Butterworths Road Traffic Service

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Filing instructions: This Bulletin should be filed immediately after the Bulletins Guide Card. **Binder 1 should now contain Bulletins 219 to 229.** This bulletin contains material available on 17 January 2013.

LEGISLATION OF NOTE

The Road Safety Act 2006 (Commencement No 9 and Transitional Provisions) Order 2012, SI 2012/2938

This Order was made on 22 November, 2012. It brings into force RSA 2006, s 35 with related repeals. This section substitutes new provisions for ss 34 through 34C of the Road Traffic Offenders Act 1988, which provide for reduced disqualification in return for completing a drink-drive rehabilitation course.

The section is brought into force only in so far as ss 34A through 34C have application where a person is convicted of a drink-driving offence. There are two implementation dates: 21 December 2012 regarding making application for approval of DDR courses, etc, and 24 June 2013 for all other purposes. There are transitional provisions covering course approved before 21 December 2012.

The Criminal Procedure (Amendment) Rules 2012, SI 2012/3089

The Criminal Procedure (Amendment) Rules 2012 bring the Criminal Procedure Rules 2012 up to date and make some changes about: (a) prosecution and company representatives (Part 2); (b) getting a case ready for trial (Part 3); (c) initial prosecution disclosure (Part 21); (d) giving sentencing reasons and explanations in magistrates' courts (Part 37); and (e) giving case information to magistrates who are about to try a case (Part 37). The rules also update statutory references, and make some changes, in consequence of the implementation of most of the Legal Aid, Sentencing and Punishment of Offences Act 2012 (as to which, see below).

(a) Changes to rule 2.4 (Representatives) clarify the circumstances in which someone other than a qualified legal representative can start a prosecution on behalf of a prosecutor, or speak and act on behalf of a defendant company.

(b) In Part 3 (Case management), a change to rule 3.8 (Case preparation and progression) explicitly requires courts to facilitate the participation in the trial of anyone taking part, witnesses and defendants.

(c) In Part 21 (Initial details of the prosecution case), changes to rule 21.2 (Providing initial details of the prosecution case) require the prosecutor to supply initial details in response to a defence request. The Rules already require the prosecutor to make those initial details available by no later than the beginning of the day of the first court hearing, so that the defendant and the court have an indication of how the prosecutor intends to prove the alleged offence and of what is likely to be in issue at trial. However, that may be too late to allow the defendant effectively to assist the court at that first hearing in making arrangements for a trial. The new rules provides explicitly for defence requests for those details in advance.

(d) In Part 37 (Trial and sentence in a magistrates' court), rule 37.10 (Procedure if the court convicts) sets out the procedure that applies in magistrates' courts where, after convicting a defendant, the court receives information relevant to sentence, and passes sentence. Changes have been made to rule 37.10(9) to relieve magistrates of the obligation to make sentencing announcements in the court room when there is no-one there to hear. Other changes to rule 37.10 clarify the information that prosecutors and defendants are required to give the court, about the effect of the offence on the victim and about the defendant's financial circumstances, to help the court pass sentence fairly and effectively.

(e) In Part 37 (Trial and sentence in a magistrates' court), rule 37.12 (Provision of documents for the court) lists the documents that magistrates must be given when they conduct a trial and rule 37.14 (Duty of justices' legal adviser) sets out the particular responsibilities of magistrates' legal advisers at trial. It was reported to the Rule Committee that there was some doubt about what information from the court's case file ought fairly and usefully to be given to the magistrates about to conduct the trial. Consequently, the rules now list the material that the trial court will receive and describe the pre-trial summary of that material which the court's legal adviser will give the magistrates.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 3 and Saving Provision Order 2012, SI 2012/2770

This Order brought into force, on 3 December 2012, LASPOA 2012, ss 142–147 (new offences and penalties), together with the consequential amendments made by Schs 26 & 27.

LASPOA 2012, s 143 is the provision of particular interest to road traffic practitioners. This creates the new offence of causing serious injury by dangerous driving. The offence is triable either way and carries a maximum penalty of five years' imprisonment on conviction on indictment. 'Serious injury' is defined as 'grievous bodily harm for the purposes of the Offences against the Person Act 1861'. The intention is to bridge the gap, which has grown in recent years, between the basic dangerous driving offence and causing death by dangerous driving. The change is also in step with the recent introduction of causing death by careless driving, which also carries a maximum of five years' imprisonment.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions Order 2012, SI 2012/2906

This Order brought into force, also on 3 December 2012, the remand and sentencing changes made by Part 3 of the Act. These are numerous and include changes to: grounds for withholding bail; remands of children (now including 17-year-olds) otherwise than on bail; credit for time on remand in custody or on a qualifying curfew (both now automatic); date of automatic release from a custodial sentence (there is now just one regime whenever the offence was committed); duty to consider compensation in every case where there is compensatable loss or injury; end of orders of return to custody for offences committed during the unserved part of a previous custodial sentence; new curfew, etc, limits for community and suspended sentence orders; suspended sentence orders no longer need contain requirements and the maximum term that can be suspended has been increased; new power to fine for breach of community and suspended sentence order; and new dangerous offender provisions (which all make life sentences for a second offence very rare and which establish a new regime for extended sentences). There are many consequential and transitional provisions.

CASES OF NOTE

Offence of interference with a motor vehicle, contrary to the Road Traffic Act 1988, s 21A(1)

R v Meeking

In *R v Meeking* [2012] EWCA Crim 641, [2013] RTR 4 the defendant, who was having a row with her husband while he was driving them home, suddenly pulled the handbrake when the car was travelling at 60 mph. The idea was get him to stop. The result, however, was to put the car into a spin, resulting in a fatal collision. The defendant was charged with unlawful act manslaughter, that act being endangering road users, contrary to s 22A(1)(b) of the RTA 1988. The judge ruled that pulling the handbrake could amount to such inference and the defendant was convicted.

The Court of Appeal (Toulson LJ, Kenneth Parker J and HHJ Barker QC) dismissed the defendant's appeal against conviction. The offence did not

require proof of an intention to endanger life, nor was it limited to acts done to a vehicle before the vehicle was driven, nor did the conduct have to be external to the vehicle. The braking system was a mechanical part of the car and pulling the handbrake could amount to an interference with the vehicle in the ordinary sense of those words.

Corporate liability

Vehicle Operator Services Agency v FM Conway Ltd

In *Vehicle Operator Services Agency v FM Conway Ltd* [2012] EWHC 2930 (Admin), [2012] ALL ER (D) 299 (Oct), the Administrative Court (Irwin J) upheld the acquittal of a company on the basis that the offence concerned was not one of strict liability and the company's 'directing mind and will' lacked the necessary criminal knowledge and intent to render it guilty.

In December 2009, a heavy goods vehicle was selected at random to be stopped as part of a multi-agency vehicle check. It was found that the operator's licence identity disk displayed in the vehicle, which had been issued to the respondent company, was valid. However, the vehicle was not the vehicle to which the licence applied. The driver of the vehicle, KH, was not at that time an employee of the respondent company but was working as a sole trader sub-contracted by them. The operator's licence was not transferable and KH was not entitled to drive the vehicle with an operating licence identity disk issued to the company displayed in the vehicle. The person with responsibility for the administration of matters concerning the company's operator licence, RH, was employed as plant and asset manager. He was not a director or company secretary of the company. When interviewed under caution, RH confirmed that he had allowed KH to use the operator's licence. RH produced a letter of authority for him to act on behalf of the company signed by the Plant and Transport Director of the company. It was alleged that the company had lent and allowed KH to use the operator's licence with intent to deceive and the company was charged with an offence under s 38 of the Goods Vehicles (Licensing of Operators) Act 1995. In October 2010, the magistrates' court dismissed the case against the company. The company successfully argued that those holding positions of authority within companies could not be responsible for the actions and omissions of their staff for the purposes of such prosecutions unless the latter were directors, company secretaries, officer holders or 'the brains of the company'. The justices found, inter alia, that the appellant had adduced insufficient factual evidence that any officer of the company had been a party to the decision to allow KH to drive the vehicle. The appellants appealed by way of case stated.

The questions posed for the consideration of the court were: (i) whether the offence was one of strict liability, therefore whether the company should have been convicted; (ii) assuming that the answer to the first question was 'no', was the court in error in finding that RH had not fallen within the class of persons who could properly be held to be the 'brains' of the company and could not therefore have committed an offence in the name of the company; and (iii) assuming that the answer to the first question was no, whether the court was in error in finding that there was no evidence from which a

reasonable tribunal could infer that an officer of the company had knowledge of the facts at the time the offence had been committed so as to have been able to find the necessary intent to deceive. Consideration was given to whether there was a requirement before a specific intent of the instant kind could be proved against a company to demonstrate that a director or office holder, whether fully appointed or by operation of law because of assumed control, had the necessary mens rea.

The Court of Appeal held that, when dealing with criminal liability, the policy of the law where there was any ambiguity was to sustain a narrow reading. Even where there had been a delegation of a significant area of operations to a senior employee, there was still a requirement that those with general direction of the company should be fixed with the necessary criminal intention before an offence could be brought home against a company. That was particularly the case where the necessary intent was intent to deceive.

Credit for pleading guilty

R v Caley

In *R v Caley and others* [2012] EWCA Crim 2821, [2012] ALL ER (D) 261 (Dec) , the Court of Appeal (Hughes LJ, Wilkie and Popplewell JJ) gave the following, important guidance on the application of the Sentencing Council guidelines on credit for pleading guilty.

First reasonable opportunity

Some limited narrowing of the spectrum of possibilities as to the point of first reasonable opportunity could be achieved in the interests of greater consistency. The right way for courts to deal with admissions in interview was not by treating them as essential in every case to according the maximum one-third reduction for guilty plea. Rather, the variable circumstances of such admissions were best dealt with not by percentage adjustments prescribed in advance, but by recognising them as a factor tending towards downwards adjustment to the sentence passed, to be assessed in the ordinary way by the judge along with other aggravating and mitigating factors, but before adjustment for plea of guilty. Absent particular considerations individual to the case, the first reasonable opportunity for the defendant to indicate (not necessarily enter) his plea of guilty, if that was his mind, was not the PCMH. The first reasonable opportunity was normally either at the magistrates' court or immediately on arrival in the Crown Court – whether at a preliminary hearing or by way of a locally-approved system for indicating plea through the defendant's solicitors. There would ordinarily be some, but limited, difference in public benefits between the two stages of the magistrates' Court and the first arrival in the Crown Court, but for practical reasons, either could properly ordinarily attract the maximum percentage reduction of one third provided for by the guideline. The possibility adverted to in the guideline that an indication at the magistrates' court might attract a reduction of 33% and an indication at the first Crown Court hearing 30%, was not generally reflected in practice as experience had developed it over the years

and, given the minimal distinction, was likely to be an unlooked-for complication. A plea of guilty at a PCMH would ordinarily not be significantly different from a plea notified shortly after it. Whatever the exact procedure in different courts in for fixing trial windows or dates, that was clearly the stage at which the guideline contemplated a reduction of about a quarter.

Overwhelming strong cases

The cautious terms of the guideline in relation to limiting the reduction in sentence for plea of guilty where the case against the defendant was, irrespective of any admission, overwhelming, were deliberate and wise. The various public benefits which underlay the practice of reducing sentence for plea of guilty applied just as much to overwhelming cases as to less strong ones. Judges ought to be wary of concluding that a case was 'overwhelming' when all that was seen was evidence which was not contested. Even when the case was very strong indeed, some defendants would elect to force the issue to trial, as was their right. It could not be assumed that defendants would make rational decisions or ones which were born of any inclination to co-operate with the system, but those who did merited recognition. When contemplating withholding a reduction for plea of guilty in a very strong case, it was often helpful to reflect on what might have been the sentences if two identical defendants had faced the same 'overwhelming' case and one had pleaded guilty and the other had not. In any event, the guideline made clear that normally at least a one-fifth reduction ought to be made, however 'overwhelming' the evidence. It could be particularly tempting for courts to avoid reduction in sentence for plea of guilty when the statutory maximum sentence was low, or there was other inhibition and the resulting sentence was felt to be insufficient. However tempting, that had to be resisted.

Following a 'Newton' hearing

It was neither necessary nor possible to attempt to lay down a rule as to what, if any, reduction for plea should survive an adverse Newton finding. It would depend on all the circumstances of the case, including the extent of the issue determined, on whether lay witnesses had had to give evidence and on the extra public time and effort that had been involved. Some cases involved little more than an assertion in mitigation which the judge was not minded to accept at face value, so that the defendant was given an opportunity to give evidence about it, often there and then. In that case, the reduction ought normally to be less than it would have been if the false assertion had not been made, but significant reduction for plea of guilty would normally survive. Other cases might be ones where something akin to a full trial had to take place, with full preparation by the Crown, lay witnesses having to be called and considerable court time taken up. In such a case, the reduction for plea of guilty which survived was likely to be very small and might be none at all. In between there might be a considerable range of situations. Those had to be left to the informed judgment of the sentencing judge.

Residual flexibility

Notwithstanding that the general approach set out was essential to an understanding by defendants and their advisers, it did not altogether remove

the scope of the judge to treat an individual case individually. However, the necessary residual flexibility which had thus to remain did not extend to suggesting an investigation in every case of the savings which had or had not actually ensued. The rationale of the reduction for plea of guilty lay in the incentive provided, not in an enquiry after the fact into what would or might have happened if a different course had been taken. If that kind of enquiry were necessary in every case, the administration of justice would not be made more efficient, but would unnecessarily be complicated, slowed and made more expensive.

Re-opening conviction in absence

R (*on the application of Killick*) *v West London Magistrates' Court*

In *R (on the application of Killick) v West London Magistrates' Court* [2012] All ER (D) 51 (Dec), the claimant was arrested for, inter alia, driving without insurance in October 2011. In February 2012, he applied to have the hearing date vacated on medical grounds. That application was accompanied by a note from his GP. The first application was refused by the district judge. The claimant then failed to attend the hearing and he was convicted in his absence. At the sentencing hearing, the claimant applied to have the conviction reopened. The second application was accompanied by evidence from a psychiatrist indicating that the claimant had psychotic conditions and depression and that he was unfit to plead and not fit to attend court. The judge dismissed the second application and proceeded to sentence the claimant. The claimant applied for judicial review of the decisions to dismiss both the first and second applications.

The Administrative Court (Collins and Sharp JJ) held It was established principle that: (i) the court should not hear a case in the defendant's absence unless it was satisfied that there would be no unfairness to either party; (ii) the discretion to hear a case in absence should be exercised with the utmost care and caution; (iii) if asked for an adjournment on medical grounds which were suspected to be spurious, the court should express its doubts and give the defendant the opportunity to respond to those doubts; (iv) if the court came to the conclusion that the circumstances were not sufficient to grant an adjournment, it had to state that; and (v) if the conclusion that the reason for the adjournment was spurious was open to the court, it had the power to proceed but that would be exceptional.

In the present case, the medical evidence in support of the first application was extremely weak and the judge had been entitled to dismiss the application. In respect of the second application, the position had been wholly different on account of the new medical report and the decision to dismiss that application had not been one reasonably open to the judge. The conviction was accordingly, quashed.

CPS powers to take over and discontinue private prosecutions

R (on the application of Gujra) v Crown Prosecution Service

In *R (on the application of Gujra) v Crown Prosecution Service* [2012] UKSC 52, [2012] ALL ER (D) 163 (Nov) the Supreme Court, by a majority of only 3:2, upheld the decision of the Divisional Court that the CPS's current policy concerning circumstances for take over and discontinuance was lawful.

The policy of the Director of Public Prosecutions was instigated in 2009 and applied a stricter 'reasonable prospect of success' test. The majority of the Court were wholly unable to subscribe to the view that, in reaffirming, in qualified terms, the right to maintain a private prosecution in s 6 of the Act, Parliament should have been taken to have intended that the Director should decline to exercise his discretion so as to intervene and discontinue it even if it lacked a reasonable prospect of success.

Crown Court sentencing powers

R v Bateman; R v Doyle [2012]

In *R v Bateman; R v Doyle* [2012] EWCA Crim 2158, [2012] ALL ER (D) 307 (Nov) the Court of Appeal (Moore-Bick LJ, Collins J and HHH Cooke) held that, where an offender is committed to the Crown Court to be dealt with for the commission of a further offence during the operational period of a Crown Court suspended sentence, any associated offence committed at the same time under s 6 of the Powers of Criminal Courts (Sentencing) Act 2000 was subject to the sentencing limitation (powers of magistrates' court) prescribed by s 7(1). The disapplication of s 7(1) by s 7(2) was not concerned with Crown Court suspended sentences – which are committed under para 11(2)(a) of Sch 12 to the Criminal Justice Act 2003 – but with committals for sentence under s 6. Therefore, the suspended sentences referred to in s 7(2) are those imposed in the magistrates' court.

> '20. When considering the proper interpretation of section 7(2) two things must be borne in mind. The first is that both subsection (1) and subsection (2) are concerned with committals under section 6, that is, with the committal of a person to the Crown Court to be dealt with in respect of an associated offence. The second is that subsection (2) must be read in the context of subsection (1), to which it provides an exception. Committal of a person to the Crown Court to be dealt with for a breach of a suspended sentence imposed by that court involves the exercise of the magistrates' powers under paragraph 11(2)(a) of Schedule 12, not of their powers under section 6 of the Act. It follows, therefore, that when subsection (2) speaks of the committal of a person under section 6 to be dealt with by the Crown Court in respect of a suspended sentence it must be referring to a suspended sentence previously imposed by the magistrates' court. That is reinforced by the words that follow, which enable the Crown Court to exercise the powers under paragraphs 8 and 9 of Schedule 12 which could otherwise have

been exercised by the magistrates themselves. In those circumstances the opening words of subsection (2) disapply the provisions of section 7(1) which would otherwise enable the Crown Court to deal with the offender in any way in which the magistrates' court could deal with him if it had just convicted him of the offence. The two parts of section 7(2) therefore complement each other and implement the overall legislative purpose of sections 6 and 7 by ensuring that on committal to the Crown Court under section 6 a person is not exposed to a more severe penalty than could have been imposed on him by the magistrates. (per Moore-Bick LJ)'

Sentencing causing death by dangerous driving

R v Singh

In *R v Singh* [2013] All ER (D) 47 (Jan), the Court of Appeal (Jackson LJ, Globe J and Judge Beaumont QC) dismissed an appeal against a sentence of 18 months' imprisonment.

On 3 September 2011, the defendant was driving his car along a road in Wolverhampton which had a 30mph speed limit. As the defendant was approaching a junction on the road, there was a row of traffic to his right obstructing the view but the light on his side was green and he proceeded to travel across the junction. As the defendant crossed the junction, he collided with a motorcycle and knocked the driver off the motorcycle who later died as a result (the deceased). Subsequently, the police examined the speed at which the defendant was travelling by the road markings and CCTV footage. The driver was found to have travelled at 50mph at the time of the collision. Witnesses had also stated that the defendant had driven too fast for the circumstances of the road. The defendant was charged with death by dangerous driving. Initially, he pleaded not guilty to the offence but changed his plea to guilty a day before the trial was scheduled to commence. In his sentencing remarks, the judge said, amongst other things, that: (i) the defendant had been driving too fast at two-thirds over the legal limit for that road; (ii) with the vehicles obscuring his view, it had been obvious that care had been needed at the junction; (iii) the defendant had failed to slow down and there had been no evidence of him slowing down even after the collision; (iv) although there was an element of mitigation in that the deceased had come across the path of the defendant, everything done by the deceased before had been proper; and (v) the defendant had a significant previous conviction of operating a mobile phone whilst driving. Further, the judge stated that the case had fallen within level one of the relevant sentencing guidelines and would allow a 25% discount for his guilty plea.

The Court of Appeal did not accept the submissions that the case should be at level two or three of the appropriate sentencing guidelines. It was significant that, although the speed limit had been 30mph, the fact that it had been night time and there had been traffic obstructing the view of the defendant meant that it would not have been appropriate for the defendant to have entered the junction at the correct speed limit. Accordingly, the judge had been entirely correct to state that the case had fallen within level one of the

sentencing guidelines. The defendant's previous conviction for operating a mobile phone whilst driving had not only been an aggravating feature but a significant feature to the instant case. It demonstrated that the defendant had previously exposed a risk to other people. Further, the court did not see great force in the argument that the actions of the deceased had been a mitigating factor. Rather, the court held that the deceased had not made any serious contribution to the accident and had not been in a position to have foreseen the speed the defendant had ultimately been driving at. Accordingly, the sentence imposed by the sentencing judge could not be said to have been manifestly excessive.

Causing death by dangerous driving – length of disqualification

R v Geale

In *R v Geale* [2012] EWCA Crim 2663, [2012] ALL ER 103 (Nov), the Court of Appeal (Pitchford LJ, Hickinbottom and Stuart-Smith JJ) reduced the period of disqualification imposed on the appellant from three to two years.

The defendant, aged 53, had spent most of his life as a car mechanic or a professional driver. In May 2011, the deceased, a ten-year-old boy, was walking home from school along a road past the Royal Albert Hall when he was struck by a coach driven by the defendant. The defendant was travelling westwards when a van drew up on his outside. The van slowed, but the defendant moved forward on the inside before turning left. He was distracted by the van and the coach was incorrectly positioned on the entry to the junction. The corner was too tight and the defendant was preoccupied with the possibility of oncoming traffic appearing. There was a significant blind spot on the nearside of the coach and the manoeuvre was inherently unsafe. The deceased was in the defendant's blind spot. The defendant subsequently saw the deceased approximately one foot away from the coach, but was unable to avoid a collision. The deceased was run over by the rear wheels of the coach and was pronounced dead a few minutes later. The defendant, who had no previous convictions except for one for speeding some six years previously, accepted that he had been distracted for a split second by the white van and pleaded guilty at the first opportunity to causing death by dangerous driving. References speaking highly of his driving were before the sentencing judge, who considered that the offence fell between categories 2 and 3 of the relevant sentencing guidelines. The defendant was sentenced to 12 months' imprisonment suspended for two years and was also disqualified from driving for the period of 3 years. The defendant appealed against the latter.

The Court held that it was settled law that the main purpose of a disqualification order was to protect the public from the risk posed by an offender's driving. Where that risk was low, a lengthy period of disqualification might be inappropriate, particularly where the offender depended upon driving for his livelihood. However, such risk was not the only criterion relevant to the length of the period of disqualification. There might also be a punitive element.

The nature of the driving had gone beyond a momentary lack of attention. After having been distracted by the van, the defendant had continued to perform the inherently unsafe manoeuvre. That manoeuvre had been performed with the use of a large coach, which had been more likely to cause damage. A particularly high level of care had therefore been required. However, whilst the culpability of the defendant had not been the lowest, there had been no other aggravating factors. In all the circumstances of the case, given the defendant's long good driving record, his age, the fact that he was a professional driver, and the hardship imposed upon him by the disqualification, a disqualification order of three years for public protection was unnecessarily long and manifestly excessive.

Sentencing causing death by careless driving

R v Hassan

In *R v Hassan* [2012] EWCA Crim 2786, [2012] All ER (D) 258 (Oct), the Court of Appeal (Laws LJ, Griffith Williams and Males JJ) reduced the sentence from 21 to eight months' imprisonment.

At around 3.15pm in November 2011, the defendant was driving her car towards a major cross-road junction. The approach to the junction was divided into three lanes, the outside of which was designated for traffic turning right. The incident which followed was captured on CCTV. The footage showed two pedestrians, the deceased and a friend, beginning to cross the road without using the crossing and at a time when the traffic lights were changing to green. They started to jog and the vehicles in lanes one and two slowed. Lane three had no vehicle waiting in it and as the pedestrians cleared the middle lane, the defendant's vehicle came into view in lane three. The defendant braked and, the car skidding, was unable to avoid a collision. Both pedestrians were carried on the bonnet of the car. The deceased suffered brain injuries, from which he died nine days' later. His friend was badly injured. An investigation revealed that the defendant's car had been travelling at not less than 33mph when she first braked and that the collision could have been avoided if the defendant had been travelling more slowly or had been in the appropriate lane. The defendant pleaded guilty to causing death by careless driving. Rejecting the defendant's case, the sentencing judge accepted the prosecution case, which was that defendant had not intended to turn right and that she had moved into lane three to overtake traffic in the other two lanes. He concluded that the nature of the defendant's driving was not far short of dangerous and that it accordingly fell into the most serious category of the guidelines of the Sentencing Guidelines Council.

The Court of Appeal held that, while on the facts a custodial sentence had been required, the sentence was manifestly excessive. Whilst the judge had been entitled to conclude that the defendant's driving had fallen not far short of dangerous, in relation to culpability, it had fallen towards the lower end of the applicable sentencing range. The defendant had, in a momentary act of selfishness, been performing a manoeuvre which she should not have been. She had undoubtedly been driving too fast, but her essential culpability had been that, in carrying out the manoeuvre, she had failed to allow for the

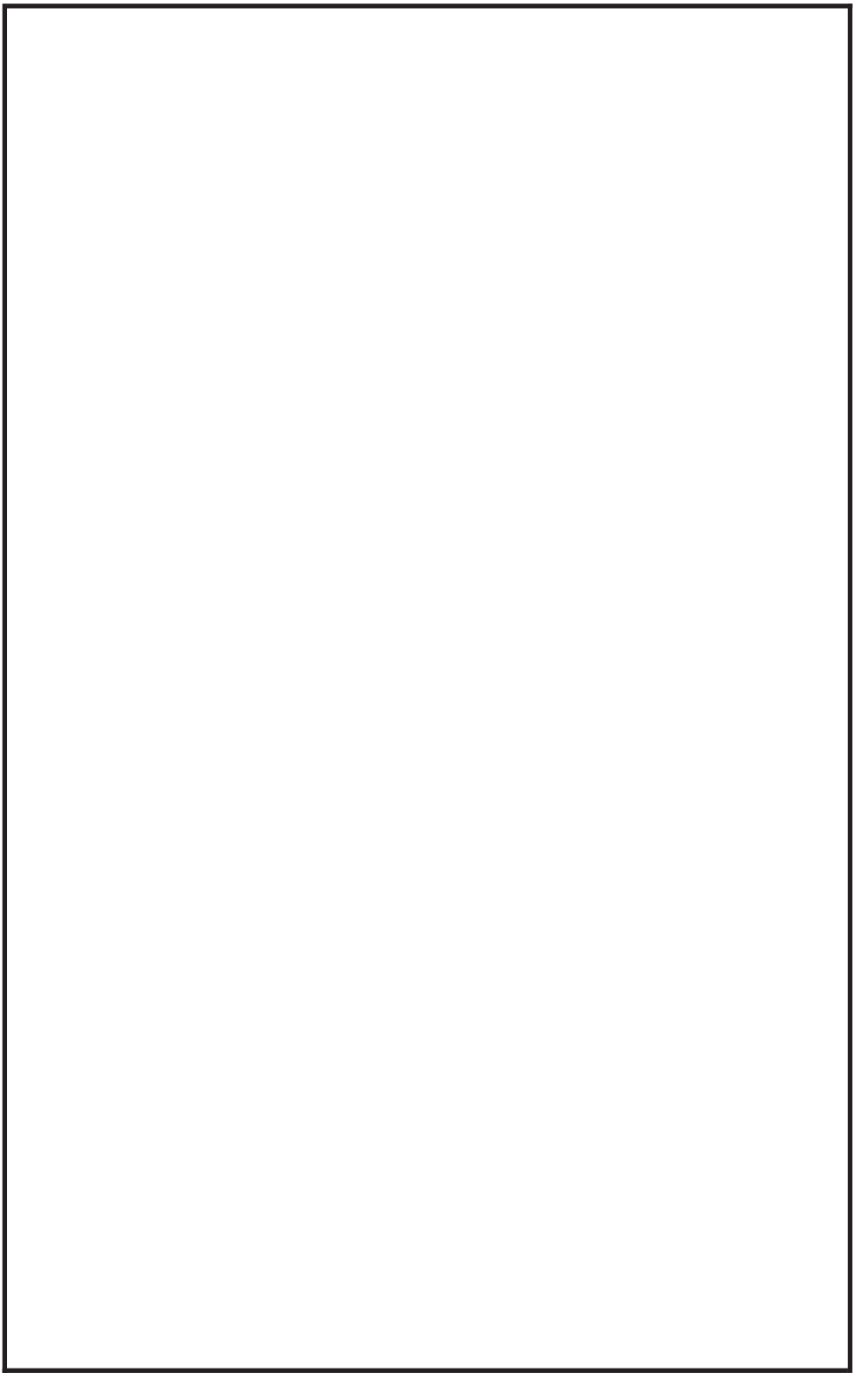
possibility that pedestrians that she could not see would emerge into her path. The consequence of her careless driving had been the death of the deceased and serious injury to his friend. However, the defendant's remorse, exemplary character and the significant impact of her conviction and sentence on her family were all factors in mitigation. A further mitigating factor was the fact that the defendant and his friend should not have been in the road at all; they had been walking where they should not have been at a time when the lights had changed to green. The appropriate sentence before considering the defendant's plea of guilty would have been ten months' imprisonment. Limiting the discount available for the defendant's plea, as a result of her denial of the over-taking manoeuvre, the appropriate sentence would be eight months' imprisonment.

R v Daniel

In *R v Daniel* [2012] EWCA Crim 2530, [2012] All ER (D) 91(Dec), the Court of Appeal (McCombe LJ, Foskett and Eder JJ) allowed an appeal from a sentence of 12 months' imprisonment and disqualification from driving for three years.

The defendant, then aged 51, took the wrong exit at a roundabout in Lewisham. He sought to make a U-turn to head back to the roundabout but did not indicate his intention to do so. The deceased was riding his motor bike in the off-side lane of two lanes on the same road. He was travelling at less than 30 miles per hour when he saw the defendant make the manoeuvre. The deceased braked but he was unable to stop in time and collided with the defendant's car. He was propelled forward over the defendant's car and was run over by it. He died from his injuries. The defendant subsequently pleaded guilty to causing death by careless driving. The judge concluded that the offence fell within the upper end of category 2 (careless driving) of the guidelines of the Sentencing Guidelines Council. In passing sentence the judge had neither indicated his starting point nor the credit given for the guilty plea.

The appeal was allowed since none of the additional aggravating features set out in the guidelines were present. The offence was sufficiently significant to justify a custodial sentence rather than a community sentence. However, in the circumstances of the case it was not right to say that the offence fell just short of dangerous driving. The judge might have had in mind a discount of 20 to 25%, suggesting a starting point of 15 months or a little more. If that was correct, the starting point was too high by reference to the guidelines and to authority. A starting point in the region of 12 months would have been appropriate. Applying a discount of 20 to 25%, the appropriate sentence would have been nine months' imprisonment. On the issue of disqualification, three years was too long. In the circumstances, a disqualification for a period of two years would be appropriate.



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Printed and bound in Great Britain by Hobbs the Printers Ltd, Totton, Hampshire

Published by LexisNexis

FSC
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MIX
Paper from responsible sources
FSC® C020438

ISBN 978-1-4057-6897-9