

Causing death by careless driving—10 years on

Summary report

1. Introduction

Ten years have passed since *Causing death by careless driving* was introduced on 18 August 2008. Previously, a driver responsible for a fatal crash but whose culpability fell short of dangerous driving was only charged with a summary offence of *Driving without due care and attention*, i.e. *Careless driving* - the same charge a driver might get for backing into a tree. The death was not mentioned at court and a plea could be sent by post. Drivers were not even required to attend court for the sentence. As a summary offence, the sentence was slight with no option of custody. Offenders were not banned but only received a few penalty points. So the death was not recognised and there was a large sentencing gap. RoadPeace was founded in 1992 by Brigitte Chaudhry, in outrage at how the death of her son had been treated by the judicial system.

Fifteen years of campaigning for a change in the law by RoadPeace and other organisations, resulted in the offence of *Causing death by careless driving*. This was a move in the right direction, as it recognised the death. But, since it was only an either-way offence, some bereaved families still had to see their cases heard and sentenced in the Magistrates Court, alongside petty crimes. And whilst it closed the sentencing gap, both proponents and opponents had concerns about unintended consequences. Campaigners warned it could lead to downgrading of dangerous driving. Opponents feared it would result in custodial sentences for drivers whose momentary lapses had caused a death.

This report analysed the evidence from the first decade on its impact on three key areas:

- Recognition of road death
- Right charge
- Proportionate sentencing

Recognition of road death

Causing death by careless driving has resulted in more wrongful road deaths being rightfully recognised in court in Britain.

England and Wales

- 2,072 road deaths were recognised and prosecuted as caused by careless driving (2008-17).
- This charge became the most common causing death by driving charge used, reaching a high of 285 prosecutions in 2010, and being used in 18% of fatal collisions in 2010 and 2012.

Scotland

- 217 road deaths were prosecuted as caused by careless driving (2007-8—2016-17).
- They reached a high of 43 in 2014-15, and were prosecuted in 24% of fatal collisions in 2014-15 and 2015-16.

In both jurisdictions

- fatal collisions are now considerably more likely to result in a successful prosecution of a causing death by driving offence. In England and Wales around one in 10 fatal collisions resulted in a conviction in 2007; in 2017, it was over one in four. In Scotland, it was one in 10 in 2007 and reached one in four in 2016, dropping slightly in 2017.

This does not mean that all culpable drivers are being prosecuted or convicted, just that the situation has improved in both jurisdictions. RoadPeace continues to hear from families of their dissatisfaction with the decision not to prosecute. As a key objective of this charge was the recognition of culpable road death, then *Causing death by careless driving* has helped.

Right charge

There was much concern that the introduction of this charge would lead to dangerous drivers facing a lesser charge¹. This could be either by undercharging with the lesser charge used from the start of proceedings, or downgrading with the charge changing later, either by the CPS, the judge or the jury.

England and Wales

- From 2011 to 2013, proceedings for *Causing death by careless driving* exceeded those for *Causing Death by Dangerous driving*, with a ratio of around 3:2. They have since evened out.
- A driver in a fatal collision was more likely to be prosecuted for *Causing death by dangerous driving* in 2017 than they were in 2007.
- The data does, however, suggest that many cases which started out as *Causing death by dangerous driving* ended up as *Causing death by careless driving*, i.e. downgrading. This was especially true over 2011-15.

Scotland

- After the introduction of *Causing death by careless driving* in 2008, *Causing death by dangerous driving* dropped dramatically, from 29 in 2007-08 to seven in 2014-15, before rising in the last two years.
- In 2014-15 there were over six times as many prosecutions for *Causing death by careless driving* than for *Causing death by dangerous driving*. By 2016-17, this was less than three times as many. This change in the ratio between the two offences was both more dramatic and more sustained than in England and Wales.
- There was also a decline in the proportion of fatal collisions resulting in a charge for *Causing death by dangerous driving*. This dropped from 11% in 2007-08 to 4% in 2014-15.
- This data is consistent with undercharging² being a problem in Scotland.

Proportionate sentencing

In the debates that preceded the introduction of *Causing death by careless driving*, there was concern that drivers could be imprisoned for a momentary lapse in attention. This report found no evidence of excessive sentencing. The opposite was found in Scotland where the number of drivers imprisoned and their custodial sentence lengths have decreased.

England and Wales

- A minority of drivers convicted of *Causing death by careless driving* received a custodial sentence. Between 2010-2016, it ranged between 19% to 30%, before reaching 32% in 2017.
- The use of community sentences, the punishment suggested in the Sentencing Guidelines for the less serious examples of *Causing death by careless driving*, declined significantly in (from 67% to 25%).
- Suspended prison sentences have increased in use from 19% to 41%.
- The minimum ban period of 12 months for *Causing death by careless driving* has not been followed for a significant number of those sentenced (up to 21%, in 2015). (Exemptions for

¹ The persisting lack of clarity on the boundaries between the base offences of Careless driving and Dangerous driving has undoubtedly contributed to this concern.

² Caution is needed in the interpretation of this data as there are far fewer fatalities and proceedings in Scotland than in England and Wales.

Causing death by dangerous driving were never more than 3%). This indicates lenient sentencing with convicted drivers not being taken off the road.

Scotland

- One in seven convictions for *Causing death by careless driving* resulted in prison, a lower rate than in England and Wales.
- Community sentences rose from 45% to 67%.
- Relative to fatal collisions, the proportion of the two offences that result in a custodial sentence is the same in 2017 (9%) as it was in 2007.
- But, of those that are sent to prison, a quarter will face the shorter sentences of *Causing death by careless driving*.

2. RoadPeace calls

1. Comprehensive legislative reform

The introduction of *Causing death by careless driving* is an example of a change in the law that has had both positive outcomes and unintended negative consequences due to flaws in the wider legislative and sentencing framework.

With the MoJ and DfT, the government's recent approach to driving offences has been piecemeal and has tended to respond to or be directed towards news headlines. At present, this looks set to continue. What is needed, and indeed was promised by the Justice Secretary over four years ago, is a comprehensive review. This should include:

- a. Review of the definition, charging standards, and sentencing for the different levels of unsafe driving, e.g. careless and dangerous driving. Additional emphasis should be given to the protection of vulnerable road users.
- b. Bringing greater consistency to the treatment of culpability, especially with regard to unsafe/illegal driving leading to serious injury.
- c. Greater consideration of alternative sentences, including driving disqualifications and vehicle confiscations. Short term impoundments, as introduced in Canada for low level drink drive offenders, should be considered.
- d. Consideration should be given to the option of amending dangerous driving so that magistrates, but not defendants, could refer cases to the Crown Court. Removing the right to trial by jury was proposed for a wide range of offences (Leveson, Rt Hon Sir Brian, 2015).

This call is not new. In March 2001, RoadPeace responded to the government's consultation on road traffic penalties, stating that "*What is needed is a comprehensive and integrated approach to criminal justice reforms: penalties is just the start*" (RoadPeace, 2001). Over 17 years on, we continue to campaign for a comprehensive review. This includes recognition of serious injury caused by law-breaking drivers, not just those involving dangerous or disqualified drivers.

2. Justice outcomes and data linkage

Justice outcomes of collision investigations need to be reported. This would clarify which collisions involved criminal culpability (and how severe). And with the majority of fatal collisions not resulting in a prosecution, the reasons for this should also be known. This would include how many were down to driver not found culpable, not in the public interest, lack of evidence, etc.

DfT is committed to the Safer System approach. It has also invested in the Collision Recording and Sharing (CRASH) information management system, which it is encouraging police services to use. Some police services use NICHE, a crime information management which tracks court outcomes with

crimes and crashes. CRASH should do the same. DfT's upcoming STATS 19 review should provide the opportunity to incorporate justice outcome data.

3. CPS quality assurance, especially with contentious cases

Victims, campaigners and MPs have raised repeated concerns about the CPS handling of fatal and serious injury related prosecutions. Improvement on collation of performance data for the CPS was called for under a recent criminal justice joint inspection (HMCSI and HMIIC).

Lessons should be learned from appeals, acquittals and complaints. In acquittals, the prosecution has to produce an adverse case report, but these are not collated or shared. They should be, with bereaved families asked to contribute how they thought the prosecution could have been improved. Cases where families have appealed the charging decision should also be collated.

4. Treatment of Victims

Causing Death by Careless driving was introduced after calls from the bereaved for rightful recognition. But victims still deserve better. All causing death by driving charges should qualify as homicide offences. Greater priority would then be allocated to investigating and prosecuting criminal road deaths. This would also improve the rights and support offered to bereaved families. It would ensure that bereaved families (and CPS) would have the right to appeal an unduly lenient sentence with *Causing death by careless driving*. They would also be offered the support of a homicide caseworker, under the national service funded by the MoJ.

Whilst the introduction of the *Causing death by careless driving* charge has helped ensure drivers are held accountable for the deaths they cause, much more could and should be done. This includes ending the justice system's complacency towards road danger and treating road crime as real crime. This would mean victims of road traffic crime, including those injured and intimidated, were treated as victims of crime.

For the full report on *Causing death by careless driving 10 years on*, including references, see RoadPeace website.

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 and navigate the justice system.

Our support does not stop there. We campaign for an end to the belief that crashes are accidents and casualties are inevitable. Crashes are preventable, especially those involving criminality.

RoadPeace monitors the justice system's response to road traffic crime. In 2017, RoadPeace published two key reports:

[Lawless Roads: road policing, casualties and driving offences since 2010, England and Wales](#)

[Road Death Investigation: Overlooked and Underfunded](#) (the first national review of road death investigation in Britain)

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