

# Driving Offences – avoiding a ban

## Special Reasons

Some motoring offences such as drink driving carry an obligatory disqualification. This means that unless there are special reasons you will receive a driving ban.

The following are examples of what may constitute a special reason:

- **Spiked/laced drinks.**

You must establish that your drinks had been spiked, that you did not know or suspect this and that if you had not taken the spiked drink the level of alcohol in your system would not have exceeded the prescribed limit. The Magistrates would normally expect to hear expert evidence on this

- **Driving in an emergency**

An emergency is not in itself a special reason. You must demonstrate that there was no other way of dealing with the emergency than you driving. The courts assess this using an objective test; would the reasonable person have thought that there was no solution to deal with the emergency other than to drive

- **Shortness of distance driven**

The following factors are taken into account: how far was the car driven; in what manner was it driven; the state of the car; whether you had any intention to drive any further; the road and traffic conditions; whether there was any possibility of danger by contact

with other road users and finally the reason the car was being driven.

You must prove to the court that you had a special reason for driving on the balance of probabilities. This means was it more likely than not that a special reason existed in your case.

If the court finds special reasons then it has the discretion not to impose the obligatory disqualification in cases where the mandatory disqualification applies; for example drink driving, or the discretion not to impose any penalty points in other endorseable driving offences; for example driving without insurance.

If you think that there could be a special reason in your case as to why the court should not disqualify you from driving you should speak to a solicitor as soon as you have either been charged with the offence or summonsed to attend court.

## Exceptional hardship

If you have 12 or more penalty points the court must disqualify you unless it finds there are mitigating circumstances in your case. Even if mitigating circumstances are found you can still be disqualified although for a shorter period than the normal minimum. If you have no previous disqualification of 56 days or more within the three years preceding the current offence, the minimum period of disqualification is 6 months. If you have had such a disqualification in the preceding three years, then the minimum period is 1 year, and if there have been two or more disqualifications imposed within the three years, the minimum disqualification period is 2 years.

It is not enough to establish that a driving ban will cause you hardship or that the offence was not serious. To be successful on this point you must establish that a driving ban will cause exceptional hardship. Exceptional hardship means just that, it must be over and above the punishment and inconvenience that Parliament intended when imposing this legislation. To argue you will lose your job if you lose your licence in most cases isn't enough to establish exceptional hardship.

You can't rely on any mitigating circumstance/s that you have relied upon already in the three years preceding your conviction for the current offence; put simply you can't use the same reasons twice.

The court will normally hear evidence; for example, from you and any family members who would be affected if you were to receive a driving ban. If you wish to advance exceptional hardship regarding your work then the court is likely to consider whether in fact you need your car to get to work or to do your work. When considering this the magistrates will want details of what public transport or other methods of travel that are available to you. The court can consider any unusual hardship faced by your family if you were to lose your job or have your income reduced if you lost your licence; for example, if a disqualification would ultimately result in you losing your home.

If the court is satisfied that you have established exceptional hardship then they will still impose penalty points on you and endorse your driving licence with the offence but they will not disqualify you. If you incur any more penalty points that take you over the 12 or more points it is likely on the next occasion you will be disqualified.

Establishing exceptional hardship is difficult and if you think you may qualify you should always consult a solicitor for advice and representation at court. You cannot argue exceptional hardship by post and if you intend to argue it, you must do so at a court hearing where the magistrates will then make a decision once they have heard evidence and representations from either you or a solicitor on your behalf.

If you have argued exceptional hardship at the magistrates' court and the magistrates have found against you, you can appeal their decision to the crown court. Again you should always ask a solicitor for advice on this.