



Driving with Excess Alcohol is one of the most serious motoring offences dealt with in the magistrates' court. Aside from the punishment you might receive if caught, the indignity of an arrest, a possible night in the cells and the subsequent appearance in court make for a truly salutary experience. Yet, in spite of this, many individuals fail a breath test at some time in their lives and there are innumerable reasons why.

Ignorance of legal alcohol limits, making a rash decision after having one too many or struggling to conceal a secret alcohol addiction can all lead otherwise law abiding citizens to fall foul of the drink driving laws.

So what can you expect if caught driving with excess alcohol?

There is a wide range of penalties available to the Magistrates.

Financial Penalties

The majority of defendants who face prosecution for driving with excess alcohol are dealt with by way of a fine and disqualification from driving. The matter is usually dealt with at the first court hearing.

Nearly every defendant appearing before the court for driving with excess alcohol will be ordered to make a contribution towards the costs of the prosecution although the level of the contribution will depend upon the defendant's means to pay.

The court will also add a victim surcharge of £15 to any fine. This sum is intended to be added to a fund to support the victims of crime.

Any financial penalties imposed will be in accordance with your means and, if it is clear that you do not have the means to pay in full straight away, the court will usually grant time to pay.

It is only when the offence becomes more serious that Community Orders and Imprisonment are

then considered.

Community Orders

Community Orders may be imposed where the offence is too serious for a fine or as a direct alternative to imprisonment. As a rule of thumb, if you are caught driving with excess alcohol with a breath/alcohol level over 90mg of alcohol in 100ml of breath or a blood/alcohol level over 200mg of alcohol in 100ml of blood you will be at risk of a Community Order rather than a financial penalty.

As well as defendants with high breath/alcohol or blood/alcohol readings, some defendants with aggravating features set out below under Imprisonment may be ordered to perform unpaid work in the community, attend alcohol treatment programmes or be placed under probation supervision.

Failure to comply with a Community Order can often lead to imprisonment for non-compliance.

Imprisonment

Imprisonment for driving with excess alcohol is rare but can be considered in a variety of cases.

The main groups at risk of imprisonment are:

- Those with very high breath/alcohol or blood/alcohol readings
- Those with previous convictions for driving with excess alcohol or other serious motoring offences such as dangerous driving or driving whilst disqualified
- Those who have caused accidents or driven at high speed
- Those who drive with children in the car

This list is by no means exhaustive and the magistrates may take a dim view of any circumstances that they feel have aggravated the offence.

Disqualification

Unless you have a special reason (and that is

extremely unlikely), the magistrates will be obliged to disqualify you from driving for a minimum period of twelve months.

If you have a previous conviction for driving with excess alcohol or failing to provide a specimen of breath within the last ten years then the magistrates will be obliged to disqualify you from driving for a minimum period of three years.

The period of disqualification will depend upon your breath/alcohol or blood/alcohol level and will take into consideration any aggravating features present as well as any personal mitigation including the effect that the disqualification may have upon you.

Remember that the fact that you will lose your job may reduce the period of disqualification but it cannot be used to persuade the magistrates not to disqualify you at all, nor to disqualify you for less than the legal minimum.

In most cases, the magistrates will offer you a chance to attend a driver rehabilitation course which, upon successful completion leads to a quarter reduction from the disqualification imposed.

Special Reasons

A Special Reason is a mitigating factor that relates to the offence, not to you. The possibilities are endless but examples might include moving a car out of the way of an ambulance, taking a very sick person to hospital or becoming over the limit because your drink has been spiked.

Even if you feel able to raise a special reason, you must be able to show that no other course of action was open to you.

It is not a special reason that you will lose your job if disqualified or that your family will suffer. The special reason must be connected with the offence itself.

Special Reasons hearings are difficult and usually require reference to be made to cases previously decided by the higher courts. Legal Aid will often be available and you should seek legal advice.

If you are at risk of imprisonment

If you have a very high reading (over 100mg in breath or 250mg in blood), if you have one or more previous convictions for driving with excess alcohol or if other aggravating factors apply such as driving at high speed, causing an accident or driving with children in the car then the magistrates could give serious consideration to sending you to prison.

If you fall into this category, a solicitor will be skilled at addressing the magistrates on your behalf with a view to persuading them that you should be allowed to serve your sentence in the community. This could considerably reduce your chances of receiving a custodial sentence.

If you are at risk of a prison sentence, legal aid may be available to you, subject to your means.

When do you need to see a solicitor?

We are always pleased to give advice to any defendant or to offer representation at any hearing. Appearing in court, especially for the first time, can be daunting and not everyone feels confident about addressing the magistrates themselves.

Some groups of defendants, however, should always give serious consideration to seeking representation.

If you dispute that you were the driver or dispute that you were over the legal alcohol limit

Whilst credit in the form of a more lenient sentence and lower bill of prosecution costs is available to those who plead guilty at an early stage, no defendant should ever plead guilty to a crime that (s)he has not committed.

Sometimes the police are given false information about who was the driver or make mistaken errors of judgement.

If you are charged with an offence that you have not committed, you should consider seeking legal representation in order that you can receive

assistance with the preparation of your defence, correspondence with the prosecution, cross examination of prosecution witnesses - who will often be police officers - and submissions to the court.

Legal aid is often available to assist with the cost of a trial.

If you wish to argue that you have a special reason to avoid disqualification

As explained above, Special Reasons are difficult to establish and you may feel more confident arguing your case with the help of an experienced advocate. You may need to call witnesses, cross examine prosecution witnesses and respond to correspondence from the prosecution.

If you have no special reason but wish to try to keep your disqualification close to the legal minimum disqualification

The magistrates do have a discretion over the length of disqualification to impose and, if your licence is important to you, you may wish to instruct a solicitor to argue that your disqualification should be kept to the lower end of the scale.

Remember, however, that the magistrates will take your breath/alcohol or blood/alcohol level together with any aggravating features into consideration as well as any mitigation that your solicitor may be able to advance.

If you have a language problem, hearing problem or other special need

Appearing in court can be especially difficult for those with special needs and legal aid is often granted so that a solicitor can help you to overcome your particular problem.

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If you need advice regarding a motoring offence, please do not hesitate to contact any of the following solicitors to arrange an appointment at either the Peterborough or Stamford office:

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Updated November 2011

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