

## Fixed penalties for careless driving: the delusion of deterrence?

S. Easton and C. Piper

### Introduction

In August 2013 new police powers to issue fixed penalty notices for careless or inconsiderate driving came into effect,<sup>1</sup> following the Coalition Government's somewhat belated response<sup>2</sup> to the Consultation Paper issued in June 2012 by the Department for Transport (DfT).<sup>3</sup> Careless driving is now potentially a fixed penalty offence and the penalty levels for many road traffic fixed penalty notice (FPN) offences have risen from £60 to £100.<sup>4</sup> These changes are generally in line<sup>5</sup> with the proposals in Parts A and B, respectively, of the Consultation Paper and, the DfT notes, 'The implementation date will coincide with the completion of the national computer system ... [which] will be used to record and process fixed penalty notice offences, and will enable police forces to deal with these offences more efficiently'.<sup>6</sup>

Under the proposals in the Consultation Paper, FPNs will be used only for the less serious cases of careless driving<sup>7</sup> and the Response also notes that 'the principal aim of the fixed penalty is to improve the efficiency of the current enforcement regime in order to tackle low level offending'.<sup>8</sup> The stated aim of the change is to improve road safety, to reduce death and injuries on the road, to improve the efficiency of enforcement processes and to make

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<sup>1</sup> See <https://www.gov.uk/government/news/new-penalties-for-careless-driving-come-into-force> (accessed 8.10.2013). The changes were originally intended to be implemented in April 2013: see Department for Transport, *A consultation on changes to the treatment of penalties for careless driving and other motoring offences*, DfT-2012-25, (London: DfT, 2012), at.4, <http://assets.dft.gov.uk/consultations/dft-2012-25/consultation-careless-driving.pdf> (accessed 8.10.2013).

<sup>2</sup> Department for Transport, *Government response to consultation on the treatment of careless driving penalties and other motoring fixed penalties* (London: DfT, June 2013).

<sup>3</sup> Department for Transport, *op cit* n 1 at 4, 9-11.

<sup>4</sup> Department for Transport, *op cit* n 2 at 14; see also <https://www.gov.uk/government/speeches/fixed-penalty-levels-for-motoring-offences> (accessed 8.10.2013). FPNs for non-endorsable offences, which do not result in penalty points on a licence, are usually set at £30 (Department for Transport, *op cit* n 1 at para 3.1).

<sup>5</sup> The 'normal' upper limit had been raised from the £90 proposed in the Consultation Paper and also in a statement by Patrick McLoughlin, Secretary of State for Transport, in May 2013: see <http://www.theguardian.com/money/2013/may/09/fines-mobile-phone-driving-increase>

<sup>6</sup> Department for Transport, *op cit* n 2 at para 72.

<sup>7</sup> Department for Transport, *op cit* n 1 at para 2.11.

<sup>8</sup> Department of Transport, *op cit* n 2 at 14. See, also, Ministry of Justice, *Penalty Notices for Disorder (PNDs)* (London, Ministry of Justice, 2013) at 4.

educational training more widely available.<sup>9</sup> FPNs are not currently available for the more serious driving offences of drink driving, dangerous driving or speeding offences over 100 MPH and will not be extended to cover these offences. Rather, the changes are designed to make some forms of careless driving an FPN offence but also to ensure that drivers have a choice to accept the notice - which entails penalty points and a fine - or attend a course, paid for by the offender.<sup>10</sup> The driver can still go to court if he or she wishes to contest the allegation but the assumption is that cases that might have gone to court will be given an FPN, cutting burdens on the courts. However, serious cases will continue to be prosecuted.

Further, the Consultation Paper noted that ‘The Association of Police Chief Officers (ACPO) have indicated that the high resource costs deter the Police from charging motorists with lower level instances of careless driving’<sup>11</sup> and so the expectation is that in issuing a notice the police will not only save time and be more efficient but will be able to ‘penalise’ such motorists who might otherwise have escaped a penalty. One could argue this is important because less serious instances of careless driving may still pose a risk to the public: it is probably sometimes pure chance as to whether careless driving leads to injury or not. The Consultation Paper noted that while it may be difficult to quantify the role of careless driving in road deaths a figure has been given for 2010 of 322 deaths with “careless, reckless or in a hurry recorded as a contributory factor” and this may be an underestimate.<sup>12</sup>

The Consultation Paper argued for a rise to £90 on the ground of price inflation but also because the “penalty levels associated with most motoring offences are lower than those with other violations of a similar, or in some cases arguably lesser, severity” and cited the fact that PNDs are set at £80 for higher tier offences (with a planned increase to £90,<sup>13</sup> now £100<sup>14</sup>). The figure of £90 was also seen as appropriate because the remedial courses are costed at £90 and, if the offender accepts that option, is required to pay for the course. The intention here is

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<sup>9</sup> Department for Transport, *op cit* n 1 at 4; see also Department for Transport, *op cit* n 2 at 14.

<sup>10</sup> Department for Transport, *op cit* n 1 at paras 2.10 and 2.11.

<sup>11</sup> *Ibid* at para. 2.3.

<sup>12</sup> *Ibid* at para 2.7: the source for this data is *Reported Road Casualties in Great Britain: Annual Report DfT 2010* which notes, “On average 2.5 contributory factors per accident were reported in 2010” and provides a detailed breakdown in Table RAS50001 of contributory factors for fatal accidents (at 66-68).

<sup>13</sup> Department for Transport, *op cit* n 1 at para. 3.4.

<sup>14</sup> Department of Transport *op cit* n 2 at 14.

to “ensure consistency with other penalty notices of a similar severity in order to avoid offences being perceived as minor infringements, and in the process, maintain compliance with motoring laws”.<sup>15</sup>

### **Deterring careless drivers**

Whilst the Consultation Paper and recent pronouncements have put forward several reasons for advocating these changes, there is an assumption underpinning them that more drivers will be deterred, either by the increase in the level of the fines or by greater enforcement. Indeed the Consultation Paper specifically supported the deterrent effect by noting that when a fixed penalty for driving while using a mobile phone was introduced in 2003, the proportion of drivers observed using hand-held phones reduced.<sup>16</sup> Further, when it became an endorsable offence and the penalty doubled from £30 to £60 in 2007 there was an immediate drop in the number of drivers observed using mobile phones<sup>17</sup> and the Government also sees this as an example of the impact of an FPN in reducing offending.

Responses to the Consultation endorsed the deterrent effect of the proposed increased penalty. For example, RoSPA (the Royal Society for the Prevention of Accidents) included the following in their response:

“RoSPA agrees that minor careless driving should be made a fixed penalty offence in order to increase the level of enforcement for this offence, and thereby discourage such driving.”

“RoSPA agrees that the financial penalty for endorsable fixed penalties should be increased from £60 to £90. This would increase the deterrent effect of the fixed penalty notices ...”.<sup>18</sup>

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<sup>15</sup> Department for Transport, *op cit* n 2 at para. 3.7.

<sup>16</sup> Walter, L. *Seatbelt and mobile phone usage surveys: England and Scotland 2009*, (London: TRL, 2010).

<sup>17</sup> Department for Transport, *op cit* n 1 at para 2.11; note, however, that Home Office statistics show a generally rising trend of FPNs for this offence: Table FPN.02 ‘Fixed penalty notices issued by offence type, 2001 to 2010’ @ <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/police-research/immigration-tabs-q4-2011/fixd-penalty-notice-1011-tabs>

<sup>18</sup> RoSPA, *Response*, 4 September 2012, at 3 and 6 respectively.

The Road Danger Reduction Forum also focused on deterrence but said that the expected low usage of the new FPN – “approximately only once a day by each police force” – means that it “poses no deterrence value at all”. Instead they suggested that “the scope of the FPN should be such as to allow for some 300 times more ticketing than is envisaged to have a deterrent effect on careless driving behaviour”.<sup>19</sup> The BVRLA (British Vehicle Rental and Leasing Association) response gave the same message: “We believe that the financial level of the penalty is not high enough as a sufficient deterrent”.<sup>20</sup> Respondents to the Consultation were particularly concerned that the 50% increase to £300 for a driving without insurance fixed penalty was not high enough to deter given the cost of insurance<sup>21</sup> and some responses argued that penalty points would be more of a deterrent than the financial penalty and thought the number should be increased.<sup>22</sup>

Deterrence has long been a significant feature of government penal policy. It underlies, for example the comment of the Under Secretary of State for Transport when referring to the proposed changes to the penalties for careless driving and speeding: “Through these measures, we want to send a clear message to dangerous drivers: If you continue to show complete disregard for the safety of other road users, we will catch you – and we will punish you”.<sup>23</sup> Indeed, until very recently the crime-reduction focus has been almost solely on the deterrent effect of penalties, including the deterrent effect of FPNs. For example a Home Office survey on attitudes to fixed penalties in the mid-1980s considered “whether a fixed penalty system could be devised which would represent an adequate deterrent whilst at the same time discouraging the option to go to court”.<sup>24</sup> However, the researchers realised that a

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<sup>19</sup> Response letter (undated) sent by Dr Robert David, Chair, RDRF: Point 3 @ <http://rdrf.org.uk/2012/09/04/rdrf-response-to-dft-consultation-on-fixed-penalty-notices-for-careless-driving/> (accessed 17/05/2013).

<sup>20</sup> September 2012, Specific Comment 2: accessible via [http://www.bvrla.co.uk/Lobbying\\_and\\_Campaigns/Consultation\\_Responses.aspx](http://www.bvrla.co.uk/Lobbying_and_Campaigns/Consultation_Responses.aspx) (accessed 17/05/2013). See also the summary of responses in Department for Transport, *op cit* n 2 at paras 21 and 40.

<sup>21</sup> Department for Transport, *op cit* n 2 at paras 56-57.

<sup>22</sup> *Ibid* at para 21.

<sup>23</sup> Stephen Hammond, MP, *Delivering road safety: what does the future hold?*, Speech by the Parliamentary Under Secretary of State for Transport, Westminster Briefing, 16<sup>th</sup> May 2013: <https://www.gov.uk/government/speeches/delivering-road-safety-what-does-the-future-hold>

<sup>24</sup> Orton, S. and Vennard, J. “Minor offences and the fixed penalty system: a survey in England and Wales” in N. Walker and M. Hough (eds) *Public Attitudes to Sentencing*, (Aldershot: Gower, 1988) at 161.

fixed penalty fine set at a high enough level to deter “runs the risk of encouraging those on low incomes to choose a court appearance” and the research did provide some evidence of this.<sup>25</sup>

As well as this problem of other desired outcomes affecting deterrence there is also the problem of proving any deterrent effect. The 2012 Consultation Paper’s use of the decrease in mobile phone usage noted above to prove deterrence is an example of a misleading statement because a correlation does not amount to a causal link. Cunningham has further argued that the two offences are not comparable. Talking while on a mobile phone is a violation and, therefore, deterrable while careless driving covers a wide range of behaviours, some of which are errors and, she says, “(D)river’s do not choose to commit errors, and so cannot be deterred by the threat of a £90 fine from committing them. Most of the time they won’t know they are driving carelessly”.<sup>26</sup> Deterrence is not, therefore, an unproblematic outcome and the proposal to raise the amount of an FPN and to provide the option of dealing with careless driving by the issue of FPNs raises questions regarding the effectiveness of this penalty in terms of the utilitarian objective of deterrence and also, we will argue, of rehabilitation.

### **Understanding deterrence**

Deterrence is a well-established justification of punishment, associated with the work of Beccaria<sup>27</sup> and Bentham<sup>28</sup> in the late eighteenth century and based on the idea that individuals seek pleasure and avoid pain and therefore this fear of punishment can be used to control or reduce criminal behaviour. Deterrence may be individual - special - or general. Most discussions of deterrence have focused on the deterrent effect of penalties on the individual offender but general deterrence, the effect on the wider public, is also important if only in considering the cost-effectiveness of measures. Deterrence may also be primary or marginal. Primary deterrence is the deterrent effect resulting from punishment where a behaviour was

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<sup>25</sup> *Ibid* at 161 and 175.

<sup>26</sup> Cunningham, S. (2012) *Consultation on changes to the treatment of penalties for careless driving and other motoring offences: Response* at 2.

<sup>27</sup> Beccaria, C. (1767) *On Crimes and Punishments and Other Writings*, ed. R. Bellamy (Cambridge: Cambridge University Press, 1995).

<sup>28</sup> Bentham, J. (1789) *Introduction to the Principles of Morals and Legislation*, ed J. L. Burns and H. L. A. Hart (Oxford: Clarendon, 1996).

previously unpunished. Marginal deterrence refers to changes in behaviour resulting from variations in the level of punishment, for actions already subject to sanctions, rather than dealing with the effect of punishment for previously unpunished actions.

Public and political discussions often assume that it is the level or severity of punishment which is crucial but this may not be the main issue: we need to consider other dimensions of deterrence as well, including perceptual deterrence, that is, the awareness of the likelihood of being punished, or of the nature, type or extent of punishment. The available research suggests that offenders underestimate the chance of conviction and are surprised they have been caught or punished. A low estimate of risk may, of course, mean a higher probability of offending. It is also clearly very difficult for a particular punishment or level of punishment to deter if the public are unaware of its existence and we certainly cannot assume a universal understanding of sentencing guidelines and the potential severity of punishments. We also cannot assume that people have uniform perceptions across the process of detection, prosecution and punishment as to what is likely to happen: a study on deterrence and gun crime in Alaska showed that “people assign different probabilities to each stage of the criminal justice process”.<sup>29</sup> Linked to this, then, is certainty – how likely is it that the person considering offending will be detected and punished?

Research has also focused on the celerity of punishment – how quickly the punishment will be delivered, on the mode or type of punishment, and also on the type of offender. Factors affecting the propensity to offend may include age, gender, past criminal history, and the type of offence, for example whether it is an acquisitive offence or sexual or violent offence. Empirical research has been undertaken on each of these areas and on a wide range of offences, including a substantial amount of research on the death penalty and homicide as well as on lesser offences, including regulatory offences. However, the research on the unique deterrent effect of the death penalty is inconclusive and not very helpful for lesser crimes.<sup>30</sup> Research<sup>31</sup> suggests that not all individuals are deterrable and the level or severity

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<sup>29</sup> Myrstol, B. A. “Anchorage Perceptions: Sanctions and Gun Crime Deterrence” *Alaska Justice Forum*, (2004) Vol 21(2) 6-11.

<sup>30</sup> Donohue, J. J. and Wolfers, J. “Uses and Abuses of Empirical Evidence in the Death Penalty Debate”, *Stanford Law Review* (2006) 58, 791-846.

of punishment may not be crucial. By definition offenders are less deterrable than others as they have already offended despite the threat of punishment.

### *Severity*

The assumption made by sections of the public, the media, governments and sentencers that people *are* deterred by punishment and that *more* punishment will deter more effectively is particularly problematic. Research on severity and crime rates suggest that severity is less important than certainty. This *may* be due to there being less public awareness of the severity of punishments but research suggests this is not the answer. Research on traffic penalties in the Netherlands concluded that “Making penalties higher, as an isolated measure, was found to have little extra effect”.<sup>32</sup> An Australian study by Weatherburn and Moffat of 12,000 drink-driving cases considered the effects of high fines on drink driving offenders but found no specific increased deterrent effect resulting from giving higher rather than lower fines for such offences.<sup>33</sup> The authors found that offenders appeared to have a low perceived risk of apprehension. They suggested this might depend on the number of times the driver has been stopped by police after drinking but also how many times the offender has previously been undetected. The offender – even if convicted - could succumb to the “gambler’s fallacy” of assuming that, statistically, being caught was unlikely to happen again.

Nonetheless many states in the US have increased the penalties for repeat drunk drivers to deter recidivism and the National Transportation Safety Board, a federal agency, wants to reduce the threshold for alcohol levels further. A study by Hansen,<sup>34</sup> of 512,964 driving under the influence cases between 1995 and 2011 in the state of Washington, found some supporting evidence to indicate that increased severity of punishment for repeat offenders did reduce recidivism in the short and long term. His research also supported the claim that “criminals update their beliefs about expected punishment for future crimes based on the last

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<sup>31</sup> See, for example, Kennedy, D. M. *Deterrence and Crime Prevention: Reconsidering the Prospect of Sanction*, (London: Routledge, 2009). See also Farrall, S. and Calverley, A. *Understanding Desistance from Crime, Crime and Justice Series* (London: Open University Press, 2006).

<sup>32</sup> SWOV Institute for Road Safety Research *SWOV Fact Sheet: Penalties in Traffic* (Leidschendam: the Netherlands, 2011) at. 1 and 5.

<sup>33</sup> Weatherburn, D. and Moffatt, S. “The Specific Deterrent Effect of Higher Fines on Drink-Driving Offenders” (2011) 5(5) *Br J Criminol* , 789-803.

<sup>34</sup> Hansen, B. “Punishment and Recidivism in Drunk Driving: Preliminary Draft”, April 13, 2012, University of Oregon, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2110483](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2110483) (accessed 9/10/2013).

punishment they received”.<sup>35</sup> At a broader level, however, there is evidence that in the United States the crime rate has fallen in states with harsh sentences *and* without harsh sentences.

### *Certainty and perceptual deterrence*

A review of research on deterrence from the late 1970s to the late 1990s by von Hirsch<sup>36</sup> and also more recent studies suggest that deterrence does work insofar as increasing the *certainty* of punishment is more significant in increasing the deterrent effect of punishment and, consequently, perceptual deterrence is crucial. Intervention and subsequent sanctions need to be certain to be effective. Two studies of the policing of domestic violence - Sherman’s<sup>37</sup> 1983 study in Minneapolis and Hanmer’s<sup>38</sup> 1999 study in Killingbeck, West Yorkshire - did find that police intervention reduced reoffending. Conversely, police strikes and reduced policing levels have been associated with increases in crime. The introduction of the breathalyser in the UK correlated with a decline in road accidents.<sup>39</sup> If people know they are being observed this may affect behaviour, for example, if parking illegally. Drivers drive more carefully if they notice a police car behind them. Research by Gill and Loveday<sup>40</sup> involving interviews with prisoners regarding the use of CCTV also suggests that those who have been caught by cameras see them as more of a threat. In a promising study in North Carolina reported by Kennedy<sup>41</sup> in 2009 drug dealers were told there was sufficient information on them for an arrest warrant and advised of the consequences of arrest. The result was a collapse in the drugs market in the area. This illustrates why perceptual deterrence is so important. Yet we already know from the British Crime Survey<sup>42</sup> that the

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<sup>35</sup> *Ibid* at 21.

<sup>36</sup> von Hirsch, A. *Criminal Deterrence and Sentence Severity* (Oxford: Hart, 1999).

<sup>37</sup> Sherman, L. W. and Berk, R. A. “The Specific Deterrent Effects of Arrest for Domestic Assault: Preliminary Findings”, Unpublished Paper (Washington: Police Foundation, 1983).

<sup>38</sup> Hanmer, J., Griffiths, S. and Jerwood, D. “Arresting Evidence, Domestic Violence and Repeat Victimisation”, *Police Research Series, Paper 104* (London: Home Office Policing and Reduce Crime Unit, Research and Statistics Directorate, 1999).

<sup>39</sup> Ross, H. L. “Deterrence Regained: The Cheshire Constabulary’s Breathalyzer Blitz”, *Journal of Legal Studies* (1973) Vol 2, 1–78.

<sup>40</sup> Gill, M. and Loveday, K. “What Do Offenders Think About CCTV?”, in M. Gill (ed.): *CCTV*, (Leicester: Perpetuity Press, 2003).

<sup>41</sup> Kennedy *op cit* n 31.

<sup>42</sup> See Chaplin, R., Flatley, J. and Smith, K. *Crime in England and Wales 2010/11 Findings from the British Crime Survey and police recorded crime*, Home Office Statistical Bulletin 10/11 (London: Home Office, 2011).



public often underestimates current sentencing levels and if they are also unaware of the chances of being caught the deterrent effect of changes will be negated. A Scottish report on *The Deterrent Effect of Enforcement in Road Safety* referred to the perception that “moderate speeding is tolerated by enforcement agencies, and that speeding in general has an associated low risk, either of getting caught or being involved in an accident”.<sup>43</sup>

Awareness of the probability of conviction may be enhanced by a strong police presence or media campaign and conversely cuts in police budgets may affect the visibility of the police and the impact of on the spot fines. A key element of any crime reduction strategy then is for public awareness of the certainty of a punishment to be conveyed; for example, that there will be zero tolerance of certain behaviours and rigorous imposition of appropriate penalties. If individuals know they cannot get caught, they may be more likely to engage in criminal behaviour.

However, a drug-driving study undertaken in Australia found a large proportion of their sample of nearly 900 people (with an average age of 30 and who most commonly consumed cannabis) were not influenced by any of the aspects of deterrence.<sup>44</sup>

“Analysis of the collected data revealed that approximately 20% of participants reported drug driving at least once in the last six months. Overall, there was considerable variability in respondent’s perceptions regarding the certainty, severity and swiftness of legal sanctions, although the largest proportion of the sample did not consider such sanctions to be certain, severe, or swift”.<sup>45</sup>

The authors report that, “a combination of perceptual and behavioural based factors” were associated with an intention to drug-drive again but “a closer examination revealed that behaviours, rather than perceptions, proved to have a greater level of influence on the current

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<sup>43</sup> The Scottish Office, *The Deterrent Effect of Enforcement in Road Safety: Research Findings*, (London: TSO, 1997).

<sup>44</sup> Freeman, J. E., Watling, C. N., Davey J. D. and Palk, G. R.. “Perceptual deterrence versus current behaviours: a study into factors influencing drug driving in Queensland”, (2010) 19(3) *Road and Transport Research*, 3-13.

<sup>45</sup> *Ibid*, Abstract.

sample's future intentions to offend."<sup>46</sup> "Behaviour" here refers to patterns of drug driving in the recent past as well as the frequency of actual drug consumption. As they note: "To some extent, habitual or regular behaviours may counteract (or negate) the deterrent impact of proposed countermeasures, as committing an offence and avoiding apprehension is likely to be a strong reinforcer to engage in further offending behaviour among some groups".<sup>47</sup>

### *Individual profiles*

Awareness of the subjective probability of conviction, however, may depend on an individual's circumstances and status, including his prior experience of the criminal justice system and access to legal advice. There are also variations in reoffending according to the type of offence committed, so reoffending rates for burglary and theft, for example, are higher than for many other offences. There may be differences between offenders in impulsivity, or circumstances, if they have nothing to lose; also between older and younger offenders. In many, but not all, studies young offenders have higher reoffending rates and men higher than women, although this may vary with the type of offence and other factors. Generally younger persistent offenders are least likely to refrain from re-offending because of the risk of being caught and one study found that reconviction rates were higher for prisoners who had experienced violence as a child in the home, or were excluded from school, or were poly drug users.<sup>48</sup> There are indications that older drivers and women are more aware of road safety and one study found that women were more likely than men to view speed cameras more favourably in contributing to the reduction of accidents.<sup>49</sup>

Factors which constrain offenders vary considerably. The Australian drug driving research, for example, found that approximately half of the sample reported that they would be concerned about their friends' views of their drug driving behaviour<sup>50</sup> and the Scottish report on road safety enforcement concluded that the research shows that "the influences on drivers'

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<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid* at 15. The Crime and Courts Act 2013 section 56 ) introduces a new offence of drug driving for England and Wales to be inserted into the Road Traffic Act 1988 (new s5A): not in force at 11.10.2013.

<sup>48</sup> See the *Surveying Prisoner Crime Reduction* survey reported in Ministry of Justice, *Compendium of Reoffending Statistics and Analysis*, *Ministry of Justice Statistics Bulletin* (London: Ministry of Justice, 2010).

<sup>49</sup> Corbett, C. and Caramlau, I. "Gender Differences in Responses to Speed Cameras: Typology Findings and Implications for Road Safety" (2006) *Criminology and Criminal Justice*, 4, 411–33.

<sup>50</sup> Freeman *et al supra* n 44, at 313.

compliance with traffic law are many and complex”<sup>51</sup> but that some drivers over-estimate their ability to anticipate and control dangerous situations. However, it found deterrence to be more effective in relation to drink-driving:

“The motivation for avoiding drunk driving varied, with previous offenders wishing to avoid the physical and social isolation associated with losing their licence, while non-offenders are more strongly motivated by the messages of risk - both of prosecution and accidents - promoted by mass, media campaigns.”<sup>52</sup>

### *Variations in the Mode of Punishment*

Research has also been conducted on the differences in deterrent effect between different types of punishment, principally custodial and noncustodial penalties. Kershaw<sup>53</sup> found that 58% of sentenced prisoners discharged from custody in 1995 were reconvicted of a standard list offence, that includes indictable plus some more serious summary offences, within 2 years. This compared with a figure of 56% for those offenders who had commenced community penalties (then Community Service, Probation and Combination Orders). A more recent longitudinal study, *Surveying Prisoner Crime Reduction*,<sup>54</sup> found that that probation supervision was more effective than a short custodial sentence (less than 1 year in reducing one-year reoffending rates. If the deterrence gap between custody and noncustodial penalties is not great a cost-benefit analysis would suggest that keeping individuals in the community and in employment may be more efficient. So in recent years the focus has been on strengthening community sentences by drug or alcohol treatment requirements. Research has also been conducted on lesser punishments in relation to road safety. Although the situation is not clear we do know that clamping deters illegal parking more than fines and drivers are more fearful of disqualification than fines.

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<sup>51</sup> The Scottish Office, *The Deterrent Effect of Enforcement in Road Safety: Research Findings*, (London: TSO, 1997): <http://www.scotland.gov.uk/Publications/1999/01/b0d42f57-77a7-4296-af24-d47af13cc953> (last accessed 21/10/2013).

<sup>52</sup> *Ibid.*

<sup>53</sup> Kershaw, C., Goodman, J. and White, S. *Reconvictions of Offenders Sentenced or Discharged from Prison in 1995 in England and Wales*, Home Office Statistical Bulletin 19/99 (London: Home Office, 1999).

<sup>54</sup> Ministry of Justice *Compendium of Reoffending Statistics and Analysis*, *Ministry of Justice Statistics Bulletin* (London: Ministry of Justice, 2010).

### *Celerity*

Celerity - or swiftness of punishment after being caught offending – may be an important element in deterrence and yet has received little attention except in relation to the death penalty. This is despite the fact that, at the other end of the punishment spectrum, FPNs have been introduced in part to provide a swift response to transgressions. However, a 1994 study did look at celerity and severity in relation to drunk-driving in New York and found that when license withdrawal was mandatory an increase in fines significantly reduced re-offending but there was only “some effect” after a swift imposition of fines.<sup>55</sup> In the North Carolina study of threatened arrests and prosecutions of drug dealers discussed by Kennedy above,<sup>56</sup> the dealers were told they would be arrested and punished on a specific date in the very near future and that did appear to have an effect.

Celerity is now a significant feature of current UK government policy. The 2012 White Paper, *Swift and Sure Justice: the Government’s Plans for Reform of the Criminal Justice System*, noted that “When crimes occur, the response must be swift if it is to be an effective deterrent”.<sup>57</sup> It is also one reason, apart from cost, that FPNs are popular with governments. As various websites on Penalty Notices for Disorder (PND) note: “Issuing a penalty notice takes an officer approximately 30 minutes compared with 2½ hours to prepare an evidential case file”.<sup>58</sup>

### **So will FPNs deter careless drivers?**

Given the complexity of factors involved, making assumptions regarding deterrence is problematic: it may be difficult to identify the causal effect of a specific punishment on any changes in behaviour or the results of experiments. For example, official statistics may show a decline in re-offending following a change in punishment, but this fall may be influenced

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<sup>55</sup> Yu, J. “Punishment celerity and severity: testing a specific deterrence model on drunk driving recidivism” (1994) *Journal of Criminal Justice*, 22:4, 355-66.

<sup>56</sup> Kennedy *op cit* n 31.

<sup>57</sup> Ministry of Justice *Swift and Sure Justice: the Government’s Plans for Reform of the Criminal Justice System* Cm 8388 (London: Ministry of Justice, 2012) at para. 77.

<sup>58</sup> Was at <http://www.homeoffice.gov.uk/police/penalty-notices/> in 2012. Now see, for example, <http://205.139.89.196/police/penalty-notices/> and <http://www.merseyside.police.uk/protecting-you/tickets-fixed-penalty-notices/fixed-penalty-notices-for-disorder.aspx> (accessed 21/10/2013).

by other intervening variables rather than the adjustment to the punishment.<sup>59</sup> Punishment is only one factor to consider in relation to offending and re-offending. There may be local variations in law enforcement which skew the figures and whilst change in sentencing law or policy may be relevant offenders may not be aware of them. Individuals might be initially deterred by a change in the severity of punishment but over time this deterrent effect may 'decay' especially if they are not caught and may decide they have overestimated the chance of being caught. Offenders may become more secretive in response to more active policing. Weatherburn and Moffat draw attention to this problem of unknown or uncontrolled for variables in relation to drink-driving offences.<sup>60</sup>

There are also methodological problems in setting up experiments and isolating the causal effect of punishment. For example, high rates of reoffending do not necessarily invalidate the deterrent effect of punishment, because the level of crime may be lower than it would have been without the punishment. Moreover, we cannot assume that the rational calculation of costs of offending is universal. Deterrence research suggests it may work on some people, even if it deters fewer offenders, and fewer potential offenders, than the public might have expected. Some may not be swayed by threats of sanctions regardless of certainty, severity or celerity, while others may habitually comply irrespective of sanctions. But there may be some who are affected by changes in punishment. It is therefore questionable whether an increase in the amount of FPNs will deter enough offenders to justify a policy partly based on deterrence. There are, then, problems with drawing conclusions from the available research on the effectiveness or non-effectiveness of punishments. For example, offenders might have reoffended but not got caught and official statistics may not give us the whole picture. If re-offending declines, we cannot necessarily infer that it was the penalty, rather than other factors, which affected the decision not to reoffend. Also the research tells us about behaviour during the time frame of the study, whether law abiding or criminal, but we need to know whether that behaviour continues or changes. Desistance may be uneven, offenders may commit offences less frequently or they may commit less serious offences rather than stop offending altogether. More research is needed on the effect of specific changes to punishment, including speed, severity and certainty before any assumptions can be made.

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<sup>59</sup> For further discussion of these issues see Easton, S. and Piper, C. *Sentencing and Punishment, The Quest for Justice*, 3<sup>rd</sup> edition, (Oxford: Oxford University Press, 2012) at 104-30.

<sup>60</sup> Weatherburn and Moffat *supra* n 33 at 790.

## Rehabilitating careless drivers

Perhaps there is more mileage – from a utilitarian point of view – in another of the Department for Transport’s justifications for increasing the level of the fine: to help cover the cost of (new) remedial driving courses to improve driver behaviour.<sup>61</sup> The Consultation Paper itself raised the question, however, as to whether we have at present sufficient evidence on which to assess the value of rehabilitative approaches in relation to driving offences: “There is currently no specific quantitative evidence regarding the effectiveness of remedial training on reducing re-offending”.<sup>62</sup>

Since then the Department for Transport has publicised the fact that in March 2013 it launched a new road safety research website called the Observatory which “gives road safety professionals access to extensive research” because “Better information is a key weapon in the fight to make our roads safer.”<sup>63</sup> “Key facts” are gradually being added under the links, although the “Perceptions of Road Safety” icon has disappeared.<sup>64</sup>

There is research into the effects of drug treatment programmes for offenders generally but the results provide no clear conclusions on effectiveness.<sup>65</sup> The Parliamentary Advisory Council for Transport Safety (PACTS), in commenting on the Government’s *Strategic*

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<sup>61</sup> Department for Transport, *op cit* n 1 at para. 2.15.

<sup>62</sup> *Ibid* at 10.

<sup>63</sup> Stephen Hammond, MP, *Delivering road safety: what does the future hold?*, Speech by the Parliamentary Under Secretary of State for Transport, Westminster Briefing, 16<sup>th</sup> May 2013: <https://www.gov.uk/government/speeches/delivering-road-safety-what-does-the-future-hold>

<sup>64</sup> See <http://www.roadsafetyobservatory.com/> (accessed 17/05/013 and then 21/10/2013). At the later date there were still no key facts for “training” and a search for “deterrence” brought up only two references to research.

<sup>65</sup> See for example, Howard League, *Response to Breaking the Cycle, Effective punishment, rehabilitation and sentencing of offenders*, (London: Howard League, 2011) referring to research by Matrix: Matrix Knowledge Group, *The economic case for and against prison*, (London: The Howard League for Penal Reform, 2007); Malloch, M. *Interventions for Drug Users in the Criminal Justice System: Scottish Review* SCCJR Research Report No.05/2011 (Stirling: SCCJR, 2011), at 32 and 36, [http://www.sccjr.ac.uk/wp-content/uploads/2012/11/SCCJR\\_REVIEW\\_OF\\_EFFECTIVENESS.pdf](http://www.sccjr.ac.uk/wp-content/uploads/2012/11/SCCJR_REVIEW_OF_EFFECTIVENESS.pdf) (last accessed 21/10/2013).

*Framework for Road Safety*,<sup>66</sup> recently noted that driver improvement and speed awareness courses “are entirely laudable” but that “a great deal of emphasis is placed upon them in the framework with only limited research evidence of their effectiveness”.<sup>67</sup> Indeed, rehabilitation research rarely focuses on traffic offenders.<sup>68</sup> For example, a recent review of research relating to different rehabilitation approaches<sup>69</sup> does not mention traffic offenders except in one footnote<sup>70</sup> although some of their conclusions are relevant:

“First of all, researchers have learned ... that more attention needs to be paid to the offender’s motivation and to the impact of his or her social context on the outcomes of the intervention ... Secondly, it is now well understood that there is more to effective programmes than designing them well; they need to be run well”.<sup>71</sup>

It is also now clear that simplistic assumptions have been made about the influence of driver training and that success will depend on developing more individualised training responses using a wide range of techniques.<sup>72</sup> However, recent research is promising in suggesting that the attitudes of those who attend remedial driver courses do change.<sup>73</sup> Drink driving courses have also been on offer for some time<sup>74</sup> and research in 2007 concluded they were effective in reducing reconvictions.<sup>75</sup> Furthermore, rehabilitation is also currently encouraged as part

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<sup>66</sup> Department for Transport *Strategic Framework for Road Safety* (London: DfT, 2011): <http://assets.dft.gov.uk/publications/strategic-framework-for-road-safety/strategicframework.pdf> (accessed 11.10.2013).

<sup>67</sup> PACTS, *The Strategic Framework for Road Safety – PACTS’ Comments* (London: PACTS, 2011).

<sup>68</sup> Several reports we reviewed specifically noted that they had not included offenders with traffic violations in their research.

<sup>69</sup> McNeill, F. and Weaver, B. *Desistance Research and Offender Management, Report 03/2010*, (Glasgow: Scottish Centre for Crime and Justice Research, 2010).

<sup>70</sup> *Ibid* at 5, fn3.

<sup>71</sup> *Ibid* at 22.

<sup>72</sup> See, for example, Fylan, F. “Making Education Work”, Paper presented at the PACTS/Brunel Law School conference, 17 April 2012.

<sup>73</sup> Fylan, F. and Stradling, S. *Comparison of Driver Alertness and the National Driver Improvement Scheme* (Brainbox Research, 2010).

<sup>74</sup> See Johnson, C. and Hardman, J. *Professional Skills for Delivering the Drink-Drive Rehabilitation (DDR) Scheme: Analysis of DDR Training Provider Organisations’ Interview Findings*, Road Safety Web Publication No. 13 (Department for Transport: London, 2010). [Interviews with providers – re KPIs]; Presentation by Sir Peter North in Dublin in April 2012: [http://www.rsa.ie/Documents/Seminars/Recidivist%20Behaviour/Presentations/Sir\\_Peter\\_North\\_Presentation.pdf](http://www.rsa.ie/Documents/Seminars/Recidivist%20Behaviour/Presentations/Sir_Peter_North_Presentation.pdf) (last accessed 21/10/2013).

<sup>75</sup> Inwood, C. Buckle, G., Keigan, M. and Borrill, R. *Extended monitoring of drink-drive rehabilitation courses: Final Report*, TRL Report No 662 (London: TRL, 2007).

of community sentences - rather than imprisonment - for the more serious traffic offences especially where drug or alcohol use is a factor.

It would appear that there is more likely to be effectiveness stemming from rehabilitation than deterrence and so we would, on balance, endorse the changes. However, the focus on utilitarian outcomes of the changes in penal policy in regard to traffic offenders hides the other issues raised by the changes and, indeed, by the respondents to the 2012 Consultation Paper. The concerns are about the potentially deleterious effects on ideas of ‘wrongfulness’ and proportionality – concepts embedded in a retributivist approach - and about the increased use of unaccountable discretion.

### **Wrongfulness**

For “normal” fines within a retributivist system of punishment, the level of severity is assessed and a proportionate penalty determined, which is then adjusted to achieve greater equality of impact.<sup>76</sup> Fines imposed in magistrates’ courts were set at five levels by s 37 of the Criminal Justice Act 1982 and the Legal Aid, Sentencing and Punishment of Offenders Act 2012<sup>77</sup> will remove the £5,000 maximum.<sup>78</sup>

Because FPNs are fixed at a particular level which applies to all offenders, those subject to fixed penalties may, therefore, be treated too leniently in comparison with other criminals dealt with through the courts. If so, this means that the symbolic message about the level of ‘wrongfulness’ or seriousness of the offending may be such that driving offences are not accorded sufficient ‘respect’. This point was made by Brake, the road safety charity, in its response to the Transport Select Committee inquiry into the work of the Vehicle and Operator Services Agency (VOSA) which also has the power to issue FPNs, usually in relation to offences committed by commercial drivers:<sup>79</sup>

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<sup>76</sup> See the introduction to the “The Approach to the Assessment of Fines” section of the 2008 Magistrates Court Guidelines and the Bands A-C + D and E: Sentencing Guidelines Council *Magistrates’ Court Sentencing Guidelines, Definitive Guideline* (London: SGC, 2008).

<sup>77</sup> Section 87: not in force.

<sup>78</sup> See s 85(10)-(17) for further details. In Scotland the maximum has been £1000 since 2007.

<sup>79</sup> By s 54 of the Road Traffic Offenders Act 1988.



“Brake believes that the current level of fine of £30-200 is woefully inadequate in encouraging respect for these vital safety laws, especially given that you can face fines of £1,000 for offences that pose no immediate threat to human life, such as littering”.<sup>80</sup>

Consequently in relation to these offences Brake has called for an increase in the highest level of fixed penalty fines for traffic offences “to £500 at the very least, but ideally around £1,000, to reflect the seriousness of the crime”.<sup>81</sup>

The BVRLA response gave the same message in relation to the careless driving proposal:

“We believe that the financial level of the penalty ... does not reflect the serious nature of careless driving[;] the proposal makes the offence look no more serious than a parking violation”.

“We believe that given the road safety implications associated with many of the motoring fixed penalty offences the fine could be more than £90. For example, the fine for parking illegally in London is normally in the region of £130 albeit discounted for prompt payment. Given that many of the motoring fixed penalty offences are effectively putting the driver, any passengers and other road users at risk it seems incorrect that the fine is less than for parking illegally.

We would suggest the department look at a fine that recognises the seriousness of the offence and sets the fine at no less than £200”.<sup>82</sup>

The Road Danger Reduction Forum expressed similar concerns in its response to the 2012 Consultation Paper: “The proposed fines should be considered to be the minimum, but those motoring offences which pose risk to life and limb should not be less than those for misusing

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<sup>80</sup> See written evidence by Brake to the House of Commons Transport Committee at <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmtran/583/583vw06.htm> (accessed 11.10.2013).

<sup>81</sup> See <http://www.brake.org.uk/latest-news/200912.htm>; also noted in Department for Transport *op cit* n 2 at para 47.

<sup>82</sup> Sept 2012 at 2-3: [http://www.bvrla.co.uk/Lobbying\\_and\\_Campaigns/Consultation\\_Responses.aspx](http://www.bvrla.co.uk/Lobbying_and_Campaigns/Consultation_Responses.aspx) (accessed 17/05/2013).

space, e.g. bus lane and parking offences (£130)". It also stated that "**Motoring fines for MOJ<sup>83</sup> should require road crime to be treated as real crime**" (emphasis in original).<sup>84</sup> Consequently, the government response to the Consultation accepted that there were "a number of organisations which felt the penalty should be higher to reflect the seriousness of the offence".<sup>85</sup>

These comments about a wide range of often very different types of offending covered by FPNs and PNDs support a longer-standing realisation that parking offences, other motoring offences, such as speeding, as well as the whole range of regulatory offences, often do not attract the same level of opprobrium as actions perceived as "real" criminality.<sup>86</sup> Furthermore, where citizens do not regard their "infraction" as criminal, they do not perceive the outcome as a punishment but rationalise it instead as a tax—a morally neutral nuisance which is the occasional result of choosing not to obey what are deemed simply as (civil) regulations. And – perceived as a tax – avoidance is the aim so we now find firms of solicitors specialising in 'saving' the motorist and biker<sup>87</sup> from a conviction or loss of licence. This is compounded by the fact that fines themselves have long had an ambivalent position in the mind of the public who often do not perceive fines to be a 'real' punishment.<sup>88</sup> Research on the practice of magistrates also noted that fines now often "seemed like the imposition of "debt" rather than punishment".<sup>89</sup>

But if fines are seen as a tax then this has implications for the potential consequences of imposing fines for more serious road traffic offences. As PACTS has warned, "FPNs for careless driving should not become viewed in the same light as for speeding offences".<sup>90</sup> But

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<sup>83</sup> Ministry of Justice.

<sup>84</sup> <http://rdrf.org.uk/2012/09/04/rdrf-response-to-dft-consultation-on-fixed-penalty-notices-for-careless-driving/> (accessed 17/05/2013).

<sup>85</sup> Department for Transport *op cit* n 2 at para 23.

<sup>86</sup> Corbett, C. "The Social Construction of Speeding as Not 'Real' Crime" *Crime Prevention and Community Safety: An International Journal* (2000) 2, 33–46.

<sup>87</sup> See, for example, <http://www.freemankeepondriving.com/> and <http://www.bikerdefence.com>

<sup>88</sup> See, for example, Young, P. "Punishment, money and a sense of justice" in P. Carlen and D. Cook (eds) *Paying for Crime*, (Milton Keynes: Open University Press, 1989).

<sup>89</sup> Mackie, A., Raine, J. W., Burrows, J., Hopkins, M. and Dunstan, E. *Clearing the Debts: The Enforcement of Financial Penalties in Magistrates' Courts*, Home Office On-Line Report 09/03, (London: Home Office; 2003); see also Raine, J., Dunstan, E. and Mackie, A. "Financial Penalties: Who Pays, Who Doesn't and Why Not?" (2004) 43(5) *Howard Journal* 518–38.

<sup>90</sup> PACTS, *The Strategic Framework for Road Safety – PACTS' Comments*, (London: PACTS, 2011).

money and punishment are underpinned by very different cultural values and even a very large fine may not be seen as a sufficient and proportionate punishment. So when a fine is the only punishment – and particularly if it is a fixed penalty imposed by the police or other out-of-court body - then the offending is downgraded along with the punishment.

Higher fines have already been implemented in relation to serious health and safety offences, and the guidance<sup>91</sup> on fines to be imposed on companies convicted under the Corporate Manslaughter and Corporate Homicide Act 2007 has set the fines at a very high level. In its 2010-11 report the Health and Safety Executive reported that duty holders found guilty of offences prosecuted by them received fines totalling £18.6 million, giving average penalties on conviction of £35,938 per case.<sup>92</sup> There is also pressure for higher fines for competition law offences.<sup>93</sup> Although these are very different offences, these developments may influence thinking about the role of fines generally.

## **Accountability**

FPNs are imposed by police officers and some of the criticisms of the proposals echo other concerns about transparency and accountability. Making careless driving a fixed penalty offence also includes a proposal for a licence endorsement of three penalty points.<sup>94</sup> A specialist firm, Biker Defence Solicitors, expressed concern that “asking police officers to judge the seriousness of an offence is setting them up in a de facto judicial role” in imposing sentences as, “through no fault of their own, police officers are not always impartial”.<sup>95</sup> The Consultation Paper notes that the FPN could be offered “in any instance of careless driving” but goes on to say, “It is not intended that fixed penalties or remedial training are used for the

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<sup>91</sup> Sentencing Guidelines Council, *Corporate Manslaughter & Health and Safety Offences Causing Death* (London: Sentencing Council, 2010) at para 24.

<sup>92</sup> Health and Safety Executive, *Annual Statistics Report 2010-11* (HSE, 2011) at 10.

<sup>93</sup> Research by the Office of Fair Trading reports UK fines as ‘around 65 per cent lower than the EC fines’ and that ‘when we apply the UK’s fining guidelines to a case study we find the UK would be 76 per cent below the fine estimated from current EC guidelines and 50-75 per cent below the fine estimated from current US guidelines’ (Office of Fair Trading, *An assessment of discretionary penalties regimes, Final report*, OFT1132 (OFT, 2009) at 6.

<sup>94</sup> On a conviction for a careless driving offence the courts can impose from 3 to 9 penalty points: the endorsement must stay on the licence for four years: see <https://www.gov.uk/penalty-points-endorsements/endorsement-codes-and-penalty-points>

<sup>95</sup> See: <http://www.bikerdefence.com/fixed-penalty-notice-fines-to-rise/> [accessed 3.7.2012].

more serious examples of careless driving”:<sup>96</sup> In other words the police will have to use their discretion to make judgements about seriousness as they do in other areas of their work.<sup>97</sup> The Consultation Paper stated, “It is envisaged that FPNs and remedial training would only be offered in situations witnessed by a police officer where there are no victims, no collisions and no public complaint”<sup>98</sup> but 31% of respondents to the Consultation disagreed with the proposed criteria for the guidance.<sup>99</sup> The government’s response is, nevertheless, that “the Association of Chief Police Officers intend [sic] proceed with the guidance criteria but will make clearer that only the lowest levels of careless driving behaviours are to be dealt with by a fixed penalty”.<sup>100</sup>

Concerns about accountability are not new. As Padfield stated in 2010, “Transparency is one key to good decision-making. Yet ... this Government has presided over the closure of 150 courts since 1997.... Instead, we have largely invisible alternative ‘disposals’ by a wide variety of criminal justice agencies”.<sup>101</sup> A report published in 2008 raised similar concerns that the trend towards pre-court summary justice for a range of offences may not be being used “fairly and effectively and that this trend remains outside of the official inspection regime”.<sup>102</sup> It warned that there is “an accountability deficit” and called for a “thoroughgoing” review of the use and impact of summary powers. A leading JP also wrote of “a slippery slope” and warned of “the inherent danger in such punishment becoming an administrative exercise with a lack of accountability as opposed to an independent judicial sanction in the public arena”.<sup>103</sup> The Lord Chief Justice has expressed his concerns about the “fundamental shift” in the administration of summary justice which these developments

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<sup>96</sup> Department for Transport, *op cit* n 1 at para 2.14.

<sup>97</sup> See, for example the Gravity Factor System used by the police in decision-making about young offenders: see <http://www.cps.gov.uk/legal/assets/uploads/files/Gravity%20Matrix%20May09.pdf>

<sup>98</sup> Department for Transport, *op cit* n 1 at paras 2.15-6.

<sup>99</sup> Department for Transport *op cit* n. 2 at para 25.

<sup>100</sup> *Ibid* at 14.

<sup>101</sup> Padfield, N. “Out-of-court (out of sight) disposals” [2010] 69(1) *Cambridge Law Journal* 6-8, at 8. See, also, Padfield, N., Morgan, R. and Maguire, M. “Out of Court? Out of Sight? Criminal Sanctions and Non- Judicial Decision-Making”, in Maguire, M., Morgan, R. and Reiner, R. (eds) *The Oxford Handbook of Criminology*, 5th edition (Oxford: Oxford University Press, 2012) at 966-7.

<sup>102</sup> Morgan, R., *Summary Justice, Fast - but Fair?* (London: Centre for Crime and Justice Studies, Kings College, 2008).

<sup>103</sup> Hudson, S. “A slippery slope” [2010] 66(4) *Magistrate* 2-3 at 2.

represent<sup>104</sup> and a joint HM Inspectorate report in 2011 noted that “concerns have been expressed that persistent offenders are repeatedly issued with out-of-court disposals, and that serious offenders are inappropriately being dealt with out of court”.<sup>105</sup> The new “speedy courts” to deal with traffic offences may encourage more appropriate prosecution.<sup>106</sup>

## Conclusions

Despite the problems of interpretation we have highlighted, we can say that the available research suggests that deterrence may work on some offenders, even if it deters fewer offenders and potential offenders than we would like. While there will be exceptions, it probably works on enough offenders to make policies based on deterrence justifiable. Even in crimes which seem to be influenced by emotions and passions, rational calculations may have a role to play. Wilson<sup>107</sup> argues that, even at times of heightened emotions people, engage in calculations. For example, if the annual office party degenerates into a drunken brawl, employees may avoid insulting or assaulting senior staff. We can also infer that specific changes in severity, certainty and celerity need to be communicated to selected offenders and groups to be affected. For the deterrent effect to work, the key issue is perceptual deterrence, people must be informed about chance of being detected and what punishment they are likely to receive. Punishment and threats of punishment need to be targeted specifically to groups of offenders to avoid unnecessary costs.

We would also endorse more research on driver rehabilitation and the piloting of courses to be attended by careless drivers under the new fixed penalty scheme. However, these changes would be dangerous unless implemented within the context of “education” to influence the way road traffic offences are viewed by the public such that the very serious implications of

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<sup>104</sup> Judge, Lord (2011) “Summary Justice in and out of court” The Police Foundation’s John Harris Memorial Lecture: [www.judiciary.gov.uk/Resources/JCO/Documents/Speeches/lcj-speech-john-harris-lecture.pdf](http://www.judiciary.gov.uk/Resources/JCO/Documents/Speeches/lcj-speech-john-harris-lecture.pdf) at 14 *et seq* (last accessed 21/10/2013). See also Morgan, R. (2012) *Criminology and Criminal Justice* vol 12 221-222, at 221.

<sup>105</sup> HM Inspectorate of Constabulary/ HM Inspectorate of the CPS *Exercising Discretion: the Gateway to Justice* (London: Criminal Justice Joint Inspection, 2011) at para 2.21.

<sup>106</sup> Damian Green, MP, ‘Traffic Courts in every Area’ , Ministry of Justice, 17 May 2013: <https://www.gov.uk/government/news/traffic-courts-in-every-area> (last accessed 21/10/2013).

<sup>107</sup> Wilson, J. Q. *Thinking about Crime* (2nd edn) (New York: Vintage Books, 1985).

poor driving are understood and careless driving is viewed as a crime. Without that the move to fixed penalties and driver training may downgrade the wrongfulness of the offending.

The Consultation Paper's proposals - and the implementation of the changes to give them effect - raise, then, fundamental issues about our justifications for sentencing: whether impact within a retributivist system should be compromised, whether the objectives should be general or specific deterrence – and if so how that can be done effectively given the research evidence, whether fines can be accepted by the public as a 'real' punishment for a "real" wrong, and how far accountability can be compromised in pursuit of cheaper, faster "justice". Raising the penalty from £60 to £100 probably will not deter a significant number of potential offenders and extending FPNs to careless driving to allow for the offer of remedial programmes could be problematic if rehabilitation is not guaranteed. However, we have argued that one justifiable reason for the fines increase is that it may have a symbolic effect in marking society's disapproval of the action. Fines could be higher for road traffic offences, even though they will not always deter but because they will help to give a message about the wrongfulness of such offending. That is a crucial factor because attitudes affect outcomes. As a Scottish Office Report noted, "The deterrent effect of enforcement depends on the type of driving offence and the public's attitude towards the severity of that offence".<sup>108</sup>

Ultimately, the aim should be to secure habitual<sup>109</sup> but also normative compliance<sup>110</sup> where drivers comply because they believe it right to do so rather than because of the fear of

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<sup>108</sup> The Scottish Office, *The Deterrent Effect of Enforcement in Road Safety: Research Findings*, (London: TSO, 1997), Conclusions.

<sup>109</sup> "Habitual compliance" is a Strategic Goal of the Association of Chief Police Officers (ACPO) in its *Policing the Roads - 5 Year Strategy 2011-2015* although a visible police presence is seen as crucial to this:  
[http://www.acpo.police.uk/documents/uniformed/2011/20111116%20UOBA%20PolicingtheRoadYearStrategy2011\\_2015.pdf](http://www.acpo.police.uk/documents/uniformed/2011/20111116%20UOBA%20PolicingtheRoadYearStrategy2011_2015.pdf) (last accessed 21/10/2013).

<sup>110</sup> There is an increasingly large body of work on compliance. See, for example, Bottoms, A. E. "Morality, Crime, Compliance and Public Policy" in A.E. Bottoms and M. Tonry (Eds) *Ideology, Crime and Criminal Justice* (Willan Publishing, 2002); Cunningham, S. *Driving Offences: Law Policy and Practice* (Aldershot: Ashgate, 2008) Chapter 6; Murphy, K., Tyler, T. and Curtis, A. "Nurturing regulatory compliance: Is procedural justice effective when people question the legitimacy of the law?" (2009) *Regulation & Governance* Vol 3(1) 1–26; Beaton-Wells, C. "Normative Compliance: The End Game?" (2012) *Competition Policy International, Antitrust Chronicle*, Feb.

detection or punishment. There has been a change in public perceptions of drink-driving and increasing the financial penalties across a wider range of traffic offences might be a first step in highlighting the wrongfulness of other forms of harmful driving. In relation to careless driving, however, change will have to be monitored very carefully.