



## POLICE, CRIME, SENTENCING AND COURTS BILL

### Lords 2<sup>nd</sup> Reading Briefing on Part 5: Road traffic offences and penalties

#### INTRODUCTION

Part 5 of the [Police, Crime, Sentencing and Courts Bill](#)<sup>1</sup> currently includes three proposed changes to the framework of road traffic offences and penalties:

1. It increases the maximum sentence for 'causing death by dangerous driving', from 14 years to a life sentence;
2. Similarly, it increases the maximum sentence for 'causing death by careless driving while under the influence of drink or drugs', from 14 years to a life sentence (these two offences have traditionally been seen as equivalent);
3. It introduces a new offence of 'causing serious injury by careless driving', with a maximum sentence of 2 years.

Although our organisations are cautiously supportive of these proposals, we fear they will do very little to address the many serious problems with the framework of road traffic offences and penalties. The Government promised a [full review of this framework](#)<sup>2</sup> back in 2014, but this has never happened. Instead, the above proposals resulted from a [much more limited consultation in 2017](#).<sup>3</sup> We believe a much wider overhaul of the legal framework is still needed, both to address its many other failings, and to prevent the above proposals from having adverse unintended consequences.

There are three key objectives we seek to pursue by way of amendments to the PCSC Bill:

1. *Prevent drivers from routinely escaping driving bans by pleading that this would cause 'exceptional hardship'.* The routine acceptance of such pleas allows dangerous drivers to continue driving, sometimes with fatal consequences.
2. *Increase the maximum sentences for 'hit and run' offences where someone is left with (potentially) very serious or fatal injuries.* At present, the maximum penalties available are appropriate for when a driver scratches someone else's car and fails to leave their contact details, but they are woefully inadequate for incidents where a driver leaves a victim for dead.
3. *Seek a Government commitment - preferably in legislation - to carry out a full review of road traffic offences and penalties, as promised in 2014.*

That review in turn would be an opportunity, among other things, to:

- *Clarify the legal distinction between 'careless' and 'dangerous' driving offences - this is currently very unclear and regularly results in inconsistent and/or weak justice.*
- *Integrate driving bans far more strongly into the sentencing framework for driving offences, recognising that most (though by no means all) of the people who have driven dangerously are not 'dangerous people' (i.e. they do not need to be locked up for public protection, they simply need to be banned from driving), while retaining serious prison sentences for more obviously 'reckless' or repeat offenders (including those who breach past driving bans).*
- *Provide for interim driving bans to be imposed on drivers charged with an offence which carries a mandatory driving ban on conviction.*
- *Ensure that the maximum penalties for 'causing serious injury' offences do not fall even further behind those for 'causing death' by equally bad driving.*
- *Increase the maximum penalty for 'car dooring' offences which cause death or serious injury.*
- *Remove the word "accident" from the legal framework.*

Several of these issues are covered in Cycling UK's booklet [Five Flaws: Failing Laws](#)<sup>4</sup> and [Commons 2nd Reading](#)<sup>5</sup> and [Committee Stage briefings](#)<sup>6</sup>, with the latter proposing amendments to address them.

### **Failure to stop, exchange details and/or report collisions involving actual or potential serious or fatal injury**

Currently, the maximum penalty for the offence of “failing to stop or report accidents” (i.e. ‘hit-and-run’ offences) is a 6 month custodial sentence. This may be appropriate in cases where someone has simply driven off after scratching the paintwork of someone else’s parked car, but not when they have left someone for dead in the road. The cases of [Peter Price](#), [Joe Nickless](#) and [Scott Walker](#) exemplify the terrible injustice that this can cause.

A [parliamentary petition](#)<sup>7</sup> calling for tougher laws to cover this situation has attracted over 104,000 signatures. It was also covered in [this recent Sunday Times article](#).<sup>8</sup>

We seek a variant of this offence, to cover cases where a driver fails to remain at the scene or to report a collision which they knew had resulted in serious or fatal injury, or where they ought reasonably to have realised that it might have done so. This would have a maximum sentence of 14 years custody. It would also apply if a driver failed to make best endeavours both to report the collision immediately and to exchange details with anyone affected by it – or, if meeting these requirements was impossible or impractical at the time, to comply with them as soon as possible afterwards. The current law does not prevent drivers from stopping briefly, then leaving the scene before anyone requests their details – or from delaying making a report of a collision for up to 24 hours, while they get any alcohol or drugs out of their system. We also seek the removal of the word “accident” from the definition of this offence, as collisions can rarely be dismissed as mere “accidents”.

### **Definition of ‘exceptional hardship’**

When an offender faces a driving ban – either having been convicted for an offence whose sentence includes a mandatory driving ban, or having accumulated 12 penalty points on their licence – the court can exempt them from the ban, or shorten it, if it accepts a plea from the offender that this would cause them ‘exceptional hardship’. However ‘exceptional hardship’ pleas are accepted so often that the word ‘exceptional’ has fallen into disrepute.

The consequences of such leniency can be lethal. When [Christopher Gard](#)<sup>9</sup> hit and killed cyclist Lee Martin in 2015, it was the 9<sup>th</sup> 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 magistrates had repeatedly accepted his plea that a driving ban would cause him ‘exceptional hardship’.

Similarly, motorcyclist Louis McGovern was killed when [Kurt Sammon](#)<sup>10</sup> crashed into him, having jumped a red light while distracted by his hands-free mobile phone. Sammon had a record of motoring offences dating back to 2002 including driving while disqualified. He had previously left a 13 year old boy to die in a hit and run collision. Yet he too had twice avoided driving bans following subsequent convictions for mobile phone offences, by pleading ‘exceptional hardship’.

Our proposed amendment provides a new definition of ‘exceptional hardship’. It requires that a court should only regard hardship as ‘exceptional’ if and only if it is significantly greater than the hardship that would arise if the same disqualification were imposed on a large majority of other drivers.

## A review of road traffic offences and penalties

We noted in our introduction that the Government promised in 2014 to carry out a full review of road traffic offences and sentencing, as our organisations had long called for.

That call has since been echoed:

- By the Commons Transport Committee, in the report of its 2015-16 [inquiry on Road Traffic Law Enforcement](#)<sup>11</sup>
- By the All Party Parliamentary Group on Cycling and Walking (formerly the All Party Parliamentary Cycling Group), in the report of its 2017 [inquiry on Cycling and the Justice System](#)<sup>12</sup>
- In a [2018 parliamentary debate on Road Justice and the Legal Framework](#),<sup>13</sup> which revealed a cross-party consensus on the need for wide-ranging reforms.

Several other road safety organisations, including the AA, RAC and RAC Foundation, have now voiced support for our call for a wider review of road traffic offences and penalties – see their statements of support in Cycling UK’s booklet [Five Flaws: Failing Laws](#).<sup>4</sup>

We urge Peers to press Ministers to recommit to carry out such a review – if need be, by including a legislative commitment to this effect in the Bill.

The remaining sections set out some of the key measures we would want included in this review. We have drafted amendments for most of these measures, but would be content for them to be tabled as probing amendments.

### Clarify or amend the distinction between ‘careless’ and ‘dangerous’ driving offences

A key concern for our organisations 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](#).<sup>14</sup> Consequently, many such offences result in sentences that are widely perceived as unduly lenient.

One example is the case of [Frankie Katciotis](#),<sup>15</sup> 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.

Cycling UK’s booklet [‘Failure to see what was there to be seen’](#)<sup>16</sup> highlights the enormous inconsistencies in how the terms ‘careless’ and ‘dangerous’ driving are interpreted by the police, prosecutors and the courts respectively. The ratio of ‘careless’ to ‘dangerous’ prosecutions and convictions has varied greatly over time, even though no change has been made to the definitions of these offences. Action Vision Zero has documented [large variations](#)<sup>17</sup> in the ratio of ‘careless’ prosecutions per fatal and serious injury in different parts of the country, and in the ratio of careless to dangerous prosecutions and convictions (the latter is as yet unpublished). These variations clearly indicate that the terms ‘careless’ and ‘dangerous’ driving are not consistently understood or applied.

For instance, the introduction of the offence of ‘causing death by careless driving’ (in 2008) led to a huge drop in the number of prosecutions and convictions for causing death by dangerous driving’, even though the definition of the latter offence had not

changed. We fear that the Bill's proposed increase in sentencing for 'causing death by dangerous driving', coupled with a new offence of 'causing serious injury by careless driving', could once again shift the boundary between 'careless' and 'dangerous' prosecutions and convictions, in ways that would undermine the intended effects of these provisions, unless steps are taken to clarify these terms.

The case of [Abdul Sujac](#)<sup>18</sup> highlights the consequences of dismissing serious driving offences as mere 'carelessness'. 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.

Our proposed amendment would define driving as 'careless, or inconsiderate' if it involves a breach of the Highway Code that results in inconvenience, intimidation or danger to one or more other road users. Such a breach would however amount to 'dangerous' driving if it is sufficiently serious that it would lead to automatic failure if it were committed during a driving test.

These amended definitions would also apply for offences involving 'causing death' and 'causing serious injury' by 'dangerous' or by 'careless, or inconsiderate' driving respectively (Road Traffic Act 1988,<sup>19</sup> sections [1](#), [1A](#) and [2B](#)).

The amended definition of 'careless driving' would also apply to the Bill's proposed new offence of 'causing serious injury by careless driving' (clause 64 of the Bill) and, unless our next amendment is also passed, to the existing offence of 'causing death by careless driving when under influence of drink or drugs' (RTA [s3A](#)).

We also wish to propose amendments that would avoid widening what is already a very large gap between the maximum sentences for 'causing death' offences and those for 'causing serious injury' by equally bad driving. This gap is also likely to be a significant reason for the reluctance of courts to go anywhere close to imposing the maximum sentences for causing death offences, given how much lower the maximum sentence would have been if the victim had 'merely' been maimed rather than killed.

### **The importance of driving bans, including interim driving bans**

Action to clarify the definitions of careless and dangerous driving needs to go hand in hand with measures 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.

We also propose measures to increase the use of interim driving bans for drivers charged with offences which carry a mandatory driving ban on conviction. Lorry driver [Robert Palmer](#)<sup>20</sup> was convicted of causing the deaths of two cyclists, Toby Wallace and Andrew

MacMenigall, who were taking part in a charity bike ride from Lands End to John O'Groats in 2013. He had driven into the back of them, having fallen asleep at the wheel, having worked excessive hours. However, while awaiting trial for that offence, he also caused serious injury in a second offence – again by driving into the back of another road user – for which he was given an additional one-year sentence. That second offence, which could too easily have also been fatal, would have been prevented if he had had an interim driving ban imposed following the first offence.

Clearly though, if driving bans are to be an effective sentencing option, it is essential to close the 'exceptional hardship' loophole which enables drivers to routinely avoid them.

We also propose increasing the penalties for those convicted of motoring offences having previously faced driving bans.

### Serious and fatal 'car dooring' offences

One other 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](#).<sup>21</sup> 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](#),<sup>22</sup> [Sam Boulton](#)<sup>23</sup> and [Robert Hamilton](#).<sup>24</sup>

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