

LOOPHOLES IN THE LAW



What Every Motorist Should Know

INTRODUCTION

If you're a UK driver, here are some figures that may shock you. Every year in England and Wales alone over 3 million fixed penalty notices and 7 million penalty charge notices are issued to motorists. With around thirty million licence holders, that means you have a ONE IN THREE chance of being charged with a motoring offence this year. And these figures don't even include prosecutions for those more serious offences which are dealt with by summons.

The great majority of these are not serious crimes. All penalty charge notices, for example, are issued for parking infringements. What is in no doubt, however, is that they are a **huge money-spinner** for councils, police and the government.

In the period from 1997 to 2000 alone, revenue from motorists from court fines and parking tickets rocketed from £13 million a year to £25 million. But did Britain's roads become twice as safe as a result? Not a bit of it! During the same period, the figures for those killed or injured on our roads actually increased.

There is only one possible conclusion. Motorists are being hit in the pocket as an alternative form of taxation. Already taxed to the hilt through road tax and petrol duty - not to mention tolls and congestion charges - they are being made to fork out yet again to help dig high-spending councils and the government out of their budget deficits.

Many readers of this report will already have suffered at the hands of Britain's motoring law enforcers, with fines or convictions incurred while pursuing their lawful business and trying to earn an honest crust for themselves and their families. As well as the ever-increasing fines themselves, the 'hidden costs' can include higher insurance premiums, penalty points on your licence, and perhaps even disqualification.

But here's the good news (yes, there is some!). There are many, perfectly legal ways you can reduce the likelihood of being charged with an offence, and this report will reveal them. And if the worst does happen, it will show you how to challenge a parking ticket, speeding charge or other driving-related prosecution, and even how to defend yourself in court should the need arise. We will reveal all the very latest tactics which have been used by motorists to challenge fines and convictions, and to avoid them in the first place.

And here's a crucial fact: the system depends on most people meekly accepting whatever charge is levelled against them and paying the fine and any other penalty. If you fight back, as explained in the following pages, your chances of success are actually much better than you think! For example, around 50% of appeals against penalty charge notices taken to the National Parking Adjudication Service are successful.

Of course, we must make clear that we are not advocating that anyone drives dangerously or recklessly. This report is aimed at the great majority of drivers who consider themselves law-abiding but are no longer prepared to put up with the state-sponsored harassment of motorists which driving in Britain now entails. This report will give you all the 'inside knowledge' you need to avoid the worst excesses of Britain's anti-motorist establishment.

For far too long, councils, the government and the police have had things all their own way as far as motorists are concerned. Now it's time for drivers to start fighting back!

If you're a UK driver, here are some figures that may shock you. Every year in England and Wales alone over 3 million fixed penalty notices and 7 million penalty charge notices are issued to motorists. With around thirty million licence holders, that means you have a ONE IN THREE chance of being charged with a motoring offence this year. And these figures don't even include prosecutions for those more serious offences which are dealt with by summons.

The great majority of these are not serious crimes. All penalty charge notices, for example, are issued for parking infringements. What is in no doubt, however, is that they are a **huge money-spinner** for councils, police and the government.

In the period from 1997 to 2000 alone, revenue from motorists from court fines and parking tickets rocketed from £13 million a year to £25 million. But did Britain's roads become twice as safe as a result? Not a bit of it! During the same period, the figures for those killed or injured on our roads actually increased.

There is only one possible conclusion. Motorists are being hit in the pocket as an alternative form of taxation. Already taxed to the hilt through road tax and petrol duty - not to mention tolls and congestion charges - they are being made to fork out yet again to help dig high-spending councils and the government out of their budget deficits.

Many readers of this report will already have suffered at the hands of Britain's motoring law enforcers, with fines or convictions incurred while pursuing their lawful business and trying to earn an honest crust for themselves and their families. As well as the ever-increasing fines themselves, the 'hidden costs' can include higher insurance premiums, penalty points on your licence, and perhaps even disqualification.

But here's the good news (yes, there is some!). There are many, perfectly legal ways you can reduce the likelihood of being charged with an offence, and this report will reveal them. And if the worst does happen, it will show you how to challenge a parking ticket, speeding charge or other driving-related prosecution, and even how to defend yourself in court should the need arise. We will reveal all the very latest tactics which have been used by motorists to challenge fines and convictions, and to avoid them in the first place.

And here's a crucial fact: the system depends on most people meekly accepting whatever charge is levelled against them and paying the fine and any other penalty. If you fight back, as explained in the following pages, your chances of success are actually much better than you think! For example, around 50% of appeals against penalty charge notices taken to the National Parking Adjudication Service are successful.

Of course, we must make clear that we are not advocating that anyone drives dangerously or recklessly. This report is aimed at the great majority of drivers who consider themselves law-abiding but are no longer prepared to put up with the state-sponsored harassment of motorists which driving in Britain now entails. This report will give you all the 'inside knowledge' you need to avoid the worst excesses of Britain's anti-motorist establishment.

For far too long, councils, the government and the police have had things all their own way as far as motorists are concerned. Now it's time for drivers to start fighting back!

. Drink-driving.

. Prosecutions arising from road accidents.

. Excessive speeding - driving at a speed above which a fixed penalty notice can be considered.

. Any other case in which evidence has to be collected before a decision can be made.

. Offences originally dealt with under the FPN system where the fine has not been paid or VDRS, where the required repair has not been made.

A summons will include the date and time of a court hearing at which the case will be considered. If you intend to plead guilty, however, you are not normally required to attend this in person (unless the summons indicates otherwise).

If you do not intend to dispute the case, you should return the tear-off slip at the bottom indicating that you intend to plead guilty. Enclose your licence if requested, and you may also enclose a letter to the magistrates in which you explain any extenuating circumstances (a 'plea of mitigation'). You will be notified in due course of the court's decision, and your licence (with any endorsements added) will be returned to you

If you wish to plead not guilty, you can also do this using the tear-off slip. In this case the hearing will NOT go ahead on the date stated. This is because witnesses will need to be called, and the case will have to be adjourned to a later date so they can attend. Again, unless the summons says otherwise, you do NOT need to intend the court on the date on the original summons.

Court hearings are further discussed later. However, it is worth noting that fines are usually higher if the matter is dealt with in court rather than under the FPN system. If a police officer tells you that you are being reported for consideration of summons, therefore, and you know that the offence falls within the scope of the FPN system, ask why he is not issuing a fixed penalty notice instead.

The officer may agree to issue you with an FPN. On the other hand, he may simply have run out of tickets, and (whether he admits it or not) may be reporting you for summons rather than his only other alternative, letting you off completely. In any event, if this happens (and you don't want to contest the charge in court) you should immediately write to the superintendent of police in the area concerned and ask that the matter be dealt with by a fixed penalty notice instead. If this is unsuccessful, you will have to attend court on the date stated and point out to the magistrates that the offence could have been dealt with under the FPN scheme, and you should not therefore be fined any more than this.

Finally, most motoring-related offences are not arrestable. There are a few exceptions, however. The most common is drink-driving, but others include causing death by dangerous driving and driving while disqualified. Unless there are exceptional circumstances (e.g. the police believe you may leave the country), once you have been interviewed at the police station you will be released and bailed to appear in court or at the police station at a later date. Failing to answer bail is a serious offence, so study any documents you are given carefully and be sure to comply with them.

FIXED PENALTY NOTICE

Fixed penalty notices were introduced in the Road Traffic Offenders Act 1988 to reduce the burden on police and the courts caused by the large numbers of motoring offences being dealt with by summonses. They may be issued by police or (for a limited range of offences) traffic wardens. A motorist issued with an FPN may accept the fine and *any* other conditions attached, and they will not then be summonsed. If they wish to challenge the ticket, however, they may still request a court hearing.

Many less serious motoring offences are nowadays dealt with by this method. As stated in the Introduction, over 10 million FPNs and PCNs (penalty charge notices, issued by councils for parking infringements) are issued to motorists every year, which means that on average over 1,000 tickets are written every hour of every day. The incentive to a motorist for paying the fine rather than going to court is that the penalty, in virtually all cases, will be less than the sentence a person would be given in court for the offence in question.

Fixed penalty notices are enforced through the criminal justice system. A wide and growing range of offences can be prosecuted under this scheme. Just a few examples are listed below:

- . Speeding
- . Illegal parking
- . Driving while holding a mobile phone
- . Failing to comply with traffic signs
- . Leaving a vehicle in a dangerous position ~
- . Breaching seat belt regulations

Some offences may be dealt with by summons or FPN according to the extent to which the law has been broken. Probably the best example is speeding. The table below shows the ACPO guidelines as to when an FPN should be issued and when a summons. The figures shown are the **lowest** speeds at which the action in question should be taken:

Limit, mph	Fixed Penalty, mph	Summons, mph
20	25	35
30	35	50
40	46	66
50	57	76
60	68	86
70	79	96

THE LAW AND MOTORISTS

VEHICLE DEFECT RECTIFICATION SCHEME

The Vehicle Defect Rectification Scheme (VDRS) was introduced at the same time as the FPN system to ensure that minor defects coming to the notice of the police could be put right without the need to take the driver to court. The philosophy is therefore one of prevention rather than prosecution.

A VDRS ticket (also known as a VDN, or Vehicle Defect Notice) can be issued by a police officer for a range of offences relating to the condition of a vehicle. A few examples are given below (a full list can be found later in the chapter):

- . Faulty silencer
- . Defective windscreen washers.
- . Horn not working.
- . No seat belts
- . No foot rest (motorcycles)

If you are issued with a VDRS ticket, you are required to have the necessary repairs made (or make them yourself) within 14 days, and take the vehicle to an official MOT testing centre to have it inspected. A tester at the centre will examine your vehicle and verify that it has been repaired by stamping the document with the MOT embossing stamp and completing the relevant section of the form.

You then return the completed form to the police force that issued it (or you can submit evidence that the vehicle has been scrapped) and that is the end of the matter. There is no fine to pay, and no penalty points will be added to your licence.

Not all MOT stations take part in the scheme, so it is advisable to check first. Note also that there is no set fee for examinations or repairs completed under the VDRS - this is a matter between the motorist and the testing station, so you may want to get a few quotes before deciding where to go.

If you do not return the completed VDRS form within the 14 days allowed, it is likely that you will receive a summons to appear in court.

FPNs are either 'endorsable' (yellow notices) or 'non-endorsable' (white notices). A white notice means the offence is considered to be of a minor nature and no endorsements will be made to your driving

licence. [It must be handed to the driver and not left on the car, because the driver is liable, not necessarily the owner of the vehicle. The ticket will show the time and date of the offence and where the offence was committed, as well as several other details, including a code to signify the offence.

Once a white notice has been issued the driver can pay the fine within 28 days, which will mean that the matter is closed.

Alternatively, if the driver feels the notice was issued unfairly, it can be contested at a court hearing, by returning a different section of the ticket within 28 days.

A yellow notice is for endorsable offences. These are offences that attract penalty points on your driving licence. Speeding, parking on a zebra crossing or jumping a red light are all in this category. Again, the driver of the vehicle is liable and must be seen and spoken to - a ticket cannot be left on the vehicle. The police will ask to see your licence, and if you don't have it (or don't wish to show it) you will be told to present it at a police station within seven days. The police may also want to see other documents such as your insurance or MOT certificate, which will be detailed on the ticket. Again, this must be done within seven days.

If the appropriate section of the ticket is returned, along with the fine and your driving licence, within 28 days then the matter is closed. Your licence will be endorsed with the appropriate number of penalty points and returned to you by post. Again, if you feel the notice was issued unfairly, you can contest it at a court hearing by returning the appropriate section of the form within 28 days.

The fixed penalty fine may be £30, £40 or £60 for a non-endorsable offence. The standard fine for endorsable offences dealt with by the FPN method is £60. These figures are correct at the time of writing, but may of course be reviewed at any time.

Parking tickets are an exception to the general rule that FPNs must be handed to the driver in person. They can be left without the driver or owner being seen, and are usually issued by a traffic warden (though police can and do write them as well). Once issued, as above, the driver can pay the fine within 28 days, which will mean the matter is closed. Alternatively, if the driver feels the ticket was issued unfairly, it can be contested. This is further discussed in Chapter 3.

Penalty charge notices are another type of fixed penalty ticket. They are issued by council parking attendants under the system of decriminalised parking enforcement (OPE) introduced by the government in the Road Traffic Act 1991. Penalty charge notices are enforced through the civil, not the criminal, courts; you will not ultimately be sent to prison for not paying a PCN, but the council could send bailiffs round to seize your goods.

The Vehicle Defect Rectification Scheme therefore provides a route by which you can legally avoid a fine or penalty points on your licence. It is possible, however, that an over-zealous police officer may issue you with an FPN or even report you for summons for an offence covered under the scheme. If this happens, you should immediately write to the superintendent of police for the area concerned pointing this out and asking for the ticket (or summons) to be cancelled. As long as the offence is minor, there is a good chance they will agree to this. One of the model letters in the Appendix can be adapted for this purpose.

VERBAL WARNING

This is the lowest grade of action a police officer can take in response to an offence, The following is a selection of offences which the ACPO guidelines recommend should be dealt with in this way:

Misuse of lamps

Sounding a horn at night

Not stopping your engine when stationary.

Reversing an unreasonable distance.

Driving in a cycle lane

In practice, police officers have considerable discretion over when to issue a verbal warning and when to prosecute, even in the case of offences for which prosecution is recommended, the ACPO guidelines state that is if the offence is considered to be minor, e.g.

- (a) No danger to another person,
- (b) No other party involved, or
- (c) Committed at a time when there is little traffic, the officer may issue a verbal warning

A verbal warning is basically a ticking off by the officer concerned, and you may also be given a written version. However, no further action will be taken against you, and no permanent record of the incident will be kept (other than for statistical purposes),

Some police forces refer to verbal warnings as cautions, but these are NOT the same as official cautions given under the Police and Criminal Evidence Act (You do not have to say anything but it may harm your defence if you do not mention now something you later rely on in court. Anything you do say may be given in evidence'). The latest ACPO guidelines recommend that, to avoid any confusion, the word 'warning' is used rather than 'caution' when referring to verbal warnings, but not all police forces have yet adopted this practice,

Obviously, if you are caught committing an offence by the police, this is the best outcome you can hope for. As already mentioned, the police in Britain (unlike many other countries) have considerable discretion in how they apply the law, and your attitude can certainly influence their decision one way or the other. If you are stopped, therefore, stay calm and listen respectfully to what the officer says. Don't talk yourself into a ticket or a summons, though equally you should avoid admitting to any offence if you believe the matter may end up in court. More advice on what to do when stopped by the police can be found in Chapter 4.

MOTURING OFFENCES

As promised, the national guidelines regarding motoring offences and how they should be treated are listed below. Note that the list shows all offences which can be dealt with by the issue of a fixed penalty notice (FPN) or lesser measure. It does not list the most serious offences such as causing death by dangerous driving, which can only be dealt with by way of a summons.

A. Endorsable Fixed Penalty Offences

These are offences for which, as well as a fine, penalty points are added to your licence. All of them carry 3 penalty points when prosecuted through the FPN system.

- * Defective brakes
- * Defective steering
- * Defective tyres
- * using vehicle in a dangerous condition using vehicle for a dangerous purpose Excess speed (20, 30, 40 mph, etc.) Excess speed for class of vehicle
- Excess speed on motorway (70 mph)
- Excess speed in temporary road works
- Excluded vehicle category on a motorway
- Stopping vehicle on a motorway carriageway
- Reversing on a motorway
- Prohibited vehicle using the offside lane of a motorway
- Provisional licence holder driving on a motorway
- Travelling in the wrong direction on a motorway

Making a u-turn on a motorway
Driving otherwise than in accordance with licence
Contravening traffic lights
Contravening stop sign
Contravening automatic level crossing
Contravening double white line system
Contravening 'no entry' sign
Failing to comply with constable/traffic warden on traffic duty
Contravening height restriction
Using vehicle in a designated play street
Stopping on pedestrian crossings and approaches
Contravening red light at a pelican crossing

Failing to give precedence to pedestrians at a crossing

Driving with a dangerous or insecure load

Vehicle left so as to cause danger to other road users

Motorcycle - excess number of passengers

Motorcycle - passenger not sitting astride

These offences may be considered for the Vehicle Defect Rectification Scheme if appropriate, in which case fines and penalty points "" will not arise if the necessary repairs are made within 14 days.

B. Non-Endorsable Fixed Penalty Offences

None of the following offences carry penalty points. The list shows whether the national policy is to prosecute (P), issue a VDRS ticket (VDRS) or give a verbal warning (VW). Note that these are purely recommendations, however. Although the UK has a single police force, it is divided into fifty different police authorities, and they have considerable autonomy over how, when and where they enforce the law. Local conditions and 'crackdowns' may also dictate that some offences are treated differently in certain areas,

Negligent Use of a motor Vehicle

Driver not in proper control of vehicle (P)

Driver not in position to have full view ahead (P)

Opening door so as to cause injury/danger (P)

Reversing unreasonable distance (VW)

Unattended vehicle - engine running or brake not set (P)

Driver able to see television screen fitted in vehicle (P)

Registration and Excise Licence Offences

Failing to exhibit excise licence (VW)

Keeping/driving without registration mark (VDRS)

Registration mark obscured (P)

Registration mark not conforming to regulations (P)

Vehicle Test Offences

Plated goods vehicle - plate not displayed (P)

Ministry test date disc not displayed or legible (P)

Vehicle or Part in Dangerous or Defective Condition

Exceeding permitted length (P)

Exceeding permitted width (P)

Exceeding permitted overhang (P)

Not equipped with suitable/sufficient springs (VDRS)

Windows not clear and unobscured (VDRS)

Glass not as prescribed (VDRS)

Mirrors not conforming to requirements (VDRS)

No windscreen wipers (VDRS)

No windscreen washers (VDRS)

Defective windscreen washers/wipers (VDRS) No speedometer (VDRS)

Defective speedometer (VDRS) No horn (VDRS)

Two-tone horn (VDRS)

Contravention of requirements for motorcycle side stands (VDRS)

Petrol tank not secure or leak proof (VDRS)

No anchorage points fitted (VDRS)

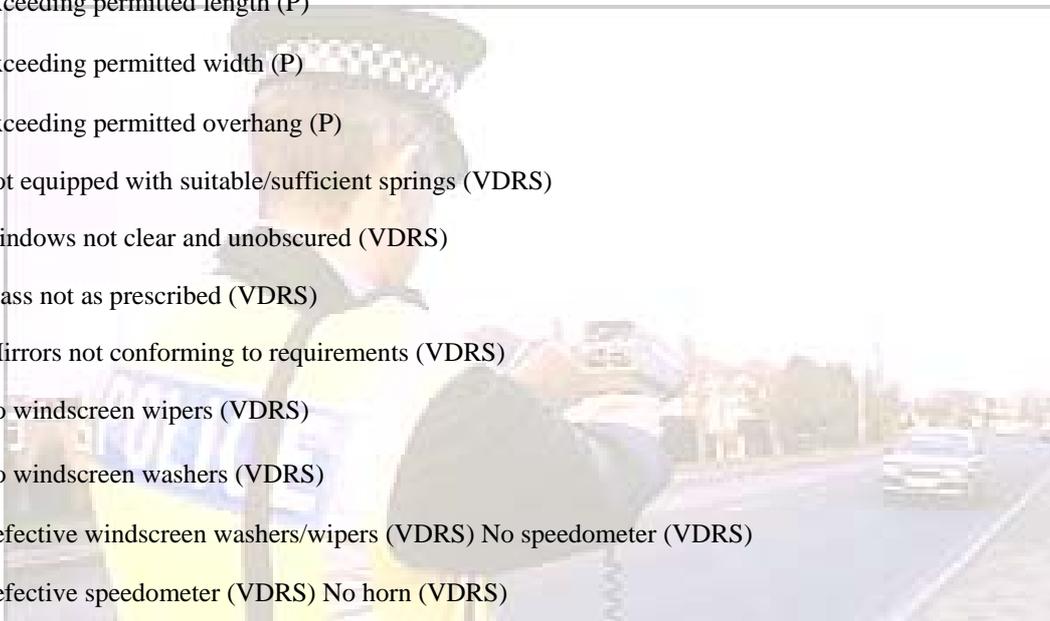
No seat belts fitted (VDRS)

Seat belt anchorage points not properly maintained (VDRS)

Emitting smoke, vapour, gases, and oily substances (VDRS)

No wing/mudguard fitted (VDRS)

Requirement to mark unladen weight 8, MGW (P)



Speed Limit Offences

Contravening temporary minimum speed limit (P)

Motorway Offences (Other Than Speeding)

Stopping on hard shoulder (P)

Neglect of Traffic Directions

Failing to stop for police constable (P)

Contravening mandatory keep left/keep right arrows (P)

Contravening mini-roundabout signs (P)

Contravening give way line and/or sign (P)

Contravening manually operated stop sign (P)

Contravening box junction (P)

Contravening MGW prohibition crossing bridge or other structure (P)

Contravening give way signs for open railway level crossing or tramway level crossing (P)

Contravening route for buses/pedal cycles only (P)

Contravening route for tram cars only (P)

Contravening width/length restriction (P) Contravening temporary restriction (P)

Contravention of traffic regulation order outside Greater London (P)

Contravening temporary prohibition due to works (P)

Contravening light signals for tram cars (P)

Contravening other statutory prohibition, i.e

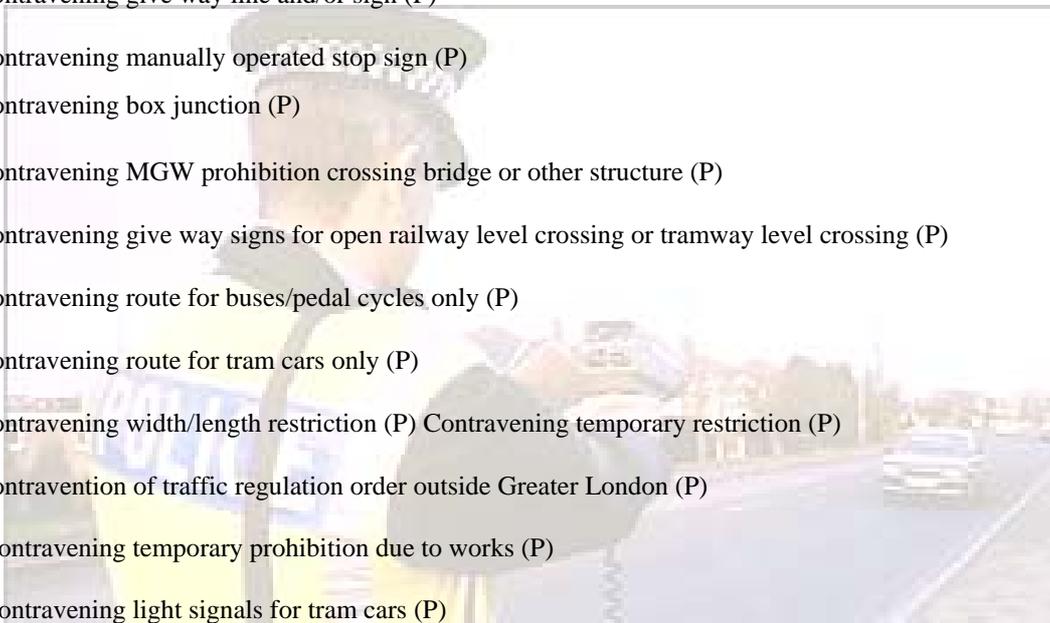
- Motor vehicles (P)
- Motor cycles (P)
- PCV (P)
- LGV (P)
- Track-laying vehicle (P)
- Horse-drawn vehicle (P)
- cycle (P)
- Pedestrian (P)
- Caravan-trailer (P)

Contravening experimental traffic order (P)

Contravening experimental traffic regulations - London (P)

Contravening one way traffic on trunk road (P)

Using prohibited vehicle on restricted road (P)



Breach of traffic regulation order in Greater London (P)

Neglect of Pedestrian Rights

Driving elsewhere than on roads (P)

Driving motor vehicle on footpath (P)

Obstruction, Waiting and Parking Offences

Contravening free on street parking order (P)

Overstaying after excess charge (P)

Charge not duly paid (P)

Incorrectly parked at bay (P)

Returning to park within prohibited period (P)

Class of vehicle not permitted to park in bay (P)

Parking at suspended bay (P)

No waiting (P)

Unlimited waiting (P)

Parking LGV on footpath or verge (P)

Parking vehicle on footpath or verge (GLC area) (P)

Parking on offside at night (P)

Unnecessary obstruction (P)

Wilful obstruction (P)

Stopping on a clearway (P)

Stopping on a bus-stop clearway (P)

Parking on a cab rank (P)

Parking without displaying permit/disabled person's badge (P)

Parking without payment by token card/season/daily ticket (p)

Lighting Offences

Showing red light to front (VDRS)

Showing other than red light to rear (VDRS)

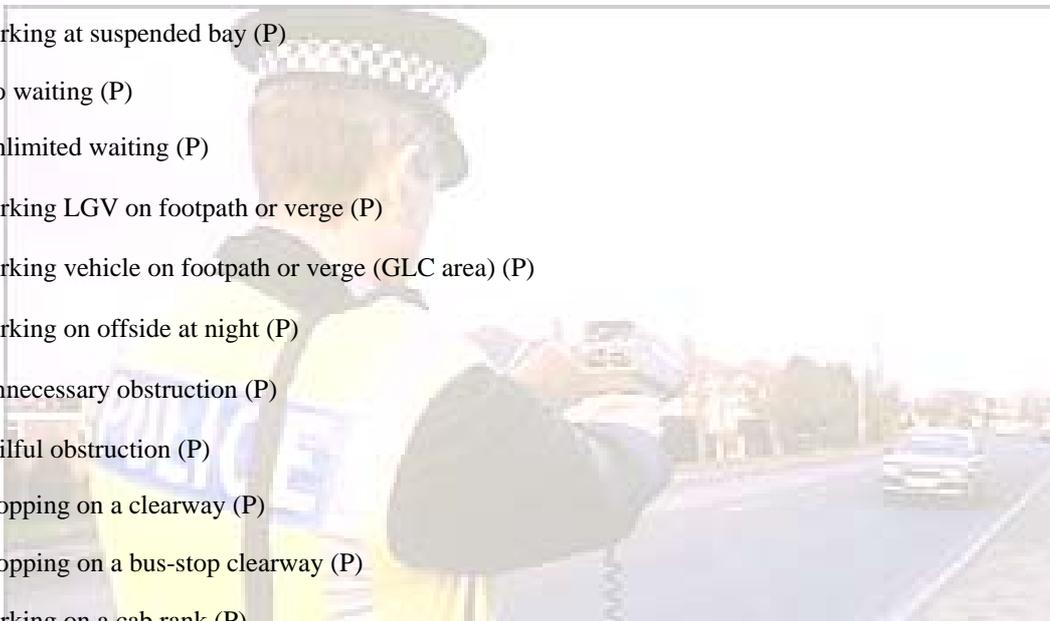
Lamp capable of being moved - vehicle in motion (VDRS)

Lamps not showing steady light (VDRS)

Filament lamp not 'E' or 'e' marked (VDRS)

General requirements for electrical connections (VDRS)

Fitted with unauthorised warning beacon (VDRS)



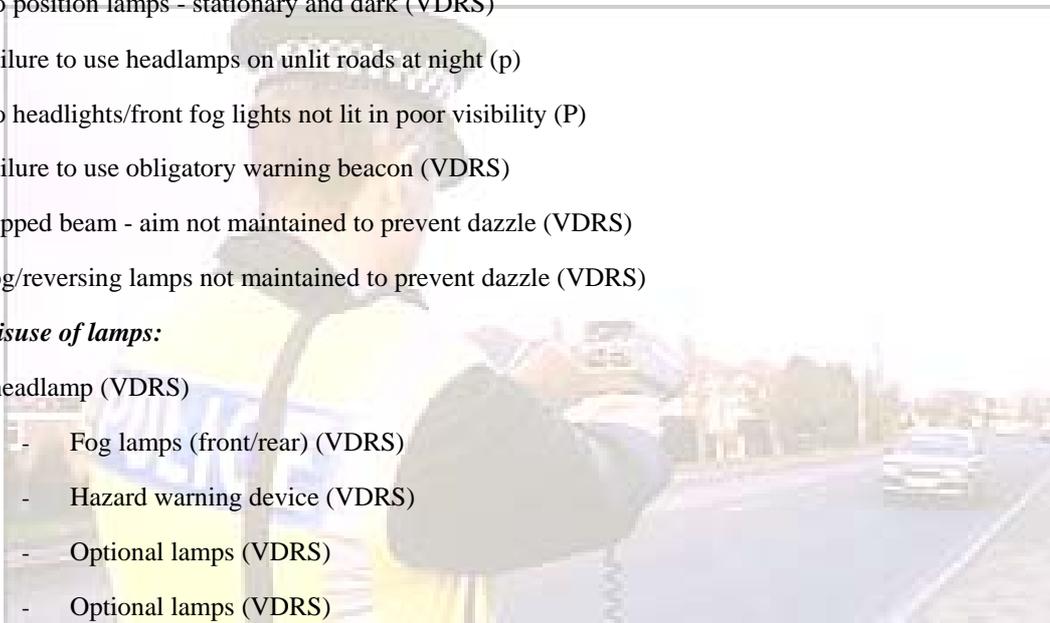
Failed to fit obligatory warning beacon (VDRS)
Failed to fit school bus sign (VDRS)
Not fitted with specified obligatory lamps (VDRS)
Specified obligatory lamps not correctly fitted (VDRS)
Obscuring of obligatory lamps and reflectors (VDRS)
Optional lamps not complying with regulations (VDRS)
Unlit projection/overhanging load (VDRS)
No additional side marker lamps (VDRS)
Lamps, reflectors, rear markings not maintained (VDRS)
Hazard warning devices not maintained (VDRS)
No position lamps - poor visibility or dark (VDRS)
No position lamps - stationary and dark (VDRS)
Failure to use headlamps on unlit roads at night (p)
No headlights/front fog lights not lit in poor visibility (P)
Failure to use obligatory warning beacon (VDRS)
Dipped beam - aim not maintained to prevent dazzle (VDRS)
Fog/reversing lamps not maintained to prevent dazzle (VDRS)

Misuse of lamps:

- headlamp (VDRS)
 - Fog lamps (front/rear) (VDRS)
 - Hazard warning device (VDRS)
 - Optional lamps (VDRS)
 - Optional lamps (VDRS)
- Rear registration mark not illuminated (VDRS)

Noise Offences

No silencer/defective exhaust (VDRS)
Failing to maintain silencer (VDRS)
Noise limits and exhaust systems on motor cycles (VDRS)
Causing unnecessary noise (P)
Not stopping engine when stationary (VW)
Sounding of horn when stationary (VW)
Sounding of horn at night (VW)



Load Offences

Contravening maximum permitted width, length, height of vehicle (P)

Leakage of lavatories/sinks on to road (P)

Laden vehicle exceeding permitted weights (P)

Exceeding permitted weight (closely spaced axles) (P)

Manufacturer's/DTP plate, exceeding gross weight (P)

Manufacturer's/DTP plate, exceeding axle weight (P)

Manufacturer's/DTP plate, exceeding train weight (P)

Offences Peculiar to motorcycles

No foot rest (VDRS)

No protective headgear (P)

Miscellaneous motoring Offences

Failing to wear seat belt (adults) driver/passenger (P) }

Child in front passenger seat - no seat belt (P)

Child in rear passenger seat - no seat belt (P)

Not equipped with rear guards (VDRS)

Rear guards not maintained (VDRS)

Not equipped with side guards (VDRS)

Side guards not maintained (VDRS)

Not equipped with spray suppression equipment (VDRS)

Spray suppression equipment not maintained (VDRS)

Mascot likely to cause injury in collision (VW or VDRS)

Motorcycle - sidecar not properly attached (VDRS) ,

carrying passengers in a trailer or caravan (P)

Lifting appliance not properly secured (VDRS)

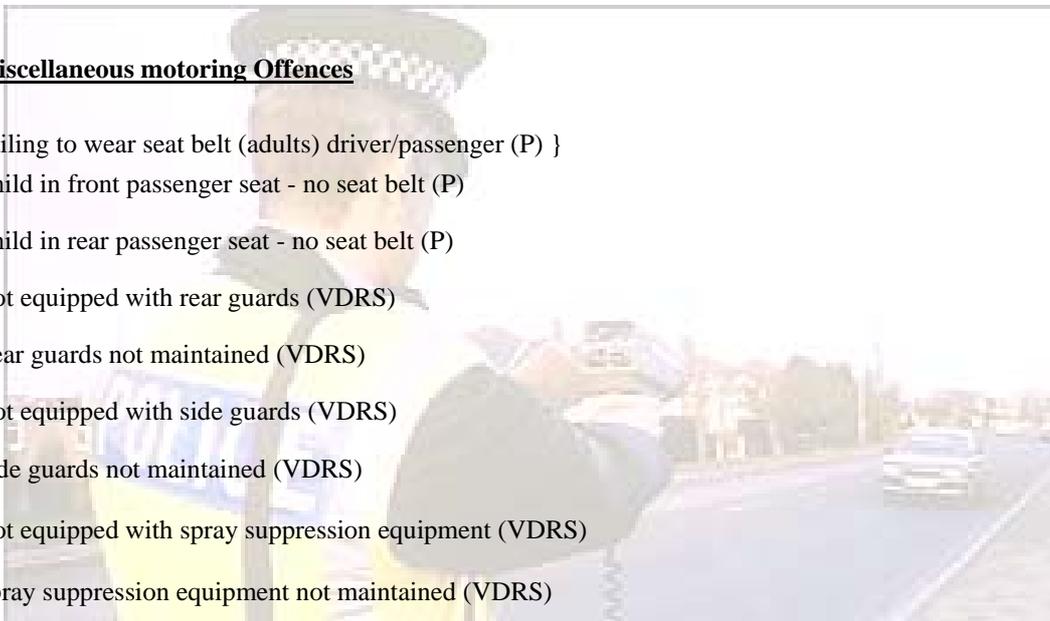
No marking of travelling height (VW)

Drawing more than the permitted number of trailers (P) .

Towing - tow rope too long (VW)

Interference with parking apparatus (P)

Prevention of movement of trailer at rest (P)



There are a lot of offences listed here, and it is easy for even the most careful of motorists to commit one. This list is therefore provided so that readers can check the recommended policy for the offence they have been charged with. Although each offence carries a recommendation, in practice individual police officers will often downgrade an offence from a prosecution to a VDRS ticket or a verbal warning. There should be no upgrading to prosecution, and if this does occur you should write immediately pointing out that you have been prosecuted when the national policy is for a VDRS ticket or verbal warning.

PENALTY POINTS SYSTEM

We have already referred to the penalty points system several times in this chapter, and the time has now come to look at it in a little more detail.

As we have already noted, if you are convicted of an endorsable offence, penalty points are added to your licence. If you accrue a total of 12 or more points within a three-year period, under the so-called 'totting-up' procedure you will then face automatic disqualification for a minimum of six months. If you have already had a disqualification within the three years preceding the latest offence you will be disqualified for at least 12 months; and if you have had two or more in the last three years you will be disqualified for at least two years. Once a period of disqualification has been served, the slate is normally wiped clean.

If an offence is prosecuted via the FPN scheme, as well as the fine you will have three penalty points added to your licence. That means you will only be disqualified after committing four such offences within a three-year period.

However, if the offence is prosecuted by way of a summons, the court may impose a larger number of penalty points. For some offences a range is set down, and the exact number of points awarded against you will depend on how the magistrate views the seriousness of your offence. Some examples of the penalty point recommendations for different offences are shown below:

Careless or inconsiderate driving (3-9)

Dangerous driving (3-11)

Refusing roadside breath test (4)

Failing to stop after an accident (5-10)

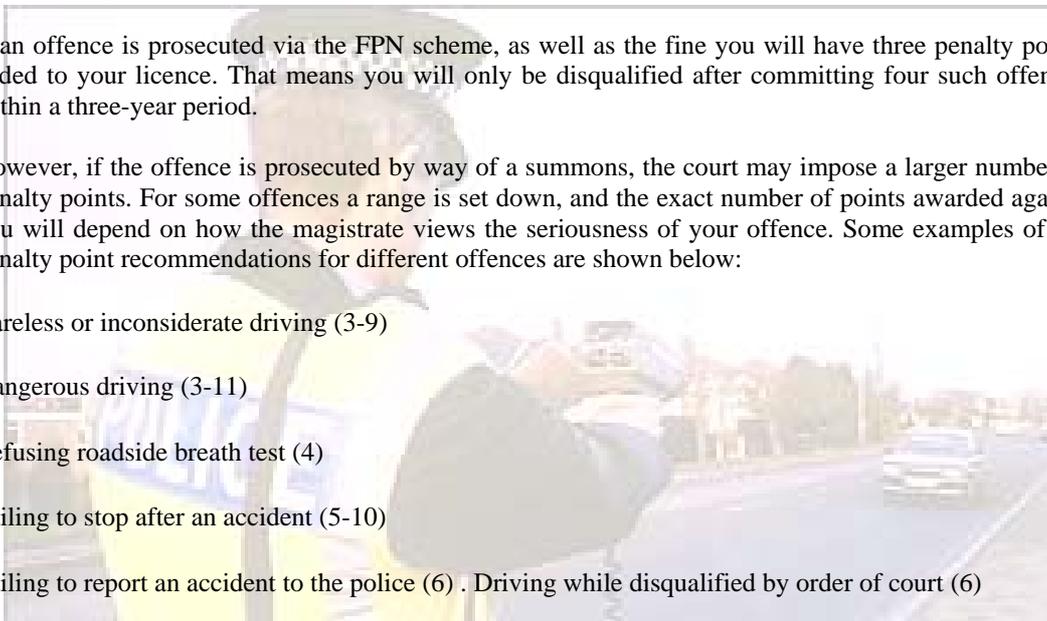
Failing to report an accident to the police (6) . Driving while disqualified by order of court (6)

Using a vehicle uninsured against third party risks (6-8)

Magistrates may also impose a period of disqualification for a specific offence, even if you would not be liable for this under the totting-up procedure - and for some motoring-related offences a period of disqualification is mandatory. If you are convicted of dangerous driving, for example, you will be disqualified for a minimum of 12 months, and the court may also order that you undergo a re-test. A custodial sentence may also apply.

If a court imposes a period of disqualification for a specific offence, you will not normally have penalty points added to your licence for that offence. In this case, however, points already on your licence for other offences will not (as is otherwise the case) be removed by serving the period of disqualification but will remain in force until three years have passed since the date of the conviction.

Under the totting-up procedure, a court will normally disqualify you for a minimum of six months. However, you may be able to avoid this (or get a shorter period of disqualification) by pleading what is known as 'special circumstances'. This means you can claim that special hardship would be forced upon you if you were to be disqualified from driving.



If losing your licence would mean you lost your job or were unable to get to work, for example, the magistrates might accept that the punishment would be out of keeping with the severity of the offence and therefore allow you to keep your licence, though with an increased fine. Note that you can only claim 'special circumstances' once. The courts take the view that they are giving you a final chance to reform, and if you subsequently come up for disqualification again, such a plea will not be accepted.

Finally, note that different rules apply to new drivers during the two years after they pass their test. If they accrue just six penalty points during this time, they lose their licence and go back to being a learner once more. They are required to apply for a provisional licence and must take both the theory and practical tests again. Appeals on the grounds of 'special circumstances' are not allowed in these circumstances.

In October 2004 the Government announced it was reviewing the penalties for motorists caught speeding at just above the limit. Under new proposals set out by Transport Secretary Alistair Darling, fines could range from £40 and two penalty points for lesser offences up to £100 and six points for the most serious examples of speeding. The lower penalty would not apply to people speeding in 20mph speed limit areas such as school areas and hospitals.

How To Get Spent Endorsements Removed From Your Licence

In most cases endorsements must remain on a licence for four years from the date of the offence. The only exceptions to this are listed below.

Endorsements must remain on a licence for eleven years from the date of conviction if the offence is:

Drinking/drugs and driving (shown on the licence as DR10, DR20, OR30 and OR8D).

Causing death by careless driving whilst under the influence of drink/drugs (shown on the licence as CD40, COSO and CO60).

Causing death by careless driving, then failing to provide a specimen for analysis (shown on the licence as CO70).

Or four years from the date of conviction (rather than the date of the offence) if the offence is as listed below;

Reckless/dangerous driving (shown on the licence as 0040, 0060 and 0080).

An offence resulting in disqualification,

Disqualified from holding a full licence until a driving test has been passed,

Once this period has elapsed, the offence is regarded as spent and can be removed from your licence. Contrary to the advice given in some other publications, there is no need to concoct a story about your licence being eaten by the dog or left in your jeans pocket while they were washed. Simply go to any post office and ask for form D1 Application for a Driving licence. Complete this and return it to the Driver and Vehicle Licensing Agency (DVLA) along with your old licence, some proof of your identity, a passport-sized colour photograph and the fee (currently £18). A new licence will be sent to you in a few weeks with all the spent endorsements removed!

How To Get Your Licence Back After Disqualification

If you have completed a period of disqualification, you are required to apply for a new licence, even if the old licence has not run out. If the system works as it is supposed to, you should automatically be sent the application form 027 (and possibly a photocard application form 0750) 56 days before the period of disqualification ends.

As in the section above, you must complete the 027 form and enclose the appropriate fee (usually £35, but £50 if you were disqualified for some drink-driving offences). You must also enclose original documentation confirming your identity and a passport-sized colour photo, and send your completed application to OVLA as before. If for any reason you do not receive a 027 form, you may apply using a 01 form from the post office in its place.

DVLA say they will make medical enquiries if you have:

(a) been disqualified for driving, or being in charge of a vehicle, when the level of alcohol in the body equalled or exceeded:

- i) 87.5 microgrammes per 100 millilitres of breath, or
- ii) 200 milligrammes per 100 millilitres of blood, or
- iii) 267.5 milligrammes per 100 millilitres of urine.

(b) two disqualifications within the space of 10 years for drinking and driving, or being in charge of a vehicle whilst unfit through drink.

(c) one disqualification for refusing/failing to supply a specimen for analysis.

If you are not sure when your disqualification ends, contact the court which disqualified you.

Finally, if your period of disqualification is under 56 days (known as a short period disqualification or SPD) the court will stamp your licence and give it back to you. The stamp will tell you how long you are disqualified for. You do not need to renew your licence when the short period disqualification ends. Your licence becomes valid again the day after the expiry of the disqualification.

How To Get A Period Of Disqualification Reduced

If you have been disqualified for two years or more, you are allowed to apply to the convicting court for a reduction in the period of disqualification in the following circumstances:

After serving two years of the disqualification period if you were disqualified for more than two but less than four years.

After half the period of disqualification has been served if you were disqualified for less than ten years but not less than four years.

After serving five years of the disqualification period if you were disqualified for ten years or more.

If the court agrees to reduce the period of disqualification, an application must be made to OVLA for the early restoration of your driving licence. Form 01 can be used for this, as above.

Note, however, that although courts may approve a reduction in the period of disqualification, this does not affect the period (4 or 11 years depending on the offence) for which an endorsement must legally remain on the driving licence.

FINALLY..

In this chapter we have set out the basics of the law as it applies to motorists, with an emphasis on the minor offences which are by far the most likely ones you will be charged with.

Obviously the best course is to avoid being charged with any offence, and in the following chapters we offer plenty of advice on how to avoid detection and prosecution. If you are charged, however, you have basically two choices.

- Admit guilt and accept the consequences. These will involve a fine and perhaps penalty points on your licence.
- Deny guilt and defend the prosecution. On the plus side, this could mean acquittal if you are found not guilty. On the minus side, it is likely to involve more hassle, and if you are found guilty the fine and penalty points incurred may well be higher.

Obviously it is down to you, the motorist, to decide what to do in any given set of circumstances. In some instances, such as when the penalty is relatively light and/or the evidence against you is compelling, you may decide that admitting guilt and getting on with your life is the smart choice. The last thing we would advise is for anyone to contest any motoring-related charge simply for the sake of it.

On the other hand, where the stakes are higher and/or you feel that you have been prosecuted unfairly, you may well decide to contest the charge. This is your right, and it is a right which - in our opinion - far too few drivers exercise.

The following chapters of the book will take you through some of the most common scenarios in which drivers are likely to come up against the law. They will explain how offences are detected and how you can reduce the risk of this happening. And if you **ARE** charged with committing an offence, they will explain what to do to maximise the chance of having the case against you dropped and, if necessary, how to present your case in court.

PARKING TICKETS

Parking tickets can be issued by representatives of three occupations: police, traffic wardens and local authority parking attendants.

Tickets issued by the police and traffic wardens (who are employed by the police) are called fixed penalty notices (FPNs). As explained in Chapter Two, they are enforced through the criminal justice system.

Tickets issued by local authority parking attendants are called penalty charge notices (PCNs). They are issued under the so-called decriminalised parking enforcement (OPE) system which, based on the Road Traffic Act 1991, allows local authorities to enforce parking regulations themselves or to sub-contract this to private firms. OPE started in London in 1994 and has now become the most common system of parking enforcement throughout the UK.

Defending yourself against parking tickets is initially similar in both cases, but the appeal routes are different. With FPNs, if your initial informal challenge is unsuccessful, your case will be heard in the local magistrates court. With PCNs, the ultimate authority is an independent tribunal. There are three of these: for parking tickets issued in London, the Parking and Traffic Appeals Service (PT AS); for those in Scotland, the Scottish Parking Appeals Service (SPAS); and for the rest of England and Wales, the National Parking Adjudication Service (NPAS). Contact details for all of these organisations can be found in the Appendix.

What To Do If You Receive a Parking Ticket

The first advice is to keep calm. Once a parking ticket has been issued, it is impossible for a traffic warden or parking attendant to cancel it, so there is no point in getting angry with them or begging them to reconsider.

If a council parking attendant is still writing out the ticket, however, as long as it hasn't been placed on your vehicle or handed to you, you can drive away and the ticket will be invalid. Under the Road Traffic Act 1991, the ticket must either be handed to the person in charge of the vehicle or placed on it.

So if the attendant says, "Its too late, I've started writing the ticket," you can still drive away and will not be breaking any laws. Do just be careful not to injure them, as they may be standing close to your vehicle (though they should be on the pavement and not the road). But note that this does not apply if the ticket is being issued by a traffic warden or a police officer - if they have your registration number, they can still book you.

If the warden or attendant is still around, ask why they issued the ticket and make a note of what they say. Explain to them why you felt you were entitled to park in that spot, and ask them to note this down in the pocket book they carry.

Before leaving, collect as much evidence as you can which may be relevant to any appeal (possible grounds for which will be discussed shortly). It can be a very good idea to keep a cheap disposable camera in your car, e.g. to take a picture of the road if yellow lines have been obscured by leaves. A camera can also be useful if you are unfortunate enough to be involved in an accident, to preserve an independent record of the accident scene.

Your next step should be to write to the issuing authority as soon as possible; the address will be on the ticket. Be polite but firm. Ask them to consider cancelling the ticket, explaining your reasons (model letters you can adapt for this purpose may be found in the Appendix). If you have evidence to support your claims such as receipts, photos or witness statements, send these as well. We recommend that you send copies only, however, and hold on to the originals. Note that if you wish to appeal on compassionate grounds or plead mitigating circumstances, now is the time to do so. If the case goes to court or an independent adjudicator, it can only be quashed on specific legal grounds.

With PCNs, there is usually a discount if you pay promptly. Many authorities charge £30 if you pay in 14 days, otherwise the fine goes up to £60. If you write within 14 days, however, the clock is stopped while the council considers your request. If they subsequently reject your challenge, you should still be offered the chance to pay at the discounted rate.

If you wish to contest the PCN, do NOT pay the £30 charge and then appeal. Your payment will be viewed as an admission of guilt and the council will regard your case as closed. As mentioned above, if you send an informal appeal within 14 days, you should still be allowed to pay the reduced fee if your appeal is rejected.

If your informal appeal is rejected and you don't pay, in the case of a fixed penalty notice the next step is that you will receive a summons to appear in court. This is further discussed in Chapter Six ('Going to Court'). As stated above, however, if a case goes to court, the grounds on which a ticket can be contested are more limited. You could also find yourself with a larger fine and perhaps legal bills to pay, so before opting for your 'day in court', it is important to weigh up carefully your chances of success.

With a PCN, if you still don't pay, the council will send a form known as a 'Notice to Owner' to the person or company they believe to be the owner of the vehicle (they get this information from the Driver and Vehicle licensing Agency). By now, the full fixed penalty charge will be payable. This notice goes to the person believed to be the owner of the car, as under the Road Traffic Act 1991 it is the owner of the vehicle who is liable for any penalty charge notices issued to it, regardless of who the driver was. This principle is known as owner liability.

If you receive a Notice to Owner, you can use the form to make formal legal representations to the council. The Notice to Owner form itself details the grounds on which a formal representation may be made. The full list is as follows:

- I was not the owner/keeper of the vehicle at the time of the contravention.

For example, the vehicle may have been sold or bought after the alleged offence occurred. You should provide proof of sale or purchase (e.g. a copy of the DVLA registration document, cancellation or issue of insurance, receipt of sale or purchase).

- The vehicle had been taken without my consent at the time of the contravention.

For example, the vehicle was improperly parked after being stolen, if you can, you should provide the crime report number, a letter from the police or a copy of the insurance claim.

- . We are a hire firm and have supplied the name of the hirer.

This only applies to hire firms where the hirer has signed a formal agreement accepting liability for penalty charges. The company must supply the name and address of the hirer and a copy of the rental agreement they signed.

- . The contravention did not occur.

For example, the contravention did not happen as stated on the PCN; the parking restrictions were not properly signed; the reason for stopping was lawful (e.g. vehicle broken down or legitimate loading/unloading). It can help if you provide evidence of your claim (e.g. if your vehicle had broken down, send a copy of the garage's report or breakdown call-out document).

- . The traffic order was invalid

This applies if the local authority's regulations are legally defective. For example, legally a vehicle cannot be clamped or removed if it is less than 15 minutes overdue on a meter or a pay-and-display. Some PCN's (e.g. those issued by the London Borough of Camden) have the wording: 'IMPORTANT: We can clamp or remove your vehicle at any time after the issue of this ticket'. As this is an incorrect statement, the PCN is legally flawed, and your appeal should be upheld.

- . The penalty exceeded the relevant amount

For example, you are being asked to pay the wrong amount for the penalty charge, the PCN was not correctly issued or the council claims you paid less (or later) than you actually did.

Most formal appeals at this stage fall into the category 'the contravention did not occur'. A growing number, however, are based on the grounds 'the traffic order was invalid'. This claim is becoming more widespread in the wake of missing road signs and markings. Many local authorities are failing to maintain these, which in turn means their regulations are legally defective. Some possible scenarios offering grounds for appeal within this category are discussed in the following section.

Even if you don't think you meet one of the above legal grounds for making a representation, you may still appeal, since the local authority may decide to exercise its discretion and cancel the PCN.

If the council decides to waive the Penalty Charge Notice, you will receive a letter informing you of this. If they decide that the PCN should not be waived, you will be sent a letter explaining why. This is called a Notice of Rejection of Representations. With this letter, you should receive a form called a Notice of Appeal, allowing you to appeal to the appropriate independent parking adjudicator.

The adjudicators are independent lawyers who will consider your case on one of the six grounds listed above, and their decision is final. Appeals can be decided either by post or in person. If you lose your appeal and do not pay (or ignore the Notice to Owner) you will be sent a Charge Certificate which increases the original charge by 50% to £90. There are no rights of appeal at this stage. If you still do not pay, the charge will be registered as a debt at the county court, and ultimately a warrant will be issued to bailiffs who will add their own costs to the charge outstanding.

Grounds For Appeal

Obviously, the main aim when you receive a parking ticket must be to get it cancelled at the earliest possible stage of the proceedings. As you get into the later stages of the appeal process, your chances of success diminish, while the potential costs if you are unsuccessful rise. Grounds for appeal, which have been used successfully by other motorists, are discussed below.

Loading And Unloading

Parking on yellow lines is one of the most common reasons for getting a parking ticket, but if you can show that you were loading or unloading goods you may have excellent grounds for getting the ticket cancelled. The laws governing this are quite complicated, however, so before we go into grounds for appeal, let's recap on what the different markings mean.

Yellow lines along the side of the road always indicate parking restrictions. Double yellow means parking is prohibited at all times, while a single yellow line indicates that parking is prohibited during certain times of day (a sign nearby should indicate what these hours are). A broken yellow line indicates some parking restrictions, e.g. parking may be allowed for only half an hour at a time. Again, a sign nearby should explain what the restrictions are.

You **ARE** allowed to wait on yellow lines for the purpose of loading or unloading unless there are also yellow vertical stripes on the kerb. These signify places where loading and unloading are (also) prohibited. As with yellow lines, double stripes apply at all times, while single stripes apply only during the times stated on nearby signs. However, if you are in a Controlled Parking Zone (CPZ) and the operating times for yellow lines and stripes are the same as those stated on the CPZ boundary signs, there is no requirement for an additional sign nearby.

In the absence of any loading restrictions, vehicles are allowed to wait as long as required for the purpose of delivering or collecting goods at premises adjacent to the street. If a parking attendant or traffic warden finds a vehicle parked on a yellow line without seeing any loading or unloading taking place, however, a ticket will be issued. If the driver can nevertheless demonstrate that he or she was loading or unloading, the ticket should be cancelled. The shorter the observation period of the parking attendant or traffic warden, the easier it will be to claim that this exemption applies.

Deliveries of smaller items are expected to take less time than those of larger items, and for this reason there will be a greater burden on the driver to justify a lengthy absence from the vehicle. Drivers making a delivery in the course of a trade or business will, in most cases, be able to produce some kind of documentation in the event of a ticket being issued, and a copy of this should be sent with any appeal.

There is no requirement that goods should be of a particular size or weight, and even small items such as postal packages are included in the definition of 'goods' in this context. Even a motorist doing his shopping might be able to claim to be 'loading'. However, it is doubtful whether choosing an item and chatting to an assistant could really be described as the collection or loading of goods. Having purchased an item, a vehicle brought to a collection point to collect it would clearly be exempt, but obviously it is impossible to arrive at a definition which leaves no room for argument.

Some local authorities state (incorrectly) that loading or unloading must be continuous, implying that there must be an uninterrupted movement of goods to or from the vehicle. This is unreasonable, as it is unrealistic to expect deliveries to be made without the checking of goods and paperwork as part of the delivery process. Difficulties can sometimes arise where there are delays in this process. The model letters in the Appendix include one which you can use in these circumstances.

You are allowed to park to load/unload from parking bays, meters, residents' bays and so on in exactly the same way as on a yellow line. The only exceptions to this are that you cannot use diplomatic parking bays or suspended parking bays, including meters with 'out of order' bags over the meter heads. And you are not allowed to use disabled bays for loading or unloading.

Finally, red lines are found in London and a few other major cities. You cannot stop to load/unload or pick up/put down passengers on a red line during its operational times. Double red lines apply all day, while most single red lines apply from 7am to 7pm, Monday to Saturday. Enforcement is by police traffic wardens rather than council parking attendants, and infringements incur a £60 FPN rather than a £30 PCN.

'Leaves On The Line'

Here is another defence which can be used successfully if you receive a ticket for parking on yellow lines. If the lines are obscured - whether by leaves, snow, road works or simple wear-and-tear - parking restrictions cannot be enforced.

Only in October 2003, the BBC reported in a morning news programme that the railway's seasonal excuse of leaves on the track had spread to Marlow in Buckinghamshire, enabling thousands of motorists to escape parking fines simply because fallen leaves had covered the double yellow lines in the town centre.

The law states that, to be enforceable, yellow lines must be continuous - so if they are even partly obscured, you should have excellent grounds for appeal. This is another of those situations where having a camera to provide back-up evidence could be invaluable. Note that the area where the lines are faded or obscured should be near where you parked, however - if it is 200 yards away, it is unlikely your appeal would be upheld.

Inadequate Signs/Markings

There are also strict laws about the signs which must be displayed in areas with parking restrictions. With single yellow lines, there must be a sign on either side of the road at every entry point to the zone with restrictions. The same applies with broken yellow lines - unless there is an accompanying sign clearly indicating the nature of the restriction, it cannot be enforced. Note that this does NOT apply to double yellow lines, however. These always mean 'at any time', and the need to have an accompanying sign was dropped in April 2003.

If the accompanying signs are absent or obscured, you should have good grounds for an appeal. Again, a photo can provide back-up evidence. This situation is more common than you might think, and for this reason it is always worth checking around for signs if you get a ticket. Surprisingly, Westminster Council recently admitted that they did not employ anyone to check the state of signs, and relied on members of the public to report any problems!

Another basis for appeal is if the yellow lines do not end in a T-shaped bar. By law, yellow lines must end in a T-bar where they terminate or change from single to double, or vice versa. If they do not, the line is illegal, and therefore not enforceable. T-bars are not, however, required where a yellow line meets a parking bay or a zebra crossing, as bays and crossings effectively sit on top of the yellow line.

If the accompanying signs are unclear or ambiguous, you could also have grounds for an appeal. However, do not fall into the trap of thinking that bank holidays are the same as Sundays, and parking restrictions do not therefore apply to them. If a sign says 'No waiting Mondays-Saturdays', this will also include bank holiday Mondays unless they are specifically excluded on the sign.

Finally, if your ticket has been issued within a Controlled Parking Zone (CPZ), check the entry signs for the zone. All CPZs have controlled hours which by law must be displayed by two signs on either side of the road at every entry point to that particular zone. If any of the entry signs are missing or obscured, e.g. by trees or other road signs, then any resulting appeal should be upheld.

Ticket Improperly Issued

To be valid a ticket must, of course, be correctly issued. This can be another area ripe with possibilities for appeal.

As mentioned earlier, if the ticket is written by a council parking attendant, it MUST be either handed to the driver or fixed to the vehicle. If you drive away while the ticket is still being written, it will not be valid. If you subsequently receive a Notice to Owner from the council, you should therefore write explaining the situation and asking for the ticket to be cancelled. If they refuse, appeal to the parking

adjudicator. Between a third and a half of all appeals to adjudication services are on these grounds, and such appeals have a high success rate.

Unfortunately the same does not apply if the ticket is written by a police officer or a traffic warden. These (fixed penalty) tickets are issued under different legislation, and they do not have to be fixed to the vehicle or handed to the driver to be valid. There is still plenty of scope for such tickets to be improperly issued, however.

There are some differences between penalty charge notices and fixed penalty notices regarding the information they include. However, in general the following details should be recorded on the ticket:

Ticket reference number

Vehicle registration number

Vehicle make and colour

Location, date and time of alleged offence

Attendant/warden number

Contravention code and description

Penalty (including any discount for prompt payment)

Study the information on your ticket carefully, as if any of this is incorrect, you have good grounds for appeal. For example, if the colour of your vehicle is incorrectly described or the make is wrong, it is unlikely that the ticket can be enforced.

You should also check carefully the contravention code. There are around forty of these - a complete list is provided in the Appendix. If the wrong code has been allocated, and/or it does not correspond with the description of the alleged offence, you should almost certainly make this the basis of your appeal. The same applies if the penalty amount is wrong.

Finally, bizarre as it sounds, your appeal may stand a better chance of success if the parking attendant or traffic warden was not wearing a hat. The Department for Transport guidance circular 1/95 says '...when carrying out prescribed functions, and issuing a PCN is one such, [parking attendants] are subject to the Parking Attendants (Wearing of Uniforms) (London) regulations 1993.'

The National Parking Adjudication Service states that, in view of circular 1/95, parking attendants should wear hats during enforcement activity, but goes on to say that an attendant not wearing headgear would not in itself be grounds for an appeal. It could, however, be considered as part of an appeal. It would then be up to the adjudicator to decide the extent to which the attendant's incorrect attire was relevant in the case concerned.

Pay And Display Car Parks

Pay and display car parks can be the motorist's only recourse in town and city centres, but many are patrolled with ruthless efficiency by over-zealous attendants, who may receive commission payments and even prizes based on the number of tickets they issue. You only need to overstay your time by a couple of minutes - perhaps due to a meeting over-running or an unexpectedly chatty client - for a ticket to be issued.

Fortunately motorists have one very good defence against parking tickets issued in pay and displays. It is the oldest trick in the book, but nonetheless very effective. If you find that your car has been ticketed, wait until another motorist returns to his car and ask if you can have his pay-and-display ticket. With no further use for it, he will almost certainly agree. The tickets usually include a warning that they are non-transferable, but don't worry about this.

Check that the other motorist's ticket covers the time when your parking ticket was issued (remember, this must be recorded on the parking ticket for it to be valid). So long as it does, you should have a strong defence. Write to the address on the parking ticket enclosing a copy of the pay-and-display ticket, explaining that you had a valid ticket but the attendant must have failed to notice this. Emphasise the inconvenience to you of having to go to all this trouble in order to 'prove your innocence'. The parking ticket will almost certainly be cancelled.

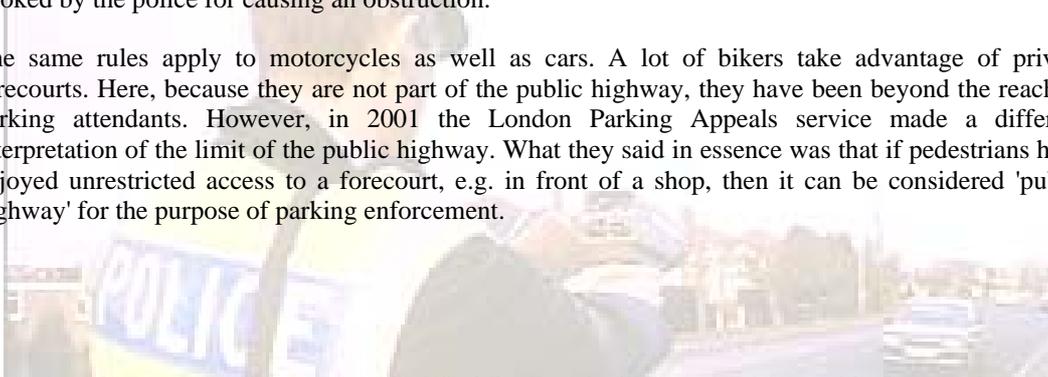
Incidentally, this is a highly effective tactic in most pay-and-display car parks, but it will not work in the latest 'high-tech' ones where you are required to enter your vehicle registration number at the same time as buying your ticket.

Footway Parking

The area between the kerb and the boundary of any building adjacent is known as the footway. In 1974 the Greater London Council banned parking with one or more wheels resting on a footway, central reservation or grass verge. Unless there are signs to the contrary, therefore, parking on the footway is illegal in London.

Outside London, however, it is a different story. If councils wish to ban footway parking, they must make a specific order. Where this is the case, signs must be erected indicating the extent of the prohibition. Therefore in London you cannot park with one or more wheels on the footway unless signs say you can, whereas elsewhere you can park with wheels on the footway unless signs say you can't. In the latter case, however, even where footway parking is not banned, there is still a risk that you may be booked by the police for causing an obstruction.

The same rules apply to motorcycles as well as cars. A lot of bikers take advantage of private forecourts. Here, because they are not part of the public highway, they have been beyond the reach of parking attendants. However, in 2001 the London Parking Appeals service made a different interpretation of the limit of the public highway. What they said in essence was that if pedestrians have enjoyed unrestricted access to a forecourt, e.g. in front of a shop, then it can be considered 'public highway' for the purpose of parking enforcement.



What the ruling seems to be saying is that if a bike is parked in an area that would otherwise be walked over by pedestrians, then a PCN can be issued. To avoid being ticketed in London, particularly in Camden and Westminster, bikes therefore need to be parked in an area that is either fenced or has some form of barrier preventing pedestrians from having casual access. Further judgements have confused the issue still further, but overall the message is that parking your bike on shop forecourts, above pavement lights, and so on, may still leave you at risk of getting a ticket.

One solution, discussed below, is to arrange that your bike's number plate is not visible when it is parked. However, a London company operating a large fleet of scooters in the capital has established a legal precedent to exploit a loophole in London's parking law, allowing their scooters to be parked on the footway with impunity.

As mentioned above, the contravention commonly known as 'footway parking' in London requires one or more of a vehicle's wheels to be actually on the ground. If the vehicle can be parked in such a way that both wheels are above the ground, even by just a few millimetres, then no offence has occurred. The company in question, 0800 handyman, won an appeal against a parking ticket issued in 2003 by the Corporation of the City of London. The stand on the particular scooters used by the company is unusual in that it can be used to keep both wheels off the ground at the same time.

Managing Director, Bruce Greig, said: "It is clearly ludicrous that such a loophole exists - the law is very badly drafted. But if local authorities persist in using parking law to raise revenue, not to manage traffic, then people like me will persist in making their life as difficult as possible. The wheels are only a few millimetres off the ground, but that's all it takes,"

Mr Greig says that he has filed a patent application for a device which can modify most scooter stands to keep both wheels off the ground, allowing scooter-riders to park on the footway without committing any contravention.

Parking Meters

Let's dismiss one popular myth straight away. If you arrive at a meter without any change, you are not allowed a few minutes to go and get some. You are required to insert the money as soon as you get out of the car.

If the meter is covered by an official 'out of order' hood, contrary to what is sometimes believed, you are prohibited from using the space. However, there are some situations you can legally take advantage of. For example, if the head of the meter has been removed, you can park free of charge in that bay. If the head is returned while your car is still parked, most councils will give you two hours' grace before issuing a ticket.

A more common scenario is that a meter fails to accept or to register coins, These can be good grounds for appeal if you subsequently receive a parking ticket, especially if you can show that there was no other empty bay you could have used at the time. Although in theory the council will send a technician to check that the meter was indeed out of action on the date you stated, in practice this is unlikely to happen, and in many cases the ticket will be cancelled automatically.

If there is a genuine problem with the meter, it can be a good idea to leave a note on your windscreen telling the attendant about the problem, showing the time you arrived and how much money you put in. This will not guarantee that you don't receive a ticket, but reduces the likelihood. If you do this, you should not leave your vehicle longer than the maximum waiting period at that meter.

Finally, if a parking meter accepts coins and then flashes alternately 'out of order' as well as the time, you are allowed to leave your vehicle for the length of time shown at the meter. At the end of that time the 'out of order' message will display, and you then have to move your vehicle.

Motorcyclists

Motorcyclists have one very good defence against parking tickets, and this lies in the fact that a traffic warden or parking attendant is not allowed to touch or interfere with a vehicle when issuing a ticket (other than to affix the PCN).

If the bike is covered with an all-in-one rain cover when parked, the registration plate and tax disc will not be visible, and a ticket cannot therefore be issued. Less subtly, the tax disc can be removed and the plate simply be covered by a cloth or board, though care must be taken to ensure that this cannot 'accidentally' fall off. Some motorcyclists have even taken to removing their numberplate completely when they dismount. Councils are reported to be developing counter-measures to close this loophole, but for the moment it appears to be perfectly legal.

You must, however, ensure that the numberplate is restored before driving off, as it is of course illegal to drive without having your vehicle registration number on display.

CLAMPING AND REMOVAL

Getting a ticket is bad enough, but being clamped or having your vehicle removed is even worse.

Clamping and removal have been around for *many* years, though originally they were limited to busy town and *city* centres. The police were once the only people with the power to remove illegally parked vehicles, but they used this power only to deal with vehicles that were dangerously parked or causing an obstruction. Clamping was sometimes used as a deterrent in places where illegal parking was seen as a particular problem.

Since the advent of decriminalised parking enforcement, however, both clamping and removal have become much more common. For many councils, there is little doubt that clamping hapless motorists with nowhere else to park provides a valuable boost to their finances. And councils with (very expensive) removal trucks and equipment have every incentive to use them on *anyone* parked 'illegally' rather than letting them stand idle.

Fortunately, motorists do have some protection, however. To start with, a local authority cannot clamp or remove your vehicle unless it has first been issued with a PCN. In addition, they cannot clamp or remove your vehicle if:

- . You return to it before the clamp padlock is closed.
- . You return to it before it is completely off the ground.
- . It displays a valid disabled driver badge (unless it is causing an obstruction).
- . It displays a valid health emergency badge.
- . It is less than 15 minutes overdue on a meter or a pay and display.

If your vehicle is clamped, it will not be released until you have paid the penalty charge, the release fee and any storage charges. You will have to show reasonable proof of entitlement to the vehicle (e.g. the logbook) before it is released. Once released from a clamp, a vehicle has an hour's grace - after that, fresh enforcement action may be taken.

If you believe that the penalty charge, clamping and/or the removal were unfair, you should write to the local authority within 28 days. State your case clearly and simply. If you have evidence to support your claims such as photographs and/or witness statements, send copies of these as well. The local authority will reply either accepting or rejecting your challenge. If you don't think you meet one of the legal grounds for making a representation, you *may* still appeal, as the local authority *may* exercise its discretion and cancel the PCN.

If the local authority does not reply within 56 days of receiving your appeal, they must cancel the PCN and refund all the charges you have paid. If they accept your informal appeal, they will refund all charges. Alternatively, they may reject your appeal against the PCN, the clamping, the removal, or all three.

If your informal appeal is rejected, the authority will then usually send you a Notice of Rejection of Formal Representations. They should also include with this a Notice of Appeal form, which allows you to appeal to the independent parking adjudicator. The same procedure applies here as with parking tickets (discussed earlier).

Private Clampers

Private clampers operating on private land (e.g. pub or shop car parks) are an even more serious hazard for the motorist. They are largely unregulated, can charge any fee they like for releasing your vehicle, and will often accept only cash as payment. Horror stories abound regarding their excesses. The RAC, which has been campaigning for better regulation of private clampers, lists the following on its website:

- . A clumper in London who impounded a car without notifying the owner, then gave it to his daughter to drive
- . A female chemotherapy patient in Yorkshire who felt ill, parked to rush to a toilet and had her car clamped and was forced to pay £100
- . An elderly pensioner in Blackburn threatened he would have to pay £200 if he didn't pay £140 in cash within ten minutes
- . A hearse clamped with a dead body in the back
- . Clampers demanding wedding rings, gold teeth or even sexual favours in lieu of payment
- . Clampers in Doncaster threatening to hold a mother's three-year-old daughter ransom until she collected £60 from a bank
- . Clampers in London hiding in a car on a private lane and clamping anyone stopping to post a letter at a nearby post office within seconds of them leaving their cars

In the light of such stories, the Government has moved to regulate private clampers (and other private security staff) through the newly established Security Industry Authority (SIA). Ultimately all private wheel clampers will need to be licensed by the SIA and will (in theory, anyway) have to comply with its code of practice. As yet the licensing system has barely got off the ground, however, and it remains to be seen how effective it will be in curbing the activities of rogue clampers.

Another Defence Against Clamping

Obviously it is best to avoid clamping or removal if at all possible. However, if you are unfortunate enough to suffer this fate, there is one other very good defence you can use. The law says that, to be clamped legally, a driver must give his consent to this happening, otherwise the clamping is illegal. If there are no warning signs to indicate this, therefore, or the signs are not sufficiently prominent, the clamping may not be enforceable. This applies whether the enforcement activity has been undertaken by local authority or private clampers.

A case in the court of appeal in April 2000 against the London Borough of Waltham Forest showed how this principle can work in a motorist's favour. The appellant, Marina Vine, won her case because the judges accepted her argument that she had not seen signs indicating that unauthorised vehicles would be clamped. This case demonstrated that clampers must ensure that warning signs are sufficiently prominent to prove beyond doubt that motorist parking illegally have consented to the risk of clamping. If motorists say that they did not see the signs, the clampers cannot simply say 'tough' and demand payment.

This same principle was applied by a motorist called Peter Cartner in October 2002 to defend himself against an accusation of criminal damage. Cartner used a crowbar to remove two wheel clamps from his car which he had left in the car park of the Black Bull pub in Haworth, Yorkshire. There were signs stating that unauthorised vehicles would be clamped, but Cartner argued that he did not believe they would apply to him, as he knew the landlord. The magistrates accepted his argument that he did not think he was at risk, and therefore did not give his consent to being clamped. In fact, the landlord Cartner knew had actually left the pub, but Cartner said it was only after being clamped that he found out about this.

Obviously magistrates would require a good reason for accepting that you had not consented to the risk of clamping - but if you have one, there is a very good possibility you can get the charges refunded, or even (as in Mr Cartner's case) remove the clamps legally yourself.

BLUE BADGE SCHEME

We couldn't have a chapter on parking tickets and not say a word about the Blue Badge (BB) scheme, which provides a national arrangement of parking concessions for people with disabilities. Of course, we are not for a moment suggesting you use or apply for a badge fraudulently (moral arguments aside, there are big fines for doing this) - but if you have any health problems which affect your ability to get about, you may find that you are eligible. Parents of a disabled child over two and under 16 can also apply for a badge on their child's behalf.

Although there has been no noticeable increase in the number of severely disabled people in Britain, the number of BBs in circulation has risen steeply in the last fifteen years. Those on the higher rate of the mobility component of the Disability Living Allowance or receiving the War pensioners' Mobility Supplement automatically qualify for a BB. So do people using a motor vehicle supplied for the use of disabled people by a government health department.

The majority of BBs in circulation, however, are 'discretionary' ones issued by local authorities, usually on the recommendation of a doctor or occupational therapist (aT). Grounds on which badges have been issued include asthma, bronchitis, emphysema and heart problems, as well as mobility problems in the accepted sense. Between 1989 and 1999 the number of BB holders almost doubled, to a point where today there are over two million.

Blue Badge holders receive various parking concessions. Provided there are no loading restrictions in operation, holders can park for up to three hours on a yellow line (other than in parts of central London and some other towns and cities and on the road systems at some airports). Other concessions include parking spaces reserved for BB holders, and additional parking time at some meters. The scheme does not apply at off-street car parks, although many of these do of course have spaces reserved for disabled people.

It is illegal for an able-bodied person to use a BB and those caught doing so could have the badge confiscated and be fined up to £1000. However, it is perfectly legal for someone else to be driving so long as it is for the benefit of the badge-holder. This must, of course, be the case, as many BB holders are not able to drive themselves.

If you wish to apply for a Blue Badge, in England and Wales you should ask for an application form from the social services department of your local council, while in Scotland you should apply to the social work department. If you do not qualify automatically for a Blue Badge, you may also need to take an 'Additional Information' form to your doctor or a GP, so that he or she can certify that your health problems are sufficient to qualify you for a badge.

Appeals and Expenses

Finally, if you take a parking case to appeal, whether in court or at a parking adjudicator's hearing, you may well suffer some out-of-pocket expenses. A common question, therefore, is whether you can get these refunded if your appeal is successful.

In general, the award of costs is the exception rather than the rule. However, you should certainly ask for costs if you think you have grounds. Magistrates and adjudicators can - and do - award costs if either party in a case acts 'frivolously, vexatiously or wholly unreasonably'. Of course, this means the other side's costs could also be awarded against you if it is felt that your grounds for appeal are entirely without merit.

The question of the awarding of costs is addressed in Regulation 12 of The Road Traffic (Parking Adjudicators) (London) Regulations 1993. This reads as follows:

12. (1) *The adjudicator shall not normally make an order awarding costs and expenses, but may, subject to paragraph (2) make such an order -*

(a) against a party (including an appellant who has withdrawn his appeal or a local authority that has consented to an appeal being allowed) if he is of the opinion that that party has acted frivolously or vexatiously or that his conduct in making, pursuing or resisting an appeal was wholly unreasonable; or

(b) against the local authority, where it considers that the disputed decision was wholly unreasonable.

(2) An order shall not be made under paragraph (1) against a party unless that party has been given an opportunity of making representations against the making of the order.

(3) An order under paragraph (1) shall require the party against whom it is made to pay the other party a specified sum in respect of the costs and expenses incurred by that other party in connection with the proceedings.

Clearly, much depends on the interpretation of the words 'frivolously', 'vexatiously' and 'wholly unreasonably'. However, it would in our view be 'wholly unreasonable' if a council refused to cancel a ticket on a point of fact. An example would be where you have provided clear evidence that you were loading or unloading your vehicle, or that yellow lines were obscured by fallen leaves or snow. If such a case goes all the way to a formal appeal, you should certainly apply for costs.

CONCLUSION – Parking Ticket Action Plan

A lot of information has been imparted in this chapter, so we would like to sum up in the form of an Action Plan. Here is a concise, step-by-step guide to what to do if you are issued with a parking ticket.

1. If you are present at the time the ticket is issued, ask the warden or parking attendant the reason why, and make a note of what he (or she) says. Explain why you believe you were within your rights to park there and ensure that he writes this down in his pocket book. If the ticket is still being written out by a council parking attendant, you are within your rights to drive off before it can be issued.
2. As soon as possible, and in any event within 14 days, send a letter of appeal to the address on the ticket, stating clearly and simply why you believe the ticket should be cancelled. See the model letters in the Appendix for some ideas.
3. If your initial informal appeal letter is unsuccessful, write again. Sometimes the first letter merely receives a 'form' reply. A second letter has a better chance of being read by someone with the authority to cancel the ticket.
4. If your informal appeal/s are unsuccessful, you will receive a Notice to Owner (PCNs) or court summons (FPNs). You can still appeal, but only on specific legal grounds, e.g. 'the traffic order was invalid' or 'the contravention did not occur'.
5. If your formal appeal is unsuccessful, in the case of a PCN you will be given the opportunity to make a further appeal to the relevant parking appeals adjudicator. Even at this point, there is still every chance that your appeal will be upheld, as over 50% of appeals to the independent adjudicators are upheld.

Finally, to avoid getting more tickets in future, read the advice in this chapter carefully, and try to avoid parking:

1. Where it would cause obstruction or danger to other road users
2. If you cannot comply with, or don't understand, the regulations
3. On a pedestrian crossing or zig-zag area
4. At the side of a road that has a central double white line
5. On a clearway or 'red route' during operational times
6. On a Cycle or bus lane, or a tramway
7. In bays reserved for doctors, ambulances, disabled drivers and so on
8. Across the lines of a marked bay.

Good luck, and happy parking!

SPEEDING

Parking tickets are a pain in the backside, but speeding tickets are an altogether more serious affair. For one thing the fines can be far higher (a maximum of £1,000, or £2,500 if caught speeding on a motorway). For another, speeding is an endorsable offence which will result in penalty points being added to *your* licence. This in turn can lead to higher car insurance premiums, problems if *you* wish to hire a vehicle or apply for a job for which a 'clean licence' is required, and perhaps even

disqualification. The impact of the latter for those who depend on driving for their living can be catastrophic.

We do not, of course, condone the actions of motorists who put the lives of other road users and pedestrians at risk by reckless speeding. However, in 2003 TWO MILLION UK motorists were convicted of speeding - that's one every fifteen seconds. The great majority of these individuals were causing no danger to anyone. Many were caught by the 6,000 speed cameras now installed on Britain's roads - often in locations where their only obvious function is to collect revenue.

Further evidence of the ineffectiveness of speed cameras and speed traps in promoting road safety is presented by the accident statistics. For example, between 1997 and 2000, the total revenue raised each year by fixed penalty tickets and court fines *for* speeding more than doubled from £13,456,200 to £28,372,200. Yet in this time the number of people killed or injured on roads in the UK actually INCREASED, from 166,937 to 171,123. Contrary to popular wisdom, studies repeatedly show that speeding is NOT a major contributing factor in most accidents. In *fact*, a study by the government's own Transport Research Laboratory (TRL) found that by far the most common cause of vehicle-related accidents is driving without due care and attention, with speed being a definite causal factor only 696 of the time. Much more information about the TRL study can be found at the Speed Trap Bible website at www.speed-trap.co.uk.

From the mass of evidence such as this, it is clear that road safety claims are a handy smokescreen. Motorists are being targeted as a source of income by cash-hungry councils, police forces and the government, and speeding fines are the number one method they use to achieve this. In this chapter, we'll therefore be focusing on speeding charges and what motorists can do to avoid them or - if the worst comes to the worst - challenge them.

We'll begin by examining the various ways speeding is detected. These fall into two main categories: police action and speed cameras. We will look at each of these in turn.

POLICE DETECTION METHODS

Many different methods are used by the police to detect speeders. Some are more effective than others, but all have weaknesses which make them vulnerable to legal challenge. We'll explain what the different methods are, what are their weak points, and how drivers can avoid being caught by them or, if necessary, challenge them.

Radar

This is still the most popular method of speed detection among police forces, though it is gradually being replaced by laser (to be discussed shortly). Radar 'speed guns' are used by police to get a reading of a car's speed which can then be used in any prosecution.

Radar speed detectors are an application of a principle in physics called the Doppler Effect. Here's a brief explanation of how they work. When a speed gun is triggered, a beam of high frequency radar waves is directed outward from the gun. If the beam hits another object, it is reflected back into the gun.

If the object the beam hits is stationary, the reflected beam is at the same frequency as the original one. If the object is moving towards or away from the gun, however, the frequency is 'shifted' - lower if the object is moving away from the gun, higher if coming towards it. The computer within the speed gun compares the outgoing and incoming frequencies, and calculates the speed of the moving object from the difference between them. If the moving object is *your* car, and the reading shows *you* are exceeding the speed limit, *you* can expect to be prosecuted.

That's fine in theory, but in practice radar speed guns do not always work as they should. The following are just some situations in which a radar speed gun may give a false reading.

- . Like a torch beam, the beam sent from a radar speed gun spreads out in an directions the further it is from the gun. If another object in a gun's field of vision is moving faster than you, the device will show its speed rather than yours.

- The gun must be pointed directly at your car to give an accurate reading. If it is at an angle, the speed it shows will be incorrect (this is known as the cosine factor).
- Radar waves cannot pass through solid objects, so anything from the overhanging branch of a tree to a roadside bridge or telegraph pole can distort the reading.
- Wind and rain may also affect the accuracy of radar speed guns, causing them to display false readings.
- Electrical equipment operating nearby can also interfere with these devices' correct operation. This includes mobile phone masts, radio and TV transmitters, overhead power lines and electricity generators. Devices used on board vehicles (including police cars) such as CB radios, scanners and mobile phones can also create false readings.
- The arm movement of the police officer using the gun can also affect the reading shown. If he draws the gun rapidly and fires it, the speed of his arm movement will be added to the reading! Radar speed should also never be used from within a vehicle, as the metal and glass of the vehicle interfere with their correct operation. The movement of air from a windscreen demister or air conditioning can also affect the readings.

For all these reasons, you should never assume that this technology is infallible. If you are stopped by a police officer using a radar speed gun, therefore, never admit the offence because you think the reading on the device 'must' be correct.

of course, the police are *well* aware of these shortcomings too, and the potential for drivers to avoid prosecution by claiming possible errors in the way in which they were deployed. The Association of Chief Police Officers (ACPO) produces a national guidance manual which all police forces are meant to abide by. The main points are as follows:

- Any officer using a speed detection device must be properly trained in its operation. . The device must be operated by an officer on foot, not from a vehicle.
- All checks must be made from a position clearly visible to the public and oncoming motorists (no hiding behind bushes!). . A device must not be used when more than one vehicle is in the device's field of view.
- It must not be pointed at the road waiting for a vehicle to appear. Speed guns must only be used to corroborate an officer's belief that the vehicle in question is exceeding the speed limit.
- The device should be pointed directly at the approaching target vehicle, parallel to the road, eliminating any significant up or down tilt.
- Once a reading has appeared on the display, the radar device should be held steady, pointing along the road for a duration of not less than three seconds. At the end of this period the officer presses a trigger on the gun and the reading is then 'locked in' and may be used as evidence.

It follows from this that the distance an operator can see along a road must be enough to cover the initial observation of the vehicle and assessment of its speed, the distance the vehicle travels during its three-second check, and the vehicle's stopping distance when signalled to do so.

If a vehicle is travelling at 50 mph, the distance travelled in three seconds will be 67 metres and the stopping distance 53.3 metres, giving a total distance of 120.3 metres. Allowing another three seconds for the initial assessment gives a total distance of 187.3 metres. It follows that a radar gun should not be used when there is not at least 187.3 metres (in this case) of clear view along the

road.

Radar speed guns must also be professionally calibrated at least once a year and a certificate issued. In addition, both before and after they are used for any tour of duty, they are supposed to be checked against a police vehicle fitted with a certified calibrated speedometer at a speed compatible with the sites to be checked. An error margin of plus or minus two miles per hour is allowed. Performing this check requires two officers - one to operate the gun, one to drive the car - and the check must be recorded in the officers' notebooks. In practice there are many occasions when this check is not performed but the device is still used for speed checks.

If any of the above operating requirements have not been met, you may be able to argue in court that your speed has been misread. If you can introduce an element of doubt as to whether the correct procedures were followed, the magistrates may have no alternative but to find you not guilty.

Laser

The latest addition to the police's speed detection arsenal is the laser speed gun, otherwise known as Lidar (Laser Infra-red Detection And Ranging).

Laser guns do not use the Doppler Effect like radar guns. Instead, to measure a vehicle's speed, they time how long pulses of infra-red light take to travel from the gun to the vehicle it is being fired at and back again. The light reflects off any flat surface on the vehicle. By sending out a series of infra-red pulses at short intervals and comparing the distance the vehicle has travelled between times, the gun very accurately determines the vehicle's speed.

Laser speed guns are more expensive than radar models. However, their one big advantage (from a police point of view) is that they can be aimed with far greater precision. The light beam from a laser gun is much narrower than a radar beam, so laser guns are much less subject to interference from other vehicles or roadside furniture.

It's not all bad news for motorists, however. There are some factors which mean laser devices may not be as accurate as the authorities would like to believe.

- They must be aimed at a vehicle very accurately, requiring the skills of a marksman. The devices are also more complex than radar guns, leaving more room for human error. Operators therefore require more training, and lack of this may be sufficient to cast doubt on any conviction.
- Laser devices cannot be used through glass, as this will distort the readings. If an officer has 'lasered' you through his patrol car window, therefore, the case should be thrown out of court.
- Lasers cannot be used properly in rain, snow, fog or other conditions of reduced visibility. If the operator cannot see your car clearly, he will not be able to aim the gun precisely enough. Note that lasers CAN be used at night, however, unlike radar guns.
- Like radar guns, lasers must be professionally calibrated at least once a year and a certificate issued. And again like radar guns, both before and after they are used for any tour of duty, they should be checked against a police vehicle fitted with a certified calibrated speedometer at a speed compatible with the sites where they will be used.

If you are stopped by a police officer using a laser speed gun, therefore, it is very important to note carefully all the circumstances applying at the time to see if any of them may provide grounds for appeal (we will go into more detail about this a little later). However, there are some precautionary measures you can take to reduce the risk of detection in the first place.

Go for a sleek, low-slung, aerodynamic car. Such cars offer fewer flat surfaces for a police officer to aim a laser at.

Choose a dark coloured vehicle, e.g. black, dark blue or dark green. Such colours are harder to target, especially in overcast conditions, and do not reflect the laser light as well.

Tilt your number plate so that it is pointing upwards or downwards. Many operators aim at the number plate as it reflects better than a vehicle's bodywork, but if it is tilted away the beam will be deflected into the air or onto the road.

Powerful driving lights can also help you to avoid detection. Operators are told not to point their lasers at bright lights, as this can burn out their circuitry!

Vascar

Vascar stands for Visual Average Speed Computer And Recorder. These devices are essentially glorified stop-watches. They use the formula $\text{speed} = \text{distance} \div \text{time}$ to work out the speed at which a vehicle is travelling. For example, if a car takes 1 minute to travel a measured distance of half a mile, its average speed will be $0.5/1.0 = 0.5$ miles per minute or 30 miles per hour. Because of this, these instruments are sometimes also referred to as time/distance devices.

Vascar units are mounted in a patrol car's console, allowing the officer easy access to the controls (they can also be fitted on motorcycles). The devices may also be linked to video cameras, so that a visual record is preserved of any alleged offence.

Two main methods currently exist for using Vascar units as speed measuring devices.

Pre-fed Distance Check

This approach, the more common of the two, requires the police vehicle to first travel between two reference points, turning the distance switch on at the first point and off at the second. This 'pre-fed' distance, set into the device, must be greater than 0.125 miles but less than or equal to 1 mile. The police vehicle then parks in a position where the two reference points can be clearly seen by the operator.

As a target vehicle passes the first reference point the time switch is turned on, and when it passes the second reference point it is turned off. As the device already knows the distance between the reference points, it can then calculate the vehicle's speed. Providing the distance information is not cleared from the device, the police vehicle can remain parked and, by clearing the time information only, another target vehicle can be checked.

Typical scenarios for this method are patrol cars parked on humps of the hard shoulder or bridges of motorways and dual carriageways, and adjacent to the Vascar landmarks, one of which will be usually be a white square painted on the road surface.

Following Check

This check is carried out when the police vehicle is following a car suspected of speeding. It can also be used when the police vehicle is travelling in front (in other words, the target vehicle is approaching from behind at a speed which the officer believes is excessive).

The method works as follows, As the target vehicle passes the first reference point, the time switch is turned on. As the police vehicle passes the same point, the distance switch is turned on. As the target vehicle passes the second reference point, the time switch is turned off,

The device now knows the time the target vehicle took to travel between the two reference points. As the police vehicle passes the second reference point, the distance switch is turned off. The device now knows the distance between the two reference points that the target vehicle has travelled. From this information it can therefore calculate the vehicle's speed.

The courts generally accept that Vascar is an accurate method of speed detection, so there is little point in challenging its legitimacy. It does have its limitations, however.

. Using these devices accurately requires skill and visual acuity, as well as good reaction times. Officers using them must therefore be trained to a high standard, and have their abilities tested and certified.

. It also necessary to use the device in well-lit areas and good weather conditions. They should not be used in fog or snow.

. Officers using the 'following' method must be careful to avoid a charge of acting as *agent provocateur*, i.e. enticing the driver in front of them (or behind them) to break the speed limit.

. As with radar and laser devices, Vascar units must be professionally calibrated at least once a year and a certificate issued.

They should also be checked before any tour of duty, and afterwards if they have been used to detect an offence.

As with all of these detection methods, motorists stopped for an alleged speeding offence detected by Vascar should make a note of all the relevant circumstances, as if any of the above requirements have not been met, you may have good grounds for appeal. There are also some precautionary steps you can take to avoid being caught in the first place.

. Always be on the lookout for police cars which may be using Vascar. They may be marked or unmarked, in front of you or behind you.

. You can often tell where Vascar is in use by marks such as circles, squares or lines painted on the road. However, note that it is not essential for police to use such marks - they may also use bridges, lamp-posts or other roadside objects to operate Vas car.

. Unlike radar and laser speed guns which give an absolute measure of your speed, Vascar shows your average speed over a set distance. If you become aware that a check is being made on you, therefore, you can reduce the average speed which will be shown on the Vas car unit by braking. Don't brake too sharply, however, or you may be accused of dangerous driving (a much more serious offence).

Pacing

This is perhaps the most basic method of speed detection. The police car follows a vehicle suspected of speeding at a constant distance behind. By checking their own speedometer, they can see how fast the target vehicle is travelling.

The best way to avoid being caught this way is to stay aware of the vehicles around you, and whether any of these might be a police car pacing you. Most often the pacing vehicle will be behind your car, but it could be in front of you, or even beside you. The correct procedure for pacing is as follows:

1. The police car takes up a position to the rear of the target car, say around 60 yards behind. 2. The police car maintains that distance, neither catching up nor dropping back.
3. The speed of the target car is matched for a distance of around 1/4 of a mile (however, there are no set minimum or maximum distances for pacing).
4. No other vehicle must interfere with the check, e.g. by coming between the police car and the target vehicle.

If this procedure has not been followed correctly, you should draw it to the attention of the court. However, perhaps the best defence open to the driver is to query the calibration of the police car's speedometer.

All road traffic patrol cars are fitted with super-accurate speedometers which measure in increments of 1 mph. Most police forces require that traffic patrol cars have their speedos professionally calibrated once (sometimes twice) a year. In addition, the officers are required to check the calibration themselves before and after each patrol, and make a note of the calibration check in their pocketbooks.

You can try to obtain the calibration records for a vehicle, perhaps by asking for them to be produced in court. The police often get behind with their paperwork, and if you can throw sufficient doubt on whether the equipment has been properly calibrated, the court may have no alternative but to find in your favour. This is further discussed later in the chapter.

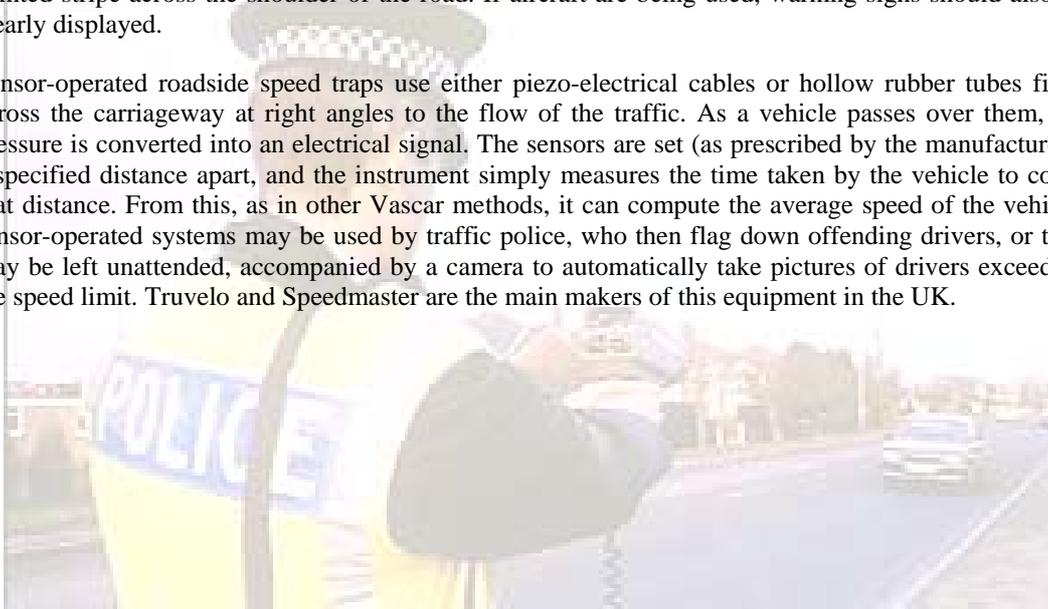
Finally, only road traffic patrol cars have these special speedometers. If you are stopped by a non-traffic officer and told that he followed you and you were speeding, simply ask when his speedometer was last calibrated. It is likely he will let you off, since normal police (beat) cars do not have certified speedometers.

Other Methods

A range of other methods is used by the police to detect speeders, but most are applications of the Vascar time/distance method. The two you are most likely to come across are aircraft and sensor-operated roadside speed traps.

In some areas aircraft are used to detect speeding motorists. The method of speed calculation is normally a Vascar approach. An observer in the aircraft measures the time it takes a vehicle to travel between two pre-determined points on the road, computes the speed, and radios a chase vehicle. You can usually identify the points at which the aircraft starts and stops measuring by watching for a painted stripe across the shoulder of the road. If aircraft are being used, warning signs should also be clearly displayed.

Sensor-operated roadside speed traps use either piezo-electrical cables or hollow rubber tubes fixed across the carriageway at right angles to the flow of the traffic. As a vehicle passes over them, the pressure is converted into an electrical signal. The sensors are set (as prescribed by the manufacturers) a specified distance apart, and the instrument simply measures the time taken by the vehicle to cover that distance. From this, as in other Vascar methods, it can compute the average speed of the vehicle. sensor-operated systems may be used by traffic police, who then flag down offending drivers, or they may be left unattended, accompanied by a camera to automatically take pictures of drivers exceeding the speed limit. Truvelo and Speedmaster are the main makers of this equipment in the UK.



What To Do If You Are Stopped For Speeding

We have now looked at the main methods a police officer may use to detect if you are speeding, and offered some suggestions on how to reduce the risk of being caught by them. But what should you do if the dreaded flashing blue lights appear in your rear view mirror and you are forced to pull over? Read on for our strategy to reduce the risk of prosecution (or, if this does occur, prepare the ground for an appeal).

1. Check which type of officer has stopped you: a normal beat officer (black hat, black uniform) or a traffic patrol officer (white hat, green overcoat). A beat officer is much more likely to let you off with a warning: for one thing he is unlikely to have solid proof that you were speeding, and anyway he won't want the extra paperwork. On the other hand, it's a traffic cop's job to catch speeders, so the likelihood of getting a ticket from him or her is much greater.
2. Try to remain calm. Stop the car in a safe place and remain in the driving seat with your hands on the steering wheel as the officer approaches. Don't make any sudden moves or reach into your coat pocket - police officers are becoming understandably more nervous in case drivers are carrying knives or even

firearms. If you stay cool and keep your hands visible, you will take a lot of the heat out of the situation.

3. Don't jump to conclusions about why you've been pulled over. It could be for speeding, or then again it may be that one of your tail-lights has blown. Don't talk yourself into a speeding ticket, but wait for the officer to explain why you have been stopped.

4. Be polite to the officer, and certainly be respectful. Remember, he is only doing his job, and may well wish he was somewhere else too! Police officers in the UK have a lot of discretion in how they pursue an alleged road traffic offence, from reporting you for prosecution to letting you off with a warning. Your attitude when you are pulled over can have a considerable bearing on whatever action the officer decides to take.

5. Do not lie, but if you have a genuine excuse for speeding, use it. Being late for a meeting or a job interview won't work, but rushing your wife to hospital to give birth (though not a statutory defence to a speeding ticket) probably will.

6. Avoid being cocky, but never admit an offence at the roadside. Remember that, when speaking to the police, anything you say really can be taken down and used in evidence against you. If you are sure you did not commit the alleged offence then say so, and stick to your story. On the other hand, if you're not sure whether you committed the offence or not, avoid saying anything that might incriminate you. A good approach is to tell the officer you thought you were going under the speed limit, but avoid getting into an argument with him.

7. Another reason for never admitting guilt at the roadside is that the officer may not have legally watertight proof that you were speeding. He may be hoping you will admit your guilt, accept the ticket and make life easy for him. Don't do this! If you don't admit to speeding and he knows he can't prove it, he may have no alternative but to let you off with a warning.

8. If the officer decides to issue you with a fixed penalty ticket or report you for summons, ask what offence it is for, but don't say or do anything else which could harm your defence later. Don't refuse to accept the ticket, or refuse to give your name and address. If you do, you could be arrested and held at the police station. By accepting the ticket and co-operating with the officer you are not admitting guilt.

9. However, do NOT hand over your driving licence, even if you have it with you (unlike some countries, there is no legal requirement in the UK to carry your licence with you). If you tell the officer you do not have your licence to hand, he or she will tell you to present it a police station within seven days, which you should do. If you hand over your licence at the roadside it will be taken as an admission of guilt - but if you present it later at a police station, you are just complying with the law.

10. Take detailed notes of all the facts relating to the situation, including:

the time, date and location;

- . the position of any other vehicles (especially if they may have affected the reading on the speed detector);
- . the weather conditions and visibility;
- . what the officer said to you, and what you said in reply;
- . the officer's collar number and their vehicle registration number; and
- . a brief physical description of the officer, so that you recognise him in court (a photo would be ideal).

Make these notes at the time rather than later. In court you may be asked if your notes were made at the scene. You need to be able to answer 'yes' to this.

11. In addition, if a radar or laser speed detector was used, ask to look at the device and check that it displays the speed you were stopped for. Take a note of the make, model and serial number. If a laser speed gun was used, note down the position of the sun and any other bright lights which may have affected the reading. Ask the officer when the device was last calibrated, and make a note of his reply. This information *may* be crucial if you decide to contest the charge in court.

By following this process, you will minimise the risk of being issued with a ticket. And, if a ticket IS issued and you decide to challenge it, you will have avoided harming your case and prepared the ground for your defence.

Defending Against A Speeding Charge

We have referred above to some approaches you may take in defending yourself against a police speeding charge, depending on how the alleged offence was detected. But if you are nevertheless charged, you will need to decide what line of defence to take.

There are two main ways that a police officer may decide to prosecute a speeding motorist. First, they may issue a verbal or written Notice of Intended Prosecution (NIP), which means that in due course you will receive a summons to attend a court hearing.

Alternatively, you may be offered a fixed penalty notice (FPN). For speeding, these normally entail a £60 fine and three penalty points being added to your licence. If you receive an FPN, you have 28 days to decide whether to accept it or contest the ticket in court. If you know you were speeding and are offered an FPN, you should certainly consider accepting it, as both the fine and the penalty points awarded against you are likely to be higher if you are found guilty *by* a court.

Whether you receive an FPN or Notice of Intended Prosecution depends on a range of factors, including the extent to which the officer believes you were over the speed limit (see the table in Chapter 2), local prosecution policies, your attitude, and (possibly) whether the officer had a good lunch or not. If you believe that your offence could have been dealt with by a FPN rather than a summons, you can certainly ask the officer to consider this.

. Note though that if you already have nine or more points on your licence, you cannot be offered an FPN, as the three additional penalty points would then take you over the limit for automatic disqualification. Any such case has to be dealt with by a court.

Either way, your first step should be to examine any documentation you are given at the scene carefully. Look for mistakes on it, such as a wrong time, date or location. If there are any, you should make a note of them for possible use in court.

If you are given an FPN and have not handed over your driving licence at the scene (as we recommend), you will need to present your licence at the police station of your choice within seven days. If you have decided to accept the FPN, simply hand over your licence, for which you will be given a receipt. Your licence will be returned in due course with the endorsement.

If you decide to contest the FPN, you should still take your licence to the police station, but explain that you are not accepting the ticket and wish the matter to be dealt with by a court. The details of your licence will be recorded and your licence returned to you. The ticket is now 'unsubstantiated', and the matter will eventually come to court. You will receive a summons giving the date and time of the hearing in due course.

If you do decide to challenge the charge in court, you should start gathering evidence for possible use in your defence. As soon as possible, return to the place where you were stopped and take photos, including any relevant road signs and markings. This is discussed in more detail in Chapter 6. However, it is worth making the point here that if you have any grounds for thinking that the prosecution is unsafe or unfair, it may well be worth pursuing it in court, especially if you have not been given the low-cost FPN option.

SPEED CAMERAS

These are the other main method used to detect and prosecute speeding motorists. Speed cameras came to the UK in 1992. There are now around 6,000 installed on Britain's roads, with the greatest concentrations in London and the West Midlands. They have proved

hugely efficient in extracting fines from British motorists, though (as mentioned at the start of this chapter) the contribution they make to road safety is far more debatable.

The speed cameras most widely used in Britain are Gatsometers, or Gatsos for short. These are the large grey boxes which have become such a familiar sight along Britain's roads (though some are now being painted other colours following criticism that they were not providing a sufficiently visible deterrent). Gatsos are named after their inventor, the former Dutch racing and rally driver Maurice Gatsonides. They are manufactured in the Netherlands by Gatso BV, a company originally formed by Gatsonides.

A speed camera installation consists of two parts:

1. A radar gun projecting a narrow beam across the road and using this to measure the speed of every vehicle (in some of the latest units, speed is measured instead by an inductive loop under the road).
2. A camera unit, which takes flash pictures of every vehicle exceeding the speed limit. In Britain two pictures are taken, usually half a second apart, to provide further evidence of the speed at which the vehicle was travelling. The camera points in the direction of motion and photographs the vehicle from behind. Forward-facing cameras are not generally used in this country.

On the road beside each Gatso you should see a series of white lines a few yards apart, at right angles to the kerb. The function of these is to confirm the speed shown on the camera's radar. By comparing the position of the vehicle in the first photo with its position in the second, it is possible to work out exactly how far the vehicle has travelled during that half-second, and from this the speed at which it was going. If you are speeding this provides additional confirmation, though if the radar is faulty (as we shall see shortly) it may also provide the evidence you need to prove your innocence. Note, however, that these marks do not have to be used on single carriageway roads or with mobile speed cameras.

Most current Gatsos are the so-called 'wet film' type. They are loaded with cartridges of film consisting of 800 frames. Once a cartridge has been fully exposed it must be removed for processing, and the unit will be unable to function until a new cartridge is installed. However, technology is moving on all the time, and the latest generation of Gatsos have digital cameras which do not require film, along with optical character recognition (OCR) software which analyses images for details of vehicle registrations. In the latest fully electronic systems, cameras are linked to remote computers by telephone or ISDN lines. Speeding tickets can be printed remotely a few seconds after an offence has been observed - linking with vehicle registration databases to match the owner against the registration number, and printing and mailing the prosecution documents automatically.

Gatsos are expensive to buy and maintain, and the 'wet film' type need to have their cartridges changed regularly. For this reason, only a minority of speed cameras are actually working at anyone time. According to Serco, the official distributors and installers of Gatsos, the figure is around one in eight, though the proportion is higher in London and Scotland.

Of course, although a camera may not be operational one day, the next day it may be loaded with film. By constantly changing which cameras are working, the police aim to sow the seeds of uncertainty in motorists' minds and ensure that even dummy cameras have a deterrent value. Contrary to some 'urban myths', there is no easy way to tell which speed cameras are dummies and which are real, and both real and dummy cameras are equipped with flash,

Avoiding Speed Cameras

The best way of avoiding a speed camera ticket is, boringly enough, not to speed as you go past one. There should be signs warning of speed cameras and white lines along the road, though this is not always the case in practice,

There are also websites which list speed camera locations, so if you are going to an area unfamiliar to you, it *may* be worth checking these before you set out. Two such sites are www.ukspeedtraps.com and www.speedcamerasuk.com. Note that these sites can only list fixed installations, however. They are unlikely to be able to warn you of mobile speed traps.

Apart from this, to some extent you *may* be able to protect yourself from speed cameras by making your numberplate harder to read. Dirty plates can make it more difficult for a camera to read your number, though this is an unreliable method for avoiding detection (and the police have image enhancement tools which can make such numbers clearly visible again).

There are also products you can buy which promise to make your numberplate invisible to speed cameras. An example is 'The Protector', made by a Canadian company called Ontrack. This is a plastic shield which installs over your numberplate and bends light so that your registration can be seen from directly behind but not - in theory anyway - at the angle speed cameras operate from. **We must state that we do not recommend such products.** In our experience they are unreliable, and if you are spotted using them by the police, you may be booked for attempting to pervert the course of justice. If, nevertheless, you would like more information, one website to try is www.babesnbass.co.uk/glate.htm.

Another option far less likely to land you in court is an on-board alert system; these are further discussed shortly. And finally, you might simply have an illegible, broken or partly obscured numberplate. Perspex plates are easily broken *by* accident, or you might have inadvertently covered them with an 'L' plate, a towing bar or a bit of rag or tarpaulin protruding from the boot. Driving with an illegible numberplate is, of course, an offence, but it is unlikely to attract a fine of up to £2,500 and possible disqualification from driving.

How Fast Can You Go?

Speeding in an absolute offence, so in theory you could be prosecuted and convicted for going at 31 mph on a road with a 30 mph limit. However, such a 'zero tolerance' policy would be hugely unpopular with motorists and be very difficult to enforce, as there is bound to be a margin of error in any measuring device.

The guideline currently issued by the Association of Chief Police Officers (ACPO) is not to prosecute motorists unless they are recorded as going at 10% plus 2 mph over the posted speed limit. That means the usual threshold at which a speed camera will be set is as follows:

20 mph limit - 24 mph 30 mph limit - 35 mph 40 mph limit - 46 mph 50 mph limit - 57 mph 60 mph limit - 68 mph 70 mph limit - 79 mph

These are only guidelines, however. The actual thresholds are sometimes set higher than this, thus reducing the number of motorists caught. The police can adjust the setting at any time, though, so you should not assume that because you have got away with driving past a speed camera at 10 mph over the limit in the past, this will always be the case in the future.

There is also a very good chance that in future the thresholds will be lowered. In December 2003 Richard Brunstrom, the Chief Constable of North Wales and head of road policing at ACPO, said that he expected the thresholds to be lowered to around 10% of the limit, meaning that a motorist caught driving at 33 mph in a 30 mph zone could expect to be prosecuted. Such a move could triple the number of motorists receiving speeding tickets.

Defending Against a Speed Camera Ticket

If you are caught by a speed camera, generally the first you will know of it is when a Notice of Intended Prosecution (NIP) arrives in the post. Legally this must be within 14 days of the date of the alleged offence, and the police also get an allowance of a couple of days for the post to deliver them. So if it's more than 17 days since you were flashed they are too late to prosecute you, unless you were driving a company car, hire car or someone else's car, in which case they are allowed more time to track you down.

The NIP is sent to the registered keeper of the vehicle (the person named in the logbook, also known as the vehicle registration document). The registered keeper is responsible for providing details of who the driver of the vehicle was at the time the alleged offence occurred. The registered keeper can be prosecuted if they refuse to name the driver.

If you receive a Notice of Intended Prosecution, you have to respond within 28 days, either by confirming that you were the driver on the date of the incident, or by nominating another person as the new or previous keeper of the vehicle at the time, or by nominating someone else.

In most instances, if you admit that you were the driver, you will be invited to accept a 'conditional offer'. This gives you the opportunity to avoid going to court by paying a fine and receiving a fixed number of points on your licence (for speeding it is usually a £60 fine and 3 penalty points). You will be given a time limit in which to accept the offer. If you decline or ignore the conditional offer, or the circumstances are of a more serious nature, the matter will be dealt with by a court. In addition, if you already have more than 8 penalty points on your licence, the matter will have to be dealt with by a court, as the additional penalty points will take you over the 12-point limit for disqualification. In a moment we will look at how best to proceed if you wish to contest the allegation.

Although the police and courts place great faith in speed cameras, these devices can and do produce errors.

. Objects can act as radio mirrors and reflect signals from moving vehicles outside the area of coverage. For example, a signal could be reflected around a bend in the road and measure the speed of a vehicle not visible to the camera.

. Large vehicles such as lorries and caravans are well known to produce false readings, especially if they are vibrating excessively. If they cause roadside objects to vibrate as they pass, this can also trigger false readings.

. Tests have shown that loud noises or music can also produce inaccurate results. If you turn your car radio up loud, it is theoretically possible that a speed camera could record your speed as over 100 mph, even if you are actually going at a steady thirty.

. Youths have also been apprehended spinning highly polished tin cans and other metal items in front of speed cameras, which mistake this for a speeding vehicle and 'flash' anything which may be passing at the time.

. Even birds can trigger a speed camera! One in Germany filmed a duck breaking the speed limit. It was registered as flying at 24 mph in a 19 mph zone. The bird was flying just above ground level in Gluckstadt when it set off the speed camera.

For all these reasons, if you receive a NIP from a speed camera and do not believe that you were travelling at the speed indicated, you should proceed as follows.

1. Write as soon as possible to the prosecuting authority on the ticket requesting BOTH copies of the photograph. You should also ask how far apart in time the pictures were taken - it will probably be half a second, but not necessarily. Police authorities are required under the Criminal Procedures and Investigation Act 1996 to provide the photos, or at least give you the opportunity to view them, but some will not release copies of photographs unless you state that you intend to contest the allegation. The Appendix includes a model letter you can use when applying.

2. When you have the pictures available, look at the lines that are painted on the road and use them to work out how far your car travelled in the time it took to take both pictures. To do this you will need to revisit the camera site and carefully measure the distance between the lines. For example, if the lines are two yards apart and your car has moved a distance of three lines in the two photos, this shows it has moved $3 \times 2 = 6$ yards in that time.

3. You will now know how far your vehicle moved in the time period, and from this you can calculate your speed using the formula below:

$$S = (3600/T) \times (D/1760)$$

Here S is your speed in mph, D is the distance moved by the car in yards, and T is the time between flashes in seconds.

So if, for example, your car has moved 10 yards between the first picture and the second half a second later, you can work out that you were travelling at $(3600/0.5) \times (10/1760) = 40.9$ miles per hour.

4. If this figure matches the speed you are accused of, it would appear to be a valid accusation. If it is less, however, you should certainly write and point this out. Incidentally, if your vehicle has a tachograph and this shows you weren't speeding, you should submit the record from this. If this still does not result in charges being dropped, you should take the case to court and present your evidence there, ""

Other Speed Camera Defences

There are several other defences which can be used in response to a speed camera NIP.

1. Identity

Speed cameras take photos from behind, so that the driver's face is not visible. This means you may be able to have a speeding charge quashed if you can show that you genuinely do not know who was driving the vehicle at the time of the alleged offence.

The celebrities Neil and Christine Hamilton used this defence in 2003 to dodge a speeding ticket. Their vehicle was caught by speed cameras on the M62, travelling at 62 mph in a section with a temporary limit of 50. As the owner, Christine Hamilton received the Notice of Intended Prosecution, but she claimed she could not remember who was driving the car at this time, her or Neil, and the photograph was inconclusive. The case was thrown out at Manchester Magistrates Court.

If you plan to use this defence, it is a good idea if you have more than one designated driver on your insurance policy (to show that it could have been any of these people driving the car on the day in question). Note that it is an offence not to make your best efforts to establish the identity of the driver, and if the court finds you guilty of this the penalties could be worse than for a speeding offence. However, if there is genuine uncertainty, the Hamiltons' example shows that this can be a highly effective line of defence.

2. Camera Incorrectly Sited

Another line of defence you can use is that the camera was not sited and used in accordance with the Department for Transport's guidelines. According to these, fixed speed cameras should only be installed in the following locations:

- . The site must be between 400 and 1500 metres in length,
- . The number of injury accidents in the preceding three years is eight or more,
- . The number of fatal/serious accidents in the preceding three years is four or more.
- . The 85th percentile speed is greater than ACPO guidelines (the 85th percentile speed on a road is the speed at or below which 85% of vehicles travel on it),
- . At least 20% of drivers are exceeding the speed limit (excluding congestion periods),
- . The site conditions are suitable.
- . No other speed reduction methods are appropriate, e.g. speed humps.

There are also guidelines about where mobile speed cameras can be used. These are a little less rigorous:

- . The site must be between 400 and 5000 metres in length.
- . The number of injury accidents in the preceding three years is four or more.
- . The number of fatal/serious accidents in the preceding three years is two or more.
- . The 85th percentile speed is greater than ACPO guidelines.
- . At least 20% of drivers are exceeding the speed limit (excluding congestion periods),
- . The site conditions are suitable.

. No other speed reduction methods are appropriate.

There are also rules concerning the exact location and appearance of speed cameras. The following are taken from the Department for Transport website (www.dft.gov.uk).

Prominence of fixed site enforcement cameras (including digital cameras): The camera housings in most circumstances should be yellow. No alternative colours will be accepted. However, if for any reason highway authorities consider that there are special circumstances, for example in areas of outstanding natural beauty, then exceptions can be considered.

Visibility of fixed site enforcement cameras (Including digital cameras): All camera housings (existing and new) should be visible to road users and not obscured behind bridges, signs, trees or bushes. The minimum visibility distance should be 60 metres where the speed limit is 40 mph or less and 100 metres for all other limits.

Visibility of mobile enforcement sites: Camera operatives at the mobile camera sites should wear fluorescent clothing and abide by all Health and Safety requirements. Vehicles should be clearly marked as camera enforcement vehicles with reflective strips (uniquely identifying them as speed camera enforcement vehicles). Covert operations can in exceptional circumstances be allowed but must be recorded by the partnership.

Signing: Camera warning and speed limit reminder signs must be placed in advance of fixed or mobile speed enforcement taking place. Ideally these should be placed within 1 km of fixed camera housings and at the beginning of a targeted route for mobile enforcement sites. Signs must only be placed in areas where camera housings are present or along routes where mobile enforcement will be targeted.

Communications: The location of both fixed and mobile cameras should be well publicised via local websites, public sector announcements on radio stations and in local newspapers.

sign design: signs must comply with those specified in Traffic Signs Regulations and General Directions or specially authorised by DfT.

Site review: Each site must be reviewed on an annual basis to ensure that conditions on prominence, visibility and signing have not changed or do not require alteration.

So there are potentially many ways in which so-called safety camera partnerships may be in breach of government guidelines. We must, however, caution that they ARE guidelines rather than legal requirements. Even if a speed camera has been incorrectly sited, you can still be convicted of speeding based on its evidence.

If you can show that the speed camera which caught you does not conform to OfT guidelines, this can and probably should form part of your defence (and will have the additional benefit of causing the authorities considerable embarrassment). However, we would not recommend contesting a speeding allegation solely on this basis.

3. The Right to Silence

Common law in Britain gives everyone the right not to incriminate themselves, and this right is further enshrined in Article 6 of the European Convention on Human Rights (ECHR).

However, a motorist receiving a NIP from a speed camera is required to reveal the identity of the person driving the car so that they can be prosecuted (remember that Gatsos, by far the most commonly used speed cameras, only take photos from behind, meaning it is often impossible to identify the driver). Some motorists have therefore refused to provide this information, citing their right under common law and Article 6 of the ECHR to remain silent so as not to incriminate themselves.

This defence was given added weight by a high-profile case in 2003 involving the footballer Dwight Yorke. Yorke had received a NIP from a speed camera, but his agent completed the form on his behalf

and returned it unsigned. Yorke was initially convicted by magistrates, but at appeal the conviction was quashed, as the judge ruled that the unsigned NIP was inadmissible as evidence. A number of other motorists, were subsequently acquitted using the same argument.

Unfortunately, however, a case in the High Court in London in March 2004 appears to have closed this loophole, at least for the moment. The defendant, Idris Francis, was challenging his conviction for failing to sign a NIP. Seved on him for speeding. His barristers argued that his conviction should be quashed on a point of law - that there was no legal obligation for him to sign the form. The judges, however, rejected this argument, and upheld the conviction. .

As the High Court is currently the most senior court to have ruled on this issue, as matters stand it appears you do have to sign the NIP when it arrives, failing which you will be summonsed to appear for failing to identify the driver as required by section 172 of the Road Traffic Act 198B. If you are convicted, you will receive a fine and points on your licence, just as you would for a speeding conviction.

At the time of writing Idris Francis is appealing to the European Court of Human Rights. He is being supported by the Association of British Drivers, and you can read the latest news about this on their website at www.abd.org.uk/righttosilence.htm. Obviously much now depends on the outcome of this case, and if you are considering using a 'right to silence' defence we would strongly recommend speaking to a solicitor rather than attempting to fight it entirely on your own.

ALERT SYSTEMS

Since a judgement by the Queens Bench Divisional Court in January 1998 confirmed that the detection of speed cameras is a lawful activity, an ever-growing range of vehicle-based alert systems has become available in the UK. Systems fall into two main categories, radar/laser detectors and GPS satellite-based systems, each of which has its strengths and weaknesses. Let's look at each in turn.

Radar/Laser Detectors

As the name suggests, these work by detecting the radiation emitted by speed guns and cameras. Most modern systems can detect both radar and laser radiation, and provide a visual and/or auditory alert when this is present. The particular strengths of this method are as follows:

- . Relatively inexpensive.
- . Works with mobile as well as fixed installations.

Unfortunately they also have a number of weaknesses:

- . Cannot detect time/distance speed measuring devices such as Vascar and Truvelo.
- . Little advance warning - in particular, if a laser beam is detected, you will almost certainly already have been caught. . Not 100% reliable - may not always be triggered, and may also issue false alerts due to radiation from other sources.

If you decide to buy a radar/laser alert system, it is important to buy one designed for UK roads which detects K and (less importantly) Ku band radar frequencies. Other countries use different frequencies such as X band, but in Britain X band is used for other purposes such as automatic doors and mobile phones. A detector set to this frequency in Britain will therefore issue many false alerts.

GPS Alert Systems

GPS stands for global positioning satellite. GPS alert systems work by calculating your vehicle's exact position based on readings from at least three satellites orbiting the globe. The unit then compares this with a database of all known permanent speed camera locations, and issues an alert when you are approaching one. GPS systems have the following advantages:

. Can give accurate warning of all fixed camera locations up to two miles in advance. . Many provide extra features and functions to assist the driver, e.g. route planning. . The user can generally choose the amount of warning given, as well as viewing the speed limit of the road being travelled on the system's LCD display.

. Alerts can be set to sound only when you are exceeding the speed limit if you wish. . False alerts are extremely rare. Their drawbacks are:

. More expensive than radar/laser systems.

. Will not warn you of mobile speedtraps or new ones which have not yet been added to the system's database.

Because of their many advantages, GPS alert systems are becoming increasingly popular. Which system and make is best for you, however is likely to depend on (a) your typical driving routine and (b) your budget.

. Drivers who regularly travel medium to long distances to a variety of destinations may be best suited by a GPS system. This will give them reliable alerts regarding speed cameras wherever in the UK they may be.

. On the other hand, drivers who mainly stay in their local area and know the positions of all the fixed installation cameras may be better off with a radar/laser alert, which will also give them warning of mobile speed traps.

. Likewise, drivers who tend to follow the same route much of the time may already know the locations of fixed cameras along this route, and may therefore be better off with a radar/laser system.

. Lower mileage motorists who sometimes drive on unfamiliar roads (holidays, weekend breaks, visiting friends and family, etc.) may benefit from either a radar/laser detector or a GPS alert system. If you want extended alert ranges then choose a GPS-based system, while if you only want a basic warning of cameras a radar/laser detector will suffice. If you are not limited to a budget, however, you may be best advised to buy a GPS-based system.

As mentioned above, both radar/laser detectors and GPS alert systems are legal in the UK, as the government believes their use contributes towards road safety. However, this does NOT apply to devices marketed as laser defusers or jammers, which prevent the (police) operator of a laser gun from obtaining a reading of the your vehicle's speed. These devices are illegal to use in Britain, as they prevent the police from carrying out their speed/safety enforcement role. Penalties for use vary from area to area, but may include fines, points and even imprisonment.

Alert systems may be bought from specialist motoring stores or via internet sites such as www.sgeedcamerasuk.com and www.radarsdirect.co.uk. The web sites mentioned also include descriptions of the leading brands and other useful information.

OTHER TYPES OF SPEED DETECTOR

Although the great majority of speed camera convictions are currently obtained via Gatso-type cameras, other types are also used. The most common are SPECS, Truvelo and Peek.

SPECS

SPECS is a system based on state-of-the-art digital cameras with automatic numberplate recognition. The system is also referred to as Speed Violation Detection Deterrent (SVDD).

The SPECS system consists of two digital cameras at fixed installations a set distance apart. Your vehicle's numberplate is photographed as you pass each one, and by checking the time it takes you to get from one camera position to the second, a central computer can work out your average speed. The system automatically reads and records vehicle registration numbers, and can issue speeding tickets without any human intervention.

SPECS cameras use infra-red light, so you won't see the traditional flash. The cameras are, however, positioned at least 200 metres apart, giving you some chance to slow down and reduce your average speed if you spot one of them. Because SPECS doesn't use radar, a radar/laser alert system will not detect them. A GPS-based system should provide an advance warning, however.

SPECS is currently in use in permanent sites in Nottingham, Gloucester and Northamptonshire, and in temporary locations in Cheshire, Kent, West Midlands, West Yorkshire and Greater Manchester. Temporary SPECS systems are also increasingly used in motorway roadworks where speed restrictions are in place.

Truvelo

Truvelo has already been referred to earlier in the chapter. This system detects speeding drivers by means of sensors in the road. As a vehicle passes over these, the pressure is converted into an electrical signal. The sensors are set a specified distance apart, and the device simply measures the time taken by the vehicle to cover that distance. From this, as in other time/distance methods, it can compute your average speed.

Unlike Gatsos, Truvelo speed traps use a forward-facing camera, with infra-red rather than visible flash (to avoid blinding oncoming drivers). Truvelo cameras are smaller than Gatsos, and can also be recognised by the three sensor strips across the road in front of them. These systems cannot be detected by radar/laser warning devices, but fixed installations should be flagged up by GPS systems.

Truvelo speed cameras are becoming increasingly common. Some counties such as Northamptonshire now predominantly use Truvelos rather than Gatsos.

Peek

Peek speed cameras, like Gatsos, are manufactured in the Netherlands. They are smaller than Gatsos, but otherwise similar in appearance. Most use radar to detect speeding vehicles, and for this reason are rear-facing. Both radar/laser and GPS alert systems should detect Peek cameras. These systems are less common than Gatsos, but quite widely used in certain counties, including Central London, Leicestershire, Merseyside and Berkshire.

Finally, it should be noted that not all cameras by the side of the road are speedtraps. There are also red light cameras, small grey boxes at traffic light junctions whose function is to catch motorists jumping the lights. Some cities also have bus/taxi lane cameras, which are intended to catch motorists using these lanes when they shouldn't. These are operated by local authorities, and are discussed in more detail in Chapter 5 (the section on bus lane contraventions).

There are also Trafficmaster cameras, which are not used for detecting law-breakers but for traffic monitoring and statistical purposes. They are painted a distinctive cobalt blue. Some are accompanied by a notice that they are NOT speed cameras, as the private company which operates them is worried that motorists thinking they are speed cameras might attempt to sabotage them!

OTHER OFFENCES

The last two chapters have covered the two biggest banes of motorists' lives, parking and speeding tickets. However, there are various other offences motorists can be accused of (and some in which they may be the innocent victims). This chapter looks at the most common of these situations, setting out the nature of the offence, how it is detected and prosecuted, and what you can do to reduce the risk of being charged and/or convicted.

Drink Driving

We must start by emphasising that we do not in any way condone drinking and driving. Every year over 400 people in the UK die from involvement in road accidents involving illegal alcohol levels, so our advice can best be summed up in a single word: Don't!

However, there is a potential pitfall awaiting even the most law-abiding driver. The current legal limit for driving is 80 milligrammes (mg) of alcohol per 100 millilitres (ml) of blood. This, however, is under review by the Government, and it is possible they will introduce a much lower rate in order to bring the UK into line with most other countries in mainland Europe. This is despite the fact that Britain already has the safest roads in Europe, and there is no evidence that lowering the blood alcohol limit any further will produce any measurable benefits for us.

This does though mean that someone who has just had a single drink at lunchtime, or a couple the night before, could find themselves over the limit and facing prosecution. If you are found guilty, even under the current laws you could then face a fine of up to £5,000, a six-month prison sentence and disqualification for up to 2V2 years (longer if you are a repeat offender). If the harsher European standards are introduced, these penalties are very likely to be increased also.

Even as things stand now, it is important to note that there are no simple rules which can be used to calculate how much you can drink and yet stay 'under the limit'. Whether you drink on an empty stomach, the amount and type of alcohol you drink, your body weight, sex, age, metabolic rate and how regular a drinker you are all play their part. The only way you can be certain of staying under the legal limit is not to drink at all.

If you are drunk, there is little you can do to avoid prosecution, and few people will have any sympathy for you. However, if you are under the limit, there are various things you can do to avoid the risk of being unfairly accused and penalised.

. Even if you have had only a single drink, drive extra carefully and be sure to remain below the speed limit. The last thing you want to do is give a traffic cop an excuse to stop you!

. If you have been drinking and are signalled to stop by the police, be aware it may be because they suspect you of drink-driving. Equally, however, it could be anything else from a missing tail-light to a random vehicle check.

. Don't jump to conclusions, therefore. Pull up as soon as it is safe to do so, turn off your engine and wait quietly, with your hands in view, for the officer to tell you why you have been stopped.

. If the officer asks you whether you have been drinking, there is no point in lying if you have. Don't give any details or excuses though, as they may be used against you.

. If you admit to drinking, you will probably be tested. Remember, however, that having a drink before driving is NOT an offence unless you are over the legal limit. Admitting you have had a drink will avoid unnecessarily antagonising the officer, and is not in itself an admission of guilt.

If the officer suspects you of drink-driving, he will ask you to blow into a roadside breathalyser unit. The police have the right to test you, even if you think you're within the legal limit, so it's normally best to co-operate (if you refuse you can get points on your licence or even a ban). If the sample is clear, you will be allowed to continue your journey as normal. If the test is positive, on the other hand, you will almost certainly be arrested.

Arrest

If you fail the roadside test, the officer will say that you are being arrested for suspected drink driving and caution you, before escorting you back to the police car. If you object, you may also be charged with obstruction or resisting arrest, so just follow the officer's orders. While the police should take account of practical problems such as getting passengers home, they are not obliged to do so.

When you arrive at the police station you will be booked into custody and read your rights. These include legal advice, but you are not allowed to hold up the breathalyser procedure waiting for that advice. You will be searched, your shoes taken away. a cell assigned and you will be asked questions such as 'Do you take drugs?' and 'Have you ever tried to harm yourself?'

As soon as practicable you will be required to provide a specimen of breath on a machine such as an Alcoalyzer. You must blow hard enough to give a reading, or the police will charge you with failure to

give a specimen and an eighteen-month ban will follow. Two breath specimens are required, and the lower of the two readings is the one that counts.

You can choose to replace the breath specimens with blood, and if you believe you are under the limit you should consider this option, as you can test your own specimen by taking it immediately to the nearest big hospital (expect to pay around £90). In this case, you also get four weeks' grace while the blood is analysed.

You will NOT be offered the option of providing a urine sample, as this is not your choice. A urine test is for those with medical conditions such as haemophilia when blood cannot be taken.

The amount of alcohol in your breath or urine is not (of course) the same as the level in your blood, but the courts accept that one provides a direct measure of the other. As stated earlier, the legal blood alcohol limit for driving is 80mg of alcohol per 100ml of blood (80mg/100ml). This is equivalent to 35 microgrammes (*mg*) of alcohol in 100ml of breath, or 107mg of alcohol in 100ml of urine. However, prosecution guidelines followed by police services mean that in practice drivers are not normally prosecuted until they reach 40µg of alcohol per 100ml of breath, equivalent to over 90mg.

If you blow under the 35 limit (that is 35µg/100ml of breath), therefore, you are innocent, and will be released immediately. If your reading is between 35 and 39 they will still normally release you without charge. If your reading is 40 or over you will be prosecuted and can expect a ban from driving as follows:

40-55 - 1 year

56- 70 - 18 months 71-100 - 2 years

101-116 - 2 1/2 years

However, if your reading is under 50, you will normally be offered the option of replacing the breath test with a test of your blood or urine (the actual type is decided by the police). This is an offer you should always accept, as you have little to lose and everything to gain. If the second test also shows you are over the limit you will automatically be convicted, but there is every chance that your blood alcohol level will have fallen since the breath test, especially if there is a delay in taking the second sample.

If your reading is over 86, your case may be postponed for probation service reports, and you could be ordered to undertake a Community Punishment Order. Above 116 the police will probably charge you and remand you in custody to appear in court the next morning, and the court may consider a custodial sentence. If you have been charged for drink driving on a prior occasion in the past 10 years, the minimum ban is three years,

After the breathalyser procedure, you will be taken to your cell. It will be made of concrete and steel, may not have windows, and will be securely locked. You will normally stay there for around two hours before the police check your breath again. If your reading is under 35 you will be charged and released, and then you usually have to make your own way back to the car. If you are still over 35, you have another two hours in the cell, and so on till you blow under the limit,

Court

Unless you blew over 116, you will be bailed to come to the local court (often next door to the police station) about four days later. By this stage you are likely to want to plead guilty (though see Defences, below); your lawyer or the duty solicitor will give you individual advice. A guilty plea means you are immediately disqualified from driving in England and Wales for the period specified, and cannot even drive home. Your licence will be taken from you, and if you are caught driving while disqualified you can expect a prison sentence.

On top of the ban there will be a fine to pay (or a community punishment Order if your reading was over 86)1 which includes a contribution towards the costs incurred in prosecuting you. You can pay this by instalments.

The only slight bit of good news if you have come this far is that you can get a quarter off your ban if you do a course. You may be offered a place on the Department for Transport's 'Drink Driver Rehabilitation Scheme', an alcohol awareness course lasting 16 hours (which usually run evenings, weekdays and Saturdays, over at least three sessions, each *d week* apart), in return for a 25% reduction in the length of your disqualification. Courses are not intended as further punishment, but as the start to getting back on the road. They aim to improve your awareness, knowledge and attitude towards drink-driving, to reduce the likelihood of a further offence. You will be responsible for the cost, likely to be between £100 and £250, but this can be paid by instalments. You must agree to do a course at the time of sentence and choose which course organiser you would prefer to do it with. There are 28 organisations offering DfT approved courses throughout the UK.

Defences

At one time lawyers grew fat defending drivers on drink-driving charges by exploiting loopholes in the law, but these have all now largely been closed,

For example, at one time if you had a drink after being breathalysed ('to calm your nerves'), you could successfully argue that if the test at the police station showed you were over the limit, this could have been due to the later drink. This is no longer the case, and if you try to use this 'hip flask' defence, the responsibility for proving it was this drink which took you over the limit will be yours. You will have to call an expert witness, probably at considerable expense, who can prove to the satisfaction of the court that your blood alcohol prior to this drink would have been below the limit. Needless to say, we do not recommend this approach. The following are the only defences with any realistic prospect of success.

. An irregularity in the testing procedure. If, for example, you were not shown a copy of the printout from the machine, or given a copy of the certificate verifying the printout, you may be able to argue that the procedure was invalid. However, this is a routine procedure in police stations, and a mistake of this nature is unlikely (though it is certainly not impossible).

. If you can show your drink was 'laced' without you knowing, the court may accept that you should not be convicted. However, you would have to prove that you took reasonable care to avoid this happening.

. You may also be able to argue that an emergency occurred which meant that you had to drive, even knowing you might be over the limit. An example would be taking an injured person to hospital. You would, however, have to prove that there was no realistic alternative to driving them yourself.

ACCIDENTS

Unfortunately, if you drive long enough, it is all but certain you will be involved in a road accident. The immediate aftermath of an accident can be highly traumatic, especially if people have suffered injuries or worse. It is important to keep as calm and collected as you can, therefore, and especially not to say anything which may be used against you later.

If you are involved in an accident, you must stop and remain at the scene for a reasonable period of time, and exchange details with the other party involved. Essential information to obtain includes:

. The make, model and registration number of the other vehicle.

. The name, address and all telephone numbers of the other party.

. Any insurance particulars the other party can provide, hopefully including the name, address and policy number, . The extent of damage to the other vehicle.

. Whether any injuries are apparent and, if so, a description of those injuries.

. Full names, addresses and telephone numbers of any witnesses, either independent or passengers in the vehicles. . The exact date and time of the accident.

. The exact location, including street names.

Other information which may be useful to have includes: .

The colour of the other vehicle.

The name and address of the owner of the other vehicle, if different from the driver.

If the police attend, the name and number of the reporting officer and details of his local station.

It is also a good idea to make a sketch of the scene, and/or take photos if you have a camera with you, make a note of any marks on the road (e.g. SLOW), speed limit signs and lines of sight.

Notify your insurers as soon as possible after an accident. You should contact them whether or not you intend to make a claim, as a claim may be made against you, regardless of your intentions. You can report an accident to your insurers for information only and this should not affect your no-claims bonus,

. But be careful to make sure they understand clearly that you *are* not making a claim. One of the writers of this guide, in his younger days, was involved in an accident where another driver ran into the back of his car, causing some minor damage, The car turned out to be stolen, and the driver ran off. The writer reported the accident to his insurance company, who sent an assessor to view the damage (even though he had told them he had no intention of making a claim). The assessor's fee was charged against his insurance, with the result that he lost his entire NCB.

In general, if no-one has been injured in an accident, the police are unlikely to take much *interest*, unless it is evident that the standard of driving was very poor, Conversely, however, if someone has been injured (or worse, killed), the police will definitely want to interview everyone involved and any other witnesses there may have been.

Be very careful what you say here, especially if you are interviewed at the scene. In the heat of the moment, it is easy to start offering excuses and explanations, to blame the other driver, or (conversely) to admit guilt. But - in the words of the official police caution - anything you say really may be taken down and used in evidence against you. So unless you are certain you are blameless (e.g. you were stationary at a zebra crossing and another driver ran into the back of you) it is best to admit nothing until you have taken advice. Simply provide your contact details and any other information that may be requested,

The police will carry out enquiries as to who caused the accident. If they believe they have sufficient evidence to convict you of a criminal offence they will refer the papers to the Crown Prosecution Service, who will decide whether to charge you. The usual offences are:

. Careless and inconsiderate driving

. Dangerous driving

. Causing death by dangerous driving

If the police indicate that they wish to interview you in connection with the accident, contact your insurers immediately and report the full circumstances to them, The insurers may, at their discretion, and depending on the terms of your policy with them: . Arrange for free legal representation when you are interviewed by the police.

- . Arrange for free legal representation when you are called to the Inquest (if someone died),
- . Arrange for free legal representation at any subsequent court hearing.

The police will interview you under caution and advise you of your right to legal representation. You should certainly take this up, not least because, if you are charged with dangerous driving, conviction may result in up to ten years' imprisonment. Even if you only face the lesser charge of careless and inconsiderate driving, however, much can depend on how you present your case - first to the police, and then (perhaps) in court.

A good solicitor will ensure you do not inadvertently incriminate yourself (generally by advising you to not reply to certain questions). If you are charged, he will advise you whether to plead guilty or not guilty, based on his assessment of the evidence against you. Even if you feel that you may be at least partly responsible for the accident, he may advise you to plead not guilty, on the basis that there is insufficient evidence to convict you.

On this last point, it is worth bearing in mind that there may be many, many factors involved in any road traffic accident, from the weather to the speed at which each vehicle was travelling. Factors which may not at first appear relevant may be crucial in demonstrating to a court that you cannot be held responsible for the accident. A good solicitor with experience in these matters will be able to assess all the evidence and advise you on your best course of action.

Accidents Involving Uninsured Drivers

An estimated 1.25 million people drive in the UK without insurance. If you are involved in an accident with such an irresponsible driver, you will be unable to claim costs or compensation from their insurance if they are to blame.

Even if you have fully comprehensive insurance yourself, this will not cover any injuries to you personally - and any claim on this is also likely to result in loss of your no-claims bonus. The same problem occurs if you are a victim of a hit-and-run driver who is never traced.

Fortunately there is help available, however. If you are involved in an accident where the other driver is uninsured or cannot be traced, you can make a claim to the Motor Insurers' Bureau (MIB). The MIB was set up by the Government to administer a fund which pays compensation to the victims of negligent uninsured drivers or negligent untraced hit-and-run drivers. The MIB fund is financed by a levy on all UK motor insurance companies, and is therefore effectively paid for by all honest, insured drivers.

In the case of a claim against an uninsured driver, the claim is dealt with in almost exactly the same way it would be if the claim was against another motorist who was insured. Negotiations for settlement of the claim are with the MIB rather than an insurance company. Losses which can be claimed include pain and suffering, loss of income, vehicle repair costs, replacement vehicle hire, medical expenses and prescriptions, and loss of amenities of life. It is usually necessary to instigate civil court proceedings and obtain judgement against the other driver, and the MIB generally settles any judgement obtained after seven days.

To make a civil court claim against an uninsured driver, you will almost certainly need legal help. The good news is that in November 2003 the MIB introduced free legal expenses cover to assist the victims of uninsured drivers whose own insurance doesn't cover this. The free scheme covers your opponent's and/or MIB's costs and the costs of your solicitor up to a total of £100,000. The scheme is run by First Assist on behalf of the MIB, and you normally have a free choice of solicitor.

If the other driver was untraced or unidentified, then a claim can be made directly to the MIB for compensation for pain and suffering, for injuries (including psychological conditions) and for losses resulting directly from the injuries. Note that if your accident occurred before 14 February 2003, you can apply to the MIB for compensation in respect of personal injuries only. If your accident occurred on or after this date, you are entitled to claim for property damage as well as personal injury.

If you wish to make a claim with the MIB following a hit-and-run accident, it is vitally important that you report the accident to the police as soon as possible. Any personal injury must be reported to the police within 14 days of the accident and any property damage within 5 days. In any event, both personal injury and property damage should be reported to the police as soon as reasonably practicable.

The award of compensation for your injuries will depend upon a number of factors, including the seriousness of the injuries, the effect they have had on your everyday life, and your prognosis. A medical expert will be instructed to carry out an examination and assessment of your injuries. A detailed report will be prepared, and on the basis of the report, a value will then be placed on your claim. As an example, following a neck injury where a full recovery has been made within *two* years, an award of between £2,000 and £4,000 is currently 'the going rate'. An award of up to £4,750 is suggested for simple leg (tibia or fibula) fractures. The MIB will consider the level of award made by courts in similar cases, and make its award on that basis. If you are unhappy with the amount of compensation offered, you may appeal, in which case the matter will be placed in the hands of an independent arbitrator.

More information about MIB, and downloadable application forms for the agency's compensation and free legal cover schemes, are available from their web site at www.mib.org.uk. You can also write to them at Motor Insurers' Bureau, Linford Wood House, 6-12 Capital Drive, Linford Wood, Milton Keynes, MK14 6XT. Tel: 01908 830001.

MOBILE PHONES

Contrary to the message put out by certain sections of the media, the police have always had the power to prosecute drivers using a mobile phone for careless, inconsiderate or dangerous driving. However, since 1 December 2003 a new law made it a specific offence to use a hand-held mobile phone or similar device when driving, even if *you* remain in full control of your vehicle.

The penalty is a £30 fixed penalty notice or up to £1,000 on conviction in court (£2,500 for drivers of goods vehicles, buses or coaches). You won't currently incur any points on your licence, but the Government has announced plans to make this offence subject to 3 penalty points and a £60 fixed penalty. Primary legislation will be needed before this can happen, however, and no schedule for this has *yet* been announced.

Provided that a phone can be operated without holding it, hands-free equipment is still permitted by the new regulation. And pushing buttons on a phone while it is in a cradle or on the steering wheel, or on the handlebars of a motorbike, is not covered by the new offence, provided *you* don't hold the phone itself.

However, hands-free phones can still be distracting, and if there is any incident, the use of any phone or similar device might lead to charges of careless or dangerous driving. To be safe, the RAG recommends that drivers adopt the following precautions:

- . Keep calls short - do not argue or enter intense negotiations.
- . Tell callers you are driving and may need to break off your conversation suddenly.
- . Save any numbers you may need to a shortcut dial before starting your journey.

cradling the phone on your shoulder while driving will not be tolerated as you will still be seen as holding the phone, albeit not with your hands. Texting is also out, although tapping out a text is not prohibited by the new law if the phone remained fixed in a cradle. But in this case you could still fall foul of the existing rules that you must drive with due care and attention.

The new law doesn't mean you have to switch off your mobile in the car. It can be left on but, unless you have hands-free kit, if you are driving when it rings you must ignore it or pull in and park safely before answering it. Even if you are waiting at traffic lights or stuck in a jam, you are still considered to be driving. In a really bad snarl-up, however, you would not be thought to be driving if your engine was switched off.

About the only exemption from the new law concerns 999/112 calls to the emergency services. You are allowed to make these while driving if it would be unsafe or impractical to stop. Claiming you have to

use a phone for your job is not good enough, however. You will still be liable for a penalty, and if your boss has insisted you take calls while driving he or she could also be prosecuted.

Overall, the best policy from both a safety point of view and avoiding fines or prosecution is to avoid using your mobile in the car. However, if you do need to make or receive calls while driving, probably the most practical solution at present is a Bluetooth headset.

Bluetooth is a wire-less short-distance radio transmission standard that enables two electronic products to talk to each other. With a Bluetooth headset *you* can hold a conversation via your mobile phone and even use voice-dialling if *your* handset supports it. If your mobile is not Bluetooth-enabled, you can buy an inexpensive adaptor. Bluetooth headsets, adaptors and kits are available from specialist mobile phone shops and internet sites such as Connectcall (<http://connectcall.2u.co.uk>).

BUS LANE CONTRAVENTIONS

Bus lanes - dedicated lanes along major roads for the use of buses only - are becoming widespread in London and other UK cities. It is illegal for motorists other than buses to drive or stop in a bus lane during its operational hours, although there are some exceptions, including police and emergency service vehicles, taxis (not minicabs), vehicles collecting mail, and bicycles.

Bus lane regulations are increasingly enforced by the use of CCTV and static video cameras operated by the local authority. You will usually receive a Penalty Charge Notice in the post giving details of the alleged contravention.

The law requires service of a PCN before the end of the period of 14 days beginning with the date on which the authority believe the contravention occurred. You then have 28 days in which to pay the charge or make representations to the authority.

If you receive a PCN for a bus lane contravention, therefore, check carefully all of the details and if any are incorrect, appeal immediately in writing. In particular, you should have your appeal upheld if you were in the bus lane for any of the following reasons:

- . You were rounding a broken-down vehicle. . It was an emergency.
- . You were instructed to do so by a police constable.
- . You were taking in petrol, oil, water or air at the kerbside. . You had broken down.

In addition, local authorities and adjudicators do allow a degree of latitude, meaning that a vehicle driven less than 20 meters in a bus lane would normally be an acceptable tolerance.

All bus lanes should have a sign informing you in advance of the bus lane beginning. There should also be a sign at the very start of the bus lane. If either sign is missing, unclear, pointing the wrong way or vandalised, your appeal should be upheld. Take photographs to support *your* appeal. If you approach a bus lane from an adjoining road, again, there should be a warning sign informing you of the bus lane and its times of operation.

You should always request photos (video prints) of the allegation. Call the number on the PCN or write to the authority. You should receive a minimum of two photos, one of the vehicle in the bus lane and one of the vehicle registration mark (number plate) magnified for identification purposes. If you are not supplied with the two photos, for whatever reasons, your appeal should be upheld.

If you prefer, you can ask for an appointment to view the recording. Some local authorities enclose a viewing request form which can be used to book an appointment. There is no charge for viewing the video recording.

If you do nothing, the local authority will send you an Enforcement Notice 28 days after the PCN was issued. You can then make a formal representation on the following legal grounds:

- . The recipient was not the owner/keeper.

- . The contravention did not occur.
- . The vehicle was taken without consent.
- . A Fixed Penalty Notice has already been issued by the police.

If the council waives the PCN, you will receive a letter, Notice of Acceptance of Representations, informing you of this. If they decide that the PCN should not be waived, you will be sent a letter explaining why. This is called a Notice of Rejection of Representations. With this letter, you should receive a Notice of Appeal, allowing you to appeal to the Independent Parking Adjudicator. You must then either pay the charge or send your appeal to the Adjudicator within 28 days. The procedures are broadly the same as those for parking tickets, as discussed in Chapter 3.

At the time of writing you are most likely to receive a PCN for a bus lane contravention in London, as only London so far has the legislation in place to allow CCTV cameras to be used for this purpose (the London Local Authorities Act 1996). The ALG Transport and Environment Committee is responsible for regulating the scheme in London. It administers the code of practice setting out the procedures that must be adhered to by any borough included in the scheme. It is also responsible for the approval of applications from boroughs wishing to join the scheme.

There are currently ten London boroughs enforcing bus lane regulations using CCTV cameras (Newham, Croydon, Hammersmith and Fulham, Ealing, Wandsworth, Southwark, Camden, Lambeth, Bexley and Waltham Forest). In addition, applications from the Corporation of London and the London Boroughs of Richmond, Harrow, Enfield, Merton, Haringey, Tower Hamlets, Bromley, Hillingdon and Islington to commence CCTV enforcement of bus lane regulations have been approved. Other UK cities such as Manchester are also trialling the use of CCTV cameras to enforce bus lanes, but their widespread use outside London will require further legislation from the government.

DOCUMENT OFFENCES

It is a well-known fact that, to drive a vehicle on British roads, you should have at least third-party insurance, a driving licence and (if the vehicle is over three years old) a valid MOT test certificate. If you are charged with not having one or more of these documents, your possible defences are very limited.

In the case of insurance, if the person driving is different from the owner, both may be charged with offences: the driver, driving without insurance, and the owner, causing or permitting the use of a vehicle without insurance. The possible penalties in either case are severe: a fine of up to £5,000, 6-8 penalty points on your licence, and a possible period of disqualification.

There is, however, a defence available to the owner if the car was being driven by a third party. For example, say a person known to the owner (and insured to drive the car) without telling the owner lends the vehicle to a third person who is uninsured. The owner could not reasonably be expected to have known about this, and should not therefore be convicted.

Another possible defence occurs when the driver has borrowed (or hired) the vehicle, and was told by the lender that it was insured. He should preferably have confirmed this by asking, "Are you sure I'm insured?" Obviously it will be up to the magistrates to decide whether sufficient enquiries were made, but if the person lending the car is willing to admit in court that he lied when asked, this should greatly assist in achieving an acquittal.

A defence available to a driver who uses a vehicle in the course of his job is to show that (a) the vehicle did not belong to him; and (b) he did not know and had no reason to believe that the vehicle was not insured. For example, if an employer asks his employee to drive a company car, the employee would normally be entitled to assume that the company's insurance covers him. He would not be expected to check the wording of the policy first.

Not having a current MOT certificate is regarded as a much less serious offence. The maximum fine is a still-substantial £1,000, but no penalty points will be added to your licence, and there is no risk of disqualification. If no other offence has been committed, this offence is generally dealt with by way of a verbal or written warning.

If you are told to produce your MOT certificate at a police station but don't have one, here is our recommended course of action. Have your car tested and take the new certificate to the police station. It will be noted that your certificate was not valid on the day you were stopped, but as you now have one, you will almost certainly be let off with a warning. The same applies if you take in proof that the vehicle has been scrapped.

Producing Documents

If you are stopped by the police for any reason, it is likely you will be asked to produce your documents. Drivers in Britain, unlike many other countries, are not required to carry their documents with them. If you cannot (or don't wish to) produce them there and then, you will be issued with a HORT 1 form, known informally as a 'producer' or 'seven day wonder'. This requires the specified documents to be produced at a police station of your choice within seven days. The form will indicate:

- . the make, type and registration number of your vehicle; . your name, address and date of birth;
- . the location of the incident at which you were required to produce your documents; . the reason for the production;
- . whether you were accompanied in the vehicle;
- . whether you were being supervised by a full licence holder; . whether you were displaying L-plates;
- . whether the vehicle was manual or automatic;
- . the station at which you elected to produce your documents; and . details of the officer making the requirement to produce.

If you receive a HORT 1 form you should take the specified documents to the police station you chose within the seven days, or a summons will be issued.

If you do not have one or more of the specified documents - e.g. your licence is away being amended - you should go to the police station within the seven days and explain the situation. Take along any substantiating evidence, e.g. a reminder notice or proof of posting. The police will normally accept this and allow you an extension (though they don't have to). In any event, it is far better to go to the police station and explain the difficulty rather than do nothing and wait for the summons.

GOING TO COURT

Despite your best efforts to avoid it, you have received a fixed penalty notice or a court summons. Does that mean you simply have to accept your guilt and face the consequences? Definitely not! There are still many options open to you to defend the charge and hopefully avoid a fine and/or other penalty.

To begin with, when you receive the FPN or summons, you have four options.

1. Disregard it

This is not recommended. If you ignore an FPN, you will subsequently receive a summons. At the court you will almost certainly receive a larger fine and more penalty points (if applicable for the offence) than would have been the case with the FPN. The system is designed to encourage people receiving FPNs to pay up without the need for a court hearing, and if by inaction you force a hearing to be held, the magistrates will not look kindly on you.

If you fail to respond to a summons, a warrant could be issued for your arrest. In extreme cases, you could even be imprisoned. Unless you skip the country you will still have to answer the charge, and preparing your defence will be a lot harder from a prison cell

2. Accept the FPN and pay the fine

At first glance this may appear the easy option, but think carefully. If you accept the FPN you will have to pay the fine and accept any penalty points on your licence. If you accrue 12 points, you are looking at an automatic six-month disqualification, with all the hassle and extra costs this will entail. Your motor insurance premiums are likely to soar, and any endorsement may even affect your employment prospects (e.g. if you apply for a job requiring a 'clean driving licence').

On the plus side, if you accept the FPN, you will not have to go to court, and the penalty is likely to be lower than if you attend a hearing and are found guilty. If you believe you have a reasonable case, however, you should certainly consider exercising your right to a court hearing.

3. Refuse to accept the FPN but admit the offence

Some motorists refuse to pay the fine, but then go to court and admit the offence. They may hope to get off on a technicality, explain to the magistrates why they should be treated leniently, and/or receive a lower penalty.

We have to say we can't see the logic of this. If you admit the offence, the magistrates will have to find you guilty, regardless of how sympathetic they may be to your personal circumstances. You are also likely to incur a larger fine and more penalty points, since (as mentioned above) the system is set up to encourage people to accept FPNs rather than go to court. In addition, you will have all the cost and inconvenience of attending court, rather than just paying the FPN by post in the first place.

And finally, if you admit an offence, there are almost no loopholes in the law you can exploit.

4. Go to court and plead not guilty

This is the recommended course of action if you are sure you didn't commit the offence - or if you might have, but believe there is a reasonable chance you can get the ticket or charge overturned.

It's worth remembering that many cases end up being dropped due to lack of time or resources, especially when the prosecution knows the evidence against you isn't watertight. Even if a case does go ahead, it may be thrown out by the magistrates, or a 'not guilty' plea accepted. If you decide to go to court, therefore, your odds of success may actually be better than you think.

The rest of this chapter looks at how to proceed if you take this fourth option.

WORKING WITHIN THE SYSTEM

If you decide to take your case to court, there are certain basic guidelines to follow..

1. Work within the system; don't try to frustrate it. The court system in the UK has evolved over the centuries and is taken very seriously by all who work in it. Show respect and understanding of the court and the rule of law, therefore, and you should be heard with understanding and (perhaps) sympathy.
2. Use the time before the hearing to prepare your case and collect as much evidence as possible in support of it. There will be several weeks, possibly months, before the hearing date, so use this time wisely.
3. If you opt to go to court, always plead 'not guilty'. There is no point doing anything else.

Many people are naturally apprehensive about conducting themselves in the unfamiliar environment of a courtroom, but there is really no need to feel this way. Anyone can become conversant with the court system and the law applying to their case with just a little research. And if you go about this task

diligently, you may well arrive better prepared than the prosecutor, who may have a dozen cases to present that day alone.

One important thing to bear in mind is that the courts are not your enemy. They are there as impartial arbiters. They will listen to the prosecution case and your defence, and make an independent decision based on the evidence they have heard and how, in their view, this relates to the laws of the land.

In particular, the courts uphold the principle of 'innocent till proven guilty'. This is one of the cornerstones of the UK legal system, and is meant to mean that the prosecution must clearly show that an offence has been committed and that the accused person is the one who committed it. In theory the defence does not have to disprove either point, though in practice the court will usually expect the defendant to present evidence on his behalf, i.e. to prove that no offence was committed or that he was not the one who committed it.

This may sound a little daunting, but the good news is that, more than ever today, the courts go to great lengths to ensure that defendants are given the benefit of any doubt. This applies especially in situations where a charge depends on the uncorroborated evidence of a single police officer. Gone are the days when the officer was automatically believed, and magistrates will sometimes acquit against seemingly overwhelming evidence. If you make an effort to research and prepare your case well, therefore, there is every chance the court will meet you half-way at least.

MAGISTRATES COURT

All but the most serious motoring-related cases are heard in magistrates courts, so let's take a closer look at what goes on in these.

Most cases in magistrates courts are heard by at least two but usually three lay magistrates. These are not professional judges or lawyers, but people of 'good character' from the local community who have volunteered for this task and perform it on a part-time basis. They receive training, and are advised on legal matters by the Clerk of the Court, a qualified lawyer.

Some cases are tried by a district judge (magistrates courts), who usually sits alone. Until August 2000 district judges were known as stipendiary magistrates, but they were renamed to recognise them as members of the professional judiciary, as they are legally qualified and salaried.

The magistrates (or judge) sit at the end of the courtroom at a raised 'bench'. The clerk of the court sits directly in front of them, so as to be able to advise them on questions of law, legal procedure and practice. In front of the clerk sit the representatives for the defence and the prosecution (in motoring cases, probably the Crown Prosecution Service). On one side of the court is the witness stand, and on the opposite the dock. The accused person sits here during the trial, but takes the witness stand if called to give evidence.

The proceedings begin with the clerk of the court confirming the identity of the defendant, and then the charges are read out. With certain more serious offences, the defendant is advised of his right to a trial in crown court in front of a jury (as we will see, if given this choice it is normally best to opt for the magistrates court). The defendant is then asked how he pleads.

Guilty - If a guilty plea is entered, the magistrates are given a summary of what happened by the prosecuting solicitor. The defending solicitor presents any mitigating circumstances on behalf of his client, or if unrepresented the defendant is allowed to speak. The magistrates then withdraw for a short period and return to announce the sentence.

Not Guilty - In this case a trial takes place. Again the prosecuting solicitor outlines the facts of the case, but witnesses are also called to relate their evidence to the court. The defence solicitor cross-examines the witnesses, hoping to bring out information which assists the defendant's case, perhaps by discrediting their testimony. An unrepresented defendant is also allowed to cross-examine witnesses.

Following this, witnesses for the defence give evidence and may be cross-examined by the prosecuting solicitor. Finally, the defending solicitor sums up the case, and the magistrates then withdraw prior to returning with their verdict.

. These are the bare bones of what to expect, but there is no substitute for actually seeing a court in action. If at all possible, therefore, make a point of going to the court once or twice before your own hearing. Most hearings are open to the public, though it is a good idea to telephone first to find out what courts are sitting on the day you wish to observe.

CROWN COURT

The great majority of motoring (and indeed all) offences are dealt with in the magistrates courts. However, magistrates cannot normally order sentences of imprisonment exceeding six months or fines exceeding £5,000, so with a very serious offence (e.g. causing death by dangerous driving) the case may be heard in crown court. In some 'triable-either-way' offences, you will have the option of trial in the magistrates court or in crown court.

The most important difference in crown court is that the case will be heard in front of a jury who will decide upon your guilt or innocence. Crown court is also a much more formal affair. The court is presided over by a legally qualified and be-wigged judge, and the case for both prosecution and defence is presented by barristers. solicitors are not allowed to present their client's case in crown court - instead they must instruct a barrister who presents the case on their (and your) behalf. You are still allowed to represent yourself in crown court, but the proceedings are far more formalised, and unless you are very well prepared there is a risk you will find yourself out of your depth.

With 'either-way' offences, the offender may be committed by the magistrates to the crown court if they feel the seriousness of the offence warrants it. If they decide the case is suitable for them to hear, the defendant can either accept this or insist that the case goes to crown court. Note, though, that most motoring offences (including speeding) do not include the right to a trial by jury.

There are some advantages to being tried in crown court. Most notably, juries are more inclined to acquit than magistrates, and a crown court decision in your favour cannot normally be overturned by the prosecution on appeal. On the other hand, there are many drawbacks.

. The costs are likely to be far higher - the barrister's fee alone will run to hundreds of pounds, possibly more.

. Crown court cases tend to involve more hearings, so you will be required to travel to court more times, at your own expense. . Your case will drag on longer - it may take a year or even more to reach trial.

. Your trial will be longer and more complicated, and require more work if you are representing yourself.

. If convicted, you are likely to get a higher sentence and court costs than if your case was heard in the magistrates court. For all these reasons, we strongly recommend having your case heard in the magistrates court if at all possible.

THE CROWN PROSECUTION SERVICE

The Crown Prosecution Service (CPS) is responsible for prosecuting people in England and Wales who have been charged by the police with a criminal offence. This role includes:

. advising the police on possible prosecutions;

. reviewing prosecutions started by the police (to make sure the right defendants are prosecuted on the right charges); . preparing cases for court;

- . prosecuting cases at the magistrates court; and
- . instructing counsel to prosecute in the crown court and higher courts

Although in theory the CPS is totally independent of the police, in practice they work closely together on cases. This is not always a happy relationship, however, as understandably friction occurs if the CPS tell the police they are not going to prosecute because the evidence the police have gathered is too weak. In addition, if a prosecution fails, the police and CPS very often blame each other.

Neither is this the only problem the CPS faces. Since its origin in 1986 it has been under-staffed and under-funded, and this still applies today, One result is that a large number of cases are dropped before they even get to court,

The CPS operates on the '51 per cent rule', which means that if there is a less than 51% chance of a successful prosecution, even in the view of their most junior solicitor, the case will not go ahead. Overall, the CPS discontinues prosecutions in around 13% of all cases, amounting to over 180,000 cases every year. There is also evidence that the police in some areas are 'rationed' in the number of cases they are allowed by the local CPS to prosecute. All of this can help to get your case dropped, especially if the evidence against you is weak.

Overall, there are still many opportunities for motorists to take advantage of the apparent disarray in the CPS. In particular, if the CPS see that you intend to defend yourself vigorously against a charge, especially a minor motoring offence, they may well decide it is not in the public interest to proceed with the case against you.

HIRING A SOLICITOR

Having reached this stage, you will need to decide whether to engage a solicitor to act on your behalf, or to represent yourself in court. Hiring a solicitor has various pros and cons.

Pros

- . A good solicitor has specialist knowledge which could be of great assistance to you.
- . They will be used to appearing in court, and should at least make a reasonable job of presenting your case.
- . They will understand the system, take care of the paperwork, and advise you on any actions you need to take.

Cons

- . Win or lose you will have to pay the solicitor's fee, in addition to any fine you incur if found guilty.
- . Not all solicitors are equally competent.
- . A solicitor is unlikely to have time for the in-depth research you can do yourself.

If you decide to hire a solicitor, it is important to take some time finding the right one. It would be a bad idea, for example, to hire your family lawyer to represent you on a speeding charge if he normally only handles conveyancing or drawing up wills. Just as you might need to consult a medical specialist if you are ill, if you are charged with a motoring offence you need to engage a solicitor with specialist experience in road traffic law. There are various ways you might find one.

. Ask around friends and colleagues - they may be able to recommend someone from personal experience.

. If you belong to a motoring association such as the AA or RAC, ask if they have any advice or recommendations.

. Visit the Law Society website at www.solicitors-online.com - this has a form enabling you to search for solicitors in your local area with specific expertise.

. Some lawyers specialising in motoring cases are listed in the Appendix of this guide.

. You can also search directly on the net for solicitors specialising in this field. Enter <solicitors "traffic law' uk> (without the angle brackets) in a search engine such as Google (www.google.com).

. Finally, surprisingly enough, the police or the courts may be able to tell you about local solicitors specialising in this field.

Note that if you are unhappy with the advice you receive from the solicitors you initially hire, there is nothing to stop you changing them.

DEFENDING YOURSELF

The alternative to hiring a solicitor is to defend yourself. This is not as daunting a prospect as might at first appear. If the case is complicated, by all means use a solicitor, but if it is reasonably straightforward there is no reason why a reasonably competent person cannot do it themselves.

This applies especially if you are admitting to a minor offence and simply wish to make a plea of mitigation to the magistrates. There is little point in paying a solicitor to do this for you, as their fee is likely to be considerably more than any reduction in your fine which their efforts might achieve. Simply go to the court at the appointed time and make your plea when invited to do so.

Even if you intend to defend the case, there are still many reasons why you should consider doing it yourself. Apart from saving the solicitors fees, you can take as much time as you need to research the law surrounding the case, and in court can present your arguments exactly as you wish. Furthermore, there is plenty of anecdotal evidence that magistrates take a sympathetic view of people defending themselves, perhaps perceiving them as being at a disadvantage. If the case hangs on your word against a police officers, this may be a particular benefit for you.

It is also worth remembering that the court is entirely impartial. Just because you have been accused of an offence by the police, this does not mean the court will automatically think you are guilty. They will want to help you present your case as clearly and effectively as possible, and you can ask for help with any aspect of the procedure, such as when it is your turn to speak or to call a witness. This help is available from the court both before the trial and on the day. They will not, however, help you to put your case together or advise you on the likely outcome.

And finally, if you are considering defending yourself but would like a bit of moral (and practical) support, it's worth knowing that as an unrepresented defendant you are entitled to have a friend sit with you in court. This person, known as a McKenzie friend, can take notes and *offer* quiet suggestions, but is not allowed to address the court. This right was established in a case called McKenzie v McKenzie (hence the name). Even if you're confident about your defence, it can be very useful to have someone with you to take notes, leaving you free to concentrate on what's going on.

Research Your Case

If you have decided to defend yourself, the first thing you will need to do is research the relevant road traffic law/s thoroughly. Start by arming yourself with an up-to-date copy of The Highway Code. This

is available inexpensively from any stationer's, or you can view it free of charge on the web at www.highwaycode.gov.uk.

The Highway Code is a generalised guide to the law, so you should not rely on it totally in your defence. However, what it will do very well is tell you the law which relates to your particular case. At the end of each section in The Highway Code you will see an abbreviation such as LAW RT(ND)A. These letters indicate the actual legislation on which the relevant section is based - in this example, the Road Traffic (New Drivers) Act 1995. The section of the Highway Code titled 'The Road User and the Law' includes a key to all the abbreviations used, and the Acts and regulations to which they refer.

Once you have found the laws which apply in your case, you should obtain a copy of the relevant Act or regulations. Your local library should be able to help here, or you could even buy a copy from The Stationery Office (TSO), which is the official government publisher. The Stationery Office has branches in six major cities, and you can also order by phone (0870 600 5522) or online (www.tso.co.uk/bookshop/bookstore.asp). Best of all, you can view and print out most legislation free of charge via the HMSO website at www.hmso.gov.uk.

Note that if your case involves a parking ticket, you may also need to contact the local council to inspect the relevant parking order. Some councils publish their parking orders on the web but others don't.

Study the relevant section of the law, regulations or parking orders carefully. You may well find the wording does not correspond exactly with the offence for which you have been charged. This could present you with a possible line of defence.

Here's just one example. In 2000, motorist Bob Norbum was ticketed by Bury Council for not parking wholly within a marked bay. He complained that the bays were so short that it was impossible for anything bigger than a mini not to extend beyond them. The council refused to cancel the ticket and he was fined £15. Angered by this, he went to the council to inspect the parking order. He discovered that not only did the council not have powers to charge at that particular location, but the bays, which were marked at an angle, should have been painted parallel to the kerb. The pay-and-display parking had to be suspended, and the highways bosses admitted they should not have been charging people to park there over the previous 18 months.

This is by no means an isolated example, and shows that motorists who are prepared to research the relevant laws and regulations can surprisingly often find loopholes they can exploit.

Check For Precedent

If you are dubious whether the law that has been used to prosecute applies in your case, as well as checking the wording of the law itself, it may be well worth looking for precedents. In other words, look to see if there have been similar cases based on this law in the past, the judgements resulting from which were in the defendant's favour.

An example, referred to in our Speeding chapter, concerned the legality of using radar detectors. Until March 1998 the police routinely prosecuted people they found using such detectors under the Wireless Telegraphy Act of 1949. This Act prohibits listening in on emissions not intended for you and acting on the information contained in them. Until March 1998, the police would argue that when they found you with a radar detector, you were listening to police information and then acting on it to reduce your speed.

However, in a landmark case in January 1998, High Court judge Lord Justice Brown threw out a claim by the police against a motorist who had been caught using a radar detector. The police claim, as usual, was that under the 1949 Act, the motorist was illegally using the device. The judge applied some common sense, and pointed out that radar contains no intelligible police information at all. As this was the case, the 1949 Act did not apply, because the detector was merely picking up the presence of radar, not any information in it. This case set a precedent, effectively making detectors legal. If the police ever attempt to prosecute a motorist under the 1949 Act now, the motorist (or their solicitor) can simply quote the 1998 High Court judgement and the court will have little option but to acquit the driver concerned.

Researching precedent can be time consuming - obviously, a solicitor with specialist knowledge will have a considerable advantage here. However, if you have the time and the inclination, there is no reason why you cannot do it yourself. Using Internet search engines and other resources, you may be able to find reports of cases covering similar ground. Even if they do not provide all the details of the case, once you have the dates and names, a little further digging will usually unearth all the information you require.

It is also well worth paying a visit to your nearest law library. A university library is likely to be best for this purpose, although a major public library may also have a suitably stocked law section with in-depth reports on legal cases. Explain to the librarians that you are researching a motoring case you wish to defend - they will almost certainly be willing to help you, or at least point you in the right direction. You may also be able to obtain assistance free of charge from your local Citizens Advice Bureau.

When looking for precedents you can quote in your defence, bear the following points in mind.

- . Judgements must be in as senior a court as possible - preferably the High Court, the Appeal Court or (the highest authority in the UK) the House of Lords.
- . Judgements made in Crown Courts only establish precedent if a High Court Judge is sitting. Judgements made in Magistrates Courts do not establish precedent.
- . Judgements should be as recent as possible - or they may already have been superseded by another judgement. . The circumstances in the cases should be as similar as possible to your own

If you have found a recent case which meets all these criteria, research it in as much depth as possible and prepare to refer to it in court (or pass details of the research to your solicitor). In appropriate cases, this can be a powerful and effective line of defence.

Revisit the Location

You should also return to the location of the alleged offence as soon as possible and check out the following points:

- . What signs apply to that particular stretch of road? Are the signs missing, obscured or damaged? If so, you can make a case that you didn't break the rules because you could not have known about them. In the case of speeding, the Road Traffic Regulation Act 1984 specifically says that you cannot be convicted of speeding unless the limit is marked by well-maintained signs. (But note that the presence of street lights automatically means there is a 30 mph limit unless another limit is signposted, and there is of course a national speed limit of 70 mph.)
- . Check what lines are painted on the road. If you have been accused of jumping a red light, for example, your case could be dismissed if you can show that the stop line was worn. And, as mentioned in chapter three, if the yellow lines on the side of the road are faded or have not been reinstated after roadworks, any parking ticket issued may well be invalid.
- . If you were caught by a police speed trap, check what visibility the officer had from their position. Did they have time to see your vehicle approaching, 'form a view that you were speeding', and complete the check itself? If the officer was deliberately concealing himself to make it easier to catch you - and you can show that this would have restricted his ability to see you clearly - this could well result in the case being thrown out.

During your visit take photographs of the road from all directions and any relevant traffic signs or markings (avoid using a digital camera, however, as evidence from these devices may not be accepted in court). You can also make drawings if these will assist your case. You will be allowed to show these at the trial to help explain your defence.

Arrange witnesses

If you wish to call witnesses, contact them as soon as possible to check their willingness to testify and their availability on the date of the hearing (if a key witness cannot attend on the date stated, you can ask for an adjournment).

The most valuable witnesses are independent ones you do not know - a passer-by who witnessed the incident and is willing to testify that you didn't jump the red light, for example. Passengers in your vehicle can also give evidence, although as they are known to you their version of events may carry less weight with the court.

If any of your witnesses can't attend court in person, you can submit what's called a 'Section 9' statement from them (forms available from solicitors), to be read out in court. However, a Section 9 statement can only be read with the consent of the prosecution, who may well not agree as it means they don't have the chance to cross-examine the witness. Likewise, the prosecution can ask to use a Section 9 statement for their witnesses. You don't have to agree to this, however, and can demand that the witness come to court. While it is your right to have all prosecution witnesses present in court, the magistrates will not look kindly on you - and may penalise you with heavier court costs if convicted - if you insist on witnesses attending if you have no intention of challenging their evidence.

Know Your Objectives

It is very important to have clear aims and objectives, so you know what questions you need to ask your witnesses and what points you wish to make to the magistrates. This in turn requires you to understand the exact charge against you and the defence you are presenting.

Careful preparation is the key here. Many people have turned up in court and pleaded not guilty, only to defend themselves not on a point of law but on some point of fact which they dispute. This approach is fraught with peril.

For example, say you are accused of speeding at 44 mph in a 30 mph zone. The police officer presents evidence that you were travelling at 44 mph. You plead not guilty, and when your turn comes to speak, tell the court the officer is wrong, in fact you were only travelling at 36 mph.

Bang! End of case! The court has no alternative but to find you guilty. Speeding is an absolute offence, and it makes no difference how much you were over the limit (though it may, of course, affect the penalty). This example illustrates why you **MUST** understand the exact nature of the offence you are charged with, and prepare an appropriate, law-based defence against it.

PRESENTING YOUR CASE

Earlier in the chapter we explained how a court hearing proceeds. To recap, once the identity of the defendant has been confirmed, the prosecuting solicitor (or barrister in crown court) outlines the facts of the case, then calls any witnesses for the prosecution. When the prosecution has finished examining its witnesses, you then have the chance to cross-examine them.

In routine cases the police officer is unlikely to be called to give evidence, and the evidence will instead be presented by the prosecuting solicitor. In this case you may be able to question the reliability of the information which has been given to the solicitor, and hence throw doubt on the case against you.

If it is necessary to your defence, you may call the police officer to give evidence. This would apply if you intend to question the officer's evidence, though if your defence is based on other grounds (e.g. interpretation of the law) calling the officer unnecessarily will antagonise the court and could add to the costs awarded against you if found guilty.

If the officer appears in court, try not to appear openly hostile or imply that he is an idiot (even if you think so!). You will win more respect from the court if you address him courteously. You can,

however, try to show that he failed to interpret the regulations carefully, or that he may simply have been mistaken. Some techniques you can use are listed below:

. Ask the officer to explain the relevant laws or regulations to the court (you will, of course, know these well from your research). Highlight any errors or omissions in his answer. Often you will find that the officer is not used to explaining the regulations in public, and will make a poor fist of it. This can help to throw doubt on his testimony.

. Ask the officer questions which will cast doubt on your identity. Ask him, for example, what you were wearing on the day in question. If the officer does not remember this - which is very likely - ask how he can be so sure that the vehicle which he from a line of vehicles was your vehicle.

. Check the officer's notes. Ask him to confirm any evidence he gave by referring to the relevant entries in his pocketbook (which he should be able to show to the magistrates if necessary). If there is any disparity between the notes and their spoken testimony, this can be a good way to cast doubt on their case.

. It's also worth noting that, unlike the prosecution, you are allowed to ask leading questions. For example, the police officer may deny that you said anything when you were stopped. You might say, "But isn't it true, officer, that I told you I had checked my speedometer and was definitely driving under the limit at the time of the alleged offence?" Again, this can help to cast doubt on the accuracy of the officer's evidence.

During cross-examination, you must remember to confine yourself to asking questions. You are not allowed to appeal directly to the magistrates or make a statement to them. That opportunity comes later, at the conclusion of the prosecution case. At this point you are allowed to speak on your own behalf. The Clerk of the Court will tell you that you can either:

1. Make a statement to the court about what happened.

This is not under oath, and you cannot be cross-examined about it. ;

OR

2. Take the oath and enter the witness box to give evidence.

In this case, as with any other witness, the prosecution will be able to cross-examine you.

You will probably be told that the first of these options, making a statement not under oath, will carry less weight. Nevertheless, this is the option we strongly recommend. Why is this?

First of all, despite everything that may be said about it carrying less weight, if you give evidence in this way you will be under much less pressure, and the magistrates (or judge) will listen just as intently to what you say. And second, if you take the witness stand, you will be subject to ruthless cross-examination from the prosecuting solicitor, who will be skilled at undermining a defendant's

evidence and casting doubt on their case. In these circumstances even the most confident of individuals can lose their cool, and before you know it you may have thrown away all your careful preparation and your entire case.

No, in our view making a statement not under oath is by far the wiser option. You will not be permitted to read out a speech, but you should be allowed to refer to notes ('to remind me of the points I want to make'). Rehearse your statement as often as possible beforehand, preferably to someone who will give you honest feedback on how it comes across. By doing this you will be presenting the magistrates with a clear account of what you are saying happened and why you believe you have not broken the law.

Mitigation

If, despite your best efforts, you are found guilty, before sentencing you should be given the chance to make a statement of mitigation - that is, to tell the court why you believe you should be treated leniently.

If you pleaded not guilty, you need to be careful here not to contradict the evidence you gave in your defence (if you gave this evidence under oath, you could be accused of perjury). The best approach is to say that you accept the verdict of the court, but point out any circumstances surrounding the case which mean that your offence should be viewed more leniently.

For example, if you have been convicted of failing to stop for a pedestrian at a zebra crossing, you might point out that the pedestrian had been walking along the pavement and suddenly stepped on to the crossing without looking. By doing this they caused you to commit the offence, which would not have occurred if the pedestrian had shown greater consideration for other road users.

If you pleaded guilty, you have more scope in your plea of mitigation. You can mention any circumstances in your personal life which may have contributed to the offence, e.g. the stress caused by a marital breakdown or financial problems. If you wish, you are even allowed to call a character witness who can testify to your normally good character and explain the effects a severe sentence would have on you.

Overall, there is no reason why anyone with a modicum of common sense should not be able to defend himself in court or deliver a plea of mitigation.

DEFENDING AGAINST SPEEDING CHARGES

Speeding is probably the offence you are most likely to end up defending in court, so we will say a few more words about it here.

Most speeding offences are detected by a device using radar or some other technology. As we explained in Chapter 4, however, none of this technology is 100 per cent reliable. 50 as well as throwing doubts on the quality of the police evidence, you can aim to cast doubt on the use of the device itself.

The courts generally accept that these devices correctly calibrated and used produce accurate measurements, so there is unlikely to be much mileage in challenging the validity of the technology. However, you may be able to cast doubt on the evidence by asking the police to produce the following:

- . The radar or other unit's calibration and maintenance records. Often these cannot be produced, or are incomplete and inadequate. They might also show that the unit has a history of malfunction and has required repairs.

- . Information on the operator's experience and training, and copies of any certificates of competence they possess. On some occasions officers without formal training have been found to have used such equipment.

- . Whether or not the device has been approved by the Home Office. Devices which are not approved and listed in accordance with the Road Traffic Offenders Act 1988 may not be used to provide evidence in court. (A list of all currently approved devices can also be found on the net at www.homeoffice.gov.uk/docs/speed.html.)

- . Written details of the force's procedures for the use of radar. If the officer concerned used radar against you in contravention of these procedures, the case could be thrown out.

Apart from this, you should check your own notes and (if taken) photographs or sketches of the location. Remember that radar is inaccurate when used in certain weather conditions or near sources of electromagnetic interference. If this applies, again the case could be dismissed.

Another tactic you might try is to take your vehicle to a garage and ask them to check the accuracy of the speedometer. If they find it faulty, ask if they will provide a written statement to that effect, and show it to the magistrates. You are still likely to be found guilty, but if you can demonstrate that you were unaware you were speeding, the court is likely to take a more lenient view, and you may escape disqualification.

It is, of course, advisable to obtain all the evidence you need BEFORE the case goes to court. Unfortunately this is not always as straightforward as one might wish (though hopefully this will change when the UK Freedom of Information Act comes into force in 2005). However, you should at least ask for it, as you can then tell the court that you requested this information but it was not provided. You might also be able to obtain information from the manufacturers of the equipment as to its correct use and calibration.

Note, however, that all evidence which the prosecution intends to use against you **MUST be disclosed if you state that you intend to plead not guilty**. This includes speed camera photos and video recordings. Once a court summons has been issued, all such evidence becomes the property of the Crown Prosecution Service, so you should write asking them to disclose all the relevant evidence you require no later than seven working days prior to your trial. Use fax or special delivery for all your correspondence, so that you have a receipt for its delivery. The CPS is organised into 42 area offices, roughly corresponding with the police forces of England and Wales. Their addresses and other contact details can be found on the CPS website at www.cps.gov.uk or telephone their general enquiries number at 020 7796 8500.

If you have still not received the evidence when the date of the trial comes round, simply contact the listings department of the court and ask to speak to the individual responsible for preparing the list of trials taking place on that date. Point out that you have not received the requested information from the CPS and have therefore been unable to prepare your defence, so in the circumstances you would like the trial adjourned. If you present your request clearly and courteously, they will normally agree to this. However, to be safe you should follow up the conversation with a faxed letter summarising your conversation and their agreement to the adjournment.

If the CPS still fail to provide you with the evidence, simply go to the hearing and ask for the case to be thrown out as 'there isn't any evidence'.

PRESENTATION TIPS

Whilst the magistrates are meant to make their judgement solely on the basis of the evidence presented, it is only human nature that they will be influenced by your appearance, your manner and how you address the court. If you are smartly dressed, confident and address the court respectfully, it will be noted, and could swing the decision your way in marginal cases. Conversely, if you are arrogant, under-prepared or rude, you increase the likelihood of being convicted.

. Wear something conservative. Dark clothing is the best choice, a suit and tie for a man, business skirt and jacket for a woman.

Cover up any tattoos, and remove any ostentatious items of jewellery. If wearing a hat, remove it when you enter the courtroom.

. Arrive at the court in good time for your hearing, and tell the court staff which is your case. You will be shown to a waiting area. Sit quietly here until your case is called.

. In court show courtesy especially to the magistrates, but also to the Clerk of the Court, other court employees and the prosecuting solicitor. Address the magistrates as 'Your Worships' and the Clerk of the Court as 'Sir' or 'Madam'. If a judge is presiding rather than magistrates, address him/her as 'Your Honour'.

. Do not direct personal insults against anyone in the court, or tell them they are lying. This will simply reflect badly on you. There is plenty you can say to throw doubt on the evidence without insulting people.

. Support what you say with any documentary evidence you have available, including sketches and photographs. Have these blown up if you feel it will help your case.

. Resist the temptation to strut and pose. This will not impress the court, who will simply see you as a barrack-room lawyer. The impression you should aim to give is of an ordinary member of the public who has been wrongly accused and is determined to clear his name. Point out that you feel so strongly about this case that you have devoted considerable time and effort to researching it. Courts respect this type of defendant and will look on you sympathetically, even if they do not ultimately accept the case you are making!

After this, all you have to do is wait (usually not very long) for the magistrates to arrive at their decision. Hopefully, you will then walk away from the court with no fine, no disqualification and no points on your licence!

FINAL THOUGHTS

And so we come to the end of this informative guide. If you find yourself in the unhappy position of receiving a fixed penalty notice or summons for prosecution, we hope very much you will find something here to assist you.

There are, of course, many ways in which a motorist can come up against the law in Britain, and in a concise guide of this nature we cannot hope to cover them all in depth. However, we hope that by highlighting aspects of the law which are not well known to the general public, we have shown how it really is possible to take on the system and win.

We hope you will use this information in this guide, not merely think 'that's interesting' and put it to one side. Having a better knowledge of these matters will make you a better, safer driver - and if by chance you fall foul of the law, the information here will show you how you can go about defending yourself. If our advice helps prevent you losing your licence and perhaps your job, the benefit to you from your modest investment in this guide could easily run to *many* thousands of pounds.

So if you do receive a summons or fixed penalty notice in future, don't just think, 'Oh well, I'll accept it and pay the fine' - be it £30, £60, £200 or more. Assess the evidence against *you*, and if you feel you have some sort of case, fight back! In our view, far too many drivers pay up because they don't want the hassle of fighting the charge, or don't know how to. Well, now you do!

And remember - it isn't only about you. By fighting our unfair laws, you are also fighting on behalf of other drivers against a system that uses the motorist as a 'cash cow' to finance other spending (an estimated £17 million is raised each year by speed cameras alone). If enough people actively challenge this injustice, the courts system will ultimately seize up, and the law-makers will finally have to account to the public as to whether it is right to continue their daily persecution of motorists. Perhaps then, finally, we will move towards a fair system which punishes the real offenders and allows the vast majority of innocent drivers to go about their lawful business without the constant threat of prosecution and disqualification.

We hope you have enjoyed reading this guide, and it will serve to make you a safer, happier and wealthier motorist!

APPENDIX A - MODEL LETTERS

Copy these letters into your word processor, and adapt them to your own particular circumstances. In most cases the letters should result in the FPN or PCN being cancelled, but if not you may wish to go to court and present your case to the magistrates. If, as is likely, they find you 'not guilty', you can then apply for costs against the police. *

101 High Road

Middleton

Anyshire [Today's Date] Dear Sir,

Re: Fixed Penalty Notice No. 123450

On the xxth of xxxx I was issued with the above ticket for the offence of parking in a restricted area. I explained to the traffic warden at the time that I was delivering parcels to a nearby shop. The warden did not accept this, and issued the ticket. Details of the delivery can be confirmed *by* [name]. In view of this, I would ask that consideration be given to cancelling the ticket.

Yours faithfully,

Jonathon Doe

Letter 2

101 High Road Middleton Anyshire

[Today's Date] Dear Sir,

Re: Fixed Penalty Notice No. 123450

On the xxth of xxxx I was issued with the above ticket for the offence of failing to maintain the silencer of my car.

I understand that this offence is one that could have been dealt with under the Vehicle Defect Rectification Scheme. This option was not offered to me. In view of this, and the fact that I have now had the silencer replaced, I would ask that consideration be given to cancelling the ticket.

Yours faithfully,

Jonathon Doe

Letter 3

101 High Road

Middleton Anyshire

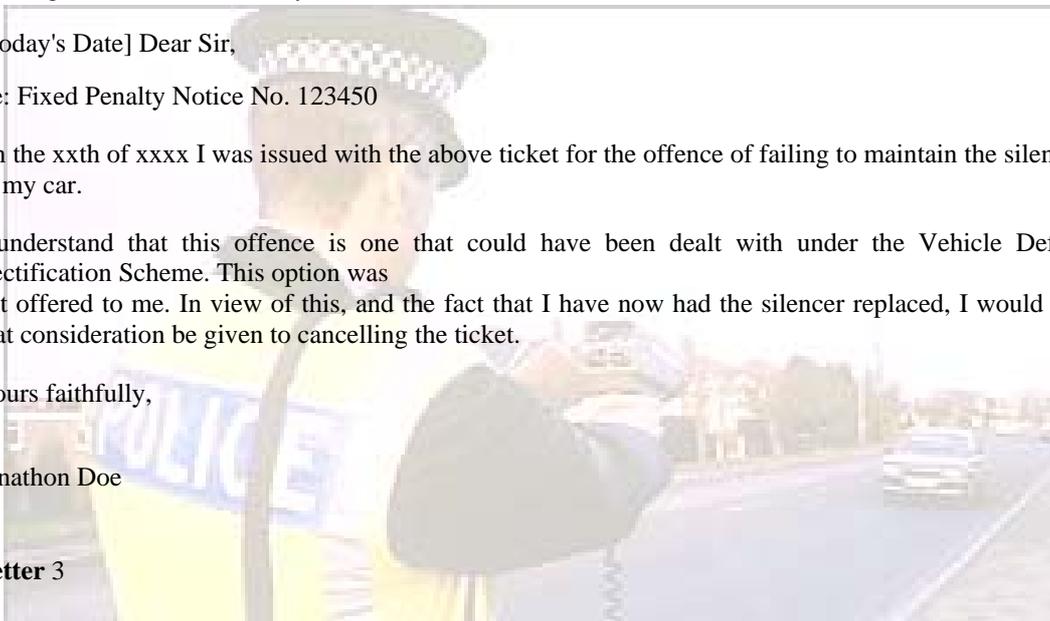
[Today's Date] Dear Sir,

Re: Fixed Penalty Notice No. 123450

On the xxth of xxxx I was issued with the above ticket for the offence of sounding my car's horn when stationary.

I understand that this offence is one that could have been dealt with by way of a verbal warning being given to me by the police officer. Realising that I was at fault, I would have accepted this. In view of this, I would ask that consideration be given to cancelling the ticket.

Yours faithfully,



Jonathon Doe

Letter 4

101 High Road Middleton Anyshire

[Today's Date] Dear Sir J

Re: Penalty Charge Notice No. 123450

On the xxth of xxxx I was issued with the above for parking without a valid ticket in the [location] pay-and-display car park

I was surprised to receive this, as I had a ticket which was valid on the date and time stated. A photocopy is attached herewith. I can only assume that the attendant failed to notice this.

In view of this, I would ask that consideration be given to cancelling the penalty charge notice. _____

Yours faithfully,
Jonathon Doe

Letter 5

101 High Road Middleton
Anyshire

[Today's Date] Dear Sir,

Re: Penalty Charge Notice No. 123450

On the xxth of xxxx I was issued with the above for parking on double yellow lines at [location].

On the day in question the roads were covered in fallen leaves and it was impossible to see any yellow lines. There was also no notice indicating any parking restrictions alongside the road in question. I enclose a photograph taken on the day in question for your information.

In view of this, I would ask that consideration be given to cancelling the penalty charge notice. Yours faithfully,

Jonathon Doe Letter 6

101 High Road
Middleton Anyshire

[Today's Date] Dear Sir,

On the xxth of xxxx I was reported by a police officer for an offence of performing a U-turn where prohibited.

I understand that this offence could have been dealt with by the issue of a fixed penalty notice. The officer did not give me this option. Whatever the reason for this, if the case goes to court I shall be additionally penalised by the extra costs involved.

In view of this, and the fact that I admit the offence, I ask that no further action be taken against me in this matter.

Yours faithfully,

Jonathon Doe

Letter 7

[To the Chief Crown Prosecutor CPS Area Office]

101 High Road Middleton Anyshire

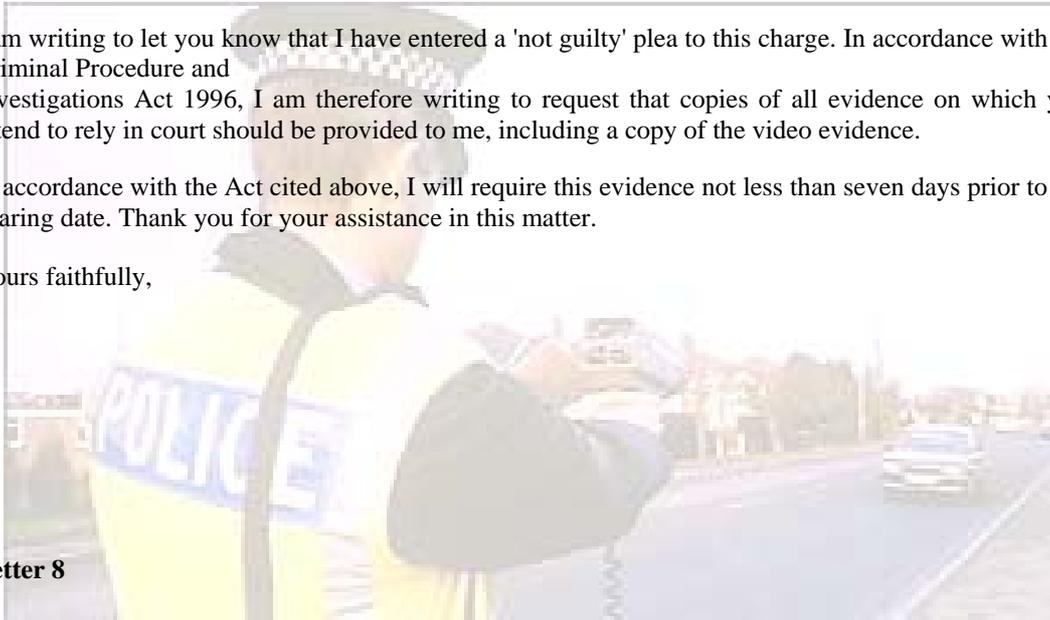
[Today's Date] Dear Sir,

On the xxth of XXX I was reported by a police officer for an offence of exceeding the speed limit. I understand that a VASCAR-type device was used in conjunction with a video camera to obtain evidence against *me*.

I am writing to let you know that I have entered a 'not guilty' plea to this charge. In accordance with the Criminal Procedure and Investigations Act 1996, I am therefore writing to request that copies of all evidence on which you intend to rely in court should be provided to me, including a copy of the video evidence.

In accordance with the Act cited above, I will require this evidence not less than seven days prior to the hearing date. Thank you for your assistance in this matter.

Yours faithfully,



Letter 8

[To the Central Ticket Office
Anyshire Safety Camera Partnership]

101 High Road Middleton
Anyshire

[Today's Date]

Your Reference: [reference number on NIP] Dear Sir

I am in receipt of your Notice of Intended Prosecution regarding an alleged speeding offence committed on [date] by my vehicle [registration number].

I am writing to let you know that I intend to contest this allegation. In accordance with the Criminal Procedure and Investigations Act 1996, I am therefore writing to request that copies of both photographs taken by your camera recording the alleged offence should be sent to me. I should also be grateful if you will confirm the exact time interval between the two photographs.

In accordance with the Act cited above, I will require this evidence not less than seven days prior to any hearing date.

Thank you for your assistance in this matter.

Yours faithfully,

Jonathon Doe

