

## Drink-Driving

### Has the Police Officer Been Trained?

By Marcus A Johnstone - specialist drink-driving solicitor

**Have you been charged with drink-driving?**

**Think the police have the correct evidence against you?**

**Think again.**



After several years defending motorists accused of driving with excess alcohol, and failing to provide a sample, I am constantly amazed at the poor evidence produced by the police and the Crown Prosecution Service (CPS).

I win a number of cases simply because the police fail to follow correct procedures. The breathalyser procedure at the police station must be carried out correctly. The police officer carrying out a breath test should complete what is known as an MGDDA booklet. This booklet, about 20-25 pages long is designed to help the police avoid mistakes. Additional booklets, known as MGDDB and MGDDC, are used (in addition to the MGDDA booklet) when blood or urine samples are taken.

Even a simple breach of procedure can result in the prosecution collapsing. You could be forgiven for thinking that any officer carrying out this procedure must be fully trained. In fact, not only do I regularly find a breach of the procedure but, surprisingly, the officer carrying out the breath test may not even be trained properly! In some cases the officer does not even know how to complete the MGDDA booklet.

The police force is now using special constables for various types of police duties, and this can include breath tests. Not being fully trained police officers, there can be even more chance of mistakes being made.

Consider below the question posed by a special constable who is unsure about the procedure for a breath test. (Note, s.5 simply refers to s.5 Road Traffic Act that sets out the offence of drink-driving.) All the comments below have been taken from the Police Specials own web site forum and is available for public access on the internet.

Some of the comments may surprise you. Worryingly, these people may be responsible for the evidence in your case!

If you have any concerns with your own case, please contact me and I will be pleased to discuss all the options open to you. My initial telephone conference is always free of charge. My office number is 0151 422 8020. My email is [marcus@speedingsolicitor.co.uk](mailto:marcus@speedingsolicitor.co.uk). It does not matter where you live or where the alleged offence was committed because I represent clients throughout England and Wales.

## Initial question posed by the officer

I'm quite annoyed just caught wind that my first ever section 5 is looking at contesting his charge on the grounds that I never asked him when he had his last drink before asking him for a sample of breath (stupid error on my behalf), also that I wasn't certified to use the Intoximeter EC/IR and that his drink was spiked and that put him over the limit because of a pint and a half (if i remember correctly) he had already had. He blew somewhere between 50 and 55 im sure so I'm certain he wont be able to rely on his 3rd defence.

Whats everyones opinions? I really hope he doesnt get off with it on a technical point as he was quite obviously drunk.

## Responses from other officers

If you aren't trained don't use it. That way you can't go wrong.

If you are upfront with CPS, expect the matter to be halted before court. If not, expect to have a good grilling, not so much on the evidence but how and why the procedures weren't followed. Also warn the mentor to get ready for some Qs.

If I was the defendant I wouldn't expect to going to court or getting convicted.

2. Training: How did you get logged on to the machine? In theory you shouldn't have password/access without being suitably qualified/ trained. The main question would be that if YOU, not the mentor, was not trained in how the machine works, how could you know whether the machine was working correctly or not! If your mentor logged on, then you should, by now, have done a lot of writing to show how and why it wasn't the logged on person doing the testing. Simply signing the mg/dd form wouldn't be enough. If you haven't done it yet, then it is now a bit late. Again this could be seen as an indicator that the officer/s are apt to deviate from the procedure.

Certified to use an Intoximeter? What does that mean? I'm not. I even saw a SGT get shown how to use one on Friday

The good part is that whatever we have said here will hopefully reuce the chances of mistakes in the futre. wether the driver is found guilty or not is now quite mute. You may just need to be prepared to have a while in the box, and remeber to make sure there are better notes in the mgdd form next time.

Sorry, it didn't occur to me that someone would actually be using the station Intoxicator machine without training

Although the training is only a few hours. Nethertheless.

I have never been trained other than being shown by my tutor donkeys years back.

I guess that loosely falls within "training" but I don't have any training record as such for this machine.

Countless convicted drink drivers later I still use the machine and show others how too.

Whilst there is always the adage that it is best to train in the real world. Is there really justification for teaching the EBM on a prisoner? The procedure can be done with anyone so why make mistakes that would have to be explained at court when it can be done in the 'peace and quiet' without the prisoner whingeing in your ear.

There may be many who have used the machines, got convictions but when they eventually get asked... how do you answer the competency question.

In our force we need training in the machine (LION Intoxilyser, for info) in order to breathalyse someone, and this needs to be done by a person trained in instructing on the machine - not just an operator. Also there was a bit of a multiple choice exam involved.

Like DGP and Metplod, I too was a bit worried when people thought it was acceptable to not be trained on it. I am due in court soon for a drink driver who is also using the defence that I wasn't trained in the use of the machine, but it's ok as I was.... though if I weren't I certainly wouldn't be looking forward to that day in court.

Interesting topic and how did it pan out? My own view is that you do not have to be trained on the EBM but if an error was made in the procedure then the prosecution can be fatal. Did you use someone's else password to log in? I suppose they could claim a DPA breach or Misuse of Computers act I suppose. Then again a court will be the decider on whether evidence is admissible.

At best we have a few weekends training which hardly even scratches the surface on policing and law. Learning 90% of it on the job is the only way we get any practice in and develop competency!

I think what your saying is that because you are specials that you can do a role yet have less than the necessary training? Practising on the real subjects for things like drink drive, which are quite procedural orientated is so fraught with dangers that it is unreasonable and unnecessary. The only reason it could be justified is if the training could be done any other way.... and we know it can. The mentor overseeing, should either do lots of supportive writing as to when the operator did things right and wrong or interfere to do it right, possibly requiring Q's to be asked several times. Sounds easier to get a trained operator in.

Put it this way, if you were the drink driver.... would you readily accept a conviction based on evidence gathered as part of a training exercise?

Perhaps it is different in other forces, but in my force the training to use the lion station evidential machine is not complicated, it simply consists of a very short training course by the local Sgt, who then has access rights to set you up an account on the machine.

**Try calibrating the machine**

You may find it surprising that an untrained officer can be responsible for taking breath samples. The law books are full of cases where the police have been challenged as to the breath test procedure. Countless cases have been won by defence solicitors because of basic mistakes made by officers.

Did you note the comment from the officer who stated that he has never been trained other than being shown how to use the device by his tutor *“donkeys years back”*. He states: *“I guess this loosely falls within “training” but I don’t have any training records”*. Nonetheless, this officer is obviously proud that: *“countless convicted drink drivers later I still use the machine and show others how to use it”*.

A drink driving conviction can ruin your life. It is vital, therefore, that the evidence against you is thoroughly checked and, where necessary, challenged. If there has been a breach of procedure by the police then the case against you may collapse.

You may also be interested to read my other booklet on my recent drink drive case studies. This booklet provides real life examples of where the police went wrong. Please contact me at [marcus@speedingsolicitor.co.uk](mailto:marcus@speedingsolicitor.co.uk) and I will be pleased to send you a copy free of charge.

What have you got to lose?

Should you wish to discuss your own case, in confidence and without charge, please call me direct on 07810 804464.