



MOTOR PROSECUTIONS

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AND STAY WITHIN THE LAW**

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DAC BEACHCROFT

DAC Beachcroft's specialist Motor Prosecutions lawyers understand the difficulties drivers and organisations face in an ever changing criminal and regulatory environment, and the need to balance the welfare of the driver while protecting the organisation's reputation against the potential impact of criminal proceedings or related civil claims arising from driving collisions.

Our national team is accessible 24/7. This ensures your driver has access to legal advice from the outset. Supported by our personal injury and credit hire claims specialists, our team then works quickly with you to safeguard your company's interests and that of your driver.



Tough penalties including large fines, driving bans and imprisonment are in place for those found guilty of dangerous and careless driving. With the Government set to take an even tougher stance by increasing the maximum sentence from

14 years to life imprisonment, organisations should have adequate procedures and policies in place to ensure that employees required to drive on business do so safely and legally.

THIS PAPER PROVIDES:

- An overview of offences, including drug driving and the respective sentences (Road Traffic Act, section 5A)
- An overview of the impact on driving at work policies
- Risk management

TARGET AUDIENCE

- Employers who require employees to drive on business
- Employees who drive on business
- Commercial motor brokers
- Motor trade brokers
- Fleet managers

INTRODUCTION



Improvements in vehicle technology and driver training mean that Britain's roads are getting safer, with statistics from the Department for Transport showing there were 44% fewer fatalities in 2016 compared with 2006. But, there were still 181,384 casualties in road accidents, including 1,792 fatalities and 24,101 people seriously injured, more work is still required¹.

To help improve driving standards - and in response to public pressure - drivers found guilty of endangering other road users as a result of their driving face tough penalties. As an example, the offence of causing death by dangerous driving carries a mandatory custodial sentence of up to 14 years.

The penalties are set to increase too. Following a government consultation, which received around 9,000 submissions, it was announced in October 2017 that the maximum penalty would be increased from 14 years to life imprisonment.

Announcing the changes, Justice Minister Dominic Raab said: "We've taken a long hard look at driving sentences. Based on the seriousness of the worst cases, the anguish of the victims' families, and maximum penalties for other serious offences such as manslaughter, we intend to introduce life sentences of imprisonment for those who wreck lives by driving dangerously, drunk or high on drugs."

Given that examples of dangerous driving include: being avoidably distracted by adjusting the controls on electronic equipment such as a radio, satellite navigation equipment or hands-free mobile phone; driving while deprived of sleep or rest; and driving a poorly maintained vehicle, it is a charge that could easily be brought against someone causing an accident while driving for work purposes.

And, while some cases have grabbed the headlines, a significant number of people have been sentenced for these offences. In 2016, 157 people were sentenced for causing death by dangerous driving, with a further 32 convicted of causing death by careless driving whilst under the influence².

The Government is also considering introducing new offences for cyclists, following a number of high profile incidents involving pedal cycles. These would be equivalent to causing death by careless or dangerous driving for cyclists and are expected to carry the same penalties.

For a fleet manager or anyone who drives for work, it is important to be aware of these offences and take steps to reduce the risk. Company drivers are 49%³ more likely to be involved in an accident than the average driver.

Additionally, figures from the Trades Union Congress show the cost of workers killed or injured on the roads is £3.5bn a year, with the Royal Society for the Prevention of Accidents finding that drivers covering average employment mileages are exposed to a similar risk of death as in traditional high-risk occupations such as construction and mining³.

If an employee does cause a collision, the organisation can risk a reputational damage, an investigation by the Health & Safety Executive and potentially a charge of corporate manslaughter.

Without taking the necessary steps to manage this risk, organisations could find themselves and their employees facing some very serious charges.

- 1 Reported Road Casualties in Great Britain: 2016 Annual Report, Department for Transport https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/648081/rccgb2016-01.pdf
- 2 <https://www.gov.uk/government/news/life-sentences-for-killer-drivers>
- 3 <http://webarchive.nationalarchives.gov.uk/20110504155237/http://www.dft.gov.uk/pgr/roadsafety/research/rsrr/theme5anindepthstudyofworkrelated.pdf>



SUMMARY OF OFFENCES

Where a driver causes a collision through dangerous or careless driving, there are a number of offences they could be charged with. These have evolved over time, with new offences added as a result of public pressure.

DEATH BY DANGEROUS DRIVING

CAUSING DEATH BY DANGEROUS DRIVING (Road Traffic Act 1988, section 1)

This is the most serious road traffic offence and a driver will be charged with this where there is a fatality and the standard of their driving fell far below that of a careful and competent driver. When the court is assessing the seriousness of the offence, five factors are taken into account.

These are:

- Awareness of risk, where the driver exhibits a prolonged, persistent and deliberate course of very bad driving
- Effect of alcohol or drugs
- Inappropriate speed, including speeding or driving too fast for the road or weather conditions
- Seriously culpable behaviour of offender - this can include aggressive driving; driving while using a hand-held mobile phone; driving while avoidably distracted, which can include reading or adjusting the controls of electronic equipment such as a radio, hands-free mobile phone or satellite navigation equipment; driving when knowingly suffering from a medical or physical condition that impairs driving skills; driving when knowingly deprived of adequate sleep or rest; and driving a poorly maintained or dangerously loaded vehicle
- Failing to have proper regard to vulnerable road users.

The sentencing guidelines are clear that, unless there are exceptional circumstances, a custodial sentence will be passed. The length of the sentence will depend on the case but the current sentencing guidelines set it between two and 14 years. In addition, there is a minimum disqualification of two years and a compulsory extended re-test.



The Government announced in October 2017 that it would be increasing the maximum penalty for death by dangerous driving to life imprisonment, in line with other serious offences such as manslaughter. This move was supported by 70% of the 9,000 responses to its consultation.

CASE STUDY DEATH BY DANGEROUS DRIVING

The defendant was driving a HGV along Fulham High Street in very busy traffic as the traffic lights at the junction were not working. As he moved forward waiting to cross the junction, he failed to see the deceased who was waiting to cross the road at the dropped kerb area.

The defendant was stationary for 30 seconds at the stop line to the junction and, although the deceased would have been visible through his windscreen for at least 35 seconds, failed to see him. As he pulled away, he didn't see the deceased step out in front of him and collided with him.

CCTV footage from the lorry, particularly in the in-cab footage, showed the defendant had been on his mobile phone for 1 minute 40 seconds. It also showed he had failed to conduct proper mirror checks before pulling away.

He was charged with causing death by dangerous driving and pleaded guilty. The defendant was of previous good character with a clean driving record.

In sentencing the defendant to four years' imprisonment and banning him from driving for five years, the judge remarked that it was an example of the horrific consequences of holding a phone while driving.

Source: DAC Beachcroft

CASE STUDY DEATH BY DANGEROUS DRIVING

The defendant was driving his HGV along The Parade in Bourne during daylight hours, in stop start rush hour traffic. He came to a stop and failed to see two pedestrians waiting to cross the road. They stepped into the road and crossed ahead of his lorry. The first cleared the road but the defendant pulled forward and collided with the second pedestrian, fatally injuring her.

CCTV footage from an adjacent petrol station captured the whole incident. This showed the defendant was not stationary long enough to have conducted proper mirror checks before pulling off. The defendant was also found to be on his phone, albeit it was accepted that this was hands free.

The deceased could have been seen both on the pavement and as she crossed. However, the defendant's driver's seat was broken and positioned so low that he did not have a proper view out of his cab. He had also fitted his own Class VI close proximity mirror – incorrectly.

He was charged with causing death by dangerous driving and pleaded guilty to this offence. The judge was very much more concerned with the hands free mobile phone use than the other aspects of the case and sentenced him to three years' imprisonment and banned him from driving for 78 months.

Source: DAC Beachcroft

DEATH BY CARELESS DRIVING

CAUSING DEATH BY CARELESS DRIVING (Road Traffic Act 1988, section 2B)

This offence was introduced in August 2008 following pressure from the public. Before, if someone's driving resulted in a fatality and it was deemed to be careless rather than dangerous, they could only have faced a charge of careless driving, which carries a small fine and some points on their licence.

To be regarded as careless rather than dangerous, the standard of driving must be regarded as having fallen 'below' rather than 'far below'. As an example, a driver might have stopped at a junction, looked around but pulled out, hitting a cyclist they had failed to see.

The maximum penalty for this offence is five years' imprisonment with a minimum disqualification of 12 months and a discretionary re-test.

However, while the maximum penalty is lower than for causing death by dangerous driving, there is evidence that drivers are more likely to be charged with the more serious offence. For example, figures obtained by the RAC for the 12 months to September 2013 show that while the number of death by careless driving offences had fallen by 14%, from 161 to 138, there had been a 38% increase in the number of cases for death by dangerous driving¹.

In addition, in its recent consultation paper, *Driving offences and penalties relating to causing death or serious injury*, the government acknowledged that the distinction between the two offences was subject to extensive scrutiny and debate. But, while it had considered creating one 'bad driving' offence, it felt this was not necessary.

¹ <https://www.rac.co.uk/press-centre/press-releases/death-by-dangerous-driving-crime-figures-rise-by-3>





CASE STUDY DEATH BY CARELESS DRIVING

The defendant was driving a tipper truck north over Lambeth Bridge when he was involved in a collision with a cyclist as they approached the Mill Bank roundabout. As this resulted in the death of the cyclist, he was charged with death by careless driving.

The prosecution alleged the defendant had failed to use his mirrors properly and had paid insufficient attention to cyclists. However, his legal team established that this location was one of the top 10 collision locations within London and separate research released two weeks prior to the start of the trial listed it as the number one location in the country for collisions involving cyclists.

Expert evidence obtained by the legal team established that the road layout at this location had been designed to slow vehicle traffic on the approach to the roundabout by creating a pinch point. Unfortunately, this created an area of conflict where the cycle lane ended, with cyclists forced to the right at the exact point that a

pedestrian crossing island forced motor vehicles to the left.

CCTV footage established that the cyclist had been positioned in a blind spot on the front nearside corner of the tipper truck in the seconds immediately prior to the collision.

The defendant was acquitted of causing death by careless driving.

Source: DAC Beachcroft

The maximum penalty for this offence is five years' imprisonment with a minimum disqualification of 12 months and a discretionary re-test.



SERIOUS INJURY

A new offence – causing serious injury by dangerous driving – was introduced in December 2012 as a result of pressure from victims and road safety campaign groups. This will be joined by a further offence – causing serious injury by careless driving – following the government’s recent consultation into driving offences.

CAUSING SERIOUS INJURY BY DANGEROUS DRIVING

(Road Traffic Act, section 1A)

This was introduced to fill the gap between the offences of causing death by dangerous driving, with a maximum custodial sentence of 14 years, and dangerous driving, with a maximum of two years.

Where there is no fatality, the police will look to charge someone under this offence.

It is also important to note that the definition of serious injury is that used under section 20 of the Offences Against the Person Act 1861, commonly known as inflicting grievous bodily harm. As such, the type of injury that could lead to this charge includes a broken leg or fractured cheek bone.

It carries a maximum custodial sentence of five years and a minimum disqualification of 12 months.

CAUSING SERIOUS INJURY BY CARELESS DRIVING

The government announced that it would be creating a new offence – causing serious injury by careless driving – following its recent consultation into driving offences and penalties. This proposal received support from 90% of responses to the consultation.

It is expected to be introduced later in 2018 and will carry a maximum custodial sentence of three years.

HGV DRIVERS

Tougher sentencing has also been introduced for HGV drivers. As they have a higher level of culpability, disqualification will be the starting point for sentencing if they are involved in any incident involving careless driving. This has huge implications for these drivers and the organisations for which they work.

DRUG DRIVING

A new road traffic offence was introduced in March 2015 in regard to driving with concentrations of specified controlled drugs above specified limits, more commonly known as drug driving.

DRUG DRIVING

(Road Traffic Act, section 5A)

With the government estimating that drug driving causes around 200 deaths a year in Great Britain, the introduction of this offence will help improve safety on the roads.

The law, which came into effect on 2 March 2015, makes it illegal to drive with certain drugs in the body above specified levels. The list of prohibited substances include eight illegal drugs and nine prescription drugs.

The illegal drugs are: cannabis; cocaine; MDMA (ecstasy); ketamine; benzoylecgonine (primary metabolite of cocaine); lysergic acid diethylamide (LSD); methylamphetamine; and 6-monoacetylmorphine (heroin).

The prescription drugs are: clonazepam, diazepam, flunitrazepam, lorazepam, methadone, morphine, oxazepam, temazepam and amphetamine.

The introduction of this offence brings the legislation in line with that in place for drink driving and carries a penalty of a maximum of six months' imprisonment, an unlimited fine and an automatic driving ban of at least 12 months. There is no need to prove impairment and the only defence will be a medical one.

Police are able to conduct roadside testing where they suspect someone is driving under the influence of drugs. As a result, conviction rates are 98% and motorists are just as likely to be convicted for drug driving as for drunk driving. Government figures show that in 2015, 1,442 motorists in the UK were convicted for offences including being in charge of, attempting to drive, or causing death after exceeding the legal drug limit¹.

¹ <https://www.gov.uk/government/news/drug-driving-crackdown-means-more-dangerous-motorists-off-roads>





CASE STUDY

DEATH BY CARELESS DRIVING WHILE OVER THE SPECIFIED LIMIT OF A CONTROLLED DRUG

The defendant was travelling along the A49 when the 4x4 vehicle in front of him came to a stop in order to turn right at the junction. The defendant did not appreciate quickly enough that the vehicle had stopped, reacting at the last minute by attempting to brake and swerving to the right.

In doing so, he collided with an ambulance travelling in the oncoming direction. One of the patients within the ambulance was not correctly restrained and died as a result of the impact.

Based on witness evidence, there was absolutely no criticism of the defendant's driving in the lead up to the collision, or any suggestion that he was travelling at excessive speed.

As is now routine, the defendant was 'drug swabbed' at the scene. There was evidence of cocaine, cannabis, and codeine use; three drugs which are listed within the legislation outlining

specified controlled drugs and specified limits. The defendant was below the specified limit of 50 micrograms per litre of blood in respect of Benzoylcegonine (the breakdown product of cocaine), though above the limit of two micrograms per litre of Delta-9-Tetrahydrocannabinol.

The defendant was charged with causing death by careless driving while over the specified limit of a specified drug.

The prosecution stated that the defendant had a minimum available view of 150m to the junction, based on his being 100 metres behind the 4x4. At a speed of 60mph, it would have taken 5.5 seconds to cover this distance. The evidence indicates that he only started to swerve when he was 14 metres away from colliding with the rear of the 4x4.

The defendant, of previous good character, who provided financial support to his single mum who was expecting a second child, received a sentence of two years' immediate custody and a three-year disqualification.

Source: DAC Beachcroft

SENTENCING

The nature of these offences means they are amongst the hardest type of cases to sentence. To assist judges, the Sentencing Guidelines Council has agreed a set of principles that help judges determine the penalty while also ensuring consistency of approach throughout the UK.

It is always important to note that these guidelines are not intended as a straightjacket, though a judge would have to justify in open court the reasoning to deviate from the guidelines.

APPROACH TO SENTENCING

With all of these offences a structured approach is taken to sentencing. The process follows these steps:

1. Identify dangerous offenders

The court will consider whether there is a significant risk of the offender committing a further offence.

2. Identify the appropriate starting point

The court will identify the level or description that most nearly matches the offence to give them the appropriate sentencing range and starting point.

As an example, with death by dangerous driving there are three levels, as follows:

LEVEL 1

The most serious offences where driving involved a deliberate decision to ignore (or a flagrant disregard for) the rules of the road and an apparent disregard for the great danger being caused to others

STARTING POINT: 8 years' custody
SENTENCING RANGE: 7-14 years' custody

LEVEL 2

Driving that created a substantial risk of danger

STARTING POINT: 5 years' custody
SENTENCING RANGE: 4-7 years' custody

LEVEL 3

Driving that created a significant risk of danger

STARTING POINT: 3 years' custody
SENTENCING RANGE: 2-5 years' custody

After identifying the appropriate starting point, the court then goes on to consider:

3. Relevant aggravating factors

Where there are additional aggravating factors it can result in a sentence level that is higher than the starting point, sometimes substantially so. As an example, the aggravating factors for causing death by dangerous driving include:

- previous convictions for motoring offences, especially ones involving bad driving or the consumption of excessive drugs or alcohol
- more than one person killed as a result of the offence
- serious injury to one or more victims in addition to the fatality
- disregard of warnings
- other offences committed at the same time such as driving while disqualified or taking a vehicle without consent
- the offender's irresponsible behaviour such as failing to stop or falsely claiming that one of the victims was responsible
- driving off in an attempt to avoid detection or apprehension.

4. Mitigating factors and personal mitigation

Mitigating factors can result in a sentence level that is lower than the starting point. As an example, the mitigating factors for causing death by dangerous driving include:

- alcohol or drugs consumed unwittingly
- serious injury to the offender in the collision
- the victim was a close friend or relative
- actions of the victim or a third party contributing significantly to the likelihood of a collision occurring
- offender's lack of driving experience
- the driving was in response to a proven and genuine emergency.

5. Reduction for guilty plea

Once aggravating and mitigating factors are taken into account to determine the sentence, the court will then apply a reduction if there was a guilty plea. This will reduce the sentence by a third.

6. Ancillary orders

The court will decide whether ancillary orders such as a disqualification or a compensation order are appropriate or necessary.

7. Totality principle

The court will review the sentence to ensure it is proportionate to the offence and properly balanced.

8. Reasons

The court is required to indicate the factors it has taken into consideration when sentencing.

Driver fatigue may be a contributory factor in up to 20% of road traffic accidents and up to 25% of fatal and serious accidents.

Source: RoSPA (<https://www.rospa.com/road-safety/advice/drivers/fatigue/road-accidents/>)

For more than a fifth of the journey time drivers carry out secondary tasks such as eating a sandwich or reading incoming emails.

Source: See Klauer et al. 100 Car Naturalistic Driving Study (2010)



In 10% of accidents the driver lost attention despite looking at the road

Source: AZT Automotive GmbH - Allianz Centre for Technology
Dr. Christoph Lauterwasser

In 2011 an estimated 73,000 people were seriously or slightly hurt in accidents while travelling on company business (excluding commuting)

Source: The Office for National Statistics

More than a quarter of all road traffic incidents may involve somebody who is driving as part of their work at the time...

Source: The Department for Transport
Dr. Christoph Lauterwasser



IMPACT ON THE EMPLOYER

Where an employee is charged with one of these motoring offences there can be serious ramifications for the employer too.

In addition to reputational damage and potential business interruption, the Health & Safety Executive (HSE) and the Vehicle and Operator Safety Agency (VOSA) may also look to conduct an investigation to determine whether the employer's actions contributed to the collision. This could result in a prosecution, potentially for corporate manslaughter if the HSE or VOSA identifies systemic failures.

Fines have increased significantly in this area too. In February 2016, new guidelines from the Sentencing Council increased the fines for corporate manslaughter to a range from £180,000 to £20m, depending on the nature of the offence and the size of the organisation.

DRIVING AT WORK POLICY

As part of its investigation the HSE will look at an employer's driving at work policy as well as other associated documents such as the mobile phone policy and drivers' hours policy.

Therefore, to help safeguard employees and reduce the risk of a prosecution, it is essential that an employer includes the following in its driving at work policy:

- **Driver safety**
This should include details of licence checks and any rules around reporting driving convictions or accidents at work.
- **Vehicle safety**
This needs to outline any checks that are required and what an employee should do if he or she identifies a defect.
- **Journey planning**
This should include rules around taking breaks to ensure that employees do not drive when tired. It also needs to highlight what an employee can do if they believe the amount of driving required will increase risks.
- **Mobile phones**
As well as highlighting the fact that using a handheld phone while driving is illegal, it should also draw attention to the fact that drivers using a hands-free set can still be prosecuted if it affects their driving.
- **Electronic equipment**
This needs to cover other potential distractions including satellite navigation systems, tablets, computers and radios.
- **Drink and drugs**
This needs to cover the employer's policy on drink, drugs and any prescription or over the counter medicines that might affect driving.



It is also important to include details of what an employee should do in the event of a collision. In addition to practical advice to ensure they are safe and contact the police if this has not been done, it also needs to draw their attention to contacting their employer and its insurer as this will enable them to receive appropriate legal representation if they are approached by the police either as a suspect or a witness to an accident.

Having the guidance and support of a solicitor at this point can be particularly important. The content of a defendant's first statement is often given the greatest weight in court so it is important that they do not unwittingly incriminate themselves or their employer.

For example, falsely claiming that one of the victims was responsible for the collision is an aggravating factor for a death by dangerous or careless driving charge and would increase their sentence.

WORKING PRACTICES

While a comprehensive driving at work policy is a good starting point, it is also essential that an employer considers how other working practices might affect employees driving for work purposes.

As an example, if an employer sets high targets for sales, this might inadvertently lead to increased risk as employees feel compelled to drive long hours making them tired and more likely to cause an accident. Similarly, if the employer provides electronic equipment to employees, for example a mobile phone or satellite navigation systems, they must set rules around how and where these are used to ensure that employees are not distracted while driving.

DASHCAMS

Employers may also want to consider fitting dashcams in company vehicles. As well as potentially encouraging good driving behaviour, video footage of an incident can be valuable. It can help to pinpoint liability and, unlike written statements, it's irrefutable.

It is increasingly used in road traffic accident cases to establish whether a driver was at fault but can also be produced as evidence in insurance claims to determine liability and identify fraudulent claims.

EMPLOYMENT ISSUES

If an employee is charged with a driving offence there are other implications for organisations too. It can take as long as 12 months for the case to go to court, during which time the employee is likely to be on bail and able to work. Employers will need to consider whether it is appropriate for the employee to drive during this period.

Some employers may decide the employee should not drive at all or employ a chauffeur if they are a senior executive. Other organisations might require the employee to undergo a driving refresher course or have another employee accompany them to oversee their driving for a number of months. In all cases though, it is essential that the employer has a transparent and documented approach.

It is also standard practice for the police to retain the vehicle until the case has been concluded. This could cause problems for the business, especially where operations are dependent on the vehicle.

SUMMARY AND GUIDANCE

With harsh penalties for motoring offences and ramifications for the organisation as well as the driver, it is important that employers take appropriate actions to safeguard their employees and other road users.

CREATING A SAFER DRIVER CULTURE

Creating a culture where employees understand the risks and only drive carefully, considerately and when they are fit to do so is essential. As a starting point, driving at work policies and other associated policies must outline the potential risks and detail the steps employees should take to avoid them. For example, the risks associated with driving while tired should be highlighted and safer driving encouraged through sensible journey planning, including allocating time for breaks.

As well as taking steps to prevent road traffic accidents, employers also need to ensure that, if an employee is involved in a collision, they receive the support they need. Key to this is providing an emergency contact point, either within the organisation or through its insurer, to enable them to receive legal advice or representation as soon as possible. Having legal advice is not an admission of fault but the advice of an experienced solicitor can make a significant difference to the outcome.

ALLIANZ'S SAFER DRIVING FOR WORK HANDBOOK

Allianz's Safer Driving for Work Handbook, which can be found on allianz.co.uk/riskmanagement, provides a wealth of advice on safe driving, and can be used to support fleet managers and health and safety executives to update their companies' driving policies. This well rounded approach will ensure that if an employee is involved in a driving offence the right support is in place to manage the associated risks.

MANAGING THE RISKS

Even minor collisions can have a big impact on a business. Having reduced levels of staff while injured employees recuperate or having vehicles off the road, being repaired, can affect a company's ability to deliver services and efficiency. In addition to this, a higher frequency of claims can lead to unforeseen payments in the form of excesses and a detrimental effect on insurance premiums.

Allianz utilises data to help its policyholders pin-point where their fleet is most at risk. By providing a breakdown of their accident experiences, trends can be recognised. This enables the policyholder to take the right risk management approach. For example, employees can refresh their driving skills by undertaking targeted driver training courses.

This tailored approach to risk management helps policyholders to better manage their risk exposure, reduce their claims frequency and insurance expenditure. While at the same time it helps to create a culture where safer driving is encouraged and embraced.

For further information on driver safety visit: allianz.co.uk/riskmanagement



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