

Exceptional Hardship

When any driver reaches 12 penalty points in any 3 year period, the Court guidelines are an immediate ban of 6 months or more. Prior to considering whether a ban should be imposed, the Court will give the Defendant the opportunity to raise an exceptional hardship argument in order to persuade the Court that a ban should not be imposed.

The only circumstances that can prevent a driving ban at 12 points is a finding of exceptional hardship. It is clear that hardship must be beyond that which would normally be suffered by depriving the Defendant of his licence. It is for the Defendant to establish the severity and degree of hardship and it is for the Court to assess the severity of the implications and to decide whether that amounts to "hardship which is beyond that normally suffered".

It is accepted that when a Defendant loses his licence, hardship will be suffered. However, that would not be regarded as out of ordinary in any particular case and thus would be perfectly foreseeable as a reasonable consequence of the offence committed.

What is the legal definition?

As far as the criminal courts are concerned, there is no statutory definition of exceptional hardship. The general approach is for each individual Court to reach its own conclusion based on the information before it. What is clear is that hardship must be beyond what would be reasonably foreseeable, that it is for the Defendant to prove the severity of the situation and to bring evidence in support.

What if my licence is essential to my employment and I will be sacked if I lose my licence?

Loss of job does not automatically amount to exceptional hardship. Some Courts will regard this as a reasonably foreseeable outcome and thus, not "exceptional". However, the implications that arise from the loss of employment and the effect it would have on others could amount to exceptional hardship. Each individual case can be interpreted differently so it is prudent to seek expert legal advice before preparing any submission.

Can I plead by letter?

No. The onus is upon the Defendant to present his case to the Court and in order to meet the criteria, a Defendant should expect to be questioned on his submission (regardless of whether it is put forward in person or via an advocate) so a personal attendance is required.

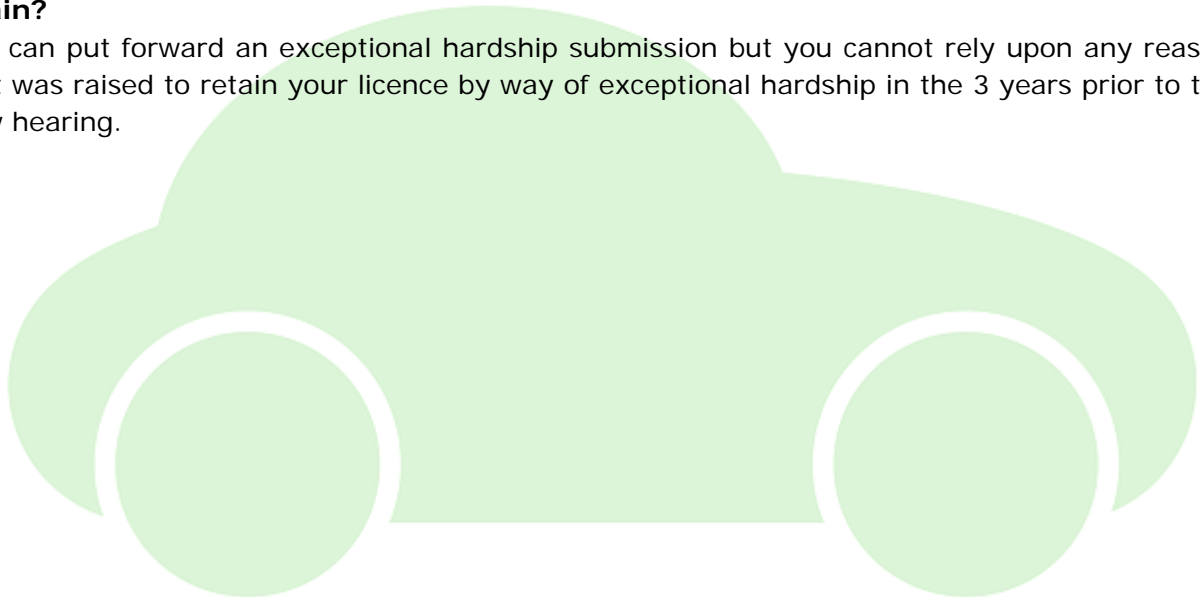


Why should I seek advice and/or representation?

Although there is no reason why a Defendant cannot represent themselves at Court, the fact is that in order to be successful, certain legal criteria must be met, regardless of the Defendant's circumstances. By obtaining advice, the case can be prepared to ensure that it exceeds the requirement imposed by the Court. This is a complicated area of law and many Defendants do not appreciate the issues to be raised and indeed often overlook as being of no significance, reasons that could be persuasive to a Court. This is the only opportunity the Defendant will get to keep his licence and in those circumstances anyone that does not feel confident in addressing the Court, would be wise to have a trained advocate present the case on their behalf.

I have already been allowed to keep my licence once by arguing exceptional hardship, I have now committed a further offence, can I use the same arguments again?

You can put forward an exceptional hardship submission but you cannot rely upon any reason that was raised to retain your licence by way of exceptional hardship in the 3 years prior to the new hearing.



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