Legal feature

Don't drink and drive… or shoot

Richard Atkins from Knights Solicitors explains where such folly can lead.

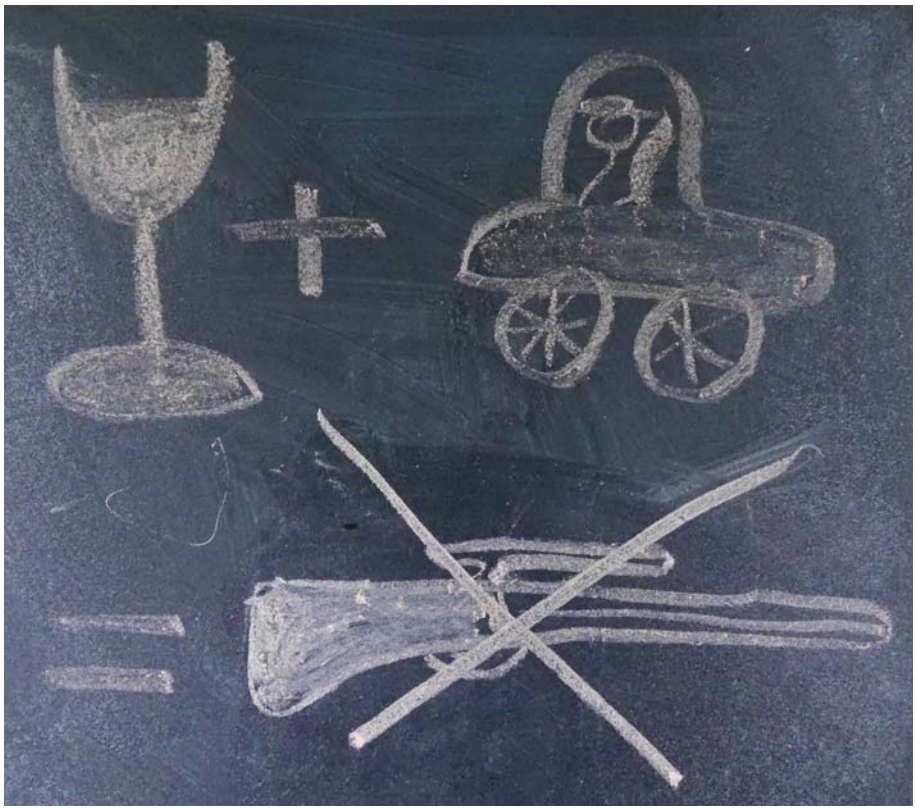
We all know the expression "Don't drink and drive" but to this must now be added: "Don't drink and drive or shoot".

Character has always been an important issue in firearms licensing. The police rightly refuse to issue and will revoke firearms and shotgun certificates to those they believe present a danger to the "public safety" or to the "peace". Although it has always been accepted that the police will take issue with those who have unfortunately committed criminal offences or have medical problems, especially any associated with alcohol, the last 12 months have seen a rise in terms of refusals or revocations on drink-drive related offences and what were generally thought previously to be "ordinary" traffic offences.

Drink-driving offences, such as *Driving a Motor Vehicle with Excess Alcohol* or *Failing to Provide a Specimen*, have over the last 10 to 15 years been treated more severely by the courts. As such, they will always present a real risk to gun holders, especially anyone who is convicted of a second or subsequent drink-driving offence. Leaving aside the minimum mandatory disqualification of three years for an offence committed within 10 years, the courts have become increasingly severe in their sentencing practice. Sentencing guidelines over the last decade have shown a continual drift to longer periods of disqualification. A high reading or a second or third offence, which might formally have attracted a financial penalty even if not disqualification, increasingly now results in a community order if not a suspended or immediate custodial sentence. Such a sentence will itself be seized upon by the police as justification to refuse or revoke a certificate.

If you drink and drive, expect it to affect your gun licences.

SOPHIA GALLIA



The impact on employment and lifestyle goes without saying, but the police themselves are now taking note of drink-driving convictions as demonstrating a disregard for the law and a potential danger to the public. What is more, firearms licensing departments are increasingly influenced by some Scottish firearm revocation decisions which have crept south of the border and now appear as part of the reasoning in any refusal or revocation decision. The weight that is attached to these decisions is founded on the fact that the Firearms Act 1968 as legislation applies both north and south of the border. More concerning is the blanket use of these cases to justify refusal or revocation licensing decisions in respect of all drink-driving cases irrespective of the facts of the specific case and even, if one may dare say, the less serious cases.

The first of these cases is Lubbock v Chief Constable of Lothian & Borders Police (2001) which is not even reported in any of the recognised legal research bases. This case is now used routinely in all drink-driving refusal or revocation decisions. However, when reading the judgement, it is clear that this is more than a simple drink-driving offence. Firstly, the offence was actually a *Failure to Provide an Evidential Sample (breath)* of what is now s7(6) of the Road Traffic Act 1988. This is rightly treated as an aggravated form of drink-driving involving, as it does, deliberate attempt to avoid prosecution and a wilful failure to co-operate and act under the direction of the police. It is also clear that in this decision, the Sheriff was influenced by

the statement of the arresting officer that the defendant "was the drunkest person he had ever seen". Likewise, the failure by the defendant when dealing with the police and in court to show sufficient remorse or to acknowledge the error of his ways adequately weighed heavily in the decision that was reached.

The second decision of Orr (2004) (once involving the same police force as in Lubbock) concerned a defendant who drove a motor vehicle on a road when he was over four times the legal limit. The decision also reflects changes in public attitudes to drink driving. Here the Sherriff stated: *"For many years chief officers of police, with the approval of the courts, have equiparated irresponsibility when in charge of a motor vehicle with irresponsibility when in charge of a shot gun or firearm. Like them, a motor vehicle is a potentially lethal instrument."* Given the high reading in the case, the decision is one that cannot be faulted, especially when it is recorded that again there was a lack of remorse for the offending. It could be said that the defendant/applicant in this case may not have been at his best at the time of his arrest. However, there appears to have been no real acknowledgment of wrong-doing before the court hearing, which cannot have helped his case.

In addition to what can be perceived to be a hardening to drink-driving offences, there is also a tendency by the Police to look more closely at other road traffic offences. *Failing to Stop or Report an Accident* has always been an offence that the police suspect has more to do with "drink-driving" than something caused by a busy work or personal schedule; coupled with (or without) the absence of anyone nearby to report an accident. In two recent cases that I have handled, the police have actually said that they believe that a recent *Failure to Stop* offence was engendered by a desire to avoid the breathalyser procedure. Unfortunately, more often than not they may be right. In one of these cases, police suspicion was heightened by admitted heavy post-driving intoxication that immediately raised a potential medical or character issue in terms of firearms licensing law, even if it frustrated a subsequent prosecution for drink-driving.

So the moral of this article is that if, unfortunately, one is stopped for drink-driving, although care must be taken in preserving one's rights, there is an immediate need to minimise the further consequences that can affect the holding of a firearm or shotgun certificate. A firearm or shotgun certificate holder is not safe post-conviction, nor indeed if acquitted, of a drink-driving or other road traffic offence. Different considerations apply in terms of the legislation and evidence and indeed the standard of proof in firearms licensing law. Those called for an interview by their firearms and explosive liaison officers need to appreciate the danger to their firearm or shotgun certificate and also consider what can and should be said to the police about the offence or incident. In practice, failure to attend an interview with your friendly licensing officer will itself be held against a firearm or shotgun certificate holder. In short, don't drink and drive if you want to shoot!

FURTHER INFORMATION

KNIGHTS SOLICITORS

Richard Atkins is a Partner of Knights Solicitors, Tunbridge Wells. Knights Solicitors have dealt with numerous investigations and prosecutions under the Animal Welfare Act 2006 and Wildlife & Countryside Act 1981. Knights Solicitors specialise in country-side and country sports litigation and have acted on behalf of gamekeepers throughout England and Wales.
Tel: 01892 537311, www.knights-solicitors.co.uk. Ask for Matthew Knight, Richard Atkins or Joshua Quinn.

NGO FREE LEGAL HELPLINE

NGO members in need of emergency legal advice relating to gamekeeping and field sports can call the helplines below. Up to 30 minutes telephone advice is available free of charge as a benefit of your NGO membership.

For those in the South: Matthew Knight, Richard Atkins and Joshua Quinn, Knights Solicitors (Tunbridge Wells), 01892 537311 (24hr line).

For those in the North, Scotland and Wales: Michael Kenyon, Solicitor (Macclesfield), 01625 422275 or 07798 636460.