Neutral Citation Number: [2023] EWCA Crim 1131

Case Nos: 202300585 A2, 202300796 A3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)

ON APPEAL FROM THE CROWN COURT AT BASILDON
Her Honour Judge Cohen

AND ON APPEAL FROM THE CROWN COURT AT NEWCASTLE UPON TYNE
His Honour Judge Prince

Date: 6 October 2023

Before :

LORD JUSTICE EDIS
MR JUSTICE GARNHAM
and
MR JUSTICE JOHNSON

- -

Between :

Rex	**Respondent**
- and -	
(1) TERRY BUTT **(2) DAVID JOHN JENKINS**	**Appellants**

- -
- -

David Lyons for the Appellant Terry Butt
Jason Smith for the Appellant David Jenkins
Duncan Atkinson KC and Denis Barry for the Respondent

Hearing date: 26 July 2023

- -

Approved Judgment

This judgment was handed down by release to The National Archives
on 6 October 2023 at 10.30am

Lord Justice Edis:

Introduction

1. In each of these two otherwise unrelated cases, the applicant seeks leave to appeal against a sentence imposed by the Crown Court. The applications for leave have been referred by the Registrar to the full court. The cases have been heard together (and also with two Divisional Court cases, R (DPP) v Luton Crown Court) because (aside from the question of whether the sentences imposed in the individual cases were manifestly excessive) they raise common issues about the consequences of errors in procedure when a case is committed or sent to the Crown Court by a magistrates' court. We grant leave. We will deal with the procedural issues first, and then deal with the substantive appeals on their merits at the end.

2. The common issue in three of these cases concerns the power of the Crown Court to deal with cases where there appears to have been an error in the process by which the case was transferred to the Crown Court by the magistrates' court. The case of Jenkins raises rather different procedural or technical issues. The decisions on the common issue in these cases concerns offences triable either way which may be accompanied by other such offences, and by summary offences. In such cases, the magistrates' court must carry out a process required by section 17A of the Magistrates' Courts Act 1980, sometimes referred to as "plea before venue". This is different from the procedure where a defendant is charged with an indictable only offence. We do not say anything about that procedure. All these defendants were adults at the time of conviction, and it is not necessary to say anything about the different provisions for young defendants. We have extracted the most important statutory provisions which are relevant to these cases in an Annex to this judgment. These are sections 14, 18 and 20 of the Sentencing Act 2020 (committal for sentence), sections 50A and 51 of the Crime and Disorder Act 1998 (sending for trial) and sections 17A and 142 of the Magistrates' Courts Act 1980 (initial procedure where accused is asked to indicate a plea before the venue for the proceedings is determined and the power to rectify mistakes).

3. The decision in this case is a decision about the powers of the Crown Court. The judgment is not to be read as a manual of procedure for the magistrates' court. Consideration of the Annex will show that the statutory scheme (of which the provisions there set out are only part) is formidably complex. It appears to us that there is perhaps scope for further clarification of it by the creation of some further guidance. That, however, is not a matter for this court.

The procedural events and facts

R v. Terry Butt

The facts

4. At around 9.35pm on 30 January 2020, the appellant, who did not have a driving licence and was not insured to drive, was driving a car in Southend-on-Sea. Police officers in an unmarked vehicle followed him. He was speeding and driving erratically. The officers turned on their vehicle's blue lights and sirens, indicating that he should stop. The appellant drove off at speed, turning into a no-entry slip road, mounting the footpath and driving the wrong way round a roundabout.

5. Other officers became involved in the pursuit. The appellant drove at speeds in excess of 70mph in a 40mph limit and in a 50mph limit. He swerved between lanes. The police deployed a "stinger" to stop the appellant. He drove over it, puncturing two tyres, and carried on driving, across a road junction and down residential streets. He travelled at around 50mph, with punctured tyres, over speed bumps, snaking in a 'S' motion with sparks coming from the metal wheel-rims. He caused the rider of an oncoming moped to swerve to avoid a collision. He went round a corner too fast, causing the car to cross the centre line onto the wrong side of the road and onto the pavement.

6. The car came to a stop and started to reverse. A police car made contact with the appellant's car to stop him from driving off. The appellant drove into the police vehicle at a very low speed, causing damage to its rear bumper. He then drove off before he stopped, got out of the car and ran off. After a short chase, he was detained. On arrest, he swore at the officers and threatened them aggressively. A wrap of cocaine was found in his jeans' pocket, and cannabis was found in the car. He failed to provide a specimen of breath for analysis.

7. At the police station the appellant was required to provide a specimen of breath for analysis but failed to do so.

8. Mr. Butt was charged with offences of (1) dangerous driving, (2) possession of class B drugs, (3) failing to provide a breath specimen, (4) possession of class A drugs, (5) failing to stop, (6) driving without a licence and (7) driving without insurance.

9. He appeared before the South Essex Magistrates' Court on 8 October 2020. The Better Case Management Form indicates that the appellant would enter not guilty pleas to charges (1)-(3) and guilty pleas to charges (4)-(7). The District Judge (Magistrates' Court) "DJ(MC)" recorded in part 2 of the Form as follows:-

> "The Defendant denies that his driving was as described by police and did not amount to dangerous. He was not asked to provide by police and denies being in possession of a Class B drug. The Defendant accepts all other offences."

10. It is common ground that this accurately records what occurred in the magistrates' court. It is consistent with records of the hearing made by representatives of both the appellant and the Crown Prosecution Service. However, the sending sheet erroneously recorded that the appellant had pleaded guilty to an offence of failing to provide a sample, and had indicated a guilty plea in respect of dangerous driving, and that he had been committed to the Crown Court for sentence in respect of all offences save for the possession of class B drugs which had been sent for trial. That form recorded that the court had declined jurisdiction to deal with the allegation of possession of cannabis and sent him for trial.

11. On 26 October 2020 an indictment was uploaded to the Digital Case System which alleged two counts: dangerous driving and possession of a class B drug. There was an appended schedule setting out a related summary offence under section 51(11) of the 1998 Act. That offence was failing to provide a specimen for analysis, and the related indictable offence was dangerous driving.

12. The case came before Mr Recorder Osborne, sitting in the Crown Court at Basildon, on 5 November 2020. The CPS note of the hearing records "confusion all round. Dangerous Driving appears to be committed for sentence. BCM Form makes clear D will be contesting the driving. Crown's record is slightly ambiguous. Solution may be that [contact] be made with Mags Court to see what the court actually did." Defence counsel indicated that his note of the hearing accorded with the BCM Form. The Recorder adjourned the case for 7 days so that enquiries could be made and any errors could be corrected.

13. The record was amended on 10 November 2020 in the magistrates' court and the Memorandum of an Entry in the Register was amended to add two notes beside charge 2 and 3 respectively. Charge 3 was a summary only offence and could not be sent for trial under section 51(1) and (2)(b) of the 1998 Act, but was required to be sent under section 51(3) and (11):-

Charge 2, dangerous driving:-

> "10/11/2020 08:37 Nicola Kaczmarska Essex Result Error NG indicated on the 08/10/20.
>
> Matter should have been sent up to the Crown Court as follows: Sent for trial under section 51(1) & (2)(b) of the Crime and Disorder Act 1998 to Basildon Crown Court on 05/11/2020 or such other date, time or place as the Crown Court directs, on unconditional bail. No indication given re VPS. Plea of not guilty or none indicated."

Charge 3, failing to provide a sample:-

> "10/11/2020 08:37 Nicola Kaczmarska Essex Result Error NG indicated on the 08/10/20.
>
> Matter should have been sent up to the Crown Court as follows: Sent for trial under section 51(1) & (2)(b) of the Crime and Disorder Act 1998 to Basildon Crown Court on 05/11/2020 or such other date, time or place as the Crown Court directs, on unconditional bail. No indication given re VPS. Plea of not guilty or none indicated."

14. On 12 November 2020 the appellant pleaded not guilty to all three offences. He was tried before HHJ Cohen and a jury in January 2023. In the course of the trial, the trial judge directed the jury to return a not guilty verdict in respect of count 2, the possession of a class B drug. On 25 January 2023 the jury convicted the appellant of count 1, the dangerous driving.

The sentence

15. The sentencing judge decided that a pre-sentence report was unnecessary. She said that the driving was not the most serious type of dangerous driving, but that it was bad and lasted for around 10-15 minutes which, in context, was a prolonged period. She referred to the appellant's large number of previous convictions which included many offences

for driving matters, albeit this was the first offence for bad driving. She took account of the long delay in the matter coming for trial, and that he had a young child. She imposed a sentence of 12 months' imprisonment and a disqualification from driving for 5 years and 6 months, the 6 months being the extension period required under section 35A of the Road Traffic Offenders Act 1988.

16. There was then a discussion in respect of the other charges. The appellant was asked if he accepted he was guilty of failing to provide a specimen of breath for analysis, and he responded that he was not guilty. He accepted that he was guilty of the possession of a class A drug, but said he could not recall if he had pleaded guilty to charges (5)-(7). The court remitted charges (3)-(7) to the magistrates' court under section 25A of the Sentencing Act 2020. As result of section 51(10) the trial of charge (3) stood adjourned in the magistrates' court and could resume without any order for remittal. On 8 March 2023 the appellant was sentenced by the magistrates' court where it is recorded that he had pleaded guilty to charges (3)-(7). He was sentenced to 4 weeks' imprisonment in respect of charge (3), to run concurrently with the sentence imposed by the Crown Court (see below), with no separate penalty on charges (4)-(7).

The procedural issues

17. In referring the case to the full court, the Registrar of Criminal Appeals raised a number of procedural issues. These included:

    (1) Whether the magistrates' court had the power to amend resulting errors on the Record Sheet in the way they did, in the light of *R v Clark* [2023] EWCA Crim 309; [2023] 2 Cr App R 4.

    (2) If *Clark* applies, and the committal for sentence following guilty plea to dangerous driving as originally recorded remained valid at the time of the trial, what the impact is on the fact that the appellant was then convicted after trial of the same offence.

    (3) If *Clark* applies, whether the offence of Failure to Provide a Specimen currently remains before the Crown Court as a s.6 Committal for Sentence, and if so, what the impact of this would be on any sentence imposed in the magistrates' court.

    (4) If the Record Sheet showing a guilty plea and s. 3 committal for sentence in relation to the offence of Possession of Class A was valid on its face and no attempt at amendment was made by the magistrates' court, whether a denial of the guilty plea by Mr. Butt was sufficient to conclude that the matter remained in the magistrates' court awaiting trial. If, on reflection, it was not, whether the matter is currently before the Crown Court and what the status would be of any magistrates' court trial in relation to this charge.

David John Jenkins

The facts

18. The appellant appeals against an extended sentence of 20 years (comprising a custodial term of 14 years and an extended licence period of 6 years) for wounding with intent imposed by HHJ Prince at the Crown Court at Newcastle Upon Tyne on 23 February 2023. The appellant was also disqualified from driving for 1 month for an offence of

dangerous driving. No separate penalty was imposed for offences of driving while uninsured and driving with excess alcohol in breath. The appellant had been convicted of the wounding offence following trial. The procedure that was adopted in respect of the remaining offences is explained below.

19. At 2.10am on 27 January 2021, police officers saw the appellant driving a car in excess of the 30mph speed limit. The appellant accelerated away from the officers, driving at 50mph through a red traffic light at a junction. The officers indicated for the appellant to stop, but he continued on driving at a high speed. As he approached a roundabout, the back end of his vehicle kicked out and he pulled over and stopped. He refused to take a roadside breath test and was arrested. At the police station he was breathalysed and recorded a reading of just over twice the legal limit. Jenkins did not have insurance to drive the car.

20. Jenkins appeared before the magistrates' court on 27 August 2021. The Court Extract records that he indicated a not guilty plea to dangerous driving and elected jury trial. He was then sent for trial on that offence under section 51(1) and (2)(b) of the 1998 Act and, as required, the two related summary matters were sent at the same time under section 51(3). The BCM Form recorded all this properly. In Part 1 the defendant indicated a plea in response to the charge of dangerous driving of not guilty but guilty to careless driving and a plea of guilty to the two summary offences. In part 2 the legal adviser recorded that the bench had accepted jurisdiction but the defendant had elected summary trial. No pleas were taken to the other offences. This was all perfectly in order. He was granted bail.

21. At around 7pm on 9 October 2021, the appellant was in a pub in Sunderland. Jacqueline Wright came into the pub, ordered a drink and sat down near him. She complained about his conduct towards a child. He was drunk and was holding a pint glass in his left hand. Without any warning he smashed the pint glass into the right side of Ms Wright's face, causing the glass to shatter. He then immediately ran out of the public house. Ms Wright initially followed him. The next thing that she recalled was a paramedic saying, "She's gone, she's gone" and then "She's back." There was blood squirting from her neck and she described it as being like a scene from a horror movie.

22. Ms Wright had a 10cm wound to the right of her neck. She was taken to hospital. In the operating theatre, it was found that there was damage to the internal jugular vein which was causing rapid haemorrhage from the wound. There was an approximately 3cm latitudinal laceration through the facing wall of the internal jugular vein, and smaller laceration on the deep aspect of the internal jugular vein. The internal jugular and facial veins were cut and stitched. The wound was closed with stitches and staples. A drain was placed on the wound for twenty-four hours. There were smaller wounds to the right angle of the jaw and the right nasojugal region. These were closed with stitches and steri-strips. She was discharged from hospital two days later.

23. Jenkins appeared before the magistrates on 11 October 2021 charged with wounding with intent, contrary to section 18 of the Offences Against the Person Act 1861. This is indictable only and was therefore sent for trial under section 51(1) and (2)(a) of the 1998 Act, as required. There does not appear to be a BCM Form and it is not necessary to consider what, if anything, was said about the likely plea because he pleaded not guilty in the Crown Court and was convicted after a trial.

The sentence

24. Jenkins was 39 at the date of sentence and had 5 convictions for 11 offences between 2004 and 2012. These included:-

    (1) An offence of causing actual bodily harm in 2010 when he had hit the victim over the head with an object and then ran after him and punched him repeatedly on the ground, and then dragged him into a house.

    (2) An offence of unlawful wounding in November 2011 when he had approached the victim outside a pub and punched them in the face.

    (3) An offence of unlawful wounding and causing actual bodily harm in May 2012 when he waved a machete around the room whilst dancing at a social gathering, injuring two people.

25. The judge had the benefit of a psychiatric report and a pre-sentence report. The psychiatric report indicated that the appellant constituted a moderate risk of committing a further offence in the medium term, which could include serious harm, but that would be reduced to a low risk if he addressed his substance misuse. By contrast, the pre-sentence report concluded that the appellant posed a high risk of serious harm to the public. The judge stated that he accepted and agreed with the risk assessment made in the pre-sentence report as opposed to that in the psychiatric report. He said Jenkins had been committing offences of violence for years during which there had been a consistent pattern of offending when in drink and with weapons.

26. The judge found that the level of harm was Category 1, having regard to the physical injuries and the content of the complainant's victim personal statements. The offence had resulted in permanent irreversible injury, particularly scarring, and a psychological condition with a substantial and long term effect on the complainant's ability to carry out her normal day-to-day activities and her ability to work. The offence had had a profound effect on her as shown by her two victim personal statements.

27. The judge found that the offence was one of high culpability. First, the glass he had smashed into the complainant's neck and face was a highly dangerous weapon which had caused injuries that would have proved fatal were it not for medical intervention. Secondly, the guidelines recognised situations where the victim was obviously vulnerable due to age, personal characteristics and circumstances. The judge said that she was a 9 stone woman, with no support, nothing to protect her, no expectation that anything was going to happen and to that extent she was vulnerable to the attack launched on her.

28. The starting point was therefore 12 years' imprisonment.

29. The judge said that there were serious aggravating features. First, at the time, the appellant had been on bail for the dangerous driving offence; secondly, he had a significant record of offences of violence against other people including the use of weapons, in particular the machete, on a previous occasion against two persons; and, thirdly, he had been intoxicated at the time.

30. The judge said that any mitigating factors raised had to be considered in the context of the failure to demonstrate any remorse. He had actively lied to the author of the pre-sentence report; he had lied in court about what occurred; and he had lied to his character referees.

31. In mitigation, the appellant had been attending courses while in prison seeking to address his drug use as that might serve to prevent future offending, and he had offered to appear as a prosecution witness in a murder trial (albeit he was not called), and that COVID difficulties were still being experienced in prison.

32. The judge was satisfied that the appellant was dangerous in that he presented a significant risk of committing further specified offences and thereby causing serious harm. If a standard determinate sentence were to be passed the least period was 14 years, but that would not fully address the risk the appellant presented and it was necessary to protect the public by imposing an extended sentence. The custodial period would be 14 years and the extended licence 6 years, making a total extended sentence of 20 years.

33. The judge imposed a disqualification for the dangerous driving offence for a minimum period of 12 months and until passing an extended test. The disqualification period would have to be extended to take into account the extended sentence. Because that involved some complexity, the judge listed the case for a hearing the following day under the slip rule so that he could consider the length of the extension that was required with the assistance of counsel. There was no separate penalty for the offence of driving without insurance, save that his licence would be endorsed and no separate penalty for the excess alcohol offence for which there was also a disqualification. The slip rule hearing took place on 24 February 2023 and Mr. Jenkins was disqualified from driving for 12 months on both the excess alcohol and the dangerous driving offences. An order was made extending and uplifting that disqualification for 112 months to a total of 124 months. Two recording errors appear to have been made and require correction:-

    i) The disqualification was said to start on the day when an interim order of disqualification was made, namely 24 September 2021. That order only lasted for 6 months, see section 26(4) of the Road Traffic Offenders Act 1988. The period of time between the expiry of the interim order and the imposition of the disqualification on sentence does not therefore count towards the disqualification, that is the period 24 March 2022 - 22 February 2023.

    ii) The record shows that the victim surcharge was imposed in the correct sum, £190, on both Court Extracts. For the avoidance of doubt, the charge is payable only once and the Crown Court Record should be amended to make that clear.

The procedural issues in R v. Jenkins which have been raised by the Registrar of Criminal Appeals

34. We can deal with these shortly as they are not, on analysis, of any substance.

35. Was the appellant sentenced for the summary offences without a guilty plea having been recorded?

i) The events of 27 August 2021 at the South Shields Magistrates' Court are set out above at [20]. During the section 17A process he indicated a not guilty plea to an either way offence and elected trial by jury in respect of it (dangerous driving). As required by statute, he was sent to the Crown Court for trial under section 51(1) and (2)(b) of the 1998 Act. No pleas were entered for the related summary offences of drink driving and driving without insurance. These offences were sent for trial under section 51(3) of the 1998 Act. This was entirely valid.

ii) At a hearing in the Crown Court on 24 September 2021 counsel agreed that the appellant had in fact entered guilty pleas in the magistrates' court to the two summary offences. This was repeated at the subsequent sentencing hearing on 23 February 2023. It was, however, incorrect: the appellant had not entered pleas to the summary offences. It follows that the appellant was sentenced for these offences (albeit by way of the imposition of no separate penalty, save for the concurrent 12-month disqualification on the excess alcohol offence) in circumstances where he had not been convicted of the offences, or pleaded guilty to the offences.

iii) Accordingly, we quash those sentences which were imposed without jurisdiction and were therefore wrong in principle. The record should be amended to show that the appellant has never been convicted of these offences.

iv) Those offences remain in the Crown Court having been validly sent there for trial under section 51(3) of the Crime and Disorder Act 1998. We direct that they shall lie on the file not to be proceeded with without leave of the Crown Court or this court.

36. Was the correct period of disqualification imposed for the dangerous driving?

i) We have been invited by the Registrar to consider the period of the disqualification and the *Needham* calculation of the uplift and extension period.

ii) We decline to do so. All parties agreed at the slip rule hearing that the order made was correct and within the power of the court. No appeal has been brought against it. We have dealt with the allowance for the interim disqualification above.

37. Was the period of disqualification amended without a hearing or announcement in open court? If so, was that a breach of rule 28.4 of the Criminal Procedure Rules? No. At one stage it appeared that the period of disqualification may not have been adjusted following a hearing in open court. We now have a transcript which shows that there was a hearing, as we have recorded above.

38. Was the disposal of Count 2 (s.20 wounding) correctly recorded on the Crown Court Extract as "discontinued"?

i) Following the appellant's conviction for wounding with intent, an alternative count of unlawful wounding was recorded as "discontinued".

ii) This was a procedural error of no importance. The correct approach was to order that the count lie on the court file: *R v Cole* (1965) 49 Cr App R 199 *per* Lord Parker CJ at 394-395. We direct that the court record be amended accordingly.

Errors in the magistrates' court: The relevant procedural law

The statutory framework

39. The procedure for trying and sentencing adults charged with an either way offence, with or without other non-indictable offences, ordinarily involves a first appearance in the magistrates' court. That court may, depending on the circumstances, deal with the case itself or send the defendant for trial in the Crown Court pursuant to section 51 of the Crime and Disorder Act 1998, or commit the defendant to the Crown Court for sentence pursuant to sections 14-20 of the Sentencing Code. The sequence of events is governed by section 50A of the Crime and Disorder Act 1998. This provision is set out at page 6 of the Annex to this judgment. It prescribes a sequence of events which regulates the operation of the mandatory provisions in section 17A of the Magistrates' Courts Act 1980 and section 51 of the Crime and Disorder Act 1998. Section 50A(3)(b) provides that the section 17A process is to be followed, but if a defendant indicates a guilty plea to an either way offence he can only be committed for sentence and must not be sent for trial. If no indication of a guilty plea is given during the section 17A process, then the court moves to section 51 of the 1998 Act.

Initial procedure in a magistrates' court

40. Section 17A of the Magistrates' Courts Act 1980 makes provision for the initial procedure to be adopted when an adult appears before a magistrates' court on an information charging an offence that is triable either way. It is set out at page 1 of the Annex. It requires either way offences to be put to the accused and that he be asked whether he would plead guilty to them. If he indicates a plea of guilty, the court is required to treat him as if he had pleaded guilty in summary proceedings in the magistrates' court. This is a mandatory obligation and means that the court should either proceed to sentence or, if concerned that its powers may be inadequate, commit to the Crown Court for sentence.

41. If the defendant indicates a not guilty plea, and if the charge can be tried either summarily in the magistrates' court or on indictment in the Crown Court, the magistrates' court must then decide whether to accept or decline jurisdiction. If it declines jurisdiction then it must (pursuant to section 21 of the 1980 Act) send the defendant to the Crown Court under section 51(1) and (2)(b) of the 1998 Act. If it accepts jurisdiction, but the defendant elects to be tried in the Crown Court pursuant to section 20(9) of the 1980 Act, the magistrates' court must then send the defendant to the Crown Court pursuant to section 51(1) and (2)(b) of the 1998 Act. In both cases, any other related either way or summary offences are also sent to the Crown Court pursuant to section 51(3) of the 1998 Act.

42. In *R v Gould* [2021] EWCA Crim 447; (2021) 2 Cr App R 7, I gave the judgment of the court and said at [102]:-

> "This procedure is mandatory because it contains important safeguards for a person appearing in the magistrates' court on an

> offence which is triable either way. It requires the court to communicate directly with that person 'in ordinary language' so that it is clear in open court that the person understands the procedure and what the consequences of indicating a guilty plea may be. The procedure taken as a whole is designed to ensure that the right to trial by jury is not lost through ignorance. It is very important that it is complied with not only for this reason, but also so that in the event that there is a committal for sentence, the Crown Court will know that the guilty plea was properly taken if any issue should arise about it. There is no transcript of proceedings before the justices and one purpose of the statute is to achieve a situation where the Crown Court can safely assume that this significant procedure has been properly undertaken."

Sending case to Crown Court for trial

43. Section 51 of the Crime and Disorder Act 1998 makes provision for a magistrates' court to send a defendant to the Crown Court for trial. It starts at page 6 of the Annex and is a very complex provision. It requires the magistrates' court to send an adult charged with an either way offence for trial in the five situations identified in section 51(2)(b). The most commonly encountered of these are the first two: where the accused elects trial and where the court declines jurisdiction. By section 51(3) the magistrates' court must also send for trial at the same time any either way offence which is related to the offence which has been sent under section 51(2)(b), and any related summary offence which is punishable by imprisonment or disqualification from driving.

Committal to the Crown Court for sentence

44. Sections 14-20 of the Sentencing Code make provision for a magistrates' court to commit an offender to the Crown Court to be sentenced.

45. Section 14 makes provision for committal following a summary trial. It applies where the magistrates decide that their limited sentencing powers are not adequate and gives the Crown Court the same sentencing powers it would have had following a conviction on indictment. It is set out at page 3 of the Annex.

46. Section 18 (Annex page 3) makes provision for committal following an indication of guilty plea where the offender is being sent for trial to the Crown Court for one or more related offence. The power is available where the magistrates consider that their sentencing powers would be adequate if the indicated guilty plea was for an offence which stood on its own. The provision enables the magistrates to state their opinion that these powers would not be adequate. This has implications for the powers of the Crown Court which it is not necessary to explore here.

47. Section 20 (Annex page 4) makes provision where an offender has been committed in respect of another offence.

Power to rectify mistake

48. Section 142 of the Magistrates' Courts Act 1980 empowers a magistrates' court to replace an invalid order with another order which the court has power to make. It is at

page 2 of the Annex. It is to be noted that, unlike its equivalent power in the Crown Court, there is no time limit within which it must be exercised, and no requirement that the court must be constituted in the same way as when the original error was made. The power is subject to subsections (1A) to (5) which are not relevant to the circumstances of these appeals.

Judges who may exercise the power of a District Judge (Magistrates' Courts)

49. The powers of a District Judge (Magistrates' Courts) in relation to criminal causes or matters may be exercised by (amongst others) an ordinary judge of the Court of Appeal, a judge (or deputy judge) of the High Court, a Circuit judge (or deputy Circuit judge) or a recorder: section 66 Courts Act 2003. The parameters of that power were identified in *Gould*.

The Criminal Procedure Rules (CrimPR)

50. This complex system is governed by the CrimPR. Part 9 deals with the effect of the statutory provisions in relation to sending for trial. Part 28.10 deals with, among other things, committal for sentence following conviction in the magistrates' court.

51. CrimPR 9.5 requires the magistrates' court officer to serve notice of a sending for trial on the Crown Court officer and the parties and contains provisions about what that notice must contain. This notice must include the matters which the court is required to specify when sending for trial under CrimPR 9.3. This includes specifying each offence which is sent for trial and the power which was exercised to send each such offence for trial.

52. CrimPR 28.10 applies where a magistrates' court commits a person to the Crown Court for sentence, as well as to other means of transferring cases between courts for disposal. 28.10(2)(a) provides as follows:-

> "(2) Unless the transferring court otherwise directs, the court officer must, as soon as practicable—
>
> (a) where paragraph (1)(a) applies, make available to the other court a record of any relevant—
>
> (i) certificate of conviction,
>
> (ii) magistrates' court register entry,
>
> (iii) decision about bail, for the purposes of section 5 of the Bail Act 1976,
>
> (iv) note of evidence,
>
> (v) statement or other document introduced in evidence,
>
> (vi) medical or other report,
>
> (vii) representation order or application for such order,

(viii) interim driving disqualification, and

(ix) statement by the court for the purposes of section 70(5) of the Proceeds of Crime Act 2002."

The court register

53. The court register is still governed in all jurisdictions by the Magistrates' Courts Rules 1981 which have, for the most part, been revoked in respect of criminal cases where they have been superseded by the CrimPR. Rule 16(1) provides:-

> **"16 Record of Adjudication**
>
> (1) A record of summary conviction or order made on complaint required for an appeal or other legal purpose may be in the form of certified extract from the court register."

54. Rule 66 of the 1981 Rules provides:-

> **"Register**
>
> **66 Register of convictions, etc**
>
> (1) The designated officer for every magistrates' court shall keep a register in which there shall be entered—
>
> (a) a minute or memorandum of every adjudication of the court;
>
> (b) a minute or memorandum of every other proceeding or thing required by these rules or any other enactment to be so entered.
>
> (2) The register may be stored in electronic form on the court computer system and entries in the register shall include, where relevant, the following particulars—
>
> (a) the name of the informant, complainant or applicant;
>
> (b) the name and date of birth (if known) of the defendant or respondent;
>
> (c) the nature of offence, matter of complaint or details of the application;
>
> (d) the date of offence or matter of complaint;
>
> (e) the plea or consent to order; and
>
> (f) the minute of adjudication."

The Common Platform

55. In three of the cases before us (the case of Jenkins and the two judicial review cases from Luton Crown Court) the magistrates' court and the Crown Court were using a computer system called "the Common Platform" which has been supplied to all the criminal courts in England and Wales in a rolling programme which has extended over the last three years. The system is still being developed, but it does now provide the means by which the results of cases are recorded and transmitted where appropriate to other courts, for example on sending for trial or committing for sentence. It is a matter of public record that this process has not been without difficulty, see *House of Commons, Committee of Public Accounts, Progress on the Courts and Tribunals Reform programme, Sixty-First Report of Session 2022–23*. Although each member of the court has some personal involvement in dealing with this programme on behalf of the judiciary, we have not relied on any knowledge obtained by that means in this judgment. We requested a document from the prosecution which has been seen by the other parties and which we will rely on for our understanding of this system so far as it is relevant to this case. We are extremely grateful to the prosecution for the speed with which they supplied this assistance to the court. It says, so far as relevant:-

> "The provision by which a case is sent or committed to the Crown Court is recorded on Common Platform as part of the resulting process. This must be selected as part of the result before it can be shared (finalised). In the Magistrates' Court this normally happens fairly shortly after the case is dealt with. Common Platform doesn't produce a sending sheet, the result and legal send provision are shown on the extract. If errors are made there is the ability to edit the original result and re-share the case which will produce an amended extract showing the amendments made. Below are 2 screen shots that show how this information is presented on the Common Platform resulting screen."

56. The two screenshots show the drop-down menus from which the Legal Adviser (if the court is a lay bench) or Associate (if the court is a DJ(MC)) must identify the power used by the magistrates' court to send the case for trial or to commit it for sentence. The first screen shot illustrates all or part of a drop-down menu which allows the user to input the power used to send a person for trial. It lists 17 powers, all arising under section 51 of the Crime and Disorder Act 1998. These are identified only by the section and sub-section and not by any descriptive phrase. Some of them are very common, and others very rarely used. The second screenshot shows part of a drop-down menu listing powers to commit for sentence. These do have a descriptive phrase, for example:- "with other related offences committed for trial [sic] (Section 18 of the Sentencing Act 2020)".

57. The prosecution's document then concludes:-

> "By reference to the issues in the present cases it is important to note:

a) The screens are completed in court and shared shortly or immediately after the Court concludes the case. The sharing of the result produces the extract and any notice or order, such as the remand warrant/bail form;

b) On sharing the case, it appears in the Crown Court's unallocated list (if sent/committed to a fixed date) or the unscheduled list (if sent to a date to be fixed) on Common Platform. The listing officer then allocates or lists the case as part of their normal business process. In effect the case automatically moves from the magistrates' court list to the Crown Court list;

c) The sending/committal provisions can be recorded incorrectly if the legal adviser selects the wrong option when completing the result, or if they select the wrong menu. For example, a sending result could be entered with the wrong provision is selected. Sending and committal are two separate results on Common Platform and it will depend on which result is entered as to the statutory provisions you can select. Where both are engaged the chance of mistake is therefore greater;

d) There is no input from, or opportunity for the parties to correct any such error before the screen is completed and the sending sheet is produced, and lodged in the Common Platform for the case in the Crown Court.

It is in those circumstances that it is submitted that the changing of the result is the correction of an administrative error not a legal mistake in that the defendant was sent/committed under the correct power but the wrong one was selected."

58. The purpose of setting this out is simply to explain that there is no reason to suppose that recording errors in the way cases are transferred to the Crown Court will be any less frequent in the future than they have been in the past. It also provides an explanation of how some of the errors in these cases were made. It is right to record that the system is still under development and changes are being made all the time.

Better Case Management

59. Following the Leveson *Review on Efficiency in Criminal Proceedings*, published January 2015, the criminal courts adopted a procedural system called "Better Case Management" for cases which are disposed of in the Crown Court. This was very effective when first introduced in 2016, but a series of events required its principles to be revived by a process which started in January 2023. It is now described in the "Better Case Management Revival Handbook" which is found in the guidance section of the Digital Case System used for Crown Court cases and on the Judiciary website[1]. It refers to a document called the "BCM Form" and stresses its importance. This is to be completed by the parties and the court when a case is sent for trial to the Crown Court, see CrimPD 5.1.3. The Handbook says:-

> "The form '*Crown Court- Cases sent for trial or following indication of guilty plea in indictable only cases'* is commonly referred to as the BCM form. All questions are posed for good

[1] https://www.judiciary.uk/guidance-and-resources/better-case-management-revival-handbook-january-2023/

> reason and it is essential that the form is completed and passed to the Crown Court. Using the form as a structure for the hearing will best secure an engaged hearing.
>
> Experience has shown that where the BCM form is completed fully as part of an engaged and considered hearing, they are valuable to the parties and the Crown Court by [the Handbook then sets out some advantages]"

60. The form is in two parts. Part 1 is to be completed by the parties before the hearing. It includes a box alongside the charges where the parties must enter "*Pleas (either way) or indicated pleas (indictable only) or alternatives offered*". This is not a record of what has happened in court, but a statement by the defendant of his intended plea or indicated plea in advance of the hearing. Part 2 is headed "To be completed "…by DJ(MC)/legal adviser after review of parties' information". The body of the form makes it clear that it is to be completed during or after the hearing.

61. In the cases of Butt and Jenkins, the forms were signed by the District Judge (Magistrates' Court) and the legal adviser respectively. The parties used Part 1 to record guilty pleas to summary only offences, as well as not guilty pleas in Butt's case and one not guilty plea in Jenkins' case. The form does not require any information to be entered about the order made by the magistrates' court in respect of each offence listed.

62. The BCM Form is made available to the Crown Court alongside the sending sheet or Court Extract on the Digital Case System. The Digital Case System is used in the Crown Court only, and enables the judge, court staff and the lawyers in the case to upload and read documents and to leave comments in the side-bar. It is separate from the Common Platform. In Jenkins' case the Court Extract was generated by the Common Platform. In Butt's case the previous system was used and the relevant documents are in a different form but also available to the Crown Court on the Digital Case System. We have set out the detail of what happened above.

The correct approach where there may have been an error in sending or committing a case from a Magistrates' Court to the Crown Court

63. This issue has been considered in a number of decisions of this court and the Administrative Court, including *R v Gould*, already referred to above.

64. The following questions potentially arise:

(1) What power was exercised by the magistrates' court when sending or committing a case to the Crown Court.

(2) Was the power was exercised erroneously?

(3) If so, what are the consequences of the procedural error?

(4) What steps can or should be taken to correct the error?

65. We address each of these questions in turn, before turning to the recent decision of this court in *R v Clark*.

(1) What power was exercised by the magistrates' court

66. The question of the power that was exercised by the magistrates' court is a question of fact. The sending sheet is, presumptively, an accurate record of the power that the magistrates' court purported to exercise. But it is not conclusive. If there is evidence to suggest that the sending sheet is inaccurate, then a factual issue may have to be resolved as to what power the magistrates' court purported to exercise. That all follows from the decision of the Divisional Court in *R v Folkestone and Hythe Juvenile Court, ex parte R* (1982) 74 Cr App R 58, and the decisions of this court in *R v Hall* (1982) 74 Cr App R 67, *R v Russell* (1998) 2 Cr App R (S) 375, and *R v Ayhan* [2011] EWCA Crim 3184; [2012] 1 WLR 1775. The first in time of this important series of cases was *R v Folkestone and Hythe Juvenile Court, ex parte R*, decided a fortnight before *R v. Hall* in October 1981. *R v Folkestone and Hythe Juvenile Court, ex parte R* deals with committals for sentence, and *R v. Hall* with committals for trial. Committal for trial was later replaced by the sending procedure explained above.

67. Two limits on the ability of the Crown Court to proceed despite procedural defects in the magistrates' court appear in *R v Folkestone and Hythe Juvenile Court, ex parte R.* We deal with one, where the defect involves non-compliance with section 17A of the Magistrates' Courts Act 1980, below. The second is expressed in distinguishing *Meek v Powell* [1952] 1 KB 164. Lord Lane said this about that decision:-

> "There again, although there are similarities between the present case and *Meek v. Powell (supra),* yet in that case it was a case of the information being laid under the wrong Act and therefore the man, on the face of it, had been convicted under a non-existent Act. Conviction is one thing, but disposal for sentence seems to me to be something entirely different."

68. In *Hall,* Lord Lane CJ did not accede to a submission which sought to limit *R v Folkestone and Hythe Juvenile Court, ex parte R* to its own facts. In *Hall* the clerk to the justices had sent a statement saying that the committal had been pursuant to section 6(2) of the Magistrates' Courts Act 1980 which was not in force. It should have referred to the 1967 Act which was in identical terms.

69. Lord Lane referred to rule 10 of the (then) Magistrates' Courts Rules 1968 which stated:-

> "As soon as practicable after the committal of any person for trial, and in any case within four days from the date of his committal …, the clerk of the Magistrates' court that committed him shall… send to the appropriate officer of the Crown Court- … (j) if the committal was under section 1 of the Criminal Justice Act 1967 (committal for trial without consideration of the evidence), a statement to that effect."

70. Committal for trial without consideration of the evidence (usually called a "new style committal" by practitioners in those days) was the precursor of the modern procedure whereby cases are sent for trial under section 51 of the Crime and Disorder Act 1998.

71. Lord Lane said:

> "…it is quite plain from the opening words of rule 10(2) that the certificate is not the committal. The committal must have taken place before this document came into existence. Although it is perhaps not necessary to decide the exact moment when the committal takes place, it seems to this Court highly likely to be when the committing justice tells the defendant that he is to be committed; that spoken order is probably the committal.
>
> Secondly, it emerges from the words of the rule that this certificate is something which the clerk sends forward to the committing Court. If there is a mistake on the face of the certificate, such as one which exists here, it is a mistake of the clerk. But that is not the basis of our decision. The justices undoubtedly had power to act as they did under the Magistrates' Courts Act 1952, s. 7(1) so far as their power to commit for trial is concerned, and under the Criminal Justice Act 1967, s.1, so far as their power to commit for trial without consideration of the evidence is concerned. Consequently, the fact that in the certificate which comes into existence later the wrong Act was mentioned seems to us in no way to invalidate the committal. That is enough so far as the first part of the argument is concerned."

72. *R v Russell* [1998] 2 Cr App R (S) 375 was a case presided over by Rose LJ, Vice-President of the Court of Appeal Criminal Division. It extended the scope of the decision in *R v Folkestone and Hythe Juvenile Court, ex parte R* somewhat. The magistrates' court had deliberately decided to commit Russell for sentence for an either way offence (and two summary offences) following summary conviction under section 56 of the Criminal Justice Act 1967. This was the form of committal for sentence which limited the powers of the Crown Court to those which the magistrates' court would have had. It was used because Russell was also committed to the Crown Court because the new convictions placed him in breach of a licence under which he had recently been released from a custodial sentence. The magistrates obviously decided that their powers for the new offences, together with the Crown Court power to impose the unserved part of the existing sentence was enough. However, for complex reasons that power to commit for sentence for the either way offence did not yet exist at the time it was exercised. The Court of Appeal held, following *R v Folkestone and Hythe Juvenile Court, ex parte R*, that this did not matter because the magistrates did have a power to commit the either way offence for sentence under section 38 of the Magistrates' Courts Act 1980. That power gave the Crown Court its full sentencing powers as if Russell had been convicted of the new either way offence on indictment. It was therefore a significantly different power from the one they had intended to use which was a power they did not have.

73. Rose LJ said:-

> "Mr Eckersley's alternative submission, on this aspect, is that the justices could have committed for the cannabis offence, which is triable either-way, under section 38. In any event, they had power to commit under section 40(3)(b) (*R. v. Burton on Trent Justices ex p. Smith (1998) 1 Cr.App.R.(S.) 223*). That being so,

> the reference to section 56 in the memoranda of conviction can be regarded as surplusage, not affecting the validity of the committal (see *R. v. Folkestone & Hythe Justices, ex p. R. (1981) 74 Cr.App.R. 58*). Dr Thomas sought to distinguish the *Folkestone and Hythe Juvenile Court* case and said there was nothing to show the justices intended to commit under section 40. But, in our judgment, the intention of justices is irrelevant to their jurisdiction: what matters, in the light of the *Folkestone Juvenile Court* case, at page 64, is whether, even if the memorandum of conviction is silent or inaccurate as to the relevant statutory provisions, the justices had the power to commit for sentence for all the new offences under section 40 and for the either-way offence under section 38. In our judgment, they did. We therefore conclude that the committal was lawful, although the inaccuracy of the memoranda was lamentable."

74. We will not trouble the reader of this judgment with section 40 of the Criminal Justice Act 1991. What matters for present purposes is what happened to the either way offence. It was treated as having been committed under what is now section 14 of the Sentencing Act 2020 when the court had decided to commit under what is now section 20 of that Act. This affected the extent of the Crown Court powers which were more extensive than they would otherwise have been. The error was actually not an error of recording, since the memorandum in relation to the either way offence accurately recorded the power which the magistrates intended to exercise. It was, after all, an offence of possession of cannabis. The problem was that they did not have that power because of apparently defective transitional provisions.

75. The Crown Court had resolved the difference in powers "pragmatically" by limiting itself to the powers which the magistrates would have had when sentencing Russell for the new offences. This flexibility of approach to achieve justice may illustrate the reasoning of Lord Lane CJ in *R v Folkestone and Hythe Juvenile Court, ex parte R* in drawing a distinction between procedural defects preceding a conviction and those preceding a sentence. Whatever the technical issues concerning its jurisdiction, any sentencing court will always seek to impose a just and proportionate sentence in a fair manner.

76. The commentator on *R v. Russell* in the Criminal Law Review was concerned at this outcome. The commentary includes this:-

> "The Court's use of *Folkestone and Hythe Juvenile Court* (1981) 74 Cr. App. R. 58 may cause problems if it is applied to other situations, particularly in the case of offenders who indicate a plea to an either way offence before the magistrates' court in accordance with Magistrates' Courts Act 1980, s.17A, and who may then be committed for sentence under either Magistrates' Courts Act 1980, s.38 or Magistrates' Courts Act 1980, s.38A (with or without a statement that the court might have committed under section 38). As the consequences of being committed under one section rather than the other are radically different, it is clearly essential to identify the section under which the defendant is committed for sentence with precision."

77. In *R v. Ayhan* [2011] EWCA Crim 3184; [2012] 1 Cr App R 27 *R v Folkestone and Hythe Juvenile Court, ex parte R, R v Hall* and *R v Russell* were all cited with approval and preferred to two other authorities which might have led to other outcomes. In particular, the passage of the judgment in *R v Russell* cited above was cited by Lord Judge CJ with approval. *Ayhan* concerned a committal for sentence where the District Judge had committed two either-way offences for sentence under what is now section 14 of the Sentencing Act 2020 and two summary only offences under what is now section 20. The memorandum recorded that all four committals were under the former provision. The court held that this did not deprive the Crown Court of jurisdiction, but its powers were limited to those of the magistrates in respect of the summary only offences.

78. In *Ayhan* Lord Judge CJ cited *Hall* and said:-

> "It is well established that… the essential question is not what power the memorandum of conviction records the justices to have used, but the power they actually used."

(2) Was the power exercised erroneously?

79. This will depend on what occurred in the magistrates' court, and whether it complied with the applicable statutory requirements. If the magistrates' court purports to send a case for trial under section 51 of the 1998 Act when the statutory conditions for doing so are not met (for example, where the defendant has indicated a plea of guilty to an either-way offence during the section 17A procedure, and section 50A(3)(b)(ii) applied), then that is an obvious procedural error. So too, if the magistrates' court purports to commit a defendant for sentence when the statutory conditions for doing so are not met (for example, where the defendant has not pleaded guilty, or indicated a plea of guilty to an either way offence during a section 17A procedure, and has not been convicted following a summary trial).

(3) If so, what are the consequences of the procedural error?

80. If the consequence is not spelt out in the legislation, then the answer to this question is a matter of statutory construction to determine whether the legislature intended that the procedural error in question should nullify further steps in the proceedings or, if not, in what circumstances the error can be remedied. There are many statements of this principle in the authorities, and it will suffice to refer to *Gould* at [82]-[86] for its summary of some of them and of the current position.

81. In the example given above, committing a case for sentence where the defendant has not been convicted, then the Crown Court has no jurisdiction to deal with the case (subject to the possibility of correcting the position by recourse to section 66 of the 2003 Act, and taking a plea): *Gould* at [96] and [103]. That, of course, is the position where that has actually happened. As we shall see, the position may be different where the proceedings in court were validly conducted and the error has crept in when the case was resulted and the record suggests that an error was made when it was not.

82. The consequence of other types of procedural error differs. The following examples perhaps illustrate the principle in operation:-

i) Where the procedure required by section 17A is not followed, that invalidates the subsequent proceedings: *R (Rahmdezfouli) v Wood Green Crown Court* [2013] EWHC 2998 (Admin), *Gould* at [103]. The importance of the procedure in section 17A was recognised and explained in *Gould* in a passage cited in *Clark* which traces its roots back through a series of different enactments. The origin of this approach appears to be *R v Cockshott* [1898] 1 QB 582, which construed section 17 of the Summary Jurisdiction Act 1879 in this way. Its statutory descendants have always been treated in the same way, see *R v Kent Justices, Ex parte Machin* (1952); 36 Cr.App.R. 23; [1952] 1 All E.R. 1123 applying the Criminal Justice Act 1948 in the same way. That decision was distinguished, but not doubted, in *R v Folkestone and Hythe Juvenile Court, ex parte R* (1982) 74 Cr App R 58 on the basis that it depended on the terms of the statute which imposed the statutory obligation on the court to undertake a prescribed procedure before embarking on the summary trial of an either way offence. The importance of this approach was recently restated in *Gould* see [42] above.

(ii) Where a defendant is sent to the Crown Court for offences which include at least one indictable only offence, but is then tried on an indictment alleging only either way offences in circumstances where no mode of trial procedure has not taken place, the proceedings are not thereby invalidated: *R v Gul* [2012] EWCA Crim 1761; [2013] 1 Cr App R 4. The failure to follow the required mode of trial procedure requirements of paragraphs 7 and 9 of Schedule 3 to the Crime and Disorder Act 1998 in the Crown Court in this situation is not as fundamental as the failure to follow the section 17A process in the magistrates' court. This is because section 17A is designed to protect a right to elect jury trial, whereas the only right preserved by the Crown Court mode of trial procedure is a right to make representations as to the appropriate mode of trial. The Crown Court makes the decision.

(4) What steps can or should be taken to correct the error?

83. This depends on the answer to the third question. If the consequence of the error is that the Crown Court has no jurisdiction, then the matter can be remedied by the magistrates' court using the power under section 142 of the 1980 Act. Alternatively, a judge sitting in the Crown Court could use section 66 of the 1980 Act to exercise the power of a District Judge (Magistrates' Court) under section 142. However, although there is power to do that, it may not be appropriate to do so for the reasons explained in *Gould* at [87] – [93]:

> "87. … a Crown Court judge may lawfully exercise the powers of the Magistrates' Court under section 66 of the 2003 Act.
>
> 88. However, the exercise of those powers will result in an ineffective order if the judge acts beyond the jurisdiction of the Magistrates' Court and may do so if the judge is responsible for procedural errors. If those errors are of a kind which Parliament is taken to have decided should invalidate all that follows, then that will be the result. …

89. The judges of the Crown Court may often have little experience of procedure in the Magistrates' Court. Their staff will usually have even less. A DJ(MC) will have that expertise. They may also perhaps sit with a legal adviser in the Magistrates' Court and, if not, will sit with a Court Associate. Between them, they will have significant expertise in ensuring that the work of the court is conducted and recorded properly. This is, in itself, a reason for restraint in the exercise of the section 66 powers by judges sitting in the Crown Court.

90. If the prosecution wishes to ask the judge to sit as a DJ(MC) in order rectify some procedural error it has made, it must always be in a position to provide the judge with procedural assistance to ensure that the issue is dealt with properly.

91. If a judge is unsure about any of what he or she is being asked to do, then the safe course will sometimes be to decline to deal with anything which requires a Magistrates' Court to deal with it. The prosecution must then take its case to a Magistrates' Court. This will cause cost and delay, but as these cases have shown, that is not always avoided by proceeding under section 66.

92. Where the judge is confident that he or she is aware of the powers of the Magistrates' Court and how they should be exercised, then section 66 is a useful power which can be used to save time and cost and to rectify earlier procedural failings. In deciding how to proceed, the judge must bear in mind that a Magistrates' Court dealing with an either way offence might have decided that it should not be committed for sentence. The fact that it has wrongly come before the Crown Court should not result in a defendant being denied that possible outcome. A Crown Court judge should also be aware that Magistrates' Courts, particularly Youth Courts, may have a different approach to sentencing and a defendant who would wish to be sentenced in the lower court should not be deprived of the possibility that this may happen because of procedural failures by the prosecution. We consider that it is only in cases where it is quite clear that the case should be dealt with by the Crown Court, or where the exercise which is being contemplated is only designed to tie up loose ends and avoid hearings in the Magistrates' Court which are clearly unnecessary, that the section 66 power should be used.

93. When the section 66 power is used, it must be used properly and the judge must proceed in the way which would be required of the Magistrates' Court… It is not necessary for a judge to "reconstitute" himself or herself as anything. It is, however, necessary to explain, with reasons, exactly what powers are being exercised and why. This is so that all concerned are aware of the extent of any powers which are being employed, and so

> that the lawfulness or otherwise of what is being done can be considered expressly at the hearing and subsequently if necessary, on appeal or judicial review. The Crown Court judge, in cases where the appeal route is important, should consider whether the proposed use of the power will create difficulties in that part of the result might be appealed to the Crown Court and part to the Court of Appeal Criminal Division. If exercising the power (and the original Explanatory Notes to section 66 of the 2003 Act suggest that this is not a bar to its exercise) the judge must be explicit and clear about which sentences are imposed as a DJ(MC) and which as a judge of the Crown Court. That must appear in the Order and, as we have said, must also appear in the records of the Magistrates' Court. We suggest that rigorous thought about these questions will reveal at least some of the cases where it would actually be better to leave the Magistrates' Court to deal with its own work.

The decision in R v Clark [2023] EWCA Crim 309

84. In *Clark* the defendant was charged with assault occasioning actual bodily harm, and breach of a restraining order. These are either way offences, and so section 17A of the 1980 Act applied. The document headed "Notice for Crown Court on Sending for Trial", which is required by CrimPR 9.5, recorded both offences and said that they had both been sent for trial under section 51(1) and (2)(b) of the Crime and Disorder Act 1998. This was a perfectly regular document on its face. It is referred to in the judgment as the "sending sheet". The case was dealt with before the arrival of the Common Platform. However, it was agreed that the Notice did not reflect what had happened in the magistrates' court. In fact, Clark had pleaded guilty to the offence of breach of the restraining order and not guilty to the offence of assault. The agreement as to these facts is recorded at [13] of the judgment.

85. The court in *Clark* drew attention to the importance of section 17A, as explained in *Gould*. The defendant pleaded guilty to breach of a restraining order and not guilty to assault occasioning actual bodily harm. Both charges were apparently sent to the Crown Court for trial, notwithstanding the guilty plea to the breach of a restraining order. It was common ground that this was an error, section 50A(3)(b)(ii) required that he be not sent under section 51 of the 1998 Act. The issue was whether it deprived the Crown Court of jurisdiction to sentence the defendant in respect of the breach of a restraining order following that guilty plea. This court held that it did – see *per* Simler LJ at [19]:

> "We have considered counsel's submissions with care, but have concluded, contrary to their submissions, that this is not a case where a mere administrative error occurred. It would have been an administrative error if the committal for sentence was made under the wrong statutory provision. It is that sort of case that the Crown Court need not be unduly concerned by and can proceed with by treating the error as an administrative one. In this case, by contrast, the sending by the Magistrates' Court was a sending for trial. That was obviously invalid because a guilty plea had been entered and there was therefore no jurisdiction in the Magistrates' Court to send the breach offence for trial. The only

> evidence of what the Magistrates did is the sending sheet itself and this does not support or confirm that the procedure set out in section 17A of the Magistrates' Court Act 1980 was followed. Counsel relied on the Better Case Management form but that does not assist us. That form would have reflected a guilty plea if Mr Clark had merely indicated a plea before venue on an either-way offence. As we have said, it is the sending sheet that is the primary record, and it is the sending sheet that matters."

86. With great respect to the court in *Clark*, this reasoning is not entirely clear. If the sending sheet really is the thing that matters, then there was nothing wrong with what happened. It did not record the guilty plea which was the source of the problem. If the sending sheet is the definitive evidence then there was no guilty plea. In fact, there was a guilty plea as recorded in the Better Case Management Form and the agreed recollection of the parties. The sending sheet was wrong, and the other evidence showed that. If primacy had been given to the sending sheet there would still have been a problem, but a different problem from the one identified by the court. If the sending sheet were correct, and no guilty plea had ever been entered, the Crown Court would have sentenced Clark for an offence of which he had never been convicted. This was not the problem which the Court of Appeal (sitting as a Divisional Court, and a magistrates' court) sought to solve by quashing the sending, and committing for sentence following the guilty plea which had never appeared on the sending sheet. The Court did not explain why it could receive evidence to correct one error in the sending sheet (the omission of the guilty plea) but not the other (the identification of the power used to transfer the case to the Crown Court for disposal alongside the assault charge). It appears that the court may not have been assisted, as we have been, with a full review of the relevant authorities, and there was a route to regularising the case before it which did not actually require such a review.

87. Having identified the error in the sending sheet, the next step of the enquiry should be to ask what power the magistrates were exercising when they sought to transfer (to use a non-technical word which does appear in CrimPR 28.10) the breach of the restraining order to the Crown Court. Given that he had pleaded guilty to this either way offence, the available powers would be the powers to commit for sentence under section 14 or 18 of the Sentencing Act 2020. It appears from paragraph [12] of the judgment that the magistrates concluded, correctly, that their sentencing powers were insufficient to deal with the breach offence to which a guilty plea had been entered. That being so, they could either commit under section 14 or under section 18 stating (pursuant to section 18(4)(b)) that their powers were inadequate. The result would be the same whichever route they chose. That must be what was intended, since it was quite clear on any view that the magistrates intended that both charges should be before the Crown Court. They had the power to achieve that, and no doubt actually did so. Following *Ayhan* the fact that the order was subsequently wrongly recorded in the Notice to Crown Court did not invalidate it.

88. The references in the judgment to the importance of section 17A of the Magistrates' Courts Act 1980 are also not wholly clear. There was no evidence that the magistrates' court had failed to follow the proper procedure and, in the absence of any evidence of a failure, the normal presumption will be that the court complied with its obligations. The existence and importance of this "clear presumption of regularity" was confirmed

in this very context by the Divisional Court in *R (Westminster City Council) v Crown Court at Southwark and others; R (Owadally and another) v Westminster Magistrates' Court* [2017] EWHC 1092 (Admin); [2017] 2 Cr App R 18 at [56(i)]. We can see nothing in the judgment to suggest that the section 17A process was not complied with. Indeed, the fact that, as was agreed, he had pleaded guilty to the offence suggests that it was indeed put to him and given that it was an either way offence the most usual way of doing that is the section 17A procedure. In all four cases before us as a constitution of the Court of Appeal Criminal Division or as a Divisional Court, there is no uncertainty about this. The section 17A procedure was properly followed. That is relied upon by the prosecution as a distinction between these cases and *Clark* which it may perhaps be.

89. The last sentence of paragraph [19] of the judgment in *Clark* may suggest that the sending sheet is conclusive evidence of the power that has been exercised by the magistrates' court to send or commit a case to the Crown Court. In *Clark* the court actually preferred the evidence that there had been a guilty plea in the magistrates' court to the sending sheet which failed to record that event. In any event, it was well established before *Clark* that what is ultimately critical is what in fact took place in the magistrates' court – see paragraphs [66] - [78] above. Indeed, in *Russell* the Court went further and held that what mattered was whether the magistrates had a power to commit for sentence even if they consciously decided to exercise another power, which they did not have. The record accurately recorded that erroneous decision, but this did not deprive the Crown Court of jurisdiction.

90. The Court in *Clark* did not hold that *Ayhan* was wrongly decided, and to an extent followed it by enquiring into whether or not Clark had in fact pleaded guilty to the offence of breach of the restraining order. The actual decision in *Clark* was one way of resolving the problem lawfully. The Court decided to sit as a Divisional Court and then through one of its members to sit as a DJ(MC) to confer jurisdiction on itself to re-sentence Clark. The Crown Court when dealing with the matter at first instance cannot sit as a Divisional Court, although it can sit as a DJ(MC) and correct any errors applying section 142 of the Magistrates' Court Act 1980 (Annex page 2). Where the decision in *Clark* is inconsistent with *Ayhan* and the long standing and authoritative decisions on which *Ayhan* relies, in our judgment, is in its decision that the Crown Court was rendered powerless by the defects in the sending sheet. In our judgment, that creates a situation where we are entitled and bound to choose between inconsistent decisions of this court, see *Young v. Bristol Aeroplane Company Ltd.* [1944] KB 718. Given the weight of the authority culminating in *Ayhan* and *Gould,* we consider that we are bound to choose to follow those cases.

91. To summarise the position, when confronted with an apparently defective Court Extract or sending sheet, the Crown Court:-

i) May hold that the defect is so fundamental that nothing has happened which gives jurisdiction to the Crown Court. This is approved in *Gould* at [80] following *R v Sheffield Crown Court Ex p. Director of Public Prosecutions* (1994) 15 Cr.App. R. (S.) 768, see [57] below. If that is so, the case has not left the magistrates' court and the Crown Court judge may lawfully have recourse to section 66 of the Courts Act 2003 and deal with the case as a DJ(MC). In cases of this kind there was an order by the magistrates' court which has been treated as being of no effect by the Crown Court and *Gould* at [80] suggested

that if a quashing order from the Divisional Court is required some expedited procedure might be devised. If the Crown Court judge, sitting as a DJ(MC), corrects the original order under section 142 of the Magistrates' Courts Act 1980 then the problem does not arise.

ii) May apply *Ayhan* and other cases and deal with the case as validly committed if the magistrates' court had power to commit and the Court Extract or sending sheet has failed to identify that power. The breadth of this power is illustrated by *Russell* which was approved in *Ayhan* notwithstanding the reservations of the commentator in the Criminal Law Review quoted above.

Where the sending sheet shows a sending for trial when there should have been, or was, a committal for sentence

92. Where the magistrates' court has no power to send a defendant for trial because they have indicated a guilty plea to the offence during the section 17A process, but does have power to commit for sentence, the record may sometimes show, so these cases suggest, that the power to send for trial was exercised. Does that prevent the Crown Court from dealing with the matter as a committal for sentence? The power to send for trial and the power to commit for sentence are different. This question requires a further analysis of *Ayhan* and *Gould* to establish whether the position explained above extends to this situation.

93. In *Gould* at [24(vii)] the court noted the difference between sending for trial and committing for sentence in the context of a set of charges which included one indictable only offence:-

> "Although there is not much difference between the word "sent" and "committed" in ordinary language, they are used technically to describe two different processes. When "sending" an indictable only offence, the court is not required to consider whether its powers are sufficient to deal with the case because it has no such power. When committing for sentence following conviction, it is doing so because a judicial decision has been made that the sentencing court ought to have available the sentencing powers of the Crown Court. There is, therefore, an important difference in substance between the two routes to the Crown Court."

94. That difference was of significance because committing for sentence following a guilty plea to an either way offence requires the procedure required by section 17A to have been followed. That is a matter of substance. In the cases before us there is no suggestion that the section 17A procedure was not followed. The decision in *Ayhan* was contained in paragraphs [22] - [23] in the judgment of the court, delivered by the then Lord Chief Justice. These follow an analysis of some authorities which were not entirely consistent and read:-

> "22. In our judgment, provided the power of the magistrates' court to commit for sentence was properly exercised in respect of one or more either way offences in accordance with section 3 of the 2000 Act, a mistake in recording the statutory basis for a

> committal of summary only offences does not invalidate the committal. The principle is that thereafter the Crown Court must abide by the sentencing powers available to the magistrates' court in relation to the summary only offences. If that principle is not followed, then the sentences must be reduced to sentences which fall within the jurisdiction of the magistrates.
>
> 23. That is what happened in the instant case. The sentences imposed on offences 2 and 3 were sentences in accordance with the powers which would have been available to the magistrates dealing with the case summarily. To the extent that *Stockton* and *Buisson* appear to depart from the principles we have identified, and which have been followed for a considerable period based on *Hall* and *Russell*, they should not be followed."

95. The judgment in *Ayhan* was therefore an authoritative decision designed to resolve a tension in some earlier cases. It has been frequently followed. It is an extension of that decision to hold that it applies so that where the magistrates have a power to commit for sentence, which they exercise validly, the mis-recording of that decision as a sending for trial does not invalidate the committal for sentence. It is not, in our judgment, an extension of the relevant principle. The principle is that it is the order which the magistrates make which gives the Crown Court jurisdiction, not the way in which it is recorded. Where there is a "resulting error" and the Crown Court is satisfied that the magistrates made a correct order despite the terms of the Court Extract, then it may proceed to deal with the case. It is highly unlikely that a court will actually decide to send a person for trial who has just pleaded guilty to the offence under consideration. A court deciding what actually happened will no doubt bear this observation in mind. This statement of the principle is enough to decide the present issue. Following *Russell* it may be that the principle actually extends further.

96. In some cases, the same result may be achieved by a different route. Paragraph [80] of *Gould* says this:-

> "80. These important parameters within which the s.66 powers may be used have been overlooked in some of the present cases and perhaps elsewhere. It is worth restating them:
>
> i) when the magistrates' court make an order which gives jurisdiction in the case to the Crown Court, whether by committal for sentence or sending for trial, that is the end of their jurisdiction in the case. In technical language they are functus officio. The Crown Court judge cannot use s.66 to make any order which the magistrates' court could no longer make; and
>
> ii) there is no power in the Crown Court to quash an irregular order. Where it is plainly bad on its face, the Crown Court may hold that nothing has occurred which is capable of conferring any jurisdiction to deal with it.

> We shall return to these points. We appreciate that this consequence of the decision in *R. v Sheffield Crown Court* limits the power under s.66 to correct errors in committals for sentence, but it is unavoidable. If quashing is required this can only be done by a Divisional Court. We have held above that it is open to the judge in the Crown Court, as a DJ(MC), to lay and commit a new charge in the correct form. The relevant Rules Committees should consider whether an expedited and summary procedure could be adopted for the quashing by consent of unlawful committals and sendings which have been overtaken by events."

97. This was further explained at [96]:-

> "If there is an obviously bad committal, the Crown Court has no power to do anything because the origin of its jurisdiction is a committal which is at least valid on its face. If there is no such committal the case has never left the magistrates' court where jurisdiction remains. It will usually be a matter for the prosecution to have the case listed there so that it can be sorted out. The Crown Court has no power to do anything by way of an order to remit a case. It will no doubt inform the magistrates' court what has occurred, but that is not the same thing as making an order in a case where there is no jurisdiction."

98. These observations were made in a case about the proper scope and utility of the power of a Crown Court judge to sit as a DJ(MC) under section 66 of the Courts Act 2003. The court in *Gould* did not engage in an analysis of *Ayhan*, although it did apply it at [44] and [136]. The scope and extent of that decision was not in issue in *Gould.* The court in *Gould* must therefore have used the expression "valid on its face" to include apparently defective orders which are saved by the application of the principle in *Ayhan*. These are effective to give jurisdiction. Further, the court in *Gould* did not engage in detailed consideration of the power to correct errors contained in section 142 of the Magistrates' Court Act 1980. We have explained the utility of that power in this type of case above.

99. We would suggest that, although ascertaining what occurred in the magistrates' court is a matter of fact for the Crown Court in each case the BCM Form will often be a valuable piece of evidence. We have noted above that a good deal of importance is placed on it in the CrimPD and the Better Case Management Revival Handbook. Perhaps even more pertinently, it is a document which should be signed by the DJ(MC) or Legal Adviser there and then. We hope that with digitisation and amendment it will become even more useful in the future as a means of identifying resulting errors in cases which are sent for trial. Such errors do not seem likely to become any less common. It is in the interests of justice that they are not allowed to delay the sentencing of defendants who have pleaded guilty to offences which the magistrates have decided should be dealt with by the Crown Court. The re-affirmation of the decisions in *Hall* and *Ayhan* in this judgment will remove any apparent obstacle to the consideration of this piece of evidence.

Procedural issues in R v. Butt: discussion and decision

100. It is common ground that the BCM Form is an accurate record of what occurred in the magistrates' court. It correctly records the pleas that were entered. The Court validly sent the case to the Crown Court for trial in respect of charges (1)-(3) and committed the appellant to the Crown Court for sentence in respect of charges (4)-(7). The sending sheet erroneously recorded what occurred in the magistrates' court, but that is not of any legal consequence. The decision in *Clark* should not be treated as deciding otherwise.

101. The appellant was then validly tried in the Crown Court on charges (1)-(2). Charges (4)-(7) were remitted to the magistrates' court pursuant to section 25A of the 2020 Act. The effect of the magistrates' court sending charge (3) to the Crown Court under section 51 of the 1998 Act was that the trial of the information charging that offence was to be treated as adjourned under section 10(1) of 1980 Act: section 51(10) of the 1998 Act. When the Crown Court did not deal with it, the magistrates' court was then entitled to set a date for the resumption of the trial, pursuant to section 10(2) of the 1980 Act.

102. Accordingly, aside from the errors in the magistrates' court sending sheet, which are of no legal consequence, there has been only one procedural error in the underlying proceedings. The convictions for the summary offences and the possession of a class A drug were the result of guilty pleas tendered on 8 November 2020. Section 25A of the Sentencing Act 2020 did not come into force until 28 April 2022. Section 2(1) of the Act provides that the Sentencing Code does not apply where a person is convicted of an offence before 1 December 2020. There has, however, been no challenge to this order of the Crown Court and the sentences imposed by the magistrates' court did not have any impact on the appellant, as we have explained. Any challenge would now be long out of time and we do not propose to make any order to correct what has taken place. In this case it would be academic.

103. In the light of the discussion of the underlying principles set out above, the questions raised by the Registrar can be answered shortly:

(1) The magistrates' court had correctly recorded the appellant's pleas in the BCM Form. The pleas were recorded in Part 1 and it is clear from the DJ(MC)'s Note (see [10] above) that they were confirmed at the hearing. This is confirmed by the separate records maintained by the parties. The court correctly sent the case to the Crown Court for trial in respect of those matters to which he had pleaded not guilty, and correctly committed him to the Crown Court for sentence in respect of those matters to which he had pleaded guilty. The fact that there was an error in the sending sheet did not deprive the Crown Court of jurisdiction to deal with the case, because, in fact, that case had been correctly sent and committed to the Crown Court

(2) The sending sheet, conveying as it did that Mr. Butt had been committed for sentence following a guilty plea to dangerous driving, did not have the effect of conferring jurisdiction on the Crown Court to sentence him for dangerous driving. There was an error in the sending sheet, and, in fact, that charge had been validly sent for trial. It was just that the sending sheet was erroneously completed. The appellant was therefore correctly tried, and his conviction for dangerous driving is valid.

(3) The decision in *Clark* does not have the effect that the offence of failing to provide a specimen was actually committed to the Crown Court for sentence. Although that is what the sending sheet said, that was an error, and the offence had instead been sent to the Crown Court for trial. The correction of the record did not cite the correct provision, sections 51(3) and (11), under which that sending occurred, but this also is without legal consequence. This is treated in law as an adjournment of the summary trial. When it was not dealt with in the Crown Court, the magistrates' court was entitled to resume the proceedings. The error does not therefore invalidate the sentence that was subsequently imposed by the magistrates' court.

(4) The committal for sentence in respect of the possession of a class A drug was valid. We have explained at [102] above why the remittal of offences to the magistrates' court is to be treated as valid in this case. For the purposes of this case, this allegation is to be treated as having been validly dealt with in the magistrates' court.

The Appeals on the Merits

Terry Butt

104. Mr Lyons, on behalf of the appellant, contends that sentence was manifestly excessive, and that a suspended sentence order should have been imposed in the light of the length of time between the offence and the trial, the change in the appellant's personal circumstances (he had become a father) and the lack of any offending in the intervening three years.

Discussion

105. In the light of the 3-year delay, the lack of offending during that period, and the change in the appellant's circumstances, it may well have been of assistance to the sentencing judge to have acceded to the appellant's application for a pre-sentence report. Given that he has now been released from custody, we do not consider that a report is now necessary.

106. The statutory maximum for the offence of dangerous driving is 2 years' imprisonment. The Judge correctly recognised that this was not the worst offence of the type, but that it was still "bad". It was aggravated by the appellant's extensive record of previous driving offences (albeit he had not previously been convicted of dangerous driving). The custody threshold was clearly surpassed, as is conceded. The only issue was whether the custodial sentence could be suspended. The sentencing judge took account of the personal mitigation but concluded that appropriate punishment could only be achieved by an immediate custodial sentence. She was in a good position to make that assessment, having conducted the trial, and it was a conclusion she was entitled to draw. Although it would have been preferable if a pre-sentence report had been obtained, we do not consider that the sentence imposed was manifestly excessive or wrong in principle. We therefore dismiss the appeal.

R v Jenkins

107. Mr Smith, on behalf of the appellant, submits that the sentence was manifestly excessive. He contends that the judge was wrong to categorise the case as one of high culpability and higher harm.

108. As to culpability, he points out that the parties had agreed that it was medium culpability: there was no planning, the complainant was not vulnerable and the glass was not a highly dangerous weapon (and the judge was wrong to find that it was).

109. As to harm, Mr Smith accepts that it was a grave injury but submits that it was not life-threatening as the complainant was only in hospital for 2 days. It had resulted in permanent irreversible injury but there was no evidence that it had created a lifelong dependency for third-party care nor caused an inability to carry out normal day-to-day activities. He submits that the judge ought to have placed the case in harm category 2.

110. Finally, Mr Smith submits that the judge placed insufficient weight on the mitigation, and erred in his assessment of dangerousness.

Discussion

The appeal

111. The judge took careful account of the detailed facts of the case, the content of the psychiatric report and pre-sentence report, the victim impact statements and the mitigation that had been presented.

112. The judge was entitled to conclude that the appellant bore high culpability for the offence. He was, in particular, entitled to conclude that Ms Wright was obviously vulnerable due to her personal characteristics. He was also entitled to conclude that a glass – thrust with force into the face and neck of Ms Wright – was, on the facts and circumstances of the case, a highly dangerous weapon. The jury convicted of an offence of wounding with intent to cause really serious harm and therefore decided that he used the glass in this way knowing and intending the effect which it had. That was, to use the phrase in the guideline, "highly dangerous". The fact that the glass was not broken prior to the blow being struck may sometimes suggest a lack of intent to use it as a cutting weapon, but Jenkins had lost on that issue before the jury. He intended that it should break and slice into her neck: that intentional act converted the glass into a "highly dangerous weapon".

113. The judge was also entitled to conclude that this was a case involving category 1 harm. Although Ms Wright only remained in hospital for 2 days, she suffered a life-threatening injury to her neck. She had been left with permanent scarring and significant psychological injury.

114. It follows that the starting point was 12 years' imprisonment, with a range of 10 – 16 years. The offence was aggravated by the appellant's antecedents, the fact that it was committed whilst on bail, and the fact that he was drunk. The judge was entitled to conclude that the aggravating features significantly outweighed such limited mitigation as was available, and to conclude that the shortest custodial term commensurate with the seriousness of the offence was 14 years.

115. In the light of the antecedents, the facts of the instant offence, and the content of the pre-sentence report, the judge was entitled to conclude that the appellant was dangerous, and that an extended licence was required. He was, however, wrong to impose an extended licence period of 6 years. Wounding with intend is a specified violent offence: s306 and paragraph 4 of schedule 18 to the Sentencing Code. The

maximum extended licence period that can be imposed for a specified violent offence is 5 years: section 281(4) of the Sentencing Code.

116. Accordingly, we quash the extended sentence that was imposed by the judge and substitute an extended sentence of 19 years, comprising a custodial term of 14 years and an extended licence period of 5 years.

117. To that very limited extent, the appeal is allowed.

ANNEX TO JUDGMENT

The Magistrates' Courts Act 1980: Plea before venue and rectification of mistakes

17A.— Initial procedure: accused to indicate intention as to plea.

(1) This section shall have effect where a person who has attained the age of 18 years appears or is brought before a magistrates' court on an information charging him with an offence triable either way.
(2) Everything that the court is required to do under the following provisions of this section must be done with the accused present in court.
(3) The court shall cause the charge to be written down, if this has not already been done, and to be read to the accused.
(4) The court shall then explain to the accused in ordinary language that he may indicate whether (if the offence were to proceed to trial) he would plead guilty or not guilty, and that if he indicates that he would plead guilty—

(a) the court must proceed as mentioned in subsection (6) below; and
(b) he may (unless section 17D(2) below were to apply) be committed for sentence to the Crown Court under section 14 or (if applicable) 15 of the Sentencing Code if the court is of such opinion as is mentioned in [subsection (1)(b)][5] of the applicable section.

(5) The court shall then ask the accused whether (if the offence were to proceed to trial) he would plead guilty or not guilty.
(6) If the accused indicates that he would plead guilty the court shall proceed as if—

(a) the proceedings constituted from the beginning the summary trial of the information; and
(b) section 9(1) above was complied with and he pleaded guilty under it.

(7) If the accused indicates that he would plead not guilty section 18(1) below shall apply.
(8) If the accused in fact fails to indicate how he would plead, for the purposes of this section and section 18(1) below he shall be taken to indicate that he would plead not guilty.
(9) Subject to subsection (6) above, the following shall not for any purpose be taken to constitute the taking of a plea—

(a) asking the accused under this section whether (if the offence were to proceed to trial) he would plead guilty or not guilty;
(b) an indication by the accused under this section of how he would plead.

(10) If in respect of the offence the court receives a notice under section 51B or 51C of the Crime and Disorder Act 1998 (which relate to serious or complex fraud cases and to certain cases involving children respectively), the preceding provisions of this section and the provisions of section 17B below shall not apply, and the court shall proceed in relation to the offence in accordance with section 51 or, as the case may be, section 51A of that Act.

142.— Power of magistrates' court to re-open cases to rectify mistakes etc.

(1) A magistrates' court may vary or rescind a sentence or other order imposed or made by it when dealing with an offender if it appears to the court to be in the interests of justice to do so; and it is hereby declared that this power extends to replacing a sentence or order which for any reason appears to be invalid by another which the court has power to impose or make.
(1A) The power conferred on a magistrates' court by subsection (1) above shall not be exercisable in relation to any sentence or order imposed or made by it when dealing with an offender if—

(a) the Crown Court has determined an appeal against—

(i) that sentence or order;

(ii) the conviction in respect of which that sentence or order was imposed or made; or

(iii) any other sentence or order imposed or made by the magistrates' court when dealing with the offender in respect of that conviction (including a sentence or order replaced by that sentence or order); or

(b) the High Court has determined a case stated for the opinion of that court on any question arising in any proceeding leading to or resulting from the imposition or making of the sentence or order.

(2) Where a person is 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.

(2A) The power conferred on a magistrates' court by subsection (2) above shall not be exercisable in relation to a conviction if—

(a) the Crown Court has determined an appeal against—

(i) the conviction; or

(ii) any sentence or order imposed or made by the magistrates' court when dealing with the offender in respect of the conviction; or

(b) the High Court has determined a case stated for the opinion of that court on any question arising in any proceeding leading to or resulting from the conviction.

(3) Where a court gives a direction under subsection (2) above—

(a) the conviction and any sentence or other order imposed or made in consequence thereof shall be of no effect; and

(b) section 10(4) above shall apply as if the trial of the person in question had been adjourned.

……

(5) Where a sentence or order is varied under subsection (1) above, the sentence or other order, as so varied, shall take effect from the beginning of the day on which it was originally imposed or made, unless the court otherwise directs.

The Sentencing Act 2020: committing for sentence

14 Committal for sentence on summary trial of offence triable either way: adults and corporations

(1) This section applies where—

(a) on the summary trial of an offence triable either way a person aged 18 or over is convicted of the offence, and

(b) the court is of the opinion that—

(i) the offence, or

(ii) the combination of the offence and one or more offences associated with it,

was so serious that the Crown Court should have the power to deal with the offender in any way it could deal with the offender if the offender had been convicted on indictment.

This is subject to the provisions mentioned in subsection (4).

(2) The court may commit the offender in custody or on bail to the Crown Court for sentence in accordance with section 21(2).

(3) For powers of the court, where it commits a person under subsection (2), also to commit in respect of other offences, see section 20.

(4) For offences in relation to which this section does not apply see sections 17D and 33 of the Magistrates' Courts Act 1980 (exclusion in respect of certain offences where value involved is small).

(5) This section applies to a corporation as if—

(a) the corporation were an individual aged 18 or over, and

(b) in subsection (2) the words "in custody or on bail" were omitted.

18 Committal for sentence on indication of guilty plea to offence triable either way: adult offenders

(1) Where a magistrates' court—

(a) has convicted an offender aged 18 or over of an offence triable either way following an indication of a guilty plea, and

(b) has sent the offender to the Crown Court for trial for one or more related offences,

it may commit the offender in custody or on bail to the Crown Court to be dealt with in respect of the offence in accordance with section 21(2).

(2) For offences in relation to which subsection (1) does not apply, see section 17D of the Magistrates' Courts Act 1980 (cases where value involved is small).

(3) Where a magistrates' court—

(a) convicts an offender aged 18 or over of an offence triable either way following an indication of a guilty plea, and

(b) is still to determine to send, or whether to send, the offender to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998, for one or more related offences,

it must adjourn the proceedings relating to the offence until after it has made those determinations.

(4) Where the court—

(a) commits the offender under subsection (1) to the Crown Court to be dealt with in respect of the offence, and

(b) in its opinion also has power under section 14(2) or is required under section 15(2) to commit the offender to the Crown Court to be dealt with in respect of the offence,

the court may make a statement of that opinion.

(5) For powers of the court, where it commits a person under subsection (1), also to commit in respect of other offences, see section 20.

(6) For the purposes of this section, a magistrates' court convicts a person of an offence triable either way following an indication of a guilty plea if—

(a) the person appears or is brought before the court on an information charging the person with the offence,

(b) the person or (where applicable) the person's representative indicates under—

(i) section 17A or 17B of the Magistrates' Courts Act 1980 (indication of intention as to plea in case of offence triable either way), or

(ii) section 20(7) of that Act (summary trial appears more suitable),

that the person would plead guilty if the offence were to proceed to trial, and

(c) proceeding as if—

(i) section 9(1) of that Act were complied with, and

(ii) the person pleaded guilty under it,

The court convicts the person of the offence.

(7) For the purposes of this section—

(a) *"related offence"* means an offence which, in the opinion of the court, is related to the offence, and

(b) one offence is related to another if, were they both to be prosecuted on indictment, the charges for them could be joined in the same indictment.

(8) In doing anything under or contemplated by this section, the court is not bound by any indication of sentence given in respect of the offence under section 20 of the Magistrates' Courts Act 1980 (procedure where summary trial appears more suitable).

(9) Nothing the court does under this section may be challenged or be the subject of any appeal in any court on the ground that it is inconsistent with an indication of sentence.

20 Committal in certain cases where offender committed in respect of another offence

(1) This section applies where a magistrates' court ("the committing court") commits an offender to the Crown Court under—

(a) sections 14 to 19 (committal for sentence for indictable offences),

(b) paragraph 5(4) of Schedule 2 (further offence committed by offender given conditional discharge order),

(c) paragraph 24(2) of Schedule 10 (committal to Crown Court where offender convicted of further offence while community order is in force),

(d) paragraph 11(2) of Schedule 16 (committal to Crown Court where offender commits further offence during operational period of suspended sentence order),

(e) section 43 of the Mental Health Act 1980 (power of magistrates' courts to commit for restriction order),

(f) section 6(6) or 9(3) of the Bail Act 1976 (committal to Crown Court for offences of absconding by person released on bail or agreeing to indemnify sureties in criminal proceedings), or

(g) the Vagrancy Act 1824 (incorrigible rogues),

to be sentenced or otherwise dealt with in respect of an offence ("the relevant offence").

(2) Where—

(a) the relevant offence is an indictable offence, and

(b) the committing court has power to deal with the offender in respect of another offence,

the committing court may also commit the offender to the Crown Court to be dealt with in respect of the other offence in accordance with section 23.

(3) It is immaterial for the purposes of subsection (2) whether the court which convicted the offender of the other offence was the committing court or another court.

(4) Where the relevant offence is a summary offence, the committing court may commit the offender to the Crown Court to be dealt with, in accordance with section 23, in respect of—

(a) any other offence of which the committing court has convicted the offender which is punishable with—

(i) imprisonment, or

(ii) driving disqualification, or

(b) any suspended sentence in respect of which it falls to the committing court to deal with the offender by virtue of paragraph 11(1) of Schedule 16.

(5) For the purposes of subsection (4)(a) an offence is punishable with driving disqualification if the committing court has a power or duty to order the offender to be disqualified under section 34, 35 or 36 of the Road Traffic Offenders Act 1988 (disqualification for certain motoring offences) in respect of it.

(6) A committal to the Crown Court under this section is to be in custody or on bail as the case may require.

The Crime And Disorder Act 1998: Sending for Trial

50A Order of consideration for either-way offences

(1) Where an adult appears or is brought before a magistrates' court charged with an either-way offence (the "relevant offence"), the court shall proceed in the manner described in this section.
(2) If notice is given in respect of the relevant offence under section 51B or 51C below, the court shall deal with the offence as provided in section 51 below.
(3) Otherwise—

(a) if the adult (or another adult with whom the adult is charged jointly with the relevant offence) is or has been sent to the Crown Court for trial for an offence under section 51(2)(a) or 51(2)(c) below—

(i) the court shall first consider the relevant offence under subsection (3), (4), (5) or, as the case may be, (6) of section 51 below and, where applicable, deal with it under that subsection;

(ii) if the adult is not sent to the Crown Court for trial for the relevant offence by virtue of sub-paragraph (i) above, the court shall then proceed to deal with the relevant offence in accordance with sections 17A to 23 of the 1980 Act;

(b) in all other cases—

(i) the court shall first consider the relevant offence under sections 17A to 20 (excluding subsections (8) and (9) of section 20) of the 1980 Act;

(ii) if, by virtue of sub-paragraph (i) above, the court would be required to proceed in relation to the offence as mentioned in section 17A(6), 17B(2)(c) or 20(7) of that Act (indication of guilty plea), it shall proceed as so required (and, accordingly, shall not consider the offence under section 51 or 51A below);

(iii) if sub-paragraph (ii) above does not apply—

(a) the court shall consider the relevant offence under sections 51 and 51A below and, where applicable, deal with it under the relevant section;

(b) if the adult is not sent to the Crown Court for trial for the relevant offence by virtue of paragraph (a) of this sub-paragraph, the court shall then proceed to deal with the relevant offence as contemplated by section 20(9) or, as the case may be, section 21 of the 1980 Act.

(4) Subsection (3) above is subject to any requirement to proceed as mentioned in subsections (2) or (6)(a) of section 22 of the 1980 Act (certain offences where value involved is small).
(5) Nothing in this section shall prevent the court from committing the adult to the Crown Court for sentence pursuant to any enactment, if he is convicted of the relevant offence.

51 Sending cases to the Crown Court: adults

(1) Where an adult appears or is brought before a magistrates' court ("the court") charged with an offence and any of the conditions mentioned in subsection (2) below is satisfied, the court shall send him forthwith to the Crown Court for trial for the offence.
(2) Those conditions are—

(a) that the offence is an offence triable only on indictment other than one in respect of which notice has been given under section 51B or 51C below;

(b) that the offence is an either-way offence and the court is required under section 20(9)(b), 21, 22A(2)(b), 23(4)(b) or (5) or 25(2D) of the Magistrates' Courts Act 1980][2] to proceed in relation to the offence in accordance with subsection (1) above;

(c) that notice is given to the court under section 51B or 51C below in respect of the offence.

(3) Where the court sends an adult for trial under subsection (1) above, it shall at the same time send him to the Crown Court for trial for any either-way or summary offence with which he is charged and which—

(a) (if it is an either-way offence) appears to the court to be related to the offence mentioned in subsection (1) above; or

(b) (if it is a summary offence) appears to the court to be related to the offence mentioned in subsection (1) above or to the either-way offence, and which fulfils the requisite condition (as defined in subsection (11) below).

(4) Where an adult who has been sent for trial under subsection (1) above subsequently appears or is brought before a magistrates' court charged with an either-way or summary offence which—

(a) appears to the court to be related to the offence mentioned in subsection (1) above; and

(b) (in the case of a summary offence) fulfils the requisite condition,

the court may send him forthwith to the Crown Court for trial for the either-way or summary offence.

(5) Where—

(a) the court sends an adult ("A") for trial under subsection (1) or (3) above;

(b) another adult appears or is brought before the court on the same or a subsequent occasion charged jointly with A with an either-way offence; and

(c) that offence appears to the court to be related to an offence for which A was sent for trial under subsection (1) or (3) above,

the court shall where it is the same occasion, and may where it is a subsequent occasion, send the other adult forthwith to the Crown Court for trial for the either-way offence.

(6) Where the court sends an adult for trial under subsection (5) above, it shall at the same time send him to the Crown Court for trial for any either-way or summary offence with which he is charged and which—

(a) (if it is an either-way offence) appears to the court to be related to the offence for which he is sent for trial; and

(b) (if it is a summary offence) appears to the court to be related to the offence for which he is sent for trial or to the either-way offence, and which fulfils the requisite condition.

(7) Where—

(a) the court sends an adult ("A") for trial under subsection (1), (3) or (5) above; and

(b) a child or young person appears or is brought before the court on the same or a subsequent occasion charged jointly with A with an indictable offence for which A is sent for trial under subsection (1), (3) or (5) above, or an indictable offence which appears to the court to be related to that offence,

the court shall, if it considers it necessary in the interests of justice to do so, send the child or young person forthwith to the Crown Court for trial for the indictable offence.

(8) Where the court sends a child or young person for trial under subsection (7) above, it may at the same time send him to the Crown Court for trial for any indictable or summary offence with which he is charged and which—

(a) (if it is an indictable offence) appears to the court to be related to the offence for which he is sent for trial; and

(b) (if it is a summary offence) appears to the court to be related to the offence for which he is sent for trial or to the indictable offence, and which fulfils the requisite condition.

(9) Subsections (7) and (8) above are subject to sections 24A and 24B of the Magistrates' Courts Act 1980 (which provide for certain cases involving children and young persons to be tried summarily).

(10) The trial of the information charging any summary offence for which a person is sent for trial under this section shall be treated as if the court had adjourned it under section 10 of the 1980 Act and had not fixed the time and place for its resumption.

(11) A summary offence fulfils the requisite condition if it is punishable with imprisonment or involves obligatory or discretionary disqualification from driving.

(12) In the case of an adult charged with an offence—

(a) if the offence satisfies paragraph (c) of subsection (2) above, the offence shall be dealt with under subsection (1) above and not under any other provision of this section or section 51A below;

(b) subject to paragraph (a) above, if the offence is one in respect of which the court is required to, or would decide to, send the adult to the Crown Court under—

(i) subsection (5) above; or

(ii) subsection (6) of section 51A below,

the offence shall be dealt with under that subsection and not under any other provision of this section or section 51A below.

(13) The functions of a magistrates' court under this section, and its related functions under section 51D below, may be discharged by a single justice.