

Cycling and the Justice System – APPCG Inquiry

Cycling UK submissions

Duncan Dollimore, Senior Road Safety Officer

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Should there be a review of careless and dangerous driving charging standards

1. The prosecution of drivers should reinforce the message that it is unacceptable to endanger and intimidate other road users, not least cyclists and pedestrians who as vulnerable road users (VRU) are disproportionately affected by road crashes. Unfortunately, there is a wide variation in how different police forces determine what is or is not careless or dangerous, and the number of people taken to court for careless and dangerous driving offences has fallen much more steeply than might be explained by the reduction in the casualty statisticsⁱ.
2. Careless driving (CD) is defined as driving which "falls below what would be expected of a competent and careful (c&c) driver", yet numerous cyclists will have experienced the police declining to prosecute, and in some cases even investigate, when they report, often with compelling video evidence in support, incidents of CD or dangerous driving (DD). These are frequently close passes, where no actual injury or damage has been caused. Some police forces, notably West Midlands Police (WMP), have realised that such driver behaviour discourages people from cycling, and have been prepared to prosecute close pass cases as CDⁱⁱ. When considering the c&c driver test, WMP ask drivers "would you drive like that in your driving test, and if you did would you expect to pass?", reflecting the fact that the minimum standard to be expected from a c&c driver is surely that required to pass the driving test. Other forces set the bar for CD much higher, declining to prosecute in close pass cases, as no injury has occurred.
3. The failure to prosecute such cases as CD artificially inflates the test for both CD and DD prosecutions, with CD incidents often dismissed, and DD treated and charged as CD. This downgrading of the threshold between CD and DD is evident from the reduction in prosecutions for causing death by DD since 2008 (when the government introduced the new offence of causing death by CD), with cases which would once have been charged as causing death by DD being downgraded to death by CD post 2008 (266 defendants prosecuted for causing death by dangerous driving in 2008, falling to 144 by 2013). The figures over the last two years suggest that this decline might have been halted following changes in 2013 to the CPS guidelines on prosecuting bad driving offences, however we remain concerned that driving which causes obviously foreseeable danger is still likely to be dismissed as being merely careless, an outcome that is entirely at odds with the need to promote road safety. This then leads to the minimisation of CD, with incidents dismissed as accidents when they arise from a lack of care or concentration, something Cycling UK would argue is inconsistent with c&c driving.
4. Cycling UK contend that the driving charging standards need to be reviewed, not least because of the substantial variation in approach between different police forces. This should also include consideration of a clearer definition of the standard of the c&c driver. Too often, the understandable tendency to empathise with fellow drivers leads to a driver's lack of concentration or failure to see a cyclist being treated as 'just one of those things'. Not only should the standard be reviewed, but the inconsistency of approach amongst prosecutors to the distinction between CD and DD needs to be addressed via training. Police and CPS training, the review of charging standards and the definition of a c&c driver, all need to reflect the fact that driving offences are the offence which many of us, as otherwise law abiding citizens, might commit. We are all therefore susceptible, whether as investigators, prosecutors, jurors or judges, to our views and decisions being influenced unduly because we can imagine ourselves in the shoes of the defendant driver, which we don't tend to do with other categories of offender.

Should there be more use of lengthy driving bans and resisting hardship pleas by the court?

5. The consultation on the government's review of driving offences and penaltiesⁱⁱⁱ (the review) closes on 01.01.17. This should have included a holistic review of the use of non-custodial sentencing options for driving offences, particularly driving disqualifications and vehicle confiscation. Disappointingly, the review concentrates on the most serious offences causing death and serious injury, and the length of prison sentences. Common driving offences, and how more frequent and longer disqualifications might deter drivers from repeat offending and improve driver behavior, have been overlooked.

6. Currently the justice system (JS) approaches the question of disqualification from the premise that driving is an entitlement rather than a privilege which can be revoked. This is clearly demonstrated when exceptional hardship^{iv} is pleaded by drivers to avoid disqualification, in circumstances where the loss of their licence would cause the type of foreseeable inconvenience that might affect many people, but their circumstances are far from exceptional.

7. Drivers who accrue 12 points on their licence within a three year period are supposed to be automatically disqualified for a minimum period of six months (totting up). They can avoid this by pleading that losing their licence will cause them exceptional hardship, although that phrase is not defined, hence thousands of people each year avoid disqualifications by arguing that they need their licence for work, have childcare or dependant relative commitments which necessitate access to a car etc. To the extent that the pleaded hardship is genuine, it was usually predictable before the commission of the offence, yet the offender's inconvenience appears to trump the safety of other road users. A farmer convicted of causing cruelty to an animal would not expect to avoid a disqualification from owning animals due to the hardship that might cause him. Animal welfare would come first. Road safety doesn't come first when driving disqualifications and exceptional hardship pleas are considered.

8. The case that demonstrates this most vividly is that of cyclist Lee Martin. Lee died in 2015 after being hit by a vehicle driven by texting driver Christopher Gard^v, who had six previous convictions for using a mobile phone whilst driving, and had avoided prosecution for the same offence on two other occasions by attending a driver retraining course. Six weeks before he killed Lee, Gard was in court for driving offences and liable to a totting up disqualification. He argued exceptional hardship, namely the implications for his family if he couldn't drive. The court gave him a ninth life, and six weeks later Lee lost his. The review will consider the maximum prison sentence someone like Gard could receive if convicted of causing death by dangerous driving. It should be looking at why repeat offenders, and those who commit common driving offences, are not disqualified more frequently, and for longer, before they kill.

9. Last year over 8,600 drivers were still able to drive with more than 12 points on their licence^{vi}, most of them having successfully argued exceptional hardship if banned from driving. Cycling UK believe that the exceptional hardship legislative loophole must be reviewed, and closed, and that the courts should be encouraged to make greater use of disqualification powers. The number of people disqualified fell from 155,484 in 2005, to just 58,715 in 2015, a 62% reduction, whilst the number of people escaping disqualification where bans are supposedly obligatory has more than doubled, and the percentage of people disqualified following conviction for offences where a ban is discretionary rather than obligatory

fell from 13 % of offenders to less than 3%. Every statistic presents the same picture. The JS is forgetting that drivers do not have a right to drive, merely a revocable licence to do so.

Do police investigation, criminal prosecution, sentencing and inquests need reviewing?

10. The answer to this question is yes, but to comply with the three page limit for submissions we will refer in part and endorse certain submissions sent to the APPCG by other parties.

11. With regard to police investigations RoadPeace's submissions highlight the lack of national standards in collision investigations. We fully support their call for further guidance and standards for the investigation of serious but non life changing injury and slight injury collision cases. The need for this is evidenced by the postcode lottery that exists regarding the police approach to examining phones and evaluating head-cam / video evidence. RoadPeace have also identified one simple step which would assist in providing a platform for certain concerns regarding investigations to be aired and hopefully addressed, namely the DfT's Justice for Vulnerable Road Users working group, which has not met since 2014. Attempts by ourselves and RoadPeace to persuade the DfT and the Ministry of Justice (MoJ) to reconvene that group, which was the only multi-disciplinary group reviewing how the JS dealt with vulnerable road users, have failed. One inexpensive, obvious and effective thing the APPCG can do, is bluntly ask the DfT, Home Office and MoJ officials why they will not reconvene that group.

12. Cycling UK does believe that a review of sentencing is necessary, but our priority within that would be disqualifications, as already outlined.

Should there be a greater priority of traffic law enforcement and 'road crime' for all police forces

13. RoadPeace have made further submissions under the sub-heading of Traffic law enforcement. We support their contention that enforcing traffic laws is often not treated as a priority for the police. This is manifested partly by the reduction in full time equivalent traffic officer numbers, which (outside London) declined by 48% from the 2002/03 average to the 2015/ 16 average^{vii}. We acknowledge the dilemma for Police and Crime Commissioners (PCCs) in setting policing priorities with limited funds. Currently the government 's national Strategic Policing Requirements in England and Wales don't mention roads policing, so roads policing is often one of the first services which PCC's look to cut when managing budgets. If PCCs are to be encouraged to require their Chief Constables to prioritise roads policing, then government needs to send a message that this is not a Cinderella service.

14. Whilst lack of resources and traffic police numbers are clearly a factor in traffic law enforcement, WMP have shown with their targeted enforcement of close pass drivers, that where there is a genuine commitment to prioritise VRU safety, that much can be achieved without huge resources in terms of officer numbers or cost. Where there is an absence of both resources and priority, there is likely to be a low rate of prosecution of drivers who cause injuries to cyclists, or whose driving deters others from cycling. We endorse the submissions made by the Bristol Road Justice Group as an excellent case study demonstrating this from their investigation into road traffic law enforcement in Bristol.

ⁱ Cycling UK prosecutors and the courts briefing <http://www.cyclinguk.org/campaigning/views-and-briefings/prosecutors-and-courts>

ⁱⁱ BBC news West Midlands Police target drivers who pass too close to cyclists <http://www.bbc.co.uk/news/uk-england-37384899>

ⁱⁱⁱ Review of motoring offences and penalties <https://www.gov.uk/government/consultations/driving-offences-and-penalties-relating-to-causing-death-or-serious-injury>

^{iv} section 35 Road Traffic Offenders Act 1988 <http://www.legislation.gov.uk/ukpga/1988/53/section/35>

^v BBC news report Lee Martin <http://www.bbc.co.uk/news/uk-england-hampshire-37294146>

^{vi} Auto express report on drivers with more than 12 points <http://www.autoexpress.co.uk/car-news/consumer-news/92095/sharp-rise-in-number-of-drivers-with-12-points-escaping-bans>

^{vii} Cycling UK Traffic policing briefing <http://www.cyclinguk.org/campaigning/views-and-briefings/traffic-police-and-other-enforcement-agencies>