

# insideinformation – fact sheet

## Quick Guide to the Stages of The Criminal Process Re-produced courtesy of Richard Marks QC

### **What do I do if I am arrested?**

When you are arrested and taken to a police station it is extremely likely that you will be interviewed. You are entitled to legal advice from a solicitor. You can ask the police to contact a solicitor of your choice. If you do not have one, you can ask for the duty solicitor, who is a solicitor who will be on a rota to work that day or night. You must be allowed to contact a solicitor and have them present at your interview, whatever the time, day or night.

Do not feel pressured to have an interview without a solicitor present because it is late and you will have to wait for them to arrive. Remember – what you say in your interview will be said in Court as part of your case so it is vital that you are properly advised by a qualified person who is able to protect your interests.

### **I've been charged with an offence**

Once it has been decided that there is enough evidence against you, you will normally be charged with an offence or offences. Criminal offences can be broken down into 3 types:

1. Those that must be heard in the Magistrates' Court;
2. Those that must be heard in the Crown Court;
3. Those that can be heard in either Court depending on how serious they are, or where you choose them to be heard.

If you are charged with an offence that can only be heard in the Magistrates' Court then, save in relation to a few minor exceptions, the police must charge you within 6 months of the offence. There is (again with a few minor exceptions) no time limit to charge you in relation to the 2 other types of offences.

### **My first court appearance**

Once you have been charged with an offence of any type you will then have to go to the Magistrates' Court for your first court appearance. At your first court appearance, in the most simple cases, and where you admit the offence, you may be dealt with there and then. You should not do so until you have been advised by a solicitor. Alternatively, where you plead guilty, the court may want to obtain more information about you, in which case it will adjourn the matter so that the Probation Service can prepare what is called a 'pre-sentence report' dealing with a wide range of matters of background. These reports are very important since they often have a significant influence on the court in its decision as to how you should be sentenced. It follows that what you say to the probation officer, who prepares the report, may be crucial. Your solicitor should advise you about this. If you deny the offence and it is agreed that you should be tried in the Magistrates' Court, your case will be adjourned to a trial date, which is when the court will hear the evidence against you. If you are found guilty, you would be sentenced at the end of your trial. Once again though, the court might opt to adjourn sentencing in order to obtain a pre-sentence report. If the case against you is to be dealt with at the Crown Court, your case will be sent there. If the case against you is weak, you may have an opportunity of asking the court to dismiss it before it comes up for trial.

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### **Bail**

In the event that (for whatever reason) your case cannot be finalised at the first hearing, your advocate can make a bail application. If that fails, you can apply once more, on the occasion of the next hearing of your case. You can't have as many bail applications as you want – after 2 failed applications you must persuade the court that something significant in your circumstances has changed (e.g. a dramatic change in evidence, new bail address on offer) before you can make another application.

In the event that your application for bail is refused in the Magistrates' Court, you may be entitled to appeal that decision to a Judge in the Crown Court. This applies to both Crown Court cases and to cases that are to be heard at the Magistrates' Court.

### **Who will represent me?**

If your case is going to remain in the Magistrates' Court, usually your legal aid will only cover your solicitor to represent you, although he/she may decide to get a barrister to represent you. If your case is going to be dealt with at the Crown Court, the legal aid position is very different. Your case will be prepared by your solicitor. However, as far as your actual representation in court is concerned, you will always be entitled to be represented by a barrister, although these days many solicitors also appear very frequently in the Crown Court. (They are called solicitor advocates or HCAs – higher court advocates. N.B. Don't be misled into thinking that anyone in court wearing a wig is a barrister, as solicitors are now also entitled to wear wigs). Does it matter whether a solicitor or a barrister appears on my behalf in the Crown Court? What you need is the best advocate to represent you bearing in mind the needs of your particular case. A lot of solicitors (although by no means all) have started to appear in the Crown Court only in the last 2 or 3 years. It follows that, of necessity, many lack the experience which only comes from appearing day in day out in the Crown Court over many years. Equally, of course, some barristers may also lack experience. Solicitor training is nothing like as extensive or as concentrated on Crown Court advocacy (that is, presenting cases in court), as is the case for barristers. By way of example, a trainee barrister has to undergo an apprenticeship called a pupillage, which, amongst other things, means that for 6 months he or she will go to court every day with a senior barrister, and will watch and be taught about advocacy. No such system operates for solicitors. Once you know that your case is going to end up in the Crown Court, you should ask your solicitor who is going to represent you there. If he/she says that they are going to do it themselves, you would be well advised to ask them how much experience they have in the Crown Court, and also how many cases like yours they have done there. This is particularly important if your case is serious and/or complex. If you are confident that they do have the experience, and that they are the right person to present your case, then no problem arises. However, you are entitled to have a barrister and to say to your solicitor that you wish them to arrange for a barrister to be instructed on your behalf. If they do get you a barrister, you should also ask the barrister about how experienced they are, so as to be confident in their ability to represent you properly.

### **Pre- trial**

Once your case has been sent to the Crown Court your first appearance will usually involve entering a plea (not guilty or guilty). This hearing is referred to as the Plea and Case Management Hearing or 'PCMH'. If you enter a not guilty plea, the court will give you a date for your trial that will be sometime in the future. If you enter a guilty plea, the Judge may sentence you there and then. Alternatively, as in the Magistrates' Court, your case may be adjourned for a pre-sentence report, so that you can be seen by the probation service to discuss the offence and your background and personal circumstances. An adjournment will ordinarily be for 3 or 4 weeks.

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### **Basis of Plea**

A situation sometimes arises where you want to admit the offence but you say that the way in which it happened was very different to and less serious than the way in which the prosecution are alleging. In these circumstances you may want to put forward, usually in writing, what is called a 'basis of plea' which sets out your version of events. The prosecution may be prepared to accept this, but equally they may not. In any event, it is ultimately a matter for the Judge. If he /she is unwilling to accept the basis of plea, then it may be necessary to hold what is called a 'Newton' hearing at which evidence is called and the Judge then decides who he believes. It's important to bear in mind that if you lose the Newton hearing, it is likely that you will not get the same discount in your sentence that you would have done in the case of a straight guilty plea. For this reason Newton hearings are often not considered to be advisable. Plea Bargaining What may also arise is that you offer to plead guilty to a less serious offence than that with which you are charged. This is known as 'plea bargaining'. Of course this offer may or may not be accepted by the prosecution. If it is not, then the case will proceed to a trial. Note also that even if the prosecution accept such an offer, if the Judge disapproves, he can ask the prosecution to reconsider their position, although ultimately it is a matter for them and not for the Judge.

### **Goodyear Indications**

At any time (although it's usually done before a trial starts) the Judge can be asked on your behalf to say what the maximum sentence would be if you pleaded guilty. The Court will not consider doing this unless there is an agreed written basis of plea. (This is called a Goodyear indication, after the name of a case in which this procedure was approved). The Judge is entitled to refuse to give such an indication. Whether he will or not may depend on a lot of different factors, including whether there are other Defendants in the case who are continuing to fight the case.

### **Discount for Guilty Plea**

If you decide to plead guilty, the earlier you do it the better. The reason for this is that the discount you will get on your sentence varies according to how early in the proceedings you plead guilty. Usually the maximum discount for a guilty plea at the earliest opportunity is one third. If you plead guilty on the day of trial, the suggested discount is only 10%.

### **My trial**

Your advocate of choice (solicitor or barrister) will represent you in Court at your trial. Sometimes, legal issues may be decided at the outset of the trial. The jury will then be chosen and sworn in, following which the prosecution will open their case to the jury, by giving them a summary of what they allege and of the evidence upon which they rely. Prosecution witnesses will come to court and be questioned on your behalf by your advocate. At the close of the prosecution case it may, in some circumstances, be open to your advocate to make a submission of no case to answer. What this means is that the Judge is asked to stop the case and tell the jury to find you not guilty. This would arise where the evidence called by the jury was insufficient to enable them to convict you. If no such submission is made, or it fails, the case will then continue and you will then have the opportunity to tell the jury your side of the story, which will involve answering questions and being cross-examined by the prosecutor. You may then, if you choose, call witnesses in your defence. When all the evidence has been concluded, the prosecuting lawyer will make a closing speech to the jury. This will be followed by a closing speech by your lawyer, and then the summing up by the Judge, who will tell the jury what the law is and remind them of the key facts. The jury will then retire to consider their verdict.

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### **Sentencing**

If the jury decides you are guilty, then the Judge will decide what sentence to give you. He may make a date for a new hearing for sentencing, to give time to obtain reports on what sort of sentence would be suitable in your case, as set out above. You will be represented at the sentence. This will normally be by the advocate who represented you at the trial.

### **Confiscation**

If you are found guilty of an offence involving financial benefit to you, the court is likely to order an enquiry into your means with a view to confiscating all your assets up to the value of your benefit from the offence. If you don't pay, you can be ordered to serve a period of imprisonment in default. Confiscation proceedings will usually be considered in cases relating to drugs, money laundering and fraud.

### **Appeal**

Your advocate will be able to advise you if they think you can successfully appeal against your conviction, or your sentence, or both. They will prepare the documents which will be placed before a senior Judge who will consider whether or not to give you permission to appeal. So far as appealing against conviction is concerned, you cannot appeal simply on the ground that you disagree with the verdict. You will only be permitted to appeal if:

1. the Judge made rulings in relation to legal matters that were wrong; and/or
2. the Judge made errors in his summing up; and/or
3. evidence was wrongly admitted or wrongly excluded; and/or
4. serious procedural errors occurred during the trial; and/or
5. new evidence has emerged which makes your conviction unsafe.

So far as appealing against sentence goes this will only generally be permitted if your sentence was 'manifestly excessive' or it was unlawful, i.e. a sentence that was not permitted by law. 'Manifestly excessive' means that the sentence you got was outside the permitted range, either having regard to the facts of the offence and/or your personal circumstances. Occasionally, the prosecution can ask for permission to appeal if they think the Judge's sentence and/or confiscation order was too low. If you are given permission to appeal you will have another Court hearing in front of a more senior judge or judges at the Court of Appeal which usually sits in London. There will often be quite some delay before that happens. If your conviction is overturned, that may not necessarily be the end of the matter, in that the Court of Appeal does have power to order a retrial. If that doesn't happen and your conviction is simply quashed, you may be entitled to some compensation for the time you have spent in prison.

### **Further appeals**

If new evidence comes up after your appeal against conviction has been dismissed, it may be possible to ask for permission to have a second appeal. This is sometimes done via a body called the Criminal Cases Review Commission (CCRC), which has the power to refer a case to the Court of Appeal. Such referrals are rare and success by this route is even rarer. In limited circumstances, you may be able to appeal, on a point of law, to the European courts. However, they do not have the power to quash your conviction, or to order a retrial. All they can do, if they find in your favour, is to order that you are paid compensation. Successful appeals are also very rare.

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### **You matter!**

You should feel confident in your legal team – don't be afraid to ask questions and tell them what you want, and in particular who you want to present your case at the Crown Court.

### IMPORTANT NOTICE

Information is given on a strictly 'without-liability' basis, and should be considered for use as guidance only. If you propose taking further action based upon this information you are strongly advised to take further and more specific legal advice before doing so.

**insidetime** *the National Newspaper for Prisoners*

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