

# Careless or inconsiderate driving

## Latest Update

11 December 2014

## Author(s)

Geoffrey Miller Solicitors

The offences of careless or inconsiderate driving fall within the scheme of offences created by [Road Traffic Act 1988](#) (RTA) for the prosecution of bad driving. Cases of inconsiderate driving are brought for the least serious instances, while careless driving falls in the middle of the scheme. There are a number of associated offences that can be prosecuted where death or serious injury are caused. More serious cases will be prosecuted as dangerous driving (a separate offence not covered in this article).

Most cases that are prosecuted in the magistrates' courts result in a guilty plea. There are relatively few technical issues involved in prosecuting or defending careless driving cases; the majority of defended cases will turn on a factual issue often arising from a dispute between witnesses over exactly what occurred during the incident.

## Overview of Topic

1. **Definition:** The offences of careless driving and inconsiderate driving are set out in [s.3 RTA](#). It is an offence for a person to drive a mechanically propelled vehicle on a road or public place without due care and attention (careless driving), or without reasonable consideration for other persons using the road or place (inconsiderate driving).
2. **Careless driving:** The actus reus of careless driving is whether a person's manner of driving falls below what would be expected of a careful and competent driver ([s.3ZA\(2\)](#)). The offence is absolute, which means that it is unnecessary to show that the defendant was conscious of the results of his actions; it is only necessary to show that he was conscious of what he was doing. [s.3ZA\(3\)](#) states that in determining for the purposes of [s.3ZA\(2\)](#) above what would be expected of a careful and competent driver in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.
3. The Prosecution will have to prove beyond reasonable doubt that the motorist has departed from the standard of driving of a competent and careful driver in all aspects of the case. This is an objective test and is primarily a question of fact. It does not matter whether the careless driving was as a result of the Defendant's negligence, incompetence, inexperience or his deliberate intent. This means the Court cannot take into account the defendant's particular circumstances i.e. that the Defendant was inexperienced and a new driver (*McCrone v Riding* [1938] 1 All E.R. 157). The defendant need not know of the carelessness as long as the actions themselves were careless. In the case of [Hampson v Powell](#) [1970] 1 All E.R. 929 the defendant was not aware that he hit a stationary vehicle, yet the conviction was upheld. It was held in [R. v Lawrence \(Stephen Richard\)](#) [1982] A.C. 510 at 220 that the only mens rea required in a case is to "simply show that the prohibited physical act done by the accused was directed by a mind that was conscious of what his

body was doing". A driver that departs from the requisite standard of driving will still be guilty of careless driving even if he has made an error of judgement ([Simpson v Peat \[1952\] 2 Q.B. 24](#)).

4. **Examples of Careless Driving:** There are countless examples of what driving behaviour can be considered to be careless driving. The following is a non-exhaustive list: mistakes such as cutting in front of another vehicle when emerging from a side road, or driving through a red light; distractions such as tuning a car radio or using a mobile phone; eating or drinking whilst driving; driving inappropriately close to another vehicle; failing to adhere to the relevant parts of the Highway Code (see below); lighting a cigarette whilst driving; remaining in the overtaking lane. See [Wilkinson's Road Traffic Vol.1 para.5.47](#). There is no behaviour that is automatically deemed to be careless driving. The court must be sure in every case that the elements of the offence (including the objective and subjective tests identified in para.4) are proven.
5. Behaviour such as reading a map whilst driving, racing other vehicles and disregarding passengers' warnings would constitute the more serious offence of dangerous driving rather than careless driving.
6. **Inconsiderate driving:** A defendant will commit the offence of inconsiderate driving if other people using the road or place are actually inconvenienced by his driving [s.3ZA\(4\)](#) (rather than just falling below the expected standard, as with careless driving). Examples of inconsiderate driving include: splashing pedestrians with your car, flashing your lights or sounding your horn to force another vehicle to give way to you, braking unnecessarily and driving with high beam headlights. See [Wilkinson's Road Traffic Vol.1 para.5.47](#).
7. **Associated offences:** There are two associated more serious offences that comprise elements of careless or inconsiderate driving. Causing death by careless or inconsiderate driving ([s.2B RTA](#)), an either way offence with a maximum penalty of 5 years' imprisonment and a mandatory minimum disqualification from driving of 12 months. Causing death by careless driving when under influence of drink or drugs ([s.3A](#)), an indictable only offence with a maximum penalty of 10 years' imprisonment and a mandatory minimum disqualification from driving of 12 months.
8. **Application of Highway Code:** [Section 38\(7\) RTA](#) states that any failure to observe a provision of the [Highway Code](#) will not render the driver liable to criminal or civil proceedings; however, any failure by the driver to adhere to the Code can be relied upon in proceedings by any party looking to establish liability.
9. The Code is often referred to in proceedings. For example, in *R v Chadwick [1975] Crim. L.R. 105* the typical stopping distances diagram which accompanies [r.126 of the Code](#) was allowed to be used in cross examination to prove a breach of the Code.
10. However, a breach of the Code will not of itself prove liability; the Court will consider the facts of each case before deciding on whether or not the Defendant is guilty of careless or inconsiderate driving. For example in [Hume v Ingleby \[1975\] R.T.R. 502](#) it was held that in the circumstances the Defendant was not guilty of careless driving despite being in breach of what is now [r.202 of the Code](#) ("you should...check there are no...obstructions in the road behind you"). In this case, the Defendant had entered his van which was parked on an unlit road, checked his rear view mirrors and looked around as far as he could before reversing, but then collided with a parked car causing minimal damage to both vehicles.
11. The judgment in [Hulme v Ingleby](#) can be considered in contrast to [McCrone \(John\) v Normand 1989 J.C. 8](#) in which it was held that the Defendant had breached what is now [r.202 of the Code](#), and he was convicted of careless driving despite it being argued that the

driver had done all that could reasonably be expected of him to ensure he could perform the manoeuvre while posing as minimal risk as possible to pedestrians.

12. **Defence of necessity:** A defence of necessity is available if the defendant who is facing a charge of careless driving only did what was actually necessary to avoid the serious harm that was facing them. It was held in [R. v Martin \(Colin\) \[1989\] 1 All E.R. 652](#), that the defence of necessity is available only if by applying the court's objective test the defendant's conduct in their driving was seen as being reasonable and proportionate given the threat of death or serious injury that faced them at the time.
13. **Defence of duress:** For duress to be available as a defence for careless driving, the objective facts of the case must establish a "duress of circumstances." In [R. v Willer \(Mark Edward\) \(1986\) 83 Cr. App. R. 225](#) duress was used as a defence to careless driving. This case involved the driver being subject to threats from a gang of youths to kill him. One of the youths also got into his car and fought with a passenger. The driver was then forced to go to a police station but drove in such a way that he mounted a pavement whilst driving along; he then faced a charge of careless driving. The court held here that even though the driver had driven "recklessly", the facts behind the allegation of his careless driving allowed a duress of circumstances to be established, and therefore he had a defence.
14. **Sentence:** Careless or inconsiderate driving are summary only offences. The maximum sentence is a level 5 fine (£5,000). Endorsement of the driver's licence is mandatory: 3-9 penalty points or a discretionary disqualification are available. When considering the sentence to be imposed for a conviction falling under [s.3 RTA](#) it is primarily a factual consideration as opposed to a legal one; the [Magistrates' Court Sentencing Guidelines](#) provide examples of the "nature of activity", namely: momentary lapse of concentration or misjudgement at low speed; loss of control due to speed, mishandling or insufficient attention to road conditions; carelessly turning right across oncoming traffic; overtaking manoeuvre at speed resulting in collision of vehicles; or driving bordering on dangerous. The Guidelines say that a disqualification should only be considered if the standard of driving is deemed "bordering on dangerous".
15. The Court is entitled to find that there are special reasons for not disqualifying or endorsing. Should the court find that there are special reasons for not imposing a ban or endorsement then it has discretion to impose a lesser penalty or none at all. The case of [R. v Lundt-Smith \[1964\] 2 Q.B. 167](#) demonstrates that a genuine emergency situation can be capable of amounting to a special reason. It involved an ambulance driver in the act of transporting an urgent case to hospital crossing a red traffic light and killing a crossing cyclist. While the case dealt with death by dangerous driving, the principles can be applied to careless or inconsiderate driving.
16. **Requirement for warning:** [Section 1](#) of the [Road Traffic Offenders Act 1988](#) requires that a person cannot be prosecuted for careless or inconsiderate driving (among other offences) unless they have been warned of the possibility that they may be prosecuted for careless or inconsiderate driving (or any other offence mentioned in [Sch.1 Road Traffic Offenders Act 1988](#)). The warning can be given in one of four ways: a warning at the time the offence was committed ([s.1\(1\)\(a\)](#)); serving a summons or a postal requisition within 14 days of the commission of the offence ([s.1\(1\)\(b\)](#)); serving a notice of intended prosecution on the alleged offender within 14 days of the commission of the offence ([s.1\(1\)\(c\)](#)); serving a notice of intended prosecution on the registered keeper of the vehicle within 14 days of the commission of the offence ([s.1\(1\)\(c\)](#)). There is no requirement for a warning to be given in the following circumstances: if there has been an accident ([s.2\(1\)](#)); if a fixed penalty has been issued ([s.2\(2\)](#)); if the correct address cannot be ascertained ([s.2\(3\)\(a\)](#)); or if the accused has contributed to the failure through his own fault ([s.2\(3\)\(b\)](#)).
17. **Alternative disposals:** If a police officer decides that the elements of the offence have been made out then the next step will be to decide how to proceed. Not all matters will

result in Court proceedings being issued. The [Association of Chief Police Officers \(ACPO\)](#) has provided [Guidelines on Eligibility Criteria for NDORS \(National Driver Offender Retraining Scheme\)](#). The police will frequently offer driver retraining courses as an alternative to prosecution or a fixed penalty in less serious cases. There is no statutory basis for offering driver education. The justification for the scheme is that the police will use their discretion not to prosecute a person if it is not in the public interest to do so. If that person successfully completes the course then it will not be in the public interest to prosecute.

18. Given the objectivity of the test (in relation to careless driving) to decide whether or not the standard of driving falls below what would be expected of a competent and careful driver, the individual officer has a decision to make at the time of the offence. Action can be taken in a number of ways: warning or offer of roadside advice with no further action; offer of a National Driver Offender Retraining Scheme; conditional offer of a fixed penalty; or issuing of a Court Summons for the matter to be dealt with by way of the Magistrates' Court process.
19. Magistrates do not have any power to offer an educational course or reinstate an offer of a fixed penalty once it has reached the stage for consideration by the Court. The offer has to be accepted and acted upon at the time of offer and in accordance with the conditions or the matter is likely to escalate to court proceedings. Once the matter is under the consideration of the Magistrates, they must follow the sentencing guidelines (see above).
20. Consideration can be given to another approach as outlined in [s.59 Police Reform Act 2002](#), where an officer can impose a warning only, should there be reasonable cause to believe that a motor vehicle is being used on any occasion in a manner which contravenes [s.3 RTA](#) and is causing or is likely to cause, alarm, distress or annoyance to members of the public. The warning will last for 12 months and in the event that the driver meets the [s.59](#) conditions again in that 12 month period the vehicle can be seized and, if not collected by paying proper recovery and storage costs, can be destroyed.

## Key Acts

[Road Traffic Offenders Act 1988](#)

[Road Traffic Act 1988](#)

Police Reform Act 1958

[Police Reform Act 2002](#)

## Key Subordinate Legislation

None.

## Key Quasi-legislation

[ACPO Guidelines on Eligibility Criteria for NDORS \(National Driver Offender Retraining Scheme\)](#)

[The Magistrates' Court Sentencing Guidelines](#)

## **Key European Union Legislation**

None.

## **Key Cases**

McCrone v Riding [1938] 1 All E.R. 157

[Hampson v Powell \[1970\] 1 All E.R. 9299](#)

[R. v Lawrence \(Stephen Richard\) \[1982\] A.C. 510](#)

[Hume v Ingleby \[1975\] R.T.R. 502](#)

[McCrone \(John\) v Normand 1989 J.C. 8](#)

[Simpson v Peat \[1952\] 2 Q.B. 24](#)

[R. v Martin \(Colin\) \[1989\] 1 All E.R. 652](#)

[R. v Willer \(Mark Edward\) \(1986\) 83 Cr. App. R. 225](#)

[R. v Lundt-Smith \[1964\] 2 Q.B. 167](#)

## **Key Texts**

[Wilkinson's Road Traffic Offences 26th Ed. Ch.5 s.6 para.5.47](#)

## **Further Reading**

None.

© 2014 Sweet & Maxwell Ltd

