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Comment

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Mechanical Law Enforcement: Speeding and Camera Technology

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Excessive and inappropriate speeding is--according to the ACPO² Road Policing Strategy--one of the four key behaviours which contribute to avoidable deaths and injury by making collisions more likely, and by making the resultant injuries worse.³ Although the imposition of a specific speed limit is a matter for legislation⁴ (either primary or in regulations and orders), the enforcement of those limits is an operational matter for the police force involved. Since the Road Traffic Act 1991, increasing reliance has been placed on the use of automatic devices for detecting speeding offences.⁵ One of these devices, the speed camera, does not enjoy universal popularity; its use tends to evoke strong emotive feelings whether they are of support or condemnation. The camera detects and gathers the initial evidence which is then used to initiate the process of prosecution and punishment.

A fixed penalty ticket procedure is available for offences of speeding detected by a camera, and it is common for the alleged offender never to experience any form of real human interaction with the prosecuting authorities from the moment of offending through to the conclusion, whatever that may be.⁶ The details of the offence are provided by the output of the machine and it is the machine that proves the facts of the offence. The system is unarguably administratively efficient and cost-effective, but are there any other costs or consequences that follow from relying on an almost totally mechanised and robotic system of law enforcement?

The offence of speeding

The offence of speeding is one of strict liability. There is no requirement to establish *mens rea* so any consideration of whether the offender acted with intention or recklessness is irrelevant. A driver who speeds inadvertently is liable to conviction and punishment in just the same way as a driver who speeds deliberately with full awareness that he is doing so. The speeding driver commits an offence irrespective of any contextual considerations that might sometimes influence any decision to prosecute. The speed camera is not concerned with what the weather conditions were or what time of day it was. The camera will not take any account of whether or not there were other road users present that were exposed to danger. Was this a prolonged and consistent bout of speeding over a significant distance? The camera is not in the least bit concerned. All these contextual factors are irrelevant to the machine that records the incident. The speed camera simply provides a snapshot of an isolated moment in time without reference to any other factors and without providing any evidence of the driver's state of mind. This mechanised approach necessarily produces a given number of offences⁷ which, in the eye of the machine and of those who behind the scenes subse-

quently process the follow-up action, appear to be identical in nature. Absent any of the contextual factors that influence police officers and prosecutors to initiate prosecutions, caution or take no further action, this mechanised system seems to demand that the errant drivers whose images have been captured should all be treated identically.

The procedure

The first stage that follows the taking of the picture by the camera will be the issue of a notice of intended prosecution (NIP)⁸ to the vehicle keeper, together with a notice under s. 172 of the Road Traffic Act 1988, requiring the registered keeper to identify the driver of the vehicle at the relevant time. Failure by the keeper to comply with this requirement is itself an offence.⁹ On many occasions, the keeper will also be the driver, but it may not be so. At this initial stage, together with the NIP and s. 172 requirement notice, some authorities also include additional documentation which is largely based on the assumption that the keeper is also the speeding driver.¹⁰

Will the offending driver be subjected to the enforcement process?

Once the offending driver has been properly identified, the process of enforcement will then continue. Although there is a great deal of room for discretion in the enforcement of speed limits, police forces will, in practice, tend to observe and follow the ACPO produced guidelines that set out the minimum speeds at which it is suggested enforcement action should be taken. The guidelines provide for the issue of a fixed penalty ticket at 10 per cent + 2 mph (i.e. 35 in a 30, 46 in a 40, etc.). In certain circumstances, an offending driver might be offered the opportunity to attend a speed awareness course (SAC) as an alternative to the full rigours of the fixed penalty process. The benefits of attending a SAC for the driver (apart from being educated on the dangers of speeding) are the avoidance of the more formal consequences of a prosecution. There is no monetary fine, although the driver will have to pay a fee to attend the SAC¹¹ and in that sense, financial inconvenience is still suffered, but the real incentive to attend and complete a SAC lies in the avoidance of penalty points being placed on the offending driver's record.¹²

The criteria for receiving an offer to attend a SAC are not always transparent. Perhaps understandably, individual police forces are less willing to publicise their criteria for attendance at such courses. This may be motivated by the fear that some drivers may consciously choose to speed within the guidelines for attendance at a SAC, knowing that should they be detected, they will escape the more formal enforcement sanctions of a fine and penalty points in favour of a SAC.

The ACPO recommended *basic* qualifying criteria for SAC attendance are:

- the speed of the driver/rider is not greater than the limit + 10% per cent+ 6 mph;
- the driver has *not* attended a SAC within the last three years;
- the driver must agree to abide by the terms and conditions of the offer of the SAC (including timescales for completion--typically four months from date of alleged offence).

Individual police forces may, however, choose to vary (or not even apply at all) the basic qualifying criteria, according to their own assessment of the offence.

Consistency and fairness

In one sense, the mechanised system of enforcement demonstrated by speed camera technology is undoubtedly 'fair'. The camera treats everyone alike without any kind of discrimination impinging on its task of capturing the image of a vehicle exceeding the speed restriction placed on that particular road. It does not take account of irrelevant factors such as age, race, and gender and offers an unquestionable degree of im-

partiality that may not always be present in a human-driven interaction. But equally, however, it does not take account of any of the (arguably) relevant individual or contextual features that may be present on any given occasion at an individual incident that might properly influence a human decision-maker as to the appropriate course of action to be taken. Is the camera's inability to do this a possible cause of the sense of unfairness of which many drivers complain? This is of importance because the perceived fairness of law enforcement systems is a key factor in shaping public support for both the police service and the criminal justice system itself.

Research has demonstrated that to be perceived as 'fair' it is not enough to simply demonstrate consistency. The enforcement experience must be respectful and contain an opportunity for the alleged offender to speak; the individual should have the opportunity to tell their 'side of the story' before the enforcement process takes its course and punishes the offender.¹³ In the context of a system of mechanised speed enforcement, the likelihood of there being any meaningful interaction that affords the offender a voice is distinctly lacking.

Wells has concluded that this form of mechanical justice can lead to perceptions of unfairness exactly because of the lack of 'common sense' and the inability to consider any of the individual contextual circumstances. Wells states:

Technologies ... are seen as inadequate for the task of judging real-world, qualitative, contextualised events. Procedurally just enforcement practices can be seen to depend ... not on the reliable measurement of acceptable levels of speed but on the reliable identification of people and actions that should and should not be [criminalised]. ... The fact that these are conditions of human enforcement and of interpersonal encounters ... represent a challenge for future enforcement based around infrastructure of this nature. The techno-fix--potentially the fairest form of enforcement to date--can therefore be experienced as one of the most unfair forms ...¹⁴

It seems evident that the perceived fairness of enforcement proceedings can be influenced and shaped, in a not insignificant way, by allowing the alleged offender a meaningful method of airing his or her views on any contextual circumstances surrounding the image produced by the camera. Additionally, the inclusion by some police forces of certain literature together with the s. 172 requirement may serve only to exacerbate resentment and increase the risk of alienating the public. In the Northumbria police area, for example, the keeper of a vehicle that is detected by camera exceeding a speed restriction will, perfectly properly and in accordance with the Road Traffic Act 1988, receive a notice under s. 172 requiring the driver to be identified. Included with that requirement is an A5 size leaflet of four sides that is unequivocally aimed at whoever the driver of the vehicle at the relevant time was. But the keeper who receives this notice may not, of course, be the errant driver. Is it appropriate to send material of this kind to a vehicle keeper when, in reality, the driver has not yet even been identified? Not particularly objectionable in itself perhaps, but on reading the leaflet, even the intended recipient (the errant driver) might develop a genuine sense of grievance at the contents. The use of phrases such as '... you're only reading this leaflet because you've been caught breaking the law ... no matter how you try to justify it ... you're about to be prosecuted', simply serve to convey to the reader that all decisions relating to liability and culpability have already been made. The camera has spoken and the conclusion has already been reached that the driver is guilty. This potentially inappropriate assumption is compounded by the use of somewhat emotive and pejorative language as the following extract from the same leaflet shows: 'You broke the law! ... When you stop to think about the consequences for yourself and other people, you begin to see that it's an incredibly stupid thing to do'.

So, without ever even hearing any representations about the circumstances of the incident, the prosecuting authorities, solely on the basis of an image captured on camera, have determined that the driver is not only guilty of the offence, but also that he or she has done 'an incredibly stupid thing'.

In a system that already disempowers the voice of the alleged offender, is there any better way of generating feelings of resentment than by disseminating material which unequivocally conveys to the driver not only that he is guilty of the offence but that he has done something incredibly stupid? Even in respect of those drivers who are truly culpable (as the vast majority may well be), it might be thought that labelling an individual driver's conduct as 'incredibly stupid' before even allowing the accused to make any kind of representation as to the circumstances of the incident, is not an appropriate and proper function of the prosecuting authorities.

Conclusions

Speed camera technology, together with the ensuing fixed penalty system, has become firmly established as the principal method of enforcement. There is little doubt that the camera offers an objectively consistent method of detection, but it is also a method that continues to generate disenchantment and feelings of unfairness. The root cause of this perceived unfairness seems to lie not in the simple fact of consistent detection, but in a system that *immediately* labels the driver as culpable and guilty. As Wells puts it:

The legitimacy of a system is ... determined not on the basis of its ability to enforce without discrimination or bias, but on the basis of ... its ability to demonstrate discrimination where appropriate. The system is judged not on the accuracy with which it detects offences, but on the accuracy with which it seems to criminalize the 'right' people.¹⁵

One possible means of improving this robotic system of enforcement would be to provide an opportunity for the detected driver to make representations concerning the alleged offence before the formal enforcement process proper commences.

The first stage of communication between prosecuting authorities and suspect occurs when the keeper of the offending vehicle is sent, by post, a requirement under s. 172 of the Road Traffic Act 1988, together with an NIP. At this stage, instead of immediately sending additional materials that label the driver as 'guilty' and describing his or her conduct as 'incredibly stupid', would it not be more conducive to a 'just' process to provide an opportunity for the suspected offender to make such representations concerning the alleged offence as may be appropriate? A simple document inviting the driver, should he or she so wish, to summarise briefly the alleged circumstances of the offence and provide such other information as may be relevant would not be costly and would not unduly increase bureaucracy.

It may be true that every driver would offer an excuse, but (rightly perhaps) almost all excuses that may be offered would not result in any change to legal liability for the offence. At best, they may amount to personal pleas of mitigation that might influence the decision-maker not to proceed with the normal prosecution process. But that is not the real issue here. The important point is that drivers will, at the very least, have been invited to voice their view and will, to that extent, feel that they have had their say. The process will have been 'humanised' to some small degree. If, after representations, the enforcement process continues to the next stage, the offending driver is much less likely to harbour those feelings of resentment that presently arise from an immediate and robotically reached conclusion of guilt. Administrative convenience may be necessary, even essential, but it should not (and need not) be at the price of a demonstrably just and fair process.

¹ Thanks are due to Neil MacEwan for comments on an earlier draft. The contents remain my sole responsibility.

² Association of Chief Police Officers.

³ See 'Policing of Roads', available at http://www.acpo.police.uk/asp/policies/Data/Policing_of_Roads.pdf, accessed 24 July 2010.

⁴ See, e.g., Road Traffic Regulation Act 1984, s. 89(1).

⁵ Section 23 of the Road Traffic Act 1991 inserted a new s. 20 into the Road Traffic Offenders Act 1988 and now provides for the admissibility into evidence of images and information produced by a camera installed for the purpose of detecting speeding and other offences.

⁶ The fixed penalty system is a procedure that permits a motorist who has committed a specified offence to pay a fixed sum of money and, in the case of an endorsable offence such as speeding, accept a set number of penalty points to be attributed to his or her driver record (Road Traffic Offenders Act 1988, ss 51-74 and ss 78-90). Under this system, no formal prosecution in court takes place.

⁷ For example, in 2004 just fewer than 2 million offences of speeding were processed by the authorities, 91 per cent of which were detected by speed cameras (Home Office Statistical Bulletin, *Motoring Offences and Breath Test Statistics 05/06*, 30 March 2006, available at <http://rds.homeoffice.gov.uk/rds/pdfs06/hosb0506.pdf>, accessed 24 July 2010).

⁸ Road Traffic Offenders Act 1988, s. 1(1) provides that for certain specified offences, a defendant must (with some exceptions) be warned of the possibility of prosecution at the time of the offence or (relevant here) a notice setting out the particulars of the alleged offence must be sent to the driver or keeper of the vehicle within 14 days of commission. Speeding is one of the specified offences.

⁹ Road Traffic Act 1988, s. 172(3). The offence also attracts six penalty points, whereas the offence of speeding currently attracts three penalty points under the fixed penalty procedure.

¹⁰ See further below.

¹¹ Broadly equivalent to the fine that would have been payable under the fixed penalty process.

¹² For more on ACPO policy on SAC, see <http://www.acpo.police.uk/asp/policies/Data/NDORS-National%20Speed%20Awareness%20Course%20Guidance%20Website.pdf>, accessed 24 July 2010.

¹³ See, e.g., J. Sunshine and T. R. Tyler, 'The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing' (2003) 37 *Law and Society Review* 513-48.

¹⁴ H. Wells, 'The Techno-Fix versus the Fair Cop: Procedural (In)Justice and Automated Speed Limit Enforcement' (2008) 48 *British Journal of Criminology* 798-817 at 815.

¹⁵ Above n. 13 at 814.