



## Driving offences and penalties relating to causing death and serious injury

### Cycling UK response to the Ministry of Justice consultation

#### Introduction

1. Cycling UK (formerly CTC, the Cyclists' Touring Club), is the national cycling charity ([www.cyclinguk.org](http://www.cyclinguk.org)). We have 65,000 members and promote the interests of cyclists and would be cyclists throughout the UK. Our central mission is to make cycling a safe, accessible, enjoyable and 'normal' activity for people of all ages and abilities.
2. Through Cycling UK's Road Justice Campaign ([www.roadjustice.org.uk](http://www.roadjustice.org.uk)) we seek to ensure that the legal system acts as an effective deterrent to bad driving, thereby improving road safety for all road users, and for cyclists in particular. We particularly welcome the Government's commitment to "reduce the number of cyclists and other road users killed or injured on our roads every year."<sup>1</sup> We have been campaigning on road safety issues since our foundation in 1878.
3. Cycling UK has given oral evidence to a number of parliamentary inquiries in recent years, including the Commons Transport Committee's inquiries into the Government's road safety strategy<sup>2</sup> and traffic law enforcement<sup>3</sup>. On 31 January 2017, we gave evidence to the All Party Parliamentary Cycling Group's (APPCG) Inquiry into cycling and the justice system<sup>4</sup>, which intends to consider issues including sentencing in bad driving cases, the distinction between careless and dangerous driving, and the use of disqualification as a penalty for driving offences. The APPCG intend to report on 27 March, having heard evidence from various witnesses including victims of road collisions and their relatives.

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<sup>1</sup> See p15 <https://s3-eu-west-1.amazonaws.com/manifesto2015/ConservativeManifesto2015.pdf>

<sup>2</sup> See [www.ctc.org.uk/news/2012-07-17/road-safety-inquiry-highlights-lack-of-government-leadership-on-cycling](http://www.ctc.org.uk/news/2012-07-17/road-safety-inquiry-highlights-lack-of-government-leadership-on-cycling)

<sup>3</sup> <http://www.publications.parliament.uk/pa/cm201516/cmselect/cmtrans/518/51803.htm>

<sup>4</sup> <https://allpartycycling.org/inquiries/justice/>

4. As the remit of the APPCG inquiry clearly touches upon matters either being considered within this review, or which we will submit should be considered, we would implore the Ministry of Justice (MoJ) to wait for and take into account the recommendations of the APPCG before publishing its response to this consultation. Given that the public consultation only commenced in December 2016, 31 months after the consultation was first announced in May 2014<sup>5</sup>, we would respectfully suggest that waiting for the APPCG inquiry report will not cause significant further delay.

### **Remit of the consultation**

5. When the then Justice Secretary Chris Grayling MP announced this review in 2014, the stated intention was “to launch a full review of all driving offences and penalties, to ensure that people who endanger lives and public safety are properly protected”. It was not suggested that the review would be limited purely to those offences causing death or serious injury, which is the focus of the consultation questions published last December.
6. When Cycling UK and Lord Berkeley met with the then Minister of State for Police, Criminal Justice and Victims, Mike Penning MP, on 17 December 2014, to discuss the proposed review, the Minister confirmed that this would need to be a comprehensive review. Cycling UK also met twice with MoJ officials whilst waiting for the consultation launch, to express our concern that the review need to look beyond just the most serious offences and include other more common road traffic offences, and crucially the use of disqualification powers as a penalty. We were therefore disappointed with the limited consultation questions.
7. Having expressed that disappointment, we were pleased to note the oral answers given by Parliamentary Under-Secretary of State for Justice Sam Gyimah MP on 6 December 2016 to justice questions in the House of Commons. Asked whether the review presented an opportunity to consider the maximum penalties for failing to stop after or report an accident, My Gyimah encouraged contributions to the consultation on this issue, notwithstanding the absence of a specific consultation question. Further, when asked about the absence of any question concerning the distinction between careless and dangerous driving, misconceptions about the law and the need for greater consistency in applying the law, Mr Gyimah clarified that consultation question 7 was an open question, and that submissions on specific concerns not reflected within the consultation questions could be included in response to question 7.
8. We also note that the government impact assessment (IA) dated 24 November invites people to respond to the government proposal “and / or provide other options”, and that the government will “consider other options that may arise from responses to the consultation”. Having regard to that invitation, and given Mr Gyimah’s response to oral justice questions, we propose to highlight four concerns within this response which are not specifically raised within the consultation questions, namely:
  - a. The need for a holistic review of the distinction between careless and dangerous driving;
  - b. The declining use of driving disqualifications as a penalty, and the need for disqualification to be used more frequently, and for longer periods, as a sentencing option (rather than focussing purely on the length of custodial sentences when discussing sentencing);

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<sup>5</sup> <https://www.gov.uk/government/news/justice-for-victims-of-banned-drivers>

- c. The need to review both scope of and penalties for the offence of car dooring (£1000 maximum fine<sup>6</sup> Under the construction and use regulations <sup>7</sup>, it is an offence to open, or cause or permit to be opened, a car door so as to injure or endanger anyone;
- d. The available penalties for the offences of failing to stop after or report accidents<sup>8</sup>.

## Consultation questions

### Question 1: Should there be a new offence of causing serious injury by careless driving?

9. As outlined at para 8 above, Cycling UK believe that the MoJ need to undertake a holistic review of the distinction between careless and dangerous driving, which should include consideration of all careless and dangerous driving offences. We are concerned that asking whether or not a new offence of causing serious injury by careless driving should be introduced addresses the wrong question. We respectfully submit that the MoJ should be asking the broader question of how to define and categorise offences of bad driving, rather than looking to fill in a perceived gap in the law.
10. The current distinction between careless<sup>9</sup> and dangerous driving<sup>10</sup> offences was introduced by the 1988 Road Traffic Act, which sought to distinguish between the two categories of offence on the basis of the standard of driving, and particularly the extent to which that fell below the standard of the competent and careful driver. It was hoped that this would avoid some of the problems that existed before the 1988 Act, where the state of mind of the driver (mens rea) was determined whether their bad driving was careless or reckless, the two categories of bad driving offence at that time.
11. There were sound and justifiable reasons to move from a classification of bad driving offences based upon mens rea to one where the standard of driving was determinative. Of course, if the standard of driving is the key determinant, then the consequences of that bad driving are legally irrelevant in determining whether a case is prosecuted as a careless or dangerous driving offence. That concern led to the introduction of the new offence of causing death by careless driving in 2008<sup>11</sup>, so that careless driving which had fatal consequences could be charged and sentenced as a more serious offence.
12. Once the issue of whether the victim of a collision survived or not became relevant to the classification of both careless and dangerous driving offences (with more serious “death by” categories for each), the question arose about those dangerous driving cases where the victim survived, but was perhaps left with life changing injuries. That led to the introduction of the new offence of causing serious injury by dangerous driving through the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Inevitably, that in turn raises the question of what to do in those cases where careless driving causes serious injury, hence this consultation question.

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<sup>6</sup> <http://www.legislation.gov.uk/ukpga/1988/52/section/42>

<sup>7</sup> <https://www.gov.uk/government/news/justice-for-victims-of-banned-drivers>

<sup>8</sup> <http://www.legislation.gov.uk/ukpga/1988/52/section/170>

<sup>9</sup> <http://www.legislation.gov.uk/ukpga/1988/52/section/3ZA>

<sup>10</sup> <http://www.legislation.gov.uk/ukpga/1988/52/section/2A>

<sup>11</sup> <http://www.legislation.gov.uk/ukpga/1988/52/section/2B>

13. No case demonstrates this dilemma more clearly than that of cyclist Julie Dinsdale<sup>12</sup>, who had her leg amputated at the road side after the driver of a HGV failed to see her and drove into her in 2015. Once the CPS decided that the standard of driving determined that the charge should be careless rather than dangerous driving, the only option was a careless driving prosecution. The fine of £625, and five penalty points, would appear to many to be derisory, though the court's sentencing powers were extremely limited and custody was not an option. It is reasonable to assume however that had the proposed offence of causing serious injury by careless driving been available in this case, the sentence would have been more substantial.
14. We have cited Julie's case at para 13, because Cycling UK do accept that there is a gap in the offence and sentencing framework which the MoJ seek to fill through this new charge. It is illogical that death is relevant to the charge whether the driving is careless or dangerous, but serious injury is only relevant in dangerous driving cases. That creates a huge disparity in sentencing outcomes dependant on whether the victim dies or is left in a wheelchair and dependant on carers for the rest of their life. Unfortunately, the discussion about adding yet another bad driving offence to the list of available careless and dangerous driving offences demonstrates the need for a comprehensive review of all bad driving offences. The standard of driving was supposed to determine how offences were categorised following the 1988 Act, but unease about consequences being ignored led to the creation of further offences categorised by the consequences of that bad driving.
15. The problems that are created when "adding" new offences to an offence classification that is not fit for purpose were demonstrated following the introduction of the death by careless driving charge in 2008. There were 266 defendants prosecuted in 2008 for causing death by dangerous driving<sup>13</sup>. The numbers fell year on year once a charge of causing death by careless driving was available as an option, and by 2013 there were only 144 prosecutions. What happened was that, without any legislative change, there was a downgrading of offences such that cases which used to be (and still should have been) charged as causing death by dangerous driving, were charged as careless.
16. One of the reasons for this downgrading (which also applies in non- fatal cases) was that, despite the legislative intent within the 1988 Act that the standard of driving should be the key determining factor, ignoring consequences and intention are difficult. As a matter of law, if a driver crosses the white line and hits another vehicle, the fact that this occurred due to a momentary lapse in attention should be irrelevant to the charging decision. Crossing the white line and driving into another vehicle must be driving below the standard of the competent and careful driver, and, looked at objectively, it is difficult to argue that it is not far below that standard. In the real world however, where charging decisions are made having regard to likely outcomes, a jury's inevitable empathy with otherwise law abiding people who may have made a momentary error with catastrophic consequences, Cycling UK believe that it is difficult for police and prosecutors to disregard intentions when making charging decisions, and for magistrates and juries to disregard them when determining guilt or innocence.
17. It is for these reasons that Cycling UK would urge the MoJ to undertake a comprehensive review of the definition, classification, and sentencing options for, all bad driving offences currently charged as careless or dangerous offences, rather than seek to add another

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<sup>12</sup> <https://www.theguardian.com/uk-news/2016/aug/19/cyclist-julie-dinsdale-lost-leg-lorry-collision-driver-625-fine>

<sup>13</sup> [http://www.cyclinguk.org/sites/default/files/file\\_public/prosecutors-courts4gbrf.pdf](http://www.cyclinguk.org/sites/default/files/file_public/prosecutors-courts4gbrf.pdf)

offence option of causing serious injury by careless driving. We do not profess to have a perfect answer to what is undoubtedly a complicated area of law, which is why we have always made it clear that such a review needs to be multi-disciplinary, with the involvement of legal academics, CPS, police, victim's organisations, legal practitioners etc, to make sure that the legislation governing bad driving is fit for purpose.

18. In 2015 we proposed three options for consideration by the MoJ as an alternative to the current classification of offences. Again, we believe these proposals could and should form the focus for further discussion within a comprehensive review, and we acknowledge that others might well have further and better suggestions. We do believe the current system leads to inconsistency, uncertainty and confusion. It is one where the standard to be expected of a competent and careful driver is unclear, with a risk that this is moulded to fit with desired outcomes which are influenced by perceptions as to the driver's intentions, and where victims are often left confused by the decisions made.
19. Our three proposals for consideration by the MoJ were, and remain:
  - a. Retain the current distinction between two levels of bad driving, but re-name the lower-tier offence (eg: unsafe or negligent driving instead of careless driving). In addition, revise dangerous driving in unambiguously objective terms (ie: relating to the manner of the driving, not the mindset of the driver). That was the intention with the 1988 Act, but it has not worked in practice. A possible definition for dangerous driving would be *"Driving that gives rise to a reasonably foreseeable risk of non-trivial injury to any person, or of serious damage to property, where this risk would be reasonably foreseeable by a driver who was driving competently and carefully."*
  - b. Revert to a two-tier distinction between 'careless' and 'reckless' driving i.e. reintroducing the state of mind (mens rea) of the driver, but avoiding the problems that existed before the 1988 Act by making it clear that the court is entitled to infer the state of mind of the driver from the manner of the driving. In this case, it would also be necessary to introduce much tougher penalties for acts of 'careless' driving that caused actual danger, in order to signal the social unacceptability of lapses of attention when undertaking a task as safety-critical as driving. The two offences could be named 'negligent' and 'grossly negligent' driving, reflecting similar distinctions in other areas of the law (e.g. manslaughter).
  - c. Abolish the two-tier distinction altogether, and have a single offence of unsafe driving. Sentencing guidelines would then need to be drafted to cover the whole range of bad driving offences, from minor lapses to the most serious examples of wilful risk-taking. A comparison with the offence of 'theft' – which covers everything from minor shoplifting to major theft – shows that it is indeed possible to take this broad brush approach.
20. Whatever changes are made, sentencing guidelines should obviously then be drafted to reflect them.

**Question 2: If yes, having regard to the maximum penalties for the existing offences of causing serious injury and assault, would either 2 or 3 years be an appropriate and proportionate maximum penalty for the new offence?**

21. As outlined above, we favour a comprehensive review of all bad driving offences. If that suggestion is not followed, and a new offence of causing serious injury by careless driving is

introduced, there are certain issues which arise where the maximum sentence for dangerous driving (currently two years) is the same or less than the available sentence for causing serious injury by careless driving.

22. If the new offence has a two or three year maximum sentence then the most horrific example of dangerous driving, where by luck rather than judgement nobody is injured or killed but dozens of people might have been endangered, could potentially attract a shorter custodial sentence than that imposed on the careless driver, whose actions were far less culpable, but who caused serious injury.
23. At the risk of repetition, the difficulty outlined above shows the danger inherent in a partial review of bad driving offences. A three year sentence for the proposed new offence might sound sensible in isolation, but not once looked at in the round.

**Question 3: Do you think that the maximum penalty for causing death by dangerous driving adequately reflects the culpability of the offending behaviour or should it be increased from 14 years' imprisonment to life?**

24. As identified within the IA, in 2015 only two people convicted of causing death by dangerous driving received a custodial sentence in excess of 10 years, and neither of them received a 14 year sentence. For modelling purposes the IA assumes that increasing the maximum available prison sentence would only impact upon those offenders who currently receive a sentence length equal to or above 9.3 years (the top third of the maximum penalty of 14 years). Accordingly, it is estimated that the proposed increase would only affect a tiny number of cases.
25. Given that the current Sentencing Council guidelines suggest that judges should consider discounting the length of any sentence by up to one third where the defendant pleads guilty at the earliest opportunity<sup>14</sup>, and that this guidance applies to all offences not just motoring offences, the practical reality is that in cases where the defendant pleads guilty, the option to impose the current maximum 14 year sentence will rarely be available to the sentencing judge. Furthermore, to impose the maximum sentence, the sentencing judge would have to come to the conclusion that the case he or she was dealing with was the absolute worst example of that offence they could imagine. Accordingly, custodial sentences over 10 years for causing death by dangerous driving are extremely rare.
26. The families of those killed by dangerous drivers often, understandably, believe that the sentence imposed upon the driver fails to adequately reflect their loss, and that in blunt terms the penalty for killing someone on the roads is less than that for murder or manslaughter. Whilst Cycling UK empathise with that view, and have long sought to ensure that the voices of victims are heard, we find ourselves in disagreement with some road safety organisations regarding the proposal to increase the maximum custodial sentence to life.
27. Firstly, in appropriate cases, the Crown Prosecution Service (CPS) can and should be prepared to charge drivers who kill with manslaughter. Whilst we acknowledge that the CPS are unlikely to charge manslaughter rather than causing death by dangerous driving in many

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<sup>14</sup> <https://www.sentencingcouncil.org.uk/publications/item/reduction-in-sentence-for-a-guilty-plea-definitive-guideline/>

cases, it is an option which should be seriously considered in certain cases, which would of course mean that a sentence up to life imprisonment would be available to the sentencing judge.

28. Secondly, we believe that there are a few cases each year where, if the maximum sentence was raised to 14 years, sentencing judges would be able to increase the sentence imposed, without necessarily proceeding to a life sentence. On balance, Cycling UK believe that it would be more appropriate to increase the maximum sentence from 14 years to 20 years, rather than moving to a life maximum.
29. We believe this would provide judges with the necessary flexibility in the most serious cases. We make that submission, acknowledging that the relatives of anyone killed by a dangerous driver can with justification ask how what happened to their family member could have been more serious. Nevertheless, there are of course scales of dangerous driving which judges must reflect when sentencing. We believe increasing the maximum sentence to 20 years will better enable judges to do this in the most serious cases.

**Question 4: Do you think that the maximum penalty for causing death by careless driving under the influence of drink or drugs should reflect the same culpability (and therefore the same maximum penalty) as causing death by dangerous driving?**

30. There is a compelling argument that driving whilst under the influence of drink or drugs is inherently dangerous, and that more cases where death occurs should be charged as death by dangerous driving in any event. Cycling UK do not however necessarily agree that any increase in the maximum sentence for causing death by dangerous driving requires or necessitates an increase in the maximum sentence for causing death by careless driving whilst under the influence of drink or drugs.
31. If the correct charge is one which begins with the word careless, it must by definition be one which is less serious than some which might come before the court. Without wishing to be semantic, if causing death by driving carelessly whilst under the influence of drink or drugs is punishable with life imprisonment, what is the maximum penalty to be for driving dangerously whilst under the influence of drink or drugs? If the behaviour of the former was dangerous, they should be charged with causing death by dangerous driving, not a careless driving offence.
32. We do not therefore see an automatic equivalence between the maximum penalties for these offences, and again, at the serious risk of repetition, the issues raised by this question show why tinkering with one offence, or one penalty, is dangerous (or is it merely careless?), and a comprehensive review is needed.

**Question 5: Should consideration be given to a longer minimum period of disqualification for offenders convicted of any causing death by driving offence and if so what do you think the minimum period should be?**

33. Cycling UK have consistently lobbied the MoJ for over two years, to request that this review considers the issue of driving disqualification as a penalty, for all endorseable offences, not just the use of disqualification in the most serious cases where death is caused.

34. In response to the specific consultation question, yes, longer minimum periods should be considered, however for reasons we will outline, minimum periods also need to be considered for other more common offences and repeat offenders, and disqualification need to be recognised and used as a sentence in its own right. There is sometimes too much emphasis on how much an offender is fined, or how long they are sent to prison for, and not enough on whether and for how long they are disqualified.
35. Before referring to some statistics regarding the declining use of driving disqualifications we should mention the case of cyclist Lee Martin as an example of why minimum disqualifications for repeat offenders<sup>15</sup>, the totting up system<sup>16</sup>, and the exceptional hardship loophole<sup>17</sup> which allows offenders to avoid a totting up disqualification, must be reviewed.
36. Lee Martin was killed in July 2015 by a driver Christopher Gard<sup>18</sup>, who was texting at the wheel of his van when he drove into Lee. Gard was convicted of causing Lee's death by dangerous driving. Tragically, six weeks before he killed Lee, Gard appeared in a local Magistrates' Court facing a totting up disqualification. He had six convictions for driving whilst using his mobile phone and had escaped prosecution twice for the same offence by attending a driver retraining course in lieu of prosecution. He avoided a disqualification by pleading exceptional hardship, namely the consequences for his family if he could not drive. Gard, and many other repeat offenders, must be disqualified before they kill or cause serious injury, which is why this consultation question is too narrow.
37. To highlight the declining use of disqualification powers we would point out that:
- a. In 2016, over 8,600 drivers were still able to drive with more than 12 points on their driving licence<sup>19</sup>, the majority of whom had avoided a totting up disqualification by successfully pleading exceptional hardship;
  - b. The number of drivers disqualified fell from 155,484 in 2005 to just 58,715 in 2015, a 62% reduction<sup>20</sup>;
  - c. During the same 10 year period the number of people escaping disqualification for offences where disqualification is supposedly obligatory, including those offences covered by this consultation question, has more than doubled;
  - d. During the same 10 year period the percentage of people disqualified following conviction for offences where a ban is discretionary rather than obligatory has fallen from 13% of offenders to less than 3%<sup>21</sup>.
38. The statistics at para 37 are merely a sample of a series which identify declining use of disqualifications for all motoring offences, for shorter periods, and an increase in drivers avoiding disqualification by arguing special reasons or exceptional hardship. Cycling UK submit that a comprehensive review of driving disqualification needs to consider inter alia:
- a. Re-drafting the existing legislation which permits drivers to argue exceptional hardship to retain their driving licence and avoid a disqualification. One option is to remove the

<sup>15</sup> <http://www.legislation.gov.uk/ukpga/1988/53/section/35>

<sup>16</sup> <https://www.gov.uk/driving-disqualifications/overview>

<sup>17</sup> <http://www.motoringlawdefence.com/points.html>

<sup>18</sup> <http://www.cyclinguk.org/news/magistrates-allowed-texting-driver-keep-licence-lee-lost-life>

<sup>19</sup> <http://www.autoexpress.co.uk/car-news/consumer-news/92095/sharp-rise-in-number-of-drivers-with-12-points-escaping-bans>

<sup>20</sup> [http://www.cyclinguk.org/sites/default/files/file\\_public/legal-framework-sentencing4dbrf.pdf](http://www.cyclinguk.org/sites/default/files/file_public/legal-framework-sentencing4dbrf.pdf)

<sup>21</sup> [http://www.roadpeace.org/resources/RoadPeace\\_Driving\\_bans\\_at\\_court\\_2016.pdf](http://www.roadpeace.org/resources/RoadPeace_Driving_bans_at_court_2016.pdf)

option to plead exceptional hardship completely. Another would be to more tightly define the remit of this “defence”. The predictable inconvenience consequent upon losing your licence should not justify a repeat motoring offender avoiding a disqualification;

- b. A similar re-drafting of the legislation which permits special reasons<sup>22</sup> to be advanced to avoid supposedly obligatory disqualifications. A special reasons defence was envisaged to be something exceptional. It was never intended to be a mechanism to allow over 7% of drivers facing obligatory bans for serious offences to avoid disqualification;
  - c. The introduction of further obligatory disqualifications for additional bad driving offences. That could for example include speeding at over twice the speed limit, or for a second careless driving offence within a five year period;
  - d. Longer minimum bans for those offences subject to existing obligatory bans;
  - e. Extending the requirements for drivers to be ordered to undertake an extended re-test<sup>23</sup> before recovering their licence following a disqualification;
  - f. Introducing driver re-training as a sentencing option, to allow courts to order drivers to undertake a re-training course as part of the sentencing package (currently driver re-training courses are merely an alternative to prosecution, not a sentencing option).
39. The fundamental priority with disqualification powers, and the use of disqualification as a sentencing option, is that there must be a legislative signal that driving is not an entitlement, it is a revocable privilege and a licence that should be removed for public protection where driving falls below the required standard. There is an illogical contrast between the way the courts deal with the disqualification of offenders in driving cases to those in animal neglect cases. The man who fails to seek medical attention for his pets is likely to face a lengthy animal ownership disqualification order<sup>24</sup> on conviction for neglect. The man who endangers other road users is far less likely to be banned from driving. Animal welfare trumps the pet owner’s desire to own a pet. The need to drive seems to trump road safety and public protection.

**Question 6: Are there any driving offences relating to causing death or serious injury that you think should be changed. If so, what changes should be made and why?**

40. As indicated at para 8, Cycling UK submit that the MoJ should also consider the offences of and penalties for failing to stop or report an accident, and car dooring.
41. Dealing briefly with fail to stop and report offences, we acknowledge that these encompass a wide range of offending behaviour, from failing to report a car park scrape with another parked car where the damage was little more than a scrape, to the driver who knows that they have been involved in a potentially fatal collision, who then flees the scene leaving someone in need of urgent medical attention.
42. There have been a number of fatal collisions with cyclists, often in rural areas or on quiet roads, where drivers have left the scene of the collision and the cyclist has subsequently died in circumstances where, had immediate medical help been sought, they might have survived. If careless or dangerous driving can’t be proved, because there are no witnesses, the driver who failed to stop and report, if subsequently identified, can only be charged with a fail to stop charge with a maximum six month custodial sentence.

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<sup>22</sup> <http://drinkdrivingdefences.co.uk/mitigation/>

<sup>23</sup> <https://www.gov.uk/driving-disqualifications/disqualification-until-test-pass-or-extended-test-pass>

<sup>24</sup> <http://www.legislation.gov.uk/ukpga/2006/45/section/34>

43. The scenario in para 42 is not conducive either to road safety, or encouraging reporting. A driver under the influence of drink or drugs who causes a collision and injures someone needs to know that there are real and substantial penalties for failing to stop and failing to report. Too often, particularly with collisions with vulnerable road users, drivers leave the scene with relative impunity, and in some cases taking a calculated risk having regard to the penalties for failing to stop and report.
44. Cycling UK do not suggest that the current penalties are inadequate for the non-injury vehicle damage cases, but in serious or potentially serious injury cases, the maximum penalties for failing to stop are inadequate, and there are offences in this bracket for which a custodial sentence in excess of six months would be appropriate.
45. In relation to car dooring, which is a construction and use offence as outlined in para 8, the maximum penalty is £1000. The CPS have an option to charge someone who kills a cyclist through opening a car door with manslaughter, but the evidential test for the latter presents a formidable burden of proof. The gap between those two offences is a chasm, hence in cases where cyclists are killed or seriously injured, the charge and sentence can appear derisory.
46. This review is considering sentences for those who kill or cause serious injury on the roads. In addition to the existing construction and use offence which covers those who open a car door "so as to endanger or injure anyone", Cycling UK submit that consideration should be given to a new offence, with more severe penalties, for opening a car door "so as to cause death". A subject for discussion would be whether that should also be extended to serious injury cases.

**Question 7: Does the equalities statement correctly identify the extent of the impacts of the proposed options for reform set out in this consultation paper?**

As far as we have been able to identify this, it appears to do so.

1 February 2017

Duncan Dollimore  
Senior Road Safety Officer  
Cycling UK

