

Impact case study (REF3b)

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| <p>Institution: University of Leicester</p> |
| <p>Unit of Assessment: UoA20 Law</p> |
| <p>Title of case study: Informing policy regarding the enforcement of driving offences to improve road safety</p> |
| <p>1. Summary of the impact</p> <p>1,754 people were killed on Great Britain’s roads in 2012, down from 1,901 in 2011 (a reduction of 8%). Law “Enforcement” is one of the three E’s used to try to increase road safety. Professor Sally Cunningham has been recognised by those within road safety circles as the foremost legal academic in this area, assisting the Association of Chief Police Officers (ACPO) in developing their road policing policy. In particular, she acted as a “critical friend” to ACPO in drafting a new five-year road policing strategy and she, alongside Sgt Alan Jones, developed one of the three strategic goals of the new strategy: “habitual compliance”.</p> <p>2. Underpinning research</p> <p>Special offences exist to provide specific offence labels and punishment for drivers who cause death. Cunningham’s research in this area started with her PhD at the University of Leicester (awarded 2004, when she also joined the School as a lecturer) which explored the way in which criminal law deals with drivers who kill. Knowledge of the way in which these offences operate in practice was previously sparse, although anecdotal evidence raised criticisms of practice such as claims that drivers tended to be “over-charged”, leading to a high rate of failure in such cases.</p> <p>Cunningham’s initial research involved an empirical study of police and Crown Prosecution Service files relating to road-deaths, in an endeavour to increase knowledge on such matters, and to inform proposals for law reform. It involved the analysis of over 300 road-death files across three counties in the East Midlands, and explored the role of prosecutorial discretion in such cases as well as examining the difficulties faced by police and prosecutors investigating and prosecuting offences linked to road-death (3.2). She also addressed the question of whether reform of the substantive law was desirable. Cunningham used the results of her own empirical study as well as drawing on existing literature relating to the philosophy of the criminal law generally and to criminological and psychological explanations for breaches of traffic laws specifically in the writing of articles and a monograph. Psychologists have conducted numerous projects on drivers and how and why risk-taking on the roads occurs, which Cunningham has argued could be applied to offence definitions in order better to deter and prevent risk taking on the roads (3.1; 3.3, 3.4, 3.5).</p> <p>For her monograph (3.1) Cunningham undertook a further study which was comparative in nature, involving the examination of the law and policy relating to driving offences in Sweden. Sweden was chosen due to the excellent safety record on the roads of that country. Cunningham interviewed police officers, policy makers and prosecutors in Sweden in order to understand the law in practice and to see if lessons could be learnt in the UK. The results are reported in a chapter in the monograph and were disseminated at a conference organised by the Parliamentary Advisory Council on Transport Safety (PACTS) in 2008. The findings suggest that it is Swedish culture and the use of education and engineering to promote road safety, rather than law enforcement, which is the secret behind Sweden’s safety record (3.1; 5.2).</p> <p>More recently, Cunningham has undertaken a study of how the law in this area now operates following the introduction of two new “causing death” offences in the Road Safety Act 2006. The study used similar methods to her earlier research to explore how the new offences have affected the use of discretion by police and Crown prosecutors, and whether the offences are likely to have met the objectives set out by the Government prior to the law being enacted. Her results, identifying best practice for the purpose of developing policy in this area, are being fed back to the police forces involved in the project (of which there are three), as well as the Crown Prosecution Service, and is already leading to outputs in the form of journal articles (3.6).</p> |

3. References to the research Funding

Grant from the Institute of Advanced Motorists Trust to carry out a project on: *Driving Offences: Law Policy and Practice – A Comparative Study with Sweden* (2007) (£3,422)

AHRC Early Career Fellowship (2011-12) (£93,500) AH/I023147/1

Outputs

1. *Driving Offences: Law, Policy and Practice*, Ashgate, 2008, ISBN 0 7546 4905 9 (244pp)
2. “The Unique Nature of Prosecutions in Cases of Fatal Road Traffic Collisions” [2005] *Criminal Law Review* 834.
3. “Punishing Drivers who Kill: Putting Road Safety First?” (2007) 27 *Legal Studies* 288–311
4. “The North Review of Drink-Driving: Some Sobering Proposals” [2011] *Criminal Law Review* 296-310.
5. Taking ‘Causing Serious Injury by Dangerous Driving’ Seriously” [2012] *Criminal Law Review* 261-274
6. “Has law reform policy been driven in the right direction? How the new causing death by driving offences are operating in practice” [2013] *Criminal Law Review* 712-729

The journal articles are in peer-reviewed journals. Both of the earlier articles are cited in leading textbooks such as *Smith and Hogan: Criminal Law*, 12th edition by David Ormerod. The monograph has been described as “very highly regarded as a rare academic study in an area which has hitherto been dominated by practitioners’ works” (anonymous reviewer from the AHRC in reviewing Cunningham’s application for an Early Career’s Fellowship).

4. Details of the impact

Road safety is continuously developing through the 3 E’s (engineering, education and enforcement) and law enforcement is seen as one way in which road traffic fatalities and serious injuries can be reduced. Cunningham’s research has had the greatest impact through her work with the Association of Chief Police Officers (ACPO). ACPO is the body which leads and coordinates the direction and development of the police service in England, Wales and Northern Ireland independently of the government. ACPO, on behalf of all chief officers, coordinates the strategic policing response. Alongside (but independent of) the Government’s development of its Strategic Framework for Road Safety in May 2011, ACPO saw the need to develop a strategy for road policing. Cunningham has acted as a ‘critical friend’ to ACPO in drafting the current five year road policing strategy and she, alongside Sgt Alan Jones of ACPO Road Policing, developed one of the three strategic goals of the new strategy: “habitual compliance”. Sgt Jones states: “A key requirement of the document was [a] request that the guidance should exhibit academic weight and merit... Dr. Cunningham was an integral member of the syndicate, chaired by myself, which developed the theme of habitual compliance. In 2010, I [was] requested to draft the new Road Policing Strategy. ... Sally proved to be extremely helpful in [the peer review] process and using her specialist academic knowledge and insight was able to assist the police service in the development of the draft document.” (5.6)

The key to the strategy of habitual compliance can be seen on p.4 of the document (5.1, 5.6): “Roads policing needs to shift from a target driven approach to performance, to one that enables officers to use their discretion and professional judgement to deliver safer roads and improved driver behaviour. Working with partners and stakeholders our ambition must be to create a shift in

public attitude and behaviour to one of habitual compliance with the laws and conventions of the road."

Habitual compliance is a concept which aims to encourage drivers to abide by the law of the roads as a matter of course, through educating drivers about the need to do so. It allows for the employment of education of offending drivers through enforcement and recognises that, in relation to low-end offending, psychologists have found that what amounts to careless driving can only be tackled via education, whereas at the top-end violations require deterrence through punishment. The concept of habitual compliance is key to the new police approach in road policing, referred to by Chief Constable Phil Gormley, Head of ACPO Road Policing in his introduction to the strategy. In his Ministerial Forward to the Strategy, Mike Penning MP, Parliamentary Undersecretary of State for Transport, declared that "*I expect [this new Road Policing strategy] to make an important contribution to reducing road casualties*" (5.1).

Elsewhere Cunningham's work has been recognised by PACTS, who have invited her to present papers at two conferences. PACTS is a registered charity and an associate Parliamentary Group. Its objective is "To protect human life through the promotion of transport safety for the public benefit". It aims to advise and inform members of parliament on road safety issues, and brings together safety professionals and legislators to identify research-based solutions to transport safety problems. One of Cunningham's papers (3.2) was published by PACTS as an occasional research report, to inform the development of the coming ten-year strategy for enforcing traffic law. This led to Cunningham taking part in an Enforcement and Education Seminar at the Department for Transport in January 2011, at which discussions took place regarding development of that strategy. Rob Gifford, Executive Director of PACTS until December 2012, states: "*The number of academic researchers involved in assessment of car crime and the contribution to road death and injury is (surprisingly) very small and Sally's work on dangerous driving has provided the road safety community with key insights into how to tackle this issue. I first came across her work when preparing the programme for a conference organized by PACTS in March 2008. I am certain that her conclusions helped in demonstrating to the government that, in tackling road crime, we need to focus both on low-level regular offending such as speeding and high-harm offending such as death by dangerous driving and dangerous driving itself.*" (5.3)

Most recently, Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) has used Cunningham's final report to the CPS from her AHRC funded project to help to formulate a scoping document that will define the parameters of a joint review between HMCPSI and Her Majesty's Inspectorate of Constabulary (HMIC) of criminal charges relating to road traffic fatalities to be undertaken in the final quarter of the 2013/14 business year. The assistant inspector in charge of this review states in relation to Cunningham's report that: "*A vital aspect of this inspection will focus on the decisions on prosecution and charge selection made by prosecutors in the period since 2008 when the new offences created by the Road Safety Act 2006 came into force. It is therefore instructive for me and my colleagues to see some of these decisions analysed by professionals from another discipline and more importantly from a source outside the criminal justice fraternity.*" (5.7)

Cunningham has been able to draw on her research to respond in detail to consultations issued by both ACPO, in relation to its new draft of the Road Death Investigation Manual, and the CPS, on their charging policy for offences relating to bad driving. In relation to the latter, she also took part in a panel discussion organised by the victims' charity RoadPeace in November 2012 on the guidance provided by the CPS on charging in relation to road traffic fatalities. RoadPeace is an organisation which has used Cunningham's monograph (3.1) to help them understand the law relating to causing death offences, feeding into their policies on encouraging the authorities to treat road crime as "real" crime. Amy Aeron-Thomas, Executive Director of RoadPeace comments: "*The importance of the research conducted by Dr Sally Cunningham should not be underestimated... RoadPeace has benefited from Dr Cunningham's presentations at our previous conferences and our Traffic Justice panel discussion last November, "You say Careless, I say Dangerous". ... We may not always agree with her but we do always learn from her*" (5.5). Cunningham also took part in the Police Foundation Forum on Roads Policing in December 2012, at which the discussion

revolved around impacting policy on roads policing, particularly through the new Police and Crimes Commissioners, and called for the introduction of a Roads Accident Investigation Branch (5.4).

5. Sources to corroborate the impact

1. ACPO Uniform Operations, *Road Policing – 5 Year Strategy: Satisfying Safety, Reducing Risk*, 2011
http://www.acpo.police.uk/documents/uniformed/2011/20111116%20UOBA%20PolicingtheRoadYearStrategy2011_2015.pdf
2. Cunningham, S. *Beyond 2010: The Role of Traffic Law Enforcement in Casualty Reduction*, PACTS Occasional Research Report, 2008 (ISSN 1748-8338) (18pp)
3. Executive Director of the Parliamentary Advisory Council on Transport Safety (PACTS)
4. The Police Foundation, *Report of the 12th Oxford Policing Policy Forum* 6th December 2012 “Is roads policing taken seriously enough?” (See <http://www.police-foundation.org.uk/uploads/holding/oppf/oppf12.pdf> .The Forum takes place under the Chatham House rules so the report does not attribute contributions to named individuals).
5. Chair of RoadPeace
6. Sergeant 1296, North Wales Police and ACPO Roads Policing
7. Assistant Inspector at HMCPSI