

**Shortlisted:
Niche Law Firm
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Liverpool Law Society
Legal Awards
2009**

Think before you drive

From the 18th August 2008 careless or inconsiderate drivers who cause fatal accidents can face up to five years imprisonment. To be careless, the driving need only fall 'below' the required standard of a competent and careful driver.

Whether a momentary lapse lands you with just 3-9 points on your licence, a community order or even a term of imprisonment now turns on whether or not such lapse leads to a death. This is an extremely sobering thought because the consequences of careless driving can be extremely wide ranging and random. Previous sentencing policy put greater emphasis on the nature of the carelessness itself rather than the effect of such carelessness.

According to recently published sentencing guidelines, where the level of carelessness is low and there are no aggravating factors (i.e. no previous convictions for bad driving or the careless driving did not involve using a mobile phone), even the fact that death was caused will not normally be sufficient to justify a prison sentence. However, a fine is unlikely to be an appropriate sentence for this offence; and, where a non-custodial sentence is considered appropriate, this will normally be a community order.



The most serious level for this offence is where the offender's driving fell not that far short of dangerous. Where the case is particularly serious there is considerable scope, within the 5 year maximum, to impose long sentences.

Disqualification from driving and endorsement are mandatory, and the offence carries between 3 and 11 penalty points when the court finds special reasons for not imposing disqualification. There is also a discretionary power to order an extended driving test where a person is convicted of this offence.



The importance of having a robust disciplinary regime for employees

The importance of having a robust disciplinary regime for employees. An astonishing amount of small businesses avoid disciplining their staff for fear of legal action. Employers feel employment law and the Tribunal system is weighted towards workers, with employers feeling unable to discipline staff because they do not feel confident of their legal position. The importance of a well-defined disciplinary procedure cannot be over-emphasised. With the correct systems in place employers should not feel afraid to use them.

A clear and effective disciplinary policy offers many benefits, including:

- **Clear guidelines for employee behaviour:**
A straightforward, easy-to-understand disciplinary policy will tell your employees what you expect of them and what conduct you will not tolerate. Enforcing the policy in a uniform manner will show your employees that you take these rules seriously.
- **Good morale for other employees:**
It's true that the employee you discipline is not likely to enjoy a morale boost, but the rest of your workforce will. Other employees do not like to see a co-worker getting away with poor, unproductive behaviour. And, if a problem employee is allowed to misbehave without suffering any consequences, others in the workforce will soon realise that they can get away with unacceptable behaviour, too.
- **Protection against Employment Tribunal Claims:**
If you clearly inform your employees of the consequences of poor behaviour and enforce your policy fairly, you will be able to take appropriate action with confidence. It will be more difficult for an employee to argue that his or her dismissal was unfair if you can show that you told your employees what conduct would result in disciplinary action, and that this particular employee had been subject to prior action.

Waste - the debate continues

The question of whether a material or substance is waste or not is, to say the least, troublesome. The European Commission has published an 'Interpretive Communication' to assist with whether or not something is waste or a non-waste in the context of production processes – the distinction between products, production residues and by-products is discussed in the Communication. The concern of the Commission is that currently the lack of consistency in decisions of National Courts on similar facts as well as the excessively wide interpretation of the definition of waste is imposing unnecessary cost on businesses and is furthermore reducing the attractiveness of materials that would otherwise be reutilised.

This is of course something our waste recycling clients have been complaining about for years. After the recent decision in the OSS case will the Environment Agency take a leaf out of the Commission's book and modify its own stance on what is and isn't waste? If some of the Environment Agency's recent decisions are anything to go by this would not appear to be the case!

Red Diesel

There have been revisions to the excepted vehicle categories in Schedule 1 of the Hydrocarbon Oil Duties Act 1979. The most recent changes were effective from 1st April 2008.

A vehicle that is not used on the public road and has no licence under the Vehicle Excise and Registration Act 1994 is an excepted vehicle (i.e. can be run on red). But if such a vehicle has become untaxed since 31 January 1998 it requires a Statutory Off-Road Notification (SORN). Such vehicles will be eligible to use red diesel if a SORN declaration has been made. Unlicensed vehicles that do not require a SORN will continue to be able to use red diesel without a SORN declaration if kept off-road. This is not something new but does, in our experience, create confusion amongst operators using vehicles off road. Worryingly, HMRC appear to be adopting a zero tolerance approach!

The message is if you are using a vehicle off road and want to be eligible for red diesel (a) make sure it is unlicensed and (b) make sure you submit a SORN for the vehicle. Do not take the vehicle on a public road unless (a) you license it first and (b) its use falls within one of the available exemptions covering on road use. Such exemptions are now rather more limited than they used to be so we suggest you tread carefully and seek advice.



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Events & Exhibitions in 2009

20 March 2009: Invitation (Manchester)

Funding, planning & public perception of new waste management facilities

It is widely accepted that the UK needs to invest over £1 billion each year for the next 5-10 years on recycling and waste facilities. The investment is required in order to achieve the targets set out in the government's Waste Strategy. This event intends to inform delegates of issues around the funding, commissioning, planning and designing for new Waste Management facilities.

24 April 2009: Chartered Institute of Wastes Management

Annual General Meeting (Preston)

Managing Recyclables in a Failing Market

Two keynote speakers will deliver the public and private sector position with regards to the LATS challenge and operational difficulties in managing recycle.

8 May 2009: FedEx & Brake Road Safety Company Driver Training (Chester)

The acclaimed Academy for road safety provides training for Company Drivers to facilitate professional and careful conduct whilst driving Company vehicles in the course of Company business. The training focuses on key essential safety measures that Company Drivers MUST observe when out in Company vehicles. Attendance on this course has obvious advantages with beneficial knock on effects for your business to include the safe provision of your drivers and the public whilst out on the road, which will reduce risk of accidents that in turn will lead to cost savings on insurance premiums. Furthermore VOSA support the work of the Academy and we strongly believe your participation in attending the course and completing the training will be perceived as an indicator of your commitment to overall fleet safety.

12, 13, 14 May 2009: SED The National Event for Construction (Corby)

Come and see us on our stand at the SED exhibition and conference. We will showcase our products and services in the form of seminars/workshops and practical guidance and handbooks will be available. We will provide impartial tips and advice for all matters regulatory!

29 May, 19 June, 17 July, 21 August, 25 September, 23 October 2009:

Fire Marshal Training (Chester)

Fire Wardens play an essential role in fire risk management and control in the work place. It is the LAW that businesses maintain risk assessments and appropriate fire emergency plans as an integral part of their systems and procedures. Continual training and awareness raising is imperative if you are to ensure compliance with the law and to protect your employees. This course is both informative and practical providing an opportunity for you to either conduct your own risk assessments and implement fire emergency plans or simply polish up your existing procedures and fulfil your statutory obligations.

9, 10, 11 June 2009: Futuresource ExCel (London)

Come and see us on our stand at the Chartered Institute of Waste Management & Environmental Services Association exhibition. We will showcase our products and services and those of Cognoscenti SimplyFi Legal Compliance Software. We will provide impartial tips and advice for all matters regulatory!

26 June 2009: CIWM - Managing Difficult Waste

Westmoreland County Show Ground, Cumbria

20, 21, 22 October 2009: British Wind Energy Association (BWEA):

Annual Conference & Exhibition (Liverpool)

BWEA's 31st annual conference and exhibition will take place at ACC Liverpool, a landmark regeneration project on the outstanding Mersey River Waterfront sited next to the famous grade one listed Albert Dock. Three days of conference sessions will address policy, development and technical aspects of UK onshore and offshore wind energy, wave and tidal energy and small wind systems. If you have an interest in renewable energy development come and see us on our stand where we can advise on the commercial property implications of getting involved in such projects.

Please visit www.dynesolicitors.co.uk for further information and booking or alternatively contact Jenny Watts on 01829 773100