

THE MAGISTRATES' ASSOCIATION

ROAD TRAFFIC COMMITTEE SENTENCING POLICY & PRACTICE COMMITTEE

Response to the Department for Transport Road Safety Compliance Consultation

The Magistrates' Association welcomes the opportunity to respond to this high-level consultation on this very important topic. We are happy for copies of this response to be made available to other parties on request.

1. Context

We were pleased to note that the number of road deaths fell in 2007 to under 3,000¹, having stayed static at around 3,200 for the three years 2004 to 2006, and previously hovered around 3,500 for the ten years from 1994 to 2003, but the slower rate of decline than that achieved prior to 1992 does raise concerns that the concentration on speed enforcement through camera technology, at the expense of other road safety measures, may not have produced optimum results over the period.

We generally agree with the statement in **1.12** that the current legal framework of road traffic law is largely satisfactory, and that significant change is not required, so that the objective now should be to ensure better compliance, however we do make some suggestions for legal change in this document.

We welcome the strategies outlined in **1.22** to use skilled police officers to maximum effect. Enforcement of all traffic laws, apart from speeding, depends on the presence of traffic police on the roads, and we regret the deskilling of dedicated Traffic Patrol Officers and that a decreased number of traffic police are now deployed; a reduction by 20% over the last 10 years has been reported.² An increase in the number of traffic police on patrol would be the single most effective measure to enhance the effective enforcement mentioned in **1.17**, in our opinion.

We do not consider that Intelligent Speed Adaptation to be a useful technology to pursue. (**2.24**)

2. Graduated fixed penalties for speeding

We welcome the proposal in **2.39** to implement graduated fixed penalties for speeding. We very much hope that the opportunity can be taken to align these penalties with those the Sentencing Guidelines Council set in the Magistrates Courts Sentencing Guidelines

¹ [Road Casualties GB 2007, table 2](#)

² [Parliamentary answer 21.10.08](#)

(MCSG) which have become definitive on courts. Unfairness and injustice arise if these two branches of the criminal justice system produce quite different results for the same offence. We would prefer to see a more incremental approach with intermediate bands, closer to the MCSG scale, which would avoid the situation that between the lower and higher penalties a 1 mph increase in speed can double the number of points. With the more sophisticated roadside equipment now available we do not anticipate this would produce operational difficulties. For example, the scale might be:

Up to 10 mph over the speed limit -	3 points	[£ 60]
11-15 mph over the speed limit -	4 points	[£ 80]
16-20 mph over the speed limit -	5 points	[£100]
21-30 mph over the speed limit -	6 points	[£120]
More than 30 mph over the speed limit -	Summons	

This might be further developed to be proportional to the speed limit concerned, but illustrates how 4 and 5 point penalties could easily be incorporated and produce a smooth progression and a much better result.

If however the two band approach is adopted, we consider the higher band should apply at 15 mph over the 20 mph limit, at 20 mph over the 30, 40, 50 and 60 mph limits and 25 mph over the 70 mph limit, for proportionality.

There appears to be no upper limit proposed for the higher fixed penalty to apply or any mention made of those grossly excessive speeders who are currently summonsed and face the possibility of an immediate disqualification when they appear in court. We suggest that the fixed penalty system should not operate and a summons should be issued when the excess over the limit is twice that stated in the preceding paragraph.

We strongly oppose the suggestion in **2.42** that the financial penalty should be at the same level as for the lower fixed penalty, because this goes completely against the closer alignment with the MCSG that we regard as so desirable. It must be wrong in principle that a more serious offence should attract no higher financial penalty. When these matters are dealt with in court, the fine is regarded as the main part of the sentence and the points or disqualification as an ancillary order, but this principle seems to be reversed where fixed penalties are concerned. If the reasoning is that a higher proportion of penalties might be paid, this is not thinking applied anywhere else in the criminal justice system. Where we set out above a better graduated scale, we also indicate what the fine might be. With the two band approach proposed in the consultation, in our view it would be appropriate for the fixed penalty to be set at £120, a level already introduced in the recent graduated penalty scheme applying to commercial vehicles.

We agree with the proposal in **2.43** that there should be no downwards graduation below 3 points.

3. Drink driving

We welcome the significant reduction in drink-drive related fatalities in 2007 after the static period noted in **3.1** and would relate that to the increase in roadside breath tests mentioned in **3.6**. We consider an active police presence on the roads is hugely important for road safety, as previously stated, and endorse the view in **3.22** that effective enforcement is the key to tackling the problem. We support the proposals set out in **3.25** and welcome the introduction of improved roadside screening devices described in **3.27** and the data which will result. Evidential roadside breath testing, as set out in **3.28**, would be a further, and very significant, advance.

The alternative of blood or urine sampling on request by a driver marginally over the limit, besides the delays mentioned in **3.29**, introduces a further range of complications into what is already a complex procedure and produces something of a legal minefield for the police to negotiate. We should welcome its abolition, except where a breath test cannot be obtained.

In relation to high-risk offenders (**3.34/3.35**), we consider that the legislation in the Road Safety Act 2006 should now be implemented and that HROs be required to submit a medical report with their application for a new licence. The DVLA reminders could then be reinforced by a warning that a report would be required. We see no reason why HROs should not pay the full cost of the medical examination (**3.36**).

We are pleased that the effectiveness of drink-driver rehabilitation course has been verified (**3.40**) and that an audit of course provision is being undertaken. We have heard anecdotal evidence of some course providers falling below an acceptable standard of provision.

We accept the argument that it is sensible that anyone who has not driven for two years owing to a disqualification should be re-tested to check their competence and support the proposal put forward in **3.43**. Such a requirement would also further encourage some drink-drivers to undertake the rehabilitation course to be able to obtain back their licences without being subjected to re-test. We suggest also that some questions on the subject of drink and driving could usefully be included in the theory section of the ordinary driving test.

As noted earlier, effective enforcement is essential in tackling the problem of drink-driving, and any blood alcohol limit is meaningless unless it is enforced; however it has long been the policy of the Magistrates' Association that the limit should be reduced to 50mg/100ml. We are not able to offer any evidence to support that view, but we note that improved roadside screening devices will provide new data on the numbers that drive over that lower level but below the existing limit and their propensity to drive badly (**3.64**). If the limit is lowered, then the question of the applicable penalty will have to be carefully considered. If it were lowered to conform to the EU norm, as is sometimes urged, then it would be difficult to resist the argument that the penalty should also reflect the customary penalties elsewhere in the EU, but if it were lowered as a result of

evidence of significant safety benefits, then a period of disqualification, even if shorter than the current period of twelve months, could be justified.

Para **3.61** is based on a misapprehension of the current legal position; it is not necessary for police to have “clear evidence of impairment” before they stop a driver for testing. In fact, the comment goes against the whole philosophy of the Road Safety Act 1967 which introduced the breath test regime in the first place. The 1967 Act was designed to catch those drivers who had consumed alcohol to a level that could diminish their ability to drive safely whilst at the same time not displaying any outward signs of impairment. What is required before a breath test is administered is that a driver either commits a moving traffic offence, or is involved in a road traffic accident, or the officer administering the test believes the driver has consumed alcohol.

We do not support a lower limit for new drivers (**3.65**).

4. Seat belts

We have responded to the Home Office consultation supporting the proposal to increase the fixed penalty for non-compliance to £60 (**4.15**).

5. Drug driving

We are well aware of the widespread use of illegal drugs through our court experience, and would support the various proposals and initiatives set out in Section 5.

We should welcome a drug screening device (**5.37**) and support the proposal to legislate so that a police officer is able to require a biological sample for analysis from a driver suspected of being unfit through drugs (**5.39**).

We would support a new offence of driving while an illegal drug is present in the driver’s body, where that illegal drug is capable of impairing ability to drive (**5.44**). We think this should not apply to any drugs legally obtained or prescribed, as the existing law adequately covers those. We suggest that illegal drugs capable of impairing ability to drive should be identified by the addition of an asterisk to their classification under the Misuse of Drugs Act, eg a Class A* drug would be a drug of Class A that might impair driving, whilst a Class A drug would not be so capable. New drugs or new research indicating impairment capability could then be accommodated by the existing mechanism for amending the listings under the MDA.

Now it has been clarified that the only restrictions on the power of courts to order a driving disqualification for any offence are those contained in the enabling act, we think it would be beneficial on safety grounds if courts routinely disqualified persistent drug offenders from driving. Courts could usefully be reminded of this power.

6. Careless driving

Looking at the list of contributory factors to road accidents recorded by police³ it is clear that various forms of what might be considered careless driving are by far the most common contributory causes of accidents, yet enforcement action has fallen to a very low level, and rarely occurs unless a road accident has resulted. **Table 6.3** shows this quite dramatically, even though it appears to understate the fatalities resulting from careless driving. The rate of enforcement needs to be increased very considerably, and we refer again to the need for greater active police presence on the road.

It is suggested in **6.18** that prosecuting careless driving involves a heavy burden of paperwork and is resource-intensive for the police, resulting in an unwillingness to prosecute. This is partially the situation that the recent initiative of CJSSS was introduced to alleviate. Under this, if an indication of plea is given at an early stage of court proceedings, then it is not necessary to complete a full file for the prosecution; the consultation document states the majority of offenders plead guilty, so this should make a real difference. It may well be that attitudes of police and prosecutors have not yet caught up with this new situation. In addition the paperwork should be reviewed with a view to streamlining the process, and anyway adequate resources need to be allocated to an offence which is a more important road safety issue than speeding, but appears to attract only a fraction of the attention and funding.

The Department is well aware of the Magistrates' Association's often repeated and consistent view that careless driving is an unsuitable offence for the offer of a fixed penalty. It is therefore very disappointing to see that this has been ignored, and a statement made (**6.21**) that in 2002 "seven out of eleven magistrates and six out of ten judges surveyed were in favour of the idea" How these eleven magistrates were selected and what precisely they were asked is not stated. Judges do not deal with careless driving offences, except a limited number on appeal. To prefer a six year old unreferenced and frankly meaningless survey to the currently expressed views of a magistrates' specialist committee is seriously to mislead readers of the document about the views of magistrates, and it is difficult to regard this as anything other than deliberate.

To repeat again the point made many times at meetings of the Fixed Penalty Procedures Working Group, careless driving covers a wide range of behaviour from minor inattention, to driving that is only just below the level of dangerous, and the penalties available reflect this, having a wider range than those for any other road traffic offence. The examples of careless driving given below **6.3** illustrate the point; the penalties given in court range from a £100 fine and 3 points, up to a £250 fine and 90 day disqualification. The seriousness of the offending is quite subjective and this makes it an inappropriate offence to be covered by a fixed penalty; fixed penalties are most suitable for clearly measurable offences such as speeding or insufficient tyre tread. We feel that the large element of judgement required to assess the seriousness of a particular incident is not something that police officers should be asked to provide, and formulating suitable guidelines would be next to impossible.

³ [Road Casualties GB 2007 Table 4b](#)

It has been suggested at the FPPWG that an important guideline would be that a fixed penalty would never be offered if there were a collision; we note that the most serious offence in the list of examples given, which attracted the £250 fine and 90 day disqualification, is not said to involve a collision. Guidelines, if produced, would remain only guidelines, with no legal effect. Faced with the choice between the “heavy burden of paperwork” in taking the matter to court and the simplicity of issuing a fixed penalty, it is certain that many police officers will opt for a fixed penalty, whatever the guidelines may say. No one will know if this happens, as the offender is hardly likely to complain.

It is wrong in principle that the police should make a judgement about whether driving is careless and then proceed effectively to sentence it. Police in some cases will be acting as witness, prosecutor and sentencer. In others, they may be making a judgement about who is to blame for an accident in the highly charged atmosphere of the immediate aftermath. Such a decision needs to be made in the calmer conditions of a court hearing, when the evidence can be presented and considered by those trained and experienced in the task. Removing from the roadside to the police station the decision on whether to issue a fixed penalty or to prosecute will not improve matters, a more senior officer may indeed feel greater pressure to choose the option that saves police time.

Drivers who choose to appeal against the fixed penalty will expose themselves to a higher number of penalty points, the possibility of disqualification, and a very much higher financial penalty in court, so there will be quite disproportionate pressure to accept the penalty notice. This is a proposal that places the convenience of the police above what is right in principle, and it is notable that, according to the 2002 survey quoted, flawed as it is, 37% of police officers themselves would not welcome it. Regrettably, very recent experience with out-of-court disposals shows that the police cannot be relied on to use them appropriately or as intended. Once they have been given these powers, the police will misuse them, that is a certainty, and careless driving will be downgraded as an offence.

If, despite the objections of all those concerned with administering proper justice, this deeply flawed proposal proceeds, we trust the guidelines issued to police will themselves be the subject of consultation and, as the Association represents sentencers, we would expect to be included in discussions.

The Magistrates’ Association’s Sentencing Policy and Practice Committee would also like to make the following comments:

Of all the cases that are dealt with by the Magistrates’ Courts, a very high proportion are Road Traffic matters, and a far higher number of people are killed or injured every year (or have property damaged, i.e. their motor vehicles) due to accidents on the roads than due to more obviously criminal activities. It is therefore important that these types of offences should not be treated as simply trivial.

The offence of Careless Driving is acknowledged to be extremely variable (paragraph 6.2) and as such – and especially because of possible consequences – should not be added to the list of offences which can be dealt with by an FPN. The examples given of careless driving on p.64 of the consultation document are quite frankly alarming and would, in the opinion of most magistrates, at least border on the category of dangerous driving as can be seen by the sentences imposed. To think that offences like these could be disposed of by an FPN of £60 and 3 penalty points is simply appalling.

Bad driving due to the failure of a driver's skills, rather than a conscious decision to drive badly (paragraph 6.6) could merit an FPN, but who is to decide in this matter? We would agree that it is wrong in principle for the police to make the decision that this driving is careless and then decide what penalty to impose; all cases of careless driving should be put before a court.

Drivers who might have a reasonable defence should not be coerced into accepting an FPN because the alternative might be a conviction and a more serious penalty, and drivers who behave as if the Highway Code does not apply to them should not be encouraged to continue in this belief by being allowed to get away with a paltry penalty. This will not improve road safety.

7. Driver re-training and re-assessment

Bad driving is very different to most other offences, in that few drivers set out with the intention of driving badly and thereby risking injury to themselves and damage to their vehicle, quite apart from legal action. There must therefore be significant opportunities for training to improve driver behaviour, and we support existing arrangements and welcome new initiatives, as we do for offences that are more deliberate, such as speeding and drink-driving. As stated in the drink driving section, we accept the argument that it is sensible that anyone who has not driven for two years or more owing to a disqualification should be re-tested to check their competence and therefore support the proposal put forward in 7.19. We also support the suggestion put forward in 7.21.

We would regard re-training as very beneficial, particularly since it can focus on those aspects of a driver's behaviour that lead to the disqualification (7.22/7.24). Consideration might be given to offering an incentive to completing a re-training course in the form of a reduced period of disqualification, along the lines of the existing drink-driver rehabilitation courses, provided of course that the re-assessment was passed. We believe that re-training and assessments are likely to be much more concerned with understanding, attitudes and motivations rather than vehicle control, so we consider that the current arrangement, where lifting the disqualification for one category of entitlement deems spent the disqualification in respect of other categories of entitlement, remains appropriate (7.32).

The rationale underlying the New Drivers Act, as is clear from the Commons debate, is that by accumulating six points on their driving licence in a short period, the driver has demonstrated that despite passing the initial test, their driving does not in fact reach an acceptable standard, and their licence should be revoked and their driving assessed again

by requiring them to re-take the test. In the words of the Minister for Transport in London in the debate, “The underlying principle behind the Bill is straightforward. The principle says, ‘If you manage to accumulate six points, which will mean a minimum of two endorsable offences in the first two years after you have passed your test, the assumption is that you did not actually learn the lessons that you were supposed to have learnt in order to pass the test in the first place. Would you please go back and have another go and this time, understand what you are being asked to qualify for?’ That principle is not unreasonable.” This rationale is understandable when the points are on the licence as a result of offences involving poor driving, but the logic breaks down when they result from document offences, such as no insurance, which we note is said to dominate the offences for which licences are revoked. The ‘no insurance’ offence was not mentioned in the debate, and it is clear from the quote above that it was never intended that a single offence would normally trigger the provisions. The act is therefore not operating as intended, but we regard it as a valuable reminder to newly qualified drivers of the full range of their responsibilities.

Bearing in mind that licences are revoked for ‘no insurance’ more than any other offence, there seems little point in developing a new course, as proposed in **7.36**. Remedial training for a group of people, many of whom have demonstrated no defect in their driving, but simply failed to insure their vehicles, would be a waste of resources. We consider that for those drivers who have demonstrated poor driving, the remedial training should be available to the court to be offered as an alternative to revocation (**7.37**).

As we have previously pointed out, there is a very considerable anomaly in the New Drivers Act in that it applies only to the accumulation of penalty points, it does not apply to any period of disqualification. Those whose driving is so bad that they are immediately disqualified by a court are not impacted at all by the Act, whereas if their driving had been slightly better and they had been given six points they would have had their licence revoked. We therefore see drivers in court pleading to be disqualified! We fail to understand why this situation has not been acknowledged and corrected when a legislative opportunity has been available. We have written to the Sentencing Guidelines Council about this, again to no effect. It is also anomalous that points incurred prior to taking the test are counted towards the 6 points, such points cannot indicate that a driver has failed to reach an acceptable standard after the test.

We consider that drivers from designated countries should be treated in the same way as drivers with EC/EEA licences. To do otherwise is clearly discriminatory.

8. Penalty for disqualified driving

The ultimate sanction against bad driving is disqualification, either directly for a particular offence or by an accumulation of points for lesser offences, but this can only be effective in taking offenders off the road if it is enforced, which again depends on a police presence. The courts see many cases of driving whilst disqualified, which is now usually punished initially with a community sentence, and if repeated or occurs after a recently imposed ban, with custody. Soundings we have taken from courts around the

country indicate that it is very common to see offenders with multiple repeat offences, numbers in the teens seem common, and may go as high as fifty. This is often associated with very poor driving, drink driving or never having passed a test. Physical prevention by way of custody appears to be the only way to keep these dangerous offenders off the roads, but with credit for a guilty plea, automatic release after serving half their sentence and the current early release scheme, the theoretical six months maximum for the offence means that they are released after about six weeks. Magistrates find it frustrating that they are unable to protect the public for a longer period or increase a sentence that has clearly lost any deterrent effect. In the absence of any indication that the provisions already enacted to increase magistrates' sentencing powers to 12 months custody will be implemented, we say again that this offence should revert to being an either way offence, at least when it is a repeated offence.

9. Level of fixed penalties

We consider that the financial element of fixed penalties is now too low, apart from the no insurance offence, and should be increased. It does of course need to be somewhat lower than that usually imposed in a magistrates' court, but has become very substantially lower and action should be taken to bring it to a more comparable level, to avoid unfairness and undue pressure to accept a fixed penalty. It is notable that the general population of drivers see their Vehicle Excise Duty increase year by year, yet road traffic offenders have had their penalties frozen.

The Magistrates' Association's Sentencing Policy and Practice Committee would also like to make the following comment:

The big problem with fixed penalties is their one-size-fits-all nature. This is particularly acute with respect to road traffic matters as these offences result in such a high proportion of the FPNs that are handed out. We would agree absolutely with the Road Traffic Committee's comments.

Summary of the Magistrates' Association's Response to Consultation Questions

Speed

- 1 *Do you agree that extreme speeders should receive a 6-point fixed penalty?*
Yes, but we would prefer a more incremental approach.
- 2 *Do you think that 20/30 mph limited roads should have a lower threshold for a 6-point penalty?*
Yes, for 20 mph roads
- 3 *Do you think that 70 mph limited roads should have a higher threshold for a 6-point penalty?*
Yes
- 4 *Do you agree that we should not graduate speeding fines?*
No, we think that is quite wrong, they should be graduated
- 5 *Do you agree that we should not offer 2-point fixed penalties for marginal breaches of the speed limit?*
Yes

Drink driving

- 6 *Do you have any comments on the use of targeted checkpoint testing for drink drivers?*
We are in favour
- 7 *Do you think we should withdraw the statutory right to a blood or urine test as an alternative to a breath test?*
Yes
- 8 *Please comment on three options in respect of the proposal to take away cover for High Risk Offenders (HROs) to drive after submitting a reapplication for a licence, while medical procedures are being carried out:*

we move now to implement the change provided for in the Road Safety Act 2006 on the basis that we are satisfied that existing procedures allow ample time for medical examinations before a disqualification expires; or

We favour this option

we develop further powers either to require an HRO to submit a medical report with their re-application for a licence or to give them that option, to be implemented probably after we have removed the cover to drive; or

we defer implementing the change provided for in the Road Safety Act until we also have powers either to require HROs to submit a medical report with their re-application for a licence or give them that option.

9 *Do you agree that the costs of implementing and enforcing a judicial alcohol ignition interlock scheme would be disproportionate?*

[We have no knowledge of what costs might be involved, but the results of the investigation described do not appear very encouraging.](#)

10 *What priority do you think should be given to a change in the prescribed alcohol limit for driving?*

[We favour lowering the limit](#)

11 *What evidence are you able to offer – and what further evidence do you consider should be obtained – to support a fully-considered decision whether or not to change the limit?*

[We are not able to offer any evidence. It appears that improved roadside screening machines may provide useful data](#)

Drug driving

12 *Do you agree that a new offence of driving with an illegal drug in the body is required to make the regulation of drug driving more effective?*

[Yes](#)

13 *Do you think that such a new offence should apply to illegal drugs only, and not those that have been legally prescribed or obtained?*

[Yes](#)

14 *How do you think we should identify the drugs that would be the subject of the proposed offence? How should we incorporate new drugs under the proposed offence?*

[See our detailed response, page 4](#)

15 *Do you have any other comments about the proposed new offence?*

[No](#)

16 *Do you have any other comments about our drug driving proposals?*

[No](#)

Careless driving

- 17 Do you agree that we should make careless driving a fixed penalty offence?
No, we very strongly disagree
- 18 Do you agree that the fixed penalty for careless driving should be £60 and 3 penalty points?
We do not agree such a penalty should exist, but if it did that would have to be the level
- 19 Do you have any further comments about our careless driving proposals?
They sacrifice principle for expediency. If however they proceed, guidelines for police should be subject to discussion, although we do not believe satisfactory guidelines are possible.

Driver retraining and re-assessment

- 20 Do you think we should specify a retraining course for cases where a vocational licence has been revoked on the advice of the Traffic Commissioners?
Yes
- 21 Do you think that disqualified drivers who are subject to a re-test should be required to take remedial training first?
Yes
- 22 Do you agree that we should develop a course for people who incur penalties while subject to the New Drivers Act, linked to a new assessment for the recovery of a revoked licence?
Yes, but the course should be limited to drivers committing offences related to driving.
- 23 Please comment on the three options for the proposal in question 22:
- it could be a mandatory step to recovering a revoked licence;*
- it could be offered as an alternative to revocation – a driver accepting remedial training would be allowed not to incur points for the offence which would otherwise trigger a revocation (this option would require primary legislation);*
We favour this. Primary legislation is anyway required to correct the anomalies concerning disqualification and prior points we identify in the act.
- It could be available to other new drivers incurring points that were not of sufficient number to trigger revocation*
We cannot see this being taken up unless it avoided incurring points

24 *Do you think we should change the rules relating to designated countries in the New Drivers Act? If so, how?*

Yes, by putting them on the same basis as EU/EEA countries

25 *Do you have any further comments on our proposals on driver retraining and re-assessment?*

No

Please consult our more detailed comments on pages 1 to 9 for full details of our response to these questions, and further comments on these and other matters.

February 2009