

Legal Update

Longer jail terms for those causing serious injury behind the wheel

For many years Judges have criticised the inadequate sentencing powers afforded to them when dealing with the offence of Dangerous Driving.

Indeed, there is a stark contrast between the penalties available for this offence, which carries a maximum of two years imprisonment, and the more serious offence of Causing Death by Dangerous Driving, which carries a maximum custodial sentence of 14 years. However, from 3 December 2012, the new offence of Causing Serious Injury by Dangerous Driving will attempt to close this gap.

The offence

The new offence is part of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which received Royal Assent on 1 May 2012.

From 3 December 2012, any person who causes serious injury to another person by driving a mechanically propelled vehicle dangerously on a road or other public place will be guilty of an offence.

The offence can be tried in either the Magistrates' or Crown Court, and, upon conviction, carries a maximum penalty of 5 years imprisonment, together with an unlimited fine and mandatory disqualification from driving (the length of which is not confirmed within the legislation).

Driving dangerously

For the new offence to apply, Prosecutors must establish that the motorist was driving dangerously, that is to say, his standard of driving fell far below that which would be expected of a careful and competent driver. Typically, this will include cases of excessive speed, aggressive driving, deliberate disregard of traffic lights or other road signs and use of a mobile telephone.

Serious injury

The definition of serious injury is stated within the legislation as "physical harm which amounts to grievous bodily harm for the purposes of the Offences Against the Person Act 1861".

Whilst case law has previously considered the types of injury which may amount to grievous bodily harm, it will of course take some time for cases to proceed through the courts before we are in a position to appreciate exactly what is considered to amount to 'serious injury' for the purposes of this new road traffic offence. Clearly, it is likely to encompass those cases where individuals sustain injury resulting in permanent disability, loss of sensory function or visible disfigurement,

i.e. the type of serious 'life changing' injuries initially debated in the run up to the introduction of this legislation.

But what about cases where individuals sustain broken or displaced limbs or bones or those which result in a substantial loss of blood? Such injuries have previously been considered to amount to grievous bodily harm for the purposes of the Offences Against the Person Act 1861. But surely, in the context of a road traffic collision, particularly one involving a motorcyclist or pedestrian, injuries such as a broken arm or leg are highly likely to feature? Is it really Parliament's intention that such injuries could fall within the scope of the legislation? There is a very real risk that drivers may face prosecution for this new offence where a third party sustains serious, but in no way life-changing or long-lasting injuries such as a broken bone or cut to the head. In the absence of any Sentencing Guidelines, the prospect of lengthy jail terms should lead drivers understandably alarmed.

The future

It will be interesting to see how the new offence is dealt with in practice. For example, will the Police arrest individuals for this more serious offence automatically in the immediate aftermath of an accident even where the extent of injuries remains unknown? How will cases be addressed where injuries start off as serious but are relatively short lived in medical terms? What about cases involving complicated medical situations where the injured party already had significant underlying medical issues but these were exacerbated as a result of a road traffic accident?

For many though, the key question remains, how long is it before the legislation is extended still further and drivers are facing custodial sentences for causing serious injuries as a result of a momentary period of careless driving?

We will of course continue to review the impact of this new legislation and a further update will follow in due course.

Further information

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