



Criminal Law and Related Matters

This Guide explains the legal services offered by our Crime department and what you might expect in a typical situation if:

- You are arrested by the police or invited to attend a voluntary interview at a police station or elsewhere; or
- You are prosecuted and have to attend court.

We hope that this provides some of the answers in what we recognise is likely to be a bewildering and perhaps frightening experience. Criminal law and the criminal justice process are becoming ever more complicated and, given that the consequences of getting things wrong can be so serious, you should **always seek legal advice at the earliest opportunity**.

What work does the Crime Department handle?

The department has an established team of lawyers dealing with a wide variety of prosecution and defence work. These include:

- Road Traffic matters
- All general criminal defence work in the Magistrates and Crown Court and the Youth Court
- Benefit fraud defence
- Health and Safety and Environmental prosecutions and defence

We also handle formal complaints against the Police.

However we do NOT deal with complex Fraud, Tax Evasion or Terrorism cases or Prison law.

I have been informed that I am being investigated in connection with a possible criminal offence - what is likely to happen?

Most investigations will be conducted by the police but, depending on the nature of the matter, you could be investigated and questioned by a number of different agencies – for example the Department of Work and Pensions, a local authority, the Health and Safety Executive, the Environment Agency or Trading Standards. With the exception of the police you will rarely face arrest and you will be given formal notice of an intention to interview. This will give you an opportunity to seek legal advice and representation. This voluntary arrangement is also increasingly used by the police, and again if you have sufficient notice it is always advisable to seek legal advice and representation.

If you are being interviewed by the police at a police station, legal assistance will always be available free of charge to you. Legal representation at other forms of interview may require payment of a fee.

I have been arrested – what happens now?

If you are arrested by the police you probably will not have had the time to get legal help but once at the police station you will always be advised of your entitlement to free legal advice. Requesting legal advice and representation will rarely, if ever, delay the process or prejudice your case.

If you have actually been arrested you can only be held and questioned by the police for a specific period, which will differ according to the type of offence which is alleged. You must be provided with adequate food, drink and rest during this period. If you have not been charged by the end of the relevant period you must be released.

How is the interview conducted? Do I have to answer the questions put to me?

Interviews are conducted according to strict rules and will almost always be recorded. There are very few situations in which you are positively required to answer questions and you will be advised should that be the case. Generally there is no obligation to reply to questions but you will be cautioned that, if you fail to answer a question put to you in the interview, then any explanation that you might later offer at court in your defence might not count as effectively. Again you will be advised by your lawyer prior to the interview as to what is the best thing to do in the circumstances.

How long could the investigation process take?

Sometimes it may be possible for a decision to be made shortly after the first interview as to whether any further action will be taken. Often additional investigation is required in which case you will be released to a later date. Please be aware that certain types of investigation may span several months and the pace of the investigation can rarely be influenced by your lawyer.

What happens if a decision is made to charge me with a criminal offence?

If and when a decision is made to prosecute you will usually either be charged by the police at the police station or otherwise receive written notice with a date to attend court. In some cases, if you have been involved in a lengthy investigation and series of voluntary interviews, you may be asked to voluntarily attend at a police station and be charged with the relevant offence. It is normally advisable for your lawyer to attend with you in such cases.

In more serious cases, or if the police reasonably believe that you may abscond or fail to attend the court hearing, they may apply for you to be remanded in custody. If the application is successful you would be transferred to a remand centre and held there until the case comes to trial. Alternatively in some cases it may be possible to apply for bail, in which case you would be released on bail pending the trial. However someone (usually a family member or friend) will have to stand bail on your behalf which will mean either depositing a fixed sum of money as security for your appearance or undertaking to pay the required sum if you fail to attend the trial. Bail conditions may be imposed such as the surrender of your passport or regular attendance at the police station.

Should I ever accept a police caution?

In minor cases, where the offender is young or has no previous criminal record, the police may offer to deliver a caution rather than press charges. If a caution is ever offered to you this needs very careful thought and advice. The immediate advantages may seem obvious and compelling in that you will be released by the police and avoid any further legal proceedings, criminal conviction or punishment.

However, the main disadvantage is that all cautions are recorded and will remain on your police record. In certain circumstances the existence of the caution will have to be disclosed. Even if you have no further brush with the police at any point afterwards this can have a serious effect when applying for some jobs and public appointments, or travel visas and other permits required by some countries. As a result a caution accepted when you are a young person could adversely impact on your career or personal life many years later.

A caution should not be offered (or accepted) if there is insufficient evidence to prove the allegation, nor should you accept a caution if you have a reasonable defence to the allegation(s) made against you. It may therefore be sensible to take legal advice to assist you in assessing whether to accept a police caution.

What happens if I am charged with a minor road traffic or similar offence?

Some minor offences (eg certain road traffic offences) may be dealt with by written plea without you having to attend court. The paperwork you receive will make it clear whether this is the case.

I have been charged and I have to attend court – which court will hear the case?

Whatever the offence your first appearance will be before the Magistrates Court (unless you are 18 years of age or less when your case will be heard by the Youth Court.). In fact most cases both start and finish in the Magistrates Court. But there are a small number of charges of a more serious nature which must be sent to the Crown Court and others which, according to the facts alleged by the prosecution, will be referred to the Crown Court.

What difference does it make which Court hears my case?

A number of important matters are determined by which court is dealing with you including;

- How long the actual hearing may take (and how quickly it can be heard)
- What sort of penalties the court can / will give you if you are found guilty
- How much it may cost (if you don't qualify for legal aid).

Your lawyer should be able to advise you at an earlier stage where your case is likely to be heard and deal with these other issues accordingly.

Do I have a good defence or should I plead guilty?

One of the more important jobs for your lawyer is to consider the evidence for the prosecution, find out what you have to say about the allegations and advise as to whether you may have a good defence. In some instances we may have to advise that you might be better off pleading guilty. Nowadays the courts are keen that people know that if they plead guilty straight away they will benefit in terms of receiving a discounted sentence and that it will probably cost them less. That is correct but we must emphasise that you should not plead guilty if you are innocent and have a legal defence. Your lawyer is there to advise you on these matters but will not dictate what you should do at this point.

What happens if I decide to plead guilty?

If you decide you are going to plead guilty your lawyer should be able to advise you into what sort of range your likely sentence will fall. Many offences are now dealt with according to national guidelines which the courts are generally required to follow. We will usually have a fair idea where your case fits within those guidelines. Sometimes the court might decide that the Probation Service should interview you and prepare a report to assist the court in reaching its decision as regards the sentence. This process can often be dealt with on the day but it might necessitate an adjournment.

If you plead guilty your lawyer may still be able to represent you in court to offer a plea in mitigation. This will enable the court to take account of any factors which might affect and hopefully reduce your sentence. Your lawyer will discuss with you what factors might be relevant in your particular case, which might include such matters as the absence of any previous criminal record, your physical or mental health, education, family and personal circumstances, recent employment history, character references from reputable persons or the extent of your co-operation with the police. Any Probation Service report will also be highly relevant in this context.

What happens if I decide to plead not guilty?

If you plead not guilty the hearing will almost always be deferred to a later date for the court to hear and decide upon the evidence presented for both prosecution and defence. During the waiting period you will have an opportunity to provide your lawyer with more detailed instructions and to obtain evidence from any witnesses whom you intend to call.

The court may also issue orders about steps that must be taken by you or your lawyer, or the prosecution, to prepare for a trial hearing. This will usually include the exchange of witness statements and the advance disclosure of any other evidence on which the parties intend to rely at trial. We have a strict duty to carry out the court's instructions.

Generally if you are being dealt with in the Magistrates Court you will be represented by one of our own lawyers. If it becomes necessary to use a barrister or some other representative we will always inform you in advance and consult you before making arrangements for your representation at the trial. Your case will be heard by a panel of magistrates, who are members of the public appointed and trained for this purpose.

If your case is sent to the Crown Court either for you to enter a plea or for trial or sentencing you will always be represented by either a barrister or higher court advocate of suitable experience. We will advise you on the selection of suitable representation taking into account the type of case, cost, availability, legal aid restrictions etc. We will still remain responsible for preparing your case and will always be your first point of contact.

A trial in the Crown Court will normally be conducted by a judge and jury. The judge controls the conduct of the trial and provides guidance to the jury. The judge may also be required to determine any technical legal issues which arise. The jury will be selected from ordinary members of the public, and will consider all the factual evidence produced at the trial before giving its verdict. Any attempt to contact or interfere or tamper with the jury, or any individual member of it, is a serious criminal offence in itself. The judge will usually require the jury to reach a unanimous verdict in order to find you guilty but a majority verdict may sometimes be accepted. If you are found guilty the judge will deal with sentencing.

What happens if I am found guilty by the court?

Many offences are now dealt with according to national sentencing guidelines which the courts are generally required to follow. We will usually have a fair idea where your case fits within those guidelines.

In many cases the hearing will be adjourned for sentencing, which will take place at a later date. This will enable the court to consider the most appropriate sentence in your particular case and any other orders (eg compensation orders) that might be applicable. Sometimes the court might decide that the Probation Service should interview you and prepare a report to assist the court in reaching its sentencing decision.

However both the Magistrates and the Crown Courts increasingly try to complete the sentencing exercise as soon as possible and in some cases straight away (whether upon a guilty plea being entered by you or after a guilty finding by the court). This may be achieved by a Probation Officer seeing you at court on the same day whilst the case is stood down. If more information is needed and it is not possible to sentence on the same day the case will be adjourned for a pre-sentence report.

Your lawyer may still be able to represent you in court to offer a plea in mitigation. This will enable the court to take account of any factors which might affect and hopefully reduce your sentence. Your lawyer will discuss with you what factors might be relevant in your particular case, which might include such matters as the absence or extent of any previous criminal record, your physical or mental health, education, family and personal circumstances, recent employment history or character references from reputable persons. Any Probation Service report will also be highly relevant in this context.

Will I qualify for Legal Aid?

We should be able to advise you at an early stage if you are likely to qualify for legal aid. You will be required to provide us with information about your finances and personal circumstances to enable us to submit an application for legal aid on your behalf. If your case is heard by the Crown Court you may have to pay a contribution, even where legal aid is granted.

You may not qualify for legal aid if either:

- your financial circumstances do not justify it; or
- the offence is not regarded as sufficiently serious.

If so, we will provide you with a fee estimate or fixed fee quotation before we commence work on your behalf.

This Guide is not intended to be comprehensive. It highlights and explains the common legal issues relevant to this topic. It should also help you to understand any steps we take on your behalf and the terms we and other professionals involved in your matter may use. Please read this Guide carefully and contact the lawyer dealing with your matter if you do not understand anything in it. We will not repeat the advice or information provided in this Guide when we meet you or write to you unless we need your specific instructions on some aspect of it.