

**THE ROYAL SOCIETY FOR THE PREVENTION OF ACCIDENTS
RoSPA**

**RESPONSE TO THE
HOME OFFICE
CONSULTATION PAPER**

**“REVIEW OF ROAD TRAFFIC OFFENCES INVOLVING
BAD DRIVING”**

4 May 2005

The Royal Society for the Prevention of Accidents
Response to “Review of Road Traffic Offences Involving Bad Driving”
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GENERAL COMMENTS

This is the response of the Royal Society for the Prevention of Accidents (RoSPA) to the Home Office’s consultation paper, “Review of Road Traffic Offences Involving Bad Driving”. It has been prepared following consultation with RoSPA’s National Road Safety Committee and Road Safety Advisory Group.

RoSPA welcomes the Review of the current law and level of penalties.

Virtually all road crashes involve at least one driver or rider of a motor vehicle, and it is well established that 95% of road crashes involve human error. Therefore, improving the behaviour of drivers and riders is fundamental to reducing the level of death and injury on our roads.

Despite substantial reductions in the number of people killed and injured on the road over the last two decades, in recent years, deaths have stuck at around 3,500 annually. The number killed in road crashes in 2003 was the highest since 1997.

The government’s Review of its Road Safety Strategy identified that *“many car accidents are caused by loss of control, with careless, reckless or aggressive driving contributing to an increasing proportion, and therefore core number of, accidents. Analysis of motorcycle accidents has also highlighted similar issues with rider behaviour”*.

To reduce the appalling toll of loss and injury, it is necessary to influence the way drivers and riders behave when using the road through a co-ordinated strategy of Education, Engineering and Enforcement.

Road traffic law plays an essential role in this strategy by setting legal standards of behaviour, supported by appropriate sanctions, in order to deter drivers from breaching those standards, to punish and (hopefully rehabilitate) those who do so and to provide justice for the victims of road crashes caused by bad driving.

It is also essential, in RoSPA’s view, that wider use is made of sanctions designed to change offenders’ behaviour, such as re-training, driver improvement, speed awareness and rehabilitation courses, and re-testing. We also support the concept of ‘restorative justice’, in appropriate cases, where offenders are obliged to confront the consequences of their behaviour and apologise to their victims and/or their relatives.

RoSPA has been concerned that some drivers who have killed people by behaving in a clearly dangerous and irresponsible manner have escaped with very low penalties (a fine and disqualification) because they have been charged only with careless driving. Many such cases have been highlighted in the media which has contributed to a public perception that it is possible to ‘get away’ with dangerous and lethal behaviour on the road.

Consistency in sentencing is important. Although, each case must be judged on its individual circumstances, it seems likely that greater consistency in sentences for similar offences would enhance their deterrent effect, and help to address the public disquiet that is often expressed when offenders receive (seemingly) inappropriately light sentences.

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RoSPA also believe that the law should deal more severely with drivers who are persistent offenders.

Serious injuries often cause life-long disability for the victims of bad drivers, and fundamentally affect their quality of life and that of their families. Therefore, RoSPA believes that the offences of causing death should be amended to causing death or serious injury.

Millions of vehicles (lorries, vans, taxis, buses, emergency service vehicles, company cars and motorcycles) are driven for work purposes. In fact, very few organisations operate without using motor vehicles. Between 25% and 33% of fatal and serious road traffic incidents involve someone who was at work. The Health and Safety Executive has recognised the importance of this issue in its Guide, “Driving at Work”, which states that the Health and Safety at Work Act applies to work-related road risks.

Employers often inadvertently or deliberately encourage or cause their staff to drive carelessly or dangerously. They do this, for example, by setting unrealistic schedules which require staff to exceed speed limits, or to drive when too tired, or to answer mobile phones while driving. Therefore, in addition to prosecuting such cases where appropriate under health and safety law, there is a strong argument for creating ‘Cause or Permit’ offences for careless and dangerous driving to make it an offence for someone to cause or permit a person to drive in a careless or dangerous manner.

RESPONSES TO THE SPECIFIC PROPOSALS

Proposal

There should continue to be a “mix” of general and specific offences to deal with bad driving.

RoSPA Response

RoSPA agrees that there should be both general and specific offences to deal with bad driving. However, it would be useful to raise awareness of the fact that drivers found guilty of driving offences could be liable for the penalties of both the specific offence (e.g., exceeding a speed limit) and those of the general offence (e.g., careless driving).

Proposal

Two general offences, one more, and the other less, serious, should continue to be used to differentiate between different levels of bad driving.

RoSPA Response

Much of the concern related to the use of bad driving offences has resulted from a perception that there is gap between careless and dangerous driving offences into which some dangerous drivers manage to escape.

One way of closing this gap would be to replace the two offences with a single offence (e.g., of ‘Bad Driving’). However, the range of penalties available for this offence would need to be sufficiently wide to deal appropriately with cases from the lower end of the scale where the bad driving was a momentary and inadvertent lapse to those at the extreme end where the bad driving was clearly and deliberately (and often persistently) dangerous without any thought for the safety of others. But, the Home Office is concerned that creating a single offence would lead to inconsistent treatment of similar cases in Courts across the country, and so does not propose to adopt a single offence.

RoSPA believes that a single offence could work effectively and close the apparent gap between the two current offences of careless and dangerous driving. However, it would require very clear and strong guidelines for courts to follow, and there would be a risk of inconsistency in sentencing which would not alleviate the current public concern.

A second approach would be to create a third offence (e.g., Negligent Driving) to sit between Careless Driving and Dangerous Driving. However, it is not clear whether this would reduce or increase the difficulties prosecution authorities and courts face when deciding what charge is appropriate in each individual case.

Therefore, RoSPA agrees that it is more practical to retain the two general offences of careless driving and dangerous driving. However, it is very important that the other proposals in the consultation paper, especially the creation of a new offence of ‘Causing Death by Careless Driving’, are implemented to ensure that drivers who kill receive appropriate sentences.

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Proposal

The two general offences of bad driving should continue to be defined in terms of an objective test, regardless of the mental state of the driver.

RoSPA Response

RoSPA agrees that the definition of careless and dangerous driving should be based on the behaviour of the drivers. It is very difficult to prove the mental state or intentions of a driver in court.

Proposal

The current definitions of driving “below” and “far below” the standard of a competent and careful driver should be retained.

RoSPA Response

RoSPA agrees that these definitions should be retained. However, we believe they need to be supported and strengthened. This could be achieved by referring to the standard of driving required to pass the driving test and to comply with the Highway Code.

Proposal

The offence of driving without due care or reasonable consideration (“careless driving”) should be defined in statute to ensure that it covers all driving “below” the standard of a competent and careful driver.

RoSPA Response

RoSPA agrees that the definition of careless driving should be defined in statute as this will help to ensure its appropriate use.

Proposal

To ensure that the fatal consequences of careless driving are properly taken into account, a new offence of causing death by careless driving, triable on indictment only, and carrying a maximum penalty of 5 years’ imprisonment will allow the courts to impose a custodial sentence where appropriate.

RoSPA Response

RoSPA strongly supports the creation of a new offence of Causing Death by Careless Driving which should be tried on indictment (i.e. in Crown Courts not Magistrates Courts). We support the penalty of up to 5 years imprisonment, and we believe this will help to prevent cases where drivers kill someone by driving badly but ‘get away’ with a fine and disqualification.

However, we also believe that the culpability of the driver and the nature of their driving (i.e. the extent of the ‘carelessness’) should be the prime consideration when charging and sentencing offenders.

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Proposal

The penalties available in cases of careless driving should include all non-custodial penalties, in order to deal with the most serious forms of the offence, including those that cause injury, and to deal adequately with the most frequent and persistent offenders (the Criminal Justice Act 2003 already provides for this).

RoSPA Response

RoSPA supports this proposal, and would like to see much greater use made of re-training and re-testing options, and the principles of restorative justice, in sentences.

Proposal

In order to ensure that non-fatal injuries caused by bad driving are properly taken into account, the law should require Courts to take into account, when sentencing for either of the two general offences, the consequences of the bad driving, including injuries, as revealed by the available evidence – to this end the Government intends to increase the maximum penalty for the offences of dangerous driving and aggravated vehicle taking from 2 to 5 years, as recommended by the Report on the Road Traffic Penalties Review (July 2002).

RoSPA Response

RoSPA agrees that non-fatal injuries should be taken into account by the Courts. In the most serious cases, these injuries cause life-long disability for the victim and consequent implications for their families.

RoSPA would support re-defining the offences of ‘Causing Death by Dangerous Driving’ and ‘Causing Death by Careless Driving When Under the Influence of Drink or Drugs’ to include causing serious injury. This should also apply to the proposed new offence of ‘Causing Death by Careless Driving’ which would become ‘Causing Death or Serious Injury by Careless Driving’. We do recognise the potential difficulties in defining ‘serious injury’, but we feel that including it in the offence would help Courts to take the injuries into account.

Proposal

When the offence of manslaughter (or in Scotland culpable homicide) is charged in a case of bad driving, provision should be made to allow for alternative verdicts when the principal offence is not proved.

RoSPA Response

RoSPA supports this proposal. We believe that the current status of these charges being ‘all or nothing’ discourages their use by prosecution authorities. Where the charges are used, it also creates a risk that a defendant gets off scot-free.

Proposal

The outdated offence, in England and Wales, of “wanton and furious driving” in the Offences Against the Person Act 1861 should be replaced by suitable modern provisions.

RoSPA Response

RoSPA supports this proposal.

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Proposal

When careless driving causes injury, should a custodial sentence be available? If so, how would this best be achieved?

RoSPA Response

RoSPA believes that custodial sentences should be available in cases where careless driving has caused injury, especially where there is evidence of persistent careless driving on the part of the offender. In general, we would like to see greater emphasis placed on repeat offending.

We are not entirely clear how this proposal relates to the proposal on the previous page regarding non-fatal injuries.

Proposal

Is there scope for applying the principles of restorative justice to suitable cases of bad driving, where death or injury have been caused, not so as to avoid prosecution, but as part of the appropriate sentence?

RoSPA Response

RoSPA supports this proposal. Requiring offenders to confront the consequences of their actions by meeting victims and their relatives (where the victims wish to do so) can be an effective part of sentences.

Proposal

Anyone convicted of driving while disqualified or unlicensed whose vehicle was involved in a collision that resulted in death, should be guilty of a new offence carrying a maximum penalty of 5 years' imprisonment.

RoSPA Response

RoSPA supports this proposal, particularly because such driving is so often linked to high risk, persistent dangerous driving.

However, we feel the proposal needs clarification. As the proposal is worded, it seems to state that anyone who has been convicted of driving while disqualified or while unlicensed can be convicted of the new offence if their vehicle is involved in a fatal crash. It does not actually state that they need to have been the driver in the fatal accident, only that their vehicle has involved one.

Proposal

When sentencing anyone convicted of driving while disqualified or unlicensed to drive, whose vehicle was involved in a collision, courts should be required to take into account any injuries that resulted.

RoSPA Response

RoSPA supports this proposal.

However, we feel this proposal also needs clarification. As it is worded, it does not actually state that the disqualified or unlicensed driver needs to have been the driver in the accident, only that their vehicle was been involved.

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Proposal

The Government would also welcome views on whether uninsured driving (or any other forms of illegal driving) should be included within the scope of the proposed new offence for disqualified and unlicensed driving.

RoSPA Response

RoSPA believes that proposed offence should include all forms of illegal driving.

Other Comment

We understand from consultation with our National Road Safety Committee that there may be a missing element in the proposals. This concerns the offence of ‘Failing to Stop’ after an accident which has resulted in death or serious injury. The Police should be given the power of arrest for this offence, which would also mean that a wider range of penalties would be available for those convicted.

RoSPA thanks the Home Office for the opportunity to comment on these proposals. We have no objection to our response being reproduced or attributed.

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