

Additional chapter: Sentencing in Road Traffic Cases

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1 INTRODUCTION

Road traffic cases occupy a considerable amount of time in magistrates' courts and therefore this web chapter is devoted to this aspect of sentencing. Although special sentencing considerations apply to these cases, the principles of sentencing in road traffic offences are based on general sentencing practice, which is explained in Chapters 21 and 22 of *Criminal Litigation*, which you should consider before reading further. As in other areas of sentencing in criminal cases, road traffic cases fall within the remit of the Sentencing Act 2020 and its attendant Sentencing Code. For example, fines are covered in ss.118-132 of the Act and disqualification from driving in ss.162-170. ~~Looking further ahead, provisions contained in~~ Part 5 of the Police, Crime, Sentencing and Courts Act 2022 has increased the maximum custodial term for the offence of causing death by dangerous driving to discretionary life and for causing death by careless driving when under the influence of drink or drugs to 14 years. A new offence of causing serious injury by careless driving has been introduced, carrying a maximum custodial terms of two years.

Under current practice, a key procedural requirement in the prosecution of road traffic offences is s. 1 Road Traffic Offenders Act 1988 (RTOA 1988), which states that a defendant cannot be convicted for certain road traffic offences, unless the defendant has been warned of intended prosecution either at the time of the offence or within 14 days of its commission. This warning is normally known as 'notice of intended prosecution' or NIP. The failure to correctly serve the NIP may provide a 'technical' defence to the charge(s). Additionally, there are several technical procedures that specifically apply to the investigation and prosecution of drink-driving offences. The failure to comply with

these statutory procedures may prevent a successful prosecution. For a detailed account of the special rules relating to evidence and procedure in road traffic prosecutions, see *Blackstone's Criminal Practice* (2021) or the Crown Prosecution Service's website (Legal Guidance section—Road Traffic Offences, available at <https://www.cps.gov./crime-info/driving-offences>). For a specialist practitioner work on road traffic law and sentencing, refer to *Wilkinson's Road Traffic Offences*.

Motoring offences are where most 'ordinary' and otherwise law-abiding people come into contact with the criminal justice system. A driving licence is regarded as essential to modern life, as employment, family responsibilities, and an enjoyable social life will often depend on a person's legal entitlement to drive. With the increased use of technology through speed cameras, databases, and automatic vehicle plate recognition, motoring offences are a lucrative source of revenue for the Government through the imposition of fines as well as a specialist area of criminal defence work. Whilst many criminal defence firms, which are largely dependent on publicly funded work, struggle financially due to the continued erosion of legal aid rates, road traffic cases can be a welcome source of income as many defendants—and sometimes their employers or insurance companies—pay generously to avoid a defendant from being convicted of a driving offence.

Motoring offences are created by statute and range in seriousness from minor document-based offences, such as failing to display a road tax certificate, through to causing death by dangerous driving (carrying a maximum custodial term of 14 years and disqualification for a minimum of two years). The classification of summary-only, either-way, and indictable-only apply to road traffic offences in the same way as it does to other criminal offences and determines the procedural path the case will follow. The likely sentencing outcome will be key to the prosecution's representations at an allocation

hearing in relation to an either-way motoring offence. (See chapter 11 in *Criminal Litigation* for a detailed explanation of this procedure.)

The tragic consequences arising out of the prosecution of a road traffic offence are well illustrated by the jailing of two drivers at Hull Crown Court in November 2020 after racing at speeds in excess of 100mph on the M62. In July 2018 a Honda driven by Isar Muhammed, at a very high speed, suffered a tyre blow-out, plunged down an embankment, and collided with a tree, killing Muhammed's three-year old son and causing life-changing injuries to his wife and daughter, then aged seven. A third child survived with relatively minor injuries.

Muhammed, aged 41, was jailed for four and a half years after being found guilty of causing death by dangerous driving, causing death uninsured, and two counts of causing serious injury while driving dangerously.

The second defendant, Adam Molloy aged 29, was also jailed for four and a half years. He was found guilty of causing death by dangerous driving and two counts of causing serious injury while driving dangerously. Both defendants were disqualified from driving for six years and three months, and until they have taken an extended re-test.

Witnesses had reported seeing the men driving aggressively at very high speed and in close proximity. Muhammed's vehicle was uninsured and the blown-out tyre was found to be 16-years old. The child seat for the three-year-old in Muhammed's car was fitted incorrectly and the child was effectively unrestrained.

Catherine Ainsworth from the CPS says, "Muhammed drove his uninsured, defective vehicle at very high speed. That in itself was a highly dangerous act. But to do this when the vehicle was carrying his family, including an unrestrained three-year old, defies comprehension. Muhammed and Molly have now been jailed. The case underlines the

tragic consequences of engaging in this type of aggressive, dangerous driving, and acts as a stark warning to anyone tempted to engage in this sort of potentially lethal behaviour behind the wheel.” (CPS Press Release 22/11/2020)

As you will see, some aspects of road traffic sentencing can be confusing and where you are uncertain of the court’s sentencing powers, you should research the potential sentencing options in *Blackstone’s Criminal Practice* (2021) and certainly study the Magistrates’ Court Sentencing Guidelines (MCSGs). For example, not all driving offences are endorsable with penalty points, and a large number of driving offences, including careless driving, do not carry a custodial sentence.

Some offences, including careless driving, carry a variable number of penalty points, between 3-9 depending on the level of seriousness. Following conviction for other offences requires the offender to undertake an extended driving test under s. 36(1) RTOA 1988, including the offence of dangerous driving under s. 2 Road Traffic Act 1988 (RTA 1988). Where the obligatory endorsement of a driving licence is ordered, the court may disqualify the defendant until he has retaken and passed his driving test (s. 36(4) RTOA 1988). In addition to imposing penalty points and disqualification from driving, a fine is likely to be imposed in most of the serious driving offences.

When representing a defendant charged with a road traffic offence, the defence lawyer should ensure she has the most up-to-date information on her client’s driving status by scrutinising her client’s driving licence. Anyone can view their driving record online at: <https://www.gov.uk/view-driving-licence>. The defendant may already have penalty point endorsements on his licence or be a disqualified driver or the holder of a provisional driver’s licence. The defendant’s driving status/record may affect the penalty the court can impose. For a useful explanation of offence conviction codes as they appear on a UK

driving licence, enabling you to interpret the information contained on a driving licence, see <https://www.gov.uk/penalty-points-endorsements/endorsement-codes-and-penalty-points>.

The following terms are fundamental to an understanding of road traffic sentencing practice:

- obligatory disqualification;
- discretionary disqualification; and
- obligatory endorsement.

2 Obligatory disqualification

Some offences carry obligatory disqualification from driving including:

- driving with excess alcohol under s. 5 RTA 1988;
 - driving or attempting to drive with concentration of specified controlled drug above specified limit under s 5A RTA 1988.
- dangerous driving under s. 3 RTA 1988;
- driving whilst disqualified s 103 RTA 1988
- aggravated vehicle-taking under s. 12A Theft Act 1968;
- causing death by careless driving under s. 2B RTA 1988;
 - causing serious injury by dangerous driving under s 1A RTA 1988
 - causing death by dangerous driving under s 1 RTA 1988
 - causing death by careless driving when under the influence of drink or drugs under s 3A RTA 1988.
 - causing death by driving while unlicensed, disqualified or uninsured under s 3ZB RTA 1988

Disqualification must be for a period of at least 12 months unless special reasons apply (s. 34 RTOA 1988—see para. W3.6). In some cases, the disqualification period will be longer. Where an offender commits an offence of drink driving within 10 years of having committed an excess alcohol offence, the minimum period of disqualification is three years. Where any offender is subject to an existing disqualification and a further disqualification is imposed for a new offence, the court cannot express the periods to run consecutively. Consequently, when imposing the new period of disqualification, the court will add the amount left on the existing period of disqualification (i.e. if 3 months is remaining on the current disqualification, and the court is imposing a 12 month disqualification for the new offence, it will be necessary to disqualify for 3 months + 12 months = 15 months from the

day of sentence).

Where the defendant pleads guilty to an offence which carries obligatory disqualification, the court can impose an interim disqualification period pending the final sentencing decision. The court has discretion to disqualify until a further driving test is passed where the offender has been convicted of an offence carrying obligatory endorsement. The court must order an extended test for those convicted of manslaughter (where vehicle was used as a weapon), causing death or serious injury by dangerous driving and for dangerous driving.

Disqualification and imprisonment

For offences committed on or after 13 April 2015, where the court disqualifies the defendant from driving and imposes a custodial sentence (or a young offender is given a DTO), the court must extend the disqualification period by half of the custodial term imposed, s.30 Criminal Justice and Courts Act 2015. This ensures that the period of disqualification starts to run only when the defendant reaches the half-way point of his sentence. Therefore, if the offender is sentenced to 12 months imprisonment and is disqualified from driving for a period of 12 months, the period of disqualification will be extended to 18 months.

2.1 PROVISION FOR DRINK DRIVERS TO REDUCE THE PERIOD OF OBLIGATORY DISQUALIFICATION

Drink drivers who are disqualified for 12 months or more under the various driving offences involving excess alcohol or drugs can reduce their period of disqualification if they successfully complete a drink driver's rehabilitation course (s. 34A RTOA 1988). The course, which is available in all areas, requires the defendant to pay privately. It has to be

completed at least two months before the expiry of the disqualification period. The reduced period of disqualification cannot be for less than three months and for no more than a quarter of the entire disqualification period. It is anticipated in the near future that similar rehabilitation courses will be available to those convicted of driving whilst under the influence of drugs.

3 PENALTY POINTS ENDORSEMENT

A number of offences require the court to endorse the driver's licence including careless driving (s. 3 RTA 1988); failure to stop and report an accident (s. 170 RTA 1988); and having no insurance (s. 143 RTA 1988). In these circumstances the offender's driving licence must be endorsed with the appropriate number of penalty points unless, at the same time, the defendant is disqualified from driving either because the court has exercised its discretionary power of disqualification or because there is mandatory disqualification for the offence. If disqualified from driving, no penalty points in respect of any other offences committed on the 'same occasion' will be endorsed (*Martin v DPP* [2000] RTR 188).

3.1 PENALTY POINTS ENDORSEMENT AND THE DISCRETION TO DISQUALIFY

Whenever a court endorses penalty points on a licence, it always has discretion to disqualify the offender from driving for the offence (s. 34(2) RTOA 1988). Disqualification subject to passing a driving test may also be ordered where the safety of other road users is an issue (s. 34(4) RTOA 1988). If a court passes a sentence of discretionary disqualification, for example, in a serious case of careless driving, no penalty points are

imposed on the defendant's driving licence, although the particulars of the offence are endorsed. Where a court exercises its discretion to disqualify, the period of disqualification is a matter for the court. Obligatory or discretionary disqualification for a period of 56 days or more results in the defendant's licence being revoked and the defendant must re-apply for a new licence. Only a disqualification under the totting-up provisions (s. 35 RTOA 1988) removes the penalty points collected before and those imposed for the offence that triggered the disqualification (s. 45(5) RTOA 1988).

3.2 ENDORSING PENALTY POINTS WHERE THE DEFENDANT HAS COMMITTED TWO OR MORE ENDORSEABLE OFFENCES

Where a defendant is convicted of two or more endorsable offences committed on the same occasion, the court will usually only endorse the highest number of points on the defendant's licence, unless it thinks fit to order otherwise (s. 28 RTOA 1988).

3.3 OFFENCES CARRYING A VARIABLE RANGE OF PENALTY POINTS

Where there is a variable range of penalty points, the points imposed should reflect the seriousness of the offence and the defendant's culpability. Careless driving carries a range of penalty points, from three to nine. Where the defendant is guilty of only a minor lapse in concentration, the penalty points endorsed on the licence should be towards the lower end of the tariff. Conversely, a serious lapse in concentration or a prolonged course of bad driving will merit the imposition of penalty points towards the higher end of the tariff.

Sentencing for road traffic offences, in common with other general criminal offences, is based on seriousness (see Chapter 21 of *Criminal Litigation*). The MCSGs identify aggravating and mitigating features in relation to summary-only and either-way road traffic offences. For drink-driving alcohol offences, the guidelines provide an indication of the likely penalty and the likely period of disqualification based on the reading of the analysed specimen. This emphasises the importance of researching any relevant sentencing guidelines before attempting to offer advice on likely sentence or mitigating on behalf of a defendant. At the conclusion of this chapter, we have included a series of short scenarios which will enable you to access and apply the relevant MCSGs to

a selection of road traffic offences. The MCSGs can be accessed online at:

<https://www.sentencingcouncil.org.uk/the-magistrates-court-sentencing-guidelines/>.

3.4 SPECIAL PROVISIONS FOR 'NEWLY QUALIFIED' DRIVERS

Section 1 Road Traffic (New Drivers) Act 1995 introduced a probationary period of two years starting from the day on which a person became a qualified driver. If the newly qualified driver acquires six or more penalty points within the probationary period of two years, his licence will be revoked by the Secretary of State, requiring the driver to retake and pass an ordinary driving test before being eligible to apply for a full licence once more. The probationary period thereafter has no further application. Revoking the driver's licence in these circumstances does not wipe the licence clean, and the penalty points will remain on the licence for the statutory period of three years from the commission of the offence.

Any points accumulated before the test was taken will count unless they were committed more than three years before the current offence. Points accumulated after the test is passed will count if the offence is within two years of the date on which the test is passed. If, however, the court decides to impose a short period of disqualification under s. 34(2) RTOA 1988 for the latest offence and therefore no points are imposed, then the revocation provisions will not apply if the number of points then remaining on the licence amounts to less than six.

Example

Leanne acquired three penalty points for a speeding offence whilst a provisional licence holder 12 months before passing her driving test. Eighteen months after passing her test she has acquired another three points for speeding. Her licence will be revoked by the Secretary of State. If the court decides instead to impose a short period of discretionary disqualification for the new offence, then the revocation provision will not be triggered. The earlier points will remain on her licence and another three within the two years of passing her test will trigger revocation.

4 SENTENCING PROCEDURE IN A ROAD TRAFFIC OFFENCE

In less serious driving offences the defendant will usually plead guilty by post (see *Criminal Litigation* Chapter 12,.3). In some cases the defendant may be given a fixed penalty at the roadside (for qualifying offences see Sch. 3 to the RTOA 1988). A defendant who denies the offence will appear in court. Unless charged with a serious road traffic offence, it is unlikely that your client would qualify for a representation order to cover the cost of legal representation at trial---unless the sentencing consequences are serious. As an alternative to self-financing legal representation, defendants may be covered under their motor insurance policy.

Having been convicted of a road traffic offence, the court will electronically access the defendant's driving record through the DVLA to check the status of the defendant's driving record. As a financial penalty is very common for road traffic offences sentenced in the magistrates' court, a statement of the defendant's means will need to be completed. The calculation of fines by reference to relevant

sentencing guidelines is covered in chapter 22.15 of *Criminal Litigation*. In April 2018, the

TV presenter Anthony McParthin was fined £86,000 and disqualified from driving for a period of 20 months for a single offence of drink driving. He was found to be twice over the legal limit for alcohol when his car crashed into another. His relevant weekly income was declared at £130,000 per week. He was fined 100% of his relevant weekly income (Band B rate) with a one-third reduction for a timely guilty plea. Remember the importance of the discount for a timely guilty plea discussed at chapter 21.13 of *Criminal Litigation*. The discount however does not apply to minimum periods of disqualification or to the mandatory imposition of penalty points.

Where a magistrates' court is considering disqualification on conviction and the defendant is not present in court, under s. 11(4) Magistrates' Courts Act 1980 (MCA 1980), the court must adjourn and notify the defendant that he is required to attend court as the court is considering a period of disqualification. This requirement does not apply if the defendant was in court on the last occasion and he has failed to attend on this occasion without good cause.

Under s. 54 Criminal Justice and Immigration Act 2008, the magistrates can proceed in absence, unless it appears to be contrary to the interests of justice to do so (see Chapter 9 of *Criminal Litigation*). Where, having been notified, the defendant subsequently fails to attend, he can be disqualified in his absence although the court might alternatively adjourn the proceedings and issue a warrant without bail under s. 13 MCA 1980 to compel the defendant's attendance.

Where a court imposes penalty points or endorses a driving licence, the court will electronically notify the DVLA in Swansea. Where a defendant is disqualified from driving for a period beyond 56 days, his licence is revoked and the defendant must re-apply for a new licence before s/he can legally drive again. Where disqualification is for less than 56

days, the defendant's licence is suspended for the period of the disqualification. The court may ask the defendant to physically produce their driving licence where they are considering disqualification or are imposing a period of disqualification.

5 DISQUALIFYING UNDER THE TOTTING-UP PROCEDURE—S. 35

RTOA 1988

A defendant can be disqualified for at least six months if the penalty points to be taken into account for the current offence amount to 12 or more.

Where the defendant is convicted of an offence which carries obligatory endorsement, the penalty points to be taken into account are:

- (1) any points attributed to the offence in respect of which the defendant has just been convicted (except if disqualified for the offence itself under s. 34 RTOA 1988); and
- (2) any points previously endorsed on his licence in respect of offences committed within the three years immediately preceding the commission of the present offence (if the defendant was disqualified in connection with an earlier offence, no penalty points would have been endorsed on his licence for that particular offence).

Under the totting-up procedure, the date of the commission of the offence is the key date and not the date of conviction.

Where a person is disqualified from driving under the penalty points system, his driving licence is wiped clear of existing penalty points.

Disqualification under the totting-up provisions is mandatory, unless there are mitigating circumstances, and must be for a minimum period of six months. The six-month minimum disqualification increases to 12 months if there has been a previous disqualification of 56 days or more within three years of the commission of the current offence. It increases to

two years if there have been two or more disqualifications imposed within three years of

the current offence. A court may order the offender to retake an extended driving test.

The minimum periods of disqualification under the totting-up provisions are subject to mitigating circumstances (see below). If such circumstances are successfully argued, the court can reduce the minimum period of disqualification or not disqualify at all.

6 AVOIDING OBLIGATORY ENDORSEMENT OR OBLIGATORY DISQUALIFICATION—SPECIAL REASONS—SS. 34 AND 44 RTOA 1988

To avoid obligatory endorsement or obligatory disqualification, a defendant must establish the defence of special reasons. What is a special reason? Whilst there is no statutory definition of special reasons, a substantial body of case law has developed over the years. We include a summary of the law. Further detail can be found in *Wilkinson's Road Traffic Offences* and *Blackstone's Criminal Practice*. A special reason was defined in *Whittal v Kirby* [1947] KB 194 as:

'[A] mitigating or extenuating circumstance, which is connected with the commission of the offence but which is not personal to the offender and which does not constitute a defence to the charge'.

The legal burden of establishing special reasons rests on the defendant on the balance of probabilities. Invariably, the defendant will be expected to adduce evidence. A submission of special reasons is likely to be critically scrutinised by the court and the accused should be warned that even where special reasons are proven, the court retains the discretion to disqualify or endorse the accused's licence.

The following have been held to amount to a special reason.

Emergency

Driving in an emergency may amount to a special reason if, for example, the defendant had not intended to drive but, having consumed alcohol, was suddenly confronted with an emergency situation requiring him to drive. A court would enquire in such a case as to whether alternative transport might have been available. The test is whether the reasonable man would have regarded the situation as being one in which no other course of action was possible (*DPP v Whittle* [1996] RTOR 154).

Laced drinks

Special reasons not to disqualify from driving can be found where a defendant establishes that his drinks were laced and that he did not know or suspect that fact and that if his drinks had not been laced, he would not have been above the legal limit (*DPP v O'Connor* [1992] RTOR 66). Special reasons would not apply to someone who knew he was drinking alcohol but had been misled about the nature and strength of the drink.

The shortness of the distance driven

An intention to drive only a short distance can be regarded as a special reason for not disqualifying. Guidance on this is provided in the Divisional Court's decision in *Chatters v Burke* [1986] RTOR 396.

6.1 EXEMPTION FROM DISQUALIFICATION AND ENDORSEMENT FOR CERTAIN OFFENCES—S. 48 RTOA 1988

On conviction for using a dangerous vehicle (s. 40A RTA 1988) a court must not endorse or disqualify if the defendant can prove that he did not know and had no reasonable cause to suspect that the offence would be committed. The legal burden of proving the defence lies with the accused on the balance of probabilities.

Example

Tahir is prosecuted for having defective brakes involving a defective handbrake linkage. If Tahir can show that he did not know of the defect and had no cause to suspect that the braking system was faulty in this way, the court cannot order endorsement.

7 AVOIDING DISCRETIONARY DISQUALIFICATION

To avoid or reduce the period of discretionary disqualification the defendant can argue mitigating factors which are relevant to the offence and may be personal to the defendant, i.e. loss of employment and effect upon the defendant's family.

8 AVOIDING DISQUALIFICATION UNDER THE TOTTING-UP

PROCEDURE—S. 35 RTOA 1988-EXCEPTIONAL HARDSHIP

To reduce or to avoid disqualification under the totting-up procedure, the defendant must argue mitigating circumstances which are relevant to the offence and may be personal to the defendant. Section 35(4) RTOA 1988 specifically excludes the defendant from submitting:

- the offence is trivial; or
- the loss of his licence would cause him hardship (unless the hardship is exceptional); or
- any mitigating circumstances which have been advanced and taken into account to avoid disqualification under the totting-up procedure within the preceding three years.

8.1 THE GROUND OF EXCEPTIONAL HARDSHIP

In deciding whether the defendant will suffer exceptional hardship on being disqualified under the totting-up procedure, regard will be had to all the circumstances. The defendant must prove that, if he loses his driving licence, he will suffer exceptional hardship and not just be inconvenienced or experience a reduction in quality of life. The exceptional hardship can extend to the defendant's dependants. Relevant factors include: the type of job the defendant has, other available means of public or private transport, and working hours requirements etc.

The defendant must usually give evidence on oath to substantiate the claim of exceptional hardship and where appropriate, adduce evidence from an employer about the consequences of losing his licence. The defendant can expect to be cross-examined by the prosecutor and the court. In 'ordinary' cases the most common argument is based on financial grounds such as submitting to the court to that the loss of the defendant's driving licence would lead to your employers being in danger of going bankrupt or would

lead to the defendant suffering mental health problems.

Exceptional hardship arguments of the rich and famous are often reported by the media. In March 2012, Tony Pulis, the then manager of a Premier-league football club, avoided disqualification under the totting-up procedure where his solicitor successfully argued

exceptional hardship on the basis that Mr Pulis would be so badly affected by the driving ban that Stoke City might be relegated from the Premier League causing suffering to the club's supporters and investors as well as interfering with the defendant's extensive charitable activities.

9 FURTHER APPLICATION TO REDUCE PERIOD OF DISQUALIFICATION

Section 42 RTOA 1988 permits a person disqualified from driving to apply to the court to end the period of disqualification before its expiry date. The provisions apply to an offender who is subject to a lengthy disqualification period. The decision to allow the application is a matter for the court's discretion. Under s. 42 RTOA 1988 the following factors are relevant: (a) the character of the person disqualified and his conduct subsequent to the order; (b) the nature of the offence; and (c) any other circumstances. A minimum period of disqualification must have expired before the offender can apply. For example, where the defendant is disqualified for less than four years, two years must have elapsed before the application can be made.

KEY POINT SUMMARY

- A defence advocate should ensure the client brings his or her driving licence to court.
- The defence advocate should also scrutinise the client's driving licence to see whether there are any past endorsements or disqualifications as these will be relevant to the sentence imposed.

- Both the prosecutor and defence advocate should ensure they have researched the penalties for the offence(s) under consideration and any applicable sentencing guidelines.
- Understand that ‘special reasons’ apply only in relation to mandatory disqualification/endorsement and that special reasons are difficult to establish.
- The defence advocate should be prepared to make a submission and to adduce evidence in a case where the client may lose his or her licence under the totting-up procedure or in the exercise of the court’s discretion to disqualify for the offence itself.

SELF-TEST QUESTIONS

Consider the following exercises designed to test your understanding of road traffic sentencing. Research the relevant sentencing guidelines using the Magistrates Court Sentencing Guidelines which can be found on the Sentencing Council’s website: <https://sentencingcouncil.org.uk/offences> and advise each client as to the likely outcome. We have included the sentencing guidelines for the offences of speeding/excess alcohol and driving with no insurance with this chapter.

Exercise 1

Ian (aged 47) is receives a postal requisition in connection with an offence of causing death by careless driving contrary to s. 2B RTA 1988. Ian was driving and approached a sharp bend in the road. His near-side wheel caught the curb and the impact sent his car across the road onto the other carriageway. While spinning out of control, Ian’s car clipped

a cyclist riding on the other side of the carriageway, knocking him to the ground. The cyclist was not wearing a helmet. He sustained a fractured skull and died in hospital several days later. Ian pleads guilty before a magistrates' court at the first opportunity. He is deeply remorseful about the death of the cyclist and has had to take time off work and undergo counselling for depression. He has returned to his job where he receives a net salary of £2,500 a month. He is married with one dependent child. His wife does not work. He has had an unblemished driving record for the past 20 years.

Exercise 2

[REDACTED]

Ruth (aged 40) is facing a charge of driving with excess alcohol, contrary to s. 5(1)(a) RTA 1988. She was observed by officers to be driving her car at 11 pm in an erratic manner. She gave a positive specimen of breath at the roadside and was then arrested. She provided a further specimen which showed the level of alcohol in her breath as 111 mgs (against a legal limit of 35 mgs), nearly four times over the legal limit.

Ruth pleads guilty. She admits to her solicitor that she has an alcohol dependency and that she is on anti-depressant medication. At present she is going through a traumatic divorce and feels that everything is spiralling out of control. Ruth is a nurse. She lives 25 miles from the hospital trust which employs her. She also works shifts. She is certain she will lose her job if she is disqualified from driving.

Exercise 3

[REDACTED]

Ben (aged 32) was involved in a minor road traffic accident which was attended by the police. Ben was driving too close to the vehicle in front and failed to brake in time to avoid a collision when the car in front had to stop at a pedestrian crossing. The rear end shunt caused damage to the car in front. It transpires that Ben was not insured to drive this

particular vehicle. He is sent a postal requisition for careless driving, (s. 3 RTA 1988) (driving without due care and attention) and for having no insurance (s. 143 RTA 1988). The lack of insurance was an oversight—he simply forgot to renew his policy. Ben had been preoccupied because his wife had to go into hospital for an emergency operation leaving him with the care of their two school-age children. He expresses his regret and pleads guilty at the first opportunity. Ben has six points currently on his licence for speeding offences. He is a self-employed mechanic and employs six others in his business. His business is 15 miles from his home. He works long hours. His work naturally involves him road testing vehicles. His wife cannot drive for the next six months due to her illness and the family is dependent upon Ben being able to drive. Ben draws £500 net per week from his business.

Exercise 4

Imran will plead guilty to an offence of driving without insurance (six to eight penalty points). He passed his test 18 months ago. His job requires him to drive and he does not wish to be without a driving licence. He earns £300 per week. The failure to have insurance was as a result of confusion with his mother's insurers. She had asked him to drive her car. He had checked her insurance cover with the insurance company and had been given the impression that his mother's policy extended to drivers under the age of 25. Imran is 23. When the insurance policy document was produced, the terms and conditions of the policy specifically excluded drivers under the age of 25.

Exercise 5

Tyrone aged 33 was caught speeding. He was driving at 82mph in a 30mph zone. Tyrone accepts he was speeding but says he had been out for a curry and desperately needed

the toilet which is why he drove so fast. Tyrone is a self-employed football agent. He is married with a young family. His eldest son, aged 12, is a talented footballer and has been signed by a Premier league football club which is situated 50 miles away from home. Tyrone needs his car for his work and to drive his son the 50 miles each way to football training and to play matches at least three times each week. Unfortunately Tyrone's wife does not drive. Tyrone already has 6 penalty points on his licence, imposed in the last three years. They are both for speeding offences committed the year previously. On his statement of means, he declares his relevant weekly income as £500 per week.

Case study: *R v Roger Martin*

If you have accessed the *R v Roger Martin* case study from this Online Learning Link, you will recall that Roger Martin has previously pleaded guilty to offences of common assault, careless driving, and failing to stop. Research the relevant sentencing guidelines in relation to the road traffic offences with which Roger Martin is charged and consider what will be Roger's priority in terms of sentence.

You can access Roger Martin's plea in mitigation elsewhere on our Online Learning Link, but before you do so, make sure that you have looked at Chapter 22, which considers the role of the defence advocate in submitting a plea in mitigation.

Analysis of all the above can be found in the answers at the end of this chapter.

FIGURE 1 SENTENCING IN ROAD TRAFFIC CASES (see below)

Offences requiring obligatory disqualification

- Disqualification will be for a minimum period of 12 months.
- The driver's licence is revoked.
- The only way to avoid obligatory disqualification or to reduce the period of disqualification is to establish 'special reasons' for not disqualifying which is difficult to establish.

Offences for which there is discretionary disqualification

- Wherever penalty points have to be endorsed, a court has the discretion to order disqualification.
- Where the court disqualifies under its discretionary powers, the period of disqualification is a matter for the court.
- The driver's licence is revoked where the period of disqualification is 56 days or more.
- The defendant can avoid discretionary disqualification by arguing mitigation relating to the offence and/or the defendant.

Offences requiring obligatory endorsement

- Certain offences require obligatory endorsement of a driver's licence.
- Where a range of penalty points can be imposed; the number of penalty points should reflect the 'seriousness' of the offence.
- The penalty points are aggregated with any other penalty points endorsed for offences committed within three years of the current offences.
- The only way to avoid obligatory endorsement is to establish 'special reasons'.

Disqualification under the 'totting-up' procedure—s. 35 RTOA 1988

- A defendant will be liable to disqualification for at least six months as a 'totter' if 12 or more penalty points have been endorsed on his licence for offences committed within the last three years.
- The court will take into account:
 - any points endorsed for the present offence; and
 - any points endorsed for offences committed within three years of the commission of the current offence.
- Where a driver is disqualified as a totter his driving licence is wiped clean of points.
- Disqualification must be for a minimum of six months—longer in some cases.
- Defendant can avoid disqualification or seek to reduce the period of disqualification as a 'totter' by arguing mitigating factors including exceptional hardship.

Answers to self-test questions

EXERCISE 1

Research the offence of causing death by careless or inconsiderate driving. The sentencing guidelines for this offence are contained in the SC's publication *Causing Death by Driving* and in the Magistrates' Court Sentencing Guidelines (MCSGs). Conviction requires the court to endorse Ian's licence with 3–9 penalty points. Having regard to the MCSGs, the starting point in terms of sentence based on the facts described is a medium level community order with a sentence range reducing to a low-level community order and increasing to a high-level community order. Disqualification for 12 months is mandatory for this offence. Ian should be sentenced according to the seriousness of the offence and his level of culpability. This was not an example of blatant bad driving. The tragic death has resulted from what might be described as a minor lapse in concentration and some fault can be attributed to the cyclist for not wearing a helmet which might have spared his life. There is ample offender mitigation. Credit must be given to Ian for his timely guilty plea. Overall, Ian can expect to be sentenced to a low-level community order for this offence in accordance with the guidelines.

EXERCISE 2

Did you research the offence of driving with excess alcohol? The bad news for Ruth is that disqualification from driving is mandatory for this offence. The MCSGs suggest that for a reading of 111 mgs in breath, the period of disqualification should be in the region of 23–28 months and a medium level community order is the appropriate starting point. Ruth will be entitled to a one-quarter reduction in the period of disqualification if she successfully completes the drink driver's rehabilitation course. She has no grounds to argue special

reasons for not disqualifying her. Given Ruth's admitted problems, a community order which includes a supervision requirement would appear to be the most constructive sentence. In determining the period, the court should have regard to Ruth's timely guilty plea.

EXERCISE 3

Ben has pleaded guilty to two endorsable offences. Careless driving carries an endorsement of 3–9 penalty points. Driving with no insurance attracts a fine and endorsement of between 6–8 penalty points. The MCSG for driving with no insurance suggests this would probably be a category 2 offence as Ben was involved in a collision albeit not a serious one. The guideline stipulates a Band C fine and an endorsement of 8 penalty points (the court can consider disqualification for a period of six months). Ben will receive only one endorsement based on the offence attracting the highest number of points (s. 28 RTOA 1988). If the magistrates decide to impose five penalty points for the offence of careless driving but eight penalty points for having no insurance, Ben's licence will be endorsed with eight penalty points in total. He can expect to be fined for each of the offences. The starting point for the fine is Band B for the offence of careless driving as described. If Band B is applied, the magistrates' court must decide what percentage (75%–125%) within the Band B range to apply. Let's assume the court applies 100%. If Ben's relevant weekly income is £500 he will be fined in the region of £500 with a third being deducted to take account of his timely guilty plea. He can thus expect a fine of £333. He will also be ordered to pay the Victims' Surcharge of £33. Prosecution costs in the sum of £85 will be added. The magistrates' court may choose to impose a further fine for the no insurance offence or impose no separate penalty if the court feels the total fine for one offence reflects the overall totality of the offending

behaviour. Ben will be disqualified from driving because he already has six current penalty points on his licence. If six or more penalty points are imposed, he will have 12 or more points on his licence. To avoid disqualification under the totting-up procedure, he must establish that the loss of his licence would cause exceptional hardship (s. 35(4) RTOA 1988). He would point out that his business is dependent upon his being able to drive and that any other form of transportation would be completely impractical.

EXERCISE 4

Imran is in a very unfortunate situation. As he is a 'newly qualified' driver within the definition of s. 1 Road Traffic (New Drivers) Act 1995, his licence will be revoked and he will have to pass his driving test all over again because of the imposition of at least six penalty points. This may take many weeks. The most pragmatic solution for Imran would be to argue for a very short period of discretionary disqualification under s. 34 RTOA 1988, as this will mean no penalty points are in fact endorsed. He can expect to be fined and to have to pay prosecution costs. However, the fine should reflect the seriousness of the offence and there would appear to be plenty that the defence solicitor can say in mitigation of the offence itself. Imran could argue special reasons for not endorsing his licence at all if he can establish he was misled by the insurance company.

Exercise 5

Tyrone is in a difficult position. He clearly does not want to lose his licence. The guideline for his speeding offence is a period of disqualification of between 7-56 days or 6 points with a Band C fine. If 6 penalty points were imposed, he would be a totter and liable to disqualification for at least six months under the totting up rules -- unless he can establish mitigating circumstances/exceptional hardship. As there is no guarantee that Tyrone could

successfully argue mitigating circumstances/exceptional hardship he could lose his licence but the penalty points would be wiped clear and he would be free to start to accumulate them again once he had served the period of disqualification! The court may decide to exercise its discretion to disqualify for the speeding offence and fine him which would leave the existing six points on Tyrone's licence. The following is taken from the MCSGs-Explanatory Notes section on 'Road traffic offences--Disqualification' <https://www.sentencingcouncil.org.uk/explanatory-material>:

In some cases in which the court is considering discretionary disqualification, the offender may already have sufficient penalty points on his or her licence that he or she would be liable to a 'totting up' disqualification if further points were imposed. In these circumstances, the court should impose penalty points rather than discretionary disqualification so that the minimum totting up disqualification period applies.

Whilst Tyrone could be disqualified in the exercise of the court's discretion for a period in excess of 7 days but not quite as long as 56 days, based on the above guidance, the court will impose 6 penalty points making him a 'totter'. He will then have to establish the defence of exceptional hardship if he is to avoid disqualification. He can expect a fine of £500 (Band C at 150% (it may be higher percentage to reflect his previous endorsements)). The figure includes a one third reduction for a timely guilty plea. It would otherwise have been £750. There will also be prosecution costs of £85 to pay and a victim surcharge of £50 to pay, making a total amount of £635.

CASE STUDY *R v ROGER MARTIN*

In addition to the offence of common assault, Roger Martin has also pleaded guilty to

careless driving (s. 3 Road Traffic Act 1988) and failing to stop and report (s. 170(4) RTA 1988). His priority will be to keep his driving licence as his livelihood depends upon it.

Careless driving is punishable with penalty points ranging from 3–9. Under the 2017 revised MCSGs this incidence of careless driving is likely to be regarded as falling within the most serious category (Category 1) with endorsement of between 7–9 penalty points and a Band C fine. The magistrates could choose to exercise their discretion to disqualify Roger for the offence itself (s. 34(2) RTOA 1988). The offence was committed in the context of what is commonly referred to as ‘road rage’. If the magistrates endorse Roger’s driving licence, they are likely to be looking at the higher end of the tariff (8 or even 9 penalty points) to reflect the seriousness of Roger’s behaviour. Furthermore, Roger can expect a high fine for the same reason. Credit will be given for his timely guilty plea. However, the credit is applied to the size of the fine and has no application to the endorsement of penalty points.

The offence of failing to stop and report carries endorsement of 5–10 penalty points and the risk of a custodial sentence. Based on the MCSG, this offence falls somewhere between a Category 2 and 1. If deemed to be a Category 2, endorsement would be in the region of 7-8 and a starting point of a Band C fine with a range up to a medium level community order. As these offences were committed on the same occasion, Roger’s driving licence will be endorsed with the highest number of points (s. 28 RTOA 1988). A pre-sentence report is likely to be ordered in this case given that he is also being sentenced for a common assault by beating in aggravating circumstances. Prosecution costs will also be ordered.

Roger already has six penalty points currently on his licence. If he receives (as is highly likely) six or more penalty points for the offences he has been convicted of today, he will

be disqualified under the totting-up procedure (s. 35 RTOA 1988), unless he is able to argue that the loss of his driving licence in these circumstances would cause him exceptional hardship. Having regard to his personal circumstances, you will see that Roger is heavily dependent on his driving licence. He is a salesman by occupation. He has extensive financial outgoings, including child maintenance. He has a strictly defined court contact order with his children which will be lost if he is unable to collect them on time. Furthermore, his youngest son is disabled and relies on his father being able to drive. Roger's former wife is unable to assist as she does not drive. It may not be reasonably practicable for Roger to use public transport. Roger can expect to give evidence on oath to substantiate his defence of exceptional hardship.