signed by the suspect or interviewing officer. The other tape is a working copy to which the defence has a right of access. Interviews other than at the police station may be off-tape. Normally the suspect must be given the chance to read the record and to sign it as correct or to indicate any parts which he thinks are incorrect.

The 2006 revision of Code E alters all references to 'tape' to 'recording' and adds a new definition of recording media as 'any removable, physical audio recording medium (such as magnetic tape, optical disc or solid state memory) which can be played and copied'. It would now be permissible to refer to this procedure as audio recording.

Interviews – suspect protection

There are the following main safeguards for the suspect:

- the suspect must be reminded of the availability of free legal advice;
- a caution must be given. This is set out at the beginning of this chapter;
- the suspect must not be unfit through drink or drugs so that he cannot appreciate the significance of the questions;
- a juvenile, i.e. a person under 17, must have an 'appropriate person' at the interview. This may be a parent or guardian of the juvenile or if one is not available or is unsuitable, as where that person is also involved in the offence, a social worker, solicitor or duty solicitor at the station may act.

The right to silence restricted

Section 34 of the Criminal Justice and Public Order Act 1994 deals with the failure by a suspect to mention facts when questioned or charged. Provided the suspect was under caution, charged or officially informed that he/she may be prosecuted at the time, the court at his subsequent trial can draw adverse inferences from the failure to disclose. So in John's case, if he does not answer a question relating to his whereabouts at the time of the offence but at the trial raises a defence of alibi, i.e. that he was at home at the relevant time, the court can draw adverse inferences from the fact that John did not mention this in answer to the question. Essentially, it means that the court may not believe John and think that the alibi has been made up after the event.

Under s 58 of the Youth Justice and Criminal Evidence Act 1999 inferences from silence are not permissible where the defendant has not had prior access to legal advice.

The trial of criminal proceedings

There are some preliminary considerations as follows.

Time-limits

- ***Summary offences***. The magistrates cannot deal with the prosecution of a case if the information (see below) is laid more than six months after the alleged offence was committed. An information is laid when it is received at the court office by an authorised officer (s 127, Magistrates' Courts Act 1980).
- ***Indictable offences*** (including offences triable either way). There are no statutory time limits for commencing criminal proceedings (s 127, MCA 1980). Defendants have, however,

a common law right to be protected against undue delay and a court may dismiss proceedings for undue delay amounting to an abuse of the process of the court. The defendant must normally show unjustifiable delay or the prosecution's bad faith. Both are, in fact, difficult to establish.

- ***Some road traffic offences***, such as dangerous driving and careless or inconsiderate driving, cannot proceed to conviction unless a notice of intented prosecution is served on the defendant within 14 days of the offence (s 1, Road Traffic Offenders Act 1988).

  This does not apply where, in addition to the nature of the driving, an accident has occurred of which the driver was aware.

Commencing the prosecution

There are two ways to commence a prosecution, i.e. by charge or by summons.

Charge

There are two possibilities as follows.

- ***Where the defendant has been charged and bailed***. Here a Crown Prosecution Service lawyer at the police station will after a police officer has signed the charge sheet look into the police files and decide how the matter will be heard. There are two possibilities as follows:
  (a) *a simple guilty plea hearing*: here the defendant admits all the elements of the offence and the offence does not involve complex issues which means in general that there are not more than two defendants and three key witnesses. These pleas will be listed before a full bench so that the defendant can be sentenced that day though the case can be adjourned for pre-sentence reports. The prosecution is conducted by a non-qualified CPS representative.

  Where the offence is a summary offence for which the defendant cannot be sent to prison for more than three months, the 'statement of facts' procedure may be used. The appropriate summons will have been served on the defendant with a 'statement of facts' and a form of explanation allowing the defendant to plead guilty and make a plea in mitigation in his or her absence. The clerk will inform the prosecution of the guilty plea and on proof of service on the defendant the statement of facts and the plea in mitigation is read out in court. No further facts of evidence may be given;
  (b) *an early administrative hearing*: where a not guilty plea is expected, the defendant's first appearance before the magistrates will be at an early administrative hearing under s 50 of the Crime and Disorder Act 1998. Except in the case of indictable-only offences, the hearing may be before a single justice or the justices' clerk. The prosecutor is a lawyer from the CPS. The EAH will deal with legal aid and make arrangements for the defendant to consult a solicitor. Where the offence is an either-way offence arrangements can be made for the advance disclosure of the case for the prosecution. The case will then be adjourned. The single justice may remand the defendant on bail or in custody. The clerk cannot remand in custody and will, therefore, take 'bail' hearings. Legal representation is allowed at both simple guilty plea and EAH proceedings by the defendant's own solicitor or the duty solicitor in either case free of charge. Following the EAH the defendant will be remanded to a pre-trial review (see below) or to the appropriate mode of trial, i.e. summary or on indictment.

For guilty pleas the expectation is that the case will be dealt with on first appearance before magistrates.

- ***Where the defendant has been charged and detained***. In this situation the defendant will remain in custody and be taken before a magistrates' court as soon as is practicable. In this connection, s 57 of the Crime and Disorder Act 1998 provides for the use of live television links at preliminary hearings where the accused is detained in custody. This reduces delays in proceedings and the number of escapes on the way to and from court. The magistrates' court will decide how the case will proceed.

Summons

As regards less serious offences, such as careless or inconsiderate driving, where there will not normally have been an arrest, the prosecution will lay an information. This tells a magistrate or the clerk of the offence alleged and asks for the issue of a summons. An information is usually in writing. A summons is normally served by posting it to the defendant's usual or last known address. An example of a summons appears later in this chapter. As regards the commencement of the prosecution, this is done by the person who lays the information. The prosecution will then normally be taken over by the relevant prosecuting body, which in the case of police officers will be the Crown Prosecution Service. Under the Criminal Justice Act 2003 (as it comes into force) this procedure is replaced by the written charge and requisition though an information can still be laid for a warrant to arrest.

Pre-trial reviews

These are provided for by s 49 of the Crime and Disorder Act 1998. They can be conducted by one justice or the clerk. The object is to provide better management of cases through the court. They provide an opportunity for the prosecution to amend the charges; the defence to enter different pleas; the issue to be identified; there may be clarification as to witnesses who need to attend and an estimate of the time the trial will take.

These reviews are not compulsory but magistrates will normally hold such procedures before trial. The decision whether or not to hold a review is for the members of the court.

The duration of remands

There are three possible situations as follows:

- ***Remand before conviction or committal for trial***. Here the general rule is that the defendant may not be remanded in custody for more than eight clear days at a time, i.e. eight days excluding the day on which the remand was made and the day on which it ends. If remand is on bail, and subject to the defendant's consent, there is no time limit (s 128, Magistrates' Courts Act 1980). If there are successive remands in custody, the defendant need only be brought to court on every fourth remand if he has given and not withdrawn his consent, and has a solicitor acting for him – who need not be present in court (MCA 1980, s 128(3A)). A court can under s 128A, MCA 1980 remand the defendant in custody for up to 28 days if it has previously remanded him in custody for the same offence and he is in court, and can remand him to the next stage in any proceedings, and this may be within the 28-day period.

  It should also be noted that magistrates have power to remand a person who has been charged with offences to police custody for up to three days the purpose being to allow questioning about other offences (see s 128(7) of the Magistrates' Courts Act 1980).

- ***Remand after conviction***. Here s 10(3) of the MCA 1980 applies and states that a magistrates' court may for the purpose of enabling inquiries to be made, e.g. medical reports, before sentence adjourn after convicting the defendant for a successive period of four weeks if on bail, but if in custody for not more than successive periods of three weeks.
- ***Remand following committal to the Crown Court***. The defendant if committed to the Crown Court for trial or sentence is remanded on bail or in custody until the case is due to be heard.

Time limits for the trial to commence

The Prosecution of Offences Act 1985 enables the Home Secretary to make regulations imposing time limits for the completion of various stages in the criminal process as follows:

- ***Magistrates' courts***: the Prosecution of Offences (Custody Time Limits) (Amendment) Regulations 1999 (SI 1999/2744) provide for a maximum magistrates' court custody time limit from first appearance to the start of the trial of 56 days in regard to those charged with summary offences. In the case of an offence triable either way, the maximum period of custody between the accused's first appearance and the start of summary trial or the time when the court decides whether or not to commit the accused for trial in the Crown Court is 70 days. If the court decides to proceed to summary trial, it must do so within 56 days. In the case of the trial of indictable-only offences, the maximum period of custody between first appearance and the decision to commit for trial in the Crown Court is 70 days.
- ***Crown Courts***: the Prosecution of Offences (Custody Time Limits) (Amendment) Regulations 2000 (SI 2000/3284) provide for a maximum Crown Court custody time limit of 182 days less any period previously spent in custody of a magistrates' court for the offence.
- ***Youth courts***: the Prosecution of Offences (Youth Court Time Limits) Regulations 1999 (SI 1999/2743) provide for the following time periods in regard to the three stages of youth court proceedings:
  - persons must be brought to trial within 99 days (the overall time limit) of the date of first appearance;
  - where they have been arrested, persons must first appear in court within 36 days (the initial time limit) of the date of arrest;
  - persons convicted should be sentenced within 29 days of the date of conviction.

The above regulations have a procedure under which the prosecution may apply for the overall and the initial time limits to be extended.

Funding the defence – legal aid

Part I of the Access to Justice Act 1999 applies. It sets up the Legal Services Commission, the members of which are appointed by the Lord Chancellor. The Commission administers the Community Legal Service (for civil legal aid, see Chapter 5) and the Criminal Defence Service (CDS) for legal aid in criminal cases. There is power in the Act to make these bodies separate and self-managing.

As regards the repayment of aid provided in criminal cases, an assisted individual may not be required to make any contribution except where aid is provided in the Crown Court and the judge orders payment to be made.

Franchising

As regards solicitors, only those firms who have contracts with the CDS and fulfil quality of service criteria are able to represent assisted clients. Defendants in criminal cases have a right to choose among firms who have contracts. Following the granting of a contract, there will be quality monitoring of firms through the Commission and a charge is made upon the firms for this purpose. Private solicitors may undertake publicly funded criminal defence work only if they have a contract with the Criminal Defence Service.

All advocacy assistance before magistrates' courts is currently granted without reference to financial resources, so there is no means test.

The Criminal Defence Service Act 2006, ss 1–4 will, as it comes into force, re-introduce means testing and the Legal Services Commission will become responsible for administering payments (see further p 104).

Payments to lawyers

Payments to solicitors are made under their contract arrangements but the Access to Justice Act provides for rules to be made by the Lord Chancellor under which the Commission may make payments to non-contracted persons. This deals with payments to barristers who, by tradition, do not contract for their services. There have been statements by the Lord Chancellor that barristers should consider offering services by contract franchising.

Criteria for the grant of a right to representation

The following are the main factors that will be taken into account when deciding whether representation is in the interests of justice (see Access to Justice Act 1999, Sch 3):

- whether the individual concerned would, as a result of the proceedings, be likely to lose his liberty or livelihood or suffer serious damage to his reputation;
- whether the determination of any matter arising in the proceedings may involve consideration of a substantial question of law;
- whether the individual may be unable to understand the proceedings or state his own case.

Bail

The place of bail as part of the pre-trial process has already been considered. More detail on the somewhat complex matter of bail appears below.

(a) Bail elsewhere than at a police station. Section 4 of the Criminal Justice Act 2003 as it comes into force amends s 30 of PACE to allow police officers to grant bail to persons following their arrest without the need to take them to a police station. This gives the police more flexibility and allows them to remain on patrol if there is no immediate need to take the person concerned to a police station. However, the CJA 2003 makes clear that the basic principle set out in PACE remains and that a person arrested by a police officer must be taken to a police station as soon as practicable. The arresting officer is required to release a person he has arrested and is taking to a police station where the officer is satisfied that there are no grounds for keeping him under arrest or releasing the person under the street bail arrangements.

A police officer can delay taking an arrested person to a police station or releasing him on street bail if that person's presence elsewhere is required for the purposes of investigation. The reasons for the delay must be recorded on eventual arrival at a police station or at the time of release on street bail. Where a constable is taking a person arrested to a police station that person may be released before arriving at the station and released on bail but must be required to attend a police station at a later time. No other conditions may be imposed on the person as a condition of bail.

A person who is street bailed must be given a notice prior to release stating the offence for which he was arrested and the police station the person is to attend and when. The grounds for arrest must also be included in the notice. The CJA 2003 makes clear that a person released on street bail may be rearrested if new evidence comes to light. Those who fail to attend at a police station as the notice requires may be arrested without warrant.

(b) Bail at a police station (police bail). Under s 47 of PACE the custody officer (see above) must, after charges have been laid, consider whether the detention conditions (see above) apply. If not, he must order the release of the accused on bail in accordance with the Bail Act 1976 (see below) or without bail. An accused who is not released must be brought before the magistrate as soon as practicable (see above). Under s 3A of the Bail Act 1976 a custody officer who has granted bail (or another custody officer at the same police station) may vary the conditions of the bail at the request of the person to whom it was given. Under Part IV of PACE a constable may arrest without warrant a person who has failed to answer to police bail.

(c) By magistrates. When an accused person comes before magistrates, e.g. on committal proceedings, the magistrates have to decide at the end of the proceedings whether to remand the accused in custody, in one of the remand prisons for persons awaiting trial, or release him on bail.

Under s 154 of the Criminal Justice Act 1988 the magistrates are obliged to consider bail on each successive remand but *are not obliged to hear argument* in support of a bail application unless there are new circumstances or circumstances not previously brought before them. They are not obliged to review matters previously considered. They are, however, obliged to hear argument in support of bail at the first hearing and at the next if they have refused bail at the first.

The granting of bail is covered by the Bail Act 1976, which is applied also to those in customs detention by s 150 of the Criminal Justice Act 1988. Section 4 of the 1976 Act contains a statutory presumption in favour of granting bail, though this does not apply in breach of bail and 'no-bail' cases (see below). Under the section a person accused of crime must be granted bail unless:

- he is charged with, or convicted of, an offence which is punishable with imprisonment and the court is satisfied there are good grounds for believing that, if released on bail, he would fail to appear at a subsequent hearing or commit an offence while on bail or obstruct the course of justice by intimidating witnesses; or
- the court is satisfied that he ought to remain in custody for his own protection or, if he is a juvenile, for his own welfare; or
- there has not been enough time to obtain information about the defendant for the court to reach a decision; or
- the defendant has been convicted of an imprisonable offence and remanded for enquiries or, say, a medical report, and it seems to the court that it is not practical to complete the enquiries or make the report unless the defendant is kept in custody;
- where the defendant is on bail at the time of the alleged offence, that is a mandatory ground to refuse bail. Under the CJA 2003 where a defendant was on bail in criminal

proceedings on the date the alleged offence was committed, *particular weight can be given to this fact* when the court is deciding release on bail. There is no longer a mandatory bar. This provision applies where the present offence, the offence for which the defendant was already on bail, or both are imprisonable;

- the defendant is in custody under the sentence of a court;
- having been released on bail in connection with proceedings for the offence, he has been arrested for absconding or breaking conditions of bail;
- drug users restrictions. Under s 19 of the CJA 2003 an alleged offender charged with an imprisonable offence will not be granted bail – unless the offender can demonstrate that there is no significant risk that he or she will commit an offence while on bail – where the following conditions exist:
  - there is evidence from a drug test that the person has a specified Class A drug, e.g. cocaine, in his or her body;
  - the court is satisfied that there are substantial grounds for believing that the misuse of a specified Class A drug caused or contributed to that offence or provided its motivation; and
  - the person does not agree to undergo an assessment as to dependency upon or propensity to misuse specified Class A drugs or has undergone such an assessment but does not agree to participate in any follow-up offered.

  If an assessment or follow-up is proposed, it will be a condition of bail that they be accepted, provided that appropriate assessment and treatment facilities are available in the area.

Section 25 of the Criminal Justice and Public Order Act 1994 provides that there is to be no bail, other than in exceptional circumstances, for a person charged with murder, attempted murder, rape, attempted rape or manslaughter, where the person concerned has a previous conviction for any of those offences and, in the case of a previous conviction for manslaughter, was sentenced to imprisonment or detention. It is not necessary that the previous conviction be for the same offence as the current charge before the court.

The prosecutor may ask the court to reconsider its decision to grant bail on the basis of new information which was not available to the court or the police (in the case of police bail) when the original decision was taken.

Where the defendant is charged with, or convicted of, an offence which is not punishable with imprisonment, the grounds for refusing bail are much more restricted. However, such a person can be refused bail if he has previously failed to answer bail and if the court believes, in view of that failure, that he will again fail to surrender to custody if released on bail. Conditions may be imposed on the granting of bail, e.g. the handing in of a passport or regular reporting to the police.

Appeals against refusal of bail

As regards appeals, an unconvicted defendant could, under s 22 of the Criminal Justice Act 1967, appeal to a High Court judge against a refusal by the magistrates or the Crown Court to grant bail. Under s 60 of the Criminal Justice Act 1982 he could, as an alternative to the High Court judge, go to a Crown Court judge in chambers for bail. Section 17 of the CJA 2003 abolishes the duplicate appeal to the High Court so that appeal is now to the Crown Court *only* from a magistrate's refusal of bail, and there is a consequent repeal of s 22 of the 1967 Act. Appeals from a Crown Court refusal are to the High Court. Section 29 of the 1982 Act gives the Crown Court the power to grant bail pending an application to the Court of Appeal for leave to appeal against sentence, or pending an appeal to that court against conviction on indictment.

In addition, under the Bail (Amendment) Act 1993 the prosecution may appeal against a magistrates' decision to grant bail. Appeal is to a judge of the Crown Court. The accused must be charged with or convicted of taking a vehicle without consent, or aggravated vehicle taking under ss 12 and 12A of the Theft Act 1968, or an offence punishable with imprisonment or, in the case of a child or young person, be so punishable if it had been done by an adult (but see below). Bail must have been opposed initially.

Power to appeal to the Crown Court

Section 16 of the CJA 2003 creates a new right of appeal to the Crown Court against the imposition by magistrates of certain conditions of bail. The conditions that may be challenged are requirements relating to residence, provision of a surety (see below), or giving a security, curfew or electronic monitoring or non-contact with a particular person or persons. Such an appeal can only be made where application to vary has been made to the magistrates. This complements the removal by s 17 of the former power of the High Court to entertain such appeals.

Section 18 of the CJA 2003 amends the Bail (Amendment) Act 1993 so that the prosecution's right of appeal to the Crown Court against a decision by magistrates to grant bail is extended to cover *all imprisonable offences*.

Surrender to bail and sureties

Section 3 of the 1976 Act imposes a duty upon a person granted bail to surrender to custody. This duty is enforceable by the creation of the offence of absconding in s 6. Security for surrender into custody and sureties may not be required nor conditions imposed on the grant of bail except as provided by s 3. Thus, for example, a deposit of a sum of money or a surety or sureties may be required if it is believed the person will abscond. A previous restriction that security or surety could be required if it was thought the person would leave the country has gone. The court may ask for sureties other than the defendant to provide an additional guarantee to secure the defendant's surrender to custody. As regards conditions, the section makes it plain that these are only to be imposed to ensure the defendant's surrender to custody, that he does not commit a further offence while on bail, that he does not interfere with the course of justice, as by intimidating witnesses, and that he makes himself available for the purposes of enabling enquiries or a report to be made. The section also provides for the parent or guardian of a juvenile to stand as surety in a sum not exceeding £50 to ensure that the juvenile complies with the requirements attached to the grant of bail.

Section 6 also creates the offence of failing, without reasonable cause, to surrender at the time and place appointed. The offence is punishable in a magistrates' court by a maximum of three months' imprisonment and/or a fine, and in a superior court, such as a Crown Court, if committed for sentence by the magistates after conviction, with 12 months' imprisonment and/or a fine. Section 7 provides for the arrest of a defendant who fails to surrender himself to custody at the appointed time and place or who breaches any of the conditions attached to the grant of bail.

Suitability of sureties and indemnities

If the court requires sureties under s 3, s 8 provides for the first time in statutory form some matters which should be taken into account in deciding the suitability of sureties. The list, which is neither mandatory nor exhaustive, relates to the financial resources, character (including previous convictions) and proximity to the defendant (in terms of blood

relationship, dwelling, or otherwise) of the proposed surety. In addition, the section enables a person who is not accepted as a surety to apply to a court to have the matter reconsidered. Section 9 creates the offence of agreeing at any time and regardless of whether or not a person in fact becomes a surety, to indemnify that person against his liability as a surety. Thus, if A asks B to stand as a surety for C and tells B that he (A) will pay to B any sum which B has to pay into court because C absconds, then A commits this s 9 offence. The penalties for this offence are the same as those for the offence of absconding. No proceedings may be instituted under this section without the consent of the Director of Public Prosecutions.

Where a person who has stood surety for a defendant's bail cannot be blamed for his failure to surrender, as where the surety has not been told when the defendant was required to appear, then the surety should not forfeit his recognisance (*R* v *Reading Crown Court, ex parte Bello* (1990) *The Times*, 10 December). However, the matter is at the discretion of the court and lack of blame on the part of the surety will not necessarily mean that there will be no forfeiture though the court may reduce the amount payable if there has, e.g., been police negligence (*R* v *Crown Court at Maidstone, ex parte Lever* [1995] 2 All ER 35).

Funding is available for defendants who wish to be represented in actions relating to whether they are entitled to bail or not.

Bail hostels

Before leaving the subject of bail, the provision of bail hostels is worthy of consideration. These hostels, often run by the probation service, give an accused person an address so that he need not necessarily be remanded in custody because he has no fixed abode, which is still a ground under s 1(4) of the Magistrates' Courts Act 1980, though persons of no fixed abode are not bound to be refused bail. The Secretary of State is given power to approve bail hostels and to provide a system of inspection under s 49 of the Powers of Criminal Courts Act 1973 (as amended by the Criminal Justice Act 1982, Schs 11 and 16). Before this statutory measure there was only a limited number of such hostels provided by voluntary organisations.

On granting bail the court may impose a condition that the defendant reside at a bail hostel and abide by its rules so that a remand in custody can result if the defendant misbehaves (Criminal Justice Act 1988, s 131, amending Bail Act 1976, s 3).

Criminal trials and the Human Rights Act 1998

Before considering trial procedure, the effect of the Human Rights Act 1998 must be briefly looked at. In this connection the Act does not require Convention issues to be taken into consideration at any particular stage of criminal proceedings. However, under the Convention the charge or indictment could be challenged before trial, and at the trial attempts may be made under the Convention to exclude evidence allegedly obtained in breach of the Convention or questioning the drawing of adverse inferences from the silence of the defendant. On appeal the defence may ask that a conviction be quashed where it is alleged that it was obtained in breach of the Convention. Since the court itself is a public authority required to comply with the Convention, it may of its own volition take points relating to breaches of the Conventions. Articles 5 and 6 of the Convention are especially applicable. The former deals with rights in relation to criminal proceedings, while the latter is concerned with the right to a fair hearing.

The law relating to arrest involves Art 5, which provides that everyone has a right to liberty and security of the person. Article 5 is also relevant to detention. If the conditions of

detention amount to inhumane or degrading treatment there could be a breach of Art 3, i.e. freedom from torture or inhumane or degrading treatment.

Summary trial before magistrates (other than in a youth court)

Since the majority of summary trials before magistrates relate to motoring offences, such an offence has been chosen as an example of the form of summary trial.

The position in regard to the disclosure of the prosecution's case, which is not a legal right in summary trials and the disclosure of unused material together with the defence statement, have been considered in Chapter 2, but should be looked at again by way of revision.

The alleged offence

Let us suppose that on 29 March 2007 Freda Jones was driving her car along George Road, Barchester, and that her attention was distracted by the sun so that she ran into the back of a stationary delivery van which was parked at the kerbside in an area where there were no parking restrictions.

Freda is to be prosecuted under s 3 of the Road Traffic Act 1988 for careless or inconsiderate driving. This offence is classified as summary only. The maximum penalty is a fine of £2,500 with discretionary disqualification and an obligatory endorsement of three to nine penalty points. The offence is defined as driving '. . . a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place . . .'.

The summons

Freda will receive a summons containing the following materials. The content of a summons is set out in Rule 7.7 of the Criminal Procedure Rules 2005 as follows:

1. It is addressed to Freda Jones and must be signed by the magistrate issuing it or state his or her name and if it does the latter the signature must be authenticated by the signature of the clerk to the magistrates' court.
2. The summons requiring a person to appear before a magistrates' court to answer an information or complaint must state shortly the matter of the information or complaint in Freda's case as follows:
   That you on 29 March 2007 at George Road, Barchester drove a motor vehicle without due care and attention contrary to section 3 of the Road Traffic Act 1988.
   Note: Rule 7.2 states that an information is sufficient if it describes the offence with which the defendant is charged. It is not necessary for it to state all the elements of the offence.
3. Rule 7.7 requires a summons to state the time and place at which the defendant is required to appear before the court as follows:
   You are hereby summoned to appear on 7 May 2007 at 10 a.m. before the Magistrates' Court at The Law Courts, High Street, Barchester to answer the information.
4. The summons is dated.
   Note: Rule 7.7(4) states that where a signature is required an electronic signature incorporated into the document will suffice.

The summons will be accompanied by (1) a notice explaining the guilty plea procedure and (2) a statement of the facts of the offence (but see below) as follows:

IF YOU INFORM THE CLERK TO THE MAGISTRATES COURT that you wish to plead guilty to the offence set out in the summons, without appearing before the Court, and the Court proceeds to hear and dispose of the case in your absence under s 12 of the Magistrates' Courts Act 1980, the following Statement of Facts will be read out in open Court before the Court decides whether to accept your plea. If your plea of guilty is accepted the Court will not, unless it adjourns the case after convicting you and before sentencing you, permit any other statement to be made by or on behalf of the prosecutor with respect to any facts relating to the offence.

STATEMENT OF FACTS
On 29 March 2007 at 10.00 hours you were the driver of a Suzuki Vitara car reg. no FJ 123, travelling north on George Road, Barchester. On approaching the junction with Marks Road you collided with a Ford delivery van N113 PJC which was parked at the kerbside. When asked by the Police Reporting Officer what had happened you said: 'I had the sun in my eyes. I did not see the van.'

Signed *Peter Green*
(on behalf of the Prosecutor)

Freda will be advised that under s 8 of the Road Traffic Offenders Act 1988 her driving licence must be at the court by the date of the hearing and that failure to comply could lead to the suspension of the licence and a fine.

Freda is unlikely to get legal aid for a lawyer to defend her (see criteria earlier in this chapter). Many magistrates are reluctant to give legal aid in motoring offences. This contrasts with persons pleading not guilty in the Crown Court. They are likely to get legal aid whatever the offence.

Effect of the Magistrates' Courts (Procedure) Act 1998

When considering summary trial before magistrates (other than in a youth court), the provisions of the Magistrates' Courts (Procedure) Act 1998 should be addressed. It amends the Magistrates' Courts Act 1980. The Act revises the procedure of pleading by post. Previously many defendants did not respond to the summons. In other words, they did not take the opportunity to plead guilty by post which the summons gives. Where guilt was not admitted in this way, the case had to be adjourned in order that the Crown Prosecution Service could obtain detailed statements from witnesses or make arrangements for them to attend the court. The 1998 Act contains provisions under which the police *may* prepare witness statements rather than a mere statement of the facts and serve these with the summons. The witness statements are then admissible as evidence, provided the defendant does not object. Thus, where a defendant does not plead guilty by post and does not attend court to plead not guilty, the magistrates can try the defendant in his or her absence and the prosecution may base its case on the witness statements which have been served on the defendant as described above. As the example given in the text indicates, the procedure of pleading guilty by post is usually used for certain driving offences. In this connection, the 1998 Act makes provision for the Driver and Vehicle Licensing Agency to supply a printout, which is admissible as evidence of the defendant's previous convictions, and there is no need to give the defendant advance notice of the intention to refer to previous convictions.

The trial

Freda could plead guilty by letter since the offence is summary only and imprisonment is not involved (Magistrates' Courts Act 1980, s 12). In fact, as we have seen, it is punishable