

# Penalty Points and Disqualification: Feared or Ignored?

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# The penalty points system in GB

- Purposes of points /disqualification: to deter and/or punish.
- Introduced in 1972. Between 3-11 for a single offence;
- 12+ in 3 year period = eligibility for a disqualification order.
- Points and disqualification usually come with a financial penalty, and disqualification may require taking a driving test.
- Those disqualified this way colloquially referred to as 'totters'.
- **421,000 court endorsements issued in E+W in 2011: 86,500 disqualifications; 24% were totting disqualifications.**

# Plan of Paper

- To what extent are penalty points and disqualification feared - in sense of securing greater compliance, and to what extent are they ignored?
  - **Drivers' responses to receipt of penalty points.**
  - **Drivers' responses to their eligibility for disqualification.**
  - **Drivers' responses to disqualification.**
  - **Conclusions and suggestions for helping achieve greater compliance.**

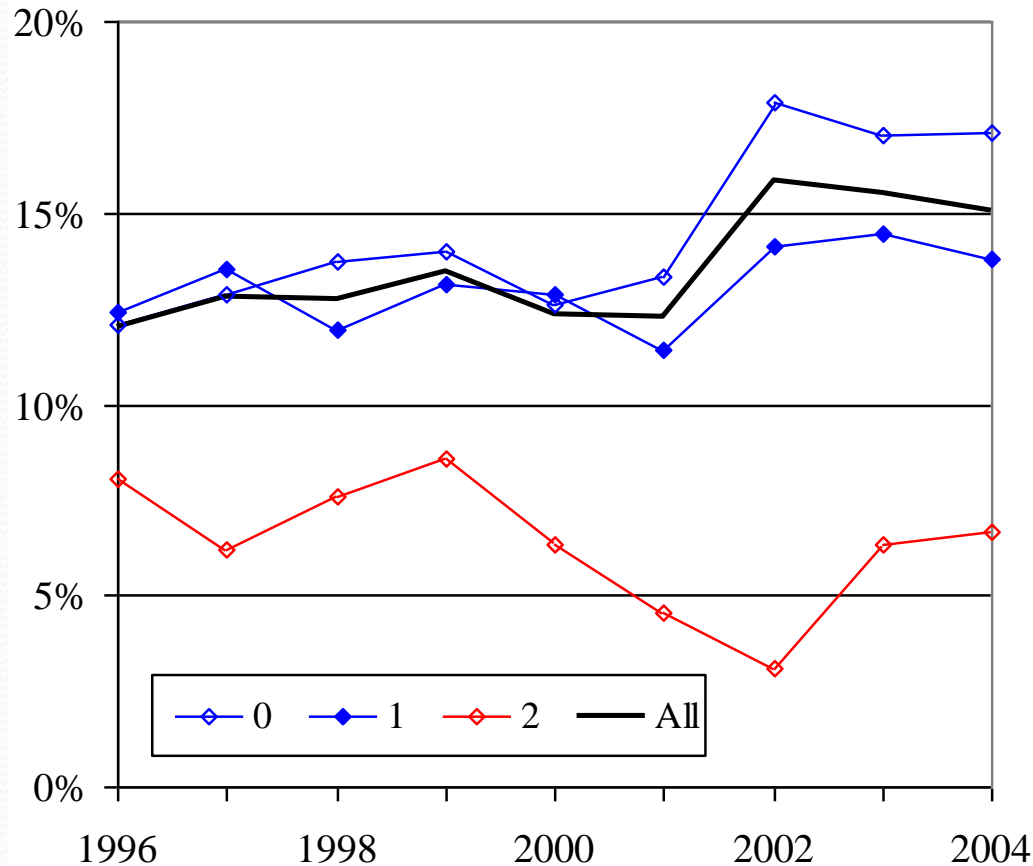
# Who has points?

- **Roughly 1 in 6-7 have some live points** (Admiral Insurance, 2009; Direct Line, 2010).
- Seemingly, professional occupational groups are at greater risk of attracting points.
- Seemingly, some types and colour of vehicle are at greater risk of attracting points.

# Drivers' responses to receipt of penalty points (1)

- Two part TRL/Brunel study:
- 1<sup>st</sup> stage: Broughton (2008) analysed two large databases.
- Those with at least one recent speeding conviction modified their behaviour as disqualification risk increased.
- Only 0.3% of those with one an initial speed conviction got 3+ more in the next 3 years.
- **Likelihood of reconviction slowed as drivers approached 9 points.**

# Drivers' Responses to penalty points: Key findings from the DVLA data analyses



**Proportion of drivers reconvicted within the following year, by number of convictions in previous 2 years (Broughton, 2008).**

## Drivers' responses to receipt of penalty points (3)

- 2<sup>nd</sup> stage: Corbett et al (2008) did postal survey of drivers with various penalty point patterns.
- 2/3 reportedly deterred by risk of detection, collision + likely penalty; a 'hard core' (7%) were undeterred: mostly male, 35-65 yrs, 15k+ m.p.a.
- 'Fear' of points shown by: purchase of radar/GPS device, slowing before camera. And 8% 'would get someone else to take the points'.
- **So 'fear' shown by greater compliance + other avoidance actions.**
- SWOV (2010) and Castillo-Manzano & Castro-Nuno (2012) confirm that points considerably reduce casualties but effects short-lived unless visible and effective enforcement.

## Drivers' responses to 'totting' disqualification eligibility: pleading 'exceptional hardship'

- Eligibility applies through S.35 Road Traffic Offenders Act 1988.
- Where eligible, must attend court, opportunity to show cause.
- Magistrates' Association (2010) estimate, following an FOIA request, that **10.2% of eligibles 'kept their licence, many pleading 'exceptional hardship'.**
- Corbett et al (2008) unexpectedly found considerable % with 12+ live points and no previous disqualification. These had more positive road safety attitudes, more likely to report speed reduction.
- **Can the threat be more effective deterrent than disqualification for some?**



# Drivers' responses to 'totting' disqualification eligibility: failure to attend court for sentencing (1)

- Another category eligible for, but who evade, disqualification (if convicted) are **those failing to engage with some/all of the prosecution process**. (Could these be additional to the 10.2%?)
- Problem became pronounced in early millennium.
- In London (at least), many more bench warrants for arrest > 'eligibles' kept a low profile > many unexecuted warrants > block adjournments in court > case withdrawals > **justice not done**.

# Drivers' responses to 'totting' disqualification eligibility: failure to attend court for sentencing (2)

- London solution was the 'London Traffic Prosecution Scheme' for all minor traffic cases:

- Centralisation and streamlining of all processes;
- More court space allocated;
- Gateway Court system introduced;
- Use of civilians employed by MPS to prosecute uncontested cases.
- Partnership working between MPS, CPS and HMCTS (+TfL, LCJP).
- **Increasing use of provisions under S.11(4) Magistrates' Courts Act to 'sentence/disqualify in absence'.**



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Recent guidance by Justices' Clerks Society and Magistrates' Association recommends widespread adoption of 'sentencing in absence' for minor uncontested traffic cases, where bench is satisfied to proceed.

## Drivers' responses to 'totting' disqualification eligibility: failure to attend court for sentencing (3)

- 'Efficient, effective and fair? Disqualifying drivers in their absence at London traffic courts. *Contemporary Issues in Law*, vol 11(4), Corbett (2012). <http://www.lawtext.com/lawtextweb/default.jsp?PageID=2>
- **Figures from the MPS Disqualified Driver Database showed 28% totters were disqualified in absence (DIA) between 2007-2010.**
- = 3,300 who probably would have otherwise evaded sanction and 'got away with it'.
- **Answer unclear whether 'DIA' helps to produce more compliance with road traffic law. More adherence? More fine defaulting? More DWD? More driving w/o insurance? More failures to reapply for licence afterwards?**
- **However, more justice done and seen to be done, and numbers of warrants issued and unexecuted have shrunk.**

# Drivers' responses to disqualification: fearful or not bothered about breaches? (1)

- Position uncertain because of limited research. Yet Knox et al (2003) showed **42% breach rate in UK** among their convenience sample.
- In 2011, 12,900 fresh convictions for DWD, and 86,500 fresh disqualifications awarded >> 1 in 6/7 + more undetected.
- **International support finding high breach rate, e.g.** DeYoung et al (1997); Lenton et al (2009); Chang et al (2010).
- **International support for higher collision risk among disqualified drivers** (e.g. DeYoung & Gebers, (2004); Siskind, (1996), DeYoung et al (1997).

## Drivers' responses to disqualification: fearful or not bothered about breaches? (2)

- Not only a higher collision risk among disqualified drivers, but **also strong correlation between disqualified driving and mainstream offending** (Rose, 2000: 45; Knox et al, 2003: 74).
- Sensible that enforcement exploits this link, e.g. via the MPS Top 20 of prolific disqualified and mainstream offenders.
- DWD not on the OBJ list.
- **Some do not reapply for licence at the end of a ban** (Pearce et al, 2002). Why not? Research recommended to find out.

## Conclusions: are points and disqualification feared or ignored?

- 'Yes' and 'no' to both.
- Seems that **most drivers are fearful of points and a ban** and modify their behaviour as risk of disqualification approaches, or plead 'exceptional hardship' to avoid.

Once disqualified, **a proportion may remain deterred from DWD** by risk of consequences. (Risk of breach may depend on type of offence.)

- Yet for 'some', **eligibility for totting disqualification and actual disqualification are ignored.**
- They *may* still be fearful but sometimes find alternative, fraudulent means to subvert justice.

## Suggestions to aid compliance re points and disqualification

- Wider applicability of remedial, post-court retraining programmes to prevent disqualification and, where awarded, to facilitate reduced length bans;
- Agree with the S.F. aim: to improve poor driving skills before and after disqualification for more drivers.
- Beuret & Chorlton (2010) found support to make such retraining available to all risky driving offenders with inappropriate attitudes;
- Include dangerous drivers (with non-custodial sentences) and totters with evidence of recent poor driving, including those pleading 'EH'?

## Suggestions to aid compliance re penalty points and disqualification (2)

- **Work towards lowering insurance premiums;** continue efforts (i) to prevent insurance scams by crime gangs and others + (ii) to reduce legal costs for litigants; (iii) for more 'carrots'.
- **More 'sentencing / disqualifying in absence' to encourage compliance with prosecution process.**
- **More deterrence measures to prevent DWD:** need to change perceptions about detection risk:
  - Change status of DWD to 'either-way' + put on OBJ list;
  - Remove opportunities for fraud by tightening up licensing system;
  - Consider reversing policy of 'wiping all points' after totting disqualification.

**Strategic Framework** has good aspirations re points and disqualification measures, but faster progress needed.