



CLYDE&CO

# Safety, Health and Environment Regulatory

Motor Crime Team's Transport & Logistics

March 2021 Update



## Introduction

In our March motor crime update we provide market insight into the key developments over the last month and the current challenges faced, including:

- New inquiry launched into smart motorways;
- Update on life sentences for dangerous drivers;
- DfT considers random roadside breath tests;
- Unsafe driving conviction quashed;
- Lorry driver sacked for refusal to wear face mask;
- Motorists to be paid to scrap old cars; and
- Parking permit tax increases.



## Smart motorways- enough is enough?

*"How many more people must die before you will make a decision and immediately suspend the use of the hard shoulder for driving traffic? Enough is enough."*<sup>[1]</sup>

We previously looked at the use and perceived benefits of smart motorways, criticisms of the system<sup>[2]</sup>, as well as the Government's evidence stocktake and action plan<sup>[3]</sup>. Since their introduction these roads have been mired in controversy. Criticisms have primarily arisen following a number of fatalities involving stranded vehicles and vehicles proceeding down closed lanes.

As the debate rages, the Transport Committee has launched a new inquiry into the future of these roads, with the Transport Secretary Grant Shapps admitting their name was a "misnomer"<sup>[4]</sup>.

Mr Shapps ruled out scrapping smart motorways, but admitted that mistakes were made in their roll-out which initially made them less safe. However, he told MPs reversing them would mean acquiring land the equivalent of 700 Wembley stadium-sized football pitches, destroying swathes of the Green Belt and buying up people's homes. He also insisted that the roads were now much safer and that death rates on conventional motorways are higher, with higher injury rates on smart motorways than on conventional motorways but fewer fatalities.

### Rising death toll

His comments come after statistics from Department for Transport revealed that the death toll on smart motorways has continued to rise. In 2019 there were 14 fatalities on motorways where hard shoulders operate as full-time or part-time traffic lanes. The number

of deaths per mile of smart motorway has risen from one every 43 miles in 2016 to one every 17 miles in 2019.

Mr Shapps has pledged that vital radar technology which can detect marooned cars within 20 seconds will be rolled out on the entire network by the end of next year, a target which has been brought forward from 2023.

Mr Shapps said:

*"I don't want to carry on with what we've seen of smart motorways, the system I've inherited...I wouldn't have gone about it like this, and I don't approve of the fact that emergency areas were being spaced way too far apart. I've said they have to be ideally three-quarters of a mile apart, no more than a mile, and I've ordered Highways England to get on with it."*

### Guilty of corporate manslaughter?

We previously commented on the ongoing inquest into the death of Nargis Begum<sup>[5]</sup>. The senior coroner has now adjourned the inquest after concluding there was "more than sufficient evidence" for the Government-owned company Highways England to be considered for corporate manslaughter.

Mrs Begum was the passenger in a Nissan Qashqai driven by her husband when it broke down on the M1 in South Yorkshire, near Woodall services, in September 2018. The incident was on a stretch without a hard shoulder. Mrs Begum was waiting for help near her car when another vehicle collided with the Nissan.

In response to the coroner's comments, a Police and Crime Commissioner said smart motorways should be abandoned so "more serious injuries or fatalities" can be avoided.

[1] Shadow transport secretary Jim McMahon

[2] <https://www.clydeco.com/en/insights/2019/11/smart-motorways-outstanding-roads-or-seriously-in>

[3] <https://www.clydeco.com/es/insights/2020/04/putting-brake-smart-motorways-government-publish-e>

[4] <https://www.dailymail.co.uk/news/article-9221889/We-stuck-smart-motorways-Transport-Secretary-Grant-Shapps-admits.html>

[5] <https://fleetworld.co.uk/comment-putting-the-brake-on-smart-motorways/>

Dr Alan Billings added: *"I do not believe there is anyone who uses this stretch of the motorway, as I do, who does not feel anxious when driving along it."* He also highlighted a recent crash on the northbound M1 between junction 30 and 31 which he said involved a lorry hitting "a stationary car in a live running lane". He added that he had been contacted by lorry drivers concerned over the dangers of stationary vehicles in a motorway lane and the difficulties of being able to pull out into fast-moving traffic.

### New inquiry launched

In Spring 2020 the Department for Transport outlined 18 recommendations as part of its stocktake of smart motorways<sup>[6]</sup>, which included proposals to abolish the confusing dynamic hard shoulder as well as reducing the distance between places to stop in an emergency to three quarters of a mile. It also promised to substantially speed up the deployment of "stopped vehicle detection" technology across the entire "all lane running" smart motorway network, so stopped vehicles can be detected and lanes closed more quickly.

The Transport Committee has now announced a new inquiry<sup>[7]</sup> into smart motorways over the summer. It is understood the committee feels Highways England has failed to respond to some of the recommendations published in its 2016 report, including calls for an education campaign to help drivers better understand what to do in an emergency.

The Chair of the Transport Committee, Huw Merriman MP, said:

*"The Department for Transport says Smart Motorways help us cope with a 23 per cent rise in traffic since 2000, helping congestion. The Department's own Stocktake report points to lower fatal casualty rates for smart motorways without a permanent hard shoulder than on motorways with a hard shoulder... This message isn't reaching the public, whose confidence in smart motorways has been dented by increasing fatalities on these roads... Will enhanced safety measures help? Will the public accept them following an awareness campaign? Or should there be a rethink of government policy?"*

Edmund King, president of the AA, commented:

*"To give the Transport Secretary some credit, he is the only minister to date who has taken the safety of 'smart' motorways seriously and has pushed Highways England to make them safer. In the meantime we hope he wastes no time in making these motorways the safest they can possibly be, by retrofitting more emergency laybys."*

Ultimately, the safety of motorists must remain the government's priority and the implementation of the government's action plan for smart motorways is required urgently. We await the outcome of the Transport Committee's inquiry and urge that any proposals go far enough to ensure that the risk that smart motorways have created is properly eliminated before another foreseeable and completely preventable death occurs.

[6] [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/936811/smart-motorway-safety-evidence-stocktake-and-action-plan.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/936811/smart-motorway-safety-evidence-stocktake-and-action-plan.pdf)

[7] <https://committees.parliament.uk/committee/153/transport-committee/news/145319/transport-committee-to-investigate-the-rollout-and-safety-of-smart-motorways/>

## An eye for an eye? Update on life sentences for dangerous drivers

*"We are not talking about a moment's inattention that has disastrous consequences. We are talking about deliberate recklessness without any thought for anyone else's life."*<sup>[8]</sup>

We previously reported on proposed legislation to introduce life sentences for dangerous drivers. Tougher sentences are now on track in the form of the Police, Crime, Sentencing and Courts Bill, which has recently been laid before Parliament<sup>[9]</sup>.

The Bill would amend the existing Road Traffic Offenders Act 1988 to increase the maximum sentence for causing death by dangerous driving from 14 years to life imprisonment.

In addition to introducing life sentences for dangerous drivers, offenders who caused death by careless driving while under the influence of drink or drugs would also face a life sentence. Judges would still retain discretion as to what length of sentence is appropriate, but the measures in the Bill would give them greater scope and enable them to issue more severe sentences than currently possible. A new offence of causing serious injury by careless driving has also been included, carrying a maximum penalty of two years' imprisonment.

Last year, 174 people were sentenced for causing death by dangerous driving, while a further 19 were convicted of causing death by careless driving whilst under the influence of drink or drugs.

Previous reaction to the above proposals has been mixed. IAM RoadSmart's own survey in February last year<sup>[10]</sup> found nearly 80% agreed there should be a new offence of causing serious injury by careless driving. Almost 50% also felt the current penalty of 14 years for causing death by dangerous driving wasn't high enough. However, it warned that the threat of jail alone is unlikely to make people drive in a less dangerous way. Others have questioned whether prevention is better than extreme punishment.

Nina Champion, director of the Criminal Justice Alliance, has previously said there was "no evidence that longer prison sentences deter people from committing crimes or make our communities safer"<sup>[11]</sup>.

It is also curious that the offence of dangerous driving where no injury or death is caused has not been addressed in the Bill and will continue have a maximum penalty of 2 years' imprisonment (the same as the new proposed offence of causing serious injury by careless driving). This is despite repeated judicial criticism to the available penalty being too low "no matter how outrageous the driving, no matter how many people were endangered and no matter how bad the defendant's record for bad driving"<sup>[12]</sup>.

However, Judith Cummins MP welcomed the new bill, saying:

*"I welcome these much tougher sentences for drivers who kill... For too long those families who have had their loved ones killed on our roads by dangerous drivers have been denied justice."*<sup>[13]</sup>

We are closely monitoring progress of the Bill and will report further in due course.

[8] Helen Jones, former MP for St Helens

[9] <https://publications.parliament.uk/pa/bills/cbill/58-01/0268/200268.pdf>

[10] <https://www.iamroadsmart.com/media-and-policy/newsroom/news-details/2017/10/15/high-profile-policing-and-consistent-sentencing-needed-to-back-up-life-jail-sentences-for-drivers-who-kill-says-iam-roadsmart>

[11] <http://criminaljusticealliance.org/cja-comments-on-government-sentencing-proposals/>

[12] R v Hughes [2013] UKSC 56

[13] <https://webcache.googleusercontent.com/search?q=cache:TWB1xPU4iEIJ:https://www.thetelegraphandargus.co.uk/news/19147245.life-sentences-killer-drivers-among-new-police-crime-sentencing-courts-bill/+&cd=1&hl=en&ct=clnk&gl=uk>

## Dying for a drink? Random roadside breath testing considered

*"Tackling drink driving is often cited as a major road safety success story... Fifty years later, however, progress in Great Britain seems to have come to a halt... There is strong evidence of the effectiveness of mandatory random breath testing."*<sup>[14]</sup>

Motorists could face random roadside drink-drive tests under proposed new laws being considered by the Department for Transport<sup>[15]</sup>.

A report by PACTS "Drink-driving: taking stock, moving forward"<sup>[16]</sup> has highlighted that a continuous decline in drink-driving rates since the late 1960s has stalled in the past decade and an average of 240 people a year have been killed in alcohol-fuelled crashes since 2010. Drink driving remains one of the biggest single causes of fatal collisions and is often combined with other high-risk behaviours such as not wearing a seat belt.

Police are currently only allowed to breathalyse a motorist if they suspect the driver has been drinking, has been involved in an accident, or has committed a traffic offence<sup>[17]</sup>. Mandatory testing would give police the powers to stop vehicles without suspicion and conduct breath tests on any driver at any time<sup>[18]</sup>.

The report highlighted that drivers believed they were "less likely to be caught" because of a decline in police enforcement after the number of people subjected to roadside breath tests fell by 63 per cent between 2009 and 2019. This is believed to have been driven in part by a sharp drop in dedicated traffic police officers.

However, the study indicated there was strong support for random breath testing, with an AA poll of members finding that 79 per cent were in favour of the police being able to breathalyse a driver at any time.

According to the report, many in the road safety profession, and more widely, also consider that the single most important measure would be to reduce the legal drink drive limit in England and Wales, as Scotland has done. The current limit of 80mg per 100ml of blood has been unchanged since 1967. While not sufficient on its own, PACTS argues that a lower limit would have a totemic impact and long-term benefit. The limit would be reduced in line with Scotland, with a "zero" limit for professional, young, and novice drivers.

This isn't the first time this proposal has been mooted. Back in 2019, road-safety charity Brake argued that the police should be given new powers to set up vehicle checkpoints and randomly test drivers for the presence of drink and drugs, saying<sup>[19]</sup>:

*"Drink and drug driving are a blight on our roads and drivers need to expect that if they break the law they will be caught and punished."*<sup>[20]</sup>

In Australia, where police can deploy random breath tests, research has shown that it successfully deters drink drivers from taking to the wheel. A University of Queensland study found that for every ten per cent increase in breath tests per driver, there was a 0.15 fall in the rate of drink-related traffic accidents per 100,000 motorists.

PACTS concluded:

*"This strategy should address the underlying causes of drivers' decisions to drink drive, significantly increase drivers' perception of their chance of being caught if they do drink drive and offer support for vulnerable people."*

[14] Parliamentary Advisory Council for Transport Safety (Pacts) report- <https://www.pacts.org.uk/wp-content/uploads/PACTS-Drink-Driving-Taking-stock-moving-forward-Report-2.0.pdf>

[15] <https://webcache.googleusercontent.com/search?q=cache:YIIJKp-0WbkJ:https://www.telegraph.co.uk/news/2021/01/26/departments-transport-considers-random-roadside-breath-tests/+&cd=2&hl=en&ct=clnk&gl=uk>

[16] <https://www.pacts.org.uk/wp-content/uploads/PACTS-Drink-Driving-Taking-stock-moving-forward-Report-2.0.pdf>

[17] <https://www.gov.uk/stopped-by-police-while-driving-your-rights/breath-tests>

[18] Section 6 of the Road Traffic Act 1988 would need to be amended accordingly

[19] <https://www.fleetnews.co.uk/news/fleet-industry-news/2019/12/10/randomly-test-drivers-for-drugs-and-alcohol-says-brake>

[20] Joshua Harris, director of campaigns for Brake

## Key statistics

- Drink driving is one of the biggest causes of road deaths (13%)
- In the last decade 240 people have been killed each year where a driver was over the limit
- Levels of police enforcement have decreased by 63% since 2009
- Nearly one in five (17%) drink drive offences is committed by a reoffender
- The coronavirus pandemic has seen an increase in the number of people with alcohol and mental health issues.

## Drink driving case

A recent case of interest involved a driver who successfully avoided a term of imprisonment by arguing that her drink-driving was a "cry for help"<sup>[21]</sup>.

Victoria Burrell-Corey, a former British Airways air hostess, was found slumped over the wheel of her Vauxhall Corsa with an empty 750ml bottle of vodka in the footwell after the police saw the car parked on a pedestrian island. She was so drunk that she was slurring her words and stumbling around the street. Neil White, for the prosecution, said her reading was 147 micrograms of alcohol per 100ml of breath; the legal limit is 35.

The court heard that the defendant had been previously convicted of drink-driving in 2009 when she was taking her daughter to school. She was fined £1,845 and banned from driving for three years.

The defendant admitted drink-driving and faced jail but was sentenced to a 12-month community order and banned from driving for three years after saying that she had been abusing alcohol to deal with anxiety and depression from a previous abusive relationship.

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[21] <https://webcache.googleusercontent.com/search?q=cache:zZV4jyZ939EJ:https://www.dailymail.co.uk/news/article-9209379/Ex-British-Airways-air-hostess-49-four-times-drink-drive-limit.html+&cd=3&hl=en&ct=clnk&gl=uk>

## Unsafe driving conviction quashed

A car was caught, by a static speed camera, speeding at 84mph on a road which had a 70mph speed limit.

A notice of intended prosecution and a reminder were sent to the registered keeper of the vehicle asking her to identify the driver. The defendant (the partner of the registered keeper) provided names and addresses of two people he said had been driving the car, and submitted their details in turn to the police but both individuals denied driving.

The defendant was charged with doing acts tending and intended to pervert the course of justice. It was the prosecution case at trial that the defendant was the driver of the vehicle, the only person in it at the material time and that he had provided false information. During the defendant's examination-in-chief counsel asked him whether to receive three penalty points on his licence would make any difference to his work, or result in his being disqualified from driving, to which he replied it would not.

Prosecuting counsel contended that the defendant's answer gave a misleading impression<sup>[22]</sup>. The recorder did not remind the jury that the defendant had never sought to conceal the fact he had six penalty points or correct any misleading impression that might have been given by the manner in which the issue had come out.

The defendant was convicted and appealed against conviction on the grounds that:

1. the evidence of his previous penalty points should not have been admitted and the recorder failed to consider properly whether he had given a false impression of his character through this evidence; and
2. the recorder entered the arena in conducting a hostile cross examination of

the defendant which would have created the impression in the minds of the jury that he was not credible and that the recorder did not believe his account.

The defendant appealed and, quashing the conviction, the Court of Appeal held:

- While it might have been desirable before the trial for counsel to discuss the scope of questioning on the issue of penalty points, the recorder had been wrong in law to rule that a materially misleading impression had been created by the questions and answers given in the defendant's examination-in-chief, since defence counsel did not ask the defendant how many points he had on his licence and he did not claim not to have any points.
- That the way in which the fact that the defendant had six points on his driving licence was allowed to come out in cross-examination might have given the jury the impression that he had not been forthcoming in his examination-in-chief, and, though that was something that could have been cured by the summing-up, the recorder made no attempt to do so, emphasising instead that the defendant subsequently told the court that he had six points on his licence.
- That error by the recorder was sufficiently serious as to undermine the safety of the defendant's conviction.
- The defendant was deprived of a fair trial because inappropriate and frequent interventions by the recorder, notably during the defendant's examination-in-chief in relation to issues which went to the core of the defence case, and the absence of such interventions during the prosecution's cross-examination of the defendant, could have led the jury to form the impression that the recorder disbelieved the defendant and sided with the prosecution.

[22] s.101(1)(f) of the Criminal Justice Act 2003

## Mask up! Lorry driver sacked for refusal to wear face mask

A lorry driver has been sacked for refusing to wear a facemask<sup>[23]</sup> in his cab, believed to be the first conviction of its kind in the UK.

Deimantas Kubilius said that the cab to his lorry was his "home" while delivering to the Tate & Lyle site in east London during the first lockdown last May, an employment tribunal was told. Staff at the refinery had asked him to wear a mask while on the site but he refused to wear it while he was in the cab. He did wear the mask when he stepped outside the cab.

He was dismissed by Kent Foods following the incident, on the basis of his "deliberate refusal

to comply with a health and safety instruction was a serious breach". Mr Kubilius subsequently brought a case for unfair dismissal against Kent Foods.

However, the tribunal in east London ruled against his claim<sup>[24]</sup>, saying that Mr Kubilius' "continued insistence that he had done nothing wrong" had caused his employers to "reasonably lose confidence in the claimant's future conduct."

The ruling added: "Taking into account the relevant circumstances, including claimant's lack of remorse and the practical difficulties caused by the T&L site ban, I conclude that the respondent's decision to dismiss fell within the range of reasonable responses. Therefore, the claimant's dismissal was fair."

[23] The Times, 20 February 2021

[24] [https://webcache.googleusercontent.com/search?q=cache:4INCSDop6LsJ:https://www.echo-news.co.uk/news/local\\_news/19106614.lorry-driver-sacked-refusing-wear-mask-fairly-dismissed/+&cd=4&hl=en&ct=clnk&gl=uk](https://webcache.googleusercontent.com/search?q=cache:4INCSDop6LsJ:https://www.echo-news.co.uk/news/local_news/19106614.lorry-driver-sacked-refusing-wear-mask-fairly-dismissed/+&cd=4&hl=en&ct=clnk&gl=uk)

## Scrap that car!

*"[Car use is the] biggest contributor to the UK's carbon emissions, accounting for the majority of roadside air pollution and costing the economy billions annually in traffic congestion".<sup>[25]</sup>*

For the first time, motorists will be paid up to £3,000 to give up their cars under new plans designed to improve air quality in built-up areas<sup>[26]</sup>. The scheme is designed to reduce car dependency in cities, leading to lower levels of congestion and air pollution.

Drivers of the most polluting cars will receive public money to surrender their vehicle in favour of "credits" that can be spent on public transport, bicycles, electric scooters, car clubs and taxis.

A trial programme will be launched in Coventry in the spring, aimed specifically at drivers of the most polluting vehicles - diesel cars built before 2016 and petrol models built before 2006. The scheme will last for two years and be analysed to test the amount of money needed to achieve a long-term change in travel habits.

As part of the scheme, between £1,500 and £3,000 will be given to motorists in return for having their car towed away for the duration of the trial. The money will be uploaded to a

payment card, with spending reserved for public transport, taxis, hire cars and other forms of transport, including bike hire and e-scooters. A similar programme could be extended to the south of England. Hampshire county council is currently considering a "mobility credit scheme" for residents who agree to no longer own a car.

The scheme is being paid for as part of a £22 million "future transport" initiative funded by the government. It is envisaged that taxpayer support will eventually be replaced by long-term funding from private companies, including electric car clubs and bus or train operators.

Figures from the Department for Transport show that vehicles collectively covered 356.5 billion miles on British roads in 2019, an increase of almost 11 per cent in five years and 36 per cent since the mid-90s.

Edmund King, president of the AA, said that the timing of the initiative was "bizarre" when many car companies were committed to going fully electric, adding:

*"The money would probably be better spent on providing electric charging points for those without off-street parking rather than giving mobility credits for services that people will use when they need to or feel safe to."*

[25] Xavier Brice, chief executive of Sustrans, the cycling and walking charity

[26] The Times, 20 February 2021

## Increase in parking taxes to cut emissions

*"This new tax hike has come at the worst possible time for many residents across the borough."*

Drivers may be asked to pay a maximum fee of £690 to park their cars outside their home<sup>[27]</sup>. That is one of the measures of a new emission-based charging system which will be introduced by Merton Council to cut the use of the most polluting vehicles in the area.

Permits for the most polluting cars will cost as much as £540 in Merton's 24-hour parking zones, on top of an existing £150 charge levied on all diesel vehicles and older petrol cars. The local authority said the annual visitor's parking permit will increase to £690, the highest level of residential permit charge plus the additional Ultra Low Emission Zone levy.

It is believed the price will further reduce sales of this permit and therefore the use of vehicle types, which are contributing to air pollution.

In April 2017, Merton decided to implement a diesel levy to encourage drivers to move away from diesel vehicles. The council estimates that diesel vehicle ownership as a share of permits sold has reduced slightly in nearly all permit zones since the introduction of the diesel levy.

Critics fear the surge charges will inspire other local authorities to follow suit. They point out that while wealthy residents with off-road parking may be able to park several vehicles for free, those who live in terraced homes and flats face huge rises in the cost of parking on the street. Indeed, the scheme has already sparked outrage among local residents.

A Merton Conservative said:

*"While many are facing job losses, stretched household budgets and an uncertain financial future due to the Covid19 pandemic, the Labour administration has chosen to put residents under the cosh with a series of new charges that fall on residents at the most financially difficult time many families will have experienced for decades."*

[27]  
<https://webcache.googleusercontent.com/search?q=cache:2BK0t3hRgC4J:https://www.energylivenews.com/2021/02/25/drivers-to-pay-up-to-690-to-park-their-cars-outside-their-home/+&cd=2&hl=en&ct=clnk&gl=uk>

Our experienced Motor Crime Team is here to assist with all motor, fleet and logistics queries. In addition, if you would like to discuss any aspect of this article further please get in touch with a member of our team at [MotorCrimeTeam@clydeco.com](mailto:MotorCrimeTeam@clydeco.com) or call us directly on 0161 240 8514.



**Chris Morrison**

Partner  
Manchester

T: +44 (0) 161 240 2655  
E: [chris.morrison@clydeco.com](mailto:chris.morrison@clydeco.com)



**Kate Hargan**

Head of Motor Crime  
Manchester

T: +44 (0) 161 240 8514  
E: [kate.hargan@clydeco.com](mailto:kate.hargan@clydeco.com)

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