

Has Law Reform Policy been Driven in the Right Direction? How the New Causing Death by Driving Offences are Operating in Practice¹

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☞ Causing death by careless or inconsiderate driving; Causing death by unlicensed disqualified or uninsured driving; Decisions to prosecute; Road traffic accidents; Strict liability

Introduction

Serious driving offences have been under scrutiny for the past two decades. The Road Traffic Act 1991 replaced reckless and causing death by reckless driving offences with equivalent offences based on “dangerous driving” which it was hoped would be easier to prove. The maximum sentence for the causing death offence was increased at that time and then again a decade later.² The 1991 Act also introduced causing death by careless driving under the influence of drink or drugs (CDCDUI)³ but the suggestion of causing death by careless driving *simpliciter* was rejected. However, campaigns by bereaved families who had seen offenders receive only a fine and/or penalty points in the magistrates’ court in fatal careless driving cases bore fruit with the passing of the Road Safety Act 2006 (RSA 2006).

The RSA 2006 created two new “vehicular homicide” offences under s.2B and s.3ZB of the Road Traffic Act 1988 (RTA 1988). Causing death by careless driving (CDCD) under s.2B requires negligence falling short of anything that could be described as “gross” negligence. Prior to the RSA 2006, driving without due care and attention⁴ was the likely charge for those whose driving was bad but not bad enough to amount to dangerous driving, and who caused a death by that driving. The fatality was no more than an aggravating factor in sentencing,⁵ and might be mentioned in court for sentencing reasons alone. The penalty for careless driving is a fine and penalty points, which stands in stark contrast to CDDD (14 years maximum). This was the reason for the creation of CDCD, the maximum penalty for which is five years’ imprisonment.

¹ The project from which the findings are reported was supported by an Arts and Humanities Research Council Early Career Fellowship running from October 2011 to June 2012, and by an award from the Society of Legal Scholars’ Research Activity Fund. Further study leave from the University of Leicester enabled the completion of the project. Many thanks to Chris Clarkson and the anonymous reviewers for invaluable comments on earlier drafts.

² CDDD was raised from 5 to 10 years imprisonment and then from 10 to 14, Criminal Justice Act 2003 s.285(3).

³ Road Traffic Act 1988 (RTA 1988) s.3A, as amended by the Road Traffic Act 1991.

⁴ RTA 1988 s.3. “Careless driving” is merely a short-hand term for this offence.

⁵ *Simmonds* [1999] 2 Cr. App. R. 18.

The definition of the underlying offence of careless driving now found under s.3ZA RTA 1988 uses terminology already in operation under s.2A RTA 1988 in relation to dangerous driving, although that offence requires the driving to fall *far* below the standard of a competent and careful driver and careless driving only requires driving below that standard. Unlike dangerous driving, careless driving does not require the driving to have been “dangerous” in the sense that it creates risk of harm to anybody.⁶ The pertinent question for any CPS lawyer presented with a file of evidence following a fatal collision is therefore how far below the required standard of driving D’s actions fell.

The second offence, created by s.3ZB, punishes causing death by unlawful driving (CDUD hereafter), and requires only that the defendant was involved in a fatal collision as a driver of a vehicle, and that at the time of the collision he⁷ should not have been on the road due to either not having a valid insurance policy or a valid driving licence, or because he had been disqualified from driving. Each of these underlying offences is a strict liability offence, meaning that D will be liable under s.3ZB even if he had (good) reason to think he was driving within the law. The offence is one that has recently been described as one which “lets rip a double-barrelled discharge of strict liability”,⁸ and carries a maximum sentence of two years’ imprisonment.

In an attempt to establish whether the new offences have achieved the objectives set out for them, and to explore how they have affected the decision-making process in the prosecution of death by driving cases, a study entailing primarily qualitative, supported by some quantitative, data was carried out. Some of the findings relating to substantive and procedural law are reported here. The offence of CDCD will be discussed first, before the spotlight falls on the offence under s.3ZB.

Research method

A primary aim of the study was to provide explanations for the choices made by police and prosecutors in their decision-making about charge selection in fatal road traffic cases.⁹ In order to answer a number of research questions, some of which are the subject of this paper,¹⁰ secondary data, in the form of police and CPS files were analysed, and interviews with practitioners conducted. The purpose was one of providing an insight, rather than a statistical analysis. The intention was to gain access to files relating to all road deaths in certain locations, represented by three police forces,¹¹ roughly over a two-year period following the coming into

⁶ Another difference is that there is no equivalent to RTA 1988 s.2A(2) which allows dangerous driving to be based on the dangerous condition of the vehicle.

⁷ In every case accessed for this project, the defendant on a RTA 1988 s.3ZB charge was male.

⁸ G.R. Sullivan and A.P. Simester, “Causation without limits: causing death while driving without a licence, while disqualified, or without insurance” [2012] Crim. L.R. 753.

⁹ For a summary of findings from an earlier research project on CDDD and careless driving, see S. Cunningham, “The Unique Nature of Prosecutions in Cases of Fatal Road Traffic Collisions” [2005] Crim. L.R. 834.

¹⁰ These include: Has the creation of CDCD influenced the decision-making process for police and Crown Prosecutors in deciding what offence to charge in the case of a road death incident? Are Crown Prosecutors less reluctant to accept pleas to CDCD on a charge of CDDD than they would have been where the lesser charge was only careless driving? When is the new offence of CDUD used? Further results from the current project focusing on additional research questions relating to such matters as the relationship between the police and the CPS will be published elsewhere.

¹¹ The number of fatal collision investigations taking place in any particular police force in England and Wales varies hugely. Unsurprisingly the Metropolitan Police investigate the most fatalities, amounting to 184 collisions in 2009 and 125 in 2010. At the other end of the spectrum (ignoring City of London Police), Cleveland Police investigated 12 fatalities in 2009 and only 2 in 2010 (source: Freedom of Information requests). The forces involved in this study

force of the RSA 2006 in August 2008.¹² In the event, 30 files were accessed in Force A.¹³ Eighteen of those files led to charges for at least one of the causing death offences, and 12 resulted in no further action (NFA). In Force B every file completed since August 2008 was accessed, amounting to 46 files: 22 resulting in a criminal charge and 24 resulting in NFA.¹⁴ In Force C 32 files were accessed: 15 resulting in a charge of some form and 17 resulting in NFA.¹⁵

Having read each of the files, the researcher built-up an impression of the cases, which was tested through a more logical analysis of the data. Cases were categorised according to their final disposal; thus cases charged as CDCD were to be grouped together, and the reasons for the decision examined. Cases charged as CDCD where CDDD was considered by decision-makers as a possible charge were compared with cases in which CDDD was charged. There were a total of 22 cases charged as CDCD, 19 cases charged as CDDD and five cases charged as CDCDUI.¹⁶

In addressing the questions relating to the CDUD offence, CPS files were accessed through CPS Headquarters.¹⁷ The number of cases where this offence has been charged is low and spread across the various CPS Areas. There were 54 prosecutions in the year 2009–10 reaching the magistrates' courts. Agreement was secured to access files relating to 15 of these cases, representing more than a quarter of cases prosecuted.¹⁸

In addition, open-ended, semi-structured interviews were conducted with 13 CPS lawyers who have expertise in prosecuting cases resulting from road deaths.¹⁹ These focused on the task of decision-making in prosecutions relating to all causing death by driving offences. Interviews with police officers,²⁰ in addition to allowing for the quality of the case file data to be checked, explored the views of frontline staff focusing specifically on the decision-making process and the rationales underpinning outcomes at different stages of the criminal process. Given the lack of specialism found in this area on the part of defence solicitors, there was limited scope for interviews with such practitioners, and only a handful of barristers with experience in the field agreed to be interviewed. It is more difficult, therefore, to claim that the views of those acting for the defence are as representative as those

represent those falling between these two extremes, in force areas with roads ranging from urban streets to rural single carriageways.

¹² The exact period was dependent upon the agreement of each force and the time at which the fieldwork took place from October 2011 to April 2012.

¹³ The researcher was informed that this represented the totality of such files which were available. It is not clear why more were not available, given that the number of fatal collisions in the force amounted to more than 30 *per year*.

¹⁴ It should be noted that in this force the number of NFAs is probably over-represented due to such files becoming available to be accessed by the researcher more quickly than cases resulting in prosecution. Another explanation for the higher number of NFA'd cases in Force B was that there were a greater number of cases where V either committed suicide (suicide was the verdict at the inquest) or V, driving a car, lost control and crossed into the path of D, who had no chance to avoid the collision.

¹⁵ The time period from which these files were taken was reduced, as they resulted from investigations that had taken place since the formation of a new centralised collision investigation unit in April 2010.

¹⁶ The remaining cases resulted either in a decision of NFA or prosecutions for minor offences such as speeding or documentary offences.

¹⁷ The fieldwork for this part of the project took place from August to October 2011 and was funded by the Society of Legal Scholars Research Activities Fund.

¹⁸ CPS policy at the time was generally to allow researchers access to a total of only 10 files. In the event, only 14 files on relevant offences were provided.

¹⁹ Again, CPS policy restricted the number of lawyers in the sample. The agreement was for 15, but in the event, despite the CPS having a policy of ensuring that each Area provides training for designated road death experts, only 13 such lawyers from nine different Areas were identified.

²⁰ Interviews were conducted with eight officers ranging from constable to Assistant Chief Constable from five forces, three of which were those in which files were examined.

gathered from prosecution lawyers, but the research questions were best answered by those working with the CPS.

This qualitative data was supplemented through access to quantitative data provided by the CPS in the form of “monitoring data”. This arose from a “monitoring period” implemented by CPS headquarters, the purpose of which was to address concerns that CDCD would be prosecuted where CDDD was appropriate and that CDUD was a new offence with a unique offence structure. During the monitoring period Crown prosecutors across England and Wales were asked to inform headquarters of any cases where, having received a file for a charging decision, CDCD or CDUD were considered as a possible charge.²¹ These cases were then tracked through to completion; a spreadsheet documented whether the cases were charged or not and, if so, what the outcome at court was. This provides some valuable information about the early operation of these offences, although no qualitative data about the nature of the offence is included.

The s.2B offence (CDCD)

In relation to this offence, the findings are that the introduction of the new offence of CDCD has had little or no effect on the way in which prosecutors categorise bad driving resulting in a fatality as either careless driving or dangerous driving.²² Victim support groups, in particular, are concerned that official statistics on the number of prosecutions brought for CDDD have fallen quite dramatically since the introduction of the new offence,²³ but the evidence from this research is that cases of CDDD are *not* generally being downgraded to CDCD.

Plea bargains are rare in the force areas that were investigated.²⁴ Of 19 cases charged as CDDD, 3 resulted in a conviction for CDCD due to a plea to that offence being accepted by the prosecution. There was one such case in each of the three police force areas in which the study was conducted.²⁵ In each of these three cases there were good reasons for the acceptance of the plea.²⁶

Interviews with prosecutors provide mixed results in terms of how they themselves assess the impact of the new offence of CDCD. Prosecutors were asked what impact the availability of CDCD as a charge had on their decision-making in a case of road death, and whether they thought the statutory definitions of careless and dangerous driving worked well in practice. Some admitted that the existence of a new lesser offence carrying the potential for a prison sentence might lead to the temptation to accept a plea to the lesser offence on a CDDD charge. Others

²¹ HMCPSI welcomed this initiative, suggesting that there was an argument for extending this to all cases arising from a road traffic fatality: HM CPS Inspectorate, *The second thematic review of Crown Prosecution Service decision-making, conduct and prosecution of cases arising from road traffic offences involving fatalities* (2008), para.5.60, available at http://www.hmcp.si.gov.uk/inspections/inspection_no/426/ [Accessed June 23, 2013].

²² At least, not in the locations that were the subject of the research.

²³ The official statistics show that in 2007 there were 233 convictions for CDDD; this fell to 114 convictions in 2011: *Criminal Justice Statistics England and Wales 2011*, Table A4.4.

²⁴ It might not always be recorded on the file whether a plea to CDCD was offered on a charge of CDDD, but what is clear is that such a plea was only accepted in three cases.

²⁵ There was also one plea to CDCD accepted on a charge of CDCDUI. In B37 the evidence on which the Crown hoped to rely to prove by way of back-calculation that D was over the legal blood-alcohol concentration limit at the time of the collision was excluded under s.78 PACE, due to a mistake made by the custody officer and D not being offered the statutory option of providing a blood sample to replace the breath sample. The back-calculation was deemed inadmissible by the judge, leaving the Crown little option but to accept a plea to CDCD.

²⁶ For further detail see the project's final report, available at: <http://www2.le.ac.uk/departments/law/people/sally-cunningham> [Accessed June 23, 2013].

maintained that although temptation exists, and in fact there are “subtle pressures” (from the courts) to enter into such plea bargains, they do their best to resist this. Most agreed that the new offence made their task much easier in terms of explaining charges to bereaved families.

Prosecutors expressed mixed feelings about the existence of the new offence, with around half agreeing that it was valuable in terms of being welcomed by bereaved families, but at least two prosecutors expressed discomfort at the idea of careless driving resulting in imprisonment. Two prosecutors described CDCD as a more “realistic” charge than CDDD.²⁷ They suggested that prior to the RSA 2006 coming into force, they might have charged CDDD in cases where the evidence of the standard of driving was equivocal, in that they felt it was worth “taking a shot” at the more serious offence rather than accepting that the case was one that would be dealt with by a mere fine and/or penalty points on a careless driving charge. This meant that weak cases were likely to go to court and might more readily result in a downgrading of charges or jury acquittal. A third prosecutor similarly suggested that greater thought was now given to whether a piece of driving was dangerous or careless. The suggestion is that cases charged as CDDD are now likely to be stronger cases since “top end” careless driving can be prosecuted as CDCD.

Around half the prosecutors were happy with the way in which legislation distinguishes between the different levels of offence, representing greater satisfaction with the law than has previously been found,²⁸ although some admit that they still find the borderline cases difficult. A minority of lawyers and a majority of police officers were of the opinion that the distinction between careless and dangerous driving is quite a clear one to make,²⁹ particularly with the assistance of the examples provided in the CPS policy guidance, while others remain of the opinion that there is difficulty in judging where dangerous driving starts and careless driving ends.

That this difficulty is sometimes experienced was clear from some of the files. In A07, for example, CPS lawyers both at local level and at headquarters were in disagreement as to what side of the line between CDDD and CDCD the case fell. Ultimately, the Chief Crown Prosecutor (CCP) endorsed a charge of CDCD; D pleaded guilty to CDCD and was sentenced to two years’ imprisonment and disqualified from driving for three years, on the basis that the judge was of the view it fell at the top end of CDCD and just short of CDDD. The facts of A07, involving as it did a car going out of control on a bend, are not uncommon, meaning that prosecutors are likely to be faced with this borderline question not infrequently. Clarke et al found that 44 per cent of fatal collisions involved a vehicle going out of control on a bend.³⁰ Another case in the current sample was A17, where D lost control on a bend and collided with a car coming in the opposite direction. The

²⁷ The word “realistic” was used unprompted, from lawyers in two separate CPS Areas. Further lawyers made similar points to those that follow, without using the word “realistic”.

²⁸ See S. Cunningham, “The Unique Nature of Prosecutions in Cases of Fatal Road Traffic Collisions” [2005] Crim. L.R. 834.

²⁹ Two separate interviewees (one a barrister and the other a police officer) recommended the crude “fuck me” test by which one placed oneself in the position of a bystander and imagined the level of profanity with which one would exclaim on witnessing the piece of driving. Others put it in less crude terms in suggesting that in making the decision as to whether to charge CDDD, they would imagine themselves having to make their case in front of a jury.

³⁰ D. Clarke, P. Ward, C. Bartle and W. Truman, “Killer Crashes: Fatal road traffic accidents in the UK” (2010) 42 *Accident Analysis and Prevention* 764.

first reviewing lawyer thought that the facts presented a *prima facie* case of CDDD, and the second reviewing lawyer agreed, citing para.5.25 of the charging policy,³¹ which states that:

“Dangerous driving not only includes situations where the driver has taken a deliberate decision to drive in a particular way, but also covers situations where a driver has made a mistake or an error of judgement that was so substantial that it caused the driving to be dangerous, even if only for a short time.”

The Chief Crown Prosecutor, however, disagreed with the way in which this paragraph had been interpreted, suggesting that the examples given in the guidance indicate that the situation is really designed to account for examples where there is a seriously dangerous manoeuvre in itself, for example failing to see and negotiate a junction. D pleaded guilty to CDCD as charged and was imprisoned for 16 months and disqualified for three years.

These, and a few others, were not typical cases, however.³² In interview the small majority of lawyers’ own self-appraisal was that in most cases the decision as to whether a case was one of dangerous or careless driving was fairly clear-cut. The ease of decision making may be assisted by changes to charging policy, which has clarified when CDDD, as opposed to CDCD, might be the most appropriate charge. The most obvious example of this is in cases involving fatigue. The 1996 version of the CPS Charging Standard listed “fatigue/nodding off” as conduct likely to support a charge of careless, rather than dangerous driving. In the 2007 edition of the charging policy, however, such conduct was upgraded to an example of dangerous driving.³³ Even before the change in the policy was made, there were cases of fatigue that were being prosecuted as CDDD, but there was inconsistency in approach.³⁴ Those cases in the current sample where drivers (usually of lorries) were suspected of falling asleep were prosecuted for CDDD.

Whilst the approach to lorry drivers falling asleep at the wheel is now consistent, placing them in the category of dangerous drivers, those that are awake but try to use technology in their cab to keep themselves entertained present new dangers to road users and problems to prosecutors in selecting a charge. In A18 and A27 both Ds were found to have laptops in their cabs, and it was suspected that D had been watching DVDs whilst driving. In A18 D pleaded guilty to CDDD,³⁵ whilst in A27, by contrast, D was charged with CDCD (after some initial consideration of a CDDD charge) and pleaded guilty to that offence.³⁶

³¹ Crown Prosecution Service, *Policy for Prosecuting Cases of Bad Driving* (2007).

³² Prior to the new offence of CDCD coming into force, however, HMCPSI did similarly find that cases involving drivers who had left the road or lost control of their vehicles was one of three categories of cases in which there was an apparent inconsistency in the charges brought, with nine of 25 cases charged as careless driving, 8 as CDCDU1, and 8 as CDDD: HMCPSI, *The second thematic review of Crown Prosecution Service decision-making, conduct and prosecution of cases arising from road traffic offences involving fatalities* (2008), para.5.31, available at http://www.hmcpsi.gov.uk/inspections/inspection_no/426/ [Accessed June 23, 2013].

³³ CPS, *Policy for Prosecuting Cases of Bad Driving* (2007). “Driving when too tired to stay awake” is an example of dangerous driving listed under para.5.27.

³⁴ See S. Cunningham, *Driving Offences: Policy and Practice* (Farnham: Ashgate, 2008), p.51.

³⁵ Although the plea to CDDD was made on the basis that D was not watching the DVD as alleged. D was sentenced to 16 months’ imprisonment and 2 years’ disqualification.

³⁶ The case was one of only four that stayed in the magistrates’ court, where D was sentenced to 24 weeks’ imprisonment and disqualified for 12 months. At the time of the charging decision the case was deemed not suitable for summary trial, and it is somewhat surprising that it was later represented as falling within the lowest category of momentary inattention for the purposes of sentencing.

Criminalisation of “momentary inattention”

Three of the CPS lawyers acting as leads on road death cases expressed discomfort with the new offence of CDCD and expressed the view that rather than the borderline between CDDD and CDCD being a problem, the real challenge came in deciding whether or not to prosecute at all at the bottom end of the scale. Eight of the total of 22 cases charged as CDCD were “looked but did not see” cases: those where D, driving a car, pulls out into the path of a motorcycle. Clearly all drivers have an obligation to make sure the road is clear of traffic before conducting such a manoeuvre, but it is these cases that tend to be placed within the bottom level in terms of sentencing and classified as “momentary inattention”. Clarke et al identified collisions involving right of way violations as providing a second main problem area for road safety, the first being loss of control collisions involving young men, mentioned above. Right of way violations made up 16 per cent of collisions in their sample.³⁷ Typical of such a case was B06 where D attempted to turn right from a main road into a side road. He had thought he had sufficient time to make the manoeuvre as the only vehicle he saw approaching from the opposite direction, a car, was some way away. However, V, riding a motorbike at a speed of between 33–38mph in a 30mph zone, overtook that car and collided with the rear of D’s car. D pleaded not guilty to CDCD but was convicted by a jury and sentenced to 180 hours unpaid work and a two year disqualification.³⁸

In that case (B06) the police collision investigator was of the opinion that V would have been visible to D, and it is this piece of evidence which appears crucial to the charging decision. In A29, by contrast, the evidence was that V was travelling at a minimum of 68mph in a 40mph limit when D turned across his path. The decision was taken not to prosecute, on the basis that the prosecution would be unable to prove that V was within D’s view at the time that she commenced her manoeuvre.

Of the cases prosecuted as CDCD in the sample, 18 pleaded guilty, with 4 pleading not guilty and, of those, only 1 resulting in an acquittal (C21).³⁹ That was another case involving a motorbike, in which D pulled out from a T-junction into V’s path. The evidence of the police collision investigator was that V was travelling at 42mph in a 30mph limit but that he would have been available to be seen by D when D commenced his manoeuvre. The cause of the collision, then, was that D pulled out into the path of V, but V’s speed was a contributory factor in that had he been travelling at 30mph he would have been able to stop in the distance available to him. The senior investigating officer in the case was of the opinion that there was sufficient evidence to provide a realistic prospect of conviction, but that it would not be in the public interest to prosecute given that D had voluntarily surrendered his licence (it was also an influencing factor that D was in his eighties). However, the CPS disagreed and D was charged with CDCD. D elected trial in the Crown Court, his defence being that it was possible that V may not have been

³⁷ Clarke, Ward, Bartle and Truman, “Killer Crashes: Fatal road traffic accidents in the UK” (2010) 42 *Accident Analysis and Prevention* 764, 768.

³⁸ This was one of only four cases determined by a jury. Of the other three, one ended in acquittal (see below) and the two others (one of which also involved D pulling across the path of a motorcycle) resulted in conviction.

³⁹ In another case the charge was dropped.

in his view if he was travelling at the top of the range of speed estimated. D's acquittal (after a four day trial) had been predicted by prosecution counsel.

What these cases show is that CDCD can capture those who are only partially responsible for the fatal collision, with some degree of responsibility lying with the deceased. In these cases, as noted by Padfield, "most of these offenders have a clean record, impeccable character, and show real remorse",⁴⁰ and D will be unlikely to receive a custodial sentence if convicted. There appears to be an inverse relationship between the role that D's blameworthiness, in the form of negligence, plays, and the contribution of V to the end result for which D is penalised. As noted by one CPS lawyer, "it's nearly always the case that there is fault on both sides in any RTC". So, where D drives carelessly, rather than dangerously, there is likely to be further contributions to the fatal collision outside the control of D, such as the actions of V him/herself. One barrister suggested that it is "unpalatable" for counsel to point out the contribution of the deceased, particularly when nobody has warned the bereaved family that this could be a mitigating factor. Such cases are probably amongst the most difficult judges have to deal with but, in most cases, D will plead guilty.⁴¹

The borderline between CDCD and no criminal liability can be seen in one case in the sample where charges were dropped. In B36 D collided with a pedestrian at the apex of a bend on a country lane, where V was out walking his dog. On the one hand, V was found to have a blood alcohol concentration of 110mg/100ml⁴² and was walking on the inside of the bend, rather than the outside where he would have been more visible. On the other hand, D claimed that he had been blinded by the sun and, if that were true, he should have adapted his driving accordingly. The CPS lawyer in the case decided that there was a realistic prospect of conviction on a charge of CDCD, but stated that he "would not be wholly surprised if a jury were to acquit". The charges were dropped after prosecution counsel reviewed the case once D had entered a plea of not guilty at the Crown Court. In another case where the final decision was one of NFA, it is interesting to note the CPS lawyer's ground for his decision was that the test of a competent and careful driver "does not require perfection".⁴³

The s.3ZB offence (CDUD)

The files relating to the s.3ZB offence showed that when it was first introduced, the offence unsurprisingly caused some degree of head-scratching amongst CPS lawyers. The case of *Williams*⁴⁴ has made it clear that no blameworthy conduct on the part of D is necessary to convict of CDUD, and that it is sufficient that D's driving was a cause of death. Sullivan and Simester provide a robust criticism of the problems posed by this offence, specifically regarding the issue of the courts' interpretation of "causing" in this context, negating the need to go into such detail

⁴⁰ N. Padfield, "Time to Bury the Custody Threshold?" [2011] *Crim. L.R.* 593, 607.

⁴¹ Although there was considerable variation between the forces as to how Ds pleaded on a charge of CDCD. In Force A, for example, all 10 Ds charged with CDCD pleaded guilty to that offence. In Force B on the other hand, only one of the six Ds charged with CDCD pleaded guilty. In Force C all but one of the six Ds charged with CDCD pleaded guilty, and the sixth case was that of the acquittal.

⁴² For the purposes of illustration, the legal limit for driving is 80mg/100ml.

⁴³ Case B29.

⁴⁴ *Williams* [2010] EWCA Crim 2552; [2011] *Crim. L.R.* 471.

here.⁴⁵ However, it is worth reporting on the way in which the offence has operated in practice, particularly before the clarification provided by the courts on the requirements of the offence in the cases of *Williams* and *H*.⁴⁶ Many of the concerns expressed by Sullivan and Simester were to be found in the correspondence of and interviews with prosecuting lawyers.

A summary of the findings relating to the 14 cases can be found in Table 1. An interesting preliminary point to make is that of the 14 cases in which CDUD was charged, it was charged alongside another “vehicular homicide” offence in eight cases,⁴⁷ and was the only “causing death by driving” offence on the indictment in six cases. Of even more significance, perhaps, is the fact that *none* of the defendants in any of the cases faced a trial on the s.3ZB charge. In the eight cases where the offence was additional to a more serious charge, D pleaded guilty to all charges (three cases), or a plea was accepted to the more serious charge with the CDUD offence left to lie on the file (two cases) or dropped (three cases). Of the six cases where CDUD was the only causing death offence, D pleaded guilty to that offence in all but one case, where no evidence was offered.

This last case (CDUD4) was one where the potential injustice of a serious triable either way offence predicated on a double dose of strict liability can be effectively illustrated. In that case D was, as far as he was aware, driving home legally one evening when the deceased’s car collided with a glancing blow with the front of a pick-up truck which was stopped in a drive at the side of the road, encroaching slightly into the carriageway. Her car rebounded and veered into D’s oncoming car. D had been driving within the speed limit and had no chance to avoid the collision. It was only after the collision that D discovered that, due to a problem with his direct debits and a clerical error at his insurance company meaning that they only corresponded with his previous address, his insurance had been cancelled over a month before the collision.

The police were content to issue D with a fixed penalty notice for driving without insurance, but the file was forwarded to the CPS for consideration. At that stage, the CPS lawyer raised the potential for the CDUD offence and this was later charged,⁴⁸ with D electing trial by jury. Prior to the hearing a detailed discussion took place between prosecution and defence counsel as to what was required to prove the offence, with defence counsel suggesting that it was not sufficient simply to say that the cause of death was putting a vehicle on a road when there was no insurance. The prosecution position was that Parliament had intended this to be a strict liability offence.

Prosecution counsel suggested that D could plead guilty on a basis that indicated that he had no civil liability for the death, but the defence were not prepared to make such a deal. D entered a plea of not guilty, at which stage the trial judge expressed considerable criticism of the decision to prosecute, expressing the view that it was “absurd”. Ultimately, prosecution counsel’s decision to offer no evidence

⁴⁵ Sullivan and Simester, “Causation without limits: causing death while driving without a licence, while disqualified, or without insurance” [2012] Crim. L.R. 753.

⁴⁶ *H* [2011] EWCA Crim 1508; [2011] 4 All E.R. 761.

⁴⁷ The additional offences were under ss. 1, 2B and 3A RTA 1988, and s.12A of the Theft Act 1968 (aggravated vehicle taking).

⁴⁸ The other surviving driver responsible for the crash in that he left a vehicle in a dangerous position was charged under s.22A RTA 1988.

at trial was taken as a “pragmatic and sensible” one.⁴⁹ The judge said that the outcome of the case would depend on his summing up to the jury and that he was against the Crown. Prosecution counsel set out his own views as follows:

“If Parliament really intended strict liability then the offence was very badly drafted. The wording talks of the defendant causing the death by driving on a road and at the same time having no insurance. The law is very unclear therefore.

In this case there is clearly no civil liability for the accident or death on the defendant. He did not contribute to the accident and couldn’t have avoided it. But for his lack of insurance he would not have been prosecuted.

There is merit in his special measures application. If convicted the likely sentence would have been an absolute discharge.

The victim’s family have expressed the view that they do not feel that this prosecution is necessary.

There was no public interest in prosecuting this case regardless of the interpretation of the law. ...

In the circumstances therefore I offered no evidence. The case was dismissed. ...

[The judge] ... said that if there was ever a case to test the correct interpretation of the law this was not it. He personally would not have allowed it to have gone to a jury.”

Of course, the case to test the correct interpretation was that of *Williams*. The result of that case would suggest that the CPS in CDUD4 was right to bring the charge in terms of it satisfying the Code for Crown Prosecutor’s evidential test, given that it confirmed that no fault was required in relation to D’s driving and that all that was required was that D’s driving was *a* cause of the fatality.⁵⁰

However, CDUD4, and other cases, raise the issue of the degree to which CPS lawyers ought to exercise their discretion in applying the public interest test. This was also an issue that was raised in interview with CPS lawyers, with specific mention made of the offence being committed “as a result of a genuine mistake or misunderstanding” as a factor listed in the Code as weighing against the public interest.⁵¹ However, the official prosecution policy on the specific offences suggests that such a factor is only to be taken into account where the deceased is a member of D’s family.⁵² As noted by Sullivan and Simester, it may not be uncommon for administrative errors and delays to result in somebody holding a reasonable belief

⁴⁹ A view attributed to the judge in notes on file from prosecution counsel.

⁵⁰ That the Court of Appeal had taken the right approach in *Williams* was again confirmed in the case of *H* [2011] EWCA Crim 1508. The appellant in *H* has since appealed to the Supreme Court, the question for the court being whether the offence is committed by a driver when the circumstances are that the manner of his or her driving is faultless and the deceased was (in the terms of civil law) 100 per cent responsible for causing the fatal accident or collision? The case was heard in June 2013 and at the time of writing the judgment is awaited with interest: *R. v Hughes*, Case ID UKSC 2011/0240.

⁵¹ *Code for Crown Prosecutors* (2010), p.13, para.4.17 (d). This factor is not listed in the new version of the Code published in January 2013 available at http://www.cps.gov.uk/publications/docs/code2013english_v2.pdf [Accessed June 23, 2013].

⁵² Paragraph 4.15 of the *CPS Policy for Prosecuting Cases of Bad Driving* (2007) reads: “Where the illegality arose as a result of a genuine mistake on the part of the driver, for example, a mistaken belief that he/she was insured, it may not necessarily be in the public interest to prosecute the driver where the deceased was a close relative or friend.”

that they are entitled to drive when that is not the case.⁵³ It is questionable whether it is right that the discretion of prosecutors must be relied upon to prevent blameless drivers from being charged with a serious offence.

Another case demonstrates how the CPS struggled to establish the legal requirement of the offence. In CDUD9, the original suggestion from the CPS lawyer reviewing the case was that D be charged with driving other than in accordance with a licence or for the police to take no further action. It was thought D had reacted in the same way as “most other drivers”⁵⁴ would have done in the circumstances. When asked by a senior colleague to look again at a CDUD charge, the CPS lawyer admitted he had real difficulty, due to the lack of case law at the time, in determining the meaning of causation for s.3ZB. However, he acknowledged that the case was one which might be “a suitable case to take through the courts for the higher courts to clarify what Parliament really meant”. D was charged with four counts⁵⁵ of CDUD and pleaded guilty. The harshness of the charges was, however, mitigated by a non-custodial sentence of a twelve month community order.

Some lawyers in interview suggested that the problem was not with the spirit of the law in itself, but in the specific terminology used. There are those who agree that, with perhaps the exception of cases where D honestly and reasonably believed he was entitled to drive, it is right that D be held responsible for the death of another person when his driving led him to be involved in a fatal collision, irrespective of his standard of driving at the time.⁵⁶ However, they did recognise that the use of the word “causing” in s.3ZB by the parliamentary draftsmen was incongruent with the purpose of the law, which was to punish those who had been driving when they ought not to have been. Better would have been to use such terminology as “owing to the presence of a vehicle on a road”.⁵⁷ This might have avoided the need to stretch the meaning of the doctrine of causation to such an extent as to leave it devoid of any application, as critiqued by Sullivan and Simester, whilst satisfying the Government’s intention.

Duplicious charges?

Given the technical nature of the offence under s.3ZB, and the lack of defence open to a driver in such a situation, it is unsurprising that nine of the defendants in the current study pleaded guilty. But what is interesting is that even in those cases where D did not plead guilty to the s.3ZB offence, he did plead guilty to a more serious causing death offence (with the exception of CDUD4). The results of the research suggest that there is some variation in the approach of the CPS to cases where D has driven badly and caused death and additionally has committed

⁵³ Sullivan and Simester, “Causation without limits: causing death while driving without a licence, while disqualified, or without insurance” [2012] Crim. L.R. 753, 759.

⁵⁴ This explains why D was not prosecuted for CDCD, although what “most” drivers do and what a “competent and careful” driver would do is not necessarily one and the same. See Cunningham, “Punishing Drivers Who Kill: Putting road safety first?” (2007) 27 *Legal Studies* 288.

⁵⁵ One charge of causing death by unlicensed driving and one for causing death by uninsured driving relating to each of the two deceased.

⁵⁶ This view is shared by the general public, who assessed the seriousness of CDUD almost as high as CDDD and CDCDUI: Hough et al, *Attitudes to the sentencing of offences involving death by driving* (2008) Sentencing Advisory Panel Research Report 5, p.12.

⁵⁷ This was also a suggestion given in the case review in CDUD9.

one of the documentary offences. Some will charge CDUD in addition to the more serious offence of CDDD or CDCD, whilst others will charge the more serious offence plus the underlying documentary offence (i.e. driving without insurance, or other than in accordance with a driving licence, or whilst disqualified).⁵⁸ This may be because there are those within the legal profession who view the charging of both offences as “duplicious”. However, the CPS legal guidance on this point stated until recently that where there is evidence that the driving fell below the required standard, making a charge of CDDD or CDCD appropriate

“section 3ZB may also properly be charged without it being duplicious or oppressive because the offences deal with different aspects of the defendant’s alleged criminality”.⁵⁹

Further confusion has arisen over the question of whether s.3ZB creates one offence or three separate offences. It will be common that where D is either unlicensed or disqualified from driving, he will also be uninsured, since if D has lied about the fact that he does not have a valid licence, this will usually invalidate his insurance. Where D was both unlicensed and uninsured prosecutors seemed unsure as to whether they ought to charge one single count of CDUD or two separate counts. In the current sample there was no clear pattern of how the CPS would charge in such cases. There was nothing in the CPS policy guideline to help determine whether s.3ZB creates one offence or three until the new version of the guidance was published in May 2013, which suggests that s.3ZB creates three separate offences, and that a single charge “may be deemed bad for duplicity”.⁶⁰ The fact that it is unclear whether such an approach is correct is yet another example of how this offence was not “thought through properly” (to quote a defence solicitor in interview).

Sentencing

Both CDCD and CDUD are triable either way offences and are the subject of a definitive sentencing guideline from the Sentencing Guidelines Council.⁶¹ Despite many of these cases receiving a final sentence that could have been passed in the magistrates’ court, the majority of them are committed to the Crown Court for trial.

⁵⁸ The 54 cases of CDUD charged in 2009 emanated from only 22 of the 43 separate police forces in England and Wales, with some forces (as advised by their local CPS Areas) seemingly making far greater use of the offence than others. Of the files accessed within the three police forces discussed in relation to the findings on CDCD, only Force A made use (as a result of CPS advice) of the s.3ZB offence (these files were excluded from the 30 accessed through the police, since they were part of the sample of 14 cases accessed via the CPS). The other two forces both charged no insurance/no licence alongside offences of causing death by careless or dangerous driving. In C18, for example, D was charged with CDDD, failing to provide a specimen, driving without insurance and driving other than in accordance with a licence. Also, in C29 D pleaded guilty as charged to CDCD, fail to stop, fail to report, no insurance and driving whilst disqualified.

⁵⁹ The new version of the guidance published in May 2013 merely states that where there is evidence that driving fell below the required standard the appropriate offence incorporating dangerous or careless driving should also be charged, see http://www.cps.gov.uk/legal/p_to_r/road_traffic_offences_guidance_on_prosecuting_cases_of_bad_driving/ [Accessed June 23, 2013].

⁶⁰ See http://www.cps.gov.uk/legal/p_to_r/road_traffic_offences_guidance_on_prosecuting_cases_of_bad_driving/index.html [Accessed June 23, 2013].

⁶¹ Sentencing Guidelines Council, *Causing Death by Driving: Definitive Guideline* (2008), available at http://sentencingcouncil.judiciary.gov.uk/docs/web_causing_death_by_driving_definitive_guideline.pdf [Accessed June 23, 2013].

CDCD

The Sentencing Guidelines categorise cases of CDCD into three levels. The top category covers the most serious cases of CDCD falling just short of dangerous driving; the bottom category covers cases of momentary inattention with no aggravating factors, and the middle category is the dust-bin to catch all that fall in between. Those in the bottom category will get a community order, whilst the starting point for those in the middle category is a custodial sentence. The most striking aspect of sentencing in cases of CDCD is that many of them result from momentary inattention, placing them within the bottom level of sentencing. However, even these cases are often heard at the Crown Court, despite falling within the sentencing powers of the magistrates' court. Of the 22 cases within the sample, four were sentenced at the magistrates' court after a guilty plea. Guilty pleas were also prevalent in the Crown Court,⁶² where the guidelines are usually cited by judges passing sentence.

In addition to the data from the sample of cases obtained via the police, access was given to a spreadsheet of cases maintained by the CPS centrally over a twelve month period when the RSA 2006 first came into force.⁶³ This monitoring data shows that during the monitoring period, of 57 cases charged as CDCD,⁶⁴ guilty pleas were entered in all but one case. Just under half of the cases (25) stayed in the magistrates' court, with a small majority being committed to the Crown Court for trial, where ultimately a guilty plea was entered. Of those that were committed, 15 were sentenced to a term beyond the powers of the magistrates, with 17 cases being sentenced to terms that would have been available to the magistrates had the case been dealt with summarily.⁶⁵ This suggests that those in the qualitative sample are not necessarily representative, and that there is some geographical variation in the number of these cases dealt with at the magistrates' court.⁶⁶

In the sample of files under discussion here, the most lenient sentence passed for CDCD in the magistrates' court was that of C08 where D was sentenced to one year's disqualification plus a conditional discharge. In that case D had caused the death of her husband, a substantial mitigating factor in sentence.⁶⁷ Apart from this case, the least serious offence if measured by sentence appears to be A06, where D pleaded guilty and was sentenced to a three month community order to

⁶² The high number of "cracked" trials appears to be caused in many cases by D awaiting a defence expert report before deciding to plead guilty on the day of trial. Further details on this matter are beyond the scope of this article but will appear elsewhere in due course.

⁶³ The period appears to cover October 2008 to October 2009.

⁶⁴ This is a smaller number than will have been charged over that period, since not all CPS Areas seem to have conformed with the request to keep headquarters informed of these cases.

⁶⁵ Twenty six weeks' imprisonment (whether suspended or not) or less.

⁶⁶ This accords with the findings of studies related to mode of trial which suggest that local cultures of magistrates are a key influence on mode of trial decisions: Cammiss, "Deciding Upon Mode of Trial" (2007) 46 *Howard Journal* 372; Herbert "Mode of trial and the influence of local justice" (2004) 43 *Howard Journal* 65.

⁶⁷ Prior to 2007, cases where D caused the death of a "nearest and dearest" were unlikely to result in prosecution. However, the 2007 version of the CPS policy guidance reversed the position in relation to CDDD and CDCDUI. In "nearest and dearest" cases of CDCD prosecutors were able to exercise their "discretion not to prosecute in cases where the degree of culpability on the part of the driver is low, or where the circumstances of the case would make it unjust to prosecute": CPS, *Policy for Prosecuting Cases of Bad Driving* (2007), para.4.13. The most recent version of the guidance increases the amount of discretion prosecutors have in what are now called "close friends and family" cases, so that in cases demonstrating a higher degree of culpability where there is no evidence that D may be a continuing danger to others it is unlikely that prosecution will be in the public interest, see http://www.cps.gov.uk/legal/p_to_r/road_traffic_offences_guidance_on_prosecuting_cases_of_bad_driving/index.html [Accessed June 23, 2013].

include a curfew from 07.00 to 19.00. Seemingly recognising that D could potentially be a danger to other road users, however, the judge disqualified D from driving for two years, rather than the minimum of 12 months. In this case D had inexplicably failed to see a car approaching from the opposite direction and had turned right across that car's path, causing the driver of the other car to take evasive action and mount the verge, colliding with V who was standing on the footpath. This was a case represented as one of momentary inattention with no aggravating features. The lowest sentences at the Crown Court can be seen in cases such as A16, B21, C20 and C32 where D received a 12 month community order and was ordered to carry out between 80 and 120 hours of unpaid work.

At the other end of the spectrum are those cases which fall not far short of dangerous driving. The sentencing range for a level one offence stops at three years' imprisonment, despite the statutory maximum being five years, to allow for there being aggravating factors which can justify going above the range,⁶⁸ as demonstrated in case C29. The judge in that case described it as the worst case of CDCD that he could imagine, sentencing D to four-and-a-half years' imprisonment. D had been travelling at 58mph in a residential 40mph zone, when he collided with a car that was turning right in front of him, killing one of the occupants of that car. Although there was some blame to be placed with the driver of the second car,⁶⁹ it is difficult not to wonder whether a charge of CDDD might have been warranted in this case.

This was also true in one of the cases from the CPS monitoring data, where the sentence passed was one of four years' imprisonment. This was reduced to three years on appeal.⁷⁰ It was held that the judge was fully entitled to go outside the sentencing range, and that he was also entitled to withhold the normal discount of one-third for a guilty plea, given that the case against D was overwhelming. However, the sentence was to be reduced because:

"We are left with the uneasy feeling that the judge was unduly influenced by his view that the appellant should have been prosecuted for causing death by dangerous driving, a view which we can fully understand. A sentencing judge must take great care to be totally faithful not only to the facts of the case, but also to the offence with which he is dealing. By placing this case at the statutory maximum, but for the plea, he left no room for the sort of case which might contain other aggravating features, or relevant previous convictions. It can be said on the other side of the coin that he cannot have given any weight to the appellant's young age and previous good character."⁷¹

These cases suggest that, despite the main findings of the project reported here, there is the occasional case which is prosecuted as CDCD when the appropriate charge would have been CDDD. In such cases the statutory maximum does at least

⁶⁸ The Sentencing Guidelines are drafted with first time offenders convicted after trial in mind, meaning that previous convictions and/or significant aggravating factors may take the case beyond the sentencing range: SGC, *Causing Death by Driving: Definitive Guideline* (2008), p.8.

⁶⁹ Due to the relationship between this second D and V, it was deemed not to be in the public interest to prosecute him for CDCD.

⁷⁰ *Shepherd* [2010] EWCA Crim 46; [2010] 2 Cr. App. R. (S.) 54 (p.370).

⁷¹ *Shepherd* [2010] EWCA Crim 46; [2010] 2 Cr. App. R. (S.) 54 (p.370) at [29].

allow the sentencing judge the ability to pass a sentence akin to that which would have been passed had the more appropriate offence been charged.⁷²

CDUD

The sentencing guidelines for CDUD distinguish between disqualified driving on the one hand, and uninsured and unlicensed driving on the other.⁷³ If D was unlicensed or uninsured and there are no aggravating factors, the starting point will be a medium community order. Where D was disqualified from driving, however, the starting point will be 12 months' imprisonment.⁷⁴ In the current study disqualified driving was actually quite rare, having been relevant to only one case, in which s.3ZB was charged alongside the more serious offence of CDCDUI. This fact is not insignificant since, as pointed out by Roberts et al, driving without insurance can be committed inadvertently, whereas driving whilst disqualified is usually intentional, meaning that the two offences cover variable degrees of culpability.⁷⁵ They found, however, that the public are sensitive to these distinctions in expressing their sentencing preferences for such cases.⁷⁶ It is unfortunate that the Government, in proposing the new offence, failed to reflect such subtlety and instead left such distinctions to be reflected by the judiciary.

Of the 14 cases in the current sample, all were heard at the Crown Court.⁷⁷ As with CDCD, in most cases the Crown will represent the case as not suitable for summary trial, but there is the odd case where prosecutors are content for the case to be heard in the magistrates court but where it is then committed to the Crown Court: in one case D elected; in one case the magistrates declined jurisdiction. As can be seen from Table 1, the sentence passed in those cases where CDUD did not share the indictment with a more serious charge was within the powers of the magistrates in all but one case (CDUD14).

The CPS monitoring data suggest that the findings relating to these 14 cases are not unrepresentative. It should be noted that it is likely that many of those 14 cases will be included within the monitoring data, but in the period Oct 08–Oct 09 the spreadsheet includes 44 cases in which the s.3ZB offence was under consideration for charge.⁷⁸ It is not always clear from the data what the final offence classification was, but it can be seen that six of those cases were dealt with by way of a guilty plea at the magistrates' court. Unfortunately the data is not complete in identifying the underlying documentary offence on which such charges were based, but it does seem that those based on disqualified driving went to the Crown Court where they

⁷² The starting point in a case of CDDD in the bottom level of seriousness is three years' imprisonment.

⁷³ That this approach was taken was supported by evidence of public attitudes to the offences. The public were found to rate the disqualified offence as more serious than CDCD: Hough et al, *Attitudes to the sentencing of offences involving death by driving* (2008) Sentencing Advisory Panel Research Report 5, p.46.

⁷⁴ Sentencing Guidelines Council, *Causing Death by Driving: Definitive Guideline* (2008), p.17.

⁷⁵ Although it is increasingly likely that D may not have known about the fact that he was driving whilst disqualified, thanks to the courts' increased tendency to disqualify in drivers' absence under totting-up procedures. See: Corbett, "Efficient, effective and fair? Disqualifying drivers in their absence at London traffic courts" (2012) 11(4) *Contemporary Issues in Law* 249.

⁷⁶ J. Roberts et al, "Public Attitudes to the Sentencing of Offences Involving Death by Driving" [2008] Crim. L.R. 525. See also M. Hough et al, *Attitudes to the sentencing of offences involving death by driving* (2008) Sentencing Advisory Panel Research Report 5.

⁷⁷ Only half of the cases, however, involved triable either way offences only. The other half were cases where at least one count related to an indictable only offence.

⁷⁸ This includes cases where s.3ZB was charged alongside more serious offences, as well as cases where it was considered but not charged, but where a more serious offence such as CDDD was charged on its own.

were likely to receive a higher prison sentence. The highest sentence passed was 12 months' imprisonment, which was passed in 3 cases. The most lenient sentence passed at the Crown Court was a case where D pleaded guilty to one count under s.3ZB and was sentenced to 40 hours unpaid work and the mandatory 12 month disqualification. The vast majority of those that were tried at the Crown Court were dealt with by way of a guilty plea.

Concluding remarks

The new offence of CDCD has been welcomed by some lawyers,⁷⁹ filling, as it does, what was described by one barrister as a "ridiculous hole in the law",⁸⁰ its value lying in the idea that it "provides a high degree of satisfaction to the family of the deceased".⁸¹ CPS lawyers who in interview allowed their own personal view to be expressed occasionally conveyed a certain degree of discomfort with the offence, on the basis that it focuses on the consequences rather than wrongdoing and criminalises to a serious degree those guilty of a momentary lapse. Having been quite critical of the law when it was first passed this author, as a result of conducting the current project, is close to agreeing with Hirst that the offence itself is not objectionable, but that

"[w]hat is objectionable is the excessively punitive sentencing regime prescribed for the new offence, in which substantial prison sentences may be imposed for tragic driving errors that are not even grave enough to be categorised as 'dangerous driving'".⁸²

What the project suggests, however, is that Hirst's concern that "[t]he new offence will doubtless muddy the waters in borderline cases that might previously have been charged as CDDD",⁸³ whilst not unfounded, overstates the reality. And although it is true that many cases will fall short of bereaved families' expectations in terms of sentencing, if those expectations can be managed the offence affords clear benefits for families in making them feel that their case "matters", by being dealt with at the Crown Court, and providing official recognition of their loss.

CDUD, on the other hand, is a legislative creation that lacks any redeeming features.⁸⁴ There are few instances in which it is used other than as a back-stop to a charge of CDDD or CDCD, where D is clearly at fault in his driving, making it superfluous. In those cases where it is charged alone due to the driving being faultless, it is unclear what benefit the short custodial sentence (often suspended) that results can have. It is unlikely to provide any benefit in terms of general deterrence for the underlying offences given that, as noted by D in CDUD5 in police interview, explaining his offence:

⁷⁹ The consultation carried out by the Home Office prior to the introduction of the RSA 2006 resulted in responses from the CPS in favour of the new offence, with the majority of the legal profession expressing the opposite view: Home Office, *A Summary and Next Steps: The Review of Road Traffic Offences Involving Bad Driving* (2005), p.5.

⁸⁰ Barrister in interview.

⁸¹ CPS lawyer in interview.

⁸² M. Hirst, "Causing death by driving and other offences: a question of balance" [2008] Crim. L.R. 339, 343.

⁸³ Hirst, "Causing death by driving and other offences: a question of balance" [2008] Crim. L.R. 339, 343.

⁸⁴ See Sullivan and Simester, "Causation without limits: causing death while driving without a licence, while disqualified, or without insurance" [2012] Crim. L.R. 753; Duff, "Whose Luck is it Anyway?" in Clarkson and Cunningham, *Criminal Liability for Non-Aggressive Death* (Farnham: Ashgate, 2008); Clarkson, "Aggravated Endangerment Offences" (2007) 60 *Current Legal Problems* 278; Cunningham, *Driving Offences: Law, Policy and Practice* (2008), pp.113–118.

“if the police pull you up, you go and stand in front of a magistrates with no qualified driver [*sic*] and you get a couple of hundred quid fine or whatever; you don’t think you’re going to kill someone or whatever”.

The offence has done more harm than good in that it “corrupts” the principles of causation, and should never have been created.

Table 1: Prosecutions for CDUD

| Case Ref No. | Offences Charged | Mode of Trial | Outcome | Sentence |
|--------------|--|--|--|---|
| CDUD1 | s.3A; s.3ZB (unlicensed) | Crown Court (indictable only) | Guilty pleas to both | 2yrs on ct 1 + 6mths conc. |
| CDUD2 | s.1; s.3ZB (uninsured) | Crown Court (indictable only) | Guilty plea to ct1; ct2 to lie on file | 5yrs |
| CDUD3 | s.1; s.3ZB (unlicensed); s.3ZB (uninsured) | Crown Court (indictable only) | Guilty plea to s.1 after plea to s.2B rejected. Ct 2 to lie on file. G plea to Ct 3. | 2yrs 6mths on ct 1 + 4mths conc. |
| CDUD4 | s.3ZB (uninsured) | Crown Court (D elected) | No evidence offered. | NA |
| CDUD5 | s.3ZB (unlicensed); s.3ZB (uninsured) | Crown Court | D pleaded G to both. | 24wks susp. 1yr. |
| CDUD6 | s.3A; s.3ZB (unlicensed) | Crown Court (indictable only) | Guilty plea to s.3A; s.3ZB dropped. | 4yrs |
| CDUD7 | s.12A Theft Act; s.3ZB (unlicensed); s.3ZB (uninsured) | Crown Court (indictable only) | Guilty pleas to all counts | 26mths on Ct 1; + 12mths conc. + 12mths conc. |
| CDUD8 | s.2B; s.3ZB (unlicensed) | Crown Court (mags declined jurisdiction) | Guilty plea to s.2B; count 2 dropped. | 3mths susp. 12mths |
| CDUD9 | s.3ZB (unlicensed) x 2 s.3ZB (uninsured) x 2 | Crown Court | Guilty pleas to all counts | 12mth community order |
| CDUD10 | s.3ZB (one count both unlicensed and uninsured) | Crown Court | Guilty plea. (“uninsured” removed from indictment). | 24wks |
| CDUD11 | s.3ZB (one count both unlicensed and uninsured) | Crown Court | Count amended to 2 separate counts. Guilty plea to s.3ZB uninsured (other count dropped) | 12wks susp. 12mths |
| CDUD12 | s.1 & s.3ZB (uninsured) | Crown Court (indictable only) | G plea to s.1. Count 2 deleted as per judge’s orders. | 4 yrs prison; 5yr ban + extended retest |
| CDUD13 | s.3A; s.3ZB (uninsured); s.3ZB (disqualified) | Crown Court (indictable only) | G plea to all 3 counts | 5yrs count 1; 1yr each concurrent for counts 2&3. |

| Case Ref No. | Offences Charged | Mode of Trial | Outcome | Sentence |
|--------------|-------------------|---------------|-------------|--------------------------------------|
| | | | | Disqualified 7 yrs and extended test |
| CDUD14 | s.3ZB (uninsured) | Crown Court | Guilty plea | 8mths YOI; 2yr ban + extended retest |