

## **Motoring Law**

### **Commercial vehicle offences**

We can help any driver of commercial vehicles who finds themselves before a Public Enquiry, where they could lose their livelihood.

#### ***What are the powers of the traffic commissioner?***

The powers of the traffic commissioner are considerable, they can:

- Grant or refuse an operator's licence
- Attach conditions to an operator's licence
- Restrict an operator's licence reducing the number of vehicles permitted to be used
- Impose financial penalties
- Suspend or even take away an existing licence
- Disqualify an individual or a company from having a licence
- Disqualify transport managers

#### **What is a Public enquiry?**

If you have been summoned to appear before the Traffic Commissioner, do not take this lightly. Failing to prepare means preparing to fail.

Traffic Commissioners can call a formal Public enquiry for them to obtain further evidence before they decide to grant or refuse an operator's licence for HGV or PSV operators, or act against a vehicle operator, a bus service operator or a driver of a bus, minibus or lorry.

Public Enquiries are held in a room that has the look and formality of a court room about it. The proceedings have an inquisitorial feel about them, in that you have to be seen to cooperate fully with the Traffic Commissioner and the process. Be seen to be obstructive or non-cooperative, and this could cause you significant problems.

Will evidence be heard? Absolutely, the Traffic Commissioner will almost certainly want to hear you give an account as to what has happened and that evidence will be sworn on oath. Might you be cross examined? Although regularly, there will not actually be a prosecutor in the public enquiry to ask you any questions, the Traffic Commissioner will do that job as well as deciding the outcome. It will be the Traffic

Commissioner who may well test your answers and cross examine your account.

Can you appreciate just how serious a business a public enquiry is now?

People often ask us whether there will be members of the public at the enquiry. Usually, it is just the Traffic Commissioner and the operator/driver along with any legal representative who will be present. However, the public are perfectly entitled to attend if they wish and often, interested parties may well attend to hear the evidence and will wait for the outcome. For instance, there is nothing stopping the press or the local police force from attending and listening to the evidence.

The Traffic Commissioner's powers are considerable, and although there is an appeal process via the Magistrates Court, be under no illusion, following a public enquiry, if the decision goes against you, you could easily find your livelihood being taken away from you.

### **Should you be concerned?**

Let's imagine you are a transport manager and one of your fleet of vehicles has been stopped by the Drivers and Vehicles Standards Agency ( DVSA). That vehicle has a bald tyre and the MOT has expired. But you weren't the driver. ANTICIPATE, THAT YOU WILL BE ASKED TO EXPLAIN YOURSELF BEFORE A TRAFFIC COMMISSIONER

Or perhaps you are an HGV driver and you have accumulated 12 penalty points on your driving licence. You might have successfully argued "Exceptional Hardship" in the Magistrates Court but is that the end of it? Again, the Traffic Commissioner may want to hear from you to determine whether you are a fit and proper person to hold such a licence, particularly if you are a Transport Manager.

Remember, where a court has disqualified you from driving, the Traffic Commissioner may decide to extend that disqualification when it comes to your HGV/PSV/OPERATORS' LICENCE

### **What should you do?**

Call James Murray Solicitors. A one-hour consultation costs just £200 (plus Vat). We will look through your paperwork and advise you on the best course of action

The worst thing that you can do is to walk into a Public Enquiry without having prepared thoroughly.

Over the years we have built up an experienced team that are regularly called upon to represent clients at Public Enquiries. We have embraced the inquisitorial approach of the Public Enquiry and merged it with our excellent Court Advocacy skills, that have been honed in the Magistrates and Crown Courts over many years.

Our strength is the preparation that we put into your case, taking our time to make sure that no stone is left unturned, that a full statement of your account, accompanied with any supporting evidence, is sent to the Traffic Commissioner in good time before the hearing.

Transparency is everything in these proceedings.

Before you go anywhere near that Public Enquiry, you will have forged a professional relationship with your advocate during the hours of preparation that we will put into your case.

Walking into that Public Enquiry alongside your James Murray Advocate will give you a sense of calmness and knowledge that we will do everything we can to get you the very best result from that Public Enquiry

So, DON'T DITHER, TIME IS OF THE ESSENCE. CONTACT OUR COMMERCIAL VEHICLES MOTORING TEAM AND AN IMMEDIATE APPOINTMENT CAN BE PROVIDED FOR YOU.

### **Drink and drug driving**

If you have been charged with drink or drug driving, you may have decided to look at this section of our website in the hope of discovering some type of glorious defence. You won't find it.

The key to your case will be the instructions that you provide to us; you may have a pearl of information relating to your case, such information that could make the difference between a

driving disqualification conviction and an acquittal. But until you have told us about it, we won't be in a position to act on that information.

***What are the legal limits for drink driving?***

In England and Wales, the alcohol limit for drivers is as follows:

1. Blood = 80 milligrams of alcohol per 100 millilitres of blood
2. Breath= 35 micrograms per 100 millilitres of breath
3. Urine= 107 milligrams per 100 millilitres of urine.

***What are the legal limits for drug driving?***

1. Cocaine = 10 micrograms
2. Benzoylcegonine = 50 micrograms
3. Cannabis= 2 micrograms
4. Ketamine= 20 micrograms
5. MDMA ( ECSTASY) = 10 micrograms
6. Heroin = 5 micrograms

(this list is not exhaustive and we have cited the most regularly detected drugs)

***If I am banned, can I apply to get my driving licence back earlier?***

Firstly, if you are convicted of drink driving, you may be able to persuade the Court to offer you the drink drive rehabilitation programme. If you take the programme and pass it, you will find that you will receive a reduction in your disqualification of approximately 25 %. Please note, the Court does not have to offer you the course, it is entirely at its discretion.

Presently, there are no such courses available for drug driving offenders, therefore such individuals would serve the full disqualification.

However, there is a category of defendant who might be able to apply to have their licence returned earlier. If your driving disqualification was for 3 years or more, you may be entitled to apply to the court for the early return of your driving licence.

Such applications have to be very carefully prepared and presented. The applicant has to demonstrate a change in his/ her circumstances.

***If I am convicted what is the likely sentence going to be?***

The Court has sentencing guidelines which it will refer to when sentencing takes place. We have provided a link for you to consider those guidelines.

To date, no actual guidelines for drug driving has been provided to the courts. However, the starting point, upon **conviction for drug driving, will be a minimum 12 month driving disqualification.**

**Exceptional hardship and totting up**

When you accumulate 12 or more penalty points on your driving licence you will find yourself before the Magistrates Court and liable to receive a MINIMUM disqualification of six months. This is known in the trade as a “totting disqualification”

The Court will disqualify you, unless you can prove “EXCEPTIONAL HARDSHIP”

There is no precise definition of Exceptional Hardship but you can use your exceptional hardship or that of your family, your employer or employees.

You may face the prospect of redundancy if you are disqualified, you may not be able to afford those mortgage repayments or your business may fail causing you to make redundant a number of members of staff.

Due to there being no precise definition of the term “Exceptional Hardship”, the list is not exhaustive. Here are a few useful tips to help you.

1. The burden of proof is on the defendant to prove exceptional hardship
2. The defendant will have to give evidence at that hearing to prove their case
3. The application must be backed up with evidence supporting the exceptional hardship theory
4. The defendant will be cross examined by the Court and their argument thoroughly tested.

### **What will we do for you?**

As soon as you instruct us, we shall arrange for you to discuss your case with partner, Mark Ellis. We will test your argument before it goes anywhere near the court room. We will advise you as to what evidence will be required in your case and we will interview and take statements from all of the witnesses in your case. We have the knowledge to understand what types of arguments succeed in court. Our fixed fee policy gives you peace of mind, there are no hidden charges. For that fee, it entitles you to unlimited access to Mark Ellis and his team, for the full preparation of your case and for the representation in court.

### **Probationer drivers**

When people pass their driving test, they feel a sense of freedom, able to drive anywhere they want to without supervision and enjoying that wide-open road that is before them. But, remember, that there are special rules for those people who have just passed their test. Having passed your test, should you acquire 6 penalty points on your licence in the first two years having passed your driving test, then your licence will be revoked by the DVLA.

### ***What does “revoked” mean?***

Having your license revoked does not mean you are banned from driving; however, it does mean you revert back to having a provisional driving licence and must take your driving test again.

That means you will have to reapply the L plates and ensure that you are supervised whilst driving.

Should you continue to drive and ignore the revocation, it will mean that you would be committing further offences of “driving otherwise in accordance with a licence” and “driving without insurance” both of which are enforceable offences.

### ***What are your options?***

We specialise in representing clients who are desperate to avoid having to re take their driving licence.

There are loopholes within the law that allow an experienced advocate to try and persuade a court not to endorse penalty points which, in turn, could cause you to find your licence is revoked, should those points be endorsed.

Over the years we have helped so many young drivers retain their driving licences, offering all probationer drivers, seeking to try and avoid a revocation, a fixed fee agreement and payment plan options.

### **Single justice procedure**

Have you received a "Single Justice Procedure notice"? It will probably be pages in length, asking you to enter a plea to a certain offence or offences, and you possibly don't have a clue what to do or how to complete the notice. Don't Ignore the Notice, act on it as soon as you receive it. The Notice is the commencement of the legal proceedings against you, and if you do not respond there is a significant chance that the case against you could be proven in your absence.

#### ***Can I just ignore the SJP notice?***

No. By ignoring the notice, you are running a significant risk of being convicted of that offence, and receiving penalty points, without even being in the court room.

#### ***Could I be convicted/sentenced by the single justice procedure***

Yes. If you plead guilty, and the offence is not that serious, then the single justice procedure may well deal with your case, with a minimum of fuss. You will receive notification from the court as to what sentence you have received.

If you do not respond to the notice and if the court is satisfied that there has been good service of the documents upon you ( that the paperwork has been sent in the post to your last known address), then the SJP may well convict you and impose penalty points upon your licence and a fine upon you.

#### ***Could the SJP procedure disqualify me?***

No, that is one thing the procedure itself could not do. If the single magistrate is of the view that there is a chance you could be disqualified from driving, either due to the amount of points on your licence, or due to the serious nature of the case itself, then the court is obliged to write to you, warning that you are at risk of receiving a driving disqualification and providing you with a court hearing date.

#### ***Can I ask for the case to come out of the SJP?***

Yes you can. You may have committed the offence but wish to try to avoid penalty points on your licence, by putting forward a "Special Reason" argument. Or, you may be of the view that you have not committed the offence and wish to stand trial. Alternatively, you might feel that you would like to put forward your explanation to the court, rather than simply writing in to the SJP procedure.

Whatever the reasoning behind it, if the defendant insists on the matter being transferred to the Magistrates Court itself, the court has to do that.

#### ***What happens if I want to plead guilty but I already have 9 points plus on my driving licence?***

In this type of situation, you are perfectly entitled to plead guilty to the offence online. However, as soon as the Single Justice sees the state of your licence, you will receive a letter from the court, warning you of a possible driving disqualification and asking you to attend court.

***Could I instruct James Murray to write to the Single Justice to explain my offending?***

Yes. For as little as £200 plus Vat, we will take your instructions and draft a letter of mitigation which ultimately will be sent to the court. We will also liaise with the Court to find out the outcome of the case and will notify you of the result

You may be technically guilty of a motoring offence but have a legal argument that justifies the court exercising discretion and not endorsing the driving licence with penalty points or even imposing a disqualification.

**What could potentially be a Special Reason?**

You have an explanation as to why the offence was committed but that that explanation does not amount in law to a defence, the court should take that explanation into consideration.

Here are some examples of what potentially a special reason might be:

1. You drove at speed in order to deal with an emergency
2. You were assured that the vehicle was insured and you have been misled into believing that therefore you were insured to drive.
3. Although over the drink drive limit, you drove for a very short distance and were unlikely to be brought into contact with other road users
4. You failed to provide a specimen of breath for analysis at the Police Station but you were not the driver of the vehicle in any event
5. You unwittingly drove the vehicle, whilst over the drink drive limit, having had your drinks “spiked” without your knowledge or consent

James Murray Solicitors have years of experience in preparing these types of arguments, contact us and we may be able to identify whether your case might just be a Special Reason in the making.

**What should you do?**

Before you do anything, call James Murray Solicitors on 0151 933 3333

1. It may be that the Police have offered you a fixed penalty for the offence or sent to you a Single Justice Procedure Notice asking for your plea. Before you accept any such disposal or enter your guilty plea, do call us to discuss your case on 0151 933 3333
2. The Police do not have the power to deal with a Special Reason argument; it is something that has to be dealt with by the Court. Therefore, before you complete that Single Justice Procedure Notice. Think about your explanation, and feel free to run it by us.
3. If your argument has legs, it will mean your having to give evidence at Court. Remember, the burden of proof will be on you to prove your special reason argument. You will need evidence to support that explanation.

4. You will be cross examined at court as to your explanation, therefore you need to prepare thoroughly for the case. A Special Reason argument will be held before a Magistrates Court and has the look and feel of a trial. The prosecution team will be represented by a Lawyer.

You will need a lawyer who has years of experience of preparing and successfully arguing “Special Reasons”.

At James Murray Solicitors, we like to offer clients a fixed fee arrangement where possible. Therefore there are no hidden charges.

Having instructed us, you will meet your advocate straight away. We do not instruct agents as a general rule. We believe that it is important that there is a consistency in the approach. You will immediately have a team around you, working with you, advising as to what evidence will be required and helping you prepare for the hearing itself. Witness statements will be taken from you and any other witness you intend to call at that hearing. By the time you arrive at Court, you will feel prepared for anything.

### **Taxi licence appeals**

You may find that your application to become a taxi driver is initially rejected by the Local Authority, perhaps because the Council has a policy that people with previous convictions cannot apply for a Licence until a set time, after their sentence has ended.

If your application has been rejected by the Local Authority on those grounds, do not dismiss the thought of your application eventually succeeding. Just because the Local Authority may have such a policy in place, does not necessarily mean that you are not a fit and proper person to hold a taxi licence.

If your application for a licence has been turned down by the Local Authority, on that basis, then you have a right to appeal against the refusal of your application, to a Magistrates Court.

### **How do I appeal?**

If you wish to appeal the refusal of your application, then you have to commence those legal proceedings yourself.

Sometimes the Court will insist on a fee being paid, in order for those proceedings to be issued. This fee can be waived in certain circumstances, for instance if you are in receipt of state benefit.

Once the Summons is issued by the Court, a date will be provided for both you and the COUNCIL officials to attend Court for the appeal to be heard.

### **What happens at an appeal?**

Your case will be heard by Magistrates or a District Judge. The Proceedings will be very formal and evidence will be heard at that hearing. If you are not used to legal proceedings, this type of hearing can be quite intimidating. The hearing will have the touch and feel of a trial in a court room.

The issue will be whether you are a “fit and proper person” to act as a taxi driver. The Local authority will bring its case and will call evidence to demonstrate their concerns. You will have an opportunity to cross examine those witnesses.

The Magistrates are entitled to consider any matter that could reasonably have been considered by the Council in reaching its decision, including hearsay evidence.

The standard of proof is that of the Civil Standard, i.e. “is it more likely than not that you are a fit and proper person” to have a taxi licence.

You will be expected to give evidence at that hearing and you are entitled also to call your own witnesses to demonstrate your character.

Having heard all of the evidence, the Magistrates will retire to consider all of the evidence but will later return to court, in order to announce their decision.

### **So what do I do?**

Call James Murray Solicitor on 0151 933 33 33 we have decades of experience in presenting such cases in order to try and persuade the Court that you are a fit and proper person.

We will have taken a statement from you, researched the evidence of the Local Authority and looked for weaknesses in their argument, and interviewed any other witnesses relevant to your case.

We will also arrange for the issuing of the summons and will liaise with the Court to arrange the hearing date itself.

You will have assigned to your case, from the outset, a senior lawyer from our motoring department who will conduct the preparation of your case and present your case to the court.

If any witnesses from the Local Authority need cross examining, we shall do all of that work for you also.

### **What will it cost me?**

Our prices start from as low as £800 plus VAT and thereafter increase dependent on the amount of work that is required in each individual case.

Whenever possible, we offer clients a fixed fee agreement with no hidden charges.

Right from the outset, we will provide you with a quote and can even offer a payment package to you, should you not be able to afford to pay in full.

Legal aid is not available for such cases but our fees and price structure can help you afford quality representation at your appeal.

Don't forget, that you would be responsible for the Court fee, to issue the proceedings, but that is likely to be the only disbursement you will have to pay for in the run up to your appeal.

### **What if my licence has been revoked?**

Just because you have been a taxi driver for many years, this does not exclude you from the risk that the Local authority revoke your licence, if they decide you are no longer a fit and proper person to hold a taxi licence.

This could be due to some type of conviction in the criminal courts, or you may have been arrested having provided a positive drug sample having driven your vehicle. Alternatively, a member of the Public might have made a complaint about you or the Police have been in touch with the Local Authority, in order to notify them of your driving or behaviour generally.

There is no precise definition of a “fit and proper person” and therefore you may find that the Local authority invite you initially to speak with their licensing officer, in order to discuss the matter.

If the matter progresses beyond that, you may well find yourself before the full licensing committee, trying to defend yourself against some type of allegation that you may not fully understand.

**Can I be legally represented at the Licensing authority meeting?**

Absolutely, you can. Often, we are instructed to represent drivers who are summonsed to appear before the Licensing committee. Our experiences are that you must try and take the opportunity to present your case to the Councillors in the most considered way possible.

We like to take a statement from our client, before we go to the meeting. We also insist on seeing the evidence relating to the Council's concerns. In that way, we can fully prepare you for the hearing and give you the best possible chance of keeping your taxi licence.

Whatever their decision, if you are not content with the reasoning behind the decision, you are perfectly entitled to appeal the revocation/ suspension of your licence, to the Magistrates Court.