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CPS's Road Traffic Offences— Guidance on Charging Offences arising from Driving Incidents

**RoadPeace summary
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1 Introduction

The CPS new document, *Road Traffic Offences—Guidance on Charging Offences arising from Driving Incidents*, is a merger of two previous CPS publications *Guidance on Prosecuting Cases of Bad Driving* and the *Policy for Prosecuting Cases of Bad Driving*, both which were published in 2007.

The CPS undertook a six week consultation in September 2012 on the proposed merger with a focus on cases related to two specific issues:

- nearest and dearest
- emergency response related

No information was provided on the prevalence of either of these issues, and RoadPeace believes they are rare occurrences. In both cases, the CPS highlighted why prosecution would be unlikely, due to public interest grounds.

RoadPeace has summarised the key points in this new guidance, organised by the following areas

- Charging standards
- Bail and driving bans
- CPS consultation priorities (Nearest and dearest and emergency response related)

Our briefing concludes with a repeat call for a proper consultation on the charging standards for careless and dangerous driving.

2 Charging standards

The consultation was unusual in that it did not pose any specific questions and only asked for general comments. It had been over five years since the CPS had conducted their first ever consultation on the charging standards for careless and dangerous driving. RoadPeace believed that a review of these standards was the priority and organised a panel discussion on “*You say Careless, I say Dangerous*”, before submitting our response.

Careless and Dangerous Driving

Careless Driving. No change was made to the examples given for Careless Driving despite this charge being used more than 10 times as often than Dangerous Driving. RoadPeace has argued that the key debate is around where Careless Driving begins and ends—where culpability is insufficient to justify a criminal charge and where it becomes Dangerous Driving.

Dangerous Driving. Minor changes were made to the examples of Dangerous Driving, including expansion of vulnerable road users (VRU) and brief danger (e.g. momentary lapses).

- **VRU.** Failing to have proper regard for vulnerable road users was already in the CPS guidance but it has now been expanded to say *“such as cyclists, motorcyclists, horse riders, the elderly and pedestrians or when in the vicinity of a pedestrian crossing, hospital, school or residential home”*.
- **Brief danger.** *A brief but obvious danger arising from a seriously dangerous manoeuvre. This covers situations where a driver has made a mistake or an error of judgement even for only a short time. Examples given included failing to stop at a junction with a Give Way sign and unintentionally pressing the accelerator instead of the brake.*

Irrelevant factors. As in the previous guidance, the factors which are not relevant in deciding careless or dangerous driving are listed. These are:

- injury or death of one or more persons
- skill or lack of skill of driver
- commission of other driving offences at same time
- previous convictions for driving offences
- “mere” disability of a driver caused by mental or physical illness, except where there is evidence that it affected the driving.

Causation. What was new was a section on causation which states

The defendants driving need not be the sole, principal or even a substantial cause of the death. It need only be a negligible cause of the death.

This could have significant implications for dangerous driving prosecutions, if implemented as stated.

3 Bail and driving bans

RoadPeace has campaigned for driving bans to be imposed on drivers arrested on suspicion of driving offences which carry a mandatory driving ban, which includes all causing death by driving charges. In the past it was extremely rare for drivers to be banned before conviction, even when they had failed the breathalyzer test after a fatal crash. There does appear to be movement on this in the new guidance.

In cases of fatal or serious injury collisions, interim driving bans are stated to *“often be appropriate”*, including where a defendant has previous driving convictions. But this is for public interest and not for punitive purposes, and the CPS said that it would be improper to call for an interim ban after all fatal crashes.

4 CPS consultation priorities

Nearest and dearest. Of the 128 who responded, only 10% commented on this issue. This is now to be referred to as “*close friends and family*”. The CPS stated that a prosecution is unlikely where culpability is low and there is no evidence that the driver is a continuing danger to other road users. RoadPeace argued that it will be difficult for the CPS to know if the driver is an ongoing threat to others and the only way to ban drivers is through convictions. The victims’ family should be the ones deciding if the suspect driver was a close friend.

Emergency response related cases. Most respondents (84%) addressed this issue, including many from the emergency services. CPS clarified that their starting point is that it is very unlikely to be appropriate to prosecute a driver responding to an emergency call. But they did state that each case was to be considered on its own facts and merits. The Bannister case was highlighted as the Court of Appeal held that special skill of a driver is irrelevant in deciding if driving was dangerous and that police officers were not entitled to drive dangerously when on duty of responding to an emergency.

The guidance also stated that there would be cases where a person who was not a member of the emergency services had to respond to an emergency. The same public considerations that apply to emergency service personnel are said to apply, as the CPS have said that skill (or lack of) is not a factor in determining if driving was careless or dangerous.

5 Conclusions

The new guidance is what the CPS said it would be—a merger of two documents, and nothing more. But more is needed. In the six years since the CPS last consulted on the charging standards of careless and dangerous driving, much has changed. Causing Death by Careless Driving has become the most common causing death by driving charge and is being used four times more frequently than the CPS ever expected. It is also being used for more serious cases than expected, as can be seen by the share receiving custodial sentences. At the other extreme, a new Careless Driving Fixed Penalty Notice has been introduced which is intended to facilitate the prosecution of careless driving where no injury has occurred.

The government is now actively promoting active travel and the threat posed to vulnerable road users’ by careless and dangerous driving needs to be urgently reassessed in light of the affect it has on suppressing walking and cycling.

In our response to CPS’s consultation last year, RoadPeace argued the need for charging standards to be reviewed. This need remains and only increases in light of this new guidance.