



What happens at a Crown Court trial - The prosecution case.

Please note that in the Crown Court you can be represented by either a barrister or a solicitor advocate. Representation is the single most important choice that you will have to make. You must have complete confidence in your chosen advocate and you must not be afraid to ask what experience that person has of dealing with similar cases. Crown Court Judges are extremely reluctant to allow late changes of representation so make sure you get it right. Speak to your solicitor about your options, in terms of who represents you for your Crown Court trial, it is your choice. For the avoidance of repetition we will refer only to a barrister in this fact-sheet.

What happens at the start of the prosecution case?

The prosecution open their case by making a speech to the jury. In general terms the opening speech sets out: the burden and standard of proof; what the prosecution have to prove in terms of your specific offence/offences; a summary of what their case against you is in terms of the evidence. In short they will tell the jury what it is they say you have done.

What is the burden of proof?

You do not have to prove you are innocent. Remember this; it is probably the most fundamental principle of criminal law. The prosecution must prove that you are guilty. You have probably heard of the expression 'innocent until proven guilty'. Many defendants are understandably

sceptical of this but this is something that juries take very seriously when considering their verdict.

This doesn't mean that the prosecution must prove every minute detail against you. An expression commonly used by the Judges is that the prosecution does not need to dot every 'i' and cross every 't'. What they must do however is prove the essential elements of the offence against you.

Please note that just because the burden of proving the case rests with the Crown this does not necessarily mean that you will not be expected to provide explanations and justifications – not having to prove the case does not mean not having to present a case.

What is the standard of proof?

The prosecution discharges the burden of proof by satisfying the jury so that they are sure. This is the standard of proof. You may have heard the phrase 'beyond all reasonable doubt'. This means that the prosecution must satisfy the jury so that they are sure. Anything less than sure and the jury must acquit you.

People often try and define 'sure' and that can often be unhelpful. The best thing to do is to give the word its ordinary everyday meaning. It is not a tricky legal concept that the jury will be asked to grapple with. It is very simple. Not sure = not guilty.

What does proving the essential elements of my offence mean?

Within any offence there are certain elements that the prosecution must first prove against you. It is outside of the scope of this fact-sheet to list every offence and the essential elements of each offence, this is something you should expect your solicitor to advise you of from the beginning of your case.

To use the simple example of theft:

The prosecution must prove that you:

- Dishonestly

- Appropriated (took control of) property
- Belonging to another
- With the intention of permanently depriving that person of the property

If the prosecution does not satisfy the jury so that they are sure about any one of these aspects then they will not have proved one of the essential elements of their case and have not discharged their burden. You would therefore be acquitted.

Does the burden of proof always remain with the prosecution?

This depends on what offence you have been charged with. The burden of proving the essential elements of your offence always rests with the crown. In some cases once the prosecution has satisfied their burden of proof, the burden of proof then shifts to you. The good news is that once the burden of proof is transferred to you, the standard of proving it is much lower. You are only required to prove it on a balance of probabilities. This means you must persuade the jury that it is more likely than not; i.e. over 51%.

This is a particularly difficult area of law and specialist advice from your chosen solicitor and barrister is essential if your case is one which requires you, as the defendant, to partially prove your innocence.

The overwhelming majority of cases will not require you to prove a single thing so unless you are told otherwise you should work on the basis that the burden will rest with the prosecution. Please do check this with your solicitors who will be able to tell you whether this applies in your case.

Will the prosecution witnesses give their evidence live in court?

In most cases, yes. Ordinarily the witness will give their evidence from the witness box which is positioned at the front of the court. This means the witness will be able to see you and you will be able to see them.

However in some cases the witness may give their evidence:

<p>What happens at a Crown Court trial – the prosecution case</p> <p>9th May 2011</p>	<p>3</p>
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- From behind a screen so that they can't see you and you can't see them
- Through a video link
- Through an intermediary
- In private in the absence of anyone in the public gallery; i.e, who is not a party to your case.

This is called special measures. This will apply for example, if the witness is a youth, or the witness is in fear of you or vulnerable, i.e. through age or disability.

What is the test for special measures?

Generally speaking:

- If the witness is a youth - the presumption is that special measures will apply
- If the witness is an adult – whether the quality of their evidence will be approved by special measures?

This is something that in most cases will have been decided upon well in advance of your trial and either you or your solicitor if represented will have been served a copy of the application in advance of your trial and had the opportunity to respond.

If you are unrepresented and have been served an application for special measures in respect of one or any of the prosecution witnesses you should speak to a solicitor about it. If you are represented, your solicitor will go through the application with you and respond on your behalf.

What happens if a prosecution witness doesn't turn up to my trial?

A number of things:

- The prosecution may be able to carry on your trial and prove the case against you without relying on that particular witness's evidence. This means that their evidence will no longer form part

of the case against you. They can only do this if you don't require that witness to attend court to give evidence. If you do, they are under a duty to ensure that all witnesses you were expecting to attend court do so.

- The prosecution may not be able to prove the case against you without that witness's evidence and so may ask the Judge to adjourn your trial to enable them to get the witness to court. You can object to this.
- The prosecution may decide that in the absence of that witness attending court they are unable to prove the case against you and may drop the case against you. That would be the end of the case against you.
- You or your barrister if represented may agree that the witness's evidence can instead be read to the jury either in full or an edited version agreed between your barrister and the prosecution.
- The Judge may issue a witness summons in respect of that witness requiring his/her attendance at court.
- If you or your barrister doesn't consent to the witness's evidence being read and there is no realistic prospect of locating that witness and getting them to court then the prosecution may make a hearsay application to allow them to read the evidence.

Will the Judge agree to adjourn my case if a prosecution witness doesn't attend for my trial?

This depends on a number of things for example;

- The reason why the witness didn't attend? If for example it's because the witness is severely ill then yes, the Judge is likely to adjourn your case.
- What efforts the prosecution has made to contact the witness?
- Whether the court and the defence could and should have been notified sooner?
- Whether your case will be prejudiced by delaying your trial?
- Overall the Judge will consider the interest of justice to both sides.

Should I agree to a witness's statement being read?

This depends on a number of things. As a general rule of thumb, if you don't accept what the witness says in their statement, you should not agree to it being read. Conversely if you do agree the contents of the statement then yes you can agree to it being read either in full, or in part by agreement with the prosecution, excluding the parts of the statement that you disagree with. You should always seek legal advice on this.

What will happen when the prosecution calls their witnesses?

The prosecution will call those witness's who are required to attend court one by one. Unless the witness is an expert they will not be able to sit in and listen to your trial until after they have given their evidence nor will they be able to speak to any other witness's about your case.

Each witness will be called into the courtroom by the court usher. Assuming they are giving evidence in the ordinary way they will be asked to stand in the witness box. Usually they will remain standing whilst they give their evidence unless they have been given permission by the Judge to sit down. They will be asked to take an oath either by swearing on the bible for example or by affirming, whichever they choose, they are effectively promising to tell the truth.

The prosecutor will then ask the witness questions. In general terms they will ask the witness to give the court their account of what happened and what it is they saw for example. Unless by agreement, the prosecutor is not allowed to lead the witness through his/her evidence and the evidence must come from them. An example of a leading question would be, 'it's right isn't it, the defendant punched you in the face?' Instead they must ask more general questions for example, 'can you tell the court what happened?'

Can a prosecution witness look at their statement whilst giving their evidence?

Giving evidence is not a memory test and so in some cases yes, a prosecution witness can refer to his/her statement whilst giving evidence

at trial. This is allowed if the Judge is satisfied that at the time of making the statement events were clearer in the witness's mind than at the time of giving evidence. This should only be used to refresh the witness's memory and the witness should not simply read their statement out word for word.

Can I ask the witness questions?

Yes, either in person if you are unrepresented or through your barrister who will ask the witness questions on your behalf. This is called cross examination and is a very important part of your case. Once the prosecutor has asked the witness questions, it is then your turn to do so.

If you are represented you must leave cross examination to your barrister no matter how tempted you are to shout out or ask your own questions. Shouting at a witness will not and does not help your case. If there is something you feel should be asked of the witness, simply attract the attention of your barrister, ask to speak to them and tell them what it is you want to ask. If your barrister advises you against asking that question you should accept that advice and not proceed to ask it anyway!

What is the purpose of cross examination?

In general terms:

- To undermine the prosecution's case
- To challenge any disputed facts with the witness
- To put your case

Putting your case to the witness is the most important part of cross examination. Even if becomes obvious that the witness is never going to agree with you or accept your case, you must still put it.

Cross examination can be very difficult and knowing which questions to ask can be tricky. Deciding what to ask is often a tactical decision as sometimes asking the wrong questions can make it worse and least said the better.

If your case is anything other than very straightforward we would always recommend that you have representation at your trial.

Can I or my barrister ask the witness questions about his/her previous convictions?

Yes but only in certain circumstances and upon a successful application to the Judge drafted within the statutory timeframe.

Bad character (or previous conviction) evidence is only admissible if:

- It goes to an important matter in issue in the case; AND
- It is of substantial importance in the context of the case as a whole.
- It is of important explanatory evidence to the case; OR
- All parties agree to it.

If it is not agreed between the parties and the Judge has not agreed to admit, neither you nor your barrister will be able to ask the witness questions on it.

One of the potential problems with introducing the bad character of a witness is that by doing so, yours may then also be introduced. Again, often this is a tactical decision and one upon which you should always seek legal advice on.

What happens after I have cross examined a witness?

Once you or your barrister have finished cross examining a witness the prosecution are allowed to re-examine them on any issues that have arisen out of your cross examination and the Judge may want to ask the witness questions.

Can a witness stay and listen to the rest of my trial after they have given their evidence?

Yes. Once they have given their evidence they are released by the court which means they are free to leave the court or stay and watch the rest of your trial. If they choose to sit in the public gallery do not attempt to speak to them, stare at them or do anything that could be construed by

the jury as in any way intimidating. Remember the jury will be interested in your reactions and will be watching how you respond.

The same procedure will apply until each live witness has given their evidence.

Some evidence has been agreed – how is that dealt with within the trial?

In most cases, some witness's statements will be agreed before the trial by you or your solicitor. An example of evidence that is often agreed is the statement of the officer who has interviewed you and who produces your interview tape. In short agreed evidence is any evidence that you do not dispute.

Generally agreed evidence is read out to the jury after all the live witness's have given their evidence.

How is audio or video evidence dealt with?

This can be produced either by a live witness in the course of giving their evidence or by agreement. By whichever means it is produced it will then be played to the court.

How is my police interview dealt with in my trial?

If the prosecution are relying on your police interview as part of their case, a transcript of your interview will either be read out to the court or the tape will simply be played. This is usually done at the end of the prosecution's case.

What happens if the prosecution have failed to make a case against me?

At the end of the prosecution's case either you or your barrister of represented can make a legal submission of 'no case to answer'. This submission is made in the absence of the jury and decided upon by the Judge alone.

What is the test for a submission of no case to answer?

- If there is no evidence that you have committed the alleged offence, the Judge will stop the case and this will be the end of it for you.
- If there is some evidence that you committed the offence but it is of tenuous character, for example it is vague or inconsistent with other evidence BUT the Judge comes to the conclusion that taking the crown's case at its highest, no properly directed jury could convict you of it; it is his duty upon a submission of no case to answer, to stop the case against you and again, this would be the end of it.

If a submission of no case to answer is successful, a formal not guilty verdict will be entered against you and this will be the end of your case. If you have paid privately or made a contribution to your legal aid you would then be able to ask for a defence costs order. Don't forget to do this!

If you face multiple charges and a submission succeeds only in respect of one of them, whilst that is the end of that matter, your trial will proceed in respect of your other charges.

For what happens at a Crown Court trial – the defence case, please see our next fact-sheet.

