

Better Justice for Victims of Criminal Driving and Their Families:

A Manifesto for Change

Supported by **Brake**, the road safety charity

Introduction

At the moment, many families of victims of criminal driving, those killed or seriously injured by careless and dangerous driving, feel that they do not get justice from the legal system in the UK.

Many MPs have seen tragic cases locally where as a result of criminal driving, lives have been lost or serious life-changing injuries caused. See Appendix 1 for the list of MPs who are involved in this initiative and are backing this.

On 1st December 2014, Greg Mulholland MP led a parliamentary summit to discuss why so many cases involving people who have been killed or maimed as a result of reckless, criminal driving do not lead to fair justice for victims and their families. Attending the summit were many of these families, including those who had tragically lost a loved one. Also in attendance were organisations and charities Brake, RoadPeace, Institute of Advanced Motorists, cycling charity CTC and a cross-party group of parliamentarians. This manifesto is a result of the discussions that took place and we thank all participants for their wide-ranging and well-articulated views.

Background

It is good to note that the figures for convictions for driving offences show a consistently falling trends, yet in many cases there is a strong feeling that proper and fair justice has not been done, and that offenders sometimes do not get a strong punishment given the crime and its devastating impact on victims and families.

On 6th May 2014, Secretary of State for Justice, Rt Hon. Chris Grayling MP, announced a full review of penalties for driving offences. The review is expected to be completed by spring 2015, with the timing of publication of the review's findings and recommendations yet to be confirmed.

What changes are we calling for?

We will now look to government to consider the points made below and give victims, families and campaigners the confidence they should have in the judicial system.

1. SENTENCING

Introduction – current situation/problem

Too many drivers at the moment who commit offences are let off with inadequate penalties or charges that are not properly phrased. This is an insult to victims and their families, and it also sends out the message that these serious offences which can severely impact people's lives are somehow minor offences. What we therefore need are tougher charges and penalties to deter risky driving and also ensure proper justice is delivered.

A 2002 report by the transport research agency TRL (Pearce, L, Dangerous driving and the law, Road Safety Research Report no 26 (DTLR, 2002)) confirmed that the 1991 Road Traffic Act, which was designed to reduce the difficulties with the charges of 'careless driving' (where a death had resulted), 'dangerous driving', and 'death by dangerous driving', had not been entirely effective. In the cases it analysed in the report, TRL noted that prosecutors often preferred a charge of 'careless driving' to 'death by dangerous driving' in cases where it could be argued that the latter was more appropriate. It also noted that maximum penalties are rarely used in 'dangerous driving' cases, stating that "cases which appear to be very serious often receive less than half of the maximum sentence."

(a) Redefining criminal driving

The existence and definition of careless driving charges is unacceptable, especially in relation to cases where a death or serious injury has occurred or could easily have occurred. 'Careless' is an inappropriate and offensive term to use for bad driving, particularly where it has resulted in horrendous suffering. Driving that is bad (especially if it has already resulted in injury or death or could easily have done so) is dangerous.

Brake believes charges and penalties for causing death or serious injury should be overhauled. We need to get rid of the split between 'dangerous' and 'careless' so prosecutors aren't tempted to go for an easier win charge that carries inappropriately low penalties and deems driving that has killed or caused serious harm as merely 'careless', terminology that undermines the gravitas of the offence.

We want to see a redefinition of 'dangerous driving' so these charges may be brought when anyone is found to be driving in a way not in accordance with road safety laws or the Highway Code. This definition is far less subjective and would make it clear to drivers that if they do not driving in accordance with legal requirements, they are posing a danger, and therefore may face these serious charges.

(b) Replace the charges of Careless Driving and Dangerous Driving with a single charge

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.

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.

(c) Scrap the charge of causing Death by Careless or Inconsiderate Driving

This charge can be brought when a driver causes a death because their driving 'fell below the standard expected of a careful and competent driver'. It was introduced after concerns were raised about the lack of mention of death in the Careless Driving charge. The maximum penalty is five years in prison and an unlimited fine, but in reality, and as predicted by Brake prior to this charge's introduction, which we opposed, much lower penalties are being imposed, and even the maximum is only just over a third that for 'Causing Death by Dangerous Driving'. Brake does not support this charge: it enables drivers who have caused enormous suffering to be let off with a paltry penalty. The word 'careless' is wholly inappropriate in the context of road deaths caused by bad driving, and insulting to bereaved families, as reported to Brake by families we work with through our support work. The charge of Death by Careless Driving should be scrapped, and cases currently dealt with by this charge should be dealt with using the charge Causing Death by Dangerous Driving, with a variety of sentencing powers for judges according to seriousness of the offence.

(d) Increase the maximum penalty for Dangerous Driving from 2 years to 5 years

This charge can be brought when driving fell far below the standard expected of a careful and competent driving, where no death occurred. It is not often brought (the charge of Careless Driving being more common). Dangerous driving carries a maximum sentence of two years. This is currently sometimes brought when someone is seriously injured by dangerous driving, although this should cease with the introduction of Causing Serious Injury by Dangerous Driving, as below. The maximum penalty for Dangerous Driving should be higher, in line with the fact that dangerous driving can, and often does, result in death. It should be at least five years, with a variety of sentences handed out up to the maximum, according to the seriousness of the offence.

(e) Scrap the charge of Causing Death by Careless Driving under the influence of drink or drugs

The charge of Causing Death by Dangerous Driving is a much more serious charge than Causing Death by Careless Driving, with a maximum penalty of 14 years in prison, but its definition differs in only one word: it can be brought when driving 'fell far below the standard expected of a careful and competent driver'. A similar charge of Causing Death by Careless Driving when under the Influence of Drink or Drugs carries the same maximum penalty. These charges should be brought when there are provable aggravating factors, such as excessive speeding above the limit, overtaking on a blind bend, or driving over the legal limit for alcohol. In most cases, however, the sentence meted out by the courts is much lower than the maximum, unless there are many aggravating factors and multiple deaths. In addition, the tiny difference in definition between this charge and the Charge of Death by Careless Driving means in many cases the more serious charges are not brought, and the lesser charge is brought instead, with its greater chance of conviction, but far lower penalties.

(f) Increase the maximum sentence for Causing Serious Injury by Dangerous Driving from 5 years to 14 years

Government introduced a new offence of causing serious injury whilst dangerous driving in December 2012 (as part of the Legal Aid, Sentencing and Punishment of Offenders Act) and this was welcomed by Brake. But Brake remains concerned that families who suffer life-changing serious injury at the hands of a dangerous driver will not receive justice, given the inadequate five year maximum penalty, and given that it will still be necessary to demonstrate driving was 'dangerous' according to the legal definition. In reality, offenders convicted of this are highly unlikely to receive close to the full five years, but even if they do, this does not reflect

the life-long suffering of the most serious and debilitating injuries that innocent victims of crashes may suffer, such as permanent brain damage, loss of limbs or paralysis. These injuries destroy lives and devastate families, with many victims needing round-the-clock care. Brake believes this new charge should carry a maximum penalty of 14 years, in line with that for Causing Death by Dangerous Driving. Brake is also concerned drivers who cause serious injury may continue to be let off with the lesser charge of careless driving (as is the case at present) because it is easier to make this charge stick.

(g) Increase the maximum sentence for failing to stop following a fatal or serious injury crash – to bring in much stiffer penalties for 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. Hit and run drivers should therefore 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.

(h) Increase the maximum sentence for Causing Death by and Causing Serious Injuries by Driving Unlicensed, Disqualified or Uninsured from 2 years to 14 years

Disqualified, unlicensed or uninsured drivers have no right to be on roads in the first place. So if they kill or injure, they should automatically be treated as a 'dangerous' driver. It is right that the Ministry of Justice announced 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. Therefore the same principle should apply 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.

(i) Tougher sentencing within the range of sentences available

Bereaved and seriously injured families supported by Brake often say they feel sentences handed to drivers who have caused their suffering are inadequate and this causes additional distress. As well as calling for reform to charges and penalties as above, Brake is concerned that sentencing for driving offences is unduly lenient. To reduce the horrifying frequency of road deaths and injuries, the criminal justice system should send drivers the message that traffic offences are not minor – particularly when they result in tragic loss of a life or debilitating injury. Yet it is extremely rare to see higher range sentences given out; often sentences are at the lower end. Brake believes this is because 'traffic offences' are seen as less serious than other crimes, even when they have resulted in a death or serious injury. The full range of sentences should be handed out, up to and including the maximum in the most serious cases.

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.

(j) Change the sentencing guidelines so that sentences for multiple deaths must no longer run concurrently

Where drivers have been convicted of causing the death of more than one person, it does not make sense for their sentences to be combined, effectively giving them a much reduced punishment for the crimes they have committed. Currently, the Sentencing Council's guidelines (*Offences Taken Into Consideration and Totality: Definitive Guideline*, pg11) say it is "undesirable" to allow multiple indeterminate sentences to run consecutively. These guidelines must be amended so judges are not discouraged from allowing multiple indeterminate sentences from running consecutively.

(k) Tougher sentences for those driving while disqualified

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. We need the government to get tough with these serial offenders, by giving judges the power to hand out higher sentences, such as up to two years, if someone is caught driving while banned a second time, having already been punished for flouting their ban the first time. Anything less would suggest that judges are not taking seriously those who repeatedly flout driving bans and continue to threaten public safety.

2. DRIVING BANS & LICENCE SUSPENSION

Introduction – current situation/problem

The Ministry of Justice took a step in the right direction in its recent decision, announced 19th October 2014, that a driving ban should not be served concurrently with a jail sentence. Until this announcement, offenders could serve a driving ban at the same time as their prison sentence, meaning they would be free to be back on the road upon being released from prison. The passing of the Criminal Justice and Courts Act 2015 means this will no longer be the case.

(a) Making driving licence suspension an automatic condition of bail in cases of dangerous and careless drivers who have seriously injured or killed.

Drivers who kill and maim should be taken off the road once they are charged, as a condition of bail. Prosecutions often take many months to come to court¹, and in many cases the driver charged with causing the crash is able to continue driving, potentially putting other innocent road users in danger, and often in the same community where they caused carnage. This can be incredibly offensive and upsetting to bereaved families and people injured by the driver, but it also means that other people are being put at risk.

If you are a teacher being investigated for misconduct, you are immediately suspended from teaching in school to protect pupils. If you are a doctor suspected of malpractice, you are immediately suspended from practising medicine to ensure no patients are harmed. Yet if you are charged with seriously injuring or killing someone because of your bad driving, you are allowed to keep driving until you are sentenced in court, despite the fact that nine in 10

¹ Average time from offence to completion of trial for an indictable motoring offence, such as causing death by dangerous or careless driving, is 120 days and only 47% of cases are completed at the first given trial date. Judicial and court statistics 2010, Ministry of Justice, 2011

drivers (89%) charged with indictable motoring offences, such as causing death by driving, are convicted².

Brake is backing a campaign by Rebecca Still, aged 13, who wants the government to change the law so driving licences are automatically suspended, as a condition of bail, in cases involving death by dangerous or careless driving, or drink/drug driving cases where the driver had at least twice the legal alcohol limit in their blood.

Rebecca's brother Jamie Still, 16, was knocked down and killed on New Year's Eve 2010 by a young driver who was twice the legal alcohol limit and speeding at 50mph in a 30mph limit. The driver was allowed to continue driving around in the same community until nine months later when he was convicted. Rebecca set up a petition to get the law changed, which has already had thousands of signatures. Visit www.jamiestillcampaign.co.uk.

STATUS OF CRIMINAL DRIVING CRIMES & VICTIMS

(a) Victims in cases where charges of criminal driving are brought must be treated as victims of crime until the contrary is proven

This is an extension of the approach adopted by the College of Policing's Authorised Professional Practice (APP) on investigating road deaths which states a road death is to be considered an unlawful killing until the contrary is proven. The Ministry of Justice's Code of Practice for Victims of Crime sets out services to be provided to victims of criminal conduct. The Code says "*Criminal conduct is behaviour constituting a criminal offence under the National Crime Recording Standard*" but then it goes on to say "*Non-NCRS offences include drink driving and careless driving.*" This must be amended so driving offences do constitute criminal conduct, allowing victims access to the support they deserve.

Furthermore, support services for crash victims must be the responsibility of a statutory agency, instead of a charity which cannot be held accountable nor can it be truly independent when it is dependent on state funding.

INVESTIGATIONS & THE JUDICIAL PROCESS

(a) Appropriate investigation of collisions

Where death has been caused, the incident scene must be investigated as a scene of murder, not as an accident, as this would allow for fairer and proper sentencing given the nature of the offence and its potential impact on people's lives. There must also not be undue police pressure to clear the roads and the police must also be more empowered to confiscate vehicles.

(b) Proper implementation of the College of Policing's Authorised Professional Practice (APP) on investigating road deaths and more rigorous training based on it.

Victims' families must have confidence that all investigators or police on the scene are also properly trained, as often non-specialist officers attend collision scenes. In other words, the guidelines set out in the APP must be followed. Officers and investigators must be thoroughly trained and regularly tested on their knowledge of the manual and its practical implementation.

² Criminal Justice Statistics Quarterly Update to September 2011, Ministry of Justice, 2012

(c) Implementing the recommendations of the 2002 report by the CPS Inspectorate

The report made a number of recommendations for improving the prosecution following a death on the road and these should be properly implemented:

- appointing an experienced prosecutor to receive specialist training in driving offences in each Crown Prosecution Service area, who could also act as first point of contact with the police in these cases;
- instructing counsel with appropriate experience and expertise to prosecute road death cases in the Crown Court;
- ensuring that all prosecutors are aware of guidance given in relation to the timing of inquests and summary criminal proceedings;
- improving the identification and flagging of files by the police and CPS, to improve case management;
- requesting further information and providing advice to the police in a timely manner;
- monitoring prosecutions for different offences, outcomes and review decisions;
- providing revised guidance to CPS prosecutors and reviewing the Driving Offences Charging Standard.

(d) Government should introduce national standards requiring judges and magistrates to receive appropriate training and advice on traffic offences, including discussion of case studies, to encourage them to implement appropriately tough charges and penalties

GENERAL JUSTICE ISSUES THAT COULD BE CHANGED TO ACHIEVE MORE JUSTICE FOR VICTIMS OF CRIMINAL DRIVING

(a) An independent and transparent assessment of offender's punishment

Under the Victims Right to Review (VRR) Scheme, victims or their families can ask for a review of a decision concerning the punishment of an offender. However the review process is not independent as it is undertaken by a more senior colleague of the original decision maker or the Chief Crown Prosecutor of the area the decision was made in. The Appeals Unit is also part of the CPS, making the whole process in-house, and the Independent Assessor only looks at how the process of review was conducted. For a VRR Scheme the public can have faith in, there needs to be a properly independent review of the original decision taken and this review must be done transparently rather than behind closed doors.

A further element undermining the VRR Scheme is that a review can only be sought if the CPS decision was "not to charge". This has been interpreted to mean that where any charge is brought, however minor, there can be no review of a decision not to prosecute on a more serious charge arising out of the same facts. This aspect of the VRR Scheme must also be urgently reviewed and it further underscores the need for a properly independent review of the original decision.

(b) Release evidence to victims and their families

Victims and their families are not always given access to all the evidence relating to the prosecution they are seeking. They end up having to 'trust' the CPS does its job properly, but this ends up undermining public confidence in the judicial system. Evidence relating to a case should be released to victims, their families and also their legal teams.

(c) Change the rules on how an offender “shows remorse” in a way that can lead to sentence reduction

Those convicted of an offence can have their sentence reduced for “showing remorse”. However, this remorse must be felt by victims and their families to be genuine, and demonstrated as such not simply through writing a letter, but through tangible actions showing a clear desire to recompense victims, families and/or the wider community. In the case of Jamie Still, 16 year-old Leeds resident killed on New Year’s Eve in 2010, the eventually convicted offender never expressed remorse to the family and also posted a photo of himself on his Facebook page making a V sign on his release. The killer showed remorse to the court but not to the family. This is not an acceptable state of affairs- if offenders are claiming to feel remorse, victims and families must feel this to be the case.

OTHER ISSUES

(a) The Department for Transport should stop describing incidents of criminal driving as “accidents”

The CPS and traffic police already do not use the word “accident” to refer to criminal driving offences, however the Department for Transport continues to do so. This does not lessen the suffering of victims and their families, who feel the use of “accident” appears to reduce the severity of the offence.

(b) Police forces should be obliged to implement recommendations of the IPCC

The Independent Police Complaints Commission (IPCC) makes recommendations to police or other relevant organisations following investigations. The IPCC’s website goes on to say “*The recipient of the recommendation has a legal duty to respond to the recommendation. They do not have to carry out our recommendation.*” This should be amended to **oblige** police forces to implement the recommendations.

Appendix 1

A huge tribute must be paid particularly to the families, whose loved ones tragically died or were injured in an incident, and they shared their stories at the parliamentary roundtable held on 1st December 2014. Their experiences in seeking proper justice have significantly shaped the changes this manifesto is calling for.

Very grateful also to the organisations who generously provided their expertise and knowledge, including Brake, RoadPeace, CTC and the Institute of Advanced Motorists.

This manifesto was produced by Greg Mulholland MP, supported by the road safety charity Brake, and additional parliamentarians involved in working with constituents and organisations include MPs Alok Sharma, Ian Lucas, Mark Pawsey, Susan Elan Jones, Caroline Dinenage, Jason McCartney, John Pugh, Chris Skidmore, Richard Graham, Annette Brooke and Lord Berkeley.