
- The exclusion requirement may provide for the prohibition only to apply for certain periods and may specify different places for different periods or days.
- The National Probation Service will produce a map defining the exclusion/inclusion zone usually as part of the recommendation within a PSR.

Custodial sentence

34. The legal adviser should be consulted before any custodial sentence is imposed in order to clarify statutory requirements such as duration, reasons and concurrent/consecutive imprisonment.

35. A pre-sentence report (PSR) must be obtained before the court reaches a decision to impose a custodial

sentence unless the court gives reasons as to why a PSR is unnecessary.

36. The defendant should be legally represented (seek advice from the legal adviser if they are not).

37. The court must not pass a custodial sentence unless it is of the opinion that the offence, or a combination of the offence and one or more offences associated with it, is so serious that neither a fine alone nor a community sentence can be justified for the offence.

38. The above paragraph does not, however, prevent the court from imposing a custodial sentence if:

    a. the defendant fails to express a willingness to comply with a requirement that the court proposes to include in a community order and which requires an expression of willingness, or

    b. the defendant fails to comply with an order for pre-sentence drug testing.

39. The approach to imposing a custodial sentence should be as follows.

    a. Has the custody (so serious) threshold been passed?

b. If so, is it unavoidable that a custodial sentence be imposed?

c. What is the shortest term commensurate with the seriousness of the offence?

d. Can the sentence be suspended?

The court must explain in open court its reasons for imposing a custodial sentence.

40. Where the court imposes a custodial sentence and the offender has spent time on bail with a qualifying curfew and an electronic monitoring condition (at least nine hours in any given day) for that offence or a related offence the court must direct the number of days which is to count as time served by them as part of the sentence. The credit period is half of the total of the first day and the days that the defendant was subject to it, excluding the last.

41. The court no longer has the same responsibility in respect of time spent on remand in custody. This will be calculated administratively.

42. When a magistrates' court passes a custodial sentence (and the offence was committed after 1

February 2015) the offender will be supervised in the community for a period of 12 months after their release from custody. This will initially be on licence and then on post-sentence supervision (PSS). The dates of the licence, the period of post-sentence supervision and any requirements attached to the licence or PSS are set administratively on behalf of the Secretary of State. They are not within the remit of, nor can they be amended by, the court. Breaches of licence can only be dealt with by way of administrative recall and the court has no jurisdiction over this. Breaches of PSS are dealt with by the magistrates' court irrespective of whether the original sentence was imposed by the magistrates' court or the Crown Court.

Deferment of sentence

43. The court must be satisfied that it is in the interests of justice to defer sentence having regard to the nature of the offence and the character and circumstances of the defendant.

44. The purpose of deferment is to allow the court to have regard to:

a. the defendant's conduct after conviction (including where appropriate the making of reparation for the offence), and

b. any change in the defendant's circumstances.

45. The defendant must consent to the deferment and must undertake to comply with any requirements as to their conduct that the court considers appropriate during deferment. The requirements can include a requirement as to residence (for the whole or part of the deferment period) and to make appropriate reparation.

46. The court can appoint a supervisor to monitor the defendant's compliance with the requirements. The supervisor can be an officer of the local probation board or anyone else the court considers appropriate. The person must consent to appointment as supervisor.

47. The court cannot defer for more than six months.

48. The court cannot remand the defendant when deferring sentence.

49. When subsequently sentencing the defendant, the court can have regard to the extent to which the defendant has complied with any requirements imposed by the court.

50. If the defendant fails to attend on the deferment date, the court has power to issue a summons or arrest warrant.

51. The court can deal with the offender before the end of the period of deferment if:

    a. they are convicted of another offence during the deferment period, or

    b. they fail to comply with one or more of the requirements they have undertaken to comply with.

52. If the court wishes to deal with the defendant before the end of the deferment period (because they have been convicted of another offence during deferment or is reported to have failed to comply with the requirements), the court has power to issue a summons or arrest warrant.

Discharge

Absolute

53. The court may make an order if it thinks it is inappropriate to punish given the nature of the offence and the character of the offender.

54. The court can make orders ancillary to sentence – endorsement, penalty points, disqualification, compensation and costs, etc.

55. The offender is not required to consent to the order.

56. It differs from 'no separate penalty', which is used to dispose of a case where a penalty is imposed on the same occasion for other offences.

Conditional

57. The court may make a conditional discharge if it thinks that it is inappropriate to punish given the nature of the offence and the character of the defendant.

58. The one condition of the order is that the defendant stays out of trouble. If they are convicted of an offence committed during the life of the order, they may be sentenced for the original offence. No other conditions may be ordered.

59. An order can be for up to a maximum of three years. There is no minimum term.

60. The court can make ancillary orders to sentence – endorsement, penalty points, disqualification, compensation and costs, etc.

61. The order must be explained in plain language so it is understood. The offender is not required to give consent.

62. A conditional discharge cannot be ordered for breach of an ASBO or on a youth who has been given a final warning less than two years before.

Endorsement and disqualification

Endorsement

63. Where an offence is endorsable, the court must order that the defendant's driving licence be endorsed with particulars of the offence and the points appropriate to that offence.

64. Where a person is convicted of two or more offences committed on the same occasion, points will only be imposed for one offence.

65. In certain limited circumstances, the court can find special reasons for not ordering endorsement. The court must give its reasons and these must be recorded in the court register. Seek legal advice if special reasons are raised.

Obligatory disqualification

66. A group of offences, most notably drink-drive offences, carry obligatory disqualification for a minimum of 12 months. This mandatory minimum period may be extended to two or three years if earlier convictions or disqualification(s) are relevant. The legal adviser will be able to provide additional advice.

67. In certain limited circumstances, the court can find special reasons for not disqualifying or for disqualifying for a shorter period. The court must give its reasons. Seek legal advice if special reasons are raised.

Discretionary disqualification

68. The court has discretion to order disqualification for any endorsable offence. Penalty points and disqualification cannot be imposed for the same offence.

Totting up disqualification

69. The defendant is a 'totter' if they have 12 or more points endorsed on their licence for offences committed within a span of three years.

70. The minimum period of disqualification is six months but may be longer if earlier disqualifications are relevant. The legal adviser will be able to provide additional advice.

71. The court may decide not to disqualify or to order a reduced period if it finds, after hearing evidence, that to do so would cause the defendant 'exceptional hardship'. These are strict and clearly defined and the advice of the legal adviser should be sought if this matter is raised.

Drink-driving disqualification and rehabilitation courses

72. A group of offences carry obligatory disqualification for a minimum of 12 months. These include:

    a. driving or attempting to drive a motor vehicle when unfit through drink or drugs

    b. driving or attempting to drive a motor vehicle with excess alcohol

c. driving or attempting to drive a motor vehicle and then failing to provide a specimen for analysis.

73. The mandatory minimum disqualification period will be three years when the defendant has within 10 years preceding the commission of the current offence been convicted of one of these offences.

74. In certain limited circumstances, the court can find special reasons for not disqualifying or for disqualifying for a shorter period. The court must give its reasons and these must be recorded in the court register. Seek legal advice if special reasons are raised.

75. If the defendant agrees to participate in a rehabilitation course, the court can order that the drink-drive disqualification be reduced by a minimum of three months up to a maximum one quarter of the original disqualification.

76. A scheme must be available in the area.

77. The effect of the order and the fees payable must first be explained to the defendant. The fees are payable by the defendant.

78. The defendant needs to give their consent to the making of the order.

79. The course must be completed at least two months before the end of the reduced disqualification period.

80. If the course is not completed the full disqualification will continue to run.

High risk offenders

81. Where a defendant is a high risk offender they will need to satisfy the DVLA doctors that they are medically fit to drive again. A defendant will have to complete, and pay for, a medical assessment including blood tests before their licence is returned.

82. A defendant is in the high risk offender category if:

    a. a disqualification was imposed for driving, or being in charge of, a vehicle with excess alcohol and the reading was equal to, or more than, 87.5mg in breath, 200mg in blood or 267.5mg in urine;

    b. there are two disqualifications within 10 years for driving a vehicle with excess alcohol or being unfit to drive;

    c. a disqualification was imposed for failing to provide a specimen for analysis;

    d. a disqualification was imposed for refusing to allow analysis of a blood sample taken due to incapacity.

Interim disqualification

83. The court can order interim disqualification after conviction if the offence carries disqualification.

84. This can be used when adjourning for reports or for other reasons, such as:

    a. committing to the Crown Court for sentence

    b. remitting to another court for sentence, or

    c. when deferring sentence.

85. The order lasts for six months or until sentence, whichever is sooner.

86. The length of disqualification imposed at sentence will be reduced by the length of the interim disqualification served.

Disqualification until test passed

87. Where the sentencing court has power to order obligatory or discretionary disqualification, it can order disqualification until a driving test is taken and passed.

88. This provision may be ordered in addition to any order of disqualification or as an order in its own right.

89. Where the defendant is not otherwise disqualified, they may drive subject to complying with the provisional licence conditions.

90. The prime reason for making an order is in the interests of road safety. It is not intended to be used as an additional punishment.

91. If the offence is one that carries obligatory disqualification, any re-test ordered will be an extended driving test; otherwise it will be an ordinary re-test. Some offences carry an obligatory extended re-test, e.g. dangerous driving.

Non-endorsable driving disqualification

92. The court may order a disqualification from driving when a defendant is convicted of any offence, instead of or in addition to dealing with them in any other way.

93. Although a disqualification can be imposed in respect of any offence, it is suggested that there should be a link between the offending behaviour and use of vehicle. Examples of offences where a disqualification order of this type might therefore be appropriate are: kerb crawling, misuse of vehicles off-road, abandoned vehicles and offences involving 'road rage'.

94. The disqualification can be made for any period that the court considers appropriate.

95. The court must require the defendant to produce their driving licence. There will be no endorsement of the driving licence, but the licence will be returned to the Driver and Vehicle Licensing Agency (DVLA).

96. There is no power to order a re-test at the end of the disqualification.

97. The defendant will need to apply for the return of their licence at the end of the disqualification period.

98. The court should explain the reasons for the disqualification as part of the reasons given for sentence.

New drivers – revocation of licence by DVLA

99. New drivers are in effect on a probationary period for two years. The DVLA is required to revoke the licence of a new driver who gets six or more points on their licence within the two years following passing their test. In these circumstances, the driver reverts to being a provisional licence holder.

100. Although the court does not order the revocation, good practice requires that the court advise the defendant of what will happen.

101. The court should consider the impact that ordering six or more points will have on a new driver. Ordering less than six points or a disqualification will not lead to a DVLA revocation of the driving licence.

Immediate custodial sentence – extension of disqualification period

102. Where a disqualification is imposed at the same time as an immediate custodial sentence, the period of disqualification must be extended to take into account the period that the offender will serve in custody. This means that any disqualification will not expire or be reduced while the offender is in custody. For sentences of less than 12 months the period is equal to the custodial period to be served.

Financial penalties

Fine and ancillary orders of compensation and costs

103. The amount of the fine fixed by the court reflects the seriousness of the offence and is the punitive element of the sentence.

    On or after 12 March 2015, for offences punishable on summary conviction by a maximum fine of £5,000

(level 5) there is now no statutory upper limit on the amount that can be ordered in a magistrates' court. Limits on fines on conviction by the magistrates' court, in such cases, are therefore removed. However, there are some exceptions. These include, but are not restricted to, summary proceedings under the Environmental Protection Act 1990 where the maximum was previously expressed as one-tenth of level 5 and some offences under the Anti-Social Behaviour Act 2003 where the maximum was previously a fine not exceeding £20,000. Where the offence is triable either-way and certain criteria apply, you will be advised by your legal adviser as these should be dealt with by a District Judge.

104. Additional financial orders are now payable on the imposition of a majority of magistrates' court sentences (i.e. the surcharge and the criminal courts charge). For details, see the end of this chapter.

105. The court must give priority to the payment of compensation. It can be a sentence in its own right or ordered as ancillary to another sentence. See *Compensation as a sentence in its own right* on the

following page for notes relating to compensation orders.

106. When assessing what can be paid, the order of priority is:

    i. compensation
    ii. surcharge
    iii. fine
    iv. costs
    v. criminal courts charge.

107. In fixing the amount, the court must take into account the circumstances of the case, including the financial circumstances of the offender. The defendant should have completed a ‘means’ form, if not, the court should order that one be completed.

108. The correct approach to imposing fines is detailed in Part 5 of the Sentencing Council *Magistrates’ Court Sentencing Guidelines*.

109. The court has discretion as to whether to order costs and how much to order. The court must take account of the defendant’s means and ability to pay before making an order.

110. For wasted costs or costs from central funds, seek legal advice.

111. Effective fine enforcement begins at the date the fine is imposed. See *Section 3 – Effective fine enforcement* of this bench book for more guidance on enforcement options.

Compensation as a sentence in its own right

112. Compensation has priority over fines and costs.

113. It can be used as a sentence in its own right or as an ancillary order to another sentence.

114. For offences committed on or after 11 December 2013 there is no statutory limit on the amount of compensation that can be ordered in a magistrates' court. For offences committed before 11 December 2013 there is an upper limit of £5,000.

115. Starting points when calculating compensation for personal injury are given in Part 5 of the Sentencing Council *Magistrates' Court Sentencing Guidelines*.

116. The court must consider making a compensation order in every case where loss, damage or injury has

resulted from the offence, whether or not an application is made.

117. The court must give reasons if it decides to make no order.

118. Compensation should only be ordered in clear, uncomplicated cases. If it is difficult to assess the claim or if it is complex, seek legal advice.

119. Different rules apply where compensation is sought in road traffic cases and legal advice should be sought.

120. The financial means of the defendant must be taken into account. Common practice is to look to the defendant to pay the total financial penalty within 12 months.

121. The compensatee should be named and the order must be for a specified amount.

122. Whenever compensation is payable (whether as a sentence in its own right or as an ancillary order) the court must, where applicable, make an attachment of earnings order or a deduction from the defendant's benefit. See *Section 3 – Effective Fine Enforcement* for further guidance.

123. The court must make a collection order unless it is impractical or inappropriate. This enables the Fines Officer to impose enforcement sanctions if the defendant fails to pay as ordered.

124. Where the court makes both a collection order and an order that deductions be made from a defendant's benefit or earnings, the court must also fix reserve terms for payment if the attachment of earnings order/deductions from benefits order is not successful.

Hospital order

125. The legal adviser should be consulted if a hospital order is being considered.

126. This is available for adults charged with an offence punishable with imprisonment.

127. The defendant must be convicted or the court satisfied that the defendant committed the act or omission alleged.

128. The court needs to be satisfied on the evidence from two registered medical practitioners that the defendant is suffering from mental illness, psychopathic disorder,

severe mental impairment, or mental impairment, and that:

a. the mental disorder from which the defendant is suffering is of a nature and degree which makes it appropriate for them to be detained in a hospital for medical treatment and, in the case of psychopathic disorder or mental impairment, that such treatment is likely to alleviate or prevent a deterioration in the condition, and

b. that having regard to all the circumstances, including the nature of the offence and the character and antecedents of the offender, and to other available methods of dealing with them, that the most suitable method of disposing of the case is by means of a hospital order.

129. The court must be satisfied that arrangements have been made for the defendant's admission to the hospital within 28 days of the making of the order.

130. The initial order will be for up to six months. This can be renewed.

131. The date of release is a matter for the hospital authorities and therefore if the case is serious and the public needs to be protected from serious harm from the defendant, the court should commit to the Crown Court so that an order that places restrictions on the discharge of the defendant (restriction order) can be considered.

Referral order

132. Available for youths aged 10 to 17 years. The advice of the legal adviser should be sought when dealing with youths in the adult court.

133. This is an order referring the youth to a Youth Offender Panel, which will agree a programme of behaviour with the youth with the aim of preventing further offending behaviour.

134. The referral order provisions apply where the court is not considering imposing a custodial sentence, hospital order, absolute or conditional discharge. In some circumstances, a referral order is compulsory.

135. The adult court *shall* make the order if the compulsory conditions apply. It *may* make the order if the discretionary conditions apply. It is not necessary to

remit to the youth court, but seek the advice of your legal adviser.

136. Referral is compulsory if the youth pleads guilty to an imprisonable offence and to any associated offence and has never been found guilty, bound over, or given a conditional discharge on a previous occasion.

137. The order lasts for between three and 12 months. The order runs from the date that the referral contract is signed.

138. The parent/guardian must be ordered to attend the meetings of the Youth Offender Panel where the youth is aged 10 to 16 years. For 17 year olds, the court may order parental attendance at the meetings.

Suspended sentence order (SSO)

139. An SSO is a custodial sentence. A suspended sentence must not be imposed as a more severe form of community order. A court should be clear that they would impose an immediate custodial sentence if the power to suspend were not available. If not, a non-custodial sentence should be imposed. The legal adviser should be consulted before any custodial

sentence is imposed in order to clarify statutory requirements.

140. A pre-sentence report must be obtained before imposing a suspended prison sentence unless the court gives reasons as to why a report is unnecessary.

141. Only available for defendants aged 18 and over.

142. A court cannot impose a custodial sentence unless it is of the opinion that the offence(s) is so serious that neither a fine alone nor a community sentence can be justified for the offence(s). A custodial sentence must be for the shortest term that is in the opinion of the court commensurate with the seriousness of the offence. The custodial sentence must be at least 14 days but no more than two years. Magistrates' court powers are restricted to six months for a single offence; this is increased to 12 months where there is more than one either-way offence. Sentences of between 12 months and two years are only available in the Crown Court.

143. The custodial sentence can be suspended for a period of between six months and two years (the operational period). Any requirements imposed by the court must

be completed during the supervision period. The supervision period can be between six months and two years but cannot last longer than the operational period.

144. A suspended prison sentence may include one or more of the following:

• Rehabilitation activity requirement	• Alcohol treatment requirement
• Attendance centre requirement	• Curfew requirement
• Drug rehabilitation requirement	• Exclusion requirement
• Mental Health treatment requirement	• Programme requirement
• Prohibited activity requirement	• Residence requirement
• Unpaid work requirement	• Foreign travel prohibition requirement
• Alcohol abstinence and monitoring requirement	• Location monitoring requirement

See *Requirements that may be attached to a community order* earlier in this bench book for further details of the requirements.

145. Before making an order with two or more requirements, the court must consider whether the requirements are compatible with each other.

146. The order can provide for periodical review hearings at specified intervals at which the defendant must attend. The responsible officer will prepare a report for the hearing detailing the defendant's progress in complying with the community requirements of the order.

147. A defendant who fails to comply with the community requirements of the order or is convicted of any offence during the operational period of the order can be ordered to serve the whole or part of the prison sentence originally suspended. The starting point where an SSO has been breached is activation of the sentence.

148. Where the court is satisfied that it would be unjust to activate the sentence it may allow the SSO to

continue. Where the original order included one or more requirements the court has the following options:

a. make the order more onerous,

b. extend the supervision period,

c. extend the operational period (up to the maximum two-year period)

d. impose a fine up to £2,500.

Where the original order did not include any requirements option (a) above is not available.

Minimum mandatory custodial sentences

149. The legal adviser should be consulted before any custodial sentence is imposed in order to clarify statutory requirements.

150. Where a defendant aged 18 or over is convicted of an offence of threatening with a bladed article or offensive weapon in public or on school premises, the court must impose a custodial sentence of at least six months imprisonment **unless** it is of the opinion that there are particular circumstances that relate to the offence or offender which would make it unjust to do so in all the circumstances

151. A community order cannot be imposed where the mandatory minimum sentence criteria is met.

Victim Surcharge ('surcharge')

152. With effect from 1 October 2012 payment of a surcharge has been extended to sentences other than just financial penalties. Revenue raised from this surcharge is used to fund victim services through the Victim and Witness General Fund.

153. The amount payable is dependent on when the offence(s) were committed, the offender's age and the sentence imposed. The amounts payable increased for offences committed on or after 14 April 2020 . As a result of a Court of Appeal decision, with effect from 8 April 2020, where there are several disposals of the same type, the correct method of calculating the total surcharge payable is to base the sum on the total of all impositions, not the highest single imposition. Where there is more than one type of sentence, the total surcharge payable is based on the higher amount of the two.

Offenders aged 18 and above	**Surcharge applicable for offences committed on or after 8 April 2016**	**Surcharge applicable for offences committed on or after 28 June 2019**	**Surcharge applicable for offences committed on or after 14 April 2020**
Conditional Discharge	£20	£21	£22
Fine	10% of the fine but subject to a minimum of £30 and a maximum of £170	10% of fine value, to a minimum of £32 and a maximum of £181	10% of fine value, to a minimum of £34 and a maximum of £190
Community Sentence	£85	£90	£95
Suspended Sentence Order/ Immediate custodial sentence	Where the sentence is 6 months or less £115 Where the sentence is more than 6 months but less than 12 months £140	Where the sentence is 6 months or less £122 Where the sentence is more than 6 months but less than 12 months £149	Where the sentence is 6 months or less £128 Where the sentence is more than 6 months but less than 12 months £156

Person not an individual (e.g. corporations)	**Surcharge applicable for offences committed on or after 8 April 2016**	**Surcharge applicable for offences committed on or after 28 June 2019**	**Surcharge applicable for offences committed on or after 14 April 2020**
Conditional Discharge	£20	£21	£22
Fine	10% of the fine but subject to a minimum of £30 and a maximum of £170	10% of the fine value but subject to a minimum of £32 and a maximum of £181	10% of fine value, to a minimum of £34 and a maximum of £190

Offenders aged under 18	Surcharge applicable for offences committed on or after 8 April 2016	Surcharge applicable for offences committed on or after 28 June 2019	Surcharge applicable for offences committed on or after 14 April 2020
Conditional Discharge	£15	£16	£17
Fine, Referral order or Youth rehabilitation order or Community Order	£20	£21	£22
Detention & Training Order	£30	£32	£34

Criminal courts charge

154. With effect from 13 April 2015 adult offenders who are convicted will pay a criminal courts charge. Revenue raised from this charge will go towards the costs of running the criminal courts. With effect from 24 December 2015 the amount payable was reduced to nil.

Statutory aggravating factors which increase sentences for hate crimes

155. Where a court is considering the seriousness of an offence (other than any offence charged as a racially or religiously aggravated offence) and it was racially or religiously aggravated the court must treat that as an aggravating factor and state this in open court.

156. Where a court is considering the seriousness of an offence and any of the following circumstances apply, the court must treat that as an aggravating factor and state this in open court:

    a. at the time of the offence, or immediately before or after, the offender demonstrated towards the victim of the offence hostility based on the sexual orientation (or presumed), or disability (or presumed) of the victim, or the victim being (or being presumed to be) transgender or

    b. the offence was motivated (wholly or partly) by hostility towards persons who are of a particular sexual orientation, or who have a disability, or a particular disability, or who are transgender.

157. References to being transgender include references to being transsexual, or undergoing, proposing to undergo, or having undergone a process, or part of a process, of gender reassignment.

158. The prosecution should bring such offences to the court's attention as the victim may have completed a Victim Personal Statement (VPS). This may be read out in court as part of the sentencing exercise.

Adjournments

The notes on the following pages supplement Section 2 of the *Adult Court Pronouncement Cards*.

Remands in custody and on bail

Applications to adjourn

159. All adjournments are a matter for the court. Each application requires a judicial decision and should be considered carefully.

160. The court needs to be satisfied that any adjournment has a clear objective and is for the shortest period necessary. It must ensure that the case proceeds as expeditiously as is consistent with the interests of justice and the right to a fair trial. Therefore, before deciding on the remand status of the defendant, consider whether the case needs to be adjourned at all.

Is a remand required?

161. At each hearing the court must consider whether or not the defendant ought to be remanded. A remand can be on bail or in custody.

162. In some cases a simple adjournment, which places no restrictions on the defendant, will be sufficient. However, the court must remand:

    a. on the adjournment of committal proceedings, or

b. if the defendant is at least 18, and is charged with an either-way offence and on their first appearance appeared from custody or in answer to bail, or

c. has previously been remanded in the proceedings.

What are the preliminary issues?

How old is the defendant?

163. Defendants under 18 years of age may sometimes appear before the adult court.

164. If the defendant is under 18 years old, different considerations apply and you should seek legal advice. (See the flowcharts in *Section 4 – Checklists* of this bench book.)

Is the defendant legally represented?

165. The issue of legal representation should be dealt with at an early stage in the hearing. A defendant should not be remanded in custody unless they are legally represented or have been given the opportunity to apply for a representation order and have failed or refused to do so.

Bail applications

Is there a right to apply for bail?

166. Defendants do not have an unfettered right to make repeated bail applications. The legal adviser should advise on whether a 'full' bail application has been made previously and whether the defendant has a right to make a further application or whether one may be made e.g. where there has been a change in circumstances.

Obtain sufficient information

167. Adjournment and bail hearings are inquisitorial and the court should not decide any issue until satisfied it has been provided with all relevant information from the following people:

    a. The legal adviser – will provide details of the case history including the results of any previous bail hearings and the reasons given for those decisions.

    b. The prosecution – will provide details of the allegation(s), any previous convictions, the results

of any drug tests, and their representations as to bail.

c. The defence – will provide details of the defence version of the allegation(s), the defendant's circumstances and their representations as to bail.

168. The court should listen to the representations of the prosecution and defence, but is not restricted by what they say. The court has a right and a duty to ensure that it has all the information needed to make the decision. Therefore, the court can ask questions to ensure that it has all the information required.

Does the right to bail apply?

169. The starting point for most bail decisions is that the defendant has a right to unconditional bail.

170. The presumption does not apply:

a. in extradition proceedings (relevant only in the City of Westminster magistrates' court) or in connection with a warrant issued in the Republic of Ireland

b. following committal to the Crown Court for sentence or for breach of a Crown Court order

c. after conviction, unless the proceedings are adjourned for enquiries to be made or a report to be prepared for sentence

d. on appeal against conviction or sentence

e. where the defendant has tested positive for heroin, cocaine or crack cocaine and is unwilling to undergo an assessment into their drug misuse and/or any proposed follow-up treatment. (See paragraph 149 below.)

Can the court grant bail?

171. *Drug intervention programme – restriction on bail* – Where the defendant meets the criteria in paragraph 148e. above, special rules apply. In this situation, the defendant cannot be granted bail unless the court is satisfied that there is no significant risk of an offence being committed on bail. The onus is on the Crown Prosecution Service (CPS) to bring the drug test result to the attention of the court, whether positive or negative, along with any other relevant information, to enable the court to decide whether restriction on bail conditions should apply.

172. *Murder* – The power of magistrates to consider bail in murder cases, whether at the first hearing or after a breach of an existing bail condition no longer exists. The defendant must appear before the Crown Court, within the period of 48 hours (excluding Saturdays, Sundays, Christmas Day, Good Friday and bank holidays) beginning with the day after the day on which the person appears or is brought before the magistrates' court.

173. Bail may only be granted in **exceptional circumstances** where a defendant is charged with or convicted of an offence of:

    a. attempted murder, or

    b. manslaughter, or

    c. rape, or

    d. attempted rape, **and**

    e. the defendant has been **previously convicted in the UK of any such offence or of culpable homicide**. (If the previous conviction was manslaughter or culpable homicide, the provision

only applies if they received a sentence of imprisonment/long-term detention).

174. On granting bail, the court must explain the basis for the finding of exceptional circumstances.

Is unconditional bail appropriate?

175. The starting point is the general presumption that the defendant has a right to bail without conditions unless;

    a. this is a case where bail may only be granted in exceptional circumstances (see paragraph 151 above)

    b. grounds exist for imposing bail conditions (see paragraphs 156 and 157)

    c. grounds exist for refusing bail and remanding in custody (see paragraphs 163 to 169).

176. Unconditional bail imposes an obligation on the defendant to attend court on the correct date and time, it does not impose any further restrictions on them.

177. Does the court have any concerns? What are the risks in granting unconditional bail?

Is conditional bail appropriate?

178. Conditions may be added to the defendant's bail only if **necessary**:

    a. to ensure attendance at court

    b. to prevent offending on bail

    c. to prevent interference with witnesses or obstruction of the course of justice

    d. for their own protection (or, if a youth, their own welfare or in their own interests)

    e. to ensure they are available for enquiries or reports

    f. to ensure they attend an appointment with their legal representative before the next hearing.

    'Necessary' means a real, not fanciful, risk of one of the above occurring.

Imposing bail conditions

179. Any conditions must be:

    a. designed solely to achieve one or more of the above (conditions cannot be imposed simply because the defendant may agree to them being imposed)

    b. clear, precise, unambiguous and easily understood

c. practical

d. enforceable

e. reasonable.

180. On granting bail with conditions the court must explain the purpose of imposing conditions and the specific reasons for applying conditions.

Examples of frequently used bail conditions and the risk they are designed to address

- **Residence** (absconding).
- **Curfew** – with or without electronic tagging or police checks (further offences). This is usually used as a direct alternative to custody. Where the defendant receives a custodial sentence, they are entitled to credit for any time spent whilst electronically tagged.
- **Reporting to a police station** (absconding).
- **Non-contact with named witnesses** (interference with witnesses/obstructing the course of justice).
- **Surety** – i.e. the promise of money being paid should the defendant abscond. The person putting forward the

money would be required to attend court and provide evidence that they have the required means.

- **Security** – i.e. the deposit of money to ensure the defendant's attendance at court, usually taken at a local police station prior to the defendant's release.
- **Location monitoring** – (absconding, further offences and interference with witnesses). N.B This should only be used where the court is satisfied that without it the defendant would not be granted bail. Depending when bail was granted, the police, defence or Crown Prosecution Service will produce a map defining the exclusion/inclusion zone. The defendant should be given a written 'description of the zone' or a map which will be attached to their bail sheet and handed and/or posted to them.

181. Any other condition may be imposed provided it addresses one of the risks under the Bail Act, is in proportion to the risk and can realistically be enforced. E.g. a condition not to drink alcohol may be both disproportionate and unenforceable whereas a condition not to go to on-licensed premises may be appropriate.

Special considerations where the defendant has tested positive for certain class A drugs

182. In addition to any other conditions, where:

a. the defendant has tested positive for heroin, cocaine or crack cocaine, and

b. a link is established between the defendant's drug misuse and offending, and

c. the defendant:

i. agrees to undergo a drug assessment and comply with any follow-up proposed, or

ii. following an assessment, has had follow-up treatment proposed, and agrees to participate in the relevant follow-up treatment

the court granting bail must impose a bail condition that the defendant undergoes a drug assessment and/or participates in any relevant follow-up treatment.

183. If the defendant does not agree to a drug assessment and/or follow-up, bail cannot be granted unless the court is satisfied that there is no significant risk of the defendant offending whilst on bail.

Are the exceptions to the right to bail made out?

184. The exceptions to bail are slightly different depending on whether the defendant is charged with an indictable offence, a summary only offence or a non-imprisonable offence. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) places additional restrictions on the exceptions to the right of bail and creates some new exceptions. 'Associated person' is defined in existing family legislation and includes relatives, spouses and co-habitants and those usually in a domestic setting (this list is not exhaustive).

Non-imprisonable

185. A remand in custody for a non-imprisonable offence will be comparatively rare and the grounds on which bail may be withheld are much more limited than those for imprisonable offences. Bail need not be granted to the defendant if:

    a. they have been convicted and have previously been granted bail, have absconded and the court believes, in view of that failure to attend, that if

they were released on bail they would fail to surrender to bail, or

b. it is for their own protection (or welfare if a child or young person), or

c. they are serving a custodial sentence, or

d. they have been convicted and have been arrested in breach of bail conditions and there are substantial grounds for believing they would:

    i. fail to surrender

    ii. commit an offence

    iii. interfere with witnesses or obstruct the course of justice, or

e. they have been arrested in breach of bail conditions and there are substantial grounds for believing the defendant would commit an offence on bail by engaging in conduct that would cause or be likely to cause physical or mental injury to an associated person.

Summary only

186. In July 2008 the Bail Act was amended, introducing more stringent exceptions to the right to bail in summary, albeit imprisonable, offences. This clearly impacts on offences such as common assault, harassment (s.2 Protection from Harassment Act 1997), threatening behaviour (s.4 and 4A Public Order Act 1996), disqualified driving and taking a vehicle without the owner's consent, amongst others.

187. A court cannot remand in custody under paragraphs a, b and f where the defendant is aged 18 and over, has not been convicted and there is no real prospect the defendant will be sentenced to a custodial sentence (the *'no real prospect test'*).

188. The exceptions to bail in imprisonable, summary-only offences are:

    a. having previously been granted bail, the defendant has absconded and the court believes, in view of that failure to attend, that if they were released on bail they would fail to surrender to bail (subject to the *'no real prospect test' see 164a*), or

b. the defendant was already on bail when the new offence was committed and the court has substantial grounds for believing that if released on bail they would commit an offence (subject to the *'no real prospect test' see 164a*), or

c. there are substantial grounds for believing that if bailed, the defendant would commit an offence on bail by engaging in conduct that would cause or be likely to cause physical or mental injury to an associated person or cause an associated person to fear such injury, or

d. for the defendant's own protection (or welfare if a child or young person), or

e. if the defendant is serving a custodial sentence, or

f. the defendant has been arrested in breach of bail conditions and there are substantial grounds for believing they would:

    i. fail to surrender (subject to the *'no real prospect test' see 164a*)

    ii. commit an offence (subject to the *'no real prospect test' see 164a*)

iii. interfere with witnesses or obstruct the course of justice (subject to the *'no real prospect test' see 164a*), or

g. there has been lack of time to obtain sufficient information to make a decision on bail.

Either-way and indictable only offences

189. A court cannot remand in custody under paragraphs a, c or g where the defendant is aged 18 and over, has not been convicted and there is no real prospect the defendant will be sentenced to a custodial sentence (the *'no real prospect test'*).

190. Bail need not be granted to the defendant if:

a. there are substantial grounds for believing they would:

i. fail to surrender (subject to the *'no real prospect test' see 165a*), or

ii. commit an offence (subject to the *'no real prospect test' see 165a*), or

iii. interfere with witnesses or obstruct the course of justice (subject to the *'no real prospect test' see 165a*).

b. there are substantial grounds for believing that if bailed, the defendant would commit an offence on bail by engaging in conduct that would cause or be likely to cause physical or mental injury to an associated person or cause an associated person to fear such injury, or.

c. they have committed an indictable or either-way offence and they were already on bail for other matters at the time (subject to the *'no real prospect test' see 165a*).

d. it is for their own protection (or welfare if a child or young person).

e. they are serving a custodial sentence.

f. there has been a lack of time to obtain sufficient information to make a decision on bail.

g. they have been arrested for failing to surrender to custody or breach of bail conditions in the same proceedings (subject to the *'no real prospect test' see 165a*).

h. they have tested positive for heroin, cocaine or crack cocaine, and refused to agree to a drug

assessment and/or follow up treatment. In this situation, the defendant may not be granted bail unless the court is satisfied that there is no significant risk of the defendant committing an offence whilst on bail.

What are the reasons for finding an exception to the right to bail?

191. In deciding whether or not to grant the defendant bail the court is required to have regard to the following:

    a. the nature and seriousness of the offence
    b. the likely sentence
    c. how the defendant has responded to bail in the past
    d. the strength of the prosecution evidence
    e. the defendant's character, antecedents, associations and community ties
    f. any other relevant considerations.

192. Where bail is withheld, the court must announce the statutory exceptions to bail that have been found and give specific reasons for finding each exception.

193. The legal adviser will be able to provide advice on matters including maximum remand periods, human rights issues and assist with the preparation of reasons.

Reasons and pronouncement

194. The court should use the pronouncements contained in *Adult Court Pronouncement Cards* as the basis for the pronouncement.

195. Reasons must be given and recorded where:

    a. conditions of bail are imposed

    b. bail is withheld

    c. bail is granted and the prosecutor has made representations against the granting of bail.

196. A defendant who is remanded in custody should be informed of their right to appeal against that decision.

Additional considerations if the defendant has committed a bail act offence in the proceedings

197. When a defendant has been convicted of a Bail Act offence during the proceedings, the court should review the remand status of the defendant. This will

include consideration of the conditions of their bail or whether they should be remanded in custody.

198. Failure by the defendant to surrender or a conviction for failing to surrender to bail will be a significant factor weighing against the re-granting of bail subject to the restrictions imposed by LASPO where the defendant is aged 18 and over, has not been convicted and there is no real prospect the defendant will be sentenced to a custodial sentence.

Prosecution right of appeal

199. The prosecution has a right of appeal against the grant of bail to a defendant who is charged with an imprisonable offence.

200. Where these provisions apply, the prosecutor can serve oral notice of an intention to appeal to the Crown Court against the decision to grant bail. Where such a notice is served, the magistrates must remand the defendant in custody. The prosecutor then has two hours in which to serve a written notice of appeal. If a written notice is not served, the defendant will be bailed on the terms originally decided by the

magistrates. If the written notice is served, the defendant will be remanded in custody and an expedited bail hearing will be arranged at the Crown Court.

Police bail

201. Where the police have arrested somebody on suspicion of an offence, there are limits on the length of time they may be detained without being charged. Where the police are not ready to charge, they may release the suspect while they continue their enquiries. An officer of the rank of inspector or above may authorise that person to be subject to bail, with or without conditions, provided that it is necessary and proportionate. The most common circumstances are on release from custody at a police station and 'street bail' i.e. when bail is granted anywhere other than at a police station, to attend a police station at a later date.

Time limits on police bail

202. The initial time limit for a person released from custody or arrested and released on street bail is 28 days

starting from the day after their arrest (the bail start date).

203. Where certain criteria are met, a senior police office (superintendent or above) may extend that period up to three months. The three month period is effective from the original bail date.

Applications to extend police bail

204. The police, Her Majesty's Custom and Revenue (HMRC), the Serious Fraud Office (SFO) and the Financial Conduct Authority (FCA) can apply to a magistrate's court to extend the bail period. The applicant must serve a copy of the application on the suspect as well as on the court, and the suspect should be given five working days in which to respond in writing to the application.

205. Normally, the suspect must be served with all of the information that the applicant provides to the court. However, sometimes the applicant will ask the court for permission to withhold sensitive information from the suspect. This application should be considered first. Always consult your legal adviser.

206. Application may be made to extend the period by a further three months, and in some cases a further six months. Applications are decided by a single magistrate and on written evidence unless:

- in a case where the application would not extend the applicable bail period beyond 12 months (can be 12 months or less) and a single magistrate considers that the interests of justice require an oral hearing or
- in a case where the application would extend the applicable bail period beyond 12 months and the suspect or the applicant requests an oral hearing.

If either of these criteria apply the application must be heard by two or more magistrates sitting in private.

207. Where an application is made for an extension of the limit (either first or subsequent) before the end of the applicable bail period and it is not practicable for the court to determine the application before the end of that period, it must be determined as soon as practicable. The bail period is treated as extended until the application is determined. However, if it appears to the court that it would have been reasonable for the application to have been made in time for it to be

determined before the end of the applicable bail period, the application may be refused.

Remand to local authority accommodation

208. Consider first whether an adjournment is necessary see *Section 2 – Case Management* for further guidance.

209. This is only available for youths, i.e. defendants under the age of 18. Seek the advice of the legal adviser when remanding a youth in the adult court. For further guidance on youth remand provisions, see the flowcharts in *Section 4 – Checklists*.

210. A remand to local authority accommodation is a remand in custody and therefore the court must find exceptions to the right to bail.

211. Youths will be remanded to local authority accommodation unless certain criteria apply, in which case they are remanded to youth detention accommodation. This may be a secure children's home, a secure training centre or a Young Offender Institution. However, the nature of the accommodation is not determined by the court.

212. Conditions can be imposed on the defendant in addition to the remand. These are like bail conditions and render the youth liable to arrest if they are breached. Any conditions should be precise, enforceable and effective.

213. Requirements can also be imposed on the local authority to ensure that the defendant complies with any conditions imposed and to direct that the defendant is not to be placed with a named person.

Remand to youth detention accommodation

214. This applies when the risks to granting bail cannot be sufficiently addressed by the use of bail conditions or a remand to local authority accommodation and certain conditions are satisfied. The Youth Offending Team/local authority should always be consulted.

215. The first set of four conditions are:

    1. The defendant is aged 12 or over *(the age condition)*.
    2. The defendant is charged with or convicted of a violent or sexual offence or an offence punishable

in the case of an adult with 14 years or more *(the offence condition).*

3. The court must be of the opinion that, after considering all of the options for the remand of the child that only remanding the child to youth detention accommodation would be adequate to:
   i. protect the public from death or serious personal injury (physical or psychological) occasioned by further offences, or
   ii. prevent the commission by the child of imprisonable offences *(the necessity condition).*
4. The defendant is legally represented (or refused or failed to apply for legal representation) *(the legal representation condition).*

216. The second set of six conditions are:

1. The defendant is aged 12 or over *(the age condition).*
2. The offence must be an imprisonable offence.
3. It must appear to the court that there is a real prospect that the child will be sentenced to a custodial sentence *(the sentencing condition).*

4. The child has a recent history of absconding while subject to a custodial remand, and the offence (or one or more of them) is alleged to have been or has been found to be committed while the child was remanded to local authority accommodation or youth detention accommodation **or**
that the offence together with any other imprisonable offences of which the child has been convicted in any proceedings, amount or would if the child were convicted of that offence or those offences, amount to a recent history of committing imprisonable offences while on bail or subject to a custodial remand *(the history condition)*.
5. The court must be of the opinion that after considering all of the options for the remand of the child that only remanding the child to youth detention accommodation would be adequate to:
    i. protect the public from death or serious personal injury (physical or psychological) occasioned by further offences, or
    ii. prevent the commission by the child of imprisonable offences *(the necessity condition).*

6. The defendant is legally represented or refused or failed to apply for legal representation *(the legal representation condition).*

217. Once a youth is remanded to local authority accommodation or youth detention accommodation they fall within the definition of a 'looked after child'. The court must specify the designated local authority that is to be responsible for the youth once remanded. This will be the local authority where the youth habitually resides or where the offence was committed.

Adjournment for reports

Pre-sentence reports

218. Pre-sentence report is the term used to describe all reports from probation which are intended to assist the court in sentencing. It includes oral reports, written reports prepared on the day of conviction and those which require an adjournment.

219. There is a presumption in favour of an oral report being prepared on the same day as the defendant is

convicted. If this is not possible, establish the reasons why not.

220. Always consider whether a recent PSR is available to the court instead of ordering a new report.

221. The court which orders a PSR is not giving any indication of the sentence which may be imposed by the sentencing court. The court may only form an opinion of whether an offence is serious enough for a community penalty or so serious that only custody can be justified once all the information about the circumstances of the offence has been considered. This may include the PSR.

222. The Senior Presiding Judge has issued a form which may be used to assist probation in the preparation of a PSR. The court is not required to use the PSR request form, but it cannot use any other form in its place.

223. Before imposing custody or a community order, a PSR will normally be required unless the court considers that one is unnecessary. Reasons must be given.

224. When requesting a PSR the court may, making it plain that it is not an indication of the sentence which will be

imposed, indicate the following to the Probation Service:

a. any specific requirements in a community order that probation should consider the defendant's suitability for,

b. whether the report should cover community sentences within the low, medium or high range,

c. a short outline of significant facts in the event of a conviction following trial.

Remand for medical reports

225. A remand to hospital for a medical report can only be done if certain conditions are fulfilled. You should seek the advice of the legal adviser.

226. The provisions of the Bail Act apply in the usual way when considering whether the remand should be on bail or in custody.

227. This is available when an adult is charged with an offence punishable with imprisonment.

228. The court must be satisfied:

a. that the defendant did the act or omission alleged, and

b. that an enquiry ought to be made into their physical or mental condition before the method of dealing with them is decided.

229. The case must be adjourned to enable an examination and report to be made. The adjournment must not exceed three weeks at a time if the remand is in custody, or four weeks if the remand is on bail.

230. Where the defendant appears to be mentally disordered, the court must obtain and consider a medical report before passing a custodial sentence, unless the court thinks this is unnecessary.

231. Bail, if granted, must include the following conditions:

a. to undergo medical examination by a qualified medical practitioner, or if the enquiry is into their mental condition and the court so directs, two medical practitioners, and

b. to attend for that purpose at such institution or place, or such practitioner as the court directs, and

c. to comply with any other directions that may be given to them (if the enquiry is into their mental condition).

Cases to be heard in the Crown Court

The notes on the following pages supplement Section 3 of the *Adult Court Pronouncement Cards*.

Committal for sentence

232. This applies when the court is dealing with either-way offences that can be dealt with in the magistrates' court or Crown Court.

233. This only applies to adult defendants aged 18 years or over.

234. The court can commit for sentence if it is of the opinion that:

    a. the offence (or a combination of the offence and one or more associated offences) is 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 them if they had been convicted on indictment, or

    b. the court is of the opinion that the defendant is a dangerous offender.

235. Where a court determines that summary trial is more suitable and an indication of a non-custodial sentence is given there is limited power to commit for sentence. Where no indication is given and the defendant is subsequently convicted or pleads guilty, a court may commit for sentence but this would be rare as any

previous convictions would be known about when deciding venue. It would have to be based on information that has since come to light.

236. An offender is a dangerous offender if they have been convicted of a specified sexual or violent offence and the court considers that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences. The legal adviser will be able to advise on the factors the court should consider when assessing dangerousness. These include the court being of the opinion that the offence merits a sentence of at least four years or the offender has relevant previous convictions for certain offences.

237. The court can also commit offences for sentence to the Crown Court where they are related to offences that court has committed for trial to the Crown Court.

238. Summary only offences can be committed for sentence with the either-way offence(s) provided they are imprisonable or can attract a driving disqualification.

239. The court will remand the defendant to the Crown Court. If a defendant answered bail in the magistrates' court, the court would normally grant bail to the Crown Court unless there is evidence that the defendant may abscond now that they are facing a long prison sentence.

Sending for trial – either-way offences

240. This now applies to either-way offences where either the defendant has elected to be tried at the Crown Court or the court has directed Crown Court trial as well as offences that are indictable only.

241. If the defendant does not consent to summary trial or the court decides the offence appears more suitable for trial on indictment, the defendant is sent forthwith to the Crown Court. Committal proceedings have been abolished.

242. The court will remand the defendant to the Crown Court either in custody or on bail.

243. The court will make directions for the conduct of the case in the Crown Court. There are standard directions for the conduct of the case in the Crown Court that take effect after sending unless varied by

the magistrates' court on application by the prosecution or defence.

Sending for trial – indictable only offences

244. This applies to offences that are indictable only.

245. The prosecution does not need to prepare committal papers for these offences.

246. The defendant will usually be sent to the Crown Court on first appearance.

247. The first hearing date at the Crown Court will be either a preliminary hearing (PH) or a PCMH.

248. The court will deal with applications for legal representation orders for the Crown Court proceedings.

249. The court will remand the defendant to the Crown Court either in custody or on bail.

250. The court has power to send any related either-way offences to the Crown Court. Related summary only offences can also be sent to the Crown Court if they are imprisonable or can attract a disqualification from driving.

251. The court will make directions for the conduct of the case in the Crown Court. There are standard directions for the conduct of the case in the Crown Court that take effect after sending unless varied by the magistrates' court on application by the prosecution or defence.

Sex offenders

The notes on the following pages supplement Section 4 of the *Adult Court Pronouncement Cards*.

Notification requirements

252. Specific advice should be sought from the legal adviser before making an order under the Sexual Offences Act 2003.

253. Although not an order, the requirement to notify certain details to the police is mandatory where an offender is convicted of a specified sexual offence; although some offences are only specified if the sentence passes a certain threshold.

254. The defendant must provide the information to the police in person after conviction (except where registration is only triggered by a sentence threshold) and, if the case is adjourned, again after sentence. Where a disposal threshold has to be met before the notification requirements are triggered for a specific offence, then the offender will not have to comply with notification requirements unless they receive a sentence that meets that threshold.

255. The defendant must attend a specified police station within three days of the requirement being made (or within three days of release if sentenced to custody).

256. The defendant must inform the police of the following information:

    a. their name, date of birth and home address,

    b. their National Insurance number,

    c. details of their bank account, credit and debit card, passport and any identity documents.

    In addition they must notify the police of any change of name or address, and if they are away from the home address for more than a total of 7 days in a year, they must tell the police within 3 days of it happening. If the defendant has no main address, every 7 days they must provide an address or location in the UK where they can regularly be found. They must also notify the police if they stay at an address where anyone under the age of 18 lives.

    If the defendant intends to travel abroad, regardless of the length of the trip, they must give the police 7 days advance notice of their plans.

257. The length of the registration period differs according to the sentence imposed. Always confirm the

appropriate length of the requirement with the legal adviser. Those relevant to the magistrates' court are:

a. custodial sentence of more than six months – 10 years
b. custodial sentence of six months or less – seven years
c. hospital order – seven years
d. any other sentence – five years.

258. The registration periods for defendants aged under 18 are half those of adults.

259. Failing to comply with the registration requirement or giving false details is an either-way offence.

260. Before leaving the court, the defendant must be given a written notice explaining the registration requirements.

Sexual Offences Act – notification order (offences committed outside the UK)

261. Specific advice should be sought from the legal adviser before making a notification order.

262. Application may be made on complaint by the Chief Officer of Police where a person who is in, or intends

to come to, their police area fulfils the following conditions:

a. the individual has been convicted, cautioned etc. for a relevant sexual offence committed overseas,

b. the conviction, caution etc. occurred on or after 1 September 1997, or before that date if on 1 September 1997 the offender had yet to be dealt with in respect of that offence, and

c. the notification period would not have expired if the offence had been committed in the UK.

263. If it is proved that the above conditions are satisfied, then the court must make a notification order. It is not necessary to show that the offender poses a risk to the public or that an order is necessary to protect the public from harm.

264. The effect of the order is to make the offender subject to the notification requirements as if they had been convicted, cautioned etc. in the UK.

265. Interim orders can be made if an application is adjourned.

266. Breach of an order is an either-way offence.

Sexual Offences Act Orders

267. As a result of the Anti-Social Behaviour, Crime and Policing Act 2014 the Sexual Offences Act has been amended. Sexual offences prevention orders and foreign travel orders are repealed and replaced with sexual harm prevention orders (SHPO). Risk of sexual harm orders are repealed and replaced by sexual risk orders (SRO). Specific advice should be sought from the legal adviser before making a sexual harm prevention order or a sexual risk order.

268. The new provisions provide that the repeal does not apply to existing orders or any applications relating to such orders prior to the commencement provisions. In addition, such orders may still be varied, renewed or discharged and any breaches prosecuted.

Sexual Offences Act – sexual harm prevention orders (SHPO)

269. Specific advice should be sought from the legal adviser before making an SHPO.

270. An SHPO may be made where a court deals with a person in respect of a relevant offence or, by a magistrates' court, when an application is made to it

by a chief officer of police or the Director General of the NCA (National Crime Agency) in respect of a person.

271. The court will need to be satisfied that:

a. the person has been dealt with by a court in respect of a relevant offence or has been dealt with by a court abroad in respect of an act which was an offence under the law of that territory and which would, if committed in any part of the United Kingdom, have constituted a relevant offence and

b. the person's behaviour, since the date on which they were first dealt with in this way, means it is necessary to make the order for the purpose of protecting the public (or any particular members of the public) from sexual harm from the defendant **or** protecting any or particular children or vulnerable adults from sexual harm from the defendant outside the United Kingdom.

272. The order can include any prohibition the court considers necessary for this purpose, including the prevention of foreign travel to the country or countries specified in the order. Where the order prevents the

person from any travel outside the UK, they must surrender their passport to the police for the duration of this prohibition.

273. The minimum duration of an SHPO will last a minimum of five years and has no maximum period (with the exception of any foreign travel restriction which, if applicable, has a maximum duration of five years but may be renewed).

274. The police can apply for an interim sexual harm prevention order.

275. Breach of an order will be a criminal offence with a maximum penalty of five years' imprisonment or an unlimited fine, or both.

276. A court can vary, renew or discharge an order upon the application of the person in respect of whom the order was made or the police. An order cannot be discharged before the end of five years from the date the order was made without the consent of the defendant and the police, with the exception of an order containing only foreign travel prohibitions.

277. The defendant may appeal against the making of an order.

Sexual Offences Act – sexual risk order (SRO)

278. Specific advice should be sought from the legal adviser before making an SRO.

279. This is a civil preventative order designed to protect the public from sexual harm. The defendant may or may not have a conviction for a sexual (or any other) offence.

280. The order will be available to the police and NCA on application in relation to a defendant who has done an act of a sexual nature and, as a result, the police or NCA have reasonable cause to believe that an order is necessary to:

    a. protect the public or any particular members of the public from harm from the defendant; or

    b. protect children or vulnerable adults generally, or any particular children or vulnerable adults, from harm from the defendant outside the United Kingdom.

281. The police or NCA may apply for an interim sexual harm prevention order where an application has been made for a full order.

282. The court may make an order if satisfied that the defendant has done an act of a sexual nature as a result of which it is necessary to make the order for one or both of these purposes. The SRO differs from the existing RSHO in that it can be made after the defendant has committed one such act, whereas an RSHO may only be made following two acts.

283. A defendant subject to an order or an interim order is required to notify to the police, within three days, their name and address (including any subsequent changes to this information).

284. An SRO can include any prohibition the court considers necessary for this purpose, including the prevention of foreign travel to the country or countries specified in the order, Where the order prevents the defendant from any travel outside the UK, they must surrender their passport to the police for the duration of this prohibition.

285. An SRO will last a minimum of two years and has no maximum period (with the exception of any foreign travel restriction which expires after a maximum of five years, unless renewed).

286. Breach of an order will be a criminal offence with a maximum penalty of five years' imprisonment or an unlimited fine, or both. Breach of an order also results in the defendant becoming subject to the notification requirements for registered sex offenders.

287. A court can vary, renew or discharge an order upon the application of the defendant or the police. An order cannot be discharged before the end of two years from the date the order was made without the consent of the defendant and the police, with the exception of an order containing only foreign travel prohibitions.

288. The defendant may appeal against the making of an order.

Reporting restrictions

The notes on the following pages supplement Section 5 of the *Adult Court Pronouncement Cards*.

(Note: Where reference is made to the media, this includes the press, radio and television and online media. Where reference is made to publication, this applies to printed and broadcast media as well as information published on line including social media sites such as Facebook and Twitter.)

General rule

289. In recognition of the open justice principle, the general rule is that justice should be administered in public. To this end:

    a. proceedings must be held in public

    b. evidence must be communicated publicly

    c. fair, accurate and contemporaneous media reporting of proceedings should not be prevented by any action of the court unless strictly necessary.

290. Therefore, unless there are exceptional circumstances laid down by statute law and/or common law, the court must not:

    a. order or allow the exclusion of the press or public from court for any part of the proceedings

    b. permit the withholding of information from the open court proceedings

    c. impose permanent or temporary bans on reporting of the proceedings or any part of them including anything that prevents the proper identification, by name and address, of those appearing or mentioned in the course of proceedings.

291. In recognition of the open justice principle, the courts and Parliament have given particular rights to the press, so that they can report court proceedings to the wider public, even if the public is excluded.

The open justice principle

292. The general rule is that the administration of justice must be done in public. The public and the media have the right to attend all court hearings and the media are able to report those proceedings fully and contemporaneously.

293. Any restriction on these usual rules will be exceptional. It must be based on necessity.

294. The need for any reporting restriction must be convincingly established and the terms of any order must be proportionate – going no further than is necessary to meet the relevant objective.

295. Whenever the court is considering excluding the public, or the media, or imposing reporting restrictions, or hearing an application to vary existing conditions, it should hear representations from the media. Likewise, the court should hear any representations made by the

media for the variation or lifting of an order in order to facilitate contemporaneous reporting.

Automatic reporting restrictions in the magistrates' court

296. There are several automatic reporting restrictions which are statutory exceptions to the open justice principle.

297. Victims of sexual offences are given lifetime anonymity which does not apply if they consent in writing to their identity being published. Their anonymity can also be lifted by the court in other limited circumstances.

298. Committal and other similar proceedings – s.8 Magistrates' Court Act 1980 prevents media reports of the proceedings except certain specified facts such as the name, address, ages and occupation of the accused, the charges they face, identity of the court, magistrates, legal representatives, whether or not bail has been granted, the date and place of any adjournment and whether the accused was committed for trial.

299. Similar restrictions apply in cases which are sent or transferred to the Crown Court for trial.

300. Reports of special measures directions and directions prohibiting the accused from conducting cross-examination cannot be published until the trial(s) of all accused are over, unless the court orders otherwise.

301. Youth court – The media are prohibited from publishing the name, address or school or any matter likely to identify a child or young person involved in youth court proceedings whether as a victim, witness or defendant.
(*Note:* when a youth appears in the adult court the reporting restrictions are not automatic.)

302. Always seek the advice of the legal adviser when considering imposing press reporting or public access restrictions to the court to ensure that that law permits the court to do so before considering whether the court ought to do so.

303. The *Reporting restrictions – checklist* at the end of this section is taken directly from *Reporting restrictions in the Criminal Courts*, a joint publication by the Judicial College, the Newspaper Society, the Society of Editors and the Media Lawyers Association, which was updated in April 2015. The whole guide is available to

the judiciary, the media and the public on the Judicial Office website (www.judiciary.gov.uk). It is also available on the Judicial College Learning Management System (LMS)[1]

Relevant sexual offences

304. The right to anonymity of alleged victims of certain sexual offences is automatic. No court order is required, but a reminder to the press may be appropriate.

305. Automatic anonymity applies to alleged victims of many sexual offences including rape, sexual assault, child sex offences and attempts and conspiracy to commit these offences.

306. The legal adviser will be able to advise whether these provisions apply in the case.

307. The prohibition relates to publication of the name, address or any still or moving picture of the alleged victim during their lifetime, if it is likely to lead to the identification of that person as the person against whom the offence is alleged to have been committed.

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[1] The Judicial College LMS can only be accessed via registration with the Judicial Intranet.

In addition, no matter likely to lead members of the public to identify the person as the alleged victim of the offence shall be published during the lifetime of the alleged victim.

308. Breach. If any matter is published or included in a TV or radio programme in contravention of such an order, then the editor or publisher shall on summary conviction be liable to a fine not exceeding level 5 on the standard scale.

Children and young people – criminal proceedings (s.45 Youth Justice and Criminal Evidence Act 1999)

309. An order can be made under this section in respect of a child or young person under 18 years of age appearing in criminal cases other than in a youth court.

310. This applies whether the child or young person is a defendant, a complainant or a witness.

311. Unlike in the youth court, the prohibition is not automatic; there must be a good reason to make an order.

312. The parties and/or the media should be invited to make representations to the court.

313. If the making of an order is contested, seek advice from the legal adviser as to the extent of the reasons the court is required to give.

314. It must be made clear in court that a formal order has been made and what the precise terms of the order are. Any order will last until the young person is 18 years of age or another order is made.

315. A written copy of the order will be drawn up soon after the case and copies will be made available for media inspection.

316. Breach. If any person publishes any matter in contravention of such an order, they shall on summary conviction be liable to a fine not exceeding level 5 on the standard scale.

Children and young people – non criminal proceedings (s.39 Children and Young Persons Act 1933)

317. An order can be made under this section in respect of a child or young person under 18 years of age appearing in non-criminal cases such as Criminal Behaviour Orders.

318. This applies whether the child or young person is a defendant, a complainant or a witness.

319. Unlike in the youth court, the prohibition is not automatic; there must be a good reason to make an order.

320. The parties and/or the media should be invited to make representations to the court.

321. If the making of an order is contested, seek advice from the legal adviser as to the extent of the reasons the court is required to give.

322. It must be made clear in court that a formal order has been made and what the precise terms of the order are. Any order will last until the end of the proceedings unless another order is made.

323. A written copy of the order will be drawn up soon after the case and copies will be made available for media inspection.

324. Breach. If any person publishes any matter in contravention of such an order, they shall on summary conviction be liable to a fine not exceeding level 5 on the standard scale.

Lifetime restriction for victims and witnesses under the age of 18 (s.45A Youth Justice and Criminal Evidence Act 1999)

325. An order can be made under this section in respect of a child or young person under 18 years of age in criminal proceedings.

326. This applies whether the child or young person is a complainant or a witness but not if they are the defendant.

327. The prohibition is not automatic; the court must be satisfied that the fear and distress on the part of the complainant or witness in connection with being identified by members of the public as a person concerned in the proceedings is likely to diminish the quality of their evidence or the level of the cooperation they give to any party to the proceedings in connection with that party's presentation of its case.

328. The parties and/or the media should be invited to make representations to the court.

329. If the making of an order is contested, seek advice from the legal adviser as to the extent of the reasons the court is required to give.

330. It must be made clear in court that a formal order has been made and what the precise terms of the order are. The order will last for the lifetime of the person concerned.

331. A written copy of the order will be drawn up soon after the case and copies will be made available for media inspection.

332. Breach. If any person publishes any matter in contravention of such an order, they shall on summary conviction be liable to a fine not exceeding level 5 on the standard scale.

Avoiding a substantial risk of prejudice to the administration of justice – s.4 Contempt of Court Act 1981

333. This order can be made in committal proceedings in the magistrates' court.

334. An order can be made where it appears necessary to avoid a substantial risk of prejudice to the administration of justice in the current proceedings (or in any other proceedings pending or imminent). The court can order that the publication of any report of the proceedings, or any part of the proceedings, be

postponed for such a period as the court thinks necessary for that purpose.

335. Only limited matters can be reported in committal proceedings, therefore the court should be slow to make an order imposing additional reporting restrictions.

336. The parties and/or the media should be invited to make representations to the court.

337. Seek advice from the legal adviser as to relevant case law and the extent of the reasons the court is required to give.

338. It must be made clear in court that a formal order has been made and what the precise terms of the order are.

339. A written copy of the order will be drawn up soon after the case and copies will be made available for media inspection.

Withholding information from the public in the interests of the administration of justice – s.11 Contempt of Court Act 1981

340. Where the court has power to allow a name or other matter to be withheld from the public, it can give

directions prohibiting the publication of the name or matter in connection with the proceedings. The circumstances where it is appropriate to withhold a name or other matter will be rare.

An order should not be made if motivated solely by sympathy for the defendant's well-being or because of the risk of damage to the defendant's business but should be for reasons to do with the administration of justice. The hearing on this matter should be heard in camera.

341. The parties and/or the media should be invited to make representations to the court.

342. Seek advice from the legal adviser as to relevant case law and the extent of the reasons the court is required to give.

343. It must be made clear in court that a formal order has been made and what the precise terms of the order are.

344. A written copy of the order will be drawn up soon after the case and copies will be made available for media inspection.

Reporting restrictions – checklist April 2015

☐ **Magistrates should seek legal advice**

Magistrates should seek the advice of the clerk/legal adviser on the circumstances in which the law allows the court to exclude the media, withhold information, postpone or ban reporting before considering whether it would be a proper and appropriate use of that power in the case before the court.

☐ **Check the legal basis for the proposed restriction**

Is there any statutory power which allows departure from the open justice principle? What is the precise wording of the statute? Is it relevant to the particular case?

Or is the applicant suggesting that the power for the requested departure from the open justice principle is derived from common law and the court's inherent jurisdiction to regulate its own proceedings? If so, does the case law actually support that contention?

☐ **Is action necessary in the interests of justice?**

Automatic restrictions upon reporting might already apply, or there may be restrictions on reporting imposed by the media's codes, or as a result of an agreed approach.

The burden lies on the party seeking a derogation from open justice to persuade the court that it is necessary on the basis of clear and cogent evidence. Has the applicant produced clear and cogent evidence in support of the application?

Is any derogation from the open justice principle really necessary? Always consider if there are there any less restrictive alternatives available.

☐ **If restrictions are necessary how far should they go?**

Where the court is satisfied that a reporting restriction pursues a legitimate aim and is truly necessary, it must consider carefully the terms of any order. The principle of proportionality requires that any order must be narrowly tailored to the specific objective the court has in mind and must go no further than is necessary

to achieve that objective. Over-broad orders are liable to be set aside.

☐ **Invite media representations**

Invite oral or written representations by the media or their representatives, as well as legal submissions on the applicable law from the prosecution, in addition to any legal submissions and any evidence which the law might require in support of an application for reporting restrictions from a party.

Before imposing any reporting restriction or restriction on public access to proceedings the court is required to ensure that each party and any other person directly affected (such as the media) is present or has had an opportunity to attend or to make representations.

Where, exceptionally, the court makes an order where advance notice has not been given, the court should invite the media to make representations as soon as possible.

In the Instructions to Prosecution Advocates the Director of Public Prosecutions (DPP) has highlighted the role of the prosecution in respect of safeguarding

open justice, including opposition to reporting restrictions, where appropriate.

☐ **As soon as possible after oral announcement of the order in court, the order should be committed to writing**

If an order is made, the court must make it clear in court that a formal order has been made and its precise terms. Magistrates should seek the advice of the clerk/legal adviser on the drafting of the order and the reasons for making it. It may be helpful to suggest at the same time that the court would be prepared to discuss any problems arising from the order with the media in open court, if they are raised by written note.

The reporting restrictions order should be in precise terms, giving its legal basis, its precise scope, its duration and when it will cease to have effect if appropriate. The reasons for making the order should always be recorded in the court record.

☐ **Notifying the media**

The court should have appropriate procedures for notifying the media that an order has been made.

Copies of the written notice must be provided to the media and members of staff should be available and briefed to deal with media inquiries, inside and outside court hours.

☐ **Review**

The court should exercise its discretion to hear media representations against the imposition of any order under consideration or as to the lifting or variation of any reporting restriction as soon as possible.

Ancillary orders

The notes on the following pages supplement Section 6 of the *Adult Court Pronouncement Cards*.

Bind over

345. A bind over is an order whereby a person enters into a recognisance (i.e. a sum of money) to keep the peace for a period fixed by the court.

346. A court may bind over any person appearing before it, whether as a defendant or as a witness, although most commonly it will be the defendant.

347. A defendant can be bound over either following the laying of a complaint (usually by the police), or as an order ancillary to sentence.

348. A bind over is not a punishment but is to prevent apprehended danger of a breach of the peace. There should therefore be information before the court to justify the conclusion that there is a real risk of a breach of the peace unless action is taken to prevent it.

349. A breach of the peace must involve violence or the threat of violence, which may be from the defendant or from a third party as a natural consequence of the conduct of the person the court intends to bind over. The court must be satisfied that in all the circumstances the conduct of the person it intends to

bind over was unreasonable. In considering future conduct, it must be shown that there is a real risk, not a mere possibility, of such conduct continuing and of a breach of the peace occurring.

350. The court must inform the person it intends to bind over of the court's intention, and allow them an opportunity to make representations.

351. The court must have regard to the defendant's means before fixing the amount of the recognisance.

352. The defendant's consent is required.

353. The bind over must be for a fixed period and should specify the conduct or activity to be refrained from.

354. In addition to a requirement to keep the peace, the bind over can name a person(s) for whose special protection it is made.

355. If the defendant fails to agree to the bind over, they may be committed to custody. Legal advice should be sought before imposing a period in custody.

Exclusion order – licensed premises

356. This can only be made as an ancillary order to a sentence of the court.

357. It can only be made if the offence that is being sentenced was committed on licensed premises and in committing the offence the defendant resorted to violence or offered or threatened to resort to violence.

358. The court cannot make a blanket order – each of the licensed premises where the order applies must be named in the order.

359. An exclusion order can be for a minimum of three months and a maximum of two years.

Football banning order

360. Football banning orders can be made as ancillary orders when the defendant is convicted and sentenced for a 'relevant offence'. The legal adviser will be able to advise as to what constitutes a relevant offence.

361. The court must make such an order if it is satisfied that making the order would help to prevent violence or disorder at or in connection with any regulated football matches. If the court is not so satisfied, it must give the reasons for this in open court.

362. If the defendant receives a custodial sentence, the maximum order is ten years and the minimum six

years. For other sentences, the maximum is five years and the minimum is three years.

363. Football banning orders can also be applied for by the police on complaint.

364. Before making an order on complaint, the court must be satisfied that the respondent has at any time caused or contributed to any violence in the UK or elsewhere and that there are reasonable grounds to believe that making a banning order would help prevent violence or disorder at or in connection with any regulated football matches.

365. An order made on complaint can be for a maximum of three years and a minimum of two years.

366. The effect of the order must be explained in ordinary language and must require the person to report to a police station in England and Wales within five days of the making of the order.

Parenting order

367. Seek advice from the legal adviser when dealing with youths in the adult court.

368. A parenting order is made in respect of a parent or guardian with a view to providing help and support from the Youth Offending Team, including attendance at counselling or guidance sessions.

369. Otherwise, when a child or young person is sentenced the court should consider making a parenting order. If the defendant is under 16 years old, then the court must make an order unless it gives reasons as to why an order is not appropriate.

370. The order can have two elements:

    a. to attend counselling or guidance sessions for a period not exceeding three months,

    b. any requirements which are considered desirable in the interests of preventing a further offence.

371. The maximum length of an order is 12 months.

372. The court should, as far as is practicable, avoid any conflict with the parent's or guardian's religious beliefs, work or education.

373. If the parent or guardian breaches the order, they commit a criminal offence punishable by a fine up to level 3 (£1,000).

Restraining order

374. Since 30 September 2009, this is available where the defendant is convicted of any offence (not just offences under section 2 (harassment) or section 4 (putting a person in fear of violence) of the Protection from Harassment Act 1997).

375. If the defendant is acquitted of an offence, the court may make a restraining order if it considers it necessary to do so to protect a person from harassment by the defendant.

376. It cannot be a sentence in its own right, but is imposed as an ancillary order.

377. It may only be imposed upon sentence or acquittal and not while on remand.

378. It can be for a fixed period or until further order.

379. The order will name the persons subject to the order and clearly set out the behaviour that is prohibited.

380. The prosecutor, defendant or any other person named in the order can apply at a subsequent date for the order to be varied or discharged.

Contingent destruction orders

381. The court **must** order the immediate destruction of a dog where the defendant is convicted of certain offences relating to dangerous dogs bred for fighting (the 'prohibited type') and where the defendant is convicted of not keeping a dog under proper control and it injures any person ('the aggravated offence').

382. A court is not required to order the destruction if it is satisfied that the dog does not constitute a danger to public safety.

383. When determining if the dog is a danger to public safety the court must have regard to the temperament of the dog, its past behaviour and whether the person in charge of the dog is a fit and proper person. In deciding whether the person is a fit and proper person the court should take into account:

    a. whether the person has any relevant previous convictions or cautions;

    b. any previous breaches of court orders including contingent destruction orders made in relation to the same or a different dog;

c. any failure to comply with conditions if the prohibited dog was released by the police under an interim exemption scheme pending final court determination.

The court may also have regard to any other relevant factors, such as the nature and suitability of the premises that the dog is to be kept at by the person or whether there are other animals present at the premises. If the court is not satisfied that the person in charge of the dog is a fit and proper person it should order the destruction of the dog.

384. If the immediate destruction is not ordered and the dog is a prohibited type the court must make a contingent destruction order. A certificate of exemption must be obtained within two months of the contingent destruction order being made. Failure to do so may result in the dog being seized and destroyed. The certificate will require that the dog must be micro-chipped, insured and neutered and, when in public, the dog must be muzzled and held securely on a lead. The agency responsible for issuing the certificate may also attach additional conditions to the certificate.

385. Failure to obtain the certificate or to comply with any condition attached to the certificate may result in the dog being seized and destroyed and is a separate offence.

386. If the immediate destruction is not ordered and the dog is not a prohibited type the court **may** make a contingent destruction order.

387. Where the dog is not a prohibited type the court may make an order that the dog is kept under proper control. The court may specify the measures to be taken for keeping the dog under proper control (e.g. muzzling, keeping it on a lead etc). Failure to keep the dog under proper control may result in the dog being seized and destroyed.

388. Where a destruction order is made the court may also order the defendant to pay the reasonable expenses of destroying the dog and of keeping it pending its destruction.

Disqualification Orders (Animal related)

389. Where a person is convicted of an offence under the Dangerous Dogs Act 1991 or one to which the Animal Welfare Act 2006 applies the court may disqualify

them from having custody of dogs or from owning and/or keeping animals respectively.

390. A disqualification under the Animal Welfare Act 2006 may be a sentence in its own right and can specify all animals or a particular type.

391. Under the Animal Welfare Act, the court may also disqualify a person from:

a. participating in the keeping of animals,

b. being party to an arrangement under which they are entitled to control or influence the way in which animals are kept,

c. dealing in animals,

d. being involved with the transportation of animals.

If you are considering this type of order consult your legal adviser.

392. Breach of any disqualification order is an offence.

SECTION 2 – CASE MANAGEMENT

Introduction

1. Good case management is not a discrete topic limited specifically to case management hearings or the making of directions, although these are clearly important elements. Effective case management occurs at every hearing whether adjourned or not.

2. The practice and procedures to be followed in court are governed by the **Criminal Procedure Rules (CPR)** and supplemented by **Practice Directions** made by the Lord Chief Justice. Anyone who is involved in any way with a criminal case has case management obligations under the CPR. The participants clearly include the advocates but also include legal advisers and administrative court staff, CPS, police, magistrates and judges.

3. Compliance with the CPR is compulsory. **The Criminal Case Management Framework** published in July 2007 was a guide for participants in criminal case management to help them prepare and conduct cases in compliance with the CPR. In December 2009

the Senior Presiding Judge issued guidance on applying the Criminal Procedure Rules. This is reproduced at Appendix 2.1

4. This section will assist in applying the CPR. Practical examples have been given where appropriate. The relevant rules are reproduced as *Appendix 2.2 – Extract from the Criminal Procedure Rules* and are referenced throughout this section.

The overriding objective

5. The overriding objective is to **deal with cases justly (r.1.1)**. This includes:

   a. acquitting the innocent and convicting the guilty

   b. being fair to both prosecution and defence

   c. recognising the defendant's rights (especially the right to a fair trial, the presumption of innocence, the right to silence, privilege against self-incrimination and legal professional privilege)

   d. respecting the needs of witnesses and victims and keeping them informed of the progress on the case

   e. dealing with cases efficiently and expeditiously

f. ensuring that sufficient information is available before the court when considering bail and sentence.

6. Each case presents different issues. However, when making case management decisions or when giving directions magistrates must take into account the seriousness and complexity of the offence, the consequences of their decisions and the needs of other cases before the court.

The court's case management duties

7. The court is required to further the overriding objective of managing cases justly by actively managing the case **(r.3.2)**. This involves making appropriate directions as early as possible. Active case management includes:

   a. The early identification of the real issues.

   b. The early identification of the needs of witnesses.

   c. Achieving certainty as to what needs to be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case.

d. Monitoring progress of the case and compliance with directions.

e. Ensuring that the evidence, whether disputed or not, is presented in the shortest and clearest way.

f. Discouraging delay, dealing with as many aspects of the case as possible on the same occasion and avoiding unnecessary hearings.

g. Encouraging participants to co-operate in the progression of the case.

h. Making use of technology.

Early identification of the real issues

- As part of the pre-court briefing, agree who will take responsibility for this during the hearing. You may agree that it is the legal adviser who undertakes this role on the court's behalf.
- Parties are required to say what the issues in the case are. They should do this voluntarily, but, if necessary, make a direction compelling them to do so whilst making clear what the consequences will be if they fail to do so. For example, on a charge of common assault, if a defendant admits hitting a person but is alleging self-

defence, the solicitor should make this clear. Or, if the issue on a drink-driving offence is that the correct procedure at the police station was not followed, this should be stated at the first case management hearing (i.e. the date on which the plea was entered). It is not acceptable for these, or any other *known* issues from either the prosecution or the defence, to be raised for the first time at the trial.

- An illustration of the consequences of such action can be seen in the case of **Malcom v DPP[2007]** where it was held that *"Criminal trials were no longer to be treated as a game in which each move was final and any omission by the prosecution led to the trial's failure. It was the duty of the defence to make its defence clear to the prosecution and the court at an early stage. That duty was implicit in the Criminal Procedure Rules 2005 r.3.3".* In this particular case, the issue was raised for the first time during closing speeches and this was described as *"a classic and improper defence ambush of the prosecution"*. This means that an opportunity for evidence to be given in rebuttal must be allowed, even if this results in an adjournment as the most important

question is whether justice can be done. This principle is equally applicable to the prosecution and the defence.

- A further consequence may be an order for wasted costs if it can be shown that such costs were incurred by a party "as a result of any improper, unreasonable or negligent act or omission on the part of any representative or any employee of a representative". However, you should always take advice from the legal adviser.
- It is not sufficient for the issues in the case to be described as 'factual' or a simple denial of the offence. This is self evident if the defendant has pleaded not guilty.

Early identification of the needs of the witnesses

- Do not limit this to the dates to avoid, although this is a very important feature. It will also include such matters as whether the witnesses will give evidence behind a screen or by live television link. Also the need for interpreters, disabled access or the wish to give evidence through an intermediary (a person appointed to assist victims and witnesses with communication difficulties autism, learning difficulties or hearing

impairments) and other needs. Be aware of the specific guidance on child and other vulnerable witnesses. See Appendix 2.3 – Good practice when dealing with child and other vulnerable witnesses for an extract from the JSB (*now the Judicial College*) *Guidance for District Judges (Magistrates' Court), Magistrates and Legal Advisers on Child and other Vulnerable Witnesses*.

Achieving certainty as to what must be done, by whom and when, in particular by the early setting of a timetable for the progress of the case.

- The legal adviser will complete specific case progression forms which make reference to standard directions. These are directions that have specific time limits and that must apply in every case (unless the court orders otherwise) **Part V.56.6 Practice Direction (criminal: consolidated)**. Your court should have a list of its standard directions which may include such matters as:
  - hearsay evidence (r.34)
  - bad character evidence (r.35)
  - evidence by way of special measures (r.29)
  - certificates of trial readiness (r.3.9)
  - service of witness statements (r.27)

  - prosecution's duty of initial disclosure (r.22)
  - expert evidence (r.33).

- Do not limit the making of directions to standard directions if the circumstances in a particular case lead you to the conclusion that other directions are appropriate. Non-standard directions may include directions as to the filing to and service of skeleton arguments for points of law or abuse of process arguments.
- Timetabling can also include the timetable for the trial itself. Avoid where possible listing trials for half a day or a whole day. Be more specific by calculating the realistic time estimates for each witness to give evidence in chief and be cross examined together with the prosecution's opening submissions, the defence's closing speeches and any legal arguments that are known at this stage.
- All directions should further the overriding objective.

Monitoring the progress of the case and compliance with directions

- The CPR requires all parties (including the court) to nominate and exchange contact details of the individuals who are responsible for progressing the case **(r.3.4)**.

Only by doing this can there be effective early communication of information which may affect progress of the case and for that information to be acted upon promptly by all sides. This may involve making additional directions, varying directions already made or fixing or amending a hearing date **(r.3.5)**. (See *The court's case management powers* below.)

Ensuring that the evidence, whether disputed or not, is presented in the shortest and clearest way

- Live evidence at a trial should generally be limited to those issues which are in dispute.
- Ensure that effective use is made of written statements being read at trial in accordance with **s.9 Criminal Justice Act 1967** (CJA 1967). This does not prevent the witness from being called but it can mean the statements are agreed and simply read or it may shorten the length of time the witness is required to give evidence. It is not necessarily conclusive evidence but is treated as if the witness had been called. If a witness is central to the case, it is still desirable that they are called to give evidence rather than relying on a written statement.

- If certain facts are admitted, these can be proved conclusively by a formal admission under **s.10 CJA 1967**. Such admissions avoid the need for live evidence to be given on agreed facts.

Discouraging delay, dealing with as many aspects of the case as possible on the same occasion and avoiding unnecessary hearings

- There will rarely be a need to adjourn the case for a further case management hearing. The expectation is that in most cases a plea is taken on the first hearing **(r.3.8)**. In an exceptional case if this is not possible, ensure that the reasons given do genuinely justify the exception to the rule.
- If a case is adjourned, the court must give directions so that the case can be concluded at the next hearing or as soon as possible after that.

Encouraging participants to co-operate in the progression of the case

- Despite the fact that the CPR are compulsory and the parties are obliged actively assist the court in actively managing the case, there may still be occasions when this is a challenge and failures to comply will occur.

- By encouraging the parties to co-operate in case progression, potential problems can be identified at an early stage and action taken e.g. by applying to vary the directions pursuant to **r.3.6.(2)** especially if the parties can be assured that this will not necessarily result in an additional court hearing. The court can also encourage the side who has experienced a breach to inform the court of this immediately rather than wait until the next hearing thus allowing the court's case progression officer to take positive action to remedy the problem.
- On the day of trial all participants should be reminded of, and review where appropriate, any timetable set for the hearing. Once the trial has started, the court must actively manage the trial, keeping an eye on the progress of the case in relation to that timetable to ensure the case can be concluded within its time estimate – **Drinkwater v Solihull Magistrates' Court [2012]**.

The court's case management powers

8. The court has long had an inherent discretion in how it manages proceedings. In addition, it has a duty to further the overriding objective of dealing with cases

justly by actively managing the case and giving appropriate directions (which includes varying or revoking such directions). Particular attention should be paid to **r.3.5** which sets out specific case management powers. These enable the court to:

a. nominate a judge, magistrate, justices' clerk or assistant to a justices' clerk to manage the case
b. give a direction on its own initiative or on application by a party
c. ask or allow a party to propose a direction
d. for the purpose of giving directions, receive applications and representations by letter, by telephone or by any other means of electronic communication, and conduct a hearing by such means
e. give a direction without a hearing
f. fix, postpone, bring forward, extend or cancel a hearing
g. shorten or extend (even after it has expired) a time limit fixed by a direction

h. require that issues in the case should be determined separately, and decide in what order they will be determined

i. specify the consequences of failing to comply with a direction.

Non-compliance with case management orders and directions

9. If a party fails to comply with a rule or direction, the court may:

   a. fix, postpone, bring forward, extend, cancel or adjourn a hearing

   b. exercise its powers to make a costs order

   c. impose such other sanctions as may be appropriate.

Making a costs order

10. Always take the advice of the legal adviser before imposing an order for costs. The rules governing the making of costs orders can be very complex.

11. The making of an order, other than the usual contribution to prosecution costs when the defendant is sentenced, should be rare. The sanctions are not

intended to be a punishment for failing to comply but instead a sanction that furthers the overriding objective.

12. The other costs orders, which may be made in exceptional circumstances are:

    a. Costs against a party – where a party has incurred costs as the result of "an unnecessary or improper act or omission by or on behalf of another in those proceedings".

    b. Wasted costs order – against the legal representative where costs have been incurred by a party "as a result of any improper, unreasonable or negligent act or omission" on the part of the legal representative.

    c. Costs against third parties – i.e. against someone who is not a party who has been guilty of "serious misconduct".

Other sanctions

13. The CPR does not define or suggest what other sanctions may be appropriate. There is much case law to support the view that there is often no meaningful

sanction that furthers the overriding objective. For example, if the prosecution fails to comply with the time limits for service of notices or evidence, or there is some other procedural mistake, it will not usually result in the failure of the prosecution case as a whole. Likewise, failures on the part of the defence cannot be allowed to affect the defendant's right to a fair trial to the extent that it is unlikely a direction that prevented the defendant from giving evidence or calling witnesses in support of his case would be upheld.

14. The legal adviser can advise on whether some other legislation, including Parts 33 (expert evidence), 34 (hearsay evidence) and 35 (evidence of bad character) of the CPR, permits the imposition of a sanction if a party fails to comply with a rule or a direction. In some circumstances:

    a. the court may refuse to allow that party to introduce evidence

    b. evidence that that party wants to introduce may not be admissible

    c. the court may draw adverse inferences from the late introduction of an issue or evidence.

Case management – checklists

First hearing

☐ **The court should ask if the defendant has been advised of credit for a guilty plea.**

☐ **The defendant is expected to enter a plea in most cases.** Exceptions to the rule are rare and should be fully justified (see *Applications to adjourn* below).

☐ **If the defendant pleads guilty, sentence should take place the same day wherever possible.** Ensure that you make use of the facilities provided by the Probation Service to prepare reports on the day of court. An oral report may suffice.

☐ **If the plea is not guilty, the hearing becomes the first case management hearing** (see *First case management hearing (NG plea entered)* on the following page).

Applications to adjourn

☐ **All applications to adjourn require a judicial decision** and must be considered carefully.

- ☐ **Some adjournments may be unavoidable** e.g. an adjournment for trial or for the preparation of committal papers.

- ☐ **If an adjournment is necessary, give clear directions as to the purpose of the adjournment and the expectations of the parties for the next hearing.**

  Consider:

  - Who is making the application?
  - What is the history of the case?
  - Have the parties behaved in accordance with the CPR and complied with previous directions?
  - Whether the decision to grant or refuse the application will have a prejudicial effect on the overriding objective of dealing with case justly?

First case management hearing (NG plea entered)

The court should:

- ☐ **Ask the defendant if they have been advised of credit for a guilty plea** and inform them that credit for a guilty plea will be reduced if they plead guilty later.

- ☐ **Identify the basis for the not guilty plea.** The court may make reference to the initial details of the prosecution case but should exercise caution as it is likely to be only a summary of the prosecution case. The defence should be given an equal opportunity to put forward their version of events.
- ☐ **Identify the disputed issues and agree those that are not disputed.**
- ☐ **Identify the necessary witnesses to be called, the nature of their evidence and ensure their specific needs are noted including dates to avoid** (see *Appendix 2.3* for guidance on child and vulnerable witnesses).
- ☐ **Note whose statements can be agreed under s.9 CJA 1967.**
- ☐ **Which facts can be admitted under s.10 CJA 1967.** Require the parties to agree and sign an appropriate form in court.

☐ **Note any practical arrangements necessary for the trial** e.g. interpreters, tape playing facilities, disabilities, secure court, availability of video-link facilities etc.

☐ **Ask if either party wishes to introduce evidence of bad character, hearsay evidence or special measures?** Make the necessary (standard) directions for parties to comply with the time limits in the CPR.

The court may make a direction that if notice in writing opposing the application is not given within 14 days the application will be deemed to be unopposed.

☐ **If the application is not opposed, deal with it at first hearing.** Otherwise you may need to fix a separate hearing to deal with these applications, or you may have specific arrangements to consider them on the basis of written submissions only.

☐ **Where necessary, make directions on the service of:**

- **outstanding evidence e.g. CCTV, medical evidence, record of taped interview, forensic evidence**
- **skeleton arguments**

- **any other directions that are necessary to ensure effective case management.**

☐ **Fix a trial date and establish a realistic time estimate for the hearing.** Further case management hearings (pre-trial reviews) are only necessary in exceptional cases.

☐ **If applicable, bail the defendant using the relevant pronouncement** from the *Adult Court Pronouncement Cards*.

On the day of trial

☐ **Check that the advocates are ready to start the case on time** without needing further time to confer with each other.

☐ **Check compliance with all pre-trial directions.** The parties must actively assist the court in establishing what disputed issues they intend to explore.

☐ **Confirm the names of the witnesses in attendance, those witnesses whose statements are agreed under s.9 CJA 1967 and those facts agreed under s.10.** Establish whether the statements can be summarised.

☐ **What enquiries have been made about absent witnesses?** Are they essential witnesses and what would be the prejudicial effect of their non attendance?

☐ **If a defendant is absent, consider whether the trial should proceed in their absence.**

Should the court proceed in the defendant's absence?

15. The presumption is that for an offender aged 18 or over, the court *shall* proceed in absence unless it appears to the court to be contrary to the interests of justice to do so. If the offender is under 18, it *may* proceed in absence.

16. If there is an application to adjourn, consider the following checklist approved by the House of Lords:

    a. The nature and circumstances of the defendant's behaviour in absenting themselves from the trial.

    b. Whether any adjournment might result in the defendant being caught or attending voluntarily.

    c. The likely length of any such adjournment.

d. Whether the defendant, though absent, is or wishes to be legally represented at trial or has by their conduct waived their right to representation

e. The extent to which the defendant's legal representatives are able to receive instructions from the defendant and the extent to which they can present the defence case.

f. The extent of disadvantage to the defendant in not being able to give their account of events, having regard to the nature of the evidence against them.

g. The effect of any delay on the memory of the witnesses.

h. In exercising a discretion of whether to proceed, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account.

17. **The Lord Chief Justice has outlined other relevant considerations:**

a. The seriousness of the offence and likely outcome if the defendant is found guilty. If the defendant is only likely to be fined, this can be relevant as the

costs that a defendant might otherwise be ordered to pay as a result of an adjournment could be disproportionate.

b. The fact that there can be an appeal that is a complete rehearing.

c. The power to re-open the case under s.142 of the Magistrates' Courts Act 1980.

d. Confirm the timetable for the trial process and ensure that parties comply with this so far as is possible.

e. Focus the conduct of the trial on the issues previously identified in the case.

f. Ensure examination in chief, cross examination and any submissions are not oppressive, protracted or repetitive.

Applications to adjourn on the day of trial

- ☐ **The circumstances in which an adjournment should be properly granted are very limited** – Swash v DPP [2009].
- ☐ **Applications to adjourn would be refused unless it was necessary and just** – Aravinthan Visvaratnam v Brent Magistrates' Court [2009].
- ☐ **Applications for adjournments must be subjected to rigorous scrutiny** – Essen v DPP [2005], CPS v Picton [2006].
- ☐ **Ensure the enquiries are specific and tailored to the issues in the case** – Swash v DPP [2009].
- ☐ **Appeal courts will be slow to interfere with a decision to grant an adjournment unless they are not satisfied that the magistrates had taken into account all relevant considerations and excluded all irrelevant ones** – Essen v DPP[2005], CPS v Picton [2006].

- ☐ **Identify the problem and explore ways in which it can be addressed in the interests of justice** – R v Taylor [2008].

- ☐ **Neither party is entitled to ambush the other** (e.g. by raising known issues for the first time at trial and opposing reasonable applications for necessary adjournment – Writtle v DPP[2009]. "The days when the defence could ambush the prosecution are over" – R v Taylor [2008].

- ☐ **If there is a high public interest in the trial taking place on a particular date, an adjournment ought not to be granted unless there were good and compelling reasons to do so** – Aravinthan Visvaratnam v Brent Magistrates' Court [2009].

- ☐ **Before making a decision whether to adjourn, the court must enquire as to the next available trial date** – Nadour v Chester Magistrates' Court [2009].

- ☐ **Where witnesses are unable to attend through no fault of their own, a refusal to adjourn the trial is perverse** – R (on application of the DPP) v North East Hertfordshire Justices [2008].

- ☐ **There is an obligation to ensure fairness on both sides.** Examine the likely consequences of the proposed adjournment, its likely length and the need to decide the facts while witnesses recollections are still fresh – CPS v Picton [2006].

The factors to be considered cannot be listed exhaustively but will depend on the circumstances in each case.

Examples of when an adjournment could properly be granted

- It was right to adjourn a trial when the defendant (D) through no fault of his own, was unable to contact or secure attendance of a witness whose evidence went to the heart of the matter when the prosecution (P) refused to provide contact details **Khurshied v Peterborough MC and Peterborough City Council [2009]** (offence: plying for hire).
- An adjournment was allowed to P after the close of its case to allow P to deal with a highly technical point regarding non service of a notice of intended prosecution **Taylor v Southampton Magistrates [2008]** (offence: failing to provide details of driver).
- A refusal to grant D an adjournment when P had failed to make full disclosure [when the material was so obviously disclosable] was unreasonable **Swash v DPP[2009]** (offence: common assault – domestic violence).
- The court was entitled to adjourn proceedings for speeding against two alleged offenders who had failed to confirm the real issues that they wished to raise in their defence prior to the hearings. The mere fact of the

Crown's failures to serve notices pursuant to s.20 of the Road Traffic Offenders Act 1988 s.20 could not be determinative of an application to adjourn **Robinson: Fine v Abergavenny Magistrates' Court [2007]** (offence: speeding).

- A decision by a magistrates' court to refuse an application for an adjournment had been incorrect as it had presented a clear risk of prejudice to a D's case by forcing him to defend himself and give evidence when he had suffered a traumatic ordeal shortly before the hearing. D should have had every opportunity to put his defence in its best form without being distracted by events that were outside of his control **R (on the application of C) v North East Essex Magistrates' Court [2006]** (offence: common assault).
- A magistrates' court's decision to refuse a defence application to adjourn a trial where P had failed to make full disclosure was so unreasonable that no properly directed court could have reached it **S v DPP[2006]** (offence: common assault).

Examples when an adjournment could properly be refused

- Where a case depended on the evidence of a very young child, it is essential that the trial takes place very soon **R v Malicki [2009]** (offence: sexual assault).
- D's application to adjourn on the grounds of inconvenience is not in itself a ground for an adjournment **Essen v DPP [2005]** (offence: driving whilst unfit through drink or drugs).
- Magistrates were right to refuse an adjournment to P who had informed witnesses of the wrong time to attend court. To adjourn would have resulted in a lengthy part-heard adjournment **CPS v Picton [2006]** (offence: common assault).
- P failed to notify D and the court that the expert witness was unable to attend even though P had been aware of this much earlier. The expert's report was served very late, the day before the trial was listed. The magistrates were wrong to adjourn the trial **Visvaranthan v Brent Magistrates' Court [2009]** (offence: driving whilst unfit through drink or drugs).

- Whilst the magistrates had been entitled to allow an application by the CPS to amend a charge from failing to provide a breath specimen to failure to supply a urine specimen, it was not in the interests of justice to allow the amendment where it resulted in an adjournment of the case for four months **Williams v DPP [2009]**.
- A magistrates' court had been entitled to reject D's application to adjourn his trial on a charge of driving over the limit so that he could gather evidence to rebut P evidence, as he had received sufficient disclosure of the P's case and the P evidence caused no unfairness **David Filmer v DPP [2006]**.

Appendix 2.1 – Essential case management: applying the criminal procedure rules[2]

A) Generally

- The court[3] must further the Overriding Objective of the Rules by actively managing each case *[Crim PR 3.2(1)]*.
- The parties must actively assist the court in this without being asked *[Crim PR 3.3(a)]*. But at every hearing, including at trial, it is the personal responsibility of the Magistrates or District Judge actively to manage the case *[Crim PR 3.2]*.
- Unnecessary hearings should be avoided by dealing with as many aspects of the case as possible at the same time *[Crim PR 3.2(2)(f)]*.

B) The first hearing: taking the plea

At every hearing (however early):

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2 It is important to note that all participants in criminal cases, including Magistrates, District Judges, and Justices' Clerks must follow and apply the Criminal Procedure Rules. The Rules are not mere guidance. Compliance is compulsory. The word "must" in the Rules means must.

3 The expression 'court' includes Magistrates, District Judges, and Justices' Clerks exercising judicial powers [Crim PR 2.2(1)].

- Unless it has been done already, the court must take the defendant's plea *[Crim PR 3.8(2)(b)]*. This obligation does not depend on the extent of advance information, service of evidence, disclosure of unused material, or the grant of legal aid.
- If the plea really cannot be taken[4], or if the alleged offence is indictable only, the court must find out what the plea is likely to be *[Crim PR 3.8(2)(b)]*.

C) If the plea is 'guilty'

- The court should pass sentence on the same day, if at all possible (unless committing for sentence).
- If information about the defendant is needed from the Probation Service, it may be that a report prepared for earlier proceedings will be sufficient or a 'fast delivery' report (oral or written) may be prepared that day, depending on local arrangements.
- If a 'Newton' hearing is needed, the court, with the active assistance of the parties, must identify the disputed issue *[Crim PR 3.2(2)(a); 3.3(a)]* and if possible,

[4] Exceptions to the rule requiring the plea to be taken are rare and must be strictly justified.

determine it there and then or, if it really cannot be decided, give directions specifically relating to that disputed issue to ensure that the next hearing is the last.

D) If the plea is 'not guilty'

The key to effective case management is the early identification by the court of the relevant disputed issues *[Crim PR 3.2(2)(a)]*. From the start, the parties must identify those issues and tell the court what they are *[Crim PR 3.3(a)]*. If the parties do not tell the court, the court must require them to do so.

- The relevant disputed issues must be explicitly identified and the case must be managed by the court to ensure that the 'live' evidence at trial is confined to those issues.
- The parties must complete the prescribed case progression form *[Crim PR 3.11; Consolidated Practice Direction V.56.2]* and the court must rigorously consider each entry on the form in order to comply with its duty actively to manage the case by making properly informed directions specific to each case.
- Only those witnesses who are really needed in relation to genuinely disputed, relevant issues should be

required to attend. The court must take responsibility for this (and not simply leave it to the parties) in order to comply with the Overriding Objective of the Rules *[Crim PR 1.1(2)(d), (e)]*.

- The court's directions must include a timetable for the progress of the case (which can include a timetable for the trial itself) *[Crim PR 3.8(2)(c)]*.
- The time estimate for the trial should be made by considering, individually, how long each 'live' witness will take having regard to the relevant disputed issue(s).

E) The parties' obligations to prepare for trial include:

- Getting witnesses to court *[Crim PR 3.9(2)(b)].*
- Making arrangements for the efficient presentation of written evidence/other material *[Crim PR 3.9(2)(c)].*
- Promptly warning the court and other parties of any problems *[Crim PR 3.9(2)(d)].*

F) At trial

Before the trial begins, the court must establish, with the active assistance of the parties, what disputed issues they intend to explore [Crim PR 3.10(a)].

The court may require the parties to provide:

- A timed, 'batting order' of live witnesses *[Crim PR 3.10(b)(i), (ii), (ix)].*
- Details of any admissions/written evidence/other material to be adduced *[Crim PR 3.10(b)(vi), (vii)].*
- Warning of any point of law *[Crim PR 3.10(b)(viii)].*
- A timetable for the whole case *[Crim PR 3.10(b)(ix)].*

During the trial the court must ensure that the 'live' evidence, questions, and submissions are strictly directed to the relevant disputed issues.

G) The Rules

For a full version of the Rules, see:

http://www.justice.gov.uk/criminal/procrules_fin/rules menu.htm

Lord Justice Leveson

Senior Presiding Judge for England and Wales

December 2009

Appendix 2.2 – Extract from the CPR

PART 1 – THE OVERRIDING OBJECTIVE

1.1 The overriding objective

(1) The overriding objective of this new code is that criminal cases be dealt with justly.

(2) Dealing with a criminal case justly includes—

(a) acquitting the innocent and convicting the guilty;

(b) dealing with the prosecution and the defence fairly;

(c) recognising the rights of a defendant, particularly those under Article 6 of the European Convention on Human Rights;

(d) respecting the interests of witnesses, victims and jurors and keeping them informed of the progress of the case;

(e) dealing with the case efficiently and expeditiously;

(f) ensuring that appropriate information is available to the court when bail and sentence are considered; and

(g) dealing with the case in ways that take into account—

(i) the gravity of the offence alleged,

(ii) the complexity of what is in issue,

(iii) the severity of the consequences for the defendant and others affected, and

(iv) the needs of other cases.

1.2 The duty of the participants in a criminal case

(1) Each participant, in the conduct of each case, must—

(a) prepare and conduct the case in accordance with the overriding objective;

(b) comply with these Rules, practice directions and directions made by the court; and

(c) at once inform the court and all parties of any significant failure (whether or not that participant is responsible for that failure) to take any procedural step required by these Rules, any practice direction or any direction of the court. A failure is significant if it might hinder the court in furthering the overriding objective.

(2) Anyone involved in any way with a criminal case is a participant in its conduct for the purposes of this rule.

1.3 The application by the court of the overriding objective

The court must further the overriding objective in particular when—

(a) exercising any power given to it by legislation (including these Rules);

(b) applying any practice direction; or

(c) interpreting any rule or practice direction.

PART 3 – CASE MANAGEMENT

3.2 The duty of the court

(1) The court must further the overriding objective by actively managing the case.

(2) Active case management includes –

(a) the early identification of the real issues;

(b) the early identification of the needs of witnesses;

(c) achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case;

(d) monitoring the progress of the case and compliance with directions;

(e) ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;

(f) discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;

(g) encouraging the participants to co-operate in the progression of the case; and

(h) making use of technology.

(3) The court must actively manage the case by giving any direction appropriate to the needs of that case as early as possible.

3.3 The duty of the parties

Each party must –

(a) actively assist the court in fulfilling its duty under rule 3.2, without or if necessary with a direction; and

(b) apply for a direction if needed to further the overriding objective.

3.4 Case progression officers and their duties

(1) At the beginning of the case each party must, unless the court otherwise directs—

(a) nominate an individual responsible for progressing that case; and

(b) tell other parties and the court who he is and how to contact him.

(2) In fulfilling its duty under rule 3.2, the court must where appropriate –

(a) nominate a court officer responsible for progressing the case; and

(b) make sure the parties know who he is and how to contact him.

(3) In this Part a person nominated under this rule is called a case progression officer.

(4) A case progression officer must –

(a) monitor compliance with directions;

(b) make sure that the court is kept informed of events that may affect the progress of that case;

(c) make sure that he can be contacted promptly about the case during ordinary business hours;

(d) act promptly and reasonably in response to communications about the case; and

(e) if he will be unavailable, appoint a substitute to fulfil his duties and inform the other case progression officers.

3.5 The court's case management powers

(1) In fulfilling its duty under rule 3.2 the court may give any direction and take any step actively to manage a case unless that direction or step would be inconsistent with legislation, including these Rules.

(2) In particular, the court may –

(a) nominate a judge, magistrate, justices' clerk or assistant to a justices' clerk to manage the case;

(b) give a direction on its own initiative or on application by a party;

(c) ask or allow a party to propose a direction;

(d) for the purpose of giving directions, receive applications and representations by letter, by telephone or by any other means of electronic communication, and conduct a hearing by such means;

(e) give a direction –

(i) at a hearing, in public or in private, or

(ii) without a hearing;

(f) fix, postpone, bring forward, extend or cancel a hearing;

(g) shorten or extend (even after it has expired) a time limit fixed by a direction;

(h) require that issues in the case should be determined separately, and decide in what order they will be determined; and

(i) specify the consequences of failing to comply with a direction.

(3) A magistrates' court may give a direction that will apply in the Crown Court if the case is to continue there.

(4) The Crown Court may give a direction that will apply in a magistrates' court if the case is to continue there.

(5) Any power to give a direction under this Part includes a power to vary or revoke that direction.

(6) If a party fails to comply with a rule or a direction, the court may –

(a) fix, postpone, bring forward, extend, cancel or adjourn a hearing;

(b) exercise its powers to make a costs order; and

(c) impose such other sanction as may be appropriate.

[Note. Depending upon the nature of a case and the stage that it has reached, its progress may be affected by other Criminal Procedure Rules and by other legislation. The note at the end of this Part lists other rules and legislation that may apply.]

See also rule 3.10.

The court may make a costs order under –

a. *section 19 of the Prosecution of Offences Act 1985, where the court decides that one party to criminal*

proceedings has incurred costs as a result of an unnecessary or improper act or omission by, or on behalf of, another party;

b. *section 19A of that Act, where the court decides that a party has incurred costs as a result of an improper, unreasonable or negligent act or omission on the part of a legal representative;*

c. *section 19B of that Act, where the court decides that there has been serious misconduct by a person who is not a party.*

Under some other legislation, including Parts 33, 34 and 35 of these Rules, if a party fails to comply with a rule or a direction then in some circumstances –

a. *the court may refuse to allow that party to introduce evidence;*

b. *evidence that that party wants to introduce may not be admissible;*

c. *the court may draw adverse inferences from the late introduction of an issue or evidence.*

See also –

- *section 81(1) of the Police and Criminal Evidence Act 1984 and section 20(3) of the Criminal Procedure and Investigations Act 1996 (advance disclosure of expert evidence);*
- *section 11(5) of the Criminal Procedure and Investigations Act 1996 (faults in disclosure by accused);*
- *section 132(5) of the Criminal Justice Act 2003 (failure to give notice of hearsay evidence).*

3.6 Application to vary a direction

(1) A party may apply to vary a direction if –

(a) the court gave it without a hearing;

(b) the court gave it at a hearing in his absence; or

(c) circumstances have changed.

(2) A party who applies to vary a direction must –

(a) apply as soon as practicable after he becomes aware of the grounds for doing so; and

(b) give as much notice to the other parties as the nature and urgency of his application permits.

3.7 Agreement to vary a time limit fixed by a direction

(1) The parties may agree to vary a time limit fixed by a direction, but only if—

(a) the variation will not –

(i) affect the date of any hearing that has been fixed, or

(ii) significantly affect the progress of the case in any other way;

(b) the court has not prohibited variation by agreement; and

(c) the court's case progression officer is promptly informed.

(2) The court's case progression officer must refer the agreement to the court if he doubts the condition in paragraph (1)(a) is satisfied.

3.8 Case preparation and progression

(1) At every hearing, if a case cannot be concluded there and then the court must give directions so

that it can be concluded at the next hearing or as soon as possible after that.

(2) At every hearing the court must, where relevant–

(a) if the defendant is absent, decide whether to proceed nonetheless;

(b) take the defendant's plea (unless already done) or if no plea can be taken then find out whether the defendant is likely to plead guilty or not guilty;

(c) set, follow or revise a timetable for the progress of the case, which may include a timetable for any hearing including the trial or (in the Crown Court) the appeal;

(d) in giving directions, ensure continuity in relation to the court and to the parties' representatives where that is appropriate and practicable; and

(e) where a direction has not been complied with, find out why, identify who was responsible, and take appropriate action.

(3) In order to prepare for a trial in the Crown Court, the court must conduct a plea and case management hearing unless the circumstances make that unnecessary.

(4) In order to prepare for the trial, the court must take every reasonable step –

(a) to encourage and to facilitate the attendance of witnesses when they are needed and

(b) to facilitate the participation of any person, including the defendant.

3.9 Readiness for trial or appeal

(1) This rule applies to a party's preparation for trial or appeal, and in this rule and rule 3.10 trial includes any hearing at which evidence will be introduced.

(2) In fulfilling his duty under rule 3.3, each party must –

(a) comply with directions given by the court;

(b) take every reasonable step to make sure his witnesses will attend when they are needed;

(c) make appropriate arrangements to present any written or other material; and

(d) promptly inform the court and the other parties of anything that may –

(i) affect the date or duration of the trial or appeal, or

(ii) significantly affect the progress of the case in any other way.

(3) The court may require a party to give a certificate of readiness.

3.10 Conduct of a trial or an appeal

In order to manage a trial or an appeal, the court –

(a) must establish, with the active assistance of the parties, what are the disputed issues;

(b) must consider setting a timetable that –

(i) takes account of those issues and of any timetable proposed by a party, and

(ii) may limit the duration of any stage of the hearing;

(c) may require a party to identify –

(i) which witnesses that party wants to give evidence in person.

(ii) the order in which that party wants those witnesses to give their evidence,

(iii) whether that party requires an order compelling the attendance of a witness,

(iv) what arrangements are desirable to facilitate the giving of evidence by a witness,

(v) what arrangements are desirable to facilitate the participation of any other person, including the defendant,

(vi) what written evidence that party intends to introduce,

(vii) what other material, if any, that person intends to make available to the court in the presentation of the case, and

(viii) whether that party intends to raise any point of law that could affect the conduct of the trial or appeal; and

(d) may limit –

(i) the examination, cross-examination or re-examination of a witness, and

(ii) the duration of any stage of the hearing

[Note. See also rule 3.5 and 3.8.]

Appendix 2.3 – Good practice when dealing with child and other vulnerable witnesses

Pre-court

Courts should engage with police, the CPS and Local Criminal Justice Boards (LCJBs) to provide feedback when the early identification of child and vulnerable witnesses has not been evidenced.

District Judges (Magistrates' Courts), magistrates and legal advisers should use their enhanced case management powers to check that any child or vulnerable witnesses are identified and their needs met.

Courts should engage with police and Witness Care Units to ensure that relevant information leaflets, DVDs and guides are issued to every witness.

Child and vulnerable or intimidated witnesses should have the opportunity to view video recorded statements, visit the courthouse and experience live link equipment before the day of the trial.

Courts should be aware that in deciding whether pre-trial therapy should be provided, the best interests of the child or vulnerable or intimidated adult will be the paramount consideration.

Child and vulnerable or intimidated witnesses should have their views taken into consideration wherever possible regarding the use of special or other measures.

When making directions for live linked evidence courts should explore whether it is in the interests of justice for

evidence to be given from another court or an alternative location.

Courts should ensure that live link equipment is checked and in good working order on both the day before and the day of the hearing. Every effort should be made to ensure that the users in court are familiar with its operation.

An independent trained supporter, working to agreed procedures and protocols should accompany the child, vulnerable or intimidated witness in the live link room.

Cases involving child or vulnerable or intimidated witnesses should not be double-listed and should be given priority early listing.

Staggered witness attendance times should be considered for child or vulnerable or intimidated witnesses and their waiting time at court should be minimised. Their evidence should be heard at the start of the day wherever practicable.

Where a child or vulnerable witness or intimidated witness giving evidence on behalf of the prosecution fears confrontation with the defendant and the defendant's family and supporters, special arrangements should be made in advance for separation at the court or transfer to suitable courthouse. Equally, where any child or vulnerable or intimidated witness fears confrontation with a witness for the other side, similar arrangements should be made.

Courts should be aware of the role of intermediaries and encourage prompt applications for their involvement in appropriate cases.

At court

HMCS should ensure that witness liaison officers and all ushers receive specific training on how to deal with child and vulnerable or intimidated witnesses and those who accompany them.

The court should be made aware of trials involving children or vulnerable or intimidated witnesses. Explanations should be given for any delay on the day of trial, either through the legal adviser or by asking the parties to come into court.

DJ (MC)s and chairman, on behalf of the court, should introduce themselves to child or vulnerable or intimidated witnesses when the witness is called to give evidence. If the legal adviser has not already spoken to the witness they should introduce themselves along with the other parties.

DJ (MC)s and magistrates should control inappropriate cross-examination and in particular be vigilant to rule out questioning that lacks relevance, is repetitive, oppressive or intimidating in accordance with the court's overriding duty to deal with cases justly.

Live links should be considered as a special measure for child or vulnerable defendants and appropriate explanations and checks on understanding should be made throughout the court process.

Whilst certain vulnerable defendants may be permitted to give evidence by way of live link, the court is required when dealing with defendants under 18 years and adults who suffer from a mental disorder or other significant impairments of intelligence and social functioning to take account of the age, maturity and intellectual, social and emotional development of the defendant. All possible steps should be taken to assist such vulnerable defendants to

understand and participate in the proceedings and the ordinary trail process should so far as necessary, be adapted to meet those ends.

Post-court

All witnesses, particularly child and or intimidated vulnerable witnesses, should be thanked for attending court to give evidence whether they are called or not. If practicable, those that accompany child or vulnerable witnesses should be thanked as well.

Extracted from the JSB (now the Judicial College) *Guidance for District Judges (Magistrates' Court), Magistrates and Legal Advisers on Child and other Vulnerable Witnesses.*

SECTION 3 – EFFECTIVE FINE ENFORCEMENT AND COUNCIL TAX COMMITTAL

Introduction

1. Imposition of a fine is the most common punishment imposed by magistrates. Payment is due on the day on which the fine is imposed. Chairmen should not invite an application for time to pay.

2. **Sch 5 of the Courts Act 2003** provides a framework for the enforcement of financial penalties.

3. This section explains the processes for enforcing new and pre-existing financial penalties. There is now a wide range of enforcement options, which are dealt with administratively by fines officers. As a result, the number of enforcement cases listed in the court has reduced significantly to the extent that many areas now choose not to hold specific fines enforcement courts and many magistrates have limited recent experience of it.

On the day of imposition

4. Effective fine enforcement starts on the day on which it is imposed.

5. The level of fine imposed must reflect the seriousness of the offence. The court must also take into account the defendant's financial circumstances and calculate the defendant's relevant weekly income (RWI), which is the defendant's actual income less tax and National Insurance. If the defendant's sole source of income is benefits (or in cases where there is a small amount of income earned in addition to the benefits) and the total received is £120 or less, the RWI is deemed to be £120.

6. Defendants are obliged to complete a statement of means and it is an offence if they fail to do so. If there is no reliable information about a defendant's means, perhaps because they are absent from court, the assumed RWI is £440.

7. Part 5 of the Sentencing Council's *Magistrates' Courts' Sentencing Guidelines Definitive Guideline* (MCSG) sets out individual offences and examples of activity that will guide magistrates when determining the level

of fine and the court must have regard to the MCSG and must give reasons when imposing a sentence outside the range. Refer to the Sentencing Council guidelines for a full explanation of the approach to be taken when imposing fines.

8. The following chart shows the MCSG starting point and ranges based on RWI.

	Starting point	**Range**
Fine Band A	50% of RWI	25-75% of RWI
Fine Band B	100% of RWI	75-125% of RWI
Fine Band C	150% of RWI	125-175% of RWI
Fine Band D	250% of RWI	200-300% of RWI
Fine Band E	400% of RWI	300-500% of RWI

9. Collection orders – The Courts Act 2003 **requires** a court to impose a collection order when a financial penalty (other than confiscation and forfeiture) unless it is impracticable or inappropriate to do so. The most common reason for not imposing a collection order is because payment is made immediately. Reasons must be given if a collection order is not made.

10. Effective enforcement under the Courts Act 2003 is based on three principles:

a. A wide range of enforcement methods become primarily administrative functions with only those requiring judicial intervention coming before the court.

b. There should be much less opportunity for persistent defaulters to avoid paying.

c. There should be a distinction between those who can't pay and those who won't pay.

Existing defaulters

11. If the defendant is already in default of a previous order to pay the court must:

a. consolidate all accounts

b. make a collection order

c. impose an attachment of earnings order (AEO) or a deduction from benefits order (DBO).

Fines officers

12. The making of a collection order means that a fines officer takes enforcement action without the need for a court hearing in many cases. The process is a national one but has some flexibility included which allows for

some local variations in practice. There is a strong reliance on using positive fine enforcement techniques.

The fines officer's duties in the enforcement process

13. On first default – the making of an AEO or DBO (if not already made) unless impracticable or inappropriate. Reasons must be given and entered onto the account notes for future reference during the enforcement process.

14. On subsequent default – if there is a further default the case must either be referred back to the court or the defaulter must be issued with a **further steps notice,** listing the powers that may be adopted by the fines officer. These are:

    a. The issue of a warrant of control.

    b. Registering the sum in the Register of Judgments and Orders.

    c. Making an AEO.

    d. Making a DBO.

    e. Making a clamping order.

f. Taking proceedings to enforce payment in the county court or High Court (provided that the defaulter has the means to pay forthwith).

g. Referring the matter back to court (and issuing a summons to ensure attendance if necessary).

Distress warrant (Warrants of control)

15. Distress warrants became known as warrants of control from 6 April 2014. A warrant of control authorises seizure of the defaulter's goods so that they may be sold to settle monies due to the court.

16. Where the court has power to issue a warrant of control, it may postpone the issue for such time and on such conditions as it thinks just.

17. If the warrant is executed but the defaulter has no goods or insufficient goods to satisfy the sum due, the court will need to consider enforcing in some other way.

18. Most bailiffs, now known as enforcement agents, will only accept payment of the total outstanding for magistrates' fines, therefore there is little scope for accepting reduced instalments. They can charge for a

number of things including administration costs, handling fees and making visits to the defaulter's property, all of which is deducted before the fine is paid.

19. **Issuing a warrant of control is one of the options that must be considered before commitment to prison for non-payment.**

Registration

20. The details of the defaulter are added to a Register of Judgments and this information may affect the defaulter's ability to obtain credit in the future.

21. It is likely that by the time registration is a realistic option, the defaulter has already had several warnings of the consequences of failing to co-operate with the enforcement process.

22. Defaulters are given a period of grace during which prompt payment will result in the fine being removed from the register. If such payment is not made, it will remain on the register for five years.

23. If registration does not result in payment, the fines officer must decide what further action to take.

Attachment of earnings order

24. An AEO directs an employer to deduct money from the defaulter's pay and to send it to the court. If the defaulter is defined as an existing defaulter, an AEO must be made unless the default can be disregarded, or it is inappropriate or impracticable to make an order e.g. if the defaulter will lose their job if the order is made.

25. A collection order must be made unless it is impractical or inappropriate. This enables the fines officer to impose enforcement sanctions if the defendant fails to pay as ordered. They will also fix reserve terms for payment if the attachment of earnings order is not successful.

26. If it is not possible for deductions to be made, the defaulter will be informed of this and that they should pay in accordance with the reserve terms.

27. The amount deducted is fixed by law and not determined by the court. The amount is a percentage of the defendant's income. There is no discretion to amend the amount (see chart below).

28. The order is unlikely to be effective unless the defaulter is in regular work. It may be inappropriate if the fine is small or if the employer's business is unlikely to ensure that regular payments are made.

29. Sufficient information is required from the defaulter in respect of their employer and their employment to implement the order successfully. This includes as a minimum the company name, address and payroll number.

30. The defaulter's consent is not required if the offender is an existing defaulter.

31. **The court must consider the making of an AEO before it can commit a defaulter for non-payment.**

Deductions from attachment to earnings order table

Weekly earnings

Attachable earnings	Percentage rate deducted
£55 or less	0%
£56 – £100	3%
£101 – £135	5%
£136 – £165	7%
£166 – £260	12%
£261 – £370	17%
> £370	17% for the first £350, 50% for the remainder

Monthly earnings

Attachable earnings	Percentage rate deducted
£220 or less	0%
£221 – £400	3%
£401 – £540	5%
£541 – £660	7%
£661 – £1040	12%
£1041 – £1480	17%
> £1480	17% for the first £1480, 50% for the remainder

Daily earnings

Attachable earnings	Percentage rate deducted
£8 or less	0%
£9 – £15	3%
£16 – £20	5%
£21 – £24	7%
£25 – £38	12%
£39 – £53	17%
> £53	17% for the first £53, 50% for the remainder

Deduction from benefits order

32. After enquiry into a defaulter's means, the court has power to order deductions to be made from their state benefits. Deductions can only be made if the defaulter is in receipt of a deductible benefit such as Income Support (IS) or Income-Based Jobseeker's Allowance (JSA), Employment Support Allowance (ESA), or Pension Credit. If the defaulter has other deductions being made for housing, utilities or council tax, a DBO may not be possible. The amount to be deducted is fixed by the Department for Work and Pensions (DWP) and is currently set at £5 per week. The National Insurance number should be obtained.

33. If the defaulter is defined as an existing defaulter, the order must be made unless the default can be disregarded, or it is inappropriate or impracticable to make an order. A reason for not making the orders could be that the defaulter is already having priority deductions from benefit e.g. rent and utilities. A Crisis Loan is not a priority deduction.

34. Reserve terms for payment in the event of failure of the order must be made. If, for any reasons deductions cannot be made, DWP will inform the court. The defaulter will be advised that they must pay in accordance with the reserve terms.

35. The defaulter's consent is not required if the offender is an existing defaulter.

36. **The court should consider the making of a DBO before it commits a defaulter for non-payment.**

Clamping order

37. A fines officer may make a clamping order only where the defaulter has defaulted payment terms previously set by the fines officer (or court). The clamp may

remain in place for up to 24 hours after which time the vehicle is removed to secure storage.

38. Before an order is made the fines officer must be satisfied that:

    a. the defaulter has the means to pay

    b. the value of the vehicle would be likely to be more that the outstanding fine after sale costs and charges (including storage) are deducted.

39. The vehicle may be stored for up to one month. Should this not result in the fine being paid the fines officer will remit the case back to the court to request the vehicle be sold at auction. If sold the proceeds are distributed in the following order:

    i. The clamping contractor to cover costs of clamping, removal and storage.

    ii. The court to clear the outstanding amount.

    iii. If there is any surplus, a cheque is sent to the defaulter with a written statement of account.

40. In the event of insufficient monies being raised, the fines officer will consider the next appropriate enforcement action to take.

Enforcement in the county court or High Court

41. The Magistrates' Courts Act 1980 permits a sum adjudged to be paid on conviction to be enforced in the county court or High Court if there has been a means enquiry and the defaulter appears to have sufficient means to pay forthwith.

42. This is an unusual step because it is slow, expensive and HM Courts Service must meet the cost of such applications. It is rare that a defaulter has sufficient assets but if they do the following remedies are available:

    a. Garnishee/attachment of debts – a procedure by which the court can collect what a debtor owes by reaching the debtor's property when it is in the hands of someone other than the debtor. The defaulter's own debtors are ordered to pay the fines.

    b. A charging order – a procedure which places a 'charge' on the defaulter's property, such as a house, a piece of land or stocks and shares. The charge will be the exact amount owed. Therefore,

any payments made by the defaulter during the enforcement process must be notified to the county court or High Court before the order is made. If the defaulter sells the property the charge has usually to be paid first before any of the proceeds of the sale can be given to the defaulter.

(*Note:* a charging order does not compel the defaulter to sell the property. If there is already a charge on the property when the charge is registered, for example, arising from a mortgage, that charge will be paid first.)

c. Appointment of a receiver – a procedure by which the county court or High Court appoints a receiver who receives monies from the sale of land or rent and profit on behalf of the court to offset the outstanding amount.

43. **The court must consider enforcement in the county court or High Court before committing a defaulter for non-payment.**

Magistrates' powers of enforcement – non custodial

44. Where a fines officer refers a defaulter on a collection order to the court, magistrates may, in addition to all the options listed above, use the following options (listed in alphabetical order) to secure payment of the outstanding sums.

Attendance centre order

45. A defaulter who is under 25 years can be required to attend an attendance centre in default of the payment of any sum of money. The order must be for a period of between 12 and 36 hours. A centre must be available and reasonably accessible to the defaulter.

46. Any payments made after an attendance centre order has been imposed reduce the number of hours the defaulter is required to attend in direct proportion to the amount outstanding. Therefore, if they pay half the amount outstanding, the hours they are required to attend will be reduced by half.

47. **It is a step that must be tried or considered impracticable before imposing imprisonment in default.**

Increasing the fine

48. Where there is default on a collection order that includes a fine, the court may increase the fine (but no other part of the financial penalty) by 50%. **The court must establish wilful refusal or culpable neglect** on the part of the defaulter who is otherwise at risk of imprisonment in default i.e. the 'wont pay' category.

Local detention

49. The court can order detention for one day within the courthouse or any police station in lieu of payment. The order is not imprisonment, therefore the court need not find wilful refusal or culpable neglect before imposing it.

50. The order should specify the time when the detention ends (often expressed as 'until court rises') but no later than 8pm. In fixing the time of the order, the court must not deprive the defaulter of a reasonable opportunity of returning home that day.

51. This power may be suitable when only small sums of money are outstanding, or for defaulters of no fixed abode.

Money payment supervision order

52. An order placing a defaulter under supervision in respect of any sum shall remain in force while all or part of the sum remains payable unless it ceases to have effect or is discharged.

53. The court appoints a person to act as supervisor. This could be a fines officer or in some cases a probation officer. The duty of the supervisor is to advise and befriend the defaulter with a view to inducing them to pay and thereby avoid imprisonment. It is most appropriate in cases where the defaulter is willing to pay but would respond to advice to managing his finances.

54. The defaulter need not consent to the making of the order. An order will cease to have effect on a transfer of fine order.

55. **It is a step that must be tried or considered impracticable before imposing imprisonment in default** and if such an order has been made, the court should obtain up do date information from the supervisor on the defaulter's conduct and means.

Remission of a fine

56. Change of circumstances – The court may remit all or part of a fine if there has been a change of circumstances and it is just to do, for example where the defaulter's income has reduced significantly or where essential outgoings have increased and the defaulter provides evidence of the change of circumstances.

57. No information as to means available – The court may also remit where a fine was imposed in absence but if the defendant's financial circumstances had been known the fine would not have been imposed or would have been smaller. Reasons for remitting the fine must be given.

    Note that costs, compensation, surcharge and excise penalties cannot be remitted.

Varying payment terms

58. A reduction in the amount to be paid periodically, or extending the date by which the amount must be paid in full, may be a useful tool for those defaulters who fall into the 'can't pay' rather than 'won't pay' category. The purpose is to ensure payment is made and so will

be inappropriate if there have been previous failures to comply with payment terms. This power may be used in conjunction with other enforcement methods.

Magistrates' powers of enforcement – custodial

59. Committal to prison is the ultimate sanction for non-payment of financial penalties. The defaulter should be offered legal representation. The duty solicitor scheme included non-payment of fine if the defaulter is at risk of custody.

60. Custodial terms are imposed in accordance with the following scale:

Up to £200	7 days
£200.01 – £500	14 days
£500.01 – £1,000	28 days
£1,000.01 – £2,500	45 days
£2,500.01 – £5,000	3 months
£5,000.01 – £10,000	6 months
Over £10,000	12 months

These are the maximum periods. The court may impose a shorter period if it feels appropriate. The minimum period of custody in default is 5 days.

Committal to prison on the day of imposition

61. This is rare and can only be ordered if the defendant is:

    a. convicted of an imprisonable offence and is capable of paying sum forthwith, or

    b. unlikely to remain at an address in the UK long enough to make other methods of enforcement feasible, or

    c. already serving a custodial sentence, or

    d. is being sentenced to custody on this or another offence at the same time.

Committal to prison on default

62. This is the final stage in the enforcement process and requires a full means enquiry to take place. The court must be satisfied that:

    a. the default is due to culpable neglect or wilful refusal, and

    b. all other methods of enforcement (see a. to e. on the following page) have been tried or considered and reasons given if an alternative method is not used, and

c. the defaulter has the means to pay.

(*Note:* Culpable neglect cannot be found where the defaulter has no income or capital with which to pay the fine.)

The other methods referred to here are:

a. attachment of earnings order

b. attendance centre (if the defaulter is under 21)

c. warrant of control

d. enforcement in the county court or High Court

e. money payment supervision order.

When ruling out any of these non-custodial options the court must exercise its discretion judicially and on sufficient evidence.

Meaning of wilful refusal and culpable neglect

63. Both require the defaulter to be to blame for the non-payment and the court must be satisfied of this beyond reasonable doubt.

64. Wilful refusal – a deliberate defiance of a court order and will include situations where the defaulter will not pay on a point of principle.

65. Culpable neglect – a reckless disregard of a court order and include situations where the defaulter has chosen to use his available income for non-essential items in preference to paying the fine.

Part payments

66. If the defaulter makes some payments towards the fine the period of custody will be reduced in direct proportion to the amount paid. The legal adviser will calculate the necessary reduction based on a set formula. If the whole amount is paid, the defaulter is entitled to be released.

Suspending the term of imprisonment on payment terms

67. Imposing custody is intended to result in payment rather than punishment. If culpable neglect or wilful refusal is established and the court is intending to commit the defaulter, it may instead suspend the term of custody and impose payment terms. This means that the defaulter is not at risk of serving the custodial term provided they pay exactly as ordered. They should still be offered legal representation and advised

that any payment missed is likely to result in immediate custody.

Consequences of failing to comply with payment terms on a suspended committal

68. The defaulter is required to attend court for a further means enquiry. It should be an unusual step to further suspend the committal, however before the warrant is issued the court must still be certain that the defaulter has:

    a. the means to pay forthwith, or

    b. wilfully refused or culpably neglected to pay, and

    other methods of enforcement have been tried or are inappropriate.

Conducting a means enquiry

69. The following process should be followed whether sitting in a dedicated fines enforcement court, a fines officer has referred a case to the court or a defaulter has been arrested and appears in custody.

70. It is usual practice for the legal adviser to ask questions of the defaulter to assist the court. This is something that should be agreed as part of the pre-

court briefing. The legal adviser must remain impartial throughout.

Role of the legal adviser

71. *The following is an extract from the Practice Direction:*

"The role of legal advisers in fine default proceedings or any other proceedings for the enforcement of financial orders, obligations or penalties is to assist the court. They must not act in an adversarial or partisan manner. With the agreement of the justices a legal adviser may ask questions of the defaulter to elicit information which the justices will require to make an adjudication, for example to facilitate his explanation for the default. A legal adviser may also advise the justices in the normal way as to the options open to them in dealing with the case. It would be inappropriate for the legal adviser to set out to establish wilful refusal or neglect or any other type of culpable behaviour, to offer an opinion on the facts, or to urge a particular course of action upon the justices. The duty of impartiality is the paramount consideration for the legal adviser at all times, and this takes

precedence over any role he may have as a collecting officer."

72. Before enquiring into the defaulter's means, the legal adviser should give the following information:

    a. Whether the defaulter was present when the fines were imposed.

    b. The amount of the original penalty, the date it was imposed, the offence(s) and whether the defaulter was present at the time.

    c. The outstanding balance and a breakdown of how this is made up e.g. fines costs, compensation, surcharge.

    d. Whether there are other fines accounts outstanding and what these are for.

    e. Whether accounts have been consolidated.

    f. The current payment terms.

    g. The enforcement action that has been taken so far, including whether a collection order has been made.

    h. Any findings or expectations of previous enforcement hearings.

73. The legal adviser (or the chairman) may confirm with the defaulter:

    a. That the information contained within their means form is correct, clarifying any points where necessary.

    b. Whether they agree with the details provided by the legal adviser.

    c. Whether they are able to pay in full today (the defaulter can be asked to turn out their pockets or, if in custody, the cell staff should be able to provide details of whether the defaulter's possessions included any cash or other means to pay).

    d. Why they have not complied with previous payment terms.

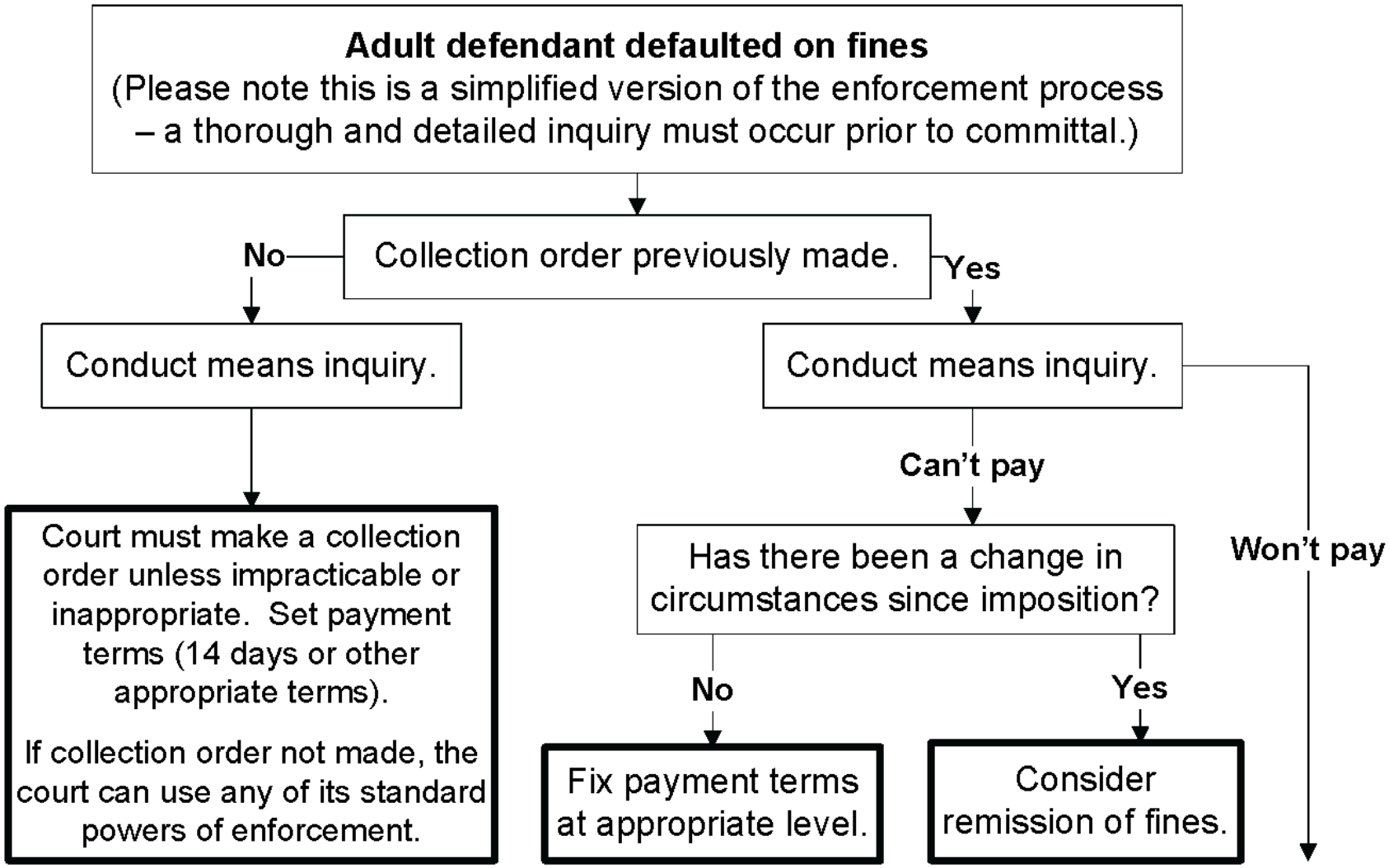
    e. Whether there has been a change in their circumstances since the fines were imposed.

74. The court chairman will ask additional questions to obtain further evidence or clarify any details with a view to obtaining as much information as possible before deciding on the most appropriate method of enforcement. This may be carried out by a fines officer

who ‘prosecutes’ the case but this service is not available in every court.

A fine enforcement flowchart appears on the following page.

Fine enforcement – flowchart



Won't pay
Was the original offence imprisonable?
and
Does the defaulter appear to have the means to pay forthwith?
Yes to both
No to either
Have all of the following enforcement methods either been tried and unsuccessful or are there reasons why they would be inappropriate?
Warrant of Control; Attachment of Earnings; Deductions from Benefits; Enforcement in County/High Court; Money Payments Supervision Order; and Attendance Centre (under 25s).
Yes
No
Is the default due to culpable neglect or wilful refusal on the part of the defaulter?
No
Yes
It is possible to commit to custody (but still consider whether other methods might work, or consider suspending committal on terms).
Make appropriate order from above list or use other non-custodial enforcement method.
Commit to prison (forthwith) or suspend on terms.

Council tax commitment

[**Courts in England:** These notes apply to all proceedings in England.

Courts in Wales: Please note that as from 1 April 2019 legislation does **not** allow committal of an individual for non-payment of council tax. However, commitments which were postponed before 1 April 2019 are still enforceable and these notes will apply to those breaches.]

75. The legal adviser should always be consulted.

76. Local authorities can apply for commitment to prison following the issue of a liability order.

77. Defendants must be represented or have declined the officer of the duty solicitor.

78. These are adversarial proceedings between the council and the debtor, so the council must show a *primâ facie* case before the court conducts a means enquiry.

79. The court must be satisfied on the balance of probabilities that*:*

    - A liability order was imposed in relation to the debt.
    - The debtor has failed to pay; and

- The council tried to collect using a warrant of control, and failed.

If those facts are found, you **must** conduct a means enquiry.

80. The means enquiry **must** cover:

- income and outgoings for each liability order separately
- future ability to pay
- alternative means of collection (other than commitment), e.g. deduction from earnings or benefit; and
- vulnerability of debtor and any dependents who would be affected by an order of commitment.

81. The grounds to order commitment, whether immediate or postponed, must all be present. The grounds are:

- liability order;
- default;
- failure of warrant of control;
- wilful refusal or culpable neglect;

- a commitment order will be effective in encouraging payment

82. When ordering commitment, either immediate or postponed, the court must give and record full reasons.

83. Reasons must be intelligible to a third party without needing to read between the lines and should include:

- Why the court found wilful refusal or culpable neglect.
- The reason for imprisonment, i.e. why imprisonment is likely to result in payment; and
- Why imprisonment is likely to result in payment.

If there are dependents, why the court imposed a forthwith commitment.

Postponed (or suspended) commitment

84. The reasons must be as cogent for a postponed commitment as an immediate. In addition:

- the rate of payment must be realistic
- the order should be capable of being paid within three years

- a period of up to five years is possible with additional reasons, but should be rare.

If the rate of payment is subsequently varied because of a change of circumstances, it is acceptable (indeed inevitable) for the period to be longer as a result.

Remittal

85. There is a power to remit arrears. In general courts should be thinking about remittal if the court's instalment order would mean it would take more than three years to pay off.

86. The Regulations do not permit remittal and committal in the same hearing or after a postponed commitment has been ordered.

Period of imprisonment

87. Courts should normally impose a lower term than the maximum based on the amount, as this is an order for non-payment of a civil debt, not a fine. The term should be further reduced where the court finds culpable neglect rather than wilful refusal.

88. Legal advisers will calculate the term using a calculator which makes allowance for both these

factors. Justices should then determine the precise term based on the circumstances, but in the interests of consistency should not depart far from the recommended term save in exceptional circumstances.

SECTION 4 – CHECKLISTS

Human Rights

- ☐ As a public authority, **the court has a duty to act compatibly with the European Convention on Human Rights.**

- ☐ The practices, procedures and decisions of the court should be carried out in such a way so as not to breach an individual's human rights. This applies to all those affected, e.g. defendants, victims, witnesses, etc.

- ☐ **Article 6 is the right to a fair trial** and should always be at the forefront of your mind – a full list of the articles is provided at the end of this checklist.

- ☐ The magistrates' court has not seen many human rights challenges. However, it can be a complex area of law and should always seek the advice of the legal adviser if a Convention point is raised.

- ☐ A party wishing to raise a Convention point should be required to **provide a written outline of their argument including supporting case law.** This enables the

parties, magistrates and legal adviser to consider the point fully.

☐ **Is the Convention engaged?**

☐ **If so, which right is engaged?** The articles that are most likely to be raised in court are:

- Article 5 – Right to liberty and security (limited right)
- Article 6 – Right to a fair trial (part absolute right, part limited right)
- Article 8 – Right to respect for private and family life (qualified right)
- Article 10 – Right to freedom of expression (qualified right)
- Article 11 – Right to freedom of assembly (qualified right)
- Article 14 – Prohibition of discrimination (qualified right).

☐ **Has the right been breached?** The fact that a right is interfered with does not necessarily mean that it has been breached.

☐ **Establish the type of right that is engaged:**

Absolute right – Has there been an interference with the individual's Convention right?

If the answer is yes, then there has been a breach of the right – there are no circumstances when such behaviour would be acceptable under the Convention.

Limited right – Does the interference fall within one of the lawful exceptions within the article?

Each limited article contains an exhaustive list of the exceptions to the right – if the exception is not in the list, there is a breach. Seek advice from the legal adviser.

Qualified right – You need to ask three questions:

1. Is the interference prescribed by clear and accessible UK law?

2. Does it pursue one of the legitimate aims set out in the article?

3. Is it no more than is necessary to secure that legitimate aim?

If the answer is NO to any of these three questions, there is a breach.

☐ **Identify the source of the breach and determine how you deal with it.**

- **Primary legislation**

  Can you find a possible interpretation that will give effect to the Convention right?

  - If YES, then the law must be applied in this way.
  - If NO, then apply national law as it is.

- **Secondary legislation**

  Can you find a possible interpretation that will give effect to the Convention right?

  - If YES, then the law must be applied in this way.
  - If NO, disregard national law so as to give effect to the Convention right.

- **Practice or precedent**

  Can you find a possible interpretation that will give effect to the Convention right?

  - If YES, then the law must be applied in this way.
  - If NO, disregard national law so as to give effect to the Convention right.

- ☐ Explain why you have reached the conclusion you have – this structure will provide a basis for your reasons.
- ☐ Seek the assistance of the legal adviser in preparing your pronouncement and reasons.

List of convention articles

Article 2	Right to Life (limited)
Article 3	Prohibition of Torture (absolute)
Article 4	Prohibition of Slavery (absolute) and Forced Labour (limited)
Article 5	Right to Liberty and Security (limited)
Article 6	Right to a Fair Trial (absolute and limited)
Article 7	No Punishment without Lawful Authority (absolute)
Article 8	Right to respect for Private and Family Life (qualified)
Article 9	Freedom of Thought and Conscience and Religion (qualified)
Article 10	Freedom of Expression (qualified)
Article 11	Freedom of Assembly and Association (qualified)
Article 12	Right to Marry (limited)
Article 13	Right to an Effective Remedy (not incorporated in HRA)
Article 14	Prohibition of Discrimination

Article 15	Derogation in times of Emergency
Article 16	Restrictions on the Political Activity of Aliens
Article 17	Prohibition of Abuse of Rights
Article 18	Limitation on use of restriction of rights
1st Protocol	Article 1 Protection of Property (fair balance test)
1st Protocol	Article 2 Right to Education (UK reservation)
1st Protocol	Article 3 Free Elections
6th Protocol	Article 1 Abolition of the Death Penalty
6th Protocol	Article 2 Death Penalty in Time of War

Plea before venue and allocation (adult defendants)

Plea before venue

☐ **This procedure only applies to defendants aged 18 years and over charged with offences triable either-way** – i.e. cases which may be dealt with in the magistrates' court or the Crown Court. However, some repeat either-way offences become indictable only due to the minimum sentence that must be imposed on conviction, e.g. third conviction for domestic burglary, class A drug trafficking and certain firearm offences. In addition the prosecution, in particular cases which involve serious or complex fraud or crimes against children, may serve notice on the court which means the court must send them to the Crown Court forthwith. The legal adviser will be able to advise you if these circumstances apply.

☐ **Have initial details (ID) of the prosecution case under part 8 Criminal Procedure Rules (CPR) been served?** It is important to ensure that a defendant, particularly if they are unrepresented, is aware of this right. Initial details usually comprise of a summary of the

case, which may include copies of any statements which assist a defendant to decide where the case should be dealt with and what their plea will be. The CPR requires these details to be served at or before the first court hearing.

- If initial details have not been served where it is on file or available electronically and can be provided, the court should consider putting the case back to avoid an unnecessary adjournment.
- If the initial details are not available or are extensive the court may, after hearing representations, consider an adjournment for the shortest period, stating the expectations of the court of all parties during the adjournment and at the next court hearing.

☐ **The legal adviser will read the charge(s) and explain the plea before venue procedure to the defendant.** The defendant may indicate a guilty or not guilty plea or give no indication. They will also be warned that they may be committed to the Crown Court for sentence if they are convicted of the offence and the court considers that its sentencing powers are insufficient.

☐ **When the defendant indicates a guilty plea** the court:

- should proceed to sentence forthwith (with a recent PSR and oral update if necessary) and hear representations from the prosecution and defence,

  or

- if it cannot sentence forthwith, may order a report to be prepared for either later the same day or if necessary, adjourn for the shortest period possible,

  or

- may commit the defendant to the Crown Court for sentence if the court decides its powers are not sufficient or is a dangerous offender.

☐ Refer to any sentencing guidelines for the approach to be taken when considering sentence.

☐ **Where the defendant indicates a not guilty plea or gives no indication of plea** the court should proceed to the allocation procedure.

Allocation

The Sentencing Council published a revised Allocation guideline in March 2016.

- ☐ **This procedure applies where the defendant has indicated a not guilty plea or has given no indication of plea.**

- ☐ The decision should be made in accordance with the revised Sentencing Council *Allocation Guideline* effective from March 2016

> **'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 concerned or for reasons of unusual legal, procedural or factual complexity […] 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'.

- ☐ Ensure you have adequate information to make a decision. The hearing is inquisitorial, and if you believe that you do not have sufficient information you should obtain further information from either party.

- ☐ What guidance is available? The court should refer to definitive guidelines to assess the likely sentence for the offence.
  - **Where there is a definitive guideline** these provide categories of offences identifying factors which indicate higher or lower levels of culpability and harm with associated starting points and sentencing ranges.
  - **Where there is no definitive guideline** assistance can be found in Court of Appeal sentencing decisions and advice from the legal adviser.
- ☐ **Decide which venue is more appropriate.**
- ☐ **Where the court decides the case is more suitable for Crown Court trial**, the defendant will be sent forthwith to the Crown Court.
- ☐ **Where the case is more suitable for summary trial** the court will explain to the defendant that:
  - the case appears most suitable for summary trial
  - they can consent to be dealt with in the magistrates' court or choose to be dealt with at the Crown Court

- if they consent to be dealt with in the magistrates' court and are later convicted, they may be committed for sentence if 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 power to deal with the offences in any way it could with him if he had been convicted on indictment'.

☐ **At this stage the defendant may request an indication of sentence** i.e. whether a custody or a non-custodial sentence would be imposed if they consented to summary trial and pleaded guilty. It should not be more specific and the court may decline to given any indication. N.B. a court can only give an indication on request, not of its own motion.

☐ **Where the defendant makes a request and the court gives an indication of sentence** the defendant should be asked if they wish to reconsider their earlier indicated plea.

- **If they indicate a guilty plea** they will be treated as if their case has been dealt with summarily and must be sentenced in the magistrates' court in accordance with any indication given. Where a non-custodial sentence was indicated, a court cannot impose custody. An exception is where the defendant may be committed for sentence because they fall within the dangerousness provisions, or they had other related offences which have been sent to the Crown Court. There is no longer a power to commit for sentence because the court's powers are insufficient.
- **If they do not indicate a guilty plea** any indication of sentence is not binding.

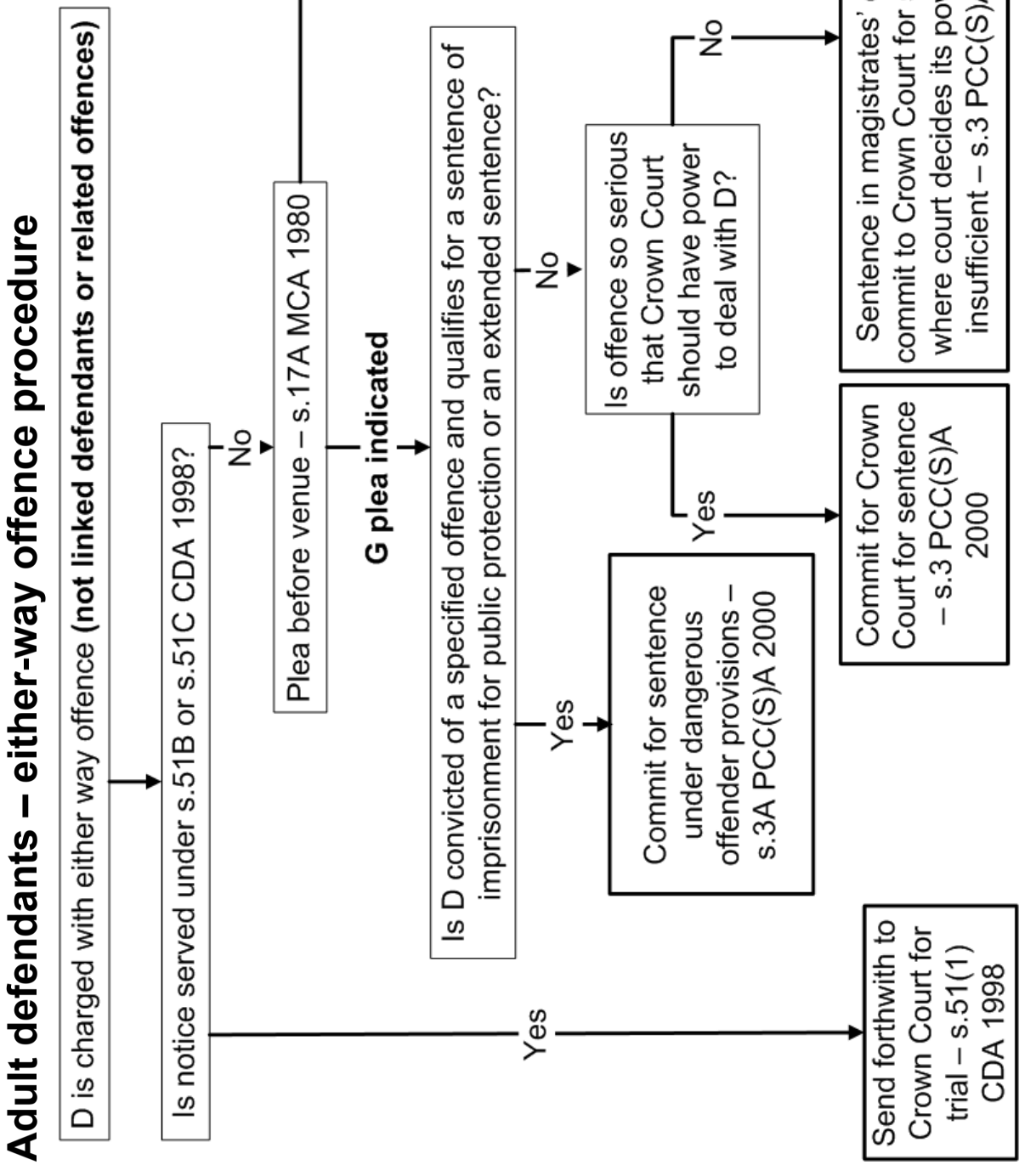
☐ **Where the defendant makes no request, or the court declines to give an indication of sentence and the defendant indicates no plea or one of not guilty** the defendant should be asked where they wish to be dealt with.

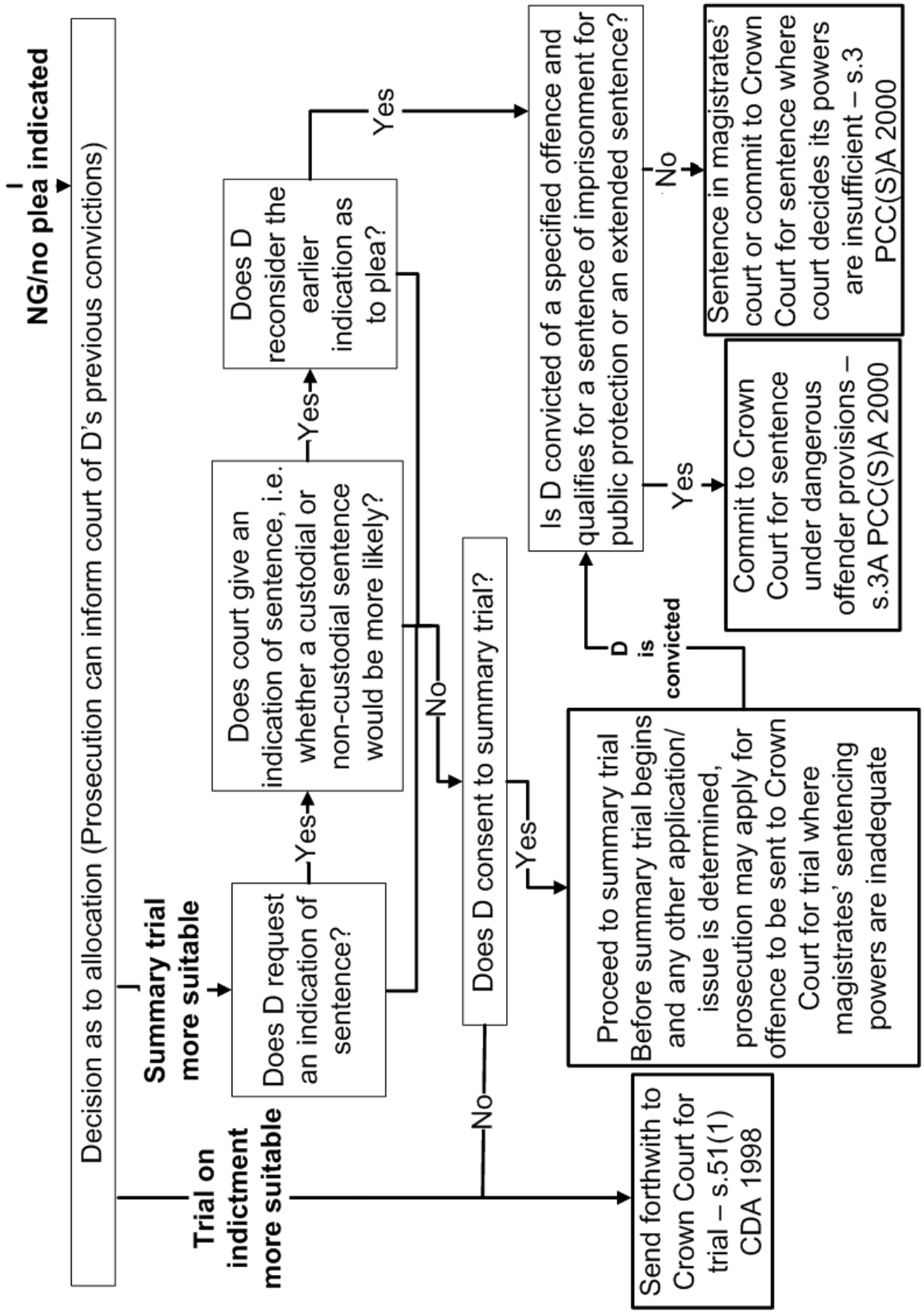
- **Where the defendant elects Crown Court trial** the defendant will be sent forthwith to the Crown Court.

Where the defendant agrees to summary trial the case will proceed in the magistrates' court. Once summary trial begins the powers to send the matter to the Crown Court are limited. In certain circumstances, the prosecution may make an application that the matter is sent for trial. This is likely to be rare and where additional information comes to light that makes the offence more serious and thus outside the magistrates' court powers of sentence. Remember when deciding which court is the most appropriate, magistrates will now be made aware of any previous convictions. The prosecution can only make this application before any summary trial begins and this includes any issue in relation to the summary trial such as an application for special measures or bad character evidence to be admitted. The court may commit for sentence if the defendant is convicted after trial, falls within the dangerousness provisions or they had other related offences which have been committed. The court may still commit for sentence where

'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 power to deal with the offences in any way it could with him if he had been convicted on indictment'.[5]

[5] Powers Criminal Court (Sentencing) Act 2000, s3


Adult defendants – either-way offence procedure
D is charged with either way offence (not linked defendants or related offences)
Is notice served under s.51B or s.51C CDA 1998?
No
Yes
Send forthwith to Crown Court for trial – s.51(1) CDA 1998
Plea before venue – s.17A MCA 1980
NG/no plea indicated
G plea indicated
Is D convicted of a specified offence and qualifies for a sentence of imprisonment for public protection or an extended sentence?
No
Yes
Commit for sentence under dangerous offender provisions – s.3A PCC(S)A 2000
Is offence so serious that Crown Court should have power to deal with D?
Yes
No
Commit for Crown Court for sentence – s.3 PCC(S)A 2000
Sentence in magistrates' court or commit to Crown Court for sentence where court decides its powers are insufficient – s.3 PCC(S)A 2000


NG/no plea indicated
Decision as to allocation (Prosecution can inform court of D's previous convictions)
Trial on indictment more suitable
Summary trial more suitable
Does D request an indication of sentence?
Yes
No
Does court give an indication of sentence, i.e. whether a custodial or non-custodial sentence would be more likely?
Yes
No
Does D reconsider the earlier indication as to plea?
Yes
No
Does D consent to summary trial?
Yes
No
Send forthwith to Crown Court for trial – s.51(1) CDA 1998
Proceed to summary trial Before summary trial begins and any other application/ issue is determined, prosecution may apply for offence to be sent to Crown Court for trial where magistrates' sentencing powers are inadequate
D is convicted
Is D convicted of a specified offence and qualifies for a sentence of imprisonment for public protection or an extended sentence?
Yes
No
Commit to Crown Court for sentence under dangerous offender provisions – s.3A PCC(S)A 2000
Sentence in magistrates' court or commit to Crown Court for sentence where court decides its powers are insufficient – s.3 PCC(S)A 2000

Plea before venue and allocation (youth defendants)

- ☐ **In any of the following cases a youth shall be sent forthwith to the Crown Court for trial.** The legal adviser will inform you if the relevant criteria are met.
  - **Where they are jointly charged with an adult defendant and the adult co-accused has been sent for trial and the court considers it necessary in the interests of justice.** However, the youth will be asked to indicate a plea. If that is one of guilty, sending the case to the Crown Court will be avoided.
  - **Where they are jointly charged with an offence capable of being a 'grave crime' and the youth indicates a not guilty plea or gives no indication and the court is of the opinion that the powers of the youth court would be insufficient.** In such cases the adult must then also be sent to the Crown Court.

Plea before venue and allocation (adult and youth defendants jointly charged)

- ☐ **It is important to determine the category of offences charged as this will dictate the court's powers.** Depending on the offences faced and by which defendant, the procedure will differ. It will depend on whether the offence charged by the youth defendant falls within the dangerousness provisions or is capable of being a grave crime. On some occasions the adult defendant will be dealt with first; on other occasions it will be the youth defendant. There are numerous combinations so it is impossible to outline them all. You should **always seek the advice of your legal adviser.**

- ☐ **Where the youth is charged with an offence which falls within the dangerousness provisions the court must make a preliminary decision (based on the information available), if convicted, should the youth be sentenced as a dangerous offender? If yes, the case must be sent forthwith to the Crown Court**. A youth is a dangerous offender if:

- they are found guilty of certain serious violent or sexual offences committed after 4 April 2005, and
- the court is of the opinion that there is a significant risk to the public of serious harm caused by the child or young person committing further specified offences, and
- the Crown Court would specify the appropriate determinate sentence of at least four years.

Examples of specified violent offences include GBH with intent, Wounding, ABH and Robbery. Examples of specified sexual offences include rape, sexual assault and possession of indecent photographs of children.

If the court does not send the youth defendant for trial but the youth subsequently pleads guilty, or is convicted of an offence which would make them a dangerous offender, the court has the power to commit to the Crown Court for sentence.

☐ **Where the youth is charged with an offence which is capable of being a grave crime, and indicates a not guilty plea, the court must decide the appropriate venue. If the court decides, if convicted, the youth**

should be sentenced to an extended period of detention the case must be sent forthwith to the Crown Court. The Crown Court may impose a period of detention on any youth. A grave crime is defined as:

- Any offence which in the case of an adult carries 14 years or more imprisonment e.g. burglary of a dwelling, handling stolen goods or possession of drugs with intent to supply.
- Any offence of sexual assault.
- Child sex offences committed by a child or young person.
- Sexual activity with a child family member.
- Inciting a child family member to engage in sexual activity.

Where a youth has been sent for trial for an offence which is a grave crime, and an adult co-accused appears on the same day, charged with a related either-way offence the court **must** send the adult defendant forthwith to the Crown Court. Where an adult co-accused appears on a different day the court **may** send the adult defendant forthwith to the Crown Court.

If the youth pleads guilty to an offence which is capable of being a grave crime the court has the power to commit to the Crown Court for sentence.

☐ **Where both defendants are charged with either-way offences, which in the case of the youth defendant do not fall within the dangerousness provisions or are not capable of being a grave crime and the adult co-accused has been sent for trial, the court must consider if it is necessary in the interests of justice to send the youth forthwith to the Crown Court.** However, the youth will be asked to indicate a plea. If that is one of guilty, sending the case to the Crown Court will be avoided.

☐ **Where the adult defendant consents to summary trial and pleads not guilty and the youth pleads not guilty** the court must decide if the youth should stand trial in the magistrates' court with the adult co-accused, or if they should be remitted to the youth court for trial (this would of course mean two separate trials, which is unlikely to be in the interests of justice).

- ☐ **Where the adult defendant consents to summary trial and pleads guilty and the youth pleads not guilty** the court will remit the youth defendant to the youth court for trial.

- ☐ **Where the adult defendant consents to summary trial and pleads guilty and the youth pleads guilty** the court must decide to sentence in the magistrates' court (where the powers are limited to a discharge, referral order, fine or parental bind over) or to remit to the youth court for sentence.

- ☐ You may wish to refer to the relevant chapters in the *Youth Court Bench Book* on dangerous offenders and grave crimes

- ☐ In addition, in the *Youth Court Pronouncement Cards* there are relevant pronouncements for sending dangerous offenders and grave crime offences to the Crown Court for trial and committals for sentence.

Guilty or not guilty

- ☐ **Every element of the offence must be proved before the defendant can be convicted.**

- ☐ **The prosecutor should outline each element of the offence they intend to prove before the trial starts.** If this does not happen, ask for it to be done.

- ☐ **The burden of proof rests with the prosecution and the standard of proof is 'beyond reasonable doubt'.** This means that you have to be satisfied so that you are sure that the accused is guilty. If you are not sure, you will find the accused not guilty.

- ☐ **Occasionally, the burden of proof is reversed and rests with the defendant. The standard of proof is 'on a balance of probabilities'** i.e. more likely than not. For example, once the prosecution has proved that a defendant was using a motor vehicle on a road, the burden shifts to the defendant to prove, on a balance of probabilities, that they had valid insurance.

- ☐ **It is advisable to make notes of the evidence**, but you can also seek clarification from the legal adviser's notes.

☐ **Consider what admissible evidence has been adduced.** Evidence does not include the prosecution opening speech nor the defence closing submissions. However, these may help you analyse the evidence. Evidence comes in a number of forms including:

- oral testimony from witnesses
- written (section 9) statements
- statement of formally agreed facts (section 10 admission)
- exhibits and documents
- video or tape recordings
- admissible hearsay.

☐ **You must exclude from consideration:**

- anything heard which is not covered by admissible evidence, e.g. assertions by advocates not supported by the evidence
- evidence which is excluded as a result of a successful application under s.76 PACE 1984 (confessions) or s.78 PACE (exclusion of unfair evidence)

- your personal views, opinions or prejudices
- consideration of possible consequences of conviction or acquittal.

☐ **Identify what facts are not in dispute** e.g. that the defendant was present at the scene of the alleged crime or that the defendant took goods out of the store without paying.

☐ **Identify the facts in dispute that are issues that need to be determined** e.g. they relate to an element of the offence.

☐ **Decide what weight to attach to the admissible evidence from both sides.** Remember that all witnesses for the prosecution and defence are entitled to equal consideration.

☐ **Are there any inferences to be drawn from the accused's silence?** It may be possible to draw inferences from the:

- silence of the accused at arrest/charge
- failure of the accused to give evidence at trial

- failure of the accused to account for presence of self at scene
- failure of accused to account for objects, substances or marks.

This is a complex area of law where you will need to seek advice from the legal adviser.

☐ **Evaluate the evidence on the disputed facts and make findings of fact.**

- Who do you believe?
- Who do you not believe?
- Is there any independent supporting evidence?

☐ **Do the facts you have found proved establish all the elements of the offence to the required standard?**
If you reach a majority decision, this will be the collective decision of the Bench and no dissenting judgement will be given.

☐ **Inform the accused whether you find them guilty or not guilty.**

☐ **Give reasons for your decision.** The legal adviser can assist you with the preparation of reasons.

- ☐ **You should make a written record of your verdict** (ideally on a form provided by the court) and hand this to the legal adviser to keep with the court papers.

Contempt of court – section 12 Contempt of Court Act 1981

- ☐ **Does the behaviour amount to a contempt?** A contempt of court occurs when someone who is present in court (for these purposes, the respondent) wilfully insults the magistrates, advocates, witnesses or any court officer, or wilfully interrupts or disrupts court proceedings or otherwise misbehaves in court.

- ☐ **Remain calm and in control, take care not to act in haste when dealing with a contempt.**

- ☐ **Be aware that the behaviour may be due to mental health issues, learning difficulties or disabilities or medical issues.**

- ☐ **Explain in terms that the respondent understands the conduct that is in question, that the respondent can be fined or imprisoned for it or subject to immediate temporary detention.**

- ☐ **Give the respondent an opportunity to explain their conduct and to apologise for it. The respondent may take legal advice.**

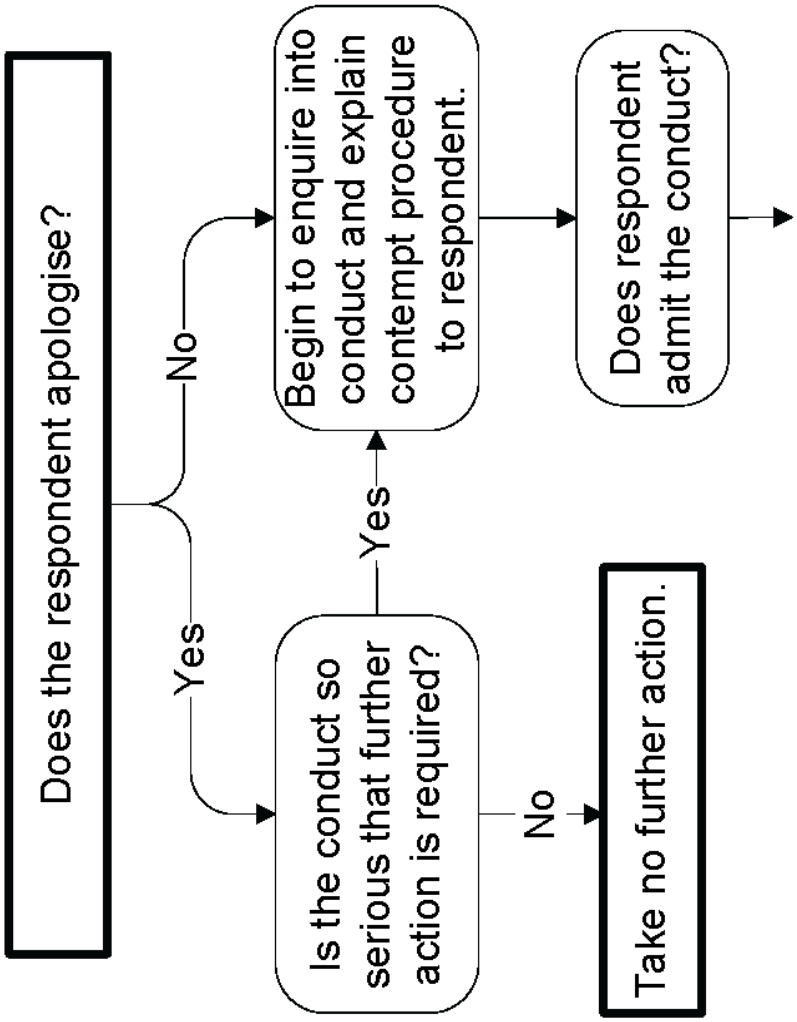
☐ **Consider whether one or more of the following options (listed in no particular order) may be appropriate before taking further action:**

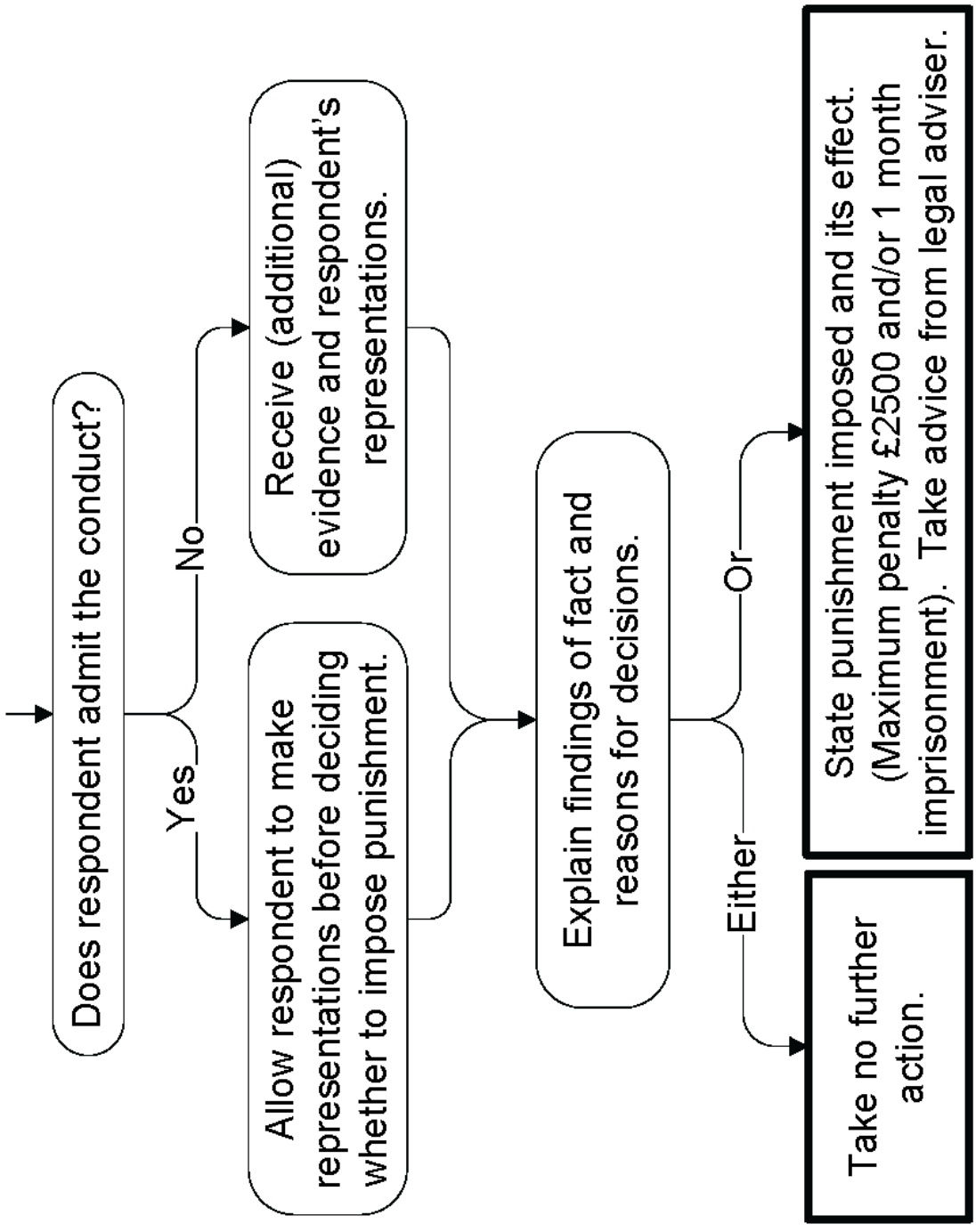
- Ignore the misbehaviour if it is minor.
- Explain clearly the need for quiet to allow the court to conduct its business.
- Seek an apology.
- Require the respondent to leave the court.
- Where it is the defendant's conduct that is called into question, require the defendant to leave. This should be used rarely and only when the defendant has been previously warned. It is generally undesirable to continue in the defendant's absence, therefore give some time for the defendant to calm down and receive advice if they have a solicitor.
- Allow a cooling off period.
- Clear the public gallery. This should be rarely used and only when absolutely necessary to ensure proper administration of justice.
- Retire – particularly if the misbehaviour is serious.

- ☐ **If further action is required, retire, consult your legal adviser. If you are considering immediate temporary detention see Contempt of court – flowchart, overleaf.**

Contempt of court (procedure where action is required) – flowchart

- Is the respondent to be temporarily detained immediately?
- Respondent ‘cools off’ in the cells. The respondent should have the opportunity to be legally represented.
- Bring the respondent back into court. Review the case and repeat explanation of possible consequences.
- Allow the respondent time to reflect, seek advice, explain and apologise.


Does the respondent apologise?
No
Yes
Begin to enquire into conduct and explain contempt procedure to respondent.
Does respondent admit the conduct?
Is the conduct so serious that further action is required?
Yes
No
Take no further action.


Does respondent admit the conduct?
Yes
No
Allow respondent to make representations before deciding whether to impose punishment.
Receive (additional) evidence and respondent's representations.
Explain findings of fact and reasons for decisions.
Either
Or
Take no further action.
State punishment imposed and its effect. (Maximum penalty £2500 and/or 1 month imprisonment). Take advice from legal adviser.

Youths appearing in the adult court

- ☐ **Youths are those persons between 10 and 17 years of age.** They will normally appear in the youth court before magistrates who have received specialist training.
- ☐ **The advice of the legal adviser should be sought** if a person in court appears to be under 18 years of age as different provisions cover most aspects of the proceedings.
- ☐ **All youths should be addressed by their first/given name.**
- ☐ **A press restriction may be required** – If a youth appears before the youth court, they will receive automatic anonymity. This is not the case in the adult court. Therefore, an order under s.45 Youth Justice and Criminal Evidence Act 1999 may be made to prevent publication of information relating to their identity, address and school. (Please refer to *Reporting restrictions – checklist* in Section 1 of this bench book.)
- ☐ **If the youth is under 16, they must be accompanied by a parent/guardian or by a carer if the youth is in**

the care of the local authority. If the youth is unaccompanied, consideration should be given to adjourning the case and ordering the parent/guardian to attend – unless this would not be in the interests of justice.

☐ **If the youth is 16 or 17**, the presence of an adult is optional.

☐ The adult should be seated close to the youth so that they can advise and assist the youth with the proceedings.

☐ **A member of the Youth Offending Team should be in attendance** – This is particularly important if the youth is in custody. The YOT is responsible for the provision of youth justice services locally. Their role includes:

- providing bail support
- preparing reports to assist the court in sentencing
- supervising youths who receive community and custodial penalties.

☐ **Establish why the youth is before the adult court.**

There will be two circumstances when a youth could appear before an adult court.

1. No youth court is available.

   If a youth must be produced before the court (e.g. they have been arrested and are in custody) and no youth court is sitting, then:

   a. before conviction, remand the youth to the local youth court, or

   b. after conviction, remit the youth to the youth court covering the area in which the youth lives.

2. Youth co-charged with one or more adults. The table below gives the options for dealing with youths co-charged with adults. In all cases, the adult remains in the adult court unless committed to the Crown Court.

Adults and youths jointly charged and appearing before the adult court (You should seek the advice of the legal adviser)

The Sentencing Council Revised Allocation Guideline 2016 states '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.'

It is important to determine the category of offences charged as this will dictate the court's powers. Depending on the offences faced and by which defendant, the procedure will differ. It will depend on whether the offence faced by the youth falls within the dangerousness provisions and/or is capable of being a grave crime (see below). On some occasions the adult defendant will be dealt with first; on other occasions it will be the youth defendant. There are numerous combinations so it is impossible to outline them all.

The table on the next page outlines the basic options when dealing with a summary only offence or an either-way offence which is not capable of being a grave crime or a specified dangerous offence:

Summary of options – for offences that are not a grave crime

Class of offence	Adult pleads guilty and youth pleads not guilty	Adult pleads guilty and youth pleads guilty	Adult elects or jurisdiction declined and youth pleads guilty	Adult elects or jurisdiction declined and youth indicates not guilty	Adult pleads not guilty and youth pleads not guilty	Adult pleads not guilty and youth pleads guilty
Summary only	Remit youth to youth court for trial.	Consider limited options for sentence in adult court or remit youth to home youth court for sentence.			Youth remains in the adult court for joint trial.	Consider limited options for sentence in adult court or remit youth to home youth court for sentence.

Class of offence	Adult pleads guilty and youth pleads not guilty	Adult pleads guilty and youth pleads guilty	Adult elects or jurisdiction declined and youth pleads guilty	Adult elects or jurisdiction declined and youth indicates not guilty	Adult pleads not guilty and youth pleads not guilty	Adult pleads not guilty and youth pleads guilty
Either-way offence NOT a grave crime or specified dangerous offence	Remit youth to youth court for trial.	Consider limited options for sentence in adult court or remit youth to home youth court for sentence.	Consider limited options for sentence in adult court or remit youth to home youth court for sentence.	Consider committing youth for joint trial with adult (interests of justice test*) or remit to local youth court for trial.	Youth remains in the adult court for joint trial.	Consider limited options for sentence in adult court or remit youth to home youth court for sentence.

**Sentencing Council Revised Allocation Guideline 2016*

Grave crime

Some either-way offences may be **grave crimes**. A grave crime is one that carries 14 years or more imprisonment in the case of an adult, and certain sexual offences. The court is required to determine that, if the youth is convicted, a sentence substantially beyond the powers of the youth court (i.e. a two year detention and training order) should be available. This is usually a decision made by the youth court. However on rare occasions, the adult court may be asked to make such a decision. The test to apply varies according the offender's age and antecedents and it is important to seek advice from the legal adviser in every case.

Following the case of **R v Sheffield Youth Court [2008],** the venue must be decided before the plea is taken. If a guilty plea is taken in the adult court and the case remitted to the youth court, summary jurisdiction is deemed to be accepted.

Specified dangerous offences

Some either-way offences may be **specified dangerous offences**. A youth will be categorised as a dangerous

offender if they are found guilty of certain specified violent or sexual offences **and** the court is of the opinion that there is a significant risk to the public of serious harm caused by the child or young person committing further specified offences, **and** the Crown Court would impose an extended sentence of at least four years.

- **There are very limited options for sentencing youths in the adult court –** Always seek the advice of the legal adviser before sentencing a youth in the adult court. Youths will normally be remitted to their home youth court for sentence. However, certain orders can be made in the adult court.

  1. **Referral order**

     This is an order referring the youth to a Youth Offender Panel, which will agree a programme of behaviour with the youth with the aim of preventing further offending behaviour. The referral order provisions apply where the court is not considering imposing a custodial sentence, hospital order, absolute or conditional discharge. In some circumstances, a referral order is compulsory.

Compulsory referral order conditions – Referral orders must be imposed on all youths with **no previous convictions** who are **pleading guilty** to any **imprisonable** offence, unless the court is considering an **absolute or conditional discharge, Mental Health Act order or custody**. Previous bind overs and discharges (absolute or conditional) are not previous convictions for these purposes, so do not have any impact on the mandatory referral order provisions. The order lasts for between three and 12 months. The order runs from the date that the referral contract is signed.

2. Absolute or conditional discharge

The provisions in relation to an absolute discharge are as for an adult. A conditional discharge of up to three years can be imposed. However, if the defendant committed the offence within two years of receiving a final warning for another offence, a conditional discharge cannot be imposed unless the court is satisfied there are exceptional circumstances.

3. **Fine**

   The maximum fines available for youths are limited as follows: £250 for youths aged 10-13 years; £1,000 for youths aged 14 – 17 years. If the maximum fine for an adult is less than this, the lower figure will apply.

   Where a youth under 16 years is fined, the parent/carer must be ordered to pay. When the youth is aged 16 or 17, the youth or the parent/carer can be ordered to pay.

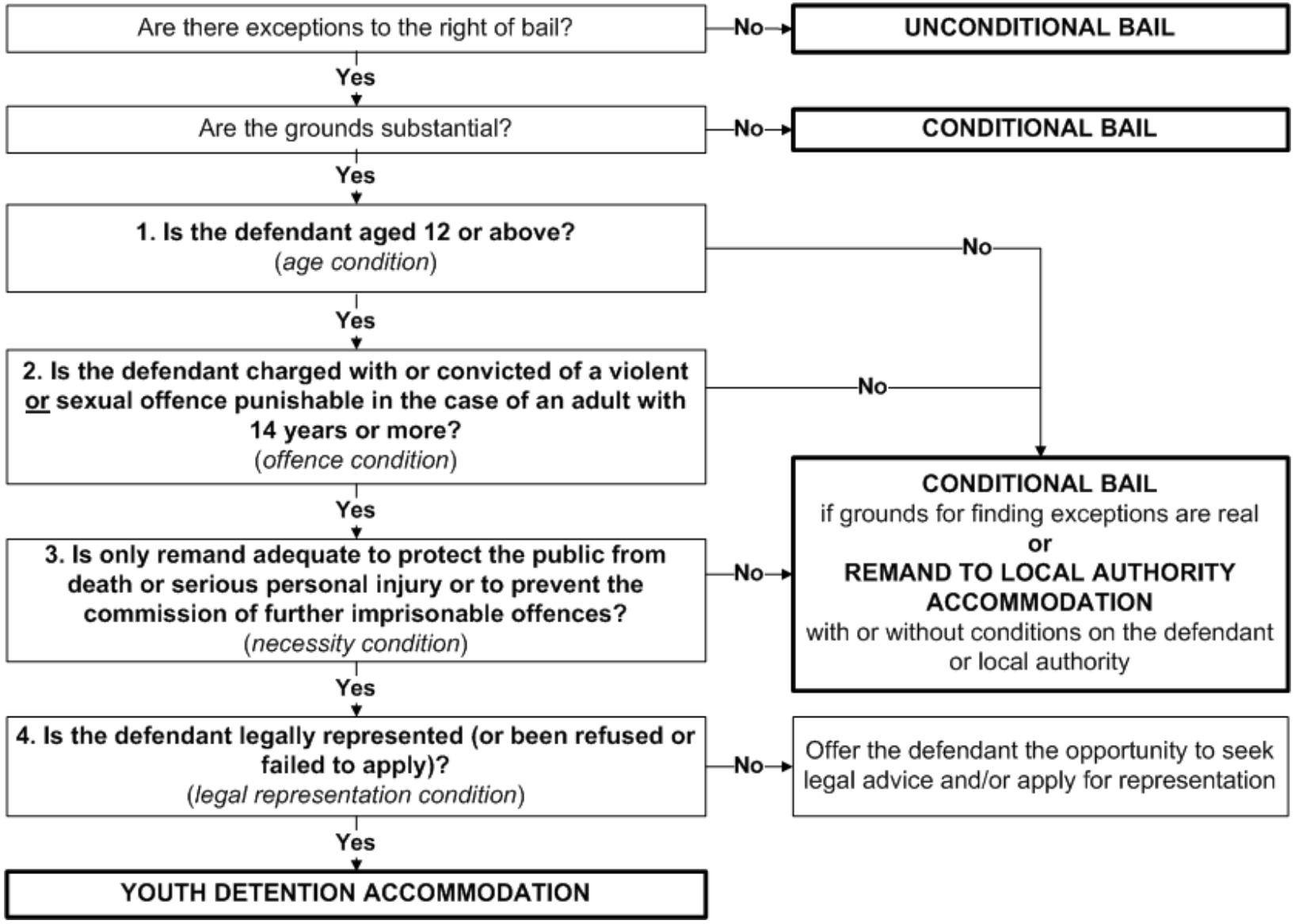
4. **Ancillary orders**

   Many of the ancillary orders available for adults are also available for youths, e.g. disqualification, compensation. In addition, there are other orders that the court must consider making in respect of youths: parental bind over and parenting order. (See *Ancillary orders* in Section 1 of this bench book and Section 6 of the *Adult Court Pronouncement Cards*.)

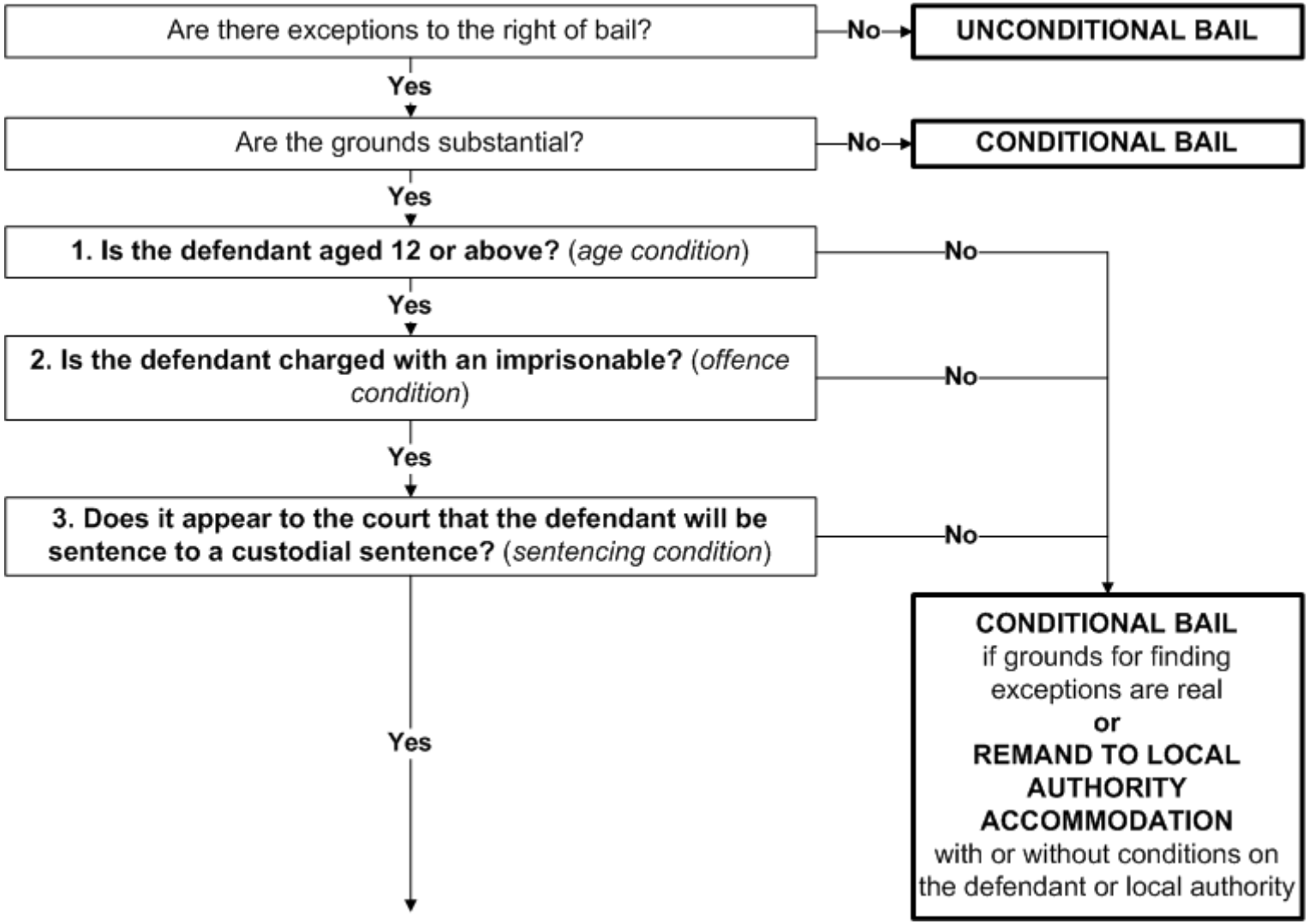
□ **Different remand criteria apply to youths**

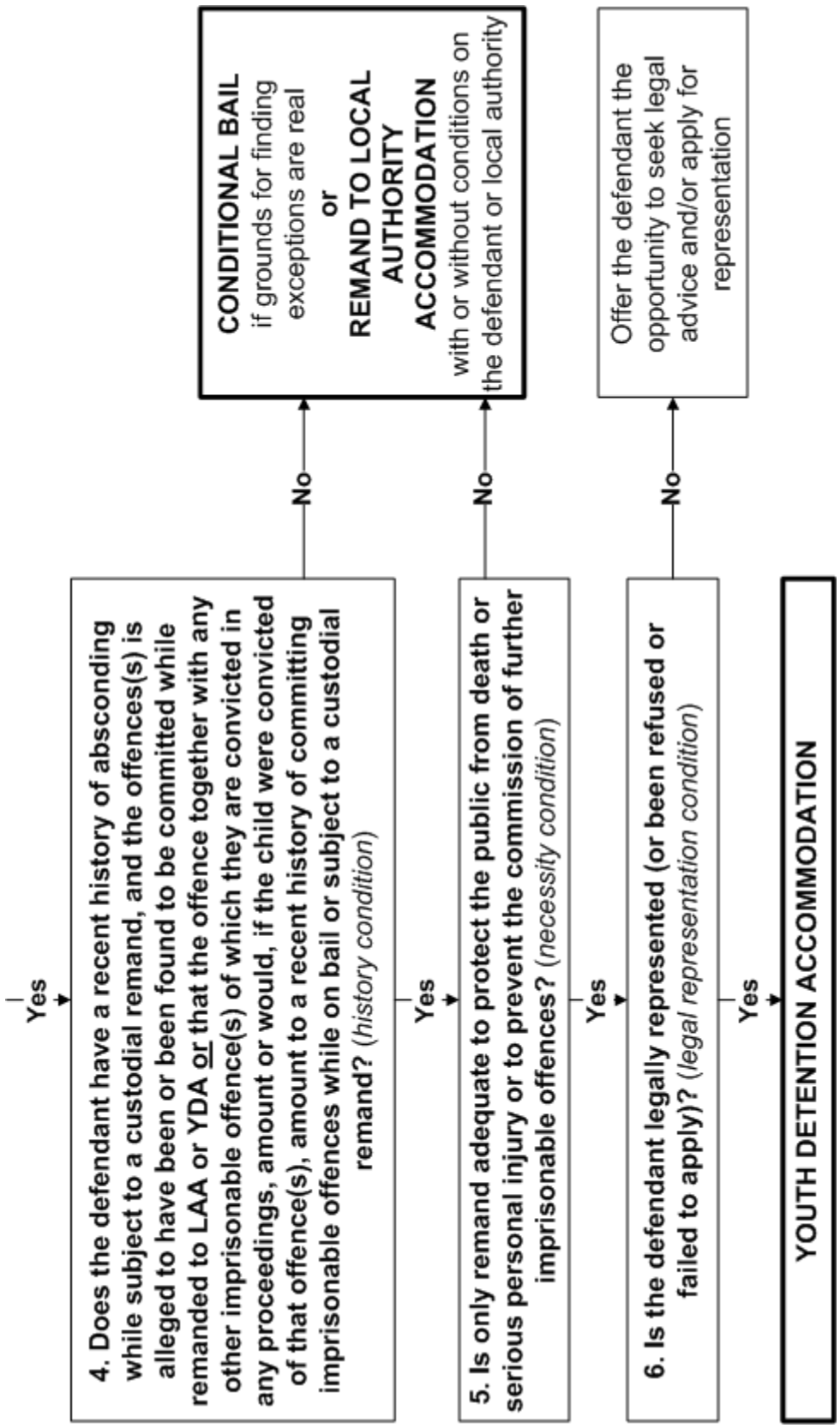
Always seek the advice of the legal adviser.

1. Youth remand criteria Section 98 LASPO – 4 conditions



2. Youth remand criteria Section 99 LASPO – 6 conditions




Yes
4. Does the defendant have a recent history of absconding while subject to a custodial remand, and the offences(s) is alleged to have been or been found to be committed while remanded to LAA or YDA or that the offence together with any other imprisonable offence(s) of which they are convicted in any proceedings, amount or would, if the child were convicted of that offence(s), amount to a recent history of committing imprisonable offences while on bail or subject to a custodial remand? (history condition)
No
CONDITIONAL BAIL
if grounds for finding exceptions are real
or
REMAND TO LOCAL AUTHORITY ACCOMMODATION
with or without conditions on the defendant or local authority
Yes
5. Is only remand adequate to protect the public from death or serious personal injury or to prevent the commission of further imprisonable offences? (necessity condition)
No
Offer the defendant the opportunity to seek legal advice and/or apply for representation
Yes
6. Is the defendant legally represented (or been refused or failed to apply)? (legal representation condition)
No
Yes
YOUTH DETENTION ACCOMMODATION

Appendix 4.1 – General Mode of Trial Considerations

Section 19 of the Magistrates' Court Act 1980 requires magistrates to have regard to the following matters in deciding whether an offence is more suitable for summary trial or trial on indictment:

1. the nature of the case;
2. whether the circumstances make the offence one of a serious character;
3. whether the punishment which a magistrates' court would have power to inflict for it would be adequate;
4. any other circumstances which appear to the court to make it more suitable for the offence to be tried in one way rather than the other;
5. any representations made by the prosecution or the defence.

Certain general observations can be made:

a. The court should never make its decision on the grounds of convenience or expedition.

b. The court should assume for the purpose of deciding mode of trial that the prosecution version of the facts is correct.

c. The fact that the offences are alleged to be specimens is a relevant consideration; the fact that the defendant will be asking for other offences to be taken into consideration, if convicted, is not.

d. Where cases involve complex questions of fact or difficult questions of law, including difficult issues of disclosure of sensitive material, the court should consider committal for trial.

e. Where two or more defendants are jointly charged with an offence each has an individual right to elect his mode of trial. [This follows the decision in R v Brentwood Justices ex parte Nicholls.]

f. *In general, except where otherwise stated, either-way offences should be tried summarily unless the court considers that the particular case has one or more of the features set out in the following pages* ***and*** *that its sentencing powers are insufficient.*

g. The court should also consider its power to commit an offender for sentence, under sections 3 and 4 of the Powers of Criminal Courts (Sentencing) Act 2000, **if information emerges during the course of the hearing which leads them to conclude that the offence is so serious, or the offender such a risk to the public, that their powers to sentence him are inadequate.** This amendment means that committal for sentence is no longer determined by reference to the character or antecedents of the defendant.

Features relevant to the individual offences.

(*Note:* Where reference is made in these guidelines to property or damage of 'high value' it means a figure equal to at least twice the amount of the limit (currently 5,000 pounds) imposed by statute on a magistrates' court when making a compensation order.)

SECTION 5 – OTHER USEFUL INFORMATION

Introduction

1. It is anticipated that there will be documents with local application that can be filed within this section. These items might include:

   a. local police station opening times

   b. local bail hostel details, e.g. address, bail condition requirements

   c. details of the Probation Service Accredited Programmes that are available locally

   d. a list of current benefit rates

   e. local protocols in relation to, e.g. listing practices, out of office applications, ordering reports, etc.

Oaths

Key points

2. The Oaths Act 1978 permits witnesses the choice between swearing an oath or making a solemn affirmation.

3. The degree to which a witness considers their conscience bound by the procedure is the criterion of validity. (See the case of Kemble on the following page.)

4. The contents of this section should assist all magistrates in ensuring that:

   a. sworn testimony meets all the requirements of the Oaths Act 1978

   b. the needs of all court users and witnesses are met with regard to their religious affiliation when giving sworn evidence or making declarations

   c. all witnesses, whether they choose to affirm or swear an oath, are treated with respect and sensitivity.

5. The Oaths Act 1978 makes provisions for the forms in which oaths may be administered and states that a solemn affirmation shall be of the same force and effect as an oath. In today's inclusive multi-cultural society, all citizens whether or not they are members of faith traditions should be treated sensitively when making affirmations, declarations or swearing oaths.

6. As a matter of good practice:

   a. the sensitive question of whether to affirm or swear an oath should be presented to all concerned as a solemn choice between two procedures, which are equally valid in legal terms

   b. the primary consideration should be what binds the conscience of the individual

   c. one should not assume that an individual belonging to any community will automatically prefer to swear an oath rather than affirm

   d. all faith traditions have differing practices with regard to court proceedings and these should be treated with respect.

7. Guidance was given in the case of ***Kemble*:**

   "We take the view that the question of whether the administration of an oath is lawful does not depend upon what may be the considerable intricacies of the particular religion, which is adhered to by the witness. It concerns two matters and two matters only in our judgement. First of all, ***is the oath*** *an oath which* ***appears to the court*** *to be* ***binding on the***

conscience of the witness? *And if so, secondly, and* ***more importantly, is it an oath which the witness himself considers to be binding upon his conscience?"*** Lord Lane C.J. in **R. v. Kemble (1990)** 91 Cr App R 178 (emphasis added)

8. In this case, a Muslim witness in the criminal trial had previously sworn an oath on the New Testament, although in the Court of Appeal the same witness swore an oath on the Qur'an. He told the Court of Appeal on oath that he considered himself conscience-bound by the oath he made at the trial. He added that he would still have considered the oath to be binding on his conscience whether he had taken it upon the Qur'an, the Bible or the Torah. The Court of Appeal accepted his evidence, finding that he considered all those books to be holy books, and thus that he was conscience-bound by his oath. This is despite the fact that in Islamic jurisprudence, an oath taken by a Muslim is only binding if taken on the Qur'an.

9. Since it cannot be assumed that every believer knows all the theological doctrines pertaining to their faith

tradition, in the courtroom the emphasis is upon receiving the live testimony and determining the credibility of the witness, on the basis of how much the witness considers themselves bound by the oath or affirmation. For witnesses who openly profess to be adherents of a particular faith that is scripture-based, the swearing of an oath is a profoundly solemn undertaking. Some extremely strict believers may choose to affirm instead because they believe that swearing an oath is not a procedure to be undertaken in a non-religious context, such as some Orthodox Jews for example.

Holy scriptures

10. Different faith traditions place varying emphases upon their holy scriptures in the context of their overall belief. Many faith traditions are oral, or not based on scripture as such, while others, such as Hinduism or Jainism equally revere a number of scriptures. For some, there is one central text, which is the direct word of God and so signifies the actual Divine presence. For all, their books must be handled with respect and sensitivity.

Ritual purity

11. Certain faith traditions insist that anyone handling a holy scripture be in a state of ritual purity.

12. This ritual purity may be achieved by performing ablutions involving the use of water, or by other means (for example, the use of incense or earth, which may not be suitable in the courtroom context).

13. A witness may indicate the need to perform ablutions by referring to the 'need to wash' or may even specify that they need 'to wash their hands/face/feet'. An opportunity to use a washroom for this purpose should be given to the witness.

14. In certain religious traditions, women who are menstruating/recovering from childbirth would be unable to obtain ritual purity and therefore may prefer to affirm rather than handle their holy scriptures. It is for this reason that it is preferable and good practice for the holy books to remain covered in a separate cloth when not in use and when being handled by court staff so as to avoid causing offence to believers. Needless to say all handling of holy scriptures should

be with the utmost respect, and no holy book should be put on the floor or thrown down.

15. Other practices:

    a. Hindu and Sikh witnesses may wish to remove their shoes.

    b. Jewish or Muslim witnesses may wish to cover their heads when taking the oath.

    c. Hindu witnesses may wish to bow before the holy scriptures with folded hands before or after taking the oath.

    d. Witnesses may prefer that the scripture is only touched by the right hand.

    e. These practices should be facilitated, to enable such witnesses to consider themselves most conscience-bound to tell the truth.

16. Great sensitivity is required when a witness indicates a preference to swear an oath on a holy scripture of a faith of which they are not an adherent because their particular holy scripture is not available in court. Even though according to the ***Kemble*** criteria that evidence might be acceptable, for the sake of clarity it is

preferable that oath-taking is upon the appropriate scriptures and if there is any doubt, affirmations are declared.

Good practice by court staff

17. Witnesses should be presented with a choice between the two equally valid procedures of making an affirmation or swearing an oath by court staff, before they come into court.

18. If they do wish to swear an oath, witnesses should be informed about the availability of different scriptures in court, in order to reassure them that asking for a particular scripture is not an inconvenience. They should not be persuaded to swear an oath on the New Testament for the sake of convenience.

19. ***If*** they indicate a preference to swear an oath, witnesses should be invited to identify the holy book on which they wish to swear an oath, and if it is not available, they should be encouraged to bring their own copy of the holy scripture to court.

20. If it is not possible to obtain the appropriate holy scripture, it is good practice for the witness to be

invited to affirm, even if they are willing to swear an oath on the holy book of another religion.

21. It must not be assumed that all minority ethnic individuals are practising adherents of their faith; many consider themselves non-practising/secular.

22. Different witnesses from the same faith tradition in any one court proceeding should all be given the choice to affirm or swear an oath, and no assumptions should be made.

Specific practices of the different faith traditions

23. For more detailed consideration regarding the different faith traditions please refer to the entries in the JSB (now the Judicial College) *Equal Treatment Bench Book*.

24. The most common wording of the oath is:

'I swear by [substitute Almighty God/name of God (such as Allah) or the name of the holy scripture] **that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.'**

25. The most common wording for making an affirmation is:

'I do solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.'

26. The form of oath for any child or young person aged 14 to 17 years, and for any person before the youth court commences 'I promise by …'.

27. The evidence of a child aged under 14 years is given unsworn.

Bahais

- May choose either to affirm, or possibly swear an oath. For the Bahai their word is their bond.
- The holy scripture containing the teachings of their Guide is called the *Kitabi- Aqdas*.

Buddhists

- May choose either to affirm, or possibly swear an oath.
- A form of declaration to Buddhists which starts 'I declare in the presence of Buddha that . . .' is erroneous and should be discontinued.
- A Tibetan Buddhist who wishes to swear an oath, should be asked to state the form of oath that they will regard as

binding on their conscience. (In Tibetan practice, oaths are normally taken in front of a picture of a deity, a photograph of the Dalai Lama or any Lama of the witness's practice, if taken at all.) Sometimes, such a witness will take an oath by taking a religious textbook on his head and swearing by it. If such a witness does not stipulate such a practice and does not have the appropriate book with them, they should affirm.

Christians

- May choose to swear an oath or affirm.
- Their holy scripture is the *Bible*, most often the part that is known as the *New Testament* will suffice.

Hindus

- May choose to affirm or swear an oath.
- Of their many holy scriptures, the *Bhagavad Gita* is considered suitable for the purposes of swearing oaths.
- The *Bhagavad Gita* may be kept in a covered cloth, and the suggested colour is red.
- Questions of ritual purity may arise.

Indigenous traditions

- May choose to affirm or swear an oath.
- Many peoples from Africa, Native Americans, and Aboriginal peoples from Australia maintain their own traditional religious heritage. Making affirmations would be in line with this heritage.
- Some also follow other faith traditions as well, in which case they may choose to swear an oath on a holy scripture.

Jains

- May choose either to affirm, or possibly swear an oath.
- Since there are many different groupings, no single text can be specified, but some may choose to swear an oath on a text such as the *Kalpa Sutra*. Sometimes such a witness will swear an oath by placing a holy scripture upon their head and swearing by it. If such a witness does not stipulate such a practice and does not have the appropriate text in court, they should affirm.
- Questions of ritual purity may arise.

Jews

- May choose to affirm or swear an oath.
- Their holy scripture is known as the *Hebrew Bible* or the *Pentateuch* sometimes also referred to as the 'Old Testament'.
- The *Hebrew Bible* may be kept in a covered cloth, and the suggested colour is black.
- Jews should not be asked to remove their head coverings in court.
- Questions of ritual purity may arise.

Muslims

- May choose to affirm or swear an oath.
- Their holy scripture is known as the *Qur'an*.
- The *Qur'an* should be kept in a covered cloth, and the suggested colour is green.
- Muslims should not be asked to remove their head coverings in court.
- Questions of ritual purity may arise.

Moravians/Quakers

- May choose either to affirm, or possibly swear an oath.
- A suitable holy scripture is the *Bible*, most often the part that is known as the *New Testament* will suffice.

Rastafarians

- May choose either to affirm, or possibly swear an oath.
- A suitable holy scripture is the *Bible*, most often the part that is known as the *New Testament* will suffice.
- Rastafarians should not be asked to remove their head coverings in court.

Sikhs

- May choose to affirm or swear an oath.
- Their holy scripture is known as the *Guru Granth Sahib*, and a portion of it known as the *Sunder Gutka* may be suitable for the purposes of swearing an oath in court proceedings.
- The *Sunder Gutka* should be kept in a covered cloth, and the suggested colour is orange or yellow.
- Sikhs should not be asked to remove their head coverings in court.

- The form of the oath which stipulates swearing by the 'Waheguru' is not recommended since the Sikhs believe in swearing an oath before God.
- Questions of ritual purity may arise.

Taoists

- May choose either to affirm, or possibly swear an oath.
- Many Taoists in the UK are members of the Chinese community and many of them would also consider themselves to be adherents of Confucianism.
- Both Taoism and Confucianism permit the membership of and participation in the communal practices of other faith communities, so many may also be, for example, Buddhists, Christians or Muslims.
- The Taoist holy scripture is the *Tao Te Ching*, although those who are also practising other faith traditions may choose to swear upon their appropriate holy scripture.

Zoroastrians

- May choose either to affirm, or possibly swear an oath.
- Their holy scriptures are known as the *Avesta*.

Other forms of oath taken in court

(*Note:* In every case, the appropriate form of oath or affirmation (as set out in the main text) precedes the words set out below.)

Witnesses

- '…that the evidence which I shall give shall be the truth, the whole truth and nothing but the truth.'
- '…that I shall answer truthfully any questions which the court may ask of me.'

Interpreters

- '…that I will well and faithfully interpret and true explanation make of all such matters and things as shall be required of me according to the best of my skill and understanding.'

Naming systems

Names and forms of address

28. What follows are some very basic explanations of certain minority ethnic community naming systems, but all must be read with the proviso: *there is no homogeneity only tremendous diversity and no assumptions can be made*.

Construction of names

29. Naming systems generally reflect how family and community life is organised. Where groupings have been historically significant (as in much of Africa and Asia), names that indicate membership of them will be important for individuals. Where family and community life has traditionally had a less structured character (such as across most of Europe), personal and parental names tend to receive greater emphasis.

    a. Many members of minority ethnic communities continue to name their children according to the traditional naming systems, which comprise their cultural heritage/identity.

b. It cannot be assumed that everybody from that community will necessarily follow the same rules. Some members from minority ethnic groups may adapt their names to fit in with ethnic UK social conventions and official requirements.

30. Given below are:

a. some examples of naming patterns from the various minority ethnic communities

b. some dos and don’ts of names and forms of address.

The ethnic UK context

31. In the traditional ethnic UK naming system, each person will have one or more personal names, followed by a surname/last name (often reflecting clans/origins e.g. McKenzie/York or occupation e.g. Baker/Taylor).

32. Most personal names are gender-specific. The surname/last name is normally also a family name, shared by all members of the immediate family.

33. Traditionally on marriage, a woman ceases to use her ‘maiden’ name and instead adopts her husband’s

family name, and the children of the marriage assume their father's last name. Unmarried couples may or may not adopt this course, and some women retain their maiden name for professional (but not necessarily family) purposes.

Main components:

personal name(s) + last name/family name.

Examples:

Robert Frederick McKenzie; Elizabeth Marie Baker.

African names

34. Traditionally across sub-Saharan Africa, names would consist of personal names only. Each of the many peoples of Black Africa had their own naming practices, and names indicated ethnic group and cultural background.

35. Most personal names are gender-specific, but there may not have been 'surnames', or family names, as in modern Europe.

36. These traditional naming practices have been transformed, on the one hand by religion and on the other by colonialism. The adoption of Christian or

Muslim personal names has been widespread across Africa (varying according to the spheres of religious influence). Family names have also been introduced.

Main components:

personal name(s) + last name/family name.

Examples:

Julius Nyerere; Kwame Nkrumah; Pauline Wanjiku Njuguna.

Caribbean names

37. As a result of colonialism and the influence of Christianity, the majority of African-Caribbeans may follow the ethnic UK naming pattern of personal name(s) and last name.

38. In previous generations, greater use was made of Biblical names from the Old Testament.

Main components:

personal name(s) + last name/family name.

Examples:

Moses John Joseph; Leroy Smith; Ruth Garfield.

Chinese names

39. Traditionally, the Chinese naming system consisted of a last name/family name followed by personal name(s).

40. Most personal names are gender-specific. The importance of the family name is stressed by it being placed first in the sequence.

41. Many British Chinese have adapted their names to follow the Ethnic UK system. In addition to using their traditional Chinese names, many Chinese nowadays may also use a European personal name.

    Main components:
    personal name(s) + last name/family name.

    Examples:
    Lan-Ying Cheung; Alison Wing; Wen-Zhi Man.

Hindu names

42. Generally, Hindu names have three components: a personal name, followed by a middle name, followed by a last name/family name.

43. Some Hindus do not use a family name, and use personal and middle names only. Most personal names are gender-specific.

44. Middle names can signify a gender designation such as Lal/Bhai (masculine) or Devi/Bhen (feminine).

45. A Hindu woman usually takes her husband's last name/family name on marriage. Most Hindu names will follow the Ethnic UK naming system.

    Main components:

    first name(s) + gender designation + last name/family name.

    Examples:

    Vijay Lal Sharma = personal name (Vijay) + gender designation (Lal) + last name/family name (Sharma).

    Jyoti Devi Chopra = personal name (Jyoti) + gender designation (Devi) + last name/family name (Chopra).

    Indira Gandhi = personal name + last name/family name.

Muslim names

46. Muslim names vary considerably largely due to the vast cultural diversity of the adherents (from Albania to China).

47. The personal name may be a single word, or in itself comprise two words, in which case it would be incorrect to pronounce only one of the two. For example, in the name Abdul Rahman it would be incorrect to pronounce only Abdul or only Rahman.

48. Most personal names are gender-specific. In all instances, it is better to ask the individual how they would like to be addressed.

49. In certain parts of the Indian subcontinent, it is also common practice to have a middle name, which designates a gender title like Begum/Bibi (feminine) or Miah/Agha (masculine). The last name/family name can often designate clan (e.g. Khan) or derive from the father's first name (e.g. Habib).

    Main components:

    personal name(s) + gender designation + last name/ family name.

Examples:

Abdul Rahman Habib = personal name (Abdul Rahman) + last name/family name (Habib).

Aziz Ullah Baig = personal name (Aziz Ullah) + last name/ family name (Baig).

Amina Bibi Khan = personal name + gender designation + last name/family name.

Talal El-Alí = Talal (personal name) + El-Alí (last name/ family name).

A name may also be preceded by an honorific title such as:

a. Hajji (masculine)/Hajja (feminine) (someone who has performed the obligatory pilgrimage), or
b. Shaykh or Sayyed/Sayyeda or even the name Mohammed classifies as an honorific title, or
c. the gender designation Bibi/Begum (female), Miah/Agha (male). (Note: these may be spelt differently according to transliteration conventions).

Examples:

Hajji Akbar Shah = honorific title (Hajji – masculine) + personal name (Akbar) + family/last name (Shah).

Sayyida Nusrat Mohammed Khan = honorific title (Sayyida – feminine) + personal name (Nusrat) + family/ last name (Mohammed Khan).

Sikh names

50. Most often, Sikh names comprise a personal name, a (religious) gender designation and a last name/family name.

51. In most cases, Sikh personal names are gender-neutral and therefore gender can be designated by the addition of the male (religious) epithet ‘Singh’, or the female epithet ‘Kaur’, followed by the last name/family name, although this is by no means obligatory, and possibly becoming less common.

Main components:

personal name + religious gender designation + last name/family name.

Examples:

Manjit Singh Dhillon = personal name + male religious designation + family/last name.

Manjit Kaur Dhillon = personal name + female religious designation + family/last name.

or simply:

Manjit Singh = personal name + family/last name.

Terminology

Terminology in use for minority ethnic communities

Black

52. The term 'Black', which at one time in Britain was felt to be derogatory, now has a **positive** meaning as a result of the political civil liberties movements in the 1960s and 1970s. To the extent that the term is used in its political/sociological context, it may be used to refer to all minority groups. However as a descriptive term, Black can refer to all people of **Caribbean** or **African** descent.

Coloured

53. The once commonly used term 'coloured people' is now considered **offensive,** as it assumes the inferiority of those who are not 'white' by focusing on the 'racial' origin of people.

People of colour

54. This expression is more popular in the United States, although it is occasionally used in the UK. It also implies a status based on racial (and therefore **inferior**) categories, and so should be **avoided**.

Visible minorities

55. The expression ‘visible minorities’ has gained ground in the last few years as an acceptable term whose scope is wider than ‘black’, but is itself **problematic**, as it seems to imply the existence of invisible minorities.

Minority ethnic/minority cultural/minority faith/multicultural/multi-faith

56. These terms for communities are now widely used and are considered **acceptable** as the broadest terms to encompass all those groups who see themselves as distinct from the majority in terms of ethnicity, culture, and faith identity. The terms encompass, for example, groups such as the Greek and Turkish Cypriots, Chinese, Irish.

57. The reverse order of words, **‘minority ethnic’** has the advantage of making clear that ethnicity is a component of **all** people’s identity whether from the minority or majority.

58. It is for this reason that the term ethnic UK or (ethnic English/Welsh/Scottish) is valuable because it signifies

that everyone has an ethnicity, and it is not simply the 'prerogative' of those who are 'different' (i.e. 'we' are 'normal'). This dangerously ethnocentric view is sometimes conveyed by reference to minority communities as 'ethnics', a **patronising** expression which should certainly be **avoided**.

59. Similarly, it is valuable to distinguish and **specify** the **context** of the term utilised and be specific: is it in terms of **ethnicity**, or **culture**, or **faith** that we wish to distinguish and why?

Immigrants

60. The description of all people of minority ethnic origin as 'immigrants' is highly **inaccurate** given the period of time the majority have been settled in the UK. The term is **exclusionary** and liable to give **offence**. Except in reference to 'immigrants' in the strict, technical sense, all such terms should be avoided. Likewise, any expressions referring to 'second/third generation' immigrants is exclusionary and is likely to cause offence given the fact that these individuals are British citizens.

Refugees/migrants

61. Although not synonymous, the terms ‘refugee’ and ‘migrant’ in general refer to those people who have had to escape from **political crises** in their home countries, or those who consider themselves here on a **new** or **temporary basis**. Given the negative media attention to such peoples and those who are ‘asylum seekers’, care must be taken when using these terms to ensure **accuracy** in **factual** or **technical** terms.

Asylum seekers

62. A now almost **pejorative** term despite its origins being based in a noble and humanitarian tradition, and should only be used where **technically** and **factually accurate/necessary**.

Race, ethnicity and culture

63. Race: is often used in the specific context of delineating personal characteristics, such as physical appearance, which are permanent, non-changeable, and not a question of choice but how one is perceived.

64. Ethnicity: is used to define those factors that are determined by nationality, culture, and religion and are

therefore to a certain and limited extent subject to the possibility of change.

65. Culture: is more characterised by behaviour and attitudes, which although determined by upbringing and nationality, and perceived as changeable.

West Indian/African-Caribbean/African

66. The term **'West Indian'**, although used in the UK as a broadly inclusive term to describe the first generation of migrants who came to the UK in the 1940s and 1950s from the Caribbean, was not in use in the Caribbean islands, where island origin was and remains the criterion of identity. Those who came from the Caribbean Islands at that time still think of and often describe themselves as 'Jamaican', 'Barbadian', 'Guyanese' and so on. The term 'West Indian' may not necessarily give offence, but in most contexts it is **inappropriate**. It may also be felt to have colonial overtones, and is better avoided unless people choose to actually identify themselves in this way.

67. The term **'African-Caribbean'** (as opposed to **Afro**-Caribbean) is much more **widely used**, especially in

official and academic documents, to refer to black people of Caribbean origin, although it is not generally used by black people amongst themselves. Where it is desirable to specify geographical origin, use of this term is both **appropriate and acceptable**. The term does not, however, refer to all people of Caribbean origin, some of whom are white or of Asian origin.

68. Young people born in Britain will probably not use any of these designations, and will simply refer to themselves as '**Black**'. Where racial identity is relevant, it will therefore be appropriate to describe them by this term (rather than to describe them as African-Caribbean or West Indian). However, increased interest among young black people in their African cultural origins is resulting in a greater assertion of the African aspect of their identity, and the term 'African-Caribbean' is now more widely used in some circles. Likewise, the term '**African**' is **acceptable** and may be used in self-identification, although many of those of African origin will refer to themselves in national terms as 'Nigerian', 'Ghanaian', etc.

Asian/Oriental/British Asian

69. People from the **Indian sub-continent** do **not** consider themselves to be 'Asians'; this term being one applied to them for the sake of convenience in Britain. People from the Indian sub-continent identify themselves rather in the following sets of terms: their national origin ('Indian', 'Pakistani', 'Bangladeshi'); their **region** of origin ('Gujarati', 'Punjabi', 'Bengali'); or their **religion** ('Muslim', 'Hindu', 'Sikh'). The term most appropriate to the context should be used; national, regional or religious.

70. However, the term 'Asian' may be **acceptable** in cases where the exact ethnic origin of the person is unknown. Strictly speaking, however, it would be **more accurate** to make a collective reference to people from the Indian sub-continent as being of '**South Asian**' origin, so as to distinguish them from those from South Eastern Asia (e.g. Malaysians and Vietnamese) and from the Far East (e.g. Hong Kong Chinese). The term '**Oriental**' should be **avoided** as it is imprecise and may be considered racist or offensive.

71. Young people of South Asian origin born in the UK may accept the same identities as their parents. However, this is by no means always the case, and some may choose to assert themselves as 'Black' or 'British Asians', although the use of either these phrases requires great sensitivity.

British

72. Care should be taken to use the term 'British' in an **inclusive** sense, so that it includes all inhabitants or citizens of our multi ethnic, multicultural society. Exclusionary use of the term as a **synonym** for '**white**', '**English**' or '**Christian**' is **unacceptable**.

Mixed parentage/dual-heritage/mixed race/half-caste

73. The term '**half-caste**' is generally found **offensive** and should be avoided. The term **mixed parentage** connotes a **neutral** appraisal of the factual reality of being born to parents who are from a **mixture** of cultural and ethnic backgrounds, whilst **dual-heritage** may sometimes be used to describe children born of parents with **two** distinct backgrounds.

74. The term **mixed race** may be considered slightly **pejorative** to the extent that it focuses upon the **racial** identity of the parents as opposed to other factors such as culture or ethnicity.

Terminology for disabled people

Key points

75. The word ‘disabled’ should not be used as a collective noun – ‘the disabled’ do not constitute a separate group. Avoid referring to someone as ‘handicapped’. The phrases ‘people with disabilities’, ‘disabled people’ and ‘disabled person’ are acceptable.

76. Disability or impairment is not the same as an illness. It is a personal quality in the same way as is being tall, short, or red-haired. It is the experience of prejudice, which places an inappropriate qualitative value on these attributes.

77. Avoid the terms ‘mental illness’ and ‘mental handicap’ – use instead ‘person with learning difficulties (or disabilities)’ and ‘person with a mental health problem’.

78. Avoid also referring to ‘the blind’ or ‘the deaf’ – use instead ‘people who are blind’ (the same is true for ‘deaf people’).

79. Other terms to use include: ‘physical disability’, ‘sensory impairments’, ‘partially sighted’, ‘deaf without speech’, ‘cerebral palsy’ and ‘persons with special needs’.

80. People are not medical conditions so do not label them as ‘epileptic’ or ‘arthritic’ – use instead ‘person with epilepsy’.

81. The commonly used terms *impairment*, *disability* and *handicap* are frequently treated as if they mean the same thing, but they do not. It is necessary to distinguish the differing aspects of an illness or condition. It is suggested that a correct use of the common terms is as follows:

    a. an individual may suffer from an illness or disorder

    b. this may result in a disability which comprises:

        i. the limitation imposed upon the individual by reason of their physical, mental or sensory impairment, and

ii. the handicap that this imposes on the individual in their environment

c. if the disability is of a sufficient degree, the individual may be treated as legally incapacitated (or incompetent)

d. this may be due to mental incapacity or physical inability or both.

World Health Organisation definitions (1982)

82. **Impairment:** a permanent or transitory psychological, physiological or anatomical loss or abnormality of structure or function.

83. **Disability:** any restriction or prevention of the performance of an activity, resulting from an impairment, in the manner or within the range considered normal for a human being.

84. **Handicap:** a disability that constitutes a disadvantage for a given individual in that it limits or prevents the fulfilment of a role that is normal depending on age, sex, social and cultural factors, for that individual.

Use of terms

85. To use any of these terms as labels, especially in the wrong context, is stigmatising and demeaning to the persons concerned. We should avoid referring to 'the disabled' or 'the handicapped' as if referring to a distinct class, and comparisons with 'normal' are inappropriate. The phrase 'disabled people' is criticised by some because it emphasises the disability rather than the person, but it is preferred by the *Disability Rights Commission* and the alternative of 'people with disabilities' is difficult to use consistently. It does no harm, however, to use it with emphasis on occasions.

The magistrate at home

86. You may be asked to deal with applications outside court hours. The purpose of these notes is to provide a handy reference guide to assist in dealing with these requests.

87. The guidelines are not exhaustive. **You must be very careful before signing any document at home.** In

the case of unusual requests and in all cases, if you are unsure or have any doubts, you should contact a member of the legal team either at the court office or their home. If you are unable to contact anyone, **do not sign the document** but ask the applicant to attend at their local courthouse during normal working hours.

88. This document cannot cover all of the applications that can be made to a single justice. Many statutes contain provisions for applications that can be made and some of these may, by necessity, have to be considered outside normal court hours because they are required urgently. This document provides some guidance on the most common applications.

All applications

89. **You should not deal with any warrant application without obtaining legal advice from a member of the legal team.**

90. For other documents, if in any doubt, please seek guidance as to your powers.

91. There may be local agreed practices and procedures for dealing with out of hours applications – you should

therefore refer to any local protocols or guidance before dealing with any applications.

92. All documents that you are asked to sign or witness must be complete and typewritten or handwritten in ink. **Never** sign or witness a document that is incomplete or has been written in pencil.

93. Always read the document and ensure that it is signed in your presence. Where a document has already been signed by the applicant, ask them to countersign it in your presence.

94. No matter how much time or trouble you may take over these 'extra judicial duties', you must not charge a fee or accept a gift or favour for undertaking them.

95. Where required, an oath must be taken on the applicant's Holy Book. If this is not available, the applicant should affirm. The details of any required oaths or affirmations are given below.

Search warrants

96. The majority of applications are made by police officers, but warrants may also be requested by employees of the local authority, animal welfare

inspectors, HM Revenue and Customs, UK Borders Agency and various other bodies.

97. The most common applications are for a warrant to search for:

    a. stolen property under the Theft Act

    b. controlled drugs under the Misuse of Drugs Act

    c. firearms under the Firearms Act.

98. Applications may also be made for a warrant to enter premises and **search for evidence** under the Police and Criminal Evidence Act (PACE). These applications may only be made in certain cases. The procedure is outlined in PACE. Extra care should be taken with these applications because they may only be applied for in limited circumstances and in some cases application must be made to the higher courts. The search warrant may authorise search of specific premises or any premises occupied/controlled by the person specified in the warrant. The warrant may authorise entry to and search of premises on more than one occasion. Advice should always be sought

from a legal adviser when dealing with such applications.

For all search warrant applications

99. You should have been contacted by a legal adviser who will have made the necessary arrangements for the applicant to visit your home or place of work. Applications may now also be made via telephone conference and/or video-link. If this is not the case and you have been approached directly by the applicant, **do not** deal with the application. You **must contact a legal adviser before** hearing the application and signing the forms presented, to ensure that you have jurisdiction and that the necessary legal and administrative requirements have been complied with.

100. When the applicant attends, request formal identification from them.

101. Where the applicant is a police officer, check that the application has been authorised by an inspector or senior officer on duty. The application **must** be signed by both the applicant and the authorising officer.

102. The applicant should bring with them the written and signed application setting out the grounds for why it is

being made, together with sufficient copies of the search warrant and any other paperwork required. The forms are prescribed by the Criminal Procedure Rules. The legal adviser referring the application to you will advise you as to how many copies of the warrant are required and what paperwork the applicant should bring with them. Ask the applicant to sign the application. This must be done in your presence. If the documents have already been signed, ask the applicant to sign them again.

103. The applicant takes an oath or makes an affirmation. The wording is not prescriptive. The following are examples of what they may say:

"…this is my name and handwriting and the contents of this information are true and correct to the best of my knowledge and belief."

"….that the evidence I shall give shall be the truth, the whole truth and nothing but the truth."

"……that the information I shall give is true to the best of my knowledge and belief."

(For guidance in relation to forms of oath and affirmation see *Oaths* at the beginning of this section.)

104. The legal adviser will already have explained what the applicant must identify if you are to issue the warrant. Question the applicant to satisfy yourself of the grounds. In particular, ensure that the premises are precisely identified in the documents and that all relevant details have been completed.

105. **Human Rights.** Before a search warrant can be issued, you must be satisfied that the application complies with the Human Rights Act 1998. A search warrant involves entry into a person's home and therefore may interfere with, for example, their right to private and family life. In addition to the statutory criteria for the warrant, the application must pursue one of the following aims:

    a. the interests of national security

    b. the interests of public health

    c. the economic well-being of the country

    d. the prevention of disorder and crime (this will usually be relevant)

e. the protection of health and morals

f. the protection of the rights and freedoms of others, and

you must be satisfied that the granting of the warrant is a proportionate response to the perceived risk.

106. If you are satisfied that the necessary grounds exist, sign the application and put a date and time on it. However, only sign and date the warrant and copy warrants – do not put a time on them. Where the application made via telephone conference or video-link a digital signature will suffice.

107. **Giving Reasons.** The forms prescribed by the Criminal Procedure Rules require that reasons are given and recorded for the granting or refusing of a search warrant. There is a section on the new application form that you must complete.

108. Retain the original application document and hand the warrant to the applicant. The retained information should be handed to the court office at the earliest opportunity.

Guidance from the Justices' Clerks' Society – *Justices' Guidance Booklet: Dealing with Search Warrants* can be found in the *Magistrates* section of our Learning Management System.

Additional information

109. You should sign one copy of the application (the one you retain and return to the court office) and two copies of the warrant itself, clearly marked as such (a copy for the owner/occupier of the premises, one to be endorsed and returned to the court post execution/expiry).

110. There are different forms to be completed depending on the section of the Act the application is being made under. You must be satisfied you are signing the appropriate form (the legal adviser will have checked this with the applicant).

111. The application **must** contain the following information:

    a. the Act and Section under which the application is being made

    b. the name of the person making the application

c. the premises to which it relates and are to be entered (including reference to any vehicles, adjoining land etc. These must be clearly defined.)

d. the object of the search i.e. the items or person sought

e. the grounds on which the application is made

f. the date, and

g. the court name and code.

112. There are different forms to be completed depending on the section of the Act the application is being made under. You must be satisfied you are signing the appropriate form.

113. The applicant must answer any questions you may have in relation to the application. If they do not, or you are not satisfied with any answer, then you should refuse the application and invite the applicant to attend court.

114. Appropriate questions may include:

a. how reliable is the information

b. what grading is the information

c. has the information been corroborated e.g. police observations.

115. When considering an application for a warrant to search for drugs and stolen goods the applicant must have reasonable grounds to believe that the items sought are on the premises at the time you grant the application. An application cannot be made in advance e.g. where the applicant believes items may be at the premises at a later time.

116. **Stolen Goods.** You must be satisfied that there is reasonable cause to believe that any person has in their possession or custody or on the premises any stolen goods.

Controlled drugs. You must be satisfied that there are reasonable grounds for suspecting that illegal drugs are in the possession or custody of a person on the premises.

Firearms. You must be satisfied that there are reasonable grounds for suspecting that an offence under the Firearms Act has been, is being or is going to be committed.

Evidence. You must be satisfied that there are reasonable grounds for believing that an indictable offence has been committed, that there is material on the premises which is likely to be of substantial value to the investigation of the offence, it is likely to be relevant evidence and it is not items subject to 'legal privilege', 'excluded material' or 'special procedure'. In addition, you must be satisfied it is not practicable to communicate with any person entitled to grant entry or access to the evidence or that entry to the premises will not be granted without a warrant, or that any search would be frustrated/prejudiced without immediate entry.

117. Warrants allow for one entry to premises (save those made under section 8 Police and Criminal Evidence Act 1984) and must be executed within three months. Warrants relating to searches for drugs (section 23 Misuse Drugs Act 1971) are valid for one month.

Utility warrants

118. Representatives of utility companies may apply to a magistrates' court for warrants of entry to premises to

inspect/read a meter, install pre-payment meters and/or to disconnect a supply.

119. A majority are now dealt with in bulk applications via telephone conference. The applicant will take the oath and outline the details of the applications over the telephone. Magistrates do not see any paperwork but details are placed on the applications register to create a formal record.

120. When considering any application, the court must be satisfied:

    a. that the company or its employees have a right to enter the premises (e.g. because a sum of money for the supply of gas or electricity is owed);

    b. **that** access is reasonably required (e.g. to fit a pre-payment meter, inspect, or disconnect);

    c. if entry is sought to enforce payment, there has been a demand for payment and payment in full has not been made within 28 days;

    d. the **sums** owing are not in genuinely in dispute;

    e. that notice has been given of the intention to enter to fit a meter or disconnect;

f. that the occupier has been given the opportunity to challenge the warrant in court.

Other warrant applications

121. You may be asked to consider applications for other types of warrant. All applications must go be referred to a legal adviser first. The most common of these are:

a. **Mental Health.** A representative from either Social Services or the mental health team may apply for a warrant to remove a person to a place of safety, usually a hospital and to enter premises, by force if necessary. Similar provisions also apply to persons who are incapable of looking after themselves and are refusing assistance.

b. **Noise.** Applications can be made by the local authority where ‘noise nuisance’ is alleged. The most common applications are in respect of burglar alarms which have been activated where the premises are either empty or the occupier is cannot be contacted. In this case, a warrant may be issued to allow for the alarm to be deactivated.

Other applications

Witnessing a signature

122. You may be asked to witness the signing or preparation of certain documents in order to prevent fraud or deception. However well known the signatory may be to you, you must insist that the document is signed in your presence. Some signatories may be impatient with this procedure, but you must demand formality.

    a. Examine the document and ensure that you are entitled to witness the signature. Most official documents contain a list of persons entitled to be a witness. If Justice of the Peace is not mentioned, refer the person to the court, a Citizens Advice Bureau or Law Centre.

    b. Ask the signatory to sign the document in your presence, in ink and at the appropriate place.

    c. Date the document the day on which it was signed.

    d. Countersign the document in the appropriate place, adding your title of Justice of the Peace and

initial any alterations there may be within the text of the document.

Statutory declaration

123. Sometimes legal procedures require a person to make a statutory declaration containing a particular statement. These are regularly dealt with at court, usually in respect of fixed penalty tickets and fines imposed in the absence of the accused.

124. You do not have to establish in your own mind the truth of the contents; you are simply attesting that you were present and heard the maker of the declaration declare that the contents were true. A statutory declaration can be made in respect of any statement but the deponent should be warned that if anything in the statement is false or untrue they could be guilty of a serious criminal offence. If in any doubt, contact the legal adviser or refer the applicant to the local court.

    a. Unless you know the person yourself, you should request formal identification from the applicant (e.g. photocard driving licence or passport) and confirm their identity.

b. An oath is not required when making a statutory declaration. The following wording should be contained in the document and should be read aloud by the applicant in your presence:

"I (full name), do solemnly and sincerely declare that the contents of this declaration are true. And I make this declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835."

c. Ask the applicant to sign the declaration in ink.

d. Date the document the day on which it was signed.

e. Countersign the document in the appropriate place, adding your title of Justice of the Peace and initial any alterations there may be within the text of the document.

f. Return the document to the person. You are not required to supply a copy of the document to the court office.

Other documents

125. These include passport applications, oaths of allegiance, firearms certificates and other examples

too numerous to mention. These documents usually ask you to confirm by your signature that the person completing the document is known to you.

126. Read the document carefully and check whether:
    a. it is a requirement that the applicant is known to you, and if so, for how long
    b. you as a JP are entitled to witness the document
    c. anything needs to be read aloud by the applicant
    d. the applicant has to produce any additional documents or identification.
127. If you are unsure or unable to proceed, either ring a legal adviser or refuse to sign and request that the applicant attend at the local courthouse where the documents can be checked.
128. If you are satisfied that you can proceed, sign the form where stated and add the title JP.
129. Some jurisdictions require that a document be stamped or sealed, in which case refer the matter to a legal adviser who will make the necessary arrangements.

Religious dress – veils in court

130. The following is an extract from the JSB's (now the Judicial College) booklet, *Fairness in courts and tribunals*, which is itself a summary of guidance published as part of the JSB's (now the Judicial College) *Equal Treatment Bench Book*. Any reference to judges should be read to include magistrates as part of the same judicial family. Readers may wish to refer to the full version of that guidance, which is available at http://www.jsboard.co.uk/etac/etbb/index.htm.

*"At the heart of the guidance on the wearing of the full veil, or **niqab**, in court, is the principle that each situation should be considered individually in order to find the best solution in each case, with the interests of justice remaining paramount.*

If a person's face is almost fully covered, a judge may have to consider if any steps are required to ensure effective participation and a fair hearing – both for the woman wearing a niqab and for other parties in the proceedings.

Victims and complainants. *It is clearly important that people are not deterred from seeking justice or not getting a fair hearing by a sense that they are excluded from court. It may be possible for evidence to be given wearing a veil, or for the woman to agree to remove it while giving evidence. Other measures are available to the court, such as screens, video links, clearing the public gallery. A short adjournment may be provided to enable the woman to seek guidance. What is clear is that a decision on these matters should ideally be reached after discussion at a preliminary hearing.*

Witnesses and defendants. *Similarly a sensitive request to remove a veil may be appropriate, but should follow careful thought as attending court itself is a daunting prospect for witnesses and may affect the quality of evidence given. While it may be more difficult in some cases to assess the evidence of a woman wearing a niqab, the experiences of judges in other cases have shown that it is possible to do so. Where identification is an issue, it must be dealt with appropriately and may require the witness to make a*

choice between showing her face or not giving evidence.

Advocates. The starting point should be that an advocate wearing a full veil should be entitled to appear when wearing it. The interests of justice will be paramount and the judge may need to consider – in the particular circumstances that arise – if the interests of justice are being impeded or not by the fact the advocate's face cannot be seen, or they cannot be heard clearly."

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