



A SHORT GUIDE TO THE CRIMINAL PROCESS

This guide is intended to give a very brief summary of the criminal investigation and trial process. It should not be substituted for proper legal advice, which is always free and readily available when a person is interviewed at the police station.

CONTENTS



(1) THE POLICE INVESTIGATION

- Police powers - searches and warrants.
 - Stop and search
 - Cans / can'ts
 - Strip searches
 - Sex / Gender
 - Entering private property
- When can the police make an arrest?
- The police caution
- Rights in a police interview
- The interview process
 - Being fit for interview
 - Time at the station
- Leaving the station without (or before) charge



(2) BEING CHARGED WITH A CRIMINAL OFFENCE

- Being charged
 - Bail
 - Custody
 - Postal requisition
- Out of court disposals



(3) THE COURTS - TRIAL, SENTENCE AND APPEAL

- Types of court
- Which court will the case be heard in?
 - Magistrates Court
 - Crown Court
 - Youth Court
- The court process
- Sentencing
 - Who decides and how?
 - What sentencing powers to the courts have?
- Appealing a conviction/ sentence

A NOTE ON LEGAL AID

The Legal Aid Agency ('LAA') is a government agency that pays for the legal representation of people who meet its eligibility criteria.

More information on this criteria can be found at: www.gov.uk/guidance/work-out-who-qualifies-for-criminal-legal-aid

At the police station - representation is always **free**. The LAA pays a fixed fee to the legal representative, no matter who the client is.

At court - representation under the Legal Aid Scheme is determined by two tests:

(1) The **means test** - this is information about the applicants income, capital and outgoings to determine their 'disposable income'. If the applicant meets a certain threshold, they cannot receive any Legal Aid, or will be asked to make a financial contribution. The threshold differs for the Magistrates Court and the Crown Court.

(2) The **interests of justice test** - there are various factors to this including the complexity of the allegation, the likely sentence and the defendants ability to understand the proceedings.



(1) THE POLICE INVESTIGATION

Police powers - searches and warrants

The police have the power to stop and search a person or people in a vehicle and vehicle itself if they have **'reasonable grounds' to suspect** that:

- They have committed a crime, or
- They are carrying illegal drugs, a weapon, stolen property, or something which could be used to commit a crime.

This suspicion must be linked to **accurate and current information**, or to their **behaviour**.

The police will need to be able to explain what aspects of this behaviour informed their suspicion. A 'hunch' is not enough.



Before conducting a search **the police must tell the person they are searching:**

- Their name, and the name of their police station,
- What they are looking for,
- The reason they are searching them- for example because of their behaviour, or they match the description of a wanted person,
- That they can ask for a copy of the search warrant.

It is perfectly legal to **film** the police conducting a stop and search on the street.

The police can only search **outer clothing and bags** in public. If they want to do a more thorough search that involves taking off outer clothing like a hoodie then this has to be somewhere out of public view.

Most stop and searches will take place in a public space. The police can search someone in the garden of a private property if they have reasonable grounds for believing they do not live there, and they are a trespasser.



The police can **enter a private property** if:

- they are invited in
- they hear cries of distress that make them think someone is in need of their help
- to deal with a disturbance
- to execute an arrest warrant, or if a court has granted a search warrant
- if they are chasing a person they believe has committed or attempted to commit a serious crime
- it is a property occupied or controlled by someone who has been arrested, and they suspect there is evidence inside relating to the offence the person has been arrested for a similar or connected offence
- it is a property where a person was arrested or was at immediately before they were arrested, and they suspect there is evidence related to the arrest



A **strip search**, where a person is asked to remove all of their clothing, can only take place at a police station or a private designated police area, and only be done by an officer of the same sex. A strip search will only be **authorised** by a police inspector or a higher ranking officer, if there are reasonable grounds to believe the person has concealed something that:

- could be used to cause physical injury,
- might be used in police detention or in the custody of the court.

If the search involves exposing **intimate body parts** there must be at least **2 people** there other than the person being searched. If the search is of a young person, or mentally disordered or vulnerable person, one of those people must be an **appropriate adult** (see definition on next page), unless the young person says they do not want them present and the adult agrees.

The police must have regard to the vulnerability and sensitivity of the detainee, including religious sensitivities. The police can only remove a **face or head covering** if they have reason to believe it is wholly or mainly for the purpose of disguising identity. It should be removed by an officer of the same gender and away from anyone of the opposite gender if possible.



If there is no doubt as to whether someone is male or female, the police will treat them as that gender (and accordingly sex) for the purposes of their search.

If there is any doubt whether someone is male or female, the police should NOT ask for a Gender Recognition Certificate. They SHOULD ask what gender they person considers themselves to be. They will be treated according to this **preference**, unless there is any indication this does not reflect their **predominant lifestyle**. If they don't want to express a preference, the police will again try to determine their predominant lifestyle and treat them accordingly.



Further resources

For more information on police investigations, check out:

- For Stop and Search- ystop.org
- For information about drug related searches and advice specific to sex workers - release.org.uk



When can the police make an arrest?

To make an arrest, there must be

- Actual, suspected or attempted involvement in a criminal offence by the arrested person, and
- Reasonable grounds for believing that the arrest is necessary, e.g. to prevent the person causing physical injury to themselves or others, to allow prompt and effective investigation of the offence.

The police caution

If the police arrest you, they have to tell you in a language that you understand the reason why you were arrested even if it is obvious. You will also be **cautioned** before any questioning about the offence. The caution is:

"You do not have to say anything. But it may harm your defence if you do not mention, when questioned, something which you later rely on in court."

This is meant to tell you 3 things:

- (1) You have **a right to stay silent.**
- (2) If you want to rely on something in your defence and don't mention this at the police interview, then at court a jury can draw **negative inferences** (conclusions) from this - e.g. that you didn't answer questions because you needed time to make up a story,
- (3) Anything that you do say can be **used as evidence.**



More about the law

Most of the police powers to arrest, interview and charge suspects are contained in the **Police and Criminal Evidence Act 1984 ('PACE')** and accompanying codes of practice - these can be found at:
<https://www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice#pace-codes-of-practice>

Rights in a police interview

A person who attends the police station for an interview will either have been **arrested**, or be attending as a **volunteer**. A volunteer is free to leave the station at any time, and should be told this. If the police want to make you stay, then they have to arrest you.

(1) You have a right to legal representation (a solicitor)

If you have been arrested or invited as a volunteer for an interview, then you will have the **right to talk to a solicitor privately** at any time, including during your interview. A solicitor at the police station is **always free**, as this advice is paid for by the Legal Aid Agency.

If you know which solicitor you want to represent you, then you can ask the police to call the Duty Solicitor Call Centre (DSCC) who will then call them for you. If you don't have a solicitor, the DSCC will instead call a **'duty solicitor'** from a local firm who accept legal aid work. They are **independent from the police**, and are paid the same fixed fee as any other solicitor under the Legal Aid scheme.

In limited circumstances this right might be delayed with authority from a senior officer, but it should never be denied completely.

(2) You have a right to inform someone if you have been arrested

If you have been arrested, you also have a right to have someone informed about the arrest, usually by making a **phone call**. This right can also be delayed in limited circumstances, but it should never be denied.

(3) You have a right to consult the Codes of Practice

These are the rules that set out how the police should behave when doing their job.

(4) If you are under 18 or mentally vulnerable, then you should be appointed an appropriate adult to join you in your interview.

The role of the **appropriate adult** is to protect your interests, by

- Advising you,
- Observing whether the interview is being conducted fairly,
- Helping communication with the person being interviewed

An appropriate adult should be

- A parent, carer or guardian,
- A social worker, or
- Any other responsible adult (over 18) who is not connected to the police.



The Interview Process

Traditionally, all police interviews were conducted at police stations. However, it is now also possible for 'street interviews' to take place. These are recorded on police body worn camera. **It is inadvisable to agree to a street interview, as there is no legal advice available before a street interview.** The police may speak to a suspect about their involvement in their allegation before they conduct an interview, but this should never go beyond a mere request for information. However, evidence of these conversations can still be given as **evidence** at court.



The custody officer will decide if a detainee is 'fit' to be interviewed. An interview should not be conducted if:

- The interviewee does not appreciate the significance of the questions put to him/her, or the significance of their answers,
- The interviewee is not able to understand what is happening because they are drunk, on drugs, or have an illness or condition that makes them unable to understand the process.

Leaving the station without (or before) charge

If an arrested person is released without being charged with a criminal offence, that may not be the end of the matter. Often the police will not have enough evidence to bring a charge but will want to continue their investigations. They can be:

- **Released under investigation** ('RUI') - this is release without any conditions whilst the investigation continues. It may be weeks or months until the released person hears back from the police with a final decision, if at all. The police might arrest them again and re-interview them, they might receive a postal summons (see below), or the police can end their investigation and take no further action.
- **Bailed to return** ('BTR') - the police have the power to release the arrested person on 'police bail', meaning that they will be given a **date and time to come back** to the police station for further questioning and/or a charging decision. The police can attach conditions if these appear necessary, e.g. not to contact a witness. Breaching these conditions is not an offence, but failing to return to the police station for a bail date **is** an offence.
- **No further action** ('NFA') - if the police decide not to continue their investigation any further, then they will take no further action. This should be the end of the matter. The case will only be reopened if new evidence comes to light.



The interviewee should be given **breaks every 2 hours**, and within any period of 24 hours at the station they should be given an uninterrupted period of 8 hours in which to sleep.

A suspect under arrest can be detained for a **maximum of 24 hours** until the police have to make a decision to either:

- charge them with a criminal offence,
- release them without charge, or
- get permission from a superintendent (senior police officer) to detain them for a further 12 hours. This takes the detention time up to **36 hours**.

If the police want to keep the suspect for longer than 36 hours, they must seek **permission from the Magistrates Court** *before* the 36 hours are up. The potential charge must be serious (see below on indictable offences). The Magistrates Court can authorize detention for another 60 hours, taking the total time in detention to **96 hours**.

After 96 hours, the police must either charge or release the suspect. Only terrorism suspects can be authorised for detention beyond 96 hours.



Contact Details

- It is important to exchange **accurate contact details** with the solicitor who attends the interview, so that they can follow up with written confirmation of their advice and any updates on the case progression if it is ongoing.
- If the police have the passwords to confiscated phones or laptops then anything logged in to those devices is **no longer confidential**. A new email address should be created for any legal correspondence.
- If the police need to be contacted for other associated reasons, such as to ask for the return of property that was seized for the investigation, the solicitor can request this.



(2) BEING CHARGED WITH A CRIMINAL OFFENCE

To charge someone means to formally accuse them of a criminal offence. At this point, the police questioning will stop and the case will be passed to the Crown Prosecution Service ('CPS') to prepare for trial at court.

A person can be charged with a different or an additional offence to the one for which they were arrested, depending on what the police investigation has revealed. For example, someone might be arrested for theft, and then charged with the more serious offence of robbery. The CPS will make this decision in all but the most minor allegations, in which case the Police will make the charging decision.

In deciding whether it is appropriate to bring a charge there must :

- (1) Be **enough evidence to provide a realistic prospect of conviction** at court
- (2) Be a **public interest** in prosecuting - this considers the seriousness of the allegation, the impact on the victim and community, and if this would be a proportionate response.

A custody officer will decide if the charged person should be **released on bail** until they appear at court, or be kept in detention and taken to court by the police.



Bail can be **unconditional**, meaning that the only requirement is to attend court on a set date, or it can be **conditional** on the person following additional rules. For example, they may be told that they cannot contact a particular witness, or that they cannot go to a particular place.

If you are kept in **custody** rather than given bail, you will be taken to court within **24 hours** unless it is a weekend or bank holiday.



Conditions will be imposed only if it appears to the custody officer that this is necessary to prevent the person from:

- Failing to turn up to court ('failing to surrender')
- Committing an offence whilst on bail
- Interfering with witnesses or obstructing the course of justice

Sometimes a charge is not brought at the police station, but arrives in the post instead. For example, if you were released under investigation and the police investigation reveals evidence sufficient to bring a charge without conducting a further interview. This is a **postal requisition**.

Out of court disposals

Sometimes it will not be appropriate to charge someone, or satisfactory in the eyes of the police to release them.

A **simple caution** may be given for low level, first time offending. It can only be awarded when

- There is sufficient evidence to justify a prosecution,
- The suspect admits his/her guilt,
- The suspect (now offender, having admitted guilt) agrees to receive the caution and understands that it may be referred to in future criminal proceedings.

A caution is not a conviction, but will remain on the police record and will show up on an enhanced DBS check for the next **6 years**. After that time it can be removed or **'filtered'**, except if it relates to a violent or sexual offence.

A **conditional caution** imposes extra conditions, e.g. repayment for a stolen item.

Another option is an **informal warning** - this may be where the allegation is very minor. It will not be recorded on the Police National Computer.

The agreed policy for youth **under 18** is that where possible they should be diverted away from the criminal justice system to a Youth Offending Team ('YOT') for what is called in London 'triage'. The YOT will decide if they need to take any further steps.

A **youth caution** is a simple caution given to someone aged 10 - 17. An admission of guilt is an essential element. It will remain on the police record for **2 years** for persons under 18.

The YOT team *may* arrange a rehabilitation programme for a first time caution . They *must* do for someone with a previous caution.

The effects of a **youth conditional caution** ('YCC') must be explained to the youth (with an appropriate adult if under 16). Failure to comply with the conditions can result in prosecution.



Find out more

For information on DBS checks , filtering cautions and more go to unlock.org.uk



(3) THE COURTS - TRIAL, SENTENCING AND APPEAL

The types of court

There are **three types of criminal court**:

- A **Magistrates Court** is presided over by lay (non-legally trained) magistrates and their legal advisors, or a District Judge sitting alone. There is no jury.
- A **Crown Court** is where more serious allegations are tried. A judge will decide the issues of law, and a jury of 12 members of the public chosen at random will decide the verdict. The judge will decide the sentence and can impose terms of imprisonment.
- A **Youth Court** is a type of Magistrates Court for defendants under the age of 18. However, their case might be heard in a mainstream court:
 - if a youth is being tried alongside an adult in either mainstream court if it is in the **interests of justice** to do so,
 - if they are charged with a really serious offence they may be tried in a Crown Court.

Which court will the case be heard in?

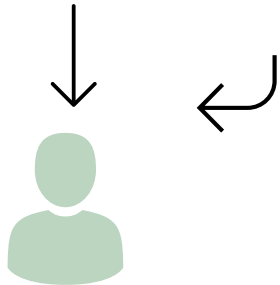
All cases start with a **'first appearance' at the Magistrates Court**, no matter how serious the charge. The defendant will either come to court having been released on bail, or if they were not granted bail at the police station they will be brought by the police 'in custody'. Beyond the first appearance however, where the case will be heard will depend on the type of offence the defendant has been charged with:



Summary only

These are less serious offences such as common assault, minor criminal damage, motoring offences.

These cases are heard in the Magistrates Court (or, if the defendant is under 18, a Youth Court).



At the Magistrates Court:

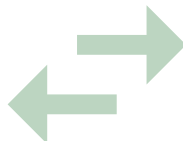
Representatives

You will be represented by a solicitor, or a solicitor-advocate. Another lawyer will prosecute the case.

Who will decide the case?

- EITHER a panel of 3 magistrates, who are non-legally trained volunteers. They are helped by a legal advisor.
- OR 2 magistrates and a District Judge.
- OR a District Judge alone.

Whoever hears your case will decide the verdict - guilty or not guilty.



Either way

These offences can be heard in either the Magistrates Court or the Crown Court. This depends on whether the magistrates believe they have enough sentencing power to deal with the case, and if the defendant consents to have their case in the Magistrates Court or elects to have it in the Crown Court.

If you have a choice of court for your case, some of the things you should consider are:

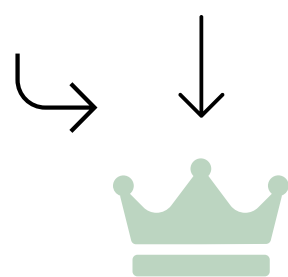
- Sentencing powers are weaker in the Magistrates Court (maximum of 6 months for 1 offence) than the Crown Court (12 months for more than one offence)
- There is a lower rate of conviction in the Crown Court, because juries are often more sympathetic than magistrates who hear a lot of cases every day, and issues of law are dealt with more carefully as there is less time pressure
- The Crown Court can be a more daunting experience
- Crown Court cases can go on for longer
- Most working people are not eligible for legal aid in the Magistrates Court, but will be in the Crown Court.



Indictable only

These are more serious offences such as murder, rape, robbery and grievous bodily harm.

These cases are all heard in the Crown Court (there is no equivalent court for defendants under 18).



At the Crown Court:

Representatives

You will be represented by a barrister, or a solicitor-advocate. Another barrister will prosecute the case

Who will decide the case?

- A jury made up of 12 members of the public will listen to the evidence from both sides, then give a verdict of guilty (convicted) or not guilty (acquitted).
- A judge will decide any legal issues that arise in your case. If you are convicted, they will decide the sentence.



At the Youth Court:

Youth Courts are held inside the Magistrates' Court, and operate in a similar way. The main difference in Youth Court and for youth defendants at the Crown Court is that it will be less formal (e.g. judges do not have to wear wigs), and at Youth Court members of the public will not be allowed to watch. If the defendant is under 16, their parent or guardian **must** attend with them.



For cases being heard at the Magistrates Court only:

Plea

If you **plead guilty** at your first appearance, this removes any need for a full trial. The court can move straight to sentencing or adjourn until sentencing for a pre-sentencing report to be prepared by a Probation officer. If you **plead not guilty**, a date will be set for trial.



For cases proceeding to the Crown Court:

Plea

You will not enter a plea at your first appearance at the Magistrates Court. Instead, you will be given a specific date for a **'plea and trial preparation hearing'** (PTPH) at the Crown Court. If you plead **not guilty** to one or all of the counts, a date will be set for trial.

There might be additional hearings before the trial date, where the court makes decisions to prepare for the trial such as obtaining evidence.

The trial

Although the trials at Magistrates and Crown courts are different in that they are decided by different people (see above), the basic procedure is similar.

The prosecution will present their case first. The defence will try to expose flaws in their evidence through cross-examination.

After the prosecution have given their evidence, if this seems especially weak the defence can ask the judge or magistrates to have the case stopped completely. This is called a **'submission of no case to answer'**.

The **burden of proof** lies with the prosecution. This means that they must prove their case beyond **reasonable doubt**, or so that the court is 'sure'. The defendant does not need to prove their innocence, but if they are arguing a particular type of defence such as self-defence they will need to introduce **evidence** to support that defence.

What sort of evidence can be used?

- **Witnesses** may come to court to answer questions about what happened. This may include police officers.
- **You** can tell the court about what happened, but you do not have to and can stay silent if you want. Your lawyer will be able to advise you on whether to give evidence or not.
- **Other evidence** might include CCTV, documents, photographs or mobile data. Your solicitor might also instruct an **expert witness** to write a report.



Who decides the sentence, and how?

For cases at the Magistrates Court. the Magistrate can find the defendant guilty and pass sentence themselves, or send the case to the Crown Court if they feel, having heard the case, the offence is too serious for their sentencing powers.

For cases at the Crown Court. the jury will decide if the defendant is guilty or not guilty. The judge will then decide an appropriate sentence.

Sentencing is a complex process, and there are detailed **sentencing guidelines** for each offence that magistrates and judges can only depart from in exceptional circumstances. In considering the appropriate sentences, they will look at the circumstances of the offence, and consider the **seriousness (harm and culpability)** of the offence and the circumstances including any **aggravating or mitigating factors**.

If an offender pleads guilty to their crime it usually means they will get a **reduced sentence** - as much as a third will be deducted if they plead guilty as the earliest opportunity. The later the plea, the smaller the reduction.

In sentencing **children and young people** at a Youth Court, the court must have regard to:

- The principle aim of the youth justice system (which is to **prevent offending** by children and young persons),
- The **welfare** of the offender.

More about the law

These guidelines are set by the Sentencing Council - see sentencingcouncil.org.uk



What sentencing powers do the courts have?

There are a large range of sentences available to the courts. These include:

- **Custodial sentences (prison)** - this is available only when the 'custody threshold' has been passed, which means the offence is too serious for a fine/community sentence alone.
- **Suspended sentences** - this is a custodial sentence, but served outside of prison 'in the community' - there will be requirements such as unpaid work, or probation.
- **Fines** - are the most common type of sentence given. They are given for lower level crimes that are frequently committed, such as minor driving offences or criminal damage. The amount is set by the court after considering the circumstances and seriousness of the offence, and how much the offender can afford to pay. Fines can be given to organisations or companies as well as people. There is no maximum fine.
- **Conditional / Absolute Discharge** - these are given for the least serious offences, such as minor thefts. This means that there is no punishment, although the offender still gets a criminal record. A conditional discharge means that if the offender commits another crime they will be sentenced for the first one as well as the new one.
- **Community sentence** - these are mandatory activities carried out in the community, and can include:
 - Unpaid work up to 300hrs
 - Undertaking programmes to change offending behaviour
 - Prohibition from particular activities
 - A curfew, requiring the offender to be in a particular place at certain times,
 - An exclusion requirement, banning them from particular places,
 - A residence requirement to live at a particular address,
 - A prohibition on foreign travel,
 - Mental health treatment, with the offenders consent,
 - Drug/alcohol rehabilitation with the offenders consent,
 - An alcohol abstinence and monitoring requirement with the offender's consent,
 - Where offenders are under 25 they may be required to go to a centre at specific times over the course of their sentences.

At the **Youth Court** the possible sentences are:

- Detention and training orders (Young Offenders Institutes)
- Fines up to £1,000 (up to £250 if the offender is under 14)
- Youth community orders
- Reparation orders
- Referral orders
- Absolute and conditional discharges
- Ancillary orders
- Binding over the offenders parents.

Appealing a conviction/sentence



A defendant who is found guilty in the Magistrates Court has an **automatic right to appeal to the Crown Court**.



A defendant who is found guilty in the Crown Court will usually only be able to appeal if the judge at the original trial made a **legal error**, or if **new evidence** has to come to light.

The '**appellant**' must apply within **21 days** of being sentenced, and only later than this if there is a good reason for missing the deadline. They can appeal the conviction (i.e. the 'guilty' verdict) and the sentence, or just the sentence.

The 'appellant' must apply within 28 days of

- the conviction - if they are appealing against their conviction as 'guilty', or
- the sentence - if they are appealing against the sentence, e.g. because the judge took irrelevant factors into account

An appeal to the Crown Court involves a complete **rehearing** of the case. It will be heard by a Circuit Judge or Recorder sitting with two magistrates. No jury is involved.

The first step is to apply to a judge for **permission to appeal**. If permission is granted, then the appeal will be heard by the **Court of Appeal** (Criminal Division).

The Crown Court can **allow** the appeal (Not Guilty) or **dismiss** the appeal (original Guilty verdict is maintained). They will give reasons for their decision.

The Court of Appeal may hear new evidence if:

- it appears capable of belief,
- it may give grounds for allowing an appeal,
- it would have been admissible (i.e. a type possible to submit) at the original trial,
- it relates to the subject of the appeal,
- there is a reasonable explanation for it not being included in the original trial.

If the appeal is dismissed, the court can still **change the sentence**. This includes increasing it, within the maximum sentencing powers available to the Magistrates Court.

The prosecution can also apply to be paid the **costs** of the appeal, in addition to any costs from the original Magistrates Court trial.

If an appeal is unsuccessful in either court, the appellant can apply to the Criminal Case Review Commission (CCRC). See more at ccrc.gov.uk