

The Criminal Jurisdiction of Magistrates

Eighth Edition

Fines, Compensation and Property Orders

Brian Harris



Barry Rose

THE CRIMINAL JURISDICTION
OF MAGISTRATES

EIGHTH EDITION

FINES, COMPENSATION AND PROPERTY ORDERS

BY

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GENERAL INTRODUCTION

Books are not exempt from the general rule that everything gets dearer. No one who has to buy books for professional purposes wants to waste money on inessentials. It was with this in mind that the publisher suggested there might be readers whose use of this book is confined largely to certain parts. Thus, the solicitor advocate may be interested in evidence, court practice, legal aid and costs, the prosecuting solicitor in proving the case, the process officer in commencing the prosecution, the court clerk in sentencing, the probation officer in probation and community service and the lay justice in the powers and responsibilities of his office. By offering each of these subjects in separate booklets the purchaser can select those which suit his needs. In a large firm, moreover, it will be financially practicable for each solicitor to have a copy of those parts of the book which he needs to take into court instead of having to rely on sharing a common volume. The idea of publishing the book in separate parts has other advantages. First, each part can be revised as it goes to press, thus ensuring that the law is stated at the last possible date. Secondly, when in future a particular branch of the law is amended it will be relatively easy to issue a new edition of that part only instead of the whole work. Supplements, thank goodness, should be a thing of the past. It is not intended to abandon the complete book in its conventional form: it is expected that there will be sufficient readers who will want both it and the constituent parts which most interest them. Thanks to modern printing technology it will be possible to publish the complete book in a different makeup from the parts without going to the expense of resetting type. This will take place, however, only after the constituent parts have all appeared and will contain yet further alterations, bringing the law right up to date.

The basic framework has remained almost untouched throughout seven editions. It was time for a review. Looking at the contents from the user's standpoint has brought about some unexpectedly profitable conjunctions of subject matter. Thus,

Commencing the prosecution is based on the old chapters 1, 2 and 3 and Appendix E (jurisdiction of the London courts) together with some additional material.

Proving the case is based on the old chapter 7 together with elements of chapter 6. To this has been added all the principal statutes on the law of evidence in criminal cases, together with the Judges' Rules, extracts from the decision in *Turnbull* and the law of attempt as codified in the Act of 1981.

Bail is based on the old chapter 8.

Committal proceedings and selection of mode of trial is based on the old chapters 4 and 5 together with elements from chapters 6 and 9, and the former Appendix C. (Lord Chief Justice's directions).

Trial and sentence is based on the old chapters 6 and 10 together with the treatment of juveniles from chapter 9. To this has been added notes on the role of the prosecutor, oppression and abuse of process, withdrawal of prosecution and ascertaining the facts on a plea of guilty.

Imprisonment and other custodial sentences is based on the old chapters 11, 12, 13 and 14.

Probation and other non-custodial orders is based on the old chapters 16, 17, 18 and 21.

Fines, compensation and property orders is based on the old chapters 15, 17 and 19, along with the former Appendix D (Attachment of Earnings).

Binding Over is based on the old chapter 23.

Legal Aid and Costs is based on the old chapters 22 and 25.

Appeal is based on the old chapter 24.

Magistrates and their courts is based on the old chapter 26.

Common Offences and Disqualification is a new feature consisting of a comprehensive list of offences commonly met with in magistrates' courts, including their maximum penalties and mode of trial, to which has been added the old chapter 20 and Appendix F (Endorsement Code).

In the introduction to the first edition (1969) I wrote:

Fundamentally, my approach has been to assemble together all the relevant Acts and Rules on any one topic, avoiding, so far as possible, undue repetition and cross reference, so that each chapter aims at setting out completely the law concerning a separate aspect of the powers and procedures of magistrates' courts. However, as there is nothing more conducive to intellectual indigestion than a mass of undigested statutes, every chapter has been prefaced by an introduction stating in brief compass the outlines of its subject matter by reference to the provisions dealt with therein.

While holding good to that basic approach, greater emphasis has been laid in this new edition on the introduction as a means of providing a broad conspectus of the law. Each introduction incorporates the common law where it is uncoded, describes in outline the relevant Acts and Regulations and incorporates the most important decisions. As before, the introduction is followed by the statutes in chronological order with commentaries where necessary.

The consolidating Magistrates' Courts Act 1980 is fully incorporated in the new edition, as are the consolidating Rules of 1981. I have abandoned the former practice of printing the Rules together in one place; instead, each Rule is now to be found at the end of the part to which it relates. The energetic passage of Lord Justice Donaldson through the Divisional Court, while clearing the backlog of work in that Court, nevertheless left in its wake a batch of decisions (not all of them uncontroversial) vitally affecting the work of magistrates' courts. Because of the change of format it is not proposed to review them here. As before, this book does not deal with the juvenile court (as to which see *Clarke Hall and Morrison on Children* by Jackson, Booth and Harris), but the law relating to juveniles in the adult court is fully covered.

I was fortunate indeed to have the first edition of this book read for me by the late George Wilkinson, whose work on road traffic is still the practitioner's *vade mecum*, albeit now edited by others. His only rebuke was whenever I drew attention to an area of difficulty in the law without venturing an opinion of my own. "What the reader wants is advice", he wrote. I have tried to learn that lesson, but the value of the advice you must judge for yourself.

October 1981.

Brian Harris.

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FINES, COMPENSATION AND PROPERTY ORDERS

FINES

The fine is far and away the most commonly used penalty in magistrates' courts, even for indictable offences. As a sentence, the fine has no remedial effect, its function being one of punishment or deterrence or both. In a report submitted to the Home Secretary in 1957 the Advisory Council on the Treatment of Offenders made the following observations which are still very pertinent:

A number of witnesses have pointed out to us that fines of an amount higher than that now imposed might be used in some cases where the courts at present feel that they must impose imprisonment. The representatives of the police were firmly of the opinion that the deterrent value of the fine is underrated by the courts and that fines are more appropriate for many acquisitive and personal offences than the courts apparently think, although they warned that in unsuitable cases a heavy fine would serve only as an inducement to commit further offences . . .

. . . We feel that within the maxima the courts might well consider in suitable cases whether a heavy fine would not be an adequate alternative to imprisonment, and we recommend that this possibility should be brought to their attention. We think it right to say at the same time that such a fine should be carefully related to the means of the offender — as indeed should all fines — because if the offender cannot pay he will no doubt be committed to prison in default and there will be no advantage.

Maximum Fine

The maximum fine for an offence triable either way included in the Magistrates' Courts Act 1980, sch. 1 is £1000, except that a magistrates' court's powers may not in this respect exceed those of the Crown Court: Magistrates' Courts Act 1980, s. 32(1). The maximum fine for an offence triable either way not listed in sch. 1, *ibid.*, is £1000 or such larger sum as may be prescribed by the statute creating the offence. (*Ibid.*, s. 32(2). Certain offences under the Misuse of Drugs Act 1971 are excluded: s. 32(5), *ibid.*) The maximum fine for incitement or attempt of an offence triable either way may not exceed the maximum available on conviction of the completed offence: *ibid.*, s. 32(1). There is an overriding maximum fine for young persons of £200 (*ibid.*, ss. 24(3), 36(1)) and for children of £50 (*ibid.*, ss. 24(4) and 36(2)).

The Means of the Offender

A magistrates' court is required in fixing the amount of a fine to take into consideration the means of the offender so far as they appear or are known to the court: Magistrates' Court Act 1980, s. 35.

COMPENSATION

A magistrates' court convicting a person of any offence has power to make a compensation order for (a) personal injury, (b) loss, and (c) damage resulting from that offence or any offence taken into consideration: Powers of Criminal Courts Act 1973, s. 35. The compensation may not exceed £1000 in respect of any offence of which the court has convicted the offender: Magistrates' Court Act 1980, s. 40. Such an order may include any damage accruing to the property while out of the owner's possession by whomsoever caused in the case of offences under the Theft Act 1968 (Powers of Criminal Courts Act 1973, s. 35(2)), but except in these cases a motor vehicle accident may not be the subject of a compensation order (*ibid.*, s. 35(3)). Loss suffered by dependants of the dead is excluded (*ibid.*, s. 35(3)).

Consideration of the offender's means in so far as they appear or are known to the court is required by the Powers of Criminal Courts Act 1973, s. 35(4).

It has been held that,

(1) A compensation order is not an alternative to a sentence; (2) an order should only be made when the legal position is quite clear; (3) regard must be had to the defendant's means; (4) the order must be precise — relate to an offence, specify the amount, and the instalments if there is to be payment by instalment; (5) the order must not be oppressive. The court has to bear in mind that a discharged prisoner is often short of money, and he must not be tempted to commit further offences to provide the cash to satisfy an order; (6) there might, however, be good moral grounds for making an order, including payment by instalments, to remind the defendant of the evil he had done. This might apply particularly when a non-custodial sentence was imposed and the order was for not too great a sum; (7) an order must be realistic. An order for payment by instalments over a long period was to be avoided: *R. v. Miller* (1976) Crim. L.R. 694; 68 Cr. App. R. 58.

The machinery of the compensation order is a quick and simple way for dealing with the claim in simple cases: *per* Lord Widgery CJ in *R. v. Daly* (1974) 138 J.P. 245; [1974] 1 All E.R. 290 and *see R. v. Grundy* (1974) 138 J.P. 242; [1974] 1 All E.R. 292. It must be remembered that the civil rights of the victim remain. In a great majority of cases the appropriate court to deal with the extent of the loss is in the appropriate civil proceedings, *per* Lord Widgery CJ in *R. v. Kneeshaw* (1974) 138 J.P. 291; [1974] 1 All E.R. 896. No order for compensation should be made unless the amount is agreed or proved: *R. v. Vivian* (1979) 143 J.P. 102; [1979] 1 All E.R. 48; (Order quashed where prosecution put in a mere estimate contained in a statement of the owner of the car, which was disputed by the defence).

The court may at any later time discharge a compensation order or reduce the amount payable in the light of civil proceedings or any recovery of property (Powers of Criminal Courts Act 1973, s. 37). The effect of the order upon civil proceedings is described in s. 38, *ibid.*

A compensation order is treated for purposes of collection and enforcement as if adjudged to be paid on a conviction by a magistrates' court: Administration of Justice Act 1970, s. 41 and sch. 9.

PARENT'S RESPONSIBILITY FOR A JUVENILE

A magistrates' court may order that any fine, costs or compensation be paid by the parent or guardian of a young person and must so order in the case of a child: Children and Young Persons Act 1933, s. 55(1). This power is not available and the duty does not arise if the court is satisfied that,

- (a) the parent or guardian cannot be found; or
- (b) that he has not condoned to the commission of the offence by

neglecting to exercise due care and control over the child: *ibid.* The parent or guardian must first be given an opportunity of being heard unless, having been required to attend, he has failed to do so: s. 55(3), *ibid.*

RESTITUTION

A magistrates' court has a power under the Theft Act 1968, s. 28, to order the restitution of (a) stolen property (as widely defined in s. 24 of the Act); or (b) of goods directly or indirectly representing stolen goods; or (c) of the offender's money taken from him on arrest representing the value of the goods; or may make any combination of those orders. When an order is made under (a) above, the court may also order the payment out of the offender's money of a sum not greater than the amount by which the offender sold the goods to a purchaser in good faith or raised money on them from a lender in good faith: *ibid.*, s. 28(3).

As with compensation orders, the powers under this Act extend to offences taken into consideration: Criminal Justice Act 1972, s. 6(3) and (4).

DEPRIVATION OF PROPERTY ORDER

A magistrates' court convicting anyone of an offence punishable on indictment with not less than two years' imprisonment may, in addition to any other sentence or order, make an order under the Powers of Criminal Courts Act 1973, s. 43 depriving the offender of his rights in any property which:

- (a) was in his possession or under his control, at the time of his apprehension and which has been
- (b) used for the purpose of committing or facilitating the commission of any offence; or
- (c) was intended by him for that purpose.

The taking of steps after an offence has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection is to be regarded as facilitating the commission of the offence: *ibid.*, s. 43(2).

Not later than six months from the date of the order anyone may apply to a magistrates' court for an order under the Police (Property) Act 1897 (*see below*) if he can satisfy the court that he did not consent to the offender having possession of the property or did not know and had no reason to suspect that it was to be used for the prohibited purpose: *ibid.*, s. 43(4).

RIGHT OF APPEAL

There is a right of appeal to the Crown Court against the making of a fine and a compensation, restitution and deprivation order by virtue of the Magistrates' Courts Act 1980, s. 108.

It would be "exceedingly improper" to issue process to enforce a fine where notice of appeal has been lodged: *Kendall v. Wilkinson* (1855) 19 J.P. 467.

In the case of both compensation and, with certain exceptions, restitution orders enforcement is stayed automatically until the expiry of the normal time for appeal of the determination of any appeal entered: Powers of Criminal Courts Act 1973, s. 36(2) and the Criminal Justice Act 1972, s. 6(5) respectively.

PROPERTY IN POSSESSION OF POLICE

When any property has come into the possession of police in connexion with their investigation of a suspected offence or under certain statutes a magistrates' court having jurisdiction in the area where the offence occurred or the property is kept may on the application of the police or any claimant (a) make an order for the delivery of the property to the person appearing to be the owner or (b) make such

other order with respect to the property as may seem meet: Police (Property) Act 1897, s. 1

Justices are discouraged from attempting to use the procedure of this Act in cases which involve a real issue of law or any real difficulty in determining whether a particular person was or was not the owner: *Raymond Lyons and Co. Ltd v. Metropolitan Police Commissioner* (1975) 139 J. P. 213; [1975] 1 All E.R. 335.

There is, except by way of case stated, no right of appeal against an order under this Act. (*Stupple J.W. & F.T. v. Royal Insurance Co. Ltd.* [1970] 1 All E.R. 390). Civil proceedings may however be instituted, but not later than six months after the order: s. 1(2), *ibid.*

PRISONER'S PROPERTY

A magistrates' court has power under the Magistrates' Courts Act 1980, s.48 to direct the return of property taken from an accused person on arrest without warrant or after the issue of process where this is consistent with the interests of justice and the safe custody of the accused.

PAYMENT AND ENFORCEMENT

There is a common system for the enforcement of all sums adjudged to be paid by a conviction of a magistrates' court, a term which includes, not only the fine, but also costs and compensation: Magistrates' Courts Act 1980, s. 150(3).

Directions as to Payment

The court may allow time for payment or order payment by instalment of any sum adjudged to be paid by conviction: Magistrates Courts Act 1980, s. 75(1). When payment by instalment is ordered, enforcement proceedings may be brought if there is default in any one payment: s. 75(3), *ibid.*

When time is allowed for payment (but not when payment is ordered by instalments) the court may at the same time fix a day on which, if the sum is not paid in full, the defaulter must attend court for a means inquiry: s. 86, *ibid.*

Search

When a magistrates' court has adjudged a sum to be paid by a conviction, it may order that the offender be searched. Any money found on him may, unless the court otherwise directs, be applied towards payment: Magistrates' Courts Act 1980, s. 80.

Transfer of Fine

When a person has been adjudged by a summary conviction to pay a sum and it appears that he is resident in a different petty sessions area, the court may make a transfer of fine order making payment enforceable in the other area: Magistrates' Courts Act 1980, s. 89. The other court may make a further transfer of fine order: s. 89(3), *ibid.* A transfer of fine order may be made to and from courts in Scotland and Northern Ireland, ss 90, 91, *ibid.*

Money Payment Supervision Order

A person adjudged to pay a sum by a summary conviction may be placed under the supervision of such person as the court may from time to time appoint: Magistrates' Courts Act 1980, s. 88(1).

Such an order may be made on conviction or subsequently. A defaulter under 21 years of age may not be committed to prison unless placed under such supervision unless the court is satisfied that it is undesirable or impracticable: s. 88(4), *ibid.*

Enforcement

When the offender ignores the court's directions as to payment, the fine may be enforced by any of the following means:

Distress:

Magistrates' Courts Act 1980, s. 76(1). Issue of the warrant may be postponed on terms under s. 77(1), *ibid.* Defects in the warrant are protected by s. 78, *ibid.* The restrictions on the issue of a warrant of commitment to prison (means inquiry, wilful refusal or culpable neglect etc) do not apply to the issue of a warrant of distress.

In the High Court or County Court:

Magistrates' Courts Act 1980, s. 87. This can be useful to obtain a garnishee order. It is not available for a writ of *fieri facias* or other process against goods or for attachment of earnings because these remedies are available in the magistrates' court.

Attachment of earnings:

Attachment of Earnings Act 1971. *See below.*

Detention Centre Training:

Criminal Justice Act 1961, s. 5. Available for defaulters aged 17-20, but only when they are already detained in a detention centre.

Attendance at an Attendance Centre:

Criminal Justice Act 1948, s. 19. Criminal Law Act 1977, s. 36(1).

Detention in police cells, etc:

Magistrates' Courts Act 1980, s. 134.

One day's detention in court or cells:

Magistrates' Courts Act 1980, s. 135.

Committal to custody overnight:

Magistrates' Courts Act 1980, s. 136.

Imprisonment: *see below.**Imprisonment*

A magistrates' court may issue a warrant committing to prison anyone who has made default in paying a sum adjudged to be paid by a conviction: Magistrates' Courts Act 1980, s. 76(1), (2). The period to be served must not exceed the periods set out in *ibid.*, sch. 4: *ibid.*, s. 76(3). Consecutive terms may be imposed by virtue of *ibid.*, s. 133, but the period may not be less than five days: *ibid.*, s. 132. A warrant of commitment issued in England and Wales may be executed in Scotland by virtue of the Criminal Law Act 1977, s. 38A(2).

A warrant of commitment may issue in respect of a defaulter:

at the time of conviction only:

- (a) in the case of an offence punishable with imprisonment if the offender appears to the court to have sufficient means to pay forthwith;
- (b) it appears to the court that he is unlikely to remain long enough at a place of abode in the United Kingdom to enable payment to be enforced by other methods; or
- (c) he is sentenced to immediate imprisonment or detention for that or another offence or he is already serving such a sentence:

Magistrates' Courts Act 1980, s. 82(1).

after conviction only:

- (a) when the defaulter is serving a term of imprisonment or detention; or
- (b) after a means inquiry (*see below*):

Magistrates' Courts Act 1980, s. 82(3).

The Secretary of State offers guidance to courts on the enforcement of outstanding fines, costs and compensation orders on persons in borstal or detention centre in Home Office cir. 122/1979, dated July 27, 1979. Broadly speaking, this suggests that, since offenders leaving these institutions should be given a fresh start, it is desirable to lodge warrants concurrently to wipe off any outstanding fines (or seek approval to write off in the case of juveniles in detention centres). However, continued efforts should normally be made to secure compliance with any outstanding orders of compensation. So far as costs are concerned, these should be enforced if payable to a private prosecutor, but in all other cases no action should be taken to enforce payment.

Means Enquiry

After conviction a warrant of commitment may not be issued or a term of imprisonment fixed in default except at a hearing at which the defaulter is present unless,

- (a) he is in breach of postponed terms; or
- (b) he is serving a term of imprisonment or detention:

Magistrates' Courts Act 1980, s. 82(5). This provision does not mean that the defaulter is not entitled to a hearing in case (b), merely that he is not entitled to be present at the hearing: *Forrest v. Brighton Justices. Hamilton v. Marylebone Magistrates' Court* (1981) 145 J.P. 356. There is no requirement for a hearing in case (a): *R. v. Chichester Justices, ex parte Collins* (1981) *The Times*, Dec. 4.

Attendance of a defaulter at a means inquiry may be secured by the issue of a summons or warrant: Magistrates' Courts Act 1980, s. 83(1), (2). Either before or at the inquiry the magistrates' court or a justice of the peace may order the defaulter to furnish to the court, within a specified period, such statement of his means as the court may require: *ibid.*, s. 84(1). Any written statement of wages by an employer is evidence in the inquiry: *ibid.*, s. 100.

When a means inquiry is held the warrant may not issue except,

- (a) in the case of an offence punishable with imprisonment the defaulter appears to have sufficient means to pay forthwith; or
- (b) the court
 - (i) is satisfied that the default is due to the offender's wilful refusal or culpable neglect; and (ii) has considered or tried all other methods of enforcing payment and they appear inappropriate or unsuccessful:

Magistrates' Courts Act 1980, ss. 77(2), 82(2).

Postponed Commitment

Instead of issuing the warrant forthwith the court may fix a term of imprisonment and postpone its issue until such time and on such conditions as it thinks just: Magistrates' Courts Act 1980, ss. 77(2) 82(2).

When a defaulter has been imprisoned for his default payment of the sum due will secure his release: Magistrates' Courts Act 1980, s. 79(1). Part payment secures a proportionate reduction of the term calculated in accordance with s. 79(2), (3), *ibid.*