

POLICE, CRIME, SENTENCING AND COURTS BILL 2021
Briefing for Commons 2nd Reading, 16th and 17th March 2021

Cycling UK was founded in 1878 and has over 70,000 members. Historically known as 'CTC' or the 'Cyclists' Touring Club', Cycling UK's central charitable mission is to make cycling a safe, accessible, enjoyable and 'normal' transport option and leisure activity for people of all ages and abilities.

SUMMARY

'Road Justice' concerns

Cycling UK's long-running ['Road Justice' campaign](#) has for many years highlighted the persistent weakness of the legal system's response to motoring offences which cause death or serious injury. Our calls for a comprehensive review of road traffic offences and penalties were [supported](#) by the findings of a Commons Transport Committee [inquiry on road traffic law enforcement](#) in 2016, as well as achieving [cross-party consensus](#) in a Westminster Hall [debate on Road Justice in 2018](#).

We are therefore greatly dismayed that the [Police, Crime, Sentencing and Courts \(PCSC\) Bill](#) proposes only limited changes to road traffic offences and penalties. The Ministry of Justice had [promised a comprehensive review](#) of these back in 2014. Yet it then consulted on some much more limited measures in 2016, which now form the basis of the PCSC Bill's proposals.

Cycling UK would in principle wish to support the proposed increase in the maximum penalty for 'causing death by dangerous driving' from 14 years to life imprisonment. However we fear this would make [little difference on its own](#), without also:

- [Reviewing the definitions of 'dangerous' and 'careless' driving](#) respectively; and
- [Formalising the role of driving bans](#) as a sentencing option for those convicted of driving offences which have clearly caused 'danger' but who are not obviously 'dangerous' people who need to be imprisoned in the interests of public protection.

Unfortunately, the proposed new offence of 'causing serious injury by careless driving' could prove counterproductive if introduced without the above measures, particularly while also vastly increasing the gap between the maximum sentences for causing death by 'dangerous' and 'careless' driving respectively (the latter is set to remain at 5 years).

The framework of road traffic offences and penalties also needs amendments to:

- Increase the [penalties for hit-and-run offences](#) in cases where the driver knew, or reasonably should have known, that the collision had resulted in serious or potentially fatal injuries – this has been subject of a [parliamentary petition which attracted over 104,000 signatures](#);
- Strengthen the penalties for [causing death or serious injury by opening a car door unsafely](#) – this all too often results in death or serious injury to cyclists, yet the maximum penalties available do not remotely reflect this; and
- Close the loophole whereby large numbers of [convicted drivers evade driving bans](#) by claiming this would cause 'exceptional hardship'.

Other concerns

Cycling UK is also concerned at the Bill's proposals to:

- [Criminalise many forms of protest](#) – whilst Cycling UK does not directly support '[Critical Mass](#)' and [similar protests](#), we fully support people's rights to participate in them, and recognises their importance in bringing about crucial improvements to cycle safety in recent years;
- [Prohibit 'intentional trespass'](#). This too prompted a [petition, signed by almost 135,000 people](#). Their many concerns included the risk of criminalising wild camping by cyclists and others, with the added risk that those accused (possibly incorrectly) could have their vehicles seized. The definition of a 'vehicle' for this purpose is wide-ranging and could encompass pedal cycles.

Finally, we note that this huge and wide-ranging Bill is being rushed through with minimal time for scrutiny and debate, while the [Environment Bill](#) (which, among other things, includes vital measures to save lives by lowering air pollution thresholds) has been delayed by many months.

1. 'ROAD JUSTICE' ISSUES

Cycling UK has [long been concerned](#) that the framework of road traffic offences and penalties is not fit for purpose. Our ['Road Justice' campaign](#) was launched in 2013, after we had collected over 4,000 reports of bad driving which the victims felt were not dealt with properly by the legal system. Our calls for a comprehensive review of road traffic offences and penalties were [supported](#) by the findings of a Commons Transport Committee [inquiry on road traffic law enforcement](#) in 2016, as well as achieving [cross-party consensus](#) in a Westminster Hall [debate on Road Justice in 2018](#), following an [inquiry](#) on the subject by the All Party Parliamentary Group on Cycling and Walking.

The Ministry of Justice [promised in 2014](#) to carry out the comprehensive review of road traffic offences that we had long called for. We are therefore greatly dismayed that the Bill's proposals reflect only the much more limited set of proposals that it [consulted on in 2016](#).

The distinction between 'dangerous' and 'careless' driving

A key concern for Cycling UK and our allies is how often drivers are either prosecuted or convicted for a 'careless' driving offence, even where death and serious injury results from driving which self-evidently caused 'danger' that should have been 'obvious to a competent and careful driver', and which should therefore have been classed as 'dangerous' driving according to [section 2A of the Road Traffic Act 1988](#). Consequently, many such offences result in sentences that are widely perceived as unduly lenient.

One example is the case of [Frankie Katciotis](#), who admitted causing death of 61 year old cyclist Steven Jones by 'careless' driving in August 2017. Despite his visibility being hampered by low sunlight, Katciotis was breaking the speed limit when he drove into the back of Jones's bicycle in the New Forest. He received a suspended 6 months sentence and a 2-year driving ban, along with 240 hours of unpaid community service.

Other similar recent cases include:

- [David McSkimming](#), who admitted killing cyclist Anthony Satterthwaite by 'careless' driving in December 2018. McSkimming was driving at 59mph in a 40mph zone as he approached a bend, when he lost control of his car on a damp road and span into the cyclists' path. He too received a 6 month suspended sentence and a 2-year driving ban, along with 250 hours of community service.
- Coach driver [Barry Northcott](#), who killed cyclist Karla Roman in February 2017. He illegally pulled up beside her in the cyclists' box at a set of red traffic lights (he said he routinely did this "to avoid getting swarmed by cyclists"), then turned across her path without paying attention. He received a 15 month jail term and a 5 year driving ban.
- [Ayesha Penfold](#), who killed 69 year old cyclist John Durey in a head-on collision while overtaking a car and a lorry. Durey would have been visible to her for at least 45 seconds beforehand, yet she failed to see him till it was too late to take avoiding action. The jury failed to agree on a 'dangerous' verdict, hence she was convicted for causing death by careless driving (which she admitted). She received a 12-month community order and an 18 month driving ban.

The case of [Abdul Sujac](#) highlights the consequences of such leniency. In February 2017, Sujac seriously injured a pedestrian in Stratford, East London, but pleaded guilty to 'careless' driving and received just 9 points on his licence. He then sent friends a WhatsApp video saying "Nine points ain't stopping me from driving". Nine months later he killed pedestrian Laura Keyes, who was crossing the road as he drove at 68mph on a 30mph street, swerving in and out of traffic. Police found videos on his phone of his dangerous and illegal driving, including one captioned "ABDUL ripping the road 146mph". Keyes' death could have been prevented if his earlier offence had attracted the driving ban it deserved.

It also shows that the courts never come close to using the current maximum 14-year sentence. Although Sujac was a serious repeat offender, his guilty plea to the charge of causing death by dangerous driving earned him a sentence of just 6 years.

Similarly, [Reuben Richardson](#) received just an 8 years for killing cyclist Antonio Marchesini by dangerous driving in 2018. Richardson had no licence or insurance and was on licence from prison, when he drove the wrong way up a one-way street while using a mobile phone, and kept on driving after crushing Marchesini. When the police tracked him down, he gave a false name and refused to be interviewed. He had 13 previous convictions for 21 offences. If any case deserved a maximum sentence, this was it.

Clause 64 of the Bill proposes to increase the maximum sentences for the offences of 'causing death by dangerous driving', and of 'causing death by careless driving when under the influence of drink and drugs', from 14 years to life imprisonment. Cycling UK would wish to support these provisions. However, on their own, these changes would have [little if any impact](#). Cycling UK knows of no case where these maximum sentences have ever been used, and certainly there were [none in the 5 years to 2017](#).

It is far more important to prevent driving being dismissed as merely 'careless' offences, as happens in the majority of fatal prosecutions. If the maximum sentence for causing death by 'dangerous' driving is increased from 14 years to life, while causing death by 'careless' driving remains at 5 years, this is likely to have the following consequences:

- Defendants will be even more determined to oppose 'dangerous' prosecutions and instead to accept guilty pleas for 'careless' offences;
- Jurors are even less likely to be willing to convict for 'dangerous' offences if they fear this could inflict a very long sentence on a driver whose offence they could imagine committing themselves ('there but for the grace of God go I');
- This increased reluctance of jurors to convict for 'dangerous' offences would make prosecutors even more wary of pressing these charges in the first place, and instead would make them more likely to accept guilty pleas for 'careless' offences.

These effects would be further magnified if a new offence of causing serious injury by 'careless' driving is introduced at the same time, as proposed in clause 65 of the Bill.

Since the offence of causing death by careless driving was introduced in 2008, it has become the most common outcome from fatal driving prosecutions. In the 10 years to 2018, there were 1898 convictions for causing death by 'careless' driving, compared with just 1482 convictions for causing death by 'dangerous' driving. Cycling UK finds it hard to believe that so many fatal offences did not involve danger that would have been 'obvious to a competent and careful driver'.

This could be rectified in one of two ways:

- EITHER: 'Dangerous' driving could be defined as driving which falls so far below the standard of a competent and careful driver that it would result in an immediate failure if committed during a driving test. 'Careless' driving would be driving that fell below that standard, but only far enough to warrant a driving test points deduction. This would provide clarity for what were always supposed to be 'objectively' defined offences (i.e. they were intended to relate to the standard of driving, rather than the state of mind of the driver).
- OR: 'Dangerous' driving could be replaced by the former offence of 'Reckless driving', which preceded the introduction of 'dangerous' driving in 1991. The pitfalls of the older offence (namely the difficulty of proving a 'reckless' state of mind to the

criminal standard, i.e. 'beyond reasonable doubt') could be avoided by creating a reverse burden of proof, whereby driving that appeared to be 'reckless' could be assumed to be 'reckless', unless the driver provided a credible alternative explanation. This option is legally more complex, however it would create a better alignment between offences and penalties: reckless driving would generally attract custodial sentences, whereas 'careless' offences would mainly attract driving bans.

The importance of driving bans, and the 'exceptional hardship' loophole

Whatever option is chosen, there is a need to formalise the role of driving bans as a sentencing option. Driving bans should be the norm for offences which may have caused danger but where there is no indication that the driver is a 'dangerous' person who needs to be locked up for public protection. Custody should be the assumed sentence for those displaying a more reckless attitude, including those who breach driving bans.

Meanwhile, the rules on driving bans need to be tightened, including for drivers who have 'totted up' 12 points on their licence. Drivers facing bans routinely gain exemptions by claiming that this would cause 'exceptional hardship'. Recent figures show that around [8,800 people are still being allowed to drive](#) despite having accrued 12 penalty points.

The risks of this approach are highlighted by the case of [Christopher Gard](#). In August 2015 he hit and killed cyclist Lee Martin, while texting a friend. He had failed to notice Lee and several other cyclists he had passed who were taking part in a time-trial on the A31 in Hampshire. This was the 9th time since 2009 that he had been caught using a mobile phone while driving. Twice previously he had been sent on a driver retraining course, and he had been convicted and fined on 6 other occasions. Yet the magistrates repeatedly accepted his plea that banning him from driving would cause 'exceptional hardship'. This wholly 'unexceptional' leniency created far greater 'hardship' for Lee's bereaved family.

Serious and fatal 'car dooring' offences

Another legal loophole which needs closing is the leniency of the penalties for opening car doors dangerously. Cycling UK has called for the forthcoming revision of the Highway Code to say that drivers and passengers should open a car door with the hand on the opposite side to the door (e.g. using their left hand to open a door on their right). This technique, known as the 'Dutch Reach' (because it is normal in the Netherlands) makes them turn their head to see whether it is safe before opening the door.

However the maximum penalty for this offence – £1000 fine – does not remotely reflect its [potentially lethal consequences](#). A Freedom of Information request by Cycling UK showed that, between 2011 and 2015, there were 3,108 people injured, eight fatally, where the police recorded 'vehicle door opened or closed negligently' as a contributory factor to the injury. 2,009 of those injured were cyclists, of whom 5 were killed, including [Sam Harding](#), [Sam Boulton](#) and [Robert Hamilton](#).

Serious and fatal 'hit-and-run' offences

If a driver is involved in a collision which results in injury or property damage, they are [required to stop and exchange details](#) or, failing that, to report the incident to the police as soon as practicable and within a maximum of 24 hours. However the maximum penalties for failing to do so – a 6-month prison sentence plus a fine, a minimum of 5 points on the driver's licence and possible disqualification – are only sufficient to deter leaving the scene following relatively minor vehicle damage. They do not reflect the gravity of leaving the scene where the driver knew (or ought reasonably to have known) that a victim had suffered serious or potentially fatal injuries.

Cyclists killed in hit-and-run collisions in recent months include [Andell Goulbourne](#), [Jay Kristiansen](#) and [Agnieszka Poczowska](#). The car which hit Poczowska also injured another cyclist shortly afterwards, before the driver fled.

Where the driver is identified but the victim does not die, they can receive absurdly lenient sentences. [Brandon Tate](#) was driving without a licence or insurance when he collided with an unnamed cyclist, causing life-changing injuries, and left the scene. He escaped jail, receiving only an 18-month community order, 250 hours of unpaid work and an 18 month driving ban.

A recent parliamentary petition calling for substantially increased penalties for hit-and-run offences has attracted [over 104,000 signatures](#). The Government's proposals have yet to address this issue.

2. OTHER CONCERNS

Protest rights: 'Critical mass' and vigils for deceased cyclists

['Critical Mass' cycle rides](#) are a world-wide phenomenon. Some see them as a protest in favour of cycle-friendly streets, with others seeing them simply as a cycle ride or a celebration of car-free space. They have neither organisers nor leaders: participants simply gather at a regular meeting-point at a regular time (typically the last Friday of the month), and follow whoever is at the front of the ride.

Vigils for deceased cyclists are also common. The [vigils in London](#) held by campaign group Stop Killing Cyclists were an important catalyst for persuading Transport for London to adopt higher-quality cycle provision and to improve lorry safety.

Cycling UK does not directly support these events but does [recognise people's rights to take part](#) in them. Cycling UK's Cyclists' Defence Fund supported a [legal challenge](#) to prevent the Police from ruling London's 'Critical Mass' rides unlawful (the challenge initially succeeded but was reversed on appeal – though critical mass rides still take place).

We are therefore concerned at the PCSC Bill's provisions to allow the imposition of unspecified conditions on public processions or public assemblies (in clauses 54 and 55) to prevent them causing other people "serious unease, alarm or distress"; and to introduce a new statutory offence of "causing a public nuisance" (clause 57), a term whose definition is worryingly broad, but with a maximum sentence of 10 years. We note that this is twice the maximum sentence for causing death by 'careless' driving.

Criminalising 'intentional trespass': the threat to wild camping

We are similarly concerned that the Bill's proposals (in Part 4) to criminalise unlawful encampments could also catch cyclists who wild-camp. If a police officer, the occupier of land or a representative of the occupier believes someone is 'residing' or intending to reside on land (including temporarily) with a vehicle (which does not have to be with them), and their presence or activities have caused or are likely to cause 'significant' damage or disruption, or 'significant distress' due to the person's 'offensive conduct', an officer can require that person to leave with all their property, and can arrest them and/or confiscate any vehicle or other property they have with them. The definition of a vehicle is very broad: it does not have to be suitable for use on the road and does not even have to have wheels.

We at least seek clarification or amendments to the definitions of 'reside' and 'vehicle', and other terms in this clause. We also question whether these provisions are necessary.

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