



## **Speeding: Useful quirks in the law**

**By John Lynch, QEB Hollis Whiteman**

For a great number of people, the only time they will ever be the subject of criminal proceedings is when they are prosecuted for speeding. Most of those, when faced with a speeding charge, simply plead guilty and receive a sentence that typically comprises a fine and an endorsement of their licence with a few points.

However, there are a number of quirks in the law relating to speeding that, in certain cases, mean that those charged need not necessarily accept their fate without putting up a fight. Some of those are explored below. These are just a few examples of the situations in which an able lawyer could help you mount a successful defence to a speeding charge.

### **I. Inadequate signage**

It is a general principle that, where there is a change of speed limit, there must be sufficient notice of the new limit so as to allow the motorist to reduce his or her speed and comply with that limit.

It appears that there may be valid grounds of appeal. In *Coombes v DPP* [2006] EWHC 3263 (Admin) Mr Justice Walker stated (at paragraph 27):

'There is a requirement that at the geographical point where the motorist exceeded the limit, the requisite signs could reasonably be expected to have conveyed the limit to an approaching motorist in sufficient time for the motorist to reduce from a previous lawful speed to a speed within the new limit.'

The signage must, therefore, be visible and of sufficient quality. If you were allegedly caught speeding at a spot just after the speed limit has changed, you may have a successful defence if there was inadequate signage.

### **II. Temporary speed limits**

Temporary speed limits are a common feature on the roads. Most frequently, they are put in place when work is being done on the road. Whoever is carrying out the work has to apply for permission

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from the Local Authority to impose the temporary speed limit. That application must state the area covered by the limit (e.g. Chancery Lane) and the time period during which the limit will be in place. The permit issued by the Local Authority is then limited in time and space.

Frequently, however, works overrun or cover an area greater than that originally envisaged. In a lot of such cases, those carrying out the work neglect to apply for an extension of the permit.

If you were allegedly speeding in an area which was subject to a temporary limit, then you may be able to rely on the inattention of those who originally applied for that limit.

### **IIIa Problems with speed detection devices: Is it an approved device?**

In order to prosecute someone for excess speed, the police must have a reading from an approved device showing that you were, in fact, speeding. Whether your excess speed has been detected by a hand-held radar gun or a stationary radar speed meter ('Gatso') device, the device itself must be 'approved'. The government updates the schedule of approved devices on a regular basis, and a huge array of measuring equipment is now available to the police for the purposes of detecting excess speed.

It is therefore highly unlikely that the detection equipment that has led to your prosecution is not approved. However, if equipment has been altered in some way, then it may no longer be approved.

It should be noted that this defence is rarely successful, because the courts have ruled that modifications have to be relatively substantial. In *Breckon v DPP* [2007] EWHC 2013 (Admin), Nelson J stated (at paragraph 31):

"[T]here must be room to make sensible modifications without having to seek a new approval every time this is done. The test must be whether after such modification or alteration the machine remains one to which the description in the schedule still properly applies. If it does not, then the device is no longer an approved device; but if the description does still properly apply to the device it will remain an approved device even though modifications or alterations have been made."

Although police forces are usually careful to ensure that their equipment complies with the government's schedules, this may be an avenue to explore if no other defences are available.

### **IIIb Problems with speed detection devices: Device operation and calibration**

If there is video footage or a still of the alleged offence (as there often is when the alleged speeding is captured by a stationary 'Gatso'), then the Prosecution must serve that evidence in good time. Failure to do so may be fatal to their case. In *R (Donahue) v Calderdale Magistrates' Court* DC 18 October 2000, the Court stated that such evidence must be available promptly 'in order to advise the applicants on their pleas'.

Police officers operating handheld devices also have to comply with guidance issued by the Association of Chief Police Officers. For example, they have to carry out three calibration checks on handheld devices at the beginning and end of each period of use. If they have not done so, the evidence of the alleged offence could be thrown out.

A skilled lawyer can help you go through the papers you receive from the Prosecution to check that they and the police have complied with obligations such as the ones mentioned above. If they have not, you may be able to mount a successful defence.

#### **IV. Driver identification**

If you are charged with speeding, it is of course a successful defence if you can prove that you were not driving the car. Furthermore, the owner of a vehicle is presumed to be the driver in the absence of any evidence to the contrary.

If you were not driving a vehicle that was allegedly speeding, you could, with the assistance of a lawyer, avoid prosecution altogether.

#### **Conclusion**

It is clear from the limited examples above that an allegation that you were speeding is not, in itself, a reason to give up and accept what may have seemed inevitable. With the help of a skilled lawyer, you may well be able to avoid a large fine or endorsement of your licence. If you are close to 12 points on your licence, or simply want to avoid conviction, it is essential to seek legal advice early on. The cost could be relatively small, and the benefits great.