

Department for Transport

Using a mobile phone while driving:

Consultation on changing the law.

A response by the Association of Personal Injury Lawyers

January 2021



Introduction

APIL welcomes the opportunity to respond to the Department for Transport's (DfT) consultation on changing the law with regard to the offence of using a mobile phone whilst driving.

Individuals should have the right to use the roads without the risk of becoming injured. In 2019 there were 25,945 serious injuries reported and 1,752 deaths on the roads in Great Britain¹. Distractions at the wheel such as the use of a handheld mobile phone can significantly reduce driver awareness and cause collisions. Distractions can often be a contributing factor to collisions on the road. In 2018, 'driver using mobile phone' was *reported* as a contributory factor in 29 fatalities and 119 serious injuries in road traffic collisions². This does not include collisions which are not reported to the police or where minor injuries are sustained.

Technology is changing fast. Some technological developments will ultimately improve road safety, such as the development of fully autonomous vehicles. However, other forms of technology have the potential to do harm by causing distractions to drivers and the risk of road collisions. It is crucial that distractions, such as hand-held mobile phones, are limited to ensure that our roads are as safe as possible.

Although we broadly agree that closing the loophole to this offence is necessary to improve road safety, the proposed amendments may in fact result in further loopholes which can be exploited. Using a mobile phone whilst it is in a cradle is also a potential distraction, however this would not be covered by the proposed expansion of the handheld mobile phone offence. We are also concerned that the proposed exemption outlined in the consultation document does not go far enough in reflecting the reality of technology and what is expected in today's society in terms of collecting goods and attending events.

APIL is also concerned that the issue of what is 'hands-free' adds confusion as to what mobile phone use is, and is not, lawful whilst driving. Although a phone is in a cradle, if the driver is required to touch the screen in order to make a call or search for music, this is not technically hands-free. Whereas if the driver can make a voice-activated call through a phone that is in a cradle, maintaining both hands on the steering wheel, then this is hands-free. APIL argues that even touching a phone screen whilst it is in a cradle is not strictly hands-free, which has the potential to be unsafe because it results in the driver losing focus of the road which may cause a collision and potential injury. A form of "driving mode" (similar to aeroplane mode) could be developed so that all apps, functions and notifications are disabled except from the satnav, limited music features and calls where hands-

¹ Gov.UK 'Reported Road Casualties in Great Britain 2019 Annual Report < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/922717/reported-road-casualties-annual-report-2019.pdf > p.1

² PACTS Roads Policing Report June 2020 p. 74

free/Bluetooth is enabled. This should be activated whilst an individual is driving to ensure that there is limited distraction. The government should be exploring the use of such technology which could improve road safety and reduce collisions and casualties.

Expanding the handheld mobile phone offence

APIL broadly agrees that standalone functions, such as taking video footage, should be included within the offence. Such standalone functions can be just as distracting and dangerous as texting or operating a mobile phone because at least one hand is required to do so. Standalone functions therefore would close the loophole which is discussed within the consultation document.

We also agree that it is useful to include a list of functions which the offence will cover. It will provide a helpful guide to enforcement officers, prosecutors and road users. We suggest searching for files stored on the phone or the SIM card on a memory card/stick or any device connected to the phone should be included within the list, such as searching for music, photos and contacts.

In addition, we agree that any device capable of interactive communication, even if the communication element is disabled, should come under the offence. This would provide for a device such as an iPad which is only capable of interactive communication when connected to Wi-Fi or SIM including via Bluetooth or similar. This would ensure that drivers cannot avoid the offence by performing standalone functions, which at the time of using the device whilst driving, is incapable of interactive communication.

APIL is concerned that the amendments will result in loopholes elsewhere. For example, a driver using a mobile phone whilst it is in a cradle in the car is also distracting and dangerous whilst driving. Although scrolling through a device to locate stored music will be included within the offence where the driver is *physically* holding the phone, it is unclear as to whether locating stored music whilst the device is in a cradle will be included in the offence. Scrolling through a device that is in a cradle is also distracting because a driver's focus would be on the device rather than on the road. In light of this, the amendment could result in a further loophole for the offence, because drivers would be able to perform standalone functions whilst the device is in a cradle, rather than physically holding it. APIL argues that such mobile phone use should fall under the hand-held mobile phone offence.

APIL is also concerned that the sophistication of technology could allow a driver to view notifications and communicate whilst driving without using a handheld device, thus creating another loophole. Reading a text message on a wristwatch screen for example may be just as distracting as viewing a text message on a device in a cradle which flashes up on the home screen of the device when received. In addition, a notification which pops up at the top of a phone screen whilst the satnav is in use can be viewed by a quick swipe down whilst it remains in the cradle. APIL is concerned that technology allows a driver to perform functions on their device by a flick of the wrist or one touch of the screen whilst it is in a cradle, both of which seem to not be included within the proposed amendments to the offence because the device is not hand-held. This would create another loophole which would prove challenging for enforcement and would distract drivers whilst driving. The challenge is for the Government to decide where the line should be drawn with regard to using devices whilst driving. APIL reiterates the importance of focusing on safety and injury prevention, so touching the screen of a phone in a cradle for reasons which are not the exceptions outlined in our suggestion of developing a "driving mode", should be an offence.

Additional exemption

In light of technological advancements and the reality of the use of such payments, APIL supports the introduction of contactless phone payments as an exemption to the offence as long as the car is stationary at the time of the transaction. However, this does not provide for presenting pre-paid tickets or confirmation emails of prior payment on entry at events or on collecting goods.

Often tickets and confirmation emails provide QR codes to be scanned on arrival at an event carpark or collection, which would mean a driver would have to present the QR code on a device in order to obtain entry for their goods and services. This would not come under the exemption because the tickets or confirmation emails have been pre-paid sometimes a long time in advance. APIL argues that this should be included in the exemption to reflect the reality of technology and event organisation. This is especially relevant in today's society in light of the Covid-19 pandemic when stores have been closed, so orders are placed online and collected at a later time. This is also relevant due to the commonplace of outdoor events and the requirement for contactless tickets to avoid the spread of the virus.

APIL argues that in order to reflect the reality of society today, that this should also be an exemption of the handheld mobile phone offence.

Amending the Highway Code

Considering that the purpose of the Highway Code is to educate road users on their responsibility to ensure they are acting safely and inform them of road traffic offences, the non-exhaustive list contained on page 12 of the consultation document regarding the functions which will fall under the proposed offence, should be included. This would make it clear to the road user themselves what is an offence, they are unlikely to look at the full legislation. The inclusion of "you cannot pick up the phone to dial a number and then put it in the cradle for the duration of the conversation" provides a useful example for drivers on the offence but will not inform drivers of other functions which now fall under the offence.

As previously highlighted, the offence does not provide for functions being performed on a device whilst not being physically held, which can also be a distraction to a driver. If the DfT are not including this within the amendments to the offence, as suggested by APIL, then there should be warnings within the Highway Code that devices which are not physically being held can also distract a driver. This includes devices in a cradle and technology such as Apple watches.

There needs to be further clarification regarding the amendment to Rule 149. Often driving instructors or those undertaking a learner driver's test may use a device capable of interactive communication such as an iPad to refer to a checklist. Previously this may have been done by pen and paper, but reflecting modern society, paperless checklists may be preferred.

APIL suggests that it would be useful to include examples of 'similar devices' as mentioned in Rule 149 of the Highway Code. This will give road users an idea of what would be considered a 'similar device'. In addition, APIL argues that due to the advanced nature of Apple watches and other versions of technological watches, they should be considered a 'similar device'. This is because drivers can view notifications, compose text messages and take calls on such devices without the requirement to physically hold them.

The amendments to the Highway Code also state that an exception to Rule 149 is when it is necessary to call 999 or 112, however fails to mention GPRS emergency positioning

technology. This technology requires activation and is a form of communication. It is crucial for those with illnesses or disabilities, who may not be able to make a 999 or 112 call for assistance, to be able to contact someone in the event of an emergency.

About APIL

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation which has worked for 30 years to help injured people gain the access to justice they need, and to which they are entitled. We have more than 3,000 members who are committed to supporting the association's aims, and all are signed up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives, paralegals and some academics.

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