



Bad driving and the justice system

The legal framework and sentencing policy

THIS BRIEFING COVERS

- The legal framework: cycles and motor vehicles - which cause more danger? The definitions of bad driving offences; the problems; what needs to change
- Sentencing policy: maximum sentences, driving bans and other penalties

HEADLINE MESSAGES

- All road users should share the roads responsibly, with respect for the law and the safety and comfort of others. Irresponsible driving, however, poses a disproportionate threat to pedestrians and cyclists and puts people off travelling by foot or cycle, despite its health, environmental and economic benefits.
- Driving a car is the one situation in which normally law-abiding citizens put other people routinely at risk. Such people do not deliberately set out to cause harm, but a moment's inattention may cause serious injury and sometimes death. This is a dilemma for the justice system, and one that has yet to be solved effectively.
- Society expects high safety standards in various aspects of our lives where there are inherent risks – e.g. rail and air travel, in workplaces or on construction sites – and the law creates strong obligations to avoid or minimise the risks. However, there is a different culture on the roads. Lapses there are regularly dismissed merely as 'accidents' or 'carelessness' rather than something that is avoidable. Likewise, the penalties seem to reflect the attitude that the absence of care and the resultant collisions are inevitable.
- An overhaul of the framework of bad driving offences and sentencing is one of the solutions. In particular, the system should ensure that *dangerous* driving is never dismissed as being merely 'careless'; and there should be far greater use of lengthy driving bans both as a penalty and to protect the public. This would make it clearer that it is unacceptable to endanger other road users, and it would help encourage more and safer cycling.

KEY FACTS

- In Great Britain, from 2011-15, under 2% of all trip stages were made by cycle, but cyclists represented around 6% of fatalities and 14% of serious injuries.
- Over the same period, c.84% of cyclists' road fatalities reported by the police happened in crashes involving a motor vehicle.
- Between 2005 and 2016 in England and Wales, the number of people disqualified from driving directly by the courts dropped from 155,484 to just 62,822 – a fall of 60%.
- In 2016, 90% of drivers sentenced for killing another road user were directly disqualified by the courts, compared to 96% in 2005 (100% were banned in 2006 and 2008).
- In January 2017, there were 9,909 drivers still able to drive even though they had amassed 12 points or more on their licence increases, even though those who accumulate this number automatically face disqualification.
- For dangerous driving with a fatal outcome, the maximum sentence is 14 years; for both dangerous driving that causes a serious injury, and causing death by 'careless' driving, the maximum prison sentence is five years.





Cycling UK VIEW

Legal framework

- The legal framework should make it clear that it is unacceptable to endanger and intimidate other road users. This is particularly important for cyclists and pedestrians because they are disproportionately likely to be the victims of road crashes.
- The current legal definitions for 'careless' and 'dangerous' driving have led to confusion, inconsistency and injustice. As a result, too many drivers who have obviously and evidently caused 'danger' are convicted of 'careless' rather than 'dangerous' driving due to confusion over the standard of driving to be applied. As a result, they may receive derisory penalties, or are acquitted altogether.
- The definitions of 'careless' and 'dangerous' driving should therefore be revised, along with the available penalties as part of the Government's ongoing review of driving offences and penalties.
- To eliminate the element of subjectivity when determining how far a driver has fallen short of the standards expected of a careful and competent driver, their driving should be measured against a clear, objective standard. This could be based, for example, around the standard required to pass the driving test, which should surely be the minimum expected of a careful driver.
- Prosecution guidelines should be amended to reflect the above.

Sentencing policy

- The underlying principle of sentencing must be that road crime is treated as real crime, and not minimised as mere 'traffic offences'.
- Whether a seriously injured victim happens to survive or die makes too much difference to the sentences available. Instead, sentencing should primarily reflect the standard of driving, rather than its outcome.
- Too often, discussions on how the justice system should penalise offending drivers centre on custodial sentences. This neglects the value of driving bans both as a penalty and as a means to protect the public:
 - Driving bans should be more widely used as a penalty and to ensure that those who cause danger are not allowed to drive again until they can prove they can do so safely.
 - Those who appear to have driven recklessly or with intent to cause danger should still normally receive prison sentences, as should repeat offenders, particularly those who have breached past driving bans. Long-term or lifetime disqualification should also be the norm in such cases.
- Banned drivers, especially those who drive professionally, should be retested before regaining their licence.
- The courts should be given the power to impose driver retraining as a sanction for convicted drivers.
- The definition of 'exceptional hardship' should be revised to prevent the routine use of this defence by drivers seeking to avoid driving bans.
- An offence of causing serious injury or death by car-dooring should be introduced, with much tougher penalties than fines.
- The Government's ongoing review of driving offences and penalties should include all the above proposals.
- Fines in serious or fatal cases can trivialise the seriousness of the offence, particularly when the fine is small.
- The above proposals should be reflected in revisions to sentencing guidelines.

1. The legal framework

Cycling UK view: The legal framework should make it clear that it is unacceptable to endanger and intimidate other road users. This is particularly important for cyclists and pedestrians because they are disproportionately likely to be the victims of road crashes.

a. Cycles and motor vehicles: which cause more danger?

In Great Britain, on average each year from 2011 to 2015:

- Cyclists and pedestrians accounted for c.30% of road fatalities (109 cyclists and 425 pedestrians out of the 1,775 road users killed on average each year).¹
- Under 2% of all trip stages were made by cycle², but cyclists represented around 6% of fatalities and 14% of serious injuries.³
- Around 84% of cyclists' road fatalities reported by the police happened in crashes involving a motor vehicle.⁴

By contrast, the risk that cyclists pose to other road users is very small indeed. In 2015: ⁵

- Out of the 14,964 collisions involving a car and cycle (all areas), no car occupant died. Forty-four cyclists were killed, however.
- 99.6% of the cyclists in these collisions were injured, but only 1.4% of car occupants.

On average each year from 2011-15, *in all urban areas (excluding motorways)*:

- Cycles accounted for about 2.3% of vehicular traffic, but were involved in only just over 1% of pedestrian fatalities and 1.8% of serious pedestrian casualties.⁶
- Mile-for-mile, motor vehicles were more likely than a cycle to seriously injure a pedestrian, and over twice as likely to kill them.⁷

For more on casualties involving cyclists, drivers, pedestrians and law-breaking, see Cycling UK briefings: *Road safety Overview*; *Cycling & pedestrians*; and *Cyclists' behaviour & the law*, all available at www.cyclinguk.org/campaigning/views-and-briefings

b. The problematic definitions of bad driving offences

Cycling UK view:

- The current legal definitions for 'careless' and 'dangerous' driving have led to confusion, inconsistency and injustice. As a result, too many drivers who have obviously and evidently caused 'danger' are convicted of 'careless' rather than 'dangerous' driving due to confusion over the standard of driving to be applied. As a result, they may receive derisory penalties, or are acquitted altogether.
- The definitions of 'careless' and 'dangerous' driving should therefore be revised, along with the available penalties as part of the Government's ongoing review of driving offences and penalties.

Legally, 'dangerous' driving means driving that falls *far below* the standard that would normally be expected of a 'competent and careful' driver. 'Careless' driving simply means driving *below* this standard. Importantly, the statutory definition of 'dangerous driving' also takes into account both danger of injury and of serious damage to property.





Legal Definitions	
Dangerous driving	<p><i>"... falls far below what would be expected of a competent and careful driver, and it would be obvious to a competent and careful driver that driving in that way would be dangerous."</i></p> <p><i>"[...] "dangerous" refers to danger either of injury to any person or of serious damage to property;"</i></p>
	Road Traffic Act 1988, as amended by the Road Traffic Act 1991. Section 2A
Careless	<p>The driving:-</p> <p><i>"... falls below what would be expected of a competent and careful driver."</i></p> <p><i>"A person is to be regarded as driving without reasonable consideration for other persons only if those persons are inconvenienced by his driving."</i></p>
	Road Traffic Act 1988. Section 3ZA, as amended by the Road Safety Act 2006
Inconsiderate Driving	<p>Driving:-</p> <p><i>"... without reasonable consideration for other persons only if those persons are inconvenienced by his driving."</i></p>
	Road Traffic Act 1988. Section 3ZA, as amended by the Road Safety Act 2006

Note: The two *Road Traffic Acts* (1988 & 1991) apply to England, Wales and Scotland, but not to Northern Ireland. *The Road Safety Act 2006* applies to the whole of the UK (England, Wales, Scotland & Northern Ireland).

The above arrangement replaced an earlier two-tier framework that distinguished between 'reckless' and 'careless' driving. The distinction was based on the driver's state of mind (or *mens rea*), i.e. if it could be proved that the driver acted intentionally, 'reckless' driving was the appropriate charge.

Although sound in principle, this approach was problematic in practice. As Lord North showed in his *Road Traffic Law Review Report (North Report)*,⁸ it was very difficult to prove beyond doubt what the driver's state of mind was. On Lord North's recommendation, therefore, 'reckless' driving was replaced with 'dangerous' driving, and the offences instead were defined in *purely objective terms*. In other words, it is *only the standard of driving that is now supposed to count*.

c. The problems

In Cycling UK's experience, the above definitions have led to confusion, inconsistency and injustice.

Currently, too many drivers avoid prosecution even though their driving fell below the objective standard needed to acquire a driving licence; are acquitted when their driving would be deemed careless if assessed against this standard; or, prosecuted simply for 'careless' rather than 'dangerous' driving, despite having evidently caused danger that should have been obvious to a careful and competent driver. This both trivialises the risks of bad driving both to all road users, and partly explains lenient and/or ineffective sentencing for bad driving offences. This situation seems to arise because:

- **In practice, it appears that prosecutors tend to decide between 'dangerous' and 'careless' charges by considering the driver's state of mind (*mens rea*).**

In other words, they *do* consider whether the offence involved wilful risk-taking or, alternatively, a simple lapse of concentration. While it is perfectly reasonable to reflect the driver's state of mind in the scale of any penalty imposed on them, under the current legislation it should not be a factor when deciding what charges to bring in the first place, or whether to convict in any particular case. As mentioned in 1b above, *it is only the standard of driving that counts*.

It is the word 'careless' for the lesser offence that seems to cause this problem because it incorrectly implies that the charge does, in fact, relate to the driver's state of mind. Therefore, if it appears that a driver caused danger and harm but did not mean to do so, prosecutors may wrongly assume that the offence must be 'careless', rather than 'dangerous'.

- **Those who deal with cases of bad driving have their own subjective view about the standard of driving expected of a competent and careful driver.**

Police officers, prosecutors, magistrates and jurors all have different views about what the standard of a competent and careful driver should be. It is therefore not surprising that it is often difficult for them to decide whether someone's driving falls below that standard and, if so, whether it is just below, or far below it.⁹ This leads to serious inconsistencies.

- ***"There but for the grace of God go I".***

Inevitably, most magistrates and jurors are drivers, so when they see another driver before them in court, they may well identify with them more closely than they would, say, a burglar. Putting such a defendant at risk of a prison term may be particularly unpalatable, especially when it looks as if they are guilty of nothing more than a simple lapse of attention, whatever its outcome. Thus, their propensity is either to lean towards the less serious charge of 'careless' or, worse, not convict at all. This can happen even when it is clear that the driving in question caused obviously foreseeable danger.¹⁰

Knowing that essentially decent drivers appearing in court are likely to attract sympathy, prosecutors are often wary of opting for a 'dangerous' charge in the first place. A 'careless' charge has a better chance of success, and is also easier to prove.

- **There are confusing inconsistencies in the maximum sentences available for bad driving and they are over-dependent on whether the victim dies or survives (see 2a below).**

Revised guidelines from the Crown Prosecution Service (England & Wales)¹¹

Revised guidelines from the CPS issued in 2013 seem, at least, to be helping courts understand the difference between 'dangerous' and 'careless' driving: Ministry of Justice figures show that, from 2014 onwards, the number of drivers prosecuted and convicted for dangerous driving offences has begun to recover after years of decline.

Nevertheless, while this may show that better guidelines do have welcome impact, on their own they are unlikely to solve the wider problems identified in this briefing. Hence, Cycling UK will continue to press for changes to the statutory definitions and penalties for these offences as part of the Government's ongoing review of driving offences and penalties, as discussed below.

For more on the impact of the revised guidelines, and how prosecutors and courts have been operating within the current framework, see

www.cyclinguk.org/campaigning/views-and-briefings/prosecutors-and-courts





d. What needs to change?

Cycling UK view:

- The definitions of 'careless' and 'dangerous' driving should therefore be revised, along with the available penalties as part of the Government's ongoing review of driving offences and penalties.
- To eliminate the element of subjectivity when determining how far a driver has fallen short of the standards expected of a careful and competent driver, their driving should be measured against a clear, objective standard. This could be based, for example, around the standard required to pass the driving test, which should surely be the minimum expected of a careful driver.

The Government's ongoing review of driving offences and penalties presents the ideal opportunity to make changes to the legal framework to stop driving that causes obvious danger being dismissed as merely 'careless'. The following broadly outlines how we think this could be achieved:

- **Retain the distinction between two tiers of bad driving, but give 'careless' driving another name.** It could, for example, be renamed '*unsafe*' or '*negligent*' driving, thus removing any implication that the driver's state of mind is a factor when distinguishing this offence from 'dangerous' driving.

At the same time, the definition of '**dangerous**' driving would need to be revised in unambiguously objective terms (i.e. relating to the manner of the driving, not the mind-set of the driver), e.g.: "*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.*"

- **Revert to a two-tier distinction between 'careless' and 'reckless' driving,** i.e. reintroduce the element of *mens rea* (i.e. state of mind). The two offences could be named 'negligent' and 'grossly negligent' driving, reflecting similar distinctions in other areas of law (e.g. manslaughter).

To avoid the problems that existed before the 1988 Road Traffic Act (see 1b & c above), it should be made clear that, when judging the severity of the offence, the court may infer the driver's state of mind from the manner of the driving.

- **Introduce a clearer objective test of the standard of driving expected.** Whether or not *mens rea* is reintroduced, Cycling UK believes that the standard of driving should be measured against a clear, objective test. This could, perhaps, be based around the *minimum* standard required to pass the driving test, a well-known and accepted standard that has been developed to assess the competency to drive safely.

For example, if there is evidence proving that a driver has committed a serious/dangerous fault that would automatically cause them to fail a driving test, this would be classified as an offence that falls into the upper tier, (or 'dangerous' driving, as it is at the moment). Significant or prolonged breaches of traffic law and/or the Highway Code would be similarly categorised.

Should *mens rea* be reintroduced, an act of the kind that automatically fails a driving test candidate would constitute 'reckless' (or 'grossly negligent' driving, if renamed as we propose). This would make it easier for courts to assess the manner of driving and infer the driver's state of mind from it. Of course, if the driver could prove that they had reasonable cause to drive in that manner, this should be taken into account. The burden of proof, however, would rest with them, and not with those prosecuting the case.

Measuring acts of bad driving by the standard required to pass a driving test would eliminate the subjective assessment and decision-making that causes so much confusion and inconsistency at present. It would help everyone at all stages of the process, from police and prosecutors, to magistrates and jurors. As an added advantage, driving examiners could act as expert witnesses in court.

For these proposals to work, however, the standards required by the driving test need to remain high and rigorously applied by all driving examiners.

Whatever changes are made, prosecution guidelines should be (re)drafted to reflect them.

Cycling UK's views on driver training, testing and the licensing process, and the improvements that need to be made in the interests of cyclist safety, are available at:
www.cyclinguk.org/campaigning/views-and-briefings/driver-training-testing-licensing

2. Sentencing policy and penalties

Below, we outline how we believe sentencing policy and policies should change to reinforce the message that road crime is real crime. Again, the Government's ongoing review of driving offences and penalties is the ideal opportunity to take all our following proposals forward.

a. Maximum sentences

Cycling UK view:

- The underlying principle of sentencing must be that road crime is treated as real crime, and not minimised as mere 'traffic offences'.
- Whether a seriously injured victim happens to survive or die makes too much difference to the sentences available. Instead, sentencing should primarily reflect the standard of driving, rather than its outcome.

These are the maximum sentences available for 'dangerous' and 'careless' driving offences:¹²

	Outcome	Maximum prison sentence
Dangerous driving	Fatal	14 years
Dangerous driving	Non-fatal, but serious injury	5 years
Dangerous driving	Non-fatal	2 years
Careless driving	Fatal	5 years
Careless driving	Non-fatal	(maximum fine £5,000)

The table above shows that, despite the introduction of the offence of 'causing serious injury by dangerous driving' (*Legal Aid, Sentencing and Punishment of Offenders Act 2012*), there is still a substantial nine year gap between the maximum sentence available in cases of dangerous driving where the victim dies and those where they happen to survive. In other words, it is possible to impose a far more severe sentence on a driver who happens to kill someone than on a driver whose victim is seriously maimed, *even though the driving involved may have been equally bad*.¹³

In practice, it is extremely rare for courts to go anywhere near the maximum 14 years' sentence available for causing death by dangerous driving. Apart from the fact that a defendant with a strong possibility of the maximum term will probably plead guilty to earn a discount, the courts are no doubt mindful that, had the victim survived, the maximum sentence available is only five years (in fact, the maximum available was only two years before the new offence of 'causing serious injury by dangerous



driving' came in). Equally, the maximum five year sentence for causing death by *careless* driving is hard to justify when two years is the maximum for *dangerous* (i.e. worse) driving if it happens not to cause death or serious injury.

These inconsistencies make it very difficult for both the Sentencing Council (England & Wales) and the courts to deliver rational sentences for bad driving offences and, all too often, leniency results.

The current sentencing framework, therefore, is not conveying clear messages about the social unacceptability of dangerous driving. Road crime is real crime, after all.

This does not mean, however, that we want people who are generally law-abiding to be imprisoned for a long time because a lapse of attention has led to someone's death (see 2b & c below). On the other hand, where there is evidence suggesting conscious or reckless risk-taking, or intent to cause danger, intimidation or injury, prosecutors should seriously consider manslaughter or assault charges.

Sentencing guidelines and vulnerable road users

The current sentencing guidelines from the Sentencing Council (England & Wales) say:

"Cyclists, motorbike riders, horse riders, pedestrians and those working in the road are vulnerable road users and a driver is expected to take extra care when driving near them. Driving too close to a bike or horse; allowing a vehicle to mount the pavement; driving into a cycle lane; and driving without the care needed in the vicinity of a pedestrian crossing, hospital, school or residential home, are all examples of factors that should be taken into account when determining the seriousness of an offence." And:

"The fact that the victim of a causing death by driving offence was a particularly vulnerable road user is a factor that should be taken into account when determining the seriousness of an offence."
www.sentencingcouncil.org.uk/wp-content/uploads/web_causing_death_by_driving_definitive_guideline.pdf

Note: A Scottish Sentencing Council was established in 2015. One of its responsibilities is to prepare sentencing guidelines for the courts, and causing death by dangerous driving is one of its set priorities. Until this happens, the Scottish courts will no doubt continue to refer to the guidelines published by the Sentencing Council for England & Wales, as in the past.

For more on the Scottish Sentencing Council, see: www.scottishsentencingcouncil.org.uk/

b. Imprisonment / Driving bans

Cycling UK view:

- Too often, discussions on how the justice system should penalise offending drivers centre too often on custodial sentences. This neglects the value of driving bans both as a penalty and as a means to protect the public:
 - Driving bans should be more widely used as a penalty and to ensure that those who cause danger are not allowed to drive again until they can prove they can do so safely.
 - Those who appear to have driven recklessly or with intent to cause danger should still normally receive prison sentences, as should repeat offenders, particularly those who have breached past driving bans. Long-term or lifetime disqualification should also be the norm in such cases.

- **Imprisonment**

Quite legitimately, the public is concerned about imprisoning people who are not generally a danger to society. Drivers who have seriously injured or killed someone through a momentary lapse of concentration fall into this category. As mentioned above, whether or not they intended to cause harm should make no difference to the charge – if they have driven dangerously, then they should be charged



accordingly – but it does make sense to take their state of mind into account as far as sentencing is concerned.

Cycling UK therefore believes that imprisonment should be reserved for the most serious examples of dangerous driving, and for those who persistently break driving bans, or continue to drive despite not being entitled to do so for some reason.

Where the driver is not imprisoned, the courts should still seriously consider imposing a significant ban too.

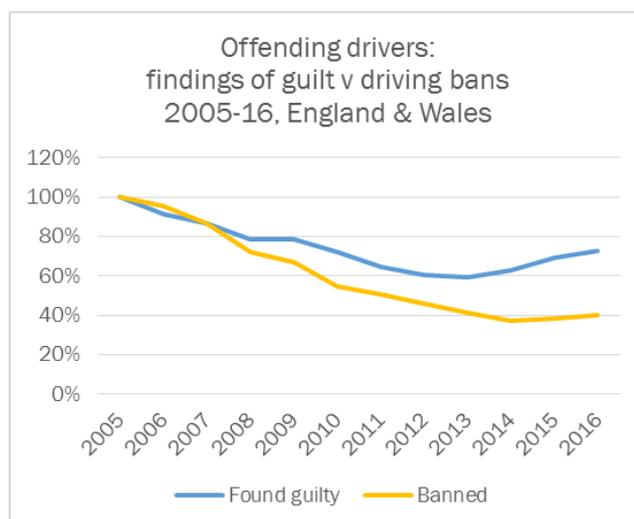
As discussed below, less serious offences are best penalised by non-custodial sentences, e.g. bans, fines, community sentences, anti-social behaviour orders (ASBOs), vehicle confiscation and through restorative justice processes, where appropriate. Greater use of non-custodial options, especially bans, might increase the willingness of juries to convict for dangerous driving when they (perhaps mistakenly) perceive that the judge will send the defendant to prison on conviction.

- **Disqualification**

Although exceptions can be made, bans are obligatory for certain driving offences, i.e.: all causing death and causing serious injury offences, dangerous driving and driving with alcohol in the blood over the prescribed limit. However, where they have discretion (e.g. careless driving offences, excluding mobile phone use), the courts seem to be increasingly reluctant to take driving licences away.

For example, between 2005 and 2016 in England and Wales:

- The number of people disqualified from driving directly by the courts dropped from 155,484 to just 62,822 – a fall of 60%.¹⁴ The number of motorists found guilty of offences for which the courts could directly disqualify them also fell during this period, but by much less (27%).¹⁵
- In 2016, 90% of drivers sentenced for killing another road user were directly disqualified by the courts, compared to 96% in 2005 (100% were banned in 2006 and 2008).¹⁶
- For offences where bans are obligatory, the number of drivers escaping them has more than doubled from 3% to 7% (2005-15). Where bans are discretionary (as in most cases), the proportion receiving a ban has declined from almost 13% to less than 3%.¹⁷
- In 2016, 62,822 offenders were directly disqualified by the courts. The most commonly imposed period of disqualification was over one year and under two years (21,520 or 34%). Twelve offenders were directly banned for life, including: two for ‘causing death by dangerous driving’; one for ‘causing death by careless or inconsiderate driving’; two for ‘causing serious injury by dangerous driving’; and five for ‘dangerous driving’. On the other hand, 25 people found guilty of ‘causing death by careless or inconsiderate driving’, and 34 for ‘causing serious injury by dangerous driving’ had their licences endorsed, but were not directly disqualified (although this does not necessarily mean that they were not disqualified under the penalty point ‘totting up’ system).¹⁸
- DVLA has confirmed to Cycling UK that, as of January 2017, there were 9,909 drivers still able to drive even though they had amassed 12 points or more on their licence increases.¹⁹



Banning bad drivers from the roads is clearly a sentencing option that the courts are failing to take seriously enough. Yet, banning bad drivers for a significant amount of time is an effective deterrent, and it helps protect the public. Moreover, society already accepts that licences may need to be withdrawn from people who suffer from visual or other disabilities that could put others at risk on the roads and, in any case, a significant proportion of the British population lives without a car anyway (around a quarter of households do not have access to a car,²⁰ and the same proportion of adults do not currently have a full driving licence).²¹

Equally, it is important to remember that driving is not an entitlement, but an activity that people are given a revocable licence to do. In any case, courts should bear in mind that driving is neither an essential need, nor a right. As such, withdrawing licences for extended periods should not be seen as too great an imposition on people prone to moments of lethal (or potentially lethal) inattention whilst driving, or on drivers convicted for killing someone.

Commercial drivers: bans are especially effective for commercial drivers whose livelihoods depend on their licence. These drivers are disproportionately involved in road collisions and deaths: on average each year from 2001-2015 (GB), heavy goods vehicles (HGVs) accounted for just 3.6% of non-motorway motor traffic mileage on British roads, yet were involved in around 18% of cyclists' fatalities. HGVs were also involved in almost 14% of pedestrian fatalities, so pose a serious threat to them too.²²

Enforcement: for disqualification to be seen as an effective punishment, it needs to be well-enforced. For those who repeatedly breach bans, Cycling UK believes that a long custodial sentence is appropriate. Since the introduction of the *Criminal Justice and Courts Act 2015*, the maximum prison sentence available for causing death by driving when disqualified was raised from two to ten years. The maximum prison sentence for causing serious injury by driving when disqualified is now four years.

Note: Bans used to overlap any custodial sentence, but thanks to the *Coroners and Justice Act 2009*, since April 2015 judges must state how long an offender's ban will last once they leave prison.

- **Re-tests and retraining**

Cycling UK view:

- Banned drivers, especially those who drive professionally, should be retested before regaining their licence.
- The courts should be given the power to impose driver retraining as a sanction for convicted drivers.

Within the first two years of passing their test, new drivers who build up six or more penalty points must re-sit their test and reapply for their licence.²³

In Cycling UK's view, however, drivers who are directly disqualified by the courts need to be sent for extended re-testing far more often. The best way of doing this is to make it mandatory. Accompanied by remedial training, this is not only an effective penalty, but also helps address lack of practice whilst disqualified. At the moment, the courts (England & Wales) require only a very small proportion of the drivers they ban directly to take an extended test before they can recover their licence – 7% in 2016 (4,499 out of 62,822).²⁴

Driver retraining schemes/ National Driver Offender Retraining Scheme (NDORS): NDORS (or 'driver diversion') was introduced in 1991 to improve driving standards and reduce risk by re-educating rather than prosecuting people who have committed a minor driving offence and/or involved in a minor collision.²⁵ It is up to the police (not the courts) to offer this option to offenders.



Courses cover offences such as speeding, careless/inconsiderate driving etc. and, in theory, are not intended for people who have committed serious offences (e.g. dangerous driving, or where the degree of carelessness was high) – these should still be prosecuted.

Some evidence indicates that these courses do influence drivers' attitudes (and that this impact lasts at least for several weeks),²⁶ but at the moment it is unclear whether their actual driving behaviour changes.

Cycling UK believes that NDORS should be a sanction available to the courts as well as the police, although it is no substitute for prosecution. We share concerns, too, that the police may be overly keen on the scheme, no doubt because following up a prosecution instead is labour-intensive, and because it earns them money (drivers pay for their course). Equally, the CPS, which faces serious workload pressures as well, may also decide not to prosecute in a case referred to them by the police, and send it back for NDORS treatment instead.

- **Pleas of 'exceptional hardship'**

Cycling UK view: The definition of 'exceptional hardship' should be revised to prevent the routine use of this defence by drivers seeking to avoid driving bans.

Pleas of 'exceptional hardship' to avoid a ban are very rarely justified. The 'need' to drive for work or the school-run, for example, does not automatically lead to insurmountable problems that cannot be solved by alternative transport or arrangements, and should not be accepted as grounds for allowing a driver to keep their licence. Hardship pleas, therefore, should only be allowed if the hardship in question is genuinely 'exceptional'.

The loss of your driving licence is a predictable consequence of acquiring 12 penalty points on your licence. Accordingly, drivers should moderate their driving behaviour after acquiring penalty points, rather than relying upon exceptional hardship as an argument once they have offended again.

- **'Car-dooring'**

Cycling UK view: An offence of causing serious injury or death by car-dooring should be introduced, with much tougher penalties than fines.

'Car-dooring' is a criminal offence under Regulation 105 of the *Road Vehicles (Construction and Use) Regulations 1986* and *Section 42 Road Traffic Act 1988*. Under this legislation, it is not only an offence to open the door of a vehicle on a road "so as to injure or endanger any person", but also to "cause or permit it". Note that this offence covers endangering other people, not just injuring them. In 2015:

- Police at the scene considered 'vehicle door opened or closed negligently' to be a contributory factor in 561 reported collisions;
- The police also thought that 'vehicle door opened or closed negligently' contributed to incidents in which three people were killed, 58 seriously injured and 538 slightly injured.²⁷

Although we do not know from the figures above how many of the people killed or injured in these incidents were cycling at the time, it is likely that they represent a very high number:

- According to a parliamentary answer in 2014, 78 cyclists were killed or seriously injured (KSI) as a result of hitting an open door of a car in 2012.²⁸ This amounts to at least three quarters of the KSI incidents in which the police thought that 'vehicle door opened or closed negligently' was a contributory factor in that year (in total, three people were killed and 101 seriously injured – and another 517 slightly injured).
- We also know that several cyclists have died as a result of the offence.²⁹



Despite the potentially very serious consequences of 'car-dooring', this offence is only punishable by a fine of up to £1,000 and the offender's licence is not endorsed with any penalty points. Cycling UK wants to see greater public awareness of its dangers, and a new offence of causing serious injury or death by car-dooring, with much tougher penalties than fines.

c. Fines

Cycling UK view: Fines in serious or fatal cases can trivialise the seriousness of the offence, particularly when the fine is small.

- **Fines and Fixed Penalty Notices (FPNs)**

Court fines: The existing legal framework gives courts no choice but to impose fines as a penalty for offenders convicted of certain charges (e.g. non-fatal 'careless driving'), but this often appears to trivialise the seriousness of the offence, particularly where a victim has suffered severe injury. Over the last ten years (2006-16), the average fine for 'dangerous driving' imposed by the courts (England & Wales) has been around £250.³⁰

Fixed penalty notices (FPNs): FPNs provide the police with a significant and instantaneous penalty involving relatively little paperwork because the defendant does not have to be sent to court if they pay up. The police issued just under 1.02 million FPNs for motoring offences in 2015 (England & Wales) in 2015. While this is a 1% drop from 2014, the number of FPNs issued for speed limits offences increased by 6% (from 74,300 to 79,100).³¹

In 2013, the Government made careless driving a fixed penalty offence, with a £100 fine and three penalty points. In Cycling UK's view, the police should be absolutely sure not to issue FPNs where the driving in question was essentially dangerous, and certainly not when someone has been injured, or if there is evidence of a potentially dangerous 'near miss'. Such cases need to be investigated thoroughly and passed to the courts, where more serious penalties are available. Clear guidance on the use of FPNs for careless driving are therefore vital.

d. Other penalties

- **Community Sentencing**

In some cases, it may be appropriate for a court to sentence a convicted offender to unpaid community service of some kind (e.g. collecting litter, helping charities, removing graffiti, etc).

- **Restorative Justice**

The Restorative Justice Council says: "*Restorative justice brings those harmed by crime or conflict and those responsible for the harm into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward. This is part of a wider field called restorative practice.*"³² The process can take place at any stage of the criminal justice process, including post-conviction.³³

According to the Restorative Justice Council, evidence shows that this approach meets the needs of crime victims and reduces the frequency of reoffending by 14%.³⁴

Cycling UK believes that it should be positively considered where the injured or bereaved victim(s) of road crime feel this is suitable, but never used an alternative to prosecution in serious cases. In such circumstances, it is best to impose it as part of the offender's sentence. In appropriate cases where a cyclist has been injured, victims might like to request that the offender is sent on a practical cycle training course to rectify their behaviour and give them an insight into cycling.

- **Penalties that target the offending behaviour**

ASBOs, curfews and electronic tagging are effective penalties for certain types of offensive behaviour because they can limit the offenders' opportunity to commit it. ASBOs, for example, can be used to prevent a drink/driver from driving in the evening, whilst allowing them to drive during working hours.

- **Confiscation and crushing of vehicles**

The police already have the powers to confiscate, crush or re-sell uninsured cars that are being driven. In some cases, this could also be an appropriate sanction for drivers with long driving bans.

e. Research and attitudes

The fact that jurors tend to be unwilling to convict bad drivers as charged under the current system (see 1c) suggests that any changes to sentencing policy should be informed by research into public attitudes to give the system a better chance of working effectively. In turn, revisions to sentencing should also seek to influence public attitudes. The frequency with which drivers currently receive derisory sentences is not only a reflection of society's complacent attitudes to bad driving, but also perpetuates them.

FURTHER READING/WEBSITES

- Cycling UK's 'Safe drivers and vehicles' briefings: www.cyclinguk.org/campaignsbriefings
- www.roadjustice.org: Cycling UK's campaign site on road justice, with advice, crash/'near miss' reporting facility and actions to take.
- Serious driving offences. House of Commons briefing paper SN01496. Dec 2016. <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN01496#fullreport>
- RoadPeace (charity for the road crash victims), particularly the resource library: www.roadpeace.org

¹ DfT. *Reported Road Casualties Great Britain: 2015*. Sep 2016. Table RAS 30001.

www.gov.uk/government/collections/road-accidents-and-safety-statistics

² DfT. *National Travel Survey: 2015*. Sep 2016. Table NTS0304.

www.gov.uk/government/collections/national-travel-survey-statistics. Note: until 2013, the NTS covered all of Great Britain, but thereafter England only. However, trip rates for GB as a whole and England in particular are similar, so we quote the figures for England as a simple proxy.

³ DfT. *Reported Road Casualties Great Britain: 2015*. Sep 2016. Table RAS 30001 (link above). DfT defines "serious injury" as: "An injury for which a person is detained in hospital as an "in-patient", or any of the following injuries whether or not they are detained in hospital: fractures, concussion, internal injuries, crushings, burns (excluding friction burns), severe cuts, severe general shock requiring medical treatment and injuries causing death 30 or more days after the accident."

www.gov.uk/government/uploads/system/uploads/attachment_data/file/568484/rrcgb-2015.pdf (page 389)

⁴ DfT. *Reported Road Casualties Great Britain: 2015*. Sep 2016. Table RAS 40004. (All areas).

www.gov.uk/government/collections/road-accidents-and-safety-statistics

⁵ DfT. *Reported Road Casualties Great Britain: 2015*. Sep 2016. Table RAS40004. (Link above).

⁶ Casualty figures from DfT, *Reported Road Casualties Great Britain 2015*. Sept 2016. RAS40004 (link above); road traffic figures from DfT, *Road Traffic Estimates in Great Britain: 2015*. May 2016. Tables: TRA0402 (pedal cycles); TRA0104 (motor vehicles). www.gov.uk/government/collections/road-traffic-statistics

⁷ Traffic figures from DfT *Road Traffic Estimates 2015*. May 2016. Tables TRA 0104 and TRA 0402 (link above); Casualty figures from DfT *Reported Road Casualties Great Britain 2015*. Sep. 2016. Table RAS 40004 (link above).

⁸ DoT and Home Office, *Road Traffic Law Review Report*, 12 April 1988

⁹ Cunningham S. *The reality of vehicular homicides: convictions for murder, manslaughter and causing death by dangerous driving*. Criminal Law Review. September 2001: "a problem inevitably arises from what is meant by a 'competent and careful' driver. In practice the competent and careful driver will be those twelve drivers sitting on the jury."

¹⁰ Cunningham S. *The reality of vehicular homicides: convictions for murder, manslaughter and causing death by dangerous driving*. Criminal Law Review. September 2001: "a problem inevitably arises from what is meant by a 'competent and careful' driver. In practice the competent and careful driver will be those twelve drivers sitting on the jury."

¹¹ The CPS's Road Traffic Offences - *Guidance on Charging Offences arising from Driving Incidents* (2013), is a merger of two previous CPS publications *Guidance on Prosecuting Cases of Bad Driving* and the *Policy for Prosecuting Cases of Bad Driving* (both



published in 2007). New guidance at:

http://www.cps.gov.uk/legal/p_to_r/road_traffic_offences_guidance_on_prosecuting_cases_of_bad_driving/

¹² CPS. *Road Traffic Offences – guidance on charging offences arising from driving incidents.*

http://www.cps.gov.uk/legal/p_to_r/road_traffic_offences_guidance_on_prosecuting_cases_of_bad_driving/

¹³ The original maximum sentence for causing death by dangerous driving (10 years) was set by the *Criminal Justice Act 1993*, and increased to 14 years in 2003.

¹⁴ Ministry of Justice. *Criminal Justice Statistics Quarterly Dec 2016*. May 2017. Overview Tables A.6.5A.

www.gov.uk/government/collections/criminal-justice-statistics-quarterly

¹⁵ Ministry of Justice. *Criminal Justice Statistics Quarterly Dec 2016*. May 2017. Overview Table A.6.2 (link above).

¹⁶ Ministry of Justice. *Criminal Justice Statistics Quarterly Dec 2016*. May 2017. Calculated from Overview Tables A.6.3A and A6.5A (link above).

¹⁷ For this, and further facts and commentary on driving bans, see RoadPeace's briefing *Driving bans given at court*. Dec 2016.

<https://roadpeacejusticewatch.files.wordpress.com/2017/02/roadpeace-driving-bans-at-court-2016.pdf>

¹⁸ Ministry of Justice. *Criminal Justice Statistics Quarterly Dec 2016*. May 2017. Overview Table A.6.6A (link above).

¹⁹ DVLA answer to a Freedom of Information follow-up request made by Cycling UK, June 2017.

²⁰ DfT. *National Travel Survey: 2015*. September 2016. Table NTS0205.

www.gov.uk/government/collections/national-travel-survey-statistics

²¹ Driving licence data from DVLA: <https://data.gov.uk/dataset/driving-licence-data>; Population statistics, GB (by age): ONS.

www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/populationestimateforukenglandandwalescotlandandnorthernireland

²² Traffic statistics from: DfT. *Road Traffic Estimates in Great Britain 2015*. June 2016. Table TRA0104; road casualty statistics

from: DfT. *Reported Road Casualties Great Britain: 2015*. Sept. 2016. Table RAS40004 (link above)

²³ *New Drivers Act 1995*. www.legislation.gov.uk/ukpga/1995/13/contents

²⁴ Ministry of Justice. *Criminal Justice Statistics Quarterly Dec 2016*. May 2017. Overview Table A.6.6A. (link above)

²⁵ For more background, see: <https://ndors.org.uk/>

²⁶ Aston University Press release 28/2/2013. 'Aston academics research effectiveness of speed awareness courses.'

<http://www.aston.ac.uk/about/news/releases/2013/january/speed-awareness-courses/>

²⁷ DfT. *Reported Road Casualties Great Britain: 2015*. Sep 2016. Tables RAS 50005 & 50007.

www.gov.uk/government/collections/road-accidents-and-safety-statistics

²⁸ Written answer from Baroness Kramer to a question posed by Lord Greaves. 26 Feb 2014.

<https://www.theyworkforyou.com/wrans/?d=2014-02-26>

²⁹ See, for example, the cases of Sam Boulton <http://www.cyclinguk.org/press-release/2017-06-05/taxi-driver-convicted-'car-dooring'-incident-caused-cyclist-death>, and Sam Harding www.cyclinguk.org/cycle/car-door-dangers

³⁰ Ministry of Justice. *Criminal Justice Statistics Quarterly Dec 2016*. May 2017. Overview Table A.6.4B (link above)

³¹ Home Office. *Police powers and procedures, England and Wales, year ending 31 March 2016*. Oct 2016.

www.gov.uk/government/uploads/system/uploads/attachment_data/file/562977/police-powers-procedures-hosb1516.pdf; Fixed

penalty notices for motoring offences statistics data tables: police powers and procedures year ending 31 March 2016, Table FPN_02. www.gov.uk/government/statistics/police-powers-and-procedures-england-and-wales-year-ending-31-march-2016

³² See www.restorativejustice.org.uk/what-restorative-justice. For an example of restorative justice in the case of a cyclist killed

by a motorist (August 2009), see www.telegraph.co.uk/news/newstoppers/politics/lawandorder/6028317/Motorist-spared-jail-for-killing-Oxford-graduate-cyclist.html

³³ See http://www.cps.gov.uk/legal/p_to_r/restorative_justice/ for the CPS's guidance on restorative justice.

³⁴ <http://restorativejustice.org.uk/resources/evidence-supporting-use-restorative-justice>