



Promoting Safety for Vulnerable Road Users: Assessing the Investigation and Enforcement of Endangerment Offences

End of Project Report

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A socio-legal study of the investigation and enforcement of the road traffic offences of careless driving, dangerous driving, and using a mobile phone whilst driving.

Glossary

ANPR – Automatic number plate recognition

CC – Chief Constable

CCTV – Close Circuit Television

CPS – Crown Prosecution Service

D – the driver in a case who is deemed by police to have committed an offence.

DD – dangerous driving, the offence under s.2 Road Traffic Act 1988

FOI – freedom of information

FPN – fixed penalty notice

HGV – heavy goods vehicle

HMCTS – Her Majesty's Courts and Tribunals Service

KSI – Killed and seriously injured casualty statistics

MG11 – standardised form used for witness statements by police and Crown Prosecution Service to use as evidence in court.

NDAC – National Driver Alertness Course

NFA – no further action (case is not prosecuted due to lack of evidence or thought not to be in the public interest)

NIP – notice of intended prosecution.

PCC – Police and Crime Commissioner

PLP – Police Led Prosecutor

PNC – Police National Computer

RPU – Roads Policing Unit

RTA – Road Traffic Act

RTC – Road Traffic Collision

SJP – Single Justice Procedure (at the magistrates' court)

TISPOL – European Traffic Police Network

TOR – Traffic Offence Report

TPU – Traffic Processing Unit (alternatively known as the Traffic Process Office or Traffic Process Management Unit)

WDC – driving without due care and attention/careless driving under s.3. Road Traffic Act 1988.

WMP – West Midlands Police

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Executive Summary

Introduction

This report explores the importance of enforcement in reducing harm on the roads, through an examination of current practice relating to the enforcement of the mainstream endangerment offences: dangerous driving; careless driving; and using a mobile telephone whilst driving. The research informing this report consisted of two strands: strand 1 accessed empirical data (case files on the prosecution of the offences, interviews with police officers, and examples of best practice in roads policing) from three police forces; strand 2 gathered data from vulnerable road users (cyclists) on their perceptions of police enforcement activity. One of the aims of the project was to explore and understand differential investigation and prosecution practices in the forces studied and associated Crown Prosecution Service (CPS) areas. We sought to provide a measure of the nature of cases deemed to warrant a legal response, what that response was, and of the evidence required to proceed with a case to court. We also examined cases that were deemed not suitable for prosecution, whether this was based on evidential or public interest factors. Although we did not always uncover the reasons behind decisions in individual cases, we were able to build up a picture of the nature of cases resulting in different disposals, to identify some good practice and also inconsistencies in approach.

Methods

For strand 1, we analysed 301 cases of offences of using a mobile telephone, careless and dangerous driving, from Surrey, West Mercia/Warwickshire and West Midlands police (WMP).¹ Our aim was to explore the nature of these cases, the classification of the offence, and the evidence collected. We also conducted 28 semi-structured interviews with police officers, Crown Prosecutors and Police and crime Commissioners (PCCs), focusing on the enforcement of these offences and any innovative methods used in education and enforcement.

For strand 2, we hosted focus groups with cyclists, so as to gain the perspective of a group of vulnerable road users. These focused upon police activity and the measures cyclists used to manage risk on the roads. We conducted 9 focus groups (for a duration of between 1 and 2 hours), in 6 locations, within 5 police forces (Durham, Leicestershire, Surrey, West Mercia, and West Midlands), with 77 participants.

To supplement these strands, we also collected data (largely through freedom of information [FOI] requests) on the extent to which forces in England and Wales make use of the submission of digital footage from members of the public. The use of this 'third-party footage' is an interesting and recent development in the enforcement of road traffic offences.

Findings

Strand 1

The significance of harmful results

All three of the offences examined do not require a collision to occur for the offence to be prosecuted. Anecdotal evidence, prior to our research, suggested that, for dangerous and careless driving, enforcement would only result after a collision. We found that this is not the case, although in cases

¹ Within this report, we will anonymise our findings, unless this is not possible, for instance, when commenting on specific well known operations that were initiated by one of these forces.

where there was a collision, this could influence the choice of charge. In the absence of a collision, a case is only likely to proceed if there is a police witness, video footage, or an independent witness.

Third party footage

A very recent development in enforcement is the use of third-party footage for the prosecution of road traffic offences. The majority of police forces now have web portals for the submission of video evidence of bad driving; members of the public can upload footage to make a complaint, and complete a witness statement. There are concerns with how forces can manage the extra demand generated and maintain consistent decision-making. However, this seems an efficient means of enforcement using limited resources. Further, there is a degree of variability in the extent to which such submissions lead to a positive enforcement outcome, suggesting a problem of 'postcode justice'. We recommend that forces consider their approach to reviewing this footage, putting in place methods to ensure appropriate and consistent decision-making.

The exercise of discretion

Discretion is an inevitable part of policing, and roads policing is no different. Officers and Traffic Processing Unit (TPU) staff exercise discretion on the choice of charge and the appropriate outcome for cases (such as no further action [NFA], an education course, a fixed penalty notice [FPN], or a court summons). There are a number of means by which this discretion can be framed to ensure consistent decisions, such as guidance, case triage, and structured evidence gathering. However, inadequate resources can lead to decision makers being overburdened, leading to inconsistency.

CPS and police relationship

Under the statutory charging scheme, the police can prosecute careless driving, but must prepare a CPS advice file for dangerous driving. Forces complained that this could be burdensome, with different CPS areas making different demands on the police in the preparation of the file. This led, especially in borderline cases, to officers choosing to charge the lesser offence. Further, officers expressed frustration with the CPS's definition of dangerous driving, particularly in cases not involving a collision. We recommend that the CPS should be more willing to consider prosecuting for this offence than they have been at the time of this research and that the CPS should be properly resourced, with specialist road traffic prosecutors who work closely with police colleagues.

Using a mobile telephone whilst driving

Whilst frontline officers perceived this to be a straightforward offence, TPU employees noted a possible ambiguity in the offence definition, such as when a mobile is 'handheld' and when it is being used. As a result, officers are advised to record more details on the traffic offence report [TOR], such as how the phone was being used, for how long, and how the driver was interacting with the device. Nevertheless, cases have been lost due to this ambiguity. Despite the Government's recommendation that an education course not being offered in these cases, forces were still offering a course, using guidelines (not always adhered to) on when this is appropriate. We recommend that frontline officers should record more details of the allegations on the TOR, that decision-makers consider alternative charges in difficult cases (such as 'not being in proper control'²), and that the offence definition be reviewed.

² An offence under para 104 of the Road Vehicles (Construction and Use) Regulations 1986/1078: 'No person shall drive or cause or permit any other person to drive, a motor vehicle on a road if he is in such a position that he cannot have proper control of the vehicle or have a full view of the road and traffic ahead.'

Evidence led policing

Given the reduction in police numbers, especially traffic units, forces are keen to ensure that their resources are appropriately targeted. This is done through evidence led approaches. Project Verrier (focusing on uninsured, disqualified, or intoxicated drivers), Operation Tutelage (reminding uninsured drivers of the need to gain insurance) and Op Close Pass (educating drivers about appropriate passing distances around cyclists), are all examples of evidence led initiatives that focus upon seeking to reduce KSIs. They are also examples of education *through* enforcement. We recommend that these, and similar initiatives, be adopted by other forces.

Importance of staff and structures

The work of TPUs is of utmost importance in enforcement. Structuring decision making, training staff, adopting processes for ensuring consistency, and maintaining good relationships with front-line officers are all vital aspects of an effectively functioning TPU. However, growing demand and shrinking resources are placing TPUs under real pressure, threatening the effectiveness of their work. We also note that many of the successes of these forces depend upon passionate and dedicated staff. We recommend that forces keep under review the work of TPUs, with a view to ensuring effective and consistent decision-making.

Strand 2

Cyclists in our groups felt exposed and vulnerable, and were subject to a range of problematic actions from other road users. Despite this, they displayed a degree of ambivalence and fatalism about police enforcement activity, recognising the limitations of enforcement, be they evidential or due to reduced police resources. As a result, they felt compelled to manage their own risk, through safety equipment, planning and avoidance. This leads, however, to the responsabilisation of cyclists for their own safety, a paradox given their position as vulnerable road users. It also leads to victim blaming, whereby other road users blame cyclists for incidents. In addition to enforcement, cyclists seek effective infrastructure and a change in road use culture as a means to reduce risk.

Conclusions and recommendations

Enforcement has a vital part to play in reducing harm and risk on the roads. These endangerment offences are a means of reducing harm through prevention, rather than responding to harm after it has occurred. There have been a number of innovations in roads policing recently and these, combined with efficient and effective structures and working relationships, can improve roads policing enforcement. As a result of our study, we recommend:

- forces review their approach to accepting and acting on third party footage, putting in place methods to ensure appropriate and consistent decision-making;
- national guidelines should be developed on when it is reasonable for the police to issue a notice of intended prosecution (NIP) outside the normal 14 day period;
- national guidelines should be developed on the submission and processing of third party footage;
- the CPS should be more willing to consider prosecuting for dangerous driving in the absence of a collision;

- the CPS should be properly resourced, with specialist road traffic prosecutors who work closely with police colleagues;
- for mobile telephone offences, frontline officers should record more details of the allegations on the TOR, that decision-makers consider alternative charges in difficult cases (such as 'not being in proper control'), and that the offence definition be reviewed;
- innovative initiatives, such as Op Close Pass, Project Verrier, and Operation Tutelage, be adopted by other forces; and
- forces keep under review the work of TPUs, with a view to ensuring effective and consistent decision-making.

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Introduction

Road safety policy generally relies on the three Es for its implementation: 'Engineering', 'Education' and law 'Enforcement'. The focus of this research report is on the last of these. A number of criminal offences exist to promote road safety and to reduce the incidence of road traffic collisions on the UK's roads. Although statutes such as the Road Traffic Act 1988 apply across the UK, because Scotland has a separate criminal justice system, the research has been limited to enforcement within England and Wales. Little empirical research has been conducted into how driving offences are enforced in practice, and a number of questions arise regarding the use of police and prosecutorial discretion. Prior to the commencement of this study, one of its authors had conducted research into the operation of 'result' crimes³, in the form of the various causing death by driving offences,⁴ but there has been until now a dearth of information relating to how offences in the form of conduct crimes, or endangerment offences, operate in practice.⁵ As noted by the All Party Parliamentary Cycling Group:

Typically, the discussion of the legal system resolves [sic] principally on what happens in the gravest of cases: where death or serious injury has resulted. For each injury crash, however, hundreds of near misses have occurred, and thousands more conflicts between road users are likely to have taken place. If we are to try to stop the incidents that cause harm and injury from occurring, the justice system needs to focus on preventing danger throughout the system.⁶

The APPG recommended that the Ministry of Justice should examine in more detail how offences are being used.⁷ Of particular interest are the offences of careless driving and dangerous driving. Anecdotal evidence⁸ had suggested that such offences are rarely prosecuted in the absence of a collision resulting in injury or damage to property, despite such harms not being a required element of the offence. There is also the issue of overlap between these general driving offences and more specific offences such as using a handheld phone or speeding, which in addition to amounting to offences in their own right can also provide evidence to support a charge of careless or even dangerous driving.⁹

Dangerous driving and careless driving are committed when a driver drives below the required standard of a competent and careful driver; the degree by which he or she fails to meet the

³ That is, where the law prohibits action that causes a particular result (such as death or injury).

⁴ See Cunningham, *Driving Offences: Law Policy and Practice* (Ashgate 2008) and Kyd Cunningham, "Has law reform policy been driven in the right direction? How the new causing death by driving offences are operating in practice" [2013] *Criminal Law Review* 711-728.

⁵ Conduct crime or endangerment offences, unlike result crimes, do not require that a specific result, such as death or injury, materialise.

⁶ APPG Cycling, *Cycling and the Justice System*, May 2017, pp.15-16, available at: <https://allpartycycling.org/inquiries/justice/>. p.9.

⁷ *Ibid*, recommendation 11.

⁸ Informal conversations with traffic officers. Such suggestions were also made by police in a research project by the Transport Research Laboratory, published in 2002: Pearce, L.M., Knowles, J., Davies, G.P. and Buttress, S. (2002), *Dangerous Driving and the Law*, Road Safety Research Report No.26 (Crowthorne: Transport Research Laboratory), p.33.

⁹ See CPS Legal Guidance: <https://www.cps.gov.uk/legal-guidance/road-traffic-offences-guidance-charging-offences-arising-driving-incidents>.

requirement will determine which of the offences has been committed. Driving below the required standard is more likely to lead to road traffic collisions, which in turn are likely to cause injury, serious injury or death.

Dangerous driving (DD) is the more serious of the two offences, first introduced as an offence by the Road Transport Act 1930. The law has been altered several times over the decades, with the current attempt to define the offence originating from a review of traffic offences conducted by the North Commission in 1988 which led to the Road Traffic Act 1991 providing amendments to the relevant sections of the RTA 1988.¹⁰ Dangerous driving is a triable either way offence. If tried at the Crown Court, the maximum penalty is two years' imprisonment; at the magistrates' court it is six months' imprisonment. In addition to any term of imprisonment, disqualification from driving is mandatory.

Careless driving, or driving without due care and attention (WDC) criminalises those who drive with a degree of negligence that does not amount to dangerous driving. Unlike dangerous driving, however, the offence attracted little attention from the legislature and was left undefined by statute until the Road Safety Act 2006, which inserted section 3ZA into the RTA 1988. Careless driving is triable summarily in the magistrates' court, and is punishable by a fine, penalty points and possible disqualification. Case law exists to assist in the interpretation of the tests for both careless and dangerous driving, but will be not discussed further here. In both cases the test is objective, insofar as D's driving is assessed against the standard of a competent and careful driver. Where the driving falls below that standard, the driving is careless; where it falls *far* below that standard, it is dangerous. Neither offence requires any particular result to have occurred as a result of the poor driving, although dangerous driving does require that a competent and careful driver would realise that the driving was dangerous, in the sense that it created a *risk* of injury or of serious damage to property.

In essence, DD and WDC exist as endangerment offences to punish causing the second-order harm of risking harm to others. At a theoretical level, Duff identifies the wrong in endangering others as that of creating an unreasonable or unjustified risk of harm which 'manifests our lack of proper concern for the interests of those we endanger' (Duff 2005, 53):

The drawback is that, unless we can rely on some quite specific shared understandings of what counts as an unreasonable risk, and of what kinds of care people should take, in a range of contexts, the standards that courts have to apply will not be the polity's shared standards, but the individual standards of each court and its members – which generates the familiar defects of uncertainty in the law's content, and unpredictability and inconsistency in its application.¹¹

Duff goes on to distinguish between *implicit* and *explicit* endangerment offences.¹² Whilst dangerous driving is an explicit endangerment offence, in that it sets out in the offence the danger that is created by the offending behaviour, use of a mobile phone is an example of an *implicit* endangerment offence. Although driving whilst using a hand-held mobile can provide evidence of dangerous or careless

¹⁰ See Appendix 1 for the current statutory provisions.

¹¹ Duff, R.A., 'Criminalizing Endangerment' in Duff, R.A. and Green, S.P. (eds), *Defining Crimes: Essays on the Special Part of the Criminal Law* (2005, Oxford University Press), p.60.

¹² Duff, above n.11, p.50.

driving,¹³ it is of itself an offence under regulation 110 of the Road Vehicles (Construction and Use) Regulations, in force since 1 December 2003. The offence exists to prevent the risks involved in distracted driving but, as noted by Duff, does so by instructing drivers to follow a simple rule (do not use a handheld phone whilst driving) on the basis that drivers are prone to misjudge their ability to drive according to the required standards and cannot be trusted to decide for themselves when conducting certain inherently risky activities whilst driving is acceptable (see also drink driving).¹⁴ Although it might be seen as a lesser offence to WDC, the fact that it now carries a penalty of a £200 fine and 6 penalty points provides an incentive to prosecute for this offence rather than WDC. As we explain below, the offence is rather technical but, as for DD and WDC, can be prosecuted whether or not it results in a collision.

Historically, one explanation for the lack of prosecution in cases where a risk has been created but not materialised in the causing of a collision, may be the evidential difficulties of proving that an offence has been committed in the absence of what is legally termed an ‘accident’. It may be that, broadly speaking, those cases resulting in police action in the absence of a collision were limited to instances in which the police themselves had witnessed the offending behaviour, although the accuracy of such a claim had until now never been measured. Additionally, in recent years a number of technological advancements have been made which may assist in providing the evidence required to prove that a driver has driven below, or *far* below the standard of a competent and careful driver. For example, there is a growing number of regular cyclists who use helmet/bike-mounted cameras to capture instances of near-misses on the roads. Similarly, the number of drivers of motor vehicles using dash-cams has increased to 27% according to one survey.¹⁵ Footage is often shared on social media but, of greater interest, it can now also be submitted to many local police forces as evidence of offending behaviour.¹⁶ This study set out to explore the legal responses to such increases in reporting of driving offences.

This study collected empirical evidence of the way in which driving offences are enforced using a multi-method approach. It has two broad strands:

Strand 1

This first strand, focusing on the perspective of the police in enforcing the relevant offences, involved gaining access to data on the nature of cases taken forward for prosecution or resulting in out-of-court disposals, and the classification of the offence charged (dangerous driving, careless driving, mobile phone use while driving). The objective of this strand was to provide a measure of the nature of cases deemed to warrant a legal response, what that response was, and of the evidence required to proceed with a case to court. We were also keen to examine cases that were deemed not suitable for prosecution, whether this was based on evidential or public interest factors. Of particular interest

¹³ <https://www.cps.gov.uk/legal-guidance/road-traffic-charging>. Examples of sentencing cases where D has been distracted by using a mobile phone whilst driving have related to charges of causing death by dangerous driving: e.g. *R v Browning* [2001] EWCA Crim 1831, *R v Payne* [2007] EWCA Crim 157.

¹⁴ Duff, n.11, p.61.

¹⁵ <https://www.which.co.uk/news/2018/06/one-in-four-motorists-now-use-a-dash-cam/>

¹⁶ This innovation originated in Wales through ‘Operation Snap’: <https://www.south-wales.police.uk/en/newsroom/operation-snap/> but has since been rolled out to other forces. See further the findings and discussion sections below.

was whether a collision needs to take place before proceedings for dangerous or careless driving will be initiated.

In addition, the project sought to identify best practice in roads policing and enforcement practices. With this in mind, the first force we approached to be involved in the project was West Midlands Police (WMP). WMP was identified as one force which has been developing innovative initiatives for enforcement, policies for employing enforcement alongside education, and was one of the first forces to make use of potential victims' video recorded evidence. One of the aims of the project was to explore and understand differential investigation and prosecution practices in the forces studied and associated CPS areas. At the outset we were conscious of a degree of differential enforcement between forces, and had hoped to select forces according to the level of engagement they have shown with this issue. However, when it came to it we found gaining access to forces extremely difficult, and the process of identifying appropriate forces for involvement in the study became a self-selecting exercise: only those forces already showing an interest in prioritising roads policing responded positively to our call for participants. For further details of the data collected, please see the methods section below.

Strand 2

The aim of the second strand was to collect data from those who self-identify as 'victims'¹⁷ or witnesses of offending behaviour. The objective here was to supplement the data collected from the official sources as to the number of potential cases where there is evidence of offending behaviour, and the nature of those prosecuted. Additionally, it explored victims' perception of enforcement as an effective response to road safety issues. We were not, however, seeking to uncover the extent of unreported offences. Rather, we are interested in how underreporting of offending behaviour is linked to police practices (if at all), and how the perception of vulnerable road users influences reporting of criminal activity.

These strands are linked, but independent. The first concerns the enforcement of endangerment offences, while the second is focused upon vulnerable road users. The collection of qualitative data from the police and CPS was incorporated to explore how enforcement, on the ground, accords with force and CPS policy. This allowed us to explore tensions within these organisations, and factors which increase 'buy in' from front line officers and prosecutors. The second strand, in focusing upon vulnerable road users, provided important qualitative data on other road users' perceptions of police and CPS practice. This allowed us to explore any issues with vulnerable road users' opinions of police practice and provided data on how forces may need to amend their practices, or communicate their policies more effectively, as well as measure whether there is any dissonance between users' perceptions and the policies and practices of the police and CPS.

¹⁷ Strictly speaking, offences such as dangerous and careless driving can be categorised as 'victimless' crimes, in the sense that the offending behaviour need not result in harm to any identified or identifiable individual. However, witnesses of offending behaviour may categorise themselves as victims of the second-order harm of the *risk* created to them by the offence.

Research Method

This study is socio-legal in nature, employing qualitative, rather than quantitative, research methods.

Strand 1: Analysis of traffic offence reports and interviews with criminal justice professionals

As noted above, strand 1 sought to examine how the law is applied and enforced by the police and Crown Prosecution Service. Having secured the involvement of WMP at an early stage we gained agreement in principle from a second force, and keen interest from a third. In the event, the second force declined to proceed with the study on the basis that resources within the criminal justice unit were stretched and they could not physically support the project. Within the third force, some keen interest expressed by one senior officer appears not to have been shared by others, and we failed to persuade this force that involvement in the study might prove beneficial. This force was one we had identified as operating basic levels of roads policing, but failing to deploy some of the more innovative operations developed in WMP, such as Op Close Pass or the acceptance of digital footage online. We had been keen to compare the kinds of cases taken forward for prosecution or out-of-court disposal in this force. However, given that roads policing appears not to have been a priority it is perhaps unsurprising that they were unwilling to engage in the project. We hope that this, and other forces, will benefit from our findings.

A call for participants was sent out to police forces and we were able to identify two further forces to be involved in the project. The first was West Mercia Police, with CC Anthony Bangham supporting the project. This had the advantage that West Mercia was (and still is until later this year) working in partnership with Warwickshire Police, allowing access to both forces. The third force which became involved was Surrey Police. We were able to negotiate Information Sharing Agreements with WMP, West Mercia/Warwicks and Surrey, providing us with a sample of Traffic Offence Reports and access to interview police officers from constables upwards.

Given the resource implications of allowing access to TORs, we were reliant on each force to provide us with the data as they saw fit. One force digitised its TORs and provided them by secure email in redacted form; the second scanned the TORs, redacted them, and sent them to us in registered post, and the third allowed us to come and view the TORs on site. In each force we requested a random sample of TORs for careless driving and dangerous driving, whether they resulted in NFA, out-of-court disposal (a driver improvement scheme), or prosecution in court. In two of the forces, we were also provided with TORs in relation to the offence of use of a mobile phone while driving. We were interested in exploring how this offence works in practice, given the complexity of the way it is drafted (see Appendix 1), and when it is used on its own rather than being evidence of either careless or dangerous driving. We did not explore this further with Surrey as we felt we had sufficient data from that force relating to the other offences, and we were conscious about the demand on resources in supplying us with the data. The data on mobile phone use from the two forces who provided it present some interesting findings, discussed below.

The analysis of a random sample of case files enabled the collection of data on the nature of cases taken forward for prosecution or resulting in out-of-court disposals, and the classification of the offence charged (e.g. dangerous driving, careless driving, mobile phone use while driving, driving with excess speed etc.). The objective of this strand was to provide a measure of the nature of cases

deemed to warrant a legal response, what that response was, and of the evidence required to proceed with a case to court. Although we tried, as far as possible, to compare like with like, there were some differences in the way in which TORs were selected by each force for analysis. This was beyond our control, but we are confident that, ultimately, we had access to a fairly representative sample of cases arising within the last year or two (TORs were dated from 2016, 2017 or 2018, and we could not have access to any cases awaiting trial). The number of TORs provided from each force appears in table 1. It should be noted that for this purpose West Mercia and Warwickshire are represented as one force, as they operate through the same Traffic Process Unit. The offence listed relates to the offence for which the driver was reported, whether or not it led to prosecution, out-of-court disposal or NFA. We would offer one cautionary note in relation to the representativeness of the sample. It can be seen that WMP supplied us with far more examples of dangerous driving than the other two forces. This, we understand, related to the way in which we were provided with the data. In Surrey and West Mercia/Warwickshire we dealt only with data stored at the TPU; cases of dangerous driving are not held there. WMP were able to supply us with data on offences of dangerous driving in the form of a table collating data from various sources, including the file itself and the PNC. This will have involved considerable resource and we are extremely fortunate they were able to do so.

Table 1

Offence/force	West Midlands	Surrey	West Mercia/ Warks	Total
Dangerous driving	41	5	8	54
Careless driving	35	76	55	166
NFA*	2	10	0	12
Use of a mobile phone	33	0	36	69
Total	111	91	99	301

* These were cases arising either out of a RTC or third party allegation where it was clear from the outset that NFA was appropriate and no offence was reported.

The details of these cases were recorded in spreadsheets for qualitative analysis, whilst we also entered data into SPSS for the purposes of limited quantitative analysis. Analysis of TORs and outcomes was supplemented by open-ended, semi-structured interviews with representatives of each police force. Interviews with roads policing officers provided rich qualitative data on policing and enforcement practices. These interviews engaged with officers' understanding of best practice and the aims of roads policing enforcement practices, as well as exploring their views of obstacles to prosecution, relations with the CPS and difficulties in employing the law for the purposes of reducing road danger. Interviews were conducted with Traffic Process Office/Unit civilian staff, given that these are the individuals who make the decisions as to disposal once a TOR has been submitted, and thus exercise considerable discretion in prosecutorial decision-making. We also interviewed senior officers to try to gain an understanding of the priority given to roads policing in each force, and we also interviewed the Police and Crime Commissioner for the three forces for this purpose.

Due to our particular interest in the use of third party footage to support prosecutions for driving offences, we also interviewed staff at Dyfed-Powys police on Op Snap. Given that Wales led the way

in developing a process by which members of the public can submit footage of alleged offences it was valuable to understand how this initiative had been put into practice, and how it had been operating since 2017.

In total we conducted interviews with the following number of personnel:

TPU staff: 7

Police constables – 8

Sergeants – 4

Inspectors – 4

Superintendent - 1

PCCs - 3

Crown prosecutors – 1

Total number of interviews: 28

Our plan had been to also conduct interviews with Crown prosecutors in order to provide further data on the prosecution of these offences, particularly on how prosecutors apply the evidential and public interest tests when deciding whether to continue with a prosecution. Unfortunately, this proved impossible. There is now no central unit dealing with research requests to the CPS, and instead researchers are asked to approach each CPS area separately. WMP, Warwickshire and West Mercia police forces are all located within the West Midlands CPS area and we were unsuccessful in our request for approval to interview Crown prosecutors within this area. Although one Senior Crown Prosecutor expressed willingness to be interviewed in his own time, he felt unable to do so without the approval of his superiors. This was extremely disappointing but is, we believe, symptomatic of problems within the CPS (see discussion below). We were able to interview one Crown Prosecutor from Surrey. It has to be noted that the answers to questions in this interview cannot be presented as representative, given that by agreeing to be interviewed this individual demonstrated an unusual interest in driving offences. Again, this is something we will comment on further below.

Interviews were conducted during the second half of 2018. Towards the end of our data collection, in December 2018, we conducted a ‘sense-checking workshop’ at the University of Leicester, attended by a number of interviewees in order to discuss our preliminary findings as a group. This was also attended by solicitor Andrew Perry, expert in road traffic law and former Senior Policy Advisor (Road Traffic) for the CPS, now employed by Road Safety Support. The discussion from that workshop also feeds into the findings we report here.

Strand 2: focus groups with cyclists

In this strand we conducted focus groups with cyclists; our initial aim was to conduct these with those who self-identified as ‘victims’ or witnesses of offending behaviour. In so doing, we wanted to collect qualitative data on, *inter alia*, the frequency with which they observed or captured what they perceived as offending behaviour, the extent to which they reported such behaviour to the police, and their perceptions as to the police response. Our objective was to supplement the data collected from police forces on the enforcement of road traffic offences. Further, we wanted to explore how these

road users perceive enforcement activity, as well as their views on the importance, or otherwise, of enforcement for reducing harm and risk on the roads.

Participants were recruited via a call on different social media platforms: a project Twitter account (@RST_driving_law) was created and posts were made on both open and closed Facebook groups related to cycling. The call for participants emphasised that discussions would focus upon the action cyclists take to reduce their risk of harm, any incidents or collisions, and the effectiveness (or otherwise) of any criminal justice response to these incidents. So as to not overly skew the sample, the call made it clear that it was not a requirement to have been involved in any incident, and that a range of cycling experience was sought.

Initially, we planned to hold one focus group in each police force area, with around 8 participants in each group. However, this was amended for a number of reasons. The first call for participants was restricted to the West Midlands region and there was a strong response to this call. As a result, we conducted two focus groups in this location. Further, due to the nature of the police forces who participated in the project, we decided to conduct focus groups in two further police force areas where we perceived there to be less visible policing that focused upon reducing risk to cyclists as vulnerable road users. As a result, we conducted two groups in the West Midlands, one in West Mercia,¹⁸ two in Surrey, two in Leicester, and two in Durham. In total, we, therefore, conducted 9 focus groups (for a duration of between 1 and 2 hours), in 6 locations, within 5 police forces, with a total of 77 participants.¹⁹ The locations represented a range of road conditions, consisting of urban, rural and suburban areas. Further, there was a broad range of cycling experience represented within the groups; participants included club cyclists, commuters, leisure cyclists, utility cyclists, occasional cyclists and those who rode with their family. One group was recruited, so as to ensure a broad range of experience in the sample, exclusively from a group of female leisure cyclists who largely plan their routes to avoid cycling on the road.

All participants were provided with a participation information sheet and completed a consent form. A focus group schedule was prepared with a view to guiding the topics to be discussed by participants. Participants were initially asked to talk a little about themselves and their level of cycling experience. Later topics included: perceptions of risk; actions to minimise risk; use of technology; views on the law; perceptions of enforcement activity; and incidents with other road users. In most groups, these topics were raised spontaneously by the participants, with the facilitator merely steering the discussion and ensuring all participants were given an opportunity to contribute. Due to the spontaneity of the participants' contributions, the focus groups were very fluid with topics covered in no particular order, with the interests of the participants naturally emerging during the course of the discussion.

While we did recruit a broad range of cyclists, care must be taken in the analysis of our findings. In the first instance, the sample size was small, with the production of rich qualitative data being a priority

¹⁸ We planned on holding two groups, but the first was very well attended and the second was cancelled at the last minute due to problems with the booked venue. A decision was taken, as this was the last group to be held, that data saturation had been reached and there was little need to conduct a further group.

¹⁹ 47 male and 30 female. Given the general perception that cycling is a male dominant activity, this is a reasonable gender balance.

for the study. The call recruited cyclists with an interest in talking about risk and danger on the roads, while observation of the groups suggested a preponderance of middle class, white cyclists.²⁰ Further, responses indicated that a good number in most groups were very much aware, via social and traditional media, of many of the debates on how cyclists manage risk. The groups did, therefore, skew towards experienced cyclists with fewer voices from those who choose to cycle little due to perceived risks.²¹ Further, as was pointed out by one participant, an important group of cyclists – children, particularly teenagers – were not represented in the groups. However, as explored below, the findings of the study suggest that we did not solely recruit cyclists with an ‘axe to grind’ about enforcement; we will explore our findings later, but there was a very nuanced appreciation of the importance and limitations of enforcement activity. While our findings are necessarily tentative, we believe that they do add to the developing literature in this area.²²

So as to aid the analysis of this data, all the groups were recorded and these recordings were subsequently transcribed and then coded using NVivo. Codes were selected on the basis of the initial focus group schedule and from a close reading of the data. The main themes that emerged were: motivations for cycling; the extent of cycling experience; exposure, risk and risk management strategies adopted; experiences of cycling in other jurisdictions, particularly continental Europe; the use (or not) of personal safety equipment; technology uptake (such as mobile cameras) and use; social media campaigns; incidents, including collisions, near misses, and confrontations with other road users; police response to reported incidents, whether reporting is worthwhile, and current police initiatives; driving and cycling culture, particularly relating to safety and sharing the road; constructing a self-identity as a ‘cyclist’ and how this impacts upon road safety and the uptake of cycling; and steps necessary to reduce risk on the roads generally.

Finally, in order to try to understand how representative our sample is in relation to the use of video footage to support prosecutions, we made Freedom of Information requests to every police force in England for which we did not have the relevant data.²³ These FOI requests were also useful in assessing the responses of our focus groups in Strand 2. The FOI request asked the following questions:

1. Do you currently accept digital upload of video footage from road users as part of a complaint against driving offences? If you do, could you provide details on how members of the public submit this footage?
2. If you do not accept digital upload of video footage, do you accept third party footage via other means (CD, DVD, Memory stick etc)? If you do, could you provide details on how members of the public submit this footage?
3. Could you please provide the number of complaints received in the last 12 months via digital upload, broken down by offence category, if possible?

²⁰ Data was not collected on the demographics of the participants.

²¹ A frequent topic within the groups concerned how cycling could be promoted as an active and sustainable travel option.

²² See, for instance, Aldred, R. ‘Cycling Near Misses: Their Frequency, Impact and Prevention’ (2016) 90 *Transportation Research Part A*, 69-83.

²³ We already possessed the relevant data concerning the three forces in our study and all forces in Wales.

4. Could you please provide the outcome of such complaints received in the last 12 months, broken down by offence category, if possible?
5. Could you please provide the number of complaints received in the last 12 months via means other than digital upload, broken down by offence category, if possible?
6. Could you please provide the outcome of such complaints received in the last 12 months, broken down by offence category, if possible?

A summary of responses to this FOI request can be found in Appendix 2. The responses were sent to us between November 2018 and February 2019. In total, five forces did not provide any response to the request.

Results/findings

Strand 1

We present the findings below primarily from the 232 TORs we were able to analyse for dangerous driving or careless driving. Initial quantitative data is buttressed with qualitative data taken from TORs. We discuss the use of a mobile phone cases separately, since all of these arose from cases where an officer had witnessed this offence whilst out on patrol. We also draw upon answers to our questions in interview, although these feature more in the discussion section below. We have taken a thematic approach to the presentation of our findings, and it should be borne in mind that there is, in places, considerable overlap between the themes.

The use of video footage

One of our research questions related to the prevalence of video footage which is becoming increasingly available to support allegations of bad driving. We discuss, within the different themes set out below, how the existence or unavailability of video evidence may affect the outcome of a case, but we start by presenting some raw data. Of the 232 TORs examined, the presence of footage, either from a police in-car camera, a dashcam or bike or helmet mounted camera, or CCTV from nearby premises was indicated in 82 cases, with it being unclear in a further 22 cases as to whether such footage was available. Of the 82 cases, 29 were prosecuted as DD, 48 as WDC, and four resulted in NFA. One case was investigated as dangerous driving but charged as another (non-driving) offence. There were a further four cases (two of DD and two of WDC) where footage had been recorded at the time of the incident but was lost or corrupt and so could not be used in evidence.

The significance of harmful results

One of the main questions we were seeking an answer to was whether the endangerment offences of careless and dangerous driving are unlikely to be prosecuted in the absence of harm being caused in the way of a RTC. We quickly discovered that prosecutions do take place in the absence of harm. As a prosecutor stated:

I don't require a collisions in order to charge a road traffic offence like careless. I mean, I've laid careless and inconsiderate driving charges where we've had sort of, failure to stop for officers, for police constables, and they've then driven poorly in the road – not caused an accident, but you can see people slamming their brakes on, for instance. So I don't need a collision in order to lay one. Is it easier to lay one, once you've got a collision? Yeah, definitely. I, I think especially because-. You can, you can feel more confident that you're going to get, a positive prosecution.

However, it was also suggested that results can influence the level of charge brought:

[T]here doesn't need to be a collision, and certainly that's not a major rationale in our decision making, but it might be an aggravating factor, if no-one's been seriously injured, the fact that it's caused a collision might be an aggravating factor to decide whether we go careless or dangerous.

We will return to this theme later. Our findings show that there are broadly three different sources of allegations of such offences: RTC; police witnessed; and third party allegation.

A note on the process

In each of these three types of case, it will be the staff in the Traffic Process Office (TPO; or TPU or TPMU) who make the decision as to the outcome of a case. The TPU will receive a TOR from the reporting officer in a case of an officer-witnessed offence or an offence detected as the result of an RTC and will begin an investigation from the information recorded by the officer on the TOR. It may be that the officer has had the opportunity to speak to the alleged offender, and informed the driver that they will be reported for an offence. Alternatively, it may be that the registration number of the offending vehicle has been noted, and the procedure is then to send a notice of intended prosecution (NIP) to the registered keeper of that vehicle in order to allow for the identification of the driver under s.172 Road Traffic Act 1988.²⁴ This should be done within 14 days of the alleged offence, after which the registered keeper has 28 days to respond. If the registered keeper fails to respond, the police will be unable to pursue the driver for the original offence, without further evidence as to the identity of the driver, but will prosecute for the offence under s.172(3) RTA 1988. Sending a NIP is also the procedure to be followed where an offence is detected through the submission of third party footage (see below).

In addition to identifying the alleged offender, TPU staff also have to determine whether they are in agreement that an offence has been committed. Where a TOR has been submitted, this will be determined by the details provided on the TOR and assessing whether they provide evidence of the alleged offence. In the case of third party footage, whether submitted online via a portal or provided on a memory card or some other device, the staff member will view the footage alongside reading the statement provided by the person alleging the offence, and determine if this provides evidence of any offence and, if so, what offence. This function is sometimes referred to as 'triage': the initial assessment of whether there is sufficient evidence that an offence has been committed for prosecution.

Once triage has taken place, the subsequent decision to be made is as to what the disposal should be in the particular case. This may be prosecution but, as expressed in several interviews with officers, the common approach is to check whether the driver has already completed an educational course. If not, it may be that an offer of education will be made. Where a course has already been taken, it is likely that prosecution will be preferred. Alternatively, in cases of minor transgressions, a fixed penalty notice (FPN) will be offered. A police sergeant should confirm any decision as to disposal. The driver will then receive a letter communicating the decision. If they have been offered an educational course they can decline to take up the offer, but will be prosecuted in the alternative. Similarly, if they fail to pay a FPN they face prosecution for the offence alleged. Prosecutions take place in the magistrates' court and will, if the offender pleads guilty, go through the Single Justice Procedure (SJP). This allows a case to be dealt with by a single magistrate with reference to written evidence in the absence of the defendant and lawyers. It requires the defendant to plead guilty; if a defendant pleads not guilty the case will be referred to a traditional magistrates' court. In some areas, Police Led Prosecutors (PLP), rather than CPS lawyers, will prosecute a case where a not guilty plea has been entered.

The above applies in cases of WDC and use of a mobile phone whilst driving. Where the driving falls so far below the standard of a competent and careful driver that dangerous driving is alleged, the case

²⁴ See Appendix 1.

will have to be referred to the Crown Prosecution Service (CPS) for a decision to be made as to prosecution, under the Director for Public Prosecution's guidance on charging.²⁵ This will involve preparing a digital file for submission to the Athena file management system, after which a CPS lawyer will review the evidence and make a decision in accordance with the Code for Crown Prosecutors as to whether a charge should be brought. This involves satisfying both the evidential test, requiring sufficient evidence to provide a realistic prospect of conviction, and the public interest test, requiring the reviewing lawyer to weigh up a number of factors for and against prosecution.²⁶ In the event that the CPS lawyer judges that both tests are passed, a prosecution will commence in the magistrates' court.

Road traffic collision

Where a RTC occurs, there may be a requirement to report it to the police in accordance with s.170 RTA 1988. It is an offence under s.170(4) to fail to report a collision. A RTC might also come to the attention of the police due to their attendance in order to manage traffic flow whilst vehicles are recovered. In our sample there were 10 cases of DD arising from a RTC and 96 cases of WDC.

The term collision is important here. Whilst the word 'accident' appears in the legislation and is significant for legal purposes, RTCs are in the most part not 'accidental' in the sense of being random occurrences. Given that human error is generally recognised as being the main contributory factor in 69% of RTCs,²⁷ the fact that a collision has occurred should give rise to questions about who was at fault, irrespective of how serious the damage or injury caused was. As noted by one senior officer:

from my experience as a general rule, unless something dangerous has happened, every RTC that I've investigated or has come across my desk, will always be written off with a referral for due care – driver improvement course or prosecution.

The police will find this easier to establish in cases involving their attendance at the scene, since officers are then able to identify witnesses and record initial explanations of the collision for further investigation. In cases where the RTC is reported at a later time at a police station, evidence may be more difficult to collect with a view to establishing fault.

An ideal scenario will be that one of the vehicles involved in the collision, or a vehicle in close proximity, will have recorded events on a dash-cam, providing objective evidence of what exactly happened. Some kind of footage, either from dash-cams or CCTV, was available in 20 of the cases arising from a RTC. Some of these will have involved very low-level careless driving, often involving D colliding with a parked vehicle and caught on CCTV from nearby premises.

²⁵ <https://www.cps.gov.uk/legal-guidance/charging-directors-guidance-2013-fifth-edition-may-2013-revised-arrangements>. Where a guilty plea is anticipated and it is expected that the case will not be committed to the Crown Court, it is possible for the police to charge without approval of the CPS, but given that a not guilty plea is unlikely for the more serious offence, this will be rare.

²⁶ <https://www.cps.gov.uk/publication/code-crown-prosecutors>

²⁷ In the latest statistics, Driver/Rider error or reaction was a contributory factor in 69% of collisions, but additionally the following contributory factors are recorded which similarly demonstrate the fault of drivers: injudicious action (20%); impairment or distraction (14%); behaviour or inexperience (22%). See *Department for Transport Statistics* table RAS50001, Contributory factors in reported accidents by severity, Great Britain, 2017 available at <https://www.gov.uk/government/statistical-data-sets/ras50-contributory-factors>.



A successful example of this can be seen in case BRTCWDCP23. This was a RTC reported to a police station after the event, with the complainant's motorcycle having been damaged in a 'parking prang' outside a shop. The shop's CCTV footage had recorded D reversing his van into the motorbike and driving off. D was sent a s.172 NIP and responded to admit he had been driving the van at the relevant time. D was prosecuted for failing to stop and failing to report an accident, as well as WDC and driving without insurance, with D pleading guilty to all offences. This was a case where the WDC allegation was fairly low level: D had failed to observe that the motorcycle had been parked behind his van and reversed into it. Without the CCTV footage it is likely that this case would have been left to the insurance company to deal with, but this case resulted in 6 penalty points and fines of £40 for WDC and slightly higher fines for the other offences.

The guilty plea appears to have been crucial here: in another case within the same force (BRTCWDCP13) D similarly reversed into the complainant's vehicle outside a shop, and this was recorded on CCTV. In that case, D was prepared to plead guilty to failing to stop and failing to report, and no evidence was offered on the WDC charge. D was fined £400 and her licence was endorsed with 5 points. In this case, then, D's poor driving was not punished and she was clearly not willing to accept that her driving was below the standard of a competent and careful driver, despite the fact that she had driven into a stationary car, there was CCTV footage of this, and she was facing a fine and penalty points for the other offences. Without the evidence being put to proof, it is not clear whether that evidence was sufficient to prove the offence of WDC (in this instance we did not have access to the available footage to be able to make this assessment for ourselves). However, it can be argued that it is sometimes worth the police charging WDC on the basis that the evidence provides a realistic prospect of conviction and the driver may well admit the offence. This again occurred in case BRTCWDCP4 where there was in fact no video footage but the evidence of careless driving came from eye-witnesses, who were neighbours of the car owner whose car had been damaged. It may have been that this case was pursued in the absence of CCTV footage because of the aggravating factor that D was driving without a licence and without insurance, and in the event D admitted his guilt in relation to all offences, including WDC, which in terms of penalty could be seen as the least serious of the offences charged. As this last case shows, video footage might be seen as ideal, but a prosecution may be brought through reliance upon independent witness evidence of what occurred.

It is important that the witness be independent and not someone involved in the collision. In some cases it might be possible to prosecute on the basis of the witness testimony of a driver involved in the collision but the danger is that their version of events will be doubted due to their involvement. This can be seen in case CWDCP35 in which D collided with a car from behind on a dual-carriageway. The car had been moving from lane 1 to lane 2 in order to allow an HGV to pull onto the carriageway from a layby. D had been travelling too fast (and likely well in excess of the speed limit) to stop. The driver of the other car said she had judged there to have been 'plenty of space' between her and the D's car approaching from behind when she pulled out; D claimed that the other driver did not look before pulling out. The PLP withdrew the charges on the basis that the police had not obtained an MG11 witness statement from the HGV driver to support the other driver's claims. The only other witness had been the passenger in the second driver's car.

Although WDC does not require a victim of the offence to be identified, where there is such a victim a prosecution is unlikely to be brought unless that victim is willing to give evidence against D. In CDDNDAC1 D attempted to overtake the victim's car as she commenced a right turn. The collision was

high impact, but fortunately the victim escaped without notable injury. Although there was an independent witness to give evidence against D, when the victim expressed unwillingness to go to court the sergeant decision-maker decided to offer D a course. Here, the evidential test for prosecution was passed, but it was thought not to be in the public interest to prosecute D where his driving behaviour might be addressed by attendance on a course.

Police witnessed

The vast majority of cases of dangerous driving in our sample (42/54) came to light because the offence was witnessed by an on-duty police officer. This occurred in the course of a police pursuit, where a suspect had come to the attention of the police due to suspicious activity, bad driving, or ANPR trigger, and the driver failed to stop for the police, who gave pursuit. In a little over half of these (25/42) cases the police had in-car video that recorded the pursuit and provided evidence in support of a charge of dangerous driving. In interview it was agreed that such footage was ideal to prove a case of dangerous driving, but in its absence the witness testimony of an officer, or preferably two officers, would suffice to support prosecution. The weight given to the words of an officer, given the officer's credibility is perceived to be far higher than that of a member of the public, results in prosecutions which would not proceed if a member of the public reported the offence without further evidence or independent witnesses,²⁸ as illustrated by case CDDP3. This was an exception to the general trend that dangerous driving arises from police pursuit and a course of conduct over several miles. This was a case in which D overtook another car when it was unsafe to do so, resulting in a near miss with a police car travelling in the opposite direction. Despite the police car not having an in-car camera and there being no independent witnesses, D was prosecuted for dangerous driving on the strength of the evidence from the two officers in the police car. In this case D was remorseful from the outset and pleaded guilty at court; one does wonder whether a conviction would have been obtained had the case gone to trial, given what is said about the threshold for dangerous driving below. Had a member of the public experienced the same near miss it is unlikely that a charge for either dangerous driving or careless driving would have been brought.

In one force the police were used to having to bring cases against drivers in the absence of footage of a pursuit, simply because the police cars had not been fitted with in-car cameras until very recently:

The issue we have with dangerous drive through pursuit is the quality of essentially, the police evidence. And it's probably only fair to test here because, believe it not, only in the last six months have we incorporated camera equipment into our vehicles. And that's been some ten years without. We had all the VHS systems removed from the vehicles eight to ten years ago. We've had a gap of that period between, and now we've just got some equipment, which is very poor in quality, put into the cars. ... So, whilst we haven't had equipment in the vehicles, we've relied a lot on officer commentaries. So, when you have a pursuit, the officer runs a commentary. So, you are then proving an offence of dangerous driving, yes, on witness testimony from a police officer – which is generally regarded- – but it is open to scrutiny.

²⁸ For further comment on the credibility of the police as witnesses, see McBarnet (1981) *Conviction: Law, the State and the Construction of Justice* (MacMillan) and McConville, Sanders and Leng (1991) *The Case for the Prosecution* (Routledge).

However, it should also be noted that the one case in the sample where the police reported a case of DD which was downgraded to WDC by the CPS (CWDCP9) was also a case witnessed by the police without the support of video footage. The two police officers were able to give detailed commentary of the pursuit and it is unknown why the CPS advised a charge of WDC rather than DD, but provides a good case study for discussing the threshold for proving DD over WDC,

In CWDCP9 the police officers' witness statements described how, once they had attempted to speak to the occupants of a suspicious car, D had made off, driving in excess of the speed limit (70mph in 40mph limit, 80mph in a 60mph limit, and 'easily in excess of 100mph' on a dual carriageway). One of the officers graded the Dynamic Risk Assessment as Medium and described how D drove on the wrong side of road, showing little regard for members of public, and nearly lost control resulting in a near miss with a truck parked on the offside. The officers were also careful to make a statement assessing the standard of D's driving in relation to the offence definition, stating that D's driving 'fell far below that of a competent and careful driver and not only did he put his own life in danger but he also subjected his passengers to danger, the general public and myself and colleagues'. This was a common feature of cases prosecuted as DD witnessed by the police but, in this case, the CPS chose not to prosecute for DD. There was unfortunately no explanation of this on the file, and so we are unable to say whether the lack of footage was influential here.

What we can say, however, is that what is described by the officers in the case appears fairly typical of what is required for a charge of DD to be brought. Many of the cases in the sample resulting in a charge of dangerous driving involved more than a few minutes of bad driving over several miles, including driving at excess speed, perhaps running red lights and driving on the wrong side of the road or across pavements; what one officer described as a 'protracted' course of bad driving. On the other hand, another officer also stated that a dangerous driving charge could be supported on the basis of one particular manoeuvre, such as running a red light in a residential area at 70mph, and on the basis of as little as a minute's footage in evidence: 'Dangerous is dangerous, regardless of how long it may continue for.' What appears to be crucial is the presence of a number of aggravating factors combining to demonstrate driving that is unusual in falling far below the required standard but also occurring in circumstances where it is clear that individuals in the vicinity were put at risk of harm.

While a number of cases of DD were successfully prosecuted in the absence of camera footage, due to a software error, the footage being lost, or some other unknown reason, ultimately, a police pursuit recorded on in-car video is the most likely type of case to result in a charge of dangerous driving. As a prosecutor stated:

I mean, one of the beauties of the police pursuits is generally speaking – not all the time, course – but a significant amount of the times, you've got Cleartone cams on the police cars, and so you're, you know, you've got footage where you're following this vehicle. It demonstrates the driving throughout; you can see the speed... The fact you've got the emergency lights going and this person clearly ignoring lawful directions – yeah, that, that makes things a lot easier.

In relation to the less serious offence, 52 cases of WDC were prosecuted on the basis of the offence being witnessed by the police.

Third party allegation

One of the most interesting recent developments in roads policing is the use of footage from members of the public to initiate prosecutions; this allows for greater enforcement of road traffic offences as they do not require a police officer to observe the alleged behaviour. Since this project was conceived and started there have been a number of important developments in this area. Previously, a number of forces, including WMP, would accept footage from members of the public, if submitted with an associated witness statement. However, this necessitated the member of the public delivering a hard copy of the footage (on CD, memory stick, etc.) to a local police station. West Midlands Police, as part of Operation Close Pass, started to improve this approach by accepting digital footage, thereby making it easier for the member of the public to supply this to the force. Initially, they facilitated a small number of cyclists, whom they met through developing Operation Close Pass, to be able to submit footage via a private YouTube link. Officers within the traffic unit would then review this footage and the accompanying witness statement. As the number of submissions increased, officers passed on this function to the TPU, working closely with them so as to build an informal understanding as to an appropriate response to the allegations, thereby promoting continuity and consistency of decision making. As we note below, WMP now utilise a web portal for the submission of this footage. In interview the manager of the TPU noted that this has provided a further means of enforcement activity, but one that is putting a clear strain on the TPU's resources. We will discuss further, below, what this may mean for the quality of decision making.

Elsewhere, police forces in Wales, in collaboration with GoSafe, developed Operation Snap. North Wales police developed a pilot operation in 2016 and other forces in Wales subsequently joined and helped develop the scheme. This is a web-based portal for the submission of digital footage concerning allegations of driving offences developed with the assistance of Nextbase, a dashcam manufacturer; members of the public can upload footage alongside a witness statement, and the relevant force's TPU can then process the allegation, deciding upon what action is appropriate. Op Snap has since been adopted by West Mercia and Warwickshire.

Building upon their work with Operation Snap, Nextbase launched a similar web-portal in 2018 for the submission of digital footage, purporting to offer national coverage. While some forces have signed up for this option, a number have not, either having no means of accepting such footage, or using their own portal. If a member of the public uses this Nextbase portal to submit footage, what happens next depends upon the location of the force area for the associated allegation. If the force has signed up to use the portal, a link to the footage and the accompanying witness statement is sent directly to the force. When the force has its own portal, they are redirected to the relevant force website. If the force has no means of accepting digital footage, the portal provides a witness statement for the member of the public to print and then take, with a hard copy of the footage, to their local police station. Of the three forces in our study, West Midlands, West Mercia and Warwickshire use the Nextbase portal, while Surrey have developed their own system.

Surrey have recently changed the portal they use. In 2017 Surrey went live with an in-house portal for the submission of evidence and amended this in December 2018, so as to utilise a portal similar to the national 'Single Online Home' portal used by a number of other forces. Allegations submitted to this portal are then processed by the force's TPU.

We have received details of the number of submissions uploaded on these portals. Care needs to be exercised in comparing these, particularly as different labels appear to have been supplied to describe

the various outcomes of submissions, and the approximate nature of some of the figures. Similarly, we have no qualitative data available to investigate whether these outcomes are appropriate. Nevertheless, the figures do suggest a degree of variance in outcomes for the submission of digital footage by members of the public. West Midlands reported to us that, at the time of requesting the data, they had received 1010 reports, of which approximately 32 percent concerned mobile phone offences, 50 per cent WDC, and 18 per cent 'other'. Approximately 28 per cent of these resulted in the offer of an education course, 35 per cent in a fixed penalty, 12 per cent were prosecuted through the magistrates' court, and 25 per cent were cancelled. Officers from WMP, at our sense-checking workshop, stated that they initially were concerned that this last figure for cancellations was disappointingly high. However, when they investigated the likely reasons (the quality of the footage, the evidence not coming up to proof, not receiving the footage in time to issue a NIP) they were satisfied that the TPU were appropriately processing these cases.

West Mercia and Warwickshire reported that since July 2018, they had received 280 reports concerning 311 offences, the majority being WDC (157), using a hard shoulder (55) mobile phone use (17) and failing to stop for a red light (17). Turning to outcomes, a NIP was issued 136 times, a warning letter was sent in 104 cases, 59 allegations were NFA, 6 NDAC, 2 were prosecuted, and 2 resulted in 'traffic management intervention'.

Surrey have received 1583 complaints via their portal since December 2017. Of these 1235 were NFA and around 22 per cent were live where some action (warning letter, education course, prosecution) either did take place or was live at the time of the request.

For Operation Snap, we have data from November 2017 to November 2018 for one force (Dyfed Powys) and from November 2017 to July 2018 for the other Welsh forces. Dyfed Powys received 434 submissions in this time, with 192 cases no further actioned and 53 warnings were issued. Of the remaining cases, a prosecution was initiated for the following offences: 112 WDC, 9 DD, 5 mobile and 62 other.²⁹ Gwent received 194 submissions and 122 were NFA with a further 22 warnings sent to drivers. The following cases were prosecuted: 11 WDC, 14 DD, 6 mobile phone and 17 other offences. North Wales received 411 submissions and 123 were NFA with a further 6 warnings issued. The following offences were prosecuted: 139 WDC, 4 DD, 31 mobile phone and 108 other offences. Finally, South Wales received 817 submissions and 497 were NFA and 51 warnings were sent to drivers. Of those processed further, these were for: 134 WDC, 8 DD, 33 mobile phone and 93 other offences.

These figures show a high degree of variation in the outcomes from submissions, particularly the rates of NFA.³⁰ WMP, West Mercia and North Wales police, for instance, appear to be more willing to initiate action when compared to some of the other forces. This raises issues concerning consistency of decision making between forces; we will explore this further, below.

While Operation Snap is commonly understood to be the first means by which members of the public can remotely submit digital footage, other forces were developing similar projects. As a result, there are now a variety of systems being utilised by forces across the country: Nextbase, Operation Snap, Single Online Home, and force specific portals. So as to examine the extent to which forces across the

²⁹ For Operation Snap in Wales we do not have data on the outcomes (fixed penalty, education course, court summons etc.).

³⁰ This data can be examined in greater detail in appendix 2.

country adopted this development, we made a FOI request to all the forces in England outside the study, requesting, *inter alia*, if they accepted footage from members of the public, in either hard or digital format. The extent of uptake has been very rapid, with the majority of forces in England and Wales now utilising some form of digital portal, or with firm plans to do so in the immediate future. We cannot, however, be very specific on the actual numbers, as five forces either did not respond to our FOI request or the response was not sufficiently clear. Having said that, we estimate that fewer than 10 forces do not and do not plan, in the near future, to use such a system. We also requested forces to provide, if possible, raw data on the numbers of submissions, the offences alleged, and outcomes. Due to difficulties in providing this data, many forces were unable to provide this in a manner that allowed for meaningful comparison. However, the extent to which the development of third-party reporting has the potential to impact upon enforcement is apparent from the data we received, if only due to the sheer numbers of submissions that these portals receive. Some forces provided information on the number of submissions, while others provided data on outcomes. As a result, we do not have data that allows us to compare the rate of submission between the forces who did respond. Nevertheless, we are able to note the extent to which some forces do receive a high volume of submissions, in circumstances where the technology is new and the availability of the portal has not been widely advertised. It is also noteworthy that while we asked for data from the previous 12 months, some forces have not had an operational system for most of this time, so the figures provided are for a period of less than a year. As an indication of the extent to which this system is already being used, we provide some raw data on the number of submissions or outcomes from some of the forces who responded to our request, alongside the data from the forces in our study: Avon and Somerset, 650 submissions; Dyfed Powys, 434 submissions; Essex, 2115 submissions; Cheshire, 757 incidents; Greater Manchester, 809 submitted; Gwent, 194 submissions; Met, 6744 submissions; Norfolk, 1322 submissions; North Wales, 411 submissions; Northumbria, 93 submissions; South Wales, 817 submissions; Suffolk, 737 submissions; Surrey, 1583 submissions; Warwickshire, 280 submissions; and West Midlands, 1010 submissions. These figures suggest that Operation Snap and its variants are satisfying a previously unmet demand. However, how these cases are processed is of importance, and more will be said on this later.

Turning to third party submission cases in our sample, there were 26 allegations that came from this source, of the 232 cases we examined. It is therefore difficult to claim representativeness of this group of cases, given the smaller sample size, so we will concentrate on the quality of the individual cases. Of the cases arising out of an allegation made by a member of the public, two of these led to a prosecution for DD, with 18 cases considered for prosecution for WDC. There were 6 instances where a member of the public alleged an offence had taken place, but the police found that NFA was appropriate from the outset. In half of these (3) the allegation was supported by video evidence. Of those taken forward to consider for prosecution, 5 resulted in the offer of a driver improvement course. In addition, two cases arising from a third party allegation not supported by footage resulted in the acceptance of a driver improvement course. In two cases a prosecution was initiated, but after a not guilty plea was entered the case was withdrawn.

In terms of the identity of who made allegations, cyclists were the largest group of road users to do so, with 11 such allegations being made in relation to a victim who was a cyclist.³¹ Eight cases involved

³¹ This is supported by a TPU employee who, in interview, reported that a large proportion of third-party submissions came from cyclists.

car drivers who alleged an offence, and there were two pedestrians and one motorcyclist. In three cases there was no identifiable potential victim of the alleged offence.

The findings from each of these categories of case (RTC; police-witnessed; 3rd part allegation) are set out further in different themes below. For now, it is worth noting that in interview officers were fairly consistent in agreeing that although the source of allegations of bad driving might differ and prosecutions can and are brought in the absence of a collision, results do matter to the decision-making process. The following quotation articulates a consistent view of this:

Now, I know, because I've dealt with numerous collisions, that if somebody is injured as a result of it, seriously, well, if you go into the arena of dealing with a serious injury or fatal road traffic collision, what is careless and what is dangerous is a totally different definition for the CPS, basically, compared to how they would view a standard offence where maybe it's just a minor RTC with no injury. Maybe it's just an offence that had been recorded on a dashcam. They look at the two in completely different ways.

This implications of this are discussed further below.

The exercise of discretion

The police and CPS exercise a great deal of discretion when making decisions in relation to allegations of offending behaviour. This is true for all criminal offences, but is perhaps particularly marked in the cases under investigation for various reasons, including the range of disposals available for these offences (prosecution; FPN; driver improvement course; warning; NFA) and the perception amongst members of the public that these offences are not 'true' crimes. Decision-making is discretionary both in the sense of determining whether an offence has been committed and, if so, how that offence should be categorised (e.g. careless driving vs dangerous driving) and, if there is evidence of careless driving, what disposal is appropriate.

In interview, police officers articulated how they exercised their discretion at the roadside, influenced by the attitude of the offending driver:

I would say a big piece of it is the attitude, because you know within minutes how that person reflects on what they've done. ... And some people, I feel ... it's like a reality switch gets turned on, and they're mortified by what they've done. And you can work with that; you can educate those people, and, and hope, in the long term, that they'll change their driving. And if they don't, if you use the right educational tools, we'll know who's got them before, and you've given them an opportunity to change. If they haven't changed, then the next step up is you've got, like the way it runs is that, you've been educated; you've been offered this; nothing's changed for you – then you get straightforward points. You know, I've stopped two or three people that have had two educational courses for speeding, then got three points for speeding, and we stop them for speeding. You're flogging a dead horse. They've been given two opportunities, and points – and you still think that you can drive as fast as you wanna drive because you're late, or whatever. So, unfortunately, then it's more points. ... And then discretion becomes less because it's like, I can't educate you. So, you're gonna have to have points, and fines, and it's gonna increase, and eventually, you'll get banned. And then maybe you'll learn. Maybe you won't.

Similarly:

A lot of, a lot of what we do is people acknowledging what they've done wrong. Because so many people are blasé to the rules of the road and they don't understand them, or not even aware of them. ...If people acknowledge what they've done, I don't want them to grovel and apologise wholeheartedly, but: 'I'm really sorry. I know I shouldn't have done it' and my reasons were this. So, if people acknowledge what they've done wrong and they apologise for what they've done, it leaves my options more open to how I can deal them. And if, maybe if that driver had apologised and had given whatever reason they have done, the option for me then is to offer them a driver awareness course. But because they completely denied and they were basically saying that I'm a liar for saying what I had, it's like, right, if that's the case then, if you're saying I'm a liar, then this is gonna go to court and we'll let the magistrates decide who's telling the truth. ... I said to them, my options are limited. If you can't admit what you've done, then it will either be one of these two options. So, wait for a letter: you choose which one you want to go for, and then we'll see where it goes.

Beyond the roadside, where officers and TPU staff have discretion in relation to desk-based decision making, there is evidence that some (but not all) police forces try to encourage the consistent exercise of discretion through various means, such as drafting a decision-making rationale for determining disposal in a case of careless driving. An example of this can be seen in one force where all third party footage would be triaged by one individual police officer, ensuring consistency of approach in determining whether an offence had been committed, before the TPU staff would then determine the disposal based on the decision-making rationale written by the officer:

You have to make the decision making rationale for it. So once you've made the decision making rationale, they can then run with it...-. So it says, education over prosecution, let's start low, offer them a course. If they're not eligible for a course, then offer them a fixed penalty. If they're not eligible for a fixed penalty, go to summons. Or if they haven't identified the driver properly, so straight to the failed to ID driver.

Here we see the discretion for disposal being structured, and the discretion for deciding whether an offence of WDC was committed is controlled by the fact that it is one individual making that decision. The problem in other forces, is that there may be several staff-members, some civilians rather than officers, exercising that initial triaging discretion, both in relation to third party allegations and TORs submitted following a RTC. In those forces, consistency of decision-making was not always demonstrated. From interviews with staff at Dyfed Powys, that also appears to be a teething-problem with Op Snap, in that there has been no training of back-office staff as to how to interpret the evidence presented in the submitted video footage, and different approaches are taken within the different Welsh forces. Those working in the same office may well call upon their colleagues for second opinions in many cases to try to increase the degree to which decisions are made consistently, but the danger is that it could well be that one case might be dealt with differently depending upon the location in which the bad driving occurred. This is partly explained by the fact that different CPS offices have different requirements for bringing charges, which filters down to the police decision-makers.

Structured decision-making

The ways in which the police attempt to structure their decision making differs between forces. In relation to TORs some, but not all, forces ask the reporting officer to select at the end of the form whether or not the offence committed appears to have been deliberate or unintentional. For example, a TOR from Feb 2017 WMP had two boxes for an officer to select:

Evidence suggests lack of awareness of the law pertaining to the offence he/she committed, that does not have wider consequences (ie collision)

or

Evidence suggests by an Act/Omission their mischief was intentional/deliberate (ie the driver knew their actions amounted to an offence)

Similarly, TORs in Warwickshire required officers to simply select whether the offence was deliberate or a 'lapse in concentration (unintentional act)'.

Interviews suggested that the main purpose for these choices was to assist in assessing the appropriate disposal in a case. As will be discussed below, the tests for WDC and DD are objective and do not require proof of D's state of mind. There is no need, for example, to prove that D was aware of their offending for the purposes of proving DD. However, we have found that a prosecution for DD is far more likely where the offending involves an intentional act. That is not, however, the purported reason for these tick-boxes appearing on the TOR. Rather, the reported rationale is to determine the appropriate educational course for D to attend if such a course is deemed appropriate.³² It should be noted that whichever course is deemed to be appropriate (driver awareness; driver education; driver improvement) the effect is the same, in that they are all offered as an alternative to prosecution and where completed, D will avoid prosecution for the offence. The data we had did not specify which particular course had been offered to D; only whether a course had been accepted as an alternative to prosecution.

We can see how this operates in practice. For example, in AWDC2 D was seen by an officer crossing the solid white line and hatch markings at the exit junction of a motorway, having almost missed the junction. The 'deliberate' box was ticked, and D was offered and accepted an educational course. Similarly, in AWDC23 the 'deliberate' box was ticked, in circumstances where a taxi driver was stationary facing the wrong way down a one way street, and an educational course was offered.

The offer of an educational course may be appropriate in cases such as this, as it gives offenders the opportunity to reflect on their offending and learn from their mistakes. It is more difficult, however, to reconcile a case in which the 'deliberate' box was ticked and the case resulted in a FPN. This can be seen in AWDC21, in which two officers in a marked vehicle witnessed D pull out from the oncoming lane to overtake a taxi, at speed (45-50mph in 30 limit). The officer driving was forced to brake hard to avoid a collision. D admitted wrongdoing in the back of the police car; this admission was captured on the PC's bodycam. Nevertheless, a FPN was issued.

³² See <https://www.ndors.org.uk/courses/>. E.g. the What's Driving Us Course: "is for those drivers where the evidence suggests by an act or omission their mischief was intentional or deliberate i.e. the driver knew their actions amounted to an offence".

This can also be seen in other forces. In CWDCFP6 a FPN was issued, despite the reporting officer making the plea to 'please prosecute' next to the 'deliberate' box having been ticked. This was a case in which the officer was driving a marked police car attending a RTC on the motorway. He was driving in lane 3, with lights and sirens operating, at 120 MPH. He reported that: 'Offender ahead stopped dead in lane 3. I had to use full emergency brakes stopping from 110mph coming to rest 1m from rear bumper of offender. This was a serious risk to life and I feared a serious collision only just avoided.' It may well be that the appropriate outcome was reached in this case. The officer was clearly affected by the near-miss in this case, contributed to by the fact that he was driving at speed to attend an emergency, but it may have been that the offending driver simply panicked and rather than deliberately endangering the officer, had failed to respond appropriately. It is right that a decision should be made in a case such as this by an objective decision-maker. It does though, along with these other cases, raise questions about the utility of a box assessing the deliberate nature of the offending.

Conversely, there were cases where the 'unaware' box was ticked and the initial suggestion from officers assessing submitted footage of close passes was that an educational course was appropriate. There was clear evidence of WDC, with the driver in each case passing very close to a cyclist, as caught on the cyclist's camera. However, in both of these cases (AWDC7 and AWDC20) D was prosecuted in court for WDC, presumably because D was not eligible for a course or had declined the offer. In the first of these, no evidence was offered in court and the case was dismissed. It is not known the reason for this. In the second, D was found guilty of WDC in his absence and was fined £220 and given 3 penalty points.

In other cases, it can be questioned whether the correct box was selected. This can be seen both in terms of driving being categorised as 'unaware', when the evidence suggests it was deliberate, and vice versa. An example of the former type of case is AWDC4 in which officers witnessed D driving the wrong way around a roundabout in order to avoid traffic. It is difficult to understand why the 'lack of awareness' box was ticked in this case, given that the facts described would appear to require a conscious decision rather than lapse of attention. An educational course was offered and accepted in this case. On the other hand, an example of the latter type of case is AWDC18. This was a RTC case in which the victim, a young girl, emerged into the road from behind an ice cream van in a residential street. Despite noting that the collision could have been avoided if D had been paying proper attention, the reporting officer also ticked the 'deliberate' box. One wonders whether this was done in order to encourage prosecution in this case, which was arguably appropriate given the existence of an identifiable victim and harm caused (it is unclear how extensive the victim's injuries were). D was prosecuted for WDC, found guilty in his absence and fined £440 and given 6 penalty points.

There are other cases in which the 'deliberate' box was ticked and D was prosecuted for WDC in circumstances where the degree of deliberation involved might have given rise to suggestions that a prosecution for DD was appropriate. An example is AWDC17 in which D was witnessed by officers driving onto the opposite footpath in order to overtake traffic. Given that the officer described this as placing both pedestrians and drivers in danger, one might expect a charge of DD to be made out. He was sentenced at the top end of what is possible for WDC, given that he was disqualified from driving for six months. Similarly, in AWDC6 the combination of factors involved in D deliberately breaching a number of different rules of the road could arguably have given rise to a charge of DD. An officer in an unmarked car was overtaken by D driving in excess of speed limit (60+ in 30 limit) in heavy rain. D also ran a red light before stopping for the officer. D's driving was recorded on in-car video but the

officer described the driving as falling below, rather than far below, the standard of a competent and careful driver, and D was told that he would be reported for WDC. He was found guilty in his absence at court, fined £440 and given 6 penalty points.

These boxes which are available to be ticked may well simply reflect a factor that is taken into account by officers when exercising their discretion in any case. This was also reflected by an officer who made decisions after reviewing third party footage:

*if I think somebody's just made a stupid mistake, then I might send them a letter.
If I think somebody's being an idiot and doing it deliberately, then-. If-. I suppose
the decision making thing for me: if somebody's done thing deliberately, I would
always push across towards the side of prosecution.*

In one of the forces investigated, it was also the case that the third party member of the public was asked to tick a box when submitting evidence in support of their allegation as to what they felt the appropriate disposal should be. It is unclear whether asking this question is particularly helpful, given that it is for the police or CPS to decide first whether there is sufficient evidence that an offence has been committed and, second, if it is in the public interest to prosecute. It can be argued that the submitter is acting on behalf of the public in submitting the allegation and their view might be representative of the public interest. However, this is a decision that ought to be made objectively and should not be influenced by whether a particular individual is understanding of the fact that in some cases an educational course might be the more appropriate disposal than prosecution. This explains why in the majority of cases in our sample the final outcome did not correspond with the option ticked by the submitter regarding their view as to appropriate disposal.

CPS involvement

We had planned to incorporate interviews with CPS lawyers within our research, in order to provide a balanced view of the issues from different perspectives. This proved impossible in practice, given that the CPS declined to support our research and we were in the event able to interview only one Crown prosecutor who we cannot claim to be representative. That one lawyer is to some degree self-selected; in agreeing to be interviewed they have gone outside the norm. However, in interviews with police officers in the three force areas we consistently received the same responses in relation to our questions regarding CPS involvement in cases. Whatever the reality of such cases, the *perception* on the part of officers (and TPU staff) is clear, and it is also clear that this perception impacts on the way in which cases are dealt with by the police. As noted above, where the police feel there is sufficient evidence to warrant a charge of DD rather than WDC, they must prepare an advice file and seek a decision from the CPS as to the appropriate charge. This will require more work on the part of the police, with no guarantee that the additional resource allocation will result in a charge for anything other than WDC. Consequently, it was suggested by officers in each of the forces that they may sometimes choose to prosecute for WDC rather than get the CPS involved. The following quotations show that this was a common theme in interviews with police officers, suggesting that our findings here can be generalised more widely:

*If we were to take careless and dangerous driving as a for instance, the
difference between careless and dangerous can be... there can be some cases
where we think this is borderline careless, borderline dangerous, in those*

situations I would say that we would always err towards careless, the reason being is that dangerous is a recordable offence, dangerous becomes a full file. ... Dangerous, they're looking at a driving ban, potentially prison so it's far more serious and procedurally we have to submit a file, potentially that file will have to go through a CPS prosecutor to get authority to charge, and that then creates a lot of work for that police officer. So they've got to be satisfied that this offence is worth my time, because this might create 4, 5, 6, 7, 8 hours for them. So they've got to be satisfied that the standard of driving was that bad that we're going to put that time in and that that person should suffer the consequences of losing their driving licence. (Senior officer)

When you progress to CPS they have charging standards and you become quite savvy as to what to do as dangerous; it's a lot of work for it to be put down to due care, even if as a member of the public it's black and white dangerous. (PC)

It's like hitting our head against a brick wall to get someone prosecuted. ... We get silly questions all the way through, it drags on without making a decision. That's a clear example of losing a case where we shouldn't. It makes it that much harder to deal with someone for dangerous and it's easier to deal with them as careless and we can secure a straight forward prosecution. (PC)

I don't really know why we have to go through the CPS for dangerous driving, especially because we've got it on video and they've admitted it, why do we need to go through that legality? (PC)

It appears that there is some inconsistency between CPS areas as to what is deemed necessary to support a charge of DD. It was reported in interviews with police that some forces have been told that they must conduct an interview with D to support a charge of DD. The rationale for this is that it is seen as a means not of assessing *mens rea* (the need to prove what the defendant was thinking), but to check for possible excuses that may be raised in court. Suspects are more likely to plead not guilty to a charge of DD rather than of WDC, because of the higher penalty involved. This makes sense. What was more difficult to understand, however, is that it was reported that in Wales the police are now required to interview suspects of WDC. This was described by attendees of the sense-checking workshop as 'absurd', and we are in agreement that it is difficult to see how the use of limited police resources can be justified for this.

The offence of use of a mobile phone whilst driving

The offence of using a mobile telephone whilst driving raises a number of issues that we explored in the data. The cases suggest that officers believe the prosecution of this offence is relatively straightforward, in that minimal details were frequently recorded on the tickets issued for the offence. Whilst this is, to some extent, likely to be a product of the space available to record details, the variable amount of detail on the tickets (some officers provided more information than others) point to some officers believing that the requirements for the offence require little evidence. On the whole, officers recorded observing how the defendant was holding or using a mobile phone (such as holding it to their ear or holding it in their hand whilst appearing to text). Evidence for the view that officers think the offence was straightforward also comes from interviews with TPU employees; it was noted that some officers were frequently reminded of the need to record more information on the ticket, so as to enable proper case preparation in the event of a not guilty plea. However, within formal interviews

and with conversations with officers and employees outside of interview, views were expressed regarding the difficulties of proving the offence, particularly if the defendant offered a defence, such as the phone was not being used as ‘an interactive communication device’ (examples included using the telephone as a satellite navigation device). We will return to this complexity below in the discussion section.

Before examining the data for this offence, it should be highlighted that the penalty for a FPN issued for the offence has recently increased to £200 and 6 penalty points,³³ following a Department for Transport review into road safety.³⁴ Alongside the increase in the penalty, the Department for Transport recommended that an education course no longer be offered for this offence. We discuss the offer of a course for this offence below, but before doing so, we should note that some of the offences we examine below were committed before the change in the penalty. For one force, we have the date for some of the offences but in other cases the date was part of the information redacted from the ticket. We know that in half of the ten cases in which an educational course was attended, the offence occurred before 1st March 2017, while the date of the other half is unknown. It is also worth noting that in this force, all but one of the offences sent to case preparation with a view to prosecution at court were committed *after* the increase in the fixed penalty, suggesting an increase in the number of contested allegations when more was at stake for the driver. For the second force, none of the offences were committed before the increase in the penalties.

In interviews with officers from one force, it was often said that this force would only offer an education course if a telephone was used in stationary traffic, and in all other cases the defendant would be offered points and a fine.³⁵ However, there were a number of cases where a course was offered despite the telephone being used when the vehicle was not stationary, such as in circumstances when a near miss was observed or the driver negotiated two roundabouts when driving. Of the 33 cases in the sample from this force, courses were offered and completed in 10 of the cases, with a further case where an offer of a course was withdrawn. Importantly, of these, only one appears to be a clear case of using a telephone when stationary.

Further, this was an approach that officers may well endorse, as two tickets were marked as suitable for a course despite the offence taking place in moving traffic. Importantly, it could be questioned if a course was appropriate in some of these cases, given that the use of courses for mobile telephone offences are discouraged. This is particularly relevant for cases where there appeared to be aggravating features, such as a ‘near miss’.

There also appears to be a problem with consistency of decision making. Some examples of mobile telephone use in slow moving traffic resulted in a fixed penalty. As this information is not recorded, it could be, however, that these defendants were not eligible for a course.

In three cases in the sample D, when being questioned about the use of the telephone, offered an explanation of how they were using the telephone that may be indicative of a belief that the offence is limited in what it covers. Two defendants stated they were attempting to use the ‘Bluetooth’ function, while a third stated it was being used a navigation device. Whilst it is not clear, from the

³³ From 1 March 2017; see Fixed Penalty (Amendment) Order 2017/66 and Road Traffic Offenders Act 1988 (Penalty Points) (Amendment) Order 2017/104.

³⁴ Department for Transport (2015) *Working Together to Build a Safer Road System*. Cm 9175.

³⁵ This is despite the force’s website claiming that the offer of a course is now not available.

tickets, if these drivers were attempting to offer a legal defence to the accusation, it does raise issues around the scope of the offence which will be examined below when discussing these cases.

In cases provided by the second force, there were none where a course was offered for a mobile phone offence. Within this force, questions as to the extent and quality of the evidence needed were raised in a number of cases. TPU staff were asking officers to provide more detail in their allegations, such as how was the device being used and what was said when the driver was stopped. In some cases, no further action was taken due to this information not being provided. This contrasts to other cases in the sample where minimal details were recorded.

As with the cases in the first force, there was a degree of variation in the extent of information recorded, although it did appear that more cases in this sample recorded more details of the offence. There were more references to 'lips moving', the defendant, 'scrolling through the screen' or the 'screen was illuminated' and a number of officers recorded the approximate time span for which the telephone was being used.

An example of a case in which no further action was taken was one where the driver claimed, at the roadside, that the telephone was being used as a satellite navigation device. Additionally, a solicitor's letter was on file which claimed that the defendant had the telephone in a holder to be used in this way, the holder fell into the footwell, and the defendant was merely removing this as a possible obstruction, only handling the holder and not the telephone. This case is highlighted as we will return to the offence definition in the discussion section below. In the meantime, it is important to note that a number of officers and TPU employees discussed issues with the offence definition, in particular regarding when a telephone is being used for the purposes of the offence. So as to alleviate this issue, a number of respondents suggested means by which difficulties could be averted. Officers were encouraged to record as much detail as possible on the ticket, speak to the suspect about why they were using the telephone, switch on body cameras to record use and the subsequent interaction, or consider alternative offences such as not being in proper control or careless driving. It is also possible to prosecute for WDC in cases of use of a mobile phone while driving, where there is evidence that such use affected D's standard of driving. Although on the face of it, careless driving might be considered the more serious offence, in practice if use of a mobile phone can be charged the police have expressed preference for this offence on the basis that a fine of £200 and 6 penalty points is unlikely to be exceeded if a prosecution for WDC is successful.

While we did not have data on mobile telephone cases from Surrey, we did gather data from interviews. On the use of courses, one respondent suggested that a course would be appropriate 'if the driver was in slow moving traffic'. This seems to be subtly different from the advice offered in the first force, where a course will only be offered if a telephone is used in stationary traffic.

Evidence led policing

We have seen that the resources invested into roads policing, and the approach taken in each force, can differ widely. We also found, however, that generally senior officers involved in roads policing are proactive and keen to identify how best to allocate the few resources available. In all the forces the TISPOL calendar of enforcement operations was generally followed, although some senior officers expressed frustration about the need and effectiveness of using what few officers they had on enforcement operations where there may not be the evidence-base to justify allocating officers to these duties. In interview, senior officers were keen to reflect on the particular problems faced in their

force, determined by the geographical and societal make-up of the area, including the road infrastructure. Interestingly, of the forces involved in this study, each of the Police and Crime Commissioners had included roads policing as part of their Police and Crime Plan. As identified by Wells in her earlier research, roads policing is a contested policing activity with very specific local demands being made of roads policing.³⁶ She noted that by the time of the second wave of PCC elections in 2016, a change was discernible, with a greater number of PCC candidates promising to prioritise some aspect of roads policing in comparison to the first round of elections.³⁷ In our interviews with PCCs, we were struck in the most part by the acknowledgement from PCCs that the public's views on roads policing tends to be inconsistent and contradictory, and by the PCCs' expressed commitment to maintaining roads policing as an important activity alongside other 'crime'. For example:

I think roads policing is very important for two reasons. One is, it's important because it's important. When I go round talking to residents' groups, I have a statistic – which I must update – which says 11 people were murdered in [this county] last year, and three times that amount killed on the roads. Now, if those proportions were reversed, we'd be a very, very different society, but those people are just as dead – so, you know, road safety is what it's all about. And the second reason is that the perception is just as important, really, because roads safety affects every single resident, whereas, alas, domestic abuse and all that sort of thing, mercifully, does not affect many residents, and so seeing as I represent over a million residents, roads policing and the safety aspect – that, that's what it's all about – its safety has to be of paramount importance. But of course, there's lots of other priorities, and I would like very much for the force to increase their roads presence but they can only do that by withdrawing from other areas, and I'm broadly satisfied, given the overall resources envelope, that road policing has the right priority in the force, yeah. I do, of course, keep a close eye on it.

Elsewhere there were additional reasons given for roads policing being a priority. One PCC highlighted the need to 'deny criminals the use of the road', emphasising the opportunity for officers to detect other 'crime' whilst carrying out roads policing duties. In addition, he was keen to ensure that the occurrence of RTCs did not impact too much on local industry, with the need for the police to keep the local roads network moving. Each of these PCCs reported that they had a good relationship with the local Chief Constable, and were generally content with the roads policing provision, allowing the force to make operational decisions as to how best to fulfil local needs. It is clear that there is no single 'one size fits all' approach that ought to be taken to roads policing, but a number of notable practices can be identified.

West Mercia has particular problems in that geographically it is a large and diverse force area, covering a number of counties, some motorways, very rural areas and some larger towns. Concerns about the number of fatalities across the force led to senior officers examining the circumstances in which fatal collisions occurred within the force, who was causing them, and what information was available about

³⁶ H.M. Wells, 'The Angered Versus the Endangered: PCCs, Roads Policing and The Challenges of Assessing and Representing "Public Opinion"' (2018) *Br J Criminol.* 58(1): 95-113.

³⁷ *Ibid*, at 110.

the drivers who were at fault. With the aim of managing the risk of fatal collisions with fewer resources, they established Project Verrier. Project Verrier involves identifying offenders who may be driving without insurance, whilst disqualified, or whilst under the influence of drink or drugs and intervening to try to prevent harm occurring. Once identified, these people are told what the police know about them, in order to try to mitigate the risk. This might be done through a letter, a personal visit, or inviting them to the police station. This builds on the work of Operation Tutelage, giving those driving without insurance who might not be aware, the opportunity to rectify this and take out insurance. It recognises that those who drink drive may well need help and support to overcome the problems they face with alcoholism and day-to-day life, and tries to mitigate the risk presented by such people by pointing them in the right direction of support services before they cause too much harm.

A very different approach is taken by WMP's Road Harm Reduction Team (WMPRHRT). WMPRHRT was set up in order to give effect to the idea that enforcement is seen to be very important to address behaviour. WMPRHRT's aim is to change driver behaviour and, whilst recognising that there is a place for education in changing behaviour, one senior officer remarked that 'I don't think law enforcement are the people to do that'. Education is seen to be possible *through* enforcement; for example when the new 20mph speed restrictions in Birmingham were introduced, WMPRHRT first used education to communicate the message to drivers that the new limits would be enforceable. Once the limits become enforceable, that education was done through the issuing of FPNs. The team's activities are dictated by what they know from their evidence base (data relating to KSI collisions within the force area) are the causes of serious harm on the roads. They are particularly well known for their introduction of Op Close Pass, designed to reduce the number of cyclists killed or seriously injured. These operations run in the summer months, and involve a plain clothed police officer riding a pedal cycle along a road identified as being one where close passes have been problematic, for example a single carriageway with a number of 'pinch points' (traffic islands). The officer's bicycle is mounted with front and rear facing cameras in order to capture any offending behaviour of drivers who drive too close to the cyclist. He then informs his colleague on a police motorcycle, who intercepts the driver and pulls them into a site, usually a car park, to be dealt with. What happens next is described in the following extract:

We do tend to stick to the sites we know because a lot of them are fire stations, but with the sporadic jobs we'll go down the day before and identify somewhere we quite like and if it's ok we'll go back and do a more formal job. I guess we have about a dozen sites, but it is a guess. It varies how many people we stop a day. The other day we only stopped three but they failed their eyesight test and one was a drink driver too. It also depends how many stopping officers we've got. If we've only got one [PC A] will shout out fewer and then go through the video footage later to pick out more. The driver is taken onto the stop site and they speak to [PC B] who gives them an eye test and close pass is explained and they'll be given the option for education. We do PNC checks, driving licence checks, vehicle checks, breathalysers. ... Those who don't wish to receive education will be dealt with by a [traffic] office report for due care. The majority will be educated. One offender an operation maybe might receive a ticket. That varies so much. Whether [PC A] looks through them when he gets back depends on how much time he has available, it might be that there's one that's stuck out and he'll look back just to deal with that one. There was one where there was a close pass

at a pinch point but there was no-one available to stop them so he's verbalised the registration number as it's sound recorded as well and it's helped him to pick that out and he's also noted the time on the video.

WMPRHRT are clear that the success or otherwise of their operations is to be measured by examining KSI figures, since their activities are targeted at reducing harm on the roads.

The success of Op Close Pass has seen it spread to other forces, although the uptake is variable. The way in which the operations are conducted is also dependent upon the resources available within a force. In WMP, the practice is to work in partnership with the Fire and Rescue Service in order to provide education to offenders. Once an offending driver has been pulled in and offered the choice of an educational chat or prosecution for WDC, in most cases the offender will opt for education and the offender will be taken over to an officer from the Fire Service who will explain to the offender the need to allow sufficient space when passing cyclists. A mat on the ground is used to illustrate this. WMP have found that drivers are more receptive to the words of a Fire Service officer, as they experience this in a less confrontational way than if a police officer conducts the talk. Elsewhere, other police forces, including Surrey and Warwickshire, have made use of the mats provided by Cycling UK's Too Close for Comfort campaign³⁸ to run their own operations. Warwickshire has a dedicated officer running the operation when resources allow it, although the Fire Service is not employed there as it is in WMP.

WMP reports that Op Close Pass has resulted in a cyclist KSIs dropping by a fifth in the first year.³⁹ We have not been able to test the veracity of this claim, but from prosecution statistics the operations appear to be resulting in successful prosecutions for WDC, as well as providing the opportunity for educational intervention. None of the cases within our sample from WMP involved evidence from Op Close Pass, but in our sample as a whole there were 16 cases in which the victim or complainant was a cyclist. Eleven of these made an allegation of bad driving supported by video, and five resulted from RTCs. We see in our findings from Strand 2 that cyclists have real concerns about the risks they face as a result of drivers' offending behaviour.

³⁸ <https://www.cyclinguk.org/campaign/toocloseforcomfort>

³⁹ <https://west-midlands.police.uk/news/serious-cycle-smashes-down-fifth-close-pass-first-year>

Strand 2

The focus groups provided a rich source of data on cyclists' perceptions of risk, how that risk was self-managed, the role of the criminal justice process in reducing risk or responding to harm, and other initiatives that could reduce harm to vulnerable road users on the roads.

Incidents

Many participants reported either being involved in incidents on the roads, or told stories of what had happened to others. These included: aggression from other road users; confrontations with other road users; assaults; close passes; near misses (SMIDSY⁴⁰); collisions; poor road conditions; and dangerous parking. As a result, many participants described a feeling of being exposed when cycling, with the activity being laden with risk that has to be managed. However, when exploring the participants' motives for cycling, a number focused upon the joy of cycling, in addition to environmental, health, and other benefits. While incidents were discussed at length, often in a solemn way, this should be balanced against a general feeling that cycling is a beneficial and positive activity. Participants would, for instance, sometimes try and change the focus of the discussion to move away from 'war stories' and negative aspects of cycling so as to discuss the positive elements. It was also recognised that focusing upon the negative aspects was very much a function of the group dynamic and the issues to be addressed in the focus groups; some participants, for instance, openly stated that their focus, when speaking to friends and colleagues who did not cycle, would be to accentuate the positive aspects of cycling.

Views on police enforcement

Given this shared sense of exposure and risk, it could be expected that police enforcement activity would be a high priority for the participants. However, this was not the case. Rather, there was a degree of ambivalence as to the role of enforcement in reducing risk. Of those who discussed specific instances, there was a general feeling that the police could do little to help, which often drifted into a fatalistic attitude to enforcement. Stories were shared about non-police action for both incidents that impacted upon them and other cyclists they knew. However, participants' understanding of the lack of police response was nuanced. While some roundly complained that the police did not care about the risks cyclists faced, others identified reasons as to why the police were not able to act. A number of participants noted the difficulties of obtaining sufficient evidence, particularly if a driver failed to stop, while others were aware of the reduction in police officer numbers and how this has particularly impacted upon RPUs. Furthermore, there was a general feeling that reporting incidents was particularly burdensome, given the evidential requirements. This was also the case for those cyclists who used cameras so as to collect evidence in the event of any incident. Given that, at the time, there was no digital portal in many forces to upload such footage, these participants were put-off submitting footage via CD or memory stick. Importantly, the sense that reporting was burdensome combined with the fatalism about whether any response would be positive meant that some participants discussed relatively serious incidents that they did not report to the police. In short, the sense of ambivalence displayed by the participants should not be interpreted in a manner that suggests they did not care about enforcement as a means of reducing risk; rather, that enforcement is important, but there is an understanding that there are limits to its effectiveness.

⁴⁰ An acronym used by cyclists pertaining to a common excuse used by drivers after a near miss or collision: 'Sorry mate, I didn't see you'.

Knowledge of police initiatives

Amongst the participants there was a varying degree of knowledge about police initiatives around vulnerable road users. To some extent, but not wholly, this was often related to the experience of the participants. The most committed cyclists, particularly those engaged with campaign groups, organisations that promote cycling, or cycling clubs, were often very aware of recent developments. Their knowledge was often gleaned from the cycling press or social media. Operation Close Pass was the most referenced police initiative, while much fewer participants were aware of Operation Snap or its variants.⁴¹ However, as these operations rely upon publicity so as to educate all road users, the absence of knowledge about these activities should be a real concern to forces. In the West Midlands focus groups, for instance, many participants were not aware of Operation Close Pass, and of those that were, some thought that the force were no longer running the operation. Outside of the West Midlands, participants often raised Operation Close Pass as a means to question the actions of their own force; there was a clear desire for this to be introduced in their area.

Managing risk

Given the general ambivalence and fatalism about the role of enforcement, this leads to questions of how cyclists do manage the risks they perceived on the roads. It is clear, from their responses, that risk management is an important aspect of their activities. Importantly, much of this takes the form of self-management, in that the participants made choices around what they can do to minimise or manage risk. Risk management activity takes the form of avoidance, planning, cycling style, and personal safety equipment. Many of the participants noted the extent to which they avoided certain situations; avoidance focused upon roads, times, and routes. Many participants said that they would avoid completely certain types of roads, such as dual carriageways or major trunk roads. However, for others, road type avoidance went much further than this, particularly in urban areas. Main arterial roads were avoided too, for instance. The extent to which certain roads were avoided largely depended upon perceptions of risk; a small number of participants thought it too risky to ride on any road, and limited riding to off road cycle routes or the pavement if this was not possible. In relation to times, some participants would not ride during rush hour (due to the weight of traffic), while others identified late night riding as problematic (due to a perception that more irresponsible motorists would be encountered). Finally, many participants commented on how certain routes were avoided. This could relate to the type of road, but mention was also made of specific routes, relating to concerns about junctions, past driver behaviour on these roads, publicity about major incidents involving cyclists, or exposure to unrelated criminal activity. This links to an important aspect of risk management; many participants relied upon information from a range of sources to help manage their exposure to risk, be this personal experience, stories told by others, or assessing risk based on reports from traditional and social media.

Avoidance is closely linked to the necessity of planning for many participants; if certain situations were to be avoided, participants must plan, in advance, their routes and other risk management activities. This was, for some, a source of anxiety; cycling, it was said, should be an easy and convenient transport choice, but the necessity to plan made it more burdensome.

⁴¹ This is, to some extent, to be expected, given the limited role out of digital upload portals at the time the groups were conducted.

Planning, however, is not limited to avoidance. The perceived need to utilise personal safety equipment added another dimension to the need to be prepared, for a number of the participants. In addition to lights (and some participants referred to the need to have multiple front and rear facing lights), participants noted their use of high visibility clothing, helmets, and cameras (used to record evidence of any incident). This aspect was perhaps the liveliest part of nearly every group; the reasons for this will be explored later, but for the time being it is worth noting that this aspect of risk management caused the most controversy.

The final risk management activity that the participants discussed concerned riding style, particularly the position taken on the road. For some cyclists, they were intimidated by the perceived risks to the extent that they tried, as much as possible, to yield to other road users. These cyclists perceived danger to be almost ubiquitous, so would ride very close to the kerb to give motorists space to pass, and slow at junctions where they had priority as they expect motorists to not see them or pull out regardless. Others stated that they took a more assertive approach, riding well away from the kerb, and 'taking the lane' when it was thought this was appropriate. This was often justified on the basis of advice in the highway code, being a road user with an equal right to be using the roads (and, therefore, not yielding to motorised vehicles), or as a means to be prominent and visible. However, this approach could lead to conflict; it was reported that other road users can object to a cyclist taking an assertive position on the road, either by revving their engine at junctions, sounding their horn, flashing their lights, or shouting abuse. It could also lead to a 'punishment pass'.⁴²

Responsibilisation, victim blaming and accessibility

There is a clear picture of the participants as actively constructing knowledge around cycling and the management of risk. Cyclists, therefore, constantly seek information about risk, evaluate this information, and then respond accordingly so as to manage risk. However, this active process raises a number of important issues, many of which were discussed with the groups. This approach, particularly when combined with the fatalism expressed around enforcement, leads to a responsabilisation⁴³ of cyclists as road users; their safety becomes their own concern, downplaying the role of other road users for ensuring the safety of others. This is particularly problematic in the context of viewing cyclists as vulnerable road users; there seems to be a paradox in making the vulnerable responsible for their own management of risk.

Closely linked to responsabilisation is the problem with victim blaming, a view that allows perpetrators of offences to rationalise their actions and for the wider public to discount feelings of insecurity that may result from offending.⁴⁴ While victim blaming has historically been utilised to examine responses to sexual violence, there is no reason why this concept cannot be applied elsewhere.⁴⁵ We would argue that the vulnerability of cyclists, and their somewhat outside status,⁴⁶ makes victim blaming more likely. This, in our context, means that if a cyclist does not act in ways that effectively manage risk, they are liable to be blamed for any subsequent incident. While our findings do concentrate on

⁴² This is a deliberate close pass where a motorist intends to frighten and intimidate a cyclist.

⁴³ See Garland, D. (2001) *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford: OUP).

⁴⁴ Hayes, R. M., Lorenz, K. and Bell, K. A. (2013) 'Victim Blaming Others: Rape Myth Acceptance and the Just World Belief' 8(3) *Feminist Criminology* 202-220.

⁴⁵ Mancini, C. and Pickett, J. T. (2017) 'Reaping What They Sow? Victim-Offender Overlap Perceptions and Victim Blaming Attitudes', 12(3) *Victims and Offenders* 434-466.

⁴⁶ As discussed within the focus groups.

cyclists as vulnerable road users, we would suggest that forces and other agencies would do well to focus upon their vulnerability, rather than their status as cyclists. As noted above, a number of participants reflected on their status as problematic, resisting the label being applied to them. One of the grounds for this resistance concerned their perception that this did separate them, as a group, from other road users, perpetuating arguments around 'who owns the road'. Focusing upon their experiences as vulnerable road users, rather than cyclists, can hopefully illuminate the problems concerning responsabilisation and victim blaming.

Many participants shared stories of how other road users, particularly after an incident, would blame the cyclist. They were told they should be wearing a helmet, should not be on that particular road, or should be wearing high visibility clothing etc. A focus, therefore, upon personal safety equipment and the role of the cyclist in their risk management, allows other road users to shift the focus from their actions onto the actions (or omissions) of those who are more vulnerable.

The responsabilisation of cyclists also raises other issues, particularly around the accessibility of cycling as a regular and normalised form of transport. Many participants noted that the extent of equipment, including safety equipment, added an unwelcome burden to cycling as an activity. All of these items needed to be bought, maintained, carried, and used. This burden was felt in two ways; practically and emotionally. From a practical perspective, it makes cycling more difficult; many expressed a desire to simply be able to walk out of their front door, jump on their cycle and simply ride. Remembering helmets, cameras, suitable clothing and other equipment makes cycling more complex than it needs to be. Participants noted how this leads to a particular image of cycling in the wider community: the Mamil,⁴⁷ an image that, for many, damages the reputation of cycling as an active transport choice. For these, cycling should not be about high specification road bikes, specialist (and expensive) clothing and a growing range of kit and gadgets; rather, it should be a mundane and normal everyday activity.⁴⁸ From an emotional perspective, some participants noted how the burden of kit leads to a feeling of 'going out to battle', where one expects incidents and confrontations.

Self-management of risk, therefore, is problematic for the potential it has to take an everyday activity and turn it into something more specialised. The more knowledgeable participants noted a problematic paradox; for these, what matters is a critical mass of cyclists. For cycling to become less risky, more cyclists need to use the roads so that drivers are more aware of cyclists, are used to encountering them, and are more likely to be cyclists themselves; making cycling a niche or burdensome activity will reduce its attraction as a transport option, thereby contributing to the associated risks.

Cultural change and infrastructure

This leads into final findings on this strand of the research; in addition to discussing enforcement and self-management of risk, participants also discussed other matters they felt were important. These are cultural change and infrastructure.

⁴⁷ This is an acronym for 'middle aged man in Lycra'.

⁴⁸ For those with relevant experience or knowledge, comparisons were frequently drawn with cycling on the continent, particularly The Netherlands.

Cultural change focused upon two concerns; critical mass and road culture. As noted above, some participants thought that achieving a critical mass of cyclists is key to reducing risk. This, it was said, would make other road users more aware of cyclists, more likely to encounter them, and perhaps more likely to also be a cyclist.⁴⁹ Road culture, however, focused upon broad and narrow matters. In one sense, discussions about the culture of the road were narrow, focusing upon the 'selfishness' of other road users and how they could view their journey as being more important than the needs of others, thereby leading to more risk taking activity so as to progress their own journey. But there was also a broader point, focusing upon the question, 'who owns the road'? Many participants expressed the belief that drivers⁵⁰ thought that cyclists were not equal road users, sometimes to the extent that they should not actually be on the road. The road, on this account, is not a shared space, and a car dominant culture necessarily denigrates alternative forms of transport. As one participant put it, to own a car is aspirational, a status symbol, whereas riding a cycle is akin to an adult playing with a child's toy. What these participants wanted was a cultural change focusing upon the road as a shared space, for motorists, cyclists and pedestrians. More knowledgeable participants thought this could be achieved via a number of means, such as education (and focusing upon vulnerable road users as part of the driving test) and the introduction of presumed liability (where the driver of a motor vehicle would be presumed to be at fault, in the civil law, for any collision with a vulnerable road user).

The final change participants wanted to see was perhaps the most important; a significant investment in infrastructure. While cultural change was important, as was a critical mass of cyclists, many thought these were not possible without extensive dedicated infrastructure to encourage the uptake of cycling. The perceived risks associated with cycling, it was said, could only be minimised to an acceptable level of perceived risk if the preponderance of a journey could be undertaken in dedicated cycling infrastructure. This would lead to a critical mass of cyclists, which would help to achieve cultural change. In discussing infrastructure, participants were particularly critical of current provision. In short, it was said that infrastructure needs to be co-ordinated, segregated, and 'end to end', without losing priority.⁵¹ Current infrastructure in all of the areas where the groups were held currently falls well short of these requirements.

In the following section, we bring together the two strands to discuss their significance, before making conclusions and recommendations.

⁴⁹ There was a constant theme of cyclists being 'better drivers', as they are more aware of risk and able to better empathise with vulnerable road users. Some, as a result, advocated incorporating cycling training into the licensing of drivers; new drivers should be expected to cycle so as to gain an appreciation of a cyclist's view of the world.

⁵⁰ Some were unspecific, referring to 'drivers', while others suggested a 'minority of drivers'.

⁵¹ Especially when crossing side roads perpendicular to main routes.

Discussion

In this section we seek to explore in more detail some of our findings, to identify particular factors which affect the way in which roads policing is conducted and may contribute to successful enforcement practices. In doing so, we draw on our findings from both strands of the project, and support our discussions with further reference to what was said in interviews.

Importance of staff

We discussed above in our findings how important the exercise of decision making discretion is and how attempts are made to structure such discretion. What we want to focus on in this section is the idea that the people entrusted with such discretion are key to the effect that enforcement practices have.

Reliance on individuals

We noted above that different police forces will face different challenges depending on their geographical location and make-up, and we identified a number of evidence based initiatives which allow forces to make the best use of limited resources. However, what also emerged from interviews with police is the importance of influence from individuals within the forces. In the words of one senior officer:

These things only happen when the individual has a passion for them really.

In essence, those who do the job because they have a passion for promoting road safety and seeing a reduction in road danger are most likely to see results. However, roads policing is not always seen positively by members of the police force, let alone the public, as expressed by this very junior officer:

Traffic is viewed as the ugly cousin, really. ... Most people don't like it. It's frowned upon to be interested in it, and I don't know why. ... 'cause it's part of their job.

When asked about why he bucked the trend in being interested in traffic policing, this officer responded:

Because I and my colleagues, there's obviously just something in our brain that kind of clicked, and we found it interesting. And ... I find it very interesting dealing with the collisions, and the logistics of it, and the fact that you are really there to help someone... So, it's the helping aspects; it's the logistics of, you know, trying to sort out three overturned cars and numerous road closures. That just appeals to me, and the fact that traffic all tends to be a bit more black and white, I think, is also appealing... For example, domestic violence: you've only got one word against another and not much supporting evidence; you're not sure whether they committed that offence or not. Whereas traffic, well, you've normally seen the offence committed yourself, so they've either done it or they haven't don't it.

The last statement is, perhaps, an oversimplification of traffic law. We have seen above, and will discuss further below, that because of the way that some offences are defined there is in fact often a 'grey area' where it is unclear if an offence has been committed, or what level of offence has been committed. It is perhaps interesting that this was the only officer who made reference to helping people as providing him with interest in roads policing; most other officers explained their interest on



the basis that they had, over time, experienced horrific scenes of death and serious injury on the roads, and were keen to contribute to a reduction in such harm. Other officers' interest in roads policing appears to stem from their interest in motoring more generally:

I suppose if I took it right back to base level, as a child, I loved cars and anything that made a loud noise, so [sigh] petrol head, I suppose, is a phrase that might spring to mind. You know, I've got my own motorbike, I just enjoy that side of things. ... I think I understand ... people's attitude in cars, ... and I enjoy trying to educate them or, if they're not listening, perhaps, to education, then to go further. It just fascinates me, and I'm interested in, in anything to do with motoring, really.

Without wanting to belittle the motivations of individual officers, an officer who is interested in roads policing for the purpose of helping members of the public at the scene of RTCS is unlikely to develop initiatives to counter the risk caused to road users by offending behaviour. What we saw in the forces that have developed important initiatives to address driver behaviour and reduce risk on the roads, such as Op Snap or Op Close Pass, is that individuals with strong characters, who are not necessarily particularly senior within the force, can make a real difference to the way roads policing operates. These individuals use their passion, tenacity and perseverance to see that changes are made. Here we see two officers, one a PC and one his senior officer, telling of their experience in pushing for third party reporting to be adopted:

So, when you have different operations that you need to bring in, people will always look at the negatives and try and stop things before they get started – that's what I've found in the police. So, you're always pushing against other people to try and get things through. With [this op], we had exactly the same. And then you'd always have the people who've said, oh, I had that idea, I've been trying to do something with that for six months, now. And then you say, okay, what have you done? Nothing. ... People just like to talk crap, just for the sake of having something to say. ... And it's always the same old crap from the same old people. And then when you try to push it through, to go up the ranks, there's always people who will say, how are you going to run it? What are you gonna do? Is it sustainable? Is it this? Is it that? Have you spoken to, ... whoever? Have you spoken to IT?... Have you spoken to the people who liaise with the public to make sure the public aren't offended by what we're doing? Have you spoken to this unit? Have you spoken to that unit? Have you spoken to all these people? And when you do, they'll come back and say, can you speak to all these other people now? And these other people don't reply, and they're just not interested. But, and you need somebody in each force who is willing to push against it, from fear of perhaps having their own promotion prospects passed over ... and just say, sod it! We're gonna, we're gonna run with it. [PC]

The obvious frustration expressed by this more junior officer was not expressed in quite the same way by his superior:

I put through the proposal, and in a time when budgets were dwindling, they were going to invest capital into it. However, at the same time, Nextbase came along and said, we'll do it for free. We'll provide you with this ... so, ultimately, we were, well, we have to go with this. We need to launch this as quick as possible.



It's free – let's go for it, and push it in. We looked at the IT infrastructure, I've a bit of an IT background, so I know it wouldn't cause a problem, the way we were doing it. I checked all the security, the due diligence – that was all fine. And then we looked at the processes, and [officers] put in all the processes to run it, and we got a system that can process a complaint, a prosecution complaint – it's probably about 20 minutes. [Inspector]

This particular example tells an interesting story about the challenges encountered by all forces who have, in the past couple of years, faced increasing public pressure to follow the lead of the Welsh forces in developing a version of Op Snap. When we first started our project early in 2018, the number of forces which had adopted third party reporting allowing for digital uploads was far lower than it is now that we reach the end of the report. The last twelve months has seen the slow realisation from some forces that allowing members of the public to provide evidence of bad driving is something that ought to be supported and, whatever the concerns about IT issues and workload, the benefit outweighs the cost. Although some forces may not want to take up the offer of free support from Nextbase, the example provided here shows that where there are individuals who identify this benefit, such realisation occurs sooner rather than later.

There appear to be a number of reasons why some forces have been slower than others to respond to requests from members of the public to facilitate the submission of evidence in support of a third party allegation of bad driving. One appears to be a concern that such evidence would not be admissible in court in support of relevant charges. This worry is misguided; the forces with whom we worked on the study have had no such difficulties. At the sense-checking workshop attendees agreed that the issue of continuity of evidence, for example, should not be a problem. It was recognised that some forces appear to be under the impression that a police officer must witness an offence to support a prosecution. This is not required, although it is necessary for a police officer to operate as part of the back-office function to support prosecutions based on third party footage, hence the presence of sergeants in TPUs for this purpose. The appropriate process is to identify the driver through a s.172 notification first, then decide upon prosecution or alternative disposal. It was further acknowledged, though, that it is essential that the witness submitting the footage is able to confirm that they are in the video.

The other major concern is that forces will be inundated with submissions and will be unable to process the numbers they receive. It is true that those forces that are successfully operating a system of triaging footage do find it difficult sometimes to keep up with demand, and it is important that sufficient resources are allocated to back-office staff to enable this. However, those interviewed also pointed to reasons why members of the public will not inundate the police with frivolous allegations. It is seen to be good practice to include a question on the online pro forma requiring a submitter to agree to be prepared to attend court. That does not deter all from making submissions which police deem do not warrant a response; more than one force admitted that they did have one or two 'problem *allegators*'. These might be seen as self-appointed vigilantes who have a tendency to submit footage to the police on a daily basis, even where the evidence of offending captured is equivocal at best. However, in some instances the police have been able to visit these individuals to explain to them the reason why their footage has not been acted upon and this has resulted in a reduction in the number of submissions from these people.

Another argument that can be made is that although an effective back-office for Op Snap and the like will require investment and resources, this can be an efficient use of limited resources. As one officer described it, the use of a portal or Op Snap can allow for a kind of ‘Neighbourhood Watch of the roads’, communicating to offending drivers the idea that despite the lack of marked police cars on the roads, they are far from immune from prosecution because any other vehicle could be fitted with a camera to record evidence to be used in a prosecution:

It's not targeting people to give us dashcam footage; it's targeting people to say, that driver behind you, that driver in front of you, could have dashcam. If they have dashcam, they're going to record you. So, if you're going to overtake on a solid white line, you need to think about it, coz we are going to prosecute. If you're going to run through that red light, you need to think about it, because if someone is recording you, we will prosecute on it. And that's where our campaign needs to go, coz we need to influence the drivers to realise that four million drivers out there have the potential of catching them. So, forty million drivers, please change your driver behaviour, because that's what's killing people. It's people overtaking on the solids; it's people talking on their mobiles; it's people speeding. Those are the things that are killing people, and we need to ensure that we're trying our hardest to stop it. So, if they get the message that I want to get out, that is, there's four million special police officers, a Neighbourhood Watch of the roads – there are people out there that are going to report you. Hopefully, we can get their driver behaviour back to where it should be, where the fear of being caught is keeping people safe on the road. Coz that's all we're trying to do, is reduce road death and serious injuries. [Inspector]

Here the officer is making a clear link between the use of a portal and the role of roads policing in reducing harm on the roads. Representatives from other forces confirm the idea that this is not about requiring the public to do something they were not already doing:

So the public were asking us to deal with it; this is not new. We're not asking anybody to send us anything. However, what we're saying is, if you do send it, we'll deal with it and we've got a safe and secure way to deal with it. [Sergeant]

Although the Nextbase portal does provide an easy, cost-free option for police forces to enable the submission of third party footage, it is by no means a panacea for roads policing. As noted by one TPU manager:

Ultimately, the portal allows somebody to put something there and we can go and view it, but it doesn't do much more than that, and then we struggle in terms of where we save it thereafter.

This manager expressed a desire to introduce a ‘proper system’ enabling his staff to store and catalogue footage, to enable easy retrieval at a later date. The Nextbase system does not at present allow the TPU to manage and track cases as is possible in relation to other cases managed through the PentIP system. This is particularly problematic in cases resulting in a decision of NFA, as data on such cases has to be recorded in a manual log, making the collection and use of statistics difficult and time-consuming.

TPU set-up

Although it may be uniformed officers out on patrol who are the ones called to the scene of a collision, or witness poor driving offences, once they have completed a TOR it is the staff in the local TPU (Traffic Processing Unit) who must then exercise their discretion in deciding what the outcome in a particular case should be. For example, in Warwickshire, 22 case progression officers, supported by 13 case workers, will follow a case through to case prosecution. Any decision as to prosecution must be made by the in-house sergeant, and it is then for two Police Led Prosecutors (PLP) to present the case in the magistrates' court. One of these is a retired police officer. In Surrey, on the other hand, the PLP function is carried out as a bolt-on to the decision makers' roles. Training is 'on the job', meaning that some of those prosecuting have very little experience when they start in the role. Those decision-makers who are former police officers may find this less of a challenge than others, and we would suggest that it is good practice to employ former officers in these roles.

In WMP the main decision-makers in the TPU are in fact serving police officers. This force operates with three PCs, nine police staff investigators, one sergeant and a team of administrative staff. There is additionally a small team of legally qualified PLPs. The three PCs conduct the initial triage for collisions and allegations, and then conduct further investigations as required. The manager of this TPU explained that, like one of the other forces, this team is now dealing with a huge increase in workload since the adoption of the portal for third party reporting supported by digital evidence. Submissions have increased fourfold, and his team is having to process these cases alongside their existing workload resulting from RTCS, without an increase in staff numbers. His team is, therefore, struggling to keep up with the workload and it can be argued that consistency in decision making is likely to deteriorate where capacity is stretched in this way.

In Surrey, as well as the team feeling under pressure to cope with the workload (one retired officer said he worked harder in his current role than when he had been in operational policing), the TPU manager also reported that they face challenges in relation to finding enough court time to prosecute the cases identified as being appropriate for prosecution. The knock-on effect of this is that decision makers had been feeling pressure to dispose of cases in alternative ways to prosecutions, such as offering an educational course, while reserving the available court time for more serious cases that have resulted from RTCs:

Not belittling what is happening, but people actually getting injured. So if we can avoid that and have some sort of intervention...

Although the pressure on the decision-makers was felt to find alternative disposal methods, this did not mean that those cases considered suitable for prosecution were not submitted as such; it just meant there were occasions where there were delays in getting the case to a hearing. However, since the interviews were conducted the TPU manager reports that the police have been working very closely with their partners in HMCTS and have now mitigated this issue with an increase in both PLP and SJP Court slots. This has resulted in all traffic cases now being listed within appropriate timescales, once the file has been submitted for prosecution, resulting in an alleviation of this issue.

It appears that forces have had similar experiences in developing the way in which they deal with third party footage, giving rise to an increase in workload. We saw that the TPU at WMP has suffered a huge increase since the portal went live, whereas previously cases were triaged by members of WMPRHRT, possible only until volume became too high. These officers had the necessary expertise to make

decisions in such cases, and were likely to make consistent decisions leading to successful prosecutions. In West Mercia, on the other hand, third party footage was initially processed by sending the case to front line officers in the local neighbourhood policing teams. A TPU employee in this force accepted that this led to a high rate of NFAs, largely due to a lack of specialist knowledge, workload concerns, and a perception that road traffic offences were not a priority for these officers. As a result, third-party footage case processing was later consolidated in a team in the TPU, after being triaged by a single officer. Interviews with TPU employees in all the forces confirm that there are problems in maintaining consistency of decision making, particularly in cases involving vulnerable road users. Reasons for this include inexperienced decision makers, a lack of guidance, or a coherent approach to decision making or the use of non-legally trained police staff. This is not to say that TPUs should only utilise those legally trained or from a background in roads policing. An interview with a TPU employee from a force which takes action in a high proportion of third-party submission cases points to a number of means by which decision-making can be improved. This TPU did employ ex traffic officers alongside police staff. Further, there was a low staff turnover, meaning that there was an extensive body of knowledge to draw upon with the team, thereby aiding the training of inexperienced employees. This TPU also took consistency of decision making seriously, periodically formally reviewing practices, utilising informal discussion on live cases, and dip sampling completed cases. Finally, this TPU had a close working relationship with frontline traffic officers, enabling open communication and the sharing of perspectives on appropriate outcomes.

In an ideal world those who submit footage to portals would be informed of the outcome of 'their' case. This does not happen in most forces, as the TPU staff simply do not have the time to communicate results to the public. There is also the concern that staff should not be getting into debates with members of the public as to what the appropriate outcome was. This is another reason why we would suggest it is not necessarily appropriate for online submission forms to give the submitter a chance to express their view as to what the final outcome should be. However, we were told that in one of the forces with the highest number of TPU staff available, submitters are informed of the outcome, and it appears that this has not proved problematic. This arguably keeps the public engaged; if they feel their contribution is valued they are more likely to continue to do what one interviewee described as their 'civic duty' and submit footage of offences. It conforms with the police's obligations to keep victims informed of the process of their case, assuming we view those subjected to risk on the roads as 'victims'. On the other hand, if prosecution is deemed inappropriate, due to lack of evidence that an offence has been committed, it makes sense to feed this back to the member of the public so that they are encouraged to submit only in cases where positive action can be taken, and reduce the number of NFAs. Given that TPU staff are stretched it is suggested that forces might be able to adopt an automated process by which a decision as to outcome triggers an automated email to the submitter. If it is clear that the address from which this email is sent is not monitored this should have the benefit of avoiding the police getting into discussions as to whether the outcome was appropriate. Further investment in an IT management system beyond what is provided free of charge by Nextbase would provide a clear benefit here.

There is one final point to be made about the need for TPUs to be effectively resourced. If it transpires that supply of third party footage exceeds a TPU's capacity to process the footage, cases are likely to be lost. It is important that allegations are dealt with in a timely manner, given that if a prosecution is to be brought a NIP must be sent to the driver within 14 days of the alleged offence. How strictly this requirement is enforced does appear to differ from force to force. Some apply some flexibility, arguing

that the court will not reject a case if it can be shown that any delay beyond the 14 days was reasonable in the circumstances (e.g. the submitter witnessed the offence and recorded it on video immediately before leaving the country on holiday, but submitted it as soon as they returned). Others apply the rule far more strictly, limiting themselves to sending out a warning letter in the event that the 14 day period had expired. In our sample we had one case, BABDNFA1, in which the final decision had to be taken as NFA, as the driver argued that it was not reasonable for the police to have sent a NIP outside the 14 days. It would be helpful if national guidelines on this type of issue were developed to ensure consistency between forces.

As well as the 14 day time limit for issuing a NIP, it is also the case that if WDC is to be charged this must be done within 6 months of the alleged offence. This is particularly an issue in the more serious cases where the police are considering whether a charge of DD is appropriate. If the case is borderline, and the 6 month deadline is nearing, it may be that a decision is taken to prosecute for WDC rather than DD. This might happen in a case in which the police are still awaiting a response from the CPS after submission of an advice file, and do not want to lose the opportunity to prosecute for WDC in the event that the CPS decide that there is insufficient evidence for DD. This is an issue to which our discussion now turns.

CPS involvement

It was noted above that while the police are able to prosecute the lesser offence of WDC and use of a mobile phone while driving themselves, they are reliant on the CPS to take forward a case for prosecution if they believe that the appropriate charge is DD. Because of the experience that some officers have had in putting forward an advice file for DD, they become reluctant to pursue a case in this way, sometimes deciding to prosecute what might amount to DD as high-end WDC. We take the opportunity here to discuss this issue in more depth.

The CPS, like the police, have, in recent years, experienced severe financial cuts as a result of the austerity agenda. It is likely that any study of prosecutorial decision-making, whatever the offence category under scrutiny, is likely to uncover problems with the relationship between the police and CPS. Relations between the two bodies have arguably been difficult since the creation of the CPS following the enactment of the Prosecution of Offences Act 1985.⁵² At the beginning of this century, a review of the CPS⁵³ had resulted in a closer working relationship between the CPS and police, with Crown prosecutors being on hand at police stations, or Criminal Justice Units, to provide advice to officers investigating a particular case. More recently, though, Crown prosecutors have been removed from police stations and the introduction of CPS Direct⁵⁴ has seen a deterioration in this working relationship. A single case is likely to have a number of different prosecutors dealing with it depending on who is available at any particular time, so that rather than an officer receiving advice from one lawyer and then following it up with the same lawyer, they are likely to have to deal with a different lawyer at every stage of the prosecution.

⁵² McConville, Sanders and Leng (1991) *The Case for the Prosecution* (Routledge).

⁵³ Glidewell, Sir I., *The Review of the Crown Prosecution Service: A Report*, Cm 3960, 1998.

⁵⁴ <https://www.cps.gov.uk/cps-areas-and-cps-direct>

It is difficult 'cause we don't have a, a direct contact at CPS so we can't have that conversation – and that doesn't help. So we are reliant on putting, you know, a pre-charge document together and sending it across, so then we get something bounce back, so we never really have direct link, which would be more useful if you could have that conversation first. [TPU manager]

This lack of consistency in individual cases is likely one source of the problem; another is that the lawyers themselves, except in a limited number of specialist roles, do not build up expertise in particular types of cases, and officers are not confident that any lawyer reviewing an advice file will have had experience of the legal questions raised in the case.

We don't have the luxury of having individuals that, you know, it's just the luck of the draw as to who might pick it up.... We go through different phases. [A]t one point, we had a prosecutor that we could go to who had an interest in traffic law, and was very useful. She's since moved on, and we've got nobody else. But we've also found that, you know, traffic is one of those areas that people sometimes think they know the answer and don't necessarily, and it's easy-. We've had cases discontinued because we didn't serve a NIP within 14 days for a collision, when you don't need to under the Road Traffic Act. So, it's things like that, and I think not everybody's that interested in traffic and irrespective of how serious it is, I think if we're sending something to court it's because we've exhausted other avenues and it needs to go to court, whereas the CPS, my feeling is once it gets to court, actually, it's a traffic matter, and crime stuff takes preference over that. [TPU manager]

Problems with lack of expertise and a failure to invest time and effort in traffic cases appear to have consistently led to frustration amongst officers and TPU managers across all forces, as expressed in interviews:

I think there's such a, there's such a discrepancy between the CPS lawyers who review fatal and serious injuries full time and the people who review the case, the case officers, or whoever, review standard road traffic offences being pushed through for the lower end, and it's disgraceful, really, the way CPS handle it, you know, and perhaps you should speak to CPS about it really. ... We've taken the opinion now that we don't process anything for dangerous with ... the dashcam portal, okay? And I'll, and I'll give you a perfect example of why we don't ... [I]t was two months or something, until I had a decision back, maybe two and a half months, coming back with the decision-. They normally come back and ask for something stupid in the meantime, like has the NIP been served correctly? Which, if they'd read the forms, they would know that it has 'cause there's a copy on the file or whatever. But, taking all that aside, the answer always comes back from CPS: no, just deal with it as a high-end careless. [PC]

The frustrations expressed make reference to a number of issues. First, there appears to be a dissonance between police and CPS as to what is required to prove DD, and where the line should be drawn between WDC and DD. It should be noted that the way in which the offence of dangerous driving was drafted in 1991, when the law was changed, was to ensure that it is an objective test. The previous offence of reckless driving had caused problems in terms of proof, and the North Report was keen to ensure that the offence be drafted in a way which takes no account of what was in the mind

of the driver.⁵⁵ It appears that in practice, however, the driver's perceived state of mind is taken into account when assessing the gravity of the offence. When asked how the police differentiate between DD and WDC, one senior officer responded:

Based on the legislation. So, we will sometimes have debates, on what is it, because the standard falls well below that of a careful and competent driver. So, when you look at it, it's, yeah, that, that is without doubt, that is dangerous. A lot of the time you can say there's an intent to it. It's not a mistake: it's an intent. Someone has done something and there are, the road rage things, that they spring to mind. Someone going up a motorway, pulling in front of someone and stamping on the brakes coz the other person's overtaken them in a way they didn't like. On a motorway, that's dangerous. So, that would form a dangerous: there's the level of intent there; they know they shouldn't be doing that. If it's a momentary lapse, then that goes into careless... If there's no solid [white line], and we look at driving and, ooh, they've veered over the road, they've done something they shouldn't have – let's have a look at that. Have they breached the keep left? If they've breached to keep left, why have they done it? Was it dangerous, 'cause it's an intentional move? And it's-. It is always going to be subjective....

This view was expressed at all levels, from the senior officer (above) to the civilian decision-maker:

I think with dangerous, I think, well, the main difference is almost it's, it's almost like it's deliberate. ... Whereas due care is like, you know, I hadn't been concentrating, that sort of thing. It's a very sort of, oops – wasn't paying attention, type of thing. And obviously that's with varying levels of not paying attention. I think dangerous is very sort of, it's almost, it's bordering on deliberate? So, you know, if you're sort of, if you've mounted the kerb, ..., been driving down the pavement and taken out a pedestrian, there's, clearly there's some sort of intent there. I think that's, that's the main difference.

As presented in our findings above, some forces use a tick box on the TOR to indicate whether the reporting officer judges the risk taking to deliberate or inadvertent, but we found that the box ticked did not always accord with our view of the evidence. While we are of the view that this distinction is unhelpful, we recognise that some guidance for officers is needed. Despite the claim above that driving offences involve black or white offending, another officer when asked how he makes the distinction between DD and WDC recognised the greyness of the offence definitions:

[W]hether they fall below that of a careful and competent driver, or far below ... that's open to interpretation, isn't it? Because you could sit ten officers around a table and show them a piece of footage and I wouldn't like to say what the split would be, but there would be sort disagreement I'm sure if it was bordering below or far below. So, if it's that obvious that it's far below, then I would deal with the dangerous driving side of things; and if it's not, then I would just deal with it as a, as a due care or careless.

⁵⁵ Department of Transport and Home Office, *Road Traffic Law Review Report (North Report)*, (London: HMSO, 1988).

The added complication that is faced in cases where the police are in agreement that a piece of driving meets the test for DD, is that they must then persuade a Crown prosecutor that this is the case. Unless the lawyer reviewing the file has experience of prosecuting such cases, to see where the courts draw the line between dangerous and careless driving, they are unlikely to be well equipped to make that judgment. Officers then get frustrated by what they see to be obstacles preventing them from doing their job and enforcing the law. What would be of particular benefit, then, would be for the CPS to support and encourage specialism in this area of law. This does happen to some extent still with prosecutions arising out of fatal collisions, but there is no such specialism for the less serious driving offences.

It is worth reinforcing at this point that, despite our findings that the endangerment offences of WDC and DD are prosecuted in the absence of direct harm having been caused, the result of risk-taking does influence legal decision making. Further, whether a piece of driving meets the threshold for DD or WDC may be dependent upon what the outcome was. Having conducted previous research examining prosecutorial decision-making in relation to fatal collisions,⁵⁶ one of the authors was conscious that had a fatal collision occurred in some of the cases in the current sample, the offence level prosecuted might have been different. This was confirmed, unprompted, at the sense-checking workshop, where participants agreed that the threshold for dangerous driving tends to be lowered in cases of causing death by dangerous driving. This can be explained in part by the application of the public interest test. There is an argument to be made that in the absence of serious harm, the public interest test will fail. Under the Code for Crown Prosecutors, a number of factors need to be taken into account when deciding whether it is in the public interest to prosecute, *inter alia*:

- i) How serious is the offence committed?
- ii) What is the level of culpability of the suspect?
- iii) What are the circumstances of and the harm caused to the victim?
- iv) Is prosecution a proportionate response?⁵⁷

These pose a potential problem in relation to endangerment offences, particularly driving offences, in that society does not necessarily see such offences as serious; no harm, or minor harm, may have been caused; and the culpability of the suspect may be seen to be low since these are offences of negligence and strict liability. However, arguably the focus should be on the harm *risks* rather than caused, given that a fatal collision might have been caused, and the resulting harm is beyond the control of the suspect. As noted by the CPS in its legal guidance, although many driving offences may be minor in nature, 'the prosecution of traffic offences is vital to the enforcement and promotion of road safety and the protection of the public'.⁵⁸ Those who deal with both cases where a fatality arises, and those where luckily no serious injuries are caused, are more likely to see this connection and understand the public interest in prosecuting bad driving, whatever the outcome in terms of harm

⁵⁶ See SR Cunningham, PhD thesis submitted to the University of Leicester, 2004, *Criminal Charges Brought in Cases of Road Death Incidents in the East Midlands: Implications for Law Reform*; and SR Kyd Cunningham, "Has law reform policy been driven in the right direction? How the new causing death by driving offences are operating in practice" [2013] Crim LR 712-729.

⁵⁷ Code for Crown Prosecutors, para. 4.14, available at <https://www.cps.gov.uk/publication/code-crown-prosecutors>.

⁵⁸ <https://www.cps.gov.uk/legal-guidance/road-traffic-summary-offences>.

caused. If the same prosecutors dealt with all driving offences, including those arising out of fatal collisions, it might be that more consistency would be applied across each level of offending in interpreting the legal requirements for DD and WDC.

In the cases in our sample, an example of the problem of inconsistency in approach being dependent on outcome can be seen in relation to offences involving suspected fatigue. The cases of suspected fatigued driving in our sample were prosecuted as WDC, even though if a fatal collision had resulted it is likely that causing death by dangerous driving would be seen as the appropriate charge. Fatigued driving, or driving when knowingly deprived of adequate sleep or rest, is provided by the CPS as an example of circumstances that are likely to be characterised as dangerous driving.⁵⁹ However, the existence of evidence of this factor is less likely to be collected in a case which did not result in a fatal collision. The issue here is that in a fatal collision the police will have the resources to conduct a full investigation, sometimes with detective officers conducting in-depth interviews at the police station. Where a less serious collision results from fatigued driving there is far less in the way of in-depth investigation which takes place: for example D's movements in the day or days prior to the collision will not be investigated to establish how much sleep he may have had, meaning that the collision is left as 'unexplained'. This is likely to have occurred where D's car has drifted onto the wrong side of the carriageway, causing a head-on collision, and D has no explanation as to why as he cannot remember what happened. An example of this was case BRTCWDCP16 where D pleaded guilty to WDC and was fined £1000 and had his licence endorsed with 7 points. Another was CCDC29 in which the question for the prosecutor appears to have been whether prosecution for WDC or diversion was appropriate, rather than prosecution for DD. An email on file shows that prosecution, rather than diversion, was preferred on the basis that significant damage had been caused to a house when D, who was fatigued due to caring for a three-month-old baby, had fallen asleep at the wheel. The email went on to state: 'the matter attracted a lot of public attention and I feel diversion would send a weak message about the dangers of fatigue to the public.' This does, however, lead to the question of why DD was not considered as an appropriate charge, given the danger involved and damage caused. The court appears to have agreed that this was a serious case of WDC: D was sentenced to 4 months' disqualification, despite credit being given for her guilty plea.

The attitude of magistrates

As noted above, the Full Code Test must be applied by Crown prosecutors and police before deciding to prosecute a driver for an offence. Although the offences discussed here are endangerment offences, not requiring any harm to have been caused, we have seen that one obstacle to prosecuting such offences in the absence of harm is the public interest stage of the test. However, before that stage is reached, the evidential test must first be passed, and it is here too that obstacles present themselves. Our suggestion is that the focus for decision makers should be on the standard of driving, as required under the statutory definitions of the offences, rather than on the results. That said, one has to be conscious that prosecutorial decision-making will be influenced by the realities of what happens in court, given that a prosecution should not be brought in the absence of a realistic prospect of conviction. One police decision maker was clear that a pragmatic approach was taken:

⁵⁹ <https://www.cps.gov.uk/legal-guidance/road-traffic-charging>.

I think the problem you can have sometimes is that,... not everyone's a perfect driver. And I think a magistrate will feel greater ease at acquitting someone when there's been no road traffic collision. So, the instance you gave, where a cyclist is slightly inconvenienced, I think sort of you get a bit of people's justice, sometimes, where they kind of go, ooh, we'll just let that one pass, particularly if it's a defendant who comes across very well in court. You know, well-presented, well-spoken, and sometimes I think they're, they're willing to let things fly rather than applying the law strictly... I mean, it's easier to turn a blind eye to those kind of offences 'cause there's no real negative outcome..... I think some of them take the view: coming to court is punishment enough; we don't need to stick the boot in, so to speak. Whereas, you can't do that when there's been a clear road traffic collision, or someone's been punched, or robbed, or something like that. ... It's the culpability, I think. You know, where someone's potentially swerved too close to a cyclist, I think there's the-, they probably adopt the view, we, anyone could've done that, you know, it was just a moment of lapse of concentration. Do we need to convict here? I think some magistrates struggle with the criminality in those sort of cases.

There was agreement at the sense-checking workshop that prosecutions are more likely to be successful in cases resulting in RTCs, suggesting better use of court time. The suggestion was that magistrates engage more with cases where the prosecution can place a victim in the witness box, and sentences tend to be higher in RTC cases because the presence of a victim who has been injured humanises the experience.

On the other hand, there were other interviewees, and general agreement amongst officers in attendance at our sense-checking workshop, that such attitudes from magistrates should be challenged and cases brought forward wherever there is clear evidence of WDC, that D drove below the standard of a competent and careful driver, whether or not the risk created thereby materialised. Those whose role involves dealing with collisions perhaps have a greater appreciation of the fact that in many cases, whether an example of bad driving results in a near miss, a minor collision or a fatal collision may be a matter of circumstance and luck, beyond the control of the offending driver. If the focus is placed on the quality of the driving, it may be difficult for magistrates to dismiss a charge supported by clear evidence, whether or not a collision occurred.

We saw above that this can be effective when dealing with close passes of cyclists. Rule 163 of the Highway Code states that a driver should give a cyclist as much room when overtaking as they would do a car. Some forces who conduct Close Pass Operations suggest that 1.5 metres of clearance ought to be given to cyclists, and use a mat set on the ground to illustrate this to offending drivers. Where insufficient space is given the case can be made that D has driven below the standard of a competent and careful driver, and a prosecution should be brought whether or not the driver in fact came into physical contact with the cyclist causing a collision, or it resulted in a 'near miss'. There were several examples of 'close passes' in the sample, only one of which resulted in a collision (CWDC40). In that case D was prosecuted for WDC, fined £266 and received 5 penalty points. In one force, cases involving near misses caught on camera were similarly prosecuted for WDC (e.g. AWDC20).⁶⁰ However, such an approach is not consistently applied, with other forces arguing that they do not have the capacity to

⁶⁰ In AWDC7 a close pass of a cyclist resulting in a near miss resulted in a prosecution for WDC being initiated. No evidence was offered at court and we have been unable to discern the reasons for this.



prosecute such cases in the absence of injury having been caused. There is an exception to this in cases where it is evident that the absence of injury was purely down to luck. This recognises that it is the risk-taking that ought to be the focus of enforcement priorities, and we would encourage forces to properly resource TPUs in order that they do not have to make a judgement call as to whether it is only luck which prevented an injury having been caused. The focus should be on whether the requirements of the offence are made out.

Ultimately, the best way for decision-makers to determine if an offence of WDC has been committed is most likely to ignore the outcome of the driving and to focus on the 'driving test' test. More than one officer, from more than one force, expressed the view that WDC is not a difficult offence to charge if one compares D's driving to what would be expected on the day of a driving test:

It's clear to me. I don't know of every officer, but it's clear for me because careless driving is a driving standard that falls below that of a normal competent driver. A normal competent careful driver, if you want the exact words. So, normal, competent, careful and driver, I always put to, the day of your driving test, you're a normal competent careful driver. If you drive outside of what you would driving in a driving test and wouldn't pass your test, you fall outside that – so does that then become careless? If you're driving falls far below that of a normal competent driver – so anything that makes you go 'holy crap!' – that's far below and could ultimately lead in to serious injury or deaths of a person: that's gotta be dangerous driving.

The significance of speed

The offence of speeding, or driving at a speed in excess of the speed limit, was not one which we chose to explore in this study. Like the offences that do form the subject of this project, it is an endangerment offence that exists in order to prevent harm on the roads and, like use of a mobile phone whilst driving, it is a strict liability, *implicit* endangerment offence that is quite technical in nature. Driving at excess speed is, like use of a mobile phone, also listed in the CPS legal guidance as a factor providing evidence of careless and dangerous driving. We were interested, therefore, in how these offences overlap with one another and under what circumstances a case of excess speed might be prosecuted as either WDC or DD.

Of the 54 cases of dangerous driving, more than half (35 = 65%) involved an allegation that D was driving at excess speed, as part of the evidence of dangerous driving. This was combined with other factors which made the driving dangerous: driving through red lights and failing give way or show any consideration for other road users, usually in the context of a police pursuit. In these cases speeds as high as 90mph in a 30mph limit were recorded. Of the 166 cases in which WDC was investigated, a much smaller percentage (35 = 21%) involved an allegation of speeding, although in another 12 cases witness statements made reference to D driving at speed. Some of these were not dissimilar to the cases prosecuted as DD: for example AWDCP6 in which D drove at above 60mph in a 30mph limit, and ran a red light; AWDC10 in which D drove at 50-55mph in a 30mph zone, overtook a vehicle on the approach to a pedestrian crossing nearly missing an oncoming vehicle, and continued to drive at excess speed whilst being pursued by police, before coming to a stop. It is difficult to see in some of these cases why D's driving was not assessed to fall *far* below the standard of a competent and careful

driver; and CWDCDCT3 in which D drove at up to 85mph in a 30mph limit and, according to the officer in pursuit, ‘missed 3x pedestrians narrowly on light controlled crossing’.

In other cases, D’s excess speed may have been combined with less dangerous manoeuvres, such as poor lane discipline, or the driving occurred late at night in the absence of other road users where it would be difficult to make a case for dangerous driving. Suspicions of excess speed after collisions are often not confirmed as, unlike in cases of fatal RTCs, collision investigators are rarely deployed to reconstruct the collision and calculate vehicle speeds from skid marks etc. Therefore, there may be additional cases of WDC where excess speed was involved, but where such excess speed cannot be evidenced, for example where D failed to see stationary traffic ahead in enough time to stop, resulting in a rear-end shunt. In such cases the evidence of excess speed is not required, since D can be seen to have fallen below the standard of a competent and careful driver in driving too fast for the road conditions (whether or not this was in excess of the speed limit) and failing to pay sufficient attention to the road ahead.

In interview we probed the question of when it is that excess speed will be prosecuted as DD or WDC. There is an argument to be made that a competent and careful driver will never exceed the speed limit by more than 10%, and that highly excessive speed could arguably, on its own, give rise to a risk of injury given D’s inability to stop in the distance seen to be clear, or the increased likelihood of D losing control of the vehicle. However, officers consistently responded that excess speed would have to be combined with other factors before DD would be considered an appropriate charge. One officer gave the following response:

I’ve prosecuted people for well over 100 miles an hours – so, were 50, 60 miles an hour over the limit – but it’s not been dangerous driving or due care, it’s been a speeding offence, because that’s what it’s there for, supposedly. But if you put another element in – so, let’s say you take that past a school, or, putting that speed into a situation which just raises it up to due care or to dangerous. So, if it is just speeding, it’s just speeding, whatever the speed might be, in my experience. So, you need that little bit element of something else to put it into a different category. Same with mobile phone use. It’s, it is simply mobile phone, unless it is outside a school, unless it leads to a collision, or something else.

Since we completed the fieldwork for this project, WMPRHRT has developed a new strategy for prosecuting drivers for WDC and DD based on this idea that speed combined with ‘that little element of something else’ provides evidence of those offences. The rationale for this is that fines and penalty points for speeding are failing to provide sufficient deterrence to some motorists and, where their speeding is particularly risky, the penalties available at court for WDC and DD provide the ‘ultimate deterrence’ for such drivers. Operation Zig Zag involves the deployment of officers to vulnerable locations, marked by the existence of zig zags on the road surface, such as crossings outside schools. An officer will be located by the roadside at these locations, equipped with a body-cam or helmet-cam, to capture instances of speeding and/or distracted driving (use of a mobile phone) at peak hours when vulnerable road users are most likely to be put at risk. Rather than prosecuting for simple excess speed, the outcome will depend on what threshold is crossed. The disposals in a 30mph limit, for example, are as follow:

- 35–41mph – S3RTA1988 (WDC) standard disposal (i.e. offer of educational course where appropriate)
- 41–49mph – S3RTA1988 (WDC) court disposal only
- 50 mph + - S2RTA1988 (DD) prosecution

Most of these cases will be dealt with in PLP courts, but guidance has been drawn up for the CPS as to how to prosecute such cases as DD. At the magistrates' court for WDC, PLPs will push for a minimum of 7 points and up to disqualification in the worst cases. The first day at court prosecuting such offences occurred in April 2019, during which 27 cases of WDC were alleged. Of these, 24 pleaded guilty; 22 of these were given 7 or 8 points and an average fine of £385, and two were adjourned for disqualification. The further three who pleaded not guilty are going forward to trial, although the officer expects a change of plea in due course. Another three cases are being prosecuted as dangerous driving.

The officers responsible for this initiative see its aim to be 'To deter offending at vulnerable locations by developing driver behavioural change, stimulated by the locational trigger of "Zig Zag" lines which drivers will associate with enforcement that results in life changing sentencing.' It is an excellent example of evidence led policing, prompted by the KSI data relating to pedestrians in relevant locations, and targeting behavioural change amongst drivers. We endorse this imaginative approach of using the existing law as a tool to promote safety for vulnerable road users, and would like to see it adopted by other forces.

The problematic offence of use of a mobile phone whilst driving

Turning to the offence of using a mobile telephone, our findings raise important issues as to the scope of the offence. The wording of the regulation is not particularly helpful. The relevant regulation states that 'no person shall drive a motor vehicle on a road if he is using a handheld mobile telephone' *or* 'a handheld device... which performs an interactive communication function.'⁶¹ On the face of it, this seems to prohibit the use of handheld mobile telephones or equivalent devices which perform a particular function (interactive communication). For instance, a tablet connected to the internet, so as to send and receive data, would be equivalent to a mobile telephone under this definition. However, the difficulty arises from para 110(6) of the regulation which defines when 'a mobile telephone *or* other device is to be treated' as handheld (emphasis added). It will be, 'if it is, or must be, held at some point during the course of making or receiving a call or performing any other interactive communication function'. Within para 110(1) a mobile telephone is just that, a mobile telephone, and there is no reference to its function (as an interactive communication device). However, para 110(6) could be read to tie the function of the telephone to the device for the purposes of assessing when it is handheld; it could be said that a mobile telephone will only be treated as handheld when used in this way, as an interactive communication device. Using the telephone, in any other way, for instance, would not class as being handheld. If this was the intention of the provision,

⁶¹ Para 110(1) of Road Vehicles (Construction and Use) Regulations 1986/1078, as amended by The Road Vehicles (Construction and Use) (Amendment) (No. 4) Regulations 2003/2695 (see Appendix 1).

however, why was the function (communication) not tied to the definition of mobile telephone in para 110(1)?

It is arguable if the provision, therefore, restricts the definition of a telephone as being handheld 'only' when it is used for an interactive purpose. However, the ambiguity, as seen above, has raised concerns about the scope of the offence. This leaves open many questions as to what is meant by an 'interactive communication device'? Given the regulations were passed before the wide uptake of smartphones, many of these functions may, or may not, fit within this definition. Further, in the absence of any decision from a court of record,⁶² forces are left with little guidance as to the exact parameters of the law here. This ambiguity is important for decision makers who have to apply the law in practice. As we noted above, this leads to problems with consistency of decision making and the possibility of cases being lost.

In the absence of clarity, forces would do well to consider their approach to the prosecution of mobile telephone offences. In the first instance, the advice suggested by TPU employees⁶³ on the steps that could be taken to strengthen a case should be followed. It is not enough for officers to simply think *their* interpretation of the law is correct, given that cases have been lost due to the courts disagreeing with this interpretation. Officers should record details pertaining to the use of the telephone, such as the length of time it was held, whether it was illuminated, how the defendant interacted, and the suspect's responses to questions posed at the roadside. Further, it should be remembered that forces do have the ability, in cases where the use of the telephone is in issue, to proceed either with the mobile telephone offence or an alternative, such as the offence of 'not being in proper control'.⁶⁴ As was discussed with a TPU officer from one force, this raises issues as to the appropriate penalty. But this is preferable to the case discussed above, where a mobile telephone offence was dropped when the driver claimed the telephone was used as satellite navigation device and was being retrieved from the footwell. The account provided by the suspect certainly indicated that 'not in control' would have been a viable alternative means to proceed.

However, of more importance here is the wider issue of a law that is unclear and not fit for purpose. As the functions on modern smartphones have developed immensely since the regulations were promulgated, it is clearly time for an amendment to the law to clarify the meaning of a 'handheld device'. Such an amendment to the law would assist decision makers when applying the provision, leading to consistency of decisions and clarity as to the level of evidence required to prove the offence.

It is worth noting here that the purpose of the legislation is to deter drivers from engaging in behaviour which causes a dangerous distraction. In the absence of proof of the specific offence, alternative offences can be charged where the distraction has created a danger and caused D to drive below the standard of a competent and careful driver. Research has been conducted showing that the use of a hands-free mobile is just as dangerous but at present this is not a separate offence. Such an offence would, of course, be even more difficult to enforce than the current hand-held offence. However, in the event that hands-free use gives rise to distraction it is possible to use other offences to prosecute D. This can be seen in BRTCWDCP17 where a WDC charge arose from a RTC resulting in broken bones.

⁶² At the time of writing this final report, a case had been heard at the High Court. *DPP v Barreto* was heard on 9th April 2019 and the ruling is awaited with great anticipation but has not, as of 10th May, been made.

⁶³ And noted above.

⁶⁴ Para 104 of Road Vehicles (Construction and Use) Regulations 1986/1078 (see appendix 1).

The reason for the collision appears to have been that D was concentrating on a hands-free call to his employer rather than his driving, and he failed to notice that the cars in front had come to a stop, resulting in a rear-end shunt. D pleaded guilty to WDC and was sentenced to a fine of £450 and his licence was endorsed with 7 points. Given that the use of a mobile phone offence gives rise to a minimum of 6 points it is unsurprising that this offence is preferred over WDC where it can be proved.

We also noted, in our findings, the inconsistency between and within forces on the use (or otherwise) of education courses for this offence. Despite the increase in penalties for this offence, and the associated recommendation that courses should not be offered as a result, two forces claimed, in interview, to still offer courses in limited circumstances. We also explored the possibility, in the analysis of the cases in our sample, that, depending upon the date of the offence (which was not always disclosed), one force was offering courses after the increase in penalties. We would recommend that forces review their policies in this regard, consider whether the use of an education course is appropriate, and ensure that any guidance is adhered to in practice.

The experience of vulnerable road users (cyclists)

In the findings from the second strand of the project we outlined a number of outcomes. To recap, for focus group participants, there was a degree of ambivalence and fatalism surrounding the role of enforcement for the reduction of risk and harm on the roads. The result was that risk management was largely the responsibility of the cyclist. We noted how it was problematic to place responsibility for risk management at the feet of the vulnerable road user: it downplays the responsibility of other road users for reducing risk and harm; it leads to 'victim blaming'; it makes cycling more burdensome; and risks reducing cycling participation rates. Rather than risk management being the responsibility of the individual cyclists, the groups suggested other alternatives to reducing risk and harm; achieving a critical mass of cyclists through culture change and the provision of appropriate infrastructure.

Returning to the ambivalence and fatalism of the focus group participants, it is worthwhile exploring if the research from strand 1 supports or challenges this view. Two data sources allow us to draw some tentative conclusions. The first is an examination of the data we have received from Operation Snap and similar initiatives. All three forces provided data on the number of cases they have processed as part of their digital upload portals and we have also been able to access data from Welsh forces for Operation Snap. To supplement this, we also made Freedom of Information requests to every other force in England to request if they accepted digital footage for allegations of bad driving, and if they could supply data on the outcomes of any cases. While most forces could not provide this data (either because they did not currently accept such footage, or could not easily retrieve the data from their systems) a number were able to do so.

An important caveat, here, is that footage uploaded on a digital portal may come from a variety of sources, be they dashcams, cyclists' cameras, CCTV systems, or mobile telephones. Any analysis of this data, therefore, is not restricted to incidents involving vulnerable road users. Having said that, we requested this data due to some responses in the cyclists' focus groups. They were very much a minority, but we did receive contributions from some participants whom would regularly submit footage to their local force. However, they were dissatisfied with the outcomes that resulted from these allegations, adding to the sense of ambivalence around enforcement practices. While we would not be able to qualitatively assess whether their disappointment was justified, we took the view that obtaining raw outcome data would allow for, at least, an impression as to the efficacy of third party

reporting of incidents. The data we do have makes comparison extremely difficult. As there is no national portal and no national standard of processing these cases, it is very difficult to make direct comparisons between the data supplied. Having said this, what is clear from the data collected is that there is an exceptionally wide variation in the attrition rates between forces. For some forces well over half of all submissions result in no further action of any type, formal or informal. Whereas for other forces, some form of action (education, warnings, fixed penalties, prosecutions) is taken in the majority of cases. While these differences may be the product of a variable caseload, they could also be the result of inconsistent decision making between forces. While this evidence is merely anecdotal, one focus group participant, who frequently cycled between two force areas, reported that outcomes were often very different for similar incidents when he submitted footage to these forces.

The second data source supports the tentative conclusion that there is a degree of inconsistency in how cases are processed when third-party digital evidence is submitted. While the discussion above under the heading of TPU staff is focused upon intra-force consistency, there are lessons for consistency between forces. If a force engages with the issue of consistency in this way, it will be more able to justify decision-making practices as being legally appropriate and proportionate to the risk of harm. In so doing, this should reduce inconsistency between forces. The need to reduce such inconsistency was recognised in interviews. One officer particularly highlighted the importance of consistency across the country by pointing out that in individual victim of assault would expect to be treated the same way wherever they were in the country; the same is true of those who witness offences on the roads. He therefore sees as problematic that some forces don't accept footage online.

There is a wider issue, here, however. There is little doubt from the data gathered in interview that the use of third party footage is a major change in roads policing. TPUs and front-line officers have all noted how third party reporting has led to a large increase in demand, in a time of shrinking resources. There are questions as to whether TPUs will be able to cope if demand continues to rise. In this context, it will be extremely difficult for forces to maintain or develop processes that assure consistency of decision making, be these processes designed to aid decision making (such as training, informal support, the development of guidance) or those that review previous decision making (such as dip sampling of completed cases); TPUs may simply be overwhelmed by the sheer volume of work.⁶⁵ Of relevance here is the uneven development of the use of third party footage. There are a range of technical solutions available to forces and while many forces now do accept digital footage, or are in the process of introducing this, a small number of forces have indicated that they have no plans to do so. This, obviously, leads to differential practices across the country, with seemingly little objective justification for this. Importantly, it is also evidence of a lack of a national strategy on this important addition to roads policing. While the introduction of Police and Crime Commissioners was undoubtedly part of a localism agenda, whereby forces are thought best placed to make decisions regarding the allocation of resources, this cannot provide a defence to practices which lead to 'postcode justice'. If a force decides not to implement a new development, such as third party reporting, this is obviously a decision for the PCC and the Chief Constable. But the processing of cases should be done in a manner consistent with the evidential requirements for the offence and public

⁶⁵ As one TPU manager conceded in interview, the sheer volume of work makes dip sampling of cases difficult or meaningless (as he does not have the resources to sample a representative number of files).



interest requirements. There is scope here, therefore, for a role for the College of Policing in developing guidance so as to ensure consistent and appropriate decision making.



Conclusion/recommendations

We set out to uncover ways in which the current law relating to certain endangerment offences are used as tool through enforcement to deter risk taking on our roads. We found that forces use a combination of education and enforcement to varying degrees, and would suggest that the police should not be reluctant to rely on the force of the law where this is thought to be effective in reducing road danger. Good practice can be achieved through enforcing these endangerment offences as a means of reducing harm through prevention, rather than responding to harm after it has occurred. It is the risk-taking that ought to be the focus of enforcement priorities, and we encourage forces to properly resource TPUs in order that they do not have to make a judgement call as to whether it is only luck which prevented an injury having been caused. The focus should be on whether the requirements of the offence are made out.

Prosecutions for WDC and DD arise from three situations: RTCs; police witnessed incidents (particularly police pursuits); and third party allegations (supported by video footage). The law is used to address offending whether or not the risk created by these offences has materialised and caused harm, but we also found that results of risk-taking do influence how cases are dealt with. Although the current offence definitions for careless driving and dangerous driving do not require the state of mind of the driver to be taken into account, we found that in practice decisions are influenced by an assessment of whether the driver's offence was deliberate, or the result of a lack of awareness. The offence requirements are not interpreted consistently, and frustration amongst the police and their perception that the CPS will likely downgrade any allegation of dangerous driving to careless driving, may contribute to cases not being referred to the CPS for prosecution for the more serious offence where this would be appropriate. Despite the increase in resources needed to support an allegation of dangerous driving we would encourage the police to push for such charges where they view the standard of driving to have fallen far below the acceptable standard. Good use can be made of PLP courts, as can be seen through the recent initiative of Op Zig Zag which allows speeding and use of a mobile phone at risky locations to be prosecuted as either careless or dangerous driving. The law can be used to try to effect behavioural change amongst drivers if the police and CPS work together in this way.

There have been a number of innovations in roads policing recently and these, combined with efficient and effective structures and working relationships can improve roads policing enforcement. However, ultimately effective enforcement, and the resulting harm reduction, cannot be achieved without the investment of resources. The increase in dashcams and other video evidence is used by the most proactive forces to support their role in reducing road danger in the absence of appropriate funding; some forces are doing very well with very little, and should be congratulated on this, but the strains that frontline officer and TPU staff are currently working under will inevitably have a negative effect on cementing long term changes to driver behaviour. The availability of means by which road users, in particular vulnerable road users, can submit evidence to the police supporting an allegation of bad driving has the ability to empower cyclists and others to do their bit to promote behavioural change amongst drivers. The way in which such allegations are processed is at present variable and inconsistent, but good practice includes using fully trained decision-makers or individual officers to triage cases in order to promote consistency. We saw evidence that this can be effective in encouraging a 'Neighbourhood Watch of the roads', but there was also evidenced that back-office support must be resourced and training provided to staff in order to maximise consistency of approach

and avoid post-code justice. Similarly, the CPS needs to be better resourced in order to allow the development of expertise in road traffic prosecutions, and good relations with the police, so that they can work together to achieve the same goal.

We make the following specific recommendations:

Forces review their approach to accepting and acting on third party footage, putting in place methods to ensure appropriate and consistent decision-making

This is not simply recommending that each and every force should make use of a portal but also that there is consistency in approach to how these are handled in the back-office. We recommend that forces make use of retired officers and, where non-police staff are employed, provide appropriate training. We also recommend dip-sampling of completed cases to measure consistency and rectify any notable disparities of approach. We make this recommendation whilst acknowledging that there is a risk of unintended consequences from this. The idea that members of the public will help to police the roads might tempt those in power to further cut resources for roads policing. Initiatives such as Op Snap require proper investment, but not at the expense of roads policing officers, who are required to carry out a range of essential services: not just to deter bad driving but also to ensure that the transport system continues to operate and collisions are dealt with and investigated; to enforce offences that will not be visible to civilians (documentary offences such as driving whilst disqualified); to deter drink and drug driving by having officers on the roads equipped to issue breath tests and drugs swipes; and to deny criminals the use of the roads.

Forces keep under review the work of TPUs, with a view to ensuring effective and consistent decision-making.

Road traffic offences are a form of high-volume crime. Although the public might not currently value the work of TPUs as well as roads policing officers, there is a role to be played by forces in communicating to the public the important role that roads policing plays in promoting safe communities. That message is easier to convey if decision making is consistent and members of the public do not feel subjected to a 'post code lottery' of justice. As the work of TPUs increases through the acceptance of third party allegations, TPUs come under increasing pressure to deal with a greater workload from RTCs and such allegations. This needs to be recognised by central government if enforcement is valued as a way of reducing KSIs at a time when they are on the increase.

National guidelines should be developed on when it is reasonable for the police to issue a NIP outside the normal 14 day period

Different forces have different approaches to whether they will issue a NIP more than 14 days after the alleged offence. Some apply this deadline very strictly, whilst others interpret the requirement to mean that they can issue the NIP so long as there are clear reasons beyond their control as to why they could not issue it sooner. This applies particularly to offences which come to light through the use of third party reporting. We recommend that national guidance be developed to standardise the approach to this question in order to improve consistency.

National guidelines should be developed on the submission and processing of third party footage

There is no standardised approach as to whether third party footage is accepted and, if so, in what format. There have been a number of initiatives at individual force level to deal with the growing demand for members of the public to be able to make allegations of bad driving, but the variance in approach leads to the potential of post-code justice. The College of Policing should consider developing guidelines setting out best practice in relation to the practicalities of accepting such submissions, using them as evidence, and responding to those who make the allegations.

The CPS should be more willing to consider prosecuting for dangerous driving in the absence of a collision

The CPS must, under the Code for Crown Prosecutors, ensure that the evidential test and public interest test are met before charging for an offence. We would argue, however, that with robust prosecuting convictions can be achieved, in turn providing the necessary confidence of a realistic prospect of conviction. We would encourage the view that the harm risked in careless and dangerous driving provides the public interest needed to prosecute in many cases, despite the absence of a collision. This does, of course, have to be assessed on a case by case basis, but a change in attitudes amongst those who are involved in the administration of justice may be needed so that, in turn, behavioural change amongst drivers can be encouraged.

The CPS should be properly resourced, with specialist road traffic prosecutors who work closely with police colleagues

Successful prosecutions require specialist knowledge. Beyond the offences of DD and WDC, much of the legislation is highly technical, as can be seen with the use of a mobile phone offence. The CPS ought to make use of their own CPS legal guidance to support prosecutions in the absence of a fatality. Crown prosecutors need to be supported in developing specialist knowledge of the legislation, and in understanding how the law can be used to good effect. Good relations with the police will benefit prosecutors in this regard. Police should have a Single Point of Contact in the local CPS area for dealing with road traffic offences.

For mobile telephone offences, frontline officers should record more details of the allegations on the TOR, that decision-makers consider alternative charges in difficult cases (such as 'not being in proper control'), and that the offence definition be reviewed

The current law is poorly defined, resulting in problems faced by police in prosecuting those who choose to challenge allegations that the offence has been committed. We have identified best practice in detailing the offence at the roadside, but are of the view that the statutory definition needs revising.

Innovative initiatives, such as Op Close Pass, Project Verrier, Operation Tutelage and Op Zig Zag, be adopted by all forces

While each force will have its own particular priorities, some are slower than others in adopting examples of best practice. Where possible, data should be provided by forces to show how their



operations are making an impact on KSI figures. Whilst there are a number of variables which affect KSIs, any obvious successes should be shared in order to maximise take-up of innovative approaches.

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Appendix 1 – the offences

Road Traffic Act 1988

As amended

2. Dangerous driving.

A person who drives a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence.

2A.— Meaning of dangerous driving.

(1) For the purposes of sections 1, 1A and 2 above a person is to be regarded as driving dangerously if (and, subject to subsection (2) below, only if)—

(a) the way he drives falls far below what would be expected of a competent and careful driver, and

(b) it would be obvious to a competent and careful driver that driving in that way would be dangerous.

(2) A person is also to be regarded as driving dangerously for the purposes of sections 1 [, 1A] and 2 above if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous.

(3) In subsections (1) and (2) above "*dangerous*" refers to danger either of injury to any person or of serious damage to property; and in determining for the purposes of those subsections what would be expected of, or obvious to, a competent and careful 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.

(4) In determining for the purposes of subsection (2) above the state of a vehicle, regard may be had to anything attached to or carried on or in it and to the manner in which it is attached or carried.

3. Careless, and inconsiderate, driving.

If a person drives a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, he is guilty of an offence.

3ZA Meaning of careless, or inconsiderate, driving

(1) This section has effect for the purposes of sections 2B and 3 above and section 3A below.

(2) A person is to be regarded as driving without due care and attention if (and only if) the way he drives falls below what would be expected of a competent and careful driver.

(3) In determining for the purposes of subsection (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.

(4) A person is to be regarded as driving without reasonable consideration for other persons only if those persons are inconvenienced by his driving.



41D Breach of requirements as to control of vehicle, mobile telephones etc.

A person who contravenes or fails to comply with a construction and use requirement—

(a) as to not driving a motor vehicle in a position which does not give proper control or a full view of the road and traffic ahead, or not causing or permitting the driving of a motor vehicle by another person in such a position, or

(b) as to not driving or supervising the driving of a motor vehicle while using a hand-held mobile telephone or other hand-held interactive communication device, or not causing or permitting the driving of a motor vehicle by another person using such a telephone or other device,

is guilty of an offence.

170— Duty of driver to stop, report accident and give information or documents

(1) This section applies in a case where, owing to the presence of a [mechanically propelled vehicle] on a road [or other public place], an accident occurs by which—

(a) personal injury is caused to a person other than the driver of that [mechanically propelled vehicle], or

(b) damage is caused—

(i) to a vehicle other than that [mechanically propelled vehicle] ¹ or a trailer drawn by that [mechanically propelled vehicle], or

(ii) to an animal other than an animal in or on that [mechanically propelled vehicle] ¹ or a trailer drawn by that [mechanically propelled vehicle], or

(iii) to any other property constructed on, fixed to, growing in or otherwise forming part of the land on which the road [or place] in question is situated or land adjacent to such land.

(2) The driver of the [mechanically propelled vehicle] must stop and, if required to do so by any person having reasonable grounds for so requiring, give his name and address and also the name and address of the owner and the identification marks of the vehicle.

(3) If for any reason the driver of the [mechanically propelled vehicle] does not give his name and address under subsection (2) above, he must report the accident.

(4) A person who fails to comply with subsection (2) or (3) above is guilty of an offence.

(5) If, in a case where this section applies by virtue of subsection (1)(a) above, the driver of [a motor vehicle] does not at the time of the accident produce such a certificate of insurance or security, or other evidence, as is mentioned in section 165(2)(a) of this Act—

(a) to a constable, or

(b) to some person who, having reasonable grounds for so doing, has required him to produce it,

the driver must report the accident and produce such a certificate or other evidence.

This subsection does not apply to the driver of an invalid carriage.

(6) To comply with a duty under this section to report an accident or to produce such a certificate of insurance or security, or other evidence, as is mentioned in section 165(2)(a) of this Act, the driver—

(a) must do so at a police station or to a constable, and

(b) must do so as soon as is reasonably practicable and, in any case, within twenty-four hours of the occurrence of the accident.

(7) A person who fails to comply with a duty under subsection (5) above is guilty of an offence, but he shall not be convicted by reason only of a failure to produce a certificate or other evidence if, within [seven] days after the occurrence of the accident, the certificate or other evidence is produced at a police station that was specified by him at the time when the accident was reported.

(8) In this section *animal* means horse, cattle, ass, mule, sheep, pig, goat or dog.

172— Duty to give information as to identity of driver etc in certain circumstances.

(1) This section applies—

(a) to any offence under the preceding provisions of this Act except—

(i) an offence under Part V, or

(ii) an offence under section 13, 16, 51(2), 61(4), 67(9), 68(4), 96 or 120,

and to an offence under section 178 of this Act,

(b) to any offence under sections 25, 26 or 27 of the Road Traffic Offenders Act 1988,

(c) to any offence against any other enactment relating to the use of vehicles on roads [...], and

(d) to manslaughter, or in Scotland culpable homicide, by the driver of a motor vehicle.

(2) Where the driver of a vehicle is alleged to be guilty of an offence to which this section applies—

(a) the person keeping the vehicle shall give such information as to the identity of the driver as he may be required to give by or on behalf of a chief officer of police [or the Chief Constable of the British Transport Police Force], and

(b) any other person shall if required as stated above give any information which it is in his power to give and may lead to identification of the driver.

(3) Subject to the following provisions, a person who fails to comply with a requirement under subsection (2) above shall be guilty of an offence.

(4) A person shall not be guilty of an offence by virtue of paragraph (a) of subsection (2) above if he shows that he did not know and could not with reasonable diligence have ascertained who the driver of the vehicle was.

(5) Where a body corporate is guilty of an offence under this section and the offence is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and liable to be proceeded against and punished accordingly.

(6) Where the alleged offender is a body corporate, or in Scotland a partnership or an unincorporated association, or the proceedings are brought against him by virtue of subsection (5) above or subsection (11) below, subsection (4) above shall not apply unless, in addition to the matters there mentioned, the alleged offender shows that no record was kept of the persons who drove the vehicle and that the failure to keep a record was reasonable.

(7) A requirement under subsection (2) may be made by written notice served by post; and where it is so made—

(a) it shall have effect as a requirement to give the information within the period of 28 days beginning with the day on which the notice is served, and

(b) the person on whom the notice is served shall not be guilty of an offence under this section if he shows either that he gave the information as soon as reasonably practicable after the end of that period or that it has not been reasonably practicable for him to give it.

(8) Where the person on whom a notice under subsection (7) above is to be served is a body corporate, the notice is duly served if it is served on the secretary or clerk of that body.

(9) For the purposes of section 7 of the Interpretation Act 1978 as it applies for the purposes of this section the proper address of any person in relation to the service on him of a notice under subsection (7) above is—

(a) in the case of the secretary or clerk of a body corporate, that of the registered or principal office of that body or (if the body corporate is the registered keeper of the vehicle concerned) the registered address, and

(b) in any other case, his last known address at the time of service.

(10) In this section—

"registered address", in relation to the registered keeper of a vehicle, means the address recorded in the record kept under the Vehicle Excise and Registration Act 1994 with respect to that vehicle as being that person's address, and

"registered keeper", in relation to a vehicle, means the person in whose name the vehicle is registered under that Act;

and references to the driver of a vehicle include references to the rider of a cycle.

Road Vehicles (Construction and Use) Regulations 1986/1078

104. Driver's control

No person shall drive or cause or permit any other person to drive, a motor vehicle on a road if he is in such a position that he cannot have proper control of the vehicle or have a full view of the road and traffic ahead.

110.— Mobile telephones

(1) No person shall drive a motor vehicle on a road if he is using—

(a) a hand-held mobile telephone; or

(b) a hand-held device of a kind specified in paragraph (4).



(2) No person shall cause or permit any other person to drive a motor vehicle on a road while that other person is using—

(a) a hand-held mobile telephone; or

(b) a hand-held device of a kind specified in paragraph (4).

(3) No person shall supervise a holder of a provisional licence if the person supervising is using—

(a) a hand-held mobile telephone; or

(b) a hand-held device of a kind specified in paragraph (4),

at a time when the provisional licence holder is driving a motor vehicle on a road.

(4) A device referred to in paragraphs (1)(b), (2)(b) and (3)(b) is a device, other than a two-way radio, which performs an interactive communication function by transmitting and receiving data.

(5) A person does not contravene a provision of this regulation if, at the time of the alleged contravention—

(a) he is using the telephone or other device to call the police, fire, ambulance or other emergency service on 112 or 999;

(b) he is acting in response to a genuine emergency; and

(c) it is unsafe or impracticable for him to cease driving in order to make the call (or, in the case of an alleged contravention of paragraph (3)(b), for the provisional licence holder to cease driving while the call was being made).

[

(5A) A person does not contravene a provision of this regulation if, at the time of the alleged contravention—

(a) that person is using the mobile telephone or other device only to perform a remote controlled parking function of the motor vehicle; and

(b) that mobile telephone or other device only enables the motor vehicle to move where the following conditions are satisfied—

(i) there is continuous activation of the remote control application of the telephone or device by the driver;

(ii) the signal between the motor vehicle and the telephone or the motor vehicle and the device, as appropriate, is maintained; and

(iii) the distance between the motor vehicle and the telephone or the motor vehicle and the device, as appropriate, is not more than 6 metres.

(6) For the purposes of this regulation—

(a) a mobile telephone or other device is to be treated as hand-held if it is, or must be, held at some point during the course of making or receiving a call or performing any other interactive communication function;

(b) a person supervises the holder of a provisional licence if he does so pursuant to a condition imposed on that licence holder prescribed under section 97(3)(a) of the Road Traffic Act 1988 (grant of provisional licence);

(c) "*interactive communication function*" includes the following:

(i) sending or receiving oral or written messages;

(ii) sending or receiving facsimile documents;

(iii) sending or receiving still or moving images; and

(iv) providing access to the internet;

(d) "*two-way radio*" means any wireless telegraphy apparatus which is designed or adapted—

(i) for the purpose of transmitting and receiving spoken messages; and

(ii) to operate on any frequency other than 880 MHz to 915 MHz, 925 MHz to 960 MHz, 1710 MHz to 1785 MHz, 1805 MHz to 1880 MHz, 1900 MHz to 1980 MHz or 2110 MHz to 2170 MHz; and

(e) "*wireless telegraphy*" has the same meaning as in section 19(1) of the Wireless Telegraphy Act 1949.

Appendix 2 – FOI requests

As a result of our FOI requests and online searches, we are aware that the following forces currently utilise a portal:

Avon and Somerset; Bedfordshire; Cambridgeshire; Cumbria; Cheshire; Derbyshire; Dyfed Powys; Essex; Greater Manchester; Gwent; Hampshire; Hertfordshire; Humberside; Leicestershire; Merseyside; Metropolitan Police; Norfolk; North Wales; Northamptonshire; Northumbria; South Wales; South Yorkshire; Suffolk; Surrey; Sussex; Thames Valley, Warwickshire; West Mercia; West Midlands; Wiltshire.

Additionally, Staffordshire claimed in their FOI responses to use a portal but we could not find this.

The following forces have informed us that they are working towards using a portal:

Devon and Cornwall; Durham; Dorset; South Yorkshire; West Yorkshire.

The following forces do not currently utilise a portal and we are unaware of any plans to do so:

City of London; Cleveland; Gloucestershire; Kent; Lancashire; Lincolnshire; Nottinghamshire.

The following figures were supplied to us concerning the rate of submissions, type of offence, and outcome. Not all forces provided figures for all of these categories.

Avon and Somerset

They received a total of 650 uploads. Of those, 127 resulted in prosecution notices being issued (outlined in the table below).

	Offences	127
Drive motor vehicle fail comply with red traffic signal / lane closure light signals - manual detection	4	
Drive a mechanically propelled vehicle on a road / in a public place without reasonable consideration to other users	24	
Drive a vehicle backwards on a motorway	1	
Drive motor vehicle fail comply with red traffic signal / lane closure light signals - automatic equipment	7	
Drive a mechanically propelled vehicle on a road / in a public place without due care and attention	67	
Use a handheld mobile phone / device while driving a motor vehicle on a road - endorsable offence	1	
Drive / stop / cause to remain at rest a motor vehicle drawing a trailer in offside lane of a motorway	1	
Motor vehicle fail to comply with solid white line road markings - manned equipment	7	
Motor vehicle fail to comply with endorsable section 36 traffic sign - manned equipment	2	
Drive motor vehicle fail comply with red / green arrow / lane closure traffic light signals - automatic equipment	8	
Drive on motorway hard shoulder / emergency refuge area	1	
Drive motor vehicle fail comply with red / green arrow / lane closure traffic light signals - manual detection	4	



Cheshire police

Dates: 01/11/2017 – 01/11/2018. Total number of Incidents recorded in that period: 757

Offences	Number Recorded	NFA	Positive Outcome
Section 2 RTA Dangerous Driving	1	1	0
Section3 RTA Careless Driving	510	395	115
Fail to conform with Red Traffic Light	89	52	37
Fail to conform with Double White Lines	21	7	14
Driver Not having Proper Control of M/V	7	5	2
Use of Mobile Phone	44	36	8
Causing Unnecessary Obstruction	6	6	
Litter	2	1	1
Footage Not Road Related	34	34	
Driving in a Bus Lane	0	0	0
Motorway – trailer in offside lane	4	3	1
Motorway – making U-Turn	6	4	2
Motorway – driving on hard shoulder	11	9	2
Motorway – prohibited vehicle in 3 rd lane	2	2	0
Motorway – powers to stop or direct traffic	0	0	0
Stop within limits of zebra crossing	1	1	0
Stop within limits of pelican crossing	3		1
Motor vehicle fail to comply with endorsable section 36 sign – manned equipment level crossing	4	4	0
Driving on a footpath or causeway by side of road	4	2	2
Fail to wear seatbelt – child under 14 years	2	2	0
Section 172 Fail to Conform with NIP	0	0	0

Positive outcomes could be one of the 3 outcomes below but we do not have a breakdown of these:

- A Driver Educational Course (which they have to pay for)
- A conditional offer (usually points and a fine)
- A summons to court (usually for the more serious offences)

Dyfed Powys

Phils	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Total
DPP															
Submissions	15	7	26	44	56	78	45	33	23	44	21	18	24		434
NFA	5	1	13	19	34	37	21	13	9	19	11	8	2		192
Warnings	4	2	6		9	5		6							32
Warnings (Close Pass)				18								1	2		21
Due care/Reasonable consideration	3	1	2	5	8	30	14	9	8	16	4	2	10		112
Contravene a traffic sign						1	1	1	1	3					7
Dangerous Driving	2	0	1		1	1		1	1			1	1		9
Double White			2			2	4		3	5	1		2		19
Insecure Load	1														1
NIPC (Mobile)			1		1		1	2							5
Red Light		3	1	1	3	2	4	1	1		1	2	2		21
Other										1	4	4	5		14

Essex police

	PIR	CONCERN	CARELESS	RED ATS	MOBILE	CLOSE PASS	OTHER	INSUFFICIENT	NO VIDEO	NO INDEX	OUT OF FORCE	OUT OF TIME	RTC	STORM/CB	TOTAL	MONTH	YEAR TOTAL
	0	0	50	0	0	0	0	35	42	17	10	0	1	9	164	Mar-18	164
	4	0	74	0	0	5	3	53	43	0	7	4	2	12	206	Apr-18	370
	7	0	50	9	9	7	1	48	55	4	13	2	10	24	239	May-18	609
	3	0	37	5	9	8	2	71	64	46	7	2	7	34	289	Jun-18	898
	9	7	68	7	4	8	0	68	85	12	7	4	8	24	306	Jul-18	1204
	2	1	106	11	2	14	3	78	69	21	9	3	9	14	352	Aug-18	1556
	4	3	37	13	5	17	1	70	59	27	14	5	6	16	273	Sep-18	1829
	6	2	71	9	9	15	40	65	59	53	14	1	15	28	386	Oct-18	2115
TOTALS	35	13	493	54	38	74	50	488	476	180	81	21	58	161	2215		

KEY to Spreadsheet:

GREEN are positive reports which comprise:

- PIR as a Police Information Report
- Concern is self-explanatory
- Careless is a report of careless driving
- RED ATS is Red automatic Traffic Signal
- Mobile reports are sent through cell phones
- Close Pass are near misses; Other are non-specific

ORANGE are non-positive

- Most are self-explanatory but RTC is Road Traffic Collision, STORM/CB means STORM our incident input system and CB means Crime Bureau



Greater Manchester police

Op Considerate Detections 01/11/2017 - 31/10/2018		Outcome as of 08/11/2018						
Offence Details	Total	Cancelled, incl warning letters	Still Live	Paid	Paid / Licence Endorsed	Potential Prosecution	Retraining Course Attended	
Drive / ride a motor vehicle on a footpath / causeway beside a road - outside Greater London	5	1	0	2	0	2	0	
Drive / stop a vehicle on motorway central reservation / verge	2	1	1	0	0	0	0	
Drive a mechanically propelled vehicle on a road / in a public place without due care and attention	75	28	14	0	2	9	22	
Drive a mechanically propelled vehicle on a road / in a public place without reasonable consideration to other users	465	161	113	0	18	70	103	
Drive a motor vehicle on a road with a child passenger seat in the rear aged 3 to 13 years not wearing a seat belt	1	1	0	0	0	0	0	
Drive motor vehicle fail comply with red / green arrow / lane closure traffic light signals - manual detection	58	6	37	0	0	5	10	
Drive motor vehicle fail comply with red traffic signal / lane closure light signals - manual detection	41	11	2	0	2	12	14	
Drive on motorway hard shoulder / emergency refuge area	25	14	5	0	1	0	5	
Drive vehicle and fail to comply with an indication given by a traffic sign - local traffic order outside Greater London	1	0	0	1	0	0	0	
Drive vehicle the wrong way on a motorway	2	1	1	0	0	0	0	
Driver not in position to have proper control - endorsable offence	2	0	0	0	0	1	1	
Fail to stop at red light at pelican / puffin crossing	3	1	0	0	0	0	2	
Fail to stop at red light at pelican crossing	2	1	1	0	0	0	0	
Fail to stop vehicle when directed by PC / traffic warden / traffic officer / CSO engaged in regulation of road traffic	2	1	0	0	1	0	0	
Keep a vehicle when registration mark fails to conform with the regulations	2	0	1	0	0	1	0	
Motor vehicle fail to comply with a non endorsable traffic sign - detected by means other than ACD	29	4	9	15	0	1	0	
Motor vehicle fail to comply with a stop sign - manned equipment	1	0	1	0	0	0	0	
Motor vehicle fail to comply with endorsable section 36 traffic sign - manned equipment	9	3	1	0	1	1	3	
Motor vehicle fail to comply with solid white line road markings - manned equipment	8	5	2	0	0	0	1	
Overtake within pedestrian crossing limits	4	1	1	0	0	0	2	
Stop vehicle in pedestrian crossing controlled area	17	3	1	0	1	1	11	
Stop vehicle in pelican crossing controlled area	12	1	3	0	0	2	6	
Use a handheld mobile phone / device while driving a motor vehicle on a road - endorsable offence	35	3	17	0	1	6	8	
Use a prohibited vehicle on a road subject to a restriction / prohibition	7	1	5	1	0	0	0	
Use on a road a motor vehicle / trailer - danger of injury due to weight / position / distribution / security of load	1	0	0	0	1	0	0	



Gwent

Phils	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Total
Gwent															
Submissions	9	13	20	18	20	19	17	23	55						194
NFA	6	10	16	16	19	10	10	11	24						122
Warnings						1	1		20						22
Warnings (Close Pass)															0
Due care/Reasonable consideration	2				1	4		2	2						11
Contravene a traffic sign							1	1	2						4
Dangerous Driving			1	1		1	2	6	3						14
Double White						1									1
Insecure Load															0
NIPC (Mobile)	1					2	1	1	1						6
Red Light		3		1		1	3	1	3						12
Other															0



Norfolk and Suffolk

DASHCAM Reports 2017

Month	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Norfolk	24	30	27	52	80	52	49	33	28
Suffolk	15	15	31	12	36	39	32	27	17
NFA	8	12	9				6	21	11
Traffic Offence Report	7	8	18				11	12	13
Warning	3	6	0				15	16	14
No Reply	21	22	25			11	24	21	15
Dangerous								1	0
Careless							57	47	27
ATS							8	2	2
White Lines								0	0
No Mot								0	0
No Insurance								0	0
Mobile Phone							8	3	3
Other							9	0	2
Close Pass							2		

DASHCAM Reports 2018

Month	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT
Norfolk	45	86	56	125	127	112	101	89	91	115
Suffolk	36	39	37	38	68	84	57	55	39	57
NFA	35	23	4	18	13	21	20	17	11	7
Traffic Offence Report	19	47	33	63	88	67	47	45	20	34
Warning	22	34	27	58	66	73	51	44	51	56
No Reply	32	23	4	9	28	24	36	34	47	33
Dangerous			1			1			2	1
Careless	54	64	50	60	102	109	111	74	93	94
ATS	5	5	4	10	11	14	5	12	8	14
White Lines		1	8	4	3	6	1	8	0	3
No Mot	5	25	14	40	31	20	4	14	4	16
No Insurance	3		1	5	5	2	3	2	1	1
Mobile Phone	7	8	13	12	12	17	9	7	10	17
Other		14	8	33	27	25	29	25	10	21
Close Pass	11	8	4	9	18	27	22	15	19	30

North Wales

Phils	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Total
North Wales															
Submissions	26	24	24	34	28	57	67	67	84						411
NFA	17	6	14	23	8	20	6	11	18						123
Warnings															0
Warnings (Close Pass)		6													6
Due care/Reasonable consideration	3	5	4	7	9	17	29	31	34						139
Contravene a traffic sign			1	1	1		8	2	3						16
Dangerous Driving								2	2						4
Double White		1	1			4	1	3	8						18
Insecure Load															0
NIPC (Mobile)	3	5	4		1	4	4	6	4						31
Red Light	3	1		3	2	2	2	3	4						20
Other					7	10	17	9	11						54

South Wales

Phils	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Total
South Wales															
Submissions	72	50	72	100	58	83	109	133	140						817
NFA	53	40	49	66	47	26	53	78	85						497
Warnings							2	9	4						15
Warnings (Close Pass)	1	1	8	14	7	5									36
Due care/Reasonable consideration	9	5	6	4	2	36	20	28	24						134
Contravene a traffic sign			1	4		1	3	1	1						11
Dangerous Driving		2				3			3						8
Double White	1		1	1			2		3						8
Insecure Load							1								1
NIPC (Mobile)			2	2	1	7	4	8	9						33
Red Light	4	2	5	7	1	2	19	7	9						56
Other	2			2		3	5	3	2						17



Surrey

They have received 1583 complaints via their portal since December 2017. Of these 1235 were 'No Further Actioned' and in around 22 per cent some action (warning letter, education course, prosecution) either did take place or the case was live at the time of the request.

Warwickshire and West Mercia

Totals	Offences	Results							
		No Further Action	Warning Letter Sent	Prosecution / Summons	Further Investigation/ notice of intended prosecution	Traffic Management Intervention	NDAC	Vehicle Already Seized	Unable To Trace Driver
157	Careless Driving	28	66		57		5	1	
5	Contravene No Entry Sign	1	2			2			
17	Contravene Red Traffic Light	5	4	1	6		1		
8	Contravene Solid White Line(s)	2			6				
17	Using Mobile Telephone Whilst Driving	3	5	1	8				
2	Dangerous Driving				1				1
1	Fail To Wear Seatbelt		1						
19	Misc Minor Road Traffic Offence	12	7						
14	Parking Offence	1	13						
3	Weight Limit Offence	3							
2	Unnecessary Obstruction		2						
55	Using Hard Shoulder On A Motorway				55				
2	No MOT	1	1						
4	Excess Speed	2	2						
1	Insecure Load		1						
1	Dangerous Condition	1							
3	Contravene No Left / Right Hand Turn				3				
311		59	104	2	136	2	6	1	1

West Midlands

They reported to us that, at the time of requesting the data, they had received 1010 reports, of which approximately 32 percent concerned mobile phone offences, 50 per cent WDC, and 18 per cent 'other'. Approximately 28 per cent of these resulted in the offer of an education course, 35 per cent in a fixed penalty, 12 were prosecuted through the magistrates' court, and 25 per cent were cancelled.