



**RESPONSE TO THE
SENTENCING ADVISORY PANEL
CONSULTATION PAPER
“DRIVING OFFENCES - CAUSING DEATH BY DRIVING”**

FEBRUARY 2008

The Royal Society for the Prevention of Accidents
Response to “Driving Offences - Death By Driving”
February 2008

INTRODUCTION

This is the response of the Royal Society for the Prevention of Accidents (RoSPA) to the Sentencing Advisory Panel’s consultation paper, “Driving Offences - Death By Driving”, that propose guidelines for sentencing adult offenders convicted of a causing death by driving offence. Our response has been prepared following consultation with RoSPA’s National Road Safety Committee.

The proposed guidelines provide sentencing advice for four offences of causing death by driving:

- *“causing death by dangerous driving*
- *“causing death by careless driving when under the influence of drink or drugs or having failed to provide a specimen for analysis without reasonable excuse (ie causing death by careless driving under the influence)*
- *“causing death by careless or inconsiderate driving”*
- *“causing death by driving: unlicensed, disqualified or uninsured drivers”.*

The last two offences were introduced by the Road Safety Act 2006 but are not yet in force. The guidelines only cover the sentencing offenders aged 18 and over.

RoSPA welcomes the proposed guidelines as they continue a long term process of our legal system treating death on the road much more seriously. This process has so far included a range of new offences, a fundamental change in the way the police investigate fatal crashes and more stringent sentences. For example, not too many years ago, falling asleep at the wheel would have been seen as a mitigating factor, leading to a lighter sentence, whereas now it is seen as an aggravating factor, leading to a more severe sentence.

The new guidelines continue this process. For example, they recommend that using a hand-held mobile phone “will always make an offence more serious” and that “failing to have proper regard to vulnerable road users” will be considered when determining the seriousness of the offence.

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RoSPA’s General comments

Sentencing policy makes an important contribution to improving road safety. Sentencing policy should complement and support other road safety measures, such as education and training to produce better, safer drivers who are less likely to offend, and high profile enforcement to deter drivers from behaving in a careless or dangerous manner.

From a road safety point of view, the most important aim of sentencing should be to change the attitudes and behaviour of the individuals being sentenced and also of the wider driving public. Sentencing policy can help to:

- change the attitudes, skills and behaviour of convicted offenders
- remove convicted offenders from the road for their period of disqualification or imprisonment
- influence the attitudes and behaviour of other drivers and riders who hear/read about the sentences imposed for particular offences.

RoSPA’s recognises that courts face a difficult task when deciding an appropriate sentence for drivers who have been convicted of causing death by driving. The court must balance the terrible outcome of the offence (at least one person’s death) and the culpability of the offender, which may range from a momentary lapse or a single mis-judgement to consistent and deliberate dangerous driving over a considerable distance without any regard for other people.

Sentences for serious offences, especially where someone has been killed, should reflect the loss and damage caused. They should demonstrate that road safety is a serious issue, and that the consequences of behaving irresponsibly are severe. Consistency in the use of sentences is also important. Although, each case must be judged on its individual circumstances, it seems reasonable to expect that greater consistency in sentences for similar offences would enhance their deterrent effect.

Driver re-training programmes are effective and positive road safety measures that help to rehabilitate drivers, rather than simply punish them. RoSPA recommends that wider use is made of re-training, driver improvement and rehabilitation courses and that consideration should be given to their use.

COMMENTS ON THE SPECIFIC PROPOSALS

Recommendation 1

Where there is sufficient evidence of driving impairment, the consumption of alcohol or drugs prior to driving will make an offence more serious. Where the drugs were legally purchased or prescribed, the offence will only be regarded as more serious if the offender knew or should have known that the drugs were likely to impair driving ability.

RoSPA’s Response

RoSPA supports the recommendation. We agree that where there is evidence of driver impairment, the consumption of alcohol or drugs should make the offence more serious.

We recognise that it is more difficult to deal with “*legally purchased or prescribed*” medicines as it is difficult to predict whether, how, when and for how long some medicines will affect a person’s ability to drive safely. A driver may not know in advance that a particular medicine might impair them (they may not be given clear advice from a doctor or pharmacist and warning labels are often ambiguous or vague). The effects depend on how much, how often and how a medicine is used, plus the psychological and physical attributes of the person taking it. A driver may genuinely not realise that they have been impaired until it is too late.

Therefore, RoSPA agrees that the consumption of “*legally purchased or prescribed*” medicines should only make an offence more serious if the offender knew or should have known that the drugs were likely to impair driving ability.

It should be noted that a person’s driving ability can also be affected by the medical condition for which they are taking the medicine.

Recommendation 2

Unless inherent in the offence or charged separately, failure to provide a specimen for analysis (or to allow a blood specimen taken without consent to be analysed) should be regarded as a determinant of offence seriousness.

RoSPA’s Response

RoSPA supports this recommendation. We believe that failing to supply a specimen for analysis should put the offence into a more serious category.

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Recommendation 3

The fact that an offender was avoidably distracted by using a hand-held mobile phone when a causing death by driving offence was committed will always make an offence more serious. Similarly, adjusting the controls of a hands-free mobile phone or any other electronic equipment will be an avoidable distraction. Reading or composing text messages over a period of time will be a gross avoidable distraction.

RoSPA’s Response

RoSPA supports this recommendation. There is a considerable amount of evidence proving that the use of mobile phones while driving impairs driving and increases the likelihood of crashing. There has also been much mass publicity and an enormous amount of media coverage on this issue. Therefore, all drivers should be aware that it is illegal and dangerous to use a hand-held mobile phone while driving.

RoSPA also agrees that other forms of avoidable distraction, such as reading, should be included.

However, we are slightly concerned by the wording “*adjusting the controls of a hands-free mobile phone or any other electronic equipment*”. While we agree that adjusting the controls is an avoidable distraction and should be included, we also know that holding a conversation on a hands-free phone (irrespective of whether the driver is adjusting its controls) is an avoidable distraction that significantly impairs driving ability. Therefore, RoSPA recommends that the wording is amended to:

‘Similarly, using a hands-free mobile phone or any other electronic equipment will be an avoidable distraction.’

Recommendation 4

The fact that the victim of a causing death by driving offence was a particularly vulnerable road user is a factor that should be taken into account when determining the seriousness of an offence.

RoSPA’s Response

RoSPA supports this recommendation.

It will help to make it clear to drivers that some road users are more vulnerable and part of the responsibility that comes with a driving licence is to take care for such road users. RoSPA agree with the consultation paper that “*Driving too close to a bike or horse; allowing a vehicle to mount the pavement; driving into a cycle lane; and driving without the care needed in the vicinity of a pedestrian crossing, hospital, school or residential home, are all examples of factors that should be taken into account when determining the seriousness of an offence.*”

Although we recognise that producing a list of types of road users that are regarded as ‘vulnerable’ might be too restrictive, RoSPA would suggest that those mentioned in the consultation paper (cyclists, motorbike riders, horse riders and pedestrians) should include ‘children’.

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Recommendation 5

Where more than one person is killed, that will aggravate the seriousness of the offence because of the increase in harm. Where the number of people killed is high and that was reasonably foreseeable, the number of deaths is likely to provide sufficient justification for moving an offence into the next highest sentencing band.

RoSPA’s Response

RoSPA supports this recommendation.

There are many situations in which it should be clear to an offender that a crash will result in more than one victim, such as drivers with passengers in their vehicle or drivers travelling where there are other road users.

Recommendation 6

The fact that an offender may have consumed alcohol or drugs unwittingly before driving may be regarded as a mitigating factor but consideration should be given to the circumstances in which the offender decided to drive or continue to drive when driving ability was impaired.

RoSPA’s Response

RoSPA agrees that there may be cases where a driver’s drink was spiked and they were unaware that they had consumed alcohol or drugs, and that in such cases, the fact that the driver was unaware should be treated as a mitigating factor. However, care should be taken to establish that the driver was unaware they’d consumed alcohol or drugs and are not just claiming this to reduce their sentence. If a driver chose to drive when they knew they were impaired, although they did not know this was because they had unwittingly consumed alcohol or drugs, then it is harder to view this as a mitigating factor.

Recommendation 7

The degree to which serious injuries sustained by an offender will justify a reduction in sentence will depend upon the degree of fault in the offender’s driving in relation to the commission of the offence.

RoSPA’s Response

RoSPA supports this recommendation. However, the more culpable the offender’s driving, the less mitigating effect should be accorded to the fact that they have been seriously injured.

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Recommendation 8

Normally, the fact that the victim of an offence was in a close personal or family relationship with the offender should be treated as a mitigating factor. The degree to which this factor should influence sentence will vary according to the culpability of the offender and, where culpability is high, a reduction in sentence may not be justified.

RoSPA’s Response

RoSPA supports this recommendation. Although, we agree that in some cases, the courts should take into account the personal loss suffered by the offender, the main determining factor should be the nature of the driving and the driver’s culpability.

Recommendation 9

Any actions on the part of the victim(s) or a third party that contributed to the commission of an offence may be taken into account as a mitigating factor.

RoSPA’s Response

This is a difficult issue. Presumably, cases where the accident was caused wholly by the behaviour of the victim (an example might be a pedestrian crossing an unlit section of motorway at night and the driver was not speeding or impaired) would not result in a prosecution and so not be subject to sentencing.

However, there are other cases where both the driver and the victim were at fault to varying degrees. An example might be a case in which a child stepped into the road without looking between parked cars and is hit and killed by a driver. Should the fact that the child made a mistake in the way s/he crossed the road be a mitigating factor?

RoSPA’s view is that the main determining factor should be the driver’s behaviour – not just whether they were driving legally (for example, within the speed limit) but also whether they were driving appropriately for the conditions (for example, when passing parked cars, driving more slowly than the speed limit).

In the case of children, they will make mistakes and do things that adults would not. Being licensed to drive comes with a responsibility to drive in a way that allows for the mistakes of other road users.

Of course, each case will be judged on its individual circumstances.

Recommendation 10

Where an offender gave direct, positive, assistance to victim(s) at the scene of a collision, this should be regarded as a mitigating factor.

RoSPA’s Response

RoSPA supports this recommendation. It is important to encourage such behaviour. Failing to give assistance should be treated as an aggravating factor, unless the offender was unable to give assistance (because they were injured, for example).

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Recommendation 11

The fact that an offender’s lack of driving experience contributed to the commission of an offence should be treated as a mitigating factor; in this regard, the age of the offender is not relevant.

RoSPA’s Response

It is well established that inexperienced drivers are more likely to crash and are more likely to be at fault for those crashes. RoSPA agrees that in cases involving careless driving, the driver’s inexperience may sometimes be seen as a mitigating factor. However, in cases involving dangerous driving, illegal driving or driving under the influence, the fact that the driver was inexperienced should not be seen as a mitigating factor. These offences involve a more deliberate and conscious decision to drive in a high risk manner that cannot be excused by claiming the driver was inexperienced. These cases do not involve the driver simply making a mistake.

Recommendation 12

Genuine remorse on the part of an offender or evidence that an offender is normally a careful and conscientious driver may both be taken into account as personal mitigation and may justify a reduction in sentence.

RoSPA’s Response

RoSPA agrees that in cases involving careless driving, genuine remorse or the fact that the driver is normally a careful and conscientious driver may be taken into account during sentencing. However, in our view, in cases involving dangerous driving, illegal driving or driving under the influence, the fact that the driver was remorseful or did not normally drive in that manner should not be seen as a mitigating factor. These offences involve a more deliberate and conscious decision to drive in a high risk manner.

Recommendation 13

When ordering disqualification from driving, the purpose of which is primarily public protection, the duration of the order should allow for the length of any custodial period in order to ensure that the disqualification has the desired impact.

RoSPA’s Response

RoSPA supports this recommendation. If an offender’s period of disqualification just runs concurrently with their period of imprisonment, and they can regain their driving licence as soon as they leave custody, this defeats the purpose of disqualification. Therefore, the period of disqualification should extend beyond any period of imprisonment.

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Recommendation 14

The sentencing starting points and ranges for the offence of causing death by dangerous driving require significant revision only towards the top of the scale of seriousness.

RoSPA’s Response

RoSPA agrees that the prime focus should be on sentencing at the top end of the scale for the most serious offences.

Recommendation 15

A fine is most unlikely to be an appropriate sentence for an offence of causing death by careless or inconsiderate driving; where a custodial sentence is not justified, a community order normally should be imposed.

RoSPA’s Response

Perhaps the most difficult issue the courts face is sentencing someone convicted of Causing Death by Careless Driving. The court must balance the outcome of the offence (at least one person’s death) and the culpability of the offender, which in these cases, may be a momentary lapse of attention or a single mis-judgement rather than driving without any regard for other people.

Much of the media coverage of the proposed sentencing guidelines gave the impression that convicted drivers who would previously have gone to prison, would in future just receive a community order. In fact, the opposite is true. The new guidelines strengthen sentencing powers, and along with the new offence of Causing Death by Careless Driving, will help to plug a gap in the law which has often seen drivers who have killed someone only charged with careless driving, receiving just a fine and a disqualification.

RoSPA agrees that there may be some cases in which a driver is convicted of causing Death by Careless Driving, but due to the specific circumstances of the case, a custodial sentence would be too harsh and would not be necessary to protect the public. We recognise that many people, especially the families and friends of victims will disagree and strongly believe that there should be a prison sentence for anyone who causes death by careless driving.

We agree that a fine is not sufficient in such cases and a community order should be imposed. RoSPA believes that wider use should also be made of re-training and re-testing options.

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Recommendation 16

A fine will rarely be an appropriate sentence for an offence of causing death by driving: unlicensed, disqualified or uninsured drivers; where a custodial sentence is not justified, a community order should be imposed.

RoSPA’s Response

Driving while unlicensed, disqualified or uninsured is deliberate and research shows that unlicensed drivers are 3 to 9 times more likely to be involved in an accident than other drivers. Any accident that occurs would not have occurred if the illegal driver had not been present on the road at that time and place.

Therefore, RoSPA finds it difficult to think of a case where a person has been convicted of causing death by driving while unlicensed, disqualified or uninsured that would not justify a custodial sentence (except perhaps where it is proven that the offender genuinely and reasonably believed that they were licensed and insured). Even if the illegal driver’s driving was not at fault, the very fact that they were driving at the time and place of the accident in the first place is a major contributory factor.

Recommendation 17

The sentencing starting point for the offence of causing death by driving: unlicensed, disqualified or uninsured drivers should be higher where the offender was disqualified than where the offender was unlicensed or uninsured.

RoSPA’s Response

RoSPA agrees that the sentencing starting point should be higher where the offender was disqualified because the offender would have known they were not legally entitled to drive. We recommend that the sentencing starting point should also be higher for offenders who were unlicensed or uninsured where it is shown that they knew this to be the case.

Recommendation 18

Where an offender is convicted of causing death by driving while unlicensed, disqualified or uninsured, the fact that the decision to drive was prompted by a genuine emergency affecting the offender or a passenger in the offender’s vehicle may be treated as mitigation.

RoSPA’s Response

RoSPA agrees that in some rare cases this may be the case and that the courts should be able to take it into account.

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

RoSPA, Road Safety Department
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