



Fenners  
Barristers

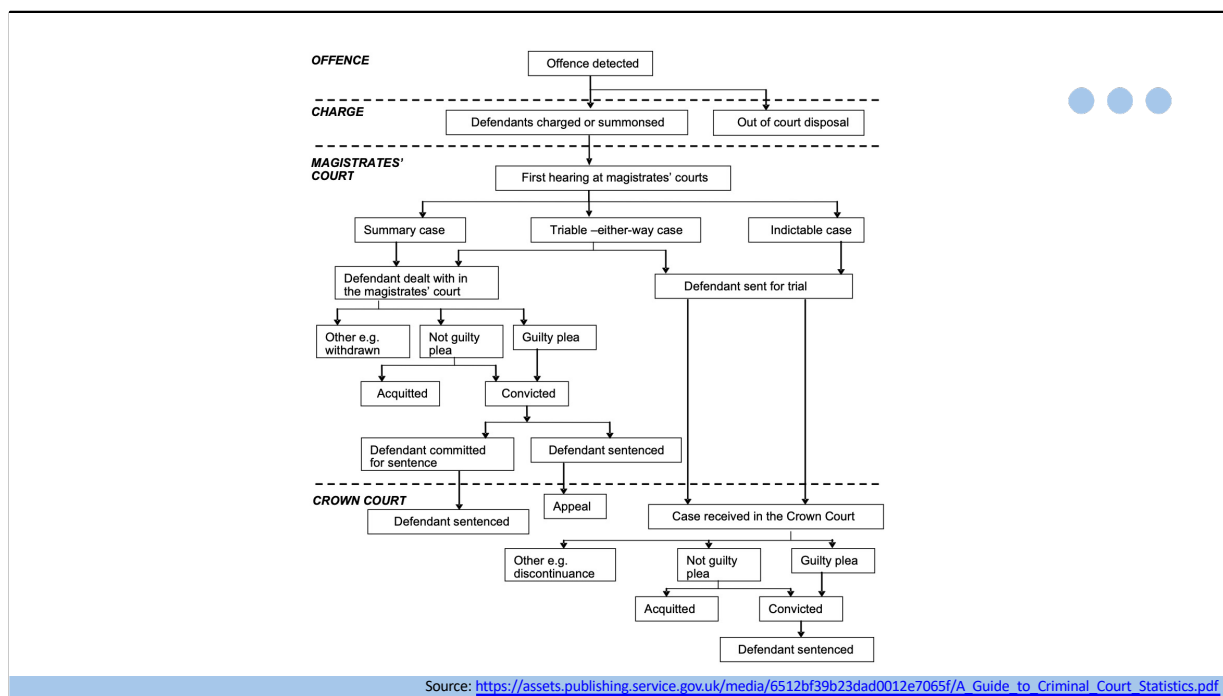


# Guide to Criminal Proceeding

Abigail Robinson

# Court Procedure in Criminal Cases





- (1) Offence committed/allegation made: police contacted, crime raised and Crime Report will commence from this time.
- (2) Investigation: individual may be arrested and interviewed. From the moment the individual is arrested and brought to the police station, the Custody Record will commence.
- (3) Interview: interviews can be conducted either post-arrest, or they can be voluntary interviews. A voluntary interview is where the individual has not be arrested and instead an arrangement at a convenient time and date is made for them to be interviewed. It is the individuals choice if they engage with that interview.
- (4) NFA, Out of Court Disposal or Charging Decision: full code test or threshold test
- (5) Defendant charged or summonsed: may have been a gap between interview and charge, investigation may have needed to continue in response to matters raised during the course of the interview. In which case, could be summonsed to Court. If not, then can be brought straight from police custody the following day.
- (6) First Appearance in the Magistrates Court: all cases involving adults have their first appearance in the Magistrates Court, even if it a murder. Defendant will need to enter a plea.

Summary only offences: NG plea, adj for trial in the MC. G plea, proceed straight to sentence or adj for PSR.

Either-Way offences: NG plea, Pros can make reps on SST, Mags can take a view, D has the choice to elect CCT. GP, Mags can retain for sentence in the usual way (with or without a PSR) or commit to CC to sentence if take the view their sentencing powers are insufficient.

Indictable only offences: must go to CC. Can indicate a plea, but either way will need to go to CC.

(7) PTPH: first opportunity for the Defendant to enter a plea in the CC. GP, either proceed to sentence or adj for PSR. NGP, case listed for trial.

(8) Trial: all trials will be before a jury in the CC.

(9) Sentence

#### Note on Crown Court Venue:

Cambridge Crown Court is comprised of Cambridge, Peterborough and Huntingdon.

Norwich Crown Court also sits at Kings Lynn.

Some West-Suffolk cases, largely Newmarket, are now being transferred to Cambridge.

Note on Youths: the Youth Court (for those under 18) has completely separate rules. The best place online for guidance is the Youth Justice Legal Centre (<https://yjlc.uk>)

# Police Bail

Pre-Charge Bail: can be imposed in a number of circumstances, including –

1. Where there is insufficient evidence to charge/further investigation is required, and the individual is released pending further investigation
2. Where there is viewed to be sufficient evidence, but a charging decision must be made by the CPS

Authorities: s.34 & 37, PACE 1984; s.46A, PACE 1984 (arrest for breach of pre-charge bail)

Post-Charge Bail: the police can bail an individual charged with an offence to appear at Court at a future date with conditions.

Authorities: s.37 & 47, PACE 1984



## Pre-Charge Bail:

Pre-Charge Bail is a matter for the police to decide, including what conditions are imposed.

Where an officer has reasonable grounds to believe that pre-charge bail conditions have been breached, they have a power of arrest. However, breach of *pre-charge* bail conditions is not, in itself, an offence. Obviously, if the breach amounts in and of itself to a criminal offence, then it is a criminal offence.

## Post-Charge Bail:

The Police can keep a person charged with an offence detained or they can release them on bail to appear at Court on a future date with or without conditions. Breach of post-charge bail is treated the same as breach of court bail.

# Court Bail

On each occasion a person is brought before a Court, charged with an offence, they have a right to bail under s.4, Bail Act 1976. Conditions may only be imposed where necessary to ensure the exceptions to bail are addressed.

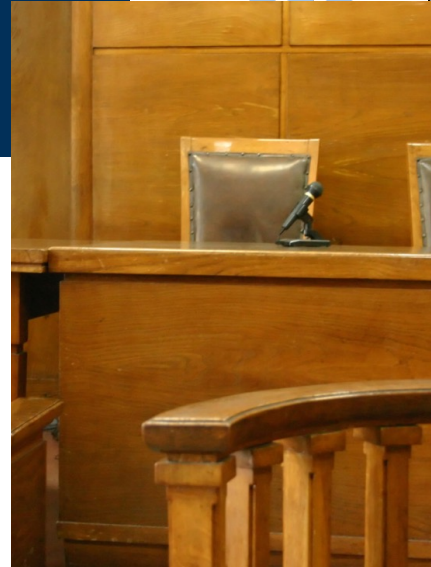
The main exceptions to the right to bail are where there are substantial grounds to believe that the Defendant, if released on bail (whether subject to conditions or not), would –

1. Fail to surrender to custody (FTS);
2. Commit an offence while on bail (CFO);
3. Interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person (IWW).

There are further exceptions, including in domestic abuse cases and where there is concern that the Defendant poses a risk to themselves.

Note: bail conditions when a person is charged with murder are different, and regard should be had to s.114 & 115, Coroners and Justice Act 2009.

Authorities: Sch. 1, Bail Act 1976



Domestic Abuse: the Legal Aid, Sentencing and Punishment of Offenders Act 2012 inserted a new exception whereby the Defendant need not be granted bail if the Court is satisfied that there are substantial grounds for believing that the Defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail by engaging in conduct that would, or would be likely to cause –

- a. Physical or mental injury to any associated person; or
- b. An associated person to fear physical or mental injury.

Associated person has the same definition as in s.62, FLA 1996.

Murder: the Magistrates does not have the power to consider bail in murder cases, whether at the first hearing or after a breach of bail conditions. The test for bail where someone is charged with murder is that they may not be granted bail unless the Court is satisfied that there is no significant risk that, if released on bail, that person would commit an offence that would be likely to cause physical or mental injury to another person.

# Restraining Orders

**Restraining Order on Conviction:** The Court may make a Restraining Order for the purpose of protecting the victim or victims of the offence, or any other person mentioned in the Order from conduct which amounts to harassment or will cause fear of violence.

Authorities: s.359 - 364, Sentencing Act 2020

**Restraining Order on Acquittal:** These are also known as Non-Conviction Restraining Orders. The Court has the power to make a Restraining Order if it considers it necessary to protect the person from harassment (but not fear of violence).

Authorities: s.5A, Protection from Harassment Act 1997



Sitting at Cambridge C

Case reference  
Defendant  
Date of birth

## Notice of Restraining Order

### Date of notice

The following order is made against the defendant to protect you from further conduct amounts to harassment or will cause fear of violence.

Just because there is a Restraining Order does not mean that there has been a conviction.

### Restraining Order on Conviction:

Where a Defendant is convicted of any offence, the Court may make a Restraining Order.

### Non-Conviction Restraining Order:

These will quite often be a compromise, particularly in DV cases in the MC, whereby the Crown will drop their case if the Defendant agrees to abide by a non-conviction Restraining Order.

Because there has been no conviction, the standard of proof in proving that the Order is necessary is the civil standard (R v Major [2010] EWCA Crim 3016).

### Where the Individual Does Not Want a RO:

R v Herrington (Wayne) [2017] EWCA Crim 889: “This is not a jurisdiction which can be used to prevent an adult from deciding who she wants to live with. Although any person considering this case would consider that Holly Jones is at serious risk of violence from the appellant, she has the right to live with him if she chooses. It is to be hoped that she is genuinely aware of the risk she is running in doing that, but ultimately she is an adult and free to take those decisions for herself. The law does not presently permit the criminal court to act to protect victims of domestic violence against the consequences of decisions of this kind which they freely make. Because of our level of concern for her safety, we caused the police to contact her very recently before this case was heard so that her wishes could be ascertained. She told them unambiguously that she wants this order revoked.” [7]

# Other Orders:

**Notification Requirements:** automatically apply when an individual has been convicted for a sexual offence listed in [Sch. 3, Sexual Offences Act 2003](#). Breach is a Criminal Offence. The requirements are set, and summarised by the Sentencing Council [here](#).

**Sexual Harm Prevention Orders:** can be sought by the Prosecution where a person has been convicted of an offence listed in [Sch. 3 or Sch. 5, Sexual Offences Act 2003](#). The terms are not set by law and are chosen depending on the risk that needs to be safeguarded. The Sentencing Council summarise the law [here](#). If a person is subject to a SHPO, they will automatically be subject to Notification Requirements for the duration of the Order. However, if someone has Notification Requirements, they do not automatically have a Sexual Harm Prevention Order.

**Sexual Risk Orders:** a civil Order sought by Police against an individual who has not been convicted of an offence but is thought to pose a risk of harm. It can include positive requirements.

**Stalking Protection Orders:** the Police may apply for an Order. There is no requirement of conviction. Breach is a criminal offence.

**Domestic Violence Protection Notices and Orders:** DVPNs give the Police the power to provide immediate protection victims against DA offenders where there are reasonable grounds to believe it is necessary. A DBPN has effect for 48 hours, after which an application must be made for a DVPO. A DVPO is sought by the Police and granted by the Magistrates Court. It may be in force for no fewer than 14 days and no longer than 28 days. Breach of either is a civil contempt of court.



Notification Requirements: s.80 – 93, Sexual Offences Act 2003

Sexual Harm Prevention Orders: s.103A – 103K, Sexual Offences Act 2003

Sexual Risk Orders: s.122A – 122K, Sexual Offences Act 2003

Stalking Protection Orders: Stalking Protection Act 2019

Domestic Violence Protection Notices and Orders: s.24 – 33, Crime and Security Act 2010

# Custody Time Limits

Magistrates Court: 56 days

Crown Court 182 days

The CPS have produced a calculator for CTLs which can be found [here](#).



Custody Time Limits begin on the first occasion at which the Defendant is remanded. This is the period within which the proceedings must be dealt with. If the case cannot be concluded (e.g. either a guilty plea or a determination of guilt), then there must be an application to extend the CTLs.



# Useful Resources

[Sentencing Council diagram of the Criminal Justice System](#)

[CPS Guidance on Bail](#)

[Code for Crown Prosecutors](#) (including explanations as to the decision to prosecute, the Full Code Test, the Threshold Test and Out of Court Disposals)

[CPS Guidance on Domestic Abuse](#)

## Documents in Criminal Cases



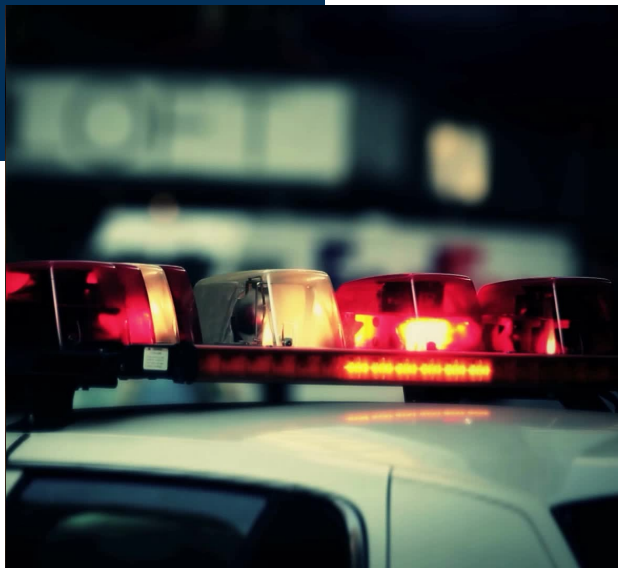


## Preliminary Documents

- Custody Records
- Crime Reports
- 999 Calls and Storm Reports
- MG4 (Notice of Criminal Charge)
- Indictment
- MG5 (Case Summary)

# Custody Records

A record created by the Custody Sergeant for the duration of time that the Individual is in police custody.



It will include:

- The items the individual had on their person at the time that they were brought to custody;
- Whether the individual required or sought medical attention during the time they were in custody. If they did receive medical attention, it will state why, what the view of the Healthcare Professional was and any medication that was prescribed;
- That they were notified of their rights (offered legal advice, to have someone informed of their arrest etc.). If they sought to have someone notified of their detention, it will confirm who that person is;
- If any of their legal rights have been overruled;
- If their detention has been extended;
- If they reported any vulnerabilities;
- If they have previously been in custody, it will confirm if there are any markers on their record such as mental health concerns, violence etc..

When might you want the Custody Record:

- If concerns about whether the person arrested was intoxicated at the time of

the offence, sensible to seek disclosure of the custody record. One of the factors that will be considered in deciding when to interview is whether or not the individual is fit to be interviewed. If there are under the influence of alcohol or drugs, or suspected to be so, then they will not be interviewed until sober and the custody record will reflect that this is the position.

- If the individual was arrested immediate after the incident and asserts that they were injured during the course of the altercation.

All entries on a custody log are time stamped.

# Crime Reports

Crime Reports are created by the Police when an allegation is made. All allegations should result in a Crime Report being created, even if it is very short. It records all steps which have been taken in an investigation.

Where counter allegations have been made, there should be separate crime reports.

May also be referred to as an Investigation Report or a CHRIS report.



A Crime Report will include:

- A summary of the allegation;
- A summary of the initial steps as taken when police first attended, e.g. –
  - Initial account taken from the complainant;
  - Arrest;
  - Any transfer to hospital;
  - Any house to house enquiries conducted;
- An entry whenever a step is taken in the investigation, e.g. –
  - If a person has been interviewed;
  - If a person has been ABE'd;
  - If a complainant has contacted the Police explaining a desire to withdraw their allegation;
- In domestic cases, a note as to whether there are previous allegation of domestic abuse and the crime reference for those allegations (which is the same reference used to identify a crime report);
- Where a case has been sent to the CPS for a charging decision and that decision has been refused with a request for further evidence, that will be included in the Crime Report;

A concluded Crime Report will state what the outcome of the investigation was. If the case has not proceeded to a charging decision, it will state why that is, e.g. evidential difficulties, unsupportive complainant etc.

Where you have a vulnerable child, such as a child who is regularly reported missing or is concerned to be involved in CSE, there will often be a Master Record which accumulates all incidents known regarding that child or vulnerable person.

When might you want the Crime Report:

- Where there is an allegation which has been investigated by the police and either –
  - The investigation is ongoing and it has yet to be sent to the CPS for a charging decision, meaning that there is MG5 or witness statements available;
  - The investigation was NFA'd.

# 999 Call and Storm Report

All 999 calls are recorded. Where a 999 call has been made in a case, and the case has proceeded to Court, the CPS will always have access to the recording.

The Storm Report is the written log kept by the call handler.



Transcripts are not sought automatically. In Cambridgeshire cases, a transcript will be sought only if the Crown intend to play the footage during the course of a trial, and even then, it is good practice but not always done. Where a case has proceeded to the Crown Court, the 999 audio recordings will almost always have been put on an MG0 link and thus be available.

## Storm Report:

The Storm Report will log if there have been other calls made to the Police about the same incident. It will also note if there are any markers on any of the individual, such as previous allegations of domestic abuse.

## Online Report:

Offences can be reported by an instant online chat, this will always be saved and retained in the same manner as the 999 call.

# DASH/DARA Form

This used to be called the DASH Form, it has been renamed the DARA Form (Domestic Abuse Risk Assessment Form).

Where an allegation has been made of Domestic Abuse, the Police will ask the Complainant if they are willing to complete a DARA. This is a set list of questions which conclude in a risk assessment.

The College of Policing have published a document about DARA Forms which can be found [here](#).

A sample DARA can be found [here](#).



This will cover not only the current allegation, but questions relating to previous domestic abuse within the relationship.

When might you want to ask for the DARA/DASH:

1. When you know that police have attended after an incident, the complainant has been spoken to and engaged;
2. There are concerns about previous domestic abuse in the relationship which has not been reported.

# MG4/Notice of Criminal Charge

This sets out the charges that the Defendant faces.

This is the initial notification that the Defendant will have received as to the charges.

Charges	
You are Charged with the Offence(s) shown below. You do not have to say anything, but it may harm your defence if you do not mention now something, which you later rely on in Court. Anything you do say may be given in evidence.	
Charge	CCCR Offence Code
Between [redacted] and [redacted] at Cambridge in the county of Cambridgeshire intentionally strangled [redacted]	SC15005
Contrary to section 75A(1)(a) and (5) of the Serious Crime Act 2015.	



This is primarily of use where the case is in the Magistrates Court, however, it is produced in all criminal cases. In cases which proceed to the Crown Court, the MG4 is effectively superseded by the Indictment.

Just because an offence is on the MG4, that does not mean that is the offence that the Defendant was ultimately convicted of, or faced trial on – this is the initial charge, however, charges c

# Indictment

This sets out the offences with which the Defendant is charged in the Crown Court. It is the offences on the Indictment that the Jury are invited to return a verdict at the conclusion of the trial.



## INDICTMENT

IN THE CROWN COURT AT CAMBRIDGE

THE KING - v - JOHN SMITH

JOHN SMITH is charged as follows:

### STATEMENT OF OFFENCE

INTENTIONAL STRANGULATION, contrary to section 75A(1)(a) and (5) of the Serious Crime Act 2015

### PARTICULARS OF OFFENCE

JOHN SMITH on the 1st day of January 2025 intentionally strangled JANE SMITH

Officer of the Court

URN:

The Indictment is drafted by the Prosecution.

If the Defendant has pleaded guilty to some offences in the Magistrates Court but not guilty to other offences which have been sent to the Crown Court for trial, then the offences which the Defendant has already pleaded guilty to will not appear on the Indictment.

Just because an offence is on the Indictment, that does not mean that is the offence that the Defendant was ultimately convicted of. Unlike an MG4, an Indictment is a living document and there may be multiple versions of the Indictment. It should be noted, that generally, the Defendant will only plead guilty to the offences which are on the Indictment, however, they may plead to a lesser alternative, for example, plead guilty to common assault instead of Assault ABH.

# MG5

The MG5 is a document drafted by the Police which summarises the facts giving rise to the offences. It is a document of multiple sections.

A guidance document on how the MG5 is completed can be found [here](#).



Sections of the document	
<b>HEADING SECTION</b>	
<b>POLICE REPORT</b>	
URN: <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	
Defendant 1: <input type="text"/>	Anticipated plea: <b>[SELECT]</b>
Defendant 2: <input type="text"/>	Anticipated plea: <b>[SELECT]</b>
<b>1. Summary of the key evidence</b> - 'Key evidence' establishes every element of the offence and that the defendant committed the offence with the necessary criminal intent. <ul style="list-style-type: none"><li>◆ Set out the facts in chronological order, telling the story and covering the 'points to prove'</li><li>◆ The summary must be balanced and fair</li><li>◆ Record address and contact details of civilian witnesses on MG9 (and <i>all dates to avoid on MG10</i>).</li></ul>	
Key evidence: <input type="text"/>	
Key witness(es) and their role (e.g. eye witness, person providing identity): <input type="text"/>	
State value of property stolen or damaged (or recovered). See Sec 9 for recording compensation details: <input type="text"/>	

A significant degree of caution is needed when considering the content of an MG5. Within the Criminal Justice System they are viewed to be notoriously unreliable documents, particularly in more complex cases. If an individual has been convicted of an offence and raises a dispute with the content of the MG5, that dispute should not be dismissed, there is a real possibility the MG5 is wrong. Equally, the MG5 is drafted when the case is sent to the CPS, it's usually a copy and past of the request for a charging decision. That means it very often does not reflect the charges that were actually authorised. Since the Indictment is advised on by counsel, it often changes the offences, and so there can be an even larger gap between the MG5 and the offences at any trial.

It is a starting point.



## 2. Defendant interview

- ◆ Set out the explanation given by defendant as to **how/why offence happened**: include any **mitigation/remorse** put forward.
- ◆ Note any **Special Warnings** given.
- ◆ Include any evidence of bad character introduced.
- ◆ State if no comment made.
- ◆ Attach copy of CCTV if shown in the interview (**to file**).

Defendant:

Date of interview:  Audio Recorded interview duration:

Interviewing officer(s):

Other person(s) present:

Summary of defendant explanation:

Defendant's response/reaction to CCTV (if 'key evidence' and shown in I/V):

Relevant admissions and their start/finish counter reference times:



<p><b>3. Non-Key evidence</b> – List witnesses present but not 'key'. State what evidence they contribute, e.g. additional eye witness, arresting officer, charging officer; officer seizing CCTV. Record contact details of civilian witnesses on MG9 and dates to avoid on MG10.</p> <p>Name of non-key witness(es) and their role: <input type="text"/></p>
<p><b>4. Visually recorded evidence</b> – CCTV, BWV, photos, mobile phone(s). Attach a copy (<i>identify playback format</i>). Custody suite CCTV should be included as unused material unless 'key evidence'.</p> <p>Is there VRE? <input type="text"/> If 'Yes', does it provide 'key evidence'? <input type="text"/></p> <p>Give details of what it shows (whether 'key' or not) and include tape counter reference times for relevant key sections (<i>i.e. defendant punching victim/kicking window</i>) <input type="text"/>.</p>

**5. Injuries** – A medical statement is **NOT** required unless needed to interpret x-rays or describe injuries not visible to the naked eye. Victim(s)/eye witness/police officer should describe any visible injuries, photos should be taken and attached (if not taken, attached, state why).  
Description of injuries:

**6. Forensic evidence** – Fingerprints, drugs evidence (weight, number of wraps, etc.). Include details such as street value and purity as this is essential for sentencing information. State if drugs field tested and by whom. State timescales for a full forensic statement (if required).

**7. DIP testing** – attach DT2 for prosecutor.  
Def. 1: Tested? ☐ Trigger off: ☐ Result: (pos/neg)  Drug:   
Def. 2: Tested? ☐ Trigger off: ☐ Result: (pos/neg)  Drug:

**8. Application for order(s) on conviction** – Consider applying for an order on conviction, e.g. compensation, forfeiture/destruction (see order list).  
Defendant:   
Order(s) applied for:  Additional order/information:

**9. Application for compensation** – State if an estimate. Attach quotes/receipts if available. An address for compensation **must** be provided on MG6. (If more than one victim/defendant, list one after the other and give details in the description box).  
Defendant:  Victim:   
Description of injury/loss and or damage:   
Amount of compensation applied for:  Has an MG19 been sent to victim?

**10. Other:** MG18 (TICs)? ☐ Pre-cons/cautions attached? ☐ MG6? ☐



# Prosecution Evidence

- Interviews
- Witness Statements
- ABEs
- Pre-Recorded Cross-Examination
- Body Worn Video
- Streamlined Forensic Reports

# Interviews

Almost all individuals charged with a crime are interviewed. All police interviews are recorded, usually both audio and visual recording.

In almost all cases which proceed to the Crown Court, there will be a transcript of the interview (a ROTI), aka an MG15, or an interview summary (usually if the Defendant went “no comment” in interview).

ROTI's are not produced as a matter of course in the Magistrates Court. You will be restricted to the summary of the interview as contained within the MG5.



Some Defendants who go “no comment” in interview will, however, provide a pre-prepared statement which summarises their account. These should be summarized within the interview transcript or within the MG5. However, you may wish to seek specific disclosure of them in circumstances where it is known one was advanced.

# Witness Statements

Almost all Complainants and witnesses will produce a witness statement during the course of the investigation.

Some witnesses statements have specific purposes such as Victim Personal Statements and Withdrawal Statements.

Witness Statements may be referred to as MG11s.

OFFICIAL (when completed)  
**WITNESS STATEMENT**  
Case Number: \_\_\_\_\_  
Crime Number: \_\_\_\_\_  
URN: \_\_\_\_\_  
Criminal Procedure Rules, r 27.2, Criminal Justice Act 1987, s. 9, Magistrates' Courts Act 1980, s 10

Statement of: \_\_\_\_\_ (If over 18 insert your ID) Occupation: \_\_\_\_\_  
Age: \_\_\_\_\_ and/or 18 \_\_\_\_\_  
This statement (consisting of \_\_\_\_\_ paragraphs each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.  
Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Has it witness evidence been visually recorded? ☐ (insert witness name on next page)  
Signature: \_\_\_\_\_ Signature witnessed by: \_\_\_\_\_  
Signature: \_\_\_\_\_ Signature witnessed by: \_\_\_\_\_

# ABE

ABE "Achieving Best Evidence" Interview. This is a pre-recorded interview conducted by the Police of the Complainant or a witness in the case. The ABE will typically stand in place of a witness statement.

ABEs are recorded using audio and visual recording. If the case proceeds to Court, their content will be transcribed.

A guidance document on ABEs can be found [here](#).



The ABE is typically conducted by the Police without any involvement from the CPS. It is often conducted pre-charge. There is no set criteria for when an ABE will be conducted, it is a matter in the discretion of the Police as to when they believe that it will help achieve the witnesses best evidence. There are some cases where ABEs are almost expected:

1. Where the witness is a child;
2. Where the witness is vulnerable due to mental health difficulties, age or otherwise;
3. Where it is a sexual offence;
4. Where it is an allegation of Coercive and Controlling Behaviour;

Where an ABE has been conducted, there will almost invariably be a application for Special Measures to enable the ABE to stand as a witnesses Evidence in Chief.

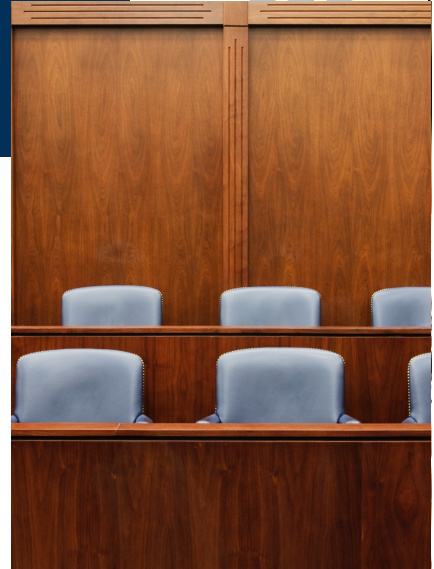
It is not unusual for a witness to have both an ABE and witness statements, usually where matters have arisen post-ABE and there needs to be further points clarified or further evidence given.

Typically, an ABE is conducted at the police station. However, there may be occasions when due to specific circumstances the ABE is conducted at the witnesses home address.

# Pre-Recorded Cross-Examination

Section 28, Youth Justice and Criminal Evidence Act 1999 permits pre-recorded cross-examination as a form of special measures. As it is a form of Special Measures, it is subject to judicial discretion.

Pre-recorded cross examination is available for all vulnerable witnesses and intimidated witnesses (of sexual offences or modern slavery offences who are victims in proceedings relating to that offence, or that offence and any other offences).



Pre-Recorded Cross-examination is a form of Special Measures. It means that the witness will be cross-examined in advance of trial. Counsel will be in the courtroom with the Judge (who *should* be the trial judge) and the witness will attend via live link. There is no jury. The witness is then cross-examined. That recording is then played at trial, and there is no need for the witness to attend.

# Vulnerable Witnesses



The availability of pre-recorded cross-examination for vulnerable witnesses is dealt with by s.16, YJCEA which provides that the following are eligible:

1. Those under the age of 18 at the time that the special measures application is made to the Court;
2. Those where the Court considers that the quality of evidence given by the witness is likely to be diminished by reason of the fact that –
  - a. The witness suffers from a mental disorder within the meaning of the Mental Health Act 1983; or
  - b. The witness has a significant impairment of intelligence and social functioning;
  - c. The witness has a physical disability or is suffering from a physical disorder.

Effectively, those under 18 automatically eligible.

## Intimidated Witnesses



S. 17(4), YJCEA provides “Where the complainant in respect of a sexual offence or an offence under section 1 or 2 of the Modern Slavery Act 2015 an offence listed in subsection (4A)) is a witness in proceedings relating to that offence (or to that offence and any other offences), the witness is eligible for assistance in relation to those proceedings by virtue of this subsection unless the witness has informed the court of the witness’ wish not to be so eligible by virtue of this subsection.”

# Body Worn Video

All uniformed police are provided with Body Worn Video camera.

Where an officer takes an initial account from a witness, it should be recorded on BWV.

Arrests should be covered on BWV.

Where a case proceeds to Court, the BWV will either comprise part of the evidence of the case or be included within the unused material.



When might you want to ask for BWV:

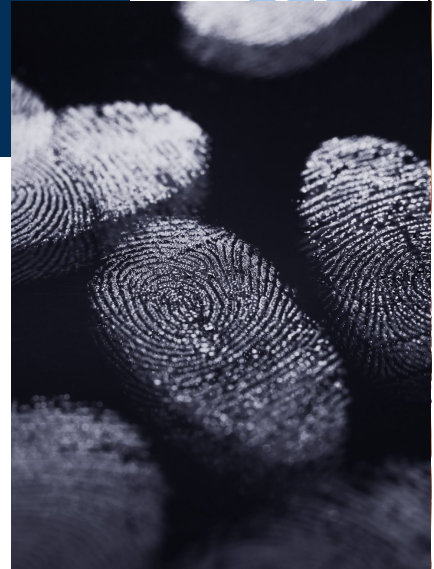
1. When it is known that uniformed police attended an incident and spoke to witnesses;
2. When it is known that children witnessed the incident and were spoken to by police officers – frequently where there is a young child, they will not seek to ABE them and will instead make a hearsay application to admit the content of that initial account;
3. Where the incident is known or believed to have still been ongoing at the time of police attendance and thus the incident itself is likely to have been captured on BWV;
4. Where it is known or suspected that multiple different accounts have been given by witnesses and thus the initial account is required;

# Streamlined Forensic Reports

Streamlined Forensic Reports (SFRs) give a summary of the conclusions of forensic evidence.

The first version of the SFR is called the SFR1, this is not a witness statement nor is an expert report. As such, it has no evidential value. If it is disputed, then there will be an SFR2.

The SFR can cover medical evidence, DNA evidence, fingerprint evidence etc.





# Defence Documents

- Defence Case Statement
- Basis of Plea

# Defence Case Statement

The Defence Case Statement is drafted by Defence Counsel or Solicitors. It is produced on behalf of the Defendant and provided to the Prosecution and the Court. It summarises the Defendant's case.

1. The offences charged;
2. The general nature of the defence;
3. Matters of fact on which the defence propose to rely (i.e. a summary of their account);
4. Matters that are in dispute;
5. Any legal issues;
6. Witnesses that are required by the Defence and any defence witnesses;
7. Disclosure sought

THE CROWN COURT SITTING AT CAMBRIDGE

BEEN

REX

-V-

JOHN SMITH

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DEFENCE STATEMENT

(S.5 Criminal Procedure and Investigations Act 1996)

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Defence Statement is given in accordance with S.5(5) and (6) of the CPIA 1996. It is intended to go further than is required by that Act. The Defendant acts on the basis of the "case for the Prosecution against the accused" (S.3(1)(a)) which is reflected in the Defence Statement against him at the time of arraignment. Accordingly, the Defence Statement sets out in general terms the accused's defence to those charges, and not to any other charges which may be suggested by the committal documents or to any charges which may be brought against him.

The defendant will argue that he is entitled to mount whatever defence he wishes to other than those on which he was arraigned, without risk of comment under s.11(d) or 11(3) of the Act.

# Basis of Plea

When a Defendant pleads guilty, it is open to them to plead on a Basis. That Basis *should* be reduced to writing.



IN THE CROWN COURT SITTING AT CAMBRIDGE  
BETWEEN

URN:

REX

-V-

JOHN SMITH

BASIS OF PLEA

I, John SMITH, plead guilty to one offence of Intentional Strangulation.

I plead guilty on the following basis –

1. At the time of the incident, I was under the influence of alcohol and Class A

When might you want to ask for a basis of plea:

1. When there is a difference between what the individual says they accepted and what the papers would suggest they were charged with.



# Sentencing Documents

- Sentencing Note
- Pre-Sentence Reports
- LADS Report
- Psychological or Psychiatric Report

# Sentencing Note

It is open to both the Prosecution and the Defence to draft a note for the Court for sentence. However, they are more commonly prepared on behalf of the Prosecution.

A sentencing note will detail:

1. The facts of the offence for which the Defendant is to be sentenced;
2. The Defendant's account in interview;
3. The stage at which the Defendant pleaded guilty;
4. The Prosecution submissions on sentencing guidelines;
5. Ancillary Orders sought by the Prosecution.



# Pre-Sentence Reports

Pre-Sentence Reports are written by Probation following a meeting (usually around 2 hours) with the Defendant. The PSR will typically address:

1. Summary of the offence;
2. Offence analysis – considering the account provided by the defendant against the prosecution evidence;
3. Pattern of offending;
4. Offender Assessment –
  1. Accommodation;
  2. Finance;
  3. Substance Misuse;
  4. Thinking and Behavior;
  5. Caring Responsibilities;
  6. Employment;
  7. Relationships;
  8. Physical and Mental Health;
  9. Experience of Trauma;
5. Risk Assessment –
  1. Likelihood of further offending;
  2. Risk of serious harm;
  3. Response to previous supervision;
  4. Details on previous supervision;
6. Proposed Sentence



A PSR is ordered by a Judge or Magistrate to assist with sentencing. They can be ordered after both a guilty plea and a guilty verdict. There are two main occasions when a PSR may be ordered –

1. Where there is scope for the sentence to be suspended or imposition of a Community Order;
2. Where there is a question of dangerousness.

# LADS Report

*Delivering an effective response to people with mental health, substance misuse, learning disabilities needs and wider vulnerabilities in the criminal justice system*

## Liaison and Diversion Court Report Mental Health Treatment Requirement

Where a PSR has been ordered on a Defendant who has mental health difficulties, there will typically be a referral to LADS who will then write a further report. This is usually short and is focused on whether a Mental Health Treatment Requirement may be suitable.



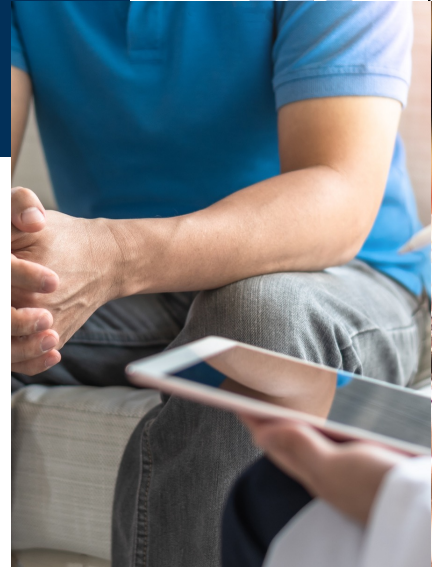
Name	D.O.B.
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**Brief history and current presentation of mental health, learning disabilities, substance misuse / alcohol issues and any other vulnerabilities**

*Are there current or relevant previous concerns regarding vulnerability? If yes, detail the history of compliance with services, any perceived links between presentation and offending, and explain how the current concerns are being managed?*

# Psychological or Psychiatric Reports

Psychological or Psychiatric reports will typically be obtained by the defence to assist with sentencing, particularly where the Defendant has mental health difficulties and it is anticipated that those difficulties may reduce their culpability. However, they can be ordered by the Court or the Prosecution.





# Court Documents

- Court Orders
- Court Transcripts
- Legal Adviser Notes/Magistrates Reasons

# Court Orders

All Court Orders will be formally drafted by the Court, these can include –

1. Notice of grant of bail;
2. Warrants (backed and not backed for bail);
3. Orders on conviction;
4. Sentences



# Court Transcripts

All hearings in the Crown Court are recorded on DARTS.



When might you want to ask for Court transcripts:

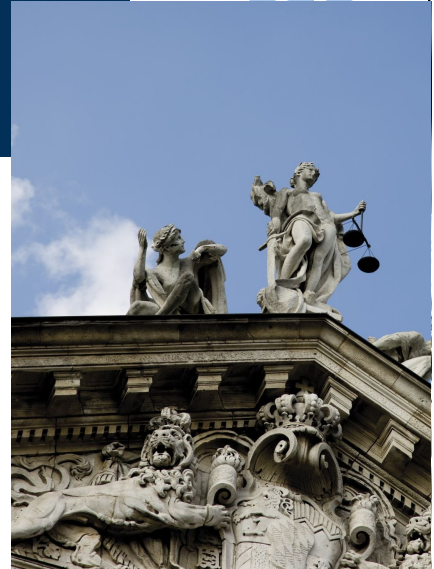
1. When you want to know the basis of a sentence, you may wish to get a transcript of the judge's sentencing remarks which will summarise the facts of the case
2. In theory, there is a transcript of all witness evidence.

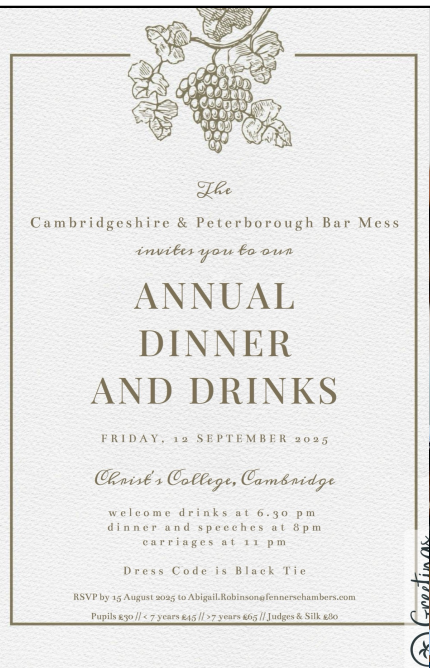
Transcripts will not be automatically produced unless there is an appeal that requires a transcript.

# Legal Adviser Notes/ Magistrates Reasons

There is no transcript of proceedings in the Magistrates Court. The only record of evidence are the notes taken by the Legal Adviser. These are typically handwritten notes that have not been seen or agreed by either the Prosecution or the Defence.

Magistrates will write reasons for their verdict.





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# Cambridgeshire & Peterborough Bar Mess Dinner

12 September 2-25 at Christ's College, Cambridge

With a post-dinner speech from HH Lindsay Davies

RSVP to [abigail.Robinson@fennerschambers.com](mailto:abigail.Robinson@fennerschambers.com)



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