



CPS

Policy for Prosecuting Cases of Bad Driving



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PUBLIC STATEMENT

Introduction

- 1.1** This document explains the way in which we, the Crown Prosecution Service (CPS), deal with cases involving bad driving. It supplements and is subordinate to the Code for Crown Prosecutors.
- 1.2** Bad driving resulting in death or injury has devastating consequences for victims and their families and friends, and it is important that justice is seen to be done in cases where this has happened.
- 1.3** The CPS is committed to ensuring that in such cases our prosecutors reach the correct charging decisions, so that the right person is prosecuted for the right offence in the right court.
- 1.4** For this to be achieved these decisions must be in line with current law, but also, where it is just and lawful to do so, they should reflect changing public attitudes to bad driving and the desire of victims, or their families, friends and the public, to see that justice is done in these cases.
- 1.5** In 2002 Her Majesty's CPS Inspectorate (HMCPSI) undertook a review of the way in which the CPS was handling road traffic cases involving fatalities. That review found that in the vast majority of cases under review the correct charge was chosen by the CPS¹.

- 1.6** In 2006 the Director of Public Prosecutions (DPP) acknowledged that, notwithstanding the findings of the HMCPSI report, there were occasions where victims or their families and friends did not agree with the decisions made by the CPS or found them hard to accept or understand.
- 1.7** Following a public consultation carried out by the Home Office in 2005, Parliament passed the Road Safety Act 2006, which will introduce new offences of causing death by careless driving and causing death while driving unlawfully on a road².
- 1.8** The DPP decided that the time was right for the CPS to review its prosecution policies and procedures for dealing with cases of bad driving, and that this review should be informed by a wide public consultation, which was launched in December 2006³.
- 1.9** The purpose of the consultation was to open up the CPS practices and procedures and to explain how CPS prosecutors reach their decisions in these cases, because the CPS wants the public to have confidence in the decisions that we make.

¹ A Report on the Thematic Review of the Advice Conduct and Prosecution by the Crown Prosecution Service of Road Traffic Offences involving Fatalities in England and Wales – available from the HMCPSI website (www.hmcpsi.gov.uk)

² Sections 20 and 21 of the Road Safety Act 2006. These sections are not in force at the time of writing.

³ Prosecuting Bad Driving – A Consultation on CPS Policy and Practice

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- 1.10** There were 139 responses to the consultation, showing how deeply people care about the consequences of bad driving and how its consequences, especially where a loved one has been killed or seriously injured, cause unimaginable distress.
- 1.11** The issues raised by the consultation attracted a wide range of views, all of which have been taken fully into account in the preparation of this policy. The content of the policy, however, is the responsibility of the CPS alone.
- 1.12** The CPS is not the only agency that deals with cases involving bad driving. The police, the criminal courts, magistrates and judges all have roles to play in promoting greater confidence in the criminal justice system. We shall work with our partner agencies to ensure that justice is done in these cases.

What is Bad Driving?

- 2.1** There is no statutory definition of bad driving, but there are a number of general offences that directly concern or relate to the way in which a vehicle is driven. The elements of each offence and levels of punishment are set out below.

Murder

- 2.2** Where there is evidence that a motorist killed another person intending to kill or cause grievous bodily harm, he or she will be liable to prosecution for murder.

- 2.3** The offence is triable only on indictment⁴ and carries a mandatory sentence of life imprisonment.

Manslaughter

- 2.4** Where a killing is involuntary, that is to say, where it was not intended, it may amount to manslaughter.
- 2.5** Manslaughter is triable only on indictment and carries a maximum sentence of life imprisonment.
- 2.6** Disqualification from driving for a minimum period of 2 years followed by an extended retest is mandatory.

Causing death by dangerous driving

- 2.7** Section 1 of the Road Traffic Act 1988 provides that the offence is committed when the driving was the cause of a death of another and it was dangerous within the meaning of Section 2A of the Road Traffic Act 1988.
- 2.8** The offence is triable only on indictment and carries a maximum sentence of 14 years' imprisonment.
- 2.9** Disqualification from driving for a minimum period of 2 years followed by an extended retest is mandatory.

⁴ Trial on indictment means trial at the Crown Court before a judge and jury.

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

- 2.10** Section 3A of the Road Traffic Act 1988 provides that this offence is committed when the driving was without due care and attention or without reasonable consideration for other road users; the driving has caused the death of another person and the driver is either unfit through the consumption of drink or drugs, or the alcohol concentration in his body is over the prescribed limit, or there has been a failure to provide a specimen of breath/blood/urine in pursuance of the law.
- 2.11** The offence is triable only on indictment and carries a maximum penalty of 14 years' imprisonment.
- 2.12** Disqualification from driving for a minimum period of 2 years followed by an extended retest is mandatory.

Causing death by careless or inconsiderate driving⁵

- 2.13** Section 2B of the Road Traffic Act 1988⁶ provides that this offence is committed when the driving is without due care and attention, or without reasonable consideration for other road users; and the driving has caused the death of another person.
- 2.14** The offence can be tried either in a magistrates' court or in the Crown Court. On indictment it carries a maximum sentence of 5 years' imprisonment.

⁵ The legislation creating this offence is not in force at the time of writing.

⁶ Inserted by Section 20 of the Road Safety Act 2006.

2.15 Disqualification from driving for a minimum of 12 months is mandatory.

Causing death by driving unlicensed, uninsured or disqualified⁷

2.16 Section 3ZB of the Road Traffic Act 1988⁸ provides that this offence is committed when a driver causes the death of another person by driving on a road when unlicensed, uninsured or disqualified from holding or obtaining a driving licence.

2.17 The offence can be tried either in a magistrates' court or in the Crown Court. On indictment it carries a maximum sentence of 2 years' imprisonment.

2.18 Disqualification from driving for a minimum of 12 months is mandatory.

Dangerous driving

2.19 Section 2A of the Road Traffic Act 1988 provides that a person is to be regarded as driving dangerously if the way he or she drives 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. A person is also 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.

⁷ The legislation creating this offence is not in force at the time of writing.

⁸ Inserted by Section 21 of the Road Safety Act 2006.

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- 2.20** The offence can be tried either in a magistrates' court or in the Crown Court. On indictment it carries a maximum sentence of 2 years' imprisonment.
- 2.21** Disqualification from driving for a minimum period of 12 months followed by an extended retest is mandatory.

Careless or inconsiderate driving

- 2.22** Careless driving is an offence contrary to Section 3 of the Road Traffic Act 1988. S3ZA of that Act⁹ defines careless driving as driving that falls below what would be expected of a competent and careful driver.
- 2.23** Inconsiderate driving requires the prosecution to prove in addition that other persons were inconvenienced by the driving.
- 2.24** The offence can be tried only in a magistrates' court.
- 2.25** The offence is not imprisonable. Disqualification is discretionary.

Wanton and furious driving

- 2.26** Wanton and furious driving is an old offence – predating the invention of the internal combustion engine – contained in Section 35 of the Offences Against the Person Act 1861. The prosecution must prove that the defendant drove dangerously (careless driving is insufficient) and caused some injury to another person.

⁹ Inserted by Section 30 of the Road Safety Act 2006.

- 2.27** The offence is not limited to a road or other public place and is therefore useful for prosecuting cases where the bad driving occurred off-road.
- 2.28** The offence is triable only on indictment and carries a maximum sentence of 2 years' imprisonment.
- 2.29** Penalty points and discretionary disqualification are now available to courts¹⁰.

Aggravated Vehicle Taking

- 2.30** This offence was introduced in 1992 in response to public concern about what had become known as 'joyriding'. Before 1992, it was an offence under Section 12 of the Theft Act 1968 to take a vehicle without the consent of the owner, or anyone else able to give permission on behalf of the owner. The offence also covered those not actually responsible for taking the vehicle, but who drove the vehicle, or allowed themselves to be carried in it after it was taken, knowing that it had been taken without permission. It is still an offence.
- 2.31** However, the original offence did not take into account any bad driving of the vehicle after it had been unlawfully taken, or the consequences that could follow from the vehicle being driven. The aggravated offence was introduced to deal with this.

¹⁰ Section 28 of the Road Safety Act 2006.

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2.32 It can be found in Section 12A of the Theft Act 1968 and is committed if, after the vehicle is unlawfully taken but before it is recovered, any one or more of the following occurs:

- the vehicle is driven dangerously on a road or other public place;
- owing to the driving of the vehicle, a collision occurs by which injury is caused to any person;
- owing to the driving of the vehicle, a collision occurs by which damage is caused to any property, other than the vehicle;
- damage is caused to the vehicle.

2.33 The offence can be tried in the magistrates' court or in the Crown Court. At the Crown Court the maximum sentence is normally 2 years' imprisonment, except where any collision has caused the death of the victim, in which case the maximum sentence is 14 years' imprisonment.

2.34 Disqualification from driving for a minimum period of 12 months is obligatory.

The role of the CPS

3.1 It is the responsibility of the police to investigate allegations of crime and to gather evidence about what occurred.

3.2 It is the responsibility of the CPS to decide charges in all

but minor and routine cases and our prosecutors will work with the police to ensure that bad driving cases are identified as early as possible so that the correct charging decision can be made.

The Code for Crown Prosecutors

- 4.1** The way in which we reach our decisions about whether to prosecute is set out in the Code for Crown Prosecutors. This document is issued by the DPP. It is updated regularly so that it reflects current practice. The Code is a public document. Copies are available from CPS Communications Branch, 50 Ludgate Hill, London EC4M 7EX or from local CPS offices, or from our website.

http://www.cps.gov.uk/victims_witnesses/code.html

- 4.2** We review the cases that are referred to us in line with the Full Code Test that is set out in the Code. The test has two stages¹¹. The first stage is consideration of the evidence and the second concerns the public interest.

The first stage – the evidential stage

- 4.3** Crown Prosecutors must first be satisfied that there is enough evidence to provide a “realistic prospect of

¹¹ At an early stage where not all of the evidence has been obtained but a decision to charge cannot be delayed because it is not appropriate to bail the defendant, prosecutors may apply what is known as the Threshold Test. However, once all the evidence has been received the final decision must be made according to the Full Code Test.

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conviction against each defendant on each charge". This means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged.

- 4.4** The evidential standard that we apply is therefore different from the one that the court applies before it may convict a defendant. This is why not all cases that are prosecuted result in a conviction. Just because a case may pass the evidential stage in the Full Code Test does not necessarily mean that the case will result in a conviction. It is for the court to decide whether a defendant is guilty based upon the evidence that it hears or reads.
- 4.5** If the case does not pass the evidential stage based on the strength of the evidence, it must not go ahead, no matter how important or serious it may be. This is because we have reached the view that the court is not likely to convict the defendant of the crime alleged on the evidence we have. In such cases, it is wrong to prosecute the defendant and it is wrong to raise the expectations of victims and witnesses when we do not believe that a conviction is likely.

The second stage – the public interest stage

- 4.6** If the case does pass the evidential stage, we must then decide if a prosecution is needed in the public interest. A prosecution will usually take place "unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour".

- 4.7** We regard all bad driving as serious, particularly where it has led directly to the death or serious injury of another person. As a result, the public interest in cases of bad driving, where death or serious injury has occurred, will almost always be in favour of a prosecution.
- 4.8** However, there will always be cases where we decide that it is not in the public interest to prosecute.
- 4.9** Although we prosecute cases on behalf of the public at large and not just in the interests of any particular individual, we always think very carefully about the interests of the victim and their family when we decide where the public interest lies¹².
- 4.10** It is not always easy to strike this balance. The views of the victim and their family are important, but they cannot be the final word on the subject of a prosecution.

Nearest and Dearest Cases

- 4.11** In the past, the CPS adopted a different approach in cases where a death has occurred and the deceased was in a close personal or family relationship with the driver. It was based on the principle that the driver has suffered such enormous personal loss that it would be oppressive and insensitive to prosecute the driver for the bad driving offence that led to the death.

¹² The Code for Crown Prosecutors Paras 5.12 & 5.13.

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- 4.12** While we must always be able to exercise discretion in cases where prosecution would be oppressive or insensitive, we believe that the public interest will normally demand that a prosecution takes place in cases of causing death by dangerous driving or causing death by careless driving when under the influence of drink or drugs or failing to provide a specimen, and that is now our policy in these cases.
- 4.13** The Road Safety Act 2006¹³ introduces new offences of causing death by careless driving and causing death by driving whilst uninsured, disqualified or unlicensed. In these cases we may exercise our discretion not to prosecute in cases where the degree of culpability on the part of the driver is low, or where the circumstances of the case would make it unjust to prosecute.
- 4.14** In such cases, we may consider whether, for example, the standard of driving fell below that required by the law only as a result of a true error of judgement.
- 4.15** 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, it may not necessarily be in the public interest to prosecute the driver where the deceased was a close relative or friend.

¹³ As at 6.12.07 these provisions were not in force.

Prosecuting cases of bad driving

- 5.1** We will adopt a proactive approach to seeking further information from the police before a charging decision is made. In all cases, prosecutors should liaise directly with the officer in the case to make sure all available evidence has been obtained and sent to the CPS so that we may fully review the case. If necessary, we will advise the police to follow up other lines of enquiry.

CPS Charging Practice

- 5.2** All Crown Prosecutors must apply the Code for Crown Prosecutors when considering charges. As we have seen, the prosecutor must consider whether there is sufficient evidence for a realistic prospect of conviction, bearing in mind the very high standard of proof applied in the criminal courts; and, if there is sufficient evidence, whether or not it is in the public interest to proceed with the case.
- 5.3** The charges that we decide on in any prosecution should always reflect the circumstances of the offence. The charges must help us to present the case clearly and simply and they must give the court the power to impose a suitable sentence.

Manslaughter

- 5.4** An offence of manslaughter may arise in two different ways: unlawful act manslaughter and gross negligence manslaughter.

5.5 In very general terms, unlawful act manslaughter can apply where a vehicle is deliberately used as a weapon of assault. Gross negligence manslaughter can be applicable to a situation where there is no intent to use the vehicle as a weapon of assault, but the standard of driving falls so far below the required standard that there is a serious and obvious risk of death and the conduct of the defendant, in all the circumstances, is 'so reprehensible as to amount to gross negligence'¹⁴.

Unlawful act manslaughter

5.6 It must be proved that:

- the defendant's act caused the death of the victim;
- the defendant's act constituted a criminal offence in itself;
- the defendant had the mens rea appropriate to the unlawful act which caused the victim's death; and
- the defendant's unlawful act is objectively recognised as having put the victim at risk of some physical harm, albeit not necessarily serious harm.

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

¹⁴ R v Misra & Srivastava [2005] 1 Cr. App. R. 21 para 48.

- 5.8** Unlawful act manslaughter can occur in a variety of ways. For example, a driver may deliberately drive at a person or group of people with the intention of causing them to fear being struck by the vehicle. The driver may not actually intend to hit them with the car, but if he/she does so and someone is killed as a result, he/she may be guilty of unlawful act manslaughter. If someone is injured, the defendant may be prosecuted for an assault.
- 5.9** There is a difference between these cases and bad driving cases where a death has occurred as a result of driving that is unlawful only because of the negligent manner of its performance¹⁵.
- 5.10** In cases where a death has occurred as a result of bad driving and it is clear that the standard of driving has been grossly negligent on the part of the driver, a charge of gross negligence manslaughter may be the correct charge, as explained below.

Gross negligence manslaughter

- 5.11** To prove a charge based on gross negligence manslaughter, the prosecution must show that the defendant owed the victim a duty of care; that the driving caused the victim's death; that the driving fell far below the minimum acceptable standard of driving; that there was an obvious and serious risk of death; and that the conduct of the defendant can, in all the circumstances, be described as 'reprehensible'.

¹⁵ *Andrews v DPP* [1937] AC 576.

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5.12 Some sections of the public consider that we should often charge gross negligence manslaughter instead of causing death by dangerous driving.

5.13 There are two arguments put forward to support this view:

- first, that the public is now increasingly less tolerant of bad driving and convictions for gross negligence manslaughter may be more likely;
- secondly, because manslaughter carries a higher maximum penalty, it better reflects the gravity of the offence.

5.14 However, the position is not straightforward. Prosecutors may have one or more statutory offences available to them (causing death by dangerous driving and causing death by careless driving whilst unfit through drink or drugs) in cases where there has been a fatal collision caused by bad driving. Before a charge of gross negligence manslaughter will be preferred, there must be something to set the case apart from one where one of the statutory offences can be proved.

5.15 As a matter of law, it is more difficult to prove an offence of gross negligence manslaughter than it is to prove an offence of causing death by dangerous driving. It is not necessary to have evidence of an obvious and serious risk of death to prove an offence of causing death by dangerous driving. All that is required is evidence that the driving was dangerous and that the driving caused the death of another person.

- 5.16** Whilst it is correct that the offence of manslaughter carries the possibility of a more severe sentence than an offence of causing death by dangerous driving, the courts have, over the years, generally passed sentences well within – sometimes significantly below – the maximum sentence available for causing death by dangerous driving.
- 5.17** We will, therefore, only charge gross negligence manslaughter in cases where there is evidence to show a very high risk of death, making the case one of the utmost gravity.
- 5.18** Under the provisions of Section 33 of the Road Safety Act 2006, juries are now able to return alternative verdicts for offences of causing death by dangerous driving, dangerous driving, causing death by careless driving when under the influence of drink or drugs and furious driving where they are not satisfied that the prosecution has made out its case for manslaughter. This has not previously been the case.
- 5.19** This alternative verdict provision provides something of a safety net for the prosecution, but there must still be sufficient evidence for a realistic prospect of conviction of manslaughter and it must still be the most appropriate charge, before a decision to charge manslaughter will be made.
- 5.20** In most cases where a death occurs as a result of dangerous driving, the statutory offence of causing death by dangerous driving will remain the correct charge.

Causing death by dangerous or careless driving

- 5.21** It is not a requirement of Section 1, Section 2B¹⁶ or Section 3A of the Road Traffic Act 1988, that the prosecution proves that the death was foreseeable. The prosecution only needs to prove that the vehicle was driven dangerously or carelessly and that the driving was the cause of the death of another person. The essential qualitative difference between the offences therefore depends on the standard of driving.
- 5.22** Both offences are objective in the sense that the defendant's state of mind is not normally a relevant consideration in determining whether the defendant drove dangerously or carelessly. The fact that a defendant genuinely believed that in the circumstances his or her driving was not dangerous is irrelevant.
- 5.23** Both offences require the driver to depart from the standard of a competent and careful driver, but the key difference between the offences is the extent to which the driving falls below the required standard:
- to be dangerous, the driving must fall 'far below' the required standard;
 - to be careless, the driving need only fall 'below' the required standard.

¹⁶ As at 6.12.07 this section was not in force

Causing death by driving while unlicensed, uninsured or disqualified

5.24 This offence does not require any proof that the driving fell below any standard required by law. We will choose this charge where a death has resulted from driving unlawfully in one or more of the three unlawful circumstances set out in Section 21 of the Road Safety Act 2006. Where there is evidence that the driving fell below the required standard, a charge incorporating dangerous or careless driving will be more appropriate.

Dangerous driving

5.25 Dangerous driving not only includes situations where the driver has taken a deliberate decision to drive in a particular way, but also 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 if only for a short time.

5.26 The circumstances of every case will be unique and we will consider these in each case before reaching a decision as to the appropriate level of charge.

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

- racing or competitive driving;
- speed, which is highly inappropriate for the prevailing

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- 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 a vehicle with a load which presents a danger to other road users;
- where the driver is suffering from impaired ability, such as having an arm or leg in plaster, or impaired eyesight;
- driving when too tired to stay awake;
- driving a vehicle knowing it has a dangerous defect;
- using a hand-held mobile phone or other hand-held electronic equipment when the driver was avoidably and dangerously distracted by that use;
- reading a newspaper/map;
- talking to and looking at a passenger where the driver was avoidably and dangerously distracted by that;
- selecting and lighting a cigarette, or similar, in circumstances where the driver was avoidably and dangerously distracted by that.

Careless/inconsiderate driving

5.28 As with dangerous driving, the circumstances of every case of careless or inconsiderate driving will be unique and we will consider these before reaching a decision as to the appropriate level of charge.

- 5.29** People can drive carelessly or inconsiderately with tragic consequences. Under the law as it stands at present, the consequence of a driver's actions are irrelevant to the level of charge that is chosen.
- 5.30** That will change with the introduction of the new offence of causing death by careless driving¹⁷.
- 5.31** The test that we apply will not change. However, if we decide that the driving was careless and caused a death, the appropriate charge will be, under the new legislation, causing death by careless driving.
- 5.32** There are decided cases that provide some guidance about the driving that the courts will regard as careless or inconsiderate and the following examples are typical of what we are likely to regard as careless or inconsiderate driving:

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;
- using a hand-held mobile phone or other hand-held electronic equipment where the driver was avoidably distracted by that use;
- selecting and lighting a cigarette or similar where the driver was avoidably distracted by that use.

¹⁷Section 20 of the Road Safety Act 2006.

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.

Wanton and Furious Driving

5.33 We will only prosecute for this offence when it is not possible to prosecute for an offence under the road traffic legislation, 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).

5.34 When a vehicle has been deliberately used as a weapon and has caused injury, we will 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.

Aggravated Vehicle Taking

- 5.35** We may use this charge where the vehicle being driven badly has been taken without the consent of the owner or other person authorised to give consent.
- 5.36** Where the manner of driving falls far below the standard required the driver will probably be charged with dangerous driving, because on conviction for that offence the court has power to order the driver to take a re-test before driving again, a power which is not available on conviction for aggravated vehicle taking.
- 5.37** Where there is evidence of dangerous driving leading to a fatal collision, we will normally charge the driver with the offence of causing death by dangerous driving, so that the sentencing court has power to order the driver to take an extended retest before driving again. This power is not available for aggravated vehicle taking.
- 5.38** Where there is no evidence that the manner of driving fell below the standard required, but there is evidence that the vehicle was taken without consent, we shall charge aggravated vehicle taking where there has been a collision, as a result of which, either personal injury, or damage to property other than the vehicle, has been caused. We will also use the charge in cases where there is no evidence of a collision, but there is evidence of damage to the vehicle itself.

General factors to take into consideration

- 5.39** We believe that it is appropriate to refer to examples such as those given above in giving guidance to our prosecutors, so that their decisions are as consistent as possible; but examples are merely illustrative of what can amount to dangerous, careless or inconsiderate driving. We will always put the facts of each case in context, and consider whether the particular circumstances warrant a charge of careless or dangerous driving.
- 5.40** In many prosecutions, the decision whether the driving was dangerous or careless will be clear, but there will always be cases that fall into that area where the two offences meet.

Road Conditions

- 5.41** Driving that may simply fall below the standard to be expected of a competent and careful driver in certain conditions may fall far below the required standard in other conditions and become dangerous. For example, there may be evidence of poor visibility, adverse weather conditions or difficult geography, such as a blind corner.

Speed

- 5.42** Evidence of excess speed is another example of this. Where there is evidence of grossly excessive speed, or speed which, although not grossly excessive, is dangerous as a result of the prevailing road conditions, a charge of dangerous driving may be appropriate. Each case will be reviewed according to its particular facts.

The Highway Code

5.43 Many of these situations are considered in the Highway Code, which was revised in 2007. We will always consider evidence of any infringement of the Highway Code, and its consequences on the standard of driving, when deciding the appropriate level of charge.

Mobile Phones and Handheld Devices

5.44 The responses to our 2007 public consultation have shown how seriously society views the potential dangers of the use of mobile phones and other hand-held devices, while driving. In cases where the driver was avoidably and dangerously distracted by that use, a charge of dangerous driving will be the starting point for our charging decisions.

Offences involving Corporate Bodies

5.45 We will ensure that cases involving bad driving in the 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.

5.46 We have a protocol¹⁸ with the Health and Safety Executive and the police for the investigation and prosecution of work-related deaths and our prosecutors will ensure that there is early liaison in appropriate cases where such a death has been caused.

¹⁸ <http://www.cps.gov.uk/publications/agencies/wrdprotocol.html>

Victim and Witness Care

- 6.1** One of our strategic aims is to champion justice and the rights of victims. Only by doing so will we inspire confidence in the communities that we serve.
- 6.2** This commitment applies to all our work dealing with bad driving, but nowhere more so than in our treatment of victims, their families, friends and witnesses, in cases where a fatality has occurred or serious injury has been caused.
- 6.3** In the last five years a number of steps have been taken to achieve this.

Direct Communication with Victims

- 6.4** Since 2001 we have written to all victims including bereaved family members in cases where a decision is taken to discontinue a case or substantially alter a charge. In cases where there has been a death we offer a meeting with the family to explain the decision. These commitments now form part of the Code of Practice for Victims of Crime¹⁹.

¹⁹ http://www.cps.gov.uk/victims_witnesses/victims_code.pdf

The Prosecutor's Pledge

- 6.5** In October 2005, the CPS issued the Prosecutor's Pledge²⁰. This is the CPS Public Policy Statement on the Treatment of Victims and Witnesses and sets out ten service standards that victims and witnesses can expect to receive from our prosecutors.
- 6.6** Since the end of 2005, there have been Witness Care Units throughout England and Wales. They assess the needs of all witnesses and provide information relating to the progress of a case directly to the victim, or their family, or via the police Family Liaison Officer (FLO), in cases where there has been a fatality.

The Victim Focus Scheme

- 6.7** We now provide an enhanced service to those who have lost a close family member in bad driving cases that are the subject of a charge that is heard in the Crown Court. This is the Victim Focus Scheme²¹.
- 6.8** Under this scheme, prosecutors will meet bereaved families early in the case to explain the charging decisions and subsequently to help them understand and answer their questions about the court process. The prosecutor will explain that they have the option, should they so wish, to make a victim personal statement. This is a statement made by or on behalf of the bereaved family about how the death of their family member has affected them.

²⁰ http://www.cps.gov.uk/publications/prosecution/prosecutor_pledge.html

²¹ http://www.cps.gov.uk/victims_witnesses/focus_scheme.html

Terminology

6.9 We recognise the distress that can be caused to victims and their families when cases of bad driving are referred to as 'accidents'. We will not use this term. We will use the term 'collision' to refer to all bad driving cases that involve death or serious injury.

Meeting Victims and Families at Court

6.10 Where possible, in cases where there has been a fatality as a result of bad driving, we will ensure that the reviewing lawyer attends court to meet the bereaved family and will conduct the prosecution where it is possible to do so. Where the reviewing lawyer is not the advocate, the advocate will meet the bereaved family as well.

Inquests

6.11 Where it is considered beneficial to do so, the reviewing lawyer will attend an inquest where the related criminal proceedings have still to be concluded.

Bail

6.12 Sometimes before, and always after, a defendant is charged with an offence, the police will decide whether to release the defendant on bail. This may be back to the police station, or to attend the next available court hearing. The decision will be to release on bail or to keep the person in custody. When the defendant appears before the court, the magistrates, a District Judge or, in certain

cases, a Crown Court judge, will decide about bail after hearing from the prosecution and defence. In certain circumstances, the CPS may appeal against a decision to grant bail.

- 6.13** In bad driving cases, where there is a risk of the defendant committing a further bad driving offence on bail, we may ask the court to impose conditions on bail, or remand the defendant in custody. The court can only do this if we show that there are substantial grounds for withholding bail or imposing conditions.
- 6.14** In a bad driving case, the most appropriate condition is for the defendant not to drive any motor vehicles. If the condition is imposed and is breached, the police can arrest the defendant and the court may remand the defendant in custody.
- 6.15** Where it is appropriate to do so, our prosecutors will invite the court to withhold bail or grant bail, subject to a suitable condition or conditions.

Accepting Pleas

- 6.16** There will be cases in which the defendant indicates a guilty plea to a different charge or to some, but not all, of the charges before the court.
- 6.17** There will also be cases in which the defendant indicates a guilty plea to the existing charge, or charges on the basis of certain specified facts.

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- 6.18** This might arise, for example, if new evidence comes to light after the original charging decision.
- 6.19** The guidelines make it clear that we should only accept the plea if we think that the court is able to pass a sentence that matches the seriousness of the offending.
- 6.20** The Code for Crown Prosecutors requires us to take into account the interests and views of the victim, or the bereaved family, when we decide whether any such plea should be accepted.
- 6.21** Although the decision rests with us, we will consult the victim, or the bereaved family, in accordance with the Victim's Code, the Prosecutor's Pledge and the Victim Focus Scheme, before the decision is made.
- 6.22** We will also follow the Guidelines on the Acceptance of Pleas and the Prosecutor's Role in Sentencing issued in October 2005 by the Attorney General. These emphasise that it is our role to protect the interests of the victim. They also state that, save in the most exceptional circumstances, the acceptance of pleas should be conducted in open court, so that we can explain our reasons for accepting pleas in public.

Sentencing

- 7.1** We will make sure that the court has all the information it needs to sentence appropriately. In 2007, the Attorney General introduced a system²² that requires us to prepare what is called a plea and sentence document in every case heard before the Crown Court and all complex cases that are heard in the magistrates' courts. This document is sent to the court before the relevant hearing at which sentence is passed.
- 7.2** In that document, we provide the court with the following information:
- the aggravating and mitigating factors of the offence (not personal mitigation);
 - any statutory provisions relevant to the offender and the offence under consideration, so that the judge is made aware of any statutory limitations on sentencing;
 - any relevant Sentencing Guidelines and guideline cases;
 - any victim personal statement, or other information available to the prosecution advocate as to the impact of the offence on the victim;
 - where appropriate, any evidence of the impact of the offending on a community;

²²<http://www.attorneygeneral.gov.uk/attachments/AG%20letter%20to%20all%20prosecutors%208%20June%202007.pdf>

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- an indication, where applicable, of an intention to apply for any ancillary orders, such as anti-social behaviour orders and confiscation orders.

- 7.3** Where there is to be a delay between the date of conviction and the date on which the court will pass sentence, we will remind the court of its power to impose an interim disqualification on a defendant where it is lawful for the court to do so.
- 7.4** We will correct any misleading information given by the defence and consider carefully any sentence that is passed to make sure that it reflects the crime.
- 7.5** In certain cases, it is possible for the Attorney General to refer the sentence to the Court of Appeal if satisfied that it is unduly lenient.²³ Where we consider a sentence in such a case to be unduly lenient, we may ask the Attorney General to consider referring it to the Court of Appeal.

²³ <http://www.cps.gov.uk/news/factsheets/fs-undulylenient.html>

Conclusion

- 8.1** We are committed to improving the way in which bad driving is dealt with in the criminal justice system. We want victims, their families and friends and witnesses to have confidence in the way we deal with cases involving bad driving, and to demonstrate to them our understanding of the pain and trauma that is caused as a consequence of bad driving.
- 8.2** We hope that this document will help the public to understand the work of the CPS; how we make our decisions; and how we deal with the often difficult issues that arise in these cases.
- 8.3** We recognise and welcome the invaluable advice and support that may be offered to victims, their families and witnesses by specialist support agencies.
- 8.4** We will continue to work with the police and colleagues in the criminal justice system, and the voluntary and community sector, to help us develop best practice.
- 8.5** We will review this policy statement regularly so that it reflects current law and public attitudes to bad driving.
- 8.6** We welcome any comments and observations that help us to do this.

Annex A

Brake

Brake is the national road safety charity, dedicated to stopping deaths and injuries on roads and caring for people bereaved and affected by road crashes.

BrakeCare helpline for road crash victims: 0845 603 8570

PO Box 548, Huddersfield HD1 2XZ

Tel: 01484 559909 Fax: 01484 559983

www.brake.org.uk

CTC – national cyclists’ organisation

CTC, the national cyclists’ organisation provides a range of information and legal services to cyclists and represents the interests of cyclists and cycling on issues of public policy.

CTC National Office, Parklands, Railton Road, Guildford GU2 9JX

Tel: 0870 873 0060 Fax: 0870 873 0064

www.ctc.org.uk

Living Streets

Living Streets is the national charity campaigning for better streets and public space for people on foot.

31 – 33 Bondway, London SW8 1SJ

Tel: 020 7820 1010 Fax: 0207820 8208

www.livingstreets.org.uk

Roadpeace

RoadPeace is a national charity dedicated to supporting bereaved and injured road crash victims.

National helpline: 0845 4500 355

PO Box 2579, London NW10 3PW

Tel: 020 8838 5102 Fax: 020 8838 5103

www.roadpeace.org

Victim Support

Victim Support is the independent national charity which helps people cope with the effects of crime. It provides free and confidential support and information to help you deal with your experience.

Victim Supportline: 0845 30 30 90

www.victimsupport.org.uk

Further copies of this booklet may be obtained from:

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