

# Road Traffic Defence

## Overview

Road Traffic Defence is an extremely broad area of law that ranges from offences as minor as using a mobile telephone whilst driving, to offences of causing death by dangerous driving. What about the less serious, on duty incidents? Or what happens if you were off duty?

## Police Pursuit and Emergency Response Driving

Police Officers are at risk of prosecution for dangerous or careless driving whenever they engage in a pursuit or attend an emergency incident as recently highlighted by the case of Holden (unreported). Cases such as Holden highlight the fact that there is no statutory exemption from prosecution and in serious incidents, particularly involving serious and fatal injury, an officer may face an immediate custodial sentence if convicted.

This is not helped by the fact that the definition of dangerous driving is a wide one. Dangerous driving is defined as driving which falls far below what would be expected of the competent and careful driver – Section 2(A) (1) Road Traffic Act 1988.

Almost any incident involving a pursuit will involve exceeding the speed limit or ignoring traffic signals and may not be viewed as the sort of driving associated with an ordinary careful driver.

## Exemptions

Police officers are exempt from such restrictions when engaged in an emergency but must drive safely and with the necessary degree of care.

It should be noted that there is no different standard for those officers with specialist driving skills and training. An officer cannot argue that he could deal with hazards more effectively than the ordinary driver and therefore his driving ought not to be considered dangerous.

There is concern within the police service that its officers should not routinely face prosecution as a result of doing their job. The Police Federation has led consultations with the Home Office and CPS to examine the correct approach to prosecuting decisions. Whilst prosecutions can normally be avoided, charging decisions will continue to vary between prosecution lawyers even where guidelines exist. There currently remains no statutory exemption for police drivers and hoped for proportionality will not always be forthcoming.



## DSI Cases

Where death or serious injury results from a pursuit or emergency incident (known as DSI cases) a Post Incident Procedure will be commenced. In these circumstances officers should be aware that they will be entitled to advise from their Police Federation Representative and will also be entitled to legal advice from a specialist law firm.

It is very important that legal advice is sought early, particularly before a police driver provides an initial account. In some circumstances the initial account can be delayed to allow the officer to rest and to obtain legal advice. ACPO Guidelines provide detailed criteria for dealing with Post Incident Procedures, access to legal advice and the provision of initial and detailed accounts. Where the police driver is suspected of a road traffic offence there will almost certainly be an interview under caution and the officers rights under PACE will apply. In such circumstances the police driver should approach the Police Federation to obtain advice at the interview stage and beyond.

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## Speeding

Anyone with experience in traffic cases will be aware of the many different methods of speed detection ranging from the fixed 'Gatso' camera to the hand-held laser devices to Vascar or the old fashioned follow check. Police officers often find themselves on the wrong side of these devices and, whether on duty or not, the exemption often doesn't apply.

If you find yourself facing prosecution then you could well have a defence or a special reason.

## Drink Driving Offences

The offence we all know as 'drink-driving' is actually charged as driving a vehicle whilst in excess of the prescribed alcohol limit, also referred to as 'excess alcohol'. Other drink drive offences include, failing to provide an evidential specimen, being 'in-charge' of a vehicle whilst in excess of the prescribed alcohol limit or driving whilst 'unfit' through drink and drugs.

### Can I defend such a case?

Some drink-drive offences have defences provided by statute so long as specific factual circumstances apply. Finally, case law and precedent can, in some circumstances provide an absolute defence.

## Special Reasons

### What is it?

1. a mitigating or extenuating circumstance,
2. that does not amount in law to a defence,
3. that is directly connected to the commission of the offence, and
4. is something that the Court ought to take into account.

It must follow a guilty plea, but, if successfully argued, the Court have the discretion to either impose no penalty at all or a reduced sentence. The most common examples apply in drink-drive cases and include things like; laced-drinks, shortness of distance, or driving in an emergency. The examples above are not the only situations in which special reasons can apply. The list is non-exhaustive and providing the criteria quoted above are met by the facts of a case, a special reason could apply to all sorts of situations. Furthermore, special reasons can apply to any sort of offence and particularly other driving offences such as speeding.

## Funding

Funding can be provided for legal representation in a variety of methods either through the Police Federation if connected with performance of duty or other insurance providers. The type of funding you require depends on factors such as the type of offence you are charged with and whether you were on duty or not at the time of the offence.

Please feel free to discuss your own position and concerns. Contact your nearest office on:

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