



Self-Help Kit

Fight a Motoring Ticket

Guidance Manual

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This is an excerpt from Lawpack's *Fight a Motoring Ticket Kit*.

To find out more about fighting a parking ticket and appealing against a speeding fine, [click here](#).

Important Facts about this Lawpack Kit

This Lawpack Kit contains guidance, instruction and documentation to help you challenge the validity of a motoring offence you have allegedly committed.

This Kit has been prepared for use in England or Wales; it is not suitable for Scotland or Northern Ireland, where procedures differ.

Neither this nor any other publication can take the place of a solicitor on important legal matters.

This Lawpack Kit is sold with the understanding that the publisher, author and retailer are not engaged in rendering legal services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

As with any legal matter, common sense should determine whether you need the assistance of a solicitor rather than relying solely on the information and forms in this Lawpack Kit.

We strongly urge you to consult a solicitor if:

- substantial amounts of money are involved;
- you do not understand the instructions or are uncertain how to complete and use a form correctly; or
- what you want to do is not precisely covered by the forms provided.

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Contents

How to use this Kit	3
About the author	6
Introduction	7
The court process	9
First notification of the offence/warning of intended prosecution	9
Summary only offences	9
Time limit	10
Location of hearing	10
The first hearing	10
Disclosure (witness statements/evidence)	11
Pre-trial reviews/case management hearing	12
The trial	13
Can I represent myself?	15
Can I have the duty solicitor represent me?	15
Can I get legal aid?	15
I am not very confident; can a friend speak for me?	16
Can I drive to court?	16
What should I take to court with me?	16
Appeal process	16
I have been convicted, but I was never told there was a court date!	17
Parking enforcement	17
What is the reason for the parking enforcement?	17
Penalty Charge Notices (PCNs)	18
Evidence in support of your case	22
Postal hearing/personal hearing	23
Police/traffic warden issued ticket – Fixed Penalty Notices (FPNs)	23
Clamping and removal of vehicle	23
Parking tickets issued by private companies	25
Bus lane contraventions	27
Speeding offences	27
Notice of Intended Prosecution	28
Failing to furnish information	28
Attempting to pervert the course of justice	31
Speeding	31

Alcohol-related offences	40
Overview of offences	41
Prescribed limit	41
Failure to provide a preliminary breath test	42
Arrest	44
Evidential breath test	45
Driving while over the prescribed limit	47
Blood or urine	49
Failure to provide a specimen	50
Driving or in charge while unfit	50
Penalties generally	51
Special reasons	53
Applying for return of licence following a ban	55
Careless and dangerous driving offences	55
Careless and inconsiderate driving	56
Dangerous driving	58
Useful pointers	59
Miscellaneous offences	61
Mobile phone offence	61
Insurance offences	62
Failing to stop and failing to report an accident	65
Penalties generally	66
Exceptional hardship	68
New drivers	70
Fixed penalty offer	71
After pleading guilty/conviction	71
Vehicle defects	76
Definitions of organisations	80
Useful websites	82

Loose-leaf forms

- Checklist to use for mitigation (if pleading guilty or convicted)
- Excess alcohol back-calculation sheet
- Procedural flowchart for parking offences
- Motoring offences codes and penalty points

Clamping and removal of vehicle

Private clamping

Clamping firms that operate on private land are now quite common and they are not subject to the same regulations as the local authority. To avoid clamping by a private clamping firm you should be very careful about parking on any apparently unused private land. There have to be warning signs where you can see them. It is common for private clamping firms to approach the owners of private land which is used by members of the public and offer to pay them a proportion of the profits if the firm is permitted to clamp a vehicle on that land. Charges by these firms for removal of clamps or return of the vehicle can be hundreds of pounds. Any money that you could recover would be strictly limited to the loss you have suffered as a result of not having the vehicle (e.g. taxi fares).

You must not damage the clamp because that could be criminal damage. You should take photographs of any warning signs, or lack of them. Contact the telephone number suggested and ask them to release the car. You should also ask the clumper for proof of their authority, as wheel clampers on private land must have a licence from the Security Industry Authority. You can check if they have a valid Security Industry Authority licence by calling 08702 430 100. If they do not have this, then call the police as they are not an authorised clumper. It is a criminal offence to clamp without a licence or for a landowner to employ an unlicensed clumper. If they are licensed, you should get a receipt with their 15-digit Security Industry Authority number on it. Please see the paragraph on recovery of private parking tickets for how to reclaim the clamp fee if it is too high at page 30.

When can your vehicle be legitimately clamped by a local authority?

A clamp can be fixed onto a vehicle at the location where it is found in contravention of a parking regulation by a parking attendant. At the same time as fixing the clamp the parking attendant should also fix a notice advising that no attempt should be made to drive or move the vehicle until the vehicle has been released from the clamp. The notice should also detail how to have the vehicle released and warn that unlawful removal of the device is an offence.

A clamp should not be fixed as a result of any of the following acts:

- Failure to pay a parking charge in respect of the vehicle.
- Failure to properly display a ticket or parking device. (What constitutes a parking device is not specified by the legislation but would likely include any device designed to be used in a similar capacity to a ticket e.g. a card clock.)
- Failure to remove a vehicle from a parking space by the end of a period paid for.

A clamp should not be fixed to any vehicle displaying a disabled badge or other current recognised badge, e.g. a doctor's badge. However, if a vehicle is parked contrary to the conditions allowed by that disabled badge and a clamp would have been fixed if there was no disabled badge, then the person in charge of the vehicle will be guilty of a criminal offence and liable for a fine on conviction. The contraventions listed above will still attract penalty charges if they are outside what is permitted by the disabled/blue badge.

You can be legitimately clamped (post 31 March 2008) if you have committed a parking contravention and either 15 or 30 minutes have elapsed, depending on the circumstances. Your vehicle can be clamped subject to the exceptions specified in this section.

The charges for vehicle removal, storage and disposal outside of London are set by the Secretary of State and are detailed in the table below. Charges within London may vary between local authorities.

Item	Type of charge	Amount of charge
1.	Vehicle removal charge	£105
2	Vehicle storage charge	£12 for each day, or part of day, during which the vehicle is impounded
3	Vehicle disposal charge	£50

Grounds to appeal a clamp/removal of a vehicle by a local authority

- **The necessary time has not passed since the parking contravention first occurred**

If the vehicle is currently subject to three or more outstanding penalty charges the parking attendant need allow only 15 minutes since the parking contravention occurred before a vehicle can be clamped or removed (a PCN for the parking offence can be issued as soon as the parking offence has occurred).

In any other case the vehicle cannot be clamped for 30 minutes.

- **The parking offence did not occur**

Please see the points previously mentioned in respect of PCNs. These apply where the circumstances as stated in the PCN did not occur or the signage for the parking restriction was not correct or you were within the scope of parking committed at the time.

- **The vehicle was taken without my consent**

As previously stated, this is applicable in circumstances where the vehicle has been stolen and then been involved in a parking violation.

- **The penalty is incorrect for the offence**

If the amount that you are being asked for in release fees or for the PCN does not correspond with those stipulated as applicable by the local authority, this can be grounds to appeal. These charges are agreed by the Secretary of State for Transport, not set arbitrarily by the local council.

- **The traffic regulation order was invalid/inapplicable**

This would be the case if the regulations were either defective or did not apply to the location/time/circumstances of this offence.

- **You are a disabled badge holder**

If you are a disabled badge holder, then your vehicle should never be clamped. **Unfortunately, this ground for appeal does not apply if the vehicle has been towed away.** Your recovery is limited to your expenses as a result of the loss of your vehicle (e.g taxi expenses). There are exceptions to this general rule, as a disabled badge holder could be penalised if he is causing an obstruction. The Blue Badge Scheme ensures that parking concessions apply to certain qualifying people, usually due to a disability resulting in mobility problems. If you are a Blue Badge holder, we recommend that you consult the Council that issued your badge for the specific rules that govern the scheme. The Blue Badge has a cardboard clock on it which should be used to indicate when you arrived. The main allowances for Blue badge holders (outside central London) are:

- Free parking at parking meters and in council pay and display car parks, unless there is a sign saying otherwise.
- Free parking for up to three hours on single and double yellow lines (the three hours is measured from the time you set on the cardboard clock on the badge).

- Parking in special disabled parking spaces on any other roads, including red routes in London.

In London the main allowances are:

- Free access to congestion charge zone, as long as you register annually.
- In the City of London, City of Westminster, Royal Borough of Kensington and Chelsea and part of Camden (south of Euston Road) there are individual schemes. You can obtain details of these from the London Councils website at www.londoncouncils.gov.uk.

- **Exclusions on Blue Badges**

The Blue Badge cannot be used to park:

- in a cycle or bus lane;
- on a double or single red line during the times that they are in operation;
- on a clearway;
- in a tram lane;
- at a bus stop;
- on a zebra/pelican/toucan crossing, or the zigzag line before them;
- in a residents' parking bay;
- in a suspended meter bay;
- in a bay reserved for a specific class of person (e.g. a taxi);
- on a pavement or walkway; or
- anywhere which would cause an obstruction (e.g. within ten feet of a junction or on a roundabout).

Parking tickets issued by private companies

Private companies can issue parking tickets for unauthorised parking on their property. Unlike tickets issued by council parking attendants, traffic wardens or police officers, these are not subject to the rules and regulations discussed above.

In the case of parking tickets issued by private companies, it is not criminal law but contract law that applies. At the entrance to many private car parks, such as at supermarkets and multi-storey car parks, you should see a large sign listing the terms and conditions relating to the use of the car park. Entrance into the car park is taken as acceptance of those terms and conditions and, as such, a contract is made between the owner of the car park and the driver of the vehicle.

If you are the owner of the vehicle and receive a request for payment from a parking company for an alleged parking offence in their car park, but you are unsure who was driving, then you should inform the company of this. As the contract is only between the driver and the landowner, or an agent of the landowner, then without details of who the driver was, they cannot claim the penalty. They have no legal right to force you to identify the driver.

If you know that you were the driver at the time or are presented with any evidence which shows that you were the driver at the time, then you should not deny being the driver. If the company wishes to pursue a claim in the Small Claims Court for the money, then they are still required to prove that you were the driver and, as such, a party to the contract and any comments that you make confirming that you were the driver could only assist them, so it is best to say nothing. If you

are approached whilst in the car park by an employee who seeks to impose a penalty, then there is no obligation on you to assist them in any way.

Any parking ticket you receive from a private company is likely to look very similar to a council issued PCN. This is so that the person receiving the ticket thinks that the same powers apply to it as they do to tickets issued by the authority and, as such, make the person less likely to dispute it.

If the parking ticket from the company deliberately makes it out to look like an official document, when it is not, with the intention of compelling someone to pay a debt resulting from a contract, then this could be a criminal offence by the parking company. If you want to pursue this offence, you should contact the police.

Parking offences in private car parks

If the company wishes to pursue the driver for anything, they must show that there was a breach of the contract. As such, you should carefully look at the terms and conditions that apply to the car park and see if there was, indeed, any breach. Common breaches would be overstaying the permitted period in the car park, parking in a shop car park when you are not a customer of that shop or not parking within a marked bay. If there has not been any breach of contract, then there cannot be any claim against the driver. The burden remains with the company that wishes to make a claim against the driver to prove the breach of contract.

In addition to there being a contract and a breach of contract, the company must show that it has suffered loss as a result of the breach. They may try to state that the penalty for a breach of the terms of use of the car park is a fixed charge of between £60 and £100, but this does not mean that they are entitled to this under the law of contract. They are only entitled to their actual losses as a result of the driver's breach of contract. An example of this would be if the car park charges £2 for an hour's parking and the driver pays for an hour's parking but then stays for three hours; then the loss to the car park, in terms of revenue, would be £4 (£2 for each hour parked and not paid for). As such, this is all that they are actually entitled to. Anything above and beyond the loss that they try to claim is a penalty and, under contract law, they are not entitled to recover that penalty.

The term in the conditions, which appear to oblige the driver to pay a disproportionately large penalty for a small loss to the company, would also be classed as an unfair contract term under the Unfair Terms in Consumer Contract Regulations 1999. Anything above and beyond the actual loss that they try to claim is a penalty and, under contract law, they are not entitled to recover that penalty.

The companies do not take these matters to court because they rely on people not knowing the facts. If they lost their case in court, which they almost certainly would as the court would be made aware of the points listed above, it could bring considerable press attention to the matter which could lead to an increase in disputes in the future.

Bus lane contraventions

If you have received a PCN for contravening a bus lane, then there are a number of reasons to dispute the ticket.

- **The police are already taking action in connection with the alleged offence**

If the police are already taking action against you for the alleged bus lane offence, then you should

not receive a PCN for the same alleged offence. The police can take action by way of a summons or by a PCN. The reason for this is that you should not be punished twice for the same offence.

- **The alleged offence did not happen**

You can show that the signs indicating the bus lane were not in place, or that your vehicle was allowed to travel in a bus lane (Hackney Carriages are permitted to use bus lanes, as are emergency service vehicles). For motorcycles special authorisation, in the form of a traffic regulation order must be given should the bus lane be open to use by motorcyclists. Signage must be in place to demonstrate this authority and unless a sign with a picture of a motorcyclist is in place, you should assume that the bus lane is **not** authorised for use by a motorcyclist.

- **You are not the owner of the vehicle on the date of the alleged offence**

If you purchased the vehicle after the date of the alleged offence or sold the vehicle before the date of the alleged offence, then this could be a ground for dispute.

- **You are a hire firm**

If you are a hire firm and can provide details of the hirer and evidence that he has signed an agreement accepting responsibility for PCNs that occur while the vehicle is under his control, then the liability for the PCN should pass to him. Generally, you have to produce a copy of the agreement.

- **If you have hired a vehicle but did not sign any agreement to accept PCNs**

If you have hired a vehicle but have not entered into an agreement where you agree to be liable for any PCNs that are incurred whilst you have the vehicle, then the liability for the PCN remains with the hire company as the owner of the vehicle.

- **Your vehicle was taken without your consent**

If your vehicle was taken without your consent at the time of the alleged offence, then you will not be liable for the PCN. Generally, you have to produce a crime reference number for the vehicle having being taken without consent.

- **Challenging the PCN for a bus lane contravention**

You should first write to the local authority setting out why you dispute the ticket. They may drop the PCN at that stage. If they indicate that they still consider the PCN to be valid, then they will supply you with the contact details for the independent adjudicator.

Speeding offences

The driver or the registered keeper of the vehicle must receive a warning of intended prosecution within 14 days of the date of the speeding offence. Most motorists are not pulled over by the police anymore and the speed is detected by either fixed or mobile speed cameras which record on photograph or film all the alleged offences that take place at a certain location. You may or may not know that you have passed one of these locations. With most devices now in use there is no flash and you may not even see the equipment or people carrying out the speed check.