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The Issue

Magistrates can send indictable only cases to the Crown Court immediately but not either-way offences and there is often a delay of about 6 weeks for committal proceedings for either way offences going to the Crown Court.

The Magistrates' Association considers the committal procedure to be unnecessary and that the resulting delay would be avoided by its abolition.

The Criminal Justice Act 2003 already contains provisions for this legislative change. On the coming into force of Schedule 3 of the Act, committal for trial would be abolished and cases triable either way would be sent to the Crown Court under sections 51 and 51A of the Crime and Disorder Act 1998, in the same way as cases triable only on indictment.

The Magistrates' Association advocates that a commencement order bringing paragraphs 7 and 18 of Schedule 3 into force should be introduced as soon as possible so as to bring to an end this needless delay in the magistrates' court.

Reasons supporting ending committal proceedings:

- Little or nothing is achieved at a committal hearing to move the case forward that could not be done out of court between the parties.
- It takes little time in court (unless the CPS is not ready with its file) but it is inefficient for defence lawyers and defendants to spend time waiting for a case of a few minutes to be brought on. If the defendant is in custody, there is substantial cost to the public purse.
- If the committal hearing or something like it took place at the Crown Court, it could be combined with the initial directions hearing.
- The legal aid budget would not need to pay defence solicitors' committal fees. That in turn might reduce the incentive felt by some solicitors to recommend clients elect for jury trial.
- We know that significant numbers of cases committed for trial do not proceed to trial. It may be that getting the case to the Crown Court at the earliest opportunity would accelerate some of the subsequent guilty pleas and avoid work for the CPS in file preparation.
- There is a suspicion that some defendants elect for jury trial simply to take advantage of the delay caused by preparation for a committal hearing.

Risks

There are some risks that this change is unnecessary or might be counter-productive:

- Proposed changes to the provision of legal aid in the Crown Court may reduce the number of cases which elect jury trial.
- Either way cases which appear or are said by the CPS to be serious at first hearing might go to the Crown Court unnecessarily if they were in fact not so serious, or if the CPS decided not to proceed at all or to substitute summary only charges. This could mean the Crown Court having to deal with cases which rightly should have been handled by magistrates. In theory this eventuality can be avoided at present because the committal decision can be reversed by the magistrates' court at the committal hearing but in practice that would only ever happen under an "old style" Section 6.1 committal at which the evidence was heard. Under the almost always used "paper" Section 6.2 committal, the evidence is not re-examined, so the case will go to the Crown Court anyway unless the CPS withdraws the original charge.
- If more guilty pleas were entered while cases were in the magistrates' courts, fewer cases would need to be sent to the Crown Court because magistrates would consider the possible sentence after the discount for a guilty plea against their maximum powers.

View of the Law Commission

This proposal was put to the Law Commission in October 2010 in response to its Eleventh Programme of Law Reform. The Commission responded in March 2011 that the project had not been recommended for further investigation as it could not identify sufficient potential benefits which would flow from reform and felt that, in practice, replacing committal with sending simply displaced the delay from the magistrates' court to the Crown Court without speeding up proceedings as a whole. In addition, it would be inappropriate for the Commission to reconsider the matter before the relevant paragraphs (7 and 18) in Schedule 3 of the Criminal Justice Act 2003 were brought into force when there had been no opportunity to assess their effectiveness.

A way forward

We understand that the objection to making the change is that the Crown Court would be overwhelmed with the sudden workload of cases arriving immediately instead of after a delay of about 6 weeks. We suggest that this can be mitigated by phasing in the work gradually by setting initial hearing dates in the Crown Court sufficiently far into the future to avoid a problem and then progressively reducing the time lag.

Conclusion

The Magistrates' Association believes that cases would be dealt with more quickly if the CPS did not have to prepare committal papers on the basis of a trial in the Crown Court, that there are substantial advantages in getting a defendant to an initial directions hearing in the Crown Court earlier than at present (because a high proportion of defendants, having pleaded not guilty in the magistrates' court, then plead guilty at the first opportunity in the Crown Court) and that these advantages outweigh the extra work the Crown Court would incur, dealing with cases where the CPS later decides to downgrade the charges to summary only matters.