

# GOING TO COURT

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The last Law in Practice (*Druglink*, vol. 6 issue 4) dealt with detention and questioning. This edition deals with procedure after the police find what they believe is evidence of an offence, charge the suspect and the case goes to court.

## Charge and police bail

After up to 96 hours' detention police must either charge or release suspects. A charge is usually read and the person cautioned and asked how they wish to respond. As the answer will be recorded it may be an idea to mention any difficulties during detention, but there is no need to respond. Police can either arrange for the suspect to appear in court at the next hearing or to be released on police bail.

Police can grant bail while their enquiries continue. Sometimes they set conditions, such as someone to guarantee that the suspect appears in court (and facing a financial penalty if they don't). Suspects with no permanent address may need to stay at a fixed address with relatives or friends.

Police can refuse bail at the police station or object to bail in court if they believe the suspect will abscond (because the charge is serious or they have no fixed address), commit another offence, or interfere with witnesses.

Refusal to bail can be appealed against before magistrates or (by paying for private representation) before a judge. A duty solicitor should be available to make an initial bail application, but if not, applicants should stress that they:

- have a good record and haven't previously absconded;
- can live at a fixed address;
- have a job which may be lost;
- have family responsibilities;
- intend to plead not guilty;
- have sureties prepared to guarantee their attendance at court or forfeit the amount set for bail.

People acting as sureties must be over 18 and prove they have the sum that is determined by the court. Preferably they

should be without previous convictions. They can sign up at any police station, but it is less complicated if they attend court.

**Solicitors** attend police stations, negotiate bail, and advise on how to plead (people often think they are guilty when they are not). They can present cases at magistrates' courts and gather evidence for the defence. Even in guilty pleas, this may be important if there are extenuating circumstances for the court to consider.

**Barristers** are specialists who represent clients in the higher courts. While barristers never attend police stations or gather evidence, junior barristers often deputise for solicitors in minor cases at magistrates' courts. As a result some people find themselves dealing with different lawyers.

Anything told a defence barrister or solicitor is supposed to be confidential. They work to certain professional rules, which, for instance, bar them from representing a client who privately admits guilt but wants to plead not guilty in court.

## Legal aid

The Duty Solicitor Scheme operates in most courts, providing emergency representation for people without a lawyer. Often solicitors are too busy to be able to represent all the people up in court. If you arrive at court without a solicitor, immediately ask one of the ushers if you can see the Duty Solicitor so they know you need help.

For those on a low income, financial help in obtaining preliminary advice from solicitors is available under the Green Form Scheme. This may, for instance, help pay for a solicitor to fill in a full legal aid application form, to advise on mitigation, or to recover property from the police. The relevant forms are available from solicitors. The Green

Form Scheme does not cover representation in court, but it does cover attendance at a police station.

To help pay for legal representation in court, defendants need to apply for full legal aid, a government scheme run through

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the courts. Help is discretionary and often refused if the court thinks a case is trivial. The scheme is means tested and applicants often have to make a contribution. Legal aid is often refused for cases in magistrates' courts, but rarely at Crown Court.

Getting legal aid does not restrict the choice of solicitor, but it can be difficult to change if the first choice proves unsatisfactory (Release can advise). Legal aid forms should not be signed with the Duty Solicitor unless the defendant is sure they want that solicitor to represent them throughout the case.

Applicants for legal aid need to fill in forms available from the local magistrates' court. One is a statement of means (how much money the applicant has) and one is the application form which seeks the applicant's reasons for applying. Advice on filling in the form should be sought from a solicitor.

Legal aid should be granted if:

- there is a risk of prison (ie, the case is serious, or there are similar recent convictions);
- there will be difficulty in understanding proceedings (eg, poor English);
- witnesses need to be traced;
- there is a complex legal argument.

These criteria should be borne in mind when filling in the form. Previous convictions, language difficulties, and a not guilty plea to a serious case should always be mentioned on the form. Forms should be returned to the court and some days later the result will be notified by post.

Unlike the means test for Green Form advice – which takes account only of income – full legal aid takes account of expenditure as well as income. With rent, mortgage and HP payments, and travelling expenses all allowable, many more people are eligible.

If legal aid is refused, a solicitor may be willing to argue before magistrates that it should have been granted, but if necessary defendants can argue on their own behalf.

## Pleading in court

Magistrates' courts are very busy; cases are often heard very quickly. Defendants who on the first appearance fail to make contact with a Duty Solicitor should play for the time needed to get representation and advice, and always plead not guilty at first – pleas can be changed later without penalty. Ask for the case to be put off so that you can get legal advice: a not guilty plea will always be adjourned to another day.

Cases can often be heard either at magistrates' courts or Crown Court. Serious offences have to be heard at Crown Court, but some – such as theft or possession of drugs – can be heard in either. Some minor offences can only be heard in magistrates' court. Magistrates can refer cases to Crown

Court for sentence. Magistrates themselves can normally only impose sentences of up to six months imprisonment and a fine – currently up to £2000.

At magistrates' court cases are heard either by three lay magistrates or by one professional magistrate. Cases are processed quickly and police evidence often accepted without question.

Crown Court cases are heard by judges, in not guilty cases before a jury. There is a higher acquittal rate than in magistrates' courts, but judges can impose greater penalties. Appeals against conviction and sentence by magistrates are heard at Crown Court, which can increase as well as reduce the sentence.

Defendants should not agree to have a case heard at magistrates' court without legal advice, and never plead guilty simply because the police say they will be treated more leniently – they are often wrong, and certainly are not defence experts.

If legal aid is refused, defendants may end up representing themselves. They should note in writing the important points

they want to make. It can be very helpful for defendants to have a competent friend to sit beside them in court to advise, make notes, and give moral support. For this to be allowed defendants must first apply to the magistrates quoting the Court of Appeal ruling in *Mckenzie v Mckenzie*. Attending court a few times to familiarise yourself with procedure and cross examination can be helpful.

## Complaints against the police

Complaints against the police face a number of difficulties. Police officers from the force complained about investigate most of the complaints themselves, and people who have complained often describe a feeling of bias against the public. The Police Complaints Authority oversees the process which can range from allegations of rudeness through to serious criminal misconduct. Only 14% of recorded complaints result in disciplinary procedure, and 2% in criminal charges.

Defendants facing criminal proceedings who want to sue the police should not even write to the police outlining the complaint without first consulting a solicitor – they may end up disclosing information that is important to their case. Solicitors can help with complaints against the police. For people on low incomes, legal aid may cover expenses under the Green Form Scheme.

If there are grounds for believing that police have broken the law – assault, false imprisonment, trespass, wrongful damage to goods or malicious prosecution – legal advice should be sought.

It is usually better to sue through the civil courts rather than to rely on the complaints procedure. There's nothing to stop people doing both, but they should get legal advice first. Legal aid may be available. ■

## Key points

- get good legal advice at the earliest opportunity – solicitors can help with bail and legal aid even before the trial
- solicitors are difficult to change – before 'signing up' with one make sure you want them to represent you throughout the case
- apply for financial help – legal aid is decided on the basis of financial commitments as well as income
- if all else fails get a friend to sit by you and advise you in court

## CAUTION

■ This is a complex area on which we can only provide general guidelines. Anyone involved with the law should get legal advice at the earliest opportunity by contacting their solicitor or Release – Release's 24-hour emergency number is 071-603 8654; during office hours phone 071-729 9904.