

# Topic guide

Updated xx

## Convictions for driving with excess alcohol

### Background

This guidance focuses on our approach to convictions for driving with excess alcohol under section 5(1) of the Road Traffic Act 1988. We have published separate guidance on our [approach to criminal conduct outside of practice](#) and to [Principle 1 and the obligation to uphold the constitutional principle of the rule of law and administration of justice](#).

### Our approach to enforcement

We consider that where a regulated individual commits an offence of this nature, they are likely to have breached the requirement to behave in a way that maintains public trust and confidence in the solicitors' profession. Depending on the circumstances, the individual may also have breached requirements to act with integrity and in a way that upholds the constitutional principle of the rule of law and administration of justice.

For this reason, we will consider whether we need to impose a sanction, which is separate from the criminal process. When considering whether we need to take any enforcement action, we will consider the need to uphold public confidence in the solicitors' profession and deter those we regulate from similar behaviour.

The potential impact on public trust and confidence caused by the conviction of an individual solicitor will vary depending on the circumstances of the case. We will obtain the certificate of conviction and any further details of the offence, including the court's sentencing remarks where available. We will use these details to inform our decision on any appropriate regulatory sanction by weighing up the aggravating and mitigating features of the conduct. The sentence itself will often be helpful in understanding the underlying conduct and the likely impact on public trust and confidence. For example, a case resulting in a community order or custodial sentence is likely to have a greater impact on public trust and confidence in the profession, than a case resulting in a fine and/or driving ban.

Where harm is caused to persons or property, it is likely that charges would be brought in relation to a different offence, for example, dangerous driving. This type of offence is not within the scope of this guidance. Where the conviction is for driving with excess alcohol, we will take into account harm caused as the extent of harm is likely to be relevant to the impact on public trust and confidence. However, we are alert to the fact that any sentence given by the court is also likely to reflect any harm

caused and we will look at the likely impact on public trust and confidence holistically when deciding on any appropriate sanction.

### Indicative sanctions guidelines

In considering whether we need to take action and if so what action is appropriate, we will consider any mitigating and aggravating factors, including those set out below.

<b>Mitigating features</b>	<b>Aggravating features</b>
Extenuating circumstances surrounding the offence	A failure to report, or delay in reporting, the conviction to the SRA, or any employer or other body to whom the individual has an obligation to report the conviction
Insight and remorse has been shown	Previous convictions for driving with excess alcohol, or a pattern of offending behaviour
	Harm was caused to property or persons as a result of the offence
	Third parties were travelling in the vehicle who were not able to give consent ie children and/or vulnerable adults
	There was an initial refusal to be breathalysed or produce a specimen

	Individual resisted arrest or fled the scene, but this did not lead to a separate conviction
	Attempts to mislead employer or SRA in relation to event
	The offence was committed during the course of the working day
	Any sentence imposed by the criminal court in addition to or instead of a fine and a period of disqualification

The presence of mitigating features without any aggravating features may result in no action being taken. In the majority of cases, where a sanction is required, a letter of warning or a rebuke will be appropriate. The appropriate sanction will depend on the nature of the aggravating features and the balancing of those against any mitigating features. However, we will not impose a financial penalty following a conviction for drink driving. Where aggravating factors are so serious that a rebuke is not appropriate, we will refer the matter to the Solicitors Disciplinary Tribunal (SDT) to consider whether the individual should be suspended or removed from practise, in order to uphold public trust and confidence in the profession and in legal services. For example, cases which suggest persistent or repeat offending, or in which the circumstances demonstrate a lack of honesty or integrity.

We will also always take very seriously any failure to cooperate with the criminal process (such as resisting arrest, fleeing the scene or an initial refusal to be breathalysed or to provide a specimen), or to comply with any duty to report. These underpin the rule of law as they are essential to the effective operation of the criminal justice and/or regulatory systems.

The action we may take in different circumstances is illustrated in the table below.

Outcome	Factors of the case
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No action – matter closed NFA	<p>This is the solicitors first offence, the courts have disqualified them from driving for 12 months (the statutory minimum).</p> <p>During our engagement the solicitor has expressed remorse and explained that they were at a party at a friend's house on a Saturday evening. They had had a drink when they received a phone call from their mother to say their father (who was very unwell) had been taken into hospital for urgent care. The solicitor's father has since passed away.</p> <p>Upon hearing this news, the solicitor had got into their car to be with their father.</p> <p>On the way they were stopped by the police and breathalysed and found to exceed the prescribed alcohol limits.</p>
Letter of warning	<p>This is the solicitor's first offence; the courts have disqualified them from driving for 12 months (the statutory minimum).</p> <p>The solicitor drove home after a night out and was stopped by police as part of a random check. The police officer's notes suggest they became suspicious of the solicitor because they were driving very cautiously and slowly which can be risk to other road users.</p>
Rebuke	<p>This is the solicitor's second conviction. The courts have disqualified them from driving for 24 months.</p> <p>The solicitor was found to be driving on a dual carriageway in the early hours of the morning. While driving the solicitor drove into and damaged temporary signs in the road. The police noticed this behaviour and breathalysed them at the roadside where they were found to be over the limit.</p> <p>The SRA issued the solicitor with a letter of warning following their first conviction.</p>
Referral to the SDT	<p>This was the solicitor's first conviction and he was issued with a custodial sentence of three months (suspended).</p> <p>He was arrested by police on the M1 when the police were informed that the solicitor had appeared drunk at a service station.</p>

	The police found a half empty bottle of whiskey on the passenger seat of their car and their three-year old child was also in the car.
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### **Driving whilst under the influence of illegal drugs**

This topic guide applies to driving with excess alcohol, but may also be relevant to driving whilst under the influence of drugs. However, there will be additional considerations where a solicitor is convicted of driving under the influence of illegal drugs. This is because the consumption of illegal drugs is in itself against the law and so committing this offence is likely to have a greater impact on public trust and confidence.

### **Unadmitted employees**

All employees of SRA regulated firms are under a duty to act in accordance with the SRA principles. However, where the person convicted of driving with excess alcohol or under the influence of drugs is a non-solicitor, our consideration may be different. This is because the impact that the conviction has on public trust and confidence is likely to be different depending on the person's role in the firm. In general, the closer the role is to a public facing role and the greater the seniority of the person, the more likelihood that the conviction had a negative impact on public trust and confidence. For example, the conviction for driving with excess alcohol of a junior member of staff in the human resources team is unlikely to have an impact on public trust and confidence. However, where the conviction relates to an unadmitted partner in an alternative business structure who has responsibility for handling client complaints, there is likely to be a negative impact on public trust and confidence.