



Public Prosecution Service for Northern Ireland

Policy for Prosecuting Road Traffic Offences

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Independent, Fair and Effective

FURTHER INFORMATION

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Policy for Prosecuting Road Traffic Offences

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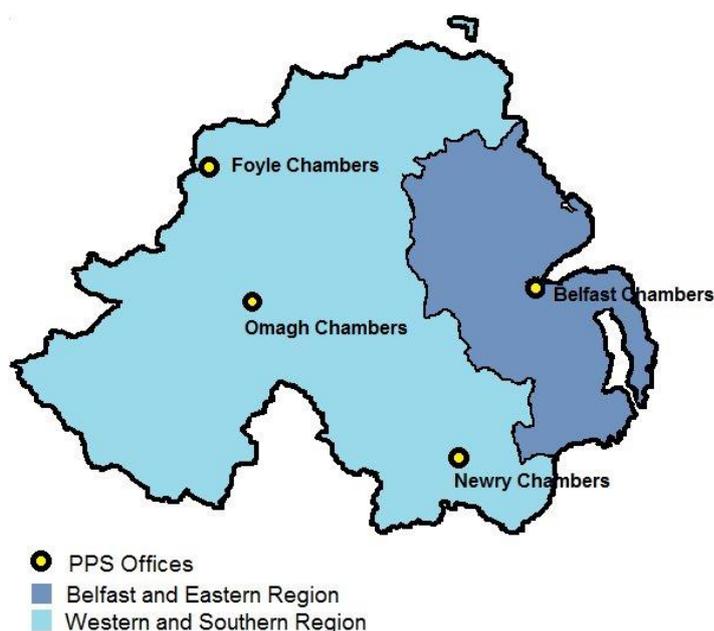
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About the Public Prosecution Service

The PPS, which is headed by the Director of Public Prosecutions, is the principal prosecuting authority in Northern Ireland. In addition to taking decisions as to prosecution in cases investigated by the police, it also considers cases investigated by other statutory authorities, such as HM Revenue and Customs.

While the PPS works closely with the police and other agencies, it is wholly independent; its decisions are impartial, based on an independent and professional assessment of the available evidence and the public interest. The PPS vision is to be recognised as providing a first class prosecution service for the people of Northern Ireland.



The PPS is a regionally based organisation (see map above). There are two regions, both headed by an Assistant Director. The Assistant Director has overall responsibility for decisions as to prosecution and for the conduct of all prosecutions in that region, with the exception of those cases which are considered by prosecutors at Headquarters in Belfast.

There are also a number of other sections within the Service, each headed by an Assistant Director, which deal with specialised areas of work. These include High Court and International, Fraud and Departmental, Central Casework and the Serious Crime Unit.

Contact details for the PPS regional offices, as well as a number of other stakeholders, are provided at **Annex A**.

1. Introduction

1.1 Purpose of this policy

1.1.1 The purpose of this policy is to explain the approach of the Public Prosecution Service (PPS) in taking prosecutorial decisions in respect of road traffic offences; that is, offences which can arise from the manner in which a motor vehicle is driven.

1.1.2 The document also provides guidance in relation to a range of road traffic offences, including the applicable legislation and the evidence needed to prove the offence. Given the relatively large number of road traffic offences in statute, it is not possible to provide a comprehensive overview, and therefore the guidance focuses on the more serious offences commonly dealt with by the PPS.

1.1.3 The principal offences covered include:

- **Manslaughter** – contrary to Common Law
- **Causing death or grievous bodily injury by dangerous driving** contrary to Article 9 of the Road Traffic (Northern Ireland) Order 1995
- **Causing death or grievous bodily injury by careless or inconsiderate driving when under the influence of drink or drugs** contrary to Article 14 of the Road Traffic (Northern Ireland) Order 1995
- **Causing death or grievous bodily injury by careless or inconsiderate driving** contrary to Article 11a of the Road Traffic (Northern Ireland) Order 1995
- **Causing death or grievous bodily injury by driving whilst unlicensed, uninsured or disqualified** contrary to Article 12B of the Road Traffic (Northern Ireland) Order 1995
- **Aggravated vehicle taking causing death or grievous bodily injury** contrary to Article 172B of the Road Traffic (Northern Ireland) Order 1981
- **Causing bodily harm by wanton or furious driving** contrary to Section 35 of the Offences against the Person act 1861
- **Dangerous driving** contrary to Article 10 of the Road Traffic (Northern Ireland) Order 1995

- **Careless or inconsiderate driving** contrary to Article 12 of the Road Traffic (Northern Ireland) Order 1995

1.1.4 It should be noted that all road traffic cases are dealt with by the PPS Regional Offices, with the exception of cases where police recommend that manslaughter is prosecuted, which are referred to the Serious Crime Unit.

1.2 PPS Code for Prosecutors

1.2.1 This policy statement should be read in conjunction with the PPS Code for Prosecutors and other guideline documents. The Code sets out the general principles to be applied in decision-making and outlines in detail the Test for Prosecution, as well as guidelines for the conduct of criminal prosecutions and other information about what we do and how we work.

1.2.2 Prosecutions are initiated or continued by the PPS only where it is satisfied that the Test for Prosecution is met. This is a two stage test as follows:

- (1) the Evidential Test – the evidence which can be presented in court is sufficient to provide a reasonable prospect of conviction; and
- (2) the Public Interest Test – prosecution is required in the public interest.

1.2.3 The Public Prosecutor must analyse and evaluate all the material submitted in a thorough and critical manner. The Evidential Test must be passed before the Public Interest Test is considered. Each of these stages must be considered separately and passed before a decision to prosecute can be taken.

1.2.4 Many road traffic offences are minor in nature. For many offenders their prosecution will be their only experience of criminal law enforcement. However it should be recognised that the prosecution of traffic offences is vital to the enforcement and promotion of road safety and the protection of the public. These factors must be borne in mind when determining the public interest in prosecuting minor road traffic offences. Public interest factors which relate to particular offences will be dealt with below.

1.2.5 The Code for Prosecutors, along with other PPS publications, is available on the PPS website at www.ppsni.gov.uk, or a hard copy can be obtained by contacting PPS directly.

1.3 Commitment to victims and witnesses

- 1.3.1 The PPS recognises that the provision of services and support for victims and witnesses, and ensuring their needs are met, is essential to the overall effectiveness of the criminal justice system. Being the subject of, or witnessing a crime, is often a traumatic experience. It is vital, therefore, that victims and witnesses are given the support, information and services they need to minimise the disruption and upset caused to them, while enabling them to give the best possible evidence.
- 1.3.2 The PPS Victim and Witness Policy explains in full the range and standards of service that victims and witnesses will receive from the prosecution service (see also Chapter 10, 'Victim and Witness Care').

1.4 Choice of charge

- 1.4.1 Prosecutors should always have in mind the following general principles when selecting the appropriate charge(s):
- (1) the offence(s) to be prosecuted should accurately reflect the seriousness of the criminal conduct for which there is evidence and should provide the court with an appropriate basis for sentence;
 - (2) the prosecutor will consider selecting offences to be prosecuted which will enable the case to be presented in a clear and simple way; and
 - (3) the prosecutor should not proceed with more offences to be prosecuted than are necessary in order to encourage a defendant to plead guilty to a few. In the same way, the prosecutor should not proceed with a more serious offence, which is not supported by the evidence, so as to influence a defendant to plead guilty to a lesser offence.

1.5 Mode of Trial

- 1.5.1 In general terms, summary offences relate to less serious criminal behaviour and are tried in the Magistrates' Court before a District Judge. Indictable offences relate to more serious criminal behaviour and are tried in the Crown Court before a judge and jury or by a judge alone. There are a number of hybrid offences that may be prosecuted at either the Magistrates' Court or the Crown Court. For these hybrid offences, having taken a decision to prosecute, the Public Prosecutor must take various factors into account and decide which court the prosecution should proceed in (see Chapter 3, 'Mode of Trial in Road Traffic Cases').

1.6 Youth offenders

- 1.6.1 A 'young person' or 'child' is defined as someone that is under 18 years of age at commencement of criminal proceedings. A 'young person' may also be referred to as a 'young offender'.
- 1.6.2 The PPS is committed to ensuring that the Best Interests of the Child Principle, as set out in Article 3(1) of the United Nations Convention on the Rights of the Child, is adhered to, and that the special considerations which apply to cases involving a young person are enshrined in its working practices (see Chapter 6, 'Youth Offenders').

2. Road Traffic Offences: Guidance

2.1 Manslaughter Contrary to Common Law

2.1.1 An offence of manslaughter may arise in two different ways: unlawful act manslaughter and gross negligence manslaughter. This offence will rarely be appropriate in road traffic fatality cases because of the existence of the statutory offences. Historically the statutory offences were introduced because of the difficulties encountered in proving manslaughter.

2.1.2 *Unlawful Act Manslaughter*

It must be proved that:

- (1) the defendant's act caused the death of the victim;
- (2) the defendant's act constituted a criminal offence in itself;
- (3) the defendant had the mens rea appropriate to the unlawful act which caused the victim's death; and
- (4) the defendant's unlawful act is objectively recognised as having put the victim at risk of some physical harm, albeit not necessarily serious harm.

2.1.3 Unlawful act manslaughter can occur in a variety of ways. For example, a driver may deliberately drive at a person or group of people with the intention of hitting someone, but if the speed was low or for some other reason it cannot be proved that they either intended or were reckless as to whether or not anyone would be killed or caused grievous bodily injury, then if someone is killed as a result, he/she may be guilty of unlawful act manslaughter.

2.1.4 *Gross Negligence Manslaughter*

To prove a charge based on gross negligence manslaughter, it must be proved that:

- (1) the defendant owed the victim a duty of care;
- (2) the driving caused the victim's death;
- (3) the driving fell far below the minimum acceptable standard of driving;
- (4) there was an obvious and serious risk of death; and

(5) the conduct of the defendant can be described as so reprehensible as to amount to gross negligence.¹

- 2.1.5 As a matter of law, it is more difficult to prove an offence of gross negligence manslaughter than it is to prove an offence of causing death by dangerous driving (see page 12). Gross negligence manslaughter is only appropriate in cases where there is evidence to show a very high risk of death, making the case one of the utmost gravity. It is not necessary to have evidence of an obvious and serious risk of death to prove an offence of causing death by dangerous driving. All that is required is evidence that the driving was dangerous and that the driving caused the death of another person.
- 2.1.6 In certain circumstances, it is possible for a jury to find the accused not guilty of the offence charged but guilty of some other alternative offence. For an offence of manslaughter, alternative verdicts may be returned for offences of causing death by dangerous driving, dangerous driving, causing death by careless driving when under the influence of drink or drugs and furious driving where a jury is not satisfied that the prosecution has made out its case for manslaughter.²
- 2.1.7 The provision for alternative verdicts notwithstanding, there must still be sufficient evidence to afford a reasonable prospect of conviction of manslaughter, and it must still be the most appropriate offence before a decision to charge manslaughter will be made.
- 2.1.8 In most cases where a death occurs as a result of dangerous driving, the statutory offence of causing death by dangerous driving will remain the appropriate charge.
- 2.1.9 Both unlawful act manslaughter and gross negligence manslaughter are triable only on indictment and carry a maximum sentence of life imprisonment and/or an unlimited fine. Under the provisions of the Road Traffic Offenders (Northern Ireland) Order 1996, the driver must be disqualified for at least two years and the driver's licence must be endorsed with 3-11 penalty points (unless there are special reasons not to do so— see page 34).³ No penalty points may be imposed if the driver is disqualified.
- 2.1.10 The examples of driving which fall far below the minimum acceptable standard of driving set out at page 17 will apply here.

¹ *R- v – Misra & Srivastava [2005] 1 Cr. App. R. 21 para 48.*

² *Article 26 (3A) Road Traffic Offenders (Northern Ireland) Order 1996.*

³ *Road Traffic Offenders (NI) Order 1996 Schedule 1: Prosecution and Punishment of Offences.*

2.1.11 Manslaughter should also be considered where the driving has occurred other than on a road or other public place, or when the vehicle driven was not mechanically propelled, and death has been caused. In these cases the statutory offences may not apply.

2.2 Causing Death or Grievous Bodily Injury by Dangerous Driving Contrary to Article 9 of the Road Traffic (Northern Ireland) Order 1995

2.2.1 This offence is committed when:

(1) the driving of the accused was a cause of the death of or grievous bodily injury to another person; and

(2) the driving was dangerous within the meaning of Article 11 of the Order.

2.2.2 When prosecutors are considering whether or not an injury amounts to grievous bodily injury, they should apply the same criteria that would be applied to the offence of grievous bodily harm contrary to section 18 and 20 of the Offences Against the Person Act 1861.

2.2.3 This offence is triable only on indictment and carries a maximum penalty of 14 years imprisonment and/or an unlimited fine with an obligatory disqualification for a minimum of two years unless there are special reasons not to disqualify. Under the provisions of the Road Traffic Offenders (Northern Ireland) Order 1996, the court must also order the driver to be disqualified until he passes the appropriate driving test and the driver's licence must be endorsed with 3-11 penalty points, unless there are special reasons not to do so.⁴

2.2.4 The accused's driving must have been a cause of the death or grievous bodily injury but need not be the sole one. There is nothing in the statute that requires the manner of the driving to be a substantial cause or a major cause or any other description of cause, of the accident. So long as the dangerous driving is a cause and something more than de minimis, the statute operates.⁵

2.2.5 The examples given in respect of dangerous driving apply to this offence (see page 17).

2.2.6 Where this offence can be proved and there is sufficient evidence for a further offence where alcohol has been consumed, for example, driving whilst unfit,

⁴ *Road Traffic Offenders (NI) Order 1996 Schedule 1: Prosecution and Punishment of Offences.*

⁵ *Lord Parker CJ at 135: R- v-Hennigan [1971] 3 ALL E.R.133.*

driving with excess alcohol or failing to provide a specimen⁶, prosecutors must consider whether it is appropriate to include such summary offences in the indictment.⁷ Where this is appropriate, it is a requirement of the legislation that evidence relating to the above summary offences shall be disclosed at the preliminary investigation or inquiry.

2.3 Causing Death or Grievous Bodily Injury by Careless Driving when Under the Influence of Drink or Drugs Contrary to Article 14 of the Road Traffic (Northern Ireland) Order 1995

2.3.1 This offence is committed when:

- (1) the driving was without due care and attention or without reasonable consideration for other road users;
- (2) the driving has caused the death of or grievous bodily injury to another person; and
- (3) the driver is either unfit through drink or drugs, or the alcohol concentration is over the prescribed limit, or there has been a failure to provide a specimen in pursuance of the Order.

2.3.2 It is an offence triable only on indictment and carries a maximum penalty of 14 years imprisonment and/or an unlimited fine and an obligatory disqualification for at least two years (three years if there is a drink-driving offence in the previous 10 years), unless there are special reasons not to disqualify. Under the provisions of the Road Traffic Offenders (Northern Ireland) Order 1996, the driver's licence must be endorsed with 3-11 penalty points.⁸

2.3.3. The examples given in respect of careless driving will apply to this offence (see page 21).

2.3.4 The accused's driving must have been a cause of the death or grievous bodily injury but need not be the sole one.

2.3.5 Proper procedures should have been followed in the requesting and/or obtaining of any sample of breath, blood or urine. In cases where the procedures are not followed, there is a risk that the evidence may be excluded. Where this is possible, careful consideration must be given as to whether the remaining evidence will support an alternative allegation of causing death or grievous bodily injury by

⁶ Article 15, 16 & 18 of the Road Traffic (NI) Order 1995.

⁷ Article 9 of the Road Traffic Offenders (NI) Order 1996.

⁸ Road Traffic Offenders (NI) Order 1996 Schedule 1: Prosecution and Punishment of Offences.

careless driving while unfit to drive through drink/drugs, in which case, evidence other than that from an intoxilyser machine can be relied upon to demonstrate the defendant's unfitness to drive.

- 2.3.6 It is not necessary to add a further charge relating to driving under the influence when the defendant is charged with this offence, as it is available as an alternative in the event that the defendant is found not guilty of the Article 14 offence.⁹

2.4 Relationship between Article 9 and Article 14 of the Road Traffic (Northern Ireland) Order 1995

- 2.4.1 Offences under Article 9 of the 1995 Order (causing death or grievous bodily injury by dangerous driving) and Article 14 of the 1995 Order (causing death or grievous bodily injury by careless driving whilst under the influence of drink or drugs), carry the same maximum penalty, so the choice of charge will not inhibit the court's sentencing powers. The courts have made it clear that for sentencing purposes the two offences are to be regarded as being equally serious.¹⁰

- 2.4.2 The court will sentence an offender in proportion to his culpability and take account of the magnitude of harm caused.¹¹ The consumption of alcohol is an aggravating feature increasing the culpability of the offender and therefore the sentence passed. The consumption of alcohol is an aggravating feature within the definition of the offence under Article 14 of the 1995 Order. The consumption of alcohol is not part of the definition of the offence under Article 9 of the 1995 Order, but may be treated as an aggravating feature in appropriate cases.

- 2.4.3 Where a defendant is tried for an offence of causing death or grievous bodily injury by dangerous driving, it is open to the jury to return a verdict of guilty to an offence of causing death by careless driving. It is not open to the jury to return a verdict of causing death or grievous bodily injury by careless driving whilst under the influence of drink or drugs under Article 14 of the 1995 Order. Therefore, consideration should be given in appropriate cases to adding an Article 14 offence to the indictment as an alternative.

- 2.4.4 Alternatively if there is evidence of dangerous driving causing death or grievous bodily injury and unfitness to drive through alcohol or drugs, then it will normally be appropriate to add a count contrary to Article 15, 16 or 18 of the 1995 Order to the indictment.¹²

⁹ Article 26 Road Traffic Offenders (Northern Ireland) Order 1996.

¹⁰ Attorney General's Reference (No 49 of 1994) R –v– Brown [1995] Crim LR 437; R –v– Locke [1995] Crim LR 438].

¹¹ R – v – Stewart [2017] NICA 1.

¹² Article 15 - Driving whilst unfit; Article 16 – Driving with excess alcohol; Article 18 - Failing to provide a specimen.

2.5 Causing Death or Grievous Bodily Injury by Careless Driving Contrary to Article 11A of the Road Traffic (Northern Ireland) Order 1995

2.5.1 This offence is committed when the driving is:

- (1) without due care and attention or without reasonable consideration for other road users; and
- (2) the driving has caused the death or grievous bodily injury of another person.

The accused's driving must have been a cause of death or grievous bodily injury, but need not be the sole one (see paragraph 2.2.3).

2.5.2 Upon summary prosecution, this offence carries a maximum penalty of 6 months imprisonment and/or the statutory maximum fine.¹³ On indictment, it carries a maximum sentence of 5 years' imprisonment and/or an unlimited fine. Disqualification from driving for a minimum of 12 months is mandatory and the driver's licence must be endorsed with 3-11 penalty points¹⁴. No penalty points may be imposed if the driver is disqualified.

2.5.3 The difference between causing death by dangerous driving and causing death by careless driving lies in the standard of the driving. For causing death by dangerous driving, the standard of driving must fall *far* below what would be expected of a competent and careful driver. For causing death by careless driving, the standard of driving must fall below what would be expected of a competent and careful driver. Further information in respect of careless driving is provided at page 18.

2.6 Causing Death or Grievous Bodily Injury by Driving whilst Unlicensed, Uninsured or Disqualified Contrary to Article 12B of the Road Traffic (Northern Ireland) Order 1995

2.6.1 This offence is committed when a driver:

- (1) causes the death of, or grievous bodily injury to, another person; and
- (2) by driving on a road when unlicensed, uninsured or disqualified from holding or obtaining a driving licence.

¹³ Currently £5,000.

¹⁴ Road Traffic Offenders (NI) Order 1996 Schedule 1: Prosecution and Punishment of Offences.

The accused's driving must have been a cause of death or grievous bodily injury but need not be the sole one (see paragraph 2.2.3).

2.6.2 What is required for this offence is different from the offence contrary to Article 11A offence of the 1995 Order (causing death or grievous bodily injury by careless driving). The prosecution must prove three elements, namely:

- (1) that the person was driving a motor vehicle;
- (2) that the driving caused the death or grievous bodily injury to another person;
and
- (3) that the driver was unlicensed, disqualified or uninsured at the time.

This offence does not require proof of dangerous driving or careless driving, but does require proof of some act or omission in the control of the car, which involves some element of fault.¹⁵

2.6.3 Upon summary prosecution this offence carries a maximum penalty of six months, imprisonment and/or the statutory maximum fine.¹⁶ On indictment, the maximum penalty is two years, imprisonment and/or an unlimited fine. Disqualification from driving for a minimum of 12 months is mandatory. The driving licence must be endorsed with 3-11 penalty points unless there are special reasons not to do so.¹⁷

2.7 Aggravated Vehicle-taking Contrary to Article 172A & B of the Road Traffic (Northern Ireland) Order 1981

2.7.1 This offence was introduced in Northern Ireland in 2004 by virtue of the Criminal Justice (No 2) (Northern Ireland) Order 2004 in order to take into account any driving offences committed after the vehicle had been unlawfully taken, or the consequences that could follow from the vehicle being driven. The 2004 Order added a new Article 172A to the Road Traffic (Northern Ireland) Order 1981.

2.7.2 An Article 172A offence is committed if, after the vehicle is unlawfully taken, but before it is recovered, any one or more of the following occurs:

- (1) the vehicle is driven dangerously on a road or other public place;

¹⁵ *R-v-Hughes* [2013] UKSC 56.

¹⁶ Currently £5,000.

¹⁷ *Road Traffic Offenders (NI) Order 1996, Schedule 1: Prosecution and Punishment of Offences.*

- (2) owing to the driving of the vehicle, a collision occurs by which injury is caused to any person;
- (3) owing to the driving of the vehicle, a collision occurs by which damage is caused to any property, other than the vehicle;
- (4) damage is caused to the vehicle.

2.7.3 A person is guilty of an offence under Article 172B if he/she commits an offence under Article 172A in relation to a motor vehicle, and it is proved that, owing to the driving of the vehicle, an accident occurred, causing the death of, or grievous bodily injury to, the person concerned. The accused's driving must have been a cause of the death or grievous bodily injury but need not be the sole one (see paragraph 2.2.3).

2.7.4 An Article 172A offence is a hybrid offence. In the Magistrates' Courts the maximum penalty is 6 months imprisonment and/or the statutory maximum fine; in the Crown Court, the maximum penalty is 5 years imprisonment and/or an unlimited fine. An Article 172B offence is triable only on indictment at the Crown Court. The maximum penalty is 14 years imprisonment and/or an unlimited fine.¹⁸ In both instances the court must disqualify the driver from driving for at least 12 months and the driver's licence is to be endorsed with 3-11 penalty points unless there are special reasons not to do so.¹⁹ No penalty points may be imposed if the driver is disqualified.

2.8 Dangerous Driving Contrary to Article 10 of the Road Traffic (Northern Ireland) Order 1995

2.8.1 A person drives dangerously when:

- (1) the way he/she drives falls far below what would be expected of a competent and careful driver; and
- (2) it would be obvious to a competent and careful driver that driving in that way would be dangerous.

2.8.2 Both parts of the definition above must be satisfied for the driving to be 'dangerous' within the Order. There is no statutory definition of what is meant by 'far below', but 'dangerous' must refer to danger either of injury to any person or of serious damage to property.²⁰ Further a person is to be regarded as driving

¹⁸ Currently £5000.

¹⁹ Road Traffic Offenders (NI) Order 1996 Schedule 1: Prosecution and Punishment of Offences.

²⁰ Article 11(3) Road Traffic (NI) Order 1995.

dangerously if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous.²¹ When considering the state of the vehicle, regard may be had to anything attached to or carried by the vehicle.²² Therefore, prosecutors must consider whether the vehicle should have been driven at all, as well as how it was driven.

- 2.8.3 Dangerous driving is a hybrid offence. In the Magistrates' Courts the maximum penalty is six months' imprisonment and/or the statutory maximum fine²³; in the Crown Court, the maximum penalty is five years' imprisonment and / or an unlimited fine. In both instances, the court must disqualify the driver from driving for least one year and will endorse the driver's licence with 3-11 penalty points unless there are special reasons not to do so.²⁴ No penalty points may be imposed if the driver is disqualified.
- 2.8.4 The test of whether a driver has fallen far below the required standard is an objective one. It applies both when the manner of driving in question is deliberate and when the manner of driving occurs as a result of an error of judgement or simply as a result of incompetence or inexperience.
- 2.8.5 As the standard of driving must be objectively assessed, it is not necessary to consider what the driver thought about the possible consequences of his actions. What must be considered is whether or not a competent and careful driver would have observed, appreciated and guarded against obvious and material dangers.
- 2.8.6 In deciding whether a prosecution for dangerous driving is appropriate, prosecutors should consider whether the act of driving concerned was undertaken deliberately and/or repeatedly.
- 2.8.7 The following are examples of driving which may support an allegation of dangerous driving:
- (1) racing; competitive driving against another vehicle; 'showing off;'
 - (2) speed which is highly inappropriate for the prevailing road or traffic conditions;
 - (3) aggressive or intimidatory driving, such as sudden lane changes, cutting into a line of vehicles or driving much too close to the vehicle in front, especially when the purpose is to cause the other vehicle to pull to one side to allow the accused to overtake;

²¹ Article 11(2) Road Traffic (NI) Order 1995.

²² Article 11(4) Road Traffic (NI) Order 1995.

²³ Currently £5,000.

²⁴ Road Traffic Offenders (NI) Order 1996 Schedule 1: Prosecution and Punishment of Offences.

- (4) doing 'doughnuts', handbrake turns, or other such driving behaviour on a road or other place to which the public have access in circumstances where there is danger to people or property;
- (5) using a mobile telephone, for any functionality, whilst the vehicle is moving in circumstances where danger is occasioned thereby, for example while driving at speed or in heavy traffic, or where use of the phone involves the driver looking at the phone for a period of time that is more than momentary;
- (6) driving when knowingly suffering from a medical condition which significantly impairs the offender's driving skills;
- (7) driving when knowingly deprived of adequate sleep or rest;
- (8) failure to pay proper attention, amounting to something significantly more than a momentary lapse;
- (9) overtaking which could not have been carried out with safety; persistent inappropriate attempts to overtake, or cutting in after overtaking;
- (10) driving a vehicle with a load or in a condition which presents a danger to other road users.

2.9 Causing Bodily Harm by Wanton and Furious Driving Contrary to Section 35 of the Offences Against the Person Act 1861

2.9.1 The offence of wanton and furious driving under section 35 of the Offences Against the Person Act 1861 is committed when bodily harm (i.e. injury) is caused to any person as a result of the manner of driving and is not limited to motor vehicles but covers any kind of vehicle or carriage including bicycles.

2.9.2 It must be proved that:

- (1) The driver drove in a wanton and furious manner, or through other wilful misconduct, or by wilful neglect and
- (2) caused to be done bodily harm to any person.

2.9.3 It is an offence triable only on indictment and carries a maximum penalty of two years imprisonment and/or an unlimited fine. A person convicted of this offence must have their driving licence endorsed with 3-9 penalty points if driving a mechanically propelled vehicle.

2.9.4 This offence is normally only used on those occasions when it is not possible to prosecute for an offence under the road traffic legislation, for example:

- (1) when the driving was not on a road or other public place;
- (2) when the vehicle used is not a mechanically propelled vehicle within the Road Traffic (Northern Ireland) Order 1995, such as a pedal cycle;
- (3) when the statutory notice of intended prosecution is a pre-requisite to a prosecution and has not been given.

2.9.5 This offence may be appropriate in cases where a victim suffers a serious injury or dies as a result of a cyclist riding his/her bicycle on a pavement, pedestrianised area or a road.²⁵ The offences of causing death by dangerous driving and careless driving do not apply to bicycles as normal pedal cycles are not mechanically propelled vehicles.

2.9.6 In the case of a mechanically propelled vehicle being deliberately used as a weapon and causing harm, alternative charges of dangerous driving or a charge of wounding / grievous bodily harm with intent to do grievous bodily harm, grievous bodily harm, wounding or assault occasioning actual bodily harm²⁶ should be considered if all the elements of those offences can be proved.

2.10 Careless Driving (Driving without Due Care and Attention) Contrary to Article 12 of the Road Traffic (Northern Ireland) Order 1995

2.10.1 The offence of driving without due care and attention is committed when the driving falls below the standard expected of a reasonable, prudent and competent driver in all the circumstances of the case. It is a summary only offence carrying a level 5 fine²⁷ and discretionary disqualification for any period and/or until a driving test has been passed. Under the provisions of the Road Traffic Offenders (Northern Ireland) Order 1995, the court must endorse the driver's licence with 3-9 penalty points unless there are special reasons not to do so.

2.10.2 The test of whether the standard of driving has fallen below the required standard is an objective one. It applies both when the manner of driving in

²⁵ *R-v- Hall [2009] EWCA Crim 2236; R-v-Gittoes [2015] EWCA Crim 1608; R –v- Lambert [2008] EWCA Crim 2109; R-v-Alliston [2017].*

²⁶ Section 18, 20 & 47 of the *Offences Against the Person Act 1861*.

²⁷ Currently £5000.

question is deliberate and when the manner of driving occurs as a result of an error of judgement or simply as a result of incompetence or inexperience.

- 2.10.3 Article 51(6) of the Road Traffic (Northern Ireland) Order 1995 states that failure on the part of a person to observe a provision of the Highway Code shall not of itself render that person liable to criminal proceedings, but a failure, particularly a serious one, may constitute evidence of careless or dangerous driving.
- 2.10.4 In general, prosecution for careless driving may be appropriate when the manner of the driving demonstrates a miscalculation or a disregard for road safety, taking into account all the circumstances including momentary inattention²⁸, road, traffic and/or weather conditions.
- 2.10.5 There will be rare occasions where an accident occurs and yet there is no evidence of any mechanical defect, illness of the driver or other explanation as to the driving to account for why the accident happened. In such a case it is possible for the Public Prosecutor to ask the court to draw inferences and the facts should be looked at very carefully. There must be a reasonable prospect that in the circumstances of the case, including such inferences as a court may properly draw, that a court will be satisfied that the defendant was driving below the standard expected of a reasonable, prudent and competent driver. If the facts are such that in the absence of an explanation put forward by the driver the only possible conclusion is that he was careless, he should be convicted.²⁹ For example, crossing the central white line will in itself be evidence of careless driving without the absence of an explanation.³⁰
- 2.10.6 The following are examples of driving which may support an allegation of careless driving:
- (1) driving inappropriately close to another vehicle (other than deliberate tailgating which may reach the threshold of dangerous driving);
 - (2) prolonged, persistent or deliberate inappropriate driving, for example, repeated disregard of traffic directions;
 - (3) inadvertently driving through a red light;
 - (4) overtaking on the inside;
 - (5) colliding with the vehicle driving in front;

²⁸ *R-v-Delduca* [2011] EWCA Crim 2454.

²⁹ *Rabjohns v Burgar* [1972] Crim.L.R.46; *Wright v Wenlock* [1972] Crim.L.R.49.

³⁰ *R – v- Warwickshire Police Ex p. Manjit Singh Mundi* [2001] EWHC Admin 448.

- (6) driving too close to a cyclist;
- (7) emerging from a side road into the path of another vehicle;
- (8) turning into a minor road and colliding with a pedestrian;
- (9) reading a newspaper/map;
- (10) adjusting the controls of electronic equipment such as a car radio, hands-free mobile phone or satellite navigation equipment, when the driver was avoidably distracted by that use;
- (11) consuming food/drink or lighting a cigarette when the driver was avoidably distracted by that use;
- (12) talking to and looking at a passenger causing the driver to be distracted;
- (13) driving whilst suffering fatigue.

2.10.7 In deciding whether the offence of careless driving is appropriate, prosecutors should consider whether the act of driving concerned was the result of either momentary inattention or an isolated misjudgement, or something more serious. A moment's inattention which causes the manner of the driving to fall below the objective standard required of the reasonable, prudent and competent driver may not, of itself, require prosecution if the outcome is minor. It is acts where the manner of the driving adversely affects the safety of other road users which will normally result in a charge of careless driving.³¹

2.10.8 In cases where there has been an accident and the evidence suggests that more than one driver may have been at fault, it will be necessary to establish that there is cogent independent evidence against each driver before instituting proceedings against either or both drivers, or that the facts speak so strongly for themselves in relation to an individual driver that the only possible conclusion is that he departed from what a reasonable, prudent and competent driver would have done in the circumstances.

2.10.9 The standard of driving expected of a reasonable, prudent and competent driver is not that of perfection. Accidents sometimes occur in circumstances where only a very capable driver, or a driver with unusually good eyesight, would be able to avoid a collision. For example, collisions sometimes occur during the hours of darkness involving pedestrians wearing dark clothing, or vehicles and cycles which are very poorly lit. The fact that it may have been possible for some people

³¹ *R –v- Samuel [2015] EWCA Crim 487; R-v-Dhuck [2014] EWCA Crim 2865.*

to see the person, cycle or vehicle does not necessarily mean that a reasonable, prudent and competent driver should have been able to avoid the collision. In some instances a prosecutor may decide that the evidence test is not met owing to the poor visibility of the person or object collided with and any other circumstances encountered by the driver at the time, such as the lights of oncoming traffic.

2.10.10 The degree to which the driving fell below the standard required is likely to have a bearing on the public interest. In addition, the public interest is liable to favour prosecuting in cases when the court may wish to make an order under Article 41 of the Road Traffic Offenders (Northern Ireland) Order 1996, disqualifying the driver until he passes a driving test; or where it appears that the court ought to notify the Department of Infrastructure that the driver may be suffering from any relevant disability within the meaning of Article 9 of the Road Traffic (Northern Ireland) Order 1981. However, the public interest may not call for a prosecution in every case where there is a reasonable prospect of conviction for careless driving; it is unlikely the public interest requires prosecution for an act of slight carelessness; and it is not the function of the prosecuting authority to direct proceedings to determine issues of civil liability.

2.10.11 The public interest may not require prosecution for careless driving where:

- (1) the manner of the driving is of a nature such as frequently occurs in slow moving traffic at parking places, roundabouts, junctions or in traffic queues, involving minimal carelessness such as momentary inattention or a minor error of judgment; and
- (2) only the person at fault suffered injury and damage, if any, was mainly restricted to the vehicle or property owned by that person.

2.10.12 In addition, there is often an overlap between careless driving and some other offences such as driving with excess alcohol, regulatory offences, offences of strict liability, or offences relating to the Motor Vehicles (Construction and use) Regulations (Northern Ireland) 1999. Certain cases may adequately be met by instituting proceedings for the specific statutory or regulatory offence which legislators have made available.

2.10.13 However, there will sometimes be evidence of a course of conduct which involves the commission of a number of different statutory or regulatory offences, or the commission of the same statutory or regulatory offence on a number of occasions which are very close in time with one another. For example, a driver may drive through a red traffic light, ignore a pelican crossing and fail to give way at a junction within what might reasonably be described as the same course of driving. Alternatively, a driver may drive through two or

more sets of red traffic lights, one after the other, within what may reasonably be described as the same course of driving.

- 2.10.14 In these situations, it may not be appropriate only to prosecute for a number of individual statutory or regulatory offences. The court needs to be made aware of the link between what might otherwise appear as isolated incidents, when in reality they form part of a more serious course of driving. Where an accident occurs or traffic or other road users are inconvenienced, the prosecutor should consider if the driving is careless or dangerous, to reflect the broader circumstances and conduct of the offender. For example, where the manner of driving has caused an accident and the driver is found to have driven with excess alcohol, then it will usually be appropriate to prosecute for driving with excess alcohol and for careless driving.

2.11 Driving without Reasonable Consideration Contrary to Article 12 of the Road Traffic (Northern Ireland) Order 1995

- 2.11.1 The offence of driving without reasonable consideration (inconsiderate driving) is committed when a vehicle is driven on a road or other public place as a result of which other persons using the road or place are inconvenienced. It is a summary only offence carrying a level 5 fine³² and the driver's licence is to be endorsed with 3-9 penalty points or a discretionary disqualification may be imposed. Under the provisions of the Road Traffic Offenders (Northern Ireland) Order 1996, the court must endorse the driver's licence with penalty points unless there are special reasons not to do so.

- 2.11.2 The defendant must be shown:

- (1) to have fallen below the standard of a reasonable, prudent and competent driver in the circumstances of the case; and
- (2) to have done so without reasonable consideration for others

- 2.11.3 The difference between the two offences under the Article is that in cases of careless driving the prosecution need not show that any other person was inconvenienced. In case of inconsiderate driving, there must be evidence that some other user of the road or public place was inconvenienced.

- 2.11.4 The following are examples of driving which may support an allegation of driving without reasonable consideration:

- (1) flashing of lights to force other drivers in front to give way;

³² Currently £5000.

- (2) misuse of any lane (including cycling lanes) to avoid queuing or gain some other advantage over other drivers;
- (3) unnecessarily remaining in an overtaking lane;
- (4) unnecessarily slow driving;
- (5) braking without good cause;
- (6) driving with undipped headlights which dazzle oncoming drivers; and
- (7) driving through a puddle causing pedestrians to be splashed.

2.12 General Comments about Careless and Dangerous Driving

2.12.1 There is no clear cut dividing line between acts of careless driving and acts of dangerous driving. The manner of the driving must be considered objectively. In practice, the difference between careless and dangerous driving will depend on the degree to which the driving falls below the minimum acceptable standard. If the manner of the driving is below that which is expected, the appropriate charge will be careless driving³³; if the manner of the driving is *far* below that which is expected, and it would be obvious to the careful and competent driver that driving in that way would be dangerous, the appropriate charge will be dangerous driving. There is no statutory guidance about what behaviour constitutes driving which is 'below' and '*far* below' the required standard. For both tests, one may take into account matters known to the driver at the time, but the test still remains an objective test.³⁴

2.12.2 The following factors are not considered relevant when deciding whether an act of driving is careless or dangerous:

- (1) the injury or death of one or more persons involved in a road traffic collision;

³³ Art. 62 of the Criminal Justice (NI) Order 2008 defines careless and inconsiderate driving as follows:

- (1) 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.
- (2) In determining for the purposes of paragraph (2) what would be expected of a careful and competent driver in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.
- (3) A person is to be regarded as driving without reasonable consideration for other persons only if those persons are inconvenienced by his driving.

³⁴ Milton –v– DPP [2007] 4 All ER 1026.

- (2) the age or experience of the driver;
- (3) the commission of other driving offences at the same time (such as driving whilst disqualified or driving without a certificate of insurance or a driving licence);
- (4) the fact that the defendant has previous convictions for road traffic offences;
- (5) the disability of a driver caused by mental illness or by physical injury or illness, except where the disability adversely affected the manner of the driving.

2.12.3 It is important to put the facts of the case in context. Driving behaviour may or may not require prosecution depending upon the particular facts and circumstances. For example, a safe lane change in slow moving traffic may become unsafe on a motorway where speeds are faster, there is less time to react and the consequences of any accident are likely to be more serious. Similarly, behaviour which might require prosecution as careless driving in certain conditions may merit a prosecution of dangerous driving, for example, if there is poor visibility, increased volume of traffic, adverse weather conditions or particular topography such as blind corners.

2.13 Driving in emergency situations

2.13.1 When a member of the emergency services commits an offence while responding to an emergency call, careful judgement should be used in deciding whether or not a prosecution is required. Generally, a prosecution is unlikely to be appropriate in cases of genuine emergency unless the driving is dangerous. For example, a prosecution of a driver who caused a minor collision while responding to an urgent, life-threatening, emergency may not be appropriate; but a prosecution may be appropriate when a serious collision is caused by a driver responding to a less urgent emergency call, in response to a non life-threatening situation, in which life is not endangered. In each case it is necessary to weigh all the facts and circumstances of the case, particularly the nature of the emergency known to, or reasonably perceived by, the driver and the nature of the driving.

2.13.2 There will be cases when persons who are not members of the emergency services drive in an emergency situation; for example, a driver taking a sick child to hospital. As with members of the emergency services, all the facts and circumstances of the case must be weighed, particularly the nature of the

emergency known to, or reasonably perceived by, the driver and the nature of the driving.

2.14 Driving and alcohol / drugs

2.14.1 The road traffic legislation treats the consumption of alcohol and drugs alike. The following considerations apply to driving affected by the consumption of alcohol or drugs, though the case law and the following paragraphs focus on alcohol.

2.14.2 The following general principles have been applied in Northern Ireland:³⁵

- (1) the fact that the driver has consumed alcohol is not of itself relevant to or admissible on the question of whether his driving is careless or dangerous;
- (2) for such evidence to be admissible, it must tend to show that the amount of drink taken is such as would adversely affect a reasonable driver, or alternatively, that the accused was in fact adversely affected.

2.14.3 In practice, however, further evidence will be required to establish that the manner of the driving fell below or *far* below that which is to be expected in order to justify proceedings under Article 12 or Article 10 respectively.

³⁵ The leading authority in regard to the relevance of the consumption of alcohol is *R –v– Woodward (Terence)* [1995] 1 WLR 375 (Court of Appeal).

3. Mode of Trial in Road Traffic Cases

3.1 General Factors

- 3.1.1 In general terms, summary offences relate to less serious criminal behaviour and are tried in the Magistrates' Court before a District Judge. Indictable offences, such as manslaughter and causing death or grievous bodily injury by dangerous driving, relate to more serious criminal behaviour and are tried in the Crown Court before a judge and jury or a judge alone.
- 3.1.2 There are a number of hybrid road traffic offences that may be prosecuted at either the Magistrates' Court or the Crown Court, such as causing death or grievous bodily injury by careless driving, dangerous driving and causing death or grievous bodily injury by driving whilst unlicensed, uninsured or disqualified.
- 3.1.3 For these hybrid offences, having taken the decision to prosecute, the Public Prosecutor must also decide, whether the prosecution should proceed in the Magistrates' Court or the Crown Court. In making this decision one of the factors the prosecutor will consider is whether the Magistrates' Court has sufficient sentencing powers to reflect the gravity of the offence, in accordance with paragraph 4.44 of the Code for Prosecutors. The prosecutor will also take into account any aggravating or mitigating factors that are relevant. The significance of the mitigating and aggravating factors can differ. There can be cases with three or more aggravating factors, which taken together may not be as significant as a case with only one very serious aggravating factor.³⁶
- 3.1.4 Every case must be decided on its own factual context taking account of the relevant considerations and evidence. Sentencing Guidelines can provide useful considerations in determining the mode of trial for prosecutors and ultimately for the Judge when sentencing.³⁷

3.2 Aggravating Factors

- 3.2.1 Having established the maximum sentencing powers of the Magistrates' and Crown Courts, prosecutors should consider any aggravating factors relevant to mode of trial.

³⁶ *R-v- Cooksley [2003] 996 EWCA Crim 996*

³⁷ *Judicial Studies Board NI; R-v-Doole [2010] NICA 11.*

3.2.2 Examples of aggravating factors include:

- (1) serious injury or death of multiple persons as a result of the road traffic collision;
- (2) other offences committed at the same time, or with no insurance or whilst disqualified;
- (3) previous driving convictions in particular those that involve bad driving and/or similar offences;
- (4) the consumption of very high levels of alcohol or drugs before driving;
- (5) taking a vehicle without consent and/or driving a stolen vehicle;
- (6) disregard of warnings from fellow passengers;
- (7) offence committed while the offender was on bail for other driving offences in respect of which the offender was subsequently convicted;
- (8) the road conditions are such that a high level of care is required, for example, turning onto or driving on a busy road where traffic moves at speed.

3.3 Mitigating factors to consider

3.3.1 Prosecutors should then consider any mitigating factors relevant to mode of trial. Examples of mitigating factors are:

- (1) a lengthy, good driving history; absence of similar convictions;
- (2) the victim is a family member or other close personal relationship;
- (3) the victim's or another's actions contributed to the offence;
- (4) the offender's lack of driving experience contributed significantly to the likelihood of the collision or death;
- (5) the driving was in response to a proven and genuine emergency (falling short of a defence);
- (6) the offender was seriously injured as a result of the road traffic collision.

3.4 Mode of trial for the offence of causing death or grievous bodily injury by careless driving

- 3.4.1 Offences alleging careless driving are relatively unique in law in so far as most serious offences require that the offender intends to commit the offence or is reckless as to whether an offence is committed. By contrast convictions for these offences can be secured by proving carelessness, examples of which are momentary inattention or poor judgement.
- 3.4.2 The level of culpability is frequently lower when committing a careless act than when committing a reckless or deliberate act. For this reason the sentences that are imposed by the judiciary are usually well within the sentencing range available in the Magistrates' Court. That being so prosecutions for the offence of causing death or grievous bodily injury by careless driving will usually be brought in the Magistrates' Court, unless there are one or more significant aggravating factors that lead to the conclusion that the sentencing powers of the Crown Court are required.

4. Sentencing

4.1 Role of the prosecutor

4.1.1 Sentencing is a matter for the court. At the stage of sentencing the only role of the prosecutor is to assist the court to reach its decision as to the appropriate sentence. The prosecution has a duty to ensure the court is provided with accurate and full information as to the relevant law and facts of the case. This role also extends to protecting the victim's interests in the acceptance of pleas and the sentencing exercise.

4.1.2 The prosecutor represents the public interest, and should be ready to assist the court to reach its decision as to the appropriate sentence. This will include drawing the court's attention to:

- any victim personal statement or other information available to the prosecutor as to the impact on the victim;
- any statutory provisions relevant to the offender and the offence under consideration;
- any relevant sentencing guidelines and guideline cases; and
- the aggravating and mitigating factors of the offence under consideration.

4.1.3 The prosecutor may offer assistance to the court by making submissions in light of the above factors, as to the appropriate sentencing range and referring to the sentencing guidelines.³⁸

4.2 Special Reasons

4.2.1 A special reason is one which is special to the facts of a particular case. It is a mitigating or extenuating circumstance which is directly connected to the commission of the offence and which can properly be taken into consideration by the sentencing court. A circumstance peculiar to the offender as distinguished from the offence is not a special reason. For example, no consideration of financial hardship, or the offender being before the court for the first time, or that he had driven for a great number of years without complaint, can be regarded as a 'special reason.'³⁹ Further, where a person is convicted of an offence under Article 172A or 172B of the 1981 Order (aggravated vehicle taking) the fact that he/she

³⁸ *Sentencing guidelines: Judicial Studies Board NI.*

³⁹ *Whittall v Kirby* [1946] 2 ALL ER 552.

did not drive the vehicle in question at any particular time or at all shall not be regarded as a special reason not to impose the disqualification.⁴⁰

4.2.2 Neither is a 'special reason' a defence to the charge. Neither special reasons nor mitigating circumstances automatically enable the offender to escape disqualification or endorsement. Where special reasons or mitigating circumstances are found it merely means that the court has a discretion to disqualify the offender for a lesser period or not at all; the court is not bound to exercise its discretion and in an appropriate case will not do so. The discretion of special reasons should only be exercised in clear and compelling cases.⁴¹

4.2.3 Special reasons, particularly in relation to driving under the influence cases, have generated a considerable body of case law and will most commonly be advanced in cases involving:

- driving in emergencies;
- inadvertent consumption of drink or drugs.

4.2.4 Where special reasons are put forward in cases of driving under the influence, the court must consider the following factors:⁴²

- the possibility of danger to other road users (this factor carries the most weight of all the factors);
- the reason for driving;
- the distance driven;
- the manner of driving;
- the condition of the vehicle driven;
- whether or not it was the driver's intention to drive any further;
- the road and traffic conditions at the relevant time.

4.2.5 The onus of establishing special reasons lies on the defence, and the standard is that of the balance of probabilities.

4.2.6 Where a court exercises its power not to disqualify for special reasons, the grounds for doing so must be stated in the order of the court.⁴³

4.3 Driving disqualification for any offence

⁴⁰ Article 35 (1A) Road Traffic Offenders (NI) Order 1996.

⁴¹ *Vaughan v Dunn* [1984] R.T.R 376.

⁴² *Chatters v Burke* [1986] 3 ALL ER 168.

⁴³ Article 35 Road Traffic Offenders (NI) Order 1996.

- 4.3.1 Article 91 of the Criminal Justice (Northern Ireland) Order 2008 provides the court with power to disqualify an offender from holding or obtaining a driving licence. A court may disqualify for any endorsable offence provided that the offender is not also liable for a penalty points disqualification. This order may be made instead of or in addition to any other sentence the court may wish to impose. For example in cases involving kerb crawling or in cases where a defendant is subject to a Non Molestation Order and uses his/her vehicle to drive past the injured party's abode or place of work.
- 4.3.2 This offence only applies to offences committed after the commencement of the 2008 Order; i.e. 16 July 2008. Specific powers under Article 91(3) to make an order for disqualification under the legislation were granted to each court in Northern Ireland by the Secretary of State on 12 November 2008. A court will order the defendant to be disqualified or the licence to be endorsed, unless there are special reasons not to do so.

5. Alternative Verdicts

5.1 General Provisions: Section 6(2) of the Criminal Law Act (Northern Ireland) 1967

- 5.1.1 In certain circumstances it is possible for a jury to find the accused not guilty of the offence charged but guilty of some other alternative offence.
- 5.1.2 Section 26 of the Road Traffic Offenders (Northern Ireland) Order 1996 allows for the return of alternative verdicts where the allegations in the indictment or complaint amount to, or include, an allegation of an offence specified in the table set out in that Article. The relevant statutory provisions are set out in the table below.
- 5.1.3 Where the accused is charged with an offence under Article 14 of the Road Traffic (Northern Ireland) Order 1995, he may not be convicted as an alternative with an offence of attempting to drive: Article 26(2) of the Road Traffic Offenders (Northern Ireland) Order 1996.

Offence charged	Alternative verdicts	Enabling legislation
Manslaughter	<p>Article 9 of the 1995 Order: causing death or GBI by dangerous driving</p> <p>Article 10 of the 1995 Order: dangerous driving</p> <p>Article 14 of the 1995 Order: causing death or GBI by careless driving with drink or drugs</p> <p>Section 35 of the Offences against the Person act 1861: furious driving</p>	<p>Article 26 3a and 3B Road Traffic Offenders (NI) Order 1996 (inserted by Article 64 of the Criminal Justice (NI) Order 2008)</p>
<p>Death Or Grievous Bodily Injury By Dangerous Driving: Article 9 of the 1995 Order</p>	<p>Article 10 of the 1995 Order: dangerous driving</p> <p>Article 12 of the 1995 Order: careless and inconsiderate driving</p>	<p>Article 26(1) Road Traffic Offenders (NI) Order</p>
<p>Causing Death Or GBI By Careless Or Inconsiderate Driving: Article 11a of the 1995 Order</p>	<p>Article 12 of the 1995 Order: careless and inconsiderate driving</p>	<p>Article 26(1) Road Traffic Offenders (NI) Order</p>

Offence charged	Alternative verdicts	Enabling legislation
<p>Causing Death, Or Grievous Bodily Injury, By Careless Driving When Under Influence Of Drink Or Drugs: Article 14 of the 1995 Order</p>	<p>Article 11a of the 1995 Order: causing death or grievous bodily injury by careless or inconsiderate driving Article 12 of the 1995 Order: careless and inconsiderate driving and/or the relevant offence from: article 15(1) of the 1995 Order: driving whilst unfit Article 16(1)(a) of the 1995 Order: driving with excess alcohol Article 18(7) of the 1995 Order: failing to provide a specimen Article 18a(6) of the 1995 Order: failing to give permission for a laboratory test</p>	<p>Article 26(1) Road Traffic Offenders (NI) Order</p>
<p>Driving Or Attempting To Drive When Unfit To Drive Through Drink Or Drugs: Article 15(1) of the 1995 Order</p>	<p>Article 15(2) of the 1995 Order: being in charge of a vehicle when unfit to drive through drink or drugs</p>	<p>Article 26(1) Road Traffic Offenders (NI) Order</p>
<p>Driving Or Attempting To Drive With Excess Alcohol In Breath, Blood Or Urine: Article 16(1)(a) of the 1995 Order</p>	<p>Article 16(1)(b) of the 1995 Order: being in charge of a vehicle with excess alcohol in breath, blood or urine</p>	<p>Article 26(1) Road Traffic Offenders (NI) Order</p>

6. Youth Offenders

6.1 Introduction

- 6.1.1 The PPS is committed to ensuring that the Best Interests of the Child Principle is adhered to, and that the special considerations which apply to cases involving a young person are enshrined in its working practices.⁴⁴ The PPS has a dedicated team of Youth Prosecutors, based in its regional offices, who have developed an expertise in taking prosecutorial decisions in cases involving young people who offend.
- 6.1.2 The PPS Guidelines for the Prosecution of Young Offenders, is available on the PPS website at www.ppsni.gov.uk, or a hard copy can be obtained by contacting the PPS directly.

6.2 Key considerations

- 6.2.1 When applying the public interest factors in a case involving a young person, paragraph 4.14 of the Code for Prosecutors sets out the key issues as follows:
- “...where the suspect is a child or a young person, the best interests and welfare of the child or young person must be considered, including whether a prosecution is likely to have an adverse impact on his or her future prospects that is disproportionate to the seriousness of the offending. Prosecutors must have regard to the principal aim of the youth justice system which is to prevent offending by children and young people.”*
- 6.2.2 Whilst “the best interests of the child” is a primary consideration, it should be balanced with the interests of all other parties, such as victims and the wider community.
- 6.2.3 It is essential in all youth cases that when considering the public interest factors for and against prosecution, prosecutors have in mind the best interests of the child principle, and that these considerations are factored in to the decision. The prosecutor should also consider what impact the decision will have upon the child.
- 6.2.4 In all cases, the victim’s views are given careful consideration before a decision is taken, and regard shall be had to the PPS Victim and Witness policy.
- 6.2.5 The PPS, where appropriate, will consider whether a young person can be dealt with by way of diversionary disposal (see Chapter 8 ‘Diversionary Disposals: Key

⁴⁴ UNCRC November 1989 - UK became a signatory in June 1992.

Considerations'). However the type of diversion directed must reflect the balancing of the relevant public interest considerations and the statutory duty to prevent offending.

6.3 Driving whilst disqualified

6.3.1 In the case of a young person who has not yet reached the age to hold a driving licence, a diversionary option in respect of the offence of driving whilst disqualified (i.e. by virtue of their age) may be appropriate, for example, where the offender has no previous offending, where other road users have not been inconvenienced and where the offender expresses remorse. In the latter case the public interest in the imposition of the penalty is less compelling and so diversion, while not usual, may be appropriate. For example, the imposition of penalty points may have a substantial impact on a youth offender's employment prospects and the best interest of the child principle is a relevant consideration.

6.4 Endorseable Road Traffic Offences

6.4.1 In respect of endorseable road traffic offences where a youth is the holder of a provisional licence, it is usually in the public interest to proceed with the prosecution to enable the driving licence to be endorsed with penalty points.

7. Road Traffic Fatality Cases: Family or Other Close Personal Relationship

7.1 Background

- 7.1.1 Any case that involves the death of another will inevitably be one of the most serious matters that will be dealt with by prosecutors. Whilst the serious nature of these cases usually mean that a prosecution will be in the public interest, prosecutors must acknowledge the greater emotional impact likely to be felt by a driver where the death he or she has caused is that of a relative or someone with whom they share a close, personal relationship.
- 7.1.2 When reviewing such cases, prosecutors must balance the circumstances of each individual case with the consequences to the driver, who is likely to have suffered significant personal loss as a result of the bereavement. Whilst there may be sufficient evidence to prosecute, the prosecutor should recognise that in some instances such prosecutions would be inappropriate, and it may not be in the public interest to proceed because of the likely life-long impact of losing a loved one and being responsible for that loss. However, this must always be balanced against the need to ensure the safety of other road users.

7.2 Factors supporting a decision to prosecute

- 7.2.1 If there is evidence to suggest higher culpability such as dangerous driving and/or that an individual may present as a continuing danger to other road users, the proper course will usually be to prosecute that individual.
- 7.2.2 Evidence of high culpability may exist for example, where the offender: demonstrated a prolonged and persistent course of dangerous driving; driving a vehicle which is in a dangerous condition and driving whilst over the prescribed alcohol limit/ under the influence of drugs or alcohol which impaired the offender's ability to drive.
- 7.2.3 Evidence that someone may present as a continuing danger to other road users may exist, for example, if the offender: has relevant previous convictions, has been previously disqualified from driving, or suffers from a medical condition that significantly impairs his/her driving skills.
- 7.2.4 The above examples are not exhaustive and prosecutors must consider each individual case on its own merits when determining the level of culpability, and deciding whether or not there is evidence to show that an individual presents a continuing danger.

7.3 Factors supporting a decision not to prosecute

7.3.1 The decision not to prosecute in the public interest should be exercised very carefully by prosecutors and it may be appropriate to consider the following:

- (1) lower level culpability such as careless driving - for example, this may include errors of judgement, such as failure to look properly before turning at a junction due to a momentary lapse of attention, or where the illegality arose as a result of a genuine mistake on the part of a driver in that he/she believed they were insured to drive the vehicle;
- (2) little or no possibility of future risk to other road users such as where the driver's licence has been surrendered;
- (3) a particular significant emotional impact having regard to the nature of the relationship and other circumstances of the case;
- (4) strong views from the family of the deceased that they do not want a prosecution.

7.3.2 Family members' views, where they are available, should be taken into account by prosecutors, and whilst these views are important, they are unlikely to weigh as heavily in the balancing exercise as evidence of an individual presenting as a continuing danger. The prosecutor will not always be able to act in accordance with the family's wishes, but they should always be carefully considered before a decision is reached.⁴⁵

7.3.3 In order to ensure consistency of approach, all family and other close personal relationship cases must be referred to the Senior Assistant Director for review prior to a decision being issued.

⁴⁵ *Attorney General's reference (No. 3 of 2000) (Rogan) (Carswell LCJ)* held that the offender's driving and his irresponsibility were culpable to a high degree and has to be regarded as the very type for which Parliament had intended the substantial penalties provided for in the legislation. Furthermore it was necessary for the Judges to exercise caution in the way they allowed representations by victims or family members to affect their judgement, whether those representations were made in favour of or were adverse to the accused: such opinions did not prove any sound basis for reassessing a sentence, otherwise cases with identical features would be dealt with in widely differing ways.

8. Diversionary Disposals: Key Considerations

8.1 General principles

- 8.1.1 Once a prosecutor is satisfied that the Evidential and Public Interest Tests are met they should consider the appropriateness of proceeding by way of a diversionary disposal, particularly when the defendant is a young person.
- 8.1.2 When considering the appropriateness of diversion, each case should be assessed on its merits, taking into account the facts and circumstances of the individual case.
- 8.1.3 Broadly, the presumption is that the public interest requires prosecution where there has been a contravention of the criminal law. This presumption provides the starting point for consideration of each individual case. In some instances the serious nature of the case will make the presumption a very strong one.
- 8.1.4 A diversionary disposal should never be directed for the most serious indictable offences, and only in exceptional circumstances, where the offence is triable only on indictment. Other summary and hybrid offences, less grave in themselves, may nevertheless be too serious for diversion to be appropriate due to the nature and extent of the harm or loss resulting from the offence.

8.2 Types of PPS diversion

- 8.2.1 Diversion refers to a variety of criminal justice methods which are used as alternatives to prosecution to avoid the formal processing of an accused person via the court system.
- 8.2.2 The types of diversion currently available to the PPS include:
- Adult caution/ restorative youth caution;
 - Informed Warning;
 - Diversionary Youth Conferencing;
 - Community Based Restorative Justice;
 - National Drivers Alertness Course;
 - Immediate Caution.
- 8.2.3 Diversionary disposals are designed to simplify and speed up dealing with less serious offending. They were introduced as a proportionate response to low-level crime. In summary, the purpose of the PPS diversionary disposals are as follows:

- To deal with less serious offences and the offender quickly and simply;
- To reduce the risk of re-offending;
- To engage the offender in a restorative process with the victim and community;
- To reduce to a minimum the offender's involvement with the criminal justice system;
- To enable victims to express their views; and
- To enable early intervention in respect of young offenders.

8.2.4 It should be noted that a number of disposals are also available to the police, including Fixed Penalty Notices and Community Resolution Notices.

8.3 Fixed Penalties

8.3.1 There is significant public interest in the effective and efficient use of the system for the issue of Police Fixed Penalty Notices. By the nature of the process offenders are given an early opportunity to avoid prosecution. It will, therefore, rarely be appropriate to divert from prosecution cases of non-payment of a Fixed Penalty Notice at the decision stage, and particularly after proceedings have commenced.

8.3.2 Prosecutors should be aware of the provisions of Article 49 of the Road Traffic Offenders (Northern Ireland) Order 1996, as amended by Article 39 of the Road Traffic (Northern Ireland) Order 2007, which allows for the prospective endorsement of a licence with an order for disqualification or imposition of penalty points where a person of any age does not hold a licence at the relevant time, but subsequently applies for a licence. Article 50 of the 1996 Order sets out the period for which the endorsement is to remain effective.

8.4 National Driver Alertness Course

National Driver Alertness Course (formerly the Northern Ireland Driver Improvement Scheme)

8.4.1 The National Driver Alertness Course (NDAC), formerly known as the NI Driver Improvement Scheme (NIDIS), exists to provide a training course to a driver who would otherwise be prosecuted for an offence of careless or inconsiderate driving contrary to Article 12 of the Road Traffic (NI) Order 1995. It is part of the National Driver Offender Retraining Scheme (NDORS - www.ndors.org.uk/scheme) which also includes the Rider Intervention Developing Experience (RIDE) course, for motorcyclists and the National Speed Awareness (NSA) course, offered by PSNI.

- 8.4.2 If the Evidential Test for Prosecution is met, a prosecutor may determine, in the public interest, that as an alternative to prosecution, a driver/rider should be invited to attend a NDAC or RIDE course.
- 8.4.3 A prosecutor may offer the offender the opportunity to attend a National Driver Alertness Course as an alternative to prosecution for an offence of careless driving, provided that the driving in question did not result in serious injury or death and that no other offences were committed at the same time.
- 8.4.4 In order to be eligible for a disposal under the National Driver Alertness Course, the driver must not have attended a retraining course within the previous 3 years. Information in respect of the National Driver Alertness Course is not recorded on an individual's criminal record. Completion of the course avoids payment of a fine and the endorsement of penalty points on a driving licence. The driver does not need to admit culpability to be considered for the course. However it is essential that the driver shows willingness, agrees to pay the cost of the course and fully participates in the training.
- 8.4.5 If the course is refused by the offender or not successfully completed, the matter will be referred back for prosecution. A Form 1 Protective Summons should be taken out at the same time as directing the course. It will always be necessary to issue a 'Form 1' in summary only cases at the same time as directing the diversionary disposal.⁴⁶ This is the responsibility of the directing prosecutor so that if diversion is unsuccessful police may refer the case back to the PPS for consideration of prosecution regardless of the fact the summary time limit has expired.
- 8.4.6 The following factors should be considered by the prosecutor *in favour* of offering the National Driver Alertness Course:
- The driver has no previous motoring offences on his criminal record and no current penalty points.
 - A significant time period has elapsed since any previous motoring offences.
 - The accident was minor in nature, involving minor damage to one or both vehicles and any injuries sustained were also minor.
 - The actions of the driver, whilst falling within the remit of 'careless driving', could be characterised as bad driving habits, for example, failing to indicate, inadequate use of mirrors.
 - It appears likely that the driver would benefit from participating on the course, for example, if the accident was partly due to the fact that the driver had not

⁴⁶ The time limits which apply to summary only offences are specified in the Magistrates' Courts (Northern Ireland) Order 1981. In such cases, the complaint(s) must be made within the 6 months from the date the offence was committed, or in the event of a continuing offence, the date it ceases. A complaint can be made by way of a lodgement of a charge sheet, the creation of a prosecutor summons or the creation / signing of a Form 1.

made provision for the prevailing weather conditions or the accident occurred at an 'accident hotspot'.

8.4.7 The following factors should be considered by the prosecutor *against* offering the National Driver Alertness Course:

- Significant damage was caused to both vehicles and serious injury was narrowly avoided.
- The actions of the defendant were so bad that the court would be likely to impose more than the minimum penalty points.
- Evidence suggests the defendant consciously took a risk causing danger to other road users.
- The actions of the driver and his attitude suggest he would not benefit from the course.

8.4.8 These lists are not exhaustive. Each case will have to be considered on an individual basis, taking into account the recommendations of police. There may be instances where a case is not suitable for the course but is still suitable for diversion. For example, a caution might be considered where the driver has refused the offer of a course for a careless driving offence, but where the level of carelessness was minor, the offender has a clear record and had been driving for a significant period.

9. Mutual Recognition of Driving Offences

9.1 The Agreement

9.1.1 With effect from 1st August 2017 the Agreement between the UK and Ireland on the Mutual Recognition of Driving Disqualifications (and the amendments to Crime (International Co-operation) Act 2003 which gave effect to it in the UK) came into force. The UK and Ireland mutually notified each other on that day, under Article 14 of the Agreement, that their respective internal procedures for bringing the Agreement into force have been completed.

9.1.2 In practice this means that if a driver resident in the UK is disqualified from driving in The Republic of Ireland, the disqualification will also apply in the UK. Likewise a driver resident in Ireland but disqualified in the UK will also be disqualified in Ireland. The disqualification only takes effect from the date the licensing authorities in the country of residence serve notice on the driver and notify police. The UK (DVLA/DVA) apply a same end date approach so when the disqualification period ends in the place where the offence occurred, the disqualification in the UK will end on the same date.

9.2 Arrangements

9.2.1 These arrangements apply to the following categories of driving conduct:

- (a) Dangerous driving (whether or not resulting in death, injury or serious risk);
- (b) Wilful failure to carry out the obligations placed on drivers after being involved in road accidents;
- (c) Driving whilst under the influence of alcohol or substances affecting or diminishing the mental and physical abilities of a driver;
- (d) Refusal to submit to a drug/alcohol test;
- (e) Driving a vehicle faster than the speed limit;
- (f) Driving whilst disqualified; and

- (g) Other conduct constituting an offence for which a driving disqualification has been imposed by the state of the offence: resulting in a disqualification period of 6 months or more (or a lesser duration where this has been agreed between the contracting states).

9.2.2 While the person is still subject to a period of disqualification, either in the state of offence or the state of residence and they continue to drive they are committing the offence of driving whilst disqualified.

9.2.3 To determine if the driver falls within the new arrangements the date of conviction, on the provision that the date of offence is no earlier than 1st August 2017, is used.

10. Victim and Witness Care

10.1 Victim and witness services

- 10.1.1 The Victim and Witness Care Unit (VWCU) is a dedicated Unit made up of specially trained staff from the PPS and PSNI. The purpose of the VWCU is to improve the experience of victims and witnesses and it is central to the provision of services. It allows for a single point of contact (via the VCWU case officer) within the criminal justice system. Its primary role is to keep victims and witnesses fully informed of the progress of their case throughout the criminal justice process. The VCWU can also make referrals to other service providers if additional support is required.
- 10.1.2 If you are a bereaved relative or next of kin of a person who has died and were involved in the case, VCWU will provide updates on the progress of the case. The case officer can communicate directly with you, or if you prefer through your Family Liaison Officer (appointed by the PSNI), if one has been appointed.
- 10.1.3 If a decision is taken to prosecute a defendant for a crime committed against you, then you can choose to make a Victim Personal Statement. This allows you, to say in your own words, how a crime has affected or continues to affect you. It can only be used when a case goes to court and a person pleads guilty or is found guilty. It will tell a judge what harm the crime has caused you, before a sentence is passed.
- 10.1.4 Prosecutors will, in appropriate cases, apply for special measures for young, intimidated or otherwise vulnerable witnesses allowing them to give their evidence with confidence. Special measures are a range of provisions that can be put in place if the judge is satisfied that a witness is either vulnerable or intimidated and, if so, whether special measures would be likely to improve the quality of their evidence. The aim is to help the witness to maximize the quality of their evidence by putting in place certain facilities that will assist in addressing some of the difficulties they may have with giving evidence in court.
- 10.1.5 The PPS Victim and Witness Policy explains in full the services and standards of services that victims and witnesses will receive from the prosecution service.

10.2 The giving of reasons

- 10.2.1 The policy of the PPS is to give victims reasons in all cases where a decision is made not to prosecute. A two tier approach applies: In a wide range of cases which might be classed as more serious, either due to the nature of the offence or to the vulnerability of the victim, detailed reasons will automatically be given

for the decision not to prosecute and a meeting offered. Where detailed reasons are given the PPS will consider what information about the decision may be provided to the victim, balancing the interests of all parties together with any other considerations which seem material to the particular facts and circumstances of the case.

- 10.2.2 In other cases reasons are given in general terms. For example, where the available evidence does not allow the Prosecution to establish an essential element of the offence the PPS will indicate that there was insufficient evidence to afford a reasonable prospect of a conviction. Another example would be a case in which the evidence was sufficient but the decision was taken not to prosecute given the age and infirmity of the prospective defendant. Here the reason given would be that it was not in the public interest to prosecute.
- 10.2.3 All victims are entitled to receive more detailed reasons for the decision taken and will be advised of that entitlement when general reasons are provided. All victims will also be informed of their right to seek a review when notified of the decision not to prosecute, whether they receive detailed or general reasons. It may be that the provision of detailed reasons will assist a victim deciding whether they wish to pursue a review. Where detailed reasons are given the requirement to seek a review within 3 months will only run from the date of receipt of the detailed reasons letter.

Annex A: Contact Details

Public Prosecution Service

Policy and Information Unit

Policy and Information Unit
Public Prosecution Service
Belfast Chambers
93 Chichester Street
Belfast BT1 3JR

Telephone: (028) 9089 7100
Deaf/Hard of hearing (SMS): 07795 675528
Email: info@ppsni.gsi.gov.uk (for general enquiries)
complaints@ppsni.gsi.gov.uk (for complaints)
reviews@ppsni.gsi.gov.uk (for reviews)

Website: www.ppsni.gov.uk

Victim and Witness Care Unit

VWCU - Belfast Office (for Belfast and Eastern Region)
Belfast Chambers
93 Chichester Street
Belfast BT1 3JR

Telephone: (028) 9026 4690
Deaf/Hard of Hearing (SMS): 07825 118389
Email: vwcubelfast@ppsni.gsi.gov.uk

VWCU - Foyle Office (for Western and Southern Region)
35 Limavady Road
Londonderry
BT47 6LP

Telephone: (028) 7134 0632
Deaf/Hard of Hearing (SMS): 07825 118416
Email: wcufoyle@ppsni.gsi.gov.uk

Belfast and Eastern Region / Headquarters Sections

Belfast Chambers

93 Chichester Street
Belfast BT1 3JR

Telephone: (028) 9054 2444
Deaf/Hard of hearing (SMS): 07795 673927

Western and Southern Region

Foyle Chambers

35 Limavady Road
Londonderry BT47 6LP

Telephone: (028) 7134 0648
Deaf/Hard of Hearing (SMS): 07795 675338

Omagh Chambers

2 Townhall Square
High Street
Omagh BT78 1BL

Telephone: (028) 8224 4319
Deaf/Hard of Hearing (SMS): 07795 831188

Newry Chambers

1 Downshire Close
Newry BT34 1FD

Telephone: (028) 3083 2500
Deaf/Hard of Hearing (SMS): 07795 810114

Police Service of Northern Ireland

65 Knock Road
Belfast BT5 6LE

Telephone: 028 9065 0222 or 0845 600 800
Crimestoppers: 0800 555 111
Website: www.psni.police.uk

Victim Support Northern Ireland

3rd Floor
Annsgate House
70-74 Ann Street
Belfast BT1 4EH

Telephone: (028) 9024 3133
Supportline: 0845 3030900
Email: info@victimsupportni.org.uk
Website: www.victimsupportni.co.uk

National Driver Alertness Course

DriveTech (UK) Limited
Alexandra House
Wellington Business Park
Dukes Ride
Crowthorne
Berkshire
RG45 6IS
Tel: 01344 773144
Fax: 01344 773148

If you require any further information about the PPS, or a copy of this document in an alternative format, please contact:

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