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THE NATIONAL SECRETARY'S OFFICE

17 June 2021

**BB CIRCULAR – 006-2021**

**To:** National Council, National Board  
**Cc:** National Board Info, Branch Council Admin

Dear Colleague

**Driving Operational Police Vehicles in Response Mode**

The purpose of this circular is to remind officers of the potential risks they face when driving a police vehicle in a pursuit or response mode.

A Metropolitan police officer has recently been charged by the CPS with the offences of causing death by dangerous driving and causing serious injury by dangerous driving. The charges follow a vehicle pursuit during which two pedestrians were killed, and a number of others were injured in a collision with the vehicle that was being pursued by the officer.

While we cannot comment on the specifics of the case, as it is due to go to trial, we do feel it acts as a useful, if disturbing reminder of the risks officers face when called upon to engage in a response or pursuit drive.

The offence of dangerous driving is set out in the Road Traffic Act 1991, as amended. Section 2A provides (**emphasis added**):

- (1) ...a person is to be regarded as driving dangerously if (and, subject to subsection (2)<sup>1</sup> below, only if)-
  - (a) the way he drives falls far below what would be expected of a **competent and careful driver**, and

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<sup>1</sup> Subsection 2 refers to the state of the vehicle in determining whether it would be obvious to a careful and competent driver that they were driving dangerously.

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

The question then is whether the driving fell below the fixed *objective* standard described above, without taking into consideration the additional skills obtained by the emergency response driver. The National Driving Model encourages officers to balance the risk of failing to take-action against the risk of doing so but arguably, the law does not permit any such balancing exercise.

In **R v Bannister [2010] 2 All ER 841**, the Court of Appeal ruled that no account can be taken of a police driver's skill or training in deciding whether the driving was careless or dangerous. The skills or training of that officer are considered to be irrelevant since they are:

*"...inconsistent with the objective test of the competent and careful driver set out in the statute. If the special skill of the driver is taken into account in assessing whether the driving is dangerous, then it must follow inevitably that the standard being applied is that of the driver with special skills and not that of the competent and careful driver, because the standard of the competent and careful driver is being modified."*<sup>2</sup>

PFEW has argued that a different standard, that takes the driver's training and expertise into account, is precisely what is required since a member of the public is not required to pursue another vehicle in excess of the speed limit or use methods such as TPAC or tactical contact. The public and government expect response drivers to engage in pursuits as part of their role and provide training to enable them to do so. PFEW considers that, to then compare the driving of an appropriately trained and experienced response driver, with a member of the public, and to not allow the courts to take the officer's additional training into consideration when determining the question of dangerous driving, is unfair.

PFEW continues to push the Home Office to change the legislation in a way that *adequately* protects our members. The campaign has enjoyed some success in that the Government has recognised that the current law is defective. In a Home Office Press Release dated 2 May 2019, the Home Secretary's office issued the following statement:

*"Current laws do not recognise the training that police response drivers undertake and the tactics they may have to employ to respond to emergencies and pursue criminals. Police drivers are currently held to the same standards as members of the public and have to rely on the discretion of the Independent Office for Police Conduct (IOPC) and the Crown Prosecution Service (CPS) to avoid misconduct investigations and criminal prosecution."*

<https://www.gov.uk/government/news/home-office-seeks-law-change-to-give-police-more-confidence-to-pursue-suspects>

In 2019 the Government conducted a public consultation<sup>3</sup> concerning the future of police response and pursuit driving which included the following question.

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<sup>2</sup> [para 16 – the judgement of Lord Justice Thomas](#)

<sup>3</sup> [The Law, Guidance and Training Governing Police Pursuits: Government Response 2<sup>nd</sup> May 2019.](#)

*Q3. To what extent do you agree or disagree that a police officer in pursuit or responding to an emergency should be held to the driving standard of a 'careful and competent' motorist (i.e. a member of the public), despite the various exemptions to roads traffic law?*

*Almost three quarters of responses, (71%) did not agree that a police officer should be held to the driving standard of a 'careful and competent' motorist, while only 4.6% agreed that they should, and the remainder either not agreeing or disagreeing or providing no additional comment.*

Despite recognising the unsatisfactory state of the law in 2019, and the risks faced by police drivers, the Government has yet to implement change. Instead, it has sought to reassure officers by publicly recognising and expressing support for their plight. The consequence of this is that Officers are being asked to drive at risk of prosecution with little protection other than expressions of sympathy and goodwill.

The consequences to the individual police driver cannot be understated. Even if the Force is supportive of the officer, it is the CPS and the IOPC that decide whether to bring a prosecution or a misconduct hearing. While the starting point for the CPS is that it is:

*"very unlikely to be appropriate to proceed with a prosecution on public interest grounds if a police officer...commits a driving offence while responding to an emergency call"*

It expressly refers to the Bannister case in its guidance, and the Court of Appeal's finding that an officer's special driving skills are irrelevant when considering whether their driving is dangerous.

In the meantime, the sentencing guidelines for a case of dangerous driving involving serious injury, indicate that the starting point is a custodial sentence. Even when such a sentence is avoided, in a recent case where an officer was given a suspended sentence, the IOPC argued that the College of Policing's APP vetting guidelines were activated in a way that made the officer "undeployable", with the result that the officer was then dismissed for Gross Misconduct. Further, the officer concerned will face a mandatory disqualification and substantial increase to their insurance premiums on returning to driving in a personal capacity.

The situation remains highly unsatisfactory and, as the cases demonstrate, our members continue to be vulnerable to prosecution, to loss of liberty and loss of livelihood. While PFEW is continuing to push for change, we encourage police drivers to drive within the confines of the legislation and to be aware of the risks of failing to do so.

Yours sincerely



**ALEX DUNCAN**  
**National Secretary**