Harris Paley Schone Ltd **Telephone: 01273 600 009**
34 Curtis House
Third Avenue
Hove
BN3 2PD

Solicitors
Stephen Paley -Director
Brian Shaw
Stephen Harris

Office Manager
Kate Swann
kate@hps-law.co.uk

E-mail:
smp@hps-law.co.uk brian@hps-law.co.uk

THIS FIRM

We are dedicated Criminal Defence Specialists. We do not conduct any other type of legal work. The firm deals solely with crime matters. Your case will be conducted by the sole director of the firm **Stephen Paley** or our assistant solicitor **Brian Shaw.** At the Police Station it is likely that you will be assisted, if not by the above members of the firm, by one of our regular agent accredited Police Station representative.

Please note our 24 hour emergency number 01273 600009. You should always ask for Harris Paley Schone Solicitors if you are arrested and the police will contact the member of staff who is on call.

At any Police Station or Court return date you may be assisted by any of us except, in very unusual circumstances, when it may be necessary to instruct an agent. If those circumstances arise you will, if possible, be informed in advance.

If your case is to go to the Crown Court we shall instruct an Advocate to represent you in the Crown Court proceedings. We will identify and instruct an

Advocate on your behalf unless you wish to make that decision yourself. Stephen Paley and Brian Shaw are Higher Court Advocates.

We will write to you following each appearance at the Police Station or at Court confirming what occurred and of any future obligations. In those letters we will confirm your instructions and our strategy and advice, setting set out the essential ingredients of any offences and matters of law or evidence and advice with regard to plea, venue and any potential sentencing.

OBJECTIVES

We are committed to providing clients with a proper standard of service taking into account their individual needs and circumstances. We provide clients with sufficient information so that they can make informed decisions about their case, services they need, how they will be delivered and how much they will cost. We always endeavour to treat our clients fairly and to protect their interests at all times consistent with our duty to uphold the law and the proper administration of justice. We never deliberately or recklessly mislead the Court or the police nor will we be involved in someone else misleading the Court.

In Court we will only advance arguments which we consider properly arguable.

We will not discriminate against our clients nor do we tolerate discrimination.

We expect our clients to treat all our staff with respect and courtesy.

We will protect our clients' interests to the utmost, which means we will not act for a client if we feel it is not in another client's interest to do so. We will not allow our independence to be compromised which means we will always advise our clients honestly even if the advice may not be what they wish to hear.

We will keep our clients' information confidential and we will ensure that evidence relating to sensitive issues is not misused.

All clients, regardless of their age, marital status, ethnic and national origins, race, colour, sex, sexual orientation, creed, religion, disability, appearance or social status are to be treated with equal courtesy

DATA PROTECTION

During the course of our activities we will collect, store and process personal information about our clients. This information is subject to certain legal safeguards specified in the Data Protection Act (1998) and other regulations, which we recognize must be treated in an appropriate and lawful manner. We have a policy to ensure that the data protection principles are applied, which is reviewed annually by the Stephen Paley a Director of the Firm. We adhere to the policy to ensure that information is only given to a person who is entitled to it. We are happy to provide you with a copy of our policy.

The Firm takes your continued instruction of us in your case as confirmation that you consent to us holding your personal data.

New legislation gives you rights in respect of the personal data that we hold about you. Everybody working for our firm is familiar with these rights and we adhere to our firms procedures to uphold your rights.

Essentially your rights include:

- Right of information and access to confirm details about the personal data that is being processed about you and to obtain a copy.
- Rights to rectification of any inaccurate data.
- Right to erasure of personal data held about you (in certain circumstances).
- Right to restriction on the use of personal data held about you (in certain circumstances).
- Rights to portability that is your right to receive data processed by automated means and having it transferred to another data controller.
- Right to object to the processing of your personal data.

If you wish to make a request to exercise any of these rights then the request must be referred to Stephen Paley who is the data protection controller. Your request must be sent by email or in writing to smp@hps-law.co.uk or Stephen.paley@hps.cjsm.net

PROFESSIONAL LEGAL INDEMNITY

The Firm holds professional legal indemnity insurance, which is reviewed annually.

FUNDING

At the Police Station

All advice and assistance given at the Police Station is **free of charge**.

All requests for legal advice at the police station are now dealt with by the Defence Solicitor Call Centre. They do make mistakes and you may find that although you have asked for our assistance some other solicitor is given your details. Please do ensure that we are contacted.

Our out-of-hours number is operated 24 hours a day and will be answered immediately unless we are already at the police station at Hollingbury where reception is very bad.

We will almost always be able to attend the police station within 30 minutes and will never delay the progress of your case. You are much more likely to be released more quickly if you ask for a solicitor.

Free advice and assistance at the police station is limited to attending for interview or on a bail return if there is to be a charge. If a bail return is not effective, i.e. there will simply be a re-bail we may not attend on that date as there is no need for legal assistance.

It is important that you ask for a Solicitor at the police station so that your legal rights can be properly safeguarded. If you have a Solicitor at the police station then the police will always provide either verbal or written disclosure setting out in broad terms the allegation against you. One disadvantage of not having a Solicitor at the police station is that you will not receive this disclosure in advance of the police interview.

If you have a police record, then it is possible for the interviewing police officer to bring up your record and the benefit of having a Solicitor is that

you can be advised on the issue of any bad character and how to deal with it in the police interview.

At the police station you may be asked to provide intimate or non-intimate samples and if you have a Solicitor you can receive appropriate advice on these issues.

Identification may be an issue in the case and similarly it is important that you receive advice on identification procedures.

Finally if you have no police record then it is possible that the police may consider that you are eligible to receive a police caution if you are an adult. Again it is in your interests to have a Solicitor at the police station who can canvass this course of action in advance of the interview. If you are a youth ie under 18 years of age then the police can consider making you subject to a youth conditional caution which is a statutory out of Court disposal but with compulsory assessment intervention attached to it.

A Youth Caution or Youth Conditional Caution may be offered when a, young person admits an offence b, there is sufficient evidence for a realistic prospect of conviction and c, the public interest can be best be served by the young person complying with suitable conditions rather than a prosecution.

Police officers must have the authority from the Crown Prosecution Service to use a youth Conditional Caution as an out of Court disposal for an indictable only offence. Authorisation by a Prosecutor is no longer required in every case.

In the event of a Youth Conditional Caution being considered, the Youth Offending Team (YOT) must assess the young person and advise on appropriate conditions. The young person must also agree to accept the Youth Conditional Caution and the conditions attached. These conditions can be rehabilitative or punitive in nature. Punitive conditions should only be used where rehabilitative and reparative conditions are not suitable or sufficient to address the offending. The Youth Offending Team is responsible for monitoring compliance with conditions and advising on non-compliance.

There is no limit on the number of youth cautions a child or a young person can receive. Youth Cautions can even be given to a child or a young person who has previously been convicted of an offence.

An appropriate adult must be present if the child or young person is under 17.

If a second Youth Caution is given, the Young Offending Team must assess the young person and offer a voluntary rehabilitation programme unless it considers it inappropriate to do so.

Similarly Youth Conditional Cautions can now be given to a young person who has previously been convicted of an offence.

Advice and Assistance Scheme

If you are released under investigation or bailed to return to the Police Station we may be able to provide assistance between bail dates under the Legal Services Commission Advice and Assistance Scheme. This was formally known as the Green Form Scheme and allows us to provide up to 3 hours advice before the Police investigation concludes, ie that the Police say they are taking no further action or charge you to appear at Court. It does not cover representation in court.

This scheme is means tested and requires the completion of a Legal Services Commission form detailing levels of capital and income. You would be passported though the means test if your are in receipt of income support, income based job seekers allowance, income based employment and support allowance, guaranteed state pension credit, working tax credit plus child tax credit (gross income not to exceed £14,230 for passporting) or working tax credit with disability element (similar gross income restriction). However there are also capital limits £1,000 for those with no dependants, £1,335 for those with one dependant, £1,555 for those with two dependents with £100 increase for each extra dependant. Capital must be assessed in all cases. There is an income limit in that you are only eligible for advice and assistance if your disposable income does not exceed £99 per week.

If you are not eligible for free advice and assistance we can provide assistance on a private basis

The advice and assistance scheme is useful in relation to varying police bail conditions and also in the case of benefit fraud interviews. (This form of assistance is referred to as advocacy assistance and there are separate income and capital limits in respect of this form of assistance. In this case disposable income cannot exceed £209 per week, the passporting provisions apply. In relation to capital limits they are £3,000 for those with no dependants, £3,335 for those with one dependant, £3,535 for those with two dependants with £100 increase for each extra dependant. In the case of advocacy assistance, if you are in receipt of income support, income based job seekers allowance or guaranteed state pension credit you are passported through in respect of capital assets.

At the Magistrates Court

If your case is one that is considered sufficiently serious or complicated to warrant the grant of Legal Aid, then an application for a Representation Order must be made and should be granted. However, if the application for a Representation Order is refused, there is no Legal Aid funding available and any representation provided will have to be privately paid. In most cases we will be able to persuade the Court that it is in the interests of justice for you to be granted a Representation Order. An Order will not be granted until an application form is signed and submitted to the Court.

There is a Means Test for proceedings in the Magistrates and Crown Courts. Legal Aid will not be granted until Means Forms are fully completed and submitted to the Court.

If you are in receipt of Income Support, Income based Jobseekers Allowance, Income-based Employment and Support Allowance (ESA) or Guarantee State Pension Credit, you will only have to confirm your National Insurance Number and sign the form to pass the Means Test.

If you receive any other benefits or if you are in work, there is a complicated and lengthy form to complete and documentation to provide, such as a recent wage slips and bank statements. The form CRM15 must be completed and submitted to the Court before any Court attendance. If the forms have not been completed and submitted to the Court, or if the Court have not had time to assess the forms,

we will not be able to represent you at Court unless you are willing, and able, to pay privately.

If you are married, or living with a partner, then they will have to sign the form also, particularly if they are receiving benefit or are in employment.

If the Court have not been able to confirm whether or not you are eligible to receive Legal Aid before the first Court hearing, then it is likely that they will agree to adjourn your case for the forms to be completed and considered. However, the Court will expect you to have made every effort to complete and submit the forms and may not agree to an adjournment if you have not done anything.

The Means Test in the Magistrates Court is relatively straightforward. You either qualify for free Legal Aid or you do not.

The Court looks at your annual household income minus your living costs and family circumstances. If you receive less than £12,475 per annum then you pass the Means Test and you receive Legal Aid.

If your annual household income is greater than £22,325 then you do not qualify for Legal Aid.

If your annual household income is between those two figures the Court will do a full assessment of your means and will look at other expenses, such as childcare costs, and will determine your annual disposable income. If the annual disposable income is less than £3,398 you qualify for Legal Aid, if it is greater than that figure you do not qualify for Legal Aid.

There will be occasions when you do not qualify for Legal Aid because your disposable income is more than £3,398 but it is possible to make a hardship application to the Court on the basis that your Legal expenses will bring your disposable income below that figure.

As a rule of thumb, if you earn less then £200 per week you will receive Legal Aid, if you earn more then £400 per week you will most likely not qualify for Legal Aid.

In the Magistrates Court there is no consideration as to your capital assets it is purely based on your income.

The income is not only your earnings from employment but can also include any rent you receive and even a student loan.

Youths

If you are under the age of 18 you will automatically pass the Means Test once the form is completed.

If you are a youth and have to go to Court you will have to appear in the youth Court unless you are charged with an adult. For cases in Brighton and West Sussex the Youth Court is now held in Worthing. For the rest of East Sussex it is in Hastings.

Certain offences that a youth will face in the youth Court may be what is commonly known as a grave crime. This means a serious crime. If the Court decides that the offence is a grave crime then even though the youth may not have been charged with an adult, the case may still have to be sent to the Crown Court to be dealt with. Specifically an offence of homicide would not be tried in the youth Court or an offence under Section 51A of the Firearms Act 1968, that is a youth aged 16 or 17, charged with possession or distribution of certain prohibited weapons or ammunition or distributing firearms disguised as another object. If a case is sent to the Crown Court as a grave crime the Judge at the Crown Court can sentence a youth outside the limits of the sentencing rules that usually apply in the youth Court. For an offence to be considered a grave crime it has to be either an offence that is, in the case of an adult, carries a maximum sentence of imprisonment of 14 years or more it is one of a number of sexual offences under the Sexual Offences Act 2003.

In making a decision whether an offence is a grave crime the youth Court will consider whether they have sufficient sentencing powers if a young person pleads guilty or is found guilty. The test is whether there is a real possibility that a sentence of, or in excess of 2 years is required, if the youth is convicted.

If it is possible that a youth before the Court could be judged a dangerous offender then the case will be sent to the Crown Court.

If you are a youth at least one of your parents (or guardians must come to Court with you. If you are 17 years of age this is not compulsory but still advisable. If no one attends with you the case may be put off (adjourned) to another day.

You should be aware that if you plead guilty to an offence at an early stage the Court must give you credit for that by way of reduction of what they consider the appropriate sentence, any financial penalty of prison sentence should be reduced by **up to a third** if a guilty plea is entered at the earliest opportunity.

See later paragraph regarding sentencing of youths.

Costs

Please note that if you plead guilty to any charge in the Magistrates Court or are found guilty then you will be liable to pay a contribution towards Prosecution Costs based upon your financial circumstances. An early Guilty Plea will attract costs of £85 and a "victim surcharge" of between approximately £20-£60, depending on the type of sentence. If you are convicted after trial or if you change your plea close to trial the CPS will ask for costs of £400-£600.

At the Crown Court

Crown Court Legal Aid is also means tested but the scheme is different to that in the Magistrates Court. If you are 'passported' by age, being under 18, or on one of the qualifying benefits then it is granted in the same way as it would be in the Magistrates Court and there will be no contributions to pay from any income or capital.

However, defendants who may not qualify for Legal Aid in the Magistrates Court because their earnings are above the eligibility limits will still receive Legal Aid in the Crown Court but will be asked to pay contributions towards their legal defence costs from both income and capital.

The Court will assess annual disposable income in the same way that it does in the Magistrates Court and contributions are based on the amount of annual disposable income over £3,398 per annum.

The annual disposable income is divided by twelve to create a monthly amount and you are then asked to pay 90% of your monthly disposable income for a period of five months. That becomes six payments if any payments are received late. For example, if your annual disposable income is £4,200 that gives a monthly figure of £350. You would be required to pay 90% of that figure, £315, for five months, making a total of £1,575.

The maximum contribution amounts from income depend on the type of case.

If you are found not guilty then your contributions are returned to you with compound interest at 2% per year.

If, on the conclusion of the case, you have been found guilty or have pleaded guilty the Court may then look at your capital assets. If you have capital assets of more than £30,000 and your contributions from income have not covered the whole of your defence costs, the Court can require you to repay the remainder of the defence costs from your capital.

If your contributions have exceeded the total defence costs then you may be refunded some monies.

Total defence costs for matters of fraud or theft (where the value is £30,000 or less), or of burglary or violence or damage or less serious drug offences, are generally between £2,000 to £4,000 if the matter goes to trial.

If an application is made for Legal Aid in the Crown Court and you do not deliver all of the evidence of income and means required by the Crown Court they will grant Legal Aid but the contributions from income and from capital will be set at a very high level. If evidence of income is not provided the Court might assume a monthly disposable income of £900 or more, and if evidence of capital is not provided the Court can remove the £30,000 capital threshold.

It will always be your responsibility to provide any missing evidence and that must always be dealt with as quickly as possible and certainly within 14 days of receipt of the notice of contributions from the Court.

Costs

As in the Magistrates Court if you plead or are found Guilty you will pay a contribution towards Prosecution Costs and a victim surcharge.

Private Funding

If yours is a case which is not considered serious enough for a Representation Order to be granted or, you do not pass the Means Test, or you are to appear before the Crown Court but do not wish to complete the Means Test, we will provide assistance and representation privately. In such circumstances we will make specific arrangements with you with regard to our fees.

In the Magistrates Court any fees paid to us can **only** be recovered from the court at **Legal Aid rates**, which are less than our private rates.

In the Crown Court, again, a defendant can recover their defence legal costs only if a determination of financial ineligibility has been made in relation to yourself and your proceedings. **If this is applicable then it is important to note that the amount of recovery is limited to the amount that would be payable under Legal Aid rates**.

If you are considering instructing us on a private basis please refer to the guide to our charging rates on our website www.hps-law.co.uk . Please feel free to speak to Stephen Paley, a director, about charging rates or a fixed fee,which are subject to negotiation.

Appeals to the Crown Court

Should there be an appeal against the decision made in the Magistrates Court to the Crown Court, the means test will only consider your income. You may be liable for a fixed sum contribution at the end of your appeal if your fail the means test and the appeal is unsuccessful. You will also be liable for a fixed sum contribution if you abandon your appeal.

COURT PROCEEDINGS

Plea

You must be aware that if you plead guilty to an offence at an early stage the Court must give you credit for that by way of a reduction of what they consider the appropriate sentence.

Any financial penalty or prison sentence should be reduced by up to a third if a guilty plea is entered at the earliest opportunity.

Mode of Trial/Venue/Election

Youths

If you are a youth, that is under 18 years of age, then you will appear at a youth court, unless you are charged with an adult in which case you will appear together with the adult in the adult Magistrates.

Adults

Some offences can only be dealt with in the Magistrates Court. These are known as summary only matters. Some charges have to be dealt with in the Crown Court. These are known as indictable only offences. Others can be dealt with by Magistrates or in the Crown Court and these are called either way offences.

Examples of summary only offences are matters such as driving whilst disqualified or having consumed excess alcohol, common assault, assaulting, resisting or obstructing a Police Officer and minor criminal damage. Indictable only offences are the very serious offences such as murder, manslaughter, grievous bodily harm with intent and sexual offences. The majority of offences are either way. Allegations of theft, deception, affray, ABH and burglary can be dealt with either by the Magistrates or in the Crown Court.

In a summary only matter a guilty plea may be dealt with immediately, sometimes after a verbal/stand-down report is obtained from the Probation Services or the case may be adjourned for the preparation of a written Pre-Sentence Reports by the Probation Services. If the plea is not guilty the case will be set down for Trial. The trial will usually be heard about 10 weeks from the first hearing.

If the matter is indictable only there will be one hearing at the Magistrates Court at which the case will be transferred to the Crown Court.

A Preliminary Hearing will be held usually 4 weeks after. At this Preliminary Hearing, if your plea is one of guilty, the Court can pass sentence immediately or the Judge may adjourn for the preparation of a Pre-Sentence Report by Probation Services.

If the indication is that the plea will be not guilty the case will adjourned for the Prosecution to serve its case together with primary disclosure of used material which will usually be served around 4 weeks after the Preliminary Hearing. At the Preliminary Hearing the case will usually be put into a warned list for trial or, in appropriate circumstances, be given a fixed trial date.

In more complex cases following a not guilty plea the case may be adjourned to another date at which there will be a Plea and Case Management Hearing with further directions being made to ensure that all parties are trial ready on the trial date.

If the charge is an either way offence a decision will be made as to whether the case should be dealt with by the Magistrates or the Crown Court. The first decision is made by the Magistrates. If you plead guilty the Magistrates may decide that their sentencing powers are insufficient and that you should attend the Crown Court for sentence. If you plead not guilty the Crown Prosecution Service will make representations to the Magistrates as to whether they feel the case is suitable for Trial in the Magistrates Court or whether it should go the Crown Court. We can also make representations to the Magistrates and they then decide if the case is not so complicated or so serious that it should go to the Crown Court. If the Magistrates decide the case is to go to the Crown Court that is the final decision. If the Magistrates agree to hear the case themselves the decision becomes yours. You can agree for the case to be tried in the Magistrates Court or you can elect Trial to the Crown Court before a Judge and Jury.

Trial Proceedings

In the Magistrates Court the Prosecution will deliver copies of the statements of witnesses or a summary thereof upon whom they wish to rely at Trial. If the matter is set down for a not guilty trial in the Magistrates Court a direction will be

made as to when the Crown must serve its full case. On this occasion the prosecution will also be required to serve Primary Disclosure of Unused Material. This is potential evidence upon which the Crown are not relying but which has been collected by the Investigating Officer in the course of the investigation.

The Prosecution will serve a Schedule of Unused Material which may undermine the Prosecution case. They are obliged to disclose this information to the Defence. **Once Primary Disclosure is received a decision must be taken as to whether a Defence Statement should be served.** The Defence Statement is a document setting out the general nature of your defence and any points on which you take issue with the Prosecution. The reason for filing a Defence Statement is to make the Prosecution look again at their Unused Material Schedule and to apply a different test as to whether or not disclose any further material to the Defence. The further test is whether there is any material on the Schedule which may assist the Defence. You will be advised in due course as to whether or not to make a Defence Statement to the Prosecution.

If the case is committed to the Crown Court, a direction will be made for the Crown Prosecution Service to serve its case on papers within a certain period of time following the Preliminary Hearing. At the same time as serving its case the Crown Prosecution Service will serve a schedule of primary disclosure of unused material.

In the Crown Court the Defence are obliged **to file a Defence Statement** within 28 days of receipt or primary disclosure of unused material. You must also be aware that if you fail to come to Court for your trial it is likely to go ahead in your absence. If you are unfit to attend Court then you should make an appointment to see a GP or have a GP come out to you to obtain a certificate excusing your attendance. It is important that the doctor indicates that not simply that you are unfit for work, but also that you are unfit to attend Court or at least "unfit to travel".

BAIL

If you are granted bail by the Police to return to the Police Station whilst they conduct further investigations the Police can put conditions on your bail. The Police will now only use Bail and conditions in very few cases. Most suspects are now Released Under Investigation, with no obligation to return to the Police

Station. However when the Police conclude their investigation they may ask you to return for further interview or to be charged. If there is to be No Further Action you should be told by letter. Sometimes you may receive a summons or Postal Requisition requiring you to attend Court.

We will contact the police on your behalf each month to determine if the investigation has yet concluded.

If you are charged and then bailed by the Police to attend Court the Police are entitled to impose conditions upon your bail and if you indicate you will not comply with those conditions the Police are entitled to keep you in custody to be produced before the Court.

At the Magistrates Court representations can be made to vary any conditions of bail the Police have imposed.

If conditions are imposed on your bail from the Police Station or the Court it is important that you comply with those conditions as if you fail to do so you may be arrested and bail may then be denied to you.

If for any reason you cannot comply with the conditions you must advise us as soon as possible and we shall arrange a Hearing to vary the conditions. Having been granted bail it is vital that you attend the Police Station or Court as required as any failure to do so can lead to your being charged with a separate offence under the Bail Act which can result in your being fined or imprisoned and, perhaps more importantly, will go on to your criminal record and may make it more difficult for you to obtain bail in the future. The Magistrates Court Guidelines are for a Community Penalty to be imposed for a Bail Act Offence, but the Government is making it clear to the Courts that they expect people who fail to attend Court to go to prison for the offence itself and to consider it a very strong indicator in any future cases so that a person can be refused bail.

It is also very important that you arrive at court in good time. If you are late the Magistrates will often put a bail act offence for which you will probably receive a fine but could result in being remanded in custody.

If you have a reasonable excuse or if you are unwell you are obliged to attend the Court as soon as possible after the Hearing date. You should not wait to hear

from the Court but should contact us to arrange your surrender as early as possible. If the reason for your failing to appear at Court is through illness the Court will expect to see a medical certificate stating that you were unfit to attend Court.

Bail Conditions

Bail conditions are usually things such as residence, which is living and sleeping at a specified address, obeying a curfew, reporting to a Police Station on specified times and dates or not contacting Prosecution witnesses. In more exceptional matters the Court may ask that someone stands surety which means that a friend or relative promises to pay a specified amount of money to the Court if you are granted bail and then fail to attend. The amount of money does not have to be paid to the Court unless there is a failure to attend but the Court must have evidence that the money is available to be paid if required.

Any breach of bail conditions will lead to you being arrested and held in custody to be produced at court. You may then be granted bail or remanded in custody until the next court date.

Being remanded in custody

If the Police decide to remand you in custody overnight to appear in Court the following day we shall make representations to the Custody Sergeant that you should be granted bail. If you appear in Court, having been remanded in custody, we are able to make applications to the Magistrates and also to a Crown Court Judge for you to be released on bail. A first remand in custody by Magistrates will be for 7 days. In most circumstances we will attempt to obtain further information during those 7 days to support a second bail application to the Magistrates. If that application fails and you remain remanded in custody you are able to make an application for bail to a Judge at the Crown Court, usually in Chambers. After the first 7 day remand the Magistrates or the Crown Court can remand for periods of up to 4 weeks at a time.

To remand you in custody the Police, Magistrates or Judge must be satisfied that there is a substantial risk of your committing other offences or that, if granted bail, you may fail to return to Court or you would seek to interfere with Prosecution witnesses. Any previous record of convictions or of failing to appear

at Court will be relevant to the decision and if you are already on bail and it is alleged that you have committed another offence whilst on bail the expectation that you should be granted bail is lost.

Remand to youth detention accommodation

The present position is that where a youth is not released on bail, the Court must remand the youth to local authority accommodation unless a set of conditions are met. A Court that remands a child to local authority accommodation must designate the local authority that is to receive the child.

If the child has looked after status the designated local authority must be the local authority that is currently looking after the child. Where the child is not looked- after, the designated local authority may be the one in the area that child resides or whether one of the offences was committed. The designated local authority must feed the child and provide an arrangement for the provision of accommodation. However the Court must first decide whether or not to remand the youth to youth detention accommodation.

To be eligible for remand to youth detention accommodation the child or young person must be aged 12 to 17. If a child is aged 10 to 11 and is refused bail they must be remanded to local authority accommodation.

The Court will only consider a remand to youth detention accommodation where the child is legally represented before the Court unless certain conditions apply.

The Court must then consider whether two sets of conditions are present, the first set of conditions is whether the offence is a violent or sexual offence or one where an adult could be punished with a term of imprisonment of 14 years or more. If this condition is met then the Court will move straight on to consider the necessity condition. See below.

If this is not the case then Court has to consider whether a second set of conditions for a remand is present. The second set of conditions are referred to as 'history conditions and sentencing conditions'. Either the first or second history condition has to be met. Under the first history condition the child must have a recent history of absconding while remanded to local authority accommodation or youth detention accommodation, and the offence or offences to which the proceedings relate it is alleged was found to have been committed while remanded to local authority accommodation or youth detention accommodation.

If the first history condition does not apply then consideration should be given as to whether the second history condition applies, under that the Court must consider whether the offence to which the proceedings relate when taken with previous imprisonable offences for which they have been convicted, amounts to a recent history of committing imprisonable offences while on bail or remanded to local authority accommodation or youth detention accommodation.

If either of the two sets of history conditions set out above apply then the Court must **additionally** consider whether there is a real prospect the child will be sentenced to a custodial sentence for the offence the Court is considering. This is known as the sentencing condition.

The Court must then finally go on to the necessity condition. The Court will only remand a youth to youth detention accommodation if it is necessary to do so either to protect the public from death or serious injury (physical or psychological) occasioned by further offences committed by the child, or to prevent the commission by the child of further imprisonable offences.

ATTENDING COURT

Each time that you attend Court you should identify yourself to the Court Usher responsible for the Court that is hearing your case. You can determine which Court you are in by finding your name on the Court Lists which are usually published near the main entrance of the Court. On arrival you should book in with the Court Usher who will make a note of the time you attended. You should tell the Usher that we will be representing you and the Usher will inform us of your arrival. Although you are required to surrender to the Court at a certain time there may be some delay before your case is heard.

When you case is called on you will usually be asked to step into the dock. You will be asked to identify yourself. The Court bench usually consists of three Lay Justices or a District Judge, sitting alone. In front of the Lay Bench or the District Judge will be a Court Clerk. A representative from the Crown Prosecution Service will be prosecuting your case and this person is usually on the front bench nearest to the Court Clerk.

Crown Court Hearings are before a Judge and are usually prosecuted by Barristers or Higher Court Advocates acting for the Crown Prosecution Service.

During any Hearing our representative, or your Advocate, will speak for you and it is rare that you would be expected to address the Court directly. If you wish to communicate any information to the Court you should do so via the representative.

When the Hearing is concluded you will be released on bail, either with bail conditions or unconditionally, and you will be given a Bail Notice setting out any conditions and the date and time that you are required to re-surrender to the Court. You should keep this Bail Notice somewhere safe. Should you lose the Bail Notice and be unable to remember the relevant date and time on which you should surrender to the Court then you can contact either our offices or the Court to obtain that information.

Custody time limits

If you are remanded in custody in matters before either the Magistrates or the Crown Court there are specific custody time limits in which time the Prosecution must prepare and present their case and the Trial must take place. If the Prosecution have failed to prepare their case "expeditiously" within the time limits they must seek an extension from the Court and there must be a good reason for any extension. If the Prosecution fail to obtain an extension then you must be released from custody.

Length of case

If you plead guilty on the first occasion the matter may be disposed of there and then or after an adjournment of 3 or 4 weeks for the preparation of a Pre-Sentence Report. If the case goes to Trial in the Magistrates Court the case will go into what is known as the effective case management programme. The system provides that it is expected a trial date will be set on the first occasion and the trial will take place in not less than thirteen weeks from the first hearing. Directions will be set for the delivery of unused material from the Crown Prosecution Service and there is a strict timetable by which the Defence must respond and deliver a Defence Statement if we believe that is the correct course of action. We are also required to advise the Court before trial if we are not trial ready.

In the Crown Court, your case may then enter a Warned List for Trial , following a Preliminary Hearing or Plea and Case Management Hearing . This means that during the warned list period your case can be called on for trial on any proceeding day. You should contact our offices on each and every working day during the warned list period in the afternoon to find our whether your case has been called on for the following day.

Sometimes your case may be given a fixed trial date in appropriate circumstances, such as when experts are involved or there are child witnesses.

Cases that must go to the Crown Court will have one hearing in the Magistrates Court and the case is then sent for trial to the Crown Court. In that time we shall instruct an Advocate and begin to prepare your defence and there are standard directions which must be followed.

Contact with CPS, Police and Prosecution witnesses

Any contact with the Crown Prosecution and the Police Force should only be conducted through us. If you are contacted either by the Crown Prosecution Service of a Police Officers please confirm that we represent you and that they should contact us to deal with whatever they wish to speak to you about.

It is very important that if any individual whom you know, or you are told, is a Crown witness, approaches you that you do not discuss your case and you should stop the conversation as soon as you can. You should report any such contact to us. It is a separate and serious offence to interfere with a Prosecution witness.

SENTENCING

Adults

If you are convicted the sentencing Court has a variety of sentencing options from absolute or conditional discharge to fines, Community Orders or custody.

An Absolute Discharge will be passed only if the Magistrates think that it is expedient to receive punishment ie. that you should not suffer any penalty although you are technically guilty of the offence.

A Conditional Discharge may be imposed if the Magistrates consider that there are very strong mitigating circumstances which caused the offence to be committed and you have not had any previous conditional discharge or have not been before the Court for many years. A conditional discharge is usually for a period of 6 or 12 months. If you do not find yourself arrested and brought before the Court and convicted of any offence in that time period then there is no penalty for you to pay for the offence. If, however, you are convicted of any offence committed during the period of the conditional discharge the Court can look at the original offence again and re-sentence you.

If the Court considers there should be some punishment, but the offence is not especially serious and you did not have a history of committing offence, they will usually impose a **financial penalty**. Any fine will take into account your income or receipt of benefit. If you have a credit card the Court may require you to pay the full amount at once. Usually the Court will make a Collection Order ie that the fine is payable within 14 days. If you are unable to pay the fine in 14 days which will probably be most cases, then the responsibility will be on you to liaise with a Court fines officer. You will be given details on how to contact this officer before your leave Court. Alternatively the Court will set a rate of repayment which should be the amount that you can afford to pay the Court per week or per month. If you fail to pay the Court can summons you to attend a Hearing and if it is eventually determined that you are wilfully refusing the pay the fine then the Court can sentence you to a period of imprisonment.

Community Orders are sentences which are supervised by the National Probation Service. There is now just one Community Order which will have requirements attached to it and those requirements will be such things as complying with a Supervision Order which was formally known as probation or doing unpaid work which was previously known as a Punishment Order or Community Service. The Orders can also have requirements that you abide by a curfew or undertake Drug Rehabilitation etc. The Court can only impose a Community Order following the preparation of a pre-sentence report although the Court may ask the Probation Services to fast track a report which can take place the same day or within forty eight hours.

You should also note that a Court must order the payment of a **victim surcharge** when it deals with an offender in respect of an offence committed on or after the

1st October 2012. Revenue raised from the victim surcharge is used to fund victim services through the victim and witness general fund. It is payable when an individual is sentenced to a Conditional Discharge, a fine, a community sentence, an immediate custodial sentence or a suspended sentence.

The surcharge will not be payable on immediate custodial sentences already in the Magistrates Court until legislation is passed to prevent the surcharge from being discharged as additional days in custody.

At present the surcharge will initially only be payable by offenders subject to immediate custodial sentence when imposed by the Crown Court. In the case of a Conditional Discharge where the offender is 18 years or over at the time the offence was committed, a £15 victim surcharge is payable. In the case of a fine the victim surcharge is calculated as 10% of the fine value with a £20 minimum and £120 maximum (surcharge should be rounded up or down to the nearest pound). In the case of a community sentence a surcharge of £60 is payable.

In relation to Crown Court cases where an immediate custodial sentence is imposed, in the case of sentences of 6 months or below £80 is payable, over 6 months and up to and including 2 years £100, over 2 years £120.

Finally in the case of a suspended sentence where the period of imprisonment is 6 months or below £80 is payable, over 6 months and up to and including two years £100.

When any of these sentences are passed the Court can also order that you pay **compensation** to any victim and a contribution towards the Prosecution costs. Usually in the Magistrates Court the Prosecution asks for between £55 and £83 if the case has been a simply guilty plea for a summary only matter and between £118 and £178 for an either way matter. If there is a conviction after Trial the Prosecution will ask for between £263 and £466 depending on the type of case.

Your full financial circumstances will be given to the Court in mitigation and will be taken in to account. It is very rare for either of the Magistrates or the Crown Court to order the full amount requested to be paid following Trial.

If the Court decides that the offence is so serious that only a **custodial sentence** is appropriate then you will be sentenced to serve a period of imprisonment. The

Magistrates Court cannot pass prison sentences of more than 6 months. However if they are passing sentence on two either way offences their powers are extended to 6 months imprisonment on both offences giving a total of 12 months. If, after having heard evidence about the matter and having considered your previous convictions, the Magistrates decide that their sentencing powers are not sufficient then they are able to commit the case to the Crown Court for sentence. Crown Court sentencing powers are far more extensive than the Magistrates.

You will be given more specific advice about potential sentence in due course.

Youths

A number of different sentences are available to a Court when sentencing an offender aged 10 to 17 these include:

Discharge Absolute or Conditional

Fine – For offenders under 16 the payment of a fine is the responsibly of a parent or guardian and it will be their financial circumstances taken into account when setting the level of the fine.

Referral Order – A Referral Order must be imposed for a first time young offender who has pleaded guilty (unless the Court decides that another sentence is justified) and may be imposed in other circumstances. A youth who has received a Referral Order may, in certain circumstances, receive another Referral Order. A Referral Order requires an offender to attend a youth offender panel (made up of two members of the local community and an advisor from the youth offender team) and agree a contract, containing certain commitments which will last between 3 months and a year. The aim is for the offender to make up for the harm caused and address their offending behaviour.

Youth Rehabilitation Order – These orders are available for young offenders who commit an offence on or after the 30th November 2009. The Youth Rehabilitation Order is a community sentence with which a Court may impose one or more of 18 different requirements that the youth offender must comply with for a period of up to 3 years. The requirements can include curfew, supervision and education requirements.

Custodial Sentences – A Detention and Training Order (DTO) A custodial sentence will only be imposed in the most serious cases and as 'a last resort'. A Detention and Training order is available for offenders aged between 12 and 17. The length of a DTO will be between 4 months and 2 years.

Reparation Order – A Reparation Order is available for any juvenile 10 to 17 years old who has been convicted of an offence. The order is designed to take into account the feelings and wishes of the victims of crime, and to prevent the young offender from committing further offences by confronting them with the consequences of their criminal behaviour and allowing them to make some amends. It will require the young offender to make specific reparation either to the individual victim of his crime where the victim desires this or to the community which they have harmed. This order may last for a maximum of 24 hours and must be carried out over a maximum period of 3 months from the date that the order is made by the Court., Examples of possible reparation include writing a letter of apology or meeting the victim in person to apologise, repairing criminal damage for which the young person has been responsible, cleaning graffiti, collecting litter and so on.

You should be aware that a **victim surcharge** may also be payable when an individual is sentenced before a youth Court. In the case of a offenders under 18 years at the time the offence was committed, a Conditional Discharge will attract a victim surcharge of £10, a fine, a Youth Rehabilitation Order or a Referral Order will attract a victim surcharge of £15 and a custodial sentence all lengths attracts a victim surcharge of £20. Revenue raised from the victim surcharge is used to fund victim services through the victim and witness general fund. A Court must order the victim surcharge when it deals with an offender in respect of a offence committed on or after the 1st October 2012. In cases, however, where compensation is ordered then the victim surcharge may not be payable.

CONCLUSION OF THE CASE

In all circumstances we will advise you of the outcome of any proceedings. Our final letter will also give advice on any appeal and any further action which may be necessary. We will also consider the return of any documentation to you.

STORAGE OF PAPERS

We are required to store your file of papers for 3 years after the conclusion of the case. After that period the papers will be destroyed unless you have advised that you wish to take receipt of the papers. We will endeavour to take virtual copies of all files but will not retain all of the paperwork. If, at any time, you wish to have access to the papers they shall be made available to you.

Please note that for financial accounting purposes your file will in fact be kept for 6 years before being destroyed.

CONDUCT AND COMPLAINTS

As required by the Law Society, we have a procedure for dealing with complaints from clients, so that we can resolve as many as possible. Such complaints will be dealt with sympathetically and quickly.

Details of formal complaints or copy correspondence will be copied to Stephen Paley, the Director of the firm, and dealt with as soon as possible.

At the conclusion of the complaint process, if we are unable to deal with any complaints to your satisfaction, you have the right to ask the Legal Ombudsman to consider the complaint. They can be contacted at www.legalombudsman.org.uk or by telephoning 0300 555 0333. Their address is PO Box 6806 Wolverhampton WV1 9WJ. Normally you will need to bring a complaint to the Legal Ombudsman within 6 months of receiving a final written response from us about your compliant.

HPS