Butterworths Road Traffic Service

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Filing instructions: This Bulletin should be filed immediately after the Bulletins Guide Card, and Bulletins 219 to 228 removed. **Binder 1 should now contain Bulletins 229 to 230.** This bulletin contains material available on 29 March 2013.

NEW LEGISLATION

The HGV Road User Levy Act 2013

The HGV Road User Levy Act 2013 received the Royal Assent on February 28, 2013. It makes provision for charging a levy for using or keeping a heavy goods vehicle on public roads in the UK. The main provisions of the Act will come into force on a day to be appointed.

The Act applies to all 'public roads', but the Secretary to State may by order limit the roads to which it applies or disapply it to certain roads. In the case of a UK HGV the person responsible for paying the levy is the registered keeper and any person by whom the vehicle is kept; in the case of a non-UK HGV it is the community licence holder and any person by whom the vehicle is kept.

The Act includes powers of stop and check and creates offences of obstruction and using/keeping without paying the levy. In the case of the latter the offence is committed by each person who is liable for the levy in addition to the actual user or keeper.

The Disabled Persons' Parking Badges Act 2013

The Disabled Persons' Parking Badges Act 2013 received the Royal Assent on 31st January, 2013. It extends to England, Wales and Scotland and it will come into force on a day to be appointed.

The Act makes various amendments to the Chronically Sick and Disabled Persons Act 1970 (CSDPA 1970), with minor consequential amendments to other legislation.

1. Section 1 is concerned with the form of parking badges.

2. Section 2 deals with the cancellation of parking badges. It inserts new CSDPA 1970, s 21(7AB), which enables a local authority in England and Wales to cancel a badge issued by them under CSDPA 1970, s 21 if it appears to the authority that the person to whom it was issued no longer holds the badge, either because that person has notified the authority of its loss or theft, or for any other reason.

3. Section 3 is concerned with the use of parking badges no longer valid. It inserts new CSDPA 1970, s 21(4BZA). This creates an offence where a person drives a motor vehicle on a road when the vehicle is displaying a badge which: a) should have been returned to the issuing authority in compliance with regulations made under CSDPA 1970, s 21(6) or a notice under CSDPA 1970, s 21(&A(b); or the badge has been cancelled under CSDPA 1970, s 21(7AB). Consequential amendments are made to s 117 of the Road Traffic Regulation Act 1984 (RTRA 1984) by the insertion of new RTRA 1984, s 117(1ZA).

4. Section 4 is concerned with enforcement. It adds to CSDPA 1970, s 21(4BB) (enforcement officers), which was inserted by s 94 of the Traffic Management Act 2004, a person employed by a local authority or by a person with whom the authority has arrangements for the purposes of s 21, who is authorised in writing by the authority to exercise the powers in subs (4BA) and (4D). New CSDPA 1970, s 21(4BE) provides, however, that it is not an offence to fail to comply with a requirement imposed by such an officer if that officer does not produce appropriate evidence of authority. New CSDPA 1970, s 21(4D) deals with the retention of badges where there are reasonable grounds for believing they were not issued under s 21, or should have been returned, or have been cancelled, or were being displayed otherwise than in the prescribed circumstances.

5. Section 5 is concerned with appeals against a refusal to issue a badge or a requirement to return a badge.

6. Section 6 is concerned with parking badges for disabled service personnel, etc, overseas.

Further commencement of the Legal Aid, Sentencing and Punishment of Offenders Act 2012

Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 6) Order 2013

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 6) Order 2013, SI 2013/453 was made on March 4, 2013. Various provisions are brought into force. Of main interest to road traffic practitioners, 'motor vehicle orders', defined as clamping or vehicle sale orders, are introduced as a means of recovering unpaid legal aid contributions. The detail will appear in regulations which are yet to be made.

Legal Aid Regulations

The **Criminal Legal Aid (Contribution Orders) Regulations 2013, SI 2013/483**; The **Criminal Legal Aid (Financial Resources) Regulations 2013, SI 2013/471**; The **Legal Aid (Disclosure of Information) Regulations 2013, SI 2013/457**; The **Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013, 2013/614**; and The **Criminal Legal Aid (Recovery of Defence Costs Orders) Regulations 2013, SI 2013/511** have been made, in all cases with a commencement date of April 1, 2013. In broad terms, taking these regulations together with those previously made and the relevant provisions of Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPOA 2012), defendants in the Crown Court will automatically qualify for legal aid but, subject to income and capital assessment, face the prospect of paying considerable contributions to the cost of their representation (different maxima apply to different offences). Defendants who are wholly acquitted (ie of all charges) will automatically be refunded any contributions paid (with the additional amount of small, compound interest) unless the judge considers there are 'exceptional reasons' why this should not happen. In the case of 'mixed' verdicts, the defendant can apply for an adjustment of his liability. Overdue contributions are recoverable summarily as a civil debt. The contribution regime also applies with modifications to appeals to the Crown Court, but not to proceedings in the magistrates' court.

The changes made to legal aid in the magistrates' court are principally bureaucratic. The court can reverse refusal of legal aid on interests of justice grounds, co-defendants will continue to be represented by the same representative unless there is, or is likely to be, a conflict of interests and the same limited grounds for changing representatives will apply.

Driving licences

The Motor Vehicles (Driving Licences) (Amendment) Regulations 2013

The Motor Vehicles (Driving Licences) (Amendment) Regulations 2013, SI 2013/258 have been made. These Regulations implement the minimum standards of medical fitness required for eyesight and epilepsy, as specified in Directive 2009/113/EC of 25 August 2009 which amends Directive 2006/126 EC of the European Parliament and of the Council on driving licences. These Regulations amend the medical standards applicable for driver licensing of applicants and licence holders in relation to eyesight and epilepsy, by making amendments to the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864.

Regulation 2 (SI 2013/258, reg 2) amends regulation 71 of the principal Regulations (SI 1999/2864, reg 71) so there is no longer a single description of epilepsy as a prescribed disability for both Groups.

Regulation 3 (SI 2013/258, reg 3) amends regulation 72 of the principal Regulations (SI 1999/2864, reg 72), in relation to Group 1 licences. Regulation 3(2) prescribes impairment of vision as a relevant disability, where an applicant for, or holder of, a Group 1 licence fails to meet visual acuity

standards or visual field standards; or in the case of a person with diplopia or sight in only one eye, fails to meet the adaptation standard for those conditions. A licence must not be refused on the basis that a person fails to meet visual field standards, where conditions prescribed under section 92(4)(b) are met. Regulation 3(3) makes epilepsy a prescribed disability for Group 1, where there has been more than one epileptic seizure in the previous five years . Regulation 3(3) also prescribes the circumstances in which a licence can be granted to a person who has had two or more epileptic seizures in the previous five years, but the condition is controlled. In such a case, a Group 1 licence must not be refused on grounds of epilepsy, where prescribed conditions are met and there is either a seizure free period of one year or the only seizure which has occurred during this period is a 'permitted seizure', as defined. Regulation 3(3) prescribes an isolated seizure or isolated epileptic seizure as a relevant disability, where that seizure has occurred in the previous six months (or one year if there is an underlying causative factor that may increase future risk). A Group 1 licence must not be refused on the grounds of an isolated seizure, which occurred outside those prescribed periods, provided additional conditions are also met.

Regulation 4 (SI 2013/258, reg 4) amends regulation 73 of the principal Regulations (SI 1999/2864, reg 72), in relation to Group 2 licences. Regulation 4(2) prescribes impairment of vision as a relevant disability, where an applicant for, or holder of, a Group 2 licence: fails to meet Group 2 visual acuity, visual field or corrective lenses standards; or has sight in only one eye or uncontrolled diplopia, unless a person is excepted from a standard. Regulations 4(3) and (4) amend the Group 2 additional visual acuity standard (regulation 73(3)). Regulation 4(5) prescribes the Group 2 visual field standard and the corrective lenses standard for visual acuity. Regulation 4(6) prescribes conditions to be satisfied by certain categories of person with sight in one eye where there is an existing entitlement to drive. Regulation 4(7) makes epilepsy a prescribed disability for Group 2, where there has been more than one seizure or medication to treat epilepsy has been prescribed, in the previous ten years. A Group 2 licence must not be refused on grounds of epilepsy where the conditions for an isolated seizure are met; or in any other case, where no seizure has occurred and no epilepsy medication has been prescribed in the 10 year period immediately before the date when the licence is granted and additional conditions are met. Regulation 4(7) also prescribes an isolated seizure as a relevant disability for Group 2, where such a seizure has occurred, or medication has been prescribed to treat epilepsy or a seizure, during the previous five year period. A Group 2 licence must not be refused on grounds of an isolated seizure, provided no seizure has occurred and no relevant medication has been prescribed, in the five year period immediately before the date on which the licence is granted and provided additional conditions are also met.

Regulation 5 (SI 2013/258, reg 5) amends the prescribed disability relating to impairment of vision, for the purposes of section 94(5)(b)(i) (examination by officer nominated by the Secretary of State).

Exchangeable driving licences

Driving Licences* (*Exchangeable Licences*) (*Amendment*) *Order 2013, SI 2013/22

The Driving Licences (Exchangeable Licences) (Amendment) Order 2013, SI 2013/22 has been made. This Order designates countries and territories for the purpose of allowing driving licences issued in those countries or territories in respect of specified vehicles to be exchanged for a driving licence issued in Great Britain. The key change is non-European members must now prove they passed their driving tests in countries with similar standards to our own.

Drink-drive rehabilitation courses

In the last bulletin (January 2013) we summarised the provisions of the Road Safety Act 2006 (Commencement No. 9 and Transitional Provisions) Order 2012, SI 2012/2938. This brought into force, in its application to drink-driving offences, RSA 2006, s 35 with related repeals. Further on this topic, the Rehabilitation Courses (Relevant Drink Offences) Regulations 2012, SI 2012/2939 were made to accompany this implementation. Of particular note, reg 8 prescribes a maximum course attendance fee of £250 and specifies when and how attendance fees are to be paid. This regulation will come into force on 24th June, 2013.

CASES OF NOTE

Criminal procedure: impermissible to convict of two offences on the same facts

R* (*on the application of Dyer*) *v Watford Magistrates Court

In *R* (*on the application of Dyer*) *v Watford Magistrates Court* [2013] EWHC 547 (Admin), [2013] All ER (D) 88 (Jan), the claimant's pre-trial plea of guilty to the simple offence of causing fear or provocation of violence pursuant to s 4 of the Public Order Act 1986 (the simple offence) was rejected by the Crown Prosecution Service, which wanted to pursue the racially aggravated form of the offence. At trial, the claimant was convicted of both the simple and aggravated offences. The claimant applied for judicial review on the decision of the magistrates' court to convict him of both the simple and aggravated offences.

The Divisional Court (Laws LJ and Hickinbottom J) allowed the application. In circumstances where both a simple and aggravated charge arose out of the same facts, it was not open to the magistrates' court to convict a defendant of both offences. In such circumstances, the lesser charge should be adjourned before conviction and, in the event of a successful appeal against the aggravated offence, a conviction on the lesser offence might thereafter be recorded. There existed no practical difficulty which could override the basic principles of justice.

Fines: proportionality to means

R (*on the application of Purnell*) *v South Western Magistrates' Court*

In *R* (*on the application of Purnell*) *v South Western Magistrates' Court* [2013] EWHC 64 (Admin), [2013] All ER (D) 200 (Jan), the claimant had received about 20 convictions and penalties over the past 12 years. Most of the fines related to driving offences in the London area. The amounts originally totalled £4,170.65. By the time the matter came before the Administrative court, the total amount outstanding at was £2,610.65 and the claimant challenged an order requiring payment at the rate of £5 per week.

The Administrative Court (Sir John Thomas P and Rafferty LJ) quashed the decision. If £5 a week had been all that the claimant could in fact pay, the judge had imposed payment of an amount over a period which had not been proportionate, as it had been far too long. The matter was remitted for re-consideration by the magistrates' court. If the amount outstanding and the claimant's means were the same, then the court would have to consider whether to utilise the alternative means of enforcement or consider remission of the fines or discharge or reduction of the amounts for costs.

Penalty charge notices

R (*Hackney Drivers Association Ltd*) *v Parking Adjudicator*

In *R* (*Hackney Drivers Association Ltd*) *v Parking Adjudicator* [2012] EWHC 3394, [2013] All ER (D) 229 (Jan) the Administrative Court (Judge Raynor sitting as a judge of the High Court) held that the penalty charge notice in question (one now in common use) was compliant with the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007, SI 2007/3482. Literal compliance was unnecessary under the scheme, as had been the case with its predecessor. Read as a whole, the notice had conveyed what was required under reg 3(2). The recipient would understand that he was entitled to challenge the notice and make representations as to why it should not be paid. Further, the recipient, reading the notice as a whole, would fairly understand that he might make representations against the charge, both before and after the service of the notice to owner, but that representations made after service of the notice to owner had to comply with the instructions given in the notice, and that was the information which the Regulations, read as a whole, required to be conveyed. The words of the notice did not suggest that there was any time limit on informal representations.

Speeding

Clark v Crown Prosecution Service

In *Clark v Crown Prosecution Service* [2013] EWHC 366 (Admin), [2013] All ER (D) 109 (Feb) the Administrative Court (Goldring LJ and Fulford J) held that the justices had been entitled to rely on the accuracy of the speed detection device and had been correct not to follow Scottish case law requiring direct evidence of a measurement of a speed detection device.

The defendant was convicted of exceeding the 50 mile per hour speed limit. The justices found that a police officer had formed the opinion that: (i) the defendant had been speeding and the police officer had used a speed measuring device (the device) to confirm that opinion; (ii) the defendant had been recorded at 68 miles per hour; (iii) the officer had checked the device several times during the day, including before and after recording the defendant, and at the beginning and end of the day, but that he had not personally measured the fixed distance used to test the device at the police station, as he had relied on another officer's measurement of five years earlier, and there had been no indication that the device was not working; (iv) the defendant's vehicle had been in the offside lane travelling more quickly than the other vehicles; and (v) the defendant had not checked the speedometer at the time and could not say at what speed he had been travelling.

The defendant appealed by way of case stated on the grounds that, inter alia: (i) there was no direct evidence of the distance used to verify the accuracy of the device and the court had not been invited to admit hearsay evidence of the other officer; (ii) there should have been direct evidence of the measurement at the police station before it could be used; (iii) the device should not have been presumed to have been accurate and evidence of its accuracy should have been provided; and (iv) Scots law should be preferred to English and Welsh law as it was illogical for English and Welsh, and Scots law to be inconsistent.

It was held that It was well established in English and Welsh law that there was no requirement that a device should be tested, unless there was a particular reason not to rely on it. Further, a device could be used as corroboration of an officer's evidence without testing. In contrast, Scots law was to the effect that there should be direct evidence of a measurement before evidence from a device could be used. The approach to law of England and Wales, and Scotland had diverged on a significant number of occasions and the inconsistency was no reason to overturn the application of English and Welsh law to the criminal law. There was no evidence that the approach of the Scottish courts was to be preferred. Further, no evidence had suggested that the device had produced inaccurate results. The device had given every indication that it had been functioning properly. There had been no evidence indicating that the distance had been incorrectly recorded or supplied by the other officer. There was no requirement that an officer had to undertake such a check personally and there was no merit in the court so requiring. The law did not require the device to be checked for accuracy to be relied on as corroborative evidence.

Adjournments

Cherpion v Director of Public Prosecutions

In *Cherpion v Director of Public Prosecutions* [2013] EWHC 615 (Admin), [2013] All ER (D) 44 (Feb), the Administrative court (Goldring LJ and Fulford J) dismissed the claimant's appeal by way of case stated against the decision of a magistrates' court to refuse to adjourn a trial and his subsequent conviction for a road traffic offence.

In October 2011, the claimant was driving a van and was involved in an accident. He was taken to hospital, where a specimen of blood was taken which was found to contain alcohol levels exceeding the legal limit. The case was first listed for trial in November 2011 and the claimant pleaded not guilty. However, the trial was subsequently adjourned on more than one occasion. The respondent indicated, amongst other things, that K, a doctor at the hospital, would be called to give evidence at trial. On 12 July 2012, at the adjourned trial, the respondent was unable to begin on time as not all of its witnesses had appeared. The claimant opposed the respondent's request for further time, but it subsequently became clear that the witnesses in question would be available. Then, the claimant applied for an adjournment, as K had not been requested to attend notwithstanding the indication that she would be. The justices refused to grant the adjournment on the basis, amongst other things: (i) of the already lengthy history; (ii) that the other witnesses were ready; (iii) that the claimant had already requested that the case continue; and (iv) that the claimant could have called K. Key issues at trial included whether K had been the medical practitioner in immediate charge in the claimant's case pursuant to s 9(1) of the Road Traffic Act 1988 and accordingly whether the procedure by which the claimant's blood had been taken had been lawful. The justices found, on the evidence, that K had been the medical practitioner in immediate charge of the claimant and the claimant was subsequently convicted of a road traffic offence.

The claimant appealed by way of case stated, but it was held: (1) on the facts, the justices had not been wrong to refuse the adjournment. Whilst the respondent had been wrong in not calling K to give evidence, there was no doubt that the justices had been entitled to refuse to adjourn the trial. It had been a matter entirely for their discretion; and (2) on the evidence, the justices had been entitled to conclude that K had been the medical practitioner in immediate charge of the claimant and they had been correct to convict the claimant.

Insurer's right to indemnity under s 151(8) of the RTA 1988

Churchill Insurance Co Ltd v Wilkinson, Evans v Equity Claims

In *Churchill Insurance Co Ltd v Wilkinson*, *Evans v Equity Claims* [2012] EWCA Civ 1166, [2013] 1 All ER 1146, [2003] RTR 1, both claimants were named as insured drivers, but allowed uninsured drivers to drive and then suffered injuries caused by their negligence. In both cases the insurers accepted that they had to satisfy the claims under s 151(2) & (5) of the RTA 1988, but claimed the right to recovery from the claimants under s 151(8). This provides:

> '(8) Where an insurer becomes liable under this section to pay an amount in respect of a liability of a person who is not insured by a policy … he is entitled to recover the amount from that person or from any other person who- (a) is insured by the policy … by the terms of

> which the liability would be covered if the policy insured all persons … and (b) caused or permitted the use of the vehicle which gave rise to the liability'.

Reference was made to the Court of Justice for that Court to rule on the compatibility of RTA 1988, s 151(8) with EC Directive 2009/113. This ruling given was the Directive precluded national rules which omitted automatically the requirement of an insurer to compensate a road traffic victim passenger, even where the accident had been caused by an uninsured driver to whom the passenger had given permission to drive, whether or not the passenger knew the driver was uninsured.

At the resumed hearing the Court of Appeal (Maurice Kay, Etherton and Aikens LJJ) had to decide whether or not s 151(8) could be interpreted in a manner consistent with EU Law, specifically arts 12(1) and 13(1) of the Directive (an issue which the Court of Justice ruled it was for the domestic court to decide).

The claimants argued that, to achieve compatibility, s 151(8) had to be restricted to cases where the victim passenger was not the insured but somebody else, and the insured caused or permitted an uninsured driver to drive the vehicle, but the Court of Appeal rejected this and held that compatibility would be achieved by reading in the words in italics at the end of 151(8)(b):

> 'Where an insurer becomes liable under this section to pay an amount in respect of a liability to a person who is not insured in a policy … he is entitled to recover the amount from … any person who- … (b) caused or permitted the use of the vehicle which gave rise to the liability*, save where the person insured by the policy may be entitled to the benefit of any judgment to which this section refers, any recovery by the insurer in respect of that judgment must be proportionate and determined on the basis of circumstances of the case*'.

Bristol Alliance Ltd Partnership v EUI Ltd

Section 151 of the RTA 1988 also arose for consideration in *Bristol Alliance Limited Partnership v EUI Ltd* [2012] EWCA Civ 1267, [2013] 1 All ER (Comm) 257 [2013] RTR 9, where a driver collided with a building owned by the claimant and the latter's insurer sought, by subrogation, to recover damages from the driver, whose insurer claimed that the damage was a deliberate act, was therefore a liability not covered by the insurance and, therefore, a judgment against the driver would not be a judgment falling within RTA 1988, s 151(1).

The Court of Appeal (Ward, MacFarlane LJJ and Dame Janet Smith) allowed the motor insurer's appeal. The relevant statutory provisions coupled with the MIB scheme satisfied the aim and spirit of applicable EU law and there was no justification for preventing the insurer from relying on the exclusion of deliberate damage. Accordingly, there was no right of recovery against the motor insurer.

Contributory negligence

Rehill v River Holdings

In *Rehill v River Holdings* [2012] EWCA Civ 628, [2012] All ER (D) 206 (May), [2003] RTR 5 the claimant walked into the carriageway against a red man signal and into the path of a bus then so close that a collision was inevitable. However, it was not the initial impact but the front nearside wheel of the bus running over the claimant which caused his serious injuries, and the failure of the driver to brake as he should was causative of those injuries. The question then arose, how was blame to be apportioned?

The Court of Appeal (Ward, Richards and Patten LJJ) disagreed with the finding of one-third-only blame on the part of the claimant, even allowing for the greater 'causative potency' of the bus as a cause of injury. The claimant was seriously blameworthy on the facts, and his contributory negligence was raised to one half.

Mini cab ban lawful

Eventech Ltd v Parking Adjudicator

Transport for London's policy of allowing black cabs, but not mini cabs (save for picking up or setting down) to use bus lanes was held to be lawful in *Eventech Ltd v Parking Adjudicator* [2012] EWHC 1903 (Admin), [2012] NLJR 962, [2012] All ER (D) 118 (Jul), [2012] W L R 770. The Administrative Court (Burton J) held that black cabs and minicabs were not comparable and, in any event, this difference in treatment was objectively justified. Minicabs did not need to use bus lanes, whereas black cabs had to be visible so they could be flagged own and there had to be ease of access from the pavement when they had been flagged down.

Causing death by careless driving – sentencing

This controversial offence continues to present considerable sentencing difficulties and to give rise to many appeals.

R v Gordon

In *R v Gordon* [2012] EWCA Crim 772, [2013] 1 Cr App Rep (S) 52 the appellant was driving a flat bed truck. He came to a junction with a dual carriageway, which he wanted to cross so that he could travel south. However, the central reservation was only 10m wide. The appellant had to wait in the reservation owing to a stream of traffic travelling south and the length of his vehicle was such that its rear protruded by 1.8 m into the fast lane of the north bound carriageway. A car collided with it, killing it driver. The appellant pleaded guilty and was sentenced to six months' imprisonment, disqualified from driving for 12 months and ordered to take an extended retest.

The Court of Appeal (Hughes VP LJ, Treacy and Globe JJ) reduced the prison term to 16 weeks and quashed the retest. While the starting point for the relevant category was 36 weeks, the appellant's personal mitigation –

excellent driving record and loss of employment – merited a reduction to 24 weeks, after which credit for pleading guilty had to be deducted. The test was unnecessary in view of the appellant's long experience and good motoring record.

R V Coveney

R V Coveney [2012] EWCA Crim 843, [2013] 1 Cr App Rep (S) 58 involved an experienced HGV driver of exemplary character, who left the motorway at an appropriate speed but then touched the wrong pedal a number of times over a number of seconds with the result that his vehicle failed to brake as he intended. When be realised he could not stop for the red light at the roundabout at the end of the slip road, he tried to warn other drivers by waving and sounding his horn, but this did not prevent a fatal collision with a car on the roundabout. He pleaded guilty. The judge imposed a term of 24 months' imprisonment.

The Court of Appeal (constituted as above) held that the judge had started at too high a point. This case was not the most serious example of causing death by careless driving and it fell somewhere in the range higher intermediate category to medium most serious category. An appropriate starting point would have two years after a trial. With the usual reduction for pleading guilty, this fell to 16 months' imprisonment, which was the term their Lordships substituted.

R v Jones

In *R v Jones* [2012] EWCA Crim 972, [2013] 1 Cr App Rep (S) 109 the sentence of three years' imprisonment was upheld. The appellant was driving on a dual carriageway with his car on cruise control set at 70 mph. He came up behind a moped driven by a 16-year-old, which he totally failed to see owing, the judge found, to lack of sleep. The moped rider died in the ensuing collision. The appellant contested the case. He suggested at first that the moped had failed to display rear lights, but this was disproved. Moreover, the carriageway was well lit and road conditions were good. The appellant asserted at his trial (for the first time) that the moped must have moved into his path immediately before the collision, but the jury clearly rejected this. The moped must have been visible to him for a total of 16 seconds before the impact.

The Court of Appeal (Davis LJ, Treacy J and Judge Collier QC) agreed with the judge that the case was in the most serious category and fell just short of dangerous driving. The appellant was of good character, but the aggravating factors and lack of remorse made the sentence of three years' imprisonment 'firm' but not 'manifestly excessive'.

Causing death by unlicensed, disqualified or uninsured driving – sentencing

R v Headley

In *R v Headley* [2012] EWCA Crim 1212, [2013] 1 Cr App Rep (S) 224 the appellant supervised an uninsured and unlicensed driver to drive in a car

park. The vehicle collided with a cyclist, who was fatally injured. The appellant had a previous conviction for uninsured driving. He was charged with aiding and abetting causing death by unlicensed, etc, driving and permitting uninsured and unlicensed driving of the vehicle. He pleaded guilty to all the offences on re-arraignment and was sentenced to eight months' imprisonment and three years' disqualification with an extended retest.

The Court of Appeal (Stanley Burnton LJ, Maddison J and Judge Russell QC reduced the disqualification to two years and quashed the extended retest. The offences did not involve bad driving on the appellant's part. The substantive sentence, however, was upheld. The previous conviction (in 2008) was a significant aggravating factor, as was the age difference and difference in driving experience between the appellant and the person he was supervising. While the case fell into the second category of the guidelines, the aggravating features justified a sentence outside that range.

Careless driving – fines and length of disqualification

R v Drobac

In *R v Drobac* [2012] EWCA Crim 1733, [2013] 1 Cr App R 73 the appellant fell asleep when driving and collided with an oncoming vehicle, seriously injuring its driver. The appellant was charged with dangerous driving. He offered to plead guilty to careless driving, and this was finally accepted on the day of the trial. The judge imposed a fine of £1250 (plus costs and surcharge) and disqualification of 18 months.

The Court of Appeal (Hooper LJ, Hamblen and Thirlwall JJ) upheld the fine, but reduced the period of disqualification to 12 months. There had been a previous occasion when the appellant had fallen asleep at the wheel, again when he was driving home from work. This should have made him aware of the danger of falling asleep at the wheel when tired. The fine was one quarter of the maximum for the offence. It could not be said to be manifestly excessive. However, immediately after the accident the appellant handed in his licence to the DVLA, acknowledging that he posed a risk to the public. He had not driven for eight months before being sentenced. He had submitted himself for comprehensive medical examination to ensure there was no underlying condition that might cause him to sleep. His employment was now at risk. The 'voluntary ban' and the disqualification resulted in a period of not driving for 26 months. The Court considered this was too long.

Driving test – fraud by impersonation

R v Dittmann

In *R v Dittmann* [2012] EWCA Crim 957, [2013] 1 Cr App R (S) 113 one of the appellants impersonated the other to take the practical part of the driving test. Both appellants were of good character and pleaded guilty at the first opportunity. The judge noted, however, the potential danger to the public of this kind of offending and imposed in each case a sentence of two months' imprisonment.

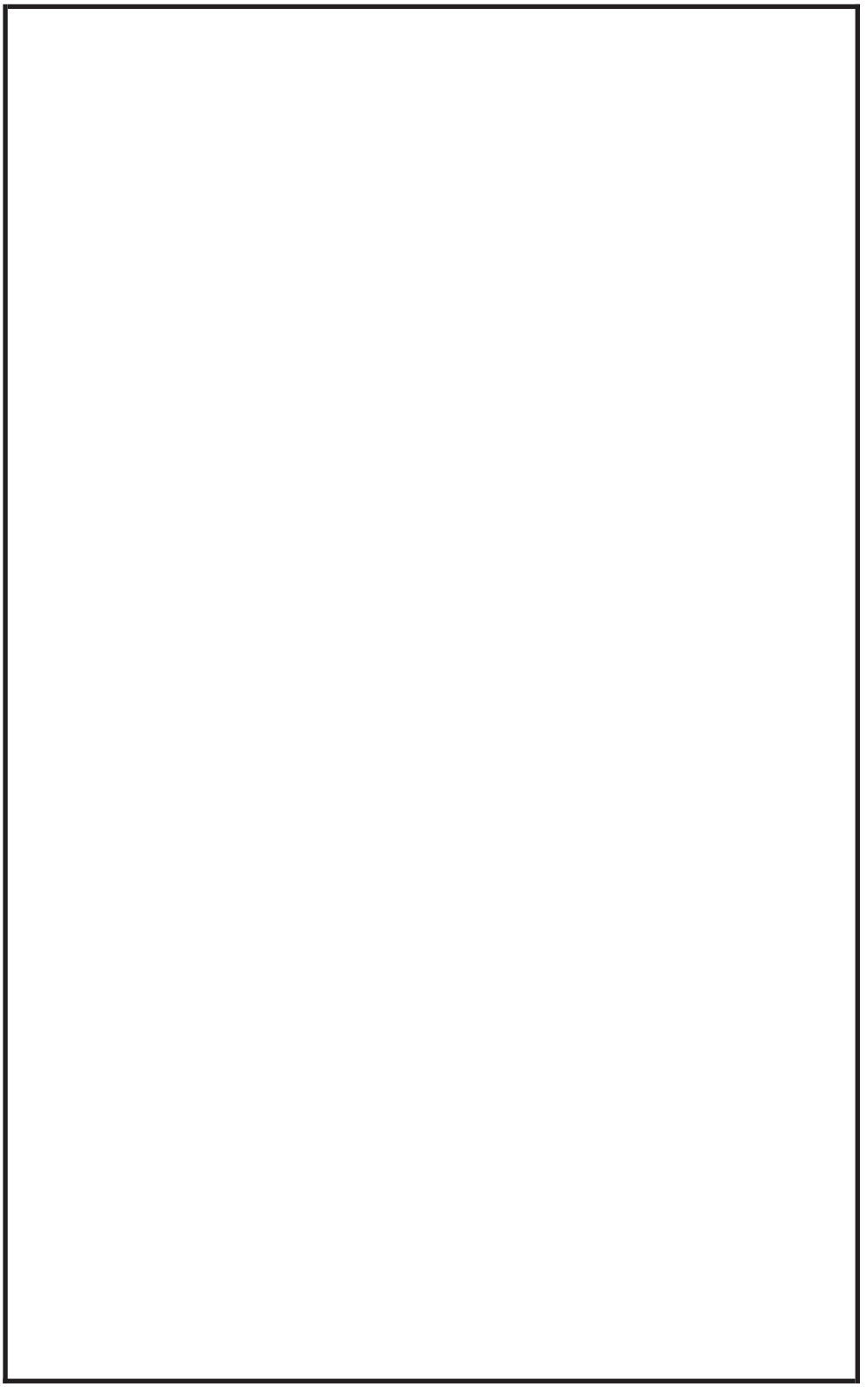
The Court of Appeal (Rafferty LJ, McCombe J and HH Pert QC) upheld the sentences. Immediate custody was plainly warranted and an element of deterrence was required.

Perverting the course of justice

R v Macklin

In *R v Macklin* [2012] EWCA Crim 1429, [2013] 1 Cr App R (S) 62 a car collided with a lorry in the early hours of the morning. When the police arrived the appellant admitted he had been driving the car. He was breathalysed and found to be twice the legal limit. He then claimed that another person, E, had been driving. When he told E he had done this, E reported the matter to the police. The denial of driving continued through a trial for the offence of perverting the course of justice. The jury failed to agree and a re-trial was ordered. Before it started fresh evidence in the form of text messages between the appellant and E was served. This caused the appellant to change his plea to guilty. The judge considered this to be bad and a persistent case of attempting to pervert the course of justice and imposed a sentence of two years' imprisonment.

The Court of Appeal (Hooper LJ, Hamblen and Thirlwall JJ) noted the persistence of the behaviour, and that the appellant had given false evidence in the first trial and only pleaded guilty when 'compelling' evidence was served. However, the sentence was excessive compared to previous authorities, and no third party had been questioned or charged. The Court accordingly reduced the sentence to 12 months.



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