

INFORMATION HANDBOOK No 1

Criminal Law – Implications after Road Death or Injury.

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This information booklet has been produced by CADD in consultation with Mr Andrew Greenwood, B.A. (Hons) (Law).

Other information booklets produced by CADD are available entitled: -

No.2: Civil Law - Compensating the Victims of Death & Injury.

No.3: Inquests & Coroner's Courts.

These booklets are available from the address on the front cover.

The CADD help-line is staffed all day, every day. Please do not hesitate to ring if you think we may be able to help you, or even if you would just like to talk to someone.

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Criminal Law - Implications after Road Death or Injury

Introduction

Following an incident on the road involving a motor vehicle and a serious or fatally injured person, the police will be called to investigate the circumstances of the incident usually with the assistance of experienced road traffic police officers and a member of the Accident Investigation Branch. The Police should gather their evidence with the aim of passing a file to the Crown Prosecution Service who are charged with the responsibility of prosecuting all criminal offences through the Criminal Courts. Although notionally an independent body, the Crown Prosecution Service maintains a close link with the police and there is a considerable measure of co-operation between them. In deciding on prosecutions both the Police and the Crown Prosecution Service apply charging standards agreed between them. At the end of the day decisions relating to prosecutions rest with the Crown Prosecution Service who are not obliged to follow the Police's own observations or opinions.

1. Parties Involved

The Crown Prosecution Service will deal with the prosecutions unless a private prosecution has been taken out. A private individual has the right to commence a criminal prosecution. This right is rarely exercised, mainly because of the cost of private prosecutions, which do not qualify for legal funding assistance, and legal hurdles, which have to be overcome. The driver will usually be the Defendant in the case and in most cases will have the benefit of legal representation usually paid for by his or her road traffic Insurance Company. The Crown Prosecution Service (C.P.S.) is normally quite approachable, particularly if you approach them with your Lawyer. A meeting can be arranged to explain why certain actions are being taken, and most Crown Prosecution Service Lawyers are quite happy to discuss the case with you. It is often extremely important to use this opportunity to meet Crown Prosecution Lawyers since it does provide an insight into the procedure and approach of the Courts.

2. Burden and Standard of Proof

The burden is upon the prosecution in nearly all cases. Only in very rare circumstances does that burden shift to the Defendant. The standard of proof is that the prosecution has to prove its case "beyond reasonable doubt". In simple terms, if the Defendant can demonstrate an element of doubt or fallibility in the prosecution's case, then the Defendant is entitled to be acquitted, or let off.

3. Common Offences

The main Act, which governs criminal driving offences, is the Road Traffic Act 1988. You will hear the Crown Prosecution Lawyers and the Police Officers talking about the various sections of this Act, which are set out below.

Section 1

- **Causing Death by Dangerous Driving**

Section 2

- ***Dangerous Driving.***

Section 3

- ***Careless or Inconsiderate Driving.***

Section 3A

- ***Causing Death by Careless Driving under the influence of drink or drugs.***

Undoubtedly the biggest complaint and cause for upset in cases involving a fatality, is the failure by the Crown Prosecution Service to secure a conviction under Section 1, Causing Death by Dangerous Driving. This is because the legal definition of what constitutes Dangerous Driving as opposed to what constitutes Careless Driving (Section 3) is one that lawyers can spend a lot of time arguing about. The definition of Dangerous Driving is set out under Section 2A of the Road Traffic Act and is driving....

"Far below what would be expected of a competent and careful driver and it would be obvious to a competent and careful driver that driving in that way would be dangerous"

The definition of Careless Driving under Section 3 is simply:

"Driving which falls below the standard of a reasonably competent and careful driver."

It would be seen therefore that in essence, the difference between the two charges is driving which is *"far below"* that of a competent careful driver as opposed to simply *"below"* that of a competent and careful driver.

4.Procedure

All criminal offences in England and Wales must start in the Magistrates Court that is local to the place where the incident occurred. In other words, it matters neither where the deceased or injured person lived, nor where the Defendant lives, but simply where the incident occurred.

Section 1 and Section 3A offences are called "*indictable only*". This means that they have got to be heard at a Crown Court, before a Crown Court Judge and Jury. A case proceeds before a Jury only if the person is pleading Not Guilty to an offence. If the person pleads Guilty to an indictable only offence then he or she receives their sentence from a Crown Court Judge. To get to the Crown Court, the case has to be committed or sent by the local Magistrates to the local Crown Court. But this is normally no more than a procedural formality and although there is limited provision for the evidence to be challenged by the defence at that stage this is not usually exercised.

All Section 3 (but not 3A) offences and speeding offences are *summary only* offences. That is to say that they can only be heard in the Magistrates Court. Even if a careless driving charge has resulted in death, it still can only be heard in the Magistrates Court.

It is the degree and competency of the driving that determines whether or not a Section 1 or Section 3 offence is brought, and therefore which Court will ultimately hear the case.

Dangerous Driving is an "*either way offence*", that is to say it can be dealt with either by the Magistrates Court or by the Crown Court. Here, although a Defendant can ask the Magistrates Court to deal with him or her, if the Magistrates Court feels that its own powers of sentencing (see later) are insufficient, they can send, or commit, the Defendant to Crown Court for sentencing alone.

5. Magistrates Court and the Crown Court

The Magistrates Court normally comprises of 3 lay Magistrates who are not lawyers and who receive assistance on legal technical points by a court official known as a legal adviser. A Magistrate (Justice of the Peace) receives some training and will be given sentencing guidelines so that he or she has an idea of the standard "tariff" for any individual offence. However, it is well known within the legal profession that there are certain Magistrates Courts that are more severe in their punishments of driving offences than others. In some larger Courts there are District Judges who sit on their own and who are senior Criminal Lawyers. They are professionals and are paid a salary. Most Lawyers regard appearing before a District Judges as a much stricter test of their legal powers of persuasion and argument than before a lay bench!

Crown Courts are presided over by senior Crown Court Judges who are usually senior Barristers who have specialised in Criminal Law. They too have access to tariff guidelines. Because of the severity of the charges which face Defendants in the Crown Court, it is much more customary for custodial offences to be handed down by Crown Court Judges than by lay Magistrates. A Judge deals with the sentencing, although the determination of whether or not a person is guilty is left to a Jury that is made up of 12 individuals each of whom is selected at random for Jury Service. However, the Jury can make no recommendation about sentence to the Judge. Their role is simply the determination of guilt.

6.Sentencing

Section 1 offences carry a maximum 14 years imprisonment, a minimum 2 years disqualification from driving, the requirement to sit a test before any new driving licence is granted after disqualification and an unlimited Fine.

Section 2 offences carry a maximum of 2 years imprisonment if dealt with by a Crown Court and a maximum 6 months imprisonment if dealt with by a Magistrates Court. There is a mandatory disqualification and the requirement for a re-test. There is an unlimited Fine in the Crown Court, and a maximum Fine of £5,000 in the Magistrates Court.

Section 3 offences attract no imprisonment, a maximum Fine of £2,500 and a discretionary disqualification. If there is no disqualification, then a Magistrates Court can impose penalty points on a licence between 3 and 9 in number.

Section 3A offences attract the same as Section 1 offences, that is to say 10 years maximum imprisonment, minimum 2 years disqualification together with re-test and an unlimited Fine.

The maximum sentences as set out above are rarely if ever imposed by Judges or Magistrates.

7.Appeals

If either the Defendant or the Crown Prosecution Service is unhappy about a decision of the Magistrates Court then, subject to legal tests being satisfied, an Appeal can be made to the Crown Court. Here, a Crown Court Judge sits with 2 Magistrates and determines the Appeal jointly with them. Obviously the Magistrates are not from the same bench of Magistrates who made the original decision. If either the Crown Prosecution Service or the Defence is unhappy about a Crown Court decision, then an Appeal can be made, subject again to certain legal tests, to the Court of Criminal Appeals sitting in London. The Appeal is normally dealt with on paper but occasionally requires a hearing. The Crown Prosecution Service should be approached after sentence has been passed if there is any concern or question raised about the type or severity of sentence, regarding the possibility of an appeal.

8.Time Limits

All *Summary Only* offences (for example Section 3 and simple speeding offences) must be charged within a 6-month period of the incident that is the subject of the complaint. Once this 6-month period has elapsed, then no summary offence can be charged. *Indictable only* offences have no such time limit. It is possible however, for a Section 1 offence to proceed to the Crown

Court, and be "down graded" to a Section 3 offence even though a Section 3 offence was not charged within the 6 month period.

If you have any questions about the contents of this booklet please ring our help line at local rate charge:

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