GILL v THOMSON

No 20
07 October 2010
[2010] HCJAC 99

Lord Carloway,
Lord Hardie and
Lord Malcolm

Angela Veronica Gill, Appellant—*J Scott (Solicitor-advocate)*
Catherine Montgomery, Appellant—*Jackson QC, MC MacKenzie*
Jane Craig, Appellant—*J Scott (Solicitor-advocate)*
Lesley Thomson (Procurator fiscal, Glasgow), Respondent—*McSporran A-D*

Justiciary – Sentencing – Sentencing guidelines – Benefit fraud – Social Security Administration Act 1992 (cap 5), sec 111A(1A) – Criminal Procedure (Scotland) Act 1995 (cap 46), sec 189(7)

Section 111A(1A) of the Social Security Administration Act 1992 (cap 5) provides, ''A person shall be guilty of an offence if– (a) there has been a change of circumstances affecting any entitlement of his to any benefit or other payment or advantage under any provision of the relevant social security legislation; (b) the change is not a change that is excluded by regulations from the changes that are required to be notified; (c) he knows that the change affects an entitlement of his to such a benefit or other payment or advantage; and (d) he dishonestly fails to give a prompt notification of that change in the prescribed manner to the prescribed person.''

Section 189(7) of the Criminal Procedure (Scotland) Act 1995 (cap 46) provides, ''In disposing of an appeal under section 175(2)(b) to (d), (3)(b) or (4) of this Act the High Court may, without prejudice to any other power in that regard, pronounce an opinion on ... the sentence or other disposal or order which is appropriate in any similar case.''

Each appellant pleaded guilty to contraventions of sec 111A(1A) of the 1992 Act. In each case, the appellant had obtained employment. Ms Gill pleaded guilty to a charge that she had received £9,500 of Income Support to which she was not entitled. She was sentenced to two months' imprisonment, discounted for an early plea from three months. Mrs Craig pleaded guilty to two charges that she had received £7,403 of Housing Benefit and £6,989 of Income Support to which she was not entitled. She was sentenced to 135 days' (four-and-a half months') imprisonment, discounted from 180 days (six months) for an early plea. Mrs Montgomery pleaded guilty to a charge that she had received Disability Living Allowance to which she was not entitled, agreed as totalling £17,189. She was sentenced to five months' imprisonment, discounted from eight months for an early plea.

When the appeals of Ms Gill and Mrs Montgomery called before two judges, the court noted that there were guideline cases in England dealing with this category of offence. The court remitted the appeals to a bench of three judges to hear the merits of the individual cases and also to consider issuing guidelines for sheriffs hearing similar cases in terms of sec 189(7) of the 1995 Act. The appeal of Mrs Craig was added at a later date.

It was submitted for the appellants that the sentences imposed were excessive and inappropriate and that non-custodial disposals ought to have been selected.

Held that: (1) a case involving benefit fraud perpetrated by several participants will almost inevitably attract custodial sentences in excess of two years' imprisonment; (2) custodial sentences of up to a maximum of 12 months will usually be sufficient in a contested case where the overpayment is less than £20,000; (3) in many cases, where a significant sum is involved, the sentence ought to contain a deterrent element; (4) for offences involving less than £5,000 of gain, a community service order may be taken as a norm, being a direct alternative to a custodial sentence for an offence at the higher end of the range; (5) for offences in the middle of the range (£2,500), a fine, or other non-custodial disposal, not being a direct alternative to custody, may be seen as reasonable;

(6) short custodial sentences of less than three months ought not to be regarded as appropriate for offences in the range of £5,000 to £20,000; (7) at the lower end of that range, a community service order may be appropriate as a norm, as a direct alternative to custody and at the upper end of that range, a significant custodial sentence in excess of six months ought to be imposed in the absence of quite exceptional circumstances; (8) offences above the level of £20,000 might attract penalties only available in solemn proceedings; (9) in the particular circumstances of the cases before the court, the sentences imposed in relation to Mrs Craig and Mrs Montgomery were not excessive and their appeals were accordingly refused, but the term of two months' imprisonment imposed on Ms Gill ought to be quashed and a community service order of 240 hours substituted.

ANGELA VERONICA GILL pleaded guilty on 16 September 2009 to a charge on summary complaint in the sheriffdom of Glasgow and Strathkelvin at Glasgow that she knowingly failed to give prompt notification to the Department of Work and Pensions of a change of circumstances which she knew affected her entitlement to Income Support and by doing so she received £9,500 to which she was not entitled. On 9 December 2009, she was sentenced to two months' imprisonment. She appealed against sentence.

CATHERINE MONTGOMERY pleaded guilty on 4 November 2009 to a charge on summary complaint in the sheriffdom of Glasgow and Strathkelvin at Glasgow that she knowingly failed to give prompt notification to the Department of Work and Pensions of a change of circumstances which she knew affected her entitlement to Disability Living Allowance. On 3 March 2010, she was sentenced to five months' imprisonment. She appealed against sentence.

JANE CRAIG pleaded guilty on 24 May 2010 to charges on summary complaint in the sheriffdom of Glasgow and Strathkelvin at Glasgow that she knowingly failed to give prompt notification to Glasgow City Council Housing and Council Tax Benefit Office of a change of circumstances which she knew affected her entitlement to Housing Benefit and thus received a sum of £7,403.04 to which she was not entitled and to the Department of Work and Pensions and thus received a sum of £6,989 to which she was not entitled. On 18 June 2010, she was sentenced to 135 days' imprisonment. She appealed against sentence.

Cases referred to:
Advocate (HM) v Graham [2010] HCJAC 50; 2011 JC 1; 2010 SLT 715; 2010 SCCR 641; 2010 SCL 789
Ahmed v HM Advocate 2002 GWD 39-1291
Allen v McFadyen 2002 GWD 6-191
Downie v HM Advocate 1999 SCCR 375; 1999 GWD 16-752
Easton v Procurator Fiscal, Falkirk 14 August 2009, unreported
Macrae v HM Advocate 1987 SCCR 712
R v Graham; R v Whatley [2004] EWCA Crim 2755; [2005] 1 Cr App R (S) 115; [2005] Crim LR 247
R v Stewart [1987] 1 WLR 559; [1987] 2 All ER 383; 85 Cr App R 66; 9 Cr App R (S) 135
Wilson v Procurator Fiscal, Paisley 18 December 2008, unreported

Textbooks etc referred to:
Morrison, NMP, *Sentencing Practice* (W Green, Edinburgh, 2000), paras F13.0004, F13.0004.2
Sentencing Guidelines Council, *Sentencing for Fraud – Statutory Offences: Definitive Guideline* (Sentencing Guidelines Council, London, 2009)

The cause called before the High Court of Justiciary, comprising Lord Carloway, Lord Hardie and Lord Malcolm, for a hearing, on 2 October 2010.

On 7 October 2010, the opinion of the Court was delivered by Lord Carloway—

OPINION OF THE COURT—

(1) Sentences

[1] Each appellant pleaded guilty at Glasgow Sheriff Court to a contravention, or contraventions, of sec 111A(1A) of the Social Security Administration Act 1992 (cap 5) by knowingly failing to give prompt notification of a change of circumstances, which she knew affected her entitlement to benefits. In each case the appellant ought to have advised the Department of Work and Pensions that she had obtained employment and was thus earning. The maximum penalty for a contravention of the section is seven years' imprisonment on indictment (sec 111A(3)) but 12 months if prosecuted summarily (Criminal Proceedings etc (Reform) (Scotland) Act 2007 (asp 6), sec 45) as all the present appeals were.

(a) Ms Gill

[2] Ms Gill pleaded guilty on 16 September 2009 to one offence; libelled as occurring only on one day, namely 13 February 2005. She had received £9,500 of Income Support to which she was not entitled. On 9 December 2009 she was sentenced to two months' imprisonment, discounted for the early plea from three months.

[3] Her personal circumstances were that she was aged 29 and had recently broken off a relationship. She normally lived with her six-year-old son but, because of developments associated with the offence, he had gone to live with his father meantime. Although no previous convictions were libelled against her, the social enquiry report revealed that Ms Gill had been fined for a road traffic offence, had other road traffic matters outstanding and had also attended a diversion from prosecution scheme for shoplifting.

[4] The social enquiry report described Ms Gill's difficult upbringing, with her mother having mental health problems and her father struggling with alcohol dependency. This culminated in Ms Gill becoming involved in an abusive relationship with a boyfriend and with drug experimentation in her late teens. Despite leaving school without any qualifications, she did achieve some success at college, gaining a Certificate in Care and obtaining some work looking after persons with learning difficulties. It was this paid sessional work that she had failed to declare.

[5] Ms Gill had sought assistance for her depression since being charged with the offence. She had, by then, become addicted to diazepam and dihydrocodeine but, in February 2009, had referred herself to the local addiction services. She was placed on a methadone programme. Because of significant progress prior to the sentencing diet, Ms Gill was assessed as at low risk of reoffending. She was repaying benefits at the rate of £15 per week.

(b) Mrs Craig

[6] Mrs Craig pleaded guilty to two charges on 24 May 2010. Her offences had taken place between July 2006 and February 2009 and had resulted in her obtaining £7,403 of Housing Benefit and £6,989 of Income Support to which she was not entitled. On 18 June 2010 she was sentenced to 135 days' imprisonment (four-and-a-half months), discounted from 180 days (six months) for an early plea.

[7] Mrs Craig's personal circumstances were that she was 56 years old. She was unemployed at the time of sentencing. She came from an impoverished background. She had had an uneventful education. She had married in her late teens but

had been divorced for many years. She had two adult daughters. She had suffered from depression for some 14 years. More recently, Mrs Craig had become stressed because of one of her daughter's health problems. She had begun to drink excessively. She accepted responsibility for the offences, having continued to claim benefits in order to subsidise herself and to pay for a recently purchased car. The social enquiry report recorded her offending, no doubt accurately, as 'deliberate, pre-meditated and financially motivated'. Despite the absence of any previous convictions being libelled, the social enquiry report noted that the appellant had acquired three recent convictions in the form of road traffic offences, including a breathalyser charge, and theft by permitting friends to obtain goods in the shop where she worked without paying for them. She was assessed as at moderate risk of reoffending. Mrs Craig had repaid some £253 by the time of the sentencing diet and was continuing to do so at the rate of £13 per week.

(c) Mrs Montgomery

[8] Mrs Montgomery pleaded guilty on 4 November 2009. Her offence was said to have occurred on a single day. She had acquired disability living allowance of an amount unspecified on the complaint. This was agreed as totalling £17,189. On 3 March 2010, the matter having been continued pending a tribunal determination on the amount of illicit benefit gained, she was sentenced to five months' imprisonment, discounted from eight months for the early plea.

[9] Mrs Montgomery was aged 57, married with three adult children. She comes from a relatively supportive and stable family background. She had been in regular employment until recent events. She had undertaken cleaning work and failed to declare it. Meantime, she had been receiving Incapacity Benefit for arthritis. She too has suffered from depression but has had no alcohol or drugs issues. Her husband had recently undergone surgery for prostate cancer. The appellant was not in any significant financial difficulties at the time of the offence. The appellant was repaying the benefit at the rate of some £70 per month. She was remorseful and assessed as at low risk of reoffending.

(2) Precedent

[10] When the appeals of Ms Gill and Mrs Montgomery called before two judges on 11 July 2010, the court noted that there were guideline cases in England dealing with this category of offence (*R v Stewart*; revised in *R v Graham*). The court remitted the appeals to a bench of three judges to hear the merits of the individual cases, and that of Mrs Craig which was added to the roll at a later date, and to consider issuing guidelines for sheriffs hearing similar cases in terms of sec 189(7) of the Criminal Procedure (Scotland) Act 1995 (cap 46).

[11] The court was referred to several Scottish cases, most of which are summarised in Morrison, *Sentencing Practice*. It is not unreasonable to comment that there has been a divergence in view between differently constituted sentencing courts. For example, in *Ahmed v HM Advocate* (Lord MacLean and Lord Sutherland) (Morrison, para F13.0004) a discounted sentence of 18 months was considered reasonable for a £21,329 Housing Benefit fraud committed by an ill 60-year-old man. Similarly, in *Macrae v HM Advocate* (Lord Justice-Clerk (Ross), Lords Dunpark and McDonald) a sentence of nine months' imprisonment on a 52 year old convicted of a £3,500 benefit fraud was upheld, even although the appellant had no previous convictions

and a good work record. However, in *Downie v HM Advocate* (Lord Prosser and Lord Milligan) and *Allen v McFadyen* (Lord Marnoch and Sheriff Principal EF Bowen QC) (Morrison, para F13.0004.2) sentences of 240 and 300 hours community service for respectively a £11,000 benefit fraud by a 49-year-old female and a £4,750 Housing Benefit fraud by a woman with two young children were deemed sufficient. Even more divergent, in *Easton v Procurator Fiscal, Falkirk* (Lord Osborne and Sheriff Principal BA Lockhart), a discounted sentence of eight months for two charges involving a combined total of £18,939 of Jobseekers Allowance and Housing Benefit was quashed. The appellant was a 48-year-old female. The substituted sentence was one of probation with a condition of 240 hours unpaid work in the community. Furthermore, in *Wilson v Procurator Fiscal, Paisley* (Lords Clarke and Hardie), a 53 year old had a custodial sentence quashed and a 300-hour community service order substituted. The amount of the benefit was not specified in the opinion.

[12] The court was also referred to cases from England. These were notably, first, the Court of Appeal guideline case of *R v Stewart*, which involved some nine appellants or applicants. Lord Lane CJ examined sundry statistical data before expressing the view that, in some cases of benefit fraud, imprisonment was unavoidable. Participation in organised frauds on a large scale could expect to attract sentences of in excess of two years. Otherwise, sentence would depend on an almost infinite variety of aggravating and mitigatory factors. These factors are all perhaps obvious and need not be repeated here. The Court of Appeal's statement that the court required to ask whether a custodial sentence was really necessary and, if so, whether a direct alternative in the form of community service might suffice, accords with the statutory restriction on imposing imprisonment in Scotland (ie 1995 Act, secs 204(2), 207(3), 238). The court did suggest that 'a short term of up to about 9 or 12 months will usually be sufficient in a contested case where the overpayment is less than, say, £10,000'. However, it is not entirely clear from the report whether such a custodial term was being selected as a norm for that level of gain.

[13] In *R v Graham* the Court of Appeal looked again at *R v Stewart*. It expressed the view that, contrary to what Lord Lane CJ might have been thought to have said:

> '[S]uch offences are easy to commit and difficult and expensive to detect ... [S]ocial security fraud is increasingly prevalent. ... [T]here will be cases in which courts will be justified in taking the view that a sentence should contain a deterrent element' (Owen J, para 9).

The £10,000 figure was upgraded to £20,000.

[14] The English Sentencing Guidelines Council has produced a 'Definitive Guideline' on 'Sentencing for Fraud — Statutory Offences'. Leaving aside the many aggravating and mitigatory factors which may exist, the table for benefit fraud, so far as relevant to the present cases, includes the following:

	Amount obtained …		
Nature of offence	**£20,000 or more and less than £100,000** Starting point based on £60,000	**£5,000 or more and less than £20,000** Starting point based on £12,500	**Less than £5,000** Starting point based on £2,500
Not fraudulent from the outset **and either** fraud carried out over a significant period of time **or** multiple frauds	**Starting point:** 36 weeks custody **Range** 12 weeks – 18 months custody	**Starting point:** 6 weeks custody **Range** Community order (MEDIUM) – 26 weeks custody	**Starting point:** Community order (MEDIUM) **Range** Fine – Community order (HIGH)

(3) Submissions

[15] Based upon the Scottish and English authorities, it was submitted that the sentences imposed upon each appellant were excessive and inappropriate. The essential contentions were that non-custodial disposals should have been selected. In relation to Ms Gill, it was also said that her condition had improved since her release on interim liberation after only one night in custody. On 10 June 2010, she had been given a place at the Phoenix House Glasgow Adult Residential Service, a long-term substance misuse rehabilitation unit, where she was expected to remain until 10 December 2010. She had, with assistance, weaned herself off all illicit drugs, including methadone; this being confirmed in a report dated 2 September 2010. She had continued to see her son and was working towards caring for him again when she completed the Phoenix House programme.

[16] Mrs Craig had not taken up an offer of alcohol counselling as she was tackling this herself with the support of her general medical practitioner. She had a daughter studying nursing at Glasgow Caledonian University, whose three-year-old child was cared for by Mrs Craig in term time or when her daughter was on a nursing placement. Although it was accepted that, were the English Guidelines to be used, the starting point for her sentence would have been higher than that selected by the sheriff, her personal and other mitigatory circumstances would have reduced the starting point. She too had been given interim liberation and it was said that it would not be appropriate to return her to custody.

[17] On behalf of Mrs Montgomery, it was argued that Guidelines 'provide a structure for, but do not remove, judicial discretion' (*HM Advocate v Graham*, Lord Justice-Clerk (Gill), para 21). The court could still impose a sentence outwith the sentencing framework set out in any Guidelines. This appellant was not in good health, nor was her husband, who still required to undergo radiotherapy. Her experience of one night in prison had been a terrifying one. She was repaying the benefit obtained and hoped to do so in larger amounts, once the loan over her house had been paid off; an event shortly to occur. Having regard to her otherwise blameless life, a non-custodial disposal ought to have been selected.

[18] The Advocate-depute reminded the court that the crown had not sought any guidelines for this category of case. It was a matter for the court to decide whether or not to accept the English Guidelines. They did seem to suggest that for the levels of benefit under consideration in these three cases, custody was an appropriate disposal.

(4) Decisions

[19] The court is conscious of the divergence in sentencing practice apparent from the cases cited. It does consider that, therefore, sentencing guidelines are required. The court agrees with the general statement of Lord Lane CJ (*R v Stewart*) that a case involving organised benefit fraud perpetrated by several participants will almost inevitably attract custodial sentences in excess of two years' imprisonment. It also agrees with his opinion that custodial sentences of up to 12 months will usually be sufficient in a contested case where the overpayment is less than (now) £20,000. That is on the assumption that what Lord Lane is referring to is a maximum for such an offence. The court also concurs with the view of Owen J that benefit frauds generally, and the related statutory offence in issue here, are easy to commit and both difficult and expensive to detect. In many cases, where a significant sum is involved, the sentence ought to contain a deterrent element.

[20] Care must be taken when considering formal Guidelines from England, even in relation to UK statutory offences, because of divergent sentencing powers and practices in the two jurisdictions. For example, the Scottish courts do not have the power to suspend prison sentences, a common feature in English sentencing practice. Furthermore, the Scottish courts now have to keep in mind the presumption against short sentences of imprisonment; that is to say those of three months or less (Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), sec 17, amending Criminal Procedure (Scotland) Act 1995, sec 204). Nevertheless, the court is content with the view of the English Sentencing Guidelines Council that, for an offence involving less than £5,000 of gain, a community service order may be taken as a norm, being a direct alternative to a custodial sentence for an offence at the higher end of the range. A fine or other non-custodial disposal, not being a direct alternative to custody, may be seen as reasonable for offences in the middle of the range (£2,500). The court does not consider that a short custodial sentence (less than three months) ought to be regarded as appropriate for offences in the range of £5,000 to £20,000. At the lower end of this range, a community service order may again be appropriate as a norm, as a direct alternative to custody. But where the offence is in the higher reaches of the range, the court would expect a significant custodial sentence to be imposed in the absence of quite exceptional circumstances. Offences above the level of £20,000 might attract penalties only available in solemn proceedings.

[21] Keeping these generalities in mind, and also recording that each case will, of course, depend upon its own facts and circumstances of a mitigatory or aggravating character, the court must turn to consider each of the three appeals. Each involves an appellant who has little, if anything, by way of previous convictions. Such convictions as there are appear to be of marginal significance in the context of the present offences. None of the appellants has been sentenced to a period of custody before. Each appellant has been able to advance significant mitigatory circumstances in the form of background family, health or economic considerations. Nevertheless, Mrs Craig and Mrs Montgomery acquired almost £15,000 and in excess of £17,000 of benefits respectively. Despite the mitigatory factors presented in each case, the court considers that only a significant custodial sentence is appropriate for such levels of illicit gain in the absence of quite exceptional circumstances, which do not exist in either case. By significant, the court considers that a starting point of at least six months would be appropriate. In each of these appeals therefore, the court considers that the sheriff has selected a sentence which

is appropriate, in its rejection of a direct alternative to custody, and cannot be said to be excessive in terms of length of custodial term. The appeals of these two appellants must be refused.

[22] The appeal of Ms Gill raises a more difficult issue. The amount of benefit obtained was slightly less than £10,000, which is a lower level of gain than in the other two appeals. Nevertheless, the court considers that, despite there being, once again, strong mitigatory factors, a sheriff would be entitled to take the view that a significant custodial term alone was appropriate even for this lower level of gain. The problem which this court faces is that the term selected by the sheriff was one of only two months. As has already been observed, the court does not consider that such a short term is appropriate for an offence of this type and level of gain. It has considered whether it should increase the term imposed, to one where the starting point is above the six month level referred to above. However, it has reached the conclusion that this would not be a reasonable course of action, especially as it has been impressed with the steps taken by Ms Gill to address her considerable problems since the sentencing diet before the sheriff. The court can see no advantage, in terms of punishment, deterrence or protection of the public, in subjecting Ms Gill to such a short term of imprisonment. As a direct alternative to custody, therefore, it will, if Ms Gill consents, substitute a community service order of 240 hours.

THE COURT refused the appeals of Jane Craig and Catherine Montgomery and in respect of Angela Veronica Gill, quashed the sentence of imprisonment and substituted therefor a community service order for 240 hours.

Capital Defence (for Jacqueline Doyle & Co, Glasgow) – Barony Law – Capital Defence (for Jacqueline Doyle & Co, Glasgow) – Crown Agent

HUNTER v DONALDSON

No 21
01 September 2010
[2010] HCJAC 105

Lord Mackay of Drumadoon,
Lord Bonomy and Lady Dorrian

Lorraine Hunter, Appellant—*Gilfedder (Solicitor-advocate)*
Anne Donaldson (Procurator fiscal, Airdrie), Respondent—*Di Emidio A-D*

Justiciary – Summary criminal jurisdiction – Dogs – Failure to control dogs – Orders in respect of the control or destruction of dogs – Whether application for such orders could competently be made by way of summary complaint – Dogs Act 1871 (34 & 35 Vict cap 56), sec 1 – Dangerous Dogs Act 1989 (cap 30), sec 1 – Criminal Procedure (Scotland) Act 1995 (cap 46), secs 7(3), (5), 133

Section 2 of the Dogs Act 1871 (34 & 35 Vict cap 56) (''the 1871 Act'') provided, ''Any court of summary jurisdiction may take cognizance of a complaint that a dog is dangerous, and not kept under proper control, and if it appears to the court having cognizance of such complaint that such dog is dangerous, the court may make an order in a summary way directing the dog to be kept by the owner under proper control or destroyed.''

Section 1 of the Dangerous Dogs Act 1989 (cap 30) (''the 1989 Act'') set out the consequences of failure to comply with an order made in terms of sec 1 of the 1871 Act and provided a right of appeal against such an order. In relation to Scotland, it provided that the consequences would be applied by a ''court of summary jurisdiction'' and that the right of appeal was to the High Court of Justiciary.

Section 7(3) of the Criminal Procedure (Scotland) Act (cap 46) (''the 1995 Act'') provides, ''Except in so far as any enactment (including this Act or an enactment passed after this Act) otherwise provides, it shall be competent for a JP court to . . . (b) make such orders and grant such warrants as are appropriate to a court of summary jurisdiction; (c) do anything else (by way of procedure or otherwise) as is appropriate to such a court.'' Section 7(5) provides, ''A JP court when constituted by a stipendiary magistrate shall, in addition to the jurisdiction and powers the court has otherwise, have the summary criminal jurisdiction and powers of a sheriff.'' Section 133 recognises the power of summary criminal courts in Scotland to pronounce ''any order *ad factum praestandum*, or other order of court or warrant competent to a court of summary jurisdiction'' and applies summary criminal procedure as set out in Pt IX of that Act to proceedings for such orders.

The appellant was charged on summary complaint in the justice of the peace court that on 18 April 2009 she was the owner of a Staffordshire Bull Terrier which was dangerous and not kept under proper control in that it escaped from her garden into a public place and thereafter entered a private garden where it attacked a pet dog and a pet rabbit. The libel referred to sec 2 of the 1871 Act.

The appellant took a plea to the competency and relevancy of proceeding by way of summary complaint in a matter which did not involve conviction but rather an order to keep the dog under proper control or destroy it. It was submitted that it ought to have proceeded by way of summary application. The justice of the peace rejected the plea and granted leave to appeal.

It was argued on behalf of the appellant that a two-stage process was envisaged, whereby a court exercising civil jurisdiction applying the civil standard of proof and rules of evidence would make an administrative order, which could become the subject of criminal proceedings if breached.

On behalf of the Crown it was argued that the accepted standard practice over many years had been that both stages were dealt with by way of complaint in summary criminal proceedings.

Held that: (1) sec 1 of the 1989 Act pointed clearly to the jurisdiction invoked being that of the criminal courts and that sec 7(3) and (5) and sec 133 of the 1995 Act also envisaged that summary criminal procedure would apply (para 4);