

This guide is published by the Robin Murray and Co

Guide to Criminal procedure

- This free guide gives a general idea to members of the public as to what you may expect to encounter if you or someone you know is charged with a criminal offence.
- The overriding advice we would like to give is that after reading this guide to please contact us. This is because many people do not realise that they may have a defence even though they do in fact have one (despite being given misleading information on this previously by the police”) or some important mitigation or explanation to put forward.
- Further even if pleading guilty procedure and sentencing is very complex and a skilled solicitor can put forward on clients behalf information that can favourably transform the approach that a court may take in dealing with the case.

Press control and right click to follow link to the following topics.

[Magistrates Courts](#)

[Crown Court](#)

[Sentencing](#)

[Youth sentencing](#)

[Legal Aid](#)

This guide is published by the Robin Murray and Co

I. Magistrates' courts

All criminal court cases start in a magistrates' court

All criminal court cases start in a magistrates' court. Depending on the crime you have been charged with, your case will either:

- start and finish in a magistrates' court
- start in a magistrates' court but finish in a 'higher' court - normally the Crown Court

1. Some offences can only be dealt with in the Magistrates Court. These are known as 'summary only offences' and tend to be less serious in terms of maximum punishment.

These include:

- most motoring offences including drink driving.
- minor 'public order' offences (like being drunk and disorderly)

The maximum punishment for a single summary offence is:

- six months in prison, and/or
- a fine of up to £5,000 (£2,000 in Northern Ireland)

2. Magistrates' courts can deal with more serious crimes, known as '**either way**' offences. This means they can be dealt with by either a magistrates' court or a Crown Court depending upon whether you consent to remain in the lower court or elect Crown Court Trial by jury (ordinary people who are called into jury service to hear your case). There are occasions though when the Magistrates can direct the case should go to the Crown court because they consider the case too serious to remain with them.

More serious '**either way**' crimes include:

- burglary
- drugs offences
- handling stolen goods

The maximum punishment in a magistrates' court for an either way offence is:

- six months in prison, and/or
- a fine of up to £5,000

It's possible to get a prison sentence of up to 12 months if you're found guilty of more than one 'either way offence'.

This guide is published by the Robin Murray and Co

Pleading guilty to an 'either way' offence

If you plead guilty, the court must decide if it has the power to sentence you. If the punishment the court feels you deserve is more than the magistrates' court can give, your case will be sent to the Crown Court. For example, if it's likely you will get a prison sentence of more than six months.

In cases like this, you do not have a new trial at the Crown Court - it's only to decide your sentence. You will be given a date to appear in the Crown Court to be sentenced.

Pleading not guilty to an 'either way' offence

If you plead not guilty to an either way offence, the court decides whether it should send the case to the Crown Court for trial.

If the magistrates' court thinks it can deal with your case, it will ask you whether:

- you agree to be tried there, or
- you want to choose to be tried in the Crown Court

You should get legal advice about making this important decision.

3. **'Indictable only offences'**. There are some offences - for example, rape, murder, conspiracy or an adult accused of robbery (as opposed to simple theft) - that are so serious that a magistrates' court is not allowed to deal with them. They are called **'Indictable'** because at the Crown Court the charges are set out on a document called an **'indictment'**.

If you're charged with a serious offence your case is sent to the Crown Court straight away usually at the first hearing by the magistrate's court. .

4. Magistrates' court - how they work

A magistrates' court has either:

- three magistrates - they don't have formal legal qualifications but are volunteers trained for the role.
- a district judge - who is legally trained and normally deals with more complicated cases
- There is also a court legal adviser who makes sure that the right court procedures are followed.

A magistrates' court is less formal than a Crown Court - for example, magistrates and judges do not wear gowns or wigs.

There is no jury (members of the public who decide whether you are guilty or not guilty) but the court is open to the public and sometimes the press does attend.

This guide is published by the Robin Murray and Co

What happens at the Magistrates Court?

If you don't turn up at court

If you don't go to court for your hearing, you may be charged with an extra offence of 'failing to attend court'. This can happen even if you're found not guilty of the original charge against you. The court may also issue a warrant for your arrest and you could be brought to court in custody..

Arriving at court

When you arrive at the court you need to report to reception. You should arrive in good time.

A note is made that you have arrived and you are told where to wait.

A court usher (someone who organises the courtroom) tells you when your hearing starts.

Approaching a witness

You (or anyone with you) should not speak to a prosecution witness who is connected to your case.

What happens during the hearing?

The basic process of a hearing is as follows.

1. You plead guilty or not guilty

The court legal adviser reads out the offence you have been charged with. You are then asked if you want to plead guilty or not guilty.

If you say nothing, the court treats it as if you are not guilty.

If you plead guilty at this stage, there's no adjourned hearing and you are convicted and sentenced by the court with or without a pre-sentence report (called 'stand down report') unless the sentencing issues are so complex that the court requires more detailed pre – sentence reports which cannot be produce at the initial hearing.

.

2. If not Guilty the prosecution 'put their case' against you

If you plead not guilty the case is likely to be adjourned to another date where the prosecution lawyer states why they think you committed the crime.

They do this by 'presenting evidence' in court - for example, a witness may say they saw you committing the crime.

3. You defend your case

Your Solicitor can challenge what the prosecution say and give your own evidence. If you decide to give evidence you 'swear' to tell the truth.

This guide is published by the Robin Murray and Co

4. The court makes its decision

After thinking about the evidence, the magistrates (or judge) will decide whether you're guilty or not guilty of the crime.

If you're found not guilty

If you're found not guilty, you are 'acquitted' - this means you are free to leave.

If you're found guilty

If you're found guilty of committing the crime, you will be sentenced by the court.

At this stage, your legal adviser will try and lessen the sentence you are likely to get (called 'mitigation'). For example, they may tell the judge about your personal circumstances if these can explain why you committed the crime.

The court may let you know what your sentence is straight away or request a same day pre-sentence report (Called a 'stand down' report).

If you are sentenced at a later date

The court may not sentence you on the day because it needs more detailed information about you than can be presented by the Probation Service in a 'stand down' report (called a 'pre-sentence report'). For example, if you have a mental health condition, the Court might want medical information about you from your doctor before making a decision.

There's also a limit on the level of sentence a magistrates' court can give. If the court believes the sentence you deserve is more than the court can give your case is sent to the Crown Court. A Crown Court judge will then decide what your sentence is.

What happens to you if sentencing is delayed?

If the magistrates' court needs more time (or the sentence needs to be decided at the Crown Court), the court decides whether you:

- can go home on 'court bail' until you're sentenced - but you may have to stick to certain conditions, like reporting regularly to a police station
- are remanded in custody (Most unlikely if you are already on bail)

The court's decision is based on whether it thinks you may:

- commit a crime while on bail
- not come back to court for sentencing

If you disagree with the court's decision

This guide is published by the Robin Murray and Co

If you disagree with the court's decision - for example, you think the sentence is too harsh - you can appeal.

This guide is published by the Robin Murray and Co

Virtual Courts.

1. Increasingly the Criminal Justice system is making use of these. Instead of physically attending court you may be placed before a court by a televised link from the police station on the first hearing when you can plead guilty or not guilty. The case may be sentenced there and then or adjourned for a trial date if the latter. Your solicitor will either be with you at the police station or before the court. Either way you will have the chance for a private consultation before the hearing. It is the usual practice of most firms to be present at court to achieve the biggest impact there rather than simply appear as a flickering image on a large screen attempting to communicate with the court
2. Representation at a Virtual court is paid for by a fixed fee and costs you nothing although if you plead guilty the Crown will ask for costs and the court can impose a fine and compensation. You do not have to contribute to the cost of legal aid.
3. After the hearing it is essential that any further hearing is covered by legal aid or for you to pay privately if you wish to continue to be represented by a lawyer. You will have to contact your solicitor as soon as possible to complete the forms as unfortunately at present this cannot be done over the Virtual link.

Virtual courts are not appropriate in the following circumstances:

- The defendant (or if there is more than one defendant, at least one of them) involved in the case is under 18 years of age;
- The case involves more than two defendants or, in a case with two defendants, one of the defendants is not suitable. Space constraints in the interview room may also need to be considered;
- The defendant requires immediate medical attention;
- The defendant has been identified as vulnerable and requiring an appropriate adult. Defendants identified as vulnerable and requiring an appropriate adult should be considered unsuitable for Virtual Courts if they have not received face-to-face legal advice. Where a such a defendant has received face-to-face legal advice, they should only be considered suitable if their legal representative is in agreement;
- The defendant requires an interpreter and it is not possible for an interpreter to be found to attend in sufficient time to enable the Virtual Court hearing to take place;

Press control and right click here to return to top of guide  [Top](#)

This guide is published by the Robin Murray and Co

This guide is published by the Robin Murray and Co

Legal Advice

Whatever you are charged with it is important to be legally represented. We strongly recommend this. The prosecution will have a lawyer in court (the CPS) as will the magistrates (The clerk). On your own you are vulnerable and at a considerable disadvantage. You may not appreciate the legal complexities of your case. You may not appreciate the seriousness of your case and the court's sentencing powers. You may not even appreciate that you do in fact have a defence and there is no need to plead guilty. If you were guilty you may not know how to express yourself to the court in a way which would minimise the sentencing impact upon you.

It is our strong recommendation that you obtain your own legal advice when facing a prosecution. You may be entitled to free legal aid or if not eligible you may be interested in paying a fixed fee or choosing to decide what level of service you require. Please call us on:

01634 832 332 during office hours or;

For out of hours emergency police arrests on 0844 567 6717

Press control and right click here to return to top of guide  [Top](#)

This guide is published by the Robin Murray and Co

II. The Crown Court

Crown Court - types of cases it deals with

The Crown Court deals with serious cases - like murder, intentional Grievous bodily harm and robbery.

Most criminal cases start and end at a magistrates' court but some have to be sent to the Crown Court.

Crown Court - sentencing and appeals

It's possible you are found guilty in a magistrates' court but the Magistrates believe you deserve a sentence that's more than the court can give. If this happens, your case is sent to the Crown Court for sentencing.

If you disagree with a magistrates' court verdict, you can appeal against the decision in the Crown Court.

Crown Court Trial - how trials work

The Crown Court is more formal than magistrates' courts - for example, the judge wears a gown and wig. The court is open to the public.

The Crown Court includes a jury of 12 members of the public who decide whether you're guilty or not guilty.

If you're found guilty, a judge decides what sentence you are given.

Plea and Case Management Hearing.

This is a hearing held once the prosecution has served their case upon the defence and you will have had an opportunity to discuss your case with us and your trial advocate. This hearing is held in front of a Judge, there will be no jury at this stage.

The Court Clerk will read a list of the offences (the indictment) to you and you will be asked to say whether you are guilty or not guilty. If you plead guilty at this stage, there's no trial and you are convicted and sentenced by the court. You will get a less severe sentence than if you plead not guilty but are later convicted.

If you plead not guilty a date will be fixed for your trial. This may either be a fixed date or your case may go into a warned list which means that you will not know the exact date of your trial but you will be given a period usually three weeks during which it will be expected for your case to be called on.

Before your trial

We explain below court procedures and what to expect on the day.

This guide is published by the Robin Murray and Co

Arriving at court for a trial

When you arrive at the court, you will need to look at the list of cases to find which court your case is to be heard in. You should then go to that court and wait outside the court room.. You should arrive in good time.

A court usher (someone who organises the courtroom) tells you when the hearing starts.

Approaching a witness

You (or anyone with you) should not speak to a prosecution witness who is connected to your case.

What happens during the trial?

The basic process of a trial is as follows.

1. The jury is 'sworn in'

The jury members are 'sworn in'. This means they promise to listen carefully to the case so that they can give a fair verdict.

2. The prosecution 'put their case' against you to the jury

If you plead not guilty, the prosecution lawyer states why they think you committed the crime.

They do this by 'presenting evidence' in court - for example, a witness may say they saw you committing the crime.

3. You defend your case

You or your solicitor (or sometimes in house counsel or counsel instructed by a solicitor) can argue against what the prosecution say and give your own evidence. If you decide to give evidence you 'swear' to tell the truth. It's a criminal offence to lie during the hearing and you could get a prison sentence if you do.

4. The jury makes its decision

At the end of the case, one member of the jury tells the court the jury's decision. This will be whether they think you are guilty or not guilty.

If you're found not guilty

If you're found not guilty by the jury, you are 'acquitted' - this means you are free to leave.

If you're found guilty

If you're found guilty by the jury of committing the crime, the judge will sentence you.

This guide is published by the Robin Murray and Co

At this stage, your solicitor will try and reduce the sentence you are likely to get (called 'mitigation'). For example, they may tell the judge about your personal circumstances if these can explain why you committed the crime.

The judge may let you know what your sentence is straight away.

If you are sentenced at a later date

The court may not sentence you on the day because it needs more information about you (called a 'pre-sentence report'). For example, if you have a mental health condition, the judge might want medical information about you before making a decision.

What happens to you if sentencing is delayed?

The court will decide whether you:

- can go home on 'court bail' until you're sentenced - but you may have to stick to certain conditions, like reporting regularly to a police station
- are remanded (locked up)

The court's decision is based on whether it thinks you:

- may commit a crime while on bail
- may not come back to court for sentencing

If you disagree with the court's decision

If you disagree with the court's decision - for example, you think the sentence is too harsh - you may be able to appeal.

Legal Aid

It's important to get legal advice about your case and your plea (whether you admit or deny the charge). It is our strong recommendation that you obtain your own legal advice when facing a prosecution. You may be entitled to free legal aid or legal aid with a contribution or you may be interested in paying a fixed fee or otherwise paying privately and choosing to decide what level of service you require. Sometimes paying privately is a better option than paying legal aid contributions depending on the type of case and its likely length. Please call us on:

01634 832 332 during office hours or;

For out of hours emergency police arrests on 0844 567 6717

Press control and right click here to return to top of guide

⇒ [Top](#)

This guide is published by the Robin Murray and Co

III. Sentencing (both magistrates Courts and Crown Courts)

What a 'sentence' is

A sentence is the punishment a court thinks is necessary based on the crime you have been found guilty of. A judge (or magistrate) decides the sentence.

How sentences are worked out

A judge (or magistrate) will look at several things when deciding a sentence, including:

- the type of crime and how serious it is
- if you have a criminal record
- your personal circumstances - for example, if you have a mental health condition
- if and when you admit your guilt

Types of sentences

There are four main types of sentence. These are:

- discharges
- court fines
- community sentences
- prison sentences

You may be ordered to do other things as part of, or in place of these sentences.

Discharges

If a court decides you are guilty, but decides not to punish you further, you are given a 'discharge'. Discharges may be given for minor crimes - for example, being drunk and disorderly in public.

A court may give a discharge if it decides the experience of going to court is enough of a punishment.

There are two types of discharge:

- an absolute discharge - no more action is taken by the court
- a conditional discharge - no more action is taken unless you commit another crime within a set period of time

Court fines

Many people convicted of a crime are fined. You could be fined for:

This guide is published by the Robin Murray and Co

- a driving or road traffic offence - for example, speeding
- minor offences of theft or criminal damage
- not having a TV licence

You could get a community sentence instead of being sent to prison

Community sentences

Instead of being fined or sent to prison you could get a community sentence. Community sentences place 'requirements' on you - things you must do, or not do in the community. Requirements can include:

- doing unpaid work
- getting treatment for an addiction (for example drugs)
- stopping you from going to a specific place or area

Prison sentences

You could get a prison sentence if your crime is so serious that a prison sentence is the only suitable type of punishment.

Court orders

A judge (or magistrate) can add a further court order to your sentence - for example, a compensation order. A compensation order could include, for example, you have to pay your victim for the damage you did to their property.

When crimes don't go to court

Not all crimes go to court. Some less serious offences may be dealt with by the police. We are sometimes able to persuade the police at the pre charge investigation stage to caution, give a formal warning or a 'fixed penalty' notice (when you pay a set amount of money). It is always worth having a solicitor at the police station when under arrest for this and many other reasons. (To make sure you are treated fairly without oppression)

Appealing against a sentence

If you disagree with a sentence, you can appeal against it. It's a good idea to get advice from a legal adviser before starting the process.

How a court reaches a decision

A sentence is the punishment a court thinks is necessary based on the crime you have been found guilty of. A judge (in a Crown Court) or a magistrate (in a magistrates' court) decides on the sentence.

This guide is published by the Robin Murray and Co

Some of the things a judge or magistrate thinks about when deciding your sentence are that it:

- punishes you in the way the court believes you deserve
- puts you off committing more crime in the future
- helps you move away from crime – for example, by supporting you to change your life for the better
- protects the public – for example, by sending you to prison if you're a risk to other people
- makes you do something to make up for your crime – like unpaid work

How a court decides the type and length of sentence

The following things can affect the type and length of sentence you get.

Whether or not you have a criminal record

If you have a criminal record, you could be given a longer sentence. A criminal record may suggest you have a tendency to commit crime. Because of this, you may need a longer sentence to put you off committing even more crime in the future.

If you say you committed the crime

If you say you committed the crime your sentence may be reduced.

Maximum sentences

For every crime there is a maximum penalty – this is the most punishment a judge can give you.

'Aggravating' and 'mitigating' factors

If you go to court, it's likely you will hear the terms 'aggravating' and 'mitigating' factors. These factors also affect the type and length of sentence you get.

A judge (or magistrate) looks at the aggravating and mitigating factors of your case before deciding on a sentence.

An aggravating factor is something that makes a crime more serious.

A mitigating factor is something that makes a crime less serious.

It is better to seek professional legal advice before putting forward 'mitigation' because if you do not get this or the tone right of what you say is at variance with the prosecution facts or a probation report 'do it yourself' mitigation can be a disaster. We know as professionals what is appropriate and what works.

Guidelines a court uses when sentencing

This guide is published by the Robin Murray and Co

A judge (or magistrate) uses guidelines when deciding on the right sentence. Guidelines help judges and magistrates to give similar sentences for similar types of crime, wherever the crime is committed.

Guidelines are issued by the:

- Court of Appeal
- Sentencing Council – an independent organisation

We as lawyers have immediate access to these guidelines and know how to ask the court to apply them.

It is our strong recommendation that you obtain your own legal advice when facing a prosecution.

Please call us on:

01634 832 332 during office hours or;

For out of hours emergency police arrests on 0844 567 6717

Press control and right click here to return to top of guide  [Top](#)

This guide is published by the Robin Murray and Co

Legal aid

In the **Magistrates court** you may be entitled to free legal aid or if not eligible you may be interested in paying a fixed fee or choosing to decide what level of service you require

In the **Crown Court** you may be entitled to free legal aid or legal aid with a contribution or you may be interested in paying a fixed fee or otherwise paying privately and choosing to decide what level of service you require. Sometimes paying privately is a better option than paying legal aid contributions depending on the type of case and its likely length.

Please call us on:

01634 832 332 during office hours or;

For out of hours emergency police arrests on 0844 567 6717

Press control and right click here to return to top of guide  [Top](#)

This guide is published by the Robin Murray and Co

Young people and sentencing

Some sentences are different for young people aged ten to eighteen years old.

Types of sentences young people can get?

How sentences for young people are decided

If you have admitted or been found guilty of a crime, the court will give you a 'sentence'.

This could be a sentence that you serve in the community, rather than being locked up. Or it could be a sentence where you are locked up - a 'custodial' sentence.

The law states the maximum amount of time you can be put on a sentence. The court can't go over this limit.

If you are found guilty of a less serious crime, or your first crime, you may get a community sentence.

Community sentences for young people

If you are under 18 and found guilty of a first or minor crime, the court will usually give you a community sentence.

Community sentences:

- mean you don't get locked up at an early age
- give you help to stop committing another crime
- often mean you have to make up for the harm you have caused, like apologising to the victim or repairing any damaged property

The type of community sentence you get will depend on:

- how serious the crime is
- what needs to be done to help stop you getting into trouble again

If you plead guilty, another type of punishment is a reprimand, final warning or Anti-Social Behaviour Order (ASBO).

Custodial sentences for young people

If you're under 18 and found guilty of a crime, you could be given a sentence that means you are locked up - a 'custodial' sentence. (DTO between ages of 12 and 17))The court can give you this kind of sentence if:

- your crime is so serious there is no other suitable option

This guide is published by the Robin Murray and Co

- you have committed crimes before
- the judge or magistrate thinks you are a risk to the public

We will do everything we can to avoid a custodial sentence (if that reflects what you ask us to do) as there are many good community sentence options that may be preferable and more effective.

Legal representation for those aged 17 or under is generally free under a legal aid representation order (if not working). If Family wish to pay for private legal representation then we can provide that service as well.

It is our strong recommendation that you obtain your own legal advice when facing a prosecution. You may be entitled to **free legal aid** or if not eligible you may be interested in paying a fixed fee or paying privately choosing to decide what level of service you require.

Please call us on:

01634 832 332 during office hours or;

For out of hours emergency police arrests on 0844 567 6717

.

Press control and right click here to return to top of guide  [Top](#)

This guide is published by the Robin Murray and Co