

# Hearing and trial management

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This is the stage where prosecutors and the courts system hold the offender(s) on trial, manage the experiences of the victim(s) and witness(es) in the courts, and where a verdict is passed with opportunity for appeal.

This module describes the relationship between police and His Majesty's Courts and Tribunals Service (HMCTS) and broadly describes the important elements of the court process.

## Court processes

For a case to be heard in court, it is necessary for police officers to liaise independently with prosecutors, offenders, victims, witnesses and staff of HMCTS. This is to ensure that each is informed and prepared for the trial.

## Adversarial and inquisitorial systems

Court hearings and trials in England, Wales and Northern Ireland follow the adversarial system of justice. In continental Europe the inquisitorial system is generally used.

### Adversarial

The court sits in independent arbitration between the prosecution and the defence. The prosecution makes an allegation and brings evidence to support their case. The defence is only obliged to respond once a *prima facie* case has been made, and can argue at any stage that the prosecution has not made out a sufficient case against the accused.

The court acts as an umpire, requiring both sides to observe the rules. It can call evidence of its own volition only in limited circumstances. In crown court cases, the court is assisted by jurors whose job is to assess the evidence presented to them and then determine guilt or innocence. If the jury finds the prosecution has proved its case beyond reasonable doubt, the court will determine the

sentence. It is not the central purpose of a trial to discover the truth, although it is hoped that this will be established. The central purpose is to establish whether, within the rules, the prosecution can prove its case beyond reasonable doubt.

## **Inquisitorial**

The court operates as a tribunal investigating the circumstances of the crime and strives to find the truth. Elements connected to the investigation are examined, the evidence and its evaluation are accumulated in an open file, and a determination is made by the court.

## **Preparation for the first court hearing**

The court arranges a pre-trial review within specific timescales. Several parties attend the pre-trial review, including police officers, the prosecution and officials of [HMCTS](#). Each party is required to identify disputed issues, agree on a timetable for the prosecution process, select witnesses, provide information on any written evidence that will be presented in the trial, and notify the court of any special arrangements needed to facilitate the participation of the witness(es) and defendant(s) in court.

For further information see:

- [The Criminal Procedure Rules 2011](#)
- [Better Case Management Revival Handbook 2023](#)
- [DCA \(2006\) Delivering Simple, Speedy, Summary Justice](#)
- [Protocol between the Association of Chief Police Officers, the Crown Prosecution Service and His Majesty's Courts and Tribunals Service to expedite cases involving witnesses under 10 years \(2015\)](#)

## **Pre-trial witness interviews**

These interviews allow prosecutors to speak to witnesses and clarify or assess the reliability of the evidence they could give, and to reach a decision about any aspect of the case. Pre-trial witness interviews can take place at any stage of proceedings, from pre-charge up until the witness begins to give evidence at the trial.

See Crown Prosecution Service (CPS) guidance on [pre-trial witness interviews](#) for further information.

## Offence types

These offences are categorised into three groups:

- summary offences, which can only be tried in the magistrates' court
- indictable offences, which can only be tried in the crown court
- either way offences, which can be heard in either type of court

Criminal cases go to the crown court in three ways, ie, they:

- have been previously sent or committed to the court for trial from a magistrates' court, for example, for sentencing
- are appeals against conviction or sentence from the magistrates' court

However, if a not guilty plea is presented at a magistrates' court in relation to an either way offence, the defendant or defence has the right to elect or choose trial by jury at crown court, even if the magistrates' court determines that the case is suitable for summary trial.

## Summary offences

Summary offences can only be tried in the magistrates' court, as outlined by the Magistrates' Courts Act 1980 s 2. The maximum sentence for a summary offence is six months or the sentence prescribed in the statute creating the offence, and/or a maximum fine of £5,000. The Act also places severe restrictions on magistrates in the use of sentences of less than 12 months' duration.

In a magistrates' court there is no jury. Trials are usually heard by three lay magistrates, although a small number of magistrates' courts are presided over by a full-time official, the district judge. These courts can only try offences committed in their area. Normally proceedings for summary offences must begin within six months from the time the offence was committed. Magistrates' courts are the first instance courts for all offences.

When an offender is charged with either way or indictable offences, which go to the crown court, any linked or connected offences may also go to the crown court.

## Indictable offences

All common law offences are indictable, including murder, rape and robbery. They must be dealt with in the crown court. Crown courts hear the more serious offences, regardless of whether the

defendant pleads guilty or not.

Trials for indictable offences in a crown court are held in front of a jury, and are presided over by a judge. If the jury determines that a person is guilty, the judge decides on the sentence. For those convicted of murder, the only sentence available is life imprisonment. Maximum penalties for other offences are laid down by statute, and may include a discretionary life sentence or a simple term of years.

For further information see:

- [Magistrates' court](#)
- [CPS guidance on sending indictable only cases to the crown court](#)
- [President of the Queen's Bench Division \(2012\) Jury Irregularities in the Crown Court: a Protocol issued by the President of the Queen's Bench Division](#)
- [authorised professional practice \(APP\) on HMCTS](#)

## **Either way offences**

Either way offences are those which can be tried in either a magistrates' court or a crown court (unless the defendant pleads guilty). Offences which are either way include theft, burglary and wounding, where the relative seriousness of the offence can vary hugely depending on the facts. The full list is set out in the [Criminal Justice Act 1988 \(Reviews of Sentencing\) Order 2006](#).

A defendant may opt to be tried in a magistrates' court if charged with an offence that is identified as triable either way. Magistrates have the right to try a case and then submit it to a crown court for sentencing if they feel their powers are inadequate to deal with the seriousness of the matter. Here tougher sentences can be imposed if the defendant is found guilty. A mode of trial hearing is held to determine whether the case should be heard in a magistrates' court or a crown court.

## **Mode of trial hearing**

A mode of trial hearing decides in which court a case will be heard, magistrates' or crown, and is only held in cases where the defendant pleads not guilty or refuses to state a plea. The first part of the hearing is called plea before venue, where the defendant is asked to indicate a plea of guilty or not guilty. If the plea is guilty, the case is handled by the magistrates' court and proceeds to sentence. If the magistrates' court considers the offence so serious that its powers of punishment do not suffice, it will commit the defendant to the crown court. This also applies if the summary

offence or either way offence is related to an offence for which the defendant or another defendant has been sent for trial to the crown court.

If the defendant indicates a not guilty plea, the magistrates will consider recommendations made by prosecutors, the seriousness of the offence, the defendant's previous convictions, and assess whether their powers of punishment are adequate when deciding on the mode of trial.

In a trial on indictment, the defendant has no right to insist on a summary trial.

If the magistrates' court decides on a summary trial and the defendant is found guilty, the case cannot be retrospectively committed to the crown court.

A [pre-trial review](#) is subsequently held to agree on dates for the trial.

For further information see [CPS guidance on unduly lenient sentences](#).

## Young offenders

Persons between the ages of 10 and 17 years are tried and sentenced in the youth court, presided over by suitably qualified magistrates, for both summary and indictable offences. However, there are five circumstances in which a young offender will be sent directly to the crown court for trial. This occurs when they are charged with:

- homicide (murder or manslaughter) or causing or allowing the death of a child or vulnerable adult
- a firearms offence
- an offence carrying a sentence of 14 years' or more imprisonment for a person over 21 years of age
- a specified violent or sexual offence as defined in the [Criminal Justice Act 2003 s 224\(1\)](#)
- an offence for which they have been jointly charged with an adult aged over 18 years who has been sent for trial for the same, or a related, indictable offence

Proceedings in a youth court are less formal, for instance robes and wigs are not usually worn by the court officials. For those offenders under 16 years, a parent or guardian must be in attendance.

In determining guilt or innocence, however, the criminal rules of evidence and the burden of proof and standard of proof are the same (the prosecution must prove guilt beyond all reasonable doubt).

For further information see [CPS guidance on youth offenders](#).

## Presentation of evidence

There are rules regarding the order in which any victims and witnesses are called and evidence is produced. Evidence is the means by which some fact is proved, disproved or rendered more or less likely. Its value is judged by relevance to the case, admissibility and weight.

## Victim and witness evidence

Victims and witnesses provide evidence to a criminal trial. This can be presented in different ways:

- orally in person as a witness testimony
- through a television live link
- by showing a video recording of a victim or witness interview
- via witness intermediaries
- in written form using an impact statement, for example, a [victim personal statement](#) or key witness written statement

Every witness giving evidence in court must take the oath or make an affirmation.

## Bad character evidence

This is evidence of, or a disposition towards, misconduct on the part of the defendant, rather than evidence relating to the facts in issue. Leave is required before evidence of bad character can be admitted in the case of a non-defendant. Such evidence is only admissible if:

- it is of important explanatory value
- it has substantive probative value in relation to a matter which is in issue in the proceedings
- it is of substantial importance to the case as a whole
- all the parties agree to the admissibility of the evidence

[Evidence of previous convictions](#) can also be used to support evidence of bad character.

## Important explanatory value

Evidence of important explanatory value is evidence without which the court or jury would find it impossible or difficult to properly understand other events in the case, and it is of substantial value

for understanding the case as a whole.

## **Substantive probative value**

Evidence going to a matter in issue must have substantive probative value for understanding the case as a whole. To assess that value, the court must have regard to:

- the nature and number of events to which the evidence relates and when those events were alleged to have happened
- the similarity between alleged instances of misconduct
- any other factors the court considers to be relevant

## **Admissibility**

Evidence of a defendant's bad character is admissible where:

- it is offered by the defendant, or is given in answer to a question asked in cross-examination
- the evidence is going to a matter in issue between the defendant and prosecution
- it has substantive probative value in relation to a matter in issue between the defendant and a co-defendant
- it is evidence to correct a false impression given by the defendant

## **Evidence of previous convictions**

Where bad character is raised during a trial, the court is encouraged to look beyond the type of offence previously charged or the basic facts of the conviction. Unlike the old common law rules, previous offending no longer has to have a striking similarity. Therefore, significant features such as aspects of the mode of operation, characteristics of victims and types of weapons used may show a propensity which would not otherwise be obvious from the charge or basic facts.

The prosecution must be able to verify the facts and circumstances of the previous offending using, where necessary, the original case papers and victim or witness testimony. The prosecution must strike a balance between proving bad character and the practical considerations of obtaining evidence of previous offending.

When investigators are completing form **MG16 – Evidence of Bad Character** and preparing case files for the CPS, they must ensure that all relevant case papers, certificates of conviction and other relevant evidence are sourced as early as possible. This may also include tracing victims and

witnesses. If the prosecution is to produce evidence of previous bad character at trial, it is required to comply with notice requirements under [The Criminal Procedure Rules 2011](#) and to disclose relevant documents to the defence under the [Criminal Procedure and Investigations Act 1996 \(CPIA\)](#).

## Exhibits

Exhibits are for use in court. They are documents or other items shown to a victim or witness and referred to by them in evidence. According to common law, it is within the power of and is the duty of a constable to retain things which may be evidence of a crime.

Prior to the trial an audit trail for exhibits must be provided to the prosecution, to satisfy the prosecutor and court that there has been no break in the chain for the handling of any exhibits. This is usually achieved by obtaining statements from all individuals who have had any dealings with an exhibit. The prosecuting counsel will then indicate which exhibits are relevant. The police are responsible for arranging the transportation of exhibits to and from the trial venue, for their security and their production as requested by the court.

Following a trial, all exhibits should be returned to the secure storage area pending an appeal. The police determine which items should be retained and any methods of disposal for others.

For further information see the [APP on Exhibits management](#).

## Expert advisers

An expert adviser (EA) is any person who is able to assist an investigation because their specialist knowledge and/or experience allows them to give an opinion on a particular matter, or provide a specialist service directly related to their expertise. An EA is independent of the police service and is usually called upon to solve a specific problem.

An EA becomes an expert witness if subsequently required to give evidence in court.

The CPS definition of an expert is:

*a person whose evidence is intended to be tendered before a court and who has relevant skill or knowledge achieved through research, experience or professional*



*application within a specific field sufficient to entitle them to give evidence of their opinion and upon which the court may require independent and impartial assistance.*

According to the CPS:

*The difference between an expert and other witnesses is that experts are the only witnesses allowed to give opinion evidence.*

This would include, for example, forensic, medical or ballistics opinion.

Court interpreters and [witness intermediaries](#) are also EAs.

For further information see:

- [APP on Managing investigations](#)
- [National Crime Agency \(NCA\) Major Crime Investigative Support](#)

## Court interpreters

Following the requirements laid out in the [European Convention on Human Rights Article 6](#), any defendant in a criminal investigation and court proceedings who cannot understand or speak the language used in court has the right to the free assistance of an interpreter, translator or language service professional.

This applies to oral statements, documentary evidence and the pre-trial proceedings. A translation or interpretation should be provided of all those documents or statements which it is necessary for the defendant to understand, in order to have the benefit of a fair trial.

The provision of interpreters for defendants in court is the responsibility of [HMCTS](#). The police service uses the HMCTS interpreters' contract only.

For further information see:

- [National Agreement on Use of Interpreters](#)
- [The Law Society: Use of Interpreters in Criminal Cases](#)
- [APP on European investigations](#)

## Witness intermediaries

The potential use of an intermediary to assist vulnerable witnesses to give their best evidence should be considered as part of the broader use of [special measures](#). The provision of an intermediary must be available to all eligible witnesses, subject to the court's discretion in deciding whether to make a special measures direction. The approval of appointment by the court may be retrospective. The absence of an intermediary at the police interview does not preclude the use of an intermediary at trial.

For further information see:

- [Ministry of Justice \(2012\) The Registered Intermediary Procedural Guidance Manual](#)
- [NCA Major Crime Investigative Support Witness Intermediary Team](#)
- [APP on the Witness intermediary scheme](#)

## Sentencing

Where the defendant is convicted, the court has various sentencing or other disposal options available to them. For information on out-of-court disposals, see the [out-of-court disposals framework](#).

## Community sentence

Courts can impose a community order when the offence is serious enough to justify this. The requirements of the order can combine punishment with activities carried out in the community. These are designed to change offenders' behaviour and to make amends, sometimes directly to the victim of the crime or the local community. In cases where the offender is under 25 years of age, an attendance centre requirement can also be imposed. Community sentencing is supervised by the National Probation Service.

For further information see:

- [Sentencing Council](#)
- [GOV.UK – Community sentences](#)

## Fine

For some offences, the court has the option to impose a monetary fine with or without a community or custodial sentence. The amount of the fine is set by the court and should reflect the seriousness of the offence and the offender's ability to pay. Enforcement of this sentence is carried out by [His Majesty's Courts and Tribunals Service](#) bailiffs and enforcement officers.

## Custodial sentence

Custodial sentences are reserved for the most serious offences and are imposed when the offence committed is, as [section 152\(2\)](#) of the Criminal Justice Act 2003 describes, 'so serious that neither a fine alone nor a community sentence can be justified for the offence'.

A custodial sentence may also be imposed where the court believes it is necessary to protect the public. The length of the prison sentence depends on the maximum penalty for the crime and the circumstances of the offence and offender.

For further information see [Mandatory and Minimum Custodial Sentences](#).

## Offences taken into consideration

A defendant who has been convicted of an offence can ask the court to take other offences into consideration when passing sentence. The court will generally increase the sentence because of the offences taken into consideration (TICs), as these show that the offender has committed multiple offences. These offences are listed on [form MG18](#).

For further information see [Sentencing for offences taken into consideration \(TICs\)](#).

## Acquittal

If the court finds the defendant not guilty, they are acquitted and free to go. For information on the retention of forensic material including DNA and fingerprints, see the forthcoming guidance on forensic science.

## Deferred sentence

This is a form of sentence in which the final decision about any punishment is suspended to a later date.

## Conditional discharge

If the court sees fit, it can discharge a person conditionally for a specified period of time (no minimum period and not more than three years). This means that the person must not commit a further offence during that time period. If they do commit a further offence, they will be guilty of breaching their conditional discharge and will be re-sentenced accordingly.

## Absolute discharge

Where a person has pleaded guilty or been convicted of an offence, in certain circumstances the court may, instead of imposing a sentence (and on summary complaint instead of convicting), discharge that person absolutely. No penalty is imposed, and in summary proceedings no conviction is recorded.

This is the lightest measure that can be ordered by a court following a conviction. It implies that the process of prosecution and finding guilt is itself a sufficient response to the offence.

## Appeals against conviction and sentence

For those who do not win their case, there may be a right of appeal from a lower court to a higher court. Appeals may be made against conviction or sentence however, an appeal against sentence may result in a higher as well as lower sentence. The Court of Appeal, at the Royal Courts of Justice in London, hears appeals from the crown court.

The prosecution also has a right of appeal in certain circumstances. Those who feel that they have experienced miscarriages of justice can have their case reviewed.

For further information see:

- [Appeals process](#)
- [Appeals to the Court of Appeal](#)

## Miscarriages of justice

The [Criminal Cases Review Commission](#) is an independent body which investigates alleged miscarriages of justice in England, Wales and Northern Ireland. It assesses whether convictions or sentences should be referred to a Court of Appeal.

# Tags

Case management