Being in charge of a vehicle with excess alcohol

Being in charge of a vehicle whilst unfit by reason of excess alcohol is defined as driving or attempting to drive a motor vehicle on the public highway or a public place whilst under the influence of alcohol exceeding the prescribed limit. Even if you are not driving the vehicle, but are in the vehicle on the public highway/public place, you can be deemed to be "in charge" of the vehicle.

The maximum penalties are:

- 10 penalty points; and
- discretionary disqualification; and
- a fine of up to £2,500; and/or
- 3 months imprisonment.

The limit

The current limit is 35 microgrammes of alcohol per litre of breath or 80 millilitres of alcohol per 100 millilitres of blood. However, if the lowest reading is 39 microgrammes or below, you should be released with a warning.

Between 40 and 50 microgrammes you must then be given the option of blood/urine tests. It is for the police to decide which of these options to use. A urine sample is on the basis of 2 samples within 1 hour. A blood sample must be taken by a police surgeon. You can demand 2 blood samples are taken which can be useful in defending the charge. If you are not given this option you may escape further prosecution (see below).

Roadside breath test followed by police station breath test

A driver can be stopped if a police officer thinks you have exceeded the limit.

A roadside breath test can then be administered and if the test is positive you will be arrested and taken to the police station where you will be asked to provide a further 2 specimens of breath for analysis using approved equipment. The lower reading is the one that will be used.

If you are over the limit during the police station breath test you will then be charged, cautioned and bailed to attend Court.

Defences

You were not on a road or public place

The term “road” is defined at section 142 of the Road Traffic Regulation Act 1984 as any length of highway or other road to which the public has access and includes bridges over which a road passes. The Concise Oxford Dictionary defines “road” as a line of communication for use of foot passengers and vehicles; while in **Oxford -v- Austin [1981] RTR 416** it was said to be a definable right of way between two points.

The expression 'on a road or other public place' is employed frequently in Road Traffic legislation, for example, in the drafting of moving traffic offences at sections 1-6 RTA. A public place is a place to which the public, or part thereof, have access.

The onus is on the prosecution to establish that a particular location was a `road' or `other public place'.

Your high reading is because you had alcohol after you drove

If you claim that the proportion of alcohol in a breath or laboratory specimen provided by you is above the legal limit because you had consumed alcohol after you had ceased to drive, you will need to rebut the presumption contained in section 15(2) Road Traffic Offenders Act 1988 that the proportion of alcohol in your breath, blood or urine at the time of the alleged offence was **not less** than in the specimen. The presumption will be rebutted if you prove the matters set out at section 15(3) on a balance of probabilities. In order to do so you will usually rely upon expert scientific evidence to establish that his alleged post driving consumption of alcohol accounts for the excess found in your sample, which took you over the legal limit.

However, in **(Dawson v Lunn [1986] RTR 234)** it was held that the decision in **(Pugsley v Hunter [1973] RTR 284)**, the leading authority on 'laced drinks', was equally applicable to this defence. Hence, the defence must call medical or scientific evidence on the point unless it is obvious to a layperson that the post offence consumption of alcohol explained the excess. Experience has shown that this is frequently argued in cases where the defendant claims to have consumed no alcohol prior to driving. Even here it will not be 'obvious' where the quantity of alcohol subsequently consumed is not consistent with the measured breath, blood or urine sample.

Conversely, if you provide a specimen some hours after the time of the alleged offence which is below the legal limit the Forensic Science Service (FSS), or a private laboratory, may advise that by means of back calculations based upon rates at which the human body

eliminates alcohol it is possible to establish that you were in excess of the legal limit when the offence occurred (see **Gumbley v Cunningham (1989) 1 All ER 5**.

The following information is relevant, where available:

- the weight, height, build, age and sex of the driver;
- details of any food consumed from six hours before the offence and the provision of a breath or laboratory specimen;
- any known medical condition;
- details of any medication taken regularly, or within 4 hours prior to drinking;
- the type and quantity of alcohol consumed before the offence and, if possible, the times at which individual units of alcohol were consumed;
- the same information concerning any alcohol allegedly consumed after the offence but before the provision of a breath or laboratory specimen.

Police failed to folow procedures for blood or urine samples at police stations

When your reading is between 40 and 50 a driver may choose to replace a breath specimen by supplying a blood or urine sample (section 8(2) of the Road Traffic Act 1988). The police:

- **must** inform the driver that the specimen of breath which he has given containing the lower proportion of alcohol exceeds the statutory limit; but does not exceed 50 microgrammes of alcohol in 100 millilitres of breath;
- **should** inform the driver that in the circumstances he is entitled to claim to have this specimen replaced by a specimen of blood or urine if he wishes; but that, if he does so, it will be for the constable to decide whether the replacement specimen is to be of blood or urine and that if the officer requires a sample of blood, it will be taken by a doctor unless the doctor considers that there are medical reasons for taking blood, when urine may be given instead;
- **should** ask the driver if there are any medical reasons why a sample of blood cannot or should not be taken from him by a doctor.

If the officer has failed to inform the driver of his option to have a blood or urine test you will be acquitted of the relevant allegation.

Challenging the evidential breath testing instrument (EBTIs)

The first generation of Evidential Breath Testing Instruments (EBTIs)were replaced in 1999. All forces are now equipped with the Intoximeter EC/IR, the Camic Datamaster or the Lion Intoxylizer 6000UK. They detect and record a wider range of information when analysing breath samples.

These three makes of instrument are type approved by the Secretary of State for the purposes of the Road Traffic Act. Any challenge of that type approval must be made by way of an application for Judicial Review, not in the course of a summary trial relating to

the performance of a particular instrument: (see **DPP -v- Brown and DPP -v- Teixeira [2001] EWHC Admin 932, 166 JP 1**)

In the case of a breath specimen there is a statutory assumption at section 15 RTA that the instrument concerned performed reliably. However, that assumption may be challenged by evidence relevant to the circumstances of that particular case. In order to convict in the face of such evidence the Court must remain satisfied that the instrument provided a reading upon which they can rely. See **Cracknell -v- Willis (1998) 1AC 450 at 467**, and **DPP -v- Brown; DPP -v- Teixeira.**

Careless driving/driving without due care

This offence is committed when the accused's driving falls below the standard expected of a reasonable, prudent and competent driver in all the circumstances of the case.

The maximum penalties are:

- a £2,500; and
- mandatory 3 to 9 penalty points; and
- discretionary disqualification.

The test of whether the standard of driving has fallen below the required standard is objective. It applies both when the manner of driving in question is deliberate and when it occurs as a result of incompetence, inadvertence or inexperience.

Occasionally an accident occurs but there is no evidence of any mechanical defect, illness of the driver or other explanation to account for why the accident happened. In these cases, a charge of careless driving may be successfully defended on the basis that there is no culpability. The case for the prosecution may be put on the basis that there is a very strong inference that the defendant was driving below the standard expected of a reasonable, prudent and competent driver because of, for example, the fact that a collision resulted.

The following are examples of driving which may amount to driving without due care and attention:

- overtaking on the inside;
- driving inappropriately close to another vehicle;
- driving through a red light;
- emerging from a side road into the path of another vehicle;

Conduct whilst driving, such as:

- using a hand held mobile telephone while the vehicle is moving;
- tuning a car radio;
- reading a newspaper/map;

- selecting and lighting a cigarette/cigar/pipe;
- talking to and looking at a passenger;

The above examples are merely indicative of what can amount to careless driving.

Court process and procedure

You will be given three options:

i) pleading guilty by post;
ii) pleading guilty in person; or
iii) pleading not guilty.

If you plead guilty by post, your case will be dealt with in your absence and you will be notified of the outcome. It is important to consider whether you want to plead guilty. The prosecution must prove its case to the Court establishing beyond reasonable doubt that you have for example, been speeding. If there are any evidential difficulties with the prosecution case, Motorlawdirect will spot them and advise you accordingly.

If you do wish to plead guilty, you should also remember that presenting mitigation is your right. Even if you do not appear in Court you should write a letter of mitigation outlining your particular circumstances. Mitigation is information provided to the Court after a guilty plea which seeks to persuade the Court that because of the circumstances you should be given a lesser penalty or sentence. It is not a denial of guilt.

If a mitigation letter is skillfully drafted it can often result in a substantially reduced punishment. Appearing in person may be a more persuasive way of establishing good mitigation with Court.

In some circumstances, particularly where there is a risk of a "totting up" disqualification or a discretionary disqualification, the Court requires drivers to attend personally. The Court cannot disqualify a driver who pleads guilty by post and if the postal option does not appear on your Summons, you should assume that the Court is considering imposing a driving ban.

Crown Prosecution Service

The Crown Prosecution Service reviews and, where appropriate, prosecutes criminal cases, following investigation by others. It also advises the police on matters relating to criminal offences. In each case which it reviews and considers whether there is sufficient evidence and, if so, whether the public interest requires a prosecution. The CPS will be represented by a Barrister or solicitor in Court for criminal offences such as drink driving, no insurance etc. However, for road traffic offences such as speeding, traffic light offences etc where the Defendant has pleaded guilty by post the CPS may not be represented in Court. Instead the

Magistrates' Legal Adviser (formerly known as the Court clerk) will read out the facts of the offence relied upon by the Police.

Disqualification from driving

As a general rule, the Courts will punish high excess speeding offences with instant disqualifications. Also, any driver reaching 12 penalty points within 3 years would face a 6 month disqualification under the "totting up" procedure. The mandatory guideline is that under the "totting up" procedure, a 6 month disqualification should be imposed but when the licence is returned, the slate is wiped clean and the points removed.

Other offences, such as drink driving also carry mandatory disqualification periods. When a disqualification is imposed for a specific offence, such as drink driving, the period of disqualification will depend on the nature of the offence itself and the licence can be returned at the end of the disqualification period with any previous penalty points still valid. Alternatively, if the offence is particular severe, the Court can disqualify you and order that you take an extended test before your new licence is issued.

Escaping Disqualification

There are two primary routes to escaping disqualification:

i) Exceptional Hardship;
ii) Special Reasons

The two concepts are totally different and have their own particualr legal meaning that has been defined and developed by case law. These are highly technical and complicated arguments as you will discover from the legal points below. They are best argued by a Barrister on your behalf.

Exceptional hardship

Motorlawdirect are experienced at arguing that special circumstances exist in the particular case of the motorist so that the Court's discretion, where it applies, should be exercised to allow even totters with 12 points or more to keep their licence. The Court is required to disqualify totters unless "exceptional hardship" circumstances apply.

The exclusion of "harship, other than exceptional hardship" as an agrument against disqualifcation is contained in section 35(4)(b) of the 1988 Road Traffic Offenders Act. Almost every order of disqualification entails hardship for the person disqualified and it is for the Courts to interpret this phrase. Exceptional hardship is a matter of fact and degree in each particular case and has been held by the Courts to be something "out of the ordinary". The Court is allowed to take into consideration exceptional hardship to the driver and also

other people affected by the disqualification such as children and spouses. Other factors include loss of employment (but this often not enough without further evidence of exceptional hardship), finances, prospects, famly cirumstances. The list is exhausted only by the facts of a particular case. Because the discretion of the Court is so wide and inevitably a little unpredicatble, it is important that your arguments are presented properly to persuade the Court of its merits.

Case preparation to ensure that you are demonstrating that you have met the legal criteria for exceptional hardship is all important in these types of cases.

Special reasons

If you are convicted of drink driving it is obligatory that you are disqualified from driving. Section 34(1) RTOA reads:

Where a person is convicted of an offence involving obligatory disqualification the Court must order him to be disqualified for such period not less than twelve months as the Court thinks fit unless the Court for special reasons thinks fit to order him to be disqualified for a shorter period, or not to order him to be disqualified.

A popular possible "escape route" from disqualification is that of "special reasons". A special reason is one which is special to the facts of a particular offence. It is a mitigating or extenuating circumstance which is directly connected with the commission of the offence and which can properly be taken into consideration by the sentencing Court. A circumstance peculiar to the offender, as distinguished from the offence, is not a special reason: see **Whittall -v- Kirby [1946] 2 ALL ER 552**. Neither is a "special reason" a defence to the charge.

Special reasons, particularly in relation to drink/drive cases, have generated a considerable body of case law and will most commonly be advanced in cases involving:

- driving in emergencies
- inadvertent consumption of drink or drugs.

Where special reasons are put forward in cases of drink and driving, the Court must consider the following factors - see **(Chatters -v- Burke [1986] 3 All ER 168)**:

- the reason for driving;
- the distance driven;
- the manner of driving;
- the condition of the vehicle driven;
- whether or not it was the driver's intention to drive any further;
- the road and traffic conditions at the relevant time; and
- the possibility of danger to other road users (the most important factor).

In **DPP -v- Bristow [1998] RTR 100** the Divisional Court stated that the key question justices should ask themselves when assessing if such special reasons existed on which they might decide not to disqualify was this: what would a sober, reasonable and responsible friend of the defendant, present at the time, but himself a non-driver and thus unable to help, have advised in the circumstances, to drive or not to drive?

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

The defence should give notice that they will be seeking to advance special reasons. Failure to do so will entitle the prosecution not only to seek an adjournment but also to cross-examine the defendant on his failure to give such notice so that the Court may consider whether that failure reflected upon his bona fides, see **DPP -v- O'Connor [1992] RTR 66**, an authority which is also helpful on the procedural requirements and the general approach to be adopted.

Drink driving

Drink driving is defined as driving or attempting to drive a motor vehicle on the public highway or a public place whilst under the influence of alcohol exceeding the prescribed limit.

The maximum penalties are:

- a 12 month mandatory disqualification for first offence or 3 years for second offence within 10 years;
- a fine of up to £5,000.00; and/or
- 6 months imprisonment.

If you are convicted of drink driving it is obligatory that you are disqualified from driving unless the Court finds that a “special reason” exists for not doing so (see below).

The Court does have the opportunity to consider sending a convicted motorist on a rehabilitation course. This entitles a reduction of 25% of the disqualification period. A mandatory 12 month ban would therefore be reduced to 9 months.

The limit

The current limit is 35 microgrammes of alcohol per litre of breath or 80 millilitres of alcohol per 100 millilitres of blood. However, if the lowest reading is 39 microgrammes or below, you should be released with a warning.

Between 40 and 50 microgrammes you must then be given the option of blood/urine tests. It is for the police to decide which of these options to use. A urine sample is on the basis of 2 samples within 1 hour. A blood sample must be taken by a police surgeon. You can demand 2 blood samples are taken which can be useful in defending the charge. If you are not given this option you may escape further prosecution (see below).

Roadside breath test followed by police station breath test

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Your high reading is because you had alcohol after you drove

If you claim that the proportion of alcohol in a breath or laboratory specimen provided by you is above the legal limit because you had consumed alcohol after you had ceased to drive, you will need to rebut the presumption contained in section 15(2) Road Traffic Offenders Act 1988 that the proportion of alcohol in your breath, blood or urine at the time of the alleged offence was **not less** than in the specimen. The presumption will be rebutted if you prove the matters set out at section 15(3) on a balance of probabilities. In order to do so you will usually rely upon expert scientific evidence to establish that his alleged post driving consumption of alcohol accounts for the excess found in your sample, which took you over the legal limit.

However, in **(Dawson v Lunn [1986] RTR 234)** it was held that the decision in **(Pugsley v Hunter [1973] RTR 284)**, the leading authority on 'laced drinks', was equally applicable to this defence. Hence, the defence must call medical or scientific evidence on the point unless it is obvious to a layperson that the post offence consumption of alcohol explained the excess. Experience has shown that this is frequently argued in cases where the defendant claims to have consumed no alcohol prior to driving. Even here it will not be 'obvious' where the quantity of alcohol subsequently consumed is not consistent with the measured breath, blood or urine sample.

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eliminates alcohol it is possible to establish that you were in excess of the legal limit when the offence occurred (see **Gumbley v Cunningham (1989) 1 All ER 5**.

The following information is relevant, where available:

- the weight, height, build, age and sex of the driver;
- details of any food consumed from six hours before the offence and the provision of a breath or laboratory specimen;
- any known medical condition;
- details of any medication taken regularly, or within 4 hours prior to drinking;
- the type and quantity of alcohol consumed before the offence and, if possible, the times at which individual units of alcohol were consumed;
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Police failed to folow procedures for blood or urine samples at police stations

When your reading is between 40 and 50 a driver may choose to replace a breath specimen by supplying a blood or urine sample (section 8(2) of the Road Traffic Act 1988). The police:

- **must** inform the driver that the specimen of breath which he has given containing the lower proportion of alcohol exceeds the statutory limit; but does not exceed 50 microgrammes of alcohol in 100 millilitres of breath;
- **should** inform the driver that in the circumstances he is entitled to claim to have this specimen replaced by a specimen of blood or urine if he wishes; but that, if he does so, it will be for the constable to decide whether the replacement specimen is to be of blood or urine and that if the officer requires a sample of blood, it will be taken by a doctor unless the doctor considers that there are medical reasons for taking blood, when urine may be given instead;
- **should** ask the driver if there are any medical reasons why a sample of blood cannot or should not be taken from him by a doctor.

If the officer has failed to inform the driver of his option to have a blood or urine test you will be acquitted of the relevant allegation.

Challenging the evidential breath testing instrument (EBTIs)

The first generation of Evidential Breath Testing Instruments (EBTIs)were replaced in 1999. All forces are now equipped with the Intoximeter EC/IR, the Camic Datamaster or the Lion Intoxylizer 6000UK. They detect and record a wider range of information when analysing breath samples.

These three makes of instrument are type approved by the Secretary of State for the purposes of the Road Traffic Act. Any challenge of that type approval must be made by way of an application for Judicial Review, not in the course of a summary trial relating to

the performance of a particular instrument: (see **DPP -v- Brown and DPP -v- Teixeira [2001] EWHC Admin 932, 166 JP 1**)

In the case of a breath specimen there is a statutory assumption at section 15 RTA that the instrument concerned performed reliably. However, that assumption may be challenged by evidence relevant to the circumstances of that particular case. In order to convict in the face of such evidence the Court must remain satisfied that the instrument provided a reading upon which they can rely. See **Cracknell -v- Willis (1998) 1AC 450 at 467**, and **DPP -v- Brown; DPP -v- Teixeira.**

Escaping Disqualification

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Where a person is convicted of an offence involving obligatory disqualification the Court must order him to be disqualified for such period not less than twelve months as the Court thinks fit unless the Court for special reasons thinks fit to order him to be disqualified for a shorter period, or not to order him to be disqualified.

A popular possible "escape route" from disqualification is that of "special reasons". A special reason is one which is special to the facts of a particular offence. It is a mitigating or extenuating circumstance which is directly connected with the commission of the offence and which can properly be taken into consideration by the sentencing Court. A circumstance peculiar to the offender, as distinguished from the offence, is not a special reason: see **Whittall -v- Kirby [1946] 2 ALL ER 552**. Neither is a "special reason" a defence to the charge.

Special reasons, particularly in relation to drink/drive cases, have generated a considerable body of case law and will most commonly be advanced in cases involving:

- driving in emergencies
- inadvertent consumption of drink or drugs.

Where special reasons are put forward in cases of drink and driving, the Court must consider the following factors - see **(Chatters -v- Burke [1986] 3 All ER 168)**:

- the reason for driving;
- the distance driven;
- the manner of driving;
- the condition of the vehicle driven;
- whether or not it was the driver's intention to drive any further;
- the road and traffic conditions at the relevant time; and
- the possibility of danger to other road users (the most important factor).

In **DPP -v- Bristow [1998] RTR 100** the Divisional Court stated that the key question justices should ask themselves when assessing if such special reasons existed on which they might decide not to disqualify was this: what would a sober, reasonable and responsible friend of the defendant, present at the time, but himself a non-driver and thus unable to help, have advised in the circumstances, to drive or not to drive?

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

The defence should give notice that they will be seeking to advance special reasons. Failure to do so will entitle the prosecution not only to seek an adjournment but also to cross-examine the defendant on his failure to give such notice so that the Court may consider whether that failure reflected upon his bona fides, see **DPP -v- O'Connor [1992] RTR 66**, an authority which is also helpful on the procedural requirements and the general approach to be adopted.

Failing to provide a specimen of breath

Failure to provide a specimen of breath can result in:

- a discretionary disqualification; and
- 4 penalty points; and
- a fine of up to £1,000.

Defences

A popular defence to the charge failing to provide a specimen of breath is based on the defence of "reasonable excuse". This defence is based on medical evidence and should be provided before the hearing. If necessary, expert medical evidence is obtained which addresses the specific issues raised by the defence. In **(DPP v Crofton (1994) RTR 265)** it was held that the Court should consider the following matters in such circumstances:

- medical evidence of physical or mental inability to provide the specimen;
- the causative link between the physical or mental condition and the failure to provide the specimen.

Once such a defence is raised, the onus is upon the prosecution to negate it.

Police failed to follow procedures for blood or urine samples at police stations

When your reading is between 40 and 50 a driver may choose to replace a breath specimen by supplying a blood or urine sample (section 8(2) of the Road Traffic Act 1988). The police:

- **must** inform the driver that the specimen of breath which he has given containing the lower proportion of alcohol exceeds the statutory limit; but does not exceed 50 microgrammes of alcohol in 100 millilitres of breath;
- **should** inform the driver that in the circumstances he is entitled to claim to have this specimen replaced by a specimen of blood or urine if he wishes; but that, if he does so, it will be for the constable to decide whether the replacement specimen is to be of blood or urine and that if the officer requires a sample of blood, it will be taken by a doctor unless the doctor considers that there are medical reasons for taking blood, when urine may be given instead;
- **should** ask the driver if there are any medical reasons why a sample of blood cannot or should not be taken from him by a doctor.

If the officer has failed to inform the driver of his option to have a bloor or urine test you will be acquitted of the relevant allegation.

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In the case of a breath specimen there is a statutory assumption at section 15 RTA that the instrument concerned performed reliably. However, that assumption may be challenged by evidence relevant to the circumstances of that particular case. In order to convict in the face of such evidence the Court must remain satisfied that the instrument provided a reading upon which they can rely. See **Cracknell -v- Willis (1998) 1AC 450 at 467**, and **DPP -v- Brown; DPP -v- Teixeira.**

Failing to stop/report an accident

After an accident you have been invoved in you must stop your vehicle and, if required to do so by any person having reasonable grounds for so requiring, give your name and address, the name and address of the owner of the vehicle and the identification marks of the vehicle (Section 170(2) of the Road Traffic act 1988).

The maximum penalty is:

- 6 months' imprisonment.

The duty to stop means to stop sufficiently long enough to exchange the particulars above: **(Lee -v- Knapp 1966 3 All ER 961)**.

Section 170(3) places an obligation on the driver, if he does not give his name and address under subsection (2) above, to report the accident to a police constable or police station as soon as reasonably practicable and in any case within 24 hours. The duty to report means "as soon as reasonably practicable": **(Bulman -v-Bennett 1974 RTR)**. It does not mean the driver has 24 hours within which to report the collision.

Fixed Penalty Notice

The Fixed Penalty Notice scheme causes confusion for many people who wish to accept the Fixed Penalty Notice but also wish to plead mitigation (i.e. wanting to present their particular circumstances to the Court to have a lesser penalty) at the same time.

A Fixed Penalty Notice is actually a "conditional offer" from the
prosecution. In the majority of cases the proposal is 3 penalty points and £60 fine. There is no flexibility on this and thus a plea of mitigation is not relevant. You either take the proposal or if you wish to argue about the level of fine/penalty points, you reject the offer and appear in Court instead. A summons will be issued to allow you to do this.

You are offered the minimum number of penalty points and a "nominal" fine. This type of fine does not include means testing. If you know you have committed the offence 3 points and a fine of £60 is most likely the best result that you are going to get. To take the matter further can often result in higher punishment and substantially more expense - particularly if the Court imposes its right to means test you before deciding on a fine. Of course if your licence is at risk from totting up too many points or you did not commit the offence you must appear in Court to contest the matter.

To contest Notices issued by the Police the usual method is for the Fixed Penalty option to be withdrawn whereupon you will be summonsed to the Magistrates' Court where the case will be heard.

Magistrates' Court

A Magistrates' Court tries summary offences (i.e. offences where there is no jury to decide upon the verdict). A Magistrates' Court will most often consist of three magistrates who will decide upon a verdict should you plead not guilty or simply move to deciding an appropriate penalty should you plead guilty. Magistrates are lay members of the public who are not legally qualified. Further, they are purely voluntary. Sometimes Magistrates' Courts have District Judges sitting to hear cases instead. District Judges are qualified solicitors or Barristers. Both lay benches of

Magistrates and District Judges are assisted by a legal adviser (formerly known as a Court clerk) sitting in Court. The legal adviser may very well be the person asking you all the questions, but does not take the final decision.

Magistrates and District Judges have the power to endorse your licence with points, impose a fine, disqualify you from driving and imprison you.

Mitigation

Mitigation is information provided to the Court after a guilty plea or a guilty verdict which seeks to persuade the Court that because of the circumstances you should be given a lesser penalty or sentence. It is not a denial of guilt.

If a plea of mitigation is presented with skill, charm and aplomb, it can often result in a substantially reduced punishment so it is advisable to seek advise before attempting to prepare a plea in mitigation.

Mobile phone use

It is an offence to use a hand-held phone, or similar device, when driving.

Maximum penalties

- £30 fixed penalty or up to £1,000 on conviction in Court; or
- £30 fixed penalty or up to £2,500 for drivers of goods vehicles, buses or coaches.

If the use of your mobile phone results in the standard of your driving to fall below the required standard you may be charged with careless or even dangerous driving. Drivers (to include somebody supervising a provisional driver) also risk prosecution for failure to have proper control if they use hands-free phones when driving.

A hand-held device is something that is or must be held at some point during the course of making or receiving a call or performing any other interactive communication function.

A device is "similar" to a mobile phone if it performs an interactive communication function by transmitting and receiving data. Examples of interactive communication functions are sending and receiving spoken or written messages, sending or receiving still or moving images and providing access to the internet.

Pushing buttons on a mobile while it is in a cradle for example is not an offence so long as you do not hold the phone. Texting whilst driving therefore is an offence if the phone (or other device) has to be held in order to operate it.

Use of devices other than mobile phones such as GPS's whilst driving is only an offence if the device performs an interactive communication function by sending and receiving data.

There is an exemption for calls to 999 (or 112) in genuine emergencies where it is unsafe or impractical to stop.

Notice of intended prosecution

Speeding offences and traffic light offences which are proved by way of photographic evidence do not require the driver to be stopped at the time of the offence. In such circumstances, the normal method is to serve a "Notice of Intended Prosecution" on the registered keeper of the vehicle. This document has to be issued within 14 days of the offence. It gives the keeper 28 days in which to identify the driver who would then normally receive a Fixed Penalty Notice.

You cannot be convicted of certain road traffic offences unless you have been warned that the question of prosecution would be taken into consideration by way of a notice of intended prosecution (Section 1 Road Traffic Offenders Act 1988).

A notice of intended prosecution can be given:

- either orally or in writing at the time the offence was committed. Such a warning need not be specific but may refer to some one or other of the offences to which section 1 applies. Whether such a warning was given `at the time' is a question of degree and the High Court will not interfere in a Magistrates' Court finding on the point if there is evidence to support that finding.
- By serving the defendant with a summons within 14 days of the offence; or
- By sending a notice within 14 days of the possibility of prosecution and specifying the nature of the alleged offence and the time and place where it is alleged to have been committed to the driver, registered keeper of the vehicle or rider of the cycle.
- The offences to which section 1 RTOA applies are listed in schedule 1 of that Act. They are, under the RTA:
    - Section 2 (dangerous driving)
    - Section 3 (careless driving/driving without reasonable consideration)
    - Section 22 (leaving the vehicle in a dangerous position)
    - Section 28 (dangerous cycling)
    - Section 29 (careless cycling)
    - Sections 35 and 36 (disobeying certain traffic signs and police signals)
- And under the Road Traffic Regulation Act:
    - Sections 16, 17(4), 88(7) and 89(1) (speeding offences)
- or aiding and abetting any of the above.

Section 2 RTOA 1988 states that the prosecution does not have to comply with section 1 if, owing to the presence on a road of a vehicle in respect of which the offence was committed, an accident occurred at the time of the offence or immediately afterwards. However, a

notice is still required if the defendant was unaware that there had been an accident: see Bentley -v- Dickenson [1983] RTR 356.

Under section 1(3) RTOA 1988 the requirements of that section are deemed to have been met unless and until the contrary is proved. The prosecution will not have to call evidence that section 1 has been complied with unless the defendant proves, on a balance of probabilities, that no effective notice was given. The issue can be raised at any relevant stage of the proceedings or decided as a preliminary point.

By virtue of section 2(3) RTOA a failure to meet the requirements shall not prevent conviction where the Court is satisfied that:

- It arose because the name and address of the accused or the registered keeper could not with reasonable diligence be ascertained within the statutory time; or
- The defendant contributed to that failure by his or her own conduct.

A claim that the requirements of the section have not been complied with is a popular technical defence. There are many decided cases on various aspects of the provisions.

Penalty points

As a general rule, the Courts will punish high excess speeding offences with instant disqualifications. Also, any driver reaching 12 penalty points within 3 years would face a 6 month disqualification under the "totting up" procedure. The mandatory guideline is that under the "totting up" procedure, a 6 month disqualification should be imposed but when the licence is returned, the slate is wiped clean and the points removed.

Other offences, such as drink driving, dangerous driving etc also carry mandatory disqualification periods.

Motorlawdirect are experienced at arguing that special circumstances exist in the particular case of the motorist so that the Court's discretion, where it applies, should be exercised to allow even totters with 12 points or more to keep their licence. The Court is required to disqualify totters unless "exceptional hardship" circumstances apply.

The exclusion of "harship, other than exceptional hardship" as an agrument against disqualifcation is contained in section 35(4)(b) of the 1988 Road Traffic Offenders Act. Almost every order of disqualification entails hardship for the person disqualified and it is for the Courts to interpret this phrase. Exceptional hardship is a matter of fact and degree in each particular case and has been held by the Courts to be something "out of the ordinary". The Court is allowed to take into consideration exceptional hardship to the driver and also other people affected by the disqualification such as children and spouses. Other factors include loss of employment (but this often not enough without further evidence of exceptional hardship), finances, prospects, famly cirumstances. The list is exhausted only

by the facts of a particular case. Because the discretion of the Court is so wide and inevitably a little unpredicatble, it is important that your arguments are presented properly to persuade the Court of its merits.

Case preparation to ensure that you are demonstrating that you have met the legal criteria for exceptional hardship is all important in these types of cases.

"road or other public place"

The term “road” is defined at section 142 of the Road Traffic Regulation Act 1984 as any length of highway or other road to which the public has access and includes bridges over which a road passes. The Concise Oxford Dictionary defines `road' as a line of communication for use of foot passengers and vehicles; while in **Oxford -v- Austin [1981] RTR 416** it was said to be a definable right of way between two points.

The expression “on a road or other public place” is employed frequently in Road Traffic legislation, for example, in the drafting of moving traffic offences at sections 1-6 RTA. A public place is a place to which the public, or part thereof, have access.

The onus is on the prosecution to establish that a particular location was a “road” or “other public place”.

- ***Seat belts***

It is an offence for an individual not to wear a seatbelt if one is available to wear. However, it also the responsibility of the driver to ensure that children under 14 are wearing seatbelts or child restraints where appropriate and where available.

Person	Front seat	Rear seat	Responsibility of
DRIVER	Must be worn if fitted	-	Driver
Child under 3 years of age	Appropriate child restraint must be worn	Appropriate child restraint must be worn if available	Driver
Child aged 3 to 11 and under, 1.5metres (about 5	Appropriate child restraint must be worn if available.	Appropriate child restraint must be worn if available.	Driver

feet) in height	If not, an adult seat belt must be worn	If not, an adult seat belt must be worn if available	
Child aged 12 or 13 or younger child 1.5metres or more in height	Adult seat belt must be worn if available	Adult seat belt must be worn if available	Driver
Passengers over the age of 14	Must be worn if available	Must be worn if available	Passenger

An appropriate child restraint can be a baby carrier, harness or booster seat or a child seat, the suitability of which is determined by the weight of the child. Approved child restraints must carry the BS "Kitemark" or United Nations "E" mark.
A restraint will be labelled by the manufacturers to show the weight for which it has been designed.Small children may find it more comfortable to use a booster cushion (not a household cushion) when wearing an adult belt.

Maximum Penalty

- maximum fine of £500.00.

The usual penalty, however, is a £30 fixed penalty notice fine.

All cars manufactured since 1973 should be fitted with front and rear seatbelts. Cars manufactured prior to that date, do not have to have seatbelts but if they have been subsequently fitted, they must be worn.

However, the following exemptions to wearing a seatbelt applies by virtue of the Motor Vehicles (Wearing of Seatbelts) Regulations 1993:

- a person holding a medical certificate;
- the driver of or a passenger in a motor vehicle constructed or adapted for carrying goods, while on a journey which does not exceed 50 metres and which is undertaken for the purposeof delivering or collecting any thing;
- a person driving a vehicle while performing a manoeuvre which includes reversing; a qualified driver (within the meaning given by regulation 17 of the. Motor Vehicles

(Driving Licences) Regulations 1999) who is supervising the holder of a provisional licence (within the meaning of Part 111 of the Act) while that holder is performing a manoeuvre which includes reversing;

- a person by whom, as provided in the Motor Vehicles (Driving Licences) Regulations 1999, a test of competence to drive is being conducted and his wearing a seat belt would endanger himself or any other person;
- a person driving or riding in a vehicle while it is being used for fire brigade or, in England, fire and rescue authority or police purposes or for carrying a person in lawful custody (a person who is being so carried being included in this exemption);
- the driver of—

(i) a licensed taxi while it is being used for seeking hire, or answering a call for hire, or carrying a passenger for hire, or . .

(ii) a private hire vehicle while it is being used to carry a passenger for Hire;

- a person riding in a vehicle, being used under a trade licence, for the purpose of investigating or remedying a mechanical fault in the vehicle;
- a disabled person who is wearing a disabled-person's belt; or
- a person riding in a vehicle while it is taking part in a procession organised by or on behalf of the Crown.

- ***Speeding***

If you are caught far in excess of the speed limit there is a high risk of an immediate disqualification from driving based on the recorded speed. Frustratingly, different Courts around the country have different local practices. A good rule of thumb however is if you are more than 40% over the speed limit, you are at risk of an immediate disqualification. The length of the ban is again at the Court's discretion, but will range from 7 to 90 days depending on the exact circumstances of your case, your personal situation and the quality of the mitigation raised by you or your Barrister.

- ***Summons***

A Summons (summoning you to attend Court at a particular time or otherwise face a possible warrant for your arrest) is issued by the Magistrates' Court and for the majority of offences must be issued within 6 months of the incident occurring.

You will be given three options:

iv) pleading guilty by post;
v) pleading guilty in person; or
vi) pleading not guilty.

If you plead guilty by post, your case will be dealt with in your absence and you will be notified of the outcome. It is important to consider whether you want to plead guilty. The prosecution must prove its case to the Court establishing beyond reasonable doubt that you have for example, been speeding. If there are any evidential difficulties with the prosecution case, Motorlawdirect will spot them and advise you accordingly.

If you do wish to plead guilty, you should also remember that presenting mitigation is your right. Even if you do not appear in Court you should write a letter of mitigation outlining your particular circumstances. Mitigation is information provided to the Court after a guilty plea which seeks to persuade the Court that because of the circumstances you should be given a lesser penalty or sentence. It is not a denial of guilt.

If a mitigation letter is skillfully drafted it can often result in a substantially reduced punishment. Appearing in person may be a more persuasive way of establishing good mitigation with Court.

In some circumstances, particularly where there is a risk of a "totting up" disqualification or a discretionary disqualification, the Court requires drivers to attend personally. The Court cannot disqualify a driver who pleads guilty by post and if the postal option does not appear on your Summons, you should assume that the Court is considering imposing a driving ban.

- ***Time limits the Police must comply with to prosecute you***

Many road traffic offences are purely summary offences and in most cases proceedings are taken by way of the laying of an information and the issue of a summons. Hence time limits are of particular significance since for various reasons substantial delay may occur before it is decided to institute proceedings. The point must also be borne in mind if it is intended at a later date to add further charges.

Laying of the information

Section 127 Magistrates' Court Act 1980 states that for all summary offences the information must be laid within six calendar months of the commission of the offence, except where any other Act expressly provides otherwise.

The following points need to be borne in mind:

- It is not necessary for the information to be personally received by a justice or by the clerk. It is enough that it is received by a member of his staff impliedly authorised to receive it. In R -v- Pontypridd Juvenile Court ex p B [1988] CLR 842 it was held that an information could be laid by being input into a terminal at a police station of a computer system which was linked to the Court, even though it was not printed out at the Court end until later.
- In computing the limitation period the day on which the offence was committed is not included.
- So long as the information is laid within six months, the issue and service of the summons and the subsequent determination may all occur outside that period.
- Laying an information within the six months' time limit before deciding whether or not to prosecute may result in the proceedings being stayed as an abuse of process; see **R -v- Brentford Magistrates' Court ex parte Wong [1981] 1 All ER 884**.

The six months' time limit applies to most summary road traffic offences, but statutory exceptions do occur. In particular:

- Section 6 RTOA 1988; and
- Section 24 RTOA 1988.

Exceptions to the six month time limit

Section 6 provides a special time limit for offences listed in Column 3, Schedule 1 RTOA 1988, and for aiding and abetting those offences. When it applies, proceedings must be brought within six months from the date on which sufficient evidence came to the knowledge of the prosecutor to warrant proceedings; but must not be brought more than three years after the commission of the offence in any event.

Section 6 applies to the following offences under the RTA:

- driving after making a false declaration as to physical fitness [section 92(10)]
- failing to notify Secretary of State of onset or deterioration of disability [section 94(3)]
- driving after such a failure
- driving after refusal of licence under section 92 or 93 (section 94A)
- failure to surrender licence following revocation (section 99)
- obtaining driving licence, or driving, whilst disqualified [section 103(1)]
- using an uninsured motor vehicle (section 143)
- making a false statement to obtain a driving licence or certificate of insurance (section 174)

- issuing false documents (section 175).

Under section 6(3) a certificate signed by or on behalf of the prosecutor, stating the date on which the necessary evidence cane to his knowledge, is conclusive evidence of that fact. Such a certificate is deemed under sub-section (4) to have been so signed unless the contrary is proved. The certificate should be signed by the appropriate police officer.

- ***Traffic lights***

It is an offence to fail to comply with traffic signs.

The maximum penalties are:

- maximum fine of £1000.00; and
- 3 points; and
- discretionary disqualification.

It is no defence that the driver failed to see the sign. No intention to fail to comply is necessary **(see Hill -v- Baxter [1958] 1 All ER 193)**. A mechanical defect of which the driver was unaware, may amount to a defence **(see R -v- Spurge [1961] 2 All ER 688)**, as will the loss of control over the vehicle due to circumstances beyond the control of the driver **(see Burns -v- Bidder [1996] 3 All ER 29)**.

Totting up

As a general rule, the Courts will punish high excess speeding offences with instant disqualifications. Also, any driver reaching 12 penalty points within 3 years would face a 6 month disqualification under the "totting up" procedure. The mandatory guideline is that under the "totting up" procedure, a 6 month disqualification should be imposed but when the licence is returned, the slate is wiped clean and the points removed.

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Using a vehicle without insurance

Under section 143(1)(a) RTA 1988 "a person must not use a motor vehicle on a road *or other public place* unless there is in force in relation to the use of that vehicle by that person a policy of insurance .". Under section 145 the policy must be issued by an authorised insurer and must insure for death or bodily injury to any person, or damage to property, caused by, or arising out of, the use of a vehicle on a road in Great Britain, i.e. third party insurance.

The maximum penalties are:

- 6-8 penalty points; and
- Discretionary disqualification; and
- £5000 fine.

Defences

Using your employer’s vehcle

A statutory defence is provided by section 143(3) RTA in relation to a driver who unwittingly drives his employer's uninsured vehicle.

You were not on a road or public place

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communication for use of foot passengers and vehicles; while in **Oxford -v- Austin [1981] RTR 416** it was said to be a definable right of way between two points.

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