

TRIAL ON INDICTMENT

1. COMMITTAL PROCEEDINGS

Up until recently, the magistrates' court had to decide if there was a *prima facie* case against the defendant, ie, if there was enough evidence on a 'first look' to justify sending the defendant for trial at the Crown Court. The procedure was regulated by the Criminal Procedure and Investigations Act 1996:

- Committal proceedings began with the prosecution tendering admissible statements and other evidence.
- The magistrates did not consider the evidence provided the defendant was legally represented and the defence agreed.
- The defence could ask that all the statements be read by the magistrates and defence lawyers were able to submit that the evidence tendered did not disclose a *prima facie* case.
- Otherwise the magistrates would then formally commit the defendant for trial at the Crown Court.

Today, under s51 of the Crime and Disorder Act 1998, the defendant will still make a first appearance at the magistrates' court but, committal proceedings having now been abolished, the magistrates will send the case to the Crown Court 'forthwith'.

2. PLEA AND DIRECTIONS HEARING

In 1995 the procedure known as the Plea and Directions Hearing (PDH) was introduced to ensure that any steps necessary for trial have been taken, and that the court is provided with sufficient information to fix a trial date.

- At the PDH, arraignment will take place, ie all the charges on the indictment will be read out to the defendant in open court, and he will be asked how he pleads to each charge.
- If the defendant pleads guilty, the judge will sentence the defendant immediately, if possible.
- If the defendant pleads not guilty, the judge will go through a PDH questionnaire, completed as far as possible with the agreement of both advocates. The Judge's Questionnaire makes the following enquiries, among others:

Length of trial,
Issues in the case,
Issues as to the mental or medical condition of the defendant or witness,
The number of Prosecution and Defence witnesses,
Exhibits to be admitted,
Alibi,
Points of law likely to arise at trial,
Questions of admissibility of evidence,
Evidence through live television links or pre-recorded video interviews with children,
Witness availability,
Advocates' availability
The judge will be able to fix a suitable trial date and make any other appropriate directions.

3. PREPARATORY HEARING

Section 29 of the Criminal Procedure and Investigations Act 1996 provides that where it appears to the Crown Court judge that an indictment reveals a case of such complexity, or a case whose trial is likely to be of such length, that substantial benefits are likely to accrue from a preparatory hearing, before the jury are sworn in, he may order a preparatory hearing. The purposes of a preparatory hearing are those of:

- (a) identifying issues which are likely to be material to the verdict of the jury;
- (b) assisting their comprehension of any such issues;
- (c) expediting the proceedings before the jury;
- (d) assisting the judge's management of the trial.

At the preparatory hearing the judge may make a ruling as to:

- (a) any question as to the admissibility of evidence;
- (b) any other question of law relating to the case.

4. DISCLOSURE

The prosecution will have given statements of all the evidence they propose to use at the trial, to the defence.

Under the Criminal Procedure and Investigations Act 1996, the prosecution and defence must disclose certain material to each other.

- *Primary disclosure by the prosecutor:* the prosecutor must (a) disclose to the defence any prosecution material which

has not previously been disclosed to the defence and which in the prosecutor's opinion might undermine the case for the prosecution against the defendant, or (b) give to the defence a written statement that there is no such material (s3).

- *Compulsory disclosure by accused:* the accused must give a defence statement to the court and the prosecutor. A defence statement is a written statement setting out in general terms the nature of the accused's defence (s5).
- *Secondary disclosure by prosecutor:* the prosecutor must (a) disclose to the defence any prosecution material which has not previously been disclosed to the accused and which might be reasonably expected to assist the accused's defence as disclosed by the defence statement, or (b) give to the accused a written statement that there is no such material (s7).
- *Application by accused for disclosure:* if the accused has at any time reasonable cause to believe that (a) there is prosecution material which might be reasonably expected to assist the accused's defence, and (b) the material has not been disclosed to the accused, the accused may apply to the court for an order requiring the prosecutor to disclose such material to the court (s8).

5. PLEA BARGAINING

There may be informal discussions between the defence and prosecution on whether the prosecution would accept the defendant pleading guilty to a lesser offence. The PDH Judge's Questionnaire asks, "Will the prosecution accept part guilty or alternative pleas?" (Q1c).

The Judge's Questionnaire also enquires if the defence advocate has advised his client of s48 of the Criminal Justice and Public Order Act 1994 (Q1b). Under s48 CJPOA 1994, the court will take into account the stage at which the defendant indicated that he intended to plead guilty and the circumstances in which this indication was given. The court can then, if it thinks fit, give a less severe sentence than it would otherwise have done. Where the court does this it must be stated in open court.

6. TRIAL PROCEDURE

See next sheet.