



# Keoghs

# Client ALERT

6 December 2016

## Consultation on dangerous driving launched

*"Killer drivers ruin lives. Their actions cause immeasurable pain to families, who must endure tragic, unnecessary losses. While impossible to compensate for the death of a loved one, we are determined to make sure the punishment fits the crime. My message is clear – if you drive dangerously and kill on our roads, you could face a life sentence".*

Sam Gyimah, Justice Minister

The Government issued a press release on 4 December, which sets out a consultation on the following:

- The introduction of life sentences for causing death by dangerous driving;
- The introduction of life sentences for careless drivers who kill whilst under the influence of drink or drugs;
- A new, three-year jail term for careless drivers causing serious injury.

Before examining the Consultation in detail, it is important to understand the law that it seeks to change. Under the previous law, an accidental death on the road could result in three possible charges:

- Gross negligence manslaughter
- Causing death by dangerous driving
- Causing death by careless driving

As matters stand, the sentence for gross negligence manslaughter is life imprisonment, whereas it is a maximum of 14 years for causing death by dangerous driving and five years for causing death by careless driving.

Whilst the Government's reaction to cases such as the recent coverage of the lorry driver who was jailed for 10 years for killing four people whilst using his mobile

phone is understandable, fortunately, headline cases usually do not necessitate the introduction of new laws. Often they highlight an extreme situation in a far more complex arena.

The first question we must ask ourselves is, whether it's wrong to create a criminal offence, punishable by a significant sentence of imprisonment, which is made out if negligent conduct is proved?

Criminal punishment is the most severe sanction imposed by society, and so fairness demands that it is only applied to those who choose to commit or choose to risk committing criminal offences. The definition of careless driving is where the standard of driving falls below the standard of a "careful and competent" driver. It is an objective test devoid of any intention on the driver's part.

In contrast, the test for dangerous driving is where the standard of driving "falls far below the standard of a careful and competent driver". Again the test is an objective one. The accused may, therefore, have chosen neither to drive poorly nor to risk doing so.

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The second question to ask ourselves is, doesn't the new offence make the sanction imposed for careless driving heavily dependent on luck?

The maximum penalty for careless driving where death does not result is a fine. Where careless driving causes death, the penalty increases to five years' imprisonment and now it is intended that careless driving which results in serious injury will carry with it a term of three years maximum in prison. And yet, isn't "luck" all that determines whether or not a particular act of careless driving has fatal consequences or serious consequences? Should the severity of a criminal sanction really be determined by chance?

Both of these criticisms require some qualification. Negligent or careless behaviour is frequently not inadvertent: it can result from a choice not to take the care required to reach the standard of the careful and competent person. In those cases, it is difficult to argue that criminal liability should not follow.

But what about those cases where the behaviour was inadvertent? Surely where careless driving is entirely inadvertent, resulting from a human error that occurred despite as much care as possible being taken to avoid it, punishments should be nominal and disqualification discretionary. As most of us are drivers, we don't need reminding of the phrase "*there but for the grace of God go I.*"

The only possible circumstances in which a "life" sentence could even begin to be justified is the deliberate and concerted taking of very high risks, for example those taken for example during prolonged police chases.

Most cases dealt with by my team and I are accidents but with highly tragic consequences for all concerned.

One District Judge I spoke to commented on the Consultation as follows: "*Where the result is completely unintended and wholly unforeseen, culpability should remain the dominant factor in any approach to sentence. The result, however tragic, of a piece of driving is more often than not a matter of pure chance, particularly in careless driving where there is no obvious risk being taken. It is common for there to be a 'conspiracy' of unfortunate circumstances that leads to a particular outcome. To focus too heavily on the end result rather than culpability would distort the true nature of these cases, many of them are pure accidents, involving minor errors where the outcome is wholly disproportionate to the magnitude of the error or the culpability of it. In the same way that 'two wrongs don't make a right', it cannot be just to make any sanction similarly disproportionate.*"

## What does this mean in practical terms?

There could be many implications if these proposals are taken forward. These include:

- Early representation at PACE interviews will be crucial to ensure proper foundations can be raised for any basis of a defence and to ensure the insured does not talk him/herself into a prosecution by attending the police station to have a "chat" with the Police.
- Engagement of expert evidence will be increasingly important when determining the facts of a case.
- Companies who employ drivers need to be sure their systems and procedures on driving are watertight as companies may become implicated in any police investigation.
- It is more likely that the number of cases fought to trial will increase, pushing up defence costs.
- If the "scare tactics" work it may mean fewer accidents brought about by mobile phone use / driver distraction which is where all the publicity seems to be - but that will remain to be seen.

Consultation responses need to be submitted by the 1st February 2017. Interesting times lie ahead....

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