



## **Prosecuting Bad Driving – A consultation on CPS Prosecution Policy and Practice**

**Response to Consultation**



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**Response to consultation carried out by the Crown Prosecution Service.  
This information is also available on the CPS website at [www.cps.gov.uk](http://www.cps.gov.uk)**

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## **Introduction**

This is a summary of the responses to 'Prosecuting Bad Driving – A consultation on CPS Prosecution Policy and Practice'.

It will cover:-

- the background to the consultation;
- a summary of the responses to the consultation;
- a summary of the responses to the specific questions raised in the consultation; and
- initial conclusions and the next steps following this consultation.

Further copies of this summary and the consultation paper can be obtained by contacting:

Bad Driving Consultation  
Crown Prosecution Service  
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They may also be obtained by e-mail from [baddriving.cpsconsultation@cps.gsi.gov.uk](mailto:baddriving.cpsconsultation@cps.gsi.gov.uk)

They are also available on the CPS website – [www.cps.gov.uk](http://www.cps.gov.uk)

## **Background**

In December 2006 the CPS launched a public consultation 'Prosecuting Bad Driving'. In the Foreword to the consultation document, the Director of Public Prosecutions (DPP) acknowledged that bad driving resulting in death or injury has devastating consequences for victims and their families and friends, and that it is important that justice is seen to be done. He emphasised the commitment of the CPS to ensuring that in such cases the right person is prosecuted for the right offence in the right court.

In reaching prosecution decisions, however, the DPP also acknowledged that there were occasions where victims or their families and friends did not agree with those decisions or found them hard to accept or understand. The DPP said the CPS should do more to ensure that decisions are correct, in line with current law, and reflect, where possible to do so, changes in the public attitude to bad driving. Following the introduction of new offences of causing death by careless driving and causing death while unlawfully on a road under the Road Safety Act 2006, the DPP decided that the time was right for the CPS to review its prosecution policies and procedures in cases of bad driving. In doing so he considered that it was essential that this review should be informed by a wide public consultation.

In the consultation document, respondents were asked to answer 10 specific questions and to give any additional comments or views at the end of their response. The consultation period ran until 16 March 2007. A list of respondents can be found at Annex A.

## Summary of Responses

1. In total 139 responses were received to the consultation paper. These respondents divide into 4 categories as follows:
  - Responses from individuals, some of whom have been directly affected by the loss of a family member as a result of a road traffic collision.
  - Responses from Organisations, some with a particular interest in road safety and others including Trade Unions, the Press and the Insurance industry.
  - Responses from Agencies within the Criminal Justice System including the Police, the Criminal Bar Association, the Bar Council, the Justices' Clerks' Society and CPS prosecutors.
  - Responses from university academics.

Details of the four categories of respondent are set out in Table 1 below.

**Table 1: Table of respondent type**

<b>Summary of Respondents</b>		
<b>Category of Respondent</b>	<b>Number</b>	<b>Percentage of Total</b>
Individual Respondents	95	68%
Organisations	20	15%
Criminal Justice Agencies	17	12%
Academics	7	5%
<b>Total</b>	<b>139</b>	<b>100%</b>

2. Not every respondent gave specific answers to each individual question in the consultation document. Table 2 below shows the total number of responses to each question and the percentage that represents of the total number of respondents, irrespective of type.

**Table 2: Table of responses to individual questions as a percentage of the total number of respondents.**

<b>Responses to individual questions as a percentage of all respondents</b>		
<b>Question</b>	<b>Number of responses received</b>	<b>Percentage of total number of respondents</b>
1	60	43%
2	60	43%
3	63	45%
4	59	42%
5	53	38%
6	50	36%
7	42	31%
8	40	29%
9	44	32%
10	7	5%
11	20	14%

3. Each individual response has been reviewed by CPS Policy Directorate. Not all respondents have followed the specific questions posed in the consultation document but the views of the respondents are evenly reflected in the above tables and the detailed analysis of the responses that follows.

## **Responses to Specific Questions**

### **1. What are your views on the approach proposed and in particular where do you think the boundaries between causing death by dangerous driving and gross negligence manslaughter may lie?**

There were 60 responses to this question. A number of respondents state that proper sentencing should be the benchmark in all serious cases. Some consider the offence of Causing Death by Dangerous Driving as ‘second best’. One respondent takes the view that the only choice of charge available to prosecutors should be Murder or Causing Death by Dangerous Driving. Another respondent thinks that the offence of Causing Death by Dangerous Driving should be abolished altogether and replaced by Manslaughter. In contrast another respondent thinks that Causing Death by Dangerous Driving should be what he describes as ‘the default charge’. More than one respondent states that Manslaughter should be the chosen charge where the evidence shows that driving was negligent from the outset. Finally there is one respondent who thinks the boundary should be determined by considering the vulnerability of the victim.

Several respondents express the view that the concept of the careful and competent driver is inappropriate. One suggests that the offences of careless and dangerous driving should be abolished and replaced with offences of bad driving and aggravated bad driving. A widely held view is that a conviction for Manslaughter should lead to a more severe sentence than a conviction for Causing Death by Dangerous Driving. Changes in the sentencing guidelines are a frequent topic in the responses. One respondent suggests that the maximum penalty for Causing Death by Dangerous Driving should be increased to life imprisonment.

There is a wide range of views among the respondents as to whether it will be appropriate for the CPS to charge Manslaughter and Causing Death by Dangerous Driving in the alternative when the relevant provisions of the Road Safety Act 2006 come into force. Some respondents would like the CPS to adopt this policy wherever possible, but others believe that it should not be used routinely.

A number of respondents take the view that any deliberate decision to perform a dangerous action while driving that leads to a death, should be charged as Manslaughter. Others would prefer charges of Manslaughter to be reserved for the most serious cases, where a sentence in excess of 14 years is probable.

Others highlight speed as a major contributory factor to fatal collisions. Three respondents express the view that any significantly excessive speed should be considered to be negligent.

A further respondent thinks that gross negligence Manslaughter should be charged more often, not necessarily to increase the likely sentence, but adequately to reflect the true criminality and express censure for the wrong that has been done.

**2. Does the guidance for prosecutors (including the examples cited for each offence) need amending? If so, please say why.**

There were 60 responses to this question. The most widely held view is that the use of a mobile phone while driving should always be considered to be dangerous. Added to this a number of respondents mention the dangers caused by drivers being distracted while adjusting/programming satellite navigation equipment or an MP3 player.

One respondent thinks that the guidance should refer to the safety of pedestrians at traffic light crossings. Another respondent wants paragraph 126 to refer to cyclists and horse riders. One respondent also suggests that there should be some specific reference to level crossings. More than one respondent wants to see further reference to the vulnerability of potential victims of a collision.

One respondent does not agree that slow driving should ever be classed as inconsiderate driving. Another stresses that guidance is only guidance, and must not be seen as prescriptive and exclusive. One respondent comments that paragraph 120 should refer to the effects of fatigue, and that the guidance should make specific reference to the Highway Code. Another would like to see more specific attention drawn to the dangers of excess speed, and the vulnerability of others such as pedestrians and cyclists. It is also suggested that all the examples of careless driving should be considered dangerous and only those listed as inconsiderate driving should be considered careless and that the CPS should use the Driving Standards Agency testing standards to differentiate between dangerous and careless driving.

One respondent suggests that prosecutors should have more specific guidance about the impact of speed and the relationship between fatigue and regulatory offences such as a breach of tachograph regulations for commercial vehicles. Another would like to see more specific guidance about the potential dangers of eating, drinking or smoking while driving. A further respondent does not wish any new guidance to be too prescriptive, suggesting that each case should be considered on its merits. This view is shared by another respondent who suggests that specific examples are only helpful up to a point, but notes that the guidance does highlight the need for decisions to be case specific. Five more respondents think that the dangerous examples are appropriate, but would add overtaking on the inside, driving too close to another vehicle, driving through a red light and emerging from a side road into the path of another vehicle.

**3. What are your views on momentary inattention and single misjudgements? Where do you think the boundaries are between dangerous and careless driving?**

There were 63 responses to this question. Many of the respondents thought that there was little or no difference between the two situations, but acknowledge that this is a difficult issue. More than one respondent suggests that careless driving should be restricted to collisions caused by things out of a driver's control. Another view that emerges is that any breach of road traffic law is dangerous. Some respondents would prefer the test to be 'bad driving' rather than careless or dangerous driving. Many take the view that single incidents can be dangerous. Another view expressed is that any bad driving that would result in a driving test failure should be regarded as dangerous. Aggressive driving is generally considered to be dangerous in the responses. One respondent suggests that there should be a presumption of

dangerous driving in every case where there is a fatality, and another states that these situations should never be regarded merely as careless driving.

One respondent considers that the current distinction is too subjective and favours new offences of bad driving and aggravated bad driving. They believe that this would provide prosecutors with a better, more objective, test. They also suggest that any breach of the Highway Code together with an aggravating factor should be dangerous driving, and that any simple breach should be regarded as careless driving. In any cases that fall on the borderline, they think that the more serious charge should be followed.

Another respondent would like the driver's intentions to be taken into account in reaching the decision as to which offence is appropriate. One respondent favours a two-stage decision making process with a subjective assessment of the driver's state of mind linked to an objective test of the reasonableness or otherwise of the actual driving. Another takes the view that leniency towards momentary inattention and single misjudgements has contributed to a tolerance of bad driving in the past, and supports the view that single incidents can be dangerous. They do, however, accept that honest mistakes can be made by drivers.

Another respondent thinks that dangerous driving should be defined as law breaking and/or having the potential to cause death or serious injury. They suggest that careless driving should be rule breaking and/or having the potential to cause minor injury. One other respondent thinks that the offence of careless driving is unsuitable in all cases where personal harm has resulted.

One respondent thinks that the crucial word is 'momentary'. Another does not think that the consequences of the driver's actions should be the starting point for a charging decision. Two respondents believe that each piece of driving must be viewed objectively when a charging decision is made. Four respondents consider that a single misjudgement is far more likely to amount to careless driving and that the consequences of the driving should not determine the charging decision. Two respondents specifically welcome the introduction of the new offences under the Road Safety Act 2006.

**4. Please provide any views, comments and examples of cases involving excessive speed where the decision as to whether the driving was careless or dangerous was not clear.**

There were 59 responses to this question. Many respondents are of the opinion that excessive speed should always be regarded as dangerous driving. A number of respondents believe that speeding offences carry no stigma in the community. One respondent thinks that wherever a collision is likely due to excessive speed, the charge should always be dangerous driving, otherwise the charge should simply be speeding, but never careless driving. Another thinks that speeding alone is only appropriate where there is no danger to others. Other respondents want to see more emphasis on the term 'appropriate speed' rather than speed limits. One respondent is not convinced that speed is ever the only issue in cases.

One respondent regards excessive speed as bad driving and a contributory factor in many fatal collisions. Another accepts the recent decision in the case of Milton v CPS<sup>1</sup>, that excessive speed cannot of itself be the basis for a conviction for

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<sup>1</sup> [2007] EWHC 532

dangerous driving, but stresses that the individual circumstances of each case need to be considered. One respondent takes the view that current speed limits do not represent a safe driving speed at all.

One respondent believes that speed alone cannot be dangerous and must be looked at in conjunction with risk. They also favour the concept of ‘appropriate speed’ as opposed to the actual speed limit. Another respondent considers that in the past the CPS has tended to adopt a conservative approach to speed. In another response the view is given that speed is such an important factor in collisions that the CPS needs to be more proactive in securing better evidence of speeding. Attention is drawn by another respondent to the effect of excessive speed on reaction times and stopping distances for drivers.

**5. Please provide any views and comments on prosecution practice in the area of employer/corporate liability.**

There were 53 responses to this question. One respondent states that prosecutors should not regard prosecutions in relation to vehicle defects as the only option for prosecution of employers. Another suggests that there should be close liaison between the CPS and the HSE. More than one respondent suggests that prosecution decisions should reflect the need to present cases in such a way that culpability is properly apportioned between the employer and employee. Several respondents take the view that employers are reluctant to discipline employees for careless use of company vehicles.

Another area of concern is that employers should be required to make all necessary checks on their employees’ health where this could affect their ability to drive safely during their employment. A widely held view is that employers, who put pressure on their drivers to break the law, should be brought to account. One respondent comments that the law must operate fairly, taking into account the differences between small businesses with small fleets and workforces and large businesses, such as supermarket chains, with large fleets and workforces.

One respondent does not consider that corporate liability extends far enough, and would like to see obligations to ensure that medical tests are carried out and risk assessments put in place for the safety of company vehicles and drivers. Another favours risk assessments and states that guidance to prosecutors should cover all areas of driving by employees at work and not concentrate only on HGVs, buses and coaches.

Four respondents think that the proposals in the paper are generally acceptable, but one stresses the importance of employers ensuring that their drivers are properly licensed to drive. Another supports the guidance but suggests additional guidelines relating to health checks, and checks on drivers’ qualifications and competence to drive.

Another respondent thinks that bad record keeping should be pursued against employers, where appropriate and favours the prosecution of any employer who has ordered or encouraged an employee to flout regulations such as those relating to drivers’ hours.

One respondent points out that an issue not addressed in the guidance is danger that can arise due to the condition of the driver rather than the vehicle. Five

respondents consider that prosecutions should always follow where it can be shown that an employer has failed to provide active safety management.

**6. What do you think of the proposed revision of the CPS ‘nearest and dearest’ policy?**

There were 50 responses to this question, and there is widespread support for the proposed changes. Some respondents question whether the changes should not go further. A common thread in these responses is that ‘nearest and dearest’ issues are matters for mitigation of sentence and not a reason not to prosecute.

Some respondents suggest that the policy should extend to cases where serious injury has occurred.

One respondent, however, thinks that the policy should remain unchanged.

**7. Please provide any views and comments on the following:**

**a) Where do you think the CPS currently falls down in terms of victim and witness care on road traffic cases, in particular those involving a death?**

There were 42 responses to this question. Many respondents talk of a lack of empathy on the part of the CPS in cases. Others describe a lack of engagement by prosecutors and some consider that victims are not treated with appropriate respect or dignity. Another widely held view is that a lack of engagement by prosecutors can lead them to overlook important aspects of the evidence in some cases. All respondents wish to see an improvement in communications between the CPS, victims and witnesses in road traffic cases and particularly those involving death and serious injury.

Many of the respondents emphasise the need for victims and their relatives to be given a proper explanation of the CPS decision and offered a meeting before the decision is made. One respondent would like the CPS to assist victims and their relatives in dealing with the press in these cases.

One respondent is concerned that victims are often left confused and do not understand the decision that has been made. They feel alienated, because they have not been asked their views. Another believes that communications between the CPS and the police should be improved, that more care should be taken over issues of confidentiality and that in all cases use of the term ‘accident’ should be avoided.

Three respondents express the view that sympathy is no substitute for justice and that early meetings and accuracy of information supplied to victims is of paramount importance. They also believe that facilities for victims and families at court are frequently inadequate, in particular a lack of private waiting areas and rooms. They further emphasise that in court itself the CPS lawyers and their agents should ensure that they show respect and consideration for the victims’ families by avoiding inappropriately close contact with defence lawyers.

One respondent advocates a respectful and consistent approach by the CPS.

One respondent thinks that there has been a great improvement recently, but wishes to see more consistency and better training of prosecutors. Better training of

prosecutors is raised by another respondent and another respondent thinks that particular care is necessary when bereaved families are disappointed by the sentence that is passed, and that the unduly lenient sentencing provisions must be explained carefully to them.

**b) What steps in your view can be taken to rectify these failures and improve witness care, in particular offering an enhanced service to bereaved families?**

A significant number of the respondents recommend earlier contact with bereaved relatives and consistent communication. They would also like regular updates about cases and better information about court hearings and attendance by the bereaved. Closer involvement by the CPS in inquests is mentioned. More than one respondent mentions the distress that has been caused by bereaved relatives being required to pay for copies of accident reports when the defendant is provided with them without cost. A number of respondents ask that meetings with the CPS should be initiated by the CPS and not simply when a meeting is requested by the bereaved relatives. Better training of CPS staff is suggested by several respondents as is participation in the Victim Advocate Scheme.

One respondent believes that an enhanced service would go a long way to improving communications and that a meeting with the victim and family is an 'absolute necessity' before a charging decision is made. The same respondent believes that after charge, further meetings should also take place, and that the Victim Advocate Scheme should be extended to road collision cases.

A further three respondents support the suggestion for a pre-charge meeting, and particularly request that the term 'accident' is not used in these cases. Another respondent wants bereaved relatives to be given better information at an early stage together with referral to support agencies, and would like the Victim Advocate Scheme to be extended to cases involving road fatalities.

**8. Do you think it would be beneficial for the case prosecutor to attend the inquest? If so, why?**

There were 40 responses to this question. 28 respondents are in favour of this, 9 consider it would be helpful but not essential, 2 think it is a matter for the CPS to decide, and 1 does not consider that it is necessary. Many of the respondents who are in favour think it would help prosecutors to be better informed about their cases, and more than one also thinks that the bereaved families would see that the CPS is closely interested in the case.

**9. Should case prosecutors regularly attend court and prosecute road traffic cases where a death has occurred?**

There were 44 respondents to this question. 42 are in favour, 1 thinks it necessary only in serious cases and the remaining responder does not consider it is necessary provided that the advocate who presents the case is fully instructed and is available to meet the bereaved family.

**10. Is there any part of the document you strongly disagree with? If so please identify which paragraph and provide a brief explanation as to why you disagree.**

There were 7 responses to this question. One respondent disagrees with paragraphs 50, 54, 78, 81 and 95 and states that there should not be a choice between careless driving and dangerous driving if the consequences of that driving are a death. Another respondent thinks there is an element of complacency in paragraph 133, especially the second sentence. One respondent disagrees with paragraphs 73 and 75 and thinks that the offences of Manslaughter and Causing Death by Dangerous Driving should carry a minimum and mandatory custodial sentence.

One respondent disagrees with paragraph 121 and believes that all driving that causes death must be dangerous unless there are very exceptional circumstances. Another respondent disagrees with paragraph 163 objecting to a policy of considering only the extent of the driver's error and not the damage caused when deciding on the public interest test. The same respondent disagrees with paragraph 5.10 of the Code for Crown Prosecutors (Annex A in the consultation document) and does not consider that making a genuine mistake should make it less likely that a prosecution for careless driving is required.

Another respondent disagrees with paragraph 83 that the offence of Wanton and Furious Driving requires evidence of dangerousness.

Another respondent disagrees with paragraph 2 that courts are more willing to convict defendants of dangerous driving on evidence that would previously have been considered careless driving. In relation to paragraph 10, this respondent believes that the police still make the charging decisions in the majority of serious injury collisions and that the CPS are only involved in cases involving fatal or near fatal collisions. In relation to the 2002 HMCPSI review mentioned in paragraph 18, this respondent does not consider that the review looked at a representative sample of cases, due to the absence of those where the police had made the decision whether or not to charge.

**11. Have you any other comments about the document not previously mentioned?**

A number of additional comments are made by 20 respondents. One notes that there is no mention in the consultation about a life driving ban. Another comments that more should be done to manage road traffic cases to control the legal costs that they create. Another is hopeful that if public opinion is listened to and acted upon, there will be an improvement in driving standards and people will feel that justice will be done.

Two respondents state that the CPS has work to do to gain the confidence of the public in these cases. Another respondent comments that there is no mention or consideration of the effect of hidden adverse driving conditions such as black ice or standing water. A further respondent asks how often guilty pleas are accepted by the CPS as a matter of convenience.

One respondent welcomes the consultation and hopes that attitudes will change as a result. In contrast another comments that the tone of the consultation paper is dismissive and portrays deaths on the roads as generally an inconvenience to the CPS, while another thinks that the CPS do not treat killer drivers as criminals.

A different respondent expresses disappointment that the consultation appears to comprehend only the possibility of increasingly severe prosecution decisions. This respondent believes that this reflects ‘an unhealthy focus on appeasing a generalised public relish for a retributive approach to criminal justice, which is particularly inappropriate in motoring cases’. Another respondent thinks that Prosecutors will fail the public interest test if they approach prosecution decisions with a view to achieving the highest level of charge, rather than with a view to contributing to safer roads and motoring.

One respondent would like to see more reference to the Highway Code. Another respondent thinks that the law and CPS are more concerned with prosecuting only where there are tragic consequences rather than prosecuting bad driving, and that re-education should be a sentencing option, to make offenders aware of the consequences of their driving. A different respondent states that national speed limits should be reviewed and increased, because modern cars are able to perform safely and reliably at higher speeds than before. Another comments that there is no point in changing the road traffic laws unless there is effective enforcement and that more dedicated Road Traffic Patrol Officers are required for this.

One respondent comments that there should be one offence of ‘Causing Death by Driving’ and the courts should be left to determine the level of culpability in each case. This respondent thinks that this would remove the possibility of prosecuting for the wrong offence.

Many respondents believe that all cases involving a fatality should be heard at a Crown Court.

One respondent comments that the public interest must include the objective of improving road safety. Another sees a need to bring the law and justice closer together.

A different respondent comments that bad driving at or near railways is not referred to in the consultation paper, and points out that many collisions, where there is serious injury or the potential for serious injury to the public travelling on the railway, are caused by bad driving, the most obvious example of which is collisions at level crossings as well as other road vehicle incursions.

One respondent mentions the use of non-road traffic offences when serious injury has been caused, for example offences under Section 20 of the Offences Against the Person Act 1861. The same respondent suggests that the penalty for the offence of failing to stop after an accident could be increased where death or serious injury has occurred, bringing with it the possibility that the case could be heard by a Crown Court.

Another respondent comments that the consultation document, whether or not this was intended, focuses too much on fatal collisions when a robust prosecution policy for all bad driving is required.

## **Conclusions and Next Steps**

We are grateful to all those who responded to the consultation and the time they have invested in doing so. We recognise that this will have been particularly difficult for those who have been directly affected by a personal loss as a result of bad driving.

The responses have demonstrated that bad driving and its consequences can cause great distress, especially when someone has died or been seriously injured as a result. It is also clear that the issue of road safety arouses much debate.

The CPS is committed to ensuring that our prosecution policy enables our prosecutors to reach the correct charging decisions not only in line with current law, but also, where it is just and lawful to do so, taking into account changing public attitudes and the desire for victims or their families and friends to see that justice is done.

Later this year we will publish a Policy for Prosecuting Cases of Bad Driving and at the same time issue guidance to prosecutors dealing with these cases. This will put in place procedures in which victims, witnesses and the public at large can have confidence.

It is already clear from the responses to specific questions that there are a number of issues for us to consider. In particular:-

1. There are a wide range of views about the CPS policy for prosecuting bad driving cases on the charge of manslaughter, in particular gross negligence manslaughter. Many respondents favour wider use of the charge of manslaughter, which they see as a way for the courts to impose more severe sentences. Although others believe that manslaughter should be reserved for only the most serious cases.

In due course the alternative verdict provision in the Road Safety Act 2006<sup>1</sup> will provide a safety net in future manslaughter prosecutions connected to bad driving, particularly where the evidence of gross negligence comes close to the evidential borderline with the offence of causing death by dangerous driving. However, we are not persuaded that the CPS should alter its approach so as to prosecute routinely for gross negligence manslaughter in circumstances where we would currently prosecute for causing death by dangerous driving. As indicated in the consultation paper, in the majority of cases, where a death occurs as a result of dangerous driving, the offence of causing death by dangerous driving will still be the most appropriate charge to bring. We do, however, consider that more detailed guidance should be provided to prosecutors about when it would be appropriate to prosecute for manslaughter so as to ensure that appropriate charges are used in individual cases.

The Sentencing Guidelines Council (SGC) has recently conducted a public consultation<sup>2</sup> in relation to offences of causing death by driving and will publish guidelines later this year or early next year. The CPS will have to consider these when guidance is given about when it would be appropriate to prosecute for manslaughter. These guidelines will also be relevant to the new offences under the provisions of the Road Safety Act 2006, which are discussed further in paragraphs 11 and 12 below.

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<sup>1</sup> Section 33

<sup>2</sup> <http://www.sentencing-guidelines.gov.uk/consultations/closed/index.html#driving>

2. There is clearly widespread public concern about the inherent dangers of using mobile telephones and other electrical devices when driving, especially where they are hand-held. We accept that in cases where there is clear evidence that danger has been caused by their use, we should make a charge of dangerous driving the starting point for our charging decision, and our policy and guidance will confirm this.
3. We will also include more detailed references to the Highway Code, and give further guidance on the potential danger of driving while suffering from fatigue or other forms of physical and mental impairment. We will ensure that the policy and guidance address the particular dangers faced by cyclists and pedestrians as a result of bad driving by other road users.
4. A number of respondents consider that dangerous and careless driving ought to be replaced by other offences. One example given is offences of bad driving and aggravated bad driving. The CPS, however, has to apply the law as it currently stands, by reviewing the evidence of bad driving in each case by reference to the standard to be expected of a 'competent and careful driver'. For a charge of dangerous driving the standard of driving must fall far below the standard 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<sup>3</sup>. For a charge of careless driving the standard of driving must simply fall below the standard expected of a competent and careful driver. The test for careless driving is defined by the Road Safety Act 2006<sup>4</sup>.

We note that a number of respondents regard the use of examples as unhelpful in making that assessment. We believe, however, that it is appropriate to include examples in our guidance so that our prosecutors achieve consistency in their decisions. We will continue to emphasise the importance of putting all evidence of bad driving in context when considering whether the circumstances of a particular case amount to dangerous driving, or careless driving. There will always be cases where the evidence falls close to the dividing line but the responses have demonstrated to us the extent to which public attitudes have changed in recent times. We therefore consider that more detailed guidance should be provided to prosecutors on when it would be appropriate to prosecute for a careless driving offence rather than a dangerous driving offence.

5. The relationship between excessive speed and dangerous driving is an example of this. The recent cases of *DPP v Milton*<sup>5</sup> and *Milton v Crown Prosecution Service*<sup>6</sup> have shown how difficult it can be to secure a conviction for dangerous driving when the main evidence is grossly excessive speed. We will always look at evidence of excess speed in the context of other admissible evidence before we make a decision on the relevant charge.
6. A number of respondents suggest that the CPS should liaise more closely with the HSE in relation to bad driving in the workplace. There is already a protocol<sup>7</sup> in place between the CPS, the HSE and the police in relation to work related deaths. We will refer to it in our guidance to prosecutors, remind them of the need for early liaison

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<sup>3</sup> Road Traffic Act 1988 (as amended) Section 2A

<sup>4</sup> Road Safety Act 2006 Section 30

<sup>5</sup> [2006] EWHC 242 (Admin)

<sup>6</sup> [2007] EWHC 532

<sup>7</sup> <http://www.cps.gov.uk/publications/agencies/wrdprotocol.html>

with the HSE in these cases and emphasise the importance of reviewing all admissible evidence that tends to show corporate liability.

7. We anticipated that the majority of responders would favour the proposed changes to the CPS 'nearest and dearest' policy and our policy and guidance will be revised to reflect this. Our aim is to ensure that our prosecutors are consistent in their approach to these cases.
8. A number of the responses demonstrate how much pain and trauma is caused to victims and their families and friends as a consequence of bad driving. Later this year the CPS is introducing an enhanced service under the Victim Focus initiative, which will be provided to all who have lost a close family member in cases that are the subject of a charge of causing death by dangerous driving, death by careless driving while unfit through drink or drugs or careless driving heard before a Crown Court. Under the initiative, prosecutors will meet bereaved families early in the case to explain the charging decisions and subsequently to help them understand and answer their questions on the court process. The prosecutor will explain that they have the option, should they so wish, to make a victim personal statement, and will explain the purpose of the statement in order that the family may make an informed decision. We also confirm our adherence to the Prosecutor's Pledge and its 10 commitments to provide a better service to victims of crime, including the bereaved, in all cases involving bad driving.
9. We acknowledge the distress caused to victims and their families where cases of bad driving, involving death or serious injury, have been referred to in court and elsewhere as 'accidents'. We will issue specific guidance that this practice should cease and that the term 'collision' should be used in all such cases.
10. The attendance of case prosecutors at inquests and at court will be considered further in view of the responses that we have received. In some CPS areas, there are arrangements in place for case prosecutors to attend court. We will look at these to identify and develop best practice.
11. We note the view expressed by many respondents that all bad driving cases, where there has been a fatality, should be heard at the Crown Court. Parliament, however, has determined that the new offences under the Road Safety Act 2006 may be heard in magistrates' courts as well as the Crown Court.
12. As mentioned in paragraph 1 above SGC guidelines on cases where death has been caused as a result of bad or illegal driving, will be published later this year or early next year, before the new offences come before the courts, and will set parameters for sentencing in these cases. These will be the starting point for our policy and guidance in these cases.

## **The Consultation Criteria**

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the time scale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

**These criteria must be reproduced within all consultation documents.**

## **ANNEX A**

### **1. INDIVIDUAL RESPONDERS**

Mr & Mrs Aldam
Roger Alma
G Angell
Mr Antell
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Miss Joanne (Barry) Browning)
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Mr R F Brown
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R J Calder & C L Calder
Mr Geoffrey Calver
Mr Michael Chance
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Geoff Crocker
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Stephen Down
Rebecca Drake
Ms Valerie Dunn
Richard Erbe
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Mr Jon Harland
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**Prosecuting Bad Driving** – A consultation on CPS Prosecution Policy and Practice – Summary of Responses

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Martin Whitlock
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Mrs Julia Wright
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**2. ORGANISATIONS**

Brake - National Road Safety Charity
BVRLA - British Vehicle Rental and Leasing Association
CWU - The Communication Workers Union
CTC - National Cyclists' Organisation
IAMMT - The Institute of Advanced Motorists
Living Streets - National Charity
London Cycling Campaign
Network Rail
Norwich Union
PACTS - Parliamentary Advisory Council for Transport Safety
RoadPeace
RoSPA - The Royal Society for the Prevention of Accidents
Slower Speeds Initiative
Sustrans Charity
The Bike Zone
The Newspaper Society
T & G - Transport and General Workers' Union
T & G - Northern
Victim Support

### **3. CRIMINAL JUSTICE AGENCIES**

Avon and Somerset Police
Crown Office & Procurator Fiscal Service
CPS Kent
CPS London Traffic Prosecution Service
CPS Nottinghamshire
CPS West Mercia
Criminal Bar Association
Hampshire Police
Justices' Clerks' Society
Law Reform Committee of the Bar Council of England & Wales
Magistrates' Association
Metropolitan Police Service
Police Federation of England and Wales
PPS for Northern Ireland
Thames Valley Police
West Yorkshire Police

### **4. ACADEMICS**

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