

# Fail to provide specimen for analysis (drive/attempt to drive)

Road Traffic Act 1988, s.7(6)

Triable only summarily:

Maximum: Level 5 fine and/or 6 months

- Must endorse and disqualify for at least 12 months
- Must disqualify for **at least** 2 years if offender has had two or more disqualifications for periods of 56 days or more in preceding 3 years – **refer to page 184 and consult your legal adviser for further guidance**
- Must disqualify for **at least** 3 years if offender has been convicted of a relevant offence in preceding 10 years – **refer to page 184 and consult your legal adviser for further guidance**

**If there is a delay in sentencing after conviction, consider interim disqualification**

Note: the final column below provides guidance regarding the length of disqualification that may be appropriate in cases to which the 3 year minimum applies. The period to be imposed in any individual case will depend on an assessment of all the relevant circumstances, including the length of time since the earlier ban was imposed and the gravity of the current offence.

## Offence seriousness (culpability and harm)

### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range	Disqualification	Disqual. 2nd offence in 10 years
Defendant refused test when had honestly held but unreasonable excuse	Band C fine	Band C fine	12 – 16 months	36 – 40 months
Deliberate refusal or deliberate failure	Low level community order	Band C fine to high level community order	17 – 28 months	36 – 52 months
Deliberate refusal or deliberate failure where evidence of serious impairment	12 weeks custody	High level community order to 26 weeks custody	29 – 36 months	36 – 60 months

## Offence seriousness (culpability and harm)

### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<b>Factors indicating higher culpability</b> <ol style="list-style-type: none"> <li>1. Evidence of unacceptable standard of driving</li> <li>2. LGV, HGV, PSV etc.</li> <li>3. Obvious state of intoxication</li> <li>4. Driving for hire or reward</li> </ol>	<b>Factor indicating lower culpability</b> <ol style="list-style-type: none"> <li>1. Genuine but unsuccessful attempt to provide specimen</li> </ol>
<b>Factor indicating greater degree of harm</b> <ol style="list-style-type: none"> <li>1. Involved in accident</li> </ol>	

### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

### Consider a reduction for guilty plea

### Consider offering drink/drive rehabilitation course; consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

### Decide sentence Give reasons

# Fail to provide specimen for analysis (in charge)

Triable only summarily:

Maximum: Level 4 fine and/or 3 months

Must endorse and may disqualify. If no disqualification, impose 10 points

<b>Offence seriousness (culpability and harm)</b> <b>A. Identify the appropriate starting point</b> Starting points based on first time offender pleading not guilty		
Examples of nature of activity	Starting point	Range
Defendant refused test when had honestly held but unreasonable excuse	Band B fine	Band B fine 10 points
Deliberate refusal or deliberate failure	Band C fine	Band C fine to medium level community order Consider disqualification OR 10 points
Deliberate refusal or deliberate failure where evidence of serious impairment	Medium level community order	Low level community order to 6 weeks custody Disqualify 6 -12 months

<b>Offence seriousness (culpability and harm)</b> <b>B. Consider the effect of aggravating and mitigating factors (other than those within examples above)</b> Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but <b>these lists are not exhaustive</b>	
<b>Factors indicating higher culpability</b> 1. Obvious state of intoxication 2. LGV, HGV, PSV etc. 3. High likelihood of driving 4. Driving for hire or reward	<b>Factors indicating lower culpability</b> 1. Genuine but unsuccessful attempt to provide specimen 2. Low likelihood of driving

**Form a preliminary view of the appropriate sentence, then consider offender mitigation**  
 Common factors are identified in the pullout card

**Consider a reduction for guilty plea**

**Consider ancillary orders**  
 Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence**  
**Give reasons**