

Chapter 3 (Classification of offences and mode of trial): Update

3.3 The 'plea before venue' hearing

3.3.1 Indication of guilty plea

In *Westminster City Council v Owadally* [2017] EWHC 1092 (Admin), at the plea before venue hearing, guilty pleas were indicated on behalf of the accused by their counsel. The Divisional Court held (at [45]) that, as in the Crown Court, an accused in a magistrates' court must enter a guilty plea personally. The requirements of s 17A of the Magistrates' Courts Act 1980 are to be treated as going to the jurisdiction of the court. It follows that, if a guilty plea is not entered by the accused personally, that plea (and any proceedings subsequent to that plea, such as committal for sentence) is to be regarded as a nullity.

3.4.1 The mode of trial hearing

In December 2015, the Sentencing Council issued a revised Allocation Guideline, which came into effect in March 2016.

It states that, in general, either-way offences should be tried summarily unless:

- the outcome would clearly be a sentence in excess of the court's powers for the offence(s) concerned after taking into account personal mitigation and any potential reduction for a guilty plea; or
- for reasons of unusual legal, procedural or factual complexity, the case should be tried in the Crown Court. This exception may apply in cases where a very substantial fine is the likely sentence. Other circumstances where this exception will apply are likely to be rare and case specific; the court will rely on the submissions of the parties to identify relevant cases.

The Guideline goes on to say that, in cases with no factual or legal complications, the court should bear in mind its power to commit for sentence after a trial and may retain jurisdiction notwithstanding that the likely sentence might exceed its powers.

The Guideline also says that 'all parties should be asked by the court to make representations as to whether the case is suitable for summary trial'. The court should refer to definitive guidelines (if any) to assess the likely sentence for the offence in the light of the facts alleged by the prosecution case, taking into account all aspects of the case including those advanced by the defence, including any personal mitigation to which the defence wish to refer.

Where the court decides that the case is suitable to be dealt with in the magistrates' court, it must warn the defendant that all sentencing options remain open and, if the defendant consents to summary trial and is convicted by the court or pleads guilty, the defendant may be committed to the Crown Court for sentence.

Turning the power to commit for sentence under s 3 of the PCC(S)A 2000, the Guideline notes that there is ordinarily no statutory restriction on committing an either way case for sentence following conviction. The general power of the magistrates' court to commit to the Crown Court for sentence after a finding that a case is suitable for summary trial and/or conviction continues to be available where the court is of the opinion 'that the offence or the combination of the 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'.

The Guideline adds that the court should refer to any definitive guideline to arrive at the appropriate sentence taking into account all of the circumstances of the case including personal mitigation and the appropriate guilty plea reduction. In borderline cases, the court should consider obtaining a pre-sentence report before deciding whether to commit to the Crown Court for sentence.

Finally, the Guidelines says that where the offending is so serious that the court is of the opinion that the Crown Court should have the power to deal with the offender, the case should be committed to the Crown Court for sentence even if a community order may be the appropriate sentence (this will allow the Crown Court to deal with any breach of a community order, if that is the sentence passed).

Low-Value Shoplifting

Section 22A(1) of the Magistrates' Courts Act 1980 provides that 'low-value' shoplifting (defined as shoplifting where the value of the stolen goods does not exceed £200) is triable only summarily. However, s 22A(2) goes on to provide that, where an accused who has attained the age of 18 is charged with low-value shoplifting, the court must, before the summary trial of the offence begins, give the accused the opportunity of electing Crown Court trial for the offence; if he elects to be so tried, the magistrates' court must send him to the Crown Court for trial. Unlike the special procedure for criminal damage (under s 22), in the case of low-value shoplifting the accused retains the right to elect Crown Court trial. Rule 9.7(4)(c) of the Criminal Procedure Rules makes it clear that, where the offence is low-value shoplifting, the magistrates' court must offer the accused the opportunity to require trial in the Crown Court.

In *R v Maxwell* [2017] EWCA Crim 1233, the court noted that, if the accused is charged (at the same time) with two or more offences of low-value shoplifting, the value is aggregated; if the total value exceeds £200, the offences are treated as ordinary either-way offences (Magistrates' Courts Act 1980, s 22A(4)(b)). In the present case, the court ruled that low-value shoplifting charges cannot be aggregated with shoplifting offences to which s 22A does not apply (and so it is only the 'low-value' offences that can be aggregated). In this case, the three low-value offences came nowhere near £200 in total and so were (unless the accused elected Crown Court trial) triable only summarily.

CPS Statistics 2016-17

Annual Report 2016-17, Annex D: Casework statistics:

Magistrates' Court trial: of defendants pleading not guilty, 61% (58% in 2015-16) were convicted and 39% (42% in 2015-16) were acquitted.

Crown Court trial: of defendants pleading not guilty, 52% (same percentage in 2015-16) were convicted and 48% (same percentage in 2015-16) were acquitted.

Allocation decision: 98% (97% in 2015-16) of either-way cases were sent for trial because the magistrates declined jurisdiction; 2% (3% in 2015-16) went to Crown Court because the defendant chose trial on indictment.