

I have been asked to provide a report on the Police action and evidential requirements for prosecution of road users who contravene the current driving restrictions applied to the area of Hills Road Bridge.

This is a guide to the law and the processes involved in prosecuting traffic offences and can not constitute legal advice. In a short document such as this some detail may be omitted, extracts of Acts may be shorted, irrelevant parts removed and other factors simplified to assist the understanding of the reader. The law surrounding offences relating to driving standards is objective and there are a number of factors that would affect a decision to prosecute.

I will explain terms and processes that are required in the prosecution of traffic offences.

### **Reporting**

Various reports of traffic problems are received by the Constabulary through a variety of means. The correct method for reporting an offence would be to contact the Police on the 0845 456 4564 telephone number as this would result in a report or incident being raised and allocated at the time. We have had reports sent to the Chief Constables office which then filter down to the Neighbourhood Policing Team over a number of days resulting in a long delay before the report is read and prohibiting an Notice of Intended Prosecution (NIP) being issued. Others have chosen to report matters through the Web communication system. This is not meant for reporting offences and there is a specific warning about this on the web page. Again this results in delays that can prevent prosecutions.

### **N.I.P.**

In order to bring a successful prosecution certain offences require the service of a Notice of Intended Prosecution (NIP) within 14 days of the commission of the offence. 'Within 14 days of the commission of the offence' means that the notice must be posted to reach the defendant by ordinary post within 14 days of the offence. It was decided in *Groome v Driscoll* (1969), that a notice of intended prosecution posted the day after the offence which failed to arrive within 14 days was deemed to have been served. Conversely in *Nicholson v Tapp* [1972] 1 WLR 1044, it was held that a notice of intended prosecution sent by recorded delivery on the fourteenth day after the offence was deemed NOT to have been served.

Schedule 1 of the Road Traffic Offenders Act 1988 provides a list of offences for which a "Notice of Intended Prosecution" is required under section 1 of the Act. They are:

### **ROAD TRAFFIC REGULATION ACT 1984**

Sections 16, 17(4), 88(7) and 89(1) - all speeding offences.

### **ROAD TRAFFIC ACT 1988**

Section 2 - dangerous driving.

Section 3 - driving w/o due care/reasonable consideration.

Section 22 - leaving vehicle in dangerous position on road.

Section 28 - dangerous cycling on a road.

Section 29 - cycling w/o due care/reasonable consideration.

Section 35 - failing to comply with traffic directions (not signs).

Section 36 - Failing to comply with traffic signs.

A person will not be convicted of an offence to which this section applies unless:

(a) he was warned at the time the offence was committed that the question of prosecuting him for one or other of the offences to which this section applies would be taken into consideration, OR

(b) within 14 days of the commission of the offence a summons for the offence was served on him, OR

(c) within 14 days of the commission of the offence a notice of the intended prosecution specifying the nature of the alleged offence and the time and place where it is alleged to have been committed, was:

(i) for an offence under section 28 (dangerous cycling) or 29 (cycling without due care & attention/reasonable consideration) of the Road Traffic Act 1988, served on him;

(ii) for any other offence, served on him or on the person, if any, registered as the keeper of the vehicle at the time of the commission of the offence.

A verbal notice 'at the time the offence was committed' is sufficient to satisfy this statutory requirement. If it has been given, a written notice is not required. 'At the time the offence was committed' should not be taken to mean a matter of seconds after the offence; see *Jollye v Dale* 1960 and *Shield v Crighton* 1974 for examples of how the term 'at the time' has been construed.

The requirements of this subsection are met where the defendant is charged and given a copy of the notice of the charge within fourteen days (*Sage v. Townsend* - Times 27/5/86).

### **Dangerous**

'Dangerously' refers to danger either of injury to any person or of serious damage to property.

Section 2A of the Road Traffic Act 1988 defines the term 'dangerous driving' for the purposes of the offences of causing death by dangerous driving under section 1 and dangerous driving under section 2 of the Act. Note that the legislation is phrased in such a way as to incorporate bad driving and the dangerous state of a vehicle.

2A(1) For the purposes of sections 1 and 2 above a person is to be regarded as driving dangerously if (and, subject to subsection (2) below, only if) -

(a) the way he drives falls far below what would be expected of a competent and careful driver, AND

(b) it would be obvious to a competent and careful driver that driving in that way would be dangerous.

Instances of bad driving which may support a prosecution for dangerous driving

- (a) racing or competitive driving;
- (b) prolonged, persistent or deliberate bad driving;
- (c) speed which is highly inappropriate for the prevailing road or traffic conditions;
- (d) aggressive or intimidatory driving, such as sudden lane changes, cutting into a line of vehicles or driving much too close to the vehicle in front, especially when the purpose is to cause the other vehicle to pull to one side to allow the accused to overtake;
- (e) disregard of traffic lights and other road signs, which, on an objective analysis, would appear to be deliberate;
- (f) failure to pay proper attention, amounting to something significantly more than a momentary lapse;
- (g) overtaking which could not have been carried out safely;
- (h) driving a vehicle with a load which presents a danger to other road users.
- (i) recent intake of intoxicants;
- (j) a knowledge of illness likely to lead to fits or similar problems (e.g. a diabetic).

The test is what would be obvious to the hypothetical competent and careful driver. However, in determining what would be obvious to a competent and careful driver in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the defendant. This provision introduces an element of subjectivity into the objective test and enables the jury to fix the hypothetical 'competent and careful driver' with the defendant's actual knowledge before asking whether it would be obvious to the former that the defendant's driving would be dangerous.

Speed alone is not sufficient to prove a charge of dangerous driving as this has to be considered in context along with all the circumstances.

The offence therefore, has two distinct parts and two separate questions for the jury or magistrates to answer. First, there is the actus reus (guilty act) of the offence. They must consider whether a defendant's driving fell far below the fixed and objective standard of a competent and careful driver, irrespective of their experience. The standard expected is the same for a learner driver holding a provisional licence as it is for a driver who has passed his driving test or even an experienced professional driver. Any aspect of a defendant's driving (control of the vehicle) may fall far below the standard expected, whether it be by excessive speed, failure to comply with a road sign, etc.

The second question for the jury or magistrates is whether it would be obvious to a competent and careful driver that driving in the way the defendant drove would be dangerous.

Although the standard of driving required is fixed and objective in the sense that it must always be that of the competent and careful driver, it may vary according to road and driving conditions. It is perfectly possible for driving to be held to be competent

and careful in one situation and to have fallen below that standard in another. The weather, visibility and traffic conditions are examples of factors which affect the degree of care required. For this reason, juries and magistrates decide each case on its own facts. The standard of driving required and failure to reach it is easier to recognise in practice, than to define generally.

### **Careless Driving**

The offence of careless driving is committed when the driving falls below the standard expected of a reasonable, prudent and competent driver in all the circumstances of the case.

The test is objective. It applies both when the manner of driving in question is deliberate and when the manner of driving occurs as a result of an error of judgement or simply as a result of incompetence or inexperience. More importantly the question to ask is what did the driver do or fail to do. It is not what happened as a result of the defendant's action or inaction.

Section 38(7) Road Traffic Act 1988 states that failure to observe a provision of the Highway Code shall not of itself bring about criminal proceedings, but a failure, particularly a serious one, may constitute evidence of careless or dangerous driving.

Prosecution for careless driving will be appropriate when the manner of driving demonstrates a serious miscalculation or a disregard for road safety, taking into account all the circumstances including road, traffic and / or weather conditions.

A charge of careless driving may be appropriate when an accident occurs and there is no evidence of mechanical defect, illness of the driver or other explanation to account for why the accident happened. In the absence of any such explanation the prosecution can provide evidence to the court about the accident on the basis that the defendant must have been driving below the standard expected of a reasonable, prudent and competent driver, since otherwise the accident would not have happened.

Examples of driving which may support an allegation of careless driving are:

1. Acts of driving caused by more than momentary inattention and where the safety of road users is affected, such as:

- (i) overtaking on the inside;
- (ii) driving inappropriately close to another vehicle;
- (iii) driving through a red light;
- (iv) emerging from a side road into the path of another vehicle;
- (v) turning into a minor road and colliding with a pedestrian.

2. Conduct causing the driver to be unresponsive in the event of an emergency on the road, for example:

- (i) using a hand held mobile telephone while the vehicle is moving, especially when at speed;
- (ii) tuning a car radio;
- (iii) reading a newspaper/map;

- (iv) selecting and lighting a cigarette/cigar/pipe;
- (v) talking to and looking at a passenger which causes the driver more than momentary inattention;

These examples explain the driver's conduct/behaviour, but this is not relevant to the choice of charge. It is actually the acts of driving which determine whether the driver has fallen below (careless driving) or far below (dangerous driving) the objective standard required.

For example, they may explain why the driver passed through a red light, but it is necessary to go beyond this explanation and consider whether the particular facts of the case warrant a charge of careless or dangerous driving.

When this conduct occurs the appropriate charge will usually be careless driving (section 3). But police officers and prosecutors must always consider the manner of the driving in the context of the other facts in the case to decide the most appropriate way forward.

It is a question of fact for the court to decide on the evidence as to whether or not driving is careless. The standard of care and attention is an objective one, in no way related to the degree of proficiency or degree of experience attained by the individual driver (see *McCrone -v- Riding*). The standard is the same in the case of a driver who is a learner holding a provisional licence as it is in the case of the holder of a full driving licence. Over the years case law has given various examples:

- (1) A driver who continues to drive when tired and falls asleep is guilty. (see *Kay v Butterworth 1945*)
- (2) The fact that a car leaves the road and mounts the pavement is *prima facie* evidence of an offence. (see *Watts v Carter 1959*)
- (3) A driver must ensure that a person whose signal he is relying on is in a position to see the road properly. (*Liddon v Stringer 1967*)
- (4) There is no special standard for police officers.
- (5) The principle of *res ipsa loquitur* (a thing speaks for itself) has no application in a criminal case such as driving without due care and attention, but the facts of a particular case might be such that, in the absence of some explanation, the only proper inference is that the driving was careless. In such a case there is a case to answer and the justices ought not to dismiss the summons on a submission at the close of the prosecution case. For example, a driver left the road and hit a telegraph pole. There was no reason why it should have happened, the car was in good order and the driver could not offer any explanation (*Wright v. Wenlock [1971] RTR 228*).

It might also be possible to draw adverse inferences (Criminal Justice and Public Order Act 1994) so long as there is some evidence available (a court cannot convict purely on the inferences alone).

## **Driving Without Reasonable Consideration**

The offence of driving without reasonable consideration is committed when a motor vehicle is driven on a road or other public place as a result of which other persons using the road/place are inconvenienced.

The accused must be shown:

- (i) to have fallen below the standard of a reasonable, prudent and competent driver in the circumstances of the case; and
- (ii) to have done so without reasonable consideration for others.

This differs from the offence of careless driving by the fact that there must be evidence that some other user of the road or public place was inconvenienced.

Allegations of inconsiderate driving include selfish, impatient or aggressive acts of driving, but there must also be some inconvenience to other road users,

for example, forcing other drivers to move over and / or brake as a consequence.

Acts of driving without reasonable consideration include:

- (i) flashing of lights to force other drivers in front to give way;
- (ii) misuse of any lane to avoid queuing or gain some other advantage over other drivers;
- (iii) unnecessarily remaining in an overtaking lane;
- (iv) unnecessarily slow driving or braking without good cause;
- (v) driving with un-dipped headlights which dazzle oncoming drivers;
- (vi) driving through a puddle causing pedestrians to be splashed.

A person who drives without reasonable consideration for other road users can be convicted of driving without due care and attention (careless driving), but if he drives without due care and attention (careless driving) he may not be convicted of driving without reasonable consideration.

## **Cycling Dangerously**

Section 28 of the Road Traffic Act 1988, as amended by the 1991 Act, creates the offence of riding a cycle dangerously on a road. It states:

28(1) A person who rides a cycle on a road dangerously is guilty of an offence.

28(2) A person is to be regarded as riding dangerously if and only if -

- (a) the way that he rides falls far below what would be expected of a competent and careful cyclist; AND
- (b) it would be obvious to a competent and careful cyclist that riding in that way would be dangerous.

28(3) The term "danger" refers to danger either of injury to any person or of serious damage to property; and in determining for the purposes of that subsection what would be obvious to a competent and careful cyclist in a particular case, regard shall

be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.

### **Careless, and inconsiderate, cycling**

If a person rides a cycle on a road without due care and attention, or without reasonable consideration for other persons using the road, he is guilty of an offence.

### **Cycling on the Footpath**

Section 72 of the Highways Act 1835 provides an offence of riding or driving on the footpath.

If any person shall wilfully ride upon any footpath or causeway by the side of any road, made or set apart for the use or accommodation of foot passengers; or shall wilfully lead or drive any horse, ass, sheep, mule, swine, cattle or carriage of any description, or any truck or sledge, upon any such footpath or causeway or tether any horse, ass, mule, swine or cattle on any highway so as to suffer or permit the tethered animal to be thereon.

#### **NOTES:**

- (i) A footpath is part of a highway, if it is beside a road.
- (ii) The section only extends to the wilful obstructions specified.
- (iii) Proceeding may be instituted by anyone and is not confined exclusively to the Highway Authority.
- (iv) "Wilful" under this section means "purposely"

Rule 64 of the Highway Code states You MUST NOT cycle on a pavement.

### **Overtaking**

Overtaking should only be done when it is safe and legal to do so.

In general a driver should not get too close to the vehicle it is intend to overtake. Drivers should move quickly past the vehicle they are overtaking, once they have started to overtake. They should allow plenty of room and move back to the left as soon as they can but not cut in. Extra care is required at night and in poor visibility when it is harder to judge speed and distance

Motorcyclists, cyclists and horse riders should be given at least as much room as when overtaking a car.

### **General Evidential Requirements**

In addition to meeting the above it is also vital to prove beyond a reasonable doubt the Day, Date, Time, Place of the offence. A witness statement or video evidence of the offence is fundamental. The registration mark and description of the offending vehicle would be required to ensure that the driver could be traced. An NIP would be required within 14 days in most situations. One witness alone may not be sufficient

for the CPS to consider a court case as it would be based on 'one word against another' and therefore be difficult to prove 'beyond all reasonable doubt'.

Officers issuing traffic tickets are required to be in Uniform. It would not be acceptable for officers to be stationed in plain clothes to deal with traffic matters, it would become a money making exercise rather than a serious attempt to make the situation safer by discouraging offences and penalising those that ignore the law or are oblivious to an officer if a yellow reflective coat.

### **Report on Location**

There are a number of areas around the bridge where temporary restrictions have been introduced to ensure the safety of road users and ensure the flow of traffic in the area. I shall look at each of the junctions in turn and define the issues raised in relation to road safety and the law.

#### **1. Hills Road/Brooklands Ave Junction. - Southbound.**

Traffic restricted from right turn onto Brooklands Avenue by signs and a physical barrier between the keep left bollard and the Traffic lights/pedestrian refuge.

Offences – Contravening a keep left arrow, Contravening a temporary restriction.

We have had some reports It has been reported that vehicles are turning into the car park of the Public House just prior to the bridge, then turning to leave the car park across the traffic on to the Northbound carriageway. This is not illegal and due to the decision to allow left or right turns from the Car park there is no enforcement action that can be taken if the manoeuvre is done with some care.

#### **2. Hills Road/Brooklands Ave Junction. - Northbound.**

No issues reported. Left turn is allowed. No reports of issues with vehicles ignoring the traffic lights at the location. No reports of collisions or near misses due to a southbound vehicle turning right across traffic.

#### **3. Brooklands Ave / Hills Road.**

Offences - Contravening a temporary restriction, Failing to comply with a Traffic sign.

We have received a number of complaints that vehicles carry out U-turns on Hills Road. Done with care this is not an offence. The issue comes when the U-turn is around the physical barrier in the road. I would consider this to be a prohibited right turn, and be willing to prosecute this. So far I have had reports of 'lots' of cars doing this, but the informant does not have the information required or is not willing to provide a statement and attend court.

#### **4. Carriageway of the Bridge – North and Southbound.**

Offences – Dangerous Driving, Careless Driving, Driving without due consideration, Cycling on the Footpath.

We have received a few still pictures of a car and cyclist on the bridge and a complaint of overtaking. The pictures provide no evidence of the offence of driving without due care or reasonable consideration on their own. There would be a need for the cyclist to provide a statement evidencing their experience of the event.

Signs stating 'Narrow lanes. Do not overtake' are not legally enforceable, if replaced with the appropriate 'No overtaking' traffic sign they would be legally enforceable.

We have completed speed checks on the bridge for a number of hours in the evening and there is no compelling evidence that vehicle speed over the bridge or that speed contributes to the danger.

Reports of vehicles driving too close to cyclists in a bid to force the cyclist out the way are anecdotal, with no reports being backed by the cyclist who fell victim to the behaviour.

While carrying out enforcement work it has been evident that large numbers of cyclists chose to cycle on the pavement, and a number of members of the public complain about this. It has been suggested that one pavement be used as a cycle path, but the Cambridge Cycling Campaign have dismissed this option as unworkable. It is proportionate and reasonable to enforce all traffic regulations and laws at the location, and inappropriate to ignore offences because a specific section of the public thinks it is unfair.

The Cambridge Cycling Campaign gives advice on alternative routes to avoid Hills Road Bridge on their web pages. Those that are not confident to cycle over the bridge should walk and not inconvenience pedestrians.

#### **5. Hills Road / Cherry Hinton Road – Northbound**

Offence - Contravening a temporary restriction

We have received very few reports of vehicles turning right against the current restriction. We have completed 2 days of action at the junction with officers tackling vehicle offences. A number of vehicles were issued with fines

#### **6. Hills Road / Cherry Hinton Road – Southbound**

No restrictions and no reported problems.

**Enforcement Action**

Previous days of enforcement action have involved officers from the Neighbourhood team, Special Constables, Community Support officers and reactive officers. These days included checks on Brooklands Ave. for offences. Two days of enforcement on the Cherry Hinton Road Junction, this resulted in both drivers and cyclists being prosecuted. One day of enforcement work on Hills Road (on the North side of the bridge) and 3 hours of speed checks. We also carry out daily patrol over the bridge during the normal course of our work.

3 further days of action are planned in the next in 2 month period. The focus of these days is to deter drivers from taking risks and ignoring road signs. These days will involve enforcement of the prohibition on right turns, prosecution of drivers who intimidate cyclists, and prosecution of cyclists who commit offences. All road users will be treated fairly, proportionately and lawfully.

Reports of offences should be directed to the Force Control Room for action. They should not be directed to specific officers as they may be on leave, ill, or abstracted from the team for other duties. This could result in delays and make prosecutions impossible.