



Judicial Studies Board

JSB's Adult Court Bench Book – March 2006 update

The following pages of the Adult Court Bench Book have been revised in the light of a number of legislative changes, listed below.

1. To amend the checklist and pronouncements touching on bail, to reflect the 'restriction on bail scheme' being rolled out across the country as a result of the Criminal Justice Act 2003 and the Drugs Act 2005.
2. To reflect the changes brought about by national roll-out of the Courts Act 2003 Fines Collection Scheme.
3. To reflect changes brought about by the Serious Organised Crime and Police Act 2005 to the issuing of warrants to enter premises and search for evidence under section 8 of the Police and Criminal Evidence Act 1984.

These sections will also be issued on paper, as part of a substantial revision of the Adult Court Bench Book later in 2006. In the meantime, in an attempt to make the updating task as straightforward as possible, the attached pdf has been put together to allow, with double sided printing, for the replacement of the following pages:

REMOVE	REPLACE WITH
SECTION 1 – CHECKLISTS	
1-21 – 1-27	1-21 – 1-28
1-49 – 1-52	1-49 – 1-52b
SECTION 3 – PRONOUNCEMENTS	
3-12 – 3-25	3-21 – 3-25a
3-47 – 3-52	3-47 – 3-52
3-131 – 3-136	3-131 – 3-136
SECTION 4 – THE MAGISTRATE AT HOME	
4-23 – 4-24	4-23 – 4-24

The following is a list of those checklists and pronouncements to which changes have been made.

Section 1 - Checklists

Bail Decision – A Structured Approach

Pages 1-21 to 1-27 have been replaced with pages 1-21 to 1-28

Fine Enforcement – A Structured Approach

Pages 1-49 to 1-52 have been replaced with pages 1-49 to 1-52b

Section 3 - Pronouncements

7. Remand on Conditional Bail

Pages 3-22 to 3-23 have been replaced with pages 3-22 to 3-23a

8. Remand in Custody

Pages 3-24 to 3-25 have been replaced with pages 3-24 to 3-25a (including 3-24a)

18. Compensation as a sentence in its own right

Pages 3-48 to 3-49 have been replaced with pages 3-48 to 3-49a

19. Fines and Ancillary Orders of Compensation and Costs

Pages 3-50 to 3-52 have been replaced with pages 3-50 to 3-52 (now including pages 3-51a and 3-51b)

57. Deductions from Benefits Order (DBO)

Pages 3-132 to 3-133 have been replaced with pages 3-132 to 3-133

58. Attachment of Earnings Order (AEO)

Pages 3-134 to 3-135 have been replaced with pages 3-134 to 3-135

Section 4 – The Magistrate at Home

Pages 4-23 to 4-24 have been replaced with pages 4-23 to 4-24

Any queries about the new material should be e-mailed to

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Bail Decision – A Structured Approach

SHOULD THE CASE BE ADJOURNED?

When considering applications to adjourn you should remember that all adjournments are a matter for the court. Each application requires a judicial decision and should be considered carefully.

You need to be satisfied that any adjournment has a clear objective and is for the shortest period necessary. You must ensure that the case proceeds as expeditiously as is consistent with the interests of justice and the fair trial provisions in Article 6 of the Convention.

Therefore, before deciding on the remand status of the defendant, consider whether the case needs to be adjourned at all.

(see Case Management Checklist on page 1–11 for further guidance)

IS A REMAND REQUIRED?

At each hearing you must consider whether or not the defendant ought to be remanded. A remand can be on bail or in custody.

In some cases a simple adjournment, which places no restrictions on the defendant, will be sufficient.

However, you must remand:

- on the adjournment of committal proceedings, or
- if the defendant is 18 years of age or over and is charged with an either way offence and on their first appearance appeared from custody or in answer to bail, or has previously been remanded in the proceedings.

WHAT ARE THE PRELIMINARY ISSUES?

How old is the defendant?

Defendants under 18 years of age may sometimes appear before the Adult Court. Provisions for the remand of 17 year olds are the same as for adults. But if the defendant is under 17 years old different considerations apply and you should seek legal advice. *(see Youth Remands Checklist on page 1–63).*

Is the defendant legally represented?

The issue of legal representation should be dealt with at an early stage in the hearing. A defendant should not be remanded in custody unless they are legally represented or have been given the opportunity to apply for a representation order and have failed or refused to do so.

Is there a right to apply for bail?

Defendants do not have an unfettered right to make repeated bail applications – your legal adviser will be able to advise on whether a ‘full’ bail application has been made previously and whether (and on what basis) a further application may be made.

Is the offence imprisonable or non-imprisonable?

A remand in custody for a non-imprisonable offence will be comparatively rare and the grounds on which bail may be withheld are more limited than those for imprisonable offences.

OBTAIN SUFFICIENT INFORMATION

Adjournment and bail hearings are **inquisitorial** and you should not decide any issue until satisfied that you have been provided with all relevant information.

The legal adviser will provide details of the case history including the results of any previous bail hearings and the reasons given for those decisions.

The prosecution will provide you with details of the allegation(s), any previous convictions, the results of any drug tests, and their representations as to bail.

The defence will provide details of the defence version of the allegation(s), the defendant’s circumstances and their representations as to bail.

The court should listen to the representations of the prosecution and defence, but is not restricted by what they say. You have a right and a duty to ensure that you have all the information needed to make the decision. You can therefore **ask questions** to ensure that you have all the information you need.

DOES THE RIGHT TO BAIL APPLY?

The starting point for most bail decisions is that the defendant has a right to unconditional bail.

The presumption does not apply:

- in extradition proceedings or in connection with a warrant issued in the Republic of Ireland,
- following committal to the Crown Court for sentence or for breach of a Crown Court order,
- after conviction, unless the proceedings are adjourned for enquiries to be made or a report to be prepared for sentence,
- on appeal against conviction or sentence.

Where the defendant has **tested positive for heroin, cocaine or crack cocaine** and is unwilling to undergo an assessment into their drug misuse and/or any proposed follow-up treatment, special rules apply. In this situation, the defendant cannot be granted bail unless the court is satisfied that there is no significant risk of an offence being committed on bail.

CAN THE COURT GRANT BAIL?

Bail may only be granted in **exceptional circumstances** where a defendant is charged with or convicted of an offence of:

- murder, or
- attempted murder, or
- manslaughter, or
- rape, or
- attempted rape, **and**
- the defendant has been previously convicted in the UK of any such offence or of culpable homicide. (If the previous conviction was manslaughter or culpable homicide the provision only applies if they received a sentence of imprisonment/long-term detention).

On granting bail you would need to explain the basis for the finding of exceptional circumstances.

IS UNCONDITIONAL BAIL APPROPRIATE?

In most cases unconditional bail is *prima facie* the defendant's right unless:

- this is a case where bail may only be granted in exceptional circumstances (see above),
- grounds exist for imposing bail conditions,
- grounds exist for refusing bail and remanding in custody.

Unconditional bail imposes an obligation on the defendant to attend court on the correct date and time, it does not impose any further restrictions on them.

Do you have any concerns? What are the risks?**IS CONDITIONAL BAIL APPROPRIATE?**

Conditions may be added to the defendant's bail **only** if **necessary**:

- to ensure attendance at court,
- to prevent offending on bail,
- to prevent interference with witnesses or obstruction of the course of justice,
- for their own protection (or, if a youth, their own welfare or in their own interests),
- to ensure they are available for enquiries or reports,
- to ensure they attend an appointment with their legal representative before the next hearing.

'Necessary' means **a real not fanciful risk** of one of the above occurring.

Any conditions must be:

- designed solely to achieve one or more of the above,
- clear, precise, unambiguous and easily understood,
- practical,
- enforceable, and
- reasonable.

On granting bail with conditions you must explain the purpose of imposing conditions and the specific reasons for applying conditions.

In addition to any other conditions, where:

- the defendant has **tested positive for heroin, cocaine or crack cocaine;**
- a link is established between the defendant's drug misuse and offending; and
- the defendant:
 - agrees to undergo a drug assessment and comply with any follow-up proposed; or
 - following an assessment, has had follow-up treatment proposed, and agrees to participate in the relevant follow-up treatment,

the court granting bail **must** impose a bail condition that the defendant undergo a drug assessment and/or participates in any relevant follow-up treatment.

If the defendant does not agree to a drug assessment and/or follow-up, the court can only grant bail if satisfied that there is no significant risk of the defendant offending whilst on bail.

Do you have any concerns? What are the risks?

ARE THE EXCEPTIONS TO THE RIGHT TO BAIL MADE OUT?

REMAND IN CUSTODY – IMPRISONABLE OFFENCES

Bail may only be withheld if one or more of the following exceptions to the right to bail apply.

1. **Substantial grounds** exist for believing that if bailed (with or without conditions) the defendant would:
 - fail to surrender to custody, and/or
 - commit an offence on bail, and/or
 - interfere with witnesses or obstruct the course of justice.
2. The charge is indictable/either way and is allegedly committed on bail.

In respect of the above exceptions the court must consider:

- the nature and seriousness of the offence,
- the likely sentence,
- how the defendant has responded to bail in the past,
- the strength of the prosecution evidence,
- the defendant's character, antecedents, associations and community ties,
- any other relevant considerations.

Bail may also be withheld where one or more of the following exceptions to the right to bail apply.

3. It has not been practicable to obtain sufficient information to make a bail decision.
4. The defendant has been arrested for failing to surrender to custody or breach of bail conditions in the same proceedings.
5. The defendant is already serving a custodial sentence.
6. It is necessary for the defendant's own protection (or if a youth, for own welfare).
7. The defendant has tested positive for heroin, cocaine or crack cocaine, and has refused to agree to a drug assessment and/or follow up treatment. In this situation, the defendant may not be granted bail unless the court is satisfied that there is no significant risk of the defendant committing an offence whilst on bail.

REMAND IN CUSTODY – NON-IMPRISONABLE OFFENCES

Bail may only be withheld if one or more of the following exceptions to the right to bail apply.

1. Defendant arrested for failing to surrender to custody or breach of bail conditions in the same proceedings **and** the court is satisfied that there are substantial grounds for believing that if released on bail (with or without conditions) they would fail to surrender to custody, commit an offence whilst on bail, or interfere with witnesses or otherwise obstruct the course of justice.
2. Defendant serving a custodial sentence.
3. Necessary for the defendant's own protection (or if a youth, for own welfare).
4. Defendant has previously in any proceedings failed to surrender to custody and because of that is likely to fail to do so again.

Where bail is withheld, you must announce the statutory exceptions to bail that have been found and give specific reasons for finding each exception.

Your legal adviser will be able to provide advice on matters including maximum remand periods, human rights issues and assist with the preparation of reasons.

WHAT ARE THE HUMAN RIGHTS CONSIDERATIONS?

Article 5 (Right to liberty and security), **Article 8** (Right to respect for private and family life) and **Article 6** (Right to fair trial) will often be engaged when dealing with bail and should be borne in mind throughout the bail decision.

When you have reached a provisional decision as to bail always consider whether any of the rights under the Convention are engaged and if so whether any restriction is one that is allowed by the Convention (*see Human Rights Checklist on page 1–1*).

REASONS AND PRONOUNCEMENT

You should use the pronouncements contained in this Bench Book as the basis for your pronouncement.

Reasons must be given and recorded where:

- conditions of bail are imposed,
- bail is withheld,
- bail is granted and the prosecutor has made representations against the granting of bail.

A defendant who is remanded in custody should be informed of their right to appeal against that decision.

**ADDITIONAL
CONSIDERATIONS IF
THE DEFENDANT HAS
COMMITTED A BAIL ACT
OFFENCE IN THE
PROCEEDINGS**

- When a defendant has been convicted of a Bail Act offence during the proceedings, the court should review the remand status of the defendant. This will include consideration of the conditions of their bail or whether they should be remanded in custody.
- Failure by the defendant to surrender or a conviction for failing to surrender to bail will be a significant factor weighing against the re-granting of bail.

**PROSECUTION RIGHT
OF APPEAL**

The prosecution has a right of appeal against the grant of bail in certain circumstances (seek legal advice).

Where these provisions apply the prosecutor can serve oral notice of an intention to appeal to the Crown Court against the decision to grant bail. Where such a notice is served the magistrates must remand the defendant in custody. The prosecutor then has two hours in which to serve a written notice of appeal. If a written notice is not served the defendant will be bailed on the terms originally decided by the magistrates. If the written notice is served, the defendant will be remanded in custody and an expedited bail hearing will be arranged at the Crown Court.

Fine Enforcement – A Structured Approach

IS THE DEFAULTER PRESENT?

NO?

- Consider **transfer** only if defaulter lives in another area and other enforcement methods cannot be used. There is a presumption that fines are not transferred routinely because enforcement can often be dealt with effectively at a distance.
- Consider an **adjournment** if there is a reasonable explanation and the defaulter is not defined as an existing defaulter (see below).
- Consider issuing an **arrest or distress warrant** (seek the advice of your legal adviser before issuing a warrant).

YES?

- The approach to fine enforcement now depends on whether or not a collection order is in force. Many defaulters will no longer come before the court because responsibility for managing enforcement under a collection order lies with the Fines Officer. If a collection order is in force, the court will only interfere with it where it is referred back to court by the Fines Officer.

WAS A COLLECTION ORDER MADE ON IMPOSITION?

NO?

If the court did not make a collection order on imposition, you must make a collection order now unless it is impractical or inappropriate to do so. If you do not make a collection order, the court will proceed to enforce the sum in the usual way using its standard powers. Similarly, if the court discharges a collection order, it is able to exercise any of its standard powers.

YES?

A collection order enables the **Fines Officer** to impose enforcement sanctions if the defendant fails to pay as ordered. The offender can make application to the Fines Officer to vary the payment terms or the reserve terms (see below). In addition, the Fines Officer can impose the following sanctions under Further Steps if the offender defaults on the fine:

- Issuing a distress warrant.

- Registering the fine with the Register of Fines and Judgements.
- Making an attachment of earnings order.
- Making a deductions from benefits order.
- Clamping the offender's vehicle.

Any **appeal against the Fines Officer's decision** regarding the variation of payment or reserve terms or the issue of a Further Steps Notice must be referred to court. In these situations, you may:

- Confirm or vary the payment or reserve terms.
- Confirm, vary or quash the further steps notice.
- Make an attachment of earnings order.
- Make a deductions from benefits order.
- Discharge the collection order and exercise any of the court's standard powers of enforcement.
- Exercise any of the court's standard powers of enforcement.

The advice of your legal adviser should always be sought as to when these powers may be used.

At any stage, the Fines Officer can **refer a case back to court**. In this situation, you may:

- Confirm or vary payment or reserve terms.
- Exercise any of the court's standard powers of enforcement.
- Increase any fine by up to 50% if default is due to wilful refusal/culpable neglect.
- (*Where available*) impose fines payment work.
- Order the sale of a clamped vehicle owned by the defaulter.
- Impose custody.

The advice of your legal adviser should always be sought as to when these powers may be used.

**IS THE DEFAULTER
DEFINED AS AN
EXISTING DEFAULTER?**

An existing defaulter is someone who is in default on a collection order or of payment of any other sum for which a collection order has not been made. A person is in default on a collection order if they fail to pay in accordance with the payment terms or the reserve terms on or before the date required to be paid.

An existing default can only be disregarded if the defaulter shows that there is adequate reason to do so.

- If the defaulter is employed/in receipt of benefits you **must** make an attachment of earnings order/deductions from benefit order unless it is impracticable or inappropriate to do so. Where a collection order is in force, you must also fix reserve terms for payment in case the attachment of earnings order/deductions from benefits order is not successful.
- If the court determines that previous default can be disregarded (and such circumstances will be rare) you should continue the means enquiry. Consider the statement of means provided (it is an offence to fail to provide a statement of financial circumstances on request). The suggested fines in the Magistrates' Court Sentencing Guidelines are based on the defendant's weekly take home pay/benefit and take into account ordinary living expenses. Outgoings are only relevant if they are out of the ordinary and substantially reduce ability to pay, leading to undue hardship.

WHAT IS THE HISTORY OF THE CASE?

Has the defaulter failed to pay as ordered?

The legal adviser should be able to outline answers to the following questions from the court records.

- Was the defaulter present when the fine was imposed and did the sentencing court have full details as to means?
- When was the order made?
- What was it for?
- How much was the original order?
- What is the outstanding balance?
- What is the nature of the balance – fine/costs/compensation?
- Are there other fines outstanding?
- What are the payment terms?
- How much has been paid and when?
- What is the enforcement action to date; what enforcement methods have been tried?
- What were the findings and expectations of the court at previous hearings?

Why has the defaulter not paid as ordered?

During the means inquiry you will want to establish answers to the following questions.

- What are the defaulter's means today?
- What are the defaulter's essential expenses?
- Can the defaulter pay in full or in part today?
- Have the defaulter's circumstances changed since the fines were imposed or the last enforcement action taken?

CAN THE AMOUNT BE PAID IN FULL?

All financial penalties are to be paid immediately unless the court grants time to pay. Therefore you should always seek to obtain payment in full. Consider all available methods of payment – these may include payment on a credit card.

You may consider imposing custody forthwith if you are satisfied that the defaulter has the means to pay in full but has not paid. However, the circumstances when this is appropriate will be rare. Other non-custodial options should be considered first (see further guidance below) and always seek the advice of your legal adviser.

CAN THE COURT CONSIDER REMISSION IN WHOLE OR IN PART?

There are two circumstances where the court can consider remission in whole or in part of a fine. **These provisions do not apply to costs, compensation or other penalties, e.g. back duty.**

Was the defaulter present when the fine was imposed? Did the sentencing court know the defaulter's means?

If the answer is NO to both of these questions and you consider that a lesser amount would have been ordered if the original court had known the defaulter's means then you have power to remit the whole or part of the fine.

Has there been a substantial change for the worse in the defaulter's circumstances?

If the answer is YES and you consider it just to do so you have power to remit all or part of the fine.

Notes.

- You need to announce **reasons** for remission.

-
- IS THERE WILFUL REFUSAL OR CULPABLE NEGLIGENCE TO PAY?**
- Seek legal advice if the fine was imposed by the Crown Court – that court will need to consent to any remission.
- Consider the information/evidence you have heard and decide whether you are satisfied beyond reasonable doubt that the default is due to:
- **wilful refusal to pay (deliberate refusal), or**
 - **culpable neglect to pay (reckless disregard).**
- If you are satisfied that the default is due to wilful refusal or culpable neglect to pay you must **announce your findings** so that they can be recorded on the court record.
- HAVE YOU CONSIDERED ALL AVAILABLE NON-CUSTODIAL OPTIONS?**
- Consider the following.**
- What other orders have been tried?
 - Have they been successful or are likely to be in the future? If not, why not?
 - What orders have not been tried? Are they likely to be successful? If not, why not?
 - Consider whether a non-custodial option can be used. If so, which one?
- Non-custodial options include the following.**
- Payment forthwith.
 - Adjournment on terms.
 - Further order for payment with a review hearing.
 - Distress warrant – suspended or forthwith.
 - Supervision (Money Payment Supervision Order MPSO).
 - Attachment of earnings order.
 - Deduction from benefits.
 - Enforcement in the County or High Court
 - Attendance Centre Order if defaulter under 25 years.
- The court can also consider:**
- Detention in the court until the court rises,
 - Detention at the police station until later in the day or overnight.

**WHEN CAN YOU
CONSIDER USE OF
CUSTODY OR
DETENTION?**

Always seek the advice of your legal adviser before imposing custody – the maximum terms of custody are specified by statute.

The court can only impose custody or detention in default if satisfied that:

- the default is due to **wilful refusal or culpable neglect** to pay, *and*
- the court has **considered or tried all other non-custodial methods** of enforcing the sum and they have been unsuccessful or are inappropriate.

And if the defaulter is under 21 and an MPSO has not been tried the court must place the defaulter under supervision unless satisfied that is undesirable or impractical.

Custodial options include:

- immediate imprisonment/detention, and
- suspended imprisonment/detention on terms.

If a suspended term would secure payment, then the court must suspend.

**ANNOUNCE FINDINGS
AND ORDER**

If the court imposes a custodial option the court's reasons need to include the following.

- The basis on which you have found wilful refusal/culpable neglect.
- For each non-custodial option – why they have been unsuccessful or are inappropriate.
- Why the term has not been suspended.
- If the defaulter is under 21 and an MPSO has not been tried – why an MPSO is undesirable or inappropriate.

6. Remand on Unconditional Bail

Your case cannot go ahead today because *[state reasons for adjournment]*.

You must come back to court on [...] at [...].

At the next hearing we expect *[state what the court expects to happen at the next hearing]*.

We are also making the following directions [...].

You are granted bail.

You will shortly be able to leave the court but must come back to court on [...] at [...].

[If the prosecutor opposed bail, explain why you have granted it.]

If you do not come back to court, you will be committing an offence, a warrant may be issued for your arrest and you may be fined or sent to prison.

If you commit an offence before the next hearing, you will be sentenced more heavily for it because you are on bail.

Do you understand?

As soon as you have received your written bail notice you may leave the court.

7. Remand on Conditional Bail

NOTES

- Consider first whether an adjournment is necessary. **See Case Management Checklist on page 1-11 for further guidance.**
- **For the guidance on the structure of a bail decision, see Bail Checklist on page 1-21.**
- The starting point for most bail decisions is that the defendant is entitled to unconditional bail.
- Bail conditions may be imposed if they are necessary:
 - to ensure attendance at court,
 - to prevent offending on bail,
 - to prevent interference with witnesses or obstruction of the course of justice,
 - for the defendant's protection (or, if a youth, their own welfare or in their own interests),
 - to ensure the defendant is available for enquiries or reports,
 - to ensure the defendant attends an appointment with their legal representative before the next hearing.
- *(If applicable:)* Where the defendant has tested positive for heroin, cocaine or crack cocaine and a link is established between the defendant's drug misuse and offending, the court must impose a bail condition that the defendant undergoes a drug assessment and/or participates in any follow-up treatment proposed if the defendant so agrees. If the defendant does not agree to assessment and/or follow-up, the court can only grant bail if satisfied that there is no significant risk of the defendant offending whilst on bail.
- Bail conditions must be proportionate to the risks identified and clear and precise in order that they can be effectively enforced.
- The reasons for imposing bail conditions must be announced in court.
- If bail is granted and the prosecutor has made representations against the granting of bail, the court must give reasons for granting bail.
- Advice should be sought from the legal adviser if the defendant is charged with murder, attempted murder, manslaughter, rape or attempted rape because additional provisions apply.
- Breach of bail conditions is not an offence. A defendant who is alleged to have breached conditions of bail can be arrested and brought before the court. If the breach is proved, the court can consider whether to grant bail on the same or different terms, or to remand in custody.
- Post conviction, bail can only be imposed for a maximum of 28 days.

7. Remand on Conditional Bail

Your case cannot go ahead today because [*state reasons for adjournment*].

You must come back to court on [...] at [...].

At the next hearing we expect [...].

We are also making the following directions [...].

You are granted bail with the following conditions:

(If applicable:) You have tested positive for heroin, cocaine or crack cocaine. You must be assessed to see whether you are dependent on or likely to misuse any of these drugs

(and/or)

You must receive whatever assistance or treatment your assessor considers appropriate for this misuse.

Do you agree to this condition being imposed?

[Give details of attendance for assessment and/or follow-up as required].

[Give details of other bail conditions imposed].

We have put these conditions on your bail because we believe they are necessary to make sure:

[you attend court]

(and/or)

[you do not commit any offences while on bail]

(and/or)

[you do not interfere with witnesses or obstruct the course of justice]

(and/or)

[you attend appointments so that the report the court has asked for is ready for the next hearing]

(and/or)

[we are imposing these conditions [for your own protection/welfare][in your own interests]]

[Explain why you find the above grounds to be satisfied in this case. If the prosecutor opposed bail, explain why you have granted bail.]

7. Remand on Conditional Bail

If you do not obey the conditions the police may arrest you and bring you back before the court in custody.

If you do not come back to court, you will be committing an offence, a warrant may be issued for your arrest and you may be fined or sent to custody.

(If applicable:) Your trial may also take place in your absence.

If you commit an offence before the next hearing, you will be sentenced more heavily for it because you are on bail.

Do you understand?

As soon as you have received your written bail notice you may leave the court.

8. Remand in Custody

NOTES

- Consider first whether an adjournment is necessary – **see Case Management Checklist on page 1-11 for further guidance.**
- **For the guidance on the structure of a bail decision, see Bail Checklist on page 1-21.**
- Different provisions apply to defendants who are under 17 years of age.
- A defendant should not be remanded in custody unless they are legally represented or have been given the opportunity to apply for a representation order and have failed or refused to do so.
- The starting point for most bail decisions is that the defendant is entitled to unconditional bail.
- For imprisonable offences bail may only be withheld if:
 1. **Substantial grounds** exist for believing that if bailed (with or without conditions) the defendant would:
 - fail to surrender to custody, and/or
 - commit an offence on bail, and/or
 - interfere with witnesses or obstruct the course of justice.
 2. The charge is indictable/either way and is allegedly committed on bail.
In respect of the above exceptions the court must consider:
 - the nature and seriousness of the offence,
 - the likely sentence,
 - how the defendant has responded to bail in the past,
 - the strength of the prosecution evidence,
 - the defendant’s character, antecedents, associations and community ties,
 - any other relevant considerations.
 3. It has not been practicable to obtain sufficient information to make a bail decision.
 4. The defendant has been arrested for breach of bail conditions in the same proceedings.
 5. The defendant is already serving a custodial sentence.
 6. It is necessary for the defendant’s own protection (or if a youth, for their own welfare).
 7. The defendant has tested positive for heroin, cocaine or crack cocaine, a link is established between the defendant’s drug misuse and offending, and the defendant has refused to agree to a drug assessment and/or follow up treatment. In this situation, the defendant may not be granted bail unless the court is satisfied that there is no significant risk of the defendant committing an offence whilst on bail.

- The grounds on which bail may be withheld for non-imprisonable offences are more limited than those for imprisonable offences.
- Where bail is withheld, the statutory exceptions to bail that have been found and specific reasons for finding each exception must be announced in court.
- **Your legal adviser will be able to provide advice on matters including maximum remand periods, human rights issues and be able to assist with the preparation of reasons.**

8. Remand in Custody

Your case cannot go ahead today because *[state reasons for adjournment]*.

Your case will be listed again in court on [...] at [...].

At the next hearing we expect [...].

We are also making the following directions [...].

You are remanded in custody until [...].

(EITHER:)

We have not granted you bail because we have substantial grounds to believe that if granted bail you will:

- not come back to court, *(and/or)*
- commit an offence on bail, *(and/or)*
- interfere with witnesses or otherwise obstruct the case.

We believe this because of:

- the type of offence alleged, how serious it is and the probable method of finally dealing with the case, *(and/or)*
- your criminal record and personal background, *(and/or)*
- your lack of strong links within the community, *(and/or)*
- the fact that you have previously failed to answer bail, *(and/or)*
- the strength of the evidence against you, *(and/or)*
- [...].

(OR:)

- We are satisfied that you should be kept in custody for your own protection (or welfare if a youth), *(or)*
- We are satisfied that it has not been practicable to obtain sufficient information to reach a decision about bail because of lack of time, *(or)*
- You are already a serving prisoner.
- You have tested positive for heroin, cocaine or crack cocaine, have refused to agree to a drug assessment and/or follow-up treatment, and we are satisfied that there is a significant risk of you committing an offence whilst on bail because *[give reasons]*.

(If applicable:) The next hearing will take place over a live television link.

8. Remand in Custody

You will not be produced to court that day but will be able to take part in the proceedings in the same way as if you were here.

Cameras, microphones and television screens will be arranged for everybody.

This will be further explained to you before the next hearing.

17. Conditional Discharge

[Explain reasons for sentence.]

For the offence of [...] we impose a conditional discharge for [...] [months/years].

This means that you will not be punished today. But if you are convicted of any offence committed during this period, you can be punished, not only for that new offence, but also for the offence[s] we have been dealing with today.

Do you understand?

REDUCTION IN SENTENCE FOR A GUILTY PLEA

We have reduced your sentence because you pleaded guilty *[indicate the reduction applied, the reasons for it and what the sentence would have been without the reduction]*.

OR

If you had pleaded guilty your sentence would have been *[explain the reduced sentence that would have been given]*.

Do you understand?

18. Compensation as a Sentence in its Own Right

NOTES

- Compensation has priority over fines and costs.
- It can be used as a sentence in its own right or as an ancillary order to another sentence.
- The maximum amount of compensation that can be ordered in a Magistrates' Court is £5,000 for each offence.
- **Starting points when calculating compensation for personal injury are given in the Sentencing Guidelines and on page 3-52 of this section.**
- The court is under a duty to consider compensation in every case where loss, damage or injury has resulted from the offence, whether or not an application is made.
- The court must give reasons if it decides to make no order.
- Compensation should only be ordered in clear, uncomplicated cases. If it is difficult to assess the claim or if it is complex, seek legal advice.
- Different rules apply where compensation is sought in road traffic cases and legal advice should be sought.
- The financial means of the defendant must be taken into account. Common practice is to look to the defendant to pay the total financial penalty within 12 months.
- The compensatee should be named and the order must be for a specified amount.
- If the defendant is an existing defaulter, the court must, where applicable, order that deductions be made from the defendant's benefit or earnings.
- The court must make a collection order unless it is impractical or inappropriate. This enables the Fines Officer to impose enforcement sanctions if the defendant fails to pay as ordered.
- Where the court makes both a collection order and an order that deductions be made from a defendant's benefit or earnings, the court must also fix reserve terms for payment if the attachment of earnings order/deductions from benefits order is not successful.

18. Compensation as a Sentence in its Own Right

[Explain reasons for sentence.]

For the offence of *[give details]* we are making a compensation order.

You must pay *[amount]* for the *[injury/damage/loss]* suffered by *[insert name]*.

(If applicable:) We are also ordering you to pay *[amount]* towards the costs of the prosecution. This makes a total of *[amount]* which you must pay through the court.

PAYMENT

Can you pay that amount now?

What can you pay today?

(If applicable:) We make a collection order. This means that the Fines Officer will oversee the enforcement of the compensation.

(If applicable:) We consider that it is impractical or inappropriate to make a collection order because *[state reasons]*.

(If applicable:) We are satisfied that you are an existing defaulter because [...] *(continue if applicable)* but we disregard your default because [...]

(EITHER)

(If not making an attachment of earnings order/deductions from benefits order)

You must pay this amount by instalments of *[amount]* every *[week/fortnight/month]*.

The first payment must be made on *[date]* and then every *[week/fortnight/month]* after that until you have paid the full amount.

(OR)

(If making an attachment of earnings order/deductions from benefits order)

We make *[an attachment of earnings order/deductions from benefits order]*.

(Either) we are satisfied that you are an existing defaulter because [...] *(or)* you consent to the making of the order.

(If also making a collection order:) If, for any reason, the order fails, you must pay the outstanding amount *(either)* by instalments of *[amount]* every *[week/fortnight/month]* *(or)* by *[specify date]*.

18. Compensation as a Sentence in its Own Right

ADVICE

If your circumstances change in any way, including changing your address, you must contact the court immediately.

(EITHER)

(If a collection order is made:) If you miss any payments, the Fines Officer or the court will enforce the collection order. You will be given a list of the ways in which this can be done. You must notify the Fines Officer of any change in your financial situation.

You will be given a notice about the different ways to pay.

(OR)

(If a collection order is not made:) If you miss any payments, the court will enforce payment and you may be sent to custody.

You will be given a notice about the different ways to pay.

19. Fine and Ancillary Orders of Compensation and Costs

NOTES

- The amount of the fine fixed by the court reflects the seriousness of the offence.
- The court must give priority to the payment of compensation. It can be a sentence in its own right or ordered as ancillary to another sentence. See page 3-48 for notes relating to compensation orders.
- When assessing what can be paid, the order of priority is:
 - compensation,
 - fine,
 - costs.
- In fixing the amount, the court must take into account the circumstances of the case, including the financial circumstances of the offender. The defendant should have completed a means form, if not, the court should order that one be completed.
- The court's approach should be the following.
 - Assess the level of seriousness (A, B or C) taking into account the aggravating and mitigating factors and using A, B and C as a starting point.
 - Obtain details of the defendant's weekly take home pay/benefit and any capital.
 - Consider the fine starting point from the sentencing guidelines.
 - Consider credit for guilty plea and other factors relevant to the case, e.g. compensation.
 - Ensure that the total financial penalty remains proportional to the seriousness of the offending and can reasonably be paid by the defendant within the period set by the court – usually not more than 12 months.
- The court has a discretion as to whether to order costs and how much to order. The court must take account of the defendant's means and ability to pay before making an order.
- For wasted costs or costs from central funds, seek legal advice.
- Effective fine enforcement begins at the date the fine is imposed. Where the defendant is present, the method of payment must be addressed. If the defendant is an existing defaulter, the court must order that deductions be made from the defendant's benefit or earnings, unless the default can be disregarded, or it is inappropriate or impracticable to make an order.
- The court must make a collection order unless it is impractical or inappropriate to do so. This enables the Fines Officer to impose enforcement sanctions if the defendant fails to pay as ordered.

19. Fine and Ancillary Orders of Compensation and Costs

- Where the court makes both a collection order and an order that deductions be made from a defendant's benefit or earnings, the court must also fix reserve terms for payment if the attachment of earnings order/deductions from benefits order is not successful.
- The court can seek immediate payment in full at the time of sentence. If this is not realistic, some payment should be sought on the day. The court should then order payment terms for the balance including a first payment date; however, if the defendant applies to the Fines Officer to vary the payment terms, the Fines Officer can only grant terms which are more favourable to the defendant.

19. Fine and Ancillary Orders of Compensation and costs

[Explain reasons for sentence.]

For the offence of *[give details]* we impose a fine of *[amount]*.

(If applicable:) We are also ordering you to pay *[amount]* in compensation for the *[injury/loss/damage]* suffered by *[name]*.

(If applicable:) We make no order for compensation because *[give details]*.

(If applicable:) We are also ordering you to pay *[amount]* towards the costs of the prosecution.

This makes a total of *[amount]* which you must pay through the court.

REDUCTION IN SENTENCE FOR A GUILTY PLEA

We have reduced your sentence because you pleaded guilty *[indicate the reduction applied, the reasons for it and what the sentence would have been without the reduction]*.

(OR)

If you had pleaded guilty your sentence would have been *[explain the reduced sentence that would have been given]*.

Do you understand?

PAYMENT

Can you pay that amount now?

What can you pay today?

(If applicable:) We make a collection order. This means that the Fines Officer will oversee the enforcement of the sum due.

(If applicable:) We consider that it is impractical or inappropriate to make a collection order because *[state reasons]*.

(If applicable:) We are satisfied that you are an existing defaulter because [...] (continue if applicable) but we disregard your default because [...]

(EITHER)

(If not making an attachment of earnings order/deductions from benefits order)

You must pay this amount by instalments of *[amount]* every *[week/fortnight/month]*.

19. Fine and Ancillary Orders of Compensation and costs

The first payment must be made on [date] and then every [week/fortnight/month] after that until you have paid the full amount.

(OR)

(If making an attachment of earnings order/deductions from benefits order)

We make [an attachment of earnings order/deductions from benefits order].

(Either) we are satisfied that you are an existing defaulter because [...] *(or)* you consent to the making of the order.

(If also making a collection order:) If, for any reason, the order fails, you must pay the outstanding amount *(either)* by instalments of [amount] every [week/fortnight/month] *(or)* by [specify date].

ADVICE

If your circumstances change in any way, including changing your address, you must contact the court immediately.

(EITHER)

(If a collection order is made:) If you miss any payments, the Fines Officer or the court will enforce the collection order. You will be given a list of the ways in which this can be done. You must notify the Fines Officer of any change in your financial situation.

You will be given a notice about the different ways to pay.

(OR)

(If a collection order is not made:) If you miss any payments, the court will enforce payment and you may be sent to custody.

You will be given a notice about the different ways to pay.

19. Fine and Ancillary Orders of Compensation and Costs

APPROPRIATE STARTING POINTS FOR GENERAL DAMAGES FOR PERSONAL INJURIES

Type of injury	Description	Starting point
Graze	Depending on size	Up to £75
Bruise	Depending on size	Up to £100
Black eye		£125
Cut: no permanent scar	Depending on size and whether stitched	£100-£500
Sprain	Depending on loss of mobility	£100-£1,000
Finger	Fractured little finger, recovery within month	£1,000
Loss of non-front tooth	Depending on cosmetic effect	£500-£1,000
Loss of front tooth		£1,500
Eye	Blurred or double vision	£1,000
Nose	Undisplaced fractured of nasal bone	£1,000
Nose	Displaced fracture of bone requiring manipulation	£1,500
Nose	Not causing fracture but displaced septum requiring sub-mucous resection	£2,000
Facial scar	However small, resulting in permanent disfigurement	£1,500
Wrist	Closed fracture, recovery within month	£3,000
Wrist	Displaced fracture, limb in plaster, recovery in 6 months	£3,500
Leg or arm	Closed fracture of tibia, fibula, ulna or radius, recovery within month	£3,500
Laparotomy	Stomach scar 6-8 inches (resulting from operation)	£3,500

VI. Fine Enforcement

57. Deductions from Benefits Order (DBO)

NOTES

- After enquiry into a defaulter's means, the court has power to order deductions to be made from their state benefits. If the defaulter is defined as an existing defaulter the court must make the order unless the default can be disregarded, or it is inappropriate or impracticable to make an order.
- The court must make a collection order unless it is impractical or inappropriate. This enables the Fines Officer to impose enforcement sanctions if the defendant fails to pay as ordered. The court must also fix reserve terms for payment if the deductions from benefits order is not successful. If it is not possible for deductions to be made, the defaulter will be informed of this and that they should pay in accordance with the reserve terms fixed by the court.
- Deductions can only be made if the defaulter is in receipt of income support or income-based job seeker's allowance.
- The court does not set the weekly amount to be deducted. The amount to be deducted will be fixed by the Benefits Agency.
- It is helpful to have the defaulter's national insurance number for the application to the Benefits Agency. The court should therefore ensure that this is obtained.
- Deductions will not commence immediately. The court office will send an application form to the Benefits Agency who will commence deductions if the defaulter is in receipt of enough of the correct type of benefit. If other deductions are being made, they may mean that a deduction by the court cannot be made. The court should therefore enquire not only as to the type of benefit, but also whether there are other current deductions from it.
- The Benefits Agency will inform the court office as to whether deductions have been successfully commenced or not.
- The defaulter's consent is not required if the offender is an existing defaulter.

57. Deductions from Benefits Order (DBO)

We intend to apply for a deductions from benefits order because *[give details]*.

This means that an amount will be taken from your benefit before you get it and will be sent to the court.

(If applicable:) We make a collection order. This means that the Fines Officer will oversee the enforcement of the sum due. If, for any reason, the order fails, you must pay the outstanding amount *(either)* by instalments of *[amount]* every *[week/fortnight/month]* *(or)* by *[specify date]*.

(If applicable:) We consider that it is impractical or inappropriate to make a collection order because *[state reasons]*.

(EITHER)

(If a collection order is made:) If the deductions from benefits order fails, you will be notified of this in writing, and the reserve terms will take effect. If you miss any payments under the reserve terms, the Fines Officer or the court will enforce the collection order. You will be given a list of the ways in which the court can do this. You must notify the Fines Officer of any change in your financial situation.

You will be given a notice about the different ways to pay.

(OR)

(If a collection order is not made:) If the deductions from benefits order fails, you will be notified of this in writing, and the court will enforce payment by some other means.

You will be given a notice about the different ways to pay.

58. Attachment of Earnings Order (AEO)

NOTES

- An attachment of earnings order directs an employer to deduct money from the defaulter's pay and to send it to the court. If the defaulter is defined as an existing defaulter the court must make an AEO unless the default can be disregarded, or it is inappropriate or impracticable to make an order.
- The court must make a collection order unless it is impractical or inappropriate. This enables the Fines Officer to impose enforcement sanctions if the defendant fails to pay as ordered. The court must also fix reserve terms for payment if the attachment of earnings order is not successful. If it is not possible for deductions to be made, the defaulter will be informed of this and that they should pay in accordance with the reserve terms fixed by the court.
- The amount deducted is fixed by law and not determined by the court. The amount is a percentage of the defendant's income. The court has no discretion to amend the amount.
- Orders tend not to be effective unless the defaulter is in regular work. Also it may be inappropriate if the fine is small or if the employer's business is unlikely to ensure that regular payments are made.
- The court will need to ensure that it obtains sufficient information from the defaulter in respect of his employer and his employment to implement the order successfully, e.g. company name, address and payroll number.
- The defaulter's consent is not required if the offender is an existing defaulter.

58. Attachment of Earnings Order (AEO)

We make an attachment of earnings order.

This is an order to your employer to deduct the relevant amount from your [wages/salary].

This amount will be paid to the court.

The amount deducted is fixed by law and will be a percentage of your income, so the amount sent to the court will depend on how much you earn.

(If applicable:) We make a collection order. This means that the Fines Officer will oversee the enforcement of the sum due. If, for any reason, the order fails, you must pay the outstanding amount *(either)* by instalments of [amount] every [week/fortnight/month] *(or)* by [specify date].

(If applicable:) We consider that it is impractical or inappropriate to make a collection order because [state reasons].

(EITHER)

(If a collection order is made:) If the attachment of earnings order fails, you will be notified of this in writing, and the reserve terms will take effect. If you miss any payments under the reserve terms, the Fines Officer or the court will enforce the collection order. You will be given a list of the ways in which this can be done. You must notify the Fines Officer of any change in your financial situation.

You will be given a notice about the different ways to pay.

(OR)

(If a collection order is not made:) If the attachment of earnings order fails, you will be notified of this in writing, and the court will enforce payment by some other means.

You will be given a notice about the different ways to pay.

59. Distress Warrant

NOTES

- A distress warrant authorises seizure of the defaulter's goods so that they may be sold to settle monies due to the court.
- Issuing a distress warrant is one of the options that must be considered before commitment to prison for non payment.
- Where the court has power to issue a warrant of distress, it may postpone the issue for such time and on such conditions as it thinks just.
- If the warrant is executed but the defaulter has no goods or insufficient goods to satisfy the sum due, then the court will need to consider enforcing in some other way.

The most common applications are for a warrant to search for:

- stolen property under the Theft Act;
- controlled drugs under the Misuse of Drugs Act; and
- firearms under the Firearms Act.

Application may also be made for a warrant to enter premises and **search for evidence**. These applications may only be made in certain cases and the procedure is outlined in the Police and Criminal Evidence Act. Extra care should be taken with these applications because they may only be applied for in limited circumstances and in some cases application must be made to the higher courts. The search warrant may authorise search of specific premises or any premises occupied/controlled by the person specified in the warrant. The warrant may authorise entry to and search of premises on more than one occasion. Advice should always be sought from a legal adviser when dealing with such applications.

FOR ALL SEARCH WARRANT APPLICATIONS:

- You **should** have been contacted by a member of court staff who will have made the necessary arrangements for the applicant to visit your home or place of work. If this is not the case and you have been approached directly by the applicant you must **contact a legal adviser before** hearing the application and signing the forms presented, to ensure that you have jurisdiction and that the necessary legal and administrative requirements have been complied with.
- When the applicant attends, request formal identification from them.
- Where the applicant is a police officer, check that the application has been authorised by an inspector or senior officer on duty.
- The applicant should bring with them an *information* setting out the grounds for the application, together with sufficient copies of the search warrant and any other paperwork required. The legal adviser referring the application to you will advise you as to how many copies of the warrant are required and what paperwork the applicant should bring with them. Ask the applicant to sign the *information*. This must be done in your presence. If the documents have already been signed, ask the applicant to sign them again.
- The applicant must under oath or affirmation state as follows:
 - ‘...this is my name and handwriting and the contents of this information are true and correct to the best of my knowledge and belief.’

(For guidance in relation to forms of oath and affirmation see Oaths section at page 4-3 et seq.)

- Your legal adviser will already have explained what the applicant must identify if you are to issue the warrant. Question the applicant to satisfy yourself of the grounds. In particular ensure that the premises are precisely identified in the documents and that all relevant details have been completed.
- **Human Rights.** Before a search warrant can be issued, you must be satisfied that the application complies with the Human Rights Act 1998. A search warrant involves entry into a person's home and therefore may interfere with, e.g. their right to private and family life. In addition to the statutory criteria for the warrant, the application must pursue one of the following aims:
 - the interests of national security
 - the interests of public health
 - the economic well-being of the country
 - the prevention of disorder and crime (this will usually be relevant)
 - the protection of health and morals
 - the protection of the rights and freedoms of others

AND you must be satisfied that the granting of the warrant is a proportionate response to the perceived risk.

- If you are satisfied that the necessary grounds exist, put the date and time on the information, warrant and copy warrants and sign them.
- **Giving Reasons.** The general rule is that reasons for granting or refusing a warrant do not have to be recorded because the information should contain all the necessary details. Where additional pertinent information is elicited from an applicant by way of questioning, it is desirable for a note to be kept in the event of a challenge being mounted against the issue of a warrant. Practice may vary, but these notes should be made on the information or on a form provided for this purpose locally. Please refer to local guidance documents to confirm the practice in your area.
- Retain the original information document and hand the warrant to the applicant. The retained information should be handed to the court office at the earliest opportunity.

OTHER WARRANT APPLICATIONS

You may be asked to consider applications for other types of warrant, the most common of these are:

- **Mental Health.** A representative from either the Social Services or the mental health team may apply for a warrant to remove a person to a place of safety, usually a hospital and to enter premises, by force if necessary. Similar provisions also apply to persons who are incapable of looking after themselves and are refusing assistance.