

Consultation on the draft guidance on charging offences arising from driving incidents

Response from CTC, the national cycling charity

CTC, the national cycling charity, was founded in 1878. CTC has 70,000 members and supporters, provides a range of information and legal services to cyclists, organises cycling events, and represents the interests of cyclists and cycling on issues of public policy.

Introduction

CTC previously responded to the consultation on the Prosecuting Bad Driving in 2007.¹ At that time we were deeply concerned that the misstatement (in our view) of what constituted ‘dangerous’ and ‘careless’ driving would lead to discrepancies in the law, and the gradual diminution of bad driving cases.

Since there was little change from results of the 2007 consultation, our views have changed little from our previous response – which we are attaching. We feel strongly that there are still many cases which should have attracted a ‘dangerous’ charge if the proper legal definition of ‘dangerous’ had been applied.

We understand that a more rigorous implementation of the definition of ‘dangerous’ would lead to far more charges using this offence, and therefore substantially more sentences of imprisonment. This is not our wish: in most cases a substantial driving ban or community sentence may be more appropriate – and these subjects require changes to sentencing guidelines, which lie beyond this consultation.

However, we feel strongly that the need to adjust other aspects of the legal system should not be an impediment to improving this guidance to ensure dangerous driving is dealt with as dangerous, rather than being downgraded to ‘careless’ for the sake of securing a conviction.

The guidance sensibly recommends removing the term ‘accident’ from any correspondence. We feel that the CPS should go further, and suggest that the CPS refrain from using it in all circumstances.

The situation since the Road Safety Act 2006

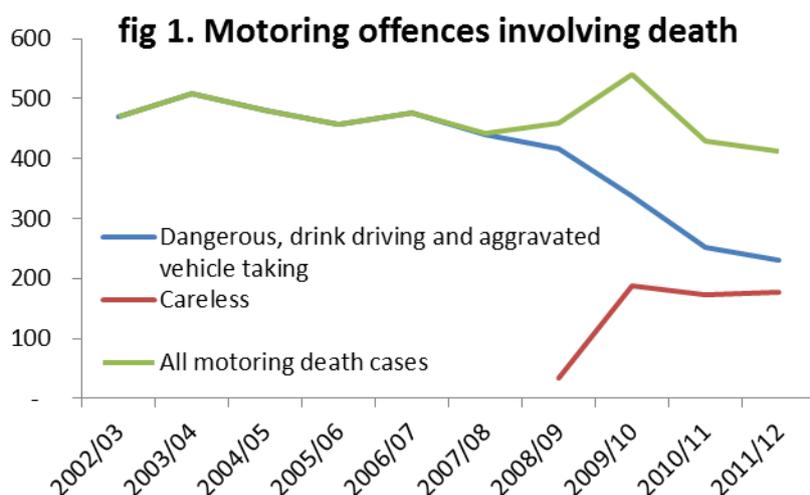
The impact of the Road Safety Act 2006 has become clearer in the years since the new offences of causing death by careless driving and causing death whilst unlicensed or uninsured came into force.

The overall number of cases in which either careless or dangerous charges have been brought in the case of a death have not declined significantly since 2001.

However, the number of cases prosecuted as dangerous has collapsed, whereas those prosecuted as careless have substantially increased (see figure 1, below).

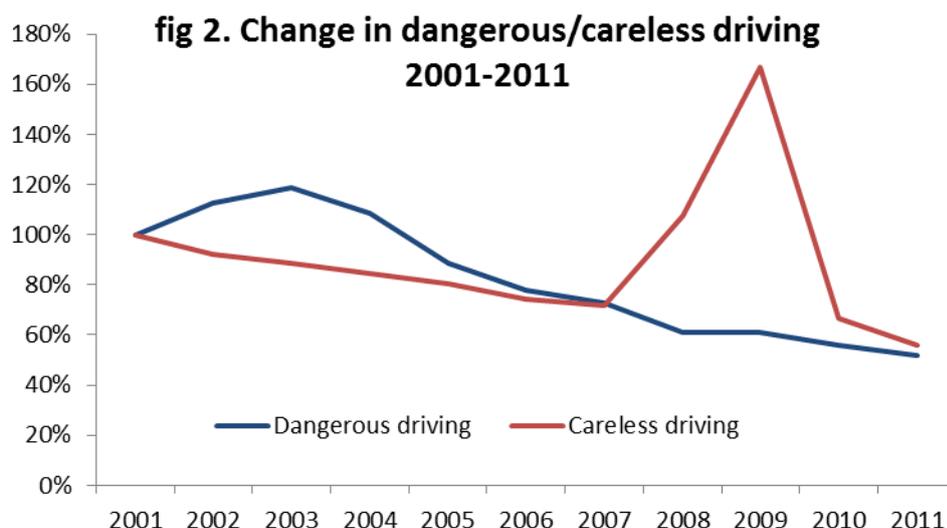
Undoubtedly there will be many cases where a charge of ‘causing death by careless driving’ (CDCD) has been brought where previously simply a ‘careless’ charge would have been applied. However, CTC believes it is very likely that there have also been a substantial number of cases which have been downgraded from ‘causing death by dangerous driving’ (CDDD) to CDCD which, prior to 2008, would have remained as ‘dangerous’. This means that dangerous drivers who have killed are receiving a more lenient sentence.

As a result, from CTC’s calculations, the proportion of all fatal crashes that have resulted in a charge of causing death by dangerous driving has fallen from approximately 18% in 2008 to just 13% in 2011.



Source: Ministry of Justice Motoring Tables 2011 - Table 8A

Meanwhile the total number of all ‘careless’ and ‘dangerous’ charges has fallen significantly, aside from a spike in careless driving offences in 2008 and 2009 – see figure 2 below. This may in turn be a result of downgrading of offences, whereby incidents of dangerous driving are dealt with as careless, and some of the minor incidents of careless driving are therefore simply dealt with by way of a warning.



Source: Ministry of Justice Motoring Tables 2011 - Table 8A

Protection of pedestrians and cyclists

As discussed in CTC’s previous response (attached), we feel strongly that the presence of a pedestrian or cyclist – as the most vulnerable road users – needs stronger emphasis in determining whether or not an offence is classified as careless or dangerous. Many of the criteria outlined on page 28 of the draft guidance for determining ‘careless’ driving (driving inappropriately close to another vehicle, inadvertently through a red light or emerging from a side road into the path of another vehicle) may not give rise to significant risk of injury were it to happen only in the presence of other motor vehicles, but could well be the cause of very serious injury or death to a pedestrian or cyclist.

We therefore suggest that the criteria presented on page 28 be prefaced with restatement (from p 25) that ‘dangerous driving’ should include ‘failing to have a proper and safe regard for vulnerable road users such as cyclists, motorcyclists, horse riders...’

This would reinforce the guidance in the Highway Code which repeatedly emphasises the need to take extra care around vulnerable road users, such as rules 206, 211, 212, 213.

Emerging from side roads into the path of other vehicles

One of CTC’s principal concerns in our response to the 2007 consultation was the inclusion of ‘emerging from a side road into the path of another vehicle’ in the examples of those cases that are typical of ‘careless driving’.

In our view this is flawed – the emergence of a motor vehicle from a side road into the path of a cyclist is the biggest source of injury to cyclists and very likely to result

in injury. Indeed, the Highway Code itself says: “always look out for [motorcyclists and cyclists] before you emerge from a junction.”ⁱⁱⁱ

68% of cyclists’ serious injuries and deaths occur at junctions.ⁱⁱⁱ In a review of the ‘On The Spot’ database of detailed road crash investigations, the largest single cause of injury or death to cyclists in urban areas was ‘vehicle pulling out of side road collided with cyclist’ (20%) while a further 15% - the third biggest cause – was ‘vehicle [not the cyclist] failed to stop at junction’.^{iv}

Given its prevalence and the serious nature of the injuries that result, we strongly believe that in the eyes of a careful and competent driver, emerging from a side road into the path of another road user – particularly a cyclist or motorcyclist – should be considered likely to cause injury or serious property damage, and fall far below the behaviour expected of a careful and competent driver, fulfilling the requirements to charge such cases as ‘dangerous’.

We therefore suggest that this be altered to make clear that emerging from a side road into the path of another vehicle can be considered dangerous, particularly in the presence of a cyclist or motorcyclist.

Duty of care shown by professional drivers

CTC also believes that given the existence of additional requirements on professional drivers to prove their enhanced driving ability, abide by more stringent medical requirements and the need for many to undergo regular training in professional competence, there should be a stronger duty of care on those road users to ensure the safety of other road users, particularly more vulnerable ones.

In addition, the operators of heavy vehicles, such as lorries, buses or coaches, which have the greater capacity to cause harm, should be expected to maintain a higher duty of care to avoid the higher risk of injury or serious property damage that might result from fall in the standard of driving. It ought to be considered that the standard of a careful and competent driver should be assumed to be even higher for the operators of a large or heavy vehicle operator. This distinction should be acknowledged in the CPS guidance.

The consequences of an increase in dangerous driving prosecutions

CTC is aware that an increase in the prosecution of cases of bad driving (whether or not death and injury resulted) as ‘dangerous’ rather than careless may risk a substantial increase in drivers who are otherwise law abiding and pose little danger to society being imprisoned. This, we acknowledge, may have a negative outcome for society.

We hope, however, that if the CPS increases its prosecution of dangerous driving (rather than dismissing clearly dangerous acts as careless), then the subsequent pressures on the judiciary and prison system will result in changes to sentencing guidance to offer non-custodial sentences in some of these cases.

In addition, we hope that much greater use can be made of driving bans, to ensure that drivers who have shown themselves to be dangerous can be properly excluded from the road network, thereby no longer posing a danger to other road users.

In the interim, it should not be for the CPS to adjust their guidance to allow flexibility of charging in order to secure a proportionate outcome; rather, the CPS should seek to implement the law as set down by Parliament.

Misunderstanding by representatives of the legal system

CTC is concerned that the incorrect selection of offences coupled with inadequate explanation of the law by the CPS may be leading to misunderstanding of the meaning of 'dangerous' in courts.

One recent case which CTC has examined involved a lorry driver who hit a car which was waiting at a red traffic light, killing the car driver. The lorry driver pleaded guilty to causing death by careless driving, but the CPS sensibly proceeded with a charge of causing death by dangerous driving.

In the end the trial collapsed due to procedural police issues. However, in a truly alarming statement, as reported by the local newspaper, the Honorary Recorder of Hull and the East Riding, Judge Michael Mettyear, said: "This was an extremely weak case from the start and, in my view, it has got weaker during the progress of the prosecution evidence."

"The Crown has a continuing duty throughout a case to consider the law and evidence as it comes out to assess whether they should be asking a jury to convict. Quite frankly the jury will not convict in this case."

"Dangerous driving is reserved for **people racing each other and drinking**. It is a very serious offence and I did express some doubt that this was a case of careless driving some time ago."^v (emphasis added)

It is of great concern that members of the judiciary seem to take such biased and legally incorrect views. Drinking is dealt with under a separate offence entirely, while if a death occurs while people are racing each other CTC suggests that this be considered gross negligence homicide, not causing death by dangerous driving.

We suggest that the CPS guidance needs to be much stronger in explaining what is and what should not be charged as 'dangerous' as we suspect that many legal minds are still treating 'dangerous' as they did the old offence of 'reckless' – ie, reserving it wanton disregard of the law, rather than falling far below the standard of a careful and competent driver – as stated on page 14.

Presently the examples provided to explain the circumstances of 'dangerous' and 'careless' driving include unfortunate overlaps and a lack of detail. If the CPS itself

does not present clear examples of what constitutes dangerous driving then in the subsequent vacuum views such as Judge Mettyear's can flourish.

Case studies

CTC has been collecting cases of incidents where we feel that the charge of 'careless' is inappropriate.

John Drake was seriously injured while cycling in May 2012. He was hit by an 84-year-old car driver who turned right across his path on Darwen Road in Bolton. Drake was left with a brain injury, fractured skull, broken nose and 30 other broken bones. The driver, despite having eyesight below standard, was only charged with **careless driving**, an offence which he admitted. Magistrates in Bolton gave him a £95 fine and a 6 point endorsement.^{vi}

Nigel Barclay was left with a serious brain injury, a fractured skull, face, broken arms, legs and pelvis, when he was hit by a 19-year-old driver in Banstead, Surrey. He was hospitalised for 2 months and has been left deaf in one ear and with double vision in one eye. The driver, who had turned across his path, pleaded guilty to **careless driving**, was given 4 penalty points and a £300 fine at East Surrey Magistrates' Court in August 2012.^{vii}

CTC has recorded many more similar cases here: <http://www.stop-smidsy.org.uk/category/official-response/careless-rather-dangerous-charge>

CTC

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ⁱ See http://www.ctc.org.uk/sites/default/files/0704_rg_cps_prosecuting-bad-driving_con.doc

ⁱⁱ Highway Code rule 211: <https://www.gov.uk/road-users-requiring-extra-care-204-to-225/motorcyclists-and-cyclists-211-to-213>

ⁱⁱⁱ As calculated from reported road casualties data, published under license from the Economic and Social Data Service.

^{iv} Knowles J et al, 2009. *Technical Annex to PPR445. Collisions involving pedal cyclists on Britain's roads: establishing the causes.* p 21

^v As reported in the Hull Daily Mail, 10/5/2012 - <http://www.thisishullandeastriding.co.uk/Lorry-driver-killed-motorist-A164-cleared-court/story-16040403-detail/story.html>

^{vi} See: <http://www.stop-smidsy.org.uk/case-study/84-yr-old-poor-eyesight-fined-%C2%A395-seriously-injuring-cyclist-652012>

^{vii} See: <http://www.stop-smidsy.org.uk/case-study/cyclist-nigel-barclay-serious-injured-19-year-old-driver-who-receives-just-%C2%A3300-fine-and->