

New cycling offences: causing death or serious injury when cycling
Consultation response by Brake, the road safety charity – November 2018

The need for a change in the law

Q1. Our consultation proposes that there should be an offence of causing death by dangerous cycling. Do you agree with this proposal?

See below

Q2. Do you think that there should be an offence of causing death by careless or inconsiderate cycling?

See below

Q3. The consultation also proposes that there should be an offence of causing serious injury by dangerous cycling. Do you agree with this proposal?

See below

Q4. The Ministry of Justice consulted on bringing forward a new offence of causing serious injury by careless driving. This consultation proposes that there should be an offence of causing serious injury by careless or inconsiderate cycling. Do you agree with this proposal?

- 1. In response to questions 1 – 4 of the consultation, in principle, Brake has no objection to the creation of new cycling offences, whether: causing death by dangerous cycling; causing death by careless or inconsiderate cycling; causing serious injury by dangerous cycling; or causing serious injury by careless or inconsiderate cycling. Having a legal framework that enables the delivery of justice for those killed or seriously injured on our roads, regardless of the mode of transport of the perpetrator, is crucial to a fully functioning and effective road justice system. We do, however, believe that the Government's efforts to address road traffic offences would be far-better served by addressing the broader, more structural, issues in our current framework. These are deep-seated issues which require a full review and so in this context, the consultation's proposal to add additional cycling offences to this fundamentally flawed framework may only result in exacerbating the existing concerns.*
- 2. At present, the legal framework for cases of death and serious injury on the road does not consistently deliver just and fair outcomes. Specifically, Brake does not believe that the existing definitions of careless and dangerous are fit for purpose and are a root cause of the flawed framework.*
- 3. When a driver causes a death they might be prosecuted with 'causing death by dangerous driving' or 'causing death by careless driving'. When a driver causes a serious injury, they might be prosecuted with 'causing serious injury by dangerous driving' (a charge introduced in 2012) or simply 'careless driving' – to note, the Government is due to implement a new offence of causing serious injury by careless driving as an outcome of the 2016/17 Ministry of Justice (MoJ) consultation ['Driving offences and penalties relating to causing death or serious injury'](#).*
- 4. The difference between 'careless' and 'dangerous' driving in the eyes of the law is slight and subjective: it's the difference between someone's driving falling below or far below what is expected of a careful and competent driver. But the difference in penalties between these charges is considerable. The maximum sentence for 'causing death by careless driving' is only five years, compared to 14 for 'causing death by dangerous driving' (although this is due to be*

increased to life as part of the outcome of the aforementioned MoJ consultation). The maximum sentence for 'causing serious injury by dangerous driving' is five years (if heard in a Crown Court), compared to a maximum penalty of a fine only for 'careless driving' - the penalty for the new offence of 'causing serious injury by careless driving' is yet to be decided by government.

5. Due to the subjective nature of the definitions of 'dangerous' and 'careless', very often offences are downgraded from 'causing death by dangerous driving' to the lesser charge of 'causing death by careless driving' simply because they are easier to prove. A recent report¹, looking at the impact of the charge of 'death by careless driving' since it was introduced in 2008, found that in the first few years after the new charge was introduced, the number of 'death by dangerous driving' convictions dropped off as the number of 'death by careless driving' convictions increased. In 2007, before 'death by careless driving' was introduced, there were 233 'death by dangerous driving' convictions, this then fell to 114 in 2011, when there was 235 'death by careless driving' convictions. Although not conclusive proof, it does demonstrate that the ability to charge someone with the lesser charge of 'death by careless driving' does have an impact on the number of people charged with the more serious charge of 'death by dangerous driving'.
6. At Brake, through our victim support services and other engagements with road crash victims, we also see many examples where charges were downgraded from 'causing death by dangerous driving' to 'causing death by careless driving' and the devastating impact this has on bereaved families. One such case is that of Jordan Peck, 17, who was driving home on his motorbike when he was hit and killed by a driver on the wrong side of the road who was speeding at 63mph in a 50mph zone. The driver was initially arrested on suspicion of 'causing death by dangerous driving' but ended up only being convicted of 'causing death by careless driving'. The driver was jailed for six months and banned from driving for a year.
7. Brake believes charges and penalties for causing death or serious injury should be overhauled. The legal system must ensure that prosecutors aren't incentivised to opt for an easier won charge, as such an approach inevitably results in the handing out of inappropriately low penalties. Additionally, the use of the term 'careless' in cases where driving has resulted in death and serious injury undermines and trivialises the gravitas of the offence and its impact on victims and their families.
8. Brake proposes that the Government launch a formal review of the road justice framework, a review which could potentially be conducted by the Law Commission. There are many proposals for amending the current framework which should be considered, however, one proposal which Brake would support would be the utilisation of a single charge, such as 'causing death or serious injury by risky driving', that can be brought against anyone whose driving causes death or serious injury. Judges would then be able to use their discretion to sentence according to the level of risk taken, across the range of penalties up to the maximum of 14 years (or life, once the outcome of the MoJ consultation has been implemented), rather than being restricted in their options by an inappropriate choice of charge. Brake does not agree with the Government's contentions, outlined in the 2016 MoJ consultation document 'Driving offences and penalties relating to causing death or serious injury' that, "There is a risk that juries may be less willing to convict a driver for an offence which falls within the less serious range of driving (what is currently careless

¹ <https://roadpeacejusticewatch.files.wordpress.com/2018/08/roadpeace-causing-death-by-careless-driving-10-years-on1.pdf>

driving) if they considered the maximum penalty that could be imposed disproportionate". Juries would be able to receive clear direction that a range of penalties would be available in sentencing, with precedent shown, negating this as an issue. Nor do Brake agree with the Government's further statement that, "...this approach would not necessarily result in different sentencing behaviour. In sentencing, a judge must consider the seriousness of the offending taking account of the culpability of the offender and the harm caused in order to impose the penalty appropriate for the offence, and this would remain the case if a new 'bad driving' offence was created. The lack of distinction between the offences would not alter the way in which a decision about the appropriate sentence is made." This position ignores the points set out by Brake in paragraph 5-7 of this response, points which are fundamental to the argument for overhauling the 'careless' and 'dangerous' definitions, that the current framework results in prosecutors opting for the easier won charge of 'causing death by careless driving', thereby restricting the sentencing powers available to the judge to the maximum sentence available for that charge.

9. *Brake believes that, as a minimum, prosecuting guidelines should be improved so that if a driver was taking an illegal risk, such as speeding or using a phone, their driving is automatically deemed 'dangerous' in the eyes of the law.*
10. *Brake believes that the justification for a full review of road traffic offences, rather than simply amending the existing framework to include new cycling offences, is provided through the innumerable case histories where the restrictions of the current definitions have led to inappropriate sentencing, such as the example mentioned in paragraph 6 above, allied to the fact that 98% of pedestrian injuries and 99% of deaths on Britain's roads involve a motor vehicle. We believe that, whilst well intentioned, adding new cycling offences into the existing framework is just tinkering around the edges of an already flawed legal framework and want to see a full review of all road traffic offences – as promised by the Justice Secretary in 2014.²*

Q5. If there were a new offence of dangerous or careless cycling, do you think the sentences should match the sentences for dangerous or careless driving (current driving sentences shown in brackets)?

- a. causing death by dangerous cycling (currently 14 years for driving)**
- b. causing death by careless cycling (currently 5 years for driving)**
- c. causing serious injury by dangerous cycling (currently 5 years for driving)**

11. *Brake believes that, in principle, there should be equality between the sentences for a new offence of dangerous or careless cycling and the sentences for dangerous or careless driving; if there were no wider issues with the legal framework surrounding road traffic offences. As detailed in our response to Q1-4, however, we believe that the current legal framework is flawed and therefore the Government should not be adding more offences to the current system using the current definitions of 'careless' and 'dangerous'. Priority should, instead, be given to fixing the flawed legal framework and seeking a solution to the issues caused by the subjective nature of the definitions of 'careless' and 'dangerous'.*

² <https://www.gov.uk/government/news/justice-for-victims-of-banned-drivers>

Q6. The report from the independent expert concluded that there is a gap in the law regarding dangerous or careless cycling. Do you feel that existing laws adequately cover circumstances where a person's cycling causes harm or injury to others?

12. *Whilst there may be a perceived gap in the law regarding dangerous or careless cycling, and Brake has no objections, in principle, to there being equality between the offences and sentences for cycling and driving offences in cases of death and serious injury, we believe that the fundamental problem here is that the current legal framework for road traffic laws is flawed. As noted in our response to Q1-4, having a legal framework that enables the delivery of justice for those killed or seriously injured on our roads, regardless of the mode of transport of the perpetrator, is crucial to a fully functioning and effective road justice system. We therefore believe that the Government's efforts to address road traffic offences would be far-better served by addressing the broader, more structural, issues in our current framework, in particular the definitions and parameters of 'careless' and 'dangerous'.*

Q7. Do you have any comments on any laws not covered in this consultation which could apply when trying to prosecute for this cycling behaviour?

13. *No. We do, however, have comments to make on other areas in which road traffic laws fail to deliver just and fair outcomes for the victims of road crashes and bereaved families, namely the use of driving disqualifications and the law for failure to stop (or hit-and-runs). We will outline our concerns on these in more detail in our response to question 19.*

Q8. Do you have any other comments that you wish to make in relation to how existing laws apply in Scotland?

14. *None.*

Road and public place

Q9. This consultation proposes that new offences should apply to public places as well as roads. Do you agree with this proposal?

Q10. The current offences of dangerous or careless cycling apply to a road. This consultation proposes that it should also extend to a public place. Do you agree with this proposal?

Q11. Are there any other comments that you wish to make about where the laws should apply?

15. *In response to consultation questions 9, 10 & 11, in principle, Brake has no objection to any new cycling offence or current cycling offence being extended to cover public places as well as roads. If a cyclist's actions cause harm to another person whilst riding somewhere other than the road or pavement, then they should, rightly, still face being charged with the appropriate offence.*

Penalty points and disqualification

Q12. Drivers may be banned from driving for committing a current cycling offence. Minimum driving disqualification periods currently apply under the Road Traffic Offenders Act 1988. For drivers this is currently 2 years for causing death or serious injury, 1 year for causing death by

careless driving. Do you think this should also apply to any of the new offences proposed in this consultation?

Q13. If not, please explain why? If so, do you have any views on how long the minimum disqualification period should be?

16. In response to questions 12 & 13, as noted in the consultation, total parity between cycling and driving offences is not possible, due to the lack of a testing, insurance and, most critically, a licensing regime for cyclists. Indeed, we agree that such a regime would not be desirable with the costs and complexity of introducing such a system significantly outweighing the benefits, allied with the potential negative consequences of discouraging people from taking up cycling. We fully support efforts to encourage active travel, reducing the negative impacts of motor traffic on safety, health and the environment. Therefore, in lieu of an infrastructure able to ban dangerous cyclists from cycling, banning cyclists from driving if they commit any of the new offences proposed in this consultation would seem appropriate. As the overarching theme of these proposals is to bring parity between cycling and driving offences, it would seem sensible to suggest that the minimum disqualification period should be the same for someone committing the proposed new cycling offences as it is for someone committing a current cycling offence. By doing this however, it may lead to inconsistent sentencing for the simple fact that not all cyclists are drivers.

Dangerous and careless cycling

Q14. There is currently an offence of dangerous cycling (with a fine of up to £2,500) and for careless cycling (with a fine of up to £1,000). This consultation proposes that the penalties for these offences should remain unchanged. Do you agree with the proposal?

Q15. If not, could you please explain why? Are there any other comments you wish to make on the level of penalty?

17. In response to questions 14 & 15, Brake agrees with the proposal that the fines for the offences of dangerous cycling and careless cycling remain unchanged. The level of harm that could be inflicted by someone driving dangerously or carelessly, by speeding for example, as opposed to someone cycling dangerously or carelessly, is much more significant. Therefore, as noted in the consultation, it would be disproportionate for a cyclist to face imprisonment if, for example, they were cycling dangerously without causing harm.

Drink and drug driving and cycling

Q16. This consultation proposes that there should not be a new offence of causing death by careless cycling when under the influence of drink or drugs. Do you agree with the proposal?

18. Brake has no objection to this proposal. We concur with the reasoning outlined in the consultation document that drink or drug use is likely to be considered as an aggravating factor when sentencing for causing death or serious injury by cycling, and therefore a new offence of causing death by careless cycling when under the influence of drink or drugs is unnecessary.

19. *The issue of whether or not separate offences for cases of causing death or serious injury when under the influence of drink or drugs are required should be considered as part of the review of road traffic offences that Brake is urging. Being under the illegal influence of drink or drugs should clearly constitute the most dangerous behaviour, even under the current framework, as it is clear that such actions fall far below the standards of a careful and competent driver.*

Q17. The current fine for riding a cycle when unfit to ride through drink or drugs is £1,000. Do you think we should consider increasing the fine?

20. *Brake has no objection to increasing the fine for riding a cycle when unfit to ride through drink or drugs.*

Q18. Do you think we should consider making it an offence to attempt to cycle (as well as actually cycling) when unfit to do so through drink or drugs?

21. *In principle Brake has no objection to this proposal, however we would question its enforceability and necessity.*

Q19. Are there any further comments you wish to make?

22. *Deaths and serious injuries on our roads cause terrible suffering— there are an average of 73 deaths and serious injuries on British roads every day. Tragically, this suffering is often compounded by a flawed legal framework which lets serious offenders get away with disproportionate penalties and which allows dangerous drivers back on our roads.*

23. *A full review of traffic offences and penalties was promised by the then Justice Secretary in 2014 and yet this promise remains unfulfilled. The Government has focused on making minor amendments to the existing law but, whilst well-intentioned, we believe they are trying to fix a fundamentally flawed legal framework.*

24. *Brake is calling for the Government to review all road traffic offences to ensure that the law delivers both just and safe outcomes and fix this fundamentally flawed legal framework.*

25. *We have already set out our reasons as to why the definitions of ‘careless’ and ‘dangerous’ driving are fundamentally flawed and need fixing in our response to Q1-4. There are, however, other areas of road traffic offences that fail to protect our road users and contribute to failures of justice. These surround the use of driving disqualifications and the ‘exceptional hardship’ loophole, and the law around hit-and-runs or ‘failure to stop’.*

26. *Brake encourages the use of disqualifications as a means of protecting the public from dangerous road users and agrees that this penalty should also apply to cyclists. However, under our current system, driving disqualifications are not used often enough and rarely reflect the severity of a driver’s actions. Instead of focussing on driving disqualifications for cyclists, as this consultation does, the Government should focus on making sure that driving disqualifications are used more effectively and that the ‘exceptional hardship’ loophole is closed.*

27. *The penalty-points system is designed to protect the public from dangerous repeat offenders, but the system is being undermined. Thousands of drivers with 12 points or more have been allowed to retain their licence. Many drivers who have reached 12 points have been using a loophole to keep their licence by claiming it would cause 'exceptional hardship' if they were banned. This loophole needs closing urgently: driving is a privilege, not a right; and if that privilege is not exercised responsibly, it should be revocable. Drivers who reach 12 points should be automatically disqualified to protect themselves and others.*
28. *Brake also believes that drivers who kill and seriously injure should be taken off the road once they are charged, as a condition of bail. Prosecutions often take months to come to court and in many cases the driver charged can continue driving during this time, potentially putting others in danger, and often in the same community where the crash took place.*
29. *Similarly, the existing maximum sentence for 'failure to stop' repeatedly fails to deliver justice for the victims of road crashes and bereaved families. Under the current system, drivers who kill and are proven to have been under the influence of drink or drugs can face up to a maximum sentence of 14 years in jail (soon to be extended to life). However, if the driver flees the scene to sober up, this can be impossible to prove, leaving only a 'hit and run' offence and a maximum custodial sentence of six months. This effectively incentivises drink and drug drivers to flee the scene and obstruct justice. Brake therefore believes hit and run drivers should face the same maximum penalties as other drivers who kill and seriously injure with an assumption that if they fled the scene they caused the crash by 'dangerous' driving.*

Contact:

Joshua Harris,

Director of Campaigns

jharris@brake.org.uk