

# CAPITA

## TV LICENSING

# COURT PRESENTERS' MANUAL

COMMERCIAL IN CONFIDENCE

### NOTICE

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Commercial In Confidence

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**Abbreviations**

- |                         |  |
|-------------------------|--|
| <b>ALL ER:</b>          | All England Law Reports                            |
| <b>CPD LAW REPORTS:</b> | Common Pleas Division                              |
| <b>CRIM.LR:</b>         | Criminal Law Review                                |
| <b>EWCA Crim:</b>       | England & Wales Court of Appeal, Criminal Division |

**1.0 Sources of English Law**

The English legal system has evolved over the last 1000 years, and over that period five main sources of law have been established.

**1.1 Common law**

The primary unwritten law of England and Wales, the history of which began in the reign of Henry II in the late 12th century, with the creation of England's first central system of Courts. This ancient law is embodied in judicial decisions as opposed to statute law (ie the law enacted by Parliament).

**1.2 Statutes**

Subject to the requirements of European Community law, Parliament has unlimited power by way of Acts of Parliament to create, alter and repeal English law. By historical evolution the word "*statute*" has come to denote those Acts. Parliament is the ultimate law maker within the United Kingdom. The Judges interpret statutes and their "*interpretation*" may sometimes alter the effect that Parliament intended.

**1.3 Case law**

Primarily, common law is "*case law*" which has been constructed from the decisions of the Court in particular cases. Nowadays, laws are created by Acts of Parliament in the form of statutes, but as we have seen above these statutes can be interpreted by Judges in particular cases. The decision of a Court in a particular case is regarded as a "*precedent*" which subsequent Courts will follow when they are called upon to determine issues of a similar kind.

The decision of a Court in a particular case is quite often binding on other Courts in subsequent cases. By this doctrine of "*the binding case*". If a decision is made by the High Court then the inferior Courts, namely the Crown Court and the Magistrates' Court, must follow that High Court decision if they have to decide a case where the facts are similar to the facts already tried by the Superior Court. However, a decision by the Crown Court is not binding upon a Magistrates' Court. That Crown Court decision can be quoted in the Magistrates' Court and the decision, although not binding, can be said to be "*persuasive*".

**1.4 Statutory Instruments**

A Statute often authorises a Government Minister to make Statutory Instruments. These are orders and regulations that have statutory force. A Statutory Instrument requires no subsequent confirmation by Act of Parliament. They need only be laid before Parliament and will usually become law if they are confirmed by simple resolution. Statutory Instruments are used to create the rules and regulations needed to make the provisions contained in a statute workable, e.g. the numerous regulations relating to road traffic.

**1.5 European Community Law**

The European Communities Act of 1972 ensured the application of European Law in the United Kingdom. It provides that all directly effective community legislation (treaty, regulation, directive or decision) creates enforceable Community rights: that is, it has direct effect in the United Kingdom and will be enforceable by courts and tribunals and UK law is to be applied subject to it.

1.6

**European Convention On Human Rights and Fundamental Freedoms (ECHR)**

On the 2<sup>nd</sup> October 2000 the Human Rights Act 1998 came into force. Now all legislation must be read or interpreted in a way compatible with the ECHR if it is possible to do so. If a statute cannot be read in a compatible way then the High Court, Court of Appeal and the House of Lords may make an “Order of Incompatibility”. Although the court cannot change law provided by Statute, such an order should lead to a review and change in the law by Parliament.



## 2.0 **THE ELEMENTS OF CRIMINAL LIABILITY**

Before a person can be considered to have committed a criminal offence, certain conditions need to be satisfied. Different offences can have different constituent elements that need to be satisfied before it can be said that the offence has been committed. The main elements to be considered are as follows:-

### 2.1 **ACTUS REUS & MENS REA** (*acts and mental intent*)

It is a general principle of criminal law that a person may not be convicted of a crime unless the Prosecution has proved beyond reasonable doubt, (a) that he has caused a certain event or a certain state of affairs which is forbidden by criminal law, and (b) that he had a defined state of mind in relation to the causing of that event or the state of affairs. The necessary state of mind is defined by the case law or statute creating the offence.

The event or state of affairs, (a), is called the Actus Reus (*The Act*) and the state of mind, (b), the Mens Rea (*the Mental Intent*) of the crime. Thus, for example, where a person has been charged with intentionally obstructing a Search Warrant, contrary to Section 366(8)(a) of the Communications Act 2003. The Prosecution must prove the Actus Reus of the offence which is that the Officer empowered by the Search Warrant to enter the said premises was prevented from doing so by the Defendant or obstructed from searching in some other way, and the Mens Rea of the offence which is that the Defendant intended to obstruct the Officer and prevent him from entering the said premises or prevent him/her from conducting the search properly (eg by allowing access to say, one room only).

### 2.2 **ABSOLUTE OFFENCES AND STRICT LIABILITY**

Although in most cases the Prosecution must prove both Actus Reus and Mens Rea against the Defendant, there are some offences which do not require a mental intention to commit the offence. These crimes are usually known as offences of strict liability (otherwise known as absolute offences).

Where a Defendant has been charged with an offence of strict liability the Prosecution need only prove that he committed the act for which he has been charged. There is no necessity for the Prosecution to prove that he had the necessary mental intention to commit the offence. Thus, for example, where a person has been charged with using a television set without a licence, contrary to Section 363 of the Communications Act 2003, this is an offence of strict liability and the Prosecution need only prove that the Defendant used the television set without a licence. There is thus no need to prove that the Defendant knew that the television set was not licensed.

### 2.3 **BURDEN AND STANDARD OF PROOF**

There are two kinds of burden. The legal burden and the evidential burden. The legal burden is the burden of proof imposed on a party to prove a fact in issue. The evidential burden is not really a burden of proof but is the burden of adducing sufficient evidence to satisfy a judge that an issue should be left to be decided by the tribunal.

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In a criminal case the legal burden lies upon the Prosecution throughout the case to rebut the presumption that a Defendant is innocent until the Prosecution has established his guilt. It is for the Prosecution to prove all elements of the offence.

The burden of proof on the Defendant usually only extends to an evidential burden, e.g. the burden to raise sufficient evidence to show that an issue of self-defence, duress or provocation should be left to the tribunal. Once that evidential burden has been discharged the legal burden of disproving that defence then shifts to the Prosecution.

Because of the difficulties of proving a negative proposition, statute may require the Defendant to bear the legal burden of proving certain facts rather than the lesser evidential burden – known as the reverse burden of proof. Such an exemption is provided by section 101 Magistrates Court Act 1980 [*See para 3.1.5*].

The standard of proof required to discharge any burden will depend on whether the burden lies with the Defence or the Prosecution. If the burden lies with the Prosecution then the standard required is proof “beyond reasonable doubt”. If the Prosecution fails to discharge this burden of proof then the Defendant must be acquitted. If the legal burden is borne by the Defendant then the standard required is proof on a “balance of probabilities” and not “beyond reasonable doubt”.

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discharged the legal burden of disproving that defence then shifts to the Prosecution.

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Clearly, it is easier to prove something on a balance of probabilities than it is beyond reasonable doubt.

Thus, for example, where a Defendant has been charged with using a television receiver without a licence, contrary to Section 363 of the Communications Act 2003 the Prosecution bear a legal burden to prove beyond reasonable doubt that there was a television set which was used by the Defendant. If the Defendant wishes to raise the defence that he held a valid television licence, then, by virtue of section 101 of the Magistrates Court Act 1980, he will bear a legal burden of proof, but he only needs to prove that he held such a licence on the balance of probabilities.

#### 2.4 REVERSE BURDEN OF PROOF - HUMAN RIGHTS ACT 1998

**[Redacted – Section 31]**

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3.0 **THE MAGISTRATES' COURTS**

3.1 **The role of the Magistrates' Courts**

The conduct of Summary Trials in Magistrates' Courts is governed principally by the Magistrates' Courts Act 1980 (MCA) and the Criminal Procedure Rules 2015 (CPR).

3.1.1 **Jurisdiction of the Magistrates' Court**

Criminal trials may take three possible forms, according to the nature of the offence. There are three main categories of offences:-

- (i) Summary offences, which tend to be minor offences and which are triable only in the Magistrates' Court.
- (ii) Offences triable upon Indictment only, which are serious offences and can only be tried before a Judge and jury in the Crown Court.
- (iii) Either way offences which can be tried either in the Magistrates' Court or in the Crown Court before a Judge and jury.

As a Court Presenter in the Magistrates' Court, you will only be involved in Summary Offences, which can only be heard in the Magistrates' Court.

3.1.2 **Starting a Prosecution in the Magistrates Court – CPR Part 7**

Under section 1 of the Magistrates' Courts Act 1980, on receiving a formal statement (described in that section as an 'information') alleging that someone has committed an offence, the court may issue a summons requiring that person to attend court.

Alternatively, under section 29 of the Criminal Justice Act 2003, a prosecutor authorised under that section (a 'relevant prosecutor') may issue a written charge alleging that someone has committed an offence, and either:

- (a) a requisition requiring that person to attend court; or
- (b) a notice that the single justice procedure (SJP) under section 16A of the Magistrates' Courts Act 1980(a) and rule 24.9 of the CPR applies.

3.1.3 ***The Single Justice Procedure***

***S29 Criminal Justice Act 2003 & Part 24.9 Criminal Procedure Rules 2015***

The Criminal Justice and Courts Act 2015 amended section 29 of the CJA 2003 and introduced sections 16A – F of the MCA 1980 thereby introducing the Single Justice Procedure. The single justice procedure applies only to cases involving adults charged with summary-only non-imprisonable offences and took effect on 13 April 2015. It enables such cases to be dealt with by a single magistrate sitting with a legal adviser on the papers without the attendance of either prosecutor or the defendant. The defendant is instead able to engage with the court in writing and the case does not need to be heard in a traditional courtroom.

It is for a 'relevant prosecutor' to identify cases which might be suitable for the single justice procedure. The BBC and consequently its agent Capita using the trademark TV Licensing is a relevant prosecutor. These cases are commenced by the issue of a written charge and a 'single justice procedure notice'.

The single justice procedure notice is sent to the defendant explaining the offence which has given rise to the proceedings, the options available to the defendant, and the consequences of not responding to the notice. It is accompanied by the evidence upon which the prosecution will be relying to prove the case.

The notice gives the defendant 21 days to respond in writing to the allegation rather than a date to attend court. However the defendant does have the right to request a traditional hearing in open court at this point or indeed at any point before his case is considered by

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the single justice. If he wishes to plead not guilty, or otherwise wants to have a hearing in a traditional courtroom, the defendant can indicate these wishes in the response to the single justice procedure notice. In such circumstances the case will be referred to a traditional court and their case will be managed in the normal way.

In cases where a defendant pleads guilty and indicates that he would like to have the matter dealt with in his absence, or fails to respond to the notice at all, a single magistrate will be able to consider the case on the basis of the evidence submitted in writing by the prosecutor, and any written mitigation from the defendant. The single magistrate can convict and sentence, or dismiss the charge as appropriate.

If a single justice considers at any point that it would be inappropriate to conduct the case under the single justice procedure, the justice can refer it to a traditional magistrates' court at any time.

### 3.1.4 ***Who May Prosecute?***

The general rule is that anyone can bring a Prosecution alleging any offence known to the criminal law, subject to, in limited classes of cases, obtaining the consent of the Attorney General or the Director of Public Prosecutions. These are not relevant here.

Section 6 of the Prosecution of Offenders Act 1985 specifically retains the right to bring a private prosecution.

A Prosecution is commenced under section 1 of the MCA 1980 by the laying of an information by the person who is bringing the Prosecution, alleging that an offence has been committed. The person laying the information (who must be an individual) is thus known as the Informant. In TV Licensing cases, a Prosecution is commenced by the Informant on behalf of their employer, Capita Business services Ltd, in their capacity as agent for Television Licensing. An Informant has the right to prosecute the case as he is one of the parties to the proceedings. The Court also has a discretion to allow an unqualified person other than the Informant to prosecute as part of the Court's power to regulate the procedure of the Court in the interests of justice.

**NB:** Note however, the effect of the Legal Services Act 2007 (*See Chapter 5 para 3*)

Under SJP a relevant prosecutor has the power to institute criminal proceedings by written charge and must at the same time issue a requisition or a single justice procedure notice.

By virtue of The Criminal Justice Act 2003 (New Method of Instituting Proceedings) (Specification of Relevant Prosecutors) Order 2016, from 14th April 2016 the BBC (and its agents) are a relevant prosecutor for the purpose of section 29 of the CJA 2003, authorised to issue written charges and SJP notices.

Under the CPR r46(1)(2):

A member, officer or employee of a prosecutor may, on the prosecutor's behalf—  
(a) serve on the magistrates' court officer, or present to a magistrates' court, an information under section 1 of the Magistrates' Courts Act 1980(a); or  
(b) issue a written charge and requisition, or single justice procedure notice, under section 29 of the Criminal Justice Act 2003(b).

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3.1.5 **Six Months' Time Limit**

Section 127 of the Magistrates' Courts Act 1980 provides that a Magistrates' Court shall not try an information for a summary offence except as expressly provided by statute, unless it was laid within six months from the time when the offence was committed. It should be noted that although the information must be laid within six months (i.e. sent electronically via LIBRA), the Summons can be served on the Defendant after the six months' time limit and, quite often, the case itself is actually heard more than six months after the commission of the offence. It is, however, desirable that matters be brought before the Court as expeditiously as possible [*See para 7.2*].

Section 30(5) of the CJA 2003 extends this restriction to proceedings instigated by way of SJP Notice. The notice must be issued (i.e. posted) within 6 months of the commission of the offence.

3.1.6.1 **Section 12 of the Magistrates' Courts Act 1980 (Part 24.8 Criminal Procedure Rules 2015)**

When a summons under section 1 of the MCA 1980 is issued and served, section 12 of the MCA allows a Defendant to plead Guilty by post and for any mitigation he wishes to bring to the Court's attention to be read out to the Court by the Clerk. Section 12 can only be used if the offence is a summary only offence.

The procedure adopted is that a Notice is served on the Defendant with the summons explaining the provisions of Section 12 of the Act together with a precise statement of facts the prosecution intend to rely on or copies of Section 9 Criminal Justice Act 1967 statements [*see para 3.4*]. The defendant must also be served with any other information to which the court will be referred – e.g. previous convictions.

By virtue of Section 9 CJA '67, the Defendant must be informed by notice of his right to require the prosecution witness to attend. The benefit of this provision is that where the Defendant fails to enter a plea the Court may proceed to hear the matter at the first hearing provided the summons and the Section 9 statements have been served.

If the Defendant elects to plead guilty by post, the Court Presenter's outline of the facts of the case is restricted to those facts which have been notified to the Defendant. The Court shall not permit further information to be given about the offence or the Defendant.

The Court Presenter may advise the Court as to the licence fee which is payable as this is a matter of law laid down by statutory instrument. Acts of Parliament and Statutory Instruments may be "judicially noticed" and will not require further proof.

3.1.6.2 **Section 12A of the Magistrates' Courts Act 1980**

This makes modifications where the Section 12 procedure has been adopted (i.e. pleads guilty by post) but the Defendant attends the hearing. These include provision for the Defendant to make oral representations to the Court before sentence. In addition, with the Defendant's consent, the court may proceed as if the Defendant were absent, strictly applying the section 12 procedure.

3.1.7 **Section 101 of the Magistrates' Courts Act 1980**

Section 101 states that where a Defendant relies for his defence on any exception; exemption, proviso, excuse or qualification, whether or not it is mentioned in the statute creating the offence, the burden of providing that exception, exemption, proviso, excuse or qualification, on a balance of probabilities, rests with the Defendant. Thus, for example, if a Defendant claims that he possesses a valid television licence, then by virtue of Section 101, the legal burden of proving that he possessed such a licence at the date of the alleged offence rests on the Defendant. This standard of proof is less than

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that required of a prosecutor. [See *Para 2.3 and 2.4 in relation to burden and standard of proof*]

**[Redacted – Section 31]**

3.1.8 **Section 123 of the Magistrates' Courts Act 1980**

Section 123 deals with the way to amend a defective summons. This subject is discussed in full at Para 9.9 (Post).

3.1.9 **Section 142 of the Magistrates' Courts Act 1980**

Section 142 deals with the power of the Magistrates to re-open cases to rectify mistakes that have occurred during the proceedings. The Magistrates have a power to rectify mistakes right up to the moment that the case is finally disposed of. Note, however, that Section 142 can only be used where the Defendant has been convicted, never when he has been acquitted.

Where a person has been convicted by a Magistrates' Court and it subsequently appears to the Court that it would be in the interests of justice that the case should be heard again by different Justices, the Court may so direct that the new hearing takes place.

Where the Court makes a direction as set out in the last paragraph the conviction and any sentence or other order imposed shall have no effect.

When the Court wishes to have a rehearing of the trial, it is as if an ordinary trial were being adjourned and, accordingly, notice must be served on both parties of the hearing date for the fresh trial.

**NOTE:** If an irregularity has occurred in the course of the trial, the Magistrates may direct a fresh trial of their own motion at any time before conviction.

3.1.10. **Time Limits for Section 142**

Section 142 does not specify a time limit. However, see *R v Newport Justices* which entitles the Magistrates to "exercise their discretion" in applying the Section. Accordingly, where there is delay, Magistrates will no doubt have regard to the staleness of applications and effects thereof.

**NB:** For procedure where the Defendant alleges that the summons was not brought to his attention, see Section 14 of the Magistrates' Courts Act 1980. [See *para 7.4*]

3.2 **The Criminal Procedure Rules**

The Criminal Procedure Rules were introduced by the Criminal Justice Act 2003. They provide the detailed Rules which control the way proceedings are conducted in the Magistrates' Court.

The Criminal Procedure Rules which are revised each year now set out a code of conduct to be followed in all criminal cases. The principals are set out in the Overriding Objective.

The overriding objective	rule 1.1
The duty of the participants in a criminal case	rule 1.2
The application by the court of the overriding objective	rule 1.3



### **The overriding objective**

**1.1.**—(1) The overriding objective of this procedural code is that criminal cases be dealt with justly.

(2) Dealing with a criminal case justly includes—

- (a) acquitting the innocent and convicting the guilty;
- (b) dealing with the prosecution and the defence fairly;
- (c) recognising the rights of a defendant, particularly those under Article 6 of the European Convention on Human Rights;
- (d) respecting the interests of witnesses, victims and jurors and keeping them informed of the progress of the case;
- (e) dealing with the case efficiently and expeditiously;
- (f) ensuring that appropriate information is available to the court when bail and sentence are considered; and
- (g) dealing with the case in ways that take into account—
  - (i) the gravity of the offence alleged,
  - (ii) the complexity of what is in issue,
  - (iii) the severity of the consequences for the defendant and others affected, and
  - (iv) the needs of other cases.

### **The duty of the participants in a criminal case**

**1.2.**—(1) Each participant, in the conduct of each case, must—

- (a) prepare and conduct the case in accordance with the overriding objective;
- (b) comply with these Rules, practice directions and directions made by the court; and
- (c) at once inform the court and all parties of any significant failure (whether or not that participant is responsible for that failure) to take any procedural step required by these Rules, any practice direction or any direction of the court. A failure is significant if it might hinder the court in furthering the overriding objective.

(2) Anyone involved in any way with a criminal case is a participant in its conduct for the purposes of this rule.

### **The application by the court of the overriding objective**

**1.3.** The court must further the overriding objective in particular when—

- (a) exercising any power given to it by legislation (including these Rules);
- (b) applying any practice direction; or
- (c) interpreting any rule or practice direction.

#### **3.2.1 Part 4 CPR**

Part 4 deals with the way a document may be served on a Defendant. The procedure is discussed more fully at paragraph 7.4 (Post).

#### **3.2.2 Part 7 CPR**

Part 7 provides the form of the information and written charge (see paras 7.2 and 7.3).

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### 3.2.3 **Part 20 and 21 CPR**

Part 20 requires a prosecutor to give notice in prescribed form of the fact that he intends to introduce hearsay evidence [see *para 3.4 below*]. Notice is required not more than 28 days after the defendant pleads not guilty in the Magistrates Court. The Defendant then has the opportunity to object or may waive the requirement of notice. The court may dispense with or vary this requirement.

If a Defendant should take issue with this, the court should be asked to dispense with this notice in light of the fact the only hearsay evidence relied on would be the section 9 statements, in respect of which the Defendant is entitled to reject in favour of a live witness, and confession evidence which may be challenged using section 76 or 78 of PACE. This should immediately be reported to legal.

Part 21 prescribes in detail a similar requirement for bad character evidence [see *para 3.5 below*].

### 3.3 **The Criminal Justice Act 1967 – CPR Part 16**

As far as the Court Presenter is concerned, Section 9 is the most important Section in the Criminal Justice Act 1967. This Section provides for the admissibility of written statements in criminal proceedings, without the attendance of the witness who made the statement. To be admissible under Section 9, the statement must be signed by the witness who made it and must contain a declaration that it is true to the best of the maker's knowledge and belief. The statement must be served on the Defendant at least seven clear days before the date of hearing and if the Defendant or his representative serves notice that he objects to it being given in evidence, the statement cannot be tendered in evidence and the witness will have to attend Court to give the evidence in person.

If the Defendant has had seven clear days before the date of hearing in which to object to the statement being read under Section 9 of the Criminal Justice Act 1967, and has failed to so object, then the statement can then be read to the Court even if the Defendant attempts to object at Court. However, if the Defendant is unrepresented, the Court may use their discretion to require that the witness attend Court to give evidence in person.

### 3.4 **Criminal Justice Act 2003 (Hearsay Evidence).**

Hearsay - "A statement other than one given in oral evidence in proceedings is inadmissible if it is tendered to prove the truth of any fact stated in it".

The general principle in relation to criminal proceedings is that witnesses should give oral evidence and be available for cross-examination.

Traditionally, with limited exceptions, hearsay evidence has been inadmissible. The 2003 Act has significantly expanded the possibility of admitting hearsay evidence by abolishing previous common law rules, codifying the statutory provisions and introducing a safety valve provision to allow admission of evidence if it is "in the interests of justice".

#### 3.4.1 **Admissibility of Hearsay Evidence (section 114 CJA '03)**

A **statement** not made in oral evidence is admissible as evidence of any **matter stated** but only if provided for in the Act, which includes "any other statutory provisions" (e.g. section 9 CJA 67), admission by agreement and where the court is satisfied admission is "in the interests of justice".

A **statement** is any representation of fact or opinion which may include a sketch or a photo-fit; and a **matter stated** is one where the purpose or one of the purposes of the

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maker appears to have been to cause another to believe the matter or cause another person to act or a machine to operate on the basis that the matter is as stated.

Note that all documentary or real evidence must be introduced by a live witness producing it at court or otherwise by exhibiting it to a section 9 statement [see *para 3.3 above*]

### 3.4.2 **Witness Unavailable (section 116 CJA '03)**

A statement not made in oral evidence is admissible as evidence of any matter stated if:

- a) It would be admissible if given orally, and
- b) The person who made the statement is identified, and
- c) Any of the following conditions are satisfied:
  - (i) Where that person is dead or unfit to be a witness because of his bodily or mental condition.
  - (ii) The witness is outside the UK and it is not reasonably practicable to secure his attendance or he cannot be found following all reasonably practicable steps having been taken.
  - (iii) The person does not give evidence through fear and the court grants leave for the statement to be given in evidence. The statement was made to a Police/other Officer charged with the duty of investigating offences and the person who made it does not give oral evidence through fear or because he is kept out of the way.

The above would apply to statements obtained in TVL investigations, but it would be most unusual to have to seek to use such means to produce evidence. The fact a VO has left the business is not sufficient and it is unlikely that the Prosecution would seek to rely on statements of untraceable third parties.

### 3.4.3 **Business and other documents (section 117 CJA '03)**

A statement contained in a document is admissible as evidence of any matter stated if:

- a) It would be admissible if given orally, and
- b) the document was created or received by a person in the course of a trade, business, profession, occupation or office, and
- c) the person who supplied the information (the relevant person) had personal knowledge of the matters dealt with, and
- d) each person through whom the information was supplied from the relevant person to the creator of the statement received it in the course of a trade, business, profession, occupation or office.

If the statement was prepared for the purpose of pending or contemplated criminal proceedings or for a criminal investigation then in addition to a to d, one of the following must be satisfied,

- a) one of the conditions in section 116 [3.4.2 above] **or**
- b) the relevant person cannot reasonably be expected to have any recollection of the matters in the statement (having regard to the length of time passed and other circumstances).

In any event, any evidence admissible by virtue of s117 may be excluded if the Court is of the opinion that its reliability as evidence for the purpose for which it is tendered is doubtful.

### 3.4.4 **Preservation of common law exemptions to the hearsay rule (section 118 CJA '03)**

Amongst other things, the following exceptions are preserved:

- 1) Public information
- 2) Confessions

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3) Admissions by agents

3.4.5 **Inconsistent Statements (section 119 CJA '03)**

If a person giving oral evidence admits making a previous inconsistent statement or that previous statement can be proved, that statement is admissible as evidence of all the matters stated in it.

3.4.6 **Other previous statements of witnesses (section 120 CJA '03)**

It should be noted that Section 139 CJA '03 allows a witness to refresh his memory from a statement made or verified by him at an earlier time provide the witness states in his oral evidence that

- a) the document records his recollection at that earlier time and
- b) that his recollection at that time is likely to have been significantly better at that time than when giving evidence.

Section 120(3) provides that if a statement in a document is used by a witness to refresh his memory whilst giving evidence and this is received into evidence as a result of him being cross-examined as to the content of that statement, it will be admissible as evidence of **any** matter stated in it.

Further more, a previous statement is admissible in evidence (as opposed to simply used as a memory refresher) of any matter stated in it, if whilst giving evidence the witness indicates that:

- a) to the best of his belief he made the statement, and
- b) to the best of his knowledge it states the truth, and:

- (1) It identifies or describes a person, object or place, or
- (2) It was made by the witness when the matters stated were fresh in his memory but he does not remember them and cannot reasonably be expected to remember them well enough to give oral evidence, or
- (3) The witness is the victim. Other provisions apply to this particular condition.

3.4.7 **General comments**

A record of interview signed by the suspect is not hearsay and can be introduced into evidence by exhibiting it to the statement of the interviewing officer and tendering it as evidence at court. The record should be produced to the court by the interviewing officer on the conclusion of his examination in chief.

The statement/output of a machine that processes **without human input** will not be hearsay so not subject to the conditions of s117.

A statement made by a machine which **relies on a person to supply the information** is admissible to the extent that the information supplied to the machine is accurate.

There is a statutory presumption that a mechanical devise has been properly set or calibrated (s129(2)). There is no need to declare this.

Where a statement in a document is admissible, an **authenticated copy** of the document is sufficient (s133).

Documentary evidence is a somewhat complex area and it is suggested that if any particular problems are foreseen, advice should be sought from the legal team by submission of the file at the earliest opportunity.

3.5 **Criminal Justice Act 2003 (Bad Character)**

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By virtue of section 101 of the CJA '03 a Defendant's previous bad character, which could include convictions, acquittals and warnings will be admissible if it is relevant to an important matter in issue, subject, in certain cases, to the court's discretion to exclude that evidence.

### 3.5.1 **Admissibility of Bad Character Evidence (section 101)**

A Defendant's bad character is not admissible unless one of the conditions in section 101(1) applies.

In TV licensing cases, the application of the majority of these provisions will be very limited. Any queries should be raised directly with legal

### 3.5.2 **Evidence Adduced by the Defendant Himself (section 101(b))**

If the Defendant introduces bad character himself at any point i.e. interview, examination in chief or cross-examination, then it is admissible evidence provided questions were not asked to elicit that evidence.

TV Licensing will not adduce this as evidence but will no longer remove it from or exclude signed records of interview on the basis of mention of previous bad character.

### 3.5.3 **Important Explanatory Evidence (section 101 (c))**

This is evidence of previous bad character which, if not admitted, would mean that the tribunal would find it impossible or difficult to understand other evidence. It will be admissible if it is more than trivial and assists the court to understand the case as a whole.

This would generally be background evidence though is unlikely to affect TV licensing cases.

### 3.5.4 **Relevant to an important matter in issue between the Defendant and Prosecution (section 101(d))**

Evidence must be relevant to an issue in the case. These are described as:

1. a propensity to commit the same kind of offence
2. a propensity to be untruthful

This is an extensive provision, which will not be used in TVL prosecutions without dedicated input from legal.

#### 3.5.4.1 **Propensity to Commit an Offence**

This may include a desire to commit an offence such as a sex crime or a habit of committing certain types of offence such as burglary.

This could be used in TVL cases if an individual has several previous convictions for use without a licence. But legal assistance should always be sought if this is considered.

#### 3.5.4.2 **Propensity to be Untruthful**

In TVL cases this will be limited to previous convictions for perjury, fraud, deception etc.

### 3.5.5 **Evidence to Correct a False Impression (section 101(1)(f))**

If the defendant makes an express or implied assertion which give the court a false impression about him the prosecution may introduce evidence of bad character to correct this impression.

If a defendant suggests he hasn't been prosecuted before or that he knows nothing about the licensing laws/requirements, if false, evidence can be introduced to correct this

assertion.

**3.5.6 Attack on Another Person's Character (section 101(1)(g))**

This is evidence to the effect that the other person has committed an offence or has behaved in a reprehensible way.

If a defendant whilst giving evidence accuses a prosecution witness of "reprehensible behaviour", then evidence of his own previous bad character may be introduced.

Reprehensible behaviour is not defined but would have to go beyond a suggestion that the witness is mistaken or incorrect. A suggestion that a witness is deliberately lying may be sufficient. Similarly an accusation that an unnamed third part committed the offence may be sufficient but not a simple assertion that it "wasn't me".

**3.5.6 Service of Notice and Waiver**

A notice of intention to adduce evidence of bad character must be served on the Defendant by the Prosecution at the same time as Initial Disclosure.

If this evidence is to be adduced as a result of a correction of a false assertion or an attack on another person's character then it can with leave of the court who can waive the requirement to serve notice.

**3.5.7 Application to Exclude Bad Character Evidence**

The Defendant is entitled to apply to exclude evidence introduced by virtue of section 101(1(d)) - an important matter in issue or section 101(1)(g) – attack on another person's character.

If a Defendant does not object then the evidence will be admissible provided it is relevant.

If there is an objection, the court will be obliged to assess the probative value of the evidence to an issue in the case and the prejudicial effect of admitting it. The evidence should be excluded where it would be unfair to admit it.

In TVL cases, sub section d is unlikely to be an issue, subsection g objections can be heard when leave to introduce this evidence is requested.

**3.5.8 Introduction of Bad Character Evidence**

If leave to adduce bad character evidence is granted then the offence or warning should be put to the Defendant. If it is denied the court should be informed of the prior behaviour but it must be noted that in the absence of formal evidence to prove this behaviour the court may still refuse to admit it.

4.0 **THE POLICE AND CRIMINAL EVIDENCE ACT 1984**

4.1 **Application to TV Licence cases**

Under Section 66 of the Police and Criminal Evidence Act 1984, the Secretary of State issued Codes of Practice relating, amongst other things, to the questioning of persons by Police Officers.

Section 67(9) of the PACE Act 1984 states

*"persons other than Police Officers who are charged with the duty of investigating offences, or charging offenders, shall in the discharge of that duty have regard to any relevant provision of a Code."*

Clearly, therefore, Enquiry Officers should have regard to the Codes of Practice issued by the Secretary of State when interviewing persons about a possible offence under Section 363 of the Communications Act 2003. In particular, Enquiry Officers should ensure that as soon as there are grounds to suspect that an offence has been committed by the person being interviewed, that person should be cautioned before any further questions are put to him for the purpose of obtaining evidence, which may be given to a Court in a Prosecution.

Codes of Practice also clearly state that an accurate record must be made of each interview with a person suspected of an offence, (Code of Practice C Para 11.7) and a record shall be made when the person is cautioned. (Codes of Practice C Para 10.13).

It is also provided that unless it is impracticable, the person interviewed, shall be given an opportunity to read the interview record and to sign it as correct or to indicate the respects in which he considers it to be inaccurate. (Codes of Practice C Para 11.11).

Para C 11.14 states *"Any refusal by a person to sign an interview record when asked to do so in accordance with the provisions of the Code must itself be recorded."*

The previous three paragraphs must be complied with so that TVL 178 may be used in any prosecution.

See in particular R v McNamara at para 6.6. This is a High Court decision confirming that TV Licensing procedures are compliant with PACE.

4.2 **Police & Criminal Evidence Act 1984 - Section 76**

This Section provides that a confession, which is partly defined in Section 82 as including "any Statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise", will be admissible against the accused (exception to the hearsay rule) but will be excluded by the Court unless the Prosecution prove beyond reasonable doubt that the confession was not obtained:

- a "by oppression of the person who made it", or
- b "in consequence of anything said or done, which is likely, in the circumstances existing at the time, to render unreliable any confession which might be made by

him in consequence thereof."

**[Redacted – Section 31]**

As a matter of procedure, where the Prosecution proposes to give in evidence a confession made by the accused and it is represented to the Court by the Defence that the confession was obtained by oppression or some other improper process, the Justices must hold a trial within a trial (a voir dire) to determine whether or not the confession shall be allowed to be given in evidence against the accused.

A trial within a trial will only take place before the close of the prosecution case, if the Defendant makes such a representation. In such a trial within a trial, the accused may give evidence confined to the question of the admissibility of the confession, and the Justices will not be concerned with the truth or otherwise of the actual confession. The Defendant is entitled to a ruling on the admissibility of the confession before the end of the Prosecution case. In practical terms, if the Defendant indicates before the case that he intends to challenge the validity of any admissions that he made, the trial with a trial will take place at the start of the case as a preliminary issue. The case proper will then proceed if appropriate.

**4.3 Police & Criminal Evidence Act 1984 - Section 78**

This Section states that "in any proceedings the Court may refuse to allow evidence on which the Prosecution proposes to rely to be given if it appears to the Court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the Court ought not to admit it."

Note that there is no burden on the Prosecution under Section 78 to disprove unfairness, whereas there is a burden on the Prosecution under Section 76. Where the Defendant makes an application for unfair evidence to be excluded under Section 78, he has no right to have the admissibility of that evidence determined as a preliminary issue by means of a trial within a trial. Accordingly, it shall be for the Justices to decide to deal with the application to exclude the evidence when it arises, or before the end of the Prosecution case.

If the question of the admissibility of evidence under Section 76 or Section 78 PACE 1984 is raised at Court by a Solicitor for the Defendant, it is strongly advised that an adjournment be sought by the Prosecution, in order that a Solicitor may attend on behalf of the Prosecution.

**4.4 Police & Criminal Evidence Act 1984 - Section 66**

Under Section 66 of the Police and Criminal Evidence Act 1984, the Secretary of State issued Codes of Practice relating, amongst other things, to the questioning of persons by Police Officers.



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The relevant parts of Code C are now set out:-

10.1 - A person whom there are grounds to suspect of an offence, must be cautioned before any questions about an offence, or further questions if the same answers provide the grounds for suspicion, are put to them if either the suspect's answers or silence, (i.e. failure or refusal to answer or answer satisfactorily) maybe given in evidence to a court in a prosecution. A person need not be cautioned if questions are for other necessary purposes.

This applies whether or not a person is under arrest.

10.5 - The caution which must be given on:

(b) all other occasions before a person is charged or informed they may be prosecuted.

"You do not have to say anything. But it may harm your defence if you do not mention when questioned something, which you later rely on in Court. Anything you do say may be given in evidence".

10.8 – After any break in questioning under caution, the person being questioned must be made aware they remain under caution. If there is any doubt the caution should be given again in full when the interview resumes. (Take note of 10D which says "If it appears a person does not understand the caution, the person giving it should explain it in their own words")

10.13 - A record shall be made when a caution is given under this section, either in the Officer's notebook or in the interview record .

11.1 A - An interview is the questioning of a person regarding their involvement or suspected involvement in a criminal offence or offences which, under paragraph 10.1, must be carried out under caution. Whenever a person is interviewed they must be informed of the nature of the offence, or future offence.

11.7

(a) An accurate record must be made of each interview.

(b) The record must state the place of interview, the time it begins and ends, any interview breaks and , subject to paragraph 2.6A, the names of all those present; and must be made on the forms provided for this purpose or in the interviewer's pocket book or in accordance with the Code of Practice E or F:

(c) Any written record must be made and completed during the interview, unless this would not be practicable or would interfere with conduct of the interview, and must constitute either a verbatim record of what has been said or, failing this, an account of the interview which adequately and accurately summarises it.

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11.8 – If a written record is not made during the interview it must be made as soon as practicable after its completion.

11.9 - Written interview records must be timed and signed by the maker

11.10 – If a written record is not completed during the interview the reason must be recorded in the interview record.

11.11 - Unless it is impracticable, the person interviewed shall be given the opportunity to read the interview record and to sign it as correct or to indicate how they consider it inaccurate. If the person interviewed cannot read or refuses to read the record or to sign it, the Officer present shall read to them and ask whether they would like to sign it as correct or make their mark) or to indicate how they consider it inaccurate. The Officer shall certify on the interview record itself what has occurred. See Note 11E

11.13 – A written record shall be made of any comments made by a suspect, including unsolicited comments, which are outside the context of an interview but which might be relevant to the offence. Any such record must be timed and signed by the maker. When practicable the suspect shall be given the opportunity to read that record and sign it as correct or to indicate how they consider it to be inaccurate.

11.14 - Any refusal by a person to sign an interview record when asked in accordance with the Code must itself be recorded

5.0 **LEGISLATION RELEVANT TO TV LICENSING**

5.1 **Communications Act 2003**

This is the main Act relating to Television Licensing,

- Part 4 of the Act has six sections (363-368) dealing with “the Licensing of TV reception”
- Section 363 creates the offences of installing or using a television receiver without a licence, possessing a television receiver with the intention of installing or using it and possessing a television receiver with the knowledge or belief that another person intends to install or use it.
- Section 364 deals with the power to issue licences, the restrictions and conditions of a licence and provides for service of notices by ordinary post.
- Section 365 provides for the licence fee and for the making of concessions by regulations.
- Section 366 provides the power to request a search warrant and creates the offences of intentionally obstructing and failing to give assistance.
- Section 368 provides for the making of regulations to define a television receiver and states that references to using a TV receiver are references to using it for receiving any TV programme or the reception of a programme included in an on-demand programme service provided by the BBC.
- Section 404 provides for the criminal liability of company directors in certain circumstances in addition to the body corporate.

5.1.1 **Unlicensed installation or use of a television receiver.  
(Section 363(2) of the Communications Act 2003)**

1. A television receiver must not be installed or used unless the installation and use of the receiver is authorised by a licence under this Part.
2. A person who installs or uses a television receiver in contravention of subsection (1) is guilty of an offence.

5.1.2 **Possession/control with intention to install or use a television receiver.  
(Section 363(3) of the Communications Act 2003)**

- (3) A person with a television receiver in his possession or under his control who-
- (a) intends to install or use it in contravention of subsection (1), or
  - (b) knows, or has reasonable grounds for believing, that another person intends to install or use it in contravention of that subsection,
- is guilty of an offence.

Offences under sections 363(3) must not be initiated without first consulting the legal team.

5.1.3 **Obstruction of a Warrant  
(Section 366(8)(a) of the Communications Act 2003)**

A person is guilty of an offence if he intentionally obstructs a person in the exercise of any power conferred [search for, examine and test any television receiver] on that person by virtue of a warrant under the section.

5.1.4 **Failure to Assist**

**(Section 366(8)(b) of the Communications Act 2003)**

A person is guilty of an offence if he without reasonable excuse fails to give any assistance that he is under a duty to give by virtue of subsection 7.

366(7)...it shall be the duty of a person who is on the premises to give the person carrying out the examination or test all such assistance as that person may reasonably require for carrying it out.

5.2.1 **The Communications (Television Licensing) Regulations 2004 as amended by The Communications (Television Licensing) (Amendment) Regulations 2016**

- Provides unequivocally that a TV Licence is required to watch or record live TV no matter where it is broadcast or distributed from, on any device including:
  - TV sets (including smart TVs)
  - Laptops and desktop computers
  - Tablets, mobile phones and other portable devices
  - Digital boxes or PVRs (such as Sky, Virgin Media or BT Vision)
  - Games consoles
  - Media streaming devices (such as Amazon Fire TV, Apple TV, Chromecast, Roku and Now TV)
  - Freeview, Freesat or YouView
- Live TV is any programme watched or recorded at the same time (or virtually the same time) as it's being shown on TV or live on an online TV service. For example, live TV can be soaps, movies, series, documentaries and news shows as well as live events like football matches and concerts. It relates to scheduled programmes watched or recorded as they are broadcast so also includes +1 and +24 type channels.
- An online TV service is where TV programmes are being shown, usually at scheduled times, over the internet as opposed to via an aerial, cable or a satellite TV service. Examples include .any website, app or smart TV service that lets you watch live TV using the internet, such as BBC iPlayer, All 4, Sky Go, Virgin Media, Now TV, BT Vision, Apple TV, YouTube, Amazon Instant Video or ITV Hub.
- From 1<sup>st</sup> September 2016 a licence is also required to download or watch BBC programmes on demand, including catch up, on BBC iPlayer
- This includes using BBC iPlayer accessed through another provider such as Sky, Virgin Media, Freeview or BT.
- It does not include downloading or watching
  - S4C programmes on demand through iPlayer,
  - BBC programmes purchased from BBC companies such as BBC Store and BBC Worldwide,
  - On demand programmes provided by 3<sup>rd</sup> party suppliers such as
    - ITV Hub, All 4 or Demand 5
    - BT Vision, Virgin Media or Sky Go
    - Netflix or Now TV
    - Apple, Roku or Amazon

- Neither does it include listening to radio through BBC iPlayer
- 5.2.2 **Regulation 9 - "television receiver"**
- Means any apparatus installed or used for the purpose of receiving (whether by means of wireless telegraphy or otherwise) any television programme service, or [from 1<sup>st</sup> September 2016] an on-demand programme service which is provided by the BBC, whether or not it is installed or used for any other purpose.
  - In this regulation, any reference to receiving a television programme service includes a reference to receiving by any means any programme included in that service, where that programme is received at the same time (or virtually the same time) as it is received by members of the public by virtue of its being broadcast or distributed as part of that service.
  - Television Programme Service is defined in the Communications Act 2003. The definition itself is very convoluted but includes any live television service (in other words a scheduled service), received in any format, from any country, received at the same time (or virtually the same time) it is broadcast.
  - An on demand programme service provided by the BBC is a BBC catch up programme viewed on the BBC iPlayer.

5.2.2 **Caravan**

Paragraph 2 of the Regulations makes distinction between (a) a caravan capable of being moved, and (b) a towing caravan. Under (a) a licence taken out for a specified location may be used by the licensee or a person normally living with the licensee in a caravan provided use at the specified location does not take place at the same time. Under (b) use may take place at the towing caravan and the specified location at the same time.

5.2.3 **Internal Batteries**

A **separate** licence is not required, *“for the use anywhere of any television receiver powered solely by its own internal batteries by the licensee or by a person normally living with the licensee at the specified location”*.

A separate licence will be required if a mobile receiver (such as a laptop or mobile phone) is used when plugged into mains power, i.e. the receiver is not being powered solely by its internal battery.

5.3 **The Legal Services Act 2007**

This Act has important implications for TVL. The most important sections as far as TVL is concerned are: -

5.3.1 **Section 13**

This Section confirms that a person is entitled to carry out an activity, which is a “reserved legal activity”, where the person is either “authorised” in relation to the relevant activity (generally speaking a qualified lawyer) or as in our case “exempt” in relation to that activity.

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5.3.2 **Schedule 3**

Provides a definition of “exempt persons” for the purposes of exercising the right of audience before court in relation to any proceedings: -

Schedule 3.1 (2) – The person is exempt if the person –

(b) Has a right of audience granted by the court in relation to those proceedings.

5.3.3 **Section 14**

Failure to obtain permission could result in an offence under Section 14 of the Act, namely on summary conviction, imprisonment not exceeding 12 months and/or a fine of £5000 and on indictment a fine and/or 2 years imprisonment.

Great care will have to be taken by Court Presenters in ensuring that they seek permission to appear in cases.

6.0 **CASE LAW RELEVANT TO TV LICENSING**

6.1 **Case Law Citation**

Every reported case has a citation after it, which indicates the year in which the decision was made and the legal journal in which the report can be found. For example, the citation in the case of DTI Ex Parte Rudd (para 6.4 below) is (1987) 2All ER553. This means that the decision of the Court was made in 1987 and that a report of the case can be found in volume 2 of the 1987 All England Reports at page 553.

6.2 **Campbell v Strangeways (1877) (3CPD105)**

This is a very old case involving a dog licence, which is the authority for the proposition that a licence only takes effect at the date and time of its issue. Thus, for example, if a Defendant is interviewed by an Enquiry Officer on 6th July and obtains a licence on 7th July, due to expire at the end of June the following year, he cannot claim that the licence must be "backdated" to cover him from 1st July. Campbell v Strangeways clearly states that a licence only takes effect at the date and time of its issue, i.e. 7th July. (*A copy of the transcript is in the Appendix*)

6.3 **Monks v Pilgrim (1979) CRIMLR595**

This case held that both husband and wife are equally liable. The High Court on appeal said as between husband and wife, both are using the set if they switch it on and watch it, even if the set belongs to one and not the other or the licence has always been paid for by one and not the other. **[Redacted – Section 31]**

6.4 **Department of Trade and Industry Ex Parte Rudd (1987) 2All ER553**  
**[Redacted – Section 31]**

6.5 **Stone v South West Surry Magistrates [2012] EWHC 2515 (Admin)**

This was an application for permission seeking judicial review of a decision of the South West Surrey Magistrates' Court, following the conviction of Mr Tony Stone of failure to pay a television licence fee.

Stone argued that the requirement to pay a licence fee when he objected to the BBC, which in his view was acting in breach of its Charter, was a breach of his human rights (article 9 - the right to freedom of thought, conscience and religion) and thus unlawful. He also argued that the use of Capita Business Services Ltd 'TV Licensing' to pursue the prosecution was an unlawful delegation by the BBC of the powers that were entrusted to it and to it alone.

With regards to unlawful delegation, the judge said that section 366 "...makes clear that it is open to the BBC to authorise for the purpose of enforcement any particular person or body.... It is entirely lawful for the BBC to have authorised, as it has, Capita Business Services to carry out the enforcement process."

Regarding the Article 9 argument the judge said "There is no question that Mr Stone's right to freedom of thought, conscience and religion is not in itself in any way affected by the requirement to pay the licence fee.

Stone also questioned whether the offence was one of strict liability. In that regard the judge said at paragraph 17 of the judgement, "I should add that there was concern raised earlier whether this was to be regarded as an offence of strict liability. It clearly is; there is no question about that. If you do not pay the licence then prima facie you are guilty of the

offence.”

6.6 **McNamara v TVL Regional Centre [2002] EWHC 2798 Admin**

This is an appeal to the High Court by way of case stated. Mr McNamara was visited and was asked if he had a television. On confirming this he was asked if he had an appropriate licence, to which he answered no. He was cautioned and refused to answer any further questions. Evidence of active use was in the form of a witness statement obtained from Sky. The appellant questioned TVL procedure.

It was held that the questions put to the interviewee before the caution, were not about the use of a television but if he possessed a television and whether he had a relevant licence. The caution should be given before any questions are asked which if answered, might incriminate the interviewee. They were not incriminating and therefore the caution was in the right place.

A distinction was drawn between a voluntary interview conducted by a police officer at a police station and someone who was not a police officer, away from a police station. The purpose of Code C of the Police and Criminal Evidence Act 1994 is to protect persons voluntarily in the custody of police officers, who possess a power of arrest, whilst they are being interviewed at police stations. **[Redacted – Section 31]**

- there is no requirement to advise of the right to consult a solicitor
- and no requirement to advise that the interviewee was not under arrest.

6.7 **R v Associated Octel Co Ltd [1996] 1Cr App Rep (S) 435**

**This case held that costs applied for may include costs incurred in the course of an investigation. TVL apply for a contribution towards prosecution costs. The figure applied for will however be increased if legal representation or witnesses are required.**

6.8 **Bradford Metropolitan v Booth (2000) QBD**

This case acts as an authority to suggest that Magistrates' need not award costs against a prosecuting authority if the authority has acted in good faith and made the decision to prosecute acting, honestly, reasonably properly and on grounds that appear to be sound.

In this case it was held that the discretion given to Magistrates' to award such costs as it feels are just and reasonable does not mean that costs should normally follow the event. Bingham CJ referred to '*the need to encourage public authorities to make and stand by honest, reasonable and apparently sound decisions made in the public interest without fear of exposure to undue financial prejudice if the decision is successfully challenged*.'



7.0 **PROCEDURE**

7.1 **The decision to prosecute – See the TV Licensing Prosecution Policy  
The Attorney General's Guidelines**

In 1983 the Home Office issued a circular containing the Attorney General's Guidelines and criteria for prosecution. These Guidelines are now embodied in the code for Crown Prosecutors. The principles of the Code form the basis of the TV Licensing Prosecution Policy which must be taken into consideration when deciding whether or not to prosecute in individual cases.

7.1.1 **Sufficiency of Evidence**

When considering the institution of criminal proceedings, the first question that would be determined by the Prosecutor is whether the evidence is sufficient to justify a prosecution. The test to be applied is whether there is a realistic prospect of conviction.

7.1.2 **Public Interest**

Where there is sufficient evidence to justify a prosecution, the person making the decision to prosecute must go on to consider whether a prosecution is required in the public interest. A prosecution will usually take place unless there are public interest factors tending against prosecution that clearly outweigh those tending in favour. Although there may be some public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors be put to the court for consideration when sentence is passed

In some cases the person making the decision to prosecute may be satisfied that the public interest could be properly served by offering the suspect the opportunity to have the matter dealt with by an out of court disposal and applying the PICS (Post Interview Customer Support) procedure.

The factors that will apply depend on the individual circumstances in each case

When deciding the public interest, the prosecutor must bear in mind the fact that TV Licensing offences (with the exception of the obstruction of a search warrant under section 368 of the Communications Act 2003) attract strict liability; they are level 3 offences, which are non-imprisonable and non-recordable

The Prosecutor should ask themselves the following questions:

- What is the level of culpability of the person suspected of committing the offence?

The greater the suspect's level of culpability (but bearing in mind the offence is likely to be one of strict liability), the more likely it is that a prosecution is required. Culpability is likely to be determined by the suspect's level of responsibility, the extent to which the offending was premeditated, whether they have previous criminal convictions and whether the offending was or is likely to be continued, repeated or escalated.

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Prosecutors should also have regard when considering culpability as to whether the suspect is, or was at the time of the offence, suffering from any significant mental or physical ill health or is particularly vulnerable as in some circumstances this will mean that it is less likely that a prosecution is required.

- What harm has been caused?

TV Licence evasion is not a victim less crime. Evasion costs the licence fee payer and results in less money for the production of quality programmes.

- What is the wider impact on licence fee payers?

The greater the impact of the offending on licence fee payers, the more likely it is that a prosecution is required. The views of the BBC in representing the licence fee payer should also be taken into consideration when considering the wider impact on the public good.

- Is prosecution/disposal a proportionate response to the offence?

A failure to properly enforce undermines the legal obligation to pay the licence and undermines the criminal deterrent but consideration must be given to the cost of the action and the likely outcome. Is prosecution, an out of court disposal (PICS) or even no further action the proportionate response given the circumstances of the case?

This will allow the Prosecutor to identify and determine the relevant public interest factors

Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The person making the decision to prosecute must decide how important each factor is within the individual circumstances of each case and go on to make an overall assessment. This assessment must be documented on the prosecution case facing sheet (TVL 335).

The following lists the most common public interest factors both for and against prosecution. These are not exhaustive. They are not listed in any order of preference or merit. Each will have a different weight and bearing depending upon the circumstances and/or the facts of the individual case

### **Some Common Public Interest Factors For and Against Prosecution** **Factors For Prosecution**

- The suspect has previously been warned or prosecuted for a TV Licensing offence.
- A search warrant had to be obtained to gather evidence.
- A colour television receiver is being used when a black and white licence is held.
- There is evidence to suggest that the suspect has deliberately defaulted on payments

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for an instalment licence

- A television receiver is found to be or is suspected to be used for licensable activity when TV Licensing has previously been informed by the suspect that a licence is not required at the premises i.e. has claimed NLN.
- The suspect has proactively informed TV Licensing that they are or intend to use a TV receiver for a licensable activity or has made a public statement to that effect, or has publically encouraged others to, do so without a licence i.e. is classed as SITE.
- There is a need to deter further offending
- There is an increased level of culpability of the suspected offender

**Factors Against Prosecution**

- A timely and appropriately dated licence was purchased following interview.
- The court is likely to impose a nominal penalty.
- The offence was committed as a result of a genuine mistake or misunderstanding
- The suspect is under the age of 18.
- The person is or was at the time of the offence
  - (i) suffering from significant mental or physical ill health, or
  - (ii) considered vulnerable due to their personal circumstances (which may include physical or mental ill health, learning difficulties, domestic hostility or abuse, or exceptional and severe financial hardship).

unless there is a real possibility that the offence might be repeated.

- The suspect is eligible for a concessionary TV licence
- The suspect is a genuine visitor.
- There is evidence to show the landlord is responsible for the television receiver or the television licence at the premises
- The offence can be appropriately dealt with by utilising an out of court disposal

**[Redacted – Section 31]**

## 7.2 **Starting a Prosecution in the Magistrates Court - CPR Part 7**

### 7.2.1 **Summons** - The laying of information

An information must be laid by a prosecutor before a summons can be issued. Unless specifically stated otherwise, the information need not be in writing or on oath.

### 7.2.2 **Single Justice Procedure**

A relevant prosecutor may issue a written charge alleging that someone has committed an offence and must at the same time issue a notice that the single justice procedure applies.

### 7.2.3 **Part 7 CPR**

Part 7 of the Rules states that an information or charge will be sufficient if it describes the offence with which the accused is charged and provides particulars necessary to provide reasonable information about the nature of the charge. The prescribed forms appended to the 2015 Rules suggest the inclusion of certain information:

- (i) The name and address of the alleged offender.
- (ii) The name and address of the informant who as a rule usually signs the written information.
- (iii) Details of the alleged offence, in ordinary language.
- (iv) The date when the alleged offence was committed.
- (v) The place where the alleged offence took place.
- (vi) Details of the section and statute or other law which creates the offence.

**[Redacted – Section 31]**

## 7.3 **Date of the Offence**

It is permissible to use the phrase "*on a date unknown between .... and ...*" if the exact date cannot be pin pointed. The first date cannot go back beyond six months prior to the date proceedings are initiated. The closing date should be the date after the visit. **For example:-**

A visit takes place on *2nd June 2004*. No specific admissions of use are made under caution but there is an admission that a colour television set is installed in a good viewing position on the premises which is found to be in good working order. An information is laid or charge issued on *3 September 2004*. The wording of that charge should be for an offence on a day unknown between *3 March*, ie six months prior to instigating proceedings and *3 June*, ie the day following the offence. The court would then be concerned with events that occurred from *4 March 2004 to 2 June 2004*, inclusive.

## 7.4 **6 Month Time Limit**

The time limits for serving or presenting an information and for issuing a written charge are prescribed by section 127 of the Magistrates' Courts Act 1980 and section 30(5) of the Criminal Justice Act 2003. The information/charge must be laid/issued within six months of

the date of the alleged offence.

## 7.5 **Issue of a Summons**

Upon an information being laid, a Justice of the Peace may issue a summons by signing it or by stating his name and authenticated by the signature of the clerk. Electronic signature is satisfactory. A summons directing the Defendant to appear before the Court to answer the information must state the matter of the information together with the time and place at which he shall appear. (Note however Section 12 Magistrates' Courts Act 1980, paragraph 3.1.5.1 above).

## 7.6 **The service of the summons/SJP Notice Criminal Procedure Rules – Rule 4.3 and 4.4**

Service of the Summons may be effected as follows:

- (i) by handing it to an individual or to a person holding a senior position in a corporation; or
- (ii) by addressing it to the person to be served and leaving it at the appropriate address for service,
- (iii) or by sending it to that address by first class post or by the equivalent of first class post

The appropriate address for service on—

- i. an individual is an address where it is reasonably believed that he or she will receive it;
- ii. a corporation is its principal office, and if there is no readily identifiable principal office then any place where it carries on its activities or business;

If a person summoned fails to appear and it is proved to the Court that the summons was served within a reasonable time before trial the matter can proceed in their absence. In the case of *R v North, ex parte Oakey* [1927] 1 KB 491 it was held that "The summons should be served as soon as possible, and in any case must be served a reasonable time before the first hearing".

Proof of service should be in accordance with rule 4.12 (see below). Note, however, that service of the summons on the Defendant can also be treated as proved if it is proved that the summons came to his knowledge. For that purpose, any letter or communication purporting to be written by him or on his behalf in such terms as are reasonable to justify the inference that the summons came to his knowledge shall be admissible as evidence of that fact.

Under Rule 4.11 of the CPR rules, the person who serves a document may prove that by signing a certificate explaining how and when it was served.

The information leading to the issue of a summons and the written charge contained within an SJP Notice remains valid even if the summons or notice is not served. A Defendant may make a Statutory Declaration under Section 14 of the Magistrates' Courts Act 1980 after

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conviction stating that he was unaware of the contents of the summons/notice until a date not more than 21 days before the date of the Statutory Declaration. The effect of that Declaration is to make all proceedings void, without prejudice to the validity of the original information or charge. Accordingly, a fresh or re-dated summons or notice may be issued on the original information or charge.

## 8.0 **THE DUTY OF THE PROSECUTION, THE PROSECUTOR AND THE DEFENCE**

### 8.1 **The Duty of the Prosecution**

It is a fundamental rule of English criminal law that it is the duty of the prosecution to prove every element of the offence alleged and that the offence has been committed by the person who is accused of it. To this general rule that the onus is on the prosecution, there are a limited number of exceptions, e.g. for the Defendant to prove that he had a licence but even in those rare instances where the onus is on the accused the prosecutor must present the basic case and the evidence to the Court.

In practice regular prosecutors tend to adopt a neutral stance as their duty to present the case permits "laying the facts before the Justices" as it is sometimes put rather than pressing hard for a particular outcome. The prosecution case must be established by evidence in the form of oral testimony, written statements, documents and exhibits.

### 8.2 **The duties of the prosecutor**

#### 8.2.1 **Generally**

In the words of the Code of Conduct for the Bar of England and Wales:

"It is not the duty of Prosecuting Counsel to obtain a conviction by all means at his command but rather to lay before the jury fairly and impartially the whole of the facts which comprise the case for the prosecution and to see that the jury are properly instructed in the law applicable to those facts."

It follows that there are certain duties laid upon the Prosecutor which are not imposed on the Defence. According to the Law Society Guide to the professional conduct of Solicitors:

The Prosecutor should state all relevant facts and should limit his expressions of opinion to those fairly required to present his case. He should reveal any mitigating circumstances. He should inform the Court of its sentencing powers if invited to do so, and/or whenever it appears to be under a misapprehension about those powers.

At or prior to trial, the Prosecutor must reveal all relevant cases and statutory provisions known to him whether it be for or against his case. This is so whether or not he has been called upon to argue the point in question.

#### 8.2.2 **Disclosure**

##### 8.2.2.1 **Initial Details**

**By virtue of the Part 8 Criminal Procedure Rules, a defendant charged with an offence, that can be tried in a Magistrates' Court, is entitled to receive copies of the evidence on which the Prosecution propose to rely, or otherwise a summary of it at or before the beginning of the day of the first hearing.**

##### 8.2.2.2 **Criminal Procedure and Investigations Act 1996**

The common law imposes a duty on a Prosecutor to disclose information which he does not intend to use but which may assist the Defence.

Since April 1997 the duty to disclose has been statutory, imposed by the **Criminal Procedure and Investigations Act 1996**. The duty to disclose extends to summary offences tried in the Magistrates' Court. Where the Defendant pleads not guilty, the Prosecution must, as soon as possible after the not guilty plea, provide the Defendant with a schedule of all "non-sensitive" unused material (i.e. relevant material not relied on by the prosecution) that has not already been disclosed and allow the defendant to

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receive a copy or otherwise inspect all material which might "undermine the Prosecution case or assist the defence, or otherwise inform the Defendant by written statement that there is no such material ("initial disclosure").

Where the Defendant serves a Defence statement (see below 8.3) the Prosecution is under a further duty to disclose material which can be brought within the rules in light of any Defence statement. There is a continuing duty on the Prosecution to review the case and to keep under review the question of whether there is information which might undermine the Prosecution case or assist the defence which needs to be disclosed

There is no requirement to reveal the existence of "sensitive" material unless it undermines the prosecution case or assists the defence. In that case the prosecution can only withhold information which it would otherwise have to disclose with the leave of the Court.

### 8.2.3 **Following a guilty plea**

Following a guilty plea:

- (i) Under the summons procedure, if the guilty plea was sent to the court (ie guilty by post), then the Prosecutor is normally only entitled to refer to the statements of facts but a summary of the evidence may be provided where a statement of facts has not been produced.
- (ii) Under SJP most guilty pleas will be dealt with by the court in the absence of the prosecutor and the defendant. Only if the defendant requests a hearing will a guilty plea come before the court in which case the procedure is as point (i) above.
- (iii) If the matter was proved by Section 9 statements, then the Prosecutor would not normally have to address the court further (other than as to costs and possibly, if asked, sentencing powers of the Magistrates e.g. the maximum level of fine).
- (iv) If the Defendant attends and pleads guilty then the Prosecutor should outline, dispassionately but fully, the facts of the case, laying before the Court any statements made by the accused; it may suffice to read the statement of facts.
- (v) To inform the Court of his previous convictions, if any provided notice to cite these convictions has been served on the Defendant. It is then a matter for the Court to decide what, if any, notice to take of those previous convictions. For further information [see para 9.12] post.

### 8.3 **Defence duties**

Where a person is charged with an indictable offence, the Criminal Procedure and Investigations Act 1996 imposes a duty on the Defence, once they have received initial disclosure [see 8.2.1 above], to serve on the Prosecutor a written statement setting out the Defence ("a Defence Statement").

A person charged with a summary or either way offence may voluntarily give a defence statement but is not under an obligation to do so.

The Defendant's solicitor is bound to reveal all relevant cases and statutory provisions. Save in exceptional and specific circumstances, the client's privilege precludes him from making a disclosure of privileged material without the client's consent. Consequently, he must not, without instructions, disclose facts known to him regarding his client's character or antecedents, nor must he correct any information which may be given to the Court by the prosecution if the correction would be to the client's detriment. However, the Defence Advocate should not act in such a way that in the context of the language used by him his failure to disclose amounts to a positive deception of the Court.



9.0 **PROCEDURE AT THE HEARING**

9.1 **Proof in absence**

9.2.1 **Section 11 Magistrates' Courts Act 1980 – Does not apply to SJP Cases**

If the Defendant fails to attend Court and fails to enter a plea in writing, then, provided the Prosecutor can prove good service of the summons, in accordance with rule 4 of the Criminal Procedure Rules then he can apply to the Court for the case to be heard in the absence of the Defendant. [See *para 7.4*].

9.2.2 **Section 12 Magistrates' Courts Act 1980 – Does not apply to SJP Cases**

In the event of a guilty plea in writing, under the provisions of Section 12, the Court Presenter or the Justice's Clerk is required to summarise the Section 9 statements that were served on the Defendant with the summons and any Notice to Cite Previous Convictions. An application for prosecution costs should be made immediately thereafter. The Clerk will then read out to the Justices any mitigation that he has received from the Defendant.

If the Defendant enters a written plea of guilty or attends the court and pleads guilty then, with the Defendant's consent, the court may proceed as if he was not there as above in accordance with (Section 12A MCA 1980).

9.2.3 **Single Justice Procedure**

Guilty pleas and proof in absence will usually be dealt with by a single magistrate in the absence of the prosecution and the defendant. A defendant may however choose to attend court and plead guilty. If that occurs the statement of facts should be read or the section 9 statements summarised.

Any previous convictions served on the defendant should be cited once the case is proved and an application for prosecution costs made.

9.3 **Equivocal plea**

In some cases, a plea is sent in which is unsigned or uncertain, known as an "equivocal plea" (for example, a Defendant may plead guilty but in the same letter claim that he never actually watched the television set). In these circumstances, the Court may proceed to a hearing in the absence of the Defendant or may adjourn the case for the Defendant to appear before the Court, in which case the Court will require service of an Adjournment Notice. Some Courts serve the Adjournment Notice themselves, whilst other Courts require the Prosecutor to serve the Notice. The same provisions as to service of an Adjournment Notice apply as to the service of a summons [See *para 7.4*].

SJP – equivocal plea are diverted to a full hearing and the defendant is summonsed to attend.

9.4 **Not guilty plea**

If a not guilty plea is entered, it is necessary to prove all the elements of the prosecution case. Many Summons Courts adopt a "plea or adjourn" system which means that only guilty pleas are heard on the first occasion and a date is then set for a trial of the not guilty

pleas. The Not Guilty procedure should be followed in this situation (see Chapter 15)

**9.5 The course of the trial**

At the commencement of the trial following a plea of not guilty the prosecution have the right to an opening speech. Unless the case is particularly complicated the Prosecutor should briefly outline the law and the case which they intend to prove. If it is anticipated that a specific point of law may be raised by the Defence, which is covered by one of the cases relevant to TV licensing prosecutions then a short speech should be made to the Magistrates in which the relevant case is referred to and outlined to the Court. When referring to a case the full name of the case should be given together with its citation (see para 6.1). The prosecutor should also have available a copy of the case to which reference is being made.

It may also be necessary in the opening speech to refer to the relevant part of the Communications Act 2003 and to explain to the Court, for example, that Section 363 creates an offence of strict liability to install or use a television receiver without a licence and that the Prosecution do not therefore need to show that the Defendant was aware that the set was unlicensed. Any additional technical points should be raised at this time, such as, the drawing of adverse inferences following silence upon caution, a failure to mention during the interview something which we know will be relied on in court or the introduction into evidence of a signed confession (in the record of interview).

**9.6 Examination in chief**

Evidence is called in support of the prosecution case usually by way of a live witness. This is known as evidence in chief. The Court Presenter must ask the witness for his full name and should ask the witness if written notes are to be relied on, when they were written and firstly that the notes record his recollection of events at that time and secondly that his recollection at that time would have been significantly better than it is now (section 139 CJA 2003). The witness may then give evidence from his notes.

When the Court Presenter asks the witness questions, the questions should be phrased in a neutral form and must not have the answer suggested in them i.e. they must not be leading questions. When the witness has finished giving evidence in chief, the Defendant has a right to cross examine him and the Court Presenter may then re-examine the witness but only on any matters which have been raised during the cross examination and not new matters which should have been raised during examination in chief.

**9.6.1 Written statements under Section 9 Criminal Justice Act 1967**

The Court Presenter may also wish to adduce evidence before the Court by means of a signed statement from a witness under the provisions of Section 9 of the Criminal Justice Act 1967. If this course is adopted, service of the copy statement on the Defendant at least seven days before the hearing must be proved by means of the appropriate Certificate of Service. Service of the Section 9 Statement can be affected by personal service, be leaving it for him at his last known address or by posting it by registered or first class post at his usual or last known address. This can be proved by a Certificate of Service (Rule 4.12 CPR). The original signed statement is handed to the Court Clerk and can then be read to the Court. [See para 3.3]

**9.6.2 Summary of Section 9**

Section 9(b) of the 1967 Act states "so much of any statement as is admitted in evidence by virtue of this section shall unless the court directs otherwise be read allowed at the hearing and where the court so directs an account shall be given orally of so much of any statement as is not read aloud". The court's permission is required to summarise.

**9.7 Closure of prosecution case**

At the conclusion of the prosecution case, the Prosecutor should inform the Court that the prosecution case is closed. The case can only then be re-opened with the leave of the Court, for example where the Defendant raises in his evidence a matter which could not properly have been foreseen. It is then possible to introduce fresh evidence to rebut this assertion.

**9.8 Cross examination of the defendant**

The Defendant can either give evidence on oath, or remain silent. If he chooses to remain silent then there is no right to cross examine him. If he chooses to give evidence on oath, however, then when he has finished giving his evidence to the Court, the Court Presenter has the right to cross examine him. It should be borne in mind that the Court of Appeal has held that during cross examination a witness is entitled to courtesy and consideration and the cross examination should not be protracted and irrelevant.

Cross examination technique:

- be brief
- ask short closed questions. Do not allow the Defendant the opportunity to introduce new evidence.
- do not repeat yourself
- try to make a few important points
- try to get the Defendant to agree with you
- know your final question and if possible build to a conclusion which will make denial implausible
- unless on solid ground stick to the basics and concentrate on main issues
- where possible don't ask a question to which you don't know the answer
- keep the questions relevant
- be courteous and fair
- do not be aggressive and avoid heated arguments with witnesses

**9.9 Amendment of summonses**

Section 123 of the Magistrates' Courts Act 1980 allows a summons/SJP Notice which is defective to be amended. If the Defendant has been misled by the error in the summons/Notice that has been amended, then the Court should grant him an adjournment to consider the amendment.

However, some errors are so fundamental as to be incapable of amendment. For example, if proceedings have been issued in the wrong name and it clearly cannot be amended to a different name: in these circumstances, the prosecution would have to be withdrawn and proceedings started again in the correct name.

It must be remembered that the six month time limit for instigating proceedings still applies.

**9.10 Golden rules on amendment**

- Check charge at outset, in particular the date of the offence and any date of admission
- If in doubt, amend
- Amend as soon as defect is discovered

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- Very minor discrepancies probably do not require amendment
- If Court allows amendment, it must grant the defendant an adjournment if they request it
- Certain fundamental errors cannot be amended

### 9.11 **Sentencing - Fines generally**

The penalties for offences in contravention of Section 363 (2) and (3) of the Communications Act 2003 are set out within Section 363 (4) of the Act.

That Section provides for a fine not exceeding Level 3 on the standard scale. The maximum fine is currently £1,000.

The penalty for contravening 366(8) (obstructing a Search Warrant) is contained within Section 366(9) of the Act, which provides for a fine not exceeding level five, currently an unlimited fine.

The standard scale giving the maximum fine for an adult on conviction of a summary offence is prescribed by section 3 of the Criminal Justice Act 1982 and is as follows:-

Level 1 £200

Level 2 £500

Level 3 £1000

Level 4 £2500

Level 5 Unlimited fine

Magistrates have to take account the Sentencing Guidelines. The Coroners and Justice Act 2009 requires the court to follow these guidelines when sentencing. Factors for TV Licensing Offences include period of time without a licence (6 months or more), attempts made to evade detection etc. Court Presenters should be familiar with these guidelines and prepared to assist the court where necessary.

### 9.12 **Previous convictions**

It is possible for an offender's record to be taken into consideration by a Court on sentencing.

#### 9.12.1 **Notice to Cite - Section 104 Magistrates Courts Act 1980**

If an offender has previous conviction(s), it is possible to serve a notice upon the offender specifying the alleged conviction(s) seven days beforehand. The Magistrates may then take the previous convictions into account when sentencing even if the accused is absent. The notice must be served in compliance with Rule 4 CPR.

### 9.13 **Rehabilitation of offenders**

The Rehabilitation of Offenders Act 1974 lays down certain rehabilitation periods after which previous convictions are "spent". Although such previous convictions may still be handed to the Clerk of the Court they would normally be disregarded by the Court and the person treated as of previously good character.

The most usual periods for our offences are:

#### **Absolute discharge**

Immediately Spent [Section 5(3)]

#### **Conditional discharge**

The length of conditional discharge [Section 5(2)]

Court Presenters' Manual (Chapter 9) – Procedure at the Hearing  
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**Fine**

One year [Section 5(2)]

Court Presenters' Manual (Chapter 10) – Costs  
Commercial In Confidence

10.0 **COSTS**

10.1 **Costs in criminal cases**

Part II of the Prosecution of Offences Act 1985 sets out the major provisions of the law relating to the award of costs in criminal cases. Awards of costs fall into three categories:

- (i) Out of Central Funds which are in effect government funds.
- (ii) Against the accused.
- (iii) Other awards.

10.2 **Prosecution costs Against the Accused**

Under Section 18 of the Prosecution of Offences Act 1985 the Magistrates' Court or the Crown Court may make such order as to costs to be paid by the person convicted to the Prosecutor as it considers just and reasonable. Thus, all applications for costs should be made against the Defendant.

10.3 **Defendants costs order**

If a Defendant is acquitted or his case is not proceeded with he does have a right to make an application for his costs. The Court may make an order in favour of the accused for payment of all or part of his costs out of central funds. If such an application for costs is made then the Court Presenter should point out to the Court that the costs should be made payable out of Central Funds under the provisions of Section 16(1) of the Prosecution of Offences Act 1985.

10.4 **Costs against the Prosecution**

The Court only has power to award costs directly against the Prosecutor under the provisions of Section 19(1) of the 1985 Act, as a result of an unnecessary or improper act or omission by the Prosecutor. Since no such improper act or omission should have taken place, the Court Presenter should be able to argue successfully that any award of costs must be made from Central Funds.

The case of *Bradford Metropolitan District Council v Booth 2000 (QBD)* re-iterates the principle '*that costs should not be awarded directly against a prosecuting authority unless the said prosecutor has acted unreasonably, improperly or dishonestly*'.

It is possible for the Court to make an order for costs against the legal or other representative of a party in respect of costs incurred as above. (Section 19A of the 1985 Act). This therefore means that the Court could order the Court Presenter personally to pay costs in the case, should a Court be considering such a course of action, then seek an adjournment for legal advice and representation.

10.5 **The "Coventry Justices" case *R v Coventry Magistrates Court ex parte DPP [1990]***

Following the decision in this case in cases using Section 12 procedure, i.e. where no prosecutor attends Court and a Defendant has entered a guilty plea, the Clerk to the Justices must now read out any claim for costs contained on the Statement of Facts form.

This case should not have had any relevance to TVL prosecutions as on all occasions we have (and always have had) a prosecutor in attendance who should be prepared to read the statement of facts and then make the appropriate application for prosecution costs.

Many Courts will accept a global application for costs for example, if the prosecutor before commencing his/her cases indicates that he/she would seek costs of £120 (or whatever sum is sought) in all cases unless a contrary intention is indicated. Whatever is the normal and accepted procedure in your local Court(s) should be followed.

10.6 **Investigation Costs**

In the case of R v Associated Octel Co Ltd [1996] it was held that costs applied for may include costs incurred in the course of a reasonable investigation. Court Presenter's should apply for a contribution towards prosecution costs. The figure applied for will however be increased if legal representation or witnesses are required.

10.7 **Statutory Declarations (applying for additional costs)**

If a Defendant has sworn a statutory declaration there are three possible scenarios;

The Defendant has sworn a statutory declaration claiming that they had not received the summons/moved away, but after further investigation the Defendant still resides at the same address and the prosecution has been proven; **(apply for costs as per High Profile list and case papers)**

The Defendant has sworn a statutory declaration claiming not to have received the summons/moved away and where some evidence has been provided to support this contention but that the case is ultimately proven; **(apply for standard costs)**

The Defendant has sworn a statutory declaration claiming not to have received the summons/moved -away and where evidence has been provided to support this contention and the case is withdrawn/not proven; **(no costs application)**

The right to apply for additional costs is established in the case of **R V Associated Octel Co Ltd [1996] 1CR App 435** which allows the prosecution to apply for costs incurred in respect of an investigation (see 10.6 above).

Court Presenters' Manual (Chapter 11) – After Conviction  
Commercial In Confidence

11.0 **AFTER CONVICTION**

A number of courses of action may be taken after conviction. The most common are as follows:

- (i) The Offender accepts the conviction and pays any fine imposed.
- (ii) The Court/Defendant/Court Presenter discovers an error has been made and the Section 142 procedure is invoked.
- (iii) A Statutory Declaration is made by the Defendant indicating non-receipt of the summons.
- (iv) The Defendant appeals against conviction and sentence or sentence only.
- (v) The Defendant or Prosecution appeal to the Divisional Court.
- (vi) It is discovered that there was a licence in force at the relevant time and a Free Pardon is applied for.
- (vii) Fine Remitted

Taking the above individually and in more detail:

**(i) Nothing more required.**

**(ii) Section 142 Magistrates Courts Act**

Section 142 of the Magistrates' Courts Act 1980 provides power for the Magistrates to re-open a case in order to rectify mistakes made [see para 3.1.8]. Under this section the court adjourns the proceedings for a fresh trial.

If an error is brought to light under this section, action may be taken by the Prosecutor. Inability to do this would almost certainly lead to the matter having to be appealed in the Crown Court.

**(iii) Statutory Declaration (s14 & s16E MCA 1980)**

A person may make a statutory declaration to the effect that he/she knew nothing of the summons or proceedings until a date specified in the declaration, being a date after the Court began to try the case.

Such a declaration may be made at any time during or after the hearing and provided such declaration is served on the Clerk to the Justices within 21 days of the date specified in the statutory declaration the summons and all subsequent proceedings shall be void.

A fresh summons may be issued relying upon the original information but that information may not then be tried by any of the same justices.

The service of the statutory declaration does not affect the validity of a Single Justice Procedure notice (SJP). The defendant will be tried for the original offence immediately if possible or at least at the next SJP mention where the statutory declaration is made other than at court and the defendant pleads not guilty or wishes to appear before the court a summons will be issued and the parties notified of the court date.

**(iv) Appeals to the Crown Court**

A convicted defendant may appeal to the Crown Court against conviction and sentence (if a not guilty plea was entered by the defendant and the matter was proved) or against sentence only if a guilty plea was entered by the defendant.

Notice of appeal must be given within 21 days after the day on which the decision appealed against was given (though leave to appeal is often granted out of time). Where conviction and sentence were on different days (most unusual for TV cases) the time limit is measured from the date of sentence.



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Commercial In Confidence

There is no appeal against acquittal (ie the prosecutor has no right of appeal) unless specified by statute.

**(v) Appeal to the High Court**

- **By way of case stated**

This type of appeal is available to any party to proceedings in the Magistrates' Court where such party is aggrieved by the conviction, order, determination or other proceeding of the Court on the ground that it is wrong in law, or is in excess of jurisdiction.

Application is made to the justices composing the Court to state a case for the opinion of the High Court. Such an appeal must relate to matters of law. Matters of fact must be dealt with by way of appeal to the Crown Court.

In view of the nature of the type of appeal it may be used by the prosecutor as well as the defendant.

- **Judicial review**

This is a second way of bringing a grievance to the High Court from the Magistrates' Court. However, Judicial Review is limited to considering whether the Magistrates' Court has failed to exercise its jurisdiction properly or whether it has come to some error of law which appears on the face of the record.

It is not the decision which is in dispute here but the decision making process.

**(vi) Free pardon**

From time to time, it is discovered after conviction that the defendant did, in fact, have a valid licence which would cover him/her for the date of the alleged offence.

A free pardon should be sought where the proper course of action was pursued in achieving the conviction and there is no recourse to appeal but where it is clear that the conviction was wrong.

However, the effect of a free pardon is simply to free the convicted person from the penalty imposed. It does not eliminate the conviction itself.

This power still exists but is now virtually redundant due to the wide use of Section 142.

**(vii) Fine Remitted**

It is possible for a convicted defendant to have a fine remitted following a means enquiry. We would take no active part in that process.

## **Pre-Court Checks, Arrange Court Attendance and Witness Citations**

### English and Welsh Pre-Court Checks

#### **12.0 Receipt of Documents.**

All Courts must be collected and checked by lunch time on a Friday at the latest.

Immediately upon receipt from the Field Office, the Court Presenter (CP) must check the following: -

- The correct courts have been received. If there are any discrepancies the relevant Senior CP (SCP) and Field Ops Support Manager must be informed immediately so that investigations can be made before the weekend.
- All cases are enclosed, including any listed HP cases, NG trials and SW applications, with relevant papers attached.
- Not guilty pro-forma (Witness required to attend) Contact should be made with the VO by Friday of the week prior to the actual court attendance to ensure that they have been notified and are available to attend. The CP should also check that the VO has received their 178 in the post and if possible run through their evidence with them.

#### **12.0.1 Case Handlers**

CP's who perform case handling duties at the FBC must notify the appropriate personnel in Field Support at the FBC by the Thursday evening the week prior to their Courts being posted out to their home address to specify if they want them to be posted out or if they will pick them up from the FBC in person.

#### **12.1 Omissions.**

Any omission or discrepancy identified must be reported immediately to the relevant SCP and Field Ops Support Manager. This must be done by lunch time on a Friday

#### **12.2 Potential Witness.**

Cases must not be presented at Court by anybody who is a potential witness in the case.

#### **12.3 Case Familiarisation.**

Prior to the hearing, the CP must familiarise themselves with each case and check for the following: -

- Summonses were served in accordance with regulations and certificates of service are provided for court. Note - SJP cases heard administratively will be adjourned for attendance of the defendant.
- Licences have been checked for all cases.
- Has any new information come to light that may affect the decision to prosecute?
- The results of any licence checks, screen prints, notes, customer correspondence and/or any record of contact with the customer attached to or annotated on the case papers must be taken into consideration.
- Any notifications from the FBC to adjourn or withdraw cases are to be actioned and acknowledged via e-mail.
- Disclosure has been served if the case is listed for trial.

#### **12.3.1 Pre Session Check.**

**[Redacted - Section 31]**

#### **12.4 Preparation for trials.**

- Has a pre trial review been conducted?

## Court Presenters' Manual (Chapter 12) Court Procedures – Prior to Attending Court Commercial In Confidence

- The CP must confirm if the witness is required and to contact each witness and speak to them directly to confirm their attendance and arrange to meet them before the hearing to go through the evidence. The CP should also check that the VO has received their ROI in the post and if possible run through their evidence with them in advance of meeting them before Court.
- Contact must be made with any witnesses by Friday of the week prior to the actual court attendance.
- If contact cannot be made with the VO then the CP should escalate it to the appropriate Visiting Manager.
- If contact cannot be made with either the VO or the VM then the CP should contact either the SCP or a Manager at the FBC.
- If the defence is known, the CP must, familiarise themselves with any relevant case law and or seek advice from the legal team. The CP must ensure that a copy of any relevant case law is available.
- Have all previous action points been completed.

### 12.4.1 **Preparation for Search Warrant Applications.**

- Check that the address on the Information and the Search Warrant corresponds to that on ROI and SW application documents.
- Ensure that the name of the Informant and the venue where the application is to be made are correct.
- Ensure that there are copies of the BBC Form of Authority and the relevant Law with the case papers. Check that there are 3 copies of each of the Information and Search Warrant to be signed by the Magistrates.
- Check the Licence status of the address before making the application and annotate the case papers.
- The CP must telephone the FBC to confirm the Warrant recipient's Name and Address and then telephone the person to inform them a Warrant is being sent to them by Special Delivery indicating the SD number.

### 12.5 **Points of Contact**

Unless instructed otherwise within this process, queries regarding the interpretation of the procedures or of policy are to be addressed to the Senior Court Presenter in the first instance.

### 12.6 **Welsh Language Act**

We will comply with the requirements of the Welsh Language Act. Any request by the defendant or their legal representative for court documentation in the Welsh language is to be actioned. Any such requests, including any requests for proceedings to be conducted in Welsh, or for a translator to be present, must be communicated to the Prosecution Manager as soon as possible and to the court in good time to allow for Welsh speaking staff or an interpreter to attend. Continued correspondence with the defendant should be conducted in Welsh if requested, though formal statements taken in English must remain in English, translated in open court for the defendant if required.

### 12.7 **Document Security**

Court Presenters must at all times be mindful of the security of documents, to this end the following instructions are to be followed

## Court Presenters' Manual (Chapter 12) Court Procedures – Prior to Attending Court Commercial In Confidence

### **At Home:**

All court documents when not actually being worked on must be placed back in the court pouch which must then be sealed and kept out of sight. At no time are documents to be left on view or unattended.

### **At Court:**

The CP must ensure that all papers are kept securely at court and they must ensure nothing is left unattended when dealing with defendants or court officials. A check must be made to ensure all papers; documents etc are collected up by the CP at the end of the court session.

When returning court documents to FBC the CP must ensure that:

1. They are returned using the issued pre-printed Royal Mail Special Delivery silver tamper proof bag/s, please ensure a new bag is used do not re-use bags that have been used previously, before posting ensure that the bag/s are securely sealed and the pre-printed information on the bag/s is correct.
2. A receipt of posting must be obtained from the Post Office which is dated and timed. The receipts should be retained by the CP for a period of 3 months.
3. Completed work is to be returned to the FBC as soon as is practicable to do so. At month end all completed work must be returned to the FBC to arrive no later than the 2nd working day of the new month.
4. CP's who perform Case Handling duties at the FBC must whenever it is practicable to do so hand their completed Court papers back in in person at the FBC.

### **During Transport.**

When transporting court documents in a vehicle the CP must ensure that all court papers are locked in the boot of the vehicle during transport.

Should it be necessary to carry court papers on public transport, they should always be carried in a locked case and never left unattended.

**Note:** Should any papers or documents go missing this must immediately be reported to a SCP and the TVL-Ops Support Manager.

**Court Attendance and Protocol**  
**England and Wales**

**13.0 Arrival at Court – Possible Delay**

The Court Presenter must be at Court at least 30 minutes before the time scheduled for TV Licensing cases to begin.

As soon as you believe that you may be late for court you should: -

- Ring the FBC on **[internal detail – removed]** and inform them that you are running late.
- Give them your reason for lateness, and an estimated time of arrival at court.
- Provide regular updates of your progress when possible.
- If it becomes clear that you will be more than 30 minutes late, ask the FBC to apologise on your behalf and to request that TVL cases be delayed in that day's list.
- If you are not going to arrive at court at all (Motorway Closure etc), then ask the FBC to apologise again and request that all TVL cases be adjourned to the next available date.

If you have any witnesses attending, then request the FBC to notify them accordingly.

**13.1 Court Attire.**

The Court expects that all Court Presenters will be smartly dressed. Court etiquette is for dark suits, conventional shirts and ties for men. Women should also dress smartly, (etiquette is for dark colours).

**13.2 Introduction.**

The Court Presenter must introduce themselves to the Court Usher on arrival.

**13.3 Dealing with Queries.**

If any queries arise before the Court commences the Court Presenter must deal with those. If a Defendant wishes to speak to the Court Presenter, it must be made clear that the Court Presenter is the prosecutor but that they will help if they can (subject to any conflict of interests)

The duty solicitor is no longer able to advise on non-imprisonable offences although some will do it free for existing clients. This was introduced from 17th May 2004 and was a change made by the Legal Services Commission.

The Court Presenter can answer any pertinent questions that the Defendant asks, but must not make any suggestions concerning their plea.

**13.4 Liaise with Legal Advisor.**

The Court Presenter should introduce themselves to the Legal Advisor. If the Legal Advisor has any queries, assist whenever possible. Notify the Legal Advisor of any case that requires attention, such as re-opening, or a SWA etc.

**13.5 Introduction to Magistrates.**

When the TV cases are called the Court Presenter must introduce themselves to the Magistrates. It may be that the Legal Advisor will make this introduction on behalf of the Court Presenter.

Court Presenters' Manual (Chapter 13) – Court Attendance and Protocol  
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13.6 **Request Permission to Prosecute.**

The Court Presenter must seek the authority of the Court to prosecute. (Schedule 3 Section 1(2)(b) of the Legal Services Act 2007) It is an offence to prosecute without authority.

The Court Presenter should also have available their TVL Identity Card, and the letter of authority signed by Director of Field Ops authorising them to Prosecute TVL cases.

13.7 **Order of Session.**

The Court will normally deal with attendees' cases first and with the other cases once the attendees have been dealt with.

The Court Presenter must make every effort to have TV cases heard as early as possible.

13.8 **Summons Defect.**

If the summons requires amendment, then provided it is not a fundamental amendment this can be done by virtue of Section 123 of the Magistrates Courts Act 1980, with leave of the Court.

Where a defect is more fundamental but not serious, an application should be made for an adjournment so that an amendment letter can be sent to the defendant.

The re-issue of a summons/notice should be a last resort and for serious errors on the summons, or at the insistence of the Court.

13.9 **Prosecution Costs**

A contribution towards prosecution costs will be applied for in every case that is found proved by the court. The level will be dependant upon the nature of the case.

Court Presenters' Manual (Chapter 14) – Guilty Plea  
Commercial In Confidence

**Guilty Plea – Attender/Non Attender**

**14.0 The Plea.**

The Defendant has the matter put to him/her, and enters their plea (in this case "Guilty") or has entered a guilty plea by writing in advance of the hearing. Under SJP the defendant will be asked to confirm his/her plea.

**14.1 Guilty Plea in Person.**

If the Defendant attends and pleads guilty. The Court Presenter will outline the facts of the case, (with the permission of the court) by summarising the section 9 statement of the prosecution witness. The name of the witness should be given and any information contained within the exhibited record of interview should be referred to as such.

**14.2 Guilty Plea in Writing.**

If the Defendant does not attend the Clerk will indicate whether a guilty plea has been entered. As above the Court Presenter summarises the Section 9 statements to the Court (including the application for costs) or reads out the Statement of Facts in SJP cases. The Court Presenter is bound by it and is not at liberty to move away from that which has been served on the Defendant [Note that the Statement of Facts is no longer served on the Defendant in domestic summons cases. Although MCA Section 12 states that the Court Clerk should summarise the facts, the Court Presenter will normally need to do this.

If under the summons procedure a written plea of guilty has been received but the accused still appears, then under section 12A of the MCA 1980, with the Defendant's consent, the court may proceed as if he was absent. The Court Presenter will then be restricted to summarise the Section 9 statements served on the Defendant. If the Defendant enters a plea and is not asked to consent to the section 12 procedure (guilty plea in absence) then this restriction does not apply and the procedure in 14.1 can be followed.

**14.3 Previous Convictions.**

Any previous convictions should be brought to the Courts attention. If a Notice to Cite has not been served then the convictions may be put to the Defendant under oath. If the Notice to Cite has not been served and the Defendant has not attended previous convictions cannot be put to the court.

**14.4 Application for Costs.**

Having outlined the case, the Court Presenter should also ask for a contribution towards the costs

**14.5 Mitigation.**

If the defendant attends to enter a 'Guilty plea' the Court will then give the defendant the opportunity to present mitigation and address them as to means. If not in attendance, evidence of means, as submitted by the Defendant by post, will be read by the Clerk. If mitigation indicates a Defence (an equivocal plea) then the Magistrates may adjourn the matter for the defendant to attend and/or to clarify plea. The adjournment and reasons must be noted on the case papers.

**14.6 Sentence.**

Magistrates then sentence (unless they require further information concerning means etc.)

Court Presenters' Manual (Chapter 14) – Guilty Plea  
Commercial In Confidence

N.B. Nothing other than that which is contained in the Section 9 Statements may be put before the Court.



## Not Guilty Plea Entered –

### Summons Procedure

- 15.1 If present, the offence is put to the defendant - Not Guilty plea entered.  
If the plea is received by letter, the matter should be adjourned for clarification of plea or pre-trial review. It may be that the Court is not prepared to adjourn for pre trial review in which case that matter will have to be adjourned for trial.
- 15.1.1 If the defendant attends, the matter will have to be adjourned unless the Visiting Officer is in attendance and available to give evidence. If a Section 9 Statement has been served and the defendant does not require the Visiting Officer's attendance, the matter could proceed immediately.
- 15.1.2 It may be that the Court wishes the case to be adjourned.
- 15.1.3 If the defendant indicates that the defence is based on law rather than fact and it is not a matter within the Court Presenter's knowledge, then the Court Presenter may apply for the matter to be adjourned in order to seek advice.
- 15.1.4 In any event, an adjournment will almost certainly be granted to the defendant if requested by him/her.
- 15.1.5 Where possible, The Court Presenter should adjourn the case to a date supplied by the Darwen Field Business Centre.
- 15.1.6 If the nature of the plea is unclear, the Court Presenter should make every effort to adjourn the case and attempt to ascertain the basis of the plea.
- 15.1.7 The Court Presenter should ascertain whether any statements of the Visiting Officer are disputed and if so note that the Officer will be required to give oral evidence.
- 15.1.8 The Case Facing Sheet is to be annotated with the above.
- 15.1.9 A Not Guilty Case Progression sheet should then be completed giving all details of the plea,
- Are there any special circumstances relating to the case?
  - Is the evidence disputed?
  - Is any correspondence attached?
  - What is the basis of the plea?
  - Is witness attendance required?
  - What is the reason for the adjournment?
  - Pre-Trial Review or Trial?
- This form should then be enclosed with the case papers to be returned to the Darwen Field Business Centre.
- 15.1.10 When a Not Guilty Plea is entered the Court Presenter must also complete a Case Management Form which when completed should be attached to the Not Guilty Progression Sheet

### Not Guilty Glossary of terms

- 15.2 A Not Guilty (NG) Progression sheet must be completed when a case is adjourned for

Court Presenters' Manual (Chapter 15) – Not Guilty Plea Entered  
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Trial or a Pre Trial Review (PTR). Cases adjourned for Clarification of Plea or To Prove do not require a NG Progression sheet.

**SJP Procedure**

15.3 Under SJP the plea in the first instance is received and processed by the court in the absence of the prosecutor. Not guilty pleas are adjourned and a summons is sent to the defendant. The prosecutor is notified of the adjourned date and provided with a copy of the plea form which should disclose the issues in the case and any witnesses the defendant intends to call to give evidence.

15.3.1 At this hearing the case will proceed to trial whenever possible so all pre court work must be completed before the hearing.

If a trial cannot proceed then an adjournment should be requested to a date supplied by the Darwen Field Business Centre. The court presenter must attempt to clarify the basis of plea, the legal issues in the case and whether skeleton arguments are required, whether witness evidence is disputed so whether the Visiting Officer is required to give live evidence or whether the trial can proceed on the basis of the section 9 statements.

15.3.4 A not guilty progression sheet should be completed (see 15.9) by the Court Presenter and the case facing sheet updated.

**Case Handler**

15.4 The case handler's role is to assess contested cases, ascertain the issues in the case and contact the defendant where appropriate to resolve or narrow the issues to be tried at court.

This should allow many of the cases to be trial ready at first instance though the CP should be alert to any issues that arise.

15.5 **Disclosures**

- A Schedule of Unused Material must be served upon the defendant as soon as reasonably practicable after receipt of the not guilty plea.
- Unused material need only be disclosed to a defendant if it undermines the prosecution case or assists the defendant; otherwise the duty of the prosecution only extends to the provision of a Schedule with a declaration that no such material exists.
- Unused Material will usually consist of one or more of the following:
  - Visit request.
  - All LASSY screen prints for any licence payment history from all licences prior to the visit, and any obtained after the visit date (provided they are in the same name as the defendant).
  - Care notes provided they are in the same name as the defendant.
  - ROI (if not already disclosed).
  - Supplementary notes submitted by VO.
  - Search warrant application, execution sheet and ancillary documents
  - **[Redacted – Section 31]**
- Two files of disclosures to be enclosed with case papers.  
One of which will have a Certificate of Service fully completed and stapled to the papers to which it refers.

15.6 **Not Guilty Letter**

Two copies to be enclosed with case papers. One of which will have a fully completed Certificate of Service stapled to it.

15.7 **Full payment history**

Full CASSIE payment schedules for any licence payment history from all licences prior to the visit, and any obtained after the visit date (provided they are in the same name as the defendant).

15.8 **Visiting Officer Availability**

The availability of the VO should be annotated on both the NG progression sheet and the case facing sheet. If no dates have been obtained then the two sheets should be annotated with the reasons.

15.8.1 **Notify Visiting Officer to attend**

Copy of the notification and the response from the VO to be enclosed within the case papers. If not enclosed, then the reasons why should be clearly annotated on the NG progression sheet and the case facing sheet.

**As Court Presenters have the necessary knowledge and experience they are required to carry out any additional investigations and enquiries to resolve issues raised in court.**

Court Presenters' Manual (Chapter 16) – Pre-Trial Review  
Commercial In Confidence

**16.1 Pre Trial Review**

16.1.1 The reason for the pre-trial review is to try to narrow down the issues of the case and where possible to resolve the matter without the necessity of a contested hearing.

16.1.2 The Court Presenter should ascertain and document the basis of the plea and any additional information pertinent to the case. This should include, where known:

- A summary of the main issues of the case.
- The number of witnesses to give oral & written evidence.
- Any facts formally admitted.
- Any points of law or admissibility of evidence likely to arise at trial.
- Estimated length of trial.
- Availability of witnesses.

If possible the Court Presenter should attempt to obtain copies of any correspondence between the defendant and the court.

16.1.3 In exceptional cases, if a complex legal issue arises, the Court Presenter should adjourn for legal advice and set a timetable for the production of skeleton arguments.

16.1.4 The Case Facing Sheet and the Not Guilty Progression Sheet are to be fully annotated.

16.1.5 If, during or after the pre-trial review, the defendant chooses to change their plea to guilty, then that process should be followed. In all other cases an appropriate adjournment date should be agreed.

**16.2 Case Management Criminal Procedure Rule 3**

The court is under a duty to actively manage each case :

**3.2.**

(1) The court must further the overriding objective by actively managing the case.

(2) Active case management includes—

- (a) the early identification of the real issues;
- (b) the early identification of the needs of witnesses;
- (c) achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case;
- (d) monitoring the progress of the case and compliance with directions;
- (e) ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;
- (f) discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;
- (g) encouraging the participants to co-operate in the progression of the case; and
- (h) making use of technology.

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(3) The court must actively manage the case by giving any direction appropriate to the needs of that case as early as possible.

**The duty of the parties**

**3.3.**

(1) Each party must—

- a) actively assist the court in fulfilling its duty under rule 3.2, without or if necessary with a direction; and
- b) apply for a direction if needed to further the overriding objective.

(2) Active assistance for the purposes of this rule includes—

- a) at the beginning of the case, communication between the prosecutor and the defendant at the first available opportunity and in any event no later than the beginning of the day of the first hearing;
- b) after that, communication between the parties and with the court officer until the conclusion of the case;
- c) by such communication establishing, among other things—
  - (i) whether the defendant is likely to plead guilty or not guilty,
  - (ii) what is agreed and what is likely to be disputed,
  - (iii) what information, or other material, is required by one party of another, and why, and
  - (iv) what is to be done, by whom, and when (without or if necessary with a direction); and
- d) reporting on that communication to the court—
  - (i) at the first hearing, and
  - (ii) after that, as directed by the court.

## Court Presenters' Manual (Chapter 17) – The Trial Commercial In Confidence

### The Trial

#### 17.0 Pre Trial Actions.

The CP should always make time to discuss the case with the TV Licensing witness. This should include informing them of court protocol and etiquette, the best way to proceed with the trial, and the most effective way to present the evidence. The CP should give the witness a copy of their Record Of Interview (ROI) and go through the evidence with them. The witness should be told that he/she is expected to remain in court until the conclusion of the trial and until they have been formally released by the Magistrates.

The witness **must** return the copy of the ROI to the CP before leaving court.

If present, any prosecution witnesses must be asked to leave the courtroom until called to give evidence.

If the defendant is represented, it may well be that a short discussion with the Defence representative prior to the case commencing would be beneficial to all parties.

#### 17.1 Opening Address.

The Court Presenter should always take the opportunity to give an opening address outlining the case. This should include where appropriate, reference to the following:

- An outline of the prosecution case against the defendant and how the prosecution intend to prove this.
- Explain to the court the offence of unlicensed use under s363 or obstruction of a warrant under s366 of the Communications Act 2003.
- It will be necessary to explain the definition of television receiver, i.e. any device used to receive live television programmes or BBC on demand programmes on iPlayer. Particularly if the device use dis not a TV set or the defendant claims non live use.
- If the ROI was signed, then this should be referred to as a signed confession as defined within section 82 of PACE 1984.
- Refer to the offence and to it being one of strict liability.
- Outline the defendant's case if known and introduce any law which may counter their argument or reverse the burden of proof, for example 101 MCA 1980 - Defendant to prove he had a licence if this is his defence.
- Invite the Court to draw inferences from any new facts introduced by the defence that were not referred to during the interview (section 34 of the Criminal Justice Act 1994). This is particularly relevant where the defendant raises a "non-live" use defence but fails to mention that during the interview (ROI)
- Any relevant case law.

#### 17.2 The Prosecution Case

The prosecution evidence will usually take the form of one or more Visiting Officers giving oral evidence.

##### 17.2.1 Examination in Chief

The Visiting Officer identifies himself to the Court and swears/affirms the truth of his evidence.

The Court Presenter should ask permission from the court for the witness to refer to

## Court Presenters' Manual (Chapter 17) – The Trial Commercial In Confidence

his/her notes, and confirm that his/her notes/the record of interview were written contemporaneously, that the document records their recollection of the matter at an earlier time and that that recollection is significantly better than it is now (section 139 CJA 2003).

The Court Presenter should seek to elicit all relevant information from the witness, generally by asking questions of the Visiting Officer, without leading, or by allowing the Visiting Officer to give their evidence without interruption - or by a mixture of both.

### 17.2.2 **Cross Examination**

The defendant asks any relevant questions which he/she may have of the witness. The Court Presenter should challenge any unsworn statements made by the defence at this time.

### 17.2.3 **Re Examination**

The Court Presenter may then re-examine the witness if necessary on any new points raised as a result of the cross examination.

This procedure is repeated in respect of any other prosecution witnesses.

### 17.3 **Closing the Case.**

At the end of the prosecution evidence, the Court Presenter formally closes the prosecution case.

### 17.4 **No Case to Answer**

At the end of the prosecution case the defence may make a submission of no case to answer. To uphold this submission the defence will need to convince the bench; there has been no evidence to prove an essential element of the alleged offence; or the evidence submitted by the prosecution was so discredited during cross-examination or is so unreliable that no tribunal could safely convict on it. The prosecution has a right to and in all cases should, reply.

### 17.5 **The Defence case**

The defence is under no obligation to say anything, but may give evidence and call witnesses. The same procedure as above is followed, but in reverse order (i.e. defendant examines in Chief, Court Presenter cross examines, the defendant re-examines).

Following conclusion of Defence evidence, the prosecution has the opportunity to re-call their witness to refute any new evidence raised by the defendant (rebuttal).

The defendant may then sum up his/her case to the Court.

The Court Presenter may respond but on points of Law only with the permission of the Court.

### 17.6 **Verdict.**

The magistrates announce their verdict.

If found guilty, the Court Presenter should cite any relevant known previous convictions and make the appropriate application for costs.

If the defendant is found not guilty they are discharged.

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If the defendant should apply for costs the Court Presenter should make a submission that the case was brought appropriately based on the evidence available. That the court was the appropriate forum to adjudicate and that any award for costs should be made from central funds.



Court Presenters' Manual (Chapter 18) -Non Attender  
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**Non Attender**

- 18.0 The Court Presenter should seek to progress the case where they are satisfied that the summons/SJP notice has been served, where SJP is used the court will issue and serve the summons requesting the defendant's attendance. If the summons/SJP notice has not been served, then the Court Presenter should apply for the summons to be re issued or re dated.
- 18.1 Where the Section 9 witness statement has been served with the summons the Court Presenter must apply to prove the case in the absence of the defendant. If the Section 9 has not been served, then an adjournment should be applied for to effect service.
- 18.2 With the permission of the Court, the Court Presenter reads or summarises the Witness Statement and if appropriate the accompanying Record of Interview.
- 18.3 The Court Presenter indicates to the Court at the end of the Prosecution evidence that he/she has concluded their evidence.
- 18.4 The Magistrates then indicate whether or not they find the case proved (guilty).
- 18.5 When a guilty verdict is given, any previous convictions should be cited. These will have been served by means of a Notice to Cite previous convictions.
- 18.6 The Court Presenter should then make the appropriate application for costs.
- 18.7 The Magistrates proceed to sentence (unless they require further information)

Court Presenters' Manual (Chapter 19) – Withdrawal of Cases  
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**Withdrawal of Cases**

- 19.0 If information comes to light, which, had that information been known before the case was laid to Court, it would not have been proceeded with, the Court Presenter should apply to withdraw the case.
- 19.1 Whenever a case is withdrawn in Court, the reason for the withdrawal **must** be recorded on the Prosecution Facing Sheet with the reason for the decision, if this has not already been done.
- 19.2 The “Closure Code” must also be recorded on the Case Facing Sheet as this is input by the Darwen Field Business Centre when recording verdicts.
- 19.3 If the Magistrates do not agree the application to withdraw, the case may be called on by the Court. A plea will be taken or a not guilty plea be entered on behalf of the Defendant. Where no plea or a not guilty plea has been entered the CP may offer no evidence and ask the Magistrates to dismiss the summons. This application cannot be refused.

Court Presenters' Manual (Chapter 20) – Dealing With Media  
Commercial In Confidence

### Dealing with Media

- 20.0 If a journalist asks for information, take their details and advise them that someone from the TV Licensing press office will get in touch. Details which should be taken and passed to the press office include:
- The journalist's name
  - The journalist's contact details / telephone number(s)
  - The name of the newspaper, journal, radio or TV station they work for
  - The journalist's deadline (if any / possible)

The journalist may also be advised to contact the TV Licensing press office them self if they wish to do so.

Inform the Court Presenter Manager about the action taken, in full.

**Court Presenters must not, under any circumstances, agree to take part in an interview, photograph or any other media activity unless this has been authorised by the TV Licensing Press Office.** (It is acknowledged that in some instances journalists will take photographs without permission.)

The TV Licensing 24 hour press office number is 0208 752 6606

### Reporting Newsworthy Events

- 20.1 If on any occasion, in court, allegations are made against TV Licensing or Capita, or if magistrates rebuke TV Licensing or Capita, the Court Presenter Manager must be contacted, who will decide on any further action.

Court Presenters' Manual (Chapter 21) – Post Court Procedures  
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**Post Court Procedure**

- 21.0 On return from court, the Court Presenter must ensure that all case papers and lists are correctly annotated with the verdicts/results of each case, plus appropriate additional information e.g. licence details, reasons if case withdrawn, dismissed, etc.
- 21.1 All case papers must be returned to the Darwen Field Business Centre using the Special Delivery process, as soon as possible after the hearing.  
If the hearing date falls on the last working day of a calendar month, then all papers must be returned, without fail, on the next working day.  
A receipt must be obtained, which indicates the barcode for the item, and the date of despatch.
- 21.2 The CP must post any sworn Warrants to the appropriate Visiting Manager by Special Delivery after confirming the recipient's Name and Address with the person designated to receive the Warrant.
- CP's must reply to the appropriate distribution list on the High Profile email and include the VM's email address who the warrant is been sent to.
  - CP's must email the Special Delivery number, Date of Posting and confirm who the warrant has been sent to on the HP email. If you hand it to or hand deliver the Warrant/s to the VM, or drop it into Darwen for posting then this must be also recorded on the HP email.
  - CPs must make contact with the VM and confirm their address before they post the warrant.
  - CPs should ensure that the return address is on the SD bag that the warrant is being sent to the VM in.

Warrants should ideally be posted the same day the warrant is sworn, if that is not possible then they **must** be posted the next working day, if this deadline can't be met then the CPM's, Ops Support Manager and the Search Warrant duty must be informed so the reason can be documented.

- 21.3 Papers must be returned to the Darwen Field Business Centre in the following order:
- Court Movement Sheet followed by Alphabetical Court Listing followed by any incidental paperwork in one clear folder.
  - Court Alphabetical List to be fully completed with correct verdict codes and Adjournment dates and times.
  - Adjourned Cases/Cases requiring attention (H404) with full reason given for adjournment for each case. If a case has been adjourned for TVL to monitor payments, then the instruction to send the appropriate letter should be annotated.
  - Case Facing Sheets to be fully completed with Verdict information and full information on any Adjourned Hearings. Indicated Not Guilty Trials/PTRs together with Not Guilty Case Progression Sheet (M192).
  - All other cases in the order as they appear on the Alphabetical Court Listing.

**Note: All bundles must be separated to enable ease of retrieval.**

- 21.4 The following information should be circulated by e-mail: -
- Notification of any HP Case results to the appropriate people. In some cases the Legal Dept will require a telephone call immediately after the hearing.
  - Notification of any adjournments via the correct template. This should include any NIL returns.
  - Notification of all Licence sales via the correct template to the appropriate

## Court Presenters' Manual (Chapter 21) – Post Court Procedures Commercial In Confidence

- people (See CP Distribution List).
- Notification of any Witness attendance times/feedback to the appropriate people (See CP Distribution List)
- Notification of any Commercial Prosecution Case results immediately after court by telephone to the FBC Manager or a member of the Legal Team as instructed.
- Any Dismissed Case Reports. (See CP Distribution List)

21.5 Complete the Court Presenter Log, as instructed and trained, with all necessary data from that day's Court.

Court Presenters' Manual (Chapter 22) – CP Attendance at an Appeal  
Commercial In Confidence

- 22.0 CP ATTENDANCE AT AN APPEAL
- 22.1 If a Defendant lodges an appeal against the decision of the Magistrates' Court a Court Presenter may be required to attend the resulting appeal hearing at the Crown Court to assist counsel.
- 22.2 In such circumstances the Court Presenter will be notified in advance by the FBC Darwin or the Senior Court Presenter
- 22.3 The Court Presenter will be sent a copy of the original case papers and the brief to counsel.
- 22.4 On receipt of the papers the Court Presenter will be required to review the case, and familiarise themselves with the key issues.
- 22.5 The Court Presenter will then be required to arrive at court at least 30 minutes before the hearing and meet with the Visiting Officer (if a VO has been required to give evidence) before making him/herself known to counsel.
- 22.6 The Court Presenter will be required to clarify/explain any technical issues pertaining to the case, and to assist counsel if needed during the appeal.
- 22.7 During the case the Court Presenter is expected to make an accurate note of proceedings and to record any relevant comments or observations made by the bench.
- 22.7 Immediately following the conclusion of the case the Court Presenter will be required to contact a member of the legal team to confirm the result of the appeal.
- 22.8 **The Court Presenter will also be required to complete a 'Crown Court Appeal Summary' form and send it by e-mail to required recipients in accordance with the Distribution List within 2 days of the hearing.**