

Anthony and Berryman's Magistrates' Court Guide 1985

Edited by A. P. Carr

**Bail p397
Crime Index p3
Road Traffic Index p215
Sentencing Index p117**

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Anthony & Berryman's

Magistrates' Court Guide 1985

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Preface

It was a surprise to everyone that a year after the commencement of the Criminal Justice Act 1982 the Home Secretary should announce a doubling of the maximum fines available to magistrates' courts. This has necessitated a thorough revision of all the maximum penalties contained in this book. At the same time the flow of new legislation in other areas has not abated. The changes made to the text of this edition are, as with the previous one, quite considerable. The more obvious changes may be summarised as follows.

Several of the articles on criminal and road traffic offences have been rewritten in the light of new legislation and cases decided in the High Court. In the chapter on sentencing I have endeavoured to set out in tabular form the sentences available for each of several types of offence. However, in view of the complexity of the modern law of sentencing it is strongly recommended that the advice of the clerk is readily available. As anticipated in the previous edition, the article on legal aid has had to be substantially rewritten.

In care proceedings the court is now required to consider the desirability of making a separate representation order and also whether a guardian *ad litem* should be appointed. Provision is also made for a parent to apply to court for access to a child in the care of the local authority.

Guardians *ad litem* also appear in domestic proceedings where new legislation has required the article on adoption to be rewritten. Those provisions of the Matrimonial and Family Proceedings Act 1984 which affect the justices' guidelines for assessing maintenance are reproduced in the text as they came into force on 12 October 1984. There is also a section on the new custodianship provisions, since although they are not in force at the time of writing, it is expected that they will commence on 1 April 1985.

With the above exceptions the law is stated as it was on 1 October 1984.

A. P. CARR
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Cambridgeshire
October 1984

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Section one

**Criminal offences dealt
with in magistrates' courts**

Index to criminal offences and table of maximum penalties

Note. Set out below are a number of maximum penalties for offences not dealt with in this book owing to shortage of space. If an offence is dealt with in this book the relevant page is stated.

For index and penalties for road traffic offences, see p. 215

Absconding £2000 and 3 months 403

Abusive words or behaviour £2000 and 6 months 76

Actual bodily harm £2000 and 6 months 9

Air guns 14–17 £400 forfeiture 12

Ammunition (*See* Firearms) £2000 and 6 months, forfeiture 54

Animals (cruelty to) £1000 and 3 months 23

Animals straying on highway £400

Assault (*See* Actual bodily harm, Common assault, Indecent assault, Grievous bodily harm, Wounding)

Assault on police constable or person assisting police constable £2000 and 6 months 13

Avoiding customs duty (*See* Customs duty) 28

Bankrupt (undischarged, obtaining credit) £2000 or 6 months

Begging £1 or 14 days before one magistrate; £400 or 1 month if before two or more magistrates

Breach of peace (*See* Insulting words, and *see* p. 145 for Binding over) 76

Brothel £200 and 3 months; £1000 and 6 months (second or subsequent offence in relation to a brothel)

Builder's skip

depositing on highway £400

not complying with a condition £400

unlit on highway £400

Burglary £2000 and 6 months 15

Car dumping (*See* Litter) 79

Children (cruelty to) £2000 and 6 months 25

Chimes (*See* Noise) 47

Copying false instrument £2000 and 6 months

Common assault £400 or 2 months; indictable common assault, £2000 and 6 months; aggravated assault, £1000 or 6 months 18

Contempt of court £1000 and 1 month 21

Controlled drugs Penalty varies with classification of drug 40

Cruelty to animals £1000 and 3 months 23

Cruelty to children £2000 and 6 months 25

Customs duty (avoiding) 3 times value of goods or £2000 and 6 months 28

Damaging property Penalty varies with value of damage 33

Dangerous dog No penalty, only an order 30

Dangerous drugs (*See* Controlled drugs) 40

- Dangerous machinery** £2000 31
- Deception (obtaining by)** £2000 and 6 months 87 & 90
- Destroying property** Penalty varies with value of property 33
- Dishonestly handling** £2000 and 6 months 67
- Displaying indecent matter** £2000 73
- Disposal of property in police possession** 94
- Dogs**
 - dangerous no penalty, only an order 30
 - dog licence £50 38
 - dog worrying livestock £400 39
- Drugs (controlled)** Penalty varies with classification of drug 40
- Drunk** £50 45
- Drunk and disorderly** £400 46
- Earnings of prostitution (living on)** £2000 and 6 months
- Enclosed premises (found on)** £400 or 3 months 61
- Evasion of liability, obtaining by deception** £2000 and 6 months 87
- Excessive noise** £2000 47
- Exclusion order (licensed premises) breach of** £400 and 1 month 174
- Exposure (indecent)** £400 or 3 months 75
- Failing to maintain oneself or a dependant**
 - £400 or (*and*, depending on the facts) 3 months (National Assistance Act 1948, s. 51)
 - £1000 and 3 months (Supplementary Benefits Act 1976, s. 25)
- False alarm or fire** £1000 and 3 months
- False instrument, using** £2000 and 6 months
- False weighing or measuring equipment** £2000 (and 6 months if fraud), and forfeiture
- False statement to obtain social security** £2000 and 3 months
- False trade description**
 - applying £2000 49
 - supplying goods with £2000 49
- Firearm (forfeiture for each of the following)**
 - loaded air weapon in public place £2000 and 6 months 52
 - firearm (other than air weapon) (and if a shotgun must be loaded) in public place £2000 and 6 months 52
 - purchasing, possessing, etc., without certificate £2000 and 6 months 54
 - trespassing in a building £2000 and 6 months 56
 - trespassing on land £1000 and 3 months 58
- Food (selling food not of quality demanded)** £2000
- Forgery** £2000 and 6 months 59
- Found on enclosed premises** £400 or 3 months 61
- Fraud** (*See* Obtaining pecuniary advantage by) 87
- Game (trespassing on land in daytime in search of game)** £50; £400 if 5 or more trespassers
- Going equipped to steal** £2000 and 6 months 63
- Grievous bodily harm** £2000 and 6 months 65
- Gross indecency** £2000 and 6 months
- Handling stolen goods** £2000 and 6 months 67
- Harassing residential occupier** £2000 and 6 months

Highway

builder's skip (depositing or leaving unlit) £400

straying animals on £400

wilful obstruction £400 85

Housebreaking implements (*See* Going equipped to steal) 63

Indecency (gross between males) £2000 and 6 months

Indecency with child £2000 and 6 months 69

Indecent assault £2000 and 6 months 71

Indecent display £2000 73

Indecent exposure £400 or 3 months 75

Insulting magistrate, etc. £1000 and 1 month 21

Insulting words or behaviour £2000 and 6 months 76

Interference with vehicle £1000 and 3 months 110

Intoxicating liquor

selling outside permitted hours £400

selling to persons under 18 £100 and forfeiture of licence (on second or subsequent conviction within 5 years)

selling without a licence £1000 and 6 months; forfeiture of liquor and containers

For a subsequent offence defendant can be disqualified from holding a licence

Landlord and tenant (unlawful eviction or harassment) £2000 and 6 months

Liability, obtaining evasion or by deception £2000 and 6 months

Litter (including car dumping)

(i) Litter Act 1983 £400 80

(ii) Refuse Disposal (Amenity) Act 1978 £1000 and 3 months 79

Living on earnings of prostitution £2000 and 6 months

Loudspeakers (*See* Excessive noise) 47

Making off without payment £2000 and 6 months 87

Measuring equipment (false or unjust) £2000 (and 6 months if fraud), and forfeiture

Misbehaviour in court £1000 and 1 month 21

Misuse of drugs (*See* Controlled drugs) 40

National insurance

(i) Failing to pay contributions £400 plus arrears of contributions for two years 83

(ii) Failing to return card £50 82

Noise (excessive) £2000 47

Obscenely exposing person £400 or 3 months 75

Obstructing a constable (or a person assisting a constable) £400 and one month 98

Obstructing highway £400 85

Obtaining evasion of liability by deception £2000 and 6 months 87

Obtaining pecuniary advantage £2000 and 6 months 87

Obtaining property by deception £2000 and 6 months 90

Obtaining services by deception £2000 and 6 months 87

Offensive weapon £2000 and 3 months, forfeiture 92

Offices, shops, railway premises, and factories

Occupier of unclean premises	}	£2000
Occupier allowing dirt, etc., to accumulate		
Occupier failing to clean floors		
Employer failing to		
keep premises warm		
allow employee to warm himself		
Employer failing to provide		
sanitary conveniences		
washing facilities		
adequate ventilation		
adequate lighting		
drinking water		
cloakroom		
sitting facilities		
eating facilities (shops)		
first-aid equipment		
fire alarm		
Dangerous machinery unfenced		
Floor opening unfenced		
Untrained person		
using dangerous machine		
in charge of first aid box		
Employer exposing person under		
18 to risk from cleaning machinery		
Committing dangerous act		
Interfering with machinery, equipment		
Employing person in premises, no fire certificate in force		
Employer breaching terms of fire certificate		
Employer failing to keep fire certificate on premises	£400	
Obstructing Inspector (Health and Safety at Work Act 1984)	£2000	

Payment, making off without £2000 and 6 months 87

Pecuniary advantage (obtaining by) £2000 and 6 months 87

Pedlar

trading without certificate £50

trading without licence £1 or 14 days one magistrate; £400 or one month before two or more magistrates

Persistently refusing to maintain oneself or a dependant

£400 or (*and*, depending on the facts) 3 months (National Assistance Act 1948, s. 51)

£1000 and 3 months (Supplementary Benefit Act 1976, s. 25)

Poaching £50, £400 if 5 or more trespassers

Police (Property) Act 1897 94

Possessing anything to damage or destroy property £2000 and 6 months 37

Possessing certain false documents £2000 and 6 months

Property (damaging or destroying) Penalty varies with value 33

Property in possession of police 94

Property (obtaining property by deception) £2000 and 6 months 90

Prostitutes

living on earnings of £2000 and 6 months

soliciting by prostitutes £100/£400

Public telephone

fraudulent use of £2000 and 3 months

indecent or false telephone calls £400

Railway offences

avoid fare £400 or 3 months 96
giving false name or address £400 or 3 months 97

Resisting a constable or a person assisting a constable £400 and one month 98

Scales (unjust) £2000 (and 6 months if fraud), and forfeiture

School attendance, parent not ensuring £400 and one month 352

Selling food not of quality demanded £1000

Shotgun

purchasing or possessing, etc., without licence £2000 and 6 months, forfeiture 100

loaded shotgun in a public place £2000 and 6 months, forfeiture 52

Skip

depositing on highway £400

not complying with condition £400

unlit £400

Smuggling 3 times value of goods or £2000 and 6 months 28

Social security

false statement to obtain £2000 and 3 months

persistently refusing or neglecting to maintain oneself or a dependant £1000 and 3 months

Soliciting by prostitutes £100/£400

Statutory nuisance (noise) £2000 47

Stealing (See Theft) £2000 and 6 months 106

Straying animals on highway £400

Taking motor vehicle or conveyance £2000 and 6 months, endorsement 8
penalty points 102

Tape recorder, using in court £1000 and 1 month 21

Tattooing a minor £400

Telephone

fraudulent use of public telephone £2000 and 3 months

indecent or false calls £400

Television licence £400 104

Theft £2000 and 6 months 106

Threatening to damage or destroy property £2000 and 6 months 37

Threatening words or behaviour £2000 or 6 months 76

Trade description

applying false trade description £2000 49

supplying goods with false description £2000 49

Trespassing on land during daytime in search of game, etc. £50/£400 (if 5 or more trespassers)

Trespassing with firearm in a building £2000 and 6 months, forfeiture 56

Trespassing with firearm on land £1000 and 3 months, forfeiture 58

Unauthorised taking of motor vehicle £2000 and 6 months, endorsement, 8
penalty points 102

Undischarged bankrupt obtaining credit £2000 or 6 months

Unjust scales, etc. £2000 (and 6 months if fraud), and forfeiture

Using false (or copy of false) instrument £2000 and 6 months

Vehicle interference £1000 and 3 months 110

Weighing equipment (unjust) £2000 (and 6 months if fraud), and forfeiture

Wilful obstruction of highway £400 85

Wilful obstruction of police constable (or person assisting police constable) £400
and one month 98

Wounding £2000 and 6 months 112

Actual bodily harm

Charge

Assault occasioning actual bodily harm

Offences against the Person Act 1861, s. 47

Maximum penalty—Fine £2000 and 6 months. Triable either way.

Crown court—5 years imprisonment and unlimited fine.

Legal notes and definitions

Serious assaults should be tried at a crown court and not in a magistrates' court. Before agreeing to try the case summarily, magistrates should consult the clerk as to whether they should try the case or commit for trial and this will probably involve hearing an outline of the case. Matters which may be taken into account in deciding the venue for trial will include whether a weapon was used, whether the attack was spontaneous under provocation or premeditated, whether the attacker had an advantage over his victim in age, sex, numbers, position of authority etc. The nature and gravity of the injuries will also be relevant.

Assault. See under 'Common assault' on p. 18.

Actual bodily harm. This is less serious than grievous bodily harm. There need not be permanent injury. Any hurt or injury calculated to interfere with health or comfort can be actual bodily harm, so can an assault causing unconsciousness or an hysterical or nervous condition. Where there is evidence that a blow was struck, the justices are entitled if they see fit to infer that some bodily harm, however slight, has resulted.

Provocation. Is not a defence but can be taken into consideration when deciding sentence.

Self-defence. There is a duty to retreat, if possible, when attacked. However force can be used in self-defence or the defence of one's close relatives provided that the attacker is resisted with only so much force as is reasonably necessary. No more force should be offered once the attack has ceased.

The defendant should have demonstrated he did not want to fight.

Misadventure	}	see these headings on p. 19
Consent		
Lawful sport		

Defence of property	} see these headings on p. 19
Execution of legal process	

Reduction of charge. The court cannot reduce this charge to common assault but if a separate charge of common assault is preferred, a conviction for that may be possible. The clerk should be consulted.

Sentencing

(See Table A on p. 123 for available sentences.)

When a weapon is used the sentence will generally be more severe, particularly in the case, for example, of a knife.

The imposition of small fines has been strongly criticised in the Court of Appeal as actually encouraging crimes of violence.

The court must consider the risks of a repetition of the offence and according to the risk a deterrent element should be included in the penalty.

The Divisional Court in 1978 said that football hooligans aged 17 or more who are convicted of offences of damage or violence 'should not expect to return home for a considerable period'. It was also remarked that a Detention Centre Order should be considered for such offenders in the 14–17 age group.

Assaults on public servants doing their duty or members of the public going to their aid when attacked should be punished with imprisonment (Lord Justice Lawton).

When the aggressors outnumber the victim (gang violence) they must expect a 'really deterrent sentence' according to the Court of Appeal.

If the court is considering a custodial sentence, reference should be made to p. 121.

Compensation. This may be ordered in respect of the victim's injuries or any other loss he may have suffered (e.g. broken dentures). Maximum is £2000. It may be ordered in addition to another sentence, or as a substantive penalty by itself. If a monetary penalty is appropriate and the defendant's means are limited, preference must be given to ordering compensation instead of a fine.

Husband and wife

These cases present especial difficulty. There is a tendency amongst police and magistrates to treat the violent husband with leniency, a tendency which the Court of Appeal has not encouraged. This is probably based on a general reluctance to interfere in matrimonial disputes and the knowledge that in many cases the wife is a contributory party. Moreover, the wife often suffers from the penalty imposed on her husband. Every case must be examined on its own merits. In the editor's

experience, however, some factors are often given little weight in these cases. A wife, like a policeman, is entitled to the protection of the law from those most likely to assault her. When wives are murdered it is usually by their husbands. When there are children in the family the effect of paternal violence should be considered and so should the ramifications of children seeing a violent father go unpunished by the law.

Licensed premises

An assault committed on licensed premises will enable the court to make an exclusion order. See p. 174.

Air guns

Charge

Being a person under 17 having with him an uncovered air weapon in a public place

Firearms Act 1968, s. 22 (5)

Maximum penalty—£400 or any other adjudication to which a young person is liable, bearing in mind the offence is not punishable with imprisonment.

Forfeiture of the air weapon or ammunition can be ordered.

Legal notes and definitions

Air weapon means an air rifle, air gun or air pistol of a type which has not been declared to be specially dangerous in rules made by the Home Office.

Public place includes any highway or premises or place to which at the material time the public had access whether for payment or otherwise.

A person between 14 and 17 years of age having in his possession in a public place an air weapon commits an offence unless it is so covered and fastened with a gun cover that it cannot be fired.

He does not commit an offence if he is engaged in target practice as a member of a club approved by the Home Office or if the weapon and ammunition are being used at a shooting gallery where only air weapons or miniature rifles of 0.23 calibre or less are used.