

## Failing to co-operate with a preliminary test (Breath test at the roadside)

<b>Drink Drive Offence:</b>	The offence is fully committed when a person fails (and failure includes refusal) to co-operate with a preliminary test when required to do so. The person must have been either driving or attempting to drive or in charge of a motor vehicle.
<b>Also Known As:</b>	Failing to provide a roadside breath test, refusing to provide a specimen of breath when stopped by the Police, Failing to co-operate with a preliminary test.
<b>Drink Driving Law:</b>	Road Traffic Act 1988 - Section 6(6)
<b>Maximum Penalty:</b>	Driving Ban.
<b>Maximum Fine:</b>	£5,000
<b>Minimum Penalty:</b>	4 Penalty Points in exceptional circumstances.
<b>Punishment Guidelines:</b>	Driving ban of between 12-36 months, subject to possible 25% reduction for attending drink driving rehabilitation course.
<b>Endorsement Code:</b>	DR70

Section 6A(1) states that a preliminary breath test is "a procedure whereby a person to whom the test is administered provides a specimen of breath to be used for the purpose of obtaining by means of a device approved by the Secretary of State an indication of whether the proportion of alcohol in the person's breath or blood is likely to exceed the prescribed limit".

As a general rule, the test must be administered by a Police Officer in uniform using one of the prescribed devices.

The obligation upon on a motorist to co-operate are wide ranging and include circumstances where a person "has been" driving, is suspected of committing a moving traffic offence, of being above the limit or involved in an accident.

### **Can I request that I supply a blood or urine test instead of a preliminary breath test?**

No. The preliminary breath test is exactly that, a breath test and there is no alternative at the roadside.



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**What if I refused to provide a breath test and I wasn't over the limit?**

If you refuse to supply a breath test, the offence is committed, regardless of whether you are actually over the limit or not. If it is subsequently proved that you were below the legal limit, this could amount to exceptional circumstances resulting in 4 penalty points as opposed to a driving ban but the Court will still be entitled to convict.

**What if my reading is borderline?**

The purpose of the roadside breath test is to establish whether further investigation should be required. If you fail the roadside test, it is still possible that you will pass a subsequent test at the Police Station. The outcome of the roadside test is only used to clarify whether further action should be taken to establish the alcohol level.

**What if I fail my roadside test but pass at the Police station?**

No further action should be taken. It is the reading at the Police Station that will be used in any proceedings. If you pass that test, there is no basis for the Police to proceed further and you should be released immediately.

**Can I be charged with a drink driving offence if I was not given a roadside test and it took some time to get to the Police Station?**

Yes. The test at the roadside is the preferred method of initial investigation but inability to supply same does not prevent further action being taken. For example, if a party was injured in a road traffic accident, they may not be able to supply a breath test but the Police can still obtain other evidence to support a drink driving prosecution.

**What if I couldn't provide a specimen of breath at the roadside as I suffer from asthma?**

There is a potential defence of "reasonable excuse" if it can be shown that the Defendant did attempt to co-operate but was incapable of supplying a breath sample. The Defendant will have to show the problem arises from a physical or mental inability to provide a specimen or there is a substantial risk in its provision. Each case will depend on its own merits and circumstances.

**What if I refused to give a test because I do not believe that I was in charge of the vehicle?**

This is not a defence and the Police will be entitled to arrest you.

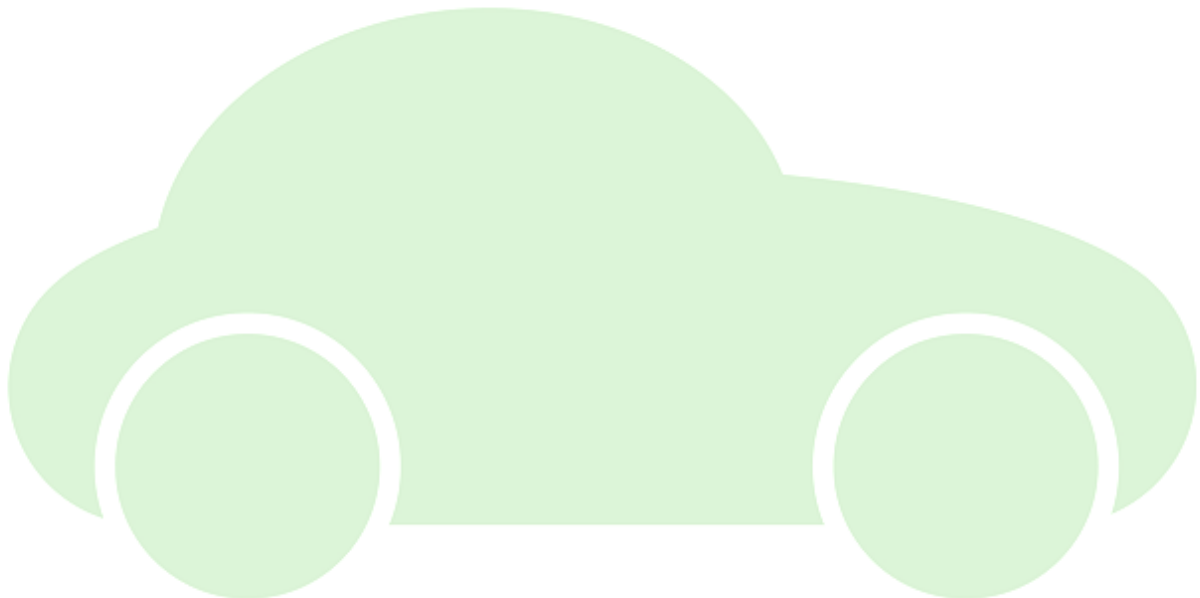


**What if the Police officer did not explain to me properly how to use the device. As a result, I failed to give a breath test but I was perfectly willing to co-operate?**

This may amount to a defence but it will be for the Defendant to show exactly why he did not understand, the Court will then decide whether that constitutes a valid defence.

**When a person is pulled over for driving erratically, if they haven't been drinking are they tested for drugs?**

This is at the discretion of the Police. If a breath test is administered and passed, the Police can then make further investigations by way of a preliminary impairment test or a preliminary drug test. In all probability, because of limited devices for a preliminary drugs test, an impairment test will be carried out.



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