

matter to the justices with the opinion of the court, or make such an order in relation to the matter as the court may see fit.

Appeals before the Crown Court

The hearing at the Crown Court is an entirely fresh one and, by virtue of section 79(3) of the Supreme Court Act 1981, is a full re-hearing of the case. The judgment in the case of **R v Lamb** [2005] EWCA Crim 2487 recommended that circuit judges and above should be dealing with these cases.

Rectification of mistakes

Section 142 of the Magistrates' Courts Act 1980 gives the court power to vary or rescind a sentence or other order imposed or made by it when dealing with an offender, if it appears to the court to be in the interests of justice to do so. However, this section is intended to rectify mistakes and applies only to orders made when dealing with an offender in criminal proceedings. Therefore, this power would only be applicable to orders made on conviction, rather than on a stand-alone application.

Application for judicial review

Judicial review looks at the lawfulness of actions and decisions. An application can be made for the High Court to consider whether the magistrates' court has failed to exercise its jurisdiction properly or whether it has made an error of law, which appears on the face of the record.

The High Court has the power to quash the order or make a mandatory prohibiting order. An application must be made promptly, and in any event within three months of the date on which the grounds for the application arose.

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Simon Cordell's Skeleton Argument (2) Pdf

Breaches

Breaches by adults

Breach of an order is a criminal offence, which is arrestable and recordable. Prosecutions for breaches of orders can be brought by the Crown Prosecution Service (CPS), although a local authority may also do so by virtue of section 1(1 OA) of the Crime and Disorder Act 1998 (as inserted by section 85(4) of the Anti-social Behaviour Act 2003), which states that prosecutions can also be brought by:

1. a council which is a relevant authority.
2. the council for the local government area in which a person in respect of whom an order has been made resides or appears to reside.

The lead officer managing the case should keep the other partner agencies informed of the progress and outcome of any breach investigation. A particular consideration will be the need to protect witnesses. The standard of proof for prosecution of a breach of an order is the criminal standard - 'beyond reasonable doubt'. Provision is made in section 1(10) of the Crime and Disorder Act 1998 for a defence of reasonable excuse.

The maximum penalty on conviction in the magistrates' court is six months in prison or a fine not exceeding £5,000 or both; at the Crown Court the maximum penalty is five years in prison or a fine or both. Community penalties are available, but a conditional discharge is not. Agencies and courts should not treat the breach of an order as just another minor offence. (It should be remembered that the order itself would normally have been the culmination of a course of persistent antisocial behaviour.) An order will only be seen to be effective if breaches are taken seriously.

Information on breaches can be received from any source, including the local authority housing department and other local authority officers, neighbours and other members of the public. Any information received by a partner agency should be passed immediately to the police and lead officer, who should inform the other agencies involved. Breach penalties are