

Just how legal is /M operation?

This 'Guest Editorial' by David Taylor was written as a result of the correspondence in 'The last word' in March and April (it was written before the May issue was published). David Taylor is a magistrate as well as being a radio amateur and a motorist, and here he poses the very serious question "just how legal is /M operation?"

In the letter from Geoff Darby, G7RTC ('The last word', March 2005), his analogy of the careless driving conviction in the 'apple case' is a good one - an apple being about the size of a radio fist mic. The assurance by Peter Kirby, RSGB General Manager, that legislation making it unlawful to use a hand-held mobile phone gives exemption to allow the use of mobile radio with a fist mic is correct. However, I think it's a mistake for amateurs who engage in this practice to believe that the exemption in itself gives them immunity from prosecution for careless or dangerous driving.

WHAT DOES THE NEW LAW REALLY MEAN?

The law was introduced because the use of mobile phones is distracting and is believed to have resulted in many accidents and scores of deaths. Department of Transport advice is that the use of *any* phone or similar device - hands free or not - is a distraction.

There is strong evidence that engaging in mobile phone conversations impairs ability to react to potentially hazardous situations, and that it is the *holding of the conversation* that increases this risk - not simply the *holding of the phone*. Indeed, research in Canada suggests that mobile phone use quadruples the risk of collision for the duration of the conversation, and that the enhanced hazard period extends for several minutes afterwards.

Thus, it seems likely that the use of mobile radio - hands free or not - poses similar risks. The majority of mobile radio use will not be by radio amateurs or CBers, but by emergency services and commercial users such as taxis. Their method of use differs greatly from that of

radio amateurs - it will generally be for the brief exchange of necessary information in calls of short duration. Often, mobile (PMR) radio will be used at the beginning or end of a journey when the vehicle is stationary, to receive instructions or to announce arrival at, or departure from, a destination.

Amateur mobile radio operation is quite different. The objective is to establish contact with fellow amateurs and to maintain contact for as long as RF conditions allow, or until one or another party wishes to go QRT. QSOs through repeaters can be of long duration, covering long distances. Often such QSOs take place in heavy commuter traffic *en route* to and from work, with cyclists and pedestrians - including children, around.

On any objective view this must impair concentration and increase the risks of accidents. Although it isn't in itself an offence to use a fist mic, neither is it a specific offence to eat an apple, peel an orange, drink from a can, unwrap a sweet, use an electric razor, fiddle with the radio, push the buttons on a hands-free phone in a holster, and so on. A car is not a mobile café, office or shack, and all these activities can, and do, lay drivers open to a charge of careless driving, whether or not an accident ensues. Worse still, there may be tragic consequences.

Offences such as using a hand-held mobile phone or exceeding the speed limit are known as 'absolute offences'. That means that if you've done it, you've done it, and it is only necessary to prove that the offence has occurred, without any burden of proof that there was any loss of control of the vehicle, or that it actually endangered anyone

in the particular instance.

However, in cases of careless or dangerous driving, it must be proved to the criminal standard of proof - beyond reasonable doubt - that the manner of driving meets the criteria of the offence. Each case must stand and fall on its merits based on the evidence.

The role of magistrates isn't to support the Crown Prosecution Service against the defendant, but to remain impartial, listen to the evidence from both sides, and conclude whether or not the case has indeed been proved 'beyond reasonable doubt'.

When considering allegations of careless driving a useful starting point that magistrates will have in mind is 'was the driver doing anything which - had they done it during their driving test would have caused them to fail? If so, had their standard of driving fallen to a point which amounts to careless driving?' In my view, the use of an amateur radio fist mic could fall well within that scope.

A HYPOTHETICAL CASE

I'd say that in most people's minds - including the public, police, CPS and magistrates (maybe many amateurs too) - an amateur using a hand-held mic has a close parallel to the use of a mobile phone, albeit simply using a hand-held mobile 'phone is an absolute offence, whereas if it is asserted that the use of a fist mic in a particular instance of alleged careless driving, it must be proved.

Consider the following hypothetical scenario of a police officer giving evidence. Put yourself in the place of the magistrates and ask yourself whether you would feel well disposed towards the defendant:

3 Crofters Drive, Cottingham, East Yorkshire HU16 4SD

E-mail: cotters@cotters.karoo.co.uk

PC: "I was on patrol with my colleague in a marked police car when I saw the defendant with something in his hand into which he appeared to be talking. At first I thought it was a mobile phone, then I saw it was a fist microphone with a curly lead attached to it.

"The traffic was busy and there were lots of pedestrians around, including children. His journey necessitated changing lanes, stopping at traffic lights and pedestrian crossings then moving away. All the time he had the microphone in his hand, talking into it for several minutes at a time. Although he didn't lose control of the vehicle, I formed the view that he was not concentrating on his driving and didn't have proper control of the vehicle.

"He had to change gear and steer the car, and it occurred to me that the curly lead might become entangled during a manoeuvre. I considered that he posed a risk to himself and other road users. In short, I thought it was an accident waiting to happen, so I signalled to the driver to pull over and stop, which he did. I asked him to explain what he was doing and he told me he was a licensed amateur radio operator, in radio contact with a fellow radio amateur while on his way to work. He said his understanding was that the law permitted the use of a mobile radio mic. I advised him that he would be reported for a possible prosecution for careless driving".

Taking the hypothetical case above, I think the hapless amateur would be up against it. What could he say in his defence? Not a great deal. Worse still if he was involved in an accident, when there'd be a



"But it's amateur radio, officer, so it's perfectly legal!" (In reality, four members of the Liverpool University Radio Society, G3OUL, during rag week in 1981. Taken from Amateur radio: the first 100 years.)

risk that the use of the mic would be seen as an aggravating factor, if not the prime cause. The penalty for careless driving is a fine of up to £2500 plus 3 - 9 penalty points or a disqualification, plus prosecution costs, plus his legal costs if represented by a solicitor, not to mention higher insurance premiums.

ANY OPPOSING VIEWS?

I don't want to sound like a scare-monger, or a do-gooder killjoy with a down on fellow amateurs. These are my personal views, and I do not claim to speak for magistrates as a whole. In any event I would declare an interest and decline to adjudicate on a case of a radio amateur accused of careless or

dangerous driving.

I doubt that fellow amateurs who enjoy mobile operation will be amenable to my comments and may assert that they have the ability to operate mobile radio and drive in today's demanding conditions at the same time, with no added risk to themselves or other road users. After 20 years of dealing with motoring offences I've long since concluded that the term 'accident' is a misnomer for 'incident', most of which occur not due to bad luck, but bad driving and a bad attitude to road safety.

As responsible members of society, I think we should reflect on the fact that careless driving offences are running at some 85,000 a year, and road deaths at 3500. Ten times as many people die on the roads as are murdered, and we surely have a part to play in not adding to that tragic toll. There are two parties to a QSO, and home-based amateurs that work mobile operators might also like to bear in mind the risks they're contributing to.

[Editorial note: If any amateur who frequently operates /M while driving would like to write a short piece expressing a different opinion, please contact the editor, c/o RSGB HQ, or e-mail: radcom@rsgb.org.uk]. ♦

WEB SEARCH

Department of Transport mobile phones and driving, FAQs:

www.dft.gov.uk/stellent/groups/dft_rdsafety/documents/page/dft_rdsafety_025216.hcsp

Roadpeace - 'Is the law of traffic offences appropriate?'

www.roadpeace.org/articles/trafilaw.html

Department for Transport website on road safety:

www.dft.gov.uk/stellent/groups/dft_rdsafety/documents/sectionhomepage/dft_rdsafety_page.hcsp

RoSPA and road safety: www.rospace.com/roadsafety/

Home Office statistics on motoring offences:

www.homeoffice.gov.uk/rds/motor1.html