

Recent Updates in Driving Law

Part I – The Road Safety Act 2006: General

- Although passed in 2006 most of the Road Safety Act is still not in force.
- Most of the provisions of the Act insert new sections into the existing legislation, making the Act itself a frequently confusing read.

Penalty Points and other Sentencing

- Section 29 was brought into force on 24/9/07. This raises the number of penalty points for a s172 offence from 3 points to 6 points.
- Sections 3-7 have not been brought into force yet. They create a system of graduated fixed penalties whereby different numbers of points can be given for the same offence.¹
- Sections 8-10 have not been brought into force yet. They create a new system of endorsement. There will be a computerised driving record held by the DVLA meaning counterpart licences will not be needed. The new system will also allow fixed penalties to be given to foreign and unlicensed drivers.
- Sections 15-16 have not been brought into force yet. They will give the courts power in certain circumstances to offer offenders the chance to reduce the length of a driving ban by taking part in an alcohol ignition interlock programme. If any of the requirements are breached then the unreduced ban takes effect.

¹ It should be noted that s17 of the Act changes the range of points available for speeding from 3-6 points to 2-6 points.

- Section 35 has not been brought into force yet. This extends the familiar principle of the drink driver's rehabilitation scheme to other offences. Completion of the relevant course will lead to a reduction in the length of the ban imposed.

Part II – Causing Death by Careless Driving

The Offence

- The new offence is created by section 20 of the Road Safety Act, which inserts a new section 2B into the Road Traffic Act 1988:

“A person who causes the death of another person by driving a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or public place, is guilty of an offence.”

It came into force on the 18th of August 2008.

- For the first time there is a statutory definition of careless driving. Section 30 of the 2006 Act inserts a new s3ZA into the Road Traffic Act 1988:

“(2) 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.
(3) In determining for the purposes of subsection (2) above what would be expected of a careful and competent driver in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.
(4) A person is to be regarded as driving without reasonable consideration for other persons only if those persons are inconvenienced by his driving.”

Broadly speaking this reflects the previous law, as outlined by Clarke J in *DPP v Cox*.²

Subsection (3) reflects the wording of s2A(3) of the Road Traffic Act 1988 regarding dangerous driving. It is now clear that this includes circumstances favourable to the accused as well as those unfavourable to him. For instance, in *Milton v CPS*³ the High Court ruled that a District Judge had been wrong to ignore the fact that the defendant was a Grade 1 advanced police driver. However, Smith LJ was keen to limit the effect the decision could have:

“It will, in my view, only be the extremes of ‘special skill’ and ‘almost complete lack of experience’ that will be such as could affect the mind of the decision maker. The mere fact that a driver has driven for 30 years without an accident will not be relevant; nor will evidence that a driver does not drive frequently.”

It might be said that it is not clear why the application of this principle should be limited to “extremes”. No doubt the precise limits of this doctrine will be tested in the future.

- The concept of causation will be familiar from the offence of causing death by dangerous driving. Suffice to say that the tribunal of fact do not have to be sure that the defendant’s driving “was the principal, or a substantial, cause of the death, as long as [they] are sure it was a cause and that there was something more than a slight or a trifling link.”⁴

Sentencing

- The definitive guideline issued by the Sentencing Guidelines Council has 3 levels. The guidelines make it clear that where the level of carelessness is low and there are no aggravating factors a prison sentence should not be imposed.
- However, the list of aggravating factors includes more than one death and serious injury to another person in addition to the death. Factors of pure chance may therefore lead to the imposition of a prison sentence rather than a community sentence.

² (1993) 157 JP 1044

³ [2007] EWHC 532 (Admin)

⁴ *Kimsey* [1996] Crim LR 35

- The highest level in the guideline has a starting point of 15 months custody and a range of 36 weeks – 3 years. This overlaps with the lowest level in the guideline for causing death by dangerous driving which has a starting point of 3 years and a range of 2 – 5 years custody. There is still something to be gained from attempting to persuade the prosecution to accept a plea to the lesser charge, although nothing like the position under the old law. No doubt the sentencing guidelines will make prosecutors much more inclined to accept pleas to the lesser offence in borderline cases.
- There may be considerable scope for the imposition of suspended prison sentences. In *Legrys*⁵ the offender received 12 months prison suspended for 2 years with 200 hours unpaid work. This was imposed for an offence of causing death by dangerous driving where the offender had attempted to overtake a tractor/trailer and collided with a motorcyclist travelling in the opposite direction. The sentence was referred by the Attorney General to the Court of Appeal. The Court of Appeal, whilst stating there should have been a custodial sentence, refused to say the sentence was unduly lenient, referring to the offender’s good character, clean driving record and the momentary nature of the error he made. Since these are factors that are likely to be present in many cases of causing death by careless driving there may well be forceful grounds for arguing for a suspended sentence in such cases.

Part III – Causing Death by Driving When Unlicensed Etc

*“Punishment Without Responsibility”?*⁶

The Offence

- No element of fault is required in the defendant’s driving: he could be completely blameless for the death yet still face prosecution.
- The test for causation, as described above, is not a difficult one.

⁵ [2007] EWCA Crim 1605

⁶ Ferguson, SLT 2007 27

- Similarly, disqualification, lack of licence and lack of insurance are likely to be easily proved facts. There may therefore be many guilty pleas when this offence is charged.
- The offence may be difficult to justify: if the defendant is at no fault for the death then surely he should only be charged with the simple offence. If his driving is at fault then surely he should be charged with causing death by careless or dangerous driving. Can it really be said that the fact that a death has resulted through no fault of the defendants can justify a prison sentence of up to 2 years?

Sentencing

- The Sentencing Guidelines contain three levels. As for the offence of causing death by careless driving the lowest level does not involve a prison sentence.
- However, similar concerns apply as the list of aggravating factors includes factors of sheer chance. These could lead to a substantial prison sentence being imposed.
- Interestingly, research commissioned by the Sentencing Advisory Panel⁷ shows that the public regard this offence as being more serious than causing death by careless driving and are in favour of longer sentences. It would seem that the very fact that these drivers should not be on the road weighs very heavily on the public mind. It remains to be seen how heavily such concerns weigh on judicial minds.

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⁷ Summarised at [2007] Crim LR 525