

Extract from Sentencing Guidelines: Magistrates Court / Crown Court

The Sentencing Council (SC) for England and Wales promotes consistency in sentencing while maintaining the independence of the judiciary. The Council produces guidelines on sentencing for the judiciary and aims to increase public understanding of sentencing. SC is an advisory non-departmental public body, sponsored by the Ministry of Justice.

Totting Up Disqualification

Incurring 12 or more penalty points means a minimum period of disqualification must be imposed - a totting up disqualification (Section 35 of the Road Traffic Offenders Act (RTOA) 1988 refers).

Points are not to be taken into account for offences committed more than three years before the commission of the current offence – Section 29 of the RTOA 1988.

The minimum period is:

- **six months** if no previous disqualification is to be taken into account.
- **one year** if one previous disqualification is to be taken into account.
- **two years** if more than one previous disqualification is to be taken into account.

A previous disqualification is to be taken into account if it is:

- not less than 56 days; and
- imposed within the three years immediately preceding the date on which the current offence (or most recent of the current offences) was committed.

The Court should first consider the circumstances of the offence, and determine whether the offence should attract a discretionary period of disqualification**

*(**discretionary period of disqualification – see paragraph later in this note)*

But the Court must note the statutory obligation to disqualify those repeat offenders who would, were penalty points imposed, be liable to the mandatory “totting” disqualification and, unless the Court is of the view that the offence should be marked by a period of discretionary disqualification in excess of the minimum totting up disqualification period, the Court should impose penalty points rather than discretionary disqualification so that the minimum totting up disqualification period applies.

In deciding whether there are grounds to reduce or avoid a totting up disqualification the Court must not take into account:

- (a) any circumstances that are alleged to make the offence (or any of the offences whose penalty points are to be taken into account) not serious,
- (b) hardship, other than exceptional hardship, or
- (c) any circumstances which, within the three years immediately preceding the conviction, have been taken into account to reduce or avoid a totting up disqualification.

Section 35(4) of the RTOA 1988

When considering whether there are grounds to reduce or avoid a totting up disqualification the Court should have regard to the following:

- It is for the offender to prove to the civil standard of proof that such grounds exist. Other than very exceptionally, this will require evidence from the offender, and where such evidence is given, it must be sworn.
- Where it is asserted that hardship would be caused, the Court must be satisfied that it is not merely inconvenience, or hardship, but exceptional hardship for which the Court must have evidence;
- Almost every disqualification entails hardship for the person disqualified and their immediate family. This is part of the deterrent objective of the provisions combined with the preventative effect of the order not to drive.
- If a motorist continues to offend after becoming aware of the risk to their licence of further penalty points, the Court can take this circumstance into account.
- Courts should be cautious before accepting assertions of exceptional hardship without evidence that alternatives (including alternative means of transport) for avoiding exceptional hardship are not viable;
- Loss of employment will be an inevitable consequence of a driving ban for many people. Evidence that loss of employment would follow from disqualification is not in itself sufficient to demonstrate exceptional hardship; whether or not it does will depend on the circumstances of the offender and the consequences of that loss of employment on the offender and/or others. Useful information can be found in the Equal Treatment Bench Book.

Where it finds that there are grounds for mitigating the 'normal consequences of the conviction', the Court may consider whether this can be achieved by ordering a period of disqualification which is shorter than the statutory minimum or by ordering that the offender should not be disqualified at all.

Where the Court does not find grounds for mitigating the normal consequences of the conviction then a period of disqualification of at least the statutory minimum must be imposed.

Consult your legal adviser for further guidance on minimum periods and applications for avoiding or reducing the minimum period.

****Discretionary Disqualification**

Whenever an offender is convicted of an endorsable offence or of taking a vehicle without consent, the Court has a discretionary power to disqualify instead of imposing penalty points. The individual offence guidelines indicate whether the offence is endorsable and the number or range of penalty points it carries.

The number of variable points or the period of disqualification should reflect the seriousness of the offence. Some of the individual offence guidelines include penalty points and/or periods of disqualification in the sentence starting points and ranges; however, the court is not precluded from sentencing outside the range where the facts justify it. Where a disqualification is for less than 56 days, there are some differences in effect compared with disqualification for a longer period; in particular, the licence will automatically come back into effect at the end of the disqualification period (instead of requiring application by the driver) and the disqualification is not taken into account for the purpose of increasing subsequent obligatory periods of disqualification (Road Traffic Offenders Act 1988, S.34(4), 35(2), 37(1A)).

In some cases in which the Court is considering discretionary disqualification, the offender may already have sufficient penalty points on their licence that they would be liable to a 'totting up' disqualification if further points were imposed. In these circumstances, unless the Court is of the view that the offence should be marked by a period of discretionary disqualification in excess of the minimum totting up disqualification

period, the Court should impose penalty points rather than discretionary disqualification so that the minimum totting up disqualification period applies.