

How to deal with a Notice of Intended Prosecution

What is a Notice of Intended Prosecution?

A Notice of Intended Prosecution is sent by the police as part of their investigation to establish the identification of a driver following an alleged motoring offence.

These are most commonly used for speed camera offences although they can be used following complaints of poor driving and after road traffic accidents. Failure to respond to the notice can result in a fine up to £1000 and 6 penalty points.

These offences are one of the most common offences coming before the Court and with such high penalties being attracted after a conviction, it is vital to deal with the notice properly and avoid prosecution or conviction.

A Notice of Intended Prosecution must be sent within 14 days of the alleged offence (or in some instances of the offence coming to the attention of the police). If another driver is nominated by the registered keeper, a new notice will then be sent to them. If the notice isn't sent within the required time frame, it may be grounds to reject the notice. The date you received the notice is immaterial and there is no similar rule in respect of nominated drivers.

The Notice of Intended Prosecution will normally be sent first to the Registered Keeper. This is simply who is registered to own the vehicle with DVLA and appears on the V5 log book and it will be sent to the last registered address. There will not be any cross referencing of addresses with the keeper's driving licence so it is important to make sure that DVLA are advised separately of any change of details.

There may be errors on the Notice, such as spelling mistakes. They do not automatically render the Notice invalid and the question for the Court will be whether it can still be properly understood by a driver or vehicle owner. If you are unsure, you may wish to seek legal advice about the options.

What do I need to do if I receive a Notice of Intended Prosecution?

You must respond! Only the person addressed on the notice can respond to the police. If you intend to nominate another person you can't pass the notice to them. You have 28 days from the date of receipt (deemed to be 2 working days after it is posted). You might use this time to make enquiries about who the driver is, take legal advice or to request more information from the police.

You can request photographs from the police, although they are not obliged to provide these. In some instances they are not helpful due to the camera positioning and the light. If you have spoken to the police by telephone you must still respond using the notice. You will only have fully complied with your legal obligations once you have signed and dated the notice, either recorded that you were the driver, nominated another individual as the driver, or provided all of the information which was within your power to give to assist the police with the investigation, and sent it to the police.

You are advised to keep a copy of the notice and send it recorded delivery, although this is not required by law.

What if I can't identify the driver?

You must still respond to the notice and give all of the information you can. If there are multiple people with access to the vehicle you must give all of their names and addresses. If you have sold the vehicle you must explain this and provide any details about the new owner with proof of sale such as receipts.

Continued overleaf >

Contact our Transport team:

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'Keepmeontheroad' is the collective name for the Road Transport Law & Motorist Defence team at Rotheras Solicitors.

The team at Rotheras solicitors like to do things differently. Our Nottingham based legal experts offer the kind of legal expertise that really counts, and our reputation pays testament to the fact we deliver the right results for our clients.

What if I am prosecuted for failing to comply?

You will need to attend Court or respond to the Court summons online or by letter. In some instances, if it was an oversight, the police may use their discretion to revert back to the less serious motoring offence such as speeding if this is requested. There is no obligation for the police to consider this and the passage of time may mean that this is not an option.

If you replied to the notice and the police have not received this, you will need to attend Court and explain this formally by giving evidence at a trial. If you haven't responded to the notice in time or at all, you must show the Court that one of the defences apply, namely that you responded as soon as was reasonably practicable or that it was not reasonably practicable for you to respond.

Reasonably practicable – what does this mean?

With regards to a late response, it will be reasonable to expect you to reply when you have made enquiries with other possible drivers. If you are making enquires, you are advised to keep the police informed about this as it will normally be expected that such enquiries could be concluded within the required 28 days. If you have been on holiday or away from your property when the notice was served, it is reasonable for you to respond at the first opportunity when you have received the notice. If you are regularly away from the registered address for significant periods of time, you are expected to have systems in place for dealing with important post in your absence.

It is not always a defence to say that it wasn't reasonably practicable to respond simply because you haven't received the notice. If you haven't notified DVLA of a change of address on the vehicle V5 document, it is does not amount to a 'reasonable excuse' under the law, that it went to the old address.

If the notice was sent to the correct address, you will need to persuade the Court that it did not arrive there in order to rely on the defence. As a registered keeper, you are expected to have robust systems in place to handle your post, so it is not a reasonable excuse to say that it was put away in a drawer unread, or that it wasn't passed to you by a partner or family member who may receive the post at your address. This doesn't apply as strictly to nominated drivers, but you will still be required to persuade the Court that delivery of the notice failed, for example due to problems with your mail.

In most instances, the police send a reminder if no response is received to the first notice. In the absence of specific problems with post, it can be difficult to persuade a Court that on two separate occasions your post went missing.

If the police have received your response but state that it is not adequate, you must show a number of things. It is a defence to show that you have responded to the notice but that you did not know and could not reasonably establish who the driver was through making relevant enquiries. For this reason it is important to make sure that you do keep records of who has access to your vehicle. Again, it is important that you do actually return the Notice, even if you cannot fully complete the information. You must provide all of the information which is within your knowledge and give a full explanation of this to the police.

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