

Ministry of Justice consultation on driving charges and penalties

Response from Brake, the road safety charity

13 January 2015

About Brake

[Brake](#) is a national road safety charity that exists to stop the needless deaths and serious injuries that happen on roads every day, make streets and communities safer for everyone, and care for families bereaved and injured in road crashes. Brake promotes road safety awareness, safe and sustainable road use, and effective road safety policies. We do this through national [campaigns](#), [community education](#), [services](#) for road safety professionals and employers, and by coordinating the UK's flagship road safety event every November, [Road Safety Week](#). Brake is a national, government-funded provider of [support](#) to families and individuals devastated by road death and serious injury, including through a helpline and support packs.

Brake was founded in the UK in 1995, and now has domestic operations in the UK and [New Zealand](#), and works globally to promote action on road safety.

Key points

- Brake supports and works alongside many families bereaved and injured by road crashes who have felt let down by the justice system and in some cases are proactively campaigning for more appropriate charges and tougher sentences for drivers who kill and injure. These families are frequently left feeling betrayed by the justice system as a result of unduly lenient sentencing.
- Brake believes the distinction between 'careless' and 'dangerous' driving should be removed and replaced with a single charge for drivers who kill or seriously injure, with a maximum sentence of 14 years, to ensure drivers who have killed or seriously injured as a result of their actions at the wheel face a charge that properly reflects the gravitas of the offence.
- 'Hit and run' drivers should face the same maximum penalties as other drivers who kill and injure, removing the current incentive for these drivers to flee the scene of a crash to sober up.
- Disqualified, uninsured and unlicensed drivers who kill and injure should automatically be treated as 'dangerous' in the eyes of the law, as they have no right to be on the road in the first place, and should face the same 14 year maximum penalty.
- The majority of drivers convicted of killing receive nowhere near the maximum sentence available. Sentencing guidelines need to be toughened to address this.
- Low fines and lenient implementation of the penalty point system for drivers who endanger give the impression that driving offences are not serious crimes and so are inadequate in deterring them.
- Public support for tougher sentences for drivers who kill and injure is extremely strong.

Response

As a charity that supports bereaved and injured road crash victims, Brake knows first-hand the damage that can be done by a perceived lack of justice in regards to driving offences, particularly those that cause death or injury. Brake's helpline, which is part-funded by the Ministry of Justice, and which supported people devastated by more than 525 cases of road death and serious injury last year through around 2,000 calls and emails, provides both emotional support and practical help and information, including on CJS procedures. It is frequently the case that we support people who are not only left deeply-traumatised and acutely-suffering due to the emotional and physical impact of a road crash, but also feeling bewildered and dismayed by the subsequent criminal proceedings, adding to their distress. A significant part of our helpline's work is assisting victims through these processes, providing information on procedures, charges and penalties, helping them know what to expect in court cases, and then in many cases helping them cope with further upset caused by what they regard to be inadequate outcomes. This often presents a major barrier to victims and families achieving closure and moving on with their lives.

Brake also works with many campaigning volunteers who have been affected in such a way, and left feeling insulted, upset or betrayed by our justice system, and the use of what we believe to be often grossly inadequate penalties, and in some cases inappropriately-termed charges. Brake is in contact with a

significant number of families who have felt compelled to actively campaign on this issue, alongside Brake, their MP or independently, due to their anger and frustration around the outcome of criminal proceedings.

Case studies:

Lillian Groves, 14 from Croydon, was crossing the road outside her home when she was killed by speeding driver John Page, who ploughed into her at over 40mph on a 30mph road. Page was uninsured and had been smoking cannabis. Despite this, he was charged with causing death by 'careless' driving, for which he received a four month sentence and a two year driving ban. He was released after eight weeks.

Lillian's family successfully campaigned, alongside Brake, for the introduction of the new drug drive law set to come into force on 2 March 2015. However, they are still campaigning for more appropriate charges and tougher sentences for drivers like the one who killed their daughter. **Lillian's mum, Natasha Groves, said:** *"A child being so suddenly killed, in such a needless and destructive way, is something that tears a hole in the heart of your family; it creates a shadow over your home you can't get away from."*

"If your actions have killed or seriously injured someone, it should not be termed merely 'careless' in the eyes of the law. Your actions were dangerous, so you should face a tough penalty that reflects the destruction and suffering you have caused."

Jamie Butcher, 22 from Wisbech, was killed on a pelican crossing when a speeding driver careered into him. Driver Michael Moore was going at twice the speed limit and had run a red light. He was convicted of causing death by dangerous driving, but got just 43 months and it's expected he'll be out within two years. More information about his family's campaign for tougher sentences can be found at www.justiceforjamie.co.uk.

Jamie's stepdad, Steve Green, said: *"Knowing that this guy, with good behaviour, could be let out and join his family in two years doesn't seem like justice. For us, losing Jamie is like a life sentence."*

Paul Stock, 53 from Gloucester, was mown down and killed when walking near his home by disqualified motorcyclist Graham Godwin. Godwin was speeding, had falsely insured his motorcycle, and was a serial offender with 12 previous convictions for driving without insurance, nine for driving while disqualified and three for drink-driving. He was sentenced to just 18 months for causing the death of Paul Stock while disqualified – the maximum the judge, who described Godwin as "an absolute menace", could give him because he pleaded guilty.

Mandy Stock, Paul's widow, said: *"Disqualified drivers who kill and seriously injure should face the same sentences as dangerous drivers. These deaths and injuries are a direct result of deliberate, illegal actions and the sentences should reflect that."*

Furthermore, low penalties for driving offences at all levels send an unhelpful and dangerous message that these are minor infringements, rather than serious crimes that result in needless suffering and loss of life. Brake campaigns for tougher penalties across the spectrum of driving offences, to pose a stronger deterrent against risky law-breaking by drivers, make clear that these behaviours won't be tolerated, and reflect the suffering that can result.

Brake calls for tougher charges and penalties for driving offences, to ensure justice is done following road death and injury, and help prevent further tragedies by deterring risky driving, through its **Crackdown** campaign: www.brake.org.uk/crackdown.

The following is an outline of Brake's key concerns and recommendations.

1. Charges and penalties for causing death and serious injury

Currently, only just over half of people (55%) convicted of killing someone through risky driving are jailed and only one in seven (14%) are sentenced to five years or more [1]. This is detrimental to both delivering justice, and deterring risky and illegal driving. There is a combination of inadequacies in the criminal justice that need to be addressed to resolve this.

a. 'Careless' and 'dangerous' driving offences

Brake believes the distinction between 'careless' and 'dangerous' driving is a false and unhelpful one. In the eyes of the law, this comes down to the slight and subjective difference between someone's driving falling below, or well below, what is expected of a careful and competent driver. However, the difference in penalties between these charges is huge (five years for causing death by careless driving, compared to 14 for causing death by dangerous driving). In Brake's experience, prosecutors appear to be opting for lesser careless driving charges because it is easier to secure a conviction, even when a dangerous driving charge may appear to be more appropriate, for example when the death has clearly resulted from illegal and risky behaviour, such as driving on drugs, without a licence, while using a mobile, or speeding.

Brake believes driving that has killed or caused serious harm is inherently dangerous, not merely 'careless', and that the term 'careless' undermines the gravitas of the offence.

Ideally, Brake would like to see this system overhauled and replaced with 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, rather than being restricted in their options by an inappropriate choice of charge.

As a minimum, prosecuting guidelines should be improved so it is clear that, under the current system, if the 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.

b. Hit and run drivers

Under the current system, drivers who kill and are proven to have been under the influence of drink or drugs can face up to the full 14 years in jail. 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.

c. Disqualified, unlicensed and uninsured drivers

Disqualified, unlicensed or uninsured drivers have no right to be on roads in the first place and so Brake believes if they kill or injure, they should automatically be treated as a 'dangerous' driver. [Brake welcomed the Ministry of Justice announcement in May 2014 that disqualified drivers who kill and injure will now face enhanced maximum sentences of 10 and four years respectively](#). However, unlicensed and uninsured drivers who kill or seriously injure still have to have their dangerous driving behaviour proven in order to face the appropriately tough penalties. Often, this isn't possible. Brake believes that the same principle applies to unlicensed and uninsured drivers as to disqualified drivers, and that if they kill or seriously injure they should automatically face the same maximum penalties as a dangerous driver who kills or seriously injures, rather than the current two year maximum.

d. Sentencing guidelines

In cases where an appropriate charge is used, inappropriately low sentences are still being handed down with alarming regularity. For instance, despite the maximum penalty for causing death by dangerous driving being increased from 10 to 14 years, sentences above 10 years, or even above eight, are almost never used. In 2013, only one third (33%) of people convicted of causing death by dangerous driving were given more than five years. This is a result of weak sentencing guidelines, and so there is an urgent need for the Sentencing Council review that is expected to follow the Ministry of Justice's own review.

e. Driving bans as a condition of bail

Brake believes drivers who kill and seriously injure should be taken off the road once they are

charged, as a condition of bail. The power to do this exists, yet Brake still hears of numerous cases where the driver has been allowed to continue driving while pending trial. This puts others in danger, can cause further distress to victims, especially when they are seen driving in the same community where original offence took place. This loophole must be fully closed as a matter of urgency.

2. Charges and penalties for drivers who endanger

a. Fines

Brake believes penalties for less serious and more widespread driving offences need to be much stronger in order to provide a more effective deterrent against risky behaviour. In June 2014, [Brake welcomed an increase in the fines that can be handed out through magistrate courts for motorway speeding and phone use](#). However, the fixed penalty notice for many driving offences, including speeding, mobile phone use and careless driving, is still only £100, plus three penalty points. Brake believes this is woefully inadequate for crimes that can and do lead to injury and death. Research shows that higher fines pose a stronger deterrent against law-breaking [2], so raising the fixed penalty to £500-£1,000 should encourage wider compliance with vital laws that are in place to protect people.

b. Licence points

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 [3]. Many drivers who have reached 12 points have been making inappropriate use of the 'exceptional hardship' loophole to keep their licence [4]. This loophole needs closing urgently: those who reach 12 points have been given ample opportunity to stop breaking the law. Drivers who reach 12 points should be automatically disqualified to protect themselves and others.

c. Violation of driving bans

Drivers who are disqualified have proven they are willing to take life-threatening risks. Disqualified drivers who ignore their ban are likely to pose a serious danger. Brake believes people who repeatedly drive while disqualified should face serious consequences, yet they currently only face a further ban and up to six months in jail, no matter how many times they are caught. Judges need to be given the power to hand out higher sentences, up to two years, if someone is caught driving while banned repeatedly.

d. Drink driving: repeat offenders

Drink drivers currently face an automatic ban and up to six months in jail, but the penalties are the same no matter how many times they re-offend. Brake is therefore concerned that the current system to tackle repeat drink driving is inadequate: one in eight drink drivers do it again, and as many as three in 10 'high risk offenders' reoffend [5]. Higher sentences (up to two years) for repeat drink drivers would provide a more effective deterrent to reoffending, plus the use of alcohol interlocks combined with rehabilitation has been shown to be effective for high-risk offenders [6].

e. Driver re-training courses

Brake is supportive of the use of driver re-training courses, which have been shown to be effective in improving attitudes to safe driving for some offenders. However, Brake is also concerned about the system of incentivising drivers to attend by letting them off penalty points, meaning risky repeat offenders may avoid sanction under the points system. Brake believes it would be better to provide an incentive of a reduced fine to attend courses, so drivers who take risks repeatedly are still sanctioned under the points system. This would be made possible were the fixed penalty fine for driving offences much higher, as proposed above.

3. Public support for tougher penalties

A report released by Brake in March 2014 showed that the UK driving public is strongly in support of many of the measures recommended above. [Please refer to the full report here](#). For instance:

- Four in five drivers (82%) think sentences should be higher for drivers who kill.
- Four in five drivers (81%) think drivers who kill or seriously injure someone when taking any kind of illegal risk should be considered 'dangerous' not 'careless' in the eyes of the law.
- The majority of drivers think drivers who kill while drink or drug driving (85%), speeding (66%) or on their phone (64%) should be sentenced to five years or more in prison.
- 95% of drivers think penalties should be tougher for drivers who kill and flee the scene [7].

End notes:

[1] [Criminal Justice Statistics 2013, Ministry of Justice, 2014](#).

[2] Calviño, N. "Public Enforcement in the EU: Deterrent Effect and Proportionality of Fines" European Competition Law Annual 2006: Enforcement of Prohibition of Cartels, 2006

[3] [Charity calls for reform to get law-breaking drivers off our roads - 10,000 drivers with 12 points are still driving](#), Brake, 2011

[4] 6,968 drivers with 12 or more points on their license avoided disqualification in 2014. Drivers with 12 points but not disqualified, DVLA, 2014.

[5] Drink driving (repeat offenders) bill, Rehman Chishti MP, 2013 <http://www.pacts.org.uk/2013/07/drink-driving-repeat-offenders/>

[6] [A Finnish report published last year, and based on four years of data, showed a recidivism rate of 6% when interlocks were used compared to the usual 30% rate in Finland. Effectiveness and impact of alcohol interlock-controlled driving rights](#), Trafi Publications, 2013

http://www.trafi.fi/tietopalvelut/julkaisut/2013_julkaisut/effectiveness_and_impact_of_alcohol_interlock-controlled_driving_rights

[7] [This isn't justice: four in five support tougher penalties for killer drivers](#), Brake, 2014 <http://brake.org.uk/news/1198-thisisntjustice>