



## **FINES AND MINOR DISPOSALS**

When it is sentencing you the Court must consider: -

- a) Is discharge or a fine appropriate?
- b) Is the offence serious enough for a community penalty?
- c) Is it so serious that only custody is appropriate (as if so, are the Magistrates' Court's powers enough, or should the case be sent to Crown Court for sentence?)?

To help them reach that decision, the Magistrates' have sentencing guidelines, which give a starting point guideline for each offence.

Once the Magistrates' have considered the seriousness of the offence, they next consider aggravating and mitigating factors.

Aggravating factors could include: -

- a) The commission of an offence on bail
- b) Previous convictions or any failure to respond to previous sentences
- c) Any racial aggravation

Mitigating factors will include a reduction in sentence for a guilty plea. A timely guilty plea may attract a sentencing discount of up to one third, but the precise amount of discount will depend on the facts of each case. Discounts apply to fines, periods of community sentence and custody however mandatory periods of disqualification and mandatory penalty points cannot be reduced for a guilty plea.

The sentencing Court then consider offender mitigation. Your individual circumstances are taken into account. Any offender mitigation that the Court accepts must lead to downward revision of the assessment of seriousness.

The Court then has the duty to consider the award of compensation in all appropriate cases.

If the Court requires assistance in reaching a decision over sentence, a pre-sentence report or a specific sentence report can be commissioned by the Court. The purpose of a pre-sentence report is to provide information to the sentencing Court about the offender and the offences charged, so that the Court has sufficient relevant information to enable it to decide a suitable sentence. The pre-sentence report must contain: -

- a) An assessment of the offending behaviour
- b) An assessment of the risk to the public
- c) A clear and realistic indication of the action which can be taken by the Court to reduce re-offending.

The Fast Delivery Report has a similar purpose to the pre-sentence report, but it is in an expedited form. It is intended for the more straightforward cases where the required information is readily available from the probation officer in Court. It is designed to be available on the same day on which the court's request is made.

In passing sentence, the Magistrates' should normally give reasons for their findings and decisions- this is obligatory under the Human Rights Act.

### **CONDITIONAL OR ABSOLUTE DISCHARGE**

Before making an absolute or conditional discharge, the Court must be of the opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is not appropriate to inflict punishment. With the conditional discharge, the Court sets a period of time. If you commit another offence during the period of discharge, you will be liable to be sentenced for both the old offence and the new offence.

Discharges may not be made for an offence committed within 2 years of a final warning administered by the Police.

### **FINES**

Fines are suitable as punishment for cases which are not serious enough to merit a community penalty, nor so serious that a custodial sentence must be considered. The fine must reflect the seriousness of the offence and must be proportionate both to the offence and the offender. Before fixing the amount of any fine, the Court must enquire into your financial circumstances. The Court will also make enquiry whether you have savings or other disposable assets out of which a fine can be paid forthwith.

The fine is notionally payable in full on the day and you will always be asked for immediate payment. However if your financial circumstances are such that payment by instalments is allowed, the fine should normally be payable within a maximum of 12 months.

### **FINE ENFORCEMENT**

Before a Court may issue a warrant of commitment to prison for non-payment of fines, it must have considered or tried all other methods of enforcing payment of the sum unless it appears to the Court that those other methods are either inappropriate or unsuccessful. The other options available to the Court are: -

- a) A money payment supervision order
- b) Attendance centre order (for the under 25s)
- c) Deduction from DSS Benefits
- d) Attachment of earnings order (regular deductions from your earnings)
- e) Distress warrant (Bailiff seizing and selling goods belonging to you)
- f) Imprisonment (for culpable neglect or wilful refusal to pay).

### **ASBO (ANTI SOCIAL BEHAVIOUR ORDER)**

This is an order designed to prevent specified anti-social behaviour.

Anti-social behaviour is widely defined, and can cover, for example, graffiti, persistent abusive or intimidating language, excessive noise particularly at night, littering, drunken behaviour or underage drinking and smoking, harassment of residents, vandalism, racial abuse, joyriding, begging, prostitution and kerb crawling, assault, throwing missiles, substance misuse and drug dealing.

The Police or Local Authority can apply for an ASBO from a Magistrates' Court when a person over the age of ten has been behaving in an anti-social manner, and it is necessary to protect others from further anti-social behaviour by that person.

An ASBO remains in force for at least 2 years and a breach is a criminal offence, which can attract stiff penalties of up to 5 years' imprisonment.

There is no requirement to show that every other remedy has been exhausted, the Court only needs to believe that an ASBO is the most appropriate remedy.

Normally you would have to be in Court when the Court consider and grant an ASBO, however an interim ASBO could be granted in your absence if this was necessary. However in such cases, you would be given an opportunity to be heard within a week or two of that decision.

An ASBO is effective in the day that it is made, but the period runs from the date of service. Breach proceedings would need to establish that you were aware of the ASBO, normally by personal service if it was made in your absence.

### **ROAD TRAFFIC PENALTIES**

Some offences carry mandatory disqualification. This mandatory disqualification period may be automatically lengthened by the existence of certain previous convictions and disqualifications.

All penalty point offences carry also as an alternative, discretionary power of disqualification for a period of time and also discretionary power to disqualify until a test is passed.

Where an offender is convicted of several offences committed on one occasion, it is suggested that the Court should concentrate on the most serious offence, carrying the greatest number of penalty points or period of disqualification.

Repeat offenders who reach 12 points or more within a period of 3 years, become liable to a minimum of disqualification for six months, and in some instances, 12 months or 2 years – but must be given an opportunity to address the Court and/or bring evidence to show why such disqualification should not be ordered or should be reduced. Totting disqualifications, unlike other disqualification, erase all penalty points.

Totting disqualifications can be reduced or avoided for exceptional hardship. However no such ground can be used again to mitigate totting, if previously taken into account in totting mitigation within the three years preceding the conviction.

### **DRIVING DISQUALIFICATION**

If you receive a driving disqualification, this means that you are banned from driving any motorized vehicle in any public place in England and Wales for duration of your ban.

Driving whilst disqualified is a serious matter that usually attracts a sentence of imprisonment.

Please ensure that at the end of your ban, you do not forget to contact the DVLA for the return of your licence (and ensure that you have the necessary insurance etc) before you start driving again.

Where a driving ban is imposed because of an alcohol-related offence, the Court has the discretion to offer you a road alcohol awareness course in addition to the punishment imposed by the Court.

Should you complete the course successfully, your disqualification will be reduced by 25%.

The course organizer will write to you with details of course dates and times. A deposit normally secures a place with the Scheme, and the remainder of the fee can sometimes be paid in instalments by cash, cheque or credit card. However, if you can show that you receive Income Support, Tax Credit, are unemployed or a full-time student, the fee is normally reduced. Payment must be completed before the course begins.

You will be obliged to attend all the sessions, which represents about 18 to 20 hours' work. There will be no exams to take. The course will use group discussions, presentations, group exercises and videos. Hand-outs and leaflets will be given to you so you need not take notes.

After you have completed the course, the course organizers will tell the Court and the Police that you have received a Completion Certificate and the organizers will then show you how to re-apply for your licence to be returned to you. Additionally they will give you the name of brokers who can help you find a good deal on insurance premiums.

Courses are run in Exeter, Torbay, Plymouth and Barnstaple, and all centres are on a bus route.

*Dunn & Baker – Here to help you*

*Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.*