

A Magistrate's View on Achieving Compliance

Hullo, I am Chris Hunt Cooke, I have been a magistrate since 1996 and Chairman of the Magistrates' Association Road Traffic Committee since 2008. I should say that I am speaking in a personal capacity, the rest of the committee might not necessarily share my views, sometimes they do get things wrong!

I should like to start consideration of this from an historical perspective. In the early days of motoring, magistrates had a rather troubled relationship with motorists. Motorists were in fact generally unpopular; motor vehicles were noisy, smelly, covered everything in dust and above all, frightened the horses. One turn of the century MP suggested that motorists should be flogged for disturbing the peace and tranquillity of the countryside. The railway lobby had effectively killed off steam-powered road vehicles by requiring that they be preceded by the famous man with a red flag, and motor cars suffered the same condition until 1896. There was also a speed limit of 4 mph in the country and 2 mph in towns, presumably in case the man ran. The first person to be convicted of speeding in the UK was Walter Arnold of East Peckham, who on 28 January 1896 was fined for speeding at 8 mph, four times the applicable limit. He was fined one shilling plus costs. Later in 1896 the need for the escort was lifted and the speed limits increased to 14 mph, inspiring of course the Emancipation Run, the very first Brighton Run. The 1903 Motor Car Act raised this limit to 20 mph. Motor cars were still not very popular, despite the royal enthusiasm of Edward VII, and "motor vigilance" was widespread. Lord Alverstone in a 1907 case warned "We must not allow ourselves to be warped by any prejudice against motor cars, and so to strain the law against them." Rudyard Kipling, who was what we would nowadays call an "early adopter" of the motor car, has a short story about speeding motorists being bullied and belittled by a magistrate to the great amusement of the public gallery, who came to hear the entertainment regularly dished out in this form in their village. The motorists eventually get their revenge by making the village and the magistrate look ridiculous as *"The Village that Voted that the Earth was Flat"*

Motor vehicles continued to develop of course, and even some magistrates became motorists. Motoring was given a great boost by the first World War, which saw many more men and women learn to drive. The 1920's saw vehicles become much more affordable and motoring become available to the public generally. Despite the great improvement in all aspects of vehicle design, the speed limit remained at 20 mph until 1930, when it was abolished because it was so universally disobeyed that it was considered that it brought the law into contempt. It was said "Nothing can be worse than that the law of this country should be universally disregarded and that courts of law should find themselves unable to secure its maintenance." The period of no speed limits lasted until 1935, when the 30 mph limit was introduced in built-up areas, lasting as a temporary measure until 1956, when it was made permanent.

Something we always need to remember is that laws do need to be generally accepted if they are to be effective, and perhaps that is applicable nowadays when we are told that more than half of all cars exceed the 70 mph motorway speed limit. Clearly the 70 limit is not being respected, or enforced with sufficient rigour for it to be generally observed and perhaps the situation is somewhat similar to that existing in 1930. As magistrates we are rather keen on laws being observed, and we do not think an “unofficial” higher limit that is enforced is acceptable. We have no expertise in setting speed limits, so we do not comment on what the limit should be, but we do think it should be at a level where it is both accepted and it is practicable to enforce it. Otherwise respect for all limits and the law generally must be diminished.

I have mentioned enforcement, and of course as magistrates we are entirely dependent on the police to bring defendants into our courts, we cannot bring them in ourselves. We deal with those who are brought into court, but we have to be aware that the majority of lower end offenders are dealt with outside the courtroom, either by means of a fixed penalty notice or increasingly by going on one of the courses arranged by the police as an extra-statutory disposal. This is very necessary; before fixed penalty notices were introduced it had become the situation that more than half of all cases going through the courts were traffic offences.

We support the police in offering courses as an alternative to other action; few people deliberately drive badly or dangerously and we think that education will usually be more effective than punishment in bringing about an improvement in someone's driving. We only wish that courts also had the power to offer a reduction in sentence if an offender completes an approved course satisfactorily; we can do this for drink-driving but not for other offences. The legislation to enable us to do this is actually in place, although we would say that there are significant flaws in it, but the provisions have never been commenced and we are told there are no plans to do so. We think this is unfortunate, the police have the discretion whether or not to prosecute, and they can exercise that to offer a course as an alternative, but that can only be justifiable for lower levels of offending because there is then no level of punishment as such, although there is of course a financial cost in paying for the course. If we were able to offer courses we could deal with much more serious offenders, arguably the ones most in need of education to improve their driving, because the sentence would be reduced, perhaps to 75% as with drink-driving, rather than removed entirely. The power for courts to offer improvement courses for offences other than drink-driving is, in my view, the single most useful step that could be taken to assist courts to make their contribution to achieving compliance.

When we sentence offenders in court, we must do so on the basis of the Magistrates' Courts Sentencing Guidelines published by the Sentencing Council, which provide us with the starting point. We can move away from that, depending on the particular circumstances of the offence or the offender if that is justified, but the guidelines provide the basis we

must start from. I read recently that a judge was pulled up quite sharply by the Court of Appeal because he disagreed with the drug guidelines recently issued by the Sentencing Council and sentenced more severely in accordance with his own views. What applies to His Honour applies just as much to us, we must follow the sentencing guidelines. There is nothing wrong with that, in fact I was reminded the other day that actually the MA Road Traffic Committee was the first body to issue recommendations for sentencing, in an attempt to achieve more consistent sentencing across the country, an initiative later copied across to other offences in the Magistrates' Association guidelines, now superseded by those issued by the Sentencing Council, which are backed up by the force of law as I have said. Incidentally, the Sentencing Council is chaired by Lord Justice Leveson, who is quite a busy man these days.

Although in the case of speeding these guidelines provide for a smooth progression of sentencing from 3 points through to 6 points or disqualification, in practice their interaction with ACPO guidelines means that there is anything but a smooth progression. For 30, 40 and 50 mph limits going 1 mph faster than the level at which police would normally issue a fixed penalty of 3 points is likely to land a driver in court and there his speed falls in a guideline band which starts with 7 to 56 days disqualification or 6 points as an alternative. This is a very dramatic increase in sentence. Even for the 70 mph limit, the entire range of penalties is compressed into a range of 5 mph. Each body of course has its own imperatives, and guards its independence, but in my view it would be in the interests of justice and respect for the law if they would talk to each other and devise an overall approach to produce a more joined up system of justice in that particular area. Having said that, I acknowledge that few, if any, people seem to share my particular concerns about this issue.

One of the things that intrigue me as a magistrate is why people persist in behaviour that gets them into trouble. We see shoplifters with strings of convictions, they are obviously very bad at shoplifting, but they carry on doing it, inevitably heading eventually towards a spell inside. One can understand a successful shoplifter continuing in their career, but why does someone who keeps on getting caught at it? Is it just their view of themselves, "I am a shoplifter, therefore I shoplift" or is it like those who enter TV talent shows when they very clearly have no talent at all, do they hope one day to make the big breakthrough and become a star shoplifter? But strangest of all are those who fail to modify their driving behaviour despite their steadily mounting tally of points. We do not of course see those who do modify their driving, but we do see those who come before us as so-called totters when they get up to 12 or more points. A few of these one can appreciate have had some element of bad luck, but most have just carried on regardless. If I was on 9 points I should be driving like a nervous nun, and no doubt become very unpopular, but the idea of cause and effect seems to be missing from some people's make-up. Many seem to feel that points are some sort of lottery and they have just been unlucky in accumulating so many. What can be done about such people? As I have said, we should like to send them on a course as part of their sentence, but we do not have that power, so we simply disqualify them, normally

for 6 months. Even this does not always convince them that their manner of driving has to change; I do not have specific figures but the information I have obtained from the DVLA shows that about 15% of those disqualified as totters are disqualified for more than 6 months, which seems to me to indicate that they are likely to have been disqualified previously. Anyone who becomes a totter and has been disqualified in the past 3 years has a minimum period of disqualification of 12 months rather than the normal 6 months.

There are those of course who still drive even though they have been disqualified, and when I first became a magistrate this inevitably meant a custodial sentence if they came to court. Now our starting point is a high community penalty, unless it is a recently imposed ban. Anecdotal evidence reaching the MA from all over the country indicates that this is very often a repeat offence; some people just seem unable to keep out of cars. The highest number of offences I have personally seen committed by one person is 33, but figures significantly higher have been noted. I say anecdotal evidence reaches us because there are simply no statistics available on this. By definition, these are some of the worst drivers on the road, and physically preventing them from driving by locking them up seems to be all we can do, but we feel frustrated that we cannot keep them off the road for longer. Our sentencing powers are limited to 6 months and we have to give credit for a timely guilty plea, reducing that to 4 months. As they are automatically released after half their sentence, they can be back driving again after 2 months, although quite unlawfully, and that was further reduced to less than 6 weeks by the early release scheme operating up to April 2010. Thus a theoretical 6 months off the road actually came down to less than 6 weeks. We have tried to persuade the Government that driving whilst disqualified should be again made an either way offence, as it once was, at least when it is a repeat offence, so that we could send these offenders up to the Crown Court for a longer sentence, but the departmental response has been that the Government is not persuaded that there is a problem. As the Government has no data available to it, perhaps it is not surprising that it is not persuaded! Incidentally we find that repeat driving-whilst-disqualified offenders, along with those committing other serious traffic offences, do tend to have criminal records for non-motoring offences as well, indicating a general disregard for the law.

The high accident rate among young drivers continues to be a worrying fact we have debated. Other countries have introduced restrictions which apply during the first years of holding a licence, such constraints as not driving at night, on certain types of road, with young passengers, or with a lower level of alcohol. We recognise that there may be difficulties over enforcement with some measures, but feel that some constraints might still be helpful, and surely worth trying. We tend to favour putting the "P" plate for probationers on to a statutory basis, but we are told that overseas experience is not particularly encouraging. I understand from reports that Suzette Davenport favours graduated licences for newly qualified drivers, and I hope she has more success in persuading ministers than we have achieved. We do of course have the New Drivers Act, and for years we have drawn attention to the bizarre anomaly that it applies only to the accumulation of 6 or more

driving licence points, and any disqualification is disregarded. We therefore see defendants in court trying to persuade us that their driving really was bad enough to merit discretionary disqualification, in order to avoid having to retake their test. We are told that having to retake the test is because the offender has demonstrated that their driving is not after all of an acceptable standard, and it is not a punishment. If that is the case, I have to ask why the provisions should apply to document offences, where no bad driving has occurred. One offence of no insurance within two years of passing the test will result in the licence being revoked; no insurance is a serious offence, but if revocation of the licence is a form of punishment, then it should be subject to judicial oversight. The huge cost of insurance for young drivers makes this a prevalent offence and this cost is surely something that should be tackled. A particular concern is that the figures show that the number of those re-taking the test is considerably lower than the number whose licences are revoked; it may be that the others have abandoned driving, but perhaps it is more likely that they are driving without the formality of a licence.

Mobile telephone offences seem to upset my magistrate colleagues more than most others, because they see so many drivers on their mobiles whenever they drive. We have been pressed to ask that the penalty be increased to 6 points, but we feel that would be out of kilter with other offences such as low level careless driving or speeding. In any case, if people feel they are very likely to get away with an offence, it does not matter what the theoretical penalty might be, they not believe it is going to apply to them so it does not affect their behaviour. We think that compliance here is essentially a matter for enforcement, if drivers thought they were likely to suffer 3 points for using their mobile, then the prospect of losing their licence if they were caught 4 times in 3 years would surely be sufficient to deter them.

In conclusion, I hope I have said enough to illustrate the constraints under which we work, the limited scope we have for altering our sentencing to achieve compliance, but also the changes in the law that we believe would be of assistance.

I should be happy to take any questions.