



**SHERIFF APPEAL COURT**

**[2019] SAC (Crim) 13  
SAC/2019-000505/AP**

Sheriff Principal Stephen QC  
Appeal Sheriff Braid  
Appeal Sheriff Holligan

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL STEPHEN OC

in BILL OF SUSPENSION

by

KELLY FERGUSON

Complainer

against

PROCURATOR FISCAL, GLASGOW

Respondent

**Complainer: Paterson, solicitor advocate; Paterson Bell Solicitors  
Respondent: Cameron, Sol Adv A.D.; Crown Agent**

24 September 2019

[1] The complainer was charged at the instance of the respondent in the Justice of the Peace Court in Glasgow with a contravention of section 143 of the Road Traffic Act 1988 by driving in Main Street, Rutherglen on 24 August 2018 without there being in force third party insurance for the vehicle that she was driving.

[2] The complainer pled guilty to this offence at the trial diet on 7 March 2019.

Conviction of the offence carries with it obligatory endorsement with penalty points in the range of 6 to 8. On conviction the solicitor for the complainer raised with the Justice of the Peace the proposition that special reasons existed in this case for non- endorsement and a proof was fixed for 28 March 2019. That proof did not take place as the complainer did not attend court her agent explaining that she was unwell. The complainer failed to attend a further five subsequent proof diets, for various reasons, all of them narrated by the Justice of the Peace in her report. Ultimately, on the date fixed for the sixth proof on 7 August 2019 the Justice of the Peace declined to adjourn the case again to a further diet and proceeded to sentence endorsing the complainer's driving licence with the minimum number of penalty points and imposing a fine of £300 which she discounted to £270.

[3] Section 44 of the Road Traffic Offenders Act 1988, as amended, makes provision for the endorsement of driving licences. In is in the following terms:

*"44 – Orders for endorsement*

(1) *Where a person is convicted of an offence involving obligatory endorsement, the court must order there to be endorsed on his driving record particulars of the conviction and also -*

*(a) if the court orders him to be disqualified, particulars of the disqualification, or*

*(b) if the court does not order him to be disqualified –*

*(i) particulars of the offence, including the date when it was committed, and*

*(ii) the penalty points to be attributed to the offence.*

(2) *Where the court does not order the person convicted to be disqualified, it need not make an order under sub-section (1) above if for special reasons it thinks fit not to do so.*

(3) *In relation to Scotland, references in this section to the court include the justice of the peace court.*

(4) *This section was subject to section 48 of this Act."*

[4] The solicitor advocate for the complainer made a submission to the effect that the Justice of the Peace acted incompetently in dismissing the 'special reasons' proof and proceeding to sentence. He accepted that there had been a catalogue of failures to attend court by the complainer. She was a young woman with health problems which affected her mobility. The vehicle she was driving was a mobility vehicle. It appears that a monthly direct debit payment covering maintenance and insurance had not been paid. Insurance had been cancelled. It was contended that there was no basis upon which the Justice of the Peace could discharge the special reasons proof and hold that there were no special reasons. The proof could have been adjourned or a warrant issued for the failure of the complainer to attend court.

[5] The advocate depute's submissions rested on the answers. It was competent for the Justice of the Peace to proceed to sentence as the complainer had had ample opportunities to appear and present evidence to the court why special reasons existed. The Bill should be refused.

[6] The onus is on the complainer who has been convicted of the offence to bring forward material at proof to satisfy the Justice of the Peace that special reasons exist which would allow the Justice to refrain from endorsing and imposing penalty points. In terms of section 44 of the Road Traffic Offenders Act 1988 the Justice of the Peace is required to endorse unless special reasons exist. The complainer has failed to appear in court to put forward any explanation which might constitute special reasons. No vouching has been provided for the dates when the complainer is said to have been unwell. The Justice of the

Peace was not obliged to take any of the steps suggested in the Bill in light of the procedural history of this case. The Justice of the Peace correctly identifies that it is for the appellant to raise the question of special reasons and having done so it is for her to establish those reasons at a proof arranged for that purpose. The suggestion that the Justice ought to have issued a warrant for the arrest of the complainer to attend a proof which she had requested is frankly specious. Wisely, the solicitor advocate for the complainer did not pursue that line.

There has been no adequate explanation why the complainer did not attend court between March and August. The suggestion that the court should have granted the complainer even further indulgence by fixing another proof is both unreasonable and unrealistic. It discloses a failure to understand that this is summary procedure and the court has finite resources. In our opinion, the interests of justice have been met by the court offering a series of opportunities to the complainer to discharge the onus of satisfying the court as to special reasons. The Justice of the Peace was entitled to proceed to sentence and is correct to observe, as she does, in her report that "*In the absence of special reasons being established by the appellant I was obliged to endorse her driving record.*" Section 144(3)(b) of the Criminal Procedure (Scotland) Act 1995 provides that the court may hear and dispose of the case in the absence of the accused (at least in the circumstances set out in subsection (2), which applied to the present case). In *Taylor v Lees* 1993 SCCR 947 a complainer in a Bill of Suspension who had pleaded guilty by letter argued that the actings of the Justice of the Peace in dealing with sentence in his absence, having ordained him to appear personally, constituted oppression and a miscarriage of justice. The High Court refused to suspend the sentence and held that the justice had a discretion to deal with the complainer who had been given an opportunity to appear or be represented. Accordingly, in summary proceedings it does not follow that

the court requires an accused to be present for sentencing even if he has been ordained to appear personally (unless the sentence is one of imprisonment or detention (S.144(6))).

[7] The Justice of the Peace heard submissions in mitigation from the complainer's solicitor and proceeded to impose the minimum number of penalty points and a discounted fine despite the plea being tendered at the trial diet. That being so, and given the number of subsequent failures to appear, diluting still further any utilitarian value in the plea, we are surprised that the fine imposed was discounted at all and that the level of the fine falls below the fixed penalty especially as the complainer has in effect delayed the penal effect of her offending by virtually a year. In these circumstances we decline to pass the Bill.