

# OFFENCES

The offences given here are the most commonly encountered prosecutions. The list is by no means exhaustive.

Now Parliament has passed the Road Safety Act 2006 which makes provision for a wide range of road traffic matters, for example:

- It creates new offences
- It introduces new measures relating to drink driving
- It provides for graduated fixed penalties for speeding and increases the range of penalty points available for those offences
- It increases the maximum penalties for various road traffic offences

The driver is increasingly being subjected to new restrictions and sanctions. It is essential that you have a defence advocate on your side.

## CARELESS/INCONSIDERATE DRIVING

Careless driving or driving without due care and attention, is defined as driving that falls below what would be expected of a reasonable, prudent and competent driver. Once the prosecution prove that you departed from this standard the offence is complete.

Inconsiderate driving requires the prosecution to prove in addition that other persons were inconvenienced by the driving.

Frequently, by skilfully cross-examining the prosecution witnesses, a solicitor can persuade a court to dismiss a summons for careless driving. Remember that as in all cases heard in Magistrates' Courts the prosecution has to prove its case beyond reasonable doubt. If the court is not sure it must acquit.

Fine up to £2,500

**Maximum penalty:** 3-9 points  
Discretionary disqualification

## DANGEROUS DRIVING

A person is regarded as driving dangerously if the way he drives falls far below what would be expected of a competent and careful driver, and it would be obvious to such a driver that driving like that would be dangerous.

The test is therefore an objective one which concentrates on the manner of driving rather than your particular state of mind. But in determining what would have been obvious to a competent and careful driver, account is also taken of the circumstances and risks personally known to the driver.

A bad speeding case of 100mph or more is likely to be charged as dangerous driving.

As this offence is far more serious than careless driving and can be tried in both the Magistrates' and the Crown Court, you must seek the advice of an experienced solicitor advocate.

**Maximum penalty:** Fine up to £5,000 or up to 6 months imprisonment if Magistrates' Court/up to 2 years imprisonment if Crown Court Compulsory disqualification for at least 12 months plus retest

## **DANGEROUS LOADS/EXCESS WEIGHT**

With offences involving a vehicle's construction and use, reference is usually made to its laden or gross weight, while offences relating to its speed and excise duty will usually be concerned with laden and unladen weight. A vehicle on the road must be in such condition that no danger is caused, or likely to be caused, to road users. Liability is usually absolute even if the dangerous condition is due to a latent defect. The penalties for excess weight and overloaded vehicles, especially commercial vehicles, are very considerable and it is always advisable to seek expert advice. .

## **DRINK DRIVING/EXCESS ALCOHOL**

If a police officer reasonably suspects that a person who is driving or attempting to drive a vehicle on a road or other public place has alcohol in his body or has committed a moving traffic offence, he can require that person to provide a (roadside) breath test. If this is positive the driver will be arrested. A specimen for analysis will then be required at the police station.

The devices used by the Police to obtain an alcohol reading are regulated by detailed and complicated procedures and must be complied with. For example, if the machine providing the alcohol reading is not operated correctly, you will have a defence. Also, you may not have been driving on a road or other public place; or there may be a substantial difference between the breath/alcohol readings on the printout.

Your case may also fall into a category where, although no defence is available, you could argue that because of exceptional circumstances you should not be disqualified. For example, your drinks had been laced without your knowledge; or you drove the car for a very short distance; or you were responding to a genuine medical emergency. (See [Special Reasons.](#))

If convicted of this offence you should be given the opportunity of attending a Drink Drivers Rehabilitation Course and, if completed satisfactorily, this will result in a 25% reduction of the disqualification.

In cases where the reading is more than 3 times over the permitted limit, the courts will consider imprisonment.

<b>Maximum</b>	Fine of up to £5,000 or up to 6 months imprisonment.
<b>penalty:</b>	Mandatory disqualification for at least 12 months.
	Mandatory disqualification of 36 months for a further offence within 10 years

## **DRIVERS HOURS, TACHOGRAPHS**

The Transport 1968 introduced a system for the recording and monitoring of the hours that some drivers work. It sets out the maximum periods of driving with minimum rest periods in between, and requires certain vehicles to have tachographs fitted and maintained. This subject, extended by EC legislation, is an extremely complex area of road traffic law and expert advice must be sought in each case.

## **DRUNK IN CHARGE**

You can be prosecuted for this offence even if the keys are not in the ignition, the engine is not running and you have no intention of driving. But you have a defence if you can prove on a balance of probabilities that at the relevant time there was no likelihood of you driving the vehicle whilst you were still above the limit.

In these cases there is a presumption that you are “drunk in charge” and so the burden of proof is on you to disprove the allegation. You will therefore need to prepare your defence with great care.

If convicted of this offence disqualification is discretionary but you will have your licence endorsed with 10 points. This will mean that you become liable under the “totting up” provisions for mandatory disqualification if there are other points on your licence.

<b>Maximum penalty:</b>	Fine up to £2,500 – 10 penalty points
	Discretionary disqualification and/or up to 3 months imprisonment

## **EXCEPTIONAL HARDSHIP**

When you accumulate 12 or more penalty points on your licence for offences committed within 3 years, you are liable to an automatic or mandatory disqualification of at least 6 months, unless you can establish that this would cause you and/or others exceptional

hardship. Hardship suffered by innocent third parties such as family members or employees is often given more weight.

To avoid a disqualification the hardship has to be “exceptional”. The evidence needs to be carefully examined and prepared. The courts will scrutinise the arguments presented, so it is essential to put forward the strongest and most persuasive case, especially as the consequences of such a disqualification are frequently far-reaching.

If you succeed with this argument you will not be able to use it again if you find yourself in a similar position within 3 years. If you are disqualified in these circumstances, at the end of the disqualification you start again with a clean licence.

## **FAILING TO PROVIDE A BREATH/BLOOD SPECIMEN**

You must have a “reasonable excuse” for failing to provide a specimen to avoid a conviction for this offence.

Broadly speaking this defence is available if you are either mentally or physically incapable of giving a specimen.

There is a great deal of case law on this subject and you will need an expert advocate to assess all the evidence to determine if you have a defence.

If convicted a mandatory disqualification of at least 12 months is imposed and in the most serious cases imprisonment may be considered.

<b>Maximum penalty:</b>	Fine up to £5,000 or up to 6 months imprisonment
	Minimum disqualification of 12 months or 3 years if further offence committed within previous 10 years

## **FAILURE TO PROVIDE DRIVER DETAILS**

If a person has allegedly committed a driving offence but not been stopped by the police, the registered keeper will receive a Notice of Intended Prosecution requiring him/her to furnish details of the driver at the time of the alleged offence. If convicted, failing to furnish information now carries (from 24th September 2007) 6 points/or a disqualification and a fine of up to £1,000.

If you can prove on a balance of probabilities that you did not know and could not, with reasonable diligence, have found out who the driver was, you have a defence. It is also a defence to show that it has not been practicable for you to give the information required.

There have been occasions when a person has named someone else as driving, knowing it to be false, and this has led to a prosecution for attempting to pervert the course of justice, which usually results in a prison sentence.

## **FAILING TO STOP**

If as a driver you are involved in an accident and either an injury is caused to another person or damage is caused to another vehicle (or to roadside property such as a fence or wall), you must stop and, if required by someone having reasonable grounds to ask, give your particulars. If you do not stop, or for any reason do not give your particulars, you must report the accident at a police station as soon as reasonably practicable, or in any case within 24 hours. Your obligation to report an accident applies even if no one else is present at the scene.

If you are prosecuted for either or both of these offences and you are genuinely unaware that an accident has happened, you have a defence. But if you subsequently become aware of the accident within 24 hours you have a duty to report it to the police.

Consult an expert for advice.

**Maximum penalty:** Fine up to £5,000 or up to 6 months imprisonment  
5-10 points, discretionary disqualification

## **MOBILE PHONES**

You face a fixed penalty of £60 or up to £1,000 on conviction in court (£2,500 for drivers of goods vehicles, buses or coaches) and 3 penalty points if you use a hand-held mobile phone when driving.

A hand-held phone is something that “is or must be held at some point during the course of making or receiving a call”. So picking up a phone for even a fraction of a second – even if using an earpiece – will be breaking the law. (But pressing numbers on a phone, providing it is not held, is not illegal). “Driving” means being in the car even when it is stationary and while the engine is still running.

If an accident is caused while a mobile phone is being used, this will be regarded as an aggravating feature.

## **NEW DRIVERS**

As a result of the Road Traffic (New Drivers) Act 1995, if you are a newly qualified driver you must now go through a probationary period of 2 years after passing your first driving test. If you are convicted of a motoring offence during this probationary period and have 6 or more penalty points on your licence you will have your full licence revoked, but you may still continue to drive provided you have a provisional licence. You will be in the position of a learner driver until you pass a test again. Once you pass a second test the probationary period ends.

The important point to remember is that on revocation the driver is not disqualified. As

long as you have a provisional licence and abide by the terms under which it is given you commit no offence.

If as a “new” driver with a clean licence you are disqualified for a speeding offence you do not have your licence revoked. This only happens if 6 points are endorsed on the licence.

## **PENALTY POINTS**

A penalty points or “totting up” disqualification will arise once you accumulate 12 penalty points within 3 years, and you become liable to a mandatory disqualification for at least 6 months. If it is your second “totting up” disqualification, then the minimum disqualification is 12 months.

To avoid a mandatory “totting up” disqualification you must show that you will suffer [exceptional hardship](#) or that [special reasons](#) apply.

The rules are complicated and it is crucial that in these situations, where so much is at stake, you take the advice of an expert solicitor.

## **REMOVAL OF DISQUALIFICATION**

If you have been disqualified for more than 2 years you can apply to the court to have the disqualification reduced after:-

- 2 years if you were disqualified for less than 4 years
- half of the period of disqualification if it is less than 10 but not less than 4 years
- 5 years if you were disqualified for 10 years or more

The court will consider:-

- your character and conduct subsequent to the order
- the nature of the original offence
- your full employment history
- the reason why you want your licence restored

If your application is refused you cannot apply again within 3 months without the leave of the court. These applications are frequently opposed by the Police and you will need a solicitor to help.

## **SPECIAL REASONS**

If you are convicted of an offence involving an obligatory disqualification (such as drink driving) you may be able to argue that “special reasons” exist for not being disqualified. But these reasons must be special to the offence and not to you as the offender.

For example, you may only have driven a car:-

- Because of a medical emergency and no other transportation was available
- For a very short distance and no one was put in danger
- After someone had laced your drinks without your knowledge

The fact that the offence is trivial, or that you have a good driving record or your driving was not impaired, is never a good enough “special reason”.

“Special reasons” arguments may also apply in cases when the only penalty the Court is considering is an endorsement of your licence (and a fine). So you may be able to say that your licence should not be endorsed as you had an exceptional excuse for breaking the law. For example in a speeding case, if you were committing the offence but felt you had no alternative because a passenger suddenly became ill.

The onus of establishing special reasons lies on the defendant and the standard of proof is that of the balance of probabilities.

This is a difficult subject and much case law is relevant. Consult an experienced solicitor.

## **SPEEDING**

As technology advances reliance is now almost exclusively placed on the use of electronic devices for detecting speeding offences.

They include cameras – GATSO, and the SPECS system -- TRUVELO, a device which uses a road sensor to detect speed, VASCAR (Visual Average Speed Computer and Recorder), speedometers and hand held laser and radar devices.

They must be properly calibrated and used only by police officers who are specifically trained in their operation. There are also guidelines that should be strictly observed governing the way they are used.

That is why it is important to look very carefully at the circumstances under which the device is operated. There are a number of checks the police officer has to comply with before this evidence is admissible. It may therefore be possible to challenge the accuracy of the speed detected by the device, and the prosecution may not be able to prove the offence.

Fine up to £1,000 (up to £2,500 if motorway)  
**Maximum penalty:** 3-6 points (3 points if fixed penalty)  
discretionary disqualification

## **PENALTY POINTS**

A penalty points or “totting up” disqualification will arise once you accumulate 12 penalty points within 3 years, and you become liable to a mandatory disqualification for at least 6 months. If it is your second “totting up” disqualification, then the minimum is 12 months.

To avoid a mandatory “totting up” disqualification you must show that you will suffer exceptional hardship or that special reasons apply.

The rules are complicated and it is crucial that in these situations, where so much is at stake, you take the advice of an expert solicitor.

## **TRAFFIC/ROAD SIGNS**

These prosecutions cover offences for contravening signs, signals and markings on the road.

They are governed by extremely lengthy and convoluted regulations, and if they are not complied with you will have a defence.

As in speeding cases, a prosecution for a traffic light offence is almost invariably based upon the evidence produced from a camera, and an NIP is issued.

Consult an expert.

Fine up to £1,000  
**Maximum penalty:** 3 points  
Discretionary disqualification