

Chapter 5 (Summary Trial): Update

5.8 Attendance of the parties

5.8.1 Non-attendance by the prosecution

In *DPP v Jarman* [2013] EWHC 4391 (Admin); (2014) 178 JP 89, the prosecutor failed to attend and the magistrates dismissed the case for want of prosecution under s 15 of the Magistrates' Courts Act 1980. Fresh proceedings were then instituted. It was held that a dismissal by a magistrates' court of a charge owing to the absence of prosecution counsel was not akin to an acquittal, as the defendant had not been in peril of conviction, and a stay of proceedings barring further prosecution for similar offences was therefore lifted. Griffith Williams J (at [30]) reiterated that the scope of *autrefois acquit* 'is narrowly confined to those cases where the accused is put in peril of conviction for the same offence as that with which he is then charged'. This requires that 'the court must be in a position to conduct a hearing and so it follows that there must be a prosecutor to prosecute and a defendant to defend unless, of course, the defendant has wilfully absented himself or herself and so the trial proceeds in his or her absence' ([31]). In the present case, the accused 'was in no way in peril because, while the court was competent to try him and there was a valid charge upon which he was to be tried, the dismissal was not on the merits; there was no prosecutor and the magistrates had heard no evidence' ([32]). His Lordship added (at [36]):

While the overriding objective [in Part 1 of the Criminal Procedure Rules] includes ... the requirement to deal with cases efficiently and expeditiously, the ... power to dismiss proceedings pursuant to s 15 of the Act must not ... be used, save in the most exceptional cases, to, in effect, punish the prosecution for its inefficiency.

5.10 Summary trial procedure

The Criminal Procedure Rules are amended, with effect from 13 November 2017, to include guidance on the conduct of **preparation for trial hearings** in magistrates' courts. Rule 3.27 provides:

- (1) A magistrates' court—
 - (a) must conduct a preparation for trial hearing unless—
 - (i) the court sends the defendant for trial in the Crown Court, or
 - (ii) the case is one to which rule 24.8 or rule 24.9 applies (Written guilty plea: special rules; Single justice procedure: special rules);
 - (b) may conduct a further pre-trial case management hearing (and if necessary more than one such hearing) only where—
 - (i) the court anticipates a guilty plea,
 - (ii) it is necessary to conduct such a hearing in order to give directions for an effective trial, or
 - (iii) such a hearing is required to set ground rules for the conduct of the questioning of a witness or defendant.
- (2) At a preparation for trial hearing the court must give directions for an effective trial.
- (3) At a preparation for trial hearing, if the defendant is present the court must—
 - (a) satisfy itself that there has been explained to the defendant, in terms the defendant can understand (with help, if necessary), that the defendant will receive credit for a guilty plea;
 - (b) take the defendant's plea or if no plea can be taken then find out whether the defendant is likely to plead guilty or not guilty; and

- (c) unless the defendant pleads guilty, satisfy itself that there has been explained to the defendant, in terms the defendant can understand (with help, if necessary), that at the trial—
 - (i) the defendant will have the right to give evidence after the court has heard the prosecution case,
 - (ii) if the defendant does not attend, the trial is likely to take place in the defendant's absence, and
 - (iii) where the defendant is released on bail, failure to attend court when required is an offence for which the defendant may be arrested and punished and bail may be withdrawn.
- (4) A pre-trial case management hearing must be in public, as a general rule, but all or part of the hearing may be in private if the court so directs ...

The rules governing the conduct of a **summary trial** are now contained in Part 24 of the Criminal Procedure Rules. The stages of a summary trial are set out in r. 24.3(3):

- (a) the prosecutor may summarise the prosecution case, concisely identifying the relevant law, outlining the facts and indicating the matters likely to be in dispute;
- (b) to help the members of the court to understand the case and resolve any issue in it, the court may invite the defendant concisely to identify what is in issue;
- (c) the prosecutor must introduce the evidence on which the prosecution case relies;
- (d) at the conclusion of the prosecution case, on the defendant's application or on its own initiative, the court: (i) may acquit on the ground that the prosecution evidence is insufficient for any reasonable court properly to convict, but (ii) must not do so unless the prosecutor has had an opportunity to make representations;
- (e) the justices' legal adviser or the court must explain, in terms the defendant can understand (with help, if necessary): (i) the right to give evidence, and (ii) the potential effect of not doing so at all, or of refusing to answer a question while doing so;
- (f) the defendant may introduce evidence;
- (g) a party may introduce further evidence if it is then admissible (for example, because it is in rebuttal of evidence already introduced);
- (h) the prosecutor may make final representations in support of the prosecution case, where: (i) the defendant is represented by a legal representative, or (ii) whether represented or not, the defendant has introduced evidence other than his or her own; and
- (i) the defendant may make final representations in support of the defence case.

It should be noted that, after the prosecutor has opened the case, the defence may then be called upon to confirm what is in issue in the case (this was added in April 2016). The *Criminal Practice Direction VI*, para 24B.2, notes that the purpose of this is to provide the court with 'focus as to what it is likely to be called upon to decide', so that the justices will be 'alert to those issues from the outset and can evaluate the prosecution evidence that they hear accordingly'.

5.10.2.1 Reading witness statements

Rule 24.5(2) makes a minor change to the procedure to be followed where the court admits evidence in writing:

- If the court admits such evidence—
 - (a) the court must read the statement; and
 - (b) unless the court otherwise directs, if any member of the public, including any reporter, is present, each relevant part of the statement must be read or summarised aloud.

5.10.8 Change of plea

The procedure for seeking to withdraw a guilty plea is unchanged but is now to be found in rule 24.10.

5.10.10 The magistrates' decision

Care must be taken by the magistrates when they are formulating the reasons for their decision. For example, in *JS (a Child) v DPP* [2017] EWHC 1162 (Admin), the accused was charged with the offence of tampering with a motor vehicle. The magistrates convicted him, saying that the accused "did not say anything to persuade us that he did not tamper with the moped" and they were therefore "sure" that he was guilty. The conviction was quashed. The words used by the magistrates created the impression that they had convicted the accused because he had not proved his innocence (thus reversing the burden of proof).

5.10.10.1 Alternative verdicts

R (Dyer) v Watford Magistrates Court [2013] EWHC 547 (Admin) was followed in *Henderson v CPS* [2016] EWHC 464 (Admin), where Simon LJ (at [40]) reiterated that:

In order to avoid the objectionable course of convicting for both the underlying offence and the aggravated offence, the sensible course is to adjourn the trial of the underlying offence sine die; and we do not consider that any practical difficulty involved in dealing with the files in such cases is an insurmountable objection to this course.

The Court of Appeal expressed agreement with this approach in *R v Nelson* [2016] EWCA Crim 1517, so long as the two charges can properly be regarded as 'genuine' or 'true' alternatives, in that they 'overlap in terms of their ingredients'.

5.12 The role of the court clerk/court legal adviser

The role of the court clerk/court legal adviser is unchanged but is now set out rule 24.15.

5.13 Committal for sentence

Sometimes the basis of a committal for sentence is mis-described by the magistrates' court. In *R v Ayhan* [2011] EWCA Crim 3184; [2012] 1 WLR 1775, Lord Judge CJ said (at [22]):

... provided the power of the magistrates' court to commit for sentence was properly exercised in respect of one or more either way offences in accordance with s 4 of the 2000 Act, a mistake in recording the statutory basis for a committal of summary only offences does not invalidate the committal. The principle is that thereafter the Crown Court must abide by the sentencing powers available to the magistrates' court in relation to the summary only offences. If that principle is not followed, then the sentences must be reduced to sentences which fall within the jurisdiction of the magistrates.

This approach was followed in *R v Luff* [2013] EWCA Crim 1958, where Bean J (at [23]) said:

The appellant's committal for sentence on the breach charge should have been under s 4. The justices had that power and should have been advised to use it. They could not have

committed under s 6 because they had no such jurisdiction. The reference to s 6 was therefore a mistake, and the committal should be treated as having been under s 4.

Trial on the papers by a single justice

Section 16A of the Magistrates' Courts Act 1980 (inserted by s 48 of the Criminal Justice and Courts Act 2015) enables a single justice to try certain cases on the papers. This procedure is limited to cases where a person who has attained the age of 18 is charged with a summary offence that does not carry imprisonment, and does not apply where the accused serves a written notice indicating either a desire to plead not guilty or not to be tried under s 16A.

Where s 16A applies, the court (which may be composed of a single justice) may try the charge as if the accused had pleaded guilty. The court hears no oral evidence but considers only the documents served on the court by the prosecution and the accused. The court is not required to conduct any part of the proceedings in open court, and may try the charge in the absence of the parties; if a party appears, the court must proceed as if the party were absent.

Under s 16B, if the court decides, before the accused is convicted of the offence, that it is not appropriate to proceed under s 16A, the trial will (if it has begun) be adjourned, and a summons will be issued requiring the accused to appear before a magistrates' court for the trial. It should be noted that the 'trial' will in fact take the form of a sentencing hearing, as this procedure applies only where the accused pleads guilty.

Similarly, under s 16C, if the court decides, after the accused has been convicted of the offence, that it is not appropriate to proceed under s 16A, the court must adjourn the case and issue a summons requiring the accused to appear before a magistrates' court to be dealt with. Under s 16C(2), if a magistrates' court which has been proceeding under s 16A, having convicted the accused, proposes to disqualify him from driving, the court must give the accused the opportunity to make representations about the proposed disqualification; if the accused indicates a wish to make such representations, the court may not continue to proceed under s 16A (and so must adjourn and issue a summons requiring the attendance of the offender).

Where a case has been adjourned under s 16B or 16C, the court which hears the case when it resumes will be composed in the usual way (namely, at least two lay justices, as required by s 121(1) of the Magistrates' Courts Act 1980 or a District Judge (Magistrates' Courts)).

Where the case is being dealt with under s 16A, the powers of the court as regards sentence are limited by s 121(5A) of the Magistrates' Courts Act 1980 (inserted by s 49 of the 2015 Act): the court may (for example) discharge the offender (conditionally or absolutely) or impose a fine, and may make a number of ancillary orders (such as compensation and disqualification from driving), but cannot impose a community order or a custodial sentence.