

FACT SHEET 3: CATEGORISATION OF OFFENCES AND CASE PROGRESSION

What is the general proposal?

To simplify the process steps for how criminal cases go through the trial courts, including:

- Reducing the current seven offence categories (including minor offences) to four.
- Removing the summary versus indictable distinction and its link between the appropriate fact-finder (judge or jury) and the appropriate trial court (District Court or High Court).
- Establishing two basic procedural tracks:
 - Judge-alone.
 - Jury trial.
- Removing the committal step (while retaining the critical elements associated with this step).
- Establishing a collaborative mechanism to identify cases that should be transferred to the High Court for trial.

Why change the law?

Currently, whether a case is heard by a jury or judge alone, and how it is to proceed through the courts, depends on:

- A complicated and inefficient system of categories of offences based around the distinction between summary (judge alone, District Court) and indictable cases (jury, District Court or High Court).
- Discretionary decisions by the prosecution about how they will charge the defendant and so whether the case will be tried by a jury or by a judge alone, and by the defence about whether they want to have a trial by jury.

This means the system mixes two important but independent issues:

- Who is the appropriate fact finder – judge or jury?
- Which is the appropriate trial court – District Court or High Court?

Changes to the law and in the criminal justice system generally have also, over time, lessened the relevance and/or effectiveness of some procedural steps.

How?

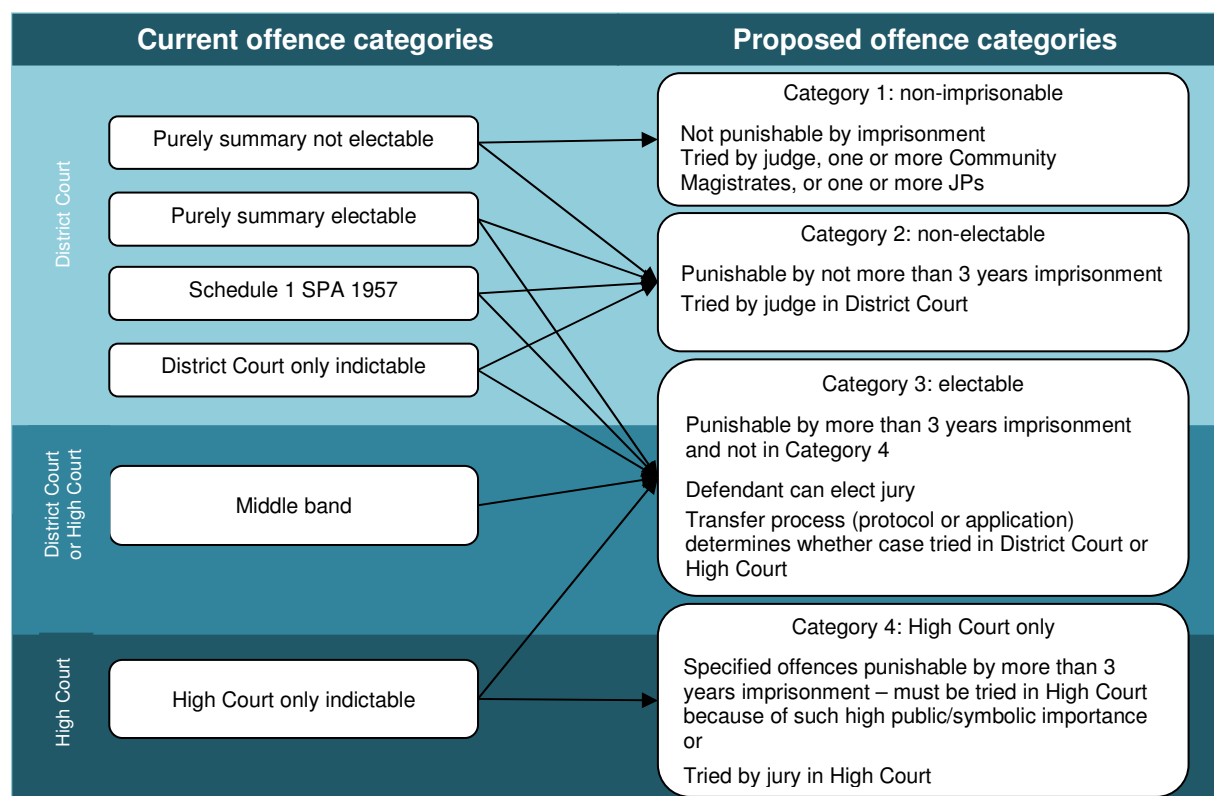
Categories of offence

There are a number of changes being made to the way offences are categorised, including to:

- Remove the distinction between summary and indictable offences, and the link between the appropriate fact finder with the appropriate trial court.
- Abolish the minor offences and complaints procedures.
- Divide the current summary offences category into two categories – whether it is punishable by imprisonment or not.
- Maintain the jurisdiction of Justices of the Peace and Community Magistrates.

- Remove the current sentencing limits on District Court judges where a person is convicted in the summary jurisdiction of an indictable offence.
- Restrict jury trials to more serious and complex cases.
- Abolish the District Court-only category of purely indictable offences.
- Abolish the middle-band offence category.
- Reduce the number of High Court-only offences.

The change in categories is summarised below:



Fact-finder and jurisdiction

The number of offences that must always be tried in the High Court will be reduced and include only the most serious offences. Because they are so serious and of public/symbolic importance, these offences will also normally be tried by jury. More serious category 3 offences will also be tried in the High Court. However, the decision to transfer these cases to the High Court (see below – transfer to High Court) will be made independent of the decision of the defendant to elect jury or not (ie, the High Court will be expected to run both judge-alone and jury trials).

Procedural tracks

The key difference in criminal procedure process steps (or case track) will be whether a case is to have:

- A judge-alone trial.
- A jury trial.

Attached are flow charts of the current criminal procedure process steps and the proposed new process steps or case tracks.

Judge-alone trial

Judge-alone trial case track would apply to:

- Those offences for which election of jury trial is not available (Category 1 and 2 offences).
- Those cases where a jury trial is not elected (Category 3 offences).

This will result in a simpler and quicker case track. Trial would be before a judge sitting alone in the District Court (or the High Court, if a case is transferred). In more complex judge-alone case track cases it will be possible for the parties to make pre-trial applications about evidence admissibility.

Jury trial

A more complex case track (compared to the judge-alone trial case track described above) is needed to accommodate the particular needs of a jury. This case track is used when jury trial is:

- Elected (Category 3 offences).
- Required (Category 4 offences).

It would almost always¹ result in a case being heard before a jury in a District Court or the High Court. As currently, this case track would include:

- The preparation of formal statements for prosecution witnesses and the ability to take oral evidence from those witnesses.
- The ability to make pre-trial applications on a range of matters before the trial begins (eg, place of trial).

Committal

Committals have been part of criminal procedure since 1848 when:

- There was no independent Police force.
- Justices of the Peace investigated and gathered evidence by examining witnesses and the suspect.
- This evidence was put before a grand jury to decide if there was enough evidence for the suspect to be tried.

Over time, committals took on a second role – providing information to the defendant about the evidence against them (disclosure).

Recent changes to criminal procedure and committal itself have largely made the committal step unnecessary. These include:

- Enactment of the Criminal Disclosure Act 2008, which sets out minimum requirements for the provision of disclosure by the prosecution to the defence.

¹ It is proposed to retain the prosecution's current ability to apply in exceptional cases for an order that a jury trial instead be dealt with by a judge sitting alone where the case is long or complex or is likely to involve juror intimidation.

- Changes to the committal process itself, meaning that committal for trial is usually automatic (following the filing of formal written statements), unless a party successfully applies for an oral hearing (which is not often).

The requirement for the prosecution to provide formal written statements, and the right of parties to apply to hear oral evidence pre-trial will be retained.

Transfer to the High Court

All criminal proceedings begin in the District Court. Though some offences are always so serious as to be appropriately heard in High Court, other offences span a range of behaviour and may or may not warrant High Court attention.

The current mechanism to identify where cases that could be heard in either the High Court or District Court are heard (the middle band process):

- Causes unnecessary delay (eg, all middle band cases are transferred to the High Court, only to then be transferred back to the District Court over 95% of the time).
- Are confusing for court users (particularly victims and witnesses) who are often left with the impression of poor service.
- Does not systematically address workload issues between the two jurisdictions.
- Creates avoidable costs on both High Court and District Court registries.

This mechanism will be replaced by two mechanisms for allocating Category 3 cases between the District Court and the High Court:

- Protocol – a list of Category 3 cases that must be routinely considered for transfer to the High Court.
- Application – where the protocol does not apply, parties will be able to request that their case is transferred to the High Court.

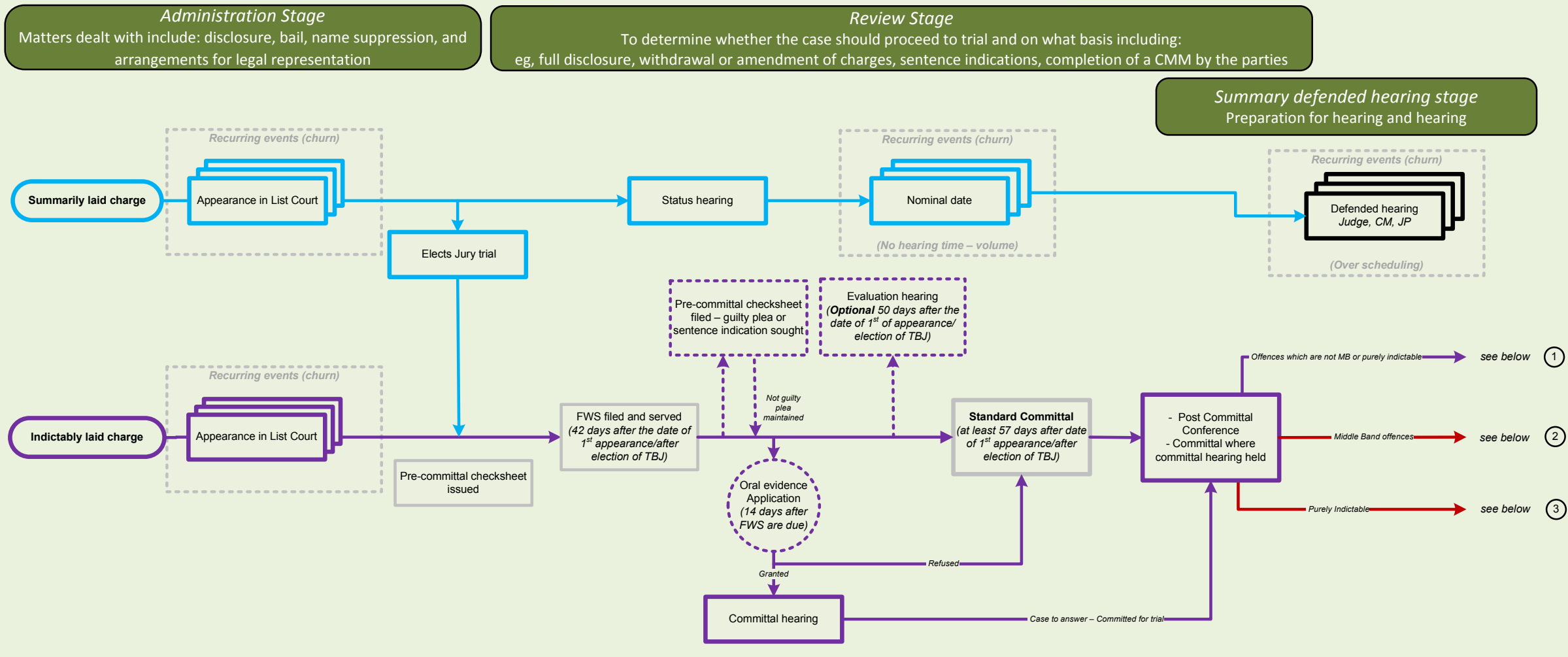
The protocol will be managed by the judiciary, who are in the best position to identify cases that may be appropriate for the High Court, and decisions regarding transfer will be made between the District Court and High Court judiciary.

International Comparisons

The United Kingdom has abolished committal for indictable offences.

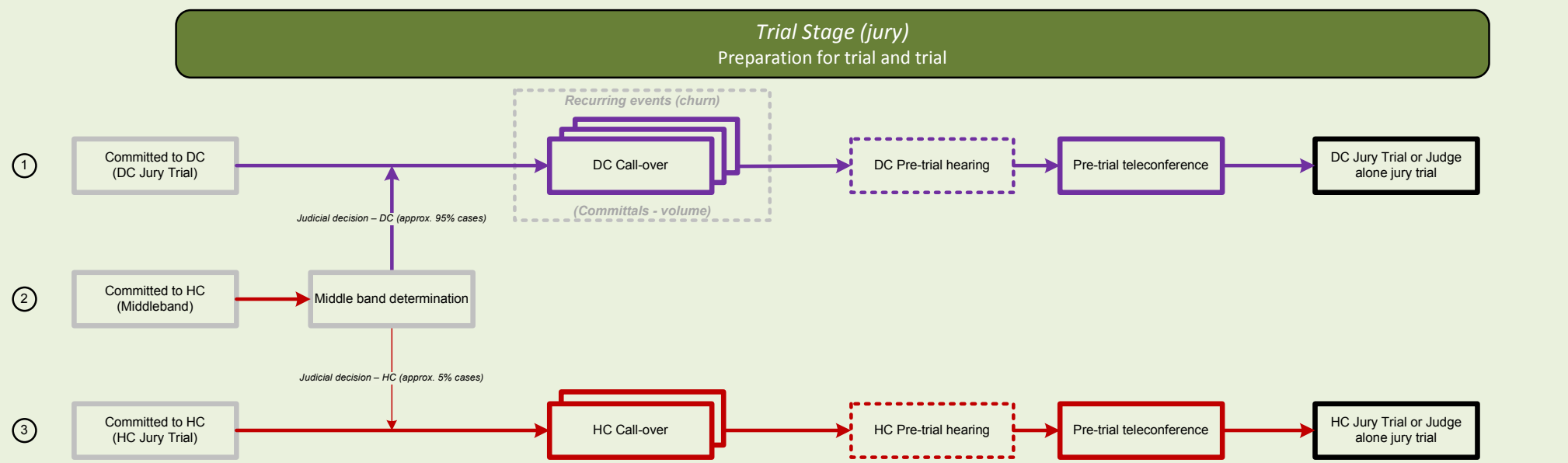
Criminal Procedure Process Steps (Case Tracks) [assumes not guilty plea maintained throughout process]

CURRENT CRIMINAL PROCESS



KEY:

- DC = District Court
- HC = High Court
- TBJ = Trial by jury
- FWS = Formal Written Statements
- Summary —
- Indictable —
- High Court (indictable) —
- No court appearance required
- Initiated by a party
- Initiated by a party

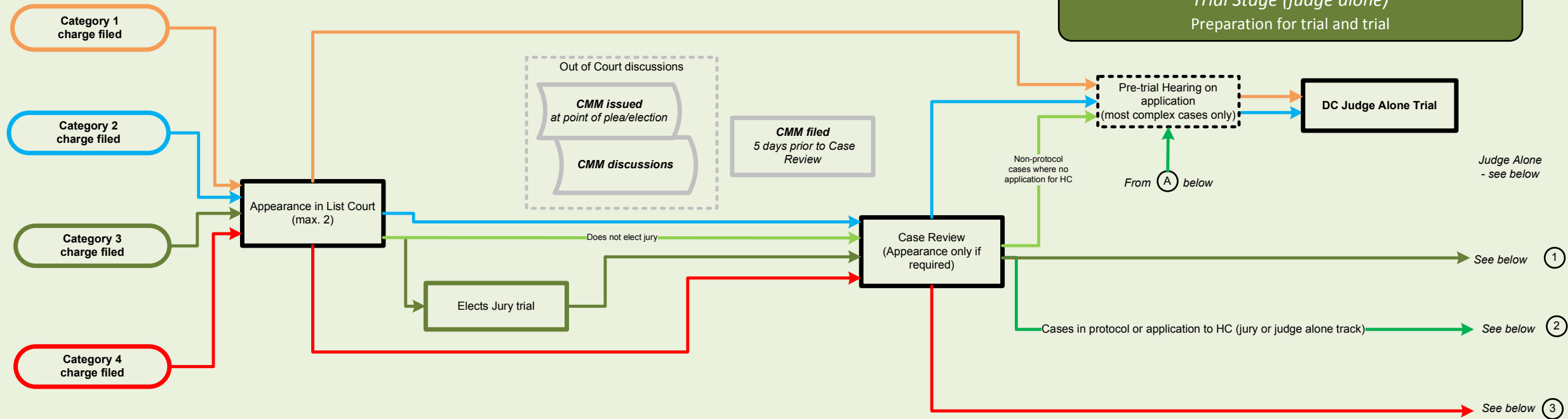


PROPOSED CRIMINAL PROCESS

Administration Stage
Matters dealt with include: disclosure, bail, name suppression, and arrangements for legal representation

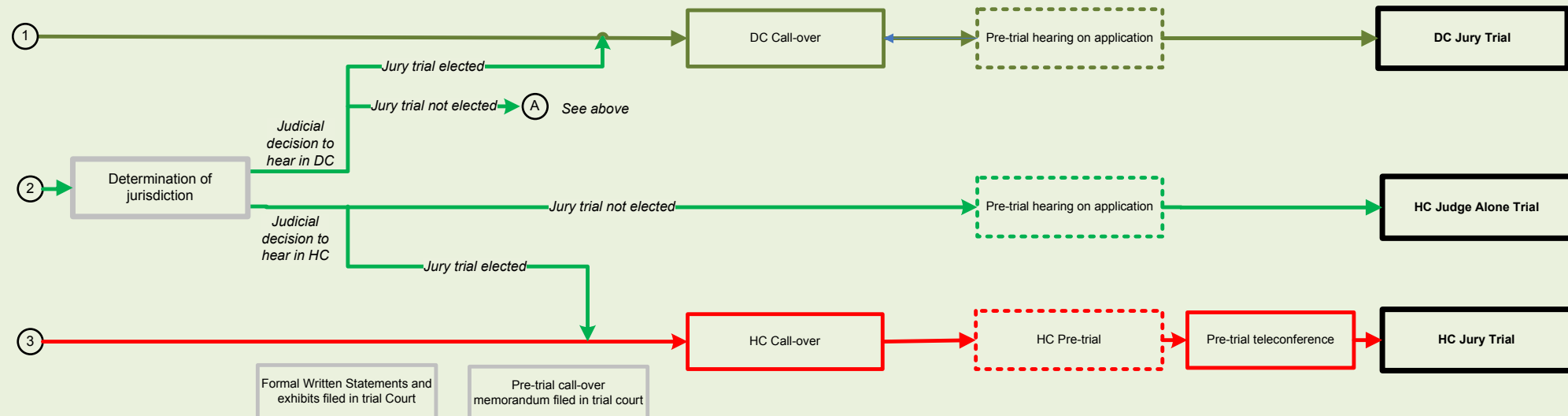
Review Stage
To determine whether the case should proceed to trial and on what basis including: eg, full disclosure, withdrawal or amendment of charges, sentence indications, completion of a CMM by the parties

Trial Stage (judge alone)
Preparation for trial and trial



Review Stage (cont.)

Trial Stage (jury)
Preparation for trial and trial



KEY:

- DC = District Court
- HC = High Court
- CMM = Case Management Memorandum
- No court appearance required
- Initiated by a party
- Initiated by a party
- Initiated by a party
- Initiated by a party