

Précis of the position of emergency responders for consideration

1. Emergency response drives are illegal and the law is in need of urgent reform.
2. At present the current exemptions designed to permit emergency service drives are unsatisfactory and unworkable.
3. Currently there are “exemptions” permitting emergency services to dis-apply traffic signs. There is an exemption permitting them to dis-apply speed limits but finally, there are no exemptions dis-applying the provisions of careless or dangerous driving.

Traffic signs and speed limits

4. The traffic sign exemption fall away if to use the exemption would “endanger” anyone. This is so even if the danger is slight and even if there is a very good reason for it. The position is absolute. The traffic sign exemptions do not permit any risk. Driving a vehicle on a road will always “endanger” someone to a greater or lesser extent. The outgoing ACPO manual of guidance stated that police pursuits are dangerous. More often than not it is necessary for an emergency service vehicle to proceed in a way that creates at least some risk. What is required is that the driver adopts a proportionate approach, balancing the risk created by the drive against the risk the driver is trying to avert. The speed limit exemption has the opposite defect. It applies once a policing purpose is identified if that purpose would be hindered by the observance of the speed limit. Once the “policing purpose” test is satisfied the exemption applies and the speed limit, falls away, completely. There is no element of proportionality restricting the extent to which the speed limit can be broken by. This has led to some perverse and expensive legal battles arising from police officers breaking the speed limit by a considerable margin in circumstances which, although were for policing purpose, (honing of skills or dashing to court) did not warrant the risks created by the drive. It was cases such as these that started the trend of prosecuting police officers not for breach of traffic signs but for dangerous or careless driving. There are no exemptions to these offences and the prosecutor is able to circumvent the exemptions and indeed the crown prosecutors guidance. Whilst initially the offences of careless and dangerous driving were used to curb excessive use of a rather permissive exemption, we have seen an increase in their use whereby they are routinely used whenever police driving has an adverse outcome and recently even when there was no adverse outcome at all.

Careless and Dangerous Driving

5. There is no facility exempting emergency response drives, pursuits or other emergency service tactics from the provisions of dangerous or careless driving. The definitions of dangerous and careless driving are very wide, wide enough to encompass driving typically found in a response drive.
6. Careless or dangerous driving involves driving that falls below the standard of the “competent and careful driver”. Not the competent and careful police driver, the competent and careful “driver”!

Emergency response drivers are judged against the standard of the competent and careful driver. The competent and careful driver does not drive through red lights, in excess of the speed limit or on the wrong side of the road. The careful and competent driver certainly does not engage in boxing or TPAC type tactics. To judge a response driver by this standard is nonsensical. In *R v Lewin* (*unreported*) HHJ Cornwall and the prosecutor refused to apply the law, the judge observing that if the standard was that of the careful and competent driver and not the careful and competent police driver, then all response drivers would be guilty of an offence. Instead both judge and prosecutor applied the standard of the careful and competent police driver. However the Court of Appeal has expressly disapproved of this.

7. In the case of *R v Bannister* [2010] 2 All ER 841, the Court of Appeal ruled that no account can be taken of a responder’s skill or training in deciding whether the driving was careless or dangerous. The skill or training is considered to be irrelevant and is to be ignored. The question is simply whether the driving fell below the fixed *objective* standard of the competent and careful driver, not the emergency response driver driving to a system with special training.
8. Society has introduced a national model under s19 of the Road Safety Act 2006. That model regulated by the College of Policing and is to be taught to responders on a national basis. It is ironic that not only is such driving illegal, but if a jury were to ask whether it could take into account the special skill and training of the driver in deciding whether the response driver was guilty of dangerous driving, it would be told that such training and skill is irrelevant. (See Bannister)
9. The extent of the problem has been masked by forces not instituting prosecutions against ambulances or its own drivers and CPS offices declining to prosecute some matters using the not in the public interest test. However, the IPCC have targeted police response driving as an area for greater investigation and regulation with the result that the underlying problems outlined above have been highlighted.
10. It is unacceptable that emergency response drivers are asked to engage in activity which is prohibited by law in the hope that the politics of the situation will be such that no prosecution will be instituted. Such an approach lacks certainty with officers having little or no guidance as to what is or is not

permitted. It also lacks consistency, with similar driving being prosecuted in some CPS areas but not others.

11. In summary the current regime is flawed in the following ways:

- a. The speed exemption is too wide. Once the “policing purpose” test is satisfied the exemption applies regardless of the extent to which the restriction is breached.
- b. The remaining exemptions do not apply if not complying with the sign or prohibition would “endanger” anyone.
- c. The definitions of careless and dangerous driving, since the case of Bannister, are so wide that all response and pursuit drives fall within the definition and as such emergency response driving is illegal.

12. The proposed exemption resolves all of the above problems. It exempts emergency response drives from the ambit of the definitions of careless and dangerous driving and other road traffic laws but, officers are allowed to depart from a rule (including the provisions of careless and dangerous driving) if and only if, they have been specially trained and even then, only to an extent which is proportionate to the risk they are seeking to avert.

13. Proposed Exemption

“When a vehicle is being used for fire brigade, ambulance, bomb or explosive disposal, national blood service, rescue or police purposes, or for a purpose connected with the National Crime Agency the driver may depart from the standard of the careful and competent driver (or by his driving, cause another to do so) if and only if;

a) driving the vehicle in accordance with road traffic regulations would be likely to hinder the use of that vehicle for the purpose for which it is being used and;

b) any such departure is a proportionate response to the circumstances as the responder reasonably believed them to be and;

c) the driver has undergone or is engaged in, specialist driver training in accordance with S19 of the RSA 2006.

14. Such an exemption would permit a proportion of appropriately trained drivers to make the kind of decision they are trained to make, balancing the risk of not proceeding against the risk created by the drive. This is no different a decision than that faced by an officer in deciding whether to use force. Ultimately, a jury could be the final arbiter of where the balance lay. Such a test would focus the mind of the decision maker towards the real decision, whether the risks created by responding/pursuing were a necessary and proportionate response to the incident, taking into account the risks associated with not responding at all.

Other considerations

- NPCC guidelines all but prohibit officers from pursuing motorcycles unless they are involved in serious and organized crime. (recent addition to the tactics directory regarding the stinging of motorcycles aside) Even then pursuit is only permitted if there is a plan in place with a “tactical resolution” to end the pursuit. There are few practical “tactical resolutions” to deal with a motorcycle pursuits.
- Telling officers up and down the country that they cannot police motorcyclists unless they believe the motorcycle is involved in serious and organised crime, turns a blind eye to illegal driving on a massive scale. Drink driving is not serious or organized crime but represents a real risk to the public. No insurance is not serious or organized crime but represents an important law that must be enforced to ensure those injured obtain the compensation they need to live with disability. If motorcycle theft increases because joyriders are confident they cannot be caught or pursued everyone’s insurance premium increases. Not policing this area is likely to lead to an increase in dangerous, drunken or uninsured driving by motorcyclists. Recent experience of the met has highlighted this trend. Case of Henry Hicks.

Other areas in urgent need of reform

- A recent High Court case (Hatzola: DPP v Issler 2014) decided that first responder vehicles providing medical aid, do not fall within the definition of “ambulance” and therefore cannot avail themselves of the limited exemptions that ambulances have to break speed limits and contravene traffic signs. In fact they cannot legally, use blues and two tone horns. That means first responder Skoda Octavia type vehicles and motor cycles are not permitted to avail themselves of the ambulance exemptions. The court observed that this was undesirable and indicated that reform was required. In the interim it hoped that the DPP would not prosecute such cases.

Mr Justice Jay said

That is not to say that the outcome of this appeal is desirable. Mention has already been made of NHS “first responder” vehicles. These probably did not exist when the relevant secondary legislation was made in the 1980s, and some of the terminology of the 1986 Regulations in particular harks back to an earlier age. The world has moved on, and a strong case has been made out for widening the exemption. The facts of the present case also highlight the need for reform.

15. In the 1970's the position was similar. There was no exemption permitting responders to contravene red traffic lights. Chief Officers had asked for an exemption. The Home Office did not provide one. Some members of the London Fire Brigade worked to rule and drivers were encouraged to refuse to drive through red lights. Officers taking action were dismissed. The sackings were reviewed by the High Court. The court upheld the sackings on the basis the Fire Brigade had said it would not discipline anyone for contravening a red light, even if it was illegal. The court observed that the system that existed whereby it was illegal for drivers to contravene red lights but if there was a prosecution the Home Office would pay the fine; was not fit for purpose. It criticized the Home Office for being reluctant to provide an exemption despite being repeated requests.

"The situation in which one department of the Home Office secures the passing of statutes and regulations which create offences and another of its departments issues instructions that resulting fines be paid out of public funds is an oddity which is no longer effective for its purpose. However smoothly it may have worked when the law relating to traffic offences was more simple, drivers of fire engines now have a genuine grievance. They are liable, however reasonably they act when 'on the bell', to have their driving record embarrassed by traffic lights convictions which, however technical, may later need explaining away—and are at risk of finding by some misfortune an endorsement on their licence which ought not in justice to have been placed there. Rarely though this may occur, the system which can produce it is wrong. The plain fact is that robot signals having replaced the human police officer, it is essential in the public interest that the law should be adjusted so as to enable them to be lawfully disobeyed in emergencies when that course does not involve danger to others. For reasons that have, I hope, now been made plain, the Home Office decision to refuse, despite the recommendation made to it, to procure an amendment of the law appears somewhat pusillanimous. It was bound in due course to lead to difficulties of the type that have arisen—and that could be quite simply avoided by, for instance, an amendment of [section 79 of the Road Traffic Regulation Act 1967](#), so that an exemption somewhat similar to that relating to speed limits is applied, subject to appropriate safeguards, to other regulations in suitable cases. The sooner some such amendment is made the better. The present system puts chief officers and local authorities alike on a tightrope—when even a correct step is liable to be misconstrued by malcontents as an attempt to use a dispensing power and when the slightest error may result in such an accusation being justified.

Lord Justice Sachs *Buckoke v GLC* 1971

I would only add that I think it is a hard thing that drivers should be left at their own discretion to make decisions whether they should or should not commit breaches of the law which in many instances must be only technical but in others may involve difficult

decisions. I would for myself think it much fairer to the drivers and generally more satisfactory that the law should prescribe in what circumstances and subject to what safeguards the drivers of such vehicles as fire engines and ambulances should be allowed to disregard traffic signals and road signs

- Lord Justice Buckley *Buckoke v GLC* 1971

By making it an offence without exceptions. Parliament has opened the way to endless discussion in fire stations which should be brought to a close. I hope that our judgment today will do something to end them. But Parliament can do it better.

- Lord Denning *Buckoke v GLC* 1971

Commentary

16. It seems we are struggling with the same issues response drivers faced in the 1970's. In the 1970's there was no exemption permitting a driver to contravene a red light. Industrial action and a court case eventually persuaded the Home Office to provide a limited exemption preventing a driver from being prosecuted for contravening a red traffic light or a traffic sign. However, if contravention of red lights and traffic signs are prosecuted as dangerous or careless driving, there is no exemption and we are back to where we were in the 1970's. The current system makes it illegal for emergency response drivers to drive in a way society has trained and equipped them to drive. The very training society has provided, has been deemed an irrelevant consideration in deciding whether the driver drove illegally. It is unfair and unjust to expect drivers to break the law in the hope that they will not be prosecuted. If the politics of a case demands it, they will be prosecuted. And they will have no defence. Society expects them to risk their lives to keep us safe, yet expose them to the very real risk of imprisonment for doing what we as a society have trained them to do. Reform is overdue.

17. Any reform needs to dis-apply speed limits and traffic signs and the provisions for careless and dangerous driving whilst still providing some form of regulation of the response driver. It is suggested that the answer lies in an exemption based on section 3 of the Criminal Law Act 1967. The proposal would permit a group of appropriately trained drivers a limited exemption. The exemption requires the risk created by the response driver to be proportionate to the risk created by the incident the driver is responding to. Ultimately the jury would be the final arbiter, weighing the risks of responding taking into account the training, against the risks of doing nothing.

18. Emergency service professionals should not be trained to a standard expected to use this training only to leave themselves despite adherence to that training vulnerable to prosecution. The situation as it stands is unacceptable to the public and practitioners alike.

