

Avoiding disqualification

(Neil Hay)



You may not know it, but it is possible to avoid disqualification from driving even where a person already has 12 penalty points on their licence.

The Road Traffic Offenders Act 1988 states that when a person reaches 12 penalty points on their licence they must be disqualified, usually for a period of six months. It is possible, however, to avoid disqualification entirely or to be disqualified for a lesser period, but it must be a case in which disqualification is at the discretion of the sentencing Judge (for instance a case of driving without insurance, without a licence, using a mobile telephone whilst driving, careless driving and speeding). The exceptions to this are cases such as drink driving or dangerous driving, where the Sheriff must disqualify: in these cases disqualification is automatic.

In the situation I have described there are two ways to avoid disqualification entirely or have disqualification imposed for a period of less than six months.

Exceptional hardship

Exceptional hardship is a way in which a person may be able to avoid outright disqualification or achieve disqualification for a period of less than six months, where hardship caused by the disqualification is exceptional. In other words, this will have to be significant hardship. It will always be accepted by the Court that disqualification will involve some hardship (for instance losing a job or being inconvenient) but examples of exceptional hardship could be: a driver who has to drive a sick child or relative regularly to hospital; a single parent who has to drive disabled children; a case where, because of the offender's age, they would lose their job and would be unlikely to obtain any future employment; where consequences of disqualification are exceptional - for instance where losing a job may lead to a person losing their home (which would have an effect of exceptional hardship upon their family); or where a person is in a position of being an employer,

and, if that person loses his licence, then other people working for him may also lose their job. Effectively, exceptional hardship will usually have to relate to hardship experienced by third parties.

Special reasons

The second way to avoid disqualification is if there was a special reason for the person driving the motor vehicle at the time of the offence. Special reasons may include a medical emergency, for instance where an unforeseen medical emergency arose and the only reasonable option was for the person to drive a motor vehicle. Other special reasons have included when a person's car broke down in a dangerous part of a busy road, and, whilst the driver was pushing the vehicle, a person who was disqualified got into the driver seat to steer the vehicle to a safe place. A further special reason could be where it is in the public interest not to disqualify, for instance where

the accused person had a special skill, like a specialist surgeon, and where it would not be in the public interest for that person to be disqualified. What these situations have in common is that they all relate to the reason why the person was driving.

Preparation – the basis of good defence

As with all such cases, early preparation is at the heart of presenting a compelling defence.

In either case the Court will expect to see proof of the special reason or exceptional hardship, for instance by letters written by other people who were witnesses, or by these people coming to Court to give evidence about it. In fact, the Court will usually expect the witnesses to attend Court to give evidence.

If you, or anyone you know, are involved in a matter which contains special reasons or exceptional hardship, please do not hesitate to get in touch.