**CHAPTER 11**

EXERCISE 1

Gunnar Erikson should be advised to elect trial by jury in any event. He stands a greater chance of being acquitted of this offence before a jury of his peers. However, he may feel he would rather the matter be tried summarily as his ordeal will be over more quickly and with less publicity.

Regard must be had to the allocation guideline and any offence-specific guidelines. The Sentencing Council has issued definitive guidelines on all the offences contained in the Sexual Offences Act 2003. There is a guideline specific to s. 7 SOA 2003 https://www.sentencingcouncil.org.uk/offences/item/sexual-assault-of-a-child-under-13/. If you consult the guideline, the starting point in terms of sentence which best describes what is alleged to have occurred in this case is a Category 3B offence. This suggests a starting point of 26 weeks in custody with a range from a high level community order to one year’s custody. The offence is arguably more serious in that it involved the touching of the perpetrator’s genitalia (even though it was through the victim’s clothing). It was also committed on a vulnerable victim who was entitled to feel safe on public transport. Erikson’s previous convictions (which are an aggravating feature of the offence) are taken into account for the purposes of determining allocation. It is likely that the CPS will represent that this is a borderline case but that on balance the Bench should decline jurisdiction. Depending on Erikson’s instructions, if he is keen to have a summary trial, his solicitor would need to make representations to suggest that the court’s maximum power of sentence (which would be six months) would be sufficient and that, in accordance with the Allocation Guideline, keeping summary jurisdiction would not prevent the magistrates’ court form committing Erikson to the Crown Court for sentence if, on conviction, they were to conclude their powers of sentence to be insufficient.. The defence solicitor would need to contend that as sexual assaults go, this was not the most serious. It was largely opportunistic and of short duration; it did not involve naked flesh and the victim does not appear to have suffered any harm. The disparity in terms of age is taken into account within the guideline’s starting point. Had the offence been committed six days later, the starting point would have been considerably lower.

This is not an entirely clear-cut decision for the magistrates’ court. However, the recent revisions to the Allocation Guideline stress the presumption in favour of summary trial, unless the outcome would clearly be a sentence in excess of six months or there are legal or factual complexities in the case making it unsuitable for summary trial.

**The magistrates’ decision**

If the magistrates were to accept jurisdiction to try the matter summarily, the legal adviser will tell Erikson of the court’s view and inform him that if he consents, he can be tried summarily but, if he chooses, he may elect trial by jury instead.

Erikson must also be told that if he is tried by the magistrates and found guilty, he may be committed to the Crown Court for sentence. This procedure is mandatory and failure to follow it amounts to procedural ultra vires. Any conviction obtained in breach of the legal adviser giving this warning is liable to be quashed when challenged in judicial review proceedings. If the magistrates’ court takes the decision to accept summary jurisdiction, Erikson may seek an indication as to whether a non-custodial or custodial sentence would be imposed in the event of a guilty plea before making a choice.

The legal adviser will then put Erikson to his election by asking him whether he wishes to be tried by the magistrates or before a jury. Only if Erikson consents to trial in the magistrates’ court may the magistrates proceed to summary trial. If he does not give his consent, MCA 1980, s. 20 requires the case to be tried in the Crown Court.

EXERCISE 2

All the offences are triable either way. The magistrates’ maximum powers of sentence on conviction for two or more either-way offences would currently be 12 months. It is most likely that the CPS will invite the magistrates to decline jurisdiction on the basis that their powers of sentence will be insufficient and that there are likely to be factual complexities in this case. The sentencing guideline for fraud is available at: [Fraud – Sentencing (sentencingcouncil.org.uk)](https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/fraud/). This is arguably a Category A-Higher Culpability with the Level of Harm just tipping into Category 3. An 18-month sentencing starting point would be about right. Given Sinead’s denial and her complete lack of any previous convictions, she would be best advised to elect trial by jury in the Crown Court in any event.

Based on the sentencing guidelines for the offence of fraud issued by the Sentencing Council and incorporated within the MCSGs, Sinead’s alleged culpability and the amount of money involved points to a sentencing starting point in excess of the magistrates’ court’s sentencing powers. Given these alleged facts, the magistrates are likely to decline jurisdiction, in which case Sinead will have no choice and the matter will be sent to the Crown Court.