

# Faslane 365

## Procedure in a Scottish District Court

This briefing explains the procedure followed in the District Court for summary cases. You (or your solicitor) have to work out where to fit your defence into this.

The District Court is the local Criminal Court. It is presided over by a Justice of the Peace (JP), who is a local 'respected person', not (usually) a trained lawyer<sup>1</sup>. The Clerk<sup>2</sup> in a District Court is a trained lawyer and will advise the JP as to procedure where necessary (and on other points of law). The Procurator Fiscal (PF) is there to prosecute you. The PF decides which court you go to, what you are charged with and whether you even get tried at all.

Before your trial starts make sure any witnesses you want to call are out of the courtroom. The court officer will show them a room to go to.

If you are representing yourself remember that you have all the same rights to speak as a lawyer would, including the right to object to irrelevant, or speculative questions the PF might ask and to hearsay evidence. The JP should guide you through the procedure and you can stop and ask the JP/Clerk for advice on procedure at any point.

### The Order of the Trial.

(Usually if you are defending yourself the JP explains the procedure as you go along. Often the JP, PF and Clerk mutter amongst themselves, you can ask them to speak up. In fact much of the proceedings are difficult to hear from the public section of the court, if you are straining to hear then your supporters also need **you** to ask people to speak louder)

1. When your name is called you take your seat in the dock. If you are defending yourself and you have a lot of papers you can ask to sit at the lawyers table. Whenever you speak or are being spoken to you have to stand up!
2. The Clerk checks who you are, and that they have the right person in the dock and also that you are still pleading not guilty and whether you have a solicitor. (Sometimes at this point they ask you to sit at the back of the court again, because they were just checking who has turned up)
3. When the trial begins the PF makes a case against you by calling witnesses. S/he asks them about what happened to prove your guilt.
4. After the PF has finished with each witness you (or your solicitor) can ask them questions. If you disagree with anything they have said you should put your version to them or the court may assume you agree. The PF has a second chance to question them after your cross-examination. You can also introduce documents, photos etc. at this stage by asking the witness to comment on them or later as part of your evidence. If they contradict the witnesses version of events you should do it now.

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1 In some District Courts there is a panel of three such JPs however in Helensburgh District Court there is just one.

2 Who sits in front of the JP facing you.

5. When the PF has finished leading all the evidence against you if you feel that it isn't enough to prove your guilt you (or your solicitor) can put in a submission that there is **no case to answer** before you give evidence. At this point you don't talk about what you did but about what the PF and witnesses have said that you did. The court has to decide whether even if everything they said is true, it is enough to find you guilty of what you are charged with. If two witnesses haven't identified you as being present the JP should dismiss the case. If you think there is evidence against you then just skip this stage.

**If the JP agrees with you s/he can throw the whole thing out, or s/he can tell the PF to drop some of the charges or even bits of charges! Yes! they can change the wording in the middle of the case!**

**If the JP thinks there is a case to answer the trial continues.**

6. Now its your turn.....you (or your solicitor) calls witnesses and introduces evidence in your defence.
7. You can go in the witness box yourself, but don't have to. If you want the court to hear about the facts of what you did, say, to counter misinformation from the police about your nonviolence, etc. you have to do this from the witness box on oath. You can swear a religious oath, OR you can ask to 'affirm', which goes something like: *'I truly declare and affirm that the evidence that I give will be the truth, the whole truth and nothing but the truth.'* (Note; In a Scottish court you are asked to raise your right hand to take the oath. You can object to this if it feels wrong for you, but the JP may insist.) If there are things you want to bring up as part of your defence later you have to submit them as evidence now, e.g. reports, letters, etc. Remember if you go in the witness box, the PF can question you. However, you have the right to speak again after the PF has finished asking questions (you can only refer to things the PF asked about at this stage, but you can put your own version more easily than when answering questions).
8. You can then call your witnesses and ask them questions. After each of your witnesses the PF can question them. After this you can question them again, but only on issues related to the questions the PF asked. (If you give evidence yourself this means you can reply after the PF's questions.)
9. The PF then sums up his/her case.
10. You then sum up your case. Say why you are not guilty and why the PF is wrong.
11. The JP then gives the verdict. (S/he may adjourn for some minutes, hours, or days to consider the evidence!).

**If you are found NOT GUILTY you are free to go!**

12. **If you are found guilty**, the clerk passes the JP (and you) a record of your previous convictions. You are asked if you admit to all of them.....check they haven't added some that aren't yours (there also may be some missing! — but you don't have to admit to them).
13. The JP then asks about your circumstances, income etc. You (or your solicitor) can make a statement (called a plea of mitigation). This is your opportunity to explain how the consequences of a heavy penalty might impact on you and any dependants. If you chose you can say it's irrelevant because you have no intention of paying a fine. You can explain why you took the action that you did.
14. The JP then sentences you.

## Where Do I Talk About ... ?

It can sometimes be tricky to work out exactly where to say what in a trial. The general rule is that anything factual must be said in evidence by a witness. This includes introducing documents, photos, etc. Legal argument would be said either in Summing Up or as part of a submission of No Case to Answer. The legal argument can refer to facts established in evidence and can comment of whether one version or another should be believed but can't introduce new facts.

Of course there are aspects which cross over. For example, the fact that Trident is illegal, while of a legal nature, is something you would have to say in evidence. That this then means you should be acquitted would be a legal argument made in summing up<sup>1</sup>.

## Possible Sentences

### Admonishment

You may be *admonished*, which means that you get a conviction on your record but no penalty.

### Fine

For a *fine* you can pay in weekly instalments or be given a period of time to pay (even if you have said that you are not going to!). You can ask for it to be transferred to your local court

### Prison

They can adjourn for a *Social Enquiry Report* — to check if it's okay to send you to prison. For serious charges or repeat offences they can send you straight to prison.

### Community Service

They can also ask for a report to see if a *Community Service Order* is appropriate. They can only impose this on people living in Scotland who agree to it, and only as an alternative to prison, not to a fine.

### Supervised Attendance

*Supervised Attendance Orders* (a bit like Community Service but they can be given without your agreement) can be imposed on failure to pay a fine but this would be at a later means court.

### Deferred Sentence

The court can also defer (put off) sentencing you for up to six months. Sometimes they will *defer sentence for you to be of good behaviour*. This means that you have to come back on the specified date for sentencing. If, at that time, you haven't been arrested again (or the PF isn't aware that you have!) then you will get a much lighter sentence than if you have. Often they will indicate when deferring sentence that if you have "been of good behaviour" they will just admonish you.

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<sup>1</sup> In fact they don't like you saying this at all, — see the Representing Yourself in Court briefing.