



**CPS**

**Consultation on the draft guidance  
on charging offences arising  
from driving incidents**

**September 2012**



## **Consultation on the CPS Draft Guidance on Charging Offences arising from Driving Incidents**

### **The Consultation Process**

The Crown Prosecution Service (CPS) currently has two documents which set out how we would approach the prosecution of driving related incidents. These are the “Guidance on Prosecuting Cases of Bad Driving” and the “Policy for Prosecuting Cases of Bad Driving” and were published in 2007 and updated in 2010. We have now consolidated these two documents into a single document. We want to know what you think about the fresh guidance.

### **What is this consultation about?**

Legal Guidance is central to how the CPS makes decisions and is regularly updated to reflect changes in the law and procedure. As part of our commitment to open and transparent decision making, it is freely available on our website. The aim of the Driving Incidents Guidance is to help prosecutors when dealing with charging offences arising from certain driving incidents. It outlines charging standards and factors for consideration when prosecutors are reviewing cases and making charging decisions.

We want to make sure that the final version of our Guidance is clear, fair and right.

We would appreciate your comments and views on developing the final version of the Guidance by no later than **8 November 2012**.

### **How to respond**

A response form is available at the end of this document. A Word version can be downloaded from the consultation homepage.

We would prefer electronic replies to the consultation on the form provided although both written and electronic responses are acceptable.

Responding by email:

- After reading the guidance, download the response form and complete it by typing your comments into the space provided.
- Please tell us your name, organisation (if applicable) and postal address
- Save the completed form on your computer, send an email to us at ([HQ.DrivingConsultation@cps.gsi.gov.uk](mailto:HQ.DrivingConsultation@cps.gsi.gov.uk)) and attach your response form
- Your response must get to us by 8 November 2012

Responding by post:

- Print the response form and complete it. Use extra sheets if the form is not long enough
- Please tell us your name, organisation (if applicable) postal address and email address (if you have one)
- Send the completed form to us at the address below. Your response must get to us by 8 November 2012:

Driving Consultation  
Strategy and Policy Directorate  
Crown Prosecution Service  
Rose Court  
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### **Confidentiality of responses**

The information you send us may be passed to colleagues within the CPS, the Government or related agencies.

Furthermore, information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information legislation including the Freedom of Information Act 2000 (FOIA).

If you want the information that you provide to be treated as confidential, please be aware that, under FOIA, there is a statutory Code of Practice with which public authorities must

comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could briefly explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded as binding on the CPS.

Please ensure your response is marked clearly if you wish your response and name to be kept confidential. Confidential responses will be included in any statistical summary of numbers of comments received and views expressed. The CPS will process your personal data in accordance with the Data Protection Act 1998 – in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

### **Alternative Formats**

If you require a copy of this Consultation Paper in any other format, for example, audio or large print, please contact the postal address above.

### **What happens next?**

We will consider every response received. A summary of the consultation responses will be published on the CPS website in accordance with the Government's guidelines.

### **Government Consultation Principles**

The key Consultation Principles are:

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;
- departments will need to give more thought to how they engage with and consult with those who are affected;
- consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy; and
- the principles of the Compact between government and the voluntary and community sector will continue to be respected.

The complete Consultation Principles are available at

<http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

Updated: September 2012

## **Crown Prosecution Service**

# **Guidance on Charging Offences arising from Driving Incidents**

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## **Introduction**

The Crown Prosecution Service (CPS) recognises that being open and transparent about how our practices and procedures are applied by prosecutors when reaching charging and other casework decisions is vital to increasing public confidence in the way we operate.

This guidance deals with a number of the most serious offences that directly result from or relate to a driving incident (and the way in which a motor vehicle has been driven). It replaces the two previous documents which set out how the CPS would approach driving related incidents. They were published in 2007 and were: “Guidance on Prosecuting Cases of Bad Driving” and the “Policy for Prosecuting Cases of Bad Driving”. We have consolidated, updated and amended the two documents into this latest guidance.

The guidance is designed to help prosecutors when dealing with charging offences arising from certain driving incidents. In doing so, it outlines charging standards and factors for consideration when prosecution decisions are taken.

This guidance must always be read in conjunction with the Code for Crown Prosecutors (the Code) when taking prosecution decisions.

## **Application of the Code for Crown Prosecutors**

Prosecutors are reminded that each case must be considered on its own facts and on its own merits when applying the Full Code Test as contained in the Code for Crown Prosecutors (the Code). The Full Code Test has two stages. The first is the consideration of whether there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge (the evidential stage). If there is sufficient evidence, the prosecutor must then go on to consider the second stage namely whether a prosecution is in the public interest (the public interest stage).

The relevant questions and considerations are set out in detail in the Code.

Given the serious nature of many of the offences covered by this guidance, especially those cases involving the death of another or where serious injury has occurred, the public interest will almost always be in favour of prosecution. However, there will be cases where we decide that it is not in the public interest to prosecute.

## Death in driving cases where the victim is a close friend or relative of the driver (“Nearest and Dearest” cases)

Any case which involves the death of another will inevitably be one of the most serious matters that will be dealt with by prosecutors. Whilst the serious nature of these cases usually means that a prosecution will be in the public interest, prosecutors must acknowledge the greater emotional impact felt by a driver where the death he/she has caused is that of a relative or someone with whom they share a close personal/family relationship. These types of cases are more commonly referred to as “nearest and dearest” cases.

When reviewing such cases, prosecutors must balance the circumstances of each individual case with the consequences to the driver who has suffered significant personal loss from the bereavement. Whilst there may be sufficient evidence to prosecute, we recognise that in some instances such prosecutions would be inappropriate and should not proceed on public interest grounds due to the life long consequences of losing a loved one and being responsible for that loss.

However, this must be balanced against the need to ensure the safety of other road users including motorists, passengers, those on public transport, cyclists and pedestrians. If there is evidence to suggest that an individual presents a continuing danger to other road users, the proper course will be to prosecute that individual. Evidence that someone presents a continuing danger to other road users may exist if they have any previous relevant convictions or a medical condition. For example, if a suspect has previous convictions for driving offences such as dangerous driving or driving with excess alcohol or whilst under the influence of drugs, this is likely to provide evidence that they are a continuing danger to others.

Where the degree of culpability of the driver is low and the fatality was as a result of the standard of driving falling below that required by law with no evidence of danger to other road users, it is unlikely that a prosecution will be in the public interest. Examples of this may include minor errors of judgement such as failure to look properly before turning at a junction due to a momentary lapse of attention; or, where the illegality arose as a result of a genuine mistake on the part of the driver, for example, a mistaken belief that he/she was insured.

The same conclusion would be appropriate where a driver demonstrated a higher degree of culpability (i.e. slightly more than low culpability) but there was no evidence of continuing danger to others. For instance, where an individual is tuning a car radio and is distracted by this and a fatality ensues.

Where however both high culpability and evidence of continuing danger are apparent, the proper course will be to prosecute. For example, where an individual demonstrated a prolonged course of dangerous driving whilst being over the prescribed alcohol limit or having never had motor insurance or having been previously disqualified from driving or never having passed a driving test. See **Att.**

***Gen's Reference No 65 of 2008 [2008] EWCA Crim 3135 (Daltry Roger Pearson)***

This is not an exhaustive set of examples and prosecutors are reminded that each case must be considered on its own particular set of facts and its own merits when determining whether or not there is evidence to show an individual presents a continuing danger.

If a person other than a "nearest and dearest" is also killed as a result of the manner of an individual's driving, an appropriate charge for causing the death of that individual should normally follow, notwithstanding the fact that someone else has also been killed who is a close relative or someone with whom they share a close personal/family relationship. The case can be presented to the court without a separate charge for the death of the close relative/someone with whom they share a close personal/family relationship.

## **Drivers of emergency service vehicles and drivers in emergencies**

In the course of their duties, police officers, ambulance drivers and fire-fighters may need to drive a vehicle in response to an emergency in a manner which would otherwise be considered unacceptable. It is very unlikely to be appropriate to proceed with a prosecution on public interest grounds if a police officer, ambulance driver or fire-fighter commits a driving offence while responding to an emergency call unless the driving is dangerous or indicates a high degree of culpability.

The nature of the emergency known to, or reasonably perceived by the driver, their level of culpability and the nature of the driving, are relevant factors that must be considered carefully before deciding whether a case should proceed. In the case of ***R v Bannister [2009] EWCA Crim 1571*** a police officer drove in the dark, with no lighting and in heavy rain on a motorway at speeds of up to 120mph and his car spun out of control and crashed. During his prosecution for dangerous driving it was argued that as the officer had completed an advanced training course he was able to drive safely at high speeds even in adverse weather conditions, as he was more skilled than the ordinary competent and careful driver who had not completed similar advanced training.

The court held that special skill (or lack of skill) of a driver is an irrelevant circumstance when considering whether driving is dangerous. Policemen were not entitled to drive dangerously when on duty or responding to an emergency. The officer was eventually convicted of driving without due care and attention but see the full judgment for the circumstances surrounding this.

It is apparent from the case of *Bannister* that members of the emergency services do not enjoy any special exemption from prosecution when responding to emergency calls and they owe the same duty of care to other road users as members of the general public.

In cases involving emergency vehicles or drivers in emergencies which have been referred by the investigator to the CPS for a prosecution decision following the completion of the investigation, prosecutors will need to have regard to evidence in the form of any police collision reports or statements regarding the manner of the driving. It is essential that the police provide this evidence when referring the case to the CPS for review or to make a charging decision and it should be requested if it is not provided.

There will sometimes be cases when a person who is not a member of the emergency services will have to drive in response to an emergency situation. For example, a parent taking a sick child to hospital. As with members of the emergency services, the considerations outlined above will also apply in these cases.

## **Other public interest considerations when charging offences arising from driving incidents**

The following is not exhaustive but it indicates some further public interest considerations that prosecutors should keep in mind:

- The level of culpability of a driver is likely to be relevant. The greater the degree of culpability, the greater the public interest in favour of prosecution;
- If the driver has caused harm, annoyance or distress to other road users, it is more likely to be in the public interest to prosecute; **See the section on Driving without reasonable consideration**
- if a person drives below the required standard and they have not passed a driving test, are unfit to drive because of a medical condition, or are driving otherwise than in accordance with the conditions of a provisional licence, it is more likely to be in the public interest to prosecute;
- It will not necessarily be appropriate to prosecute every case where a minor collision occurs e.g. where the incident is of a type that involves minimal carelessness which may occur when parking a vehicle or in traffic queues. The extent of any damage does not matter in such cases, it is the extent of the driving error. It is not a function of the criminal justice system to conduct proceedings in order to settle questions of liability for the benefit of individual drivers or insurance companies.

Prosecutors should also always consider the public interest factors identified when considering the questions set out in the public interest stage of the Full Code Test.

## General Issues

### Referral of Fatal Collision/Manslaughter Cases

To ensure consistency of approach, charging decisions in all fatal collision cases should be approved by a Chief Crown Prosecutor (CCP), Deputy Chief Crown Prosecutor (DCCP) or nominated senior decision maker (who will have been nominated for this role by their CCP/DCCP). **Refer to the relevant chapter in the CPS guidance entitled CPS: Referral of Cases.**

Where there is evidence that points towards an organisation to which the terms of the Corporate Manslaughter and Corporate Homicide Act 2007 might apply, prosecutors must refer these cases to the Special Crime and Counter Terrorism Division. **CPS: Referral of Cases guidance.**

Where a prosecutor is of the view that there may be sufficient evidence to warrant full consideration of a charge of gross negligence manslaughter, these cases should be referred to the relevant Complex Casework Unit (**see the Homicide: Murder and Manslaughter Guidance and also CPS: Referral of Cases guidance**).

### Terminology

When a suspect's/defendant's manner of driving has resulted in death or serious injury to a complainant, the term "fatal collision" or "collision" should be used in all correspondence, conversation at court and in meetings when dealing with these cases. The term "accidents" is unsuitable.

### Complainant and Witness Care

The CPS offers a direct service to bereaved families in a number of qualifying offences including all the fatal collision offences outlined in this guidance. **Prosecutors are referred to the Homicide Cases – Guidance on CPS service to bereaved families chapter in our Legal Guidance.** In addition, prosecutors should also refer to the **Direct Communication with Victims chapter in the Legal Guidance** with specific reference to Annex 6 regarding the practicalities of arranging and conducting meetings with bereaved families.

## **Allocation (Mode of Trial) in Cases Involving a Death**

All allocation (mode of trial) decisions in cases involving a death should be agreed and approved by the CCP/DCCP or nominated senior decision maker (who will have been nominated for this role by their CCP/DCCP) and, where possible, the bereaved family should be advised of it, and the reasons for reaching the decision, well in advance of the hearing at which allocation (mode of trial) will be considered.

Prosecutors will be alert to the need for sensitivity when addressing the issue of allocation (mode of trial) during any court hearing bearing in mind that members of the bereaved family are likely to be present.

In order to inform the representations on allocation (mode of trial), prosecutors should compare the circumstances of the particular case they are reviewing with those in the Sentencing Guidelines Council Causing Death by Driving Definitive Guideline (SGC Definitive Guidelines) especially in the light of the aggravating and mitigating factors set out for the offence. See the section entitled **Sentencing** for more information.

For the purpose of absolute clarity, prosecutors should make explicit reference at the allocation (mode of trial) hearing to relevant factors in the SGC Definitive Guideline.

Prosecutors are reminded of the importance of recording clearly and thoroughly the reasons for their mode of trial decisions.

Prosecutors should note that Schedule 3(1) para 5 of the Criminal Justice Act 2003 amended section 19 of the Magistrates' Courts Act 1980 (MCA 1980) which came into force on 18 June 2012.

Section 19(2)(a) of the MCA 1980 now allows the court to be informed of a defendant's previous convictions by the prosecution when the court is considering the appropriate venue for trial. Prosecutors should check that these provisions have been implemented in their Area as their commencement is taking place on a phased basis.

## **Bail**

Where bail is applied for in serious driving offences and especially in cases involving fatal collisions, prosecutors are reminded that the relevant Bail Act 1976 considerations apply. Where there are substantial grounds for believing there is a risk of the defendant committing further offences on bail, failing to surrender or interfering with witnesses, prosecutors should give careful consideration to asking the court to impose conditions on bail or remand the defendant in custody.

However, prosecutors are reminded that bail conditions or a remand in custody should never be requested as a punitive measure, despite the strength of the evidence in the case, or seeming lack of defence available to a defendant. Each case must be assessed on its own facts and its own merits and bail conditions sought that are proportionate and necessary.

Whilst the imposition of some or no bail conditions, or a remand in custody are always a decision for the court, prosecutors must ensure that appropriate representations are made to assist the court to address the issue.

In fatal collision cases, or cases where serious harm or injury has occurred, a bail condition not to drive a motor vehicle will often be appropriate having regard to the overall circumstances of a case and the need to protect the public from drivers who may cause future harm and are a danger to other road users. For example, where a defendant has previous convictions for driving offences or was on bail for a driving offence when a subsequent serious driving offence has been committed.

## Acceptance of Pleas

Prosecutors are reminded of the following in relation to acceptance of pleas:

- Any decision to accept a plea to a lesser offence in fatal collision cases must be approved by the CCP/DCCP or nominated senior decision maker (who will have been nominated for this role by their CCP/DCCP). **See CPS: Referral of Cases elsewhere in the Legal Guidance.**
- Prosecutors should consult the complainant or the bereaved family before any decision to accept a plea to a less serious offence is made. This also applies to circumstances where the defendant indicates a guilty plea on the basis of certain specified facts. However, the final decision in this regard rests with the prosecutor/CCP/DCCP or nominated senior decision maker.
- Prosecutors must also follow the Attorney General's Guidelines on the Acceptance of Pleas and the Prosecutor's Role in the Sentencing Exercise. See also the chapter entitled **Sentencing – Overview** elsewhere in the Legal Guidance.

## Sentencing

The SGC Definitive Guideline covers four offences, namely under section 1 of the Road Traffic Act 1988 (causing death by dangerous driving), under section 3A of the RTA 1988 (causing death by careless driving whilst under the influence of drink/drugs), under section 2B of the RTA 1988 (causing death by careless or

inconsiderate driving) and under section 3ZB RTA of the 1988 (causing death by driving while unlicensed, disqualified or uninsured).

The SGC Definitive Guideline is an essential reference point for prosecutors deciding upon the most suitable venue for trial in offences triable either way, namely: causing death by careless or inconsiderate driving; and causing death by driving whilst unlicensed, disqualified or uninsured. The SGC Definitive Guideline supersedes guidelines set out in case law.

Prosecutors should make sure that the court has all the information it needs to sentence appropriately including reminding the court of its power to impose an interim disqualification on a defendant where it is lawful to do so and any information contained in an impact statement from the complainant.

## **Inquests**

Section 16 of the Coroners Act 1988 (as amended by section 20(5) of the Road Safety Act 2006 - RSA 2006) stipulates that a Coroner must adjourn an inquest where a person is charged with any of the offences below:

- causing death by dangerous driving;
- causing death by careless driving while under the influence of drink or drugs;
- causing death by driving while unlicensed/disqualified or uninsured;
- causing death by careless driving.

The inquest should not take place until the conclusion of the criminal proceedings unless there is a reason to proceed with it.

Section 20(5) of the RSA 2006 does not apply to fatal collisions where section 3 of the RTA 1988 (careless driving) has been charged because in such cases causation cannot be proved.

Summary trials for careless driving offences should be adjourned until after the inquest has taken place. ***Smith v DPP [2000] R.T.R.36, R v Beresford (1952)116 JP Jo 194***

Where it is considered beneficial to do so, prosecutors should attend an inquest where the related criminal proceedings have still to be concluded.

## **Offences involving Corporate Bodies**

Prosecutors should ensure that cases involving a suspect's manner of driving relating to a workplace are reviewed not only to establish whether the driver should

be prosecuted for any offence or offences, but also to determine whether there is evidence to show that an offence or offences have been committed by the driver's employer.

The CPS has a protocol with the Health and Safety Executive, the Local Government Association and the Police for the investigation and prosecution of work related deaths and prosecutors should ensure that there is early liaison in appropriate cases where such a death has been caused as a result of a driving offence. See Legal Guidance chapter entitled **Prosecuting Agencies - Other**.

### **Commission of a number of offences**

In cases where the evidence shows a course of conduct, which involves the commission of a number of statutory or regulatory offences that are very close in time with one another, there is likely to be an overlap between careless driving and some other offences such as driving with excess alcohol, or a 'Construction and Use' offence. In such cases prosecutors should decide whether a separate charge of careless driving adds anything to the case, and whether any additional penalty is likely to result on conviction, before deciding to charge this offence as well

For example, a driver may drive through a red traffic light, ignore a pelican crossing and fail to give way at a junction within the same course of driving. The court needs to be made aware of the link between what might otherwise appear as isolated incidents, which in reality form part of a more serious course of conduct. Where this type of situation arises, the manner of driving has, in reality, fallen below or far below that expected of a competent and careful driver because of the driver's systematic failure to obey the relevant traffic directions. In such circumstances, prosecutors should consider charges under section 2 RTA 1988 (dangerous driving) or under section 3 RTA 1988 (careless driving) where the evidence supports these charges, rather than a number of individual statutory or regulatory offences.

### **Seizure of Vehicles – Fatality or serious injury cases**

In cases where a fatality or serious injury results consideration should be given to the seizure and retention of the vehicle in its post-collision condition until the conclusion of the case, and any periods for an appeal. This allows an opportunity for expert examination of the vehicle.

This is because the condition of the vehicle involved in a road collision may be relevant in explaining why the collision happened, for example, a mechanical defect. In this respect, the Court of Appeal has stated in the case of (***R v Beckford [1996] 1 Cr.App. R 94***) that the police should have established procedures to ensure that no car involved in a collision could be scrapped without their express

permission. The police should not allow a car to be destroyed where serious criminal charges are to be brought, which might involve the possibility of some mechanical defect to the vehicle as a potential issue in the case.

### **Factors that are not relevant in deciding whether an act is dangerous or careless**

The following factors are not relevant when deciding whether an act of driving is dangerous or careless:

- the injury or death of one or more persons involved in a road traffic collision. Importantly, injury or death does not, by itself, turn a collision into careless driving or turn careless driving into dangerous driving. Multiple deaths are however an aggravating factor for sentencing purposes (**Sentencing Guidelines Council: 'Causing Death by Driving' Guideline, page 5, paragraph 19**);
- the skill or lack of skill of the driver; - *R v Bannister [2009] EWCA Crim 1571*
- the commission of other driving offences at the same time (such as driving whilst disqualified or driving without a certificate of insurance or a driving licence);
- the fact that the defendant has previous convictions for road traffic offences; and
- the disability of a driver caused by mental illness or by physical injury or illness, except where there is evidence that the disability adversely affected the manner of the driving.

## **Offences and Charging Practice**

There are a number of offences which can arise from driving incidents. The elements of each of the identified offences and the levels of possible sentence are set out below.

### **Murder and Manslaughter**

If the vehicle was intentionally used as a weapon to kill, a charge of murder may be considered. If the killing was involuntary, that is to say, where it was not intended, manslaughter may be considered. Manslaughter may arise as unlawful act

manslaughter and gross negligence manslaughter. In addition, the charge of corporate manslaughter is also available.

Manslaughter is an obligatorily disqualifiable offence - Part II of Schedule 2 of the Road Traffic Offenders Act 1988 (RTOA 1988). An extended retest is also mandatory (section 36 of the RTOA 1988).

Manslaughter should also be considered where the driving has occurred “off road” i.e. other than on a road or other public place, or when the vehicle driven was not mechanically propelled, and death has been caused. In these cases the statutory offences such as causing death by dangerous driving or causing death by careless driving do not apply.

Prosecutors should also see the chapter on **Homicide: Murder and Manslaughter** in our Legal Guidance.

### **Unlawful act manslaughter**

It must be proved that:

- The suspect’s act caused the death of another;
- The suspect’s act constituted a criminal offence in itself;
- The suspect had the mens rea appropriate to the unlawful act which caused the death of another; and
- The suspect’s unlawful act is objectively recognised as subjecting another to the risk of some physical harm, albeit not necessarily serious harm.

Unlawful act manslaughter will be the most appropriate charge when there is evidence that a vehicle was used as an instrument of attack or to cause fright, (but where the necessary intent for murder is absent), and death occurs as a result.

In the context of driving offences, it is important to remember that there is a difference between cases where there is a specific unlawful act which relates to the manner and standard of the driving, and those where a death has occurred as a result of driving that is unlawful only because of the negligent manner of its performance.

Driving carelessly or driving dangerously do not, on their own, amount to unlawful acts for the purpose of unlawful act manslaughter. ***Andrews v DPP [1937] A.C. 576***

Unlawful act manslaughter should, therefore, only be charged instead of causing death by dangerous driving where there is evidence that the driver either intended to cause injury to the victim or was reckless as to whether injury would be caused.

### **Gross negligence manslaughter**

In cases where a death has occurred as a result of the manner of driving, and it is clear from the available evidence that the standard of driving has been grossly negligent on the part of the driver, a charge of gross negligence manslaughter will be the correct charge.

The prosecution must prove the following:

- The suspect owed the deceased a duty of care;
- The suspect was in breach of that duty;
- The suspect caused the death of the deceased;
- The driving fell far below the minimum acceptable standard of driving such that there was an obvious and serious risk of death; and
- The conduct of the suspect was so bad in all the circumstances as, in the opinion of the jury, to amount to a crime (*R v Adomako [1993] 3 All ER 79*).

The ordinary principles of the law of negligence apply when considering whether there is such a duty. There is a general duty of care on all persons not to do acts imperilling the lives of others. This may mean that a “hit and run” driver might be guilty of manslaughter in certain circumstances. For instance, where a driver fails to stop or to report a collision where he or she knows that there is a risk of death if no medical assistance is provided to the person who has been hit, it could be argued that the deliberate failure to stop at the scene or report the incident may amount to manslaughter by omission. Consideration should be given to this in appropriate cases where there is clear evidence to satisfy all the above elements. See Wilkinson’s Road Traffic Offences 25<sup>th</sup> Edition for further information.

The examples of driving which fall far below the minimum acceptable standard of driving are also applicable here. **See examples listed under Dangerous Driving elsewhere in this guidance.**

Gross negligence manslaughter should not be charged unless there is something to set the case apart from those cases where a statutory offence such as causing death by dangerous driving or causing death by careless driving could be proved. This will normally be evidence to show a very high risk of death, making the case

one of the utmost gravity. This is in contrast to the statutory offences where all that is required is evidence that the driving was dangerous and that the manner of driving caused the death of another person.

## **Corporate Manslaughter**

The Corporate Manslaughter and Corporate Homicide Act 2007 established this particular offence. **Prosecutors should refer to the chapter on Corporate Manslaughter** elsewhere in the Legal Guidance.

On occasion it will be apparent that working regimes, dangerous or illegal practices, or negligence have contributed to a death. In these circumstances liability may arise either in respect of corporate bodies or in respect of officers within those bodies.

The normal principles of “gross negligence manslaughter” must be followed to determine liability. A clear line of causation must be shown from the directing or controlling mind through to the unlawful act or omission. The following are examples of where corporate or individual “officer” responsibility may arise:

- An operator has no regular system of preventative checks, showing indifference to an obvious risk of injury;
- A company director knows about a defect in the vehicle and allows it to go out before the defect has been repaired, showing an appreciation of the risk but a determination to run that risk;
- A substandard repair is done to a defective part; and
- An operator fails to ensure that drivers of vehicles work proper hours and have appropriate rest periods.

Prosecutors are reminded that where there is evidence that indicates the possibility of charging corporate manslaughter, such cases must be referred to the Special Crime and Counter Terrorism Division. See the Legal Guidance chapter **CPS – Referral of Cases**.

## **Causing death by dangerous driving**

### **Definition of the offence**

This offence of causing death by dangerous driving is committed under section 1 of the Road Traffic Act 1988 (RTA 1988) when the suspect’s driving is a cause or factor in the death of another person and the driving was dangerous. By

“dangerous” we mean within the meaning of section 2A of the RTA 1988 i.e. the standard of driving 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.

The examples given in relation to dangerous driving also apply to this offence.  
**See examples listed under the Dangerous driving section.**

It is an offence triable only on indictment and carries a maximum penalty of 14 years’ imprisonment, by virtue of the Criminal Justice Act 2003, and/or an unlimited fine.

The court must disqualify the driver from driving for at least 2 years, unless special reasons are found for not disqualifying (in which case it must endorse the driver’s licence with 3 –11 penalty points, again, unless there are special reasons not to do so). An extended retest is also mandatory.

## **Charging Practice**

Charging decisions in all fatal collision cases should be approved by a Chief Crown Prosecutor (CCP) Deputy Chief Crown Prosecutor (DCCP) or other nominated senior decision maker (who will have been nominated for this role by their CCP/DCCP). **See the section entitled Referral of Fatal Collision/Manslaughter Cases.**

## **Causation**

The manner of the defendant’s driving must have been a cause of the death. (This is in contrast to causing death by driving whilst unlicensed, disqualified or uninsured (section 3ZB of the RTA 1988) where there is no direct causal link between the nature of the offending behaviour and the death and which does not involve any fault in the standard of driving – see later in this guidance).

The defendant’s driving need not be the sole, principal or even a substantial cause of the death. It need only be beyond a negligible cause of the death. The leading authorities are *R v Hennigan [1971] 3 All ER 133*, *R v Skelton [1995] Crim LR 635* and *R v Barnes [2008] EWCA Crim 2726* where the following principles were established:

- The defendant’s driving must have played a part not simply in creating the occasion for the fatal accident, i.e. causation in the “but for” sense, but in bringing it about;
- No particular degree of contribution is required beyond a negligible one;

- There may be cases in which the judge should rule that the driving is too remote from the later event to have been the cause of it, and should accordingly withdraw the case from the jury

The Court of Appeal in ***R v Kimsey [1996] Crim LR 35*** approved the expression 'more than a slight or trifling link' as a useful way of explaining 'de minimis' to the jury.

***In R v L [2011] RTR 19*** Toulson LJ said

*".....it is ultimately for the jury to decide whether, considering all the evidence, they are sure that the defendant should fairly be regarded as having brought about the death of the victim by his careless driving. That is a question of fact for them. As in so many areas, this part of the criminal law depends on the collective good sense and fairness of the jury."*

The court in this case also acknowledged that establishing when dangerous driving is actually the cause of death may not be a particularly easy concept.

Although proving causation in fatal collision cases can, on occasion, be straightforward, prosecutors should be alive to the fact that it is possible, (though this is likely to be extremely rare), for a vehicle to be driven carelessly or dangerously without the careless or dangerous act or omission being causative of death. For example, causation may not be made out where a driver was avoidably distracted by something in the car, and suddenly a pedestrian stepped out into the road and was so close to the driver's car that a collision was inevitable, even if the driver had been paying full attention. Here, the death that occurred was unavoidable, irrespective of the manner of the driving.

Another example where causation may be difficult to prove could occur where there has been a collision between two cars, whereupon a third vehicle, being driven by a driver who was momentarily distracted or who failed to react sufficiently to the situation, ploughed into the crash scene. If the drivers of the first or second vehicles suffer fatal injuries, it might not be clear whether the subsequent dangerous or careless driving by the driver of the third vehicle was a cause of death.

Prosecutors will need to have regard to relevant case law on this subject and as always bear in mind that any decision to proceed will ultimately depend on the facts and merits in any given individual case.

## Causing death by careless or inconsiderate driving

### Definition of the Offence

The offence of causing death by careless driving under section 2B of the RTA 1988 is committed when the manner of the suspect's driving causes the death of another person.

The definition of this offence is linked to the provisions of section 3ZA of the RTA 1988. The section stipulates that a person is to be regarded as driving without due care and attention if (and only if) the way he drives falls below what would be expected of a competent and careful driver.

The clear difference between this offence and an offence of causing death by dangerous driving is the standard of driving. For causing death by dangerous driving, the standard of driving must fall **far** below what would be expected of a competent and careful driver; whereas for this offence the standard of driving must merely fall **below** what would be expected of a competent and careful driver.

Although also covered by section 2B of the RTA 1988, the offence of causing death by inconsiderate driving is a separate offence. In this instance, prosecutors must show that inconvenience has been caused to other persons in order to prove this offence. Section 3ZA(4) of the RTA 1988 defines inconsiderate driving and states that a person is to be regarded as driving without reasonable consideration for other persons only if those persons are inconvenienced by his driving. Again the standard of driving must fall below what would be expected of a competent and careful driver. **See the section entitled Inconsiderate driving for further information.**

The offence can be tried either in a magistrates' court or in the Crown Court. The maximum penalty for the offence on indictment is five years' imprisonment with a mandatory minimum period of disqualification of twelve months (or 3 -11 points where special reasons are found not to disqualify).

The examples given in this guidance to illustrate careless and inconsiderate driving also apply to this offence. **See examples set out in the Careless Driving/Driving without reasonable consideration sections.**

In either offence whilst the driving does not have to be the sole cause of death, it does have to be a cause – *R v Hennigan [1971] 3 All ER 133* and *R v Barnes [2008] EWCA Crim 2726* **See Causing death by dangerous driving elsewhere in this guidance.**

## Charging Practice

A charge or count on an indictment should not usually contain both offences. Prosecutors must either charge causing death by careless driving or causing death by driving without due consideration to others.

Where drugs or alcohol are involved in the commission of a driving offence, there will be increased culpability and this must be reflected in the appropriate charge if these additional elements can be proved.

In these circumstances, an offence under section 3A of the RTA 1988 (causing death by careless driving when under the influence of drink or drugs) should be charged rather than the section 2B of the RTA 1988 offence.

## Allocation (Mode of Trial)

The allocation (mode of trial decision) must be agreed and approved by the CCP/DCCP or other nominated senior decision maker (who will have been nominated for this role by their CCP/DCCP). See the section entitled **Allocation (Mode of Trial)**.

The SGC Definitive Guideline sets out the starting points for the either way offences together with typical aggravating and mitigating factors.

Examples of aggravating factors specific to this offence include:

- Other offences committed at the same time;
- Causing the death of more than one person;
- Serious injury caused to others, in addition to any death caused;
- Irresponsible behaviour (failing to stop or falsely blaming a complainant for the collision).

Examples of mitigating factors include:

- Serious injury to the suspect as a result of the collision. However, the severity of any injuries should not have any influence on the decision to charge and the general principles set out in the Code should be applied;
- Good driving record;
- Conduct after the offence (e.g. providing assistance at the scene or showing remorse);
- If the deceased is a close friend or relative of the driver.

## Acceptance of pleas

With charges of causing death by careless/inconsiderate driving, it will not normally be appropriate to accept a plea to an offence of careless or inconsiderate driving.

## Causing death by careless driving when under the influence of drink or drugs

### Definition of the offence

The offence of causing death by careless driving when under the influence of drink or drugs under section 3A of the RTA 1988 is defined as being committed when a mechanically propelled motor vehicle is driven on a road or other public place and:

- the driving has caused the death of another person; and
- the driving was without due care and attention or without reasonable consideration for other road users; and
- the driver is either unfit through drink or drugs, or the alcohol concentration is over the prescribed limit, or there has been a failure to provide a specimen in pursuance of the RTA 1988

The suspect's driving must have been a cause of death. **See the section on Causing death by dangerous driving - *R v Hennigan [1971] 3 All ER 133* and *R v Barnes [2008] EWCA Crim 2726***

The examples given in relation to driving without due care and attention (careless driving) also apply to this offence. **See examples listed under the Careless driving section.**

The offence is triable only on indictment and carries a maximum penalty of 14 years' imprisonment and/or an unlimited fine.

The court must disqualify the driver from driving for at least 2 years (3 years if there is a relevant previous conviction), unless special reasons are found for not disqualifying (in which case it must endorse the driver's licence with 3 – 11 penalty points, again, unless there are special reasons not to do so). An extended retest is also mandatory.

## Charging Practice

Proper procedures must be adopted and applied in the requesting and/or obtaining of any sample of breath, blood or urine. In cases where the procedures are flawed, there is a risk that the evidence may be excluded. *R v Coe [2009] EWCA Crim 1452*

Where this is possible, careful consideration must be given to whether the remaining evidence will support an alternative allegation of causing death by careless driving while unfit to drive through drink/drugs, in which case, evidence other than that from an intoximeter machine can be relied upon to demonstrate the defendant's unfitness to drive.

It is not necessary to add a further charge relating to drink/driving when the defendant is charged with causing death by careless driving when under the influence of drink/drugs, because a guilty verdict to the relevant drink/drive offence can be returned by the jury under the statutory provisions.

This is also true of the offence of causing death by careless or inconsiderate driving. **See the section on Alternative verdicts.**

There may be rare occasions where the only issue to be decided is the degree to which the driving fell below the required standard and there is a genuine triable factual issue between the prosecution and the defence. As section 3A of the RTA 1988 (causing death by careless driving when under the influence of drink/drugs) is not an available alternative verdict to section 1 of the RTA 1988 (causing death by dangerous driving), it may be necessary to put both counts on the indictment to give effect to the ability of a jury to reach a verdict.

Such situations will be rare and must be capable of justification, especially since section 2B RTA of the 1988 (causing death by careless driving) is a statutory alternative verdict to section 1 of the RTA 1988 (causing death by dangerous driving). **See the section on Alternative verdicts.**

## Consumption of alcohol or drugs

Assessing the relevance of the consumption of alcohol or drugs is a difficult area. In *R v McBride (James) (1961) 45 Cr. App. R. 262*, two principles were set out in relation to alcohol consumption:

- the mere fact that the driver has consumed alcohol is not of itself relevant to or admissible on the question of whether his driving is careless or dangerous. For such evidence to be admissible, it must tend to show that the amount of alcohol taken was such as would adversely

affect a reasonable driver or alternatively that the driver was in fact adversely affected; and

- the court retains an overriding discretion to exclude such evidence if its prejudicial effect outweighs its probative value.

The principles were applied in *R v Woodward (Terence)* [1995] 1 WLR 375 (CA)

A similar approach should be followed with drugs.

### **Relationship between section 1 and section 3A of the RTA 1988**

Offences under section 1 of the RTA 1988 (causing death by dangerous driving) and section 3A of the RTA 1988 (causing death by careless driving when under the influence of drink/drugs) carry the same maximum penalty, so the choice of either charge will not inhibit the court's sentencing powers.

The courts have made it clear that for sentencing purposes the two offences are to be regarded on an equal basis (*Attorney General's Reference (No.39 of 1993)*; *R v Brown* [1994] Crim LR 337; *R v Locke* [1994] Crim LR 338) although the **SGC Definitive Guideline 'Causing Death by Driving'** gives a greater range of sentences for section 3A of the RTA offences, depending upon the amount of alcohol or drugs consumed.

The consumption of alcohol is an aggravating feature within the definition of section 3A. The consumption of alcohol is not part of the definition of section 1 but may be treated as an aggravating feature in appropriate cases. **See the SGC Definitive Guideline**

Where the offence of causing death by dangerous driving (section 1 of the RTA 1988) can be proved, it should be charged.

However prosecutors may, on occasion, have to decide which is the more appropriate of the two offences to charge. This will almost always occur when the manner of the driving is on the borderline between careless and dangerous. The prosecution is likely to be asked to choose between the two charges if the two offences are charged in the alternative. Where this is the case, section 3A of the RTA 1988 (causing death by careless driving when under the influence of drink/drugs) should be chosen provided all the other elements of that offence can be proved.

## Causing death by driving while unlicensed, disqualified or uninsured

### Definition of the Offence

The offence of causing death by driving while unlicensed, disqualified or uninsured under section 3ZB of the RTA 1988 is committed when the suspect causes the death of another person by driving a motor vehicle on a road and, at the time of driving, one of the following offences is being committed:

- section 87(1) of the RTA 1988 (driving otherwise than in accordance with a licence),
- section 103(1)(b) of the RTA 1988 (driving while disqualified), or
- section 143 of the RTA 1988 (using motor vehicle while uninsured or unsecured against third party risks).

It is an offence triable either way with a maximum sentence of two years' imprisonment and a minimum disqualification of 12 months.

The standard of driving is irrelevant. It need only be proved that someone's death was caused by virtue of the vehicle being driven on a road when one of the offences listed above is committed along with a causal link to the death of the victim.

### Charging Practice

In the normal course of events, where there is sufficient evidence for a section 3ZB of the RTA 1988 offence (causing death by driving while unlicensed, disqualified or uninsured), a prosecution for this full offence should follow (i.e. where the standard of driving does not fall below the required standard and thus is not in issue, then the offence under section 3ZB should be the most appropriate charge). Any consideration of culpability is for the court when deciding on sentence.

Where there is clear evidence that the driving fell below the required standard and was a cause of death, the appropriate offence incorporating dangerous or careless driving should be charged instead.

Prosecutors should note that an offence under section 3ZB of the RTA 1988 (causing death by driving while unlicensed, disqualified or uninsured) can only be committed on a road. Contrast this with section 143 of the RTA 1988 (using motor vehicle while uninsured) which can be committed 'on a road or other public place'.

Similarly, for causing death by driving while unlicensed, disqualified etc a person must be *driving* a motor vehicle, whereas for using a motor vehicle while uninsured

a person may also be *using* a motor vehicle – ***Elliott v Grey [1959]*** a vehicle is in use on the road even when it is stationary and unattended.

## Causation

‘Causing’ in section 3ZB of the RTA 1988 does not have the same meaning as causation in homicide or the other RTA 1988 offences. The defendant need not be culpable in any way for the death. The issue of “causation” arose in ***R v John Jason Williams [2010] EWCA Crim 2552*** where the court considered:

- (1) Was fault or another blameworthy act required;
- (2) Was it sufficient that the appellant’s driving was a cause of the death?

The court concluded that the answer to the questions was clear. Blameworthy conduct was not necessary; it was sufficient that the driving was a cause. See also ***R v MH [2011] EWCA Crim 1508***

Parliament has therefore decided that where a person drives while at the same time being unlicensed, disqualified or uninsured, and someone dies, that person is criminally liable for that death.

So, in a case where a pedestrian runs out in front of a car and is killed by the driver who could not have done anything to prevent the collision, provided that the driver was unlicensed, disqualified or uninsured, he/she may be convicted of a section 3ZB offence

In the case of ***Williams*** the victim crossed the central reservation and stepped in front of the car being driven by the defendant. The conviction was upheld.

## Allocation (Mode of Trial)

The mode of trial decision must be agreed and approved by the CCP/DCCP or other nominated senior decision maker (who will have been nominated for this role by their CCP/DCCP). See the section entitled **Allocation (Mode of Trial)**.

The SGC Definitive Guideline sets out the starting points for the either way offences together with typical aggravating and mitigating factors.

Examples of aggravating factors specific to this offence include:

- Other offences committed at the same time;
- Causing the death of more than one person;
- Serious injury caused to others, in addition to any death caused;

- Irresponsible behaviour (failing to stop or falsely blaming a complainant for the collision).

Examples of mitigating factors include:

- The decision to drive was brought about by a proven and genuine emergency falling short of a defence;
- Suspect believed he/she was insured or licensed to drive;
- Serious injury to the suspect as a result of the collision. However, the severity of any injuries should not have any influence on the decision to charge and the general principles set out in the Code should be applied;
- Good driving record;
- Conduct after the offence (providing assistance at the scene, showing remorse).

### **Acceptance of Pleas**

With a charge under section 3ZB RTA 1988 (causing death by driving while disqualified, uninsured etc), it will not normally be appropriate to accept a plea to an offence of driving otherwise than in accordance with a licence and/or while disqualified and/or uninsured.

### **Wanton and Furious Driving**

#### **Definition of the Offence**

The offence of wanton and furious driving under section 35 of the Offences Against the Person Act 1861 is committed when bodily harm (i.e. injury) is caused to any person as a result of the manner of driving of a suspect and is not limited to motor vehicles but covers any kind of vehicle or carriage including bicycles.

It is an offence triable only on indictment (except when committed by a youth).

The offence carries a maximum penalty of 2 years' imprisonment and/or an unlimited fine. Penalty points and discretionary disqualification can be imposed by the courts under section 28 Road Safety Act 2006.

The offence can only be committed if the driver has a degree of subjective recklessness so far as the foreseeability of causing injury is concerned. In other words, he/she must appreciate that harm was possible or probable as a result of the manner of driving: **see *R v Okosi [1996] CLR 666***.

## Charging Practice

Prosecutors should only prosecute this offence when it is not possible to prosecute for an offence under the RTA 1988, for example:

- when the driving was not on a road or other public place;
- when the vehicle used was not a mechanically propelled vehicle (such as a bicycle or horse drawn vehicle);
- when a Notice of Intended Prosecution has not been given.

When a vehicle has been deliberately used as a weapon and has caused injury prosecutors should normally prosecute for the offence of dangerous driving or a specific assault under other provisions in the Offences Against the Person Act 1861, subject to there being sufficient evidence to provide a realistic prospect of conviction, for one of those offences.

## Dangerous Driving

### Definition of the Offence

The offence of dangerous driving under section 2 of the RTA 1988 is committed when a person's standard of driving 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.

Dangerous driving is an either way offence carrying a level 5 fine and/or 6 months' custody in the magistrates' court.

In the Crown Court, the maximum penalty is 2 years' imprisonment and/or an unlimited fine.

Wherever the case is dealt with, the court must disqualify the driver from driving for at least a year and order an extended retest (section 36 of the Road Traffic Offenders Act 1988). Where "special reasons" are found for not disqualifying the court must endorse the driver's licence with 3-11 penalty points unless there are, again, "special reasons" for not doing so.

Prosecutors should note the following relevant factors:

- Both parts of the definition must be satisfied for the driving to be "dangerous" within the meaning of the Act - Section 2A(1) of the RTA 1988.

- There is no statutory definition of what is meant by “far below” but “dangerous” must refer to danger of personal injury or of serious damage to property - Section 2A(3) of the RTA 1988.
- Section 2A(2) of the RTA 1988 provides that a person is to be regarded as driving dangerously if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous.
- When considering the state of the vehicle, regard may be had to anything carried by or attached to the vehicle - Section 2A(3) of the RTA 1988.
- Skill (or indeed lack of skill) of a driver is an irrelevant circumstance when considering whether the driving is dangerous. *R v Bannister [2009] EWCA Crim 1571*

## Charging Practice

Dangerous driving includes situations where the driver has of his or her own free will adopted a particular way of driving, and also where there is a substantial error of judgement, that, even if only for a short time, amounts to driving falling far below the required standard. If the driving that caused the danger was taken as a deliberate decision, this would be an aggravating feature of the offence.

It is important to remember that the manner of the driving must be seen in the context of the surrounding circumstances in which the driving took place (e.g. amount of traffic, visibility, weather conditions, excess speed etc) and these unique factors will be relevant in reaching an appropriate charging decision in each case.

The test for “dangerousness” is an objective one: persistent disregard of, say, traffic directions (be they “stop”, “give way” or traffic lights) may be evidence that the manner of the driving has fallen far below the standard required, thus making a charge of dangerous driving appropriate.

The following examples of circumstances that are likely to be characterised as dangerous driving are derived from decided cases and the SGC Definitive Guideline ‘Causing Death by Driving’

- racing or competitive driving;
- failing to have a proper and safe regard for vulnerable road users such as cyclists, motorcyclists, horse riders, the elderly and pedestrians or when in the vicinity of a pedestrian crossing, hospital, school or residential home
- speed, which is particularly inappropriate for the prevailing road or traffic conditions;

- aggressive driving, such as sudden lane changes, cutting into a line of vehicles or driving much too close to the vehicle in front;
- disregard of traffic lights and other road signs, which, on an objective analysis, would appear to be deliberate;
- disregard of warnings from fellow passengers;
- overtaking which could not have been carried out safely;
- driving when knowingly suffering from a medical or physical condition that significantly and dangerously impairs the offender's driving skills such as having an arm or leg in plaster, or impaired eyesight. It can include the failure to take prescribed medication;
- driving when knowingly deprived of adequate sleep or rest;
- driving a vehicle knowing it has a dangerous defect or is poorly maintained or is dangerously loaded;
- using a hand-held mobile phone or other hand-held electronic equipment whether as a phone or to compose or read text messages when the driver was avoidably and dangerously distracted by that use; ***R v Browning (2001) EWCA Crim 1831, R v Payne [2007] EWCA Crim 157***
- driving whilst avoidably and dangerously distracted such as whilst reading a newspaper/map, talking to and looking at a passenger, selecting and lighting a cigarette or by adjusting the controls of electronic equipment such as a radio, hands-free mobile phone or satellite navigation equipment;
- a brief but obvious danger arising from a seriously dangerous manoeuvre. This covers situations where a driver has made a mistake or an error of judgement that was so substantial that it caused the driving to be dangerous even for only a short time. Cases that illustrate this principle include:
  - ***Att.Gen's Reference No 32 of 2001 (2002) 1 Cr.App.R. (S) 121*** (offender failed to stop at a junction where there was a give way sign, failing to see a taxi that was being driven across the junction perfectly properly and colliding with it);
  - ***Att.Gen's Reference No 4 of 2000 (2000) EWCA Crim 780*** (offender unintentionally pressed the accelerator instead of the brake);

- **Att.Gen’s Reference No.76 of 2002 (Hodges) (2003) 1 Cr.App.R. (S) 100** (offender drove across a junction marked by a give way sign and collided with a car that was being driven along the major road and had no explanation for his failure to see the other car –“This was a single misjudgement. It was a bad misjudgement but nevertheless a single one” (p.423).

It is not necessary to consider what the driver thought about the possible consequences of his actions: simply whether or not a competent and careful driver would have observed, appreciated and guarded against obvious and material dangers.

In the case of a vehicle in such a state of disrepair as to be dangerous, consideration should be given to whether the vehicle should have been driven at all, as well as to how it was driven in the particular circumstances.

## **Driving without due care and attention**

### **Definition of the Offence**

The offence of driving without due care and attention (careless driving) under section 3 of the RTA 1988 is committed when the defendant’s driving falls below the standard expected of a competent and careful driver - section 3ZA(2) of the RTA 1988.

The maximum penalty is a level 5 fine. The court must also either endorse the driver’s licence with between 3 and 9 penalty points (unless there are “special reasons” not to do so), or impose disqualification for a fixed period and/or until a driving test has been passed.

In determining what is to be expected of a competent and careful driver, the prosecutor must take into account not only the circumstances of which the driver could be expected to be aware, but also any circumstances shown to have been within the driver’s knowledge.

The test of whether the standard of driving has fallen below the required standard is objective. It applies both when the manner of driving in question is deliberate and when it occurs as a result of incompetence, inadvertence or inexperience.

Occasionally, a collision may occur but there is no evidence of any mechanical defect, illness of the driver or other explanation to account for why the collision happened. In these cases, a charge of careless driving may be appropriate, but prosecutors should exercise caution.

If the evidence is capable of proving how an incident occurred (e.g. a collision), the case can be put on the basis that there is a very strong inference that the defendant was driving below the standard expected of a competent and careful driver.

In the absence of any explanation by the defendant as to the cause of the collision, a court may infer that the offence was committed, but where the defendant does provide an explanation for the collision, however unlikely, you will have to consider whether to proceed.

The civil law doctrine of *res ipsa loquitur* [the thing speaks for itself] has no direct application to the criminal law. (But see **Wilkinson's 25<sup>th</sup> Edition at para 5.52**):

*".....the fact that res ipsa loquitur has no application to criminal law does not mean that the prosecution have to negate every possible explanation of a defendant before he can be convicted of careless driving where the facts at the scene of an accident are such that, in the absence of any explanation by the defendant, a court can have no alternative but to convict"*

See also ***R v Warwickshire Police Ex p. Manjit Singh Mundi [2001] EWHC Admin 448*** (the court held that crossing a central white line without explanation was, in itself, evidence of careless driving).

In some cases, particularly where there has been a collision, the evidence will show that more than one driver was at fault. It will be necessary to establish that there is evidence from an independent source against any driver who is to be charged, but the possibility of charging more than one driver remains if both have failed to comply with the statutory standard.

There are decided cases that provide some guidance as to the driving that courts will regard as careless or inconsiderate and the following examples are typical of what we are likely to regard as careless driving:

- overtaking on the inside;
- driving inappropriately close to another vehicle;
- inadvertently driving through a red light;
- emerging from a side road into the path of another vehicle;
- tuning a car radio; when the driver was unavoidably distracted by this action
- using a hand-held mobile phone or other hand-held electronic equipment when the driver was avoidably distracted by that use (note that this is an offence itself under Regulation 110 of the Road Vehicles (Construction and

Use) Regulations 1986). If this is the only relevant aspect of the case it is more appropriate to use the specific offence.

- selecting and lighting a cigarette or similar when the driver was avoidably distracted by that use.

These examples are merely indicative of what can amount to careless driving. In addition, prosecutors should note that some of these examples also fall within the examples of dangerous driving.

## Charging Practice

Prosecutors must note that the same factors must be taken into consideration as those outlined for the charging practice in respect of dangerous driving offences under section 2 of the RTA 1988. The manner of the driving must be seen in the context of the surrounding circumstances in which they took place (e.g. amount of traffic, visibility, weather conditions, excess speed etc). The circumstances in every case will be unique and must be considered in each case before reaching a decision as to the appropriate charge.

It is necessary to put the facts into context, decide the degree to which the standard of driving fell below that required, and consider whether the particular facts of the case warrant a charge under section 3 of the RTA 1988 (careless driving) or under section 2 of the RTA 1988 (dangerous driving). **See the section on Commission of a number of offences for additional guidance.**

Prosecutors should also consider whether a driver has failed to observe a provision of the Highway Code. This does not itself render that person liable to criminal proceedings, but a failure, particularly a serious one, may constitute evidence of careless or even dangerous driving. Section 38(7) of the RTA 1988.

## Driving without reasonable consideration

### Definition of the Offence

The offence of driving without reasonable consideration under section 3 of the RTA 1988 is committed only when other persons are inconvenienced by the manner of the defendant's driving, see section 3ZA(4) RTA 1988.

The maximum penalty is a level 5 fine. The court must also either endorse the driver's licence with between 3 and 9 penalty points (unless there are "special reasons" not to do so), or impose disqualification for a fixed period and/or until a driving test has been passed. The penalty is the same as for driving without due care and attention.

A 'due consideration' charge is more appropriate where the real harm done is aimed at, or suffered by a particular person.

Note the essential difference between the two offences under Section 3 of the RTA 1988 is that in cases of careless driving the prosecution need not show that any other person was inconvenienced. In cases of inconsiderate driving, there must be evidence that some other user of the road or public place was actually inconvenienced.

### **Charging Practice**

This offence is appropriate when the driving amounts to a clear act of incompetence, selfishness, impatience or aggressiveness in addition to some other inconvenience to road users. The following examples are typical of actions likely to regard as inconsiderate driving:

- flashing of lights to force other drivers in front to give way;
- misuse of any lane to avoid queuing or gain some other advantage over other drivers;
- unnecessarily remaining in an overtaking lane;
- unnecessarily slow driving or braking without good cause;
- driving with un-dipped headlights which dazzle oncoming drivers;
- driving through a puddle causing pedestrians to be splashed;
- driving a bus in such a way as to alarm passengers.

Prosecutors must decide which version of the offence to charge as the section creates two separate offences and there is no alternative verdict provision in the magistrates'/Youth court **R v Surrey Justices, ex parte Witherick [1932] 1 K.B. 340.**

### **Alternative verdicts**

Section 24 of the Road Traffic Offenders Act 1988 (RTOA 1988) allows for the return of alternative verdicts where the allegations in the indictment amount to, or include an allegation of an offence specified in the table set out in that section.

The section applies to magistrates courts as well as to juries, provided the magistrates' court has jurisdiction to try the "Offence charged". The alternatives are set out in the table below. Section 33 of the Road Safety Act 2006 (RSA 2006) is also relevant here. It allows for a jury to return an alternative verdict to a charge of manslaughter. However, prosecutors should note that section 33 of the RSA 2006 has not overturned the decision in the case of *R v Seymour [1983] RTR 455* and it remains the case that alternative charges may not be put on the indictment.

OFFENCE CHARGED

ALTERNATIVE VERDICTS

manslaughter

Section 1 of the RTA 1988 causing death by dangerous driving

Section 2 of the RTA 1988: dangerous driving

Section 3A of the RTA 1988: causing death by careless driving while under the influence of drink or drugs

Section 35 of the Offences Against the Person Act 1861: wanton & furious driving

Section 1 of the RTA 1988: death by dangerous driving

Section 2 of the RTA 1988: dangerous driving

Section 2B of the RTA 1988 causing death by careless or inconsiderate driving

Section 3 of the RTA 1988: careless or inconsiderate driving

Section 2 of the RTA 1988: dangerous driving

Section 3 of the RTA 1988: careless or inconsiderate driving

Section 2B of the RTA 1988 causing death by careless or inconsiderate driving

Section 3 of the RTA 1988 careless or inconsiderate driving

Section 3A of the RTA 1988 causing death by careless driving while under the influence of drink or drugs

Section 2B causing death by careless or inconsiderate driving

Section 3: careless or inconsiderate driving and/or the relevant offence from:

Section 4(1): driving whilst unfit

Section 5(1)(a): driving with excess alcohol

Section 7(6): failing to provide a specimen

Section 7A(6): failing to give permission for laboratory test.

Where the accused is charged with an offence under Section 3A of the RTA 1988 he may not be convicted as an alternative with any offence of attempting to drive: Section 24(2) of the RTOA 1988.

## CONSULTATION REGARDING THE DRAFT GUIDANCE ON CHARGING OFFENCES ARISING FROM DRIVING INCIDENTS

The consultation closes on **8 November 2012**. Responses can be submitted by email to [HQ.DrivingConsultation@cps.gsi.gov.uk](mailto:HQ.DrivingConsultation@cps.gsi.gov.uk)

When responding it would be helpful if you would complete the form below.

Please fill out your name and address or that of your organisation if applicable.

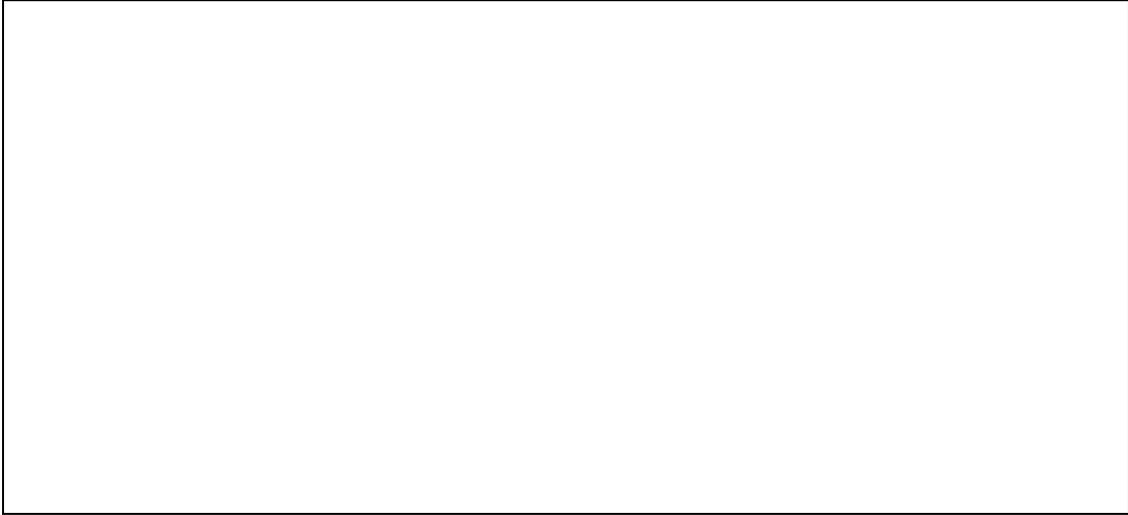
You may withhold these details if you wish but we will be unable to include you in future consultation exercises.

### RESPONSE SHEET

Please complete the following information.

<b>Manner of preferred address: Mr/Mrs/Ms</b>	
<b>First Name</b>	
<b>Family Name</b>	
<b>Any organisation you represent</b>	
<b>Postal Mailing Address</b>	
<b>Contact telephone number</b>	
<b>Email Address</b>	

Please record your comments/views on the Driving Guidance in the box below.



Crown Prosecution Service  
Driving Consultation  
Strategy and Policy Directorate  
Rose Court  
2 Southwark Bridge  
London SE1 9HS

[HQ.drivingconsultation@cps.gsi.gov.uk](mailto:HQ.drivingconsultation@cps.gsi.gov.uk)