

Promoting Safety for Vulnerable Road Users: Assessing the Investigation and Enforcement of Endangerment Offences

End of Project Report

Prof Sally Kyd & Dr Steven Cammiss

A socio-legal study of the investigation and enforcement of the road traffic offences of careless driving, dangerous driving, and using a mobile phone whilst driving.

Executive Summary

Introduction

This report explores the importance of enforcement in reducing harm on the roads, through an examination of current practice relating to the enforcement of the mainstream endangerment offences: dangerous driving; careless driving; and using a mobile telephone whilst driving. The research informing this report consisted of two strands: strand 1 accessed empirical data (case files on the prosecution of the offences, interviews with police officers, and examples of best practice in roads policing) from three police forces; strand 2 gathered data from vulnerable road users (cyclists) on their perceptions of police enforcement activity. One of the aims of the project was to explore and understand differential investigation and prosecution practices in the forces studied and associated Crown Prosecution Service (CPS) areas. We sought to provide a measure of the nature of cases deemed to warrant a legal response, what that response was, and of the evidence required to proceed with a case to court. We also examined cases that were deemed not suitable for prosecution, whether this was based on evidential or public interest factors. Although we did not always uncover the reasons behind decisions in individual cases, we were able to build up a picture of the nature of cases resulting in different disposals, to identify some good practice and also inconsistencies in approach.

Methods

For strand 1, we analysed 301 cases of offences of using a mobile telephone, careless and dangerous driving, from Surrey, West Mercia/Warwickshire and West Midlands police (WMP).¹ Our aim was to explore the nature of these cases, the classification of the offence, and the evidence collected. We also conducted 28 semi-structured interviews with police officers, Crown Prosecutors and Police and crime Commissioners (PCCs), focusing on the enforcement of these offences and any innovative methods used in education and enforcement.

For strand 2, we hosted focus groups with cyclists, so as to gain the perspective of a group of vulnerable road users. These focused upon police activity and the measures cyclists used to manage risk on the roads. We conducted 9 focus groups (for a duration of between 1 and 2 hours), in 6 locations, within 5 police forces (Durham, Leicestershire, Surrey, West Mercia, and West Midlands), with 77 participants.

To supplement these strands, we also collected data (largely through freedom of information [FOI] requests) on the extent to which forces in England and Wales make use of the submission of digital footage from members of the public. The use of this ‘third-party footage’ is an interesting and recent development in the enforcement of road traffic offences.

Findings

Strand 1

The significance of harmful results

All three of the offences examined do not require a collision to occur for the offence to be prosecuted. Anecdotal evidence, prior to our research, suggested that, for dangerous and careless driving, enforcement would only result after a collision. We found that this is not the case, although in cases where there was a collision, this could influence the choice of charge. In the absence of a collision, a case is only likely to proceed if there is a police witness, video footage, or an independent witness.

Third party footage

A very recent development in enforcement is the use of third-party footage for the prosecution of road traffic offences. The majority of police forces now have web portals for the submission of video evidence of bad driving; members of the public can upload footage to make a complaint, and complete a witness statement. There are concerns with how forces can manage the extra demand generated and maintain consistent decision-making. However, this seems an efficient means of enforcement using limited resources. Further, there is a degree of variability in the extent to which such submissions lead to a positive enforcement outcome, suggesting a problem of ‘postcode justice’. We recommend that forces consider their approach to reviewing this footage, putting in place methods to ensure appropriate and consistent decision-making.

The exercise of discretion

Discretion is an inevitable part of policing, and roads policing is no different. Officers and Traffic Processing Unit (TPU) staff exercise discretion on the choice of charge and the appropriate outcome for cases (such as no further action [NFA], an education course, a fixed penalty notice [FPN], or a court summons). There are a number of means by which this discretion can be framed to ensure consistent

¹ Within this report, we will anonymise our findings, unless this is not possible, for instance, when commenting on specific well known operations that were initiated by one of these forces.

decisions, such as guidance, case triage, and structured evidence gathering. However, inadequate resources can lead to decision makers being overburdened, leading to inconsistency.

CPS and police relationship

Under the statutory charging scheme, the police can prosecute careless driving, but must prepare a CPS advice file for dangerous driving. Forces complained that this could be burdensome, with different CPS areas making different demands on the police in the preparation of the file. This led, especially in borderline cases, to officers choosing to charge the lesser offence. Further, officers expressed frustration with the CPS's definition of dangerous driving, particularly in cases not involving a collision. We recommend that the CPS should be more willing to consider prosecuting for this offence than they have been at the time of this research and that the CPS should be properly resourced, with specialist road traffic prosecutors who work closely with police colleagues.

Using a mobile telephone whilst driving

Whilst frontline officers perceived this to be a straightforward offence, TPU employees noted a possible ambiguity in the offence definition, such as when a mobile is 'handheld' and when it is being used. As a result, officers are advised to record more details on the traffic offence report [TOR], such as how the phone was being used, for how long, and how the driver was interacting with the device. Nevertheless, cases have been lost due to this ambiguity. Despite the Government's recommendation that an education course not being offered in these cases, forces were still offering a course, using guidelines (not always adhered to) on when this is appropriate. We recommend that frontline officers should record more details of the allegations on the TOR, that decision-makers consider alternative charges in difficult cases (such as 'not being in proper control'²), and that the offence definition be reviewed.

Evidence led policing

Given the reduction in police numbers, especially traffic units, forces are keen to ensure that their resources are appropriately targeted. This is done through evidence led approaches. Project Verrier (focusing on uninsured, disqualified, or intoxicated drivers), Operation Tutelage (reminding uninsured drivers of the need to gain insurance) and Op Close Pass (educating drivers about appropriate passing distances around cyclists), are all examples of evidence led initiatives that focus upon seeking to reduce KSIs. They are also examples of education *through* enforcement. We recommend that these, and similar initiatives, be adopted by other forces.

Importance of staff and structures

The work of TPUs is of utmost importance in enforcement. Structuring decision making, training staff, adopting processes for ensuring consistency, and maintaining good relationships with front-line officers are all vital aspects of an effectively functioning TPU. However, growing demand and shrinking resources are placing TPUs under real pressure, threatening the effectiveness of their work. We also note that many of the successes of these forces depend upon passionate and dedicated staff. We recommend that forces keep under review the work of TPUs, with a view to ensuring effective and consistent decision-making.

² An offence under para 104 of the Road Vehicles (Construction and Use) Regulations 1986/1078: 'No person shall drive or cause or permit any other person to drive, a motor vehicle on a road if he is in such a position that he cannot have proper control of the vehicle or have a full view of the road and traffic ahead.'

Strand 2

Cyclists in our groups felt exposed and vulnerable, and were subject to a range of problematic actions from other road users. Despite this, they displayed a degree of ambivalence and fatalism about police enforcement activity, recognising the limitations of enforcement, be they evidential or due to reduced police resources. As a result, they felt compelled to manage their own risk, through safety equipment, planning and avoidance. This leads, however, to the responsabilisation of cyclists for their own safety, a paradox given their position as vulnerable road users. It also leads to victim blaming, whereby other road users blame cyclists for incidents. In addition to enforcement, cyclists seek effective infrastructure and a change in road use culture as a means to reduce risk.

Conclusions and recommendations

Enforcement has a vital part to play in reducing harm and risk on the roads. These endangerment offences are a means of reducing harm through prevention, rather than responding to harm after it has occurred. There have been a number of innovations in roads policing recently and these, combined with efficient and effective structures and working relationships, can improve roads policing enforcement. As a result of our study, we recommend:

- forces review their approach to accepting and acting on third party footage, putting in place methods to ensure appropriate and consistent decision-making;
- national guidelines should be developed on when it is reasonable for the police to issue a notice of intended prosecution (NIP) outside the normal 14 day period;
- national guidelines should be developed on the submission and processing of third party footage;
- the CPS should be more willing to consider prosecuting for dangerous driving in the absence of a collision;
- the CPS should be properly resourced, with specialist road traffic prosecutors who work closely with police colleagues;
- for mobile telephone offences, frontline officers should record more details of the allegations on the TOR, that decision-makers consider alternative charges in difficult cases (such as 'not being in proper control'), and that the offence definition be reviewed;
- innovative initiatives, such as Op Close Pass, Project Verrier, and Operation Tutelage, be adopted by other forces; and
- forces keep under review the work of TPUs, with a view to ensuring effective and consistent decision-making.

Contacts

Sally Kyd is a Professor of Law at the University of Leicester. Email: sally.kyd@le.ac.uk

Steven Cammiss is a senior lecturer in Law at the University of Leicester. Email: steven.cammiss@le.ac.uk