CHIEF EXAMINER COMMENTS WITH SUGGESTED ANSWERS

JUNE 2018

LEVEL 6 UNIT 18 CRIMINAL LITIGATION

Note to Candidates and Learning Centre Tutors:

The purpose of the suggested answers is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the June 2018 examinations. The suggested answers set out a response that a good (merit/distinction) candidate would have provided. The suggested answers do not for all questions set out all the points which candidates may have included in their responses to the questions. Candidates will have received credit, where applicable, for other points not addressed by the suggested answers.

Candidates and learning centre tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' **comments contained within this report** which provide feedback on candidate performance in the examination.

CHIEF EXAMINER COMMENTS

The principal comments on the overall performance of candidates are similar to those contained in previous examiners reports. The Case Study Materials contain specific information about the circumstances of each of the offences and offenders. This is designed to enable candidates to familiarise themselves with the categorisation of the offences into summary, either way or indictable only, identify the maximum sentences and, crucially, consider where the offences fit into the relevant sentencing guidelines. The specific facts should enable candidates to identify which category in the guidelines the particular offence falls into having regard to the information about harm and culpability supplied. This may not be absolutely clear cut, but should give an indication of one or two categories. This information is highly relevant when considering allocation of an either way offence, and also in relation to sentencing. Unfortunately, a sizeable proportion of candidates, including some who attained a pass, did not appear to have consulted the sentencing guidelines, and certainly did not refer to these in detail. This failure to consider the specific information provided and the specific circumstances, including additional material included in the question paper, is the most important

shortcoming. It is however closely followed by a tendency for candidates to learn by rote material on various topics and to give this as an answer to a question which they perceive as being relevant to the topic. When this rote learned answer is all that is provided there is again a failure to engage with the circumstances of the cases in front of the candidate. A substantial number of marks are allocated for application and candidates to just produce generic material will not obtain those marks. A candidate with a very good knowledge of the law and procedure who can apply this knowledge accurately can secure a bare pass even with a limited application to the facts, but a candidate with limited knowledge of law and procedure who makes no attempt to apply to the facts is not able to secure a pass mark. This is further exemplified in the detailed comments on the individual questions below.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1(a)

This was a prime example of candidates producing a rote learned generic answer including such marginal issues as checking that the client was warm and comfortable. There was no suggestion in the paper of any issue in this respect. The question specifically asked for advice in relation to the breath alcohol test, and a depressingly large number of candidates did not appear to appreciate that this was a standard requirement where there had been a positive screening test on arrest. The police are entitled to require the sample, and failure to provide is a set specific offence. A number of candidates seemed to believe that this was a request for a sample falling within the PACE rules, and very few advised that the client was obliged to submit to the test and this would not be delayed for legal advice or interpreter. It would not simply be a matter of adverse inferences. Beyond this, the question asked about the action to be taken to represent and protect the interests of the client and what was expected was the reference to ensuring that the custody officer had carried out a risk assessment and made any arrangements for medical assessment that this indicated, the need to arrange an interpreter and ensuring that the right to consular representation was respected. It did not require any discussion of funding arrangements, even those at the police station, let alone any future representation. As the client had clearly requested the duty solicitor, there was no need to discuss the right to legal representation. Some very limited reference to the client's right to choose representation could be justified, but only against the background that this is a duty solicitor case.

(b)

This was another example of candidates producing very generic answers. Only a minority appeared to appreciate that this was clearly a case where the client was guilty and wished to plead guilty having already made full admissions to the police at first contact. The focus should therefore have been on how this should best be achieved. The answer should have included a reference to the need for full admissions at the earliest opportunity to maximise the discount on sentence, and should then have focused on how this should best be achieved. Clearly the available options are to answer all questions, which would be the obvious recommendation to the client unless it was clear that he was not likely to be capable, even with an interpreter, of doing justice to himself. In that case a full written statement of admissions would be

appropriate. There is no basis for recommending a straight no comment interview. As the client is pleading guilty there was also no case for discussing such things as adverse inferences or providing the police with more information in the course of answering questions. As a result many candidates achieved little more than the single marks available for identifying the three theoretical options available and that a written statement might be appropriate.

1(c)

This question was generally well answered, with the vast majority of candidates appreciating that it was an either way offence, that the client would indicate a guilty plea at plea before venue and that it would then be a matter for the magistrates to consider whether their sentencing powers were adequate or whether the case should be committed for sentence. The circumstances of the offence were fairly serious and might well have led the magistrates to commit. They are based on a case which was heard at Nottingham Crown Court about a year ago where the magistrates had committed but the Recorder imposed a sentence which would have been within the magistrates range. Here the personal mitigation and maximum discount for a guilty plea might have encouraged the magistrates to retain jurisdiction, but provided there was a discussion of the circumstances and awareness of the sentencing guidelines, candidates received credit whether or not they considered that committal would take place. A minority of candidates either discussed the mode of trial procedure rather than the plea before venue, or dealt with plea before venue briefly and then went on to consider matters that were relevant only to mode of trial. There was no credit for this as it was clearly inappropriate.

(d)

This question again was generally efficiently answered, although some answers were weakened by a lack of focus which should have been on the personal mitigation, since unfamiliarity with British conditions does not really mitigate, particularly in relation to the initial attempt to flee the scene. A number of candidates argued for a community disposal, ignoring the fact that the client was in England only on a short visit and it would not be in his interests to tie him to a disposal which would require his presence over an extended period. Realistically, the mitigation should be against a custodial sentence in favour of a suspended sentence, or possibly a substantial financial penalty, which the client would clearly be able to meet. A large number of candidates talked about imposing a fine in order to compensate the owners of the damaged property. A compensation order would be possible but it is not the same thing as a fine.

Question 2(a)

This question was again generally answered reasonably well, but too many candidates simply copied or paraphrased the relevant part of the Case Study materials, rather than extracting the relevant material.

(b)

Answers to this question were generally disappointingly thin. It was expected that answers would cover the fact that VIPER is the primary identification procedure where there is an available suspect who denies involvement, that it

is generally seen as the most objective and the suspect/representative have some control over the images. Refusal could lead both to adverse inferences at trial and a less satisfactory method such as covert video, group identification and confrontation. Relatively few candidates addressed the issue that the client was alleging that he had been wrongly implicated out of revenge, and the possibility that the witnesses would identify him from memory rather than from the images, but of course this problem exists whatever form of identification procedure is adopted.

(c)

Again, most candidates identified the correct allocation procedure. The main deficiency was that many answers did not show any overt recognition of where this offence fitted into the sentencing guidelines. There was greater culpability due to the use of a weapon and that it was a group attack, but the degree of harm was not high, thus putting it into category 2. As a result it was likely that the magistrates would retain jurisdiction and it would be necessary to consider election. Those candidates who did consider the factors relevant to election generally did so in a very formulaic and generic way, although a number did identify that the client was likely to qualify for representation at the Crown Court although he would be outside the means test for the magistrates' court. How far this should be a factor is debatable.

Question 3(a)

Very few candidates appeared to have any grasp of the required format and did not set their answer out to indicate the nature of the defence, the facts with which issue was taken and the reason for that as they should have done. This is not the first time a question of this kind has been set and the unit specification makes it clear that the drafting of documents may be required. Most answers were also fairly weak in terms of the content, failing to make it clear that it was a case of mistaken identity and that issue would be taken with the eyewitness evidence on the basis that it was maliciously false.

(b)

Most candidates were able to give some account of this hearing, although many struggled to give it its correct title of Plea and Trial Preparation Hearing. Many candidates provided a disproportionate amount of information about the various stages of disclosure. This is unlikely to be much of an issue in a case of this kind.

(c)

Nearly all candidates recognised that this question raised issues of ethics/conduct. Some struggled to identify exactly what the problem was and did not clearly identify that it involved the client and his potential witness misleading the court. It should also be noted that the stage had not yet been reached when it would be necessary to withdraw from acting, although that remained a possibility if the client insisted on pursuing the improper course of action.

3(d)

As usual, this question proved difficult for those candidates who had not really thought about the issues. There were quite a few generic and rote learned references to the burden of proof beyond the prosecution, but unless this was specifically tied to any of the actual issues in the case, it deserved no credit. The case essentially turns on disputed identification, and so a discussion of how the Turnbull guidelines should be addressed was required. This needed to be contextualised rather than generic. Allegations that the eyewitnesses were acting maliciously out of revenge would inevitably raise issues of character. The prosecution might have chosen to seek to put the defendant's character in issue but would not have been able to do so on grounds of propensity as the previous convictions are of a different nature. Given that a propensity to be dishonest is not the same thing as a propensity to tell lies, it may be that the previous convictions for dishonesty would not be enough. Secondary issues arise around the recent suggestion that the defendant can identify the actual perpetrator. Firstly, this will be inconsistent with the prepared statement given and therefore could give rise to inferences which, while not sufficient in themselves for a conviction might bolster what would otherwise be seen as weak identification evidence. If the prosecution were aware of the dispute over the payment for the motorbike, they could suggest that the defendant is implicating Luke Williams out of malice and to extricate himself. Ultimately these will be issues on which the jury will have to decide what weight to give to the evidence and what credence to give to the witnesses.

Question 4(a)

Virtually all candidates recognised that this was a juvenile who would initially appear in the Youth Court and ought to be dealt with in that court if possible as it had the best facilities and procedures were specifically geared to ensuring that the objectives of youth justice were met. Too many candidates insisted on telling the examiner that a juvenile could be dealt with in the adult court if jointly charged with an adult, which was wholly irrelevant as it was no suggestion that anyone else was involved. Some candidates appeared under the misapprehension that a distraction burglary necessarily involves more than one participant. This case was very loosely based on a juvenile distraction burglar, who the chief examiner represented many years ago, who operated purely solo and in one particular episode perpetrated some 600 distraction burglaries over a period of three weeks. This clearly demonstrates that while some distraction burglaries involve a team, by no means all do. Where candidates struggled was in going on from this to consider how this case was likely to be dealt with. The circumstances of the cases indicate high culpability and high harm since vulnerable victims appear to have been targeted and items of significant financial and sentimental value have been taken. Candidates did not really apply the latest case law which suggests that, now that the Youth Court has power to commit for sentence to the Crown Court either on the basis that its powers of sentence are insufficient or that the dangerousness criteria have been met, allocation to the Crown Court for trial should only take place in the most serious cases. It should in any event not be considered unless the likely sentence would clearly exceed the Youth Court maximum of a twenty-four month DTO. In particular, the necessary information to make a determination of dangerousness is unlikely to be available until a presentence report has been prepared. Too many candidates simply indicated that because there was power to allocate to the Crown Court this should happen because it seemed to be a quite serious offence which might attract a sentence beyond the Youth Court maximum, although without

any real discussion of the facts of the case and how they fitted into the categorisation in the sentencing guidelines.

4(b)

Most candidates made a reasonable attempt at aspects of this question. Generally, there was insufficient distinction made between remand to local authority accommodation and remand youth detention accommodation. The latter is intended as a last resort, and this did not appear sufficiently from the discussions. Understandably, candidates did not appear to be entirely on top of the various criteria. In view of the absence of history of offending on bail, and given that there is an existing placement in local authority accommodation, the realistic argument by the defence would be for that disposal.

(c)

Disappointingly few candidates identified that this would be an application for judicial review as it is an interlocutory decision not a final disposal. Even those who did identify that the judicial review was the appropriate mechanism, did not identify that the grounds for review were in effect that the decision was irrational in the Wednesbury sense. Having regard to the comments above in relation to Q4(a) it would seem clear that the Youth Court could not reasonably have come to the conclusion that allocation for trial was appropriate as the sentencing guidelines do not indicate that a twenty-four month DTO would be inadequate. There have been at least two previous cases where similar decisions have been successfully judicially reviewed.

(d)

This question was handled reasonably well. Issues relating to competency required discussion, although it is by no means unusual for children of this age to testify. When discussing special measures, some consideration of the circumstances was necessary in order to provide an appropriate set of suggestions, most probably that evidence in chief be given by the pre-recorded ABE interview, with cross examination by Livelink and removal of wigs and gowns if the case was in the Crown Court. Alternatives were, generally speaking, unlikely. Similarly, while in theory a written statement could be admitted as hearsay, this would be unlikely in practice.

SUGGESTED ANSWERS

JUNE 2018

LEVEL 6 UNIT 18 CRIMINAL LITIGATION

Question 1(a)

Generally, there are a number of factors which render your client potentially vulnerable and you should ensure that all have been addressed by the custody officer, and if necessary make representations on matters which do not appear to you to be satisfactory. The specific issues are that as a Lithuanian national, Daukintis is entitled to consular assistance if he requires it. As he is a temporary visitor, it is likely that an interpreter will be required. As he has recently been involved in a road traffic accident, and has consumed at least some alcohol, his physical condition should have been checked by an appropriate health professional. The police are entitled to administer a breath test at this stage and are not obliged to wait until the client has received legal advice. Daukintis should be advised of this, if necessary with the assistance of an interpreter. He should also be told that the additional test may work to his advantage as the amount of alcohol in his system may be reducing, depending on when he consumed alcohol and how long has elapsed.

(b)

Daukintis has the usual options of answering questions, or going no comment with or without a prepared statement. He appears to have made what amount to admissions by volunteering that he was the driver, and his instructions to you confirm that he accepts responsibility. He should be advised that he will get the maximum credit for a guilty plea if he makes full admissions at the first opportunity. If he is sufficiently confident in answering questions, with the assistance of an interpreter if necessary, this is probably the most sensible option. You can ensure that his answers do accurately reflect his instructions to you. It would be perfectly feasible to prepare a written statement which would be a full confession and provide that to the police if for any reason you consider that an interview is unlikely to produce a clear and accurate account.

(c)

Dangerous driving is an either way offence. The first appearance will be at the relevant magistrates' court and will commence with the plea before venue procedure. When asked to indicate a plea, Daukintis will indicate a plea of guilty. The court will then consider whether it has adequate sentencing powers to deal with the matters or whether the case should be committed to the Crown Court for sentence. The prosecution will outline the circumstances, and here there is more than one incident of bad driving, since there is the initial acceleration and loss of control and then going through a red light and driving on the wrong side of the road. There is some involvement of alcohol, a quite significant damage to property, and the failure to stop or report together with the absence of insurance, all of which are aggravating features. Having regard to the magistrates' court sentencing guidelines, the court may conclude that its powers of sentence are inadequate. If it does so, the summary only matters can also be committed for sentence under s6 Powers of Criminal Court (Sentencing) Act 2000. The court will also deal with bail and the defendant

may apply for a representation order. The merits test will be satisfied as the decision to commit clearly indicates that there is a risk of a custodial sentence. If the court accepts jurisdiction it may proceed to sentence there and then or adjourn for any necessary presentence report.

(d)

The judge at the Crown Court may not take the same view of the seriousness of the matter as the magistrates' court, but clearly a custodial sentence is a real possibility. There is clearly a serious case of bad driving, and this has to be accepted. Alcohol was also involved, but the breath test at the police station demonstrates that the extent of alcohol consumption cannot have been very high. There is likely to be a disqualification from driving of up to 2 years.

There is very substantial mitigation available. Saulius Daukintis admitted to the police at once that he was the driver, made full admissions at the earliest opportunity and has maintained a guilty plea. He is entitled to full credit for this. He accepts that he panicked and acted foolishly and dangerously but has fully acknowledged his culpability and has shown genuine remorse. He is effectively of previous good character. He has suffered significant inconvenience by having to remain in the UK until the proceedings are disposed of and has been unable to work during this time. He is in a position to meet a financial penalty if one is imposed, and pay costs and compensation. Even if the custody threshold is met, the judge should be asked to consider imposing a suspended sentence, combined if necessary with a financial penalty for the summary matters.

Question 2(a)

I, Mark Potter make the following statement in relation to an alleged incident in and near the Dark End Club on the XXX June 2018. I went to the club that evening in the company of a group of friends. We arrived at approximately 10 PM. At approximately 1 a.m. there was an incident when another patron of the nightclub accused one of my friends of jumping the queue to be served at the bar. This resulted in some shouting and swearing and pushing and shoving between my group of friends and his. The security staff told us that we would all have to leave. My group of friends were told to leave first. When we got outside there was some discussion of what we were going to do next. I decided that I would go home and set off to walk there. None of my friends accompanied me. I have been told that after the other group were allowed to leave the nightclub a few minutes later there was an incident in which one of that group was assaulted and sustained injuries. I was not present at this incident and had nothing to do with it. I was on my way home, but as I was alone there is only my word for this.

[Signed by Mark Potter and countersigned by his legal representative]

(b)

The VIPER procedure is the preferred identification procedure where there is an available suspect who denies involvement. It entails the making of a standardised video image of the suspect which is shown to the witnesses together with not less than eight similar standardised images from the police database of other individuals who resemble the suspect. The defendant must consent, but it is generally regarded as the most objectively fair procedure. If the defendant does not consent, this will be noted, and inferences can be

drawn at trial. The police may also proceed to other forms of identification procedure including a group identification or the use of covert video material, neither of which is as beneficial to the defendant as there is a greater chance of a false positive identification. The defence solicitor is entitled to view the images of the proposed comparators and to object where appropriate. The procedure will be supervised by a police officer independent of the investigation. Here there is a difficulty, in that Mark Potter alleges that the witnesses have maliciously identified him as a result of a grudge. They will therefore possibly be recognising him on the basis of their previous knowledge rather than on the basis of what they saw at the time, but of course they could do the same if one of the procedures which does not require consent was adopted. It is probably best to agree to the VIPER procedure and deal with the difficulty subsequently.

2(c)

The offence charged is triable either way. The first appearance will be in the magistrates' court. At plea before venue Mark Potter will indicate a plea of not guilty and the court will proceed to consider allocation. The prosecution will outline the circumstances of the case and may make representations as to the preferred venue. The court must treat the case as being at least as serious as the prosecution allegation. The court will consider whether its sentencing powers are adequate, having regard to the relevant allocation guidelines: s 19 Magistrates Courts Act 1980. There is a presumption in favour of summary trial unless the outcome would clearly be a sentence in excess of the court's powers.

The injuries are significant, but not the most serious which could be charged. Of the factors indicating higher or lower culpability listed in the sentencing guidelines, the only one clearly present is the use of a weapon, which indicates higher culpability, although there is some group involvement. If the offence is in category one, which would require serious injury and higher culpability, the court would allocate the case to the Crown Court as the sentencing range exceeds the 26 weeks which the magistrates' court can impose. It is more likely to be seen as a category two offence since the harm is not particularly serious and while there is some indication of higher culpability it is not clear-cut. As the entry point for this category is 26 weeks custody, it is likely that the court would accept jurisdiction.

The court will, if it accepts jurisdiction, warn Mark Potter that he may still be committed for sentence if he is convicted in the magistrates' court. He has the right to elect trial on indictment. Anecdotally, the acquittal rate in the Crown Court is higher, but this is more likely to be the case where the case turns primarily on police evidence and this is not the case here. Trial in the Crown Court is more formal, and will take longer and attract more publicity. On the information given, Mark Potter would be eligible for a representation order in the Crown Court but not in the magistrates' court. He would however have a contribution to pay out of income, and the overall costs, including a possible order for prosecution costs, are significantly higher.

Question 3

(a) Part 2 will contain the following elements:

Defence relied on: Mistaken identity. The defendant denies participation in the offence and puts the prosecution to proof of the contrary. The defendant does not rely on any other specific or particular defence.

Facts with which issue is taken: That the defendant was present at the scene of the alleged offence and committed the same. That the witnesses testifying to the defendant's participation in the offence are witnesses of truth. The defendant will assert that the said witnesses have implicated the defendant as a result of pre-existing animosity between them.

Facts on which the defendant relies: The defendant relies on no additional facts other than those already stated.

Points of law: None

Alibi: N/A

(b)

This will be a Plea and Trial Preparation Hearing. The principal function is to ensure that directions can be given to ensure that a trial takes place expeditiously. If the defendant changes his plea, the case can be dealt with on a guilty plea basis or adjourned for reports. Otherwise, the court will ensure that all matters of disclosure are dealt with, and consider issues relating to the listing of the trial such as length and witness availability. In general the record of the hearing and directions is maintained electronically.

(c)

The information you now have clearly indicates that Emma Parsons would not be a witness of truth. You are under a professional duty not to mislead the court, and you would be misleading the court if you allow this evidence to be put forward (SRA Code of Conduct O(5.1); IB(5.5)). You must inform your client of the position and explain that you cannot be party to this evidence being led. If your client agrees not to rely on this evidence, you can continue to act. If he insists on it being used, you will be professionally embarrassed and must withdraw from the case. Client confidentiality however prevents you from disclosing your reason for doing so.

(d)

The principal issue is the identity of the assailant. The prosecution bears the legal and evidential burden of proving this. The defence has no burden, but it would be normal for the defendant to give evidence consistent with the defence statement and the written statement tendered to the police at interview. In this case no adverse inferences can be drawn. The fact that the defendant was present in the Dark End Club is not in dispute and the evidence in respect of this can be agreed. The case does depend substantially on the eyewitness evidence identifying the defendant as the perpetrator. The judge should give a standard Turnbull direction focusing on the relevant issues affecting the quality of the evidence, and warning the jury that eyewitness evidence can be mistaken and unreliable. Here, there are two eyewitnesses,

and even if the evidence of each is considered to be of lower quality, they can mutually reinforce each other. The situation is complicated by the allegation that these witnesses have maliciously produced a false identification. The jury must be satisfied so they sure that this is not the case. The prosecution will no doubt submit that this assertion constitutes an attack on the character of the prosecution witnesses such that the defendant's character is put in issue. If the defendant does give evidence to the effect that the offence was committed by a named third party, that will also amount to an attack on his character with the same result.

Question 4(a)

Oliver Kingston is a juvenile, and since he appears to be solely concerned in these matters, his initial appearance must be in the Youth Court. There is a strong presumption that juveniles should be dealt with in the Youth Court where possible, as this court is specially constituted to have regard to their particular needs, in particular the welfare principle set out in s 44 Children and Young Persons Act 1933: R (H, A and O) v Southampton Youth Court (2004). However, the offences carry a sentence of imprisonment of 14 years for an adult, and therefore constitute grave crimes for the purposes of s 91 Powers of Criminal Courts (Sentencing) Act 2000 (PCC). The Youth Court may decide to send the case for trial in the Crown Court, but only if satisfied that the likely sentence will be significantly greater than the maximum 24 month detention and training order which the Youth Court could impose (see the Southampton case). The allocation decision is for the court alone and the defendant has no right of election. The Sentencing Council Guideline for young offenders indicates that in most cases, and particularly where the likely sentence can only be determined after a full consideration of the circumstances, jurisdiction should be retained since there can be a committal for sentence if appropriate. These are clearly Category One burglaries, having regard to the value of the property stolen, the fact that the victims were vulnerable, and they appear to have been targeted. The entry point for an adult is three years custody, but this should be discounted substantially for a juvenile.

(b)

Pursuant to s38 PACE, following charge any detainee must be released by the custody officer with or without bail unless the conditions set out in the section are met. For a juvenile the relevant grounds for withholding bail are that he should be detained 'in his own interests', or since this is an imprisonable offence, in order to prevent further offences. Oliver Kingston will be put before the youth court which must consider bail, as he has a right to it: s4 Bail Act 1976. Given the information we have, the court may consider that bail should be withheld to prevent commission of further offences, having regard to the nature and seriousness of the offences, his lack of community ties, and the situation with regard to accommodation. If it does not grant bail, the court should remand Oliver Kingston to local authority accommodation pursuant to s91 Legal Aid, Sentencing and Public Order Act 2012 (LASPO). Conditions equivalent to bail conditions may be imposed: s93 LASPO. Here, Oliver Kingston appears to satisfy the conditions for tagging: s94 LASPO, and possibly for a remand to youth detention accommodation: s98 LASPO – this is an offence punishable with at least 14 years imprisonment in the case of an adult, Oliver Kingston is over 12, such remand is arguably necessary to prevent further offences and he is legally represented. However, this is intended as a last resort.

4(c)

The appropriate procedure is an application for judicial review. An application for leave must be made to the Administrative Court. This must be done as soon as possible, and in any event within three months. The appropriate basis for the application will be that the decision of the Youth Court is irrational in the Wednesbury sense, that is a decision which no tribunal properly addressing its mind to the issues in the case could have reached. R (DPP) v South Tyneside YC (2015) provided guidance following the introduction of the power for the Youth Court to commit for sentence in relation to a grave crime. This guidance is to the effect that the court should only allocate the case for trial in the Crown Court if there is clear and comprehensive information making it certain that a sentence under s 91 is required, and in all other cases it is likely that the Youth Court should conduct the trial, as it is only at the conclusion of the trial that it will be clear whether its sentencing powers are adequate. If in this case there is no basis for saying that committal for trial was required under these criteria, the application for judicial review is likely to succeed.

(d)

A child of this age must give unsworn evidence, and the court may need to satisfy itself that the child is capable of giving evidence. The prosecution will no doubt apply for a special measures direction pursuant to Chapter I of Part II of the Youth Justice and Criminal Evidence Act 1999. The usual direction is for the evidence in chief of the child given by way of a video recording of the Attaining Best Evidence interview. Cross examination will usually be either by Livelink or by video recording. In the unlikely event of the witness being present in court, if the trial is in the Crown Court there will be a direction for wigs and gowns to be removed.