Criminal Procedure

# Criminal Procedure

## Key personnel

### Defence solicitors

Most defendants will be represented by a solicitor. The defence solicitor will provide advice and assistance to a suspect in the police station, before the suspect is charged. If the suspect is charged, the defence solicitor will represent them in the magistrates' / Crown Court.

### Police

Investigate criminal offences. Includes power to stop and search suspected offenders, powers to search premises and the power to arrest suspects. The police have additional powers following an arrest.

The National Crime Agency investigates serious, organised and complex crime.

### CPS

Responsible for prosecuting individuals. The head of CPS is the Director of Public Prosecutions (DPP). Responsibility for deciding the charge the suspect faces rests with the CPS rather than the police. Representatives from the CPS are based in police stations.

After a suspect has been charged, the CPS retains responsibility for the prosecution of the case. CPS is an independent organisation.

A prosecution should be brought if:

1. There is enough evidence to provide a realistic prospect of conviction, and
2. It is in the public interest for a prosecution to be brought.

### Magistrates' Court

* Lowest level court in the **criminal** hierarchy. Virtually all cases start in the Magistrates' Court, and around 95% end there.
* Tries all summary (minor) offences, and some triable either way (mid-range) offences
* Power to impose fine of £5000, and/ or 6 month prison sentence for single offence
* Can commit defendant to the [Crown Court](D:\Users\Shivan\Documents\LegalPracticeCourse\Criminal%20Litigation\Civil%20Litigation\Courts\Crown%20Court.html) either for sentence or trial. This will be either because they do not have the power to impose a higher sentence, or because the offence is one triable either way and a Crown Court trial is more appropriate.
* The Magistrates' Court does not create precedent, but is bound by the Administrative Court, [Court of Appeal](D:\Users\Shivan\Documents\LegalPracticeCourse\Criminal%20Litigation\Civil%20Litigation\Courts\Court%20of%20Appeal.html) and Supreme Court.

### Functions

1. Issuing search and arrest warrants
2. Issuing warrants for further detention under the Police and Criminal Evidence Act 1984
3. Trying summary offences and either way offences
4. Sending indictable-only offences and some either way offences to the Crown Court for trial.
5. Dealing with applications for a representation order; and
6. Dealing with applications for bail.

Most magistrates are not legally qualified! They are members of the local community who have volunteered their services. They will be advised on law, practice and procedure by a legal adviser.

Sometimes a legally qualified (solicitor/barrister) District Judge will hear cases.

### Crown Court

* Senior court of first instance in the **criminal** law
* Will hear '**indictable only**' (v serious) offences.
  + These can only be tried in the Crown Court, because they are too serious for the sentencing powers of the Magistrates.
  + Note that these cases still start in [Magistrates' Court](D:\Users\Shivan\Documents\LegalPracticeCourse\Criminal%20Litigation\Civil%20Litigation\Courts\Magistrates'%20Court.html), which decide whether to grant bail and consider other procedural issues such as reporting restrictions, before passing the case onto Crown Court for trial.
* Also hears 'either way' offences transferred from the Magistrates' Court.
* Trials in the Crown Court involve juries in almost all cases.
* The Crown Court is administered by an executive agency of the Ministry of Justice called **HM Courts and Tribunals Service**.
* It sits in ~80 locations around England and Wales, the most famous of which is the Old Bailey (Central Criminal Court)

### Functions

1. To try, convict and sentence offenders convicted of indictable-only and some either-way offences.
2. To determine questionss of bail and representation, particularly appeals by a defendant against the refusal of bail by the magistrates' court
3. To hear appeals against conviction and/or sentencing from the magistrates' court.

Proceedings are by judge and, if the case goes to trial, before a judge and jury. Most cases are heard before a Circuit Judge. Particularly high profile cases are heard before a High Court Judge.

If an appeal against sentence, the judge will sit with 2-4 magistrates.

Advocacy is predominantly done by barristers. Solicitors have very limited rights of audience, though it is possible to achieve full rights of audience.

### Probation Service

Representative always present in court when a case is being heard. Responsible for compiling pre-sentence reports on a defendant who has been convicted. Focus on D's background, previous convictions and likelihood of re-offending.

### Criminal Legal Aid

Legal Aid Agency (LLA) provides funding for Ds either by entering a “standard crime contract” with solicitors in private practice, or providing salaried public defenders.

## Classification of offences

### Indictable-only offences

* Most serious form of criminal offence
* Magistrate will immediately send the case to the Crown Court for trial.
* e.g., murder, rape, robbery

### Either way offences

* If the magistrate decides to keep the case before them, D has the right to elect trial by a judge and jury in the Crown Court.
* e.g., theft, assault occasioning actual bodily harm, burglary.
* Low-value shoplifting (value of the stolen goods is ) is a summary offence (s 22A Magistrates' Courts Act 1980) but if an adult D pleads not guilty, can elect a Crown Court trial.

### Summary offences

Least serious form of criminal offence, dealt with only by the magistrates' court.

## Criminal procedure rules

April 2005 - procedural rules for criminal court consolidated into the CrimPR, as supplemented by the Consolidated Criminal Practice Direction.

### Overriding objective

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r 1.1 Criminal Procedure Rules 2020 - The overriding objective

(1) The overriding objective of this procedural code is that criminal cases be dealt with justly.

(2) Dealing with a criminal case justly includes―

* (a) acquitting the innocent and convicting the guilty;
* (b) dealing with the prosecution and the defence fairly;
* (c) recognising the rights of a defendant, particularly those under Article 6 of the European Convention on Human Rights;
* (d) respecting the interests of witnesses, victims and jurors and keeping them informed of the progress of the case;
* (e) dealing with the case efficiently and expeditiously;
* (f) ensuring that appropriate information is available to the court when bail and sentence are considered; and
* (g) dealing with the case in ways that take into account―
  + (i) the gravity of the offence alleged,
  + (ii) the complexity of what is in issue,
  + (iii) the severity of the consequences for the defendant and others affected, and
  + (iv) the needs of other cases.

### Duty of participants

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r 1.2 CrimPR - The duty of the participants in a criminal case

(1) Each participant, in the conduct of each case, must―

* (a) prepare and conduct the case in accordance with the overriding objective;
* (b) comply with these Rules, practice directions and directions made by the court; and
* (c) at once inform the court and all parties of any significant failure (whether or not that participant is responsible for that failure) to take any procedural step required by these Rules, any practice direction or any direction of the court. A failure is significant if it might hinder the court in furthering the overriding objective.

(2) Anyone involved in any way with a criminal case is a participant in its conduct for the purposes of this rule.

### Case management powers

The court must further the overriding objective (r 3.2(1)) by actively managing the case (r 3.2(1)).

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r 3.2(2)

Active case management includes―

* (a) the early identification of the real issues;
* (b) the early identification of the needs of witnesses;
* (c) achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case;
* (d) monitoring the progress of the case and compliance with directions;
* (e) ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;
* (f) discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;
* (g) encouraging the participants to co-operate in the progression of the case; and
* (h) making use of technology.

Parties must actively assist the court in its duty to manage the case (r 3.3), since failure to do so is inconsistent with the overriding objective ([R (on the application of DPP) v Chorley [2006] EWHC 1795](D:\Users\Shivan\Documents\LegalPracticeCourse\Criminal%20Litigation\R%20(on%20the%20application%20of%20DPP)%20v%20Chorley%20%5B2006%5D%20EWHC%201795.html)).

* At the beginning of a case, each party must nominate an individual responsible for the progress of the case, and must tell the other parties and the court who that individual is and how he may be contacted (r 3.4(1)).
* The court will nominate a “case progression officer”, ensuring the parties comply and keeping the court informed of anything affecting the case.
* The court is given the power to make any direction or take any step actively to manage a case, unless such a direction or step would contravene legislation (r 3.5).

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r 3.8 - Case preparation and progression

(1) At every hearing, if a case cannot be concluded there and then the court must give directions so that it can be concluded at the next hearing or as soon as possible after that.

(2) At every hearing the court must, where relevant―

* (a) if the defendant is absent, decide whether to proceed nonetheless;
* (b) take the defendant’s plea (unless already done) or if no plea can be taken then find out whether the defendant is likely to plead guilty or not guilty;
* (c) set, follow or revise a timetable for the progress of the case, which may include a timetable for any hearing including the trial or (in the Crown Court) the appeal;
* (d) in giving directions, ensure continuity in relation to the court and to the parties’ representatives where that is appropriate and practicable; and
* (e) where a direction has not been complied with, find out why, identify who was responsible, and take appropriate action.

## Professional conduct

### Rule of law and administration of justice

* All solicitors in criminal proceedings have a duty not to mislead the court (para 1.4 SRA Code)
* This overrides Principle 7 – the duty to act in the client's best interests.

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Conduct

If a client tells you they intend to give false evidence at court, the solicitor must tell the client that the solicitor will need to be withdrawn from acting for the client unless the client agrees not to do this.

### Prosecution

Prosecuting advocates are under a duty to ensure that all material evidence supporting the prosecution is put before the court in a fair and dispassionate manner. Prosecution must:

1. Inform the court of any relevant authority, even if the authority favours D
2. Relevant facts known to the prosecutor should be placed before the court, including any facts relevant to mitigation.
3. If the prosecutor obtains evidence assisting D, they must supply particulars of the evidence to the defence; and
4. If a prosecution witness gives evidence inconsistent with any earlier statement by the witness, the prosecuting solicitor should disclose this fact to the defence.

### Defence

#### Instructions from a third party

If a friend/ relative contacts the solicitor asking them to attend the police station to advise the person, the solicitor should

* Phone the station and ask to speak to the arrested person, to determine whether they want a lawyer.
* Tell arrested person that they are entitled to free legal advice from a solicitor of their choice.

#### Client admitting guilt

The solicitor should advise the client that he would receive credit from the court if he entered an early guilty plea.