

'One for the Road!'



It's that festive time of year again when we all probably drink a little more than we normally would. Many of us make judgements as to how much alcohol we can drink and yet still be below the limit when we drive. This is far from easy and all too often people get it wrong. Some people consume alcohol the night before and feel fine the next day and do not realise that they are still over the limit. Very often people are shocked to discover that they have failed the roadside breath test. Such mistakes can cost people their livelihoods and leave their personal lives in tatters owing to the driving disqualification that is imposed. The question is what to do if you find yourself in this unfortunate situation and what are your rights?

What happens if you are pulled over?

Often the first time the police come to a driver's attention is when they see the flashing blue lights in their rear-view mirror. The police do not need a reason to pull you over. However, it should be borne in mind that the police must follow strict procedures when they do so. The police can only ask you to give a roadside breath test if the officer is in uniform and reasonably suspects that you have been involved in an accident, committed a road traffic offence or that you have consumed alcohol. If any of these procedures are not complied with, then you may have a defence if you do not carry out the roadside breath test. If the roadside breath test has been lawfully requested and you fail to provide a sample of breath, then you will have committed an offence which carries four penalty points or a discretion to disqualify. If you are found to be over the legal limit on a roadside breath test then normally you will be arrested and taken to the local police station.

What is the procedure at the police station?

At the police station you will be booked in and then breathalysed normally fairly quickly. Before being breathalysed the police should warn you that failing to provide a specimen of breath may mean that you will be prosecuted. If no such warning is given then you may have a good defence in relation to the drink driving allegation, even if the police go on and take a specimen of breath that shows that you are over the limit. The police should record the warning on a specific form while going through the breath test procedure. This can be checked to see if it mentions whether the

warning was given. Also almost all police stations have CCTV systems which have an auditory record. This can be requested from the police and often shows conclusively whether or not the warning was given.

The limit on the breath is 35 micrograms of alcohol in 100 millilitres of breath. Two samples of breath are normally taken on the breathalysing machine. If the lower sample is no more than 50ugs in 100ml of breath then you should be given the option to have the breath test replaced by a sample of blood or urine. If you are not given this option then this again may provide a defence in relation to an allegation of drink driving. The reason why a blood or urine test should be offered is because they are considered to be more accurate than a breath test. It is strongly advised that if you are found to be in this position that this option is taken up.

Where a specimen of blood is taken we would urge that you ask the police for a sample of that specimen. The police have to give this to you and if they refuse then this may also constitute a defence. Such a sample of blood can be independently analysed at a later time to check the alcohol content and to see if the police analysis is correct. The limit in relation to blood is 80mg in 100ml of blood. Once more, before the blood is taken, the warning that you may be liable to prosecution if you fail to give a sample must be given by the Police or again, you may have a defence.

Why should I use a solicitor?

The sentences for drink driving can be severe. If you plead guilty or are found guilty then there is a mandatory minimum ban of 12 months for a first offence and a possible fine. However, for people well over the limit they could also receive a community order or even a prison sentence of up to 6 months.

At the police station, the police will not normally delay the breath test procedure in order for you to seek legal advice. However, where the police are looking to interview you, you will be entitled to have a solicitor present. We would strongly suggest that you take this option up, as the solicitor will be able to give advice on important issues such as whether you

should be answering police questions or not. The solicitor will also accompany you in the interview itself and check that the police questions are fair.

At Motoring Law Defence we specialise in representing clients in relation to all motoring matters including drink drinking. As well as assisting you at the police station level, we can also assist you if you are charged with drink driving and due to attend court. We can advise on whether you have a defence or whether you should plead guilty. Even if a guilty plea is appropriate, we can help obtain a more lenient sentence by explaining to the Magistrates in great detail the devastating effect that a long ban would have upon your life and others.

For free initial advice on any motoring law matter please telephone Philip Hatvany, specialist road traffic solicitor at Motoring Law Defence on 01225 442925 or via email at advice@motoringlawdefence.com



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