

Driving offences and penalties relating to causing death or serious injury consultation: RoadPeace response

Key points

- RoadPeace supports the proposals for
 - Causing Death by Dangerous Driving and Causing Death by Careless Driving Under the Influence to have the same maximum custodial sentence as Manslaughter (life), whilst appreciating the proposals may also only result in increased sentences for the very worst offenders.
 - the introduction of a charge that recognises the harm caused by careless driving with mention of serious injury. But any maximum custodial sentence should be limited to six months to avoid any downgrading of dangerous driving. And the introduction of this charge should be preceded by a CPS consultation on what qualifies as careless and dangerous driving.
 - the minimum disqualification period for causing death by driving to be increased from one year to two years. But training of judges is also needed to ensure mandatory driving bans are given (1 in 5 drivers convicted of Causing Death by Careless Driving are not given a ban).
- But other sentencing related reforms are needed, particularly with
 - Leaving the scene of a fatal/serious injury crash where the driver should have known they were abandoning a victim in a serious condition.
 - Drink driving which has a six month maximum custodial sentence--no matter how drunk the driver, how many previous offences, or how seriously injured the victim.
 - Car dooring which causes a death or serious injury.
 - Driving bans and vehicle confiscation, which should be used much more widely, especially where death or serious injury has occurred.
- And wider reform is needed and was promised. A full review of driving offences was announced in May 2014 and this is not it. We need a review of the summary motoring offences and charging standards, but also a complete review of the use of driving bans.
- And if the MoJ will not extend the manslaughter charge to apply to all culpable road deaths, it should at least classify all culpable road deaths as homicides and thus ensure better support to bereaved families and greater priority within the justice sector.

Dedication

Our response is dedicated to three people killed by law breaking drivers.

[Ross and Clare Simons](#) who were killed in January 2013 in Bristol by a speeding disqualified driver attempting to evade the police. He also had 69 previous convictions. With such extreme and multiple criminal offending, the driver was given the maximum custodial sentence possible (14 years), before it was reduced to 10 ½ years, due to the drivers' guilty plea.

And it is also dedicated to the family of [Sean Morley](#) who was killed in a hit and run crash in September 2012. The driver did not turn himself into the police until the next day, although his passengers had gone back to the crash scene that same night. The police were not able to prove causation and the driver was charged with Failing to Stop. This consultation does not offer any reform to the victims where drivers leave the scene of a crash. But the consultation does ask for other issues and RoadPeace has argued for a new charge of Knowingly Leaving the Scene of a fatal or serious injury crash.

Introduction

Launched 32 months after it was announced, this consultation has been long awaited. But it is not the full review of driving offences that was promised on 6 May 2014, and that is still needed. A full review would have included the key issue of how careless and dangerous driving are defined and their charging standards. It would have included the basic summary offences so that a proper debate could be had on how sentencing should be affected by the harm caused.

Charging standards are overdue for review. The last CPS consultation, in 2012, on driving offences was token. It focused only on explaining why emergency service personnel and also family and friends of victims (nearest and dearest) would not be prosecuted. It posed no questions so RoadPeace responded using those asked in the CPS 2006 consultation, which included the use of manslaughter and definitions of careless and dangerous driving. And we note this consultation refers to dangerous driving as including excessive speed and driving aggressively for sustained periods but no reference to how single acts of bad driving could qualify as dangerous. This was an important distinction that was achieved by the campaigning of CTC (now Cycling UK) and should not be forgotten.

This current MoJ consultation does not even offer a proper opportunity to discuss sentences, and the role of alternatives to custody, including driving bans and vehicle confiscations. This was requested by RoadPeace as well as British Cycling, Cycling UK, LCC, Living Streets, Road Danger Reduction Forum, Sustrans and Twenty's Plenty for Us. Our analysis of driving bans shows them to be a missed opportunity¹. More must be done to take unsafe drivers off our roads.

This consultation is a continuation of the piecemeal approach taken in the past decade. It will result in a very few offenders being given longer prison sentences. While longer sentences are needed for extreme offenders, much more was needed, particularly with updating both charging standards and alternatives to custody.

And before we respond to the few questions posed, we must question the MoJ's assertion that the police and CPS have improved their road death investigation and prosecution. We know of no evidence to show this is correct. In fact, since 2010 there has only been a 5% drop in fatal collisions but a 23% drop in prosecutions for causing death by driving offences. Unless there has been a large decrease in bad driving, this suggests a decline in either effort and/or standards. There has been no monitoring of the recommendations of the joint HMIC/HMCPSI inspectorate report published in February 2015. And it is

¹ http://www.roadpeace.org/resources/RoadPeace_Driving_bans_at_court_2016.pdf

only reasonable to expect that budget cuts have reduced the resources available for investigation and prosecution, especially given the low priority the Home Office and senior police assign to collision investigation.

Q1 Should there be a new offence of causing serious injury by careless driving?

Yes. Serious injury caused by careless driving should be acknowledged. All serious injury caused by law breaking drivers should be explicitly recognised in driving offences.

Q2 If yes, having regard to the maximum penalties for the existing offences of causing serious injury and assault, would either 2 or 3 years be an appropriate and proportionate maximum penalty for the new offence?

In an ideal world, we would not imprison anyone for acts of carelessness. And there would be clear distinction between what qualified as dangerous and careless driving.

But we do not live in an ideal world. We live in a world where what we believe is dangerous driving can be prosecuted as careless driving. As our [You say Careless, I say Dangerous](#) graphic shows, there is much overlap in the charging standards of these two offences. And the police, CPS, judge and jury, all have the ability to downgrade this offence for reasons unrelated to justice. And with the pressure to promote early guilty pleas and avoid the cost of trials, downgrading is to be expected.

This is facilitated by the lack of transparency with charging. It is not possible to know how often a charge started off as Dangerous Driving but ended up as Careless Driving. This includes cases of Causing Death by Dangerous Driving, which has a relatively [low conviction rate](#), as shown in our analysis and this is believed due to cases where the jury convicts the accused of the alternative and lesser charge of Causing Death by Careless Driving.

So we can see the argument for Causing serious injury by careless driving to have the option of a custodial sentence. But we think it should be less than the two year maximum custodial sentence possible for the basic offence of dangerous driving. We propose the maximum custodial sentence be limited to six months, so that it is consistent with the other summary motoring offences with a custodial sentence. And it should only apply in cases involving repeat offenders or multiple offences.

And the CPS should commit to monitoring the use of this charge as they did with Causing Death by Careless Driving when it was introduced. Cases involving downgrading should be collated and reported, to ensure transparency and help promote public confidence in charging.

But we are disappointed that the consultation did not ask about the key role and general use of driving disqualifications. In 2015, only 7% of those convicted at court for Careless Driving were banned. The top sentencing band of careless driving, including where no serious injury occurred, should require a driving ban. We called for this in our response to the Sentencing Council's consultation on sentencing guidelines for magistrates in 2016.

Q3 Do you think that the maximum penalty for causing death by dangerous driving adequately reflects the culpability of the offending behaviour or should it be increased from 14 years imprisonment to life?

RoadPeace has called for all culpable road deaths to be prosecuted as manslaughter. We see no difference with a death caused by the negligence of a train guard, optometrist, mechanic or lorry firm owner with that of a driver. Just as we have single punch manslaughter where death was not intended, so too could we have motor manslaughter, where law breaking was wilful, even when the consequences were not.

We therefore support the increased maximum prison sentence to life, so that it is the same as manslaughter. This will allow longer custodial sentences for extreme offenders. But we note the MoJ's impact appraisal assumes longer sentences (25-50% longer) for only those drivers currently receiving a sentence close to the maximum (equal to or above 9.3 years after a sentencing reduction is considered). In 2015, only two drivers convicted of Causing Death by Dangerous Driving received sentences of over 10 years.

And we await the [Sentencing Council's](#) consultation on the sentencing bands for these offences. At present they are expecting to consult on them between September-December 2018, with a definitive guideline published in July 2019 and implemented in October 2019.

Q4 Do you think that the maximum penalty for causing death by careless driving under the influence of drink or drugs should reflect the same culpability (and therefore) the same maximum penalty) as causing death by dangerous driving?

RoadPeace believes that both Causing Death by Dangerous Driving and Causing Death by Careless Driving Whilst Under the Influence should have the same maximum penalty.

But likewise, RoadPeace believes the same sentence should be possible for Causing Serious injury by Dangerous Driving and Causing Serious Injury by Careless Driving Whilst Under the Influence. This is not currently possible and this gap is not addressed in this consultation.

Q5 Should consideration be given to a longer minimum period of disqualification for offenders convicted of any causing death by driving offence and if so what do you think the minimum period should be?

Re minimum driving disqualifications, RoadPeace supports a lifetime driving ban for those convicted of Causing Death by Dangerous Driving and Causing Death by Careless Driving Whilst Under the Influence.

All causing death by driving charges already have a mandatory driving ban. But [our analysis](#) showed that one in five drivers convicted of Causing Death by Careless Driving in England and Wales in 2015, escaped a driving ban.

So we repeat our call for our judges sentencing drivers for causing a death or life changing injury to have specialist training in order to ensure they use their full powers, including with driving bans.

And much more focus on driving bans is needed, not just the minimum for the causing death by driving offences. Causing serious injury by careless driving should also carry a mandatory driving ban, as previously mentioned.

But a full rethink on driving bans by the government is needed. Disqualifications have been described as the key penalty by the Department for Transport but the Sentencing Council and courts classify them as ancillary penalties, like a rehabilitation order, rather than a core type of sentence. And driving bans are thus rarely used, except for offence where they are supposed to be mandatory. We believe there is widespread support for much greater use of driving bans. For some of our bereaved members, it is the speed which convicted drivers are allowed to return to driving that aggravates their suffering more, rather than the length of a custodial sentence.

And the exemptions of driving bans on the basis of exceptional hardship should be reviewed. At the most, drivers could be allowed to drive for work but be prohibited from driving at all other times.

It is now 50 years since a mandatory minimum driving ban of one year was imposed for first time drink drivers. And drink driving has been greatly reduced. We need much greater use of driving bans for speeding drivers, drivers using their phones, leaving the scene where someone has been injured, etc.

We also support the introductions of licence conditions which suspend a driving licence when a driver has been arrested on suspicion of an offence that carries a mandatory disqualification. This should not be a bail condition which challenges the principle of innocent until proven guilty, but a condition of a driving licence.

Q6 Are there any other driving offences relating to causing death or serious injury that you think should be changed. If so, what changes should be made and why?

Three other offences involving fatal/serious injury that need changing include:

- Leaving the Scene of a Fatal/Serious Injury crash
- Drink driving
- Car dooring

Leaving the Scene of a Fatal/Serious Injury crash

At present, drivers who leave the scene of a fatal or serious injury crash are only charged with the summary offence of Failing to Stop. This is suitable for minor property damage crashes, but not where life was lost or limited due to an absconding driver.

It is not always possible to determine if the driving caused the death. RoadPeace is calling for either manslaughter to be extended to include these cases or for a new charge of (Knowingly) Leaving the Scene of a Fatal/Serious Injury crash. This would apply where there was evidence that it would have been reasonable to assume the driver knew they were leaving a seriously injured victim.

Drink driving

The maximum sentence for drink driving is six months custodial sentence. And whilst careless driving does not carry a custodial sentence, when a death results from careless driving by a drink driver, the maximum sentence is 14 years. We have already given our views on prison for careless driving but for drink driving, we believe an increase in the maximum sentence is overdue. A maximum custodial sentence of at least two years should be considered.

And to be consistent, we should have a Causing Serious Injury by Careless Driving whilst under the influence with the same penalty as Causing Serious Injury by Dangerous Driving.

Car dooring

The current penalties imposed for car dooring are insufficient. Only in extreme circumstances, will a charge of manslaughter be used, and the much more common alternative is only that of a summary construction and use offence. The recent Magistrates Sentencing Guidelines consultation did not include reviewing the penalties for this offence.

For more information on the devastation that can be caused by car dooring, please read the blog posted by May Hamilton, a RoadPeace member, whose husband Robert was killed by a car driver carelessly opening their door. <https://roadpeacejusticewatch.wordpress.com/2016/10/19/the-forgotten-victims/>

As a society promoting cycling, reforming this offence (and deterring this criminal behaviour) should be a priority for both the MoJ and the DfT.

Q7 Does the equalities statement correctly identify the extent of the impacts of the proposed options for reform set out in this consultation paper? Please give reasons and supply evidence as appropriate.

It is not possible to know the impact these changes will have. The government does not report the associated casualty or conviction statistics by these victim characteristics.

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**About RoadPeace**

RoadPeace, the national charity for road crash victims, has been helping the families cope with the aftermath of road death and injury since 1992. We provide emotional support and information to help the bereaved and injured understand the justice system. RoadPeace also campaigns for an end to the complacency shown road danger by our justice system.