

## **Failing to provide a specimen (driving/attempting to drive).**

### **What's the law?**

If you fail without reasonable excuse to provide a specimen of blood, urine or breath for analysis you will be guilty of failing to provide. *Road Traffic Act 1988, s7(6) and s7A*

### **When do I have to give a sample?**

If the police suspect that you have committed an offence of death by careless driving, driving or attempting to drive whilst unfit through drink or drugs or being in charge of a vehicle whilst unfit through drink or drugs they can require you to give two samples of breath, blood or urine.

### **Where do I have to give the sample?**

Usually you will first be required to give a roadside breath test. This is a preliminary test where you either blow into a bag or machine. If you fail the roadside breath test you will be arrested on suspicion of a drink driving offence and taken to the police station or custody centre local to where the offence is alleged to have been committed. [For the law on failing to co-operate with a roadside breath test please see our separate factsheet].

### **What happens at the police station?**

If you have been arrested for a drink drive offence you will be booked into custody by the custody sergeant [For more information on the procedure at the police station, see our police station factsheet]. You will then be asked to give two specimens.

## **Giving a specimen**

This can be done in three ways; breath, blood and urine. It is up to the police which specimen they require. Usually they will ask for a breath specimen unless the breath machine is broken or unavailable or you raise a medical condition that means you would be unable to blow into the machine.

The police must act reasonably in deciding which specimen they want from you; for example, if they ask for a blood sample and you say that you have a religious reason for not giving blood they should take this into account when deciding which specimen they ask for.

If you are asked to give breath you will be asked to blow into a machine approved by the secretary of state and you are required to give two specimens. A police officer will conduct the breath test procedure. If you are asked to give urine, you will be asked to provide two urine samples in a 1 hour period. In practical terms you have to urinate in a pot which will then be sent off for analysis. If you are asked to give blood a doctor or a nurse will take two samples from you which will then be sent off for analysis.

The police must warn you that if you fail to provide whichever specimen asked of you then you may be liable to prosecution for the offence of failing to provide. If they don't warn you the magistrates can dismiss the charge against you. If you are unable to understand the warning even if you have failed to give a specimen; for example, you don't speak English and it has not been translated for you, you will not be guilty of failing to provide a specimen.

## **What happens if I have a medical condition?**

If you have a medical reason for being unable to provide whichever sample asked of you, you must tell the police from the outset and make sure that they write it down. This is very important.

## **What happens if you I fail to give a sample?**

You will be charged with the offence. Whether you have a reasonable excuse is something that in most cases will be determined by the court. Once you have raised a reasonable excuse it is for the prosecution to prove that you didn't have a reasonable excuse, beyond all reasonable doubt. Basically this means that once you have raised an excuse as long as it is one recognised by law, the magistrates must be sure that it didn't exist in your case before they can find you guilty.

## **What amounts to a reasonable excuse?**

An excuse which means you are physically or mentally unable to provide a sample, or where the provision of a sample would cause a substantial risk to your health. An example of a physical excuse would be if you are asthmatic and as a result of having an asthma attack at the time of giving a breath specimen you were unable to successfully blow into the machine. An example of a mental excuse would be if you were having a panic attack at the time of blowing into the machine which meant you were unable to sustain a breath to properly blow into the machine. Another example could be if you have a severe phobia of needles and the officer asked you for a blood sample.

If you don't raise it at the time whilst it's not necessarily fatal to your defence, it usually is. An exception to this would be if it is a condition that didn't know about at the time of being asked and therefore couldn't be expected to raise it.

If you refuse to co-operate with the procedure for a reason that has nothing to do with a medical excuse you can't then rely on a medical excuse at trial.

If you do have a medical excuse, in most cases you will have to call expert evidence on this at trial.

Establishing a reasonable excuse is difficult and you should always seek advice from a solicitor on this.

## **Examples of things that don't amount to a reasonable excuse:**

- You were too drunk.
- You wanted to delay giving a sample until you had spoken to a solicitor.
- You weren't the driver [this makes no difference as long as the police had reasonable grounds to suspect you were, in law you are required to give a sample irrespective of whether you were actually driving.]

- You weren't over the limit and therefore didn't think you should have to give a sample.
- You tried your hardest but in the absence of a physical or mental health reason, just couldn't do it.
- Where will my case be dealt with?

Failing to provide a specimen can only be dealt with by the magistrates' court. This means your case will be heard in the magistrates' court that is local to where you committed the alleged offence.

## **What will happen next?**

Once you have been charged with the offence in most cases you will be bailed to attend court. If you have been bailed to attend court and fail to do so without a reasonable excuse you will be committing a separate offence under the Bail Act, the maximum sentence for which in the magistrates' court is a three month custodial sentence.

At court either you or your solicitor (if you have one) will be given a copy of the evidence. If you plead not guilty your case will be adjourned for trial and in most cases you will be given the trial date at court on the day you plead not guilty.

If you plead guilty then depending on your circumstances, your previous convictions and the extent of your refusal to co-operate with giving the sample, you will either be sentenced on the day you plead guilty or your case will be adjourned for a pre sentence report. This will be prepared by a probation officer following an interview with you and they will then make recommendations about how you should be sentenced. If your case is adjourned for a pre sentence report you will be bailed to re-attend court for your sentencing hearing.

## **Will I receive a driving ban?**

Yes if you plead guilty/are convicted of failing to provide a specimen and either you were driving or attempting to drive you will be disqualified for a minimum period of 12 months. This is mandatory.

If you plead guilty to/are convicted of failing to provide a specimen whilst being in charge of a motor vehicle the magistrates will either impose 10 penalty points or disqualify you from driving.

In either case your driving licence will be endorsed with the offence.

## What length of disqualification will I receive?

If you were driving or attempting to drive, the magistrates must disqualify you for a minimum period of at least 12 months.

If you have two or more disqualifications for at least 56 days or more in the 3 years to this offence you will be disqualified for at least 2 years.

If you have been convicted of a relevant drink drive offence in the 10 years prior to this offence you will be disqualified for at least 3 years.

If you have no relevant previous convictions or disqualifications the length of your ban will depend on the circumstances of your failure to provide based on the magistrate's sentencing guidelines (see our link to the sentence council guidelines where you can download the actual guidelines for yourself). The guidelines are just that, a guideline but in most cases the magistrates will follow them.

## Guideline disqualification and sentence.

These are based on a first time offender following conviction at trial.

If you plead guilty at the first opportunity you will be entitled to a discount in your sentence of one third.

Examples of nature of activity	Starting point	Range	Disqualification	Disqualification . 2 <sup>nd</sup> offence in 10 years
Defendant refused test when had honestly held but unreasonable excuse	Band C fine	Band C fine	12-16 months	36-40 months
Deliberate refusal or deliberate failure	Low level community order (probation)	Band C fine to high level community order (probation)	17-28 months	36-52 months
Deliberate refusal or deliberate failure where evidence of serious impairment	12 weeks custody (prison)	High level community order (probation) to 26 weeks custody (prison)	29-36 months	36-60 months

*Failing To Provide A Specimen*

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## **Should I consult a solicitor?**

Yes. Failing to provide a specimen is serious and you should always seek legal advice before entering your plea.

## **Appealing against conviction**

If you have been convicted by the magistrates of this offence and want to appeal against that decision you can either appeal to the crown court where you will have a fresh trial in front of a crown court judge and two magistrates or you can appeal the decision to the high court by way of case stated or judicial review.

If you wish to appeal against either conviction or sentence you must file your notice of appeal on both the court and prosecution within 21 days of the conclusion of your case.