

The Totting up Rules and Exceptional Hardship

Overview

When a driver reaches 12 penalty points in any 3 year period, when looking at date of offence dates, the law requires that an immediate ban of 6 months or more must be imposed under the 'Totting-up' provisions for a first time totter.

When at 12 or more points with the current offence and prior to considering whether a ban should be imposed, the Court will give the Defendant Driver the opportunity to raise an 'exceptional hardship' argument in order to persuade the Court that a ban should not be imposed. If exceptional hardship is found then a ban may be either avoided or the ban could be significantly reduced. In order for the court to find exceptional hardship it is for the Defendant to establish the severity and degree of hardship and it is for the Court to assess the severity of the implications and to decide whether their circumstances amount to hardship which is beyond that normally suffered i.e "exceptional".

Almost every court order of disqualification entails hardship for the driver disqualified however for hardship to be exceptional it must be proven to be more than is normally suffered.

What is the legal definition?

There is no statutory definition of 'exceptional hardship'. The general approach is for each individual Court to reach its own conclusion based on the case and circumstances before it.

What if my licence is essential to my employment and I will lose my job if I am disqualified?

Loss of employment does not automatically amount to exceptional hardship. Some Courts will regard this as a reasonably foreseeable outcome and thus, not "exceptional". However, the financial implications that arise from the loss of employment and the effect it would have on others could amount to exceptional hardship. The court may conclude that the person could find alternative employment which would not require them to drive. Each individual case can be interpreted differently so it is advisable to seek expert legal advice before preparing any submission.

Do I have to attend court? Can I plead by letter?

Personal attendance of the driver at court is required. It is the Defendant's responsibility to present their case to the Court in order to prove exceptional hardship. A defendant will be questioned on his case whether it is put forward in person, or via an advocate at court.

Why should I seek advice and/or representation?

There is no reason why a Defendant cannot represent himself/herself at Court. However, the fact is that in order to be successful, certain legal criteria must be met, regardless of the Defendant's circumstances. By obtaining legal advice, the case can be assessed to ascertain if it meets the requirement of the law. This is a quite complex area of law and it can be difficult to appreciate the issues that should be raised and what the significant matters are which could be persuasive to a Court. A Defendant will only get one chance to advance an exceptional hardship argument and anyone that does not feel confident in addressing the Court, would be advised to instruct an advocate to present the case on their behalf. A defendant will usually be cross examined upon his/her evidence, and the Magistrates shall also want to question the defendant driver.

Continued overleaf >

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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.

I have already argued exceptional hardship and kept my licence, I have now committed a further offence, can I use the same arguments/s again?

An exceptional hardship argument can be submitted again but the same reasons previously used cannot be relied upon again within a 3 year period. Therefore another exceptional hardship argument must be advanced using entirely different reasons.

Can you give examples of what might be Exceptional Hardship?

- A person with severe disability or health problems may have their ability to get around vastly reduced compared to someone who is of good health.
- A disqualification will mean that the licence holder will be unable to find employment which will enable a mortgage to be paid. As a result the Defendant and any family may then lose their home.
- Loss of employment where a defendant is the sole wage earner in the family and as a result his partner/spouse and/or dependants will suffer.
- A threat to the job stability of employees if a manager, business owner or key employee is unable to fulfill their role.
- If a driver works in a career with a high level of importance to the health or safety of the public, or a specific group of people. Loss of a career, if supported by relevant supporting information and presented well, might be enough to persuade the court.

What makes a good Exceptional Hardship argument?

Under the totting up provisions, there is no single key element attributed to the success of an exceptional hardship argument. Usually a combination of several elements is required to persuade the court. The court will look at all of the circumstances of the case and decide each case on their own facts and merits. Sometimes there are a combination of reasons put forward which when taken together can lead to a successful result.

What is “exceptional hardship” is a question of fact to be judged by the court on the evidence. The burden of establishing exceptional hardship is always on the defendant driver, so call us for our advice and representation to ensure your best chance of success.

‘I recently used Anton to defend me on my speeding case. It was going to be a difficult one having argued exceptional hardship twice in the last 18 months. Anton put together a novel argument outlining the impact of a driving ban on television production companies and charitable organisations with which I work. The court accepted the argument and I escaped a driving ban. When it comes to driving offences, as a professional motorcycle racer and lorry driver I would not hesitate to recommend Anton and his team.’

Guy Martin – road racer, engine builder, professional pistonhead and star of film and TV, Lincolnshire

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