

234.7 Overtaking

R v Owais 2018 EWCA Crim 692 D pleaded to causing serious injury by dangerous driving. He was driving at night on unfamiliar roads after having been diverted off a motorway. D was driving on a single carriageway road and overtook two cars and then, without pulling back in, attempted to overtake a lorry. He hit an oncoming car. D said he did not see the oncoming headlights of V's vehicle and there was no way for V to have avoided the collision. V was left dazed and trapped in his vehicle by both ankles. He had surgery on his ankles and remained in hospital for nine weeks. In his victim impact statement, V said that he was depressed and anxious whilst in hospital and on his release, he had to go to stay with an aunt in her bungalow as he couldn't manage the stairs in his own house with his injuries. At the time of sentencing, V still had to walk with a stick and had a limp. He could no longer drive a manual car and had to give up dancing. He suffered fractures to his lumbar region and wrist and suffered some internal bleeding. In interview, D said that he was overtaking the lorry so that he could see the next diversion sign. He said he believed he had a clear view of the road ahead. D was aged 38. He had no previous convictions and an unblemished driving record for 21 years. His references showed he was a family man who gave a lot to the community. The Judge noted that D had two young children and that a prison sentence would jeopardise the business that D had spent many years building up. The Judge gave a notional sentence after trial of 2 1/2 years and gave a 20% discount for the plea. Held. Because death was not caused by this offence, the notional sentence following a trial was too high. We start at 2 years and with the mitigation move to 20 months, so with plea discount, **16 months** not 2 years.

234.7a Police officers on duty

(Principles applicable to death by driving cases as well)

R v McCall 2017 EWCA Crim 2024, 2018 1 Cr App R (S) 72 (p 232) D, a police officer, pleaded on the first day of his trial to causing serious injury by dangerous driving. He thought he ought to attend a fire, although the fire service did not. He drove at over 80 mph in a built-up area with a 40 mph limit. He went through a red light and hit V's car at 74 mph. V suffered seven fractured ribs, a collapsed lung and other serious injuries. The Judge held that although it was dangerous to drive at 74 mph, as it was an emergency D was entitled to do that. He considered that it was dangerous to drive through a red light and that had caused the serious injuries. Held. It was incumbent on D to adhere to the traffic rules. The harm involved was high. The mitigation (D was responding to an emergency with the stress and tension of that, he had a good driving record, remorse, his eight-year police service) was weighty. **6 months suspended** not 15.

Note: The Court seems to have placed far too much emphasis on the fact that D was a police officer and far too little emphasis on the fact that it is exceptionally dangerous to drive through a red light at 74 mph. It was a deliberate act and as a police officer he knew how dangerous it was. Ed.