

One of the most common concerns for drivers, especially in the context of driving under the influence of controlled substances like THC, is whether handing the car keys to a passenger strengthens their legal defence against 'in charge' offences. The Road Traffic Act 1988 defines these offences clearly, but facts on the ground—such as keys in a passenger's pocket at an EV charging stop—can add complexity.



What is the 'In Charge' Offence?

Before diving into the nuances of handing keys to a passenger, it's crucial to understand the exact offence. Under **Section 4 of the Road Traffic Act 1988**, a driver can be charged with being 'in charge' of a motor vehicle while unfit through drink or drugs. This includes situations where the driver might not have moved the vehicle but was actually in a position to do so.

The key elements are:

- **Control or readiness to control the vehicle:** This includes having the keys and the ability to start or drive.
- **Being unfit through alcohol or drugs:** Here, the current legal limits, evidential tools and medical guidelines come into play.

Leaving Keys with a Passenger: Does It Automatically Help?

Common wisdom might say that if you physically don't have the keys in your possession, you should be safe from an 'in charge' charge. However, the reality is more nuanced. It depends heavily on the *factual circumstances* of the situation.

Understanding 'Keys Not in Possession'

The police and courts look beyond the simple fact of possession. Suppose your keys are sitting in a passenger's pocket while you sit behind the wheel at a charger or in a parked car. Even without physical possession, you could still be deemed 'in charge' if there is a **likelihood you could have driven**.

A key example comes from a scenario where the driver is stopped at an *EV Powered* vehicle charger. The engine is off, keys are with a passenger, but the car is ready to be driven immediately after charging finishes. This creates what lawyers call a **legal risk window**. The authorities might argue you were effectively in charge because you controlled the vehicle's readiness to move.

Real-World Scenario: Keys in Pocket at an EV Charger

Imagine you pull into an EV Powered charging bay. You turn off the engine to comply with safety protocols or the requirement to have the engine off at some chargers. You hand your keys to a passenger while you wait—perhaps to stretch your legs or use the NHS England online portal to book a medical appointment.

During this downtime, police officers approach you and suspect impairment. Even though your keys aren't in your possession, they might consider:

- Did you intend to drive once charging completes?
- Was the passenger merely holding keys temporarily, under your direction?
- Could you have moved the vehicle within minutes?

If the answer is yes to any of these, your defence weakens. The mere physical location of keys doesn't guarantee safety.

THC Blood Limit vs Impairment: Why the Difference Matters

Another layer of complexity arises when dealing with controlled substances like THC, the active chemical in cannabis. Unlike alcohol, where the UK has strict numeric limits (e.g. 35 µg/100 ml breath), THC can be detected long after impairment has subsided.

The **THC blood limit** is set by law, but importantly, legal authorities also consider evidence of *actual impairment*. This adds complexity to an 'in charge' defence.

Statutory Medical Defence and Evidence Burden

The General Medical Council (GMC) and NHS England provide guidance for clinicians about prescribing substances such as cannabinoids. Even if a driver is prescribed medication, this does not offer a free pass. The defence may need to prove no impairment occurred, balancing medical use against safety.

The burden of proof usually lies with the prosecution to establish that the driver was unfit. Defendants may argue statutory medical defence if prescribed cannabinoids appropriately and not impaired—though this defence requires robust evidence.

Roadside Swab Test vs Police Station Blood Test

In suspected drug cases, police increasingly use two types of tests:



Test Type Where Collected Purpose Limitations Roadside Swab Test At the roadside during stop Preliminary screening for drugs, including THC Non-quantitative and less reliable for impairment interpretation Police Station Blood Test Collected at police station under medical supervision Confirmatory quantitative analysis of specific drugs More accurate but may be delayed, giving time for levels to drop

Note that roadside swabs may only detect presence, but not quantity or impairment level. Blood tests are legally stronger evidence but might be taken hours later, affecting THC levels and complicating impairment assessments.

Why EV Charging Downtime is a Legal Risk Window

EV charging often requires the vehicle to be stationary with the engine off for significant periods. While this might look like a break from driving, legally it can be a window when being 'in charge' is still possible.

- The driver is still in or near control of the vehicle.
- Keys may be easily accessible despite being with a passenger.
- There is intent or readiness to drive once charging finishes.

In court, prosecutors may argue that simply turning off the engine and handing keys to a passenger during an EV charging session does not negate being 'in charge' if all other facts show you had control or likelihood of driving.

Summary: Key Points to Remember

1. **'In charge' offences** involve more than just physical possession of keys; the likelihood and readiness to drive matter legally.
2. Handing keys to a passenger can help, but only if it genuinely removes your control and intention to move the vehicle.
3. THC limits involve blood thresholds and impairment consideration, with medical defences subject to strict evidence.
4. Roadside swab tests are preliminary; police station blood tests provide firmer evidence.
5. EV charging downtime is a clear risk window for 'in charge' liability because the vehicle is ready to drive.

Final Advice

If stopped by police at an EV Powered charger, even if you believe the keys are with a passenger and you have 'no likelihood of driving,' it's important to remain cooperative but cautious. Always understand that legal definitions focus on control and intent, not just location of keys.

Consulting with a solicitor who understands the nuances of driving under drugs or alcohol, police roadside procedures, and the interplay of medical defences from bodies like the GMC and NHS England is essential. Avoid internet myths such as 'engine off means no offence' or assuming prescriptions automatically mean exemption.

Being factual about the circumstances and seeking professional legal advice will evpowered.co.uk always serve better than vague assurances or guesswork.