

# motoring news

## welcome

to 'Headlight', Dolmans Solicitors' motoring news bulletin.  
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# Headlight



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## The Sentencing Act 2026

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### The Sentencing Act 2026 – Impact on Motoring Offences

The Sentencing Act 2026 represents one of the most significant shifts in sentencing policy for motoring offences in England and Wales in over a decade. Its core objective is to reduce reliance on short custodial sentences, particularly for lower level imprisonable offences, while expanding judicial discretion to manage offenders in the community under strict conditions. These reforms apply to offenders convicted on or after 22 March 2026, irrespective of when the offence occurred, and are especially relevant to motoring cases, which are predominantly dealt with in the Magistrates' Court.

#### Presumption in Favour of Suspended Sentences (12 Months or Less)

The most important reform for motoring cases is the introduction of a statutory presumption that custodial sentences of 12 months or less must be suspended, unless exceptional circumstances justify immediate imprisonment. This presumption is now embedded in the Sentencing Code and applies to adult offenders (with parallel provisions for younger adults). In practical motoring terms, this directly affects offences such as drink driving, drug driving, driving whilst disqualified, dangerous driving, failure to provide a specimen, and some causing serious injury offences where custody at or below 12 months would previously have been a realistic outcome.



The presumption does not mean custody is abolished. Rather, it reverses the starting point. Courts must now actively justify immediate imprisonment, rather than suspension. Exceptional circumstances may still arise, for example where the offence was committed while the offender was already subject to a court order, where there is a demonstrable and ongoing risk to the public, or where suspension would undermine public confidence in the justice system. However, in routine motoring cases, even those involving aggravating features, defence practitioners can now properly argue that suspension is the default outcome, fundamentally altering sentencing dynamics.

#### Expansion of Suspended Sentence Powers (up to 3 Years)

The Act also extends the maximum custodial term that can be suspended from 2 years to 3 years, with a corresponding increase in the maximum operational period. This has particular relevance to serious motoring offences which previously sat uncomfortably on the boundary between suspended and immediate custody, such as high risk dangerous driving, repeat disqualified driving or aggravated drink/drug driving cases.

Under the new regime, courts can impose a longer custodial sentence, reflecting the seriousness of the offending, while still suspending it to allow the offender to remain in the community subject to conditions. This enables sentencers to balance punishment, deterrence and rehabilitation more flexibly. For motor offenders, this is likely to result in more suspended sentences accompanied by stringent requirements, such as unpaid work, rehabilitation activity requirements, alcohol or drug treatment and lengthy disqualification periods.

### **Practical Sentencing Consequences for Common Motoring Offences**

In practical terms, the reforms mean that immediate custody for motoring offences will become significantly rarer, particularly for first time or low level repeat offenders. Drink driving cases which previously attracted short custodial sentences, especially where aggravating factors such as high readings or poor driving were present, are now more likely to result in suspended sentences, provided there are no exceptional features. Similarly, cases of driving whilst disqualified, which historically resulted in short terms of immediate imprisonment, will now more often be dealt with through suspended sentences coupled with strict supervision.

Dangerous driving remains a serious offence and higher end cases will still attract immediate custody where appropriate. However, the widened suspension powers mean that borderline cases may now fall on the suspended side of the line, particularly where there is strong mitigation, no catastrophic injury and evidence of rehabilitation or remorse.



### **Relevance to Civil Claims and Insurers**

Although the Sentencing Act 2026 is a criminal law reform, it has important knock-on effects for civil motoring claims and insurers. A reduced incidence of immediate custody may affect perceptions of culpability in related civil proceedings, particularly where claimants seek to rely on criminal outcomes to support allegations of recklessness or gross negligence. Insurers should be cautious about equating suspended sentences with reduced seriousness; the courts may still be imposing substantial custodial terms albeit suspended.

In addition, longer suspended sentences and operational periods increase the likelihood of breach proceedings, which may become relevant in subsequent incidents or repeat claims. From a strategic perspective, the reforms place greater emphasis on risk management, rehabilitation evidence and driving history, both at sentencing and in the assessment of liability and contributory negligence in civil claims.

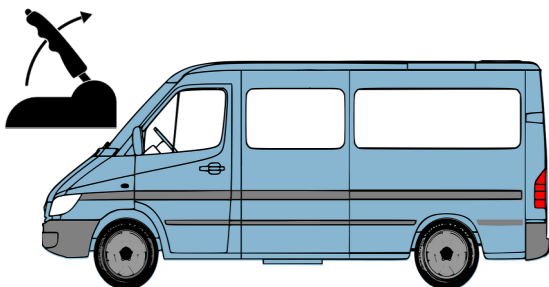
For practitioners involved in motoring litigation, criminal or civil, the reforms significantly elevate the importance of mitigation, rehabilitation evidence and risk assessments. Sentencing hearings will now involve more nuanced arguments about whether the presumption of suspension should be displaced. In parallel civil claims, practitioners should be alert to the fact that sentencing outcomes post 22 March 2026 may not reflect a softening of judicial attitudes to dangerous driving, but rather a structural change in sentencing policy.

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**Stichting Koskea (C-490/24)**

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This is a decision of the European Court of Justice clarifying the scope of compulsory motor insurance under Article 12(1) of the Motor Insurance Directive (Directive 2009/103), specifically whether such insurance must cover damage suffered by a driver where a passenger's intervention caused the accident. The reference arose from proceedings in the Netherlands following a serious road traffic accident in which ED was driving a minibus at approximately 70 km/h when a passenger seated behind him suddenly pulled the handbrake. The vehicle skidded, collided with roadside pillars and ED was ejected, sustaining serious injuries; one passenger was killed. ED sought compensation from the vehicle's insurer, but indemnity was refused. Voluntary insurance cover was excluded on the basis of alleged alcohol use and compulsory insurance was said not to apply because Dutch law, transposing Article 12(1), excluded coverage for drivers and limited compulsory insurance to passengers and other third parties.



At first instance, the National Court held that ED had ceased to be the “driver” once the passenger had pulled the handbrake, but that conclusion was overturned on appeal.

The referring court asked the ECJ whether Article 12(1) required compulsory insurance to cover the driver's damage in circumstances where a passenger had intervened in the driving of the vehicle, and, if so, what criteria EU law required to determine as to whether a person had lost their status as driver. The ECJ held that compulsory motor insurance does not have to cover damage suffered by the driver of the only vehicle involved in an accident, even where the accident was caused by a passenger's intervention. The court emphasised that the directive draws a fundamental and consistent distinction between the “driver” and “passengers” or other third party victims. Applying the ordinary meaning of those terms, the driver is the person at the controls of the vehicle responsible for steering, and there can, in principle, only be one driver at any given time. The court rejected the argument that a passenger's interference with driving could deprive the person at the wheel of their status as driver. Allowing driver status to shift depending on factual circumstances would undermine the structure and purpose of the compulsory insurance scheme, create legal uncertainty and risk excluding genuine passengers from protection. The directive's wording, recitals and legislative history consistently exclude drivers from the mandatory scope of cover, leaving the question of compensation for driver injuries to national law. While a passenger's conduct may be relevant to liability and quantum under domestic civil law, Article 12(3) makes clear that this is separate from the EU mandated scope of compulsory insurance.

The ECJ therefore concluded that damage suffered by the driver in such circumstances need not be covered by compulsory insurance, rendering the second question unnecessary to answer.

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### Braciforte v Williams

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The case arose from a 2022 road traffic accident in which the defendant drove into the claimant's parked vehicle. The claimant sought damages including the pre-accident value of her car, recovery and storage charges, and credit hire charges of nearly £17,700 for a 51 day hire period. The claimant's case was that she was impecunious and, therefore, unable to fund a replacement vehicle until payment of the pre-accident value.



Standard disclosure directions relating to impecuniosity were made and the claimant disclosed extensive financial records. However, the defendant argued that the disclosure was incomplete as it did not appear to capture all income and outgoings. In particular, the claimant disclosed the existence of a Brazilian bank account, but stated that she had no access to it and did not produce bank statements for that account.

At trial, the defendant criticised the claimant's non-compliance with disclosure obligations, but did not make a formal application to debar her from relying on impecuniosity or to strike out the credit hire claim. The trial judge accepted the claimant's evidence regarding the Brazilian account and indicated that had an application for relief from sanctions been made, it would have been granted.

The defendant appealed, arguing that the claimant should have been debarred from relying on impecuniosity due to the disclosure failures. The appeal was dismissed. The court held that the only prescriptive rule relating to credit hire and impecuniosity was CPD 16 para.6, which concerns pleadings rather than disclosure, and that the critical issue in such cases is compliance with the court's specific directions. While the standard directions provided that non-compliance could result in debarring the claimant from asserting impecuniosity, the trial judge retained a discretion to permit reliance on impecuniosity, including through an informal relief from sanctions exercise. The trial judge's finding that the breach was "technical" and his acceptance of the claimant's explanation were legitimate case management decisions.

The court emphasised that limited disclosure failures, whether deliberate or inadvertent, do not automatically preclude a claimant from pursuing credit hire charges. However, it gave clear guidance for future cases, stressing that claimants must disclose all relevant financial accounts if impecuniosity is relied upon and that the larger the credit hire claim, the greater the obligation of thorough financial disclosure.

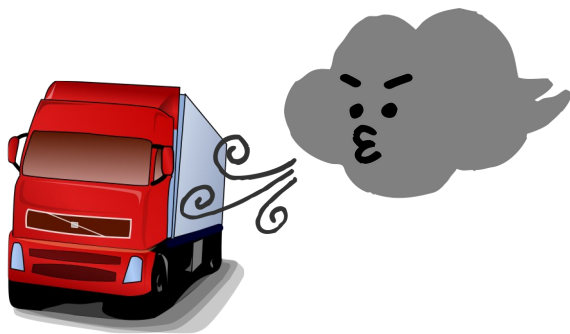
Defendants should identify disclosure shortcomings promptly and, if serious, make clear at an early stage that they will seek to debar the claimant at trial. In appropriate cases, a pre-trial strike-out application may be justified. Where disclosure failures are identified, claimant solicitors should actively consider whether a formal relief from sanctions application is required, as failure to do so risks the claimant being debarred from relying on impecuniosity.

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### Popa v XDP Limited

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This is a Court of Session decision concerning the applicable law in a fatal road traffic accident claim involving cross-border elements between England and Scotland. The pursuers, the family of a deceased heavy goods vehicle driver, raised an action against the deceased's employers alleging negligence in failing to take reasonable care for his safety. The deceased and his family lived in Liverpool, while the defenders were an English company with a registered office in Sutton Coldfield, a place of business in Lancashire and a delivery depot in Motherwell. The deceased was driving his regular route from Lancashire to Motherwell when, during a Met Office yellow weather warning for high winds, his high sided HGV was struck by a gust on the M74 in Scotland, causing it to tip over into oncoming traffic and resulting in his death. The pursuers alleged that the defenders had failed to carry out a suitable and sufficient risk assessment to control or eliminate the risks associated with operating high sided vehicles in high winds.



The case came before the court for a preliminary proof on the issue of choice of law under Regulation (EC) No 864/2007 (Rome II), Article 4.

It was accepted that both the deceased and the defenders were habitually resident in England at the time of the accident, which meant that, under Article 4(2), English law applied, unless the pursuers could demonstrate that the delict was manifestly more closely connected with Scotland under Article 4(3). The pursuers relied on a range of factors said to connect the accident more closely with Scotland, including that the accident occurred on a Scottish road, close to the Motherwell depot, involved Scottish emergency services, was subject to Scottish weather conditions and warnings, and had been considered within the Scottish fatal accident inquiry process.

Lord Uist held that English law was the applicable law. While the accident occurred in Scotland, the court found that the pursuers' arguments amounted to no more than the ordinary and inevitable consequences of the place where the accident happened. The deceased's workplace was in England, the alleged negligent acts and omissions (namely, the failure to conduct adequate risk assessments and put in place appropriate systems) were committed by the defenders in England and both parties' habitual residence was in England. Applying Article 4(2), English law therefore governed the claim and the pursuers had failed to demonstrate a clear preponderance of factors sufficient to displace that rule under Article 4(3).

The decision reinforces that the mere location of an accident, even in fatal cases with substantial local involvement, will not ordinarily be enough to override habitual residence where the alleged negligence is rooted in the employer's systems and decision making in another jurisdiction.

### Attersley v UK Insurance Limited

This is a Court of Appeal decision of significant importance on the interaction between Part 36 and the fixed recoverable costs (FRC) regime in ex-Protocol road traffic accident claims.

The claimant's claim was originally commenced under the RTA Protocol and later exited following a liability dispute. Part 7 proceedings were subsequently issued, by which stage the claim was valued substantially higher, ultimately pleaded at up to £150,000 with multiple expert disciplines. The defendant insurer admitted liability and made a Part 36 offer of £45,000 at a time when the claim remained subject to Section IIIA of CPR Part 45. The claimant did not accept the offer within the relevant period. Some time later, the claim was allocated to the multi-track and, approximately 16 months after the expiry of the relevant period, the claimant accepted the defendant's Part 36 offer. The central issue was whether the claimant's recoverable costs were limited to fixed recoverable costs under CPR 36.20 or whether she was entitled to standard basis costs on the footing that, by the date of acceptance, the claim had been allocated to the multi-track and was no longer within the FRC regime.

The Court of Appeal allowed the defendant's appeal and held that the claimant was limited to fixed recoverable costs. The court confirmed that CPR 36.20 governs the costs consequences of late acceptance of a defendant's Part 36 offer in claims which were subject to Section IIIA of Part 45 at the time the relevant period expired.

The critical point in time for determining the applicable costs regime is the expiry of the relevant period, not the later date of acceptance. Where the relevant period expired while the claim was still within the fixed costs scheme, subsequent events, such as allocation to the multi-track, do not retrospectively disapply fixed costs. The court rejected the argument that CPR 45.29B or multi-track allocation could override the specific costs consequences prescribed by CPR 36.20, emphasising that the specific Part 36 provisions take precedence over more general costs rules. In reaching its decision, the Court of Appeal stressed the importance of certainty and predictability in the operation of Part 36.

Defendants must be able to assess their potential costs exposure at the point the relevant period expires, without that exposure being altered by later procedural developments outside their control. The court observed that it would be surprising and contrary to the policy of Part 36 if a claimant could recover substantially greater costs by accepting an offer late simply because the claim had progressed or been allocated to a different track in the interim. The decision reinforces the strategic value of early Part 36 offers for defendants and insurers in ex-Protocol cases and confirms that, under the pre October 2023 rules, late acceptance does not enable claimants to escape the fixed recoverable costs regime where it applied at the expiry of the relevant period.



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If there are any topics you would like us to examine,  
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