



Vehicle & Operator Services Agency

From: **Information Access**
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BY E-MAIL

Tel: 0300 123 9000
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Our Ref: **F0001662**

Date: 17th February 2009

Dear

FREEDOM OF INFORMATION ACT 2000

I refer to your e-mail of 4th February requesting information regarding VOSA prosecutions.

Unlike with analogue tachograph sheets (which are designed to be left in the tachograph recording equipment for a maximum of 24 hours), leaving a digital driving card in the recording equipment for more than one day is not an offence. A digital card can be left in a vehicle for up to 28 days, at which point it should be removed and the information stored on it should be downloaded. However, it is an offence to fail to record accurately periods of driving, other work and rest via correct use of the mode switch/button. Failing to take sufficient daily rest and exceeding the permitted daily driving time are also offences. I can confirm that our records show the following number of offences were pursued to prosecution in 2008:

Offence	Number of Cases
Incorrect use of mode switch	138
Insufficient Daily Rest	451
Exceeding Daily Driving Time	312

Please note that an operator can be prosecuted for permitting a driver to commit these offences also. The figures quoted refer only to driver offences and not to the corresponding operator offences. The figures refer to offences perceived to have been committed under EC Regulations that were detected within England and Wales.

Once an offence has been detected, consideration is given to the most appropriate form of action in line with the guidance given in the VOSA Categorisation of Offences. In instances where an individual has been reported for an offence at the roadside but the subsequent investigation reveals that no offence has been committed or there is insufficient evidence, that individual should be informed that no further action will be taken.

If it is thought that prosecution may be appropriate, a case file is prepared and this is submitted to a Senior Traffic Examiner for a 'Public Interest Test'. This test consists of a number of factors for and against taking prosecution action. In instances where the offence is prosecutable but, after considering the evidence gathered and the facts or circumstances of the case, it is decided that prosecution action is not appropriate, an advisory letter is issued.

If the Senior Traffic Examiner decides to prosecute, the case is submitted to the Prosecutions and Legal Services team. The case is re-examined at this stage and may be referred back to the Senior Traffic Examiner where necessary. If, after deciding to prosecute, further information comes to light from whatever source to suggest or recommend that the prosecution should not proceed, the Public Interest Test is applied again in light of the new information. This new information may come from the offender themselves and explain any exceptional circumstances surrounding the offence.

For the majority of offence types, when VOSA intends to prosecute, the case must be laid at court within 6 months of the offence date. This means that a court must have received and signed paperwork from VOSA within 6 months of the offence being committed.

When a case is taken to court, VOSA calculates the cost of that case, including detecting the offence, interviewing the defendants, gathering and documenting evidence and representation at court. An application for an amount equal to these costs is made to the Magistrate by VOSA. Costs and fines are only payable by the defendant if they are convicted by the court. On conviction, the level of the fine and the amount of the costs awarded to VOSA is at the discretion of the Magistrate.

The Road Traffic Act sets out the legal *maximum* fine levels for offences committed under this Act. Although I am unsure of the exact offence to which you refer, I believe that the following three offences may be relevant to your enquiry:

Offence	Maximum Fine Level
Incorrect use of mode switch	Level 5 (£5000)
Insufficient daily rest	Level 4 (£2500)
Exceeding the maximum daily driving time	Level 4 (£2500)

These fine levels indicate the maximum fine that a Magistrate is allowed to impose. When a defendant is convicted, the Magistrate can choose to impose a fine of any amount between nothing and the maximum fine level. In making this decision, the Magistrate is likely to consider the defendant's previous history, any mitigating circumstances that have been presented to the court by the defendant (either in person or by writing), the defendant's income and the severity of the offence.

If you have any queries about this letter, please contact us, quoting reference **F0001662**.

If you are unhappy with the information supplied, you may ask for an internal review. To request an internal review, please write to:

VOSA Corporate Office,
Berkeley House,
Croydon Street,
Bristol,
BS5 0DA

or email vosa.corporateoffice@vosa.gsi.gov.uk

giving the reasons for your dissatisfaction. It will help us if you quote the reference number for your case.

If you do not agree with the outcome of the internal review, you may lodge an appeal with the Information Commissioner (www.informationcommissioner.gov.uk). The Information Commissioner is an independent official appointed by the Crown to oversee the Data Protection Act 1998, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

The Information Commissioner can consider complaints about any aspect of the way in which requests for information have been handled. Please note: the Information Commissioner would be unlikely to consider your complaint if you have not first requested an internal review.

You can write to the Information Commissioner at:

The Information Commissioner's Office
Wycliffe House,
Water Lane,
Wilmslow,
Cheshire
SK9 5AF

Yours sincerely

VOSA Information Access