

Services to Union Members

Crime and Defence Representation

Useful Information

This information booklet has been created to guide you through the criminal proceedings and steps involved in being questioned by the Police or any other organisation as a suspect, if you are charged with a criminal offence, or if you have to appear in Court.

It covers the following key areas:

Advice and Assistance at the Police Station

If you are asked to attend the Police Station, or have already done so, this section will guide you through the potential outcomes and the steps that follow.

Your Hearing - Court Proceedings

This section covers the many different kinds of cases and whether they are likely to be dealt with by the Magistrates Court or Crown Court, and what this means. It also covers entering a plea, pre-trial hearings and proceedings during a Trial.

Sentencing

This section provides information on the different type of sentences that may be given, from fines to community sentences and imprisonment.

Funding Options

You may be eligible for funding to cover some or all of your costs throughout your Case; however this will depend on a variety of factors.

We offer a 24 hour, 7 day a week Criminal Legal Advice Scheme.
For urgent queries or advice outside of office hours please call **0800 1955407**.

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Advice and Assistance at the Police Station

If you are suspected of having committed an offence and are being interviewed at the police station, you are entitled to free advice from a Solicitor or Qualified Police Station Representative (regardless of your financial circumstances). This can be given face-to-face or over the telephone.

Seeking our advice and assistance at this early stage can dramatically affect the outcome of criminal proceedings. Being interviewed by the Police is often stressful and unfamiliar to many people: our presence will ensure the interview is conducted in a fair and proper manner, and is not intimidating or oppressive in any way.

Thanks to our advice and assistance during initial questioning, a number of cases did not result in charges.

Following your attendance at the Police Station one of the following outcomes will apply:

1. You may have been released without charge.
2. You may be given a Police caution or in the case of a youth, a reprimand or a warning. This applies to cases where the offence is a minor one, and it is being admitted.
3. You may have been granted bail to return to the Police Station at a specified date and time to enable the police to conduct further enquiries into the allegations against you. You will have been given a bail date to attend at the Police Station and if you fail to do so you will be committing an offence and will be liable to immediate arrest. If you are unable to attend, you must inform the Police and/or your Solicitor.
4. If you have been charged with an offence:
 - a) You may be taken immediately before the Magistrates at court who will decide whether or not you should be granted bail. If the Magistrates decide to refuse bail, you have the right to make an application for bail to a Judge in Chambers.

Or

- b) You may be given a first hearing date on which you must attend court. You would be granted bail to attend court on that date at the specified time. If you do not do so you will be committing an offence of failing to surrender to your bail and you will be liable to immediate arrest and imprisonment.
5. You may be reported for summons, or requisition. If this occurs you will receive a letter by post with a date fixed for you to attend court. You must attend court on that date. When you attend court you will be asked if you wish to plead guilty or not guilty.

If you have been interviewed at the Police Station you will be asked if you wish to have a copy of the tape recorded interview. If you have requested the tape you should pass this to your Solicitor together with your Charge Sheet which you will have been handed upon leaving the Police Station.

The Next Steps in Proceedings

In order to progress the matter further we will ask you to provide us with details of the offences charged, your response to the allegations and your personal details. We will then ask the prosecution to provide us with a summary of the evidence against you together with any relevant witness statements (this is known as Advance Disclosure).

The Prosecution may also hold other information in connection with the case which is known as Unused Material. Having received the evidence we will contact you further to discuss the same in detail, following which we should be in a position to provide you with clear advice as to how the matter should proceed and in particular, how you should plead.

Your Hearing - Court Proceedings

1. First Hearing at Magistrates Court

You must attend at the Magistrates Court to answer your bail at the date and time given to you. You should report to the Court Usher when you arrive. We would strongly suggest that you should arrange to arrive at court at least fifteen minutes prior to the time you have been given. The court will ask you to confirm your name, address and date of birth.

a) Summary Cases

Those which can only be dealt with by the Magistrates Court. Examples of summary cases include common assault, minor public order offences and all but the most serious motoring offences. The maximum possible penalty that can be given by the Magistrates is 6 months imprisonment for one offence. If your case is a Summary Case you will be asked whether you intend to plead guilty or not guilty. If you plead guilty at the outset, the court will proceed to sentence on that date or may adjourn for a pre-sentence report. You will be given credit of up to one third which will be reflected in your sentence for a guilty plea. If you plead not guilty the case will be adjourned to a later date when a trial will take place.

b) Either Way Cases

Means that they may be dealt with in the Magistrates Court or the Crown Court. Examples of these include theft, ABH and GBH assault, affray, burglary and drug offences. In either way cases the court must first determine the mode of trial procedure. In order to do this the Magistrates will listen to the evidence submitted by the Prosecution and any representations the Defence Solicitor may wish to make.

The Magistrates will then decide whether the case is suitable to be heard in the Magistrates Court. If they decide they can deal with the case, you will be given the option to decide whether your case should be dealt with in the Magistrates Court or the Crown Court. Your decision will depend upon a number of factors. It is generally believed that Trial by Jury offers the best chance of acquittal, but if convicted in the Crown Court you might be likely to receive a more severe sentence than in the Magistrates Court. This is a very important decision and one upon which we would advise you fully at the appropriate time.

The Magistrates may however decide to direct that the case be heard by the Crown Court. In the event that your case proceeds to the Crown Court in this way, you will need to attend the Magistrates Court after your first court appearance for committal proceedings, when your case is formally committed to the Crown Court. This would usually happen in the more serious or complex cases.

c) Indictable Offences

Those which can only be dealt with in the Crown Court. Examples of these include rape, murder and death by dangerous driving. In such cases, it is now normal practice for the case to appear once in the Magistrates Court after which it is transferred immediately to the Crown Court, the timing of the next hearing being dependent upon whether you are on bail or in custody.

Credit will be given by the Magistrates Court or the Crown Court in any case where an early guilty plea to an offence is entered. This can result in up to a one third discount in any final sentence.

2. Entering a Not Guilty Plea

After you have entered a not guilty plea the court will either set an immediate trial date or adjourn the case and set a date for a Pre-Trial Review hearing. The purpose of this hearing is to enable both the Prosecution and the Defence to prepare cases for trial and to ensure that all witnesses will be available to attend at the final hearing. It is therefore very important that you advise us of any dates on which you or your witnesses are unable to attend.

3. Pre-Trial Issues and Interim Hearings

The court may list your case for any pre trial issues to be resolved. These may include being asked to agree certain witnesses can give evidence in writing rather than attend court, or decide that some witnesses can give evidence behind screens or via television link (these are called 'special measures'). The court may also be requested to decide before the trial whether 'hearsay' evidence (i.e. previous criminal conduct) can be heard at the trial itself. We will discuss fully these elements with you should they apply to your case.

4. Committal Proceedings

If the Magistrates decide that the case should be heard by the Crown Court or you have elected to have a Crown Court Trial, your case will be adjourned for committal proceedings to take place. Following the mode of trial hearing, the prosecution will send their witness statements to the Defence Solicitor who will consider them and decide whether there appears to be a case to answer (a prima facie case). Where there is a prima facie case, at the committal hearing the court will then commit (transfer) the case to the Crown Court for trial. At this stage matters which will assist the progress of the case at the Crown Court will be dealt with (e.g. any relevant alibis, numbers of witnesses to be called to give oral evidence).

5. Crown Court

A Barrister or Solicitor Advocate will be appointed to represent you in the Crown Court. Prior to the hearing you will have a conference with the Barrister or Solicitor Advocate who will discuss the evidence with you and advise you further on your plea.

The next hearing in the Crown Court is known as a Plea and Directions Hearing. You will be required to attend court and will be asked to enter a guilty or not guilty plea. At this stage, if you enter a guilty plea you may immediately be sentenced or your case may be adjourned for a pre-sentence report. If you enter a not guilty plea, your case will be adjourned to enable a date to be set for trial. It is likely that you will receive notification that your case has been placed in the Warned List. When this occurs you must be ready for trial.

6. Trial

You should attend court on the trial date at least half an hour before the time set for your hearing so that the case can be discussed in detail prior to the trial taking place. You must report to the Usher on arrival at the court.

When your case is called, you will be asked to confirm your not guilty plea. Following this the prosecution will call their witnesses. The Solicitor or Barrister

representing you at court will have the opportunity to cross examine these witnesses on your behalf.

If you have decided to give evidence you will be called to do so next, when you will be able to give a full explanation of your version of events to the court. Your Solicitor or Barrister will assist you in giving your evidence. Following this, any supporting witnesses will be called to give evidence on your behalf. Your Solicitor or Barrister will then give a closing speech to the court. Thereafter, the verdict will be decided.

In the case of a not guilty verdict the case will be dismissed.

In the case of a guilty verdict the court may sentence you immediately or may adjourn the case to enable a pre-sentence report to be prepared.

Sentencing and how long the case is likely to take

Pre-Sentence Report

This is a report prepared by the Probation Service to assist the court in deciding which sentencing option would be most suitable in the particular circumstances of your case. It is therefore essential that you co-operate fully to ensure that any recommendation made to the court is favourable to you. This report can either be prepared on the date of the hearing itself or the case may be adjourned in more serious or complex cases.

Types of Sentences

a) Fine

A financial penalty for less serious offences, particularly including motoring offences.

b) Absolute or Conditional Discharge

In this case you would be discharged from the court on condition that you did not commit any further offence within a specified period of time e.g. twelve months. In the event that you did commit an offence during that time period, you would be liable to be sentenced not only for the new offence, but also to be sentenced afresh for the original offence committed.

An absolute discharge involves no such condition.

c) Community Sentences

These are usually imposed for cases that are too serious for a fine or a discharge, but where a term of imprisonment is inappropriate. There can be one or many requirements attached to the Community Order, the important being as follows:

- i) Unpaid work requirement - this would involve between 40 and 300 unpaid hours being completed for the benefit of the community over a given period of time, and is supervised by the Probation Service.
- ii) Supervision requirement - this is a period of supervision by the Probation Service for the purpose of rehabilitation, and this can be for a period of between 6 and 36 months.

- iii) Curfew requirement - this can be up to 12 hours a day for any number of days in the week, and subject to a total period of 6 months. During the stated time and dates, you would be obliged to stay at a particular address and not to go out. The order is supervised by a monitoring company, and involves a tag being worn around the ankle which is electronically linked to a telephone point at the address.

A wide range of other requirements include a drug Rehabilitation Programme, an Alcohol Treatment requirement, Mental Health treatment, a requirement of residence, an exclusion order, an attendant sentence requirement and certain activities being prohibited.

d) Imprisonment

A sentence of imprisonment may be imposed in the case of more serious offences. The Magistrates Court has powers to impose up to 6 months for each either way offence and a total of 6 months for any number of summary only offences.

The terms of imprisonment imposed by the Crown Court are unlimited and as specified for each individual offence.

e) Deferred Sentence

In this case your sentence would be deferred to allow the court to consider your progress and will specify what progress they expect you to achieve within a specified time scale.

f) Suspended Sentence

The court can impose a period of imprisonment, but suspend the order upon certain conditions. These can include a condition that all Community Orders are completed, or a condition to seek alcohol, drug or mental health treatment. A failure to comply with the conditions will mean the suspended order taking immediate effect. Successful completion of the conditions will mean that no term of imprisonment will be imposed.

g) Youth Court

In relation to cases kept in the Youth Court for persons under the age of 18, there are a variety of specific sentences available for youths. Where a person under the age of 18 pleads guilty to his first court conviction for an imprisonable offence, (e.g. theft, assault or excess alcohol) the court must pass a Referral Order for a period of up to 12 months. The requirement of the Order will mean that the youth and an appropriate adult must be in contact with a panel of three suitably qualified people who will provide a number of tasks, including making financial or other reparation to the victim of a crime, attending mediation sessions, carrying out unpaid work for the community.

Other options include a Supervision Order, Action Plan Order and Reparation Order. In serious cases, the Youth Court can pass a term of imprisonment of up to 24 months at a Detention and Training Centre.

h) Ancillary Orders

In addition to the above the court can order a number of Ancillary Orders including, Football Banning Orders, Anti-Social Behaviour Orders, disqualification from driving and Restraining Orders.

When the court considers sentence it will take all relevant matters into consideration including any recommendation contained in a pre-sentence report, any mitigation put forward on your behalf by your Solicitor or Barrister, the state at which any guilty plea was made, any previous convictions and your record of discharging any previous sentences received. If you have no previous convictions the evidence of any character witnesses may be taken into account.

The court will also normally order that a contribution be paid towards the prosecution costs. These costs are normally much higher after conviction at trial, and are dependent upon how long the case lasts and the amount of work undertaken.

How long is the case likely to take?

This guide provides you with an approximation only and will vary depending upon the complexity of the particular case.

- a) Following a charge at the Police Station, where bail is granted for appearance in the Magistrates Court this will normally be 28 working days.
- b) If you enter a guilty plea in the Magistrates Court the case can be dealt with that day, or can take up to between 3 and 12 weeks depending on whether a pre-sentence report is ordered.
- c) If you enter a not guilty plea in the Magistrates Court the case will normally be likely to take between 1 and 6 months.
- d) Where your case is committed to the Crown Court, the following time scales will apply:
 - i) From the first court appearance to the stage of committal proceedings at the Magistrates Court, approximately 4 to 10 weeks (depending upon the seriousness of the case).
 - ii) From the committal proceedings at the Magistrates Court to a trial at the Crown Court approximately 3 to 9 months.
 - iii) On a guilty plea at the Crown Court between 3 and 10 weeks.

Funding Options

1. Police Station Advice Scheme

Under this scheme, where a person is suspected of having committed an offence, the suspect receives free advice from a Solicitor (or his/her representative). The advice can be given face to face or over the telephone. There is no means test, and no form to complete. This system only applies whilst the suspect is at a Police Station.

2. Legal Advice and Assistance Scheme

Under this scheme a person suspected of an offence and before being charged for an offence can be advised and assisted by a Solicitor at the office or on the telephone. This however depends on a person's financial circumstances. An individual with no income or in receipt of certain benefits will automatically qualify for this advice. Those on lower incomes would also generally be entitled to this advice. We will be able to advise you fully on this at the commencement of your case. The scheme does not cover representation at a court hearing. We can carry out 2 hours work on your behalf under this scheme.

3. Representation Order

- a) A Representation Order (formerly known as a Legal Aid Order) will be granted if a Magistrates Court Clerk is satisfied that it is in the interests of justice (merits test) and that an individual is financially eligible (means test).

Merits Test

In deciding whether it is in the interests of justice to grant a Representation Order, a clerk will consider such factors as the risk of imprisonment; the loss of livelihood on conviction; damage to reputation; complex areas of law; whether witnesses need to be traced; the cross examination at trial of any witnesses and whether an individual suffers from any disability, amongst other matters.

Means Test

An individual will be financially eligible for Legal Aid if their gross annual income, adjusted to take account of any partner or children is less than the lower financial threshold. The gross annual income must include any income of a partner, and does not take into account deductions such as tax and national insurance contributions.

Where the gross annual income falls between the lower and upper financial threshold, a calculation will be made of the individual's annual disposable income, deducting income tax, National Insurance, Council Tax, housing expenses, child care costs, maintenance and living expenses from the actual income. The individual may then be financially eligible for Legal Aid. It is only in exceptional circumstances e.g., where an individual has particularly high and unusual outgoings, or because their defence costs are likely to be unusually expensive, that an individual with a gross annual income over the upper financial threshold will be granted a Representation Order. This will be referred to as a 'hardship review'. The lower and upper financial threshold may be subject to change by the Legal Services Commission.

Individuals who receive Income Support; income based Job Seeker's Allowance; guaranteed Pension Credit; or individuals under the age of 16, or under 18 and in full time education, will automatically qualify for a Representation Order under the Means Test.

- b) If a Representation Order is issued it would cover only the costs incurred on your behalf. It would not cover any costs which might be ordered against you. If you plead guilty or are found guilty, the court may order you to contribute towards the legal costs of the prosecution, quite apart from any other financial penalty that the court might order.
- c) A Representational Order granted in the Magistrates Court will normally be extended to the Crown Court for the purposes of committal for trial or sentence. A Representation

Order granted in the Crown Court will cover your representation by Counsel or a Higher Court Advocate.

- d) In order to present an application for a Representation Order to the Court Clerk, a number of supporting evidence will be required, including such items as the most recent wage slip (either weekly or monthly); National Insurance number or evidence of benefits received; bank statements; child care costs; housing costs; or accounts/tax returns. It is vital that you supply this information to us promptly so as to ensure any application for a Representation Order can be made as soon as possible.
- e) If your case has proceeded to the Crown Court, you will be required to fill in a statement which sets out your means for the Crown Court. You will not be asked to pay a contribution during the currency of your case in the Crown Court, but may at the conclusion of the case, if you are convicted after a trial, or lose an appeal against conviction, be ordered to contribute towards both the costs of the prosecution and also the costs of your defence. A Judge will calculate whether or not a Recovery of Defence Costs Order should be made against you, based on your ability to pay, and the financial information set out in the Means Form.

This short guide is intended to provide you with the basic framework applicable to Representation Orders. It is obviously an important area, if you need more information, please do not hesitate to ask. We will provide you with all the necessary forms to present for a Representation Order.

4. Early Cover Scheme

Should the clerk determine that an individual (that is ineligible under the Means Test) satisfies the Merits Test, the Legal Services Commission will pay a standard fee of £75.00 for any work undertaken in any case. This is likely to cover the total costs of one court hearing. However, in the event that the case is adjourned beyond the first hearing, we will need to discuss with you how best to proceed.

In order for this payment to be made, an application for a Representation Order must be made within 2 working days of an individual being charged with any offence.

5. Pre-Order Cover

Should any individual be refused a Representation Order under the Merits and/or Means Test, the Legal Services Commission will pay for up to one hour's preparation in your case. Should a Representation Order be refused and you would wish for more than one hour's advice or preparation, we will discuss with you how best to proceed.

6. Funding in the Crown Court

If your case has proceeded to the Crown Court, you will be required to fill in a statement which sets out your means for the Crown Court. You will not be asked to pay a contribution during the currency of your case in the Crown Court, but may, at the conclusion of the case, if you are convicted after trial, or lose an appeal against conviction, be ordered to contribute towards both the costs of the prosecution and also the costs of your defence. A Judge will calculate whether or not he should make a Recovery of Defence Costs Order against you, based on your ability to pay, and the financial information set out in the Means Form. However in some courts in pilot areas of the country, there is a means testing scheme in place in the same way as the Magistrates Court.
