



In certain circumstances where a Defendant has pleaded guilty to an offence, the Magistrates/Judge may still order a full hearing of the case, with witnesses attending to give evidence in Court.

This normally occurs where the Defendant, although admitting the actual offence, does not agree with the version of events as indicated by the Prosecution, **and** where the disputed facts are likely to affect the sentence.

This can arise where a Defendant enters a guilty plea on his or her own version of events (known as a "Basis of Plea"), but this version is rejected either by the Prosecution or the Court. It can also arise where a substantially different account of events is given to a Probation Officer by a Defendant when a pre sentence report is being prepared.

Where the sentence would be the same, whichever version of events is accepted, then it is not deemed necessary for the evidence to be heard. Under those circumstances the Defendant's version will be accepted. The decision whether to hold a hearing of the evidence is that of the Magistrates/Judge.

In 'Newton' hearings, the burden of proof is on the Prosecution to satisfy the Magistrates/Judge beyond reasonable doubt that their version of events is the correct one.

Where a Defendant's version is "manifestly absurd", a court is not obliged to waste time by hearing evidence before rejecting it.

The hearing itself takes the form of a trial. Both Prosecution and Defence have the opportunity to call such evidence as they wish and to cross-examine the witnesses called by the other side.

However the Defendant remains convicted by his or her own guilty plea, regardless of the outcome of the hearing.

If a finding is made against a Defendant (that is, the Magistrates believe the Prosecution version of events), there is only a very limited right of Appeal.

Please note that if the Magistrates/Judge decide against the Defendant, this may mean a loss of some of the credit the Defendant would otherwise have received for a guilty plea, although the Defendant is still entitled to some credit for his/her plea.

If a finding is made in favour of a Defendant (that is, the Magistrates' prefer the Defence version of events), that account becomes the "official" account of the incident, and the Defendant is sentenced on this basis.

THE NEWTON HEARING

- Once the hearing starts, the Prosecution representative makes a speech in which he describes the

offence and the evidence which is going to be given by the Prosecution witnesses.

- He then calls the Prosecution witnesses to give evidence. Each witness will firstly be asked questions by the Prosecution and then may have to answer questions from the Defence (cross-examination). Following the cross-examination, the Prosecution may ask further questions.
- Then it is the turn of the Defence to put forward their Defence. If the Defendant is the only witness to be called, then the Defence lawyer cannot make an opening speech, but must call the Defendant straightaway. If there are other Defence witnesses, then he is entitled to make a speech, outlining the defence which is going to be put forward by the witnesses. He then calls the witnesses and questions them. The Prosecution lawyer may cross-examine the witnesses and the Defence lawyer may then ask further questions.
- The Magistrates/Judge will then consider which version of events they accept. Magistrates are allowed to ask the Clerk to join them in order to advise them on points of law, but he must not advise them about the facts of the case.
- The Magistrates/Judge give their verdict. The Defendant may be sentenced there and then, or, as is more usual, the case may be put off to another date for sentencing to take place.

WHEN YOU GIVE EVIDENCE

- When you are called to give evidence, you will be shown into the Witness Box. You should stand up, but if you find this difficult, e.g. you are disabled, you can ask to sit down. You will then be asked to take the oath, that is to swear to tell the truth on the Bible or Holy Book of your religion. You may, if you prefer, affirm, which is a promise to tell the truth. If you want to do this, you should tell the Usher when you are in the Witness Box, or before you go in. The Usher will hand you a card with the appropriate words, for you to read aloud.
- You will be asked questions first by the Defence lawyer, who will take you through the evidence that you have given in your statement. Then the Prosecution will be able to ask you questions (this is called cross-examination). When the cross-examination has finished, the Defence may ask you further questions, to clear up any matters which have come out in cross-examination. A Magistrate, the Clerk or the Judge may also ask you questions.
- Try to speak slowly and clearly and take your time about answering. If you are not sure of anything, say so. If you don't understand or can't hear the question, ask for it to be repeated.

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.