



"EITHER WAY" OFFENCE

This is a case which can be dealt with either by the Magistrates Court or the Crown Court.

Before any decision is made as to where the case will be tried, the Magistrates will need to have an indication of the likely plea.

If a **"not guilty"** plea is indicated, the Court Clerk will ask the Prosecutor to make representations regarding the complexity and/or seriousness of the offence(s), to enable the Magistrates to decide whether they are able to deal with the case themselves. This is called "mode of trial".

If the Magistrates decide that they are unable to deal with it, then the case will be sent to the Crown Court. Even if they decide that they can deal with the matter themselves, you still have the option to choose to go before a Crown Court. Where there are Co-Defendants, if one of the Defendants elects Crown Court trial, then it is likely that all the Defendants will be committed to the Crown Court, although it is possible, in certain circumstances, to have Co-Defendants dealt with separately in different Courts.

If a **"guilty"** plea is indicated, then the Magistrates will deem you to be convicted of the offence(s), and will simply have to decide whether or not they have the power to impose an appropriate sentence.

This decision will be based upon an outline of the facts of the case made by the Prosecutor, together with an indication of any previous convictions you may have, and a plea in mitigation made on your behalf. Where the case is to be sent to the Crown Court, then a decision as to bail will also have to be made. The Magistrates may also ask for a pre-sentence report from the Probation Service.

PROCEDURE

The procedure is carried out as follows:-

- (1) The charge will be written down and read out to you by the Clerk.
- (2) The Clerk will explain the procedure to you.
- (3) You will be asked whether, if the offence went to trial, you would plead guilty or not guilty.
- (4) If you say that you would plead guilty, then the case proceeds as though you have entered a guilty plea (see above).
- (5) If you say you would plead not guilty or you choose to indicate no plea, it is then the turn of the Prosecution and the Defence to tell the Magistrates whether they think the case is suitable for trial in the Magistrates Court or the Crown Court.
- (6) The Magistrates then consider which type of trial is more suitable (see above).

- (7) If the Magistrates decide that summary trial is more suitable, the Clerk will explain to you that you can agree to this, or you can choose to be tried in the Crown Court. S/he will also explain that the Magistrates have the power to commit you to the Crown Court for sentence.
- (8) You tell the Magistrates whether you agree to a summary trial or wish to go up to the Crown Court. (If the Magistrates have decided that the case should be sent to the Crown Court, then you have no choice).

Arriving at Court

You should arrive at Court at least 30 minutes before the hearing time and should report to the Court Usher at the Reception Desk on arrival, otherwise the case may go ahead in your absence, or other cases may be taken in its place.

Court Ushers usually wear black gowns so that they can be easily recognized. They can answer queries, e.g. where to wait, identifying solicitors, and are also responsible for telling Defendants when it is time for them to go into the courtroom.

At the hearing

You must always stand (unless physically disabled) when the Magistrates come in or go out of the courtroom, as a mark of respect. Similarly, you must stand when the charge is read out. You should also stand up when spoken to or when wishing to speak, as this will mean that the Magistrates will give you their full attention. When speaking, you should face the Magistrates and speak directly to them, and, if possible, also speak loudly enough for everyone in the room to be able to hear. The Magistrates should be addressed as "Sir" or "Madam".

The Court Clerk will introduce the case to the Magistrates and will read out the charge(s). S/he is also there to advise the Magistrates on points of law, and to advise Defendants who are not represented by a solicitor. The representative from the Crown Prosecution Service is responsible for presenting evidence that the offence has been committed by a Defendant.

The Youth Court

The Youth Court deals with children and young people under the age of 18. The public are not allowed into this Court, although members of the Press may be present. However, the Press are not allowed to reveal the names and addresses of young people coming before the Court, unless specific permission is given by the Magistrates.

If you are aged under 16, an "appropriate adult", e.g. parent, guardian etc., must be present to help explain to you what is happening and to give information to the Court, if necessary, about you. If you are aged 16 or 17, the Court may require a parent or guardian to attend Court, if appropriate.

Dunn & Baker – Here to help you

Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.