Butterworths Road Traffic Service

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NEW LEGISLATION

Crime and Courts Act 2013

This Act received the Royal assent on April 25. Its primary purposes are to establish the National Crime Agency (in place of SOCA and NPIA) and to establish a single county court and family court. However, various other measures have also been included. Of principal interest to BRTS subscribers is Crime and Courts Act 2013, s 56. This inserts a new s 5A in the Road Traffic Act 1988, which creates offences of 'Driving or being in charge of a

motor vehicle with concentration of specified controlled drug above specified limit'. There is a defence covering drugs prescribed or supplied for medical and dental purposes, provided they were taken as directed and in accordance with advice as to time that should elapse before driving. For 'in charge' cases there is a 'no likelihood of driving' defence (as per the alcohol equivalent). The penalties are the same as for the prescribed limit alcohol offence. The relevant drugs and limits will be specified in regulations. These provisions are prospective and, we suspect, unlikely to be implemented in the near future.

Conditional fees

The **Conditional Fee Agreements Order 2013, SI 2013/689** came into force on April 1. Sections 58 and 58A of the Courts and Legal Services Act 1990 make provision as to the regulation of conditional fee agreements and the recoverability of success fees payable under a CFA. Sections 58 and 58A of the 1990 Act were amended by s 44 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The effect of the amendments is that a success fee payable under a CFA may no longer be recovered by a lawyer from a losing party, but, subject to additional conditions under section 58(4A) and (4B), will be recoverable by a lawyer from their successful client. This Order makes provision as to how the success fee should be calculated.

Civil procedure

The **Civil Procedure (Amendment No.3) Rules 2013, SI 2013/789** came into force on April 30. These Rules amend Part 45 of the Civil Procedure Rules 1998, in particular, rule 45.18. This rule, in Table 6, prescribes the fixed costs which may be recovered by a legally represented claimant in respect of the Stage 1 and Stage 2 procedures under the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents. These Rules substitute the new sums which may be recovered as fixed costs in those cases where, under the Protocol, the claimant's Claim Notification Form is sent to the defendant's insurer on or after 30th April 2013.

Conditional cautions

The Criminal **Justice Act 2003 (Conditional Cautions: Code of Practice) Order 2013, SI 2013/801**, came into force on April 7. This Order brings into force a revised code of practice in relation to conditional cautions. The most significant revisions made in this code reflect the amendments to Part 3 of the Criminal Justice Act 2003 made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO 2012), which came into force at the same time as the code. LASPO 2012, s 133 amended Part 3 of the Criminal Justice Act 2003 to permit authorised persons (a constable, an investigating officer or a person authorised by a relevant prosecutor) to give a conditional caution to a person aged 18 or over, and to set and vary conditions, without reference to a relevant prosecutor. LASPO 2012, s 134 amended Part 3 of the 2003 Act to provide for conditional cautions to be given to a relevant foreign offender provided at least one of the following objects is met: bringing about the departure of the relevant foreign offender

from the United Kingdom; and ensuring that the relevant foreign offender does not return to the United Kingdom for a period of time.

Civil enforcement parking areas

The **Bus Lane Contraventions (Approved Local Authorities) (England) (Amendment) and Civil Enforcement of Parking Contraventions Designation Order 2013, SI 2013/992**, which came into effect on May 30, designates part of the area of each of The Northamptonshire County Council, The County Council of Durham, The Worcestershire County Council, The North Yorkshire County Council and The Essex County Council as a civil enforcement area for parking contraventions and as a special enforcement area for the purposes of Part 6 of the Traffic Management Act 2004.

In consequence of its revocation of SI 2008/2567 and amendment of SI 2011/2431, the Order designates the whole of the area of The County Council of Durham with the exception of the roads referred to at Schedule 2. The Order also makes a consequential amendment to the Bus Lane Contraventions (Approved Local Authorities) (England) Order 2005 (SI 2005/2755).

High risk offenders

The **Road Safety Act 2006 (Commencement No. 10) Order 2013, SI 2013/1012** came into force on June 1. This Order brings into force s 13 of the Road Safety Act 2006. This amends s 88 of the Road Traffic Act 1988, which sets out exceptions to the general requirement for anyone wishing to drive a motor vehicle on a road to have an appropriate driving licence. These include the case of a driver who has previously held a driving licence and has made an application for a new licence that meets certain conditions. The amendments apply to High Risk Offenders, who have been disqualified by court order as a result of serious drink-driving related offences, as prescribed under Road Traffic Act 1988, s 94(4) by regulation 74(1) of the Motor Vehicles (Driving Licences) Regulations 1999, 1999/2864. The amendments prevent a High Risk Offender, who is in the process of applying for a driving licence as a result of, or in anticipation of, the expiry of a driving disqualification, from driving before they have successfully been granted a new licence following a medical examination as required by the Secretary of State (under s 94(5) of the Act). The effect of s 13(2) of the Road Safety Act 2006 is that this only applies where the conviction in respect of which the disqualification was imposed is on or after the section came into force.

The **Motor Vehicles (Driving Licences) (Amendment) (No. 2) Regulations 2013, SI 2013/1013** also came into force on June 1. These Regulations amend reg 74 (disabilities requiring medical investigation: High Risk Offenders) of the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864 by prescribing an additional circumstance – disqualification by court order under section 7A of the 1988 Act for failure, without reasonable excuse, to give permission for a laboratory test of a blood specimen – to disabilities requiring medical investigation, but only in respect of orders made on or after June 1.

Allocation and sending

The **Criminal Justice Act 2003 (Commencement No. 31 and Saving Provisions) Order 2013, SI 2013/1103**, came into force on May 28. This Order extends the allocation and sending provisions of Sch 3 to the Criminal Justice Act 2003 to all local justice areas, with savings for persons making their first court appearance before that date. The savings expire on August 30, so that in cases where, by that date: (a) the court has not decided to proceed to summary trial; and (b)the person charged has not been committed or sent for trial, the new procedures will apply.

The **Coroners and Justice Act 2009 (Commencement No. 13) Order 2013, SI 2013/1104** came into force on the same date. Section 19 of the Magistrates' Courts Act 1980 is amended to add criminal convictions in other EC States to those which will be considered in mode of trial proceedings. Crown Court procedure is similarly amended in cases where the indictment is amended to remove the indictable only offence that had required the case to be sent and the Crown Court consequently has to determine mode of trial for any remaining either way offences.

New prosecution guidance

Driving deaths guidance

The CPS has issued revised *Guidance on Charging Offences Arising from Driving Incidents*. Under the new guidance, prosecution will be presumed to be in the public interest in the case of drivers who cause the death of a close friend or family member. However, the DPP has stated that the emotional trauma suffered by the driver and the consequences of bringing a prosecution to those closest to the victim and the driver will be taken into account, with the result that prosecution may be deemed to be 'inappropriate'.

CASES OF NOTE

Death by careless driving – causation

R v Jenkins

In *R v Jenkins* [2012] EWCA Crim 2909, [2013] RTR 21 a lorry driver was making a delivery. He was unable to enter the consignee's premises so he parked on the adjoining highway, blocking most of one side of the road. The lorry was parked at, or shortly before, a right-hand bend on a stretch of carriageway marked with double white lines. Snow was banked high on the verges bordering the road and the sun was very low, seriously impairing road users' vision. The driver left his lights and hazard warning lights on and his engine running. . Ten minutes later a van collided with the lorry, killing its driver. The lorry driver was charged with causing death by careless driving. There was some evidence that the van driver had been driving at excess speed. The defence case was that any relevant driving by the defendant had ceased and there had been a break in causation by the van driver's method of driving. The defendant was convicted and appealed.

The Court of Appeal (McCombe LJ, Foskett and Eder JJ) dismissed the appeal. The driving does not need to be coterminous with the impact causing death (see *R v Skelton* [1995] Crim L R 65). The question was simply whether the driving had played a part in causing death, and not simply creating the occasion of the fatality. There had been ample evidence on which the jury could find that by positioning the lorry as he had the defendant had driven carelessly and that this had caused the fatality. (Their Lordships did, however, allow the appeal against sentence and reduced the prison term from 20 to 15 months.)

Appeal against revocation of driving licence

Goldring v Secretary of State for Transport

In *Goldring v Secretary of State for Transport* [2013] EWHC 300 (Admin), [2013] RTR 20 G's licence was revoked on medical ground, two months after an accident when G had been on medication. G appealed to the magistrates' court. By the time the appeal was heard G was no longer on medication and his problems were in remission. However, the justices determined that the appeal should be decided on the material that was before the original decision maker, and that the Secretary of State had made a reasonable decision on that basis of that material.

The Administrative Court (Kenneth Parker J) upheld G's appeal by way of case stated. Appeals under s 100 of the RTA 1988 are in the nature of a hearing de novo and not in the form of a judicial review, and the task of the court is to decide whether or not the original decision remained correct on the material before the court. Moreover, it is incumbent on the court to specify the relevant disability where it refuses an appeal, which in this instance it had failed to do.

Recovery of vehicle hire charges

Singh v Yaqubi

In *Singh v Yaqubi* [2013] EWCA Civ 23, [2013] All ER (D) 225 (Jan), [2013] RTR 15 the claimant, one of two partners in a property development business, was driving a Rolls Royce. This was one of seven prestigious vehicles owned by the partnership. All were insured on a single policy. The respondent's vehicle struck the Rolls Royce. During its repair, the claimant hired a replacement Rolls Royce at a cost of £2,000 per day. He sought as part of his claim to recover these charges from the respondent. The judge rejected this claim in its entirety on the ground that the claimant had not established a reasonable need, on the part of the partnership, for a replacement Rolls Royce and, even if the claim had been allowed, only a vastly reduced sum would have been awarded.

The Court of Appeal (Pill, Black and Sir Stanley Burnton LJJ) dismissed the claimant's appeal. The need for a replacement car is not self proving. The partnership owned seven prestigious vehicles. There was no detail given of their use or of the use of the Rolls Royce before it was damaged. At best, the evidence was of a very general kind. A complainant must show reasonable

need for a replacement car to place a burden of proof on the respondent. While this can often be inferred, on the evidence in the present case the judge was not required to draw such an inference. The required need was the need of the partnership and here it had not been established.

Sentencing: causing death by dangerous driving – child dependants and art 8

R v Petherick

In *R v Petherick* [2012] EWCA Crim 2214, [2013] 1 WLR 1102, [2013] 1 Cr App R (S) 177 the appellant, aged 22, spent an evening with a group of friends drinking brandy. She then drove them to an off licence to buy some more. On the return journey she drove too fast along an urban high street. Some passengers were urging her to drive faster, others urged the opposite. She overtook two cars, but on attempting to overtake a third she failed to return to the correct side of the road and collided with a bus. One of her passengers suffered fatal injuries, another suffered serious injuries. She had driven at a speed of at least 60 mph in a street subject to a 30 mph limit and breath test analysis showed she was just over twice the limit. Her car had failed its MOT and should not have been on the road. She pleaded guilty at the first opportunity. She was the sole carer for her then 16-month-old son. She appealed against her sentence of four years nine months imprisonment, principally on art 8 grounds.

The Court of Appeal I (Hughes, VP LJ, Wilkie and Popplewell JJ) agreed with the judge's starting point of eight years after a trial, reduced this by one third to reflect the early plea of guilty, and then further reduced the sentence by 18 months on account of the personal mitigation and the likely effect on her young child. This resulted in a sentence of three years and 10 months.

Sentencing: dangerous driving and grievous bodily harm

R v Styler

In *R v Styler* [2012] EWCA Crim 2169, [2013] 1 Cr App R (S) 620 the appellant pleaded guilty to two counts of inflicting grievous bodily harm, dangerous driving, perverting the course of justice and excess alcohol. He spent a full day and evening drinking with his wife and a friend. Then, at around 23:00, he was seen driving his vehicle at excessive speed in built up areas for a distance of about a mile. His car then ploughed into two young women at a speed of 56–58 mph. One suffered a broken leg, two broken ribs, a punctured diaphragm, a bleeding spleen, whiplash and a fracture to the base of her skull. The other suffered a fractured leg and required surgery. The vehicle was found burnt out about four miles away. The police went to the appellant's home and found a washing machine operating with his clothes inside it. By the next day he had shaved off his beard. He surrendered at a police station where he said he had no memory of the incident and had been very drunk. The judge imposed sentences of four years' imprisonment for each of the GBH offences, with 18 months' imprisonment consecutive for

perverting the course of justice. The sentence for dangerous driving was 22 months, concurrent (with no separate penalty for the drink driving offence – back calculation showed he had been twice the legal limit at the time of the accident). The appellant was also banned for 10 years.

The Court of Appeal (Richards LJ, Openshaw J and Judge Ford QC) reduced the sentences for the GBH offences to three years, and the sentence for dangerous driving to 18 months. The GBH offences would have merited sentences of four years after a trial, but a reduction of 25% was appropriate in view of the pleas of guilty, and a like reduction was appropriate for the dangerous driving offence, thus bringing the total down to four years and six months' imprisonment.

Sentencing: causing death by dangerous driving – young offender

***A-G's reference* (*No 40 of 2012*)**

In *A-G's reference (No 40 of 2012)* [2012] EWCA Crim 2531, [2013] 1 Cr App R 7 the female offender (19) met her male friend at a pub. They left driving their respective cars home. The offender drove at an erratic speed, followed by the other car. The two cars travelled at increasing speed, with occasional sudden halts, down a bus lane, across a roundabout without stopping until they reached a busy road with a 30-mph limit. At this point their average speed was 69 mph. The offender braked as the two cars approached a bend, and the other car overtook her, narrowly missing a head-on collision with another vehicle. As it did so the driver lost control, his car overturned, mounted the pavement and struck two cyclists, one of whom died of her injuries. The other cyclist was seriously injured. The offender contested the case, claiming she had not been speeding or racing and had in no way encouraged her friend to drive as he did. She was convicted and sentenced to 18 months' custody. Her friend, who pleaded guilty, was sentenced to seven years' imprisonment. The Attorney-General challenged her sentence as being unduly lenient.

The Court of Appeal (Sir John Thomas (P), Kitchin LJ and Cox J) increased the sentence to three-and-a-half years' detention. The case fell within level 2 of the guidelines. The underlying cause of what had happened was her decision to be in the chase. She was of previous good character and relatively young. The starting point was five years, but her good character, immaturity and the judge's finding that she had not speeded up to prolong the other driver's manoeuvre justified a slight reduction.

Sentencing: careless driving and perverting the course of justice

R v Kruger

In *R v Kruger* [2012] EWCA Crim 2166, [2013] 1 Cr App R (S) 117 the appellant, dressed only in underwear, was travelling at a relatively high speed when he struck a vehicle in front, causing the other vehicle to end up on the

wrong side of the road and his own vehicle to fall into a ditch, where it was stuck. The occupants of the other vehicle suffered minor injuries. When paramedics arrived the appellant said he had been chasing after his girlfriend, but he later told the police she had been driving and had run off. This resulted in her arrest and detention for 10 hours before being released without charge. The appellant was charged with perverting the course of justice and careless driving. He pleaded guilty to both offences. The judge imposed 10 months' imprisonment for the former offence, with no separate penalty for careless driving, but disqualification for two years plus an extended driving retest.

The Court of Appeal (constituted as in *Styler*, above) rejected the submission that the judge's starting point of 15 months was 'manifestly excessive', albeit it was 'severe'. If careless driving had been the sole charge the disqualification would have been manifestly excessive. However, it was not the sole charge and the appellant had a previous conviction for dangerous driving from which he had only regained his licence a year before the present incident. (The extended retest was, however, quashed, since such an order only applies where disqualification is mandatory.)

Sentencing: careless driving by failing to take precautions

R v Rigby

In *R v Rigby* [2013] EWCA Crim 34, [2013] RTR 23 the defendant had been insulin dependent for 33 years. He said he always recognised the warning signs of a hypoglycaemic fit. On the day in question he found his blood sugar level to be extremely high and he gave himself extra insulin before lunch. Despite this, he fell into a condition consistent with a hypoglycaemic episode which had come on without warning, while driving at the speed limit on a well lit but icy road. Because of the icy conditions pedestrians were walking in the carriageway. The defendant's car struck one of them with fatal consequences. The defendant pleaded guilty to causing death by careless driving and was sentenced to 16 months' imprisonment, ten years' disqualification and an extended re-test.

The Court of Appeal (Pitchford LJ, Cranston and Haddon-Cave JJ) allowed the appeal against sentence. The defendant was unaware of the steps recommended by the DVLA, which included carrying his meter at all times and always testing himself before driving, though there was evidence that such ignorance was common. The defendant took too much insulin before lunch and this would have contributed to the episode. A number of factors would have pre-disposed the defendant to hypoglycaemia at any time, though the defendant believed he was hypoglycaemia aware on this occasion. The sentencing judge placed great emphasis on the defendant's failure to check his blood-sugar level before making the journey and found this to be akin to somebody imbibing a significant amount of alcohol. The Court of Appeal held that this was an erroneous comparison. The defendant's culpability was nowhere near as great. The SC guidelines were not applicable to a case of

failing to take precautions before driving. Persons with this condition have a duty to take care and to comply with DVLA advice. The case crossed the custody threshold, but the circumstances were exceptional and a short sentence was sufficient. The defendant had already served the equivalent of a sentence of four months' imprisonment and the Court directed his immediate release (there was no appeal regarding the disqualification).

Causing death by careless driving: length of disqualification

R v Bagshawe

In *R v Bagshawe* [2013] EWCA Crim 127, [2013] Crim L R 524 the defendant (86) pleaded guilty to causing death by careless driving. He crossed the southbound lane of a carriageway, intending to halt in the central reservation and drive north on the northbound carriageway. As he pulled out very slowly the front wing of his car was struck by a motorcyclist, who died at the scene. It appears that neither motorist had been aware of the other. The defendant was sentenced to a community order with 150 hours of unpaid work, and disqualified for three years with an extended retest. The appeal was limited to the disqualification, but was unsuccessful. Where a case did not fall into the bottom category the sentencing judge could increase the disqualification by a factor. Disqualification had the dual aims of punishment and prevention. Reference was made to the factually similar cases of *Campbell* [2009] EWCA Crim 2459, (2010) 174 JP 73, [2010] Crim LR 241 and *Larke* [2009] EWCA Crim 870, [2010] 1 Cr App R (S) 5. In the former, the disqualification of three years was not challenged. In the latter, the defendant was disqualified until passing an extended driving test and the court had noted she did not intend to drive again.

Sentencing: aggravated vehicle taking and driving while disqualified

R v Morley

In *R v Morley* [2013] EWCA Crim 609, (2013) ALL ER (D) 84 (May) between six o'clock in the morning and two o'clock in the afternoon, a motorcycle was stolen during a burglary. That evening, police officers saw the defendant doing 'wheelies' on the stolen motorcycle. When the officers approached in their car he speeded up and careered away at around 50 miles an hour. The area was one where a speed limit of 30 miles an hour applied. The road conditions were good and the weather was dry, but there were parents with children and teenagers out and around on the streets and the pavement at the time. As he fled, the defendant was seen to skid very hard on the bike and to take a sharp right turn. Three pedestrians who were about to cross the road had to step back out of his path. He then drove the motorbike past a primary school where children were playing by the side of the road, made another right turn past some busy shops, and then mounted the pavement, riding between a group of teenagers before rejoining the road and speeding off again. He eventually stalled the bike and, despite repeated

attempts, was unable to restart it. He abandoned the machine and ran off. An officer on foot chased after him, and finally he was stopped when a dog handler threatened to release the dog in his direction. The distance driven was about one mile. The defendant, aged 24, pleaded guilty to aggravated vehicle taking and an offence of driving whilst disqualified. He had previous offences, including one for a driving offence. The defendant was sentenced to 16 months' imprisonment for the aggravated vehicle taking and four months' imprisonment for driving whilst disqualified. The sentences were ordered to be served consecutively. The defendant was also disqualified for five years thereafter and until an extended driving test was passed. The defendant appealed against sentence.

The Court of Appeal (Laws LJ, Irwin and Cranston JJ) allowed the appeal. Taking both offences together and considering totality, the overall outcome was too high, given that the judge passed two sentences each at the top end of the range and directed that they should be served consecutively. Further, as to the disqualification, the court had repeatedly stated that periods of disqualification should not be too long. Here, a five year period would represent disqualification for some three-and-a-half years beyond the end of the sentence, and of course longer beyond any expected date of release. The appropriate course was to order that the two sentences should be served concurrently rather than consecutively. The period of disqualification would be quashed as being excessive and would be substituted by a period of two years.

Forfeiture orders

R v Lee

In *R v Lee* [2012] EWCA Crim 2658, [2013] 2 Cr App R (S) 18 the appellant kidnapped his daughter's boyfriend as a result of her complaint that he had assaulted her. As part of the sentence, the court order forfeiture of the van he had used for this purpose. The appeal was limited to this order.

The Court of Appeal (Richards LJ, Parker and Popplewell JJ) dismissed the appeal. The forfeiture provisions were meant to be penal. The victim had been seriously assaulted in the van. The judge had had regard to the value of the van, but had determined that its loss would have only a marginal impact on the appellant's earning power. The van had been an integral tool in the attack and the order did not add to the punishment in a way which was grossly disproportionate.

Pleading guilty on a basis

The following guidance was given in *R v Cairns; R v Morris; R v Rafiq; R v Firfire* [2013] EWCA Crim 467, [2013] All ER (D) 12 (May).

- A basis of plea should not be agreed on a misleading or untrue set of facts and had to take proper account of the victim's interests. In cases involving multiple defendants the bases of plea for each defendant had to be factually consistent with each other.

- The written basis of plea had to be scrutinised by the prosecution with great care such that if a defendant sought to mitigate on the basis of assertions of fact outside the prosecutor's knowledge, the judge ought to be invited not to accept that version unless given on oath and tested in cross examination. If evidence was not given in that way, then the judge might draw such an inference as he thought fit from that fact.
- The prosecution advocate had to ensure that the defence advocate was aware of the basis on which the plea was accepted and the way in which the case would be opened. Where a basis of plea was agreed it ought to be submitted to the judge prior to the opening. It should not contain matters that were in dispute. If it was not agreed, the basis of plea ought to be set out in writing identifying what was in issue and if the court decided that the dispute was material to sentence, it might direct further representations or evidence in accordance with the principles set out in *Newton*.
- Both sides had to ensure that the judge was aware of any discrepancy between the basis of plea and the prosecution case that could potentially have a significant effect on sentence so that consideration could be given to holding a *Newton* hearing.
- Even where the basis of plea was agreed between the prosecution and the defence, the judge was not bound by such an agreement. However, if the judge was minded not to accept the basis of plea in a case where that might affect sentence, he must say so. Further, there was no obligation to hold a *Newton* hearing: (i) if the difference between the two versions of fact was immaterial to sentence; (ii) where the defence version could be described as 'manifestly false' or 'wholly implausible'; or (iii) where the matters put forward by the defendant did not contradict the prosecution case but constituted extraneous mitigation where the court was not bound to accept the truth of the matters put forward whether or not they were challenged by the prosecution.
- At the conclusion of a *Newton* hearing, to meet the requirements of the defendant and the wider public, the judge had to provide a reasoned decision as to his findings of fact and thereafter, following mitigation, proceed to sentence.
- Furthermore, after conviction following a trial, a judge was bound to honour the verdicts of the jury but, provided he did so, was entitled to form his own view of the facts in the light of the evidence. However, it was not correct to say that a *Newton* hearing was never appropriate after a trial. If an issue not relevant to guilt but relevant to sentence had not been canvassed in the trial, a further hearing might be necessary.

Amending charges

Crann v Crown Prosecution Service

In *Crann v Crown Prosecution Service* [2013] EWHC 552 (Admin), [2013] ALL ER (D) 242 (May) in September 2011, the appellant was arrested on

suspicion of driving with excess alcohol. He was threatening self-harm at the time. When he was asked to provide a specimen of breath, he failed to do so, stating that he was 'not right in the head'. A police officer accepted that there was a valid reason for not providing a specimen of breath at the time. However, later the officer asked the appellant to provide a specimen of blood, which he refused, stating that he was 'terrified of needles'. On the following day, an information was proffered by the CPS alleging that he had failed, without reasonable excuse, to provide a specimen of breath for analysis. The appellant's advisers notified the CPS that the charge was incorrect when the appellant appeared in response to that charge. On the day of the trial, the magistrates' court granted the CPS leave to amend the charge to allege that the offence was one of failing to supply a specimen of blood and the matter was adjourned. The justices had followed the case of *Williams v Director of Public Prosecutions* [2009] EWHC 2354 (Admin), [2009] All ER (D) 292 (Jul) (Williams) and applied the interests of justice test. They decided to allow the amendment, as the appellant would not face a more serious charge than had already been charged. The appellant pleaded guilty to the amended charge and was sentenced to a community order for 12 months, with 50 hours of unpaid work. He was disqualified for 16 months subject to a four month reduction upon successful completion of a drink-drive rehabilitation course. The appellant appealed against the amendment of the charge by way of case stated.

The Administrative Court (Foskett J) dismissed the appeal. *Williams* established that it was a clear and long-standing principle that justice had to be delivered with promptitude. Where there had been a fundamental failure on the part of the prosecution properly to have regard in its preparation of a case to the observance of the Crim P R, particularly in the case management hearing, and to the interests of justice, those interests would be best served by disallowing the amendment to the charge. However, while the justices had not said expressly that they had taken into account the need for the delivery of justice with promptitude, the whole of the case of *Williams* had been drawn to their attention. Although another bench might have decided the matter differently, their decision could not be characterised as outside the band of reasonable responses to the issues that had fallen to them to consider.

Adjournments

R (on the application of DPP) v Ipswich Magistrates' Court

In *R (on the application of DPP) v Ipswich Magistrates' Court* [2013] EWHC 1388 (Admin), [2013] All ER (D) 1 (Jun) the claimant challenged the defendant Magistrates' Court's decision to refuse to adjourn a trial because of the non-attendance of prosecution witnesses. In February 2012, the interested party had been charged with an offence of domestic violence under s 39 of the Criminal Justice Act 1988. The trial was listed for April 2012 but was adjourned on the application of the interested party and re-listed for September 2012. The April trial was due to take place in the afternoon. The new trial date was for a morning start. On the date, it transpired that the Crown Prosecution Society had failed to fully update the file and witnesses

had been advised to attend in the afternoon as originally listed. Once the reason for their non-attendance had been discovered, the CPS requested an adjournment. The Justices, having taken advice from their legal advisor, decided to refuse an adjournment. The claimant missed the opportunity to appeal by way of case stated and so issued judicial review proceedings. The court gave consideration to the Criminal Procedure Rules 2012.

The Administrative Court (Mitting J) dismissed the application. The Justices had fully had in mind the extent of the eight-month delay already incurred and the further five-month delay that would occur if the trial was to be adjourned for a second time. The Justices had been entitled to take into account that considerable delay in deciding to refuse to adjourn the trial. Moreover, because of the CPS error, it would not have been possible to fulfil the overriding objective set out in the Criminal Procedure Rules 2012. The previous adjournment was a neutral factor, but the Justices were entitled to take into account that an old case would become increasingly stale as a result of a further adjournment.

Re-opening convictions under s 142 of the Magistrates' Courts Act 1980

DPP v Chajed

It was held in *DPP v Chajed* [2013] EWHC 188 (Admin), [2013] 2 Cr App Rep 60, 177 JP 350, 177 CL&J 63, [2013] All ER (D) 119 (Jan) that s 142 of the Magistrates' Courts Act 1980 is a not power equivalent to an appeal or a general review; accordingly, once the court has returned a guilty verdict the defendant is not entitled to make further submissions with a view to persuading the court to change its mind and substitute a not guilty verdict.

Use of force to prevent crime

R v Morris

In *R v Morris* [2013] EWCA Crim 436, [2013] RTR 22, [2013] All ER (D) 134 (Apr), [2013] WLR (D) 140 the defendant was a taxi driver. On 12 March 2011, in the early hours, he accepted a fare consisting of four men including MW. The men had emerged from a casino having spent the evening together. Another of the four men, JT, stated that he had specifically told the defendant that there would be two destinations. At the first destination, three of the men, including MW, left the taxi. JT was left in the taxi and intended to pay the fare. The defendant did not realise that he still had JT in the taxi and, believing that the men had tried to evade paying for the fare, drove onto the pavement and subsequently caused MW to fall to the ground and suffer a broken ankle. Thereafter, the police attended but were unable to interview the four men due to their state of intoxication.

At trial, the prosecution's case was that the defendant had deliberately driven his taxi onto the pavement at speed, pursued the men and driven into MW causing him to fall under the taxi. That had been dangerous driving. The defendant submitted that, although he had not looked back into his taxi, he

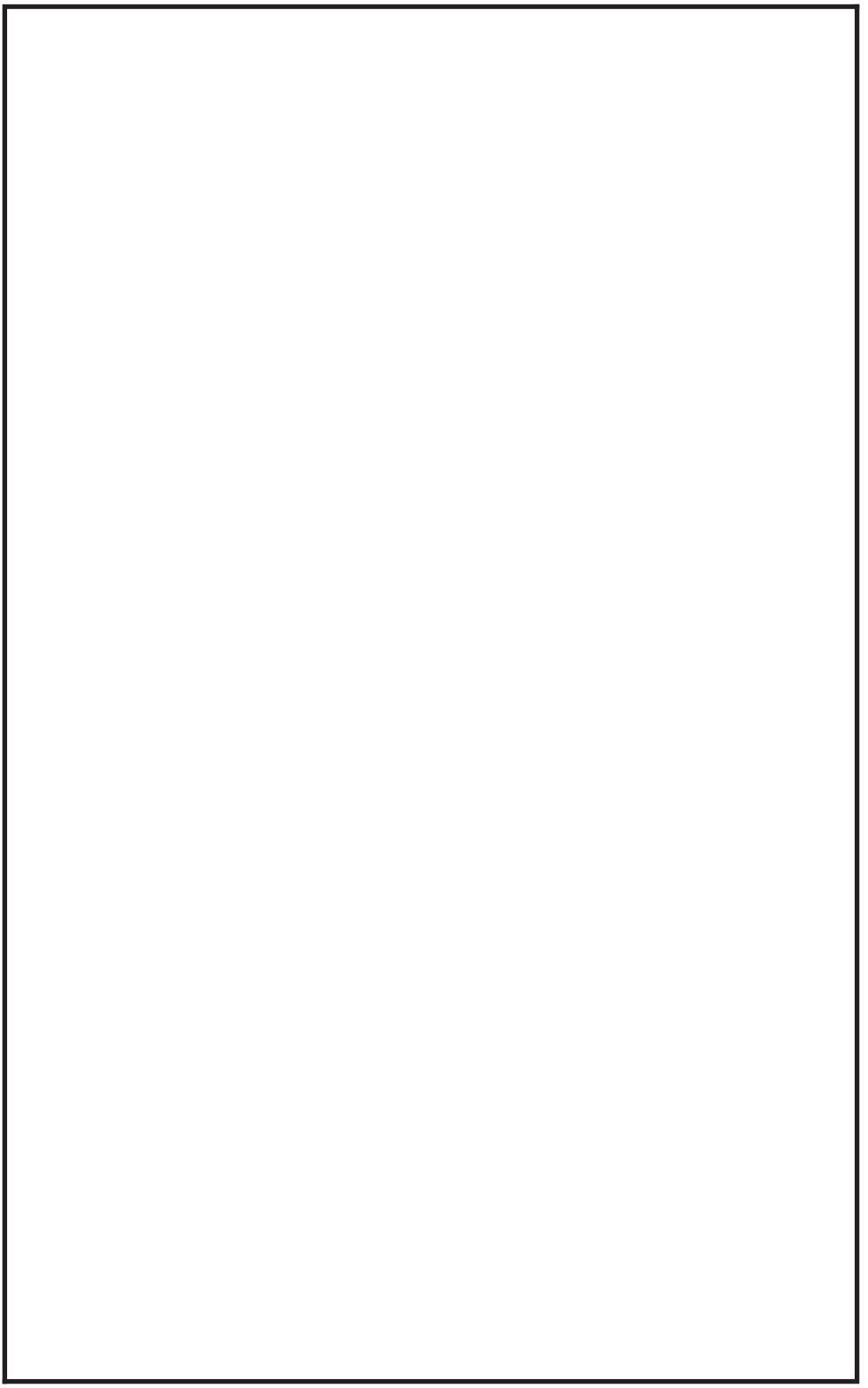
had believed that the men had shared an intention of making off without payment of the fare. He had driven at a slow speed to block the escape of the men, whereupon MW had fallen over the bonnet of the car and then onto the ground. The defendant further submitted that those actions had been reasonable.

Before considering the issue of dangerous (or alternatively careless) driving, the jury had to consider the general defence contained within s 3(1) of the Criminal Justice Act 1967 which provided that a person might use such force as was reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large. The judge ruled that the only defence that could be left to the jury was the latter; the defendant could not have been preventing a crime under the first limb of s 3(1) of the Act because the offence of making off without payment had been made out (and completed) when MW and his friends had alighted from the taxi. The judge proceeded to give directions to the jury, which dealt with, amongst other things, the use of force in effecting the lawful arrest of a suspected offender. The defendant was convicted of dangerous driving and appealed against conviction.

The Court of Appeal (Lord Justice Leveson, Mr Justice Mitting and Mr Justice Males) allowed the appeal. If, as the defendant had contended in the case, he had honestly believed that the men were making off without payment, he had been entitled to use reasonable force to prevent the commission of that offence; the jury would have thus been required to consider whether driving onto the pavement (howsoever that occurred) had been the reasonable exercise of the use of force. The judge had not dealt with the possibility that the jury could conclude that the defendant had been acting to prevent crime because he had concluded, as a matter of law, that once the passengers had moved away from the window of the taxi they had 'made off'. The judge had thereby failed to ensure that the jury had focussed on what the defendant honestly believed had been the facts before using their conclusions as to that belief to go on to decide whether he might have had reasonable grounds for suspecting that an offence was being committed and crucially, whether the force used might have been reasonable. Therefore, there had been an error of law in the direction of law that the jury had been given and the conviction was unsafe.

The Court added, however, at paragraph 22:

> '22. In the circumstances, we accept the submission that there was an error of law in the direction of law that the jury were given. *Although we have real reservations about the question whether a jury properly directed could ever have concluded that the use of force in this case was or may have been reasonable and, thus, that the offence of dangerous driving was not made out*, in the light of the failure to focus on the honest belief of the appellant, we conclude that the conviction is unsafe [emphasis added].'



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