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Death By Careless Driving

Andrew Swan, Solicitor in the Regulatory & Motoring Defence Unit at leading North East law firm, Ward Hadaway, addresses the new offence of Death by Careless Driving.

For many years, driving without due care and attention, or careless driving as it is more commonly known, has carried a maximum penalty of £2,500 and an endorsement of up to 9 penalty points on the licence. This is the case even if a death resulted from the poor driving. The death is not taken into consideration, unless the driver is under the influence of drink or drugs at the time. Death caused by dangerous driving on the other hand carries a maximum sentence of 14 years in prison.

The offence of careless driving is committed when the driving falls below the standard of a reasonable, prudent and competent driver in all the circumstances of the case.

Dangerous driving occurs when the way in which a person drives falls far below what would be expected of a competent and careful driver, and it would be obvious to such a driver that the driving was dangerous.

The difference between the two offences therefore is a question of how far below the minimum acceptable standard did the driving fall. This has clearly been a very important point for the friends and families of victims of poor driving. The death of their loved one only being relevant if the driving was deemed to be dangerous.

All is about to change. Following amendments to the Road Safety Bill in 2005 the new offence of Death by Careless Driving received Royal Assent in November 2006 and is due to come into force in March or April of this year. The new charge will apply in England, Wales and Scotland and will carry a maximum sentence of 5 years imprisonment.

The Sentencing Guidelines Council has recommended that the normal sentence for the new offence should be 3 years imprisonment and when the careless driving was only a “momentary lapse”, the courts should consider imposing community-based penalties, as opposed to prison.

This clearly is a step in the right direction. With the increased use of mobile telephones and satellite navigation systems, drivers must be reminded of their obligations when getting behind the wheel of a car. For too long, drivers have avoided serious penalties for killing others because the prosecution have been unable to prove their driving amounted to being dangerous. There has also been a history of prosecutors accepting a guilty plea to the lesser offence of careless driving, despite an initial charge of death by dangerous driving. This is a result of plea bargaining.

Critics will say that a maximum prison sentence of 5 years falls far short of the punishment required for the killing of a loved - perhaps worthy criticism. However, the new offence should prevent poor drivers avoiding incarceration when it is due. Hopefully, it will also focus the minds of those drivers putting lives at risk.

By Andrew Swan, Solicitor in the Motoring & Regulatory Defence Unit at leading North East law firm Ward Hadaway.

This briefing is for general guidance only. It represents our understanding of English law and practice as at December 2007, but is not intended to be a comprehensive statement of the law. Readers are advised to seek specific guidance from Ward Hadaway.