



UNIVERSITY OF  
**LEICESTER**

# Promoting Safety for Vulnerable Road Users: Assessing the Investigation and Enforcement of Endangerment Offences: some preliminary findings

Sally Kyd & Steven Cammiss  
@RST\_driving\_law



# Road Safety Trust funded project

- How are offences enforced in practice, and how is discretion used?
- Problem of roads policing suffering the effects of austerity: what can the police do with fewer resources?
- Exploring innovations such as Operation Close Pass and Operation Snap
- Methods:
  - Strand 1: access to traffic offence reports from 3 forces & interviews with officers at all levels. Planned interviews with CPS lawyers.
  - Strand 2: focus groups with cyclists as potential complainants



# Legal definition of offences

## Section 3ZA Road Traffic Act 1988

- (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.

## Section 2A Road Traffic Act 1988

- (1) ... a person is to be regarded as driving dangerously 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 ... 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

# Dangerous v Careless in Practice

- Results do matter: in interview officers acknowledge that a collision could determine whether driving is deemed dangerous rather than careless.
- Despite the objective test in law, in practice the distinction tends to be a question of whether *D consciously or deliberately* took risks, as opposed to inadvertent risk taking (momentary lapse of attention).
- Some problems with current law: inconsistency between forces as to what is needed to prove each offence (e.g. one of the 4 forces in Wales requires an interview with D in a case of DD). One force applies a test for careless driving of whether the driving would result in a fail on a driving test, but this is not universal.

# Evidence: “video doesn’t lie”

- Significance of video footage (almost a requirement for DD)
- Patrol cars equipped with cameras; officer body cams.
- Emergence of 3<sup>rd</sup> party footage as source of evidence: Op Snap in Wales developed in response to public making allegations supported by footage.
- Nationwide roll-out supported by Nextbase with variable uptake.
- Decisions still need to be made as to level/existence of offence.



Supporting safer roads.  
Supporting the Police.



# Cyclists, 'Allegators' and Enforcement

- Low on list of priorities
    - Personal and shared experiences
      - Evidence requirements
      - Burdensome
    - Austerity and police priorities
  - Awareness of policing initiatives
    - Operation Close Pass
    - Operation Snap
  - A justified skepticism?
    - Figures on digital footage submission outcomes
      - More figures awaited
      - Variable attrition rates
        - Consistency of decision makers
- Force 1
    - 1583 allegations, 1235 NFA
  - Force 2
    - 148 allegations, 72 NFA, 27 warnings
  - Force 3
    - 80 allegations, 67 NFA
  - Force 4
    - 136 allegations, 71 NFA, 6 warnings
  - Force 5
    - 352 allegations, 255 NFA, 31 warnings
  - Force 6
    - 311 offences, 59 NFA, 104 warnings

# Cyclists and Risk Management

- Exposure
- Avoidance
- Assertive cycling
- Personal safety equipment
- But
  - Responsibilisation of road users
  - Marginalising cycling
- Cultural change
  - Critical mass of cyclists
  - Road culture
    - Who 'owns the road'
    - Share the space
    - Presumed liability
- Infrastructure
  - Co-ordinated
  - Segregated
  - End to end
  - Priority