

Speeding

Speeding is an endorsable offence which carries a minimum of 3 penalty points and a maximum of 6 penalty points recorded on your driving licence or a discretionary disqualification from driving.

The table below sets out a simplified version of the current Sentence Guidelines for the offence. As can be seen, the guideline penalty reflects both the extent of the speed and the relevant speed limit which was in force at the time. Other factors may increase or reduce the seriousness of the offence.

Drivers who reach 12 penalty points on their licence are at risk of a minimum disqualification from driving for 6 months under the totting up provisions. A short disqualification should not be used to get around those totting up provisions. For example, if you have 6 points on your licence and are caught at 101mph on the motorway, expect the Court to impose 6 points to trigger a 6 month minimum ban under totting up rather than 7 days discretionary disqualification for the offence itself.

A disqualification is likely to have a profound impact upon you and those close to you. If you are at risk, contact us now for expert support and guidance.

Speed Limit	Speed Alleged	Speed Alleged	Speed Alleged
20 mph	41 and above	31-40	21-30
30 mph	51 and above	41-50	31-40
40 mph	66 and above	56-65	41-55
50 mph	76 and above	66-75	51-65
60 mph	91 and above	81-90	61-80
70 mph	101 and above	91-100	71-90
Sentencing Range	Band C fine	Band B fine	Band A fine
Points / disqualification	Disqualify 7 – 56 days OR 6 points	Disqualify 7 – 28 days OR 4 – 6 points	3 points

Failing to identify driver

Designed to punish drivers who fail to co-operate with police requests to establish the driver of a vehicle at the time an alleged motoring offence was committed, this offence carries 6 penalty points a fine of up to £1000.

This is one of the most common offences that we deal with. Often, a driver has failed to update the DVLA with correct details after a change of address or change of vehicle.

The scenario generally plays out that a car triggers a static or mobile camera and a Notice of Intended Prosecution is sent to the Registered Keeper. When no response is received, a reminder is sent. When that is ignored a Single Justice Procedure Notice is sent. When that is ignored, a conviction in absence is recorded and the DVLA notified. At some point, one of the agencies involved carries out checks, such as an insurance check on the vehicle and an updated address for the Registered Keeper is ascertained. The DVLA then write to the registered keeper and let them know about the points on their licence. We are now months down the line. The Registered Keeper then gets in touch and says help.

We can help you from at any stage in this situation, from initial receipt of a NIP through to unravelling a conviction in absence.

There are statutory defences available if you have done your best (reasonable diligence), or if it was not practicable for you to name the driver. At a more basic level, if the Court finds that you completed the form and sent it in a correctly addressed envelope, with correct postage then it is likely that you would raise reasonable doubt and secure your acquittal,

Rob has significant experience of dealing with these types of cases having won many cases at trial or, more frequently by negotiating the securing a withdrawal of the allegation with the prosecution.

Offence	Guideline sentence	
Fail to identify driver	Band C Fine	6 penalty points

Using mobile telephone

It is an offence to use a hand-held mobile telephone whilst driving.

This offence carries a minimum of 6 penalty points, a discretionary disqualification from driving and a fine of up to £1000.

The offence is treated particularly seriously due to wider public safety concerns and it is no coincidence that the minimum number of penalty points for the offence are the same number that take a new driver's licence off them and revert them to learner status.

To secure a conviction, the prosecution has to prove, perhaps obviously, that you were driving, that you were using a mobile telephone and that you were holding the mobile telephone. This includes texting, using social media and emails.

These cases are often winnable cases and, over a number of years, Rob has successfully defended many defendants facing such an allegation.

Should you face an allegation of driving whilst using a mobile telephone then please ring us now for expert advice.

Offence	Sentence guideline	
Using mobile telephone whilst driving	Band A Fine	6 points

Drink Driving

Driving or attempting to drive.

Courts view the offence of driving with excess alcohol very seriously. Often, people who find themselves prosecuted for this offence have a story to tell and an explanation to give. Unfortunately, even if you are a person of utmost good character and wholly co-operative at all stages, such an allegation is likely to go to Court and you are likely to lose your driving licence.

The table below sets out a simplified version of the current Sentence Guidelines for the offence. As can be seen, the guideline penalty largely reflects the level of alcohol consumption at the time of driving. Other factors may increase or reduce the

seriousness of the offence. Those with a relevant previous conviction will face a longer ban and an increased penalty.

The law in relation to drink driving is complicated and technical. There are certain procedures which have to be properly followed for a conviction to be secured by the prosecution. We offer straightforward expert advice as to how likely it is that the Crown Prosecution Service can achieve that in your case.

We have significant experience dealing with “Special Reasons” cases which may lead to the avoidance of a disqualification and the imposition of a significantly reduced penalty.

Alcohol reading in breath	Starting point	Range	Disqualification
120 and above	12 weeks custody	High level community order to 26 weeks custody	29 to 36 months, extended if immediate custody imposed
90 to 119	Medium level community order	Low level to High level community order	23 to 28 months
60-89	Band C Fine	Band C Fine to Low level community order	17 to 22 months
36 to 59	Band C Fine	Band B Fine to Band C Fine	12 to 16 months

Drink Driving

In charge.

Courts view the offence of being in charge of a motor vehicle with excess alcohol very seriously. However, a disqualification from driving is not automatic.

A statutory defence is available. If you can prove to the Court, on the balance of probabilities, that you did not intend to drive whilst over the limit then you are not guilty of the offence. Such a defence is unlikely to succeed without an expert's report and a scientist will need to provide a calculation in relation to alcohol elimination rates. Typically, such a report costs less than £200.

The table below sets out a simplified version of the current Sentence Guidelines for the offence. As can be seen, the guideline penalty largely reflects the level of alcohol consumption at the time of the offence. Other factors may increase or reduce the seriousness of the offence. Those with a relevant previous conviction will face a longer ban and an increased penalty.

Needless to say, anyone convicted of this offence without a clean licence is also at risk of a minimum 6 month disqualification under totting up.

Alcohol reading in breath	Starting point	Range	Disqualification / points
120 and above	Medium level community order	Low level community order to 6 weeks custody	Disqualify 6 to 12 months, extended if immediate custody imposed
90 to 119	Band C Fine	Band C Fine to Medium level community order	Consider disqualification up to 6 months OR 10 points
60 to 89	Band B Fine	Band B Fine to Band C Fine	Consider disqualification OR 10 points
36 to 59	Band B Fine	Band A Fine to Band B Fine	10 points

Drug Driving

This offence came into force in March 2015 and is relatively unusual as the Sentencing Council currently only offers guidance rather than guidelines.

This is still an emerging area of law but it continues to astonish us how many people are unaware of its existence or for just how long street drugs viewed as recreational by many remain in the bloodstream. This offence can be committed by people with no signs of intoxication yet carries serious consequences.

The offence is what lawyers call a “strict liability” offence. If the prosecution can prove that you are over the specified limit for one of 17 controlled drugs (including some which are medically prescribed) and can prove you were driving then you will be found guilty. Limits are set in line with a zero-tolerance approach.

Driving or attempting to drive carries a maximum penalty of 6 months custody and an unlimited fine. Once the offence is made out, a minimum 12-month disqualification from driving follows.

We can provide you with an expert view on whether or not the prosecution is likely to be able to secure a conviction in your case, what your options are and what the likely consequences of exercising those options would be. If needs be, we can arrange for a scientific witness to analyse the blood test results and provide an expert opinion.

We can advise you upon the strength of the prosecution evidence and provide representation in Court.

Driving without due care and attention

Also known as Careless Driving

This offence covers a very wide range of circumstances from minor collisions, middle lane hogging to eating whilst driving.

All drivers, including supervised learners or even those without a licence at all, are expected to observe a certain level of competence on the road. If it is felt that your driving fell below that standard, the police may offer you the opportunity of attending a driver improvement course or your case may have to go to Court. For a prosecution to succeed, the Court must be satisfied that your driving fell below the standard of a competent driver or that you did not show reasonable consideration for other pedestrians and vehicles on the road.

We have significant experience in dealing with these types of cases. The offence may be prosecuted alone or the charge may form one of a number of offences alleged to have been committed at the same time.

There is a distinction between poor driving and criminally poor driving. Our expert advice is likely to have a positive impact upon the outcome in this type of case, even where our advice is to enter an early guilty plea.

A simplified version of the sentence guidelines for driving without due care and attention are set out below. Category 1 offences involve higher culpability and greater harm. Category 2 offences involve higher culpability and lesser harm OR lower culpability and greater harm. Category 3 offences involve lesser harm and lower culpability.

Level of seriousness	Starting point	Range	Disqualification
Category 1	Band C Fine	Band C Fine	Consider disqualification OR 7 to 9 points
Category 2	Band B Fine	Band B Fine	5 to 6 points
Category 3	Band A Fine	Band A Fine	3 to 4 points

Causing death by careless or inconsiderate driving

These types of cases are extremely challenging for all parties. There is likely to be press and local interest in your case. We have significant experience in dealing with these matters with great sensitivity and offer unbiased straightforward advice to help you understand this bewildering process and to let you know the potential likely consequences of your decisions from this point forwards.

Notwithstanding the broad summary of the sentence guidelines below, these types of cases are generally dealt with at the Crown Court and attract lengthy disqualifications from driving.

This law was introduced in August 2008 due to mounting public pressure after a series of fatal collisions led to very modest penalties in Court for the driver involved. Great care is needed to balance the level of error alleged to be made by the driver and its consequences.

Having dealt with one of the very first prosecutions for this offence in the country, we are uniquely placed to be able to offer significant experience in this difficult area.

Examples of nature of activity	Starting point	Range
Careless or inconsiderate driving arising from momentary inattention with no aggravating factors	Medium level community order	Low level community order to high level community order
Other cases of careless or inconsiderate driving	36 weeks' custody	High level community order to 2 years custody
Careless or inconsiderate driving falling not far short of dangerous driving	15 months custody	36 weeks to 3 years custody

Dangerous Driving

This is an extremely serious allegation to face. A conviction carries a mandatory disqualification from driving and an extended re-test.

As the sentence guidelines below demonstrate, cases may go the Crown Court and a custodial sentence is a real risk. This is one of the rare offences which carries an alternative verdict and even if a Court finds you not guilty of dangerous driving, you can still be convicted of driving without due care and consideration.

To secure a conviction, the prosecution needs to prove that your standard of driving fell far below the standard of a competent and careful driver and that it would be

obvious to the competent and careful driver that to drive in that manner would be dangerous.

Examples of this type of driving may include driving aggressively, racing, overtaking in an unsafe manner or ignoring traffic signs.

Examples of nature of activity	Starting point	Range
Single incident where little or no damage or risk of personal injury	Medium level community order	Low level community order to high level community order. Disqualify 12 to 15 months
Incident(s) involving excessive speed or showing off, especially on busy roads or in built-up area; OR Single incident where little or no damage or risk of personal injury but offender was a disqualified driver	12 weeks custody	High level community order to 26 weeks custody. Disqualify 15 to 24 months.

<p>Prolonged bad driving involving deliberate disregard for safety of others; OR Incident(s) involving excessive speed or showing off, especially on busy roads or in built-up area, by disqualified driver; OR Driving as described in the box above while being pursued by police</p>	<p>Crown Court</p>	<p>Crown Court</p>
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Causing Death by Dangerous Driving

The most serious motoring allegation to face and one which falls to be dealt with at the Crown Court. A conviction carries a mandatory minimum 2 year disqualification from driving and a compulsory extended re-test.

A conviction carries a real and substantial risk of a substantial custodial sentence.

To secure a conviction, the prosecution needs to be able to prove, so that the Court is sure, that your driving fell well below the standards of the careful and considerate driver.

If you are prosecuted for this offence then it is imperative that you instruct a suitably experienced specialist. Rob has dealt with a number of these tragic cases either personally or in a supervisory capacity and can help guide you through this difficult situation sympathetically.

Whilst sentence advice can only be given on a case to case basis, the core part of the sentence guidelines are set out below:

Nature of offence	Starting point	Range
Level 1. The most serious offences encompassing driving that involved a deliberate decision to ignore (or a flagrant disregard for) the rules of the road and an apparent disregard for the great danger being caused to others	8 years custody	7 to 14 years custody
Level 2. Driving that created a substantial risk of danger	5 years custody	4 to 7 years custody
Driving that created a significant risk of danger	3 years custody	2 to 5 years custody

Driving whilst disqualified

The most concerning aspect of this offence is not necessarily the quality of your driving but an allegation that you have disobeyed an Order of the Court.

The sentence implications of a conviction are therefore linked to the remaining term of your current disqualification.

To secure a conviction, the prosecution must prove, so that the Court is sure, that, as it says on the tin, you were driving and, at the time of the driving, you were disqualified.

As can be seen below, the entry level sentence on conviction is a community based penalty.

Level of seriousness	Starting point	Range	Penalty points
Category 1 Higher culpability and greater harm	12 weeks custody	High level community order to 26 weeks custody	Disqualify for 12 to 18 months beyond expiry of current ban, extended if immediate custody imposed
Category 2 Higher culpability and lesser harm OR Lower culpability and greater harm	High level community order	Medium level community order to 12 weeks custody	Disqualify for 6 to 12 months beyond expiry of current ban, extended if immediate custody imposed
Category 3 Lower culpability and lesser harm	Low level community order	Band C Fine to Medium level community order	Disqualify 3 to 6 months beyond expiry of current ban OR 6 points

Totting Up Disqualification

Exceptional Hardship

The law in this area is often misunderstood.

Most motoring offences carry the imposition of penalty points on a driver's licence.

You are allowed to have up to 11 points on your driving licence and can continue to drive perfectly lawfully. The minimum number of penalty points for an offence is 3.

Penalty points run from offence date to offence date. Trying to delay matters as long as possible if you have some points that are "due to come off" in a few months' time may not be the best tactic.

Whilst points may be disclosable to insurers for longer, from the perspective of a Court, points are relevant for totting up purposes for a period of 3 years.

If a driver accumulates 12 or more penalty points within 3 years then the Court's starting point is to impose a minimum disqualification from driving for a period of 6 months. That minimum term is longer for those who have been disqualified before.

On a practical basis, any person who commits an endorsable driving offence at a point in time when they already have 9 or more points on their licence that are less than 3 years old is at risk of a totting up disqualification and, for example, attempts to accept a fixed penalty will fail and lead to Court proceedings.

A totting up disqualification serves to wipe a driver's points from their licence once the disqualification term has been served for Court purposes.

If you are at risk of a totting up disqualification then please ring us now. We have dealt with hundreds of these types of cases for a period of many years and have a strong success rate.

It is possible to advance mitigating circumstances to the Court, often known as "exceptional hardship" and if the consequences of you losing your driving licence are significant then please ring us now.

It will be appreciated that the loss of a driving licence will have different consequences to different people and the Courts will recognise this. Even if you are a professional driver who needs their licence to earn their living, such applications need careful preparation and presentation to succeed. It is easier and more cost effective for you to instruct us in advance to obtain a successful outcome for you at the first attempt than it is to come to us after you represent yourself and lose. Although if you have just been disqualified from driving at the Magistrates Court then we can help you to challenge that decision and get your licence back for you quickly pending appeal.

Special Reasons

Special reasons may be advanced for certain offences and, if successful, may lead to a significantly reduced penalty or even no penalty at all. Offences that otherwise carry a mandatory disqualification may instead lead to the imposition of penalty points or even no points at all.

A special reasons hearing takes the form of a mini-trial and the Court would listen to evidence before forming its decision.

A “special reason” was best defined back in 1958 and contains the following requirements:

1. It must be a mitigating or extenuating circumstance
2. It must not amount in law to a defence
3. It must be directly connected with the commission of the offence
4. It must be a matter which the court ought properly to take into account when considering sentence

Examples of successful special reasons include emergency, shortness of distance driven or spiked drinks.

We have conducted a large number of special reasons hearings over a number of years and have significant expertise and success in this regard.

The law is not straightforward and if you wish to advance special reasons to a Court then call us now to secure representation.

Court penalties

Absolute Discharge

This is where, technically, you are guilty of an offence but, unusually, the Court is prepared to impose no penalty whatsoever.

Conditional Discharge

The Court is putting you on trust not to re-offend. No penalty is imposed directly for the offence but you may still have to pay the surcharge and prosecution costs. The Conditional Discharge will be for a period of time, often 6 or 12 months. If you are convicted of any further offences during the period of the Conditional Discharge then the Court would be able to re-visit the matter and re-sentence you to a more onerous penalty.

Fine

Offences which attract a fine typically have sentence guidelines as to the appropriate Band. They are as follows:

Fine Band	Court start point	Range
Band A	50 % of relevant weekly income	25-75% of relevant weekly income
Band B	100% of relevant weekly income	75-125% of relevant weekly income
Band C	150% of relevant weekly income	125-175% of relevant weekly income
Band D	250% of relevant weekly income	200-300% of relevant weekly income
Band E	400% of relevant weekly income	300-500% of relevant weekly income
Band F	600% of relevant weekly income	500-700% of relevant weekly income

Whilst all fines are due immediately, the Court will allow time for you to pay.

Community Orders

These generally fall into three main areas which can be imposed as individually or grouped together.

Curfews can be imposed for up to 16 hours a day for up to 12 months. These can be monitored electronically.

Rehabilitation Activity Requirements can be imposed with guidelines suggesting a maximum of 60 days to be completed. Typically imposed in addition to other Community Orders.

Unpaid work can be imposed for up to 300 hours.

The Court has a number of additional Community based penalties available to it which include Exclusion requirement, Prohibited activity requirement, Drug rehabilitation requirement, Alcohol Treatment requirement, Mental Health Treatment requirement and Attendance Centre orders for the under 25s.

Breach of an Order will lead to a return to Court and a more onerous penalty may be imposed. Fines can still be imposed in addition to Community Orders.

Custody

Magistrates have the power to send people to prison for some but not all offences. There is a six month maximum for any one offence but potentially 12 months is available. Crown Courts have the ability to impose life imprisonment for some offences.

Before imposing a custodial sentence, a Court needs to ask itself a series of questions:

1. Has the custody threshold been passed?
2. Is it unavoidable that a sentence of imprisonment be imposed?
3. What is the shortest term commensurate with the seriousness of the offence?
4. Can the sentence be suspended?

Those sent to serve a sentence of immediate custody can expect to serve half of the sentence in a prison. Licence requirements will follow on release and then 12 months post sentence supervision with Probation. Breaches lead to additional penalties, often an immediate return to prison.

Prosecution Costs

The prosecution will ask for costs in most cases if it secures a conviction. These range from £85 for a simple guilty plea at a first hearing (£100 in some Courts) but may run to hundreds or thousands of pounds in the event of a trial.

Surcharge

A surcharge of £21 is imposed in the case of a Conditional Discharge. This rises to £32 or 10% of any fine, whichever is the higher which must be imposed by the Court in most cases on conviction. Generally speaking, it can only be avoided where the Court seeks to prioritise the payment of compensation and a defendant is of limited financial means. The surcharge increases to £90 where the Court imposes a Community Order or £122 where a custodial penalty is imposed.

Compensation

The court must consider making a compensation order in any case where personal injury, loss or damage has resulted from the offence. It can either be an ancillary order, or, a sentence in its own right. The court must give reasons if it decides not to order compensation.

As with other financial orders, the Court will allow time to pay but failure to pay as ordered may lead to direct enforcement action being taken without additional notice. This may include the instruction of bailiffs by the Court.