



# **Criminal Prosecution: Guide to going to court for bereaved families**

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RoadPeace: the national charity for road crash victims

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**Note**

If you are reading this because someone is being prosecuted for causing the death of your loved one, then please accept our condolences. We believe that such a nightmare is often made worse by a lack of information and understanding of the legal procedures. This guide is intended to help bereaved families be better informed and thus better prepared for the criminal court case ahead of you.

**We strongly recommend that you have another family member or close friend read this guide with you and if possible, have them be in charge of 'project managing' the incoming information and various queries involving the police, CPS, Witness Service, solicitors, media, etc**

## 1. Introduction

This guide is for bereaved families where a driver is being charged with causing the death. It covers the criminal prosecution procedures after the Crown Prosecution Service (CPS) have decided to charge a driver<sup>1</sup>.

This guide discusses the following key areas:

- How it is decided whether the trial will be held in the Magistrate or Crown Court
- Guilty pleas and plea bargaining
- Making a Victim Personal Statement
- What happens at court
- Juries and verdicts
- Sentencing procedures and guidelines
- Appeals by the defendant, Crown Prosecution Service (CPS) and family
- Custodial sentences—what they really mean
- Bereaved families' rights

If a summary offence is being brought against the driver, and there is no mention of the death in the charge, then please refer to our criminal prosecution information sheets for the injured. The Ministry of Justice has also produced information guides for those going to court, both as a victim and as a defendant. See our reference section at the end of this guide for other sources.

## 2. In which court?

While most causing death by driving trials are heard in the Crown Court, they can be tried in the magistrates' court. Where the case will be heard depends on which type of offence it is. As shown overleaf, there are three types of offences.

### Indictable offences

These have to be heard in the Crown Court, where the most serious cases are heard.

### Either-way offences

These can be heard in either the magistrates' court or the Crown Court. The magistrates and the defendant get to make this decision.

With either-way offences, the magistrates hear submissions from the CPS and the defendant as to where the case should be heard in a procedure called 'plea before venue'. The magistrates can decide to send the case to the Crown Court if they think it may merit a tougher sentence, as their sentencing powers are limited to six months custodial sentence for single offences and £5000 in fines.

The defendant has the right to request a trial by jury which means the case will be heard in the Crown Court. If he<sup>2</sup> is intending to plead guilty, he can request the case stay with the magistrates' Court where he is more likely to receive a lesser penalty. The defendant has the right to receive a summary of the case against him before he decides.

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<sup>1</sup> For information on this earlier stage, please see our guide for bereaved families on the Charging Decision.

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<sup>2</sup> With males accounting for the vast majority of drivers prosecuted for fatal crashes, we have referred to the driver as a 'he' for simplicity..

**Table 1: Criminal offence types**

Name	Which court	Which charge
Indictable	Crown Court	Causing Death by Dangerous Driving; Causing Death by Careless Driving whilst Under the Influence
Either-way	Either Crown Court or magistrates court	Causing Death by Careless Driving; Causing Death by Driving Whilst Unlicensed, Uninsured or Disqualified
Summary	magistrates court	All summary offences such as Careless Driving, Defective Tyre, Driving with Uncorrected Defective Vision, etc.

**Summary offences**

If the offence charged is only a summary one and thus heard in the magistrates' court, it is possible for a driver to plead guilty by post and avoid a court appearance.

The magistrates Courts hear over 90% of all criminal cases in the UK. Magistrates' Courts will have either three lay magistrates sitting or a professional District Judge. Lay magistrates are all volunteers but they are assisted by a legally trained Clerk.

**3. Guilty pleas**

In the majority of cases, there is a guilty plea submitted. If a defendant pleads guilty at the earliest stage, his sentence is reduced by one-third. The longer he waits, the less reduction in sentence is given.

With guilty pleas, the case goes straight to sentencing and there is no public review of the evidence or witnesses. In these cases, bereaved families may request that the coroner resume the inquest so that they have the chance to question the witnesses or ask the coroner to make a report on how to prevent future deaths. The coroner is not obliged to resume the inquest.

**Plea bargaining**

Defendants may try to plead guilty to a lesser charge or where some of the offences are dropped in exchange for a guilty plea. The CPS state that they "*should only accept the plea if we think that the court is able to pass a sentence that matches the seriousness of the offending*".

The CPS are supposed to consult the bereaved family before they decide whether to accept the plea. The acceptance of pleas is to be done in open court with the CPS explaining in public their reasons for accepting the plea.

**4. Making a Victim Personal Statement**

Bereaved families have the right to submit a Victim Personal Statement (VPS).

RoadPeace has produced a simple guide explaining what can and what should not be included in a VPS and the impact that they can have.

But bereaved families should be aware that the VPS is submitted as part of the court proceedings, similar to a witness statement. Thus the defence and the defendant will get a copy.

Please also remember that a VPS is considered by the court after a defendant has been found guilty. It has no bearing on the verdict. The VPS will be included in the plea and sentence document that the CPS provides to the Crown Court.

As with charging decisions, the views of the bereaved family will most likely be given more weight if they are calling for leniency. Defendants often claim remorse as a mitigating factor. Bereaved families are allowed to mention in their VPS if they do not think the defendant has shown any remorse. They can also state if they want to meet the driver as part of a Restorative Justice initiative.

For more information, see our guide on Victim Personal Statements and contact

RoadPeace if you would like examples provided by other bereaved families.

## 5. At trial

The CPS aim to start Crown Court trials within sixteen weeks of them being sent from the magistrates' court.

### *Pre court visit*

Each Crown Court has a Witness Service Unit. They can arrange pre court visits for bereaved families. If they have not contacted you, ask your Family Liaison Officer to put you in touch with them.

### *Pre trial review*

The pre trial review determines the date and the estimated duration of the trial. This will depend on the number of witnesses to be called. Both sides also exchange evidence at this stage. If there is no disagreement with a witness statement, then the witness may not need to testify in person, and their statement can be read out in court in their absence. But this will then mean that they are not available for cross-examination.

### *The trial*

The trial begins with the prosecutor outlining the case against the defendant and a summary of the evidence. Prosecution witnesses are called first. After the prosecutor interviews their witnesses, the defence cross-examines the prosecution witnesses. After this, the prosecutor is allowed to speak again and clarify any points raised by the defence.

Then the defence calls their witnesses or experts and questions them. The prosecution is then allowed to cross-examine them. Witnesses are not allowed to sit in the court-room and hear the evidence of the witnesses before them. Juries can also ask questions of the witnesses. The defence can then clarify any issues raised by the prosecutor. In their closing speech, the defence will argue the case for the defendant's innocence.

Defendants are not required to speak in court.

## 6. Verdicts and juries

At the Crown court, the jury decides if the defendant is guilty or not of the charge or an alternative charge. If during the trial, the defendant pleads guilty, the jury is required to find him guilty. The jury does not determine the sentence.

A jury should convict only if it is sure of a defendant's guilt. It does not have to be a unanimous decision and a judge can allow a majority verdict if 10 out of 12 jurors agree.

Families should know that a defendant being tried for Causing Death by Dangerous Driving can be found not guilty of that charge, but guilty of Causing Death by Careless Driving. Families should ask the CPS to clarify the alternative verdicts possible.

At the magistrates' Courts, the verdict will be decided by the magistrates or the District Judge.

### *Not guilty*

A minority of trials for causing death by driving result in a not guilty verdict. In 2008, of the 367 trials for Causing Death by Dangerous Driving, 110 were acquitted (30%) and 257 were found guilty (70%). In the 68 trials for Causing Death by Careless Driving while under the Influence of drink or drugs, 19 were acquitted (28%). And 49 were found guilty (72%). (Ministry of Justice, 2010),

The CPS should offer a meeting to the family if the case collapses or a not guilty verdict is returned.

## 7. Sentencing

After a guilty verdict, the defendant can be taken into custody. Sentencing should be done within four weeks of the end of the trial.

The basic types of sentences that courts can use in the prosecution of a fatal crash include custodial sentence or community punishment. The magistrates' court can refer a case to the Crown Court if they believe a heavier sentence is justified, as their sentencing powers are limited to six months custodial sentence for a single offence.

### Sentencing Guidelines

Judges follow the sentences detailed in the Sentencing Guidelines. These were updated in 2008 after consultation and advice from the Sentencing Advisory Panel. Please see the Sentencing Guidelines Council Causing Death by Driving Guidelines for more information including how the levels of seriousness are decided. The four tables below have been taken from this publication.

Before a defendant is sentenced, his previous convictions will be read out as these can affect the sentence. Courts are required to give credit for a plea of guilty, with a maximum of one-third if the guilty plea is entered early.

### Plea and sentencing

The CPS must prepare a plea and sentence document for the Crown Court and for complex cases being sentenced in the Magistrates Courts.

The Plea and Sentence document includes the following:

- the aggravating and mitigating factors of the offence
- any statutory provisions relevant to the offender and the offence under consideration, so that the judge is made aware of any statutory limitations on sentencing;
- any relevant Sentencing Guidelines and guideline cases;
- any victim personal statement, or other information available to the

prosecution advocate as to the impact of the offence on the victim;

- where appropriate, any evidence of the impact of the offending on a community;
- an indication, where applicable, of an intention to apply for any ancillary orders, such as anti-social behaviour orders and confiscation orders.

### *Plea in mitigation*

After a conviction, the defence will prepare a mitigation report. Unlike the Victim Personal Statement, this can include an opinion on the sentence with arguments for a lesser sentence or against a custodial sentence. It can also include an attempt by the defence to put the blame on the victim and the CPS should be prepared to counter this.

Bereaved families should note that this plea is delivered 'off the cuff' and the prosecution do not receive an advance copy.

**Table 2: Causing death by dangerous driving, Road Traffic Act 1988 (section 1)**

Nature of offence	Starting point	Sentencing range
<p><b>Level 1</b></p> <p>The most serious offences encompassing driving that involved a deliberate decision to ignore (or a flagrant disregard for) the rules of the road and an apparent disregard for the great danger being caused to others</p>	<b>8 years custody</b>	<b>7-14 years custody</b>
<p><b>Level 2</b></p> <p>Driving that created a substantial risk of danger</p>	<b>5 years custody</b>	<b>4-7 years custody</b>
<p><b>Level 3</b></p> <p>Driving that created a significant risk of danger</p> <p>[Where the driving is markedly less culpable than for this level, reference should be made to the starting point and range for the most serious level of causing death by careless driving]</p>	<b>3 years custody</b>	<b>2-5 years custody</b>
<b>Additional aggravating factors</b>	<b>Additional mitigating factors</b>	
<ol style="list-style-type: none"> <li>1. Previous convictions for motoring offences, particularly offences that involve bad driving or the consumption of excessive alcohol or drugs before driving</li> <li>2. More than one person killed as a result of the offence</li> <li>3. Serious injury to one or more victims, in addition to the death(s)</li> <li>4. Disregard of warnings</li> <li>5. Other offences committed at the same time, such as driving other than in accordance with the terms of a valid licence; driving while disqualified; driving without insurance; taking a vehicle without consent; driving a stolen vehicle</li> <li>6. The offender's irresponsible behaviour such as failing to stop, falsely claiming that one of the victims was responsible for the collision, or trying to throw the victim off the car by swerving in order to escape</li> <li>7. Driving off in an attempt to avoid detection or apprehension</li> </ol>	<ol style="list-style-type: none"> <li>1. Alcohol or drugs consumed unwittingly</li> <li>2. Offender was seriously injured in the collision</li> <li>3. The victim was a close friend or relative</li> <li>4. Actions of the victim or a third party contributed significantly to the likelihood of a collision</li> <li>5. The offender's lack of driving experience contributed to the commission of the offence</li> <li>6. The driving was in response to a proven and genuine emergency falling short of a defence</li> </ol>	

**Table 3: Causing death by careless driving when under the influence of drink or drugs or having failed either to provide a specimen for analysis or to permit analysis of a blood sample, Road Traffic Act 1988 (section 3a)**

The legal limit of alcohol is 35µg breath (80mg in blood and 107mg in urine)	Careless/ inconsiderate driving arising from momentary inattention with no aggravating factors	Other cases of careless/ inconsiderate driving	Careless/ inconsiderate driving falling not far short of dangerousness
71µ or above of alcohol/high quantity of drugs OR  deliberate non-provision of specimen where evidence of serious impairment	<b>Starting point:</b> 6 years custody  <b>Sentencing range:</b> 5–10 years custody	<b>Starting point:</b> 7 years custody  <b>Sentencing range:</b> 6–12 years custody	<b>Starting point:</b> 8 years custody  <b>Sentencing range:</b> 7–14 years custody
51–70 µg of alcohol/ moderate quantity of drugs  OR deliberate non- provision of specimen	<b>Starting point:</b> 4 years custody  <b>Sentencing range:</b> 3–7 years custody	<b>Starting point:</b> 5 years custody  <b>Sentencing range:</b> 4–8 years custody	<b>Starting point:</b> 6 years custody  <b>Sentencing range:</b> 5–9 years custody
35–50 µg of alcohol/minimum quantity of drugs OR test refused because of honestly held but unreasonable belief	<b>Starting point:</b> 18 months custody  <b>Sentencing range:</b> 26 weeks–4 years custody	<b>Starting point:</b> 3 years custody  <b>Sentencing range:</b> 2–5 years custody	<b>Starting point:</b> 4 years custody  <b>Sentencing range:</b> 3–6 years custody
<b>Additional aggravating factors</b>		<b>Additional mitigating factors</b>	
<ol style="list-style-type: none"> <li>Other offences committed at the same time, such as driving other than in accordance with the terms of a valid licence; driving while disqualified; driving without insurance; taking a vehicle without consent; driving a stolen vehicle</li> <li>Previous convictions for motoring offences, particularly offences that involve bad driving or the consumption of excessive alcohol before driving</li> <li>More than one person was killed as a result of the offence</li> <li>Serious injury to one or more persons in addition to the death(s)</li> <li>Irresponsible behaviour such as failing to stop or falsely claiming that one of the victims was responsible for the collision</li> </ol>		<ol style="list-style-type: none"> <li>Alcohol or drugs consumed unwittingly</li> <li>Offender was seriously injured in the collision</li> <li>The victim was a close friend or relative</li> <li>The actions of the victim or a third party contributed significantly to the likelihood of a collision occurring and/or death resulting</li> <li>The driving was in response to a proven and genuine emergency falling short of a defence</li> </ol>	

**Table 4: Causing death by careless or inconsiderate driving, Road Traffic Act 1988 (section 2b)**

<b>Nature of offence</b>	<b>Starting point</b>	<b>Sentencing range</b>
Careless or inconsiderate driving falling not far short of dangerous driving	<b>15 months custody</b>	<b>36 weeks–3 years custody</b>
Other cases of careless or inconsiderate driving	<b>36 weeks custody</b>	<b>Community order (HIGH)–2 years Custody</b>
Careless or inconsiderate driving arising from momentary inattention with no aggravating factors	<b>Community order (MEDIUM)</b>	<b>Community order (LOW)–Community order (HIGH)</b>
<b>Additional aggravating factors</b>	<b>Additional mitigating factors</b>	
<ol style="list-style-type: none"> <li>1. Other offences committed at the same time, such as driving other than in accordance with the terms of a valid licence; driving while disqualified; driving without insurance; taking a vehicle without consent; driving a stolen vehicle</li> <li>2. Previous convictions for motoring offences, particularly offences that involve bad driving</li> <li>3. More than one person was killed as a result of the offence</li> <li>4. Serious injury to one or more persons in addition to the death(s)</li> <li>5. Irresponsible behaviour, such as failing to stop or falsely claiming that one of the victims was responsible for the collision</li> </ol>	<ol style="list-style-type: none"> <li>1. Offender was seriously injured in the collision</li> <li>2. The victim was a close friend or relative</li> <li>3. The actions of the victim or a third party contributed to the commission of the offence</li> <li>4. The offender's lack of driving experience contributed significantly to the likelihood of a collision occurring and/or death resulting</li> <li>5. The driving was in response to a proven and genuine emergency falling short of a defence</li> </ol>	

**Table 5: Causing death by driving: unlicensed, disqualified or uninsured driver  
Road Traffic Act 1988 (section 3ZB)**

Nature of offence	Starting point	Sentencing range
The offender was disqualified from driving <b>OR</b> The offender was unlicensed or uninsured plus 2 or more aggravating factors from the list below	<b>12 months custody</b>	<b>36 weeks -2 years custody</b>
The offender was unlicensed or uninsured plus at least 1 aggravating factor from the list below	<b>26 weeks custody</b>	<b>Community order (HIGH)–36 weeks custody</b>
The offender was unlicensed or uninsured – no aggravating factors	<b>Community order (Medium)</b>	<b>Community order (LOW)–Community order (HIGH)</b>
Additional aggravating factors	Additional mitigating factors	
1. Previous convictions for motoring offences, whether involving bad driving or involving an offence of the same kind that forms part of the present conviction (i.e. unlicensed, disqualified or uninsured driving) 2. More than one person was killed as a result of the offence 3. Serious injury to one or more persons in addition to the death(s) 4. Irresponsible behaviour such as failing to stop or falsely claiming that someone else was driving	The decision to drive was brought about by a proven and genuine emergency falling short of a defence 2. The offender genuinely believed that he or she was insured or licensed to drive 3. The offender was seriously injured as a result of the collision 4. The victim was a close friend or relative	

**Table 6: Sentences for Causing Death by Driving (2008)**

	Length of sentence							
	Total	6 months and under	Over 6 months up to 12 months	Over 12 months up to 18 months	Over 18 months up to 2 years	Over 2 years up to 3 years	Over 3 years up to 5 years	Over 5 years
Causing death by dangerous driving	205	1	10	17	16	24	83	54
Causing death by careless driving under influence of drink or drugs	42	-	-	3	1	9	22	7
Causing death by aggravated vehicle taking	2	-	2	-	-	-	-	-

## 8. Appeals

In addition to increasing or decreasing a sentence, the Court of Appeal can also decide to:

- overturn a conviction and release the person if they are in prison
- order a re-trial if the conviction appears unsafe
- confirm the conviction

### **Defence's right to appeal**

The defence can appeal the conviction or the sentence. If their appeal to the Court of Appeal is unsuccessful, the defence can apply to the Criminal Cases Review Commission which considers cases of alleged miscarriages of justice. It is very rare that they find that a conviction or sentence can not be upheld, but in these cases, they refer the case back to the Court of Appeal.

### **Prosecution and family's right to appeal**

There is no right for the Prosecution to appeal a sentence. But the Attorney General does have the power to refer cases dealt heard in the Crown Court to the Court of Appeal if he considers that the sentence was "unduly lenient". It is not enough if the sentence is perceived to be just "lenient", it must be "unduly lenient". The CPS can refer such cases to the Attorney General for consideration to be passed to the Court of Appeal, who can increase a sentence.

Cases can also be referred to the Attorney General through complaints by MPs or the bereaved family themselves.

Families should check that the CPS will be attending the appeal, as they are not required to be there and that leaves no one arguing for the sentence and/or conviction to be maintained. The judges will have the court transcripts from the original trial before them.

### **Custodial sentences**

As shown in the table below, very few drivers convicted receive custodial sentence over 5 years.

No statistics are given for Causing Death by Careless Driving and Causing death by Driving: Unlicensed, uninsured, or disqualified, as these were only introduced in August 18 2008 and only applied to fatal crashes occurring from that date onwards.

### **Young offenders**

The table above refers to adult drivers convicted. Offender aged between 15-21 are sent to Young Offenders Institutions (YOI) which are run by the Prison Service. In 2008, there were 31 drivers sent to a YOI for Causing Death by Dangerous Driving, four for Causing Death by Careless Driving under influence of drink or drugs, and two for Causing Death by Aggravated Vehicle Taking.

### **Open prisons and early release**

Most people are aware that offenders only serve half their sentence before being released, unless they have reoffended whilst in prison.

### **Probation**

Where a custodial sentence of 12 months or more is given, the local probation office should write to bereaved families within 8 weeks of the offender being sentenced. They will assign the family a Probation Victim Liaison Officer. Their role is to explain the prison system and ask if the family wants to be informed when the prisoner is being considered for release by the probation board or being moved to another prison.

Families can ask them when the offender could be transferred to an open prison, qualify for weekend leave, what restrictions there will be on their movements (they can be forbidden from going near your house) and inform them if you want to be notified of any probation board hearings so that you can provide a statement. Restrictions are limited to a six month period.

The National Probation Service produce a leaflet on their Victim Contact Scheme which can be downloaded.

**Driving bans**

In 2008, there were 315 driving license disqualifications imposed for Causing death or bodily harm by driving. There were only 13 drivers convicted of Causing bodily harm. Of the 315, 187 were until a driving test was passed.

Ten drivers were disqualified for life, and another 14 received 10 years or over (but less than life). Some 54 drivers received between 5 and 10 years and another 34 were given between 2 and 3 years.

By law, driving bans must begin the day they are issued which means that they can overlap with a custody sentence. This has been addressed in the Coroner and Reform Justice Act which states that judges can specify the amount of driving ban that should start after release from custody.

Drivers can also appeal their driving bans upon their release from prison.

**Fines**

Fines are not considered appropriate in fatal cases and are rarely used. In 2008, three drivers were fined for Causing Death by Dangerous Driving

**Community Service**

As seen in Table 4 and Table 5, it is possible for a driver convicted of either Causing Death by Careless Driving or Causing Death whilst driving Unlicensed, Uninsured or Disqualified to be given a community service order.

**Restorative Justice**

Families may want to meet the driver to ensure that he is aware of the devastation that he has caused. If this is the case, ask your FLO and the CPS if they can arrange a meeting between you and the driver with a trained facilitator. This contact could also start with a letter.

## 9. Bereaved family's rights

### The Victim Focus Scheme

The Victim Focus Scheme is an enhanced service that the CPS provides to bereaved families with cases being tried in the Crown Court. Under this scheme, when prosecutors meet the bereaved family to explain the charging decision, they are also to explain to them the court process.

### Code for Victims

Under the Ministry of Justice's Code for Victims, families should be kept informed of the progress of the court trials, with notification within five days of any dates set for trials.

The CPS prosecuting lawyer should meet the bereaved family at court.

### National Homicide Service

The Ministry of Justice launched a new support service for families bereaved by homicide in late 2009. In early 2010, families bereaved by drivers being prosecuted for Causing Death by Dangerous Driving were included in this service. Bereaved families ...

### Making a complaint

If families are dissatisfied with the way the case was prosecuted, they should complain to the local CPS area office. They should provide as much detail about the case as possible and include the defendant's name, as cases will be filed under this name.

If your complaint is not resolved satisfactorily, then write to the Chief Crown Prosecutor; if you remain unsatisfied, write to the CPS Customer Service Unit.

You should receive an acknowledgement, if not a reply, of your letter within three working days of the CPS receiving it, and a full reply within 10 days.

If you need to make a complaint about the National Probation Service's Victim Contact Scheme, you are encouraged to

first speak to your Victim Liaison officer or their manager, before writing to the Chief Officer of the local probation area.

Please send a copy of any complaint to your MP and also to RoadPeace.

### Bereaved families and the media

If the family wants their views to be publicised, they should prepare a press release for the verdict, the sentencing, and also any appeal. They can prepare different versions for each event, covering the possible outcomes. These can be handed out to the press on the day or emailed to them, with photos of the victim attached.

Lastly, RoadPeace was founded because road death and injury were seen by too many as the acceptable price of motorisation and were neither a priority for the justice nor the health sector, despite the numbers involved. Progress has been made in the last two decades with criminal prosecution standards and rights for victims but more could be done. Please contact RoadPeace if there are lessons to be learned from your family's experience of the criminal justice system.

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