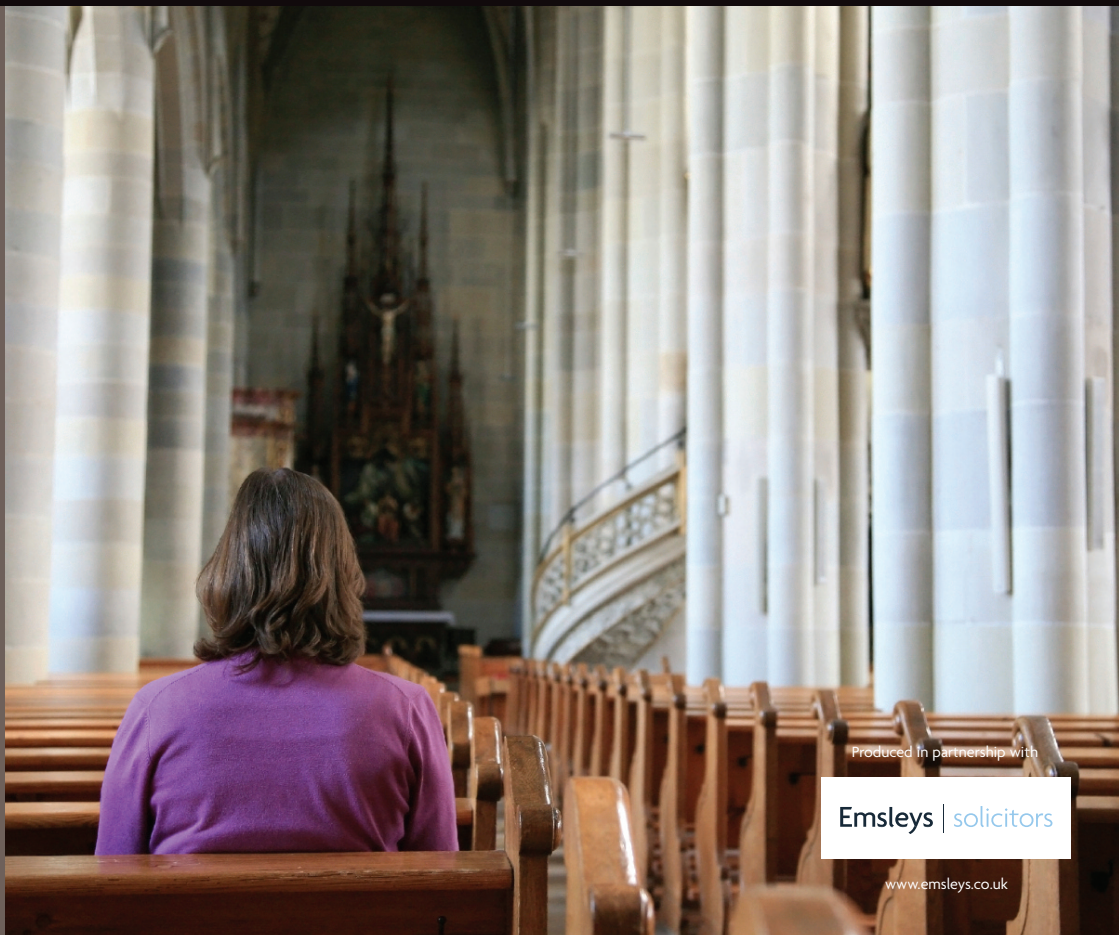




INFORMATION HANDBOOK 1

Criminal Law: Implications after road death or injury



Produced in partnership with

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1. Introduction

Following an incident on the road, involving a motor vehicle and a serious or fatally injured person, the Police will be called upon to investigate the circumstances of the incident. Depending on the seriousness of the incident, a Senior Road Traffic Officer (usually of Sergeant rank or above) will take on the Senior Investigator's role. He or she will be assisted by a member of the Collision Investigation Unit or Accident Investigation Branch. These are highly trained and technically proficient road traffic officers. Together, the Police will gather evidence with the aim of passing a file of papers containing all the evidence which they have obtained to the Crown Prosecution Service. The Crown Prosecution Service is the Government department responsible for prosecuting criminal cases investigated by the Police in England and Wales.

As the principal prosecuting authority in England and Wales, the Crown Prosecution Service is responsible for advising the Police on cases for possible prosecution, reviewing cases submitted by the Police, deciding any charges in all but the most minor cases (in these cases, the Police themselves can decide on what charge is to be preferred). The Crown Prosecution Service prepares cases for Court and presents cases at Court also. The Crown Prosecution Service is independent of the Police. They are not obliged to follow the Police's own observations or opinions.

The Parties Involved

The Crown Prosecution Service will handle the prosecution and will prosecute a Defendant. The Defendant in road traffic collisions will usually be the driver of the vehicle involved. Whilst the vast majority of prosecutions are undertaken this way, there is still the right for a private individual to commence a criminal prosecution. There is an evidential burden which remains on the private individual who would have to satisfy the Magistrates Court that there is a *prima facie* case for a defendant to answer before a proper prosecution would be allowed to proceed. This evidential burden, coupled with the fact that there is no legal aid available means that usually the cost of such legal representation and thus the private prosecution is beyond the means of most people. The Crown Prosecution Service is normally quite approachable, particularly if you approach them with your lawyer. Meetings can be arranged to explain why actions are being taken and most Crown Prosecution Service lawyers are happy to discuss the case with you.

We would always recommend using this opportunity to meet the Crown Prosecution lawyers since it provides an insight into the procedure and the approach of the Prosecution Service.

Burden & Standard of Proof

The first stage in the process is the decision to prosecute. The Prosecution Service has to be satisfied that there is enough evidence to provide a realistic prospect of conviction against the Defendant. They have to consider whether evidence is reliable and safe, and they also have to consider what the Defendant's case may be to answer the prosecution. It is an objective test. There is a subtle but important difference in the evidential test which the Crown Prosecution applies before a prosecution will be undertaken ("a realistic prospect of conviction") and the formal criminal law standard of proof which is that a person must be convicted only if a Jury or a Magistrate's Court is satisfied beyond all reasonable doubt of a Defendant's guilt. If the Crown Prosecution Service is not satisfied that the case would not pass that evidential test, it would not proceed.

Once the Crown Prosecution Service is satisfied that the evidential test is passed, then they have to decide whether a prosecution is needed in the public interest. They balance factors for and against prosecution. The code for the Crown Prosecutors is available to view at

www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html

The burden of proof in the Criminal Courts remains on the prosecution in nearly all cases. Only in very rare circumstances does the burden shift to the Defendant. As explained above, the standard of proof is that the prosecution has to prove its case beyond all reasonable doubt. In simple terms, therefore, if a Defendant can demonstrate an element of doubt or fallibility in the Prosecution's case, then the Defendant is entitled to be acquitted.

Common Offences

The main Act which governs criminal driving offences is the Road Traffic Act 1988. You will hear the Crown Prosecution Lawyers and Police Officers talking about various sections of this act, including Section 1, Causing Death by Dangerous Driving; Section 2, Dangerous Driving; Section 2B, Causing death by careless driving; Section 3, Careless or Inconsiderate Driving; Section 3A, Causing Death by Careless Driving whilst under the influence of Drink or Drugs.

The offence of causing death by dangerous driving carries a maximum 14 years in prison. The meaning of dangerous driving which applies to both Sections 1 and 2 of the Road Traffic Act (as amended by the Road Traffic Act 1991) means that a person is to be regarded as driving dangerously if the way that person drives falls far below what would have been expected of a competent and careful driver and that it would be obvious to a competent and careful driver that driving in that way would be dangerous. The meaning of dangerous driving also extends to the situation where it would be obvious to a competent and careful driver that driving that vehicle in its current state would be dangerous too.

Careless driving involves a person driving a vehicle without due care and attention or without reasonable consideration.

The Road Safety Act 2006 introduced new offences of causing death by careless driving and causing death by driving whilst unlicensed, uninsured or disqualified. They came into force in August 2008.

Now, causing death by careless or inconsiderate driving (a new Section 2 B was inserted into the Road Traffic Act 1988) permits a maximum sentence of 5 years imprisonment if the matter is dealt with at the Crown Court or 12 months maximum if the matter is dealt with in the Magistrates Court.

Section 21 of the Road Safety Act 2006 Section 21 of the Road Safety Act 2006 introduces a new charge into the Road Traffic Act 1988 of causing death by driving whilst unlicensed, disqualified or uninsured. Maximum sentence is 2 years in the Crown Court or 12 months in the Magistrates Court.

Procedure

All criminal offences in England and Wales must start in the Magistrates Court that is local to the place where the incident occurred, in other words, it matters not where the deceased or the injured person lived, nor where the Defendant lives, but where the incident occurred. Some criminal driving offences are called indictable only. This means that they must be heard at a Crown Court before a Crown Court Judge who passes sentence. If a trial occurs in the Crown Court it occurs before a Jury who decide guilt, not the Judge. The case goes before a Jury only if a person is pleading not guilty to an offence. If a person pleads guilty to an indictable only offence, then he or she receives their sentence from a Crown Court Judge.

Whereas indictable only offences have to be heard in the Crown Court, a lower Court (the Magistrates Court) can hear offences which are summary only offences (careless driving) or offences which are either way, that is, they can be tried and heard either in the Magistrates Court or the Crown Court. Causing death by dangerous driving is indictable only, and all the other offences mentioned above are either way offences, save for careless driving which is summary only and therefore can only be dealt with by the Magistrates Court. The Magistrates Court, when dealing with an either way offence, may decide that its powers of punishment are too low and they will then send the Defendant to the Crown Court so that a greater sentence can be passed than they otherwise would have been able to pass.

Magistrates Court & the Crown Court

The Magistrates Court normally comprises of three lay Magistrates who are not legally trained and who receive assistance in legal technical points by a Court Official known as a legal adviser. A Magistrate (Justice of the Peace) receives some training and will be given sentencing guidelines so that he or she has an idea of the standard tariff for any individual offence. It is a quirk of the English Legal System that there are sometimes differing approaches in differing areas, so that certain Magistrates Courts would appear to be more “severe” than others who would be regarded as more “lenient”. In some larger Magistrates Courts, there are District Judges who are professional Judges, usually former Senior Criminal Solicitors or Barristers who are paid a salary and who sit as a Judge determining Magistrates Court criminal matters.

The Crown Courts are presided over by Crown Court Judges who were formerly senior Barristers or senior Solicitors and who have specialised in criminal law for many years. They have access to tariff guidelines and because of the severity of the charges which the Defendants face in the Crown Court, it is much more usual for a custodial sentence to be handed down by Crown Court Judges by lay Magistrates. Whilst a Judge deals with the sentencing of an individual, an individual of course is only sentenced once he or she is found guilty. That role of determining guilt in the Crown Court is left to the Jury which consists of 12 individuals, each of whom is selected at random for Jury Service. A Jury can make no recommendation about sentence to the Judge; their role is simply the determination of guilt.

Sentences

Section 1 offences carry a maximum of 14 years imprisonment and a minimum of 2 years disqualification from driving, the requirement to sit a test before any new driving licence is granted after disqualification and an unlimited fine. A dangerous driving offence carries a maximum of 2 years imprisonment if dealt with by the Crown Court and a maximum of 6 months imprisonment if dealt with by the Magistrates Court. There is a mandatory disqualification and the requirement for a re-test. There is also an unlimited fine in the Crown Court and a maximum fine of £5,000.00 in the Magistrates Court.

Causing death by careless driving whilst under the influence of drink or drugs (Section 3A of the Road Traffic Act) is indictable only and carries a maximum penalty of 14 years imprisonment and disqualification for 2 years followed by an extended re-test.

Section 2B of the Road Traffic Act 1988 (causing death by careless or inconsiderate driving) is an either way offence and carries a maximum of 5 years imprisonment in the Crown Court or 12 months in the Magistrates Court. There is a 12 month minimum disqualification.

Causing death by driving unlicensed, uninsured or disqualified is an either way offence. In the Crown Court it carries a maximum sentence of 2 years and in the Magistrates Court a 6 month prison sentence. Disqualification is for a minimum of 12 months.

Careless driving under Section 3 of the Road Traffic Act is a summary only matter and can therefore only be tried in the Magistrates Court. The offence is not imprisonable and disqualification is only discretionary.

Appeals

If the Defendant is unhappy about a decision the Magistrate's Court has made, then subject to legal tests being satisfied, an Appeal can be made. From the Magistrates Court, an Appeal could be made to the Crown Court by the Defendant where a Crown Court Judge sits usually with two Magistrates and determines the Appeal jointly with them. If the Defence is unhappy about a Crown Court decision, then an Appeal can be made, subject again to legal tests, to the Court of Criminal Appeals sitting in London. The Appeal is initially normally dealt with on paper, but occasionally requires a hearing. The right for the Crown Prosecution to Appeal in relation to a conviction or sentence is more limited than that available to a Defendant.

Time Limits

All summary only offences, for example, some Section 3 or simple speeding offences, must be charged in a Magistrates Court within a 6 month period of the incident which is the subject of the complaint. Once this 6 months period has lapsed, no summary offence can be charged.

On the other hand, indictable only offences have no such time limit.

If you have any questions about the contents of this book please call our office on **01484 723649** between 9am - 5pm Monday to Friday.

Our help line is available between 9am - 9pm, 365 days a year.
Please call if you think we may be able to help, or if you would just like someone to talk to.

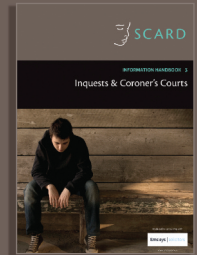
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Andrew Greenwood solicitor at Emsleys for SCARD.

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