

Aggravated vehicle taking offences guidelines, disqualification and other motoring related matters

Consultation

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The consultation will end on 22 May 2024

About this consultation

- To:** This consultation is open to everyone including members of the judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.
- Duration:** From 21 February 2024 to 22 May 2024
- Enquiries (including requests for the paper in an alternative format) to:** Office of the Sentencing Council
Tel: 020 7071 5793
Email: info@sentencingcouncil.gov.uk
- How to respond:** Please send your response by 22 May 2024 to:
Ollie Simpson
Email: consultation@sentencingcouncil.gov.uk
- Additional information:** This consultation exercise is accompanied by a resource assessment, and an online questionnaire which can be found on the [Sentencing Council website](#).
- Response paper:** Following the conclusion of this consultation exercise, a response will be published on the [Sentencing Council website](#).
- Freedom of information:** We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents' names in any final report we publish. If you wish to submit a confidential response, you should contact us before sending the response. PLEASE NOTE – We will disregard automatic confidentiality statements generated by an IT system.
- In addition, responses may be shared with the Justice Committee of the House of Commons.
- Our [privacy notice](#) sets out the standards that you can expect from the Sentencing Council when we request or hold personal information (personal data) about you; how you can get access to a copy of your personal data; and what you can do if you think the standards are not being met.

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Introduction

What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines which courts in England and Wales must follow when passing a sentence. The Council consults on proposed guidelines before they come into force and makes changes to the guidelines as a result of consultations.

Why aggravated vehicle taking and other motoring related matters?

In 2023 the Council published [new and revised sentencing guidelines](#) for a range of motoring offences relating to dangerous and careless driving. This was a wide-ranging package, but there remain several motoring-related offences for which guidelines do not exist or are out of date.

There are currently magistrates' courts guidelines for aggravated vehicle taking offences involving [dangerous driving, accident causing injury](#), and [causing damage to vehicle/property](#). However, these were published in 2008 by the Sentencing Guidelines Council, the Sentencing Council's predecessor body, and do not follow the detailed, step-by-step format now familiar to the courts. They also do not provide sentence levels for the Crown Court.

This consultation therefore seeks views on a comprehensive package of new and revised guidelines for aggravated vehicle taking offences, for use in both the magistrates' courts and in the Crown Court. These are informed by, and intended to be consistent with, the motoring guidelines published by the Council following consultation in 2023. (The magistrates' courts guideline for [vehicle taking without consent \(non-aggravated\)](#) was revised in 2017 and is out of scope of this consultation.)

A further guideline which dates back to 2008 and requires updating relates to [vehicle licence and registration fraud](#). The scope of this offence has changed since the publication of this guideline to relate only to vehicle registration fraud, as tax discs (and therefore related frauds) have fallen out of use. The Council is consulting on a revised guideline for this offence.

Following the previous consultation on motoring guidelines, the Council committed to look at what further guidance could be given to the courts on driver disqualification. This consultation seeks views on a draft overarching guideline on disqualification. This covers when disqualification is available, the principles to follow when setting the length of a disqualification (including interaction with time spent in custody), and when exemptions may or may not apply.

There are also several other miscellaneous matters relating to motoring which have been raised with the Council, or which have arisen following the consultation in 2022. Some of these involve changes which can be made without consultation and are set out in the Annex to this document. Others the Council believes deserve consultation as there may be different views about their merits.

What is the Council consulting about?

The Council has produced this consultation paper in order to seek views from as many people as possible interested in the sentencing of motoring offences.

However, it is important to clarify that the Council is consulting on the sentencing guidelines for these offences and related matters and not the legislation upon which they are based. The relevant legislation is a matter for Parliament and is, therefore, outside the scope of this exercise.

Through this consultation process, the Council is seeking views on:

- the principal factors that make any of the offences included within the draft guidelines more or less serious;
- the additional factors that should influence the sentence;
- the types and lengths of sentence that should be passed;
- the overarching guideline on how to approach imposing driver disqualifications;
- whether there are any issues relating to disparity of sentencing and/or broader matters relating to equality and diversity that the guidelines could and should address; and
- anything else you think should be considered.

We would like to hear from anyone who uses sentencing guidelines in their work or who has an interest in sentencing. We would also like to hear from individuals and organisations representing anyone who could be affected by the proposals including:

- victims and their families;
- defendants and their families;
- those under probation supervision or youth offending teams/supervision;
- those with protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

How to give your views

In the following sections the proposed guidelines are outlined in detail section by section and you will be asked to give your views.

The consultation paper is organised first by covering offence-specific guidelines related to aggravated vehicle taking offences and vehicle registration fraud. There is then a section on the proposed overarching guideline on driver disqualification. The last section covers the range of miscellaneous motoring related amendments mentioned above.

You can give your views by answering some or all of the questions either by email to consultation@sentencingcouncil.gov.uk or by using the [online questionnaire](#).

Age applicability

When issued as definitive guidelines these will only apply to offenders aged 18 and older. General principles to be considered in the sentencing of children and young people are in [the Council's definitive guideline on sentencing children and young people](#).

What else is happening as part of the consultation process?

This is a three month public consultation. During the consultation period, the Council will host a number of exercises to test the draft amendments and new guideline and consider whether any changes are needed. Once the consultation exercise is over and the results considered, a final guideline will be published and used by all courts.

The Council has also produced a resource assessment for the guidelines, along with a statistical bulletin and data tables showing current sentencing practice for these offences. The resource assessment, statistical bulletin and data tables can be found on the [Sentencing Council's website](#).

Question 1: What is your name?

Question 2: What is your email address?

Question 3: Are you answering as an individual? If so, are you happy for your name to be included in the consultation response document?

Question 4: If you are answering on behalf of an organisation, group or bench, please provide the name of the organisation, group or bench.

Aggravated vehicle taking offences

Section 12 of the Theft Act 1968 sets out the elements of the basic offence of vehicle taking:

“A person shall be guilty of an offence if, without having the consent of the owner or other lawful authority, he takes any conveyance for his own or another’s use or, knowing that any conveyance has been taken without such authority, drives it or allows himself to be carried in or on it.”

This may cover instances of theft of a vehicle, but it may also cover other situations where consent to take and drive the vehicle has not been given and there might have been an intention to return the vehicle. For example, driving a hire car beyond the allotted time, taking a company vehicle without authorisation, or driving a parent or spouse’s car without their permission.

Section 12A of the Act sets out four different ways in which the basic offence may be aggravated:

- where the vehicle is driven dangerously on a road or other public place (s12A(2)(a))
- where injury (including death) is caused owing to the driving of the vehicle (s12A(2)(b))
- where, owing to the driving of the vehicle, damage is caused to property other than the vehicle (s12A(2)(c))
- where, owing to the driving of the vehicle, damage is caused to the vehicle itself (s12A(2)(d))

In terms of penalties, the legislation sets a maximum penalty of two years’ custody, except where death results from the driving of the vehicle, in which case the maximum penalty is 14 years’ custody. Also, under section 22 of the Magistrates’ Courts Act 1980, property/vehicle damage not exceeding £5,000 will be triable only summarily and therefore subject to a maximum penalty of six months’ custody. As per section 17 of the 1980 Act, all the other variations of the offence are triable either way, so can be tried and sentenced in either the magistrates’ courts or the Crown Court.

Aggravated vehicle taking combines elements of both motoring and theft offences. With the exception of aggravated vehicle taking involving injury where death has resulted, the offences are covered by two existing magistrates’ courts guidelines, with one covering injury and dangerous driving, and the other covering vehicle/property damage. These guidelines were issued in 2008 and so are out of date and do not follow the detailed, stepped structure usually now set out in Sentencing Council guidelines.

The Council is proposing to produce four aggravated vehicle taking guidelines:

- aggravated vehicle taking – dangerous driving
- aggravated vehicle taking – causing damage (covering damage to both the vehicle taken and other property)
- aggravated vehicle taking – causing injury (excluding death)

- aggravated vehicle taking – causing death.

Where the criminal damages caused do not exceed £5,000, the sentence levels in the guideline for causing damage will reflect the powers available to the magistrates' courts as a summary only offence.

Aggravated vehicle taking – dangerous driving

In 2022, around 250 adult offenders were sentenced for aggravated vehicle taking involving dangerous driving. The majority of these (76 per cent) were sentenced in the Crown Court.

The proposed guideline for aggravated vehicle taking involving dangerous driving can be found [here](#).

Culpability

The proposed culpability factors for this variation of the offending are closely based on those in the [guideline for simple dangerous driving](#) under section 2 of the Road Traffic Act 1988. There are some additions to those culpability factors to take into account the role of the offender where the offending is committed by a group. However, the Council believes the focus of step one of the guideline should be on the standard of driving: factors related to the vehicle taking will feature at step two (see below)

Culpability

The court should determine culpability by reference only to the factors below. Where there are characteristics present that fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

A

- Deliberate decision to ignore the rules of the road and disregard for the risk of danger to others.
- Prolonged, persistent and deliberate course of dangerous driving
- Obviously highly dangerous manoeuvre
- Prolonged use of mobile phone or other electronic device
- Driving highly impaired by consumption of alcohol and/or drugs
- Offence committed in course of evading police
- Racing or competitive driving against another vehicle
- Persistent disregard of warnings of others
- Lack of attention to driving for a substantial period of time
- Speed significantly in excess of speed limit or highly inappropriate for the prevailing road or weather conditions
- Leading role in group offending

B

- Use of mobile phone or other electronic device (where not culpability A)
- Driving knowing that the vehicle has a dangerous defect or is dangerously loaded
- Driving at a speed that is inappropriate for the prevailing road or weather conditions (where not culpability A)
- Driving impaired by consumption of alcohol and/or drugs (where not culpability A)
- Driving significantly impaired as a result of a known medical condition, and/or disregarding advice relating to the effect of a medical condition or medication
- Driving when deprived of adequate sleep or rest
- Disregarding a warning of others
- The offender's culpability falls between the factors as described in high and lower culpability

C

- Standard of driving was just over threshold for dangerous driving
- Minor role in group offending

Harm

Following the same principle, the proposed harm factors for aggravated vehicle taking involving dangerous driving are the same as those in the recently revised dangerous driving guideline.

Harm	
Category 1	<ul style="list-style-type: none"> • Offence results in injury to others • Damage caused to vehicles or property
Category 2	<ul style="list-style-type: none"> • All other cases

Sentence levels

The most common outcome for offenders sentenced in 2022 was immediate custody (around 47 per cent). A further 29 per cent received a suspended sentence, 19 per cent received a community order and 4 per cent were 'Otherwise dealt with'. The remaining offenders received a fine (1 per cent) or an absolute or conditional discharge (less than 1 per cent). The (mean) average custodial sentence length after any reduction for a guilty plea (ACSL) in 2022 was 10 months. All offenders sentenced to immediate custody in 2022 received a sentence of 18 months or less, after any reduction for a guilty plea.

As set out above, the maximum penalty for this offence is two years' custody. This is the same as for dangerous driving under section 2 of the Road Traffic Act 1988. Given this, and the similarity of the culpability and harm factors, the Council proposes sentencing levels identical to those for the section 2 offence. Aggravating factors relating to the vehicle taking are set out at step two which may result in a more severe sentence than in cases which did not involve vehicle taking.

	Culpability A	Culpability B	Culpability C
Harm 1	<p>Starting point 1 year 6 months' custody</p> <p>Category range 1 – 2 years' custody</p>	<p>Starting point 36 weeks' custody</p> <p>Category range High level community order – 1 year 6 months' custody</p>	<p>Starting point High level community order</p> <p>Category range Medium level community order – 36 weeks' custody</p>
Harm 2	<p>Starting point 36 weeks' custody</p> <p>Category range High level community order – 1 year 6 months' custody</p>	<p>Starting point High level community order</p> <p>Category range Medium level community order – 36 weeks' custody</p>	<p>Starting point Medium level community order</p> <p>Category range Low level community order – High level community order</p>

Aggravating and mitigating factors

As with the step one factors, the aggravating and mitigating factors proposed are closely based on those for the dangerous driving guidelines published in 2023, with some amendments.

Several aggravating factors are added which relate to the vehicle taking:

- Vehicle taken as part of burglary
- Taken vehicle was an emergency vehicle
- Taken vehicle belongs to a vulnerable person
- Taken vehicle is an LGV, HGV or PSV etc

The Council believes that the mitigating factor of having a good driving record is less pertinent to cases where a vehicle has been taken so do not propose including it in this guideline. The factor “Actions of the victim or a third party contributed significantly to collision” is not proposed for inclusion, in part because there may well be no collision in these cases, but also to reflect the raised culpability of someone who should not have been driving the vehicle in the first place.

Factors increasing seriousness

Statutory aggravating factors

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors

- Vehicle taken as part of burglary
- Taken vehicle was an emergency vehicle
- Taken vehicle belongs to a vulnerable person
- Taken vehicle is an LGV, HGV or PSV etc
- Victim of dangerous driving was a vulnerable road user, including pedestrians, cyclists, horse riders motorcyclists etc
- Other driving offences committed at the same time (see step 6 on totality)
- Blame wrongly placed on others
- Failed to stop and/or obstructed or hindered attempts to assist at the scene
- Passengers in the offender's vehicle, including children
- Offence committed on licence or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Efforts made to assist or seek assistance for victim(s)
- Remorse
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

The remaining steps are standard for offence specific guidelines. Guidance is provided on disqualification at step 6, equivalent to that provided for the motoring offences for which guidelines were published in 2023.

Question 5: do you agree with the proposed guideline for aggravated vehicle taking – dangerous driving offences? If not, please tell us why.

Aggravated vehicle taking – causing damage

Aggravated vehicle taking where damage is caused is the most common form of aggravated vehicle taking. In 2022, around 520 offenders were sentenced for aggravated vehicle taking causing damage to property or the vehicle. Around 370 of these involved damage not exceeding £5,000, all of which were heard in the magistrates' courts. Of the remainder, involving damage of over £5,000, around two thirds (66 per cent) were sentenced in the magistrates' courts.

The proposed guideline for aggravated vehicle taking causing damage can be found [here](#).

Culpability

The vehicle taking aspect of this offence is reflected in the culpability table, where the Council proposes retaining the lower culpability factors of exceeding authorised use and retaining a hire car beyond the return date from the existing guideline. The higher culpability category also includes consideration of where the vehicle/property was deliberately destroyed, or the intention was to do so, which is a high culpability factor in the criminal damage guidelines.

The middle category is intended to capture those cases which fall between categories A and C.

Culpability	
The court should determine culpability by reference only to the factors below. Where there are characteristics present that fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender’s culpability.	
A	<ul style="list-style-type: none"> • Vehicle or property deliberately destroyed • Intention to cause serious damage • Driving impaired by consumption of alcohol and/or drugs • Significant planning • Offence committed in course of evading police • Leading role in group offending
B	<ul style="list-style-type: none"> • Cases that fall between categories A or C because: <ul style="list-style-type: none"> ○ Factors are present in A and C which balance each other out, and/or ○ The offender’s culpability falls between the factors as described in A and C
C	<ul style="list-style-type: none"> • Vehicle not driven in unsafe manner • Minor role in group offending • Exceeding authorised use of e.g. employer's or relative's vehicle • Retention of hire car for short period beyond return date

Harm

Given the nature of the offence, the focus of the proposed harm table is on the value of the property or vehicle damage. Other aspects relating to the harm caused (including the status of the victim) are proposed at step two.

Three levels of harm are proposed: the lowest level of damage valued as not exceeding £5,000 is intended for the magistrates’ courts alone; the highest level is for high value damage; and the middle category is for damage falling between categories 1 and 3.

Harm	
Category 1	<ul style="list-style-type: none"> High value damage
Category 2	<ul style="list-style-type: none"> Value of damage falls between categories 1 and 3
Category 3	<ul style="list-style-type: none"> Total damage caused not exceeding £5,000

Sentence levels

In 2022, over half of offenders sentenced for aggravated vehicle taking resulting in damage not exceeding £5,000 received a community order (56 per cent). A further 16 per cent received immediate custody, 14 per cent received a suspended sentence, 7 per cent received a fine, and 3 per cent were ‘Otherwise dealt with’. The remaining 2 per cent received an absolute or conditional discharge. Of those sentenced to immediate custody, the ACSL was 3 months.

For offending where the damage caused was over £5,000, nearly half (46 per cent) of offenders sentenced in 2022 received a community order. Around 25 per cent received a suspended sentence and 23 per cent received immediate custody. The remaining offenders received a fine (4 per cent), were ‘Otherwise dealt with’ (3 per cent) or received an absolute or conditional discharge (1 per cent). The ACSL was nine months.

The Council is intending to set proportionate penalties, but also to ensure a distinction with cases where injury has been caused. The starting points and ranges for harm category 3 cases are largely non-custodial (with the exception of box 3A, where the top of the range is 18 weeks’ custody). There is the possibility that these proposed levels may lead to a change in sentence outcome for this offence. Around a third of offenders currently receive a custodial sentence (either suspended or immediate). Under the guideline, there is likely to be an increase in community orders and a decrease in custodial sentences. The Council believes this can be justified as, simply due to inflation, the number of cases where damage will not exceed £5,000 will be decreasing over time.

The rest of the table is not likely to have a significant impact on sentencing practice for cases involving damage of over £5,000, although the Council intends to explore during consultation whether a high proportion of cases may be allocated as category 1, with the likely result of more custodial sentences. The sentencer is reminded that the lowest level of harm is summary-only with a maximum penalty of six months’ custody.

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where a case does not fall squarely within a category, adjustment from the starting point may be required before adjustment for aggravating or mitigating features.

Where the total damage caused is valued as not exceeding £5,000, this will be a summary-only offence with a statutory maximum penalty of six months' custody. This is reflected in the starting points and ranges for category 3 harm in the sentencing table below.

	Culpability A	Culpability B	Culpability C
Harm 1	<p>Starting point 1 year's custody</p> <p>Category range 18 weeks – 2 years' custody</p>	<p>Starting point 18 weeks' custody</p> <p>Category range High level community order – 1 year's custody</p>	<p>Starting point High level community order</p> <p>Category range Medium level community order – 12 weeks' custody</p>
Harm 2	<p>Starting point 12 weeks' custody</p> <p>Category range High level community order – 1 year's custody</p>	<p>Starting point High level community order</p> <p>Category range Medium level community order – 12 weeks' custody</p>	<p>Starting point Medium level community order</p> <p>Category range Low level community order – High level community order</p>
Harm 3	<p>Starting point High level community order</p> <p>Category range Medium level community order – 18 weeks' custody</p>	<p>Starting point Medium level community order</p> <p>Category range Low level community order – High level community order</p>	<p>Starting point Low level community order</p> <p>Category range Band B fine - Medium level community order</p>

Aggravating and mitigating factors

Many of the aggravating and mitigating factors proposed in this guideline are common to the motoring guidelines published in 2023, with additional aggravating factors related to the vehicle taking aspect of the offending.

Factors increasing seriousness

Statutory aggravating factors

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors

- Vehicle taken as part of burglary
- Taken and/or damaged vehicle was an emergency vehicle
- Taken and/or damaged vehicle belongs to a vulnerable person
- Disregarding warnings of others
- Damage caused in moving traffic accident
- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders and motorcyclists
- Taken vehicle is an LGV, HGV or PSV etc
- Other driving offences committed at the same time (see step 6 on totality)
- Blame wrongly placed on others
- Failed to stop and/or obstructed or hindered attempts to assist at the scene
- Passengers in the offender's vehicle, including children
- Offence committed on licence or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation

- Actions of the victim or a third party contributed significantly to collision or damage
- Efforts made to assist or seek assistance for victim(s)
- No previous convictions or no relevant/recent convictions
- Remorse
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

The remaining steps are standard for offence specific guidelines. Guidance is provided on disqualification at step 6, equivalent to that provided for the motoring offences for which guidelines were published in 2023.

Question 6: do you agree with the proposed guideline for aggravated vehicle taking – damage caused offences? If not, please tell us why.

Aggravated vehicle taking – causing injury

Aggravated vehicle taking offences resulting in injury are relatively low in number. In 2022, around 40 offenders were sentenced for aggravated vehicle taking causing injury (not involving death). There was an approximately even split in the proportion of offenders sentenced in the magistrates' courts (51 per cent) and Crown Court (49 per cent).

The proposed guideline for aggravated vehicle taking causing injury can be found [here](#).

Culpability

The culpability factors proposed for aggravated vehicle taking offences involving injury are similar to those proposed for causing property/vehicle damage and are adapted from the existing guideline and from the guideline for criminal damage.

Culpability	
The court should determine culpability by reference only to the factors below. Where there are characteristics present that fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.	
A	<ul style="list-style-type: none"> • Risk of serious injury caused to persons • Driving impaired by consumption of alcohol and/or drugs • Significant planning • Offence committed in course of evading police • Leading role in group offending
B	<ul style="list-style-type: none"> • Other cases that fall between categories A or C because: <ul style="list-style-type: none"> ○ Factors are present in A and C which balance each other out, and/or, ○ The offender's culpability falls between the factors as described in A and C
C	<ul style="list-style-type: none"> • Vehicle not driven in unsafe manner • Minor role in group offending • Exceeding authorised use of e.g. employer's or relative's vehicle • Retention of hire car for short period beyond return date

Harm

While cases resulting in death are the subject of another proposed guideline (see below), all other levels of injury are in scope of this offence. The Council therefore proposes replicating the harm categories as set out in the 2023 guideline for causing injury by wanton or furious driving.

Harm	
Category 1	<ul style="list-style-type: none"> • Grave and/or life-threatening injury caused • Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment • Offence results in a permanent, irreversible injury or condition
Category 2	<ul style="list-style-type: none"> • Other cases of serious harm
Category 3	<ul style="list-style-type: none"> • All other cases

Sentence levels

In 2022, around 40 per cent of offenders sentenced for aggravated vehicle taking causing injury (excluding death) received immediate custody, 30 per cent received a community order and 28 per cent a suspended sentence. The remaining offenders were 'Otherwise dealt with' (2 per cent). The ACSL was 8 months.

The sentencing levels proposed largely reflect those for causing injury by wanton or furious driving, which shares this offence's maximum penalty of two years' custody. There are, however, fewer fines in scope, reflecting current sentencing practice. Levels are also generally higher than those proposed for causing property or vehicle damage, which the Council believes is justified on the basis of the harm done to individuals.

	Culpability A	Culpability B	Culpability C
Harm 1	<p>Starting point 1 year 6 months' custody</p> <p>Category range 1 – 2 years' custody</p>	<p>Starting point 1 year's custody</p> <p>Category range 26 weeks – 1 year 6 months' custody</p>	<p>Starting point 26 weeks' custody</p> <p>Category range High level community order – 1 year's custody</p>
Harm 2	<p>Starting point 1 year's custody</p> <p>Category range 26 weeks – 1 year 6 months' custody</p>	<p>Starting point 26 weeks' custody</p> <p>Category range High level community order – 1 year's custody</p>	<p>Starting point High level community order</p> <p>Category range Medium level community order – 26 weeks' custody</p>
Harm 3	<p>Starting point 26 weeks' custody</p>	<p>Starting point</p>	<p>Starting point</p>

	Culpability A	Culpability B	Culpability C
		High level community order	Medium level community order
	Category range High level community order – 1 year's custody	Category range Medium level community order – 26 weeks' custody	Category range Low level community order – High level community order

Aggravating and mitigating factors

The aggravating and mitigating factors listed below are similar to those proposed for all the aggravated vehicle taking guidelines. "Multiple victims involved" is included as an aggravating factor, with a reference to the totality step of the guideline. The victim providing a public service or performing a public duty at the time of the offence, or being an emergency worker is treated as an aggravating factor as that is common in these offences.

Factors increasing seriousness
Statutory aggravating factors
<ul style="list-style-type: none"> • Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction • Offence committed whilst on bail
Other aggravating factors
<ul style="list-style-type: none"> • Vehicle taken as part of burglary • Taken vehicle was an emergency vehicle • Taken vehicle belongs to a vulnerable person • Disregarding warnings of others • Multiple victims involved (see step 6 on totality when sentencing more than one offence) • Victim was providing a public service or performing a public duty at the time of the offence, or was an emergency worker • Victim was a vulnerable road user, including pedestrians, cyclists, horse riders, motorcyclists etc • Taken vehicle is an LGV, HGV or PSV etc • Other driving offences committed at the same time (see step 6 on totality) • Blame wrongly placed on others • Failed to stop and/or obstructed or hindered attempts to assist at the scene • Passengers in the offender's vehicle, including children • Offence committed on licence or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation

- Actions of the victim or a third party contributed significantly to collision or injury
- Efforts made to assist or seek assistance for victim(s)
- No previous convictions or no relevant/recent convictions
- Remorse
- Victim was a close friend or relative
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

The remaining steps are standard for offence specific guidelines. Guidance is provided on disqualification at step 6, equivalent to that provided for the motoring offences for which guidelines were published in 2023.

Question 7: do you agree with the proposed guideline for aggravated vehicle taking – injury caused offences? If not, please tell us why.

Aggravated vehicle taking – causing death

Cases of aggravated vehicle taking resulting in death are sentenced very rarely. There were fewer than five offenders sentenced for it in 2022. In part this may reflect Crown Prosecution Service (CPS) guidance which recommends that prosecutors charge drivers with causing death by dangerous driving where this is relevant, due to the higher maximum penalty for that offence. This means that it will often be passengers in the taken vehicle who will be charged with aggravated vehicle taking causing death.

The proposed guideline for aggravated vehicle taking causing death can be found [here](#).

Culpability

The proposed culpability factors are the same as those for aggravated vehicle taking resulting in injury, reflecting the fact that this is effectively the same offence, covering the same behaviours; it is only the resulting harm which is different.

Culpability

The court should determine culpability by reference only to the factors below. Where there are characteristics present that fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

A

- Risk of serious injury caused to persons
- Driving impaired by consumption of alcohol and/or drugs
- Significant planning
- Offence committed in course of evading police

- Leading role in group offending

B

- Other cases that fall between categories A or C because:
 - Factors are present in A and C which balance each other out, and/or,
 - The offender's culpability falls between the factors as described in A and C

C

- Vehicle not driven in unsafe manner
- Minor role in group offending
- Exceeding authorised use of e.g. employer's or relative's vehicle
- Retention of hire car for short period beyond return date

Harm

The proposed approach to harm is the same as that in other motoring offences where death is caused. There is one level of harm. The increased harm of multiple deaths is covered in wording at step two. The harm caused to other victims injured is reflected under aggravating factors and at step 6 on totality.

Harm

For all cases of aggravated vehicle taking causing death, the harm caused will inevitably be of the utmost seriousness. The loss of life is taken into account in the sentencing levels at step two.

Sentence levels

The maximum penalty for this offence is 14 years' custody, considerably higher than the maximum for the other aggravated vehicle taking offences. In 2022, all offenders were sentenced to immediate custody and the ACSL for the period 2018 to 2022 was 4 years 8 months.

The proposed sentence levels for this offence are influenced by those set out in the 2023 guideline for causing death by dangerous driving. The starting points and category ranges, however, are tailored to sit within the statutory maximum for this offence, with overlapping category ranges to allow for significant increases or reductions if aggravating or mitigating factors apply.

The bottom of the offence range proposed is two years' custody, which is the top of the offence range proposed for aggravated vehicle taking causing injury, recognising that the harm caused here is much more serious. The top of the offence range is 12 years'

custody, to allow sentencers headroom to further increase sentences in exceptional cases, including where multiple deaths have been caused.

As noted above, the sentencer is provided with some guidance on how to approach cases of multiple fatalities, based on that in the guideline for causing death by dangerous driving and other motoring offences involving death.

STEP TWO
Starting point and category range

The starting points and category ranges below relate to a single offence resulting in a single death. Where more than one death is caused and they are charged in separate counts, or where another offence or offences arise out of the same incident or facts is charged, concurrent sentences reflecting the overall criminality will be appropriate.

Where more than one death is caused but they are all charged in a single count, it will be appropriate to make an upwards adjustment from the starting point within the relevant category range before consideration of other aggravating features and mitigation. See the Totality guideline and step six of this guideline.

Culpability	Starting point	Range
A	10 years' custody	7 – 12 years' custody
B	5 years' custody	3 – 8 years' custody
C	3 years' custody	2 – 4 years' custody

Aggravating and mitigating factors

The proposed aggravating and mitigating factors are the same as those proposed for aggravated vehicle taking resulting in injury. The aggravating factor “multiple victims involved” has been removed, however, as this is dealt with in the wording preceding the sentence table.

Factors increasing seriousness

Statutory aggravating factors

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors

- Vehicle taken as part of burglary
- Taken vehicle was an emergency vehicle
- Taken vehicle belongs to a vulnerable person
- Disregarding warnings of others
- Victim was providing a public service or performing a public duty at the time of the offence, or was an emergency worker
- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders, motorcyclists etc
- Taken vehicle is an LGV, HGV or PSV etc
- Other driving offences committed at the same time (see step 6 on totality)
- Blame wrongly placed on others
- Failed to stop and/or obstructed or hindered attempts to assist at the scene
- Passengers in the offender's vehicle, including children
- Offence committed on licence or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation

- Actions of the victim or a third party contributed significantly to collision or death
- Efforts made to assist or seek assistance for victim(s)
- No previous convictions or no relevant/recent convictions
- Remorse
- The victim was a close friend or relative
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

The remaining steps are standard for offence-specific guidelines, and for this offence the court is required to make an assessment of dangerousness at step 5. Guidance is provided on disqualification at step 7, equivalent to that provided for the motoring offences for which guidelines were published in 2023.

Question 8: do you agree with the proposed guideline for aggravated vehicle taking – death caused offences? If not, please tell us why.

Question 9: are there any overarching comments you would like to make on the package of proposed aggravated vehicle taking guidelines?

Vehicle registration fraud

Vehicle registration fraud is an offence under section 44 of the Vehicle Excise and Registration Act 1994. This states that it is an offence to forge, alter or fraudulently use vehicle number plates or “trade plates” (i.e. number plates used by those in the motor industry who may need to maintain a fleet of cars).

The Sentencing Guidelines Council produced a guideline for this offence in 2008. This was based in large measure on being applicable to fraudulent use of tax discs. However, the Finance Act 2014 removed tax discs from the scope of the offence: these are now administered and monitored digitally and physical tax discs are obsolete. The guideline is also aimed at magistrates: although the offence has a maximum penalty of two years’ imprisonment, the maximum penalty is a fine in the magistrates’ courts. Custodial sentences, and therefore community orders, are only available in the Crown Court.

Despite its more limited scope since 2014, volumes of the offence have increased in recent years, from a low of around 40 adult offenders in 2016 to around 160 in 2022. This rise is possibly driven by the more widespread use of Automatic Number Plate Recognition (ANPR) technology in congestion and emission zones and parking enforcement, tempting offenders to swap or forge plates to avoid detection. However, the offence can be committed in the context of a wide range of offending.

In 2022, nearly two thirds (65 per cent) of offenders were sentenced in the magistrates’ courts.

The proposed guideline for vehicle registration fraud can be found [here](#).

Culpability

The proposed guideline retains culpability and harm elements from the existing guideline, and draws on elements present in the guidelines for fraud, perverting the course of justice and driving whilst unlicensed, uninsured or disqualified.

The high culpability factor “LGV, PSV, taxi etc” does not seem relevant now that the offence is about number plates and not tax fraud, the key issue being about the commercial nature of the offending, not the size of the vehicle. It is therefore replaced with “Driving for commercial purposes”. The factor “Sophisticated nature of offence/significant planning” is added, which is found in the current fraud guideline.

The lower culpability factors are taken from the existing guideline, including the situation where the offender is the legitimate owner of the number plate. “Opportunistic ‘one-off’ offence; very little or no planning” is a low culpability factor in the fraud guideline. Closely related, “unsophisticated nature of conduct” could separately capture the situation where someone uses a crude method of disguising a number plate but over a long period of time.

Culpability

Where there are factors present that fall under different levels of culpability, the court should balance these factors to reach a fair assessment of the offender’s culpability.

A – Higher culpability

- Conducted over a sustained period of time
- Driving for commercial purposes
- Sophisticated nature of offence/significant planning

B – Lesser culpability

- Number plate from another vehicle owned by offender
- Opportunistic ‘one-off’ offence; very little or no planning
- Unsophisticated nature of conduct

Question 10: do you agree with the proposed culpability factors for vehicle registration fraud? If not, please tell us why.

Harm

For high harm the Council proposes retaining “legitimate owner inconvenienced” from the existing guideline. This is a deliberately low bar, as in many cases innocent victims may suffer serious distress when they are accused of offences and actions they have not committed.

“High financial gain” is expanded to “fraud results in high financial gain and/or high revenue loss to others” to capture the situation where a congestion or low-emission charge is being avoided. “Serious impact on criminal investigation” has been adapted from an equivalent factor, “Serious impact on the administration of justice”, in the guideline for perverting the course of justice. This reflects the fact that this offending will almost always sit as part of broader offending.

The lower harm category is proposed to capture “all other cases”, including the intention to cause the types of harm listed in Category 1.

Harm	
Category 1	<ul style="list-style-type: none">• Fraud results in significant financial gain and/or significant revenue loss to others• Legitimate owner inconvenienced• Serious impact on criminal investigation
Category 2	<ul style="list-style-type: none">• All other cases (including intention to cause harm at category 1)

Question 11: do you agree with the proposed harm factors for vehicle registration fraud? If not, please tell us why.

Sentence levels

In 2022, around 60 per cent of offenders received a fine for this offence and a further 15 per cent received a suspended sentence. In the same year, around 10 per cent of offenders received a community order, 9 per cent were sentenced to immediate custody and 4 per cent received an absolute or conditional discharge. The remaining offenders were 'Otherwise dealt with' (1 per cent). The ACSL for the period 2018 to 2022 was 5 months.

The sentence levels proposed below seek to maintain current sentence practice, with custodial sentences being reserved only for the most serious cases. Sentencers are reminded that custody and community orders may only be imposed in the Crown Court.

	Culpability A	Culpability B
Harm 1	<p>Starting point 6 months' custody (Crown Court)</p> <p>Category range: Band C fine to 1 year's custody (Crown Court)</p>	<p>Starting point Band C fine</p> <p>Category range: Band B fine to medium level community order (Crown Court)</p>
Harm 2	<p>Starting point Band C fine</p> <p>Category range: Band B fine to medium level community order (Crown Court)</p>	<p>Starting point Band B fine</p> <p>Category range: Band A fine to Band C fine</p>

Question 12: do you agree with the proposed sentence levels for vehicle registration fraud? If not, please tell us why.

Aggravating and mitigating factors

The step two aggravating and mitigating factors are similar to those found in many offence specific guidelines. None are proposed which are specific to this type of offending.

Factors increasing seriousness
Statutory aggravating factors

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors

- Commission of offence whilst under the influence of alcohol or drugs
- Offence committed on licence or post sentence supervision or while subject to court order(s)
- Attempts to conceal/dispose of evidence
- Established evidence of community/wider impact
- Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder, learning disability
- Age and/or lack of maturity
- Sole or primary carer for dependent relatives

The further steps are standard to those in other offence-specific guidelines. Step 6 on compensation and ancillary orders makes specific reference both to driving disqualifications and deprivation orders, given the relevance to this type of offending.

Question 13: do you agree with the proposed aggravating and mitigating factors for vehicle registration fraud? If not, please tell us why.

Question 14: do you have any other comments on the proposed guideline on vehicle registration fraud?

Driver disqualification

Following responses to the 2022 consultation on motoring guidelines, the Council agreed to consider what further guidance to sentencers could be provided on driving disqualifications.

The Council considered what form this further guidance should take, and gave particular thought to whether specific starting points and/or ranges for disqualification periods should be provided in offence-specific guidelines, as provided for in some magistrates' courts guidelines.

However, the Council ultimately considered that the duration of a disqualification is too fact-sensitive for this sort of approach to be effective. The discretionary period of a disqualification will depend on a range of factors which will be particular to the offender: their driving record, the extent to which they acknowledge their error, their immaturity or advanced years, and the extent to which not driving prevents rehabilitation or truly represents a punishment, as well as other factors.

Furthermore, the relationship between a custodial sentence and disqualification can be complex. A shorter period in custody might mean the disqualification constitutes more of the punitive part of the sentence. On the other hand, even with the statutory requirements that the court take into account time spent in custody, a longer custodial sentence will inevitably serve much of the preventative purpose which a disqualification is intended to provide.

The Council has concluded, therefore, that the general guidance on disqualification already provided in several offence-specific guidelines should be built upon, including principles to follow in imposing a disqualification (where this is a matter for the court's discretion) and setting the length of a disqualification beyond any applicable minimum term.

The Council puts forward a [draft overarching guideline for consultation](#) which consists of the following sections.

Availability

The first part of the proposed guideline sets out when disqualification is available and when it is mandatory. The first two powers set out are those under the Sentencing Act 2020 (the Sentencing Code). The first, under section 163 of the Code, can be used by any court without any further limit on the face of the Act. The second is under section 164 and is reserved for the Crown Court for offences carrying at least a two year maximum penalty and where a motor vehicle was used for the purposes of carrying out the offence.

The draft guideline provides guidance on the use of the section 163 power:

“This is a broad power, but it cannot be used arbitrarily. It must serve one or more of the statutory purposes of sentencing, and it should generally be reserved for cases which have involved the offender driving a vehicle or otherwise using a vehicle to commit the offence for which he or she is being sentenced.”

Although broad, the Council believes this is in line with Parliament’s intent and with existing case law on the use of both section 163 and section 164. In the case of *Cliff* 2004 EWCA Crim 3139, the Court of Appeal approvingly quoted Archbold in saying the power “is not limited to any particular offence; and it is not necessary that the offence should be connected in any way with the use of a motor vehicle.” The court added:

“In our judgment, it is not necessary for the offence to be connected to the use of the motor car. The section provides an additional punishment available to the court. That is not to say that a court can impose a period of disqualification arbitrarily. There must be a sufficient reason for the disqualification. The reasons will, of course, be open to scrutiny by an appellate court, as they are in this case.” [para 15]

The guideline then covers the specific disqualification powers in section 34 of and Schedule 2 to the Road Traffic Offenders Act 1988, which will be familiar to those with experience of sentencing road traffic cases. Sometimes the power to disqualify will be discretionary, sometimes it will be a requirement on the court and a minimum disqualification period will apply. Where the latter is the case Table 1 sets out the minimum period, the rules surrounding repeat offending and repeat disqualifications and whether an extended retest is required.

Following this, a section is proposed on “totting up” disqualifications, where a driver has received 12 points or more on their licence. Again, a table provides information on the minimum periods to be imposed where there have been previous disqualifications. The different rules for new drivers are set out. This section also emphasises to sentencers that they should prioritise a totting disqualification, rather than using a discretionary disqualification to avoid the minimum disqualification period under the totting regime. This is repeated later in the section on totting (see below), but the Council believes the duplication is justified given the importance of getting this message across to sentencers.

Question 15: do you agree with the section of the guideline regarding the availability of disqualification? If not, please tell us why.

Determining the length of disqualification

The second part of the proposed guideline is focussed on setting the length of a disqualification. The overall intention in this section is to ensure that sentencers are treating disqualification as both a punishment and a public protection measure, reflecting the approach that the courts have taken more often over the last 20 years.

This is set out in the first paragraph, then a set of questions is posed to the sentencer:

- How bad was any driving concerned in the present offence?
- Does the offender have a history of poor driving, driving unlicensed, or breaching disqualifications?
- Will the public be at risk of harm from the offender’s driving in future?

- Will the disqualification period provide a sufficient deterrent to the offender, helping to ensure their future driving is of an acceptable standard?
- How will the disqualification affect the offender's prospects for rehabilitation (with particular regard to employment, training, and family responsibilities)?
- What will the impact be on third parties (including children and dependent family members) for the duration of the disqualification?
- What is the aggregate period that the offender will be prevented from driving, bearing in mind any period spent in custody?
- Standing back, is the disqualification fair and proportionate, considering the culpability of the offender and the harm done?

After these questions, there is a paragraph about considering how a disqualification interacts with other elements of a sentence. This highlights that time spent in custody (or a lack of custody) may be a factor to play in to setting a disqualification period. The need to explain the reasons for the disqualification period is emphasised.

The proposed draft then covers in general terms the approach to lengthy disqualifications:

There is nothing in principle preventing the courts from imposing lengthy disqualifications of several years on offenders, where this is proportionate and can be justified by the need for punishment and public protection.

Lifetime disqualifications will be rare, in particular because of the increased risk of breach and the possibility of hindering rehabilitation prospects. Lifetime disqualifications will generally be inappropriate unless there is:

- psychiatric evidence and/or
- evidence of many previous convictions

indicating that the offender would be a danger to the public indefinitely if allowed to drive.

Factual guidance is then proposed on imposing disqualifications until a further test is passed, including information about the differences between an extended test and an ordinary test.

Finally in this section, there is detail, building on the guidance published in 2023, on how a disqualification should interact with a custodial period. This sets out in a table form the extension periods required for the different types of custodial sentence that may be imposed for the same offence. For custodial sentences imposed for a different offence, the checklist first set out in the case of Needham 2016 EWCA Crim 455 is represented by a flow chart.

Question 16: do you agree with the section of the guideline relating to determining the length of a disqualification? If not, please tell us why.

Exceptions

Part three of the proposed guideline relates to the exceptions which can apply either to imposing a disqualification or applying the statutory minimum. The two main headings are “special reasons” for avoiding and mandatory disqualification, and “exceptional circumstances” for avoiding a totting disqualification.

The Council is aware this is the subject of a great deal of concern amongst road safety groups, commentators and the general public, particularly in relation to the extent to which claims of exceptional hardship are used to avoid a totting up disqualification. The Council strengthened the language surrounding exceptional hardship in its current guidance in 2020. This was followed by clarifying the relative priorities of totting up and discretionary disqualifications in 2023.

The All Party Parliamentary Group on Cycling and Walking recommended in its September 2023 report ‘Road Justice’ that “the Sentencing Council revisit its 2020 guidance on the totting-up disqualification, to reinforce that exceptional hardship should only be granted in truly exceptional circumstances”.

The Council believes that it has already set out as strongly as possible in existing guidance the limits of relying on exceptions under the current law. However, it has proposed a section of the overarching guideline dedicated to the detail surrounding exceptions, making clear the strict limitations on when exceptions may be used, reflecting the revised 2020 language on exceptional hardship and making clear that the reliance on exceptions is expected to be rare.

Question 17: do you agree with the section of the guideline relating to exceptions? If not, please tell us why.

Administration of a disqualification

The final part of the proposed guideline covers the administration and consequences of disqualification.

Firstly, there is guidance on disqualifying in an offender’s absence. Then there is a paragraph on the implications for the offender of imposing a disqualification of 56 days or more.

The guideline then refers to situations where offenders are convicted of drink driving offences. Firstly it highlights the High Risk Drivers’ Scheme. This is engaged where an offender satisfies certain criteria relating to their offending; they will need to satisfy the DVLA that they no longer have an alcohol problem to regain their licence. The guidance also refers to the possibility of a reduced disqualification period for taking part in a rehabilitation course.

Question 18: do you agree with this section of the guideline? If not, please tell us why.

Question 19: do you have any further comments on the proposed overarching guideline on driver disqualification?

Further motoring related matters

Before, during and after the 2022 consultation on motoring offences, the Council has been made aware of a number of miscellaneous and cross-cutting matters related to existing motoring guidelines. A number of these are minor and can be made now without further consultation: these are set out in the annex at the end of this document.

However, other more substantive changes which the Council believes do require consultation are set out in this section.

Fail to stop/report road accident

In the [guideline for the offence of failing to stop and report a road accident](#) (section 170(4) of the Road Traffic Act 1988) one of the factors indicating higher culpability is:

- offender knew or suspected that personal injury caused and/or left injured party at scene

It has been suggested to the Council that this factor as currently written may be confusing. If an offender knew or suspected a collision had caused personal injury then leaving the victim at the scene will be an inherent part of the offending (at least in the circumstances envisaged under section 170(1)(a)) and would – it is agreed – merit higher culpability.

However, if the offender had simply left an injured party at the scene, without suspecting that personal injury had been caused (for example, a heavy goods vehicle driver who felt a bump but failed to investigate), then arguably unknowingly leaving an injured party at the scene should not be categorised as higher culpability behaviour.

Alternatively, if simply leaving an injured party at the scene, knowingly or unknowingly, were intended to be classed as higher culpability, the first part of the factor (“offender knew or suspected that personal injury caused”) is unnecessary. In that case, though, the seriousness of the offending should be captured under harm; indeed the guideline reflects this by placing “injury caused” at higher harm.

The Council believes that culpability in this case should be attached to what an offender knows or suspects and that the simplest way to reflect this is to delete the final part of the factor, allowing injury caused to be reflected in the harm assessment. It would therefore read:

- offender knew or suspected that personal injury caused ~~and/or left injured party at scene~~

Question 20: do you agree that the higher culpability factor should simply relate to personal injury that the offender knew or suspected to have been caused? If not, please tell us why.

Failure to provide a specimen (drive/attempt to drive)

As currently written, the [guideline for Failure to provide a specimen \(drive/attempt to drive\)](#), an offence under section 7(6) of the Road Traffic Act 1988 lists one factor representing higher culpability (“deliberate refusal/failure”), with all other cases falling into lower culpability.

It has been suggested to the Council that it is difficult for the courts to consider what “all other cases” (i.e. non-deliberate refusal/failures falling short of a reasonable excuse) might be.

The equivalent guideline for being in charge of a vehicle provides more assistance as to what sorts of cases may fall into lower culpability:

- honestly held belief but unreasonable excuse
- genuine attempt to comply
- all other cases

The Council sees no reason for the two guidelines to differ on this point and that the courts may benefit from more help to determine lower culpability cases. It therefore proposes to replicate the lower culpability factors for the In charge guideline in the equivalent guideline for Drive/attempt to drive.

Question 21: do you agree that the factors “honestly held belief but unreasonable excuse” and “genuine attempt to comply” should be added to the low culpability category in the guideline for Failure to provide a specimen (drive/attempt to drive)? If not, please tell us why.

Excess alcohol (in charge)

In responding to the Council’s consultation on the sentence levels for the offence of [Being in charge of a motor vehicle with a specified drug above the specified limit](#) under section 5A of the Road Traffic Act 1988, the West London Bench pointed out an anomaly between the levels proposed, and the levels in the equivalent guideline for excess alcohol (under section 5(1)(b) of that Act).

[T]he sentence starting point and range are more severe for this offence of being in charge of a vehicle under the influence of illegal drugs rather than excess alcohol (which has a starting point of Medium community order and a range of Low Level community order to 6 weeks custody)...[t]his was not the case for the drive/attempt to drive offence...

The sentences (for driving and for in charge) should either both be the same as those for excess alcohol or both should be higher for illegal drugs impairment than for excess alcohol (as taking specified illegal drugs is per se illegal). We request that the Sentencing Council looks at this again.”

The drug driving sentence levels were designed to be the same as those for the offences of being unfit through drink or drugs, both drive/attempt to drive and in charge, under sections 4(1) and 4(2) of the 1988 Act. The point raised by the West London Bench therefore highlights a pre-existing anomaly.

The Council agrees that the sentence levels should be consistent across the in charge offences, so proposes a slight adjustment to the levels in the [guideline for Excess alcohol \(in charge\)](#) with the highest starting point moving from a medium to a high level community order, the bottom of the highest range moving from a low to a medium community order, and the top of the range moving from six weeks to 12 weeks' custody, as follows:

Level of alcohol			Starting point	Range	Disqualification/Points
Breath (µg)	Blood (mg)	Urine (mg)			
120-150 and above	276-345 and above	367-459 and above	Medium High level community order	Low Medium level community order – 6 12 weeks' custody	Disqualify 6 -12 months (Extend if imposing immediate custody)
90-119	207-275	275-366	Band C fine	Band C fine – Medium level community order	Consider disqualification up to 6 months OR 10 points
60-89	138-206	184-274	Band B fine	Band B fine – Band C fine	Consider disqualification OR 10 points
36-59	81-137	108-183	Band B fine	Band A fine – Band B fine	10 points

Question 22: do you agree with the adjustment to the sentence levels for Excess alcohol (in charge) to bring them into line for the equivalent drug and unfit offences? If not, please tell us why.

Speeding

The Council has received feedback that the format of the sentence table in [the guideline for Speeding](#) (an offence under section 89 of the Road Traffic Regulation Act 1984) could be presented in a more intuitive way.

Currently, the columns read from left to right in decreasing levels of seriousness resulting in lower starting points and ranges as the user reads across. It has been suggested, and the Council agrees, that a clearer way to present the same information would be to reverse the order, so the column categories increase in seriousness.

The resulting table would look as follows:

Speed limit (mph)	Recorded speed (mph)		
	21 – 30	31 – 40	41 and above
20	21 – 30	31 – 40	41 and above
30	31 – 40	41 – 50	51 and above
40	41 – 55	56 – 65	66 and above
50	51 – 65	66 – 75	76 and above
60	61 – 80	81 – 90	91 and above
70	71 – 90	91 – 100	101 and above
Sentencing range	Band A fine	Band B fine	Band C fine
Points/disqualification	3 points	Disqualify 7 – 28 days OR 4 – 6 points	Disqualify 7 – 56 days OR 6 points

This is not a change of substance, but the Council notes this is a very commonly used guideline and wants to ensure that those who rely on it were aware of the change, and had the opportunity to comment on whether this improved the presentation of the information.

Question 23: do you agree with the reversal of the speed columns in the Speeding sentence table? If not, please tell us why.

Use of mobile telephone

The Road Traffic Offenders Act 1988 (Penalty Points) (Amendment) Order 2017 increased from three to six the points to be imposed on conviction for use of a mobile telephone while driving (an offence under section 41D(b) of the Road Traffic Act 1988).

It has since been suggested that the starting point fine for this offence in the [guidelines for Motoring offences appropriate for imposition of fine or discharge](#) should accordingly be raised from a Band A fine (i.e. a starting point of 50% of relevant weekly income, with a range of between 25% and 75%) to a Band B fine (a starting point of 100% of relevant weekly income, with a range of between 75% and 125%).

By way of comparison, the current Band A starting point places mobile phone use on the same level as, for example, driving otherwise than in accordance with a licence, having defective lights or exhaust, dangerous parking, failing to comply with a traffic sign, and failing to comply with a police constable directing traffic.

If increased to Band B, using a mobile phone would have the same starting point under the guideline as, for example, having defective brakes, steering or tyres, loading the vehicle so as to involve danger of injury, failing to stop when required by a police constable, and driving in reverse or the wrong way on a slip road.

The Council notes the prevalence of mobile phone use while driving, and the resulting risk of harm to other road users. It therefore proposes to increase the starting point to a Band B fine. (The maximum fine for this offence for standard vehicles remains a level 3 fine, as set out in the Road Traffic Offenders Act 1988, i.e. £1,000.)


(See the Annex for further details about other, non-substantive updates being made to the guidelines for Motoring offences appropriate for imposition of fine or discharge)

Question 24: do you agree that the starting point fine for mobile phone use while driving should be increased from Band A to Band B? If not, please tell us why.

Equality and diversity

The Sentencing Council considers matters relating to equality and diversity to be important in its work. The Council is always concerned if it appears that guidelines have different outcomes for different groups. The Council has had regard to its duty under the Equality Act 2010 in drafting these proposals, specifically with respect to any potential effect of the proposals on victims and offenders with protected characteristics. There may be many causes for disparities in sentencing, some of which the Council is not able to do anything about.

The available demographic data, (sex, age group and ethnicity of offenders) is examined as part of the work on each guideline, to see if there are any concerns around potential disparities within sentencing. For some offences it may not be possible to draw any conclusions on whether there are any issues of disparity of sentence outcomes between different groups caused by the guidelines. However, the Council takes care to ensure that the guidelines operate fairly and includes reference to the Equal Treatment Bench Book in all guidelines:

Guideline users should be aware that the  [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

The Council has produced information on the demographic makeup (specifically age group, ethnicity and sex) of adult offenders sentenced for the offences of aggravated vehicle taking and vehicle registration fraud. This can be seen within the data tables on the [Sentencing Council's website](#).

For certain other guidelines, where the data has shown evidence of disparity in sentence outcomes for some groups of offenders, the Sentencing Council has placed wording in the relevant guidelines, to draw sentencers' attention to these disparities and to signpost courts to important information within the Equal Treatment Bench Book. Once the Council has considered the latest available data for these offences alongside responses received to this consultation, the Council will consider before publishing a definitive guideline whether similar wording is necessary.

The potential for disparities in sentencing to arise from aspects of sentencing guidelines may not be obvious and we are therefore seeking views widely on any such potential impacts. We would like to hear from those reading this document on these matters.

We would like to know whether there is anything in the draft guidelines, amendments and revisions we are consulting on which could cause, or contribute to, such disparities across different groups, and/or whether any changes to the draft guidelines could be made to address any disparities. These could relate to:

- the language used
- culpability and harm factors
- mitigating and aggravating factors

- the expanded explanations
- the context in which the offending takes place
- the structure of the guidelines.

The Council would welcome suggestions from consultees as to any equality and diversity matters that it should address in the development of these guidelines and amendments to guidelines.

Question 25: are there any aspects of the draft guidelines, revisions and amendments that you feel may cause or increase disparity in sentencing?

Question 26: are there any existing disparities in sentencing of the offences covered in this consultation that you are aware of, which the draft guidelines, revisions and amendments could and should address?

Question 27: are there any other matters relating to equality and diversity that you consider we ought to be aware of and/or that we could and should address in the proposed guidelines, revisions and amendments?

Annex – changes that are not subject to consultation

In addition to the new and revised guidelines and amendments set out in this document, the Council is making various minor changes to its motoring-related guidelines either as a result of feedback, or stemming directly from changes made following the 2022 consultation on motoring offences. While not requiring consultation, it was felt these should be drawn to the attention of those responding to this consultation.

All minor changes made to guidelines (and associated materials) are logged and [that log is published on the Council's website](#).

While the Council is not consulting on these changes we do welcome feedback on these or any other aspects of the Council's output. This can be done at any time via the feedback section at the bottom of every guideline or by emailing info@sentencingcouncil.org.uk

Unfit through drink or drugs

Following the 2022 consultation on motoring guidelines, the Council agreed to clarify the high culpability factors in the [new guideline for Driving or attempting to drive with a specified drug above the specified limit](#), so that they applied both to driving *and* attempting to drive.

The same factors are present in the equivalent [guideline for Unfit through drink or drugs](#), so the Council is amending the culpability factors as below for the purposes of consistency:

- Driving **or attempting to drive** a LGV, HGV or PSV etc.
- Driving **or attempting to drive** for hire or reward

Excess alcohol (drive/attempt to drive) and other relevant drink drive guidelines

The Council is adding a reference to the High Risk Offenders Scheme after the sentence table in various relevant guidelines related to drink driving as follows:

“A person who has been disqualified where the level of alcohol was a least 87.5 µg in breath, 200 mg in blood or 267.5 in urine OR has been disqualified for failure to provide a specimen OR has been disqualified on two or more occasions within any period of 10 years for driving with excess alcohol or being unfit to drive is classed as a high risk offender. If the offender qualifies as a high risk offender they must satisfy the DVLA that they are medically fit to drive again. They will need to complete, and pay for, a medical assessment including blood tests.”

Concerns had been raised that victims were unaware of the scheme's existence (although the Council has seen no evidence that eligible offenders are not in practice being identified and processed accordingly).

The Council hopes that adding this wording to any guidelines where it may be relevant will help to highlight the scheme and may prompt sentencers to refer to it in open court, where it applies.

Signposts to guidance on disqualification

The Council produced guidance on disqualification for some guidelines in 2023, following consultation. This will be retained, including for the new aggravated vehicle taking guidelines, although now it will be supplemented by the overarching guideline on which the Council is consulting.

To ensure sentencers do not miss the guideline, the Council is providing a hyperlink underneath the sentence table to the relevant step, which will be renamed "Disqualification, compensation and ancillary orders" to highlight the importance of considering the rules and principles governing disqualification in these cases.

Information will also be provided at the header of any relevant guidelines where there is a discretionary power to impose disqualification with an extended retest, following concerns that some sentencers were not aware of this power (which, for example, exists for aggravated vehicle taking offences).

Motoring offences appropriate for a fine or discharge

The Council is refreshing the pages with guidelines for offences appropriate for a fine or discharge. This involves ensuring the offences, fine levels and disqualification levels are up to date, and that they are presented consistently to ensure sentencers have identified the correct offence.

These are not substantive changes to the guidelines. However, the Council is consulting on whether the starting point fine for using a mobile phone under section 41D(b) of the Road Traffic Act 1988 should be raised to a Band B fine (see page 33).

Driving or attempting to drive a LGV, HGV or PSV etc

The Council has received representations about the common phrase used in high culpability and aggravating factors across many motoring guidelines:

- Driving or attempting to drive a LGV, HGV or PSV etc

There is some uncertainty about whether "LGV" in this context is intended to refer to "large", or "light" goods vehicle. The formulation dates back many years and the correct interpretation is "light", as "large" has the same technical meaning as "heavy" (i.e. a goods vehicle, or a vehicle combination including a goods vehicle, that has a maximum laden weight exceeding 3.5 tonnes). "Heavy" is covered separately in the factor as "HGV".

The Council believes it would be helpful to clarify the terms. As it covers both light and heavy goods vehicles, the factor will now simply refer to “goods vehicle” as follows:

- Driving or attempting to drive a goods vehicle, public service vehicle etc

and the following dropdown will provide further assistance:

For the purposes of this guideline:

- “goods vehicle” means a motor vehicle constructed or adapted for use for the carriage of goods, or a trailer so constructed or adapted and includes both light and heavy goods vehicles.

- “public service vehicle” means a motor vehicle which—

(a) being a vehicle adapted to carry more than eight passengers, is used for carrying passengers for hire or reward; or

(b) being a vehicle not so adapted, is used for carrying passengers for hire or reward at separate fares in the course of a business of carrying passengers.

The Council has provisionally considered whether changes in the nature and construction of vehicles over the years require reconsideration of this distinction between different types of vehicles. While not in scope of this consultation, this is a matter to which the Council intends to return in due course.

