

Joint Guidance from the Senior District Judge (Magistrates' Courts) and the Justices' Clerk's Society

Allocation and Committal for Sentence

The recent "Review of Efficiency in Criminal Proceedings" by the Rt Hon Sir Brian Leveson, President of the Queen's Bench Division highlighted issues with regard to the allocation process for offences that are triable either way. One of the key recommendations made within the Review included:

"Magistrates' Courts must be encouraged to be far more robust in their application of the allocation guideline which mandates that either way offences should be tried summarily unless it is likely that the court's sentencing powers will be insufficient. The word "likely" does not mean "possible" and permits the court to take account of potential mitigation and guilty plea, so can encompass cases where the discount for a guilty plea is the feature that brings the case into the Magistrates' jurisdiction. It is important to underline that, provided the option to commit for sentence is publicly identified, the decision to retain jurisdiction does not fetter discretion to commit for sentence even after requesting a pre-sentence report".¹

We understand the Sentencing Council intend to reconsider the Allocation Guideline. However in the interim, we are issuing this joint guidance on Allocation and Committal for sentence to support the Sentencing Council's Allocation Guideline and Criminal Practice Direction 9A Preliminary Proceedings : Allocation.

Interim Guidance

The Allocation Guideline makes clear that in general, either way offences should be tried summarily unless it is likely that the court's sentencing powers will be insufficient. There is no restriction on committing an either way case for sentence following conviction, where the provisions of section 3 (2) Powers of the Criminal Courts (Sentencing) Act 2000 apply, namely:

" that the offence or the combination of offence and one or more offences associated with it was so serious that the Crown Court, should in the court's opinion, have the power to deal with the offender in any way it could deal with him if he had been convicted on indictment"

That opinion is not dependent on information showing the offence or offences to be more serious than they were originally thought to be being received after the decision to try the case summarily was made. *R v. Sheffield Crown Court and Sheffield Stipendiary Magistrate, ex parte DPP [1994] 15 Cr App Rep (S) 768, 401.* The magistrates court must carefully consider the adequacy of its powers of sentence when determining allocation and consider the factors set out in s.19(3) Magistrates' Courts Act 1980 and parties should be asked by the Court to make their representations on venue in line with the allocation procedure. However, although previous convictions are now taken into account in allocation, there remains an unfettered discretion after conviction to commit for sentence pursuant to s.3 Powers of the Criminal Courts (Sentencing) Act 2000. The wording of that section places no restriction on the powers of the magistrates' court to commit for sentence to cases only where information showing the offence to be more serious than it was originally thought to be is received after summary conviction.

It is important that during Plea Before Venue and Allocation the procedure in s. 17A and s.20 Magistrates' Courts Act 1980 is followed and the defendant is warned that if the defendant consents to summary trial and is convicted by the court, the defendant may be committed for sentence if the court is of the opinion as is mentioned in s.3(2) Powers of the Criminal Court (Sentencing) Act 2000 (above). This is to avoid any potential argument of a defendant being given a legitimate expectation, whether expressly or impliedly, that they will not be committed for sentence. When adjourning or standing cases down for pre-sentence reports in the magistrates court, the court should openly preserve the option of committal for sentence in appropriate cases.

There will also be cases where allocation for summary trial is appropriate even though it is apparent from the list of previous convictions that, in the event of the defendant's conviction, he would be in breach of a Crown Court Suspended Sentence Order or Community Order. The power to commit the case to the Crown Court to be dealt with under para 11(1) of Schedule 12 or para 22 of Schedule 8 to the Criminal Justice Act 2003 can then be exercised.

¹ Page 25, Review of Efficiency in Criminal Proceedings" Rt Hon Sir Brian Leveson, President of the Queen's Bench Division. January 2015