



MAJ. LAW

S O L I C I T O R S

Drink Driving - What will happen at your first court hearing?

If you have been charged with drink driving, you may think that your only option is to plead guilty. Blowing over the limit does not mean that a guilty plea must be entered.

A common mistake made by those charged with a drink driving offence is to accept the evidence for 'face value'. Consider the following;

- ★ You may receive a correctly completed **MGDDA document** from the CPS. Does this mean that the **form** was completed contemporaneously at the time of the evidential procedure, particularly if you can't remember it? Could it have been completed afterwards?
- ★ You may have received a **printout** from the police detailing the breath readings you provided. How do you know the data is accurate? Was the machine correctly calibrated?
- ★ An officer's witness statement may say that you **failed to provide a specimen** without reasonable excuse. How can we be certain the mouthpiece wasn't defective? Do you know for certain that you don't have a defence?
- ★ The Case Summary, usually provided on the first court date, may say that the procedure was conducted correctly, inline with the MGDDA document. You can plead guilty based on this information if you wish, but a Case Summary is not evidence. How do you know the evidence exists?

Can I 'go it alone'?

It is unlikely that you will receive legal aid for a drink driving / failing to provide case. This means that you are having to **pay privately for representation**. Is it advisable to attend the first court hearing alone to save money?

In short, no. Whilst this is an option, it is never advisable to attend a drink driving court hearing without a specialist solicitor. There are a number of reasons for this;

- ✓ **Check the evidence.** A specialist solicitor can consider the evidence provided at the first court hearing in detail. If there is fault with the evidence against you, your solicitor can place pressure on the CPS to drop the case.
- ✓ **Safeguard your position.** A prosecutor may take advantage of an 'unrepresented defendant'. Your solicitor must understand the law relating to drink driving procedure, disclosure and, if required, be in a position to 'out-manoeuvre' the prosecutor with a technical legal argument. Our solicitors only deal with motoring offences.
- ✓ **The early identification of issues.** Before setting a date for trial, the court will require the defence to identify the 'issues in dispute'. Generally, these are the facts of the prosecution's case that we don't agree with. There is a real danger that a 'lay' person would overlook an important issue or simply fail to raise one. If this were to happen, the court may refuse to set a date for trial (meaning you may have to return to court for a 'case management hearing').
- ✓ **Building the foundations.** Once the foundations of your defence are established, it can be very difficult for the CPS to 'disprove' them. We must always take a calculated, strategic and balanced approach to case management. If we raise too many issues with the prosecution's case, we risk being criticised for partaking in a 'fishing expedition'. On the other hand, if we fail to identify an issue we then seek to rely on, the court may prevent us from doing so. This is a decision best left to a specialist.
- ✓ **Witnesses.** The only way the CPS can prove its case is with the use of evidence. Evidence is usually introduced by way of a witness statement. On the first court date the defence will be expected to confirm what witness statements we can 'agree' and what witness statements we contest. If we contest a statement, the person who produced it will be required to attend trial to give live evidence. If we agree it, the statement can simply be read out (and its contents cannot be challenged). This will always be a fundamental part of our overall defence strategy and, if dealt with correctly, can cause the CPS huge difficulties. Time limits will also apply to witness statements.
- ✓ **Court directions.** The court will likely set a number of important directions following a not-guilty plea. For example, if your defence involves medical evidence or post driving consumption, the court may direct that expert evidence be served within 28 days. Court directions can be a useful tool to the defence, exposing the prosecution's pressure-points and giving us greater leverage when they inevitably fail to comply. Your solicitor should always apply for the most appropriate directions.

Will you see the evidence against you before the first court hearing?

As unfair as it sounds, you are not entitled to see any of the evidence against you until the first court date. In fact, even on the first court date, you'll probably only see about 20% of it. The CPS will then expect you to plead guilty based on this 'evidence'!

Due to the complexities surrounding a drink driving case, there is a considerable amount of documentary evidence that will exist (usually in excess of 150 pages).

In a drink driving breath (or failing to provide) case, I would usually expect the evidence to include;

- 1.** MG4 Charge Sheet
- 2.** MG5 Case Summary
- 3.** The MGDDA document
- 4.** CCTV of the breath test procedure
- 5.** Witness statements from all CPS witnesses
- 6.** Breath test printout (in breath cases only)
- 7.** Calibration data/records
- 8.** Training certificate
- 9.** Pocket Notebook entries
- 10.** A PNC Record (showing previous convictions)

If your case involves blood or urine, you can also add the following to the list above;

- 11.** The MGDDB document
- 12.** The HO/RT/5 Form (in blood cases only)
- 13.** The MG22(b) Streamlined Forensic Toxicology Report

14. Continuity Statements

15. Analytical Data Pack

However, in most cases, the CPS will only disclose;

- MG4 Charge Sheet
- MG5 Case Summary
- PNC Record

The only realistic way of gaining access to all the evidence in the case is by entering a not-guilty plea on the first court date. The CPS should then provide the evidence within **28 days**. In 90% of drink driving cases that M.A.J. Law challenge, the CPS will fail to serve the evidence within this time frame. We can then raise technical legal arguments and relevant case law in an attempt to secure your acquittal.

A not-guilty plea - what are the risks?

It's a question that can play on the mind of any person considering their options. Our team at M.A.J. Law are usually asked one of the following;

1. **Will I be worse off if I plead not guilty and I'm then convicted?**
2. **Will the court not 'throw the book at me' for pleading not-guilty?**
3. **Can I go to prison if I plead not-guilty?**
4. **Is my mitigation going to be less effective if I've pleaded not-guilty?**

We have addressed the questions above in a separate booklet:

The Magistrates' Court Sentencing Guidelines what you need to know.



In short, the length of disqualification imposed by the court will always remain the same (as it is based on the breath reading provided or, if you failed to provide, your level of impairment at the time of the test). This means that even if you are convicted after a trial (after seeing all the evidence - hopefully!), you will still receive the same length of disqualification as you would if you pleaded guilty on the first court date (before seeing any of the evidence against you). Of course, if we can win the case, then no penalty will be imposed.

Worried about cost?

M.A.J. Law specialise in defending drink and drug driving cases. Our solicitors are happy to outline our costs over the phone. We are pleased to confirm that we work on a fixed fee basis, thus ensuring that any legal costs are kept to a minimum. In fact, many of those who contact us to discuss their cases will often express surprise and delight about our fixed fee pricing structure. To find out more, visit our dedicated Pricing Page.