



September 2022

London Cycling Campaign welcomes the opportunity to respond to the Sentencing Council's consultation on motoring offences. We trust our response assists the Sentencing Council's decisions and we stand ready to provide further information if requested.

About LCC

London Cycling Campaign (LCC) is a charity with more than 20,000 supporters, of whom more than 11,000 are fully paid-up members. We speak up on behalf of everyone who cycles or wants to cycle in Greater London; and we speak up for a greener, healthier, happier and better-connected capital.

Introduction

LCC shares the view expressed by MPs, and victims and families of victims that road crime must be treated with the same seriousness as other types of crime.

We note that most of the consultation questions relate to custodial sentences, the gravity of offences and culpability of offenders. This is also the focus of the Resources document provided with the consultation.

While custody may serve as a punishment, and may serve as a deterrent to some road users¹, we also note that in the case of road crimes such as causing serious injury by careless driving, non-custodial penalties, such as driving bans and mandatory training, may also deter offenders and help re-educate them and prevent future offences. As noted in the Resource materials supplied with

¹ We note the statement: " Longer sentences could act as a deterrent, though evidence for the deterrent effect of longer sentences is weak " in the government's Police, Crime, Sentencing and Courts Act – Driving Offences Impact Assessment
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1073390/MOJ_Sentencing_IA_-_Driving_Offences__2022_.pdf

the consultation, increases in custodial sentences will impact prison resources²:

As a representative of vulnerable road users, our prime concern is the prevention of road collisions. We strongly support the Mayor of London's Vision Zero target of eliminating fatal and serious injuries on the capital's roads by 2041. Improved infrastructure will, of course, contribute to this aim but we also need to reduce road danger from the drivers of motor vehicles and establishing a culture of careful considerate and legal driving can make a major contribution to reducing the casualty toll.

Custodial sentences may be merited, and will keep an offender off the road for the duration of their term, but they do not necessarily prevent re-offending, nor do they change a driver's skills and behaviour.

In this consultation response, we focus on penalties other than custody such as disqualification, mandatory training and competency assessment, which may help prevent re-offending and improve driver behaviour as well as acting as a deterrent. This responds in particular to the Sentencing Council's request for views on: "information to include on guidance on how to approach disqualification" and "anything else you think should be considered."

Disqualification

Disqualification, when enforced, prevents reoffending for the duration of the term of the ban. If coupled with restorative justice, training and competency assessment it can also encourage considerate and legal behaviour.

We note that the Sentencing Council offers little guidance on variable, including longer, periods of disqualification and advises that disqualification be minimized in cases where it might impact the offender's employment or other responsibilities – a consideration that might also be applied to custody. Such advice needs re-assessment: if the court is told that an offender's profession requires regular driving then it needs to be assured that the risk of re-offending has been minimized by, for example, training and competency assessment. While in some cases retaking a driving test is mandated, current advice does not, for example, suggest a service vehicle competency

² Sentencing Council Resources document 2022 "It therefore remains difficult to estimate with any precision the impact the guidelines may have on prison and probation resources." The cost of a prison sentence for an individual is estimated at £49,000 per annum.

assessment or completion of a Safer Urban Driving course as a part of the penalty for professional drivers.

Enforcement

The Sentencing Council advises against using longer driving bans because offenders may choose to disregard them and drive without the authority to do so. Enforcement is matter for the police and legislators and we are concerned that the Sentencing Council's perception of ineffective enforcement should then be considered a factor in determining penalties. The Sentencing Council may wish to advise police and legislators to consider new technologies to monitor and enforce against disqualified drivers using vehicles instead of suggesting more lenient penalties because it considers enforcement is inadequate.

Training and industry standards

The over-representation of HGV's in cyclist and pedestrian fatal collisions in London (50% of cyclist fatalities and 20% of pedestrian fatalities in London involve HGVs whereas these vehicles account for 4% of vehicle miles in London) has led to a range of measures to minimize such collisions. This has involved the development of the government- approved Safer Urban Driving (SUD) module for HGV drivers; establishment of the Fleet Operators Recognition Scheme (FORS) standard and the Construction Logistics and Community Safety Standard(CLOCS) for contractors and employers; the development of the Direct Vision Standard (DVS) to reduce lorry blind spots; and the TfL Safer Lorry Scheme which ensures that heavy vehicles used in London meet minimum safety standards.

We note that the government was considering the adoption of London measures to reduce lorry danger in other parts of England.

The Sentencing Council should consider including reference to vehicle, operator and driver standards in its guidance in order to reduce future collisions. Were offenders subject to employer oversight their likelihood of re-offending maybe be reduced.

Employer responsibility

In addition to becoming certified members of FORS and CLOCS, using high rated DVS vehicles and requiring drivers to complete SUD training, some responsible employers also require their drivers to pass regular competency

assessments for the vehicle they are required to drive and make use of telematics to ensure that drivers stick to speed limits and follow regulations.

While a driver bears immediate responsibility for their driving, their employer can contribute to the reduction of road danger by ensuring standards are observed and drivers are competent at carrying out the driving and tasks assigned to them within the time allocated for such work. Demanding timetables or pay-per-load remuneration can lead to poor driving and consequent collisions. Poor vehicle maintenance and use of unsuitable vehicles for a given job can also undermine safety.

Sentencing guidance, which currently draws attention to matters such as the potential loss of earnings if disqualified, could also draw attention to the potential reduction of road danger through greater assessment of work-related road risk through required supervision and monitoring by an offender's employer.

Vulnerable Road Users

We note and share the concerns of our legal partners Osbornes Law solicitors regarding the change in how injuring, fatally or seriously, a vulnerable road user (such as a pedestrian or cyclist) is considered in the new guidelines.

Whereas the previous guidelines considered injuring a vulnerable road user a factor determining the seriousness of the offence³ at the outset, the new guidelines consider this only an "aggravating factor" at a later stage.

As Osbornes point out "This proposed change is contrary to the principles set out in the Highway Code concerning the hierarchy of road users. For example, rule 204 of the Highway Code states that '*In any interaction between road users, those who can cause the greatest harm have the greatest responsibility to reduce the danger or threat they pose to others.*' "

Road users need to remain aware that departing from their duty of care to more vulnerable road users could lead to a heavier sentence from the outset of the legal process.

Responses to the consultation from other organisations

³ "The fact that the victim of a causing death by driving offence was a particularly vulnerable road user is a factor that should be taken into account when determining the seriousness of an offence."

We note and commend the submissions from Osbornes Law Solicitors and Action Vision Zero which we have read in draft form.