Mobile phone use and driving

Key points

Hand-held mobile phones

- Hand-held mobile phone use by drivers is widespread, dangerous and illegal.
- Using a phone while driving for calls, texting or social media slows reaction times more than being just above the drink-drive limit. And it is much more common than drink driving.
- There has been a significant shift away from the use of Fixed Penalty Notices (FPN) (3 penalty points + £100 fine) to driver retraining schemes that do not involve points or a victim surcharge.
- Court prosecutions are becoming rarer and almost never lead to disqualification.
- Repeat offenders have been allowed to escape bans on the grounds of extreme hardship.
- Government plans to remove the option of retraining schemes and to double fines and points. So, a novice or a vocational driver could lose their licence for a first offence.

Hands free mobile phones

- Research shows that use of hands free phones (which is still legal under current system) slows reaction times almost as much as hand-held.

RoadPeace calls

Increased detection and deterrence

- **Post crash phone checks required.** In casualty collisions, drivers should have their mobile phone checked in the same way they should be breathalysed. Witness testimony should not be needed to prompt this. (If needed, this could be made a condition of receiving a driving licence.) This could start with fatal and serious injury collisions.
- **Increased enforcement.** To make new penalties effective, they must be applied more widely. This means reversing the decline in the numbers of road police, to increase detection and greater transparency around current efforts (total number of drivers sanctioned for phone use is not known).
- **Publicity campaign.** Changing behaviour requires changed attitudes. Large scale and persistent campaigning will be needed to address trends in mobile use and addiction that are going in the opposite direction.
- **Technological innovation.** Controlling phone use using telematics should be developed.

Tougher penalties

- **Bans.** Given the risk is the same as drink driving, so should the penalty be. The government's proposals will mean bans for novice drivers and potentially HGV drivers. Traffic Commissioners should make a ban following a first offence non-negotiable
- **Training**. Police, CPS and judges/magistrates should be trained on the risk posed by mobile phone use, including hands free.
- **Insurance companies.** Insurance companies can do more to help deter this risky behaviour. They should penalise drivers using mobile phones as they do drink drivers.
- **Other sanctions.** Confiscation of phone, "naming and shaming", and other sanctions should be considered.
- **Hands free phone ban.** DfT should follow the evidence and ban use of hands-free phones by drivers.

Introduction

Mobile phones are owned by 93% of adults in the UK and are widely used by drivers. The RAC Foundation reports that use of hand-held mobiles is reaching "epidemic proportions", with 48% of drivers admitting that they have received a call while driving in the last year; 13% gave use of mobiles by other drivers as their greatest concern on the roads – compared to 5% whose main concern was others driving under the influence of alcohol (RAC Foundation, 2016).

The effect of using a mobile while driving is highly distractive, differs from having a normal conversation with someone in the vehicle and reduces reaction times during and immediately after the call.

Use of a hand-held mobile while driving has been illegal since December 2003, with a fine and three penalty points being given for a first offence. But enforcement remains rare relative to the frequency of the offence and repeat offenders reaching 12 points have been able too easily escape a ban.

A high profile case highlighted the leniency shown to offenders. Chris Gard, with eight convictions, was allowed to go on driving because magistrates accepted his plea that to lose his licence would cause "excessive harm". While using his phone at the wheel again, he then killed Lee Martin, a cyclist[1].

The British Road Safety Statement, released by the Road Safety Minister at the end of 2015, included a consultation over tougher penalties as a key action. That consultation was conducted in early 2016 and the government's response, published in November 2016, proposed that remedial courses would no longer be offered to first time offenders and that all offenders, including those offending for the first time, will face a £200 fine and 6 penalty points. This would mean a novice or a vocational driver[2] could lose their licence on a first offence. Other drivers would face losing their licences after a second offence.

These proposals are in the right direction. Whether they will "provide a strong deterrent and change behaviour" as needed is still to be shown. Given the escalating levels of smartphone addiction[3] and the declining presence of traffic police[4], use may persist because of the low risk of detection.

Incidence

In 2009, the AA calculated that there were 100,000 drivers on the phone at any one time. The rate of use was 1.5% for car drivers and 3.3% for other vehicles (vans, buses, lorries) (AA, 2009).

A 2014 survey of 50 sites in England and Scotland observed 1.6% of drivers using a hand-held mobile at any one time (DfT, 2014). The survey also reported that more drivers were using it to read than to make a phone call (DfT, 2015). A separate analysis of the data from the same study, found car drivers using hand-held devices in moving traffic was (1.5%), proportionally less than drivers of other (larger) vehicles (2.9%) (Transport for Scotland, 2015, Table 4.4).

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[1] http://www.telegraph.co.uk/news/2016/09/05/van-driver-with-eight-convictions-for-using-his-phone-at-the-whe/

[2] PSV and HGV drivers could have their licences revoked by Traffic Commissioners.

[3] http://www.bbc.co.uk/news/business-37468560

[4] http://www.roadsafetygb.org.uk/news/5082.html

A pedestrian hit by an HGV is 18 times more likely to die than if hit by a car. A cyclist is nine times more likely to die (DfT, 2016a, RAS40004). The higher incidence of phone use by drivers of larger vehicles is therefore a particular concern.

Among drivers surveyed by the RAC Foundation, the use of a handheld phone for talking, texting or internet access was a rising concern. In 2015, it was one of the top four concerns of 34% of drivers and the top concern of 10%. In 2016, it was in the top four for 41% of drivers and the main concern for 13% (RAC, 2016).

Effect on driving

The effect of using a mobile phone while driving has been extensively researched in the UK and elsewhere over many years.

- In 2002, a study concluded that driving is impaired more during a phone conversation than by having a blood alcohol level at the UK legal limit (Burns, Parks *et al,* 2002).
- In 2005, a study, cross-referring Australian hospital and phone records, found that the use of the phone up to 10 minutes before a crash was associated with a fourfold increased likelihood of crashing (BMJ, 2005).
- In 2009, an overview report based on a significant body of behavioural and epidemiological research, literature reviews and meta-analyses, found that drivers using a telephone reacted 50% slower than under normal driving conditions and were 30% slower than driving with BAC levels of 80mg/100ml. Moreover, it made little difference if the phone was hand-held or hands-free (EC, 2009).
- In 2011, a simulator study differentiated the impact based on the use being made of the device: compared to control conditions of no distraction, texting and social networking increased reaction times by around 37%, but making a call increased them by 46%. Threshold BAC levels increased them by 12.5% (TRL, 2011).
- In 2016, a simulator study found that a conversation on a hands-free mobile phone can be as distracting as a hand-held phone. If it prompts them to visually imagine what they're talking about, the driver's ability to see what is in front of them on the road is impaired by competition for mental processing resources (Briggs et al., 2016).

Involvement in collisions

This is hard to know. For collisions in 2014, police reported contributory factor data showed mobile phone use as a contributory factor in only 21 fatal crashes, 84 serious injury collisions and 387 slight injury collisions. But this is a significant underestimate as contributory factors are recorded in only 80% of casualty collisions. And DfT has acknowledged the under-reporting saying:
"*Contributory factors on mobile phone use are generally under-reported because it is difficult for the reporting officer to allocate a driver using mobile phone contributory factor in certain situations*" (DfT, 2015b, p.2).

Prosecution and punishment

Use of a mobile phone while driving is an offence in its own right -- for which punishment is rare -- is inappropriately light. Additionally, use of a hand-held mobile in a collision resulting in death elevates the seriousness of the offence.

Using a mobile phone when driving (no collision)

Given that over 100,000 drivers are thought to be using their mobile at any one time, it is safe to say that this offence is most generally ignored. The numbers caught dropped by half between 2012 and 2016, in line with the drop in traffic officers (Police Oracle, 2016). When the police do act, mobile phone use can result in a verbal warning, an out of court sanction or a court prosecution.

- **Out of court sanctions**

FPNs for using a hand-held mobile while driving result in a three point driving licence endorsement and a £100 fine.

In 2012, a new National Driver Offender Retraining Scheme (NDORS) course was introduced. *What's Driving Us* (WDU), was for: *"those drivers where the evidence suggests by an act or omission their mischief was intentional or deliberate i.e. the driver knew their actions amounted to an offence."* This is attended by drivers using a hand-held mobile, as well as other offences such as red light running. Courses are provided locally and vary in content and cost. In 2016, courses were £150-£200 around London but about £80 around Liverpool. No penalty points are given.

In the period from 2011 to 2015, FPNs declined by over 86% (Police, 2015)[5]. Those attending WDU courses correspondingly increased see Figure 1 below.

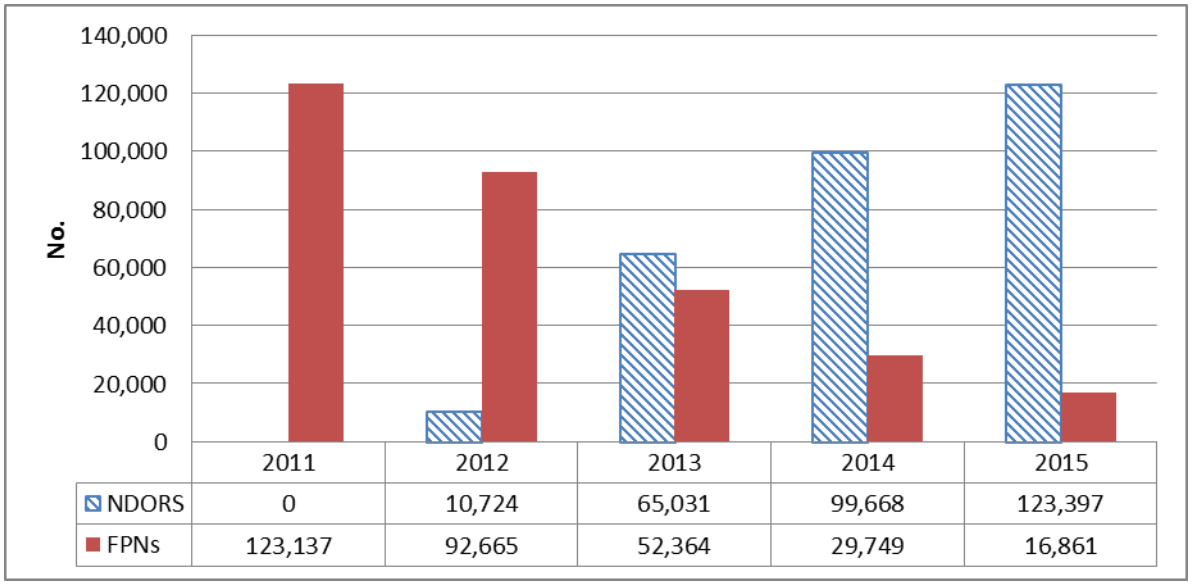

Figure 1 Mobile phone related sanctions, England and Wales, 2011-15

Note: the NDORS WDU includes red light offenders as well.

- **Court prosecutions**

The number of drivers prosecuted at court for hand-held phone in England and Wales rose steadily from 2005 to a peak of over 35,000 cases in 2010. The number has since halved. This decline is greater than for any other moving violation, see Figure 2 below.

[5] 2015 statistics not known.

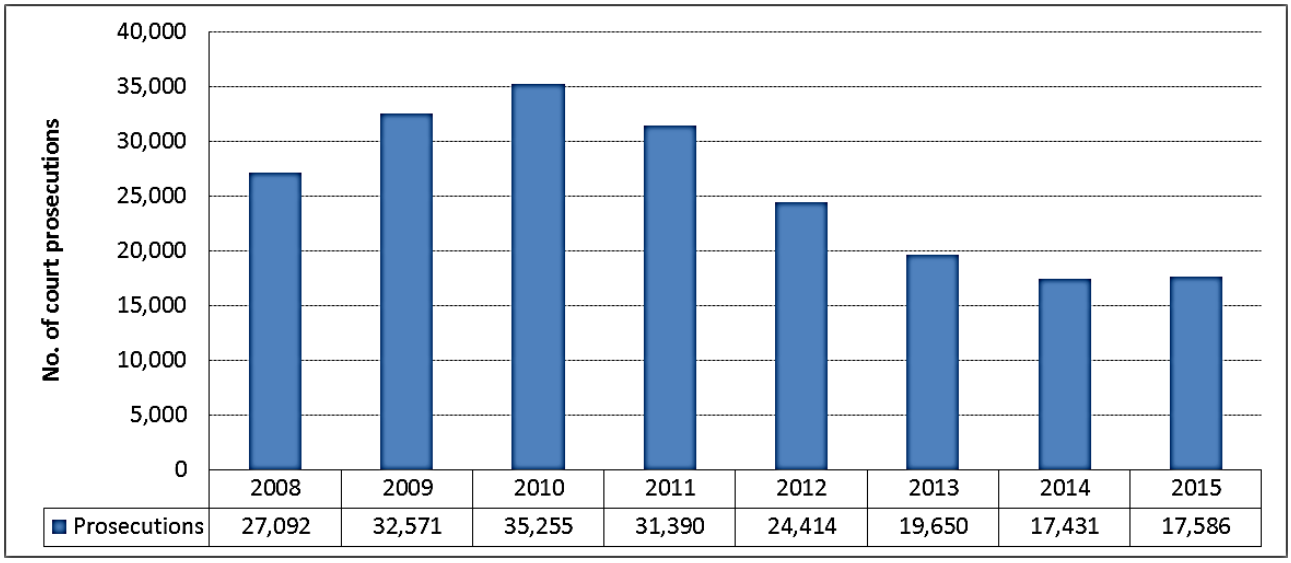

Figure 2 Using a mobile phone while driving: court prosecutions, England and Wales, 2008-15

In 2015, over 90% of those prosecuted were found guilty. All of these drivers were fined. A total of 33 drivers were given a ban, all for less than a year. Thus only one in 500 drivers convicted at court for using a mobile phone was disqualified.

In contrast, magistrates are required to disqualify for 12-16 months all those who are above the drink drive threshold. (As noted previously, mobile phone use has been shown to increase impair drivers more than being above drink drive limit).

- **Declining numbers receiving penalty points**

Taken together, the decline in both FPNs and court prosecutions means that the number of motorists facing penalty points for using a hand-held mobile while driving dropped by 78% in the period 2011-15.

- **Proposed changes**

DfT's response to the January 2016 consultation on mobile phone use proposed a new regime of penalties (DfT, 2016b). Importantly, this would remove the option of an NDORS course for first time offenders. Penalties on the FPN would double: the fine from £100 to £200, penalty points from 3 to 6. For most drivers, this could result in a ban for a second offence. For novice and vocational (PSV/HGV) drivers, a loss of licence could follow a first offence.

Using a mobile in a casualty collision – the effect on sentencing

If a driver is being prosecuted for causing a death:

"*the fact that an offender was avoidably distracted by using a hand-held mobile phone when a causing death by driving offence was committed will always make an offence more serious. Reading or composing text messages over a period of time will be a gross avoidable distraction and is likely to result in an offence of causing death by dangerous driving being in a higher level of seriousness.*"

(Sentencing Guidelines Council, 2008)

Sentencing guidelines for causing death by dangerous driving has three levels of seriousness. Moving from Level 3 to Level 2 shifts the starting point for custody from 3 to 5 years.

But, even for fatal crashes, checking provider records for mobile use depends on local police policy. Some forces check automatically, others require a witness to have mentioned a driver on the phone before they will confiscate the phone for checking. This can lead to a miscarriage of justice; see Amanda Bray's testimony below.

Victim Testimony

The days and weeks following the death of my mother who had been hit by a car whilst crossing the road were devastating. It was clear to the family from the circumstances of the collision that the driver had been distracted by something which took his attention away from driving or looking where he was going.

Our initial grief was not helped by the attitude of the police officers investigating the incident. We could not believe that, amongst other things, the police did not intend to check the driver's phone for usage prior to the collision. This decision was based on the fact that there was no supporting evidence from either CCTV or witnesses and that the process of phone analysis would be time consuming and costly. It was only through the family's persistence that the police eventually agreed to analyse the phone records and it was discovered that the driver had received a number of calls around the time of the collision and this fact helped to bring about a charge of him causing the death of my mum through dangerous driving.

In my opinion when any family loses someone in a fatal collision it is potentially an unlawful killing and every road death should be treated as such until it is proved otherwise, every collision has the potential to be unlawful. I believe that it should be standard practice for the police service to check mobile phone use immediately. Every driver should be treated as a suspect and mobile phones are an important part of early evidence gathering. I strongly support more stringent guidelines when dealing with fatal collision investigation.

Amanda Bray, bereaved daughter

Note: The driver charged with causing the death of Beryl Wenborn on 31 January 2014 was acquitted at trial.

In sentencing for the offence of dangerous driving, penalties for different levels of seriousness go from medium level community order (Level 3) to 12 weeks custody (Level 2). But in non-fatal crashes, mobile phone use is rarely checked and only limited evidence is collected from witnesses.

Checks need to become standard for all police forces or hand-held mobile phone use will continue to be under-estimated, along with the seriousness of driver culpability. This is one of the key calls in RoadPeace's collision investigation campaign.

Conclusion

Use of hand held mobile phones is highly dangerous and at the risk of becoming an epidemic. With research showing impairment equivalent to drink driving, the government should respond with the same tough approach it took with drink driving. This includes checks after all casualty crashes and much greater use of driving bans. It has been almost 50 years since a driving ban was made mandatory for first time drink drivers. This is to increase to 3 years for second time offenders and to 10 years for third time offenders. If drivers won't put down their phones, then they should be taken out of the driving seat.

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