

**Extract from CRIMINAL PRACTICE DIRECTIONS DIVISION II**  
**PRELIMINARY PROCEEDINGS**

**CPD II Preliminary proceedings 9A: ALLOCATION (MODE OF TRIAL)**

- 9A.1 Courts must follow the Sentencing Council's guideline on Allocation (mode of trial) when deciding whether or not to send defendants charged with "either way" offences for trial in the Crown Court under section 51(1) of the Crime and Disorder Act 1998. The guideline refers to the factors to which a court must have regard in accordance with section 19 of the Magistrates' Courts Act 1980. Section 19(2)(a) permits reference to previous convictions of the defendant.
- 9A.2 The Allocation guideline lists four factors, a) to d), that the court must also have regard to. No examples or guidance are given, however, the following could be a consideration when applying the factors: that where cases involve complex questions of fact or difficult questions of law, including difficult issues of disclosure of sensitive material, the court should consider sending for trial.
- 9A.3 Certain general observations can also be made:
- (a) the court should never make its decision on the grounds of convenience or expedition; and
  - (b) the fact that the offences are alleged to be specimens is a relevant consideration (although it has to be borne in mind that difficulties can arise in sentencing in relation to specimen counts: see *Rv Clark* [1996] 2 Cr. App. R. 282, [1996] 2 Cr. App. R. (S.) 351; *Rv Canavan and others* [1998] 1 W.L.R. 604, [1998] 1 Cr. App. R. 79, [1998] 1 Cr. App. R. (S.) 243 and *R v Oakes* [2012] EWCA Crim2435, [2013] 2 Cr. App. R. (S.) 22 (see case of *R v Restivo*)); the fact that the defendant will be asking for other offences to be taken into consideration, if convicted, is not.