

# Radical Increase in Sentencing Power for Magistrates

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Businesses and individuals summarily convicted of certain offences now face unlimited fines, since the previous statutory maximum of £5,000 has been lifted. Section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 came into force on the 12<sup>th</sup> of March this year and has significantly enhanced the sentencing powers of the Magistrates' Courts in relation to relevant offences committed after that date.

Although certain exceptions have been carved out by new Regulations (2015/664), in most cases offences that previously attracted a Level 5 or 'statutory maximum' fine will no longer be subject to an upper limit. The new fines apply to summary-only offences such as drink driving<sup>1</sup>, as well as either-way offences such as unfair commercial practices<sup>2</sup> and unauthorised use of trade marks<sup>3</sup>.

In addition, many fines currently set at fixed amounts of over £5,000 have also been scrapped in favour of an unlimited amount. For example, the £50,000 fine for copyright infringement and illicit recording<sup>4</sup> has been also been replaced with an unlimited fine.

Previously when pleading not guilty to an either-way offence, there was a tension between electing a Crown Court trial in order to ensure the greatest chance of acquittal and staying in the Magistrates' Court in order to benefit from weaker sentencing powers. In relation to many offences, this may no longer be an issue.

Perversely, there may even be situations in which the Magistrates' Court now has more extensive sentencing powers in this area than the Crown Court. For example, on summary conviction under regulation 20(1) of the General Product Safety Regulations 2005 a defendant now faces an unlimited fine. However, the maximum fine on indictment remains £20,000. This anomaly,

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<sup>1</sup> s. 5(1) of the Road Traffic Act 1988

<sup>2</sup> ss. 8 – 12 of the Consumer Protection from Unfair Trading Regulations 2008

<sup>3</sup> s. 92 of the Trade Marks Act 1994

<sup>4</sup> sections 107 and 198 of the Copyright, Designs and Patents Act 1988

## **INCREASE IN MAGISTRATES' SENTENCING POWERS BY ROBIN KINGHAM**

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combined with lower conviction rates in the Crown Court, means that defendants will presumably now wish to be tried in the Crown Court.

Another problem arises in relation to high income offenders. The current Magistrates' Court Sentencing Guidelines impose 'bands' of fine that reflect the offender's income. For example, the starting point for a drink driving conviction under s. 5 of the Road Traffic Act 1988 is a 'Fine Band C' or 150% of the offender's weekly income. This fine was previously capped at £5,000 and the Guidelines state that, in any event, 'the fine for a first time offender pleading not guilty should not exceed 75% of the maximum fine'. Without such a limit or maximum fine, high income offenders now face the prospect of fines that are grossly disproportionate to the seriousness of the offence.

In anticipation of the new unlimited fines, the Sentencing Council issued a consultation paper in November 2014 on health and safety offences, corporate manslaughter, and food safety and hygiene offences. Formal guidelines are expected to follow and, in the case of food safety offences, define the fine bands by reference to income or turnover. However, these guidelines are not expected to deal with the other areas mentioned above, such as road traffic, product safety, or unfair trading offences. It is hoped that further guidelines will be issued to deal with these issues.