

# Motoring offences guidelines

## Consultation

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This consultation will close on 29 September 2022



# 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 7 July 2022 to 29 September 2022
- Enquiries (including requests for the paper in an alternative format) to:** Office of the Sentencing Council  
Room EB20  
Royal Courts of Justice  
Strand  
London WC2A 2LL  
Tel: 020 7071 5793  
Email: [info@sentencingcouncil.gov.uk](mailto:info@sentencingcouncil.gov.uk)
- How to respond:** Please send your response by 29 September to:  
Ollie Simpson  
Email: [consultation@sentencingcouncil.gov.uk](mailto:consultation@sentencingcouncil.gov.uk)
- Additional ways to feed in your views:** This consultation exercise is accompanied by a resource assessment, and an online questionnaire which can be found at:  
[www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)  
A series of consultation meetings is also taking place. For more information, please use the “Enquiries” contact details above.
- Response paper:** Following the conclusion of this consultation exercise, a response will be published at: [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)
- 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 motoring offences?

The existing sentencing guidelines for motoring offences were published in 2008 by the Sentencing Guidelines Council, the Sentencing Council's predecessor body. As such, they do not follow the current format of guideline that is familiar to the courts and are in any case due for review.

The existing guidelines cover the offences of causing death by dangerous driving, causing death by careless driving under the influence of drink or drugs, causing death by careless driving, causing death by driving whilst disqualified, unlicensed or uninsured, and dangerous driving.

Following Government consultation in 2016, the Police, Crime, Sentencing and Courts Act 2022 has raised the maximum penalties for causing death by dangerous driving and causing death by careless driving whilst under the influence of drink or drugs from 14 years' custody to life imprisonment. The maximum penalty for causing death by driving whilst disqualified was raised from 2 years to 10 years' imprisonment in 2015. These changes in maximum penalties should be reflected in revised guidelines.

There are also new offences which have been created since the current guidelines were published. These include causing serious injury by dangerous driving, driving or being in charge of a motor vehicle with a concentration of a specified controlled drug above a specified limit, causing serious injury by driving whilst disqualified, and most recently under the Police, Crime, Sentencing and Courts Act 2022 the offence of causing serious injury by careless driving.

The Council believes that sentencing guidelines would be helpful for these newer offences, and also for the offence of causing injury by wanton and furious driving which may be used to prosecute cyclists who have caused death or injury.

## 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 not the legislation upon which such offences 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;
- information to include on guidance on how to approach disqualification;
- 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 those offences related to the standard of driving (i.e. dangerous, careless, or wanton or furious driving). Then the paper covers those offences causing death or injury which relate to whether an offender is disqualified from driving, unlicensed or uninsured. Proposed guidelines for drug-driving offences follow, and finally there is a section on draft guidance on disqualification.

Various elements are, by design, common to many guidelines. For example, culpability factors will be shared across all dangerous driving guidelines, and the way guidelines differentiate levels of harm will be common to all offences where serious harm has been caused. Questions which are asked for one guideline may therefore be common across several guidelines, and this is made clear where this is the case.

You can give your views either by email to [consultation@sentencingcouncil.gov.uk](mailto: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, a link to which is below:

[Sentencing Children and Young People – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk/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.

Alongside this consultation paper, the Council has produced an online questionnaire. The Council has also produced a resource assessment for the guideline, along with a statistical bulletin and data tables showing current sentencing practice for these offences. The online questionnaire, resource assessment, statistical bulletin and data tables can be found on the Sentencing Council's website: [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)



# Causing death by dangerous driving

Causing death by dangerous driving is an offence under section 1 of the Road Traffic Act 1988. For offences committed after 28 June 2022 the maximum sentence is life imprisonment, raised from 14 years' imprisonment by the Police, Crime, Sentencing and Courts Act 2022. It is indictable only, meaning cases can only be dealt with in the Crown Court.

In 2020, around 150 offenders were sentenced for causing death by dangerous driving.<sup>1</sup>

The [current sentencing guideline](#), produced by the Sentencing Guidelines Council in 2008, provides for three levels of seriousness. It sets out key factors and determinants of seriousness, related to the offender's standard of driving, their consumption of alcohol or drugs, and the nature of the victim, as well as aggravating and mitigating factors. These are set out in narrative form, with a box setting out examples of the determinants of seriousness. This differs from the current standard format of guideline, which usually provides for an assessment of culpability and harm at step one (albeit in cases where death is caused there is only one level of harm), and a sentencing table setting out starting points and ranges at step two.

The Council would like to update this guideline to reflect the current format of sentencing guidelines, which is familiar to the courts, as well as the new maximum penalty. The proposed guideline can be found [here](#).

## Culpability

The culpability factors proposed in the table below have been developed with reference to transcripts of court cases as well as existing factors from the 2008 guideline with which sentencers are familiar. The factors reflect the level of risk with reference to specific features of dangerous driving and incorporate existing determinants of seriousness where these are relevant to culpability. These cover the standard of driving, intoxication or tiredness on the part of the offender, and at medium culpability the condition of the vehicle.

These culpability factors are common across all proposed guidelines for offences involving dangerous driving: causing serious injury by dangerous driving (see page 21) and dangerous driving (see page 35).

In some cases, these culpability factors differ from their equivalent placement in the current guidelines, with some current level 3 examples proposed as medium culpability factors. These include driving above the speed limit/at a speed that is inappropriate for the prevailing conditions, driving when knowingly deprived of adequate sleep or rest, knowing that the vehicle has a dangerous defect or is poorly maintained or is dangerously loaded, and a brief but obvious danger arising from a seriously dangerous manoeuvre. It was felt

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<sup>1</sup> Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer term series, so care should be taken when interpreting these figures.

that these are all examples of behaviour which created serious dangers for other road users.

This leaves the lowest culpability level for offending which is just over the threshold for cases where the standard of driving was just over the threshold for dangerous driving, and for momentary lapses of concentration. Some determinants of seriousness relating to vulnerable road users and driving LGVs, HGVs and PSVs have been removed from culpability and are instead proposed as aggravating features (see below).

We also propose some text at the top of the culpability table making clear that an offence may share characteristics from different categories. In such cases courts may undertake a balancing exercise of different factors before determining the appropriate category. Where many factors are present in a particular category, this may justify an upwards adjustment of that category's starting point before adjustment for step two aggravating and mitigating factors.

## Culpability

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify upwards adjustment from the starting point before consideration of aggravating/mitigating factors.

### A – High culpability

- 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
- Consumption of substantial amounts of alcohol or drugs leading to gross impairment
- Offence committed in course of police pursuit
- Racing or competitive driving against another vehicle
- Disregarding warnings of others
- Lack of attention to driving for a substantial period of time
- Speed greatly in excess of speed limit

### B – Medium culpability

- Brief but obviously highly dangerous manoeuvre
- Engaging in a brief but avoidable distraction
- 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
- Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs
- Disregarding advice relating to driving when taking medication or as a result of a known medical condition which significantly impaired the offender's driving skills
- Driving when knowingly deprived of adequate sleep or rest

- The offender's culpability falls between the factors as described in high and lesser culpability

### **C – Lesser culpability**

- Standard of driving was just over threshold for dangerous driving
- Momentary lapse of concentration

***Question 1: do you agree with the proposed culpability factors for this and other guidelines involving dangerous driving? If not, please tell us why.***

## **Harm**

As with the current guideline and for the other offences where death is caused. only one level of harm is proposed for this offence.

### **Harm**

For all cases 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.

However, as mentioned below, guidance is provided for cases of multiple fatalities ahead of the sentencing table at step two.

***Question 2: do you agree with this approach to harm for this and other causing death guidelines? If not, please tell us why.***

## **Sentence levels**

The majority (93 per cent) of offenders sentenced for causing death by dangerous driving in 2020 were sentenced to immediate custody, a further 6 per cent were given a suspended sentence order, and 1 per cent were given a community order. For those receiving immediate custody in 2020, the average (mean) custodial sentence length (ACSL) was 4 years 7 months.<sup>2</sup>

The recent increase in the maximum penalty from 14 years to life imprisonment requires adjustment to the sentencing levels that exist in the current guideline. In setting these new levels the Council is mindful of the comparison with unlawful act manslaughter. Under the guideline for unlawful act manslaughter, cases of very high culpability have a starting point of 18 years' custody and a range of 11 to 24 years. The Council believe that a closer

<sup>2</sup> The average custodial sentence lengths presented in this report are mean average custodial sentence length values for offenders sentenced to determinate custodial sentences, after any reduction for guilty plea.

comparator for high culpability cases of causing death by dangerous driving is high culpability manslaughter cases, which have a starting point of 12 years’ custody and a range of 11 years to 16 years. However, we propose a higher top of the range for this guideline, bearing in mind how serious the worst cases of dangerous driving can be.

Similarly, the starting point and range for medium culpability broadly reflect the levels for medium culpability manslaughter, although for lesser culpability we propose slightly higher levels. These sentencing levels reflect the Council’s view that the worst cases of manslaughter are worse than the worst cases of dangerous driving, where there is no intent to cause harm. At the other end of the scale, the least serious cases of manslaughter may well involve less culpability than the least serious cases of dangerous driving where, inherently, someone is in charge of a machine with the capacity to kill and should be driving it with due responsibility.

Culpability	Starting point	Range
High	12 years’ custody	8 – 18 years’ custody
Medium	6 years’ custody	4 – 9 years’ custody
Lesser	3 years’ custody	2 – 5 years’ custody

The resource assessment published alongside this consultation indicates that there may be a change in how offenders are categorised under these proposed guidelines, with volumes moving from low to medium, and from medium to high. This, combined with the increase in starting points and ranges reflecting the increase in maximum penalty, could result in an increase in the average final custodial sentence length of 1 year 11 months (from 5 years 4 months to 7 years 2 months).<sup>3</sup> It is estimated this may result in a requirement for up to around 260 additional prison places per year.

These levels are intended to reflect a single offence resulting in a single death. However, the Council would like to provide brief guidance ahead of the sentence table on the approach to take in cases of multiple fatalities as follows:

“Where more than one death is caused, it will be appropriate to make an upwards adjustment from the starting point within or above the relevant category range before consideration of other aggravating features. In the most serious cases, the interests of justice may require a total sentence in excess of the offence range for a single offence. See the Totality guideline and step six of this guideline.”

We propose that this guidance appears in all the motoring guidelines involving deaths.

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<sup>3</sup> 15 transcripts of Crown Court sentencing remarks from 2019 and 2020 were analysed for causing death by dangerous driving, to assess the impact these guidelines may have on prison and probation services. These ACSL calculations have been based on the transcript analysis undertaken.

**Question 3: do you agree with these sentence levels? If not, please tell us why.**

**Question 4: do you agree with the approach to multiple deaths for this and other causing death guidelines? If not please tell us why.**

## Aggravating and mitigating factors

Many of the aggravating and mitigating factors from the current guideline for causing death by dangerous driving are proposed for inclusion in the new guideline, with some adaptations.

Some of the step two factors in the existing guideline are reflected elsewhere in the proposed guideline (for example, “more than one person killed as a result of the offence” is dealt with above the sentence table, and “disregard of warnings” is included at high culpability). Equally, some determinants of seriousness from the existing guideline are adapted as aggravating or mitigating factors, including driving and HGV, the victim being a vulnerable road user, and aspects of the offender’s behaviour at the scene, such as seeking assistance for the victim.

On this last point, the Council considered whether failing to provide assistance was reasonably an aggravating factor, given that the offender may be in shock, may feel unqualified to help, or confused as to what best to do. However, it concluded that overall a failure to assist in any way was aggravating, and that efforts made to seek assistance should be seen as mitigating. Both are included in the proposed guideline.

### 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:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Driving for commercial purposes
- Driving an LGV, HGV or PSV etc
- Other driving offences committed at the same time as the dangerous driving
- Blame wrongly placed on others
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Vehicle poorly maintained
- Serious injury to one or more victims, in addition to the death(s) (see step 6 on totality when sentencing for more than one offence)
- 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
- Impeccable driving record
- Actions of the victim or a third party contributed significantly to collision or death
- Offence due to inexperience rather than irresponsibility (where offender qualified to drive)
- Genuine emergency
- Efforts made to assist or seek assistance for victim(s)
- 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

These proposed aggravating and mitigating factors are largely common across those guidelines for offences relating to the standard of driving (i.e. dangerous driving, careless driving or wanton or furious driving), with some adjustments required for the specifics of certain offences. Where these occur these are noted in the paper below in discussing step two factors for each offence.

***Question 5: do you agree with these aggravating and mitigating factors? If not, please tell us why.***

***Question 6: do you have any further comments on the proposed guideline for causing death by dangerous driving?***

# Causing death by careless driving

Causing death by careless, or inconsiderate, driving is an offence under section 2B of the Road Traffic Act 1988. It has a maximum penalty of five years' imprisonment, and is triable either way, meaning it can be dealt with in either the magistrates' courts or the Crown Court. In 2020, around 120 offenders were sentenced for this offence.

The [current sentencing guideline](#) dates from 2008. As with the guideline for causing death by dangerous driving, it sets out key factors and determinants of seriousness in narrative form, with a box setting out examples of the determinants of seriousness. The Council would like to update this guideline to reflect the current format, which is familiar to the courts. The proposed guideline can be found [here](#).

## Culpability

The proposed culpability factors for this offence are set out below. Many of these relate to the standard of driving and have close equivalents in the proposals for dangerous driving offences, although the standard of driving will necessarily have been higher in cases of careless driving.

### Culpability

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify upwards adjustment from the starting point before consideration of aggravating/mitigating factors.

#### A – High culpability

- Standard of driving was just below threshold for dangerous driving and/or includes extreme example of a medium culpability factor

#### B – Medium culpability

- Unsafe manoeuvre or positioning
- Engaging in a brief but avoidable distraction
- Driving at a speed that is inappropriate for the prevailing road or weather conditions
- Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs
- Driving vehicle which is unsafe or where driver's visibility or controls are obstructed

- Driving in disregard of advice relating to the effects of medical condition or medication
- Driving whilst ability to drive impaired as a result of a known medical condition
- Driving when deprived of adequate sleep or rest
- The offender's culpability falls between the factors as described in high and lesser culpability

### **C – Lesser culpability**

- Standard of driving was just over threshold for careless driving
- Momentary lapse of concentration

These culpability factors are proposed for all other guidelines involving careless driving: causing death by careless driving whilst under the influence of drink or drugs, with the omission of 'driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs', see page 15) and causing serious injury by careless driving (see page 26)

***Question 7: do you agree with the proposed culpability factors for careless driving offences? If not, please tell us why.***

## **Harm**

As described above at page 8, in all guidelines where death has occurred, we propose one level of harm, with guidance provided at step two on sentencing cases of multiple fatalities.

## **Sentence levels**

Most offenders sentenced for this offence in 2020 were either given a suspended sentence order (39 per cent) or sentenced to immediate custody (31 per cent). A further 25 per cent received a community order, 4 per cent received a fine and 1 per cent were recorded as 'otherwise dealt with'. In 2020 the ACSL for this offence was 1 year.

In providing a modest uplift for starting points and ranges compared to existing levels, the Council intends to reflect the increases in sentence levels for causing death by dangerous driving which stem from the increase in maximum penalty. Equally, the Council is mindful that the new offence of causing serious injury by careless driving (see below) means a distinction needs to be drawn between the seriousness of cases where death has resulted and cases resulting in serious injury.



Culpability	Starting point	Range
High	2 years' custody	1 – 4 years' custody
Medium	1 year's custody	26 weeks – 3 years' custody
Lesser	26 weeks' custody	Medium level community order – 1 year's custody

The guidance described above on approaching cases where more than one death has occurred will also be included ahead of the sentencing table in this guideline.

**Question 8: do you agree with these sentence levels? If not, please tell us why.**

## Aggravating and mitigating factors

The step two factors proposed for this guideline are similar to those for causing death by dangerous driving, and other dangerous and careless driving offences. As “disregarding warnings of others” is less likely to be a relevant factor in careless driving cases, it appears in this guideline at step two rather than step one.

### 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:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Disregarding warnings of others
- Driving for commercial purposes
- Driving an LGV, HGV or PSV etc
- Other driving offences committed at the same time as the careless driving
- Blame wrongly placed on others
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Vehicle poorly maintained
- Serious injury to one or more victims, in addition to the death(s) (see step 5 on totality when sentencing for more than one offence)
- 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
- Impeccable driving record
- Actions of the victim or a third party contributed significantly to collision or death
- Offence due to inexperience rather than irresponsibility (where offender qualified to drive)
- Genuine emergency
- Efforts made to assist or seek assistance for victim(s)
- 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

***Question 9: do you have any further comments on the proposed guideline for causing death by careless driving?***

# Causing death by careless driving when under the influence of drink or drugs

Causing death by careless driving when under the influence of drink or drugs is an offence under section 3A of the Road Traffic Act 1988. For offences committed after 28 June 2022 the maximum sentence is life imprisonment, raised from 14 years' imprisonment by the Police, Crime, Sentencing and Courts Act 2022. It is indictable only.

In 2020, around 20 offenders were sentenced for causing death by careless driving when under the influence of drink or drugs.

The [current guideline for this offence](#), published by the Sentencing Guidelines Council in 2008, sets out three levels of culpability which, like the guideline for causing death by dangerous driving, are informed by key factors and determinants of seriousness. Starting points and ranges are also determined by three levels of facts relating to the intoxication (71µg or above of alcohol/ high quantity of drugs OR deliberate non-provision of specimen where evidence of serious impairment; 51–70 µg of alcohol/ moderate quantity of drugs OR deliberate non-provision of specimen; and 35–50 µg of alcohol/minimum quantity of drugs OR test refused because of honestly held but unreasonable belief).

The Council would like to update this guideline to reflect the current format, which is familiar to the courts as well as the new maximum penalty. The proposed guideline can be found [here](#).

## Culpability

The proposed culpability factors for this offence are set out below. These are virtually identical to those for causing death by careless driving, with some adjustments to reflect the fact that intoxication is inherent in the offending. The medium culpability factor “driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs” is omitted, and a qualifier is added to “driving in disregard of advice relating to the effects of medical condition or medication”.

The culpability table for this offence then asks sentencers to consider factors related to intoxication or the failure to provide a sample, before going on to consider sentence levels.

## Culpability

1) The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify upwards adjustment from the starting point before consideration of aggravating/mitigating factors.

2) Factors relevant to the presence of alcohol or drugs or a failure to provide a sample for analysis should then be considered to identify the appropriate offence category and starting point of sentence in accordance with the table at step two.

### A – High culpability

- Standard of driving was just below threshold for dangerous driving and/or includes extreme example of a medium culpability factor

### B – Medium culpability

- Unsafe manoeuvre or positioning
- Engaging in a brief but avoidable distraction
- Driving at a speed that is inappropriate for the prevailing road or weather conditions
- Driving vehicle which is unsafe or where driver's visibility or controls are obstructed
- Driving in disregard of advice relating to the effects of medical condition or medication (where the medication does not form a basis of the offence)
- Driving whilst ability to drive impaired as a result of a known medical condition
- Driving when deprived of adequate sleep or rest
- The offender's culpability falls between the factors as described in high and lesser culpability

### C – Low culpability

- Standard of driving was just over threshold for careless driving
- Momentary lapse of concentration

## Harm

As described above (page 8), in all guidelines where death has occurred, we propose one level of harm, with guidance provided at step two.

## Sentence levels

In 2020, the majority of offenders (89 per cent) were sentenced to immediate custody, and a further 11 per cent were given a suspended sentence order. The ACSL for this offence was 4 years 6 months.

The proposed sentencing table is similar in format to that in the existing guideline. Starting points and ranges are determined by a combination of culpability levels and to the facts around intoxication.

However, the Council believes that any deliberate refusal to provide a specimen for analysis should be regarded as most serious, so that element now appears in the highest category in relation to intoxication factors. The Council considered whether to include a low culpability factor to cater for refusal to provide a specimen based on an honestly held but unreasonable belief. However, it concluded that such beliefs should form the basis of a defence, rather than be reflected at sentencing.

We propose that high culpability captures the presence of multiple drugs or combinations of drugs and alcohol. Medium culpability provides for other cases of driving under the influence of drugs. This would reflect the zero tolerance approach of legislation to drug driving, and also reflects our approach in the drug driving guidelines (discussed below).

The sentence levels themselves mirror to some extent those proposed for causing death by dangerous driving, although the element of intoxication means it is impossible to make a direct comparison with that offence. Whilst starting points and ranges at the most serious end are increased, this table keeps the levels for the lesser culpability column at the same level as the current guideline.

The legal limit of alcohol is 35µg breath (80mg in blood and 107mg in urine)	High culpability	Medium culpability	Low culpability
71µg or above of alcohol OR Deliberate refusal to provide specimen for analysis OR Evidence of substantial impairment and/or multiple drugs or combination of drugs and alcohol	<b>Starting point:</b> 12 years' custody  <b>Category range:</b> 8 – 18 years' custody	<b>Starting point:</b> 9 years' custody  <b>Category range:</b> 6 – 12 years' custody	<b>Starting point:</b> 6 years' custody  <b>Category range:</b> 5 – 10 years' custody
51- 70 µg of alcohol OR Any quantity of a single drug detected	<b>Starting point:</b> 9 years' custody  <b>Category range:</b> 6 – 12 years' custody	<b>Starting point:</b> 6 years' custody  <b>Category range:</b> 4 – 9 years' custody	<b>Starting point:</b> 4 years' custody  <b>Category range:</b> 3 – 7 years' custody
36-50 µg of alcohol	<b>Starting point:</b> 6 years' custody  <b>Category range:</b> 4 – 9 years' custody	<b>Starting point:</b> 3 years' custody  <b>Category range:</b> 2 – 5 years' custody	<b>Starting point:</b> 1 year 6 months' custody  <b>Category range:</b> 26 weeks - 4 years' custody

As set out in the resource assessment accompanying this consultation, we estimate that the average custodial sentence could increase by 1 year and 1 month (from 4 years 4 months to 5 years 5 months) following these proposed increases to the sentencing levels, which reflect the increase to the maximum penalty.<sup>4</sup> This may result in a requirement for up to around 20 additional prison places per year.

**Question 10: do you agree with the proposed sentencing levels? If not, please tell us why.**

<sup>4</sup> 10 transcripts of Crown Court sentencing remarks from 2019 and 2020 were analysed for causing death by careless driving when under the influence of drink or drugs, to assess the impact these guidelines may have on prison and probation services. These ACSL calculations have been based on the transcript analysis undertaken.

## Aggravating and mitigating factors

The step two factors proposed for this guideline are similar to those for other dangerous and careless driving offences.

One bespoke addition is the mitigating factor “alcohol or drugs consumed unwittingly”. This is a strict liability offence, but it is possible that intoxication could occur without the offender’s knowledge and the Council feels this possibility should be reflected at step two.

### 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:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Disregarding warnings of others
- Driving for commercial purposes
- Driving an LGV, HGV or PSV etc
- Other driving offences committed at the same time as the careless driving
- Blame wrongly placed on others
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Vehicle poorly maintained
- Serious injury to one or more victims, in addition to the death(s) (see step 6 on totality when sentencing for more than one offence)
- 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
- Impeccable driving record
- Alcohol or drugs consumed unwittingly
- Actions of the victim or a third party contributed significantly to collision or death
- Offence due to inexperience rather than irresponsibility (where offender qualified to drive)
- Genuine emergency
- Efforts made to assist or seek assistance for victim(s)
- Remorse
- The victim was a close friend or relative
- Serious medical condition requiring urgent, intensive or long-term treatment

**20** Motoring offences - consultation

- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

***Question 11: do you have any further comments on the proposed guideline for causing death by careless driving whilst under the influence of drink or drugs?***



# Causing serious injury by dangerous driving

Causing serious injury by dangerous driving is an offence under section 1A of the Road Traffic Act 1988. It has a maximum penalty of five years' imprisonment and is triable either way. In 2020, around 300 offenders were sentenced for this offence.

The offence was created by the Legal Aid, Sentencing and Punishment of Offenders Act 2012. There is no current sentencing guideline for it, although the Court of Appeal has established that the courts should sentence by reference to the guideline for causing death by dangerous driving.<sup>5</sup> The proposal for a guideline can be found [here](#).

## Culpability

The culpability factors for this guideline are set out below. Because they focus on the standard of driving, which is the same regardless of the harm done, they are identical to those for causing death by dangerous driving and dangerous driving (see page 5 above).

### Culpability

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify upwards adjustment from the starting point before consideration of aggravating/mitigating factors.

#### A – High culpability

- 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
- Consumption of substantial amounts of alcohol or drugs leading to gross impairment
- Offence committed in course of police pursuit
- Racing or competitive driving against another vehicle
- Disregarding warnings of others
- Lack of attention to driving for a substantial period of time
- Speed greatly in excess of speed limit

<sup>5</sup> See *Dewdney* [2014] EWCA Crim 1722; *Shaw* [2018] EWCA Crim 2932; and *Burton* [2019] EWCA Crim 2396.

### **B – Medium culpability**

- Brief but obviously highly dangerous manoeuvre
- Engaging in a brief but avoidable distraction
- 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
- Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs
- Disregarding advice relating to driving when taking medication or as a result of a known medical condition which significantly impaired the offender's driving skills
- Driving when knowingly deprived of adequate sleep or rest
- The offender's culpability falls between the factors as described in high and lesser culpability

### **C – Lesser culpability**

- Standard of driving was just over threshold for dangerous driving
- Momentary lapse of concentration

## **Harm**

In England and Wales, the injury caused in cases of causing serious injury by dangerous driving is the equivalent of "physical harm which amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861" (section 1A(2)(a) of the Road Traffic Act 1988).

The Council has therefore considered the harm factors in the guidelines for causing grievous bodily harm with intent to do grievous bodily harm and inflicting grievous bodily harm. Given the maximum penalty for this offence (and for causing serious injury by careless driving) is relatively low compared to other standard of driving offences, we propose a two-harm approach. This will provide a simple approach for sentencers and help to distinguish truly life-changing cases in terms of the harm caused.

The proposed category 1 is exactly analogous to the highest category of harm in the GBH guidelines, and category 2 covers all other cases.

Harm
<b>Category 1</b>
<ul style="list-style-type: none"> <li>• Particularly grave and/or life-threatening injury caused</li> <li>• Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</li> <li>• Offence results in a permanent, irreversible injury or condition which has a substantial and long term effect on the victim’s ability to carry out normal day to day activities or on their ability to work</li> </ul>
<b>Category 2</b>
<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

The same approach is proposed for all guidelines involving serious injury. As well as this offence, these are causing serious injury by careless driving (see page 27) and causing serious injury by driving whilst disqualified (see page 44).

**Question 12: do you agree with the proposed harm factors for offences involving serious injury? If not, please tell us why.**

### Sentence levels

Just over two thirds of offenders (67 per cent) sentenced for causing serious injury by dangerous driving in 2020 were sentenced to immediate custody, and a further 26 per cent were given a suspended sentence order. Five per cent received a fine, 1 per cent received a community order and 1 per cent were recorded as ‘otherwise dealt with’. The ACSL for this offence in 2020 was 2 years 2 months.

The proposed sentencing levels for this offence are set out in the table below.

	Culpability A	Culpability B	Culpability C
<b>Harm 1</b>	<p><b>Starting point:</b> 4 years’ custody</p> <p><b>Category range:</b> 3 – 5 years’ custody</p>	<p><b>Starting point:</b> 3 years’ custody</p> <p><b>Category range:</b> 2 – 4 years’ custody</p>	<p><b>Starting point:</b> 2 years’ custody</p> <p><b>Category range:</b> 1 – 3 years’ custody</p>
<b>Harm 2</b>	<p><b>Starting point:</b> 3 years’ custody</p> <p><b>Category range:</b> 2 – 4 years’ custody</p>	<p><b>Starting point:</b> 2 years’ custody</p> <p><b>Category range:</b> 1 - 3 years’ custody</p>	<p><b>Starting point:</b> 1 year’s custody</p> <p><b>Category range:</b> 26 weeks – 2 years’ custody</p>

The higher culpability starting points and ranges are higher than those for the lower culpability levels for causing death by dangerous driving. The Council is content with this, as there may be cases involving serious injury where the standard of driving was worse than cases involving death. These levels also replicate the existing relationship between sentence levels for manslaughter and GBH offences.

There are no current sentencing levels with which to compare, but the resource assessment published alongside this consultation indicates that this proposed guideline could result in an increase in the average custodial sentence for this offence of 7 months (from 2 years 3 months to 2 years 11 months).<sup>6</sup> This may result in a requirement for up to around 80 additional prison places.

**Question 13: do you agree with the proposed sentencing levels? If not, please tell us why.**

### Aggravating and mitigating factors

The aggravating and mitigating factors in the proposed guideline are similar to those for other guidelines relating to the standard of driving already discussed.

The factor ‘serious injury to one or more victims, in addition to the death(s)’ found in the guideline for causing death by dangerous driving is not relevant to this offence, so is not included here.

Factors increasing seriousness
<i>Statutory aggravating factors:</i>
<ul style="list-style-type: none"> <li>• 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</li> <li>• Offence committed whilst on bail</li> </ul>
<i>Other aggravating factors:</i>
<ul style="list-style-type: none"> <li>• Victim was a vulnerable road user, including pedestrians, cyclists, horse riders</li> <li>• Driving for commercial purposes</li> <li>• Driving an LGV, HGV or PSV etc</li> <li>• Other driving offences committed at the same time as the dangerous driving</li> <li>• Blame wrongly placed on others</li> <li>• Failed to stop and/or assist or seek assistance at the scene</li> <li>• Passengers, including children</li> <li>• Vehicle poorly maintained</li> <li>• Offence committed on licence or while subject to court order(s)</li> </ul>

<sup>6</sup> 10 transcripts of Crown Court sentencing remarks for causing serious injury by dangerous driving from 2019 were analysed to assess the impact this guideline may have on prison and probation services. These ACSL calculations have been based on the transcript analysis undertaken.

**Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Impeccable driving record
- Actions of the victim or a third party contributed significantly to collision or injury
- Offence due to inexperience rather than irresponsibility (where offender qualified to drive)
- Genuine emergency
- Efforts made to assist or seek assistance for victim(s)
- 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

***Question 14: do you have any further comments on the proposed guideline for causing serious injury by dangerous driving?***

# Causing serious injury by careless driving

Causing serious injury by careless driving is an offence under section 2C of the Road Traffic Act 1988. It is a new offence, created by the Police, Crime, Sentencing and Courts Act 2022. It has a maximum penalty of two years' imprisonment and is triable either way.

The Council will not always produce a guideline immediately for a new offence, as the common elements found in the offending, and other aspects relevant to sentencing, may not be known. In this case, however, the concepts of careless driving and of serious injury are already used and understood by the courts. The Council therefore believes that guidance on sentencing levels will be helpful, particularly in relation to other offences.

The proposed guideline can be found [here](#).

## Culpability

The culpability factors proposed for the new guideline mirror those for causing death by careless driving (see page 11 above), because regardless of the harm done the culpability can be measured in the same way.

### Culpability

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify upwards adjustment from the starting point before consideration of aggravating/mitigating factors.

#### A – High culpability

- Standard of driving was just below threshold for dangerous driving and/or includes extreme example of a medium culpability factor

#### B – Medium culpability

- Unsafe manoeuvre or positioning
- Engaging in a brief but avoidable distraction
- Driving at a speed that is inappropriate for the prevailing road or weather conditions
- Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs
- Driving vehicle which is unsafe or where driver's visibility or controls are obstructed

- Driving in disregard of advice relating to the effects of medical condition or medication
- Driving whilst ability to drive impaired as a result of a known medical condition
- Driving when deprived of adequate sleep or rest
- The offender’s culpability falls between the factors as described in high and lesser culpability

**C – Lesser culpability**

- Standard of driving was just over threshold for careless driving
- Momentary lapse of concentration

**Harm**

As with causing serious injury by dangerous driving, the injury caused in cases of causing serious injury by careless driving is the equivalent of “physical harm which amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861” (section 2C(2)(a) of the Road Traffic Act 1988).

The Council therefore proposes the same two-level approach to harm for causing serious injury by careless driving as it does for causing serious injury by dangerous driving (see page 22 above).

**Harm**

**Category 1**

- Particularly 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 which has a substantial and long term effect on the victim’s ability to carry out normal day to day activities or on their ability to work

**Category 2**

- All other cases

**Sentence levels**

The sentence levels for this offence are designed with the levels for causing serious injury by dangerous driving and for causing death by careless driving in mind.

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

**Question 15: do you agree with the proposed sentence levels? If not, please tell us why.**

## Aggravating and mitigating factors

The aggravating and mitigating factors in the proposed guideline are similar to those for other guidelines relating to the standard of driving already discussed. The factor 'serious injury to one or more victims, in addition to the death(s)' is not relevant to this offence, so is not included.

### 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:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Disregarding warnings of others
- Driving for commercial purposes
- Driving an LGV, HGV or PSV etc
- Other driving offences committed at the same time as the careless driving
- Blame wrongly placed on others



- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Vehicle poorly maintained
- 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
- Impeccable driving record
- Actions of the victim or a third party contributed significantly to collision or injury
- Offence due to inexperience rather than irresponsibility (where offender qualified to drive)
- Genuine emergency
- Efforts made to assist or seek assistance for victim(s)
- 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

***Question 16: do you have any further comments on the proposed guideline for causing serious injury by careless driving?***

# Causing injury by wanton or furious driving

Causing injury by wanton or furious driving is an offence under section 35 of the Offences Against the Person Act 1861. It has a maximum penalty of two years' imprisonment and is triable on indictment only.

Around 10 offenders were sentenced for causing injury by wanton or furious driving in 2020. The offence is therefore low volume. It may be charged either where a motorised vehicle causes injury or death off-road, such as in a field or dirt track, or where a cyclist causes injury or death in any setting. There is no guideline for this offence currently, but the Council believes it would be helpful to provide the courts with sentencing guidelines for those rare occasions where section 35 cases come before them.

The proposed guideline can be found [here](#).

## Culpability

There is no definition in the statute of “wanton or furious” but in practice it covers the equivalent of both dangerous and careless driving. The culpability table below therefore replicated the high culpability elements from the highest culpability proposed for the dangerous driving guidelines, and medium culpability elements from the medium culpability proposed for careless driving guidelines. The lowest category represents all other, relatively less serious cases.

**Culpability**

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify upwards adjustment from the starting point before consideration of aggravating/mitigating factors.

References to driving below include driving or riding any kind of vehicle or carriage, including bicycles and scooters.

**A – High culpability**

- Deliberate decision to ignore the rules of the road and/or disregard for the risk of danger to others.
- Prolonged, persistent and deliberate course of driving likely to cause a danger to others
- Driving grossly impaired by consumption of alcohol or drugs

- Offence committed in course of police pursuit
- Racing or competitive driving against another vehicle
- Disregarding warnings of others
- Lack of attention to driving for a substantial period of time
- Speed greatly in excess of speed limit
- Extreme example of a medium culpability factor

**B – Medium culpability**

- Unsafe manoeuvre or positioning
- Engaging in a brief but avoidable distraction
- Inappropriate speed for the prevailing conditions
- Driving impaired by consumption of alcohol or drugs
- Visibility or controls obstructed
- Driving impaired as a result of a known medical condition
- Disregarding advice relating to the effects of medical condition or medication
- Driving when deprived of adequate sleep or rest

**C – Lesser culpability**

- All other cases

**Question 17: do you agree with the proposed culpability elements? If not, please tell us why.**

**Harm**

Under the terms of section 35 of the Offences Against the Person Act 1861, the offence covers “any bodily harm to any person whatsoever”. The potential range of injury is therefore wider than for other offences covered by this consultation, and can even include cases where a death has resulted. The harm table proposed below reflects this with a three-harm model: category 1 includes death and GBH levels of injury, category 2 captures all other serious harm, and category 3 covers all other, lesser harm.

**Harm**

**Category 1**

- Death
- 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

<b>Category 2</b>
<ul style="list-style-type: none"> <li>Other cases of serious harm</li> </ul>
<b>Category 3</b>
<ul style="list-style-type: none"> <li>All other cases</li> </ul>

**Question 18: do you agree with the proposed harm elements? If not, please tell us why.**

## Sentence levels

Just over half of offenders sentenced for this offence in 2020 (55 per cent) were given a suspended sentence, a further 36 per cent were sentenced to immediate custody, and 9 per cent received a community order (this equates to one offender). Over the period 2016-2020 the ACSL was 1 year.

The proposed sentencing table for this guideline is set out below. The sentencing levels for the highest two harm levels proposed below are equivalent to those proposed for causing serious injury by careless driving: broadly speaking they equate to the harm covered by that offence, and the two offences share a two year maximum penalty.

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

	Culpability A	Culpability B	Culpability C
Harm 3	<p><b>Starting point:</b> 26 weeks' custody</p> <p><b>Category range:</b> High level community order – 1 year's custody</p>	<p><b>Starting point:</b> High level community order</p> <p><b>Category range:</b> Low level community order – 26 weeks' custody</p>	<p><b>Starting point:</b> Low level community order</p> <p><b>Category range:</b> Band B fine – high level community order</p>

**Question 19: do you agree with the proposed sentence levels? If not, please tell us why.**

### Aggravating and mitigating factors

The aggravating and mitigating factors proposed for this guideline contain many of the elements found in other draft guidelines relating to the offender's standard of driving on which we are consulting.

Factors increasing seriousness
<p><i>Statutory aggravating factors:</i></p> <ul style="list-style-type: none"> <li>• 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</li> <li>• Offence committed whilst on bail</li> </ul>
<p><i>Other aggravating factors:</i></p> <ul style="list-style-type: none"> <li>• Victim was a vulnerable road user, including pedestrians, cyclists, horse riders</li> <li>• Driving for commercial purposes</li> <li>• Driving an LGV, HGV or PSV etc</li> <li>• Other driving offences committed at or about the same time</li> <li>• Blame wrongly placed on others</li> <li>• Failed to stop and/or assist or seek assistance at the scene</li> <li>• Passengers, including children</li> <li>• Offence committed on licence or while subject to court order(s)</li> </ul>

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Impeccable driving record
- Actions of the victim or a third party contributed significantly to collision
- Offence due to inexperience rather than irresponsibility
- Genuine emergency
- Efforts made to assist or seek assistance for victim(s)
- 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 where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

***Question 20: do you have any further comments on the proposed guideline for causing injury by wanton or furious driving?***

# Dangerous driving

Dangerous driving is an offence under section 2 of the Road Traffic Act 1988. It has a maximum penalty of two years' imprisonment and is triable either way.

In 2020, around 3,300 offenders were sentenced for dangerous driving, and the majority (83 per cent) were sentenced in the Crown Court.

There is an [existing magistrates' courts guideline](#) dating from 2008 which is still in force. The Council would like to replace this with a guideline which can be used in both the magistrates' courts and the Crown Court. The format of the guideline would also be updated, to reflect the current format of sentencing guideline which is familiar to the courts.

The proposal for a new dangerous driving guideline can be found [here](#).

## Culpability

The culpability factors for this guideline are set out below. Because they focus on the standard of driving, which is the same regardless of any harm done, they are identical to those for causing death by dangerous driving and causing serious injury by dangerous driving (see page 5 above).

### Culpability

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify upwards adjustment from the starting point before consideration of aggravating/mitigating factors.

#### A – High culpability

- 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
- Consumption of substantial amounts of alcohol or drugs leading to gross impairment
- Offence committed in course of police pursuit
- Racing or competitive driving against another vehicle
- Disregarding warnings of others
- Lack of attention to driving for a substantial period of time
- Speed greatly in excess of speed limit

**B – Medium culpability**

- Brief but obviously highly dangerous manoeuvre
- Engaging in a brief but avoidable distraction
- 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
- Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs
- Disregarding advice relating to driving when taking medication or as a result of a known medical condition which significantly impaired the offender’s driving skills
- Driving when knowingly deprived of adequate sleep or rest
- The offender’s culpability falls between the factors as described in high and lesser culpability

**C – Lesser culpability**

- Standard of driving was just over threshold for dangerous driving
- Momentary lapse of concentration

**Harm**

In cases of dangerous driving, it may be the case that no actual harm results to other people or to property, or any injury caused does not meet the threshold for “serious injury” under the Road Traffic Act 1988. We therefore propose a two-category approach to harm, with higher harm cases being those where some actual harm has occurred, whether to persons or property, or where there was a high risk of harm to others. The lower category is all other cases.

**Harm****Category 1**

- Offence results in injury to others
- Circumstances of offence created a high risk of serious harm to others
- Damage caused to vehicles or property

**Category 2**

- All other cases

**Question 21: do you agree with the proposed harm factors? If not, please tell us why.**



## Sentence levels

In 2020 most offenders were either sentenced to immediate custody (49 per cent) or were given a suspended sentence order (32 per cent). A further 15 per cent received a community order, 3 per cent received a fine, 1 per cent were recorded as ‘otherwise dealt with’, and less than 1 per cent received a discharge. In 2020, the ACSL for this offence was 10 months.

The sentence levels set out below are based on the levels in the existing magistrates’ courts guideline. However, they have been adapted as this guideline moves to the standard harm and culpability model, and we are now providing sentence levels for the Crown Court. These levels are also adjusted with the intention of being in proportion to the sentence levels in guidelines where death and injury are caused.

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

**Question 22: do you agree with the proposed sentence levels? If not, please tell us why.**

## Aggravating and mitigating factors

The aggravating and mitigating factors in the proposed guideline are similar to those for other guidelines relating to the standard of driving already discussed.

### 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:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Driving for commercial purposes
- Driving an LGV, HGV or PSV etc
- Other driving offences committed at the same time as the dangerous driving
- Blame wrongly placed on others
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Vehicle poorly maintained
- 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
- Impeccable driving record
- Actions of the victim or a third party contributed significantly to collision or injury
- Offence due to inexperience rather than irresponsibility (where offender qualified to drive)
- Genuine emergency
- Efforts made to assist or seek assistance for victim(s)
- 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

**Question 23: do you have any further comments on the proposed guideline for dangerous driving?**

# Causing death by driving: disqualified drivers

Causing death by driving whilst disqualified is an offence under section 3ZC of the Road Traffic Act 1988. It has a maximum penalty of 10 years' imprisonment and is triable on indictment only.

Since 2015, fewer than five offenders have been sentenced for this offence.

An [existing guideline](#) covers the offences of causing death by driving whilst disqualified, and causing death by driving whilst unlicensed or uninsured. However, this guideline does not take into account the increase in maximum penalty to 10 years' imprisonment for offences committed after 13 April 2015. As these offences have been split out, we propose a separate guideline for causing death by driving whilst disqualified. The proposal for this guideline can be found [here](#).

## Culpability

Unlike the offences considered in this consultation so far, the behaviour covered by causing death by driving whilst disqualified is not related to the standard of driving. The proposed culpability factors therefore focus on the fact of disqualification, with low culpability marked out by misunderstandings, driving under pressure or due to an emergency. High culpability is set by reference to when the offence takes place after the disqualification is imposed, the distance driven, whether the vehicle was obtained during the disqualification period, and whether the driver was driving a large vehicle, or whether they were driving for commercial purposes. Medium culpability is marked by cases falling between higher and lower culpability.

### Culpability

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence.

#### A – High culpability

- Driving shortly after disqualification imposed
- Vehicle obtained during disqualification period
- Driving for commercial purposes
- Driving an LGV, HGV or PSV etc
- Significant distance driven

### **B – Medium culpability**

- Cases falling between higher and lesser culpability because:
  - Factors are present in higher and lesser culpability which balance each other out and/or;
  - The offender's culpability falls between the factors as described in higher and lesser culpability

### **C – Lesser culpability**

- The offender genuinely believed that he or she was not disqualified to drive
- Decision to drive was brought about by a genuine and proven emergency
- Driving whilst disqualified by pressure, coercion or intimidation (where not amounting to a defence)

***Question 24: do you agree with the proposed culpability factors? If not, please tell us why.***

## **Harm**

As described above, in all guidelines where death has occurred, we propose one level of harm, with guidance provided at step two on sentencing cases of multiple fatalities.

## **Sentence levels**

All offenders sentenced for this offence since 2015 have been sentenced to immediate custody. An ACSL has not been calculated due to the very low number of offenders sentenced.

The maximum penalties that Parliament has set place causing death by driving whilst disqualified as less serious than causing death by dangerous driving, but more serious than causing death by careless driving. The sentence levels below are proposed being mindful that there may be little or no connection between the offender's driving and the incident.

The higher levels are adjusted downwards from the medium levels proposed for causing death by dangerous driving. The range for lesser culpability is fully suspendable, noting that this category would be for cases involving a genuine emergency, where the offender was coerced, or where they genuinely believed they were able lawfully to drive.

Culpability	Starting point	Range
High	5 years' custody	4 – 7 years' custody
Medium	3 years' custody	2 – 5 years' custody
Lesser	1 year 6 months' custody	High level community order – 2 years' custody

As with other offences where death is caused, these levels are intended to reflect a single offence resulting in a single death. The wording proposed for causing death by driving would also be included here to provide guidance in cases where more than one death is caused.

**Question 25: do you agree with the proposed sentence levels? If not, please tell us why.**

### Aggravating and mitigating factors

The proposed step two factors are similar to the ones we are proposing for other guidelines involving death and serious injury, with some necessary modifications.

A note is added relating to the statutory aggravating factor of previous convictions, given that all offenders sentenced for this offence will have at least one relevant previous conviction. “History of disobedience of disqualification orders (where not already taken into account as a previous conviction)” is added, adapted from the Sentencing Council’s guidelines for breach offences. The standard mitigating factor “impeccable driving record” will by definition be irrelevant for offenders being sentenced for this offence so does not appear.

Factors increasing seriousness
<p><i>Statutory aggravating factors:</i></p> <ul style="list-style-type: none"> <li>• 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</li> <li>• <b>Note:</b> An offender convicted of this offence will always have at least one relevant previous conviction for the offence that resulted in disqualification. The starting points and ranges take this into account; any other previous convictions should be considered in the usual way.</li> <li>• Offence committed whilst on bail</li> </ul>
<p><i>Other aggravating factors:</i></p> <ul style="list-style-type: none"> <li>• Victim was a vulnerable road user, including pedestrians, cyclists, horse riders</li> <li>• History of disobedience to disqualification orders (where not already taken into account as a previous conviction)</li> </ul>

- Disregarding warnings of others about driving whilst disqualified
- Blame wrongly placed on others
- False details given
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Serious injury to one or more victims, in addition to the death(s) (see step 6 on totality when sentencing for more than one offence)
- Offence committed on licence or while subject to court order(s) (not including the current order for disqualification)

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Actions of the victim or a third party contributed significantly to collision or death
- Efforts made to assist or seek assistance for victim(s)
- 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 relative(s)

The step two factors proposed for this offence are similar to those proposed for causing serious injury by driving whilst disqualified (see page 45) and causing death by driving whilst unlicensed or uninsured (see page 49).

***Question 26: do you agree with the proposed aggravating and mitigating factors? If not, please tell us why.***

***Question 27: do you have any further comments on the proposed guideline for causing death by driving whilst disqualified?***

# Causing serious injury by driving: disqualified drivers

Causing serious injury by driving whilst disqualified is an offence under section 3ZD of the Road Traffic Act 1988. It has a maximum penalty of four years' imprisonment and is triable either way. Fewer than ten offenders were sentenced for this offence in 2020.

There is no current sentencing guideline for this offence, which was created by the Criminal Justice and Courts Act 2015. The proposed guideline can be found [here](#).

## Culpability

Regardless of whether death or injury is caused, the culpability of driving whilst disqualified remains the same. The culpability table proposed for this guideline therefore contains exactly the same elements as that proposed for causing death by driving whilst disqualified.

### Culpability

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence.

#### A – High culpability

- Driving shortly after disqualification imposed
- Vehicle obtained during disqualification period
- Driving for commercial purposes
- Driving an LGV, HGV or PSV etc
- Significant distance driven

#### B – Medium culpability

- Cases falling between higher and lesser culpability because:
  - Factors are present in higher and lesser culpability which balance each other out and/or;
  - The offender's culpability falls between the factors as described in higher and lesser culpability

<b>C – Lesser culpability</b>
<ul style="list-style-type: none"> <li>• The offender genuinely believed that he or she was not disqualified to drive</li> <li>• Decision to drive was brought about by a genuine and proven emergency</li> <li>• Driving whilst disqualified by pressure, coercion or intimidation (where not amounting to a defence)</li> </ul>

**Harm**

As with other offences involving serious injury, the injury caused in cases of causing serious injury by driving whilst disqualified is the equivalent of “physical harm which amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861” (section 3ZD(2)(a) of the Road Traffic Act 1988).

The proposed harm levels are therefore the same as those proposed for other offences where serious injury is involved, with the proposed category 1 being exactly analogous to the highest category of harm in the GBH guidelines, and category 2 covering all other cases (see page 22 above).

<b>Harm</b>
<b>Category 1</b>
<ul style="list-style-type: none"> <li>• Particularly grave and/or life-threatening injury caused</li> <li>• Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</li> <li>• Offence results in a permanent, irreversible injury or condition which has a substantial and long term effect on the victim’s ability to carry out normal day to day activities or on their ability to work</li> </ul>
<b>Category 2</b>
<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

**Sentence levels**

The majority of offenders (86 per cent) sentenced for this offence in 2020 were sentenced to immediate custody, and 14 per cent received a fine (this equates to one offender). Over the period 2016-2020 the ACSL for this offence was 21 months.

The proposed sentencing table for causing serious injury by driving whilst disqualified is set out below. For this offence the Council proposes high culpability starting points and ranges which are in line with the medium culpability levels proposed for causing serious



injury by dangerous driving, medium culpability levels in line with the lowest culpability levels proposed for serious injury by dangerous driving, and low culpability levels which are broadly analogous to the medium culpability levels proposed for causing serious injury by careless driving:

	Culpability A	Culpability B	Culpability C
Harm 1	<p><b>Starting point:</b> 3 years' custody</p> <p><b>Category range:</b> 2 – 4 years' custody</p>	<p><b>Starting point:</b> 2 years' custody</p> <p><b>Category range:</b> 1 – 3 years' custody</p>	<p><b>Starting point:</b> 1 year's custody</p> <p><b>Category range:</b> High level community order – 2 years' custody</p>
Harm 2	<p><b>Starting point:</b> 2 years' custody</p> <p><b>Category range:</b> 1 – 3 year's custody</p>	<p><b>Starting point:</b> 1 year's custody</p> <p><b>Category range:</b> High level community order – 2 years' custody</p>	<p><b>Starting point:</b> 26 weeks' custody</p> <p><b>Category range:</b> Low level community order – 1 year's custody</p>

**Question 28: do you agree with the proposed sentence levels? If not, please tell us why.**

### Aggravating and mitigating factors

The aggravating and mitigating factors proposed for this guideline are the same as those proposed for causing death by driving whilst disqualified, with the omission of “Serious injury to one or more victims, in addition to the death(s)”.

Factors increasing seriousness
<p><i>Statutory aggravating factors:</i></p> <ul style="list-style-type: none"> <li>• 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</li> <li>• <b>Note:</b> An offender convicted of this offence will always have at least one relevant previous conviction for the offence that resulted in disqualification. The starting points and ranges take this into account; any other previous convictions should be considered in the usual way.</li> <li>• Offence committed whilst on bail</li> </ul>

*Other aggravating factors:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- History of disobedience to disqualification orders (where not already taken into account as a previous conviction)
- Disregarding warnings of others about driving whilst disqualified
- Blame wrongly placed on others
- False details given
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Offence committed on licence or while subject to court order(s) (not including the current order for disqualification)

**Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Actions of the victim or a third party contributed significantly to collision or injury
- Efforts made to assist or seek assistance for victim(s)
- 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 relative(s)

***Question 29: do you have any further comments on the proposed guideline for causing serious injury by driving whilst disqualified?***

# Causing death by driving: unlicensed or uninsured drivers

Causing death by driving whilst unlicensed or uninsured is an offence under section 3ZB of the Road Traffic Act 1988. It has a maximum penalty of two years' imprisonment and is triable either way. In 2020, fewer than five offenders were sentenced for this offence.

As mentioned above, there is [currently a guideline](#) for causing death by driving whilst disqualified, unlicensed or uninsured which dates from 2008. However, since the offence has been amended to remove the offence of causing death by driving whilst disqualified, the Council proposes a new guideline which relates only to death caused whilst driving unlicensed or uninsured. The proposed guideline can be found [here](#).

## Culpability

As with causing death by driving whilst disqualified, the behaviour covered by the offence does not relate to the standard of driving of the offender. The culpability factors reflect this, with higher culpability marked out by commercial driving, driving a large vehicle, or a significant distance driven. Lesser culpability is shown by a genuine belief in being licensed or insured, driving in a genuine emergency, or driving whilst being coerced in some form. Medium culpability involves cases falling between these two categories.

### Culpability

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence.

#### A – High culpability

- Driving for commercial purposes
- Driving an LGV, HGV or PSV etc
- Significant distance driven

**B – Medium culpability**

- Cases falling between higher and lesser culpability because:
  - Factors are present in higher and lesser culpability which balance each other out and/or;
  - The offender's culpability falls between the factors as described in higher and lesser culpability

**C – Lesser culpability**

- The offender genuinely believed that he or she was insured or licensed to drive
- Decision to drive was brought about by a genuine and proven emergency
- Driving whilst unlicensed or uninsured by pressure, coercion or intimidation (where not amounting to a defence)

**Question 30: do you agree with the proposed culpability factors? If not, please tell us why.**

**Harm**

As described above, in all guidelines where death has occurred, we propose one level of harm, with guidance provided at step two on sentencing cases of multiple fatalities.

**Sentence levels**

All offenders sentenced in 2020 for causing death by driving whilst unlicensed or uninsured were given a suspended sentence order. Over the period 2016-2020 the ACSL for this offence was 11 months.

The Council does not believe there is a good reason for amending the current sentencing levels for this offence, so the starting points and ranges set out below reflect those in the current guideline.

Culpability	Starting point	Range
High	1 year's custody	36 weeks – 2 years' custody
Medium	26 weeks' custody	High level community order – 36 weeks' custody
Lesser	Medium level community order	Low level community order – high level community order

As with other offences where death is caused, these levels are intended to reflect a single offence resulting in a single death. The wording proposed for causing death by driving would also be included here to provide guidance in cases where more than one death is caused.

**Question 31: do you agree with the proposed sentence levels? If not, please tell us why.**

## Aggravating and mitigating factors

The aggravating and mitigating factors for causing death by driving whilst unlicensed or uninsured are similar to those for causing death by driving whilst disqualified (with amendments to remove references to disqualification where necessary).

### 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:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- History of disobedience to disqualification orders (where not already taken into account as a previous conviction)
- Disregarding warnings of others about driving whilst unlicensed or uninsured
- Blame wrongly placed on others
- False details given
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Serious injury to one or more victims, in addition to the death(s) (see step 5 on totality when sentencing for more than one offence)
- 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
- Impeccable driving record
- Actions of the victim or a third party contributed significantly to collision or death
- Efforts made to assist or seek assistance for victim(s)
- 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 relative(s)

***Question 32: do you have any further comments on the proposed guideline for causing death by driving whilst unlicensed or uninsured?***

# Driving or attempting to drive with a specified drug above the specified limit

Driving or attempting to drive with a specified drug above the specified limit is an offence under section 5A(1)(a) of the Road Traffic Act 1988. It has a maximum penalty of six months' imprisonment and is triable only summarily, meaning it can only be dealt with in the magistrates' courts.

Around 13,300 offenders were sentenced in 2020 for the offence of driving or attempting to drive with a specified drug above the specified limit.

The statutory maximum sentence for this offence is an unlimited fine and/or 6 months' custody. This offence was created by the Crime and Courts Act 2013 and came into force in 2015. The Sentencing Council produced [guidance for drug-driving offences](#) in 2016, but has not to date produced a full guideline. The proposed guideline can be found [here](#).

## General approach

The Council proposes using a three tier system to determine seriousness at step one in order to determine a starting point and category range. This is the same approach as is taken in the guidelines for driving or attempting to drive and being in charge of a vehicle whilst being unfit through drink or drugs, which were revised in 2017.

<b>Category 1</b>	Higher culpability <b>and</b> greater harm
<b>Category 2</b>	Higher culpability <b>and</b> lesser harm <b>or</b> lower culpability <b>and</b> greater harm
<b>Category 3</b>	Lower culpability <b>and</b> lesser harm

See below for discussion of the culpability and harm factors.

Importantly, this differs from the approach taken in the guidelines for excess alcohol (driving or attempting to drive and in being in charge of a vehicle) which were also revised in 2017. That guideline provides for different levels of seriousness based on the levels of alcohol detected from samples. The Council does not consider such an approach is appropriate with regard to drugs. There is no current consensus in scientific literature about how different levels of drugs impair users. Indeed, the legal limits in place are set (at least for illicit drugs) on a zero tolerance, lower limit basis, rather than on likely impairment because of the difficulties of objectively measuring, trialling and defining impairment for psychoactive drugs and driving.

It is generally recognised, however, that a combination of drugs, or a combination of drugs and alcohol, can result in serious impairment, a point reflected in higher culpability which could therefore lead to the designation of an offence at category 1 or category 2.

**Question 33: do you agree with this approach to offence categorisation for the driving/attempting to drive and being in charge of a vehicle with a specified drug above the specified limit guidelines? If not please tell us why.**

## Culpability

We propose a two-culpability table with some factors indicating raised culpability and the lower category covering all other cases. The below culpability factors are similar to those for driving/attempt to drive when unfit through drink or drugs, with the addition mentioned above in relation to combinations of drugs, or the combination of drugs and alcohol. A caveat on this is added in relation to drugs which co-exist naturally in the body where one is the by-product of the other, and guidance provided in relation to situations where separate charges are brought.

### Culpability demonstrated by one or more of the following

#### Factors indicating higher culpability

- Driving an LGV, HGV or PSV etc
- Driving for hire or reward
- Evidence of another specified drug or of alcohol in the body

- For these purposes where the following pairs of drugs appear together they shall be treated as one drug as they may appear in the body as a result of a single drug use: Cocaine and benzoylecgonine (BZE); 6-Monoacetyl-morphine and morphine; or Diazepam and Temazepam.
- This factor may apply whether or not the 'other' specified drug or alcohol is present at a level that could give rise to separate charges.
- Regard should be had to totality (see step 5) if sentencing for more than one offence.

#### Factors indicating lower culpability

- All other cases

**Question 34: do you agree with the proposed culpability factors? If not please tell us why.**

## Harm

A two-tier level of harm is proposed as set out below, with elements similar to those in the unfit through drink or drugs guidelines and the existing drug driving guidance. Again, these factors indicate greater harm, with the lower category covering all other cases. A warning is included noting the points set out above in relation to how greater quantities of drugs



detected in a sample cannot automatically be considered as evidence of a proportional increase in impairment.

**Harm demonstrated by one or more of the following**

**Note: It is not possible to draw a direct connection between the levels of a substance detected and the level of harm**

The limits for illegal drugs are set in line with a zero tolerance approach but ruling out accidental exposure. The limits for drugs that may be medically prescribed are set in line with a road safety risk-based approach, at levels above the normal concentrations found with therapeutic use. This is different from the approach taken when setting the limit for alcohol, where the limit was set at a level where the effect of the alcohol would be expected to have impaired a person's driving ability.

The analysis of drugs in blood is more complex than that for alcohol and there is a larger margin of uncertainty in the measurements. Concentrations of specified substances in blood for the purposes of this offence are expressed in terms of 'not less than' which takes account of the margin of uncertainty for the particular substance

**Factors indicating greater harm**

- Obvious signs of impairment
- Evidence of an unacceptable standard of driving

**Factors indicating lesser harm**

- All other cases

**Question 35: do you agree with the proposed harm factors? If not please tell us why.**

**Sentence levels**

The majority of offenders (86 per cent) sentenced for this offence in 2020 received a fine. A further 9 per cent received a community order, 2 per cent received a suspended sentence, 1 per cent were sentenced to immediate custody, 1 per cent received a discharge, and 1 per cent were recorded as 'otherwise dealt with'. For those sentenced to custody in 2020 the ACSL for this offence was 2 months.

Proposed sentencing levels are set below. These equate to those which exist for driving/attempt to drive whilst unfit through drink or drugs. As with other magistrates' courts driving guidelines, ranges for disqualification period are proposed for first time and repeat offences.

Level of seriousness	Starting point	Range	Disqualification	Disqual. 2 <sup>nd</sup> offence in 10 years
Category 1	12 weeks' custody	High level community order – 26 weeks' custody	29 – 36 months (Extend if imposing immediate custody)	36 – 60 months (Extend if imposing immediate custody)
Category 2	Medium level community order	Low level community order – High level community order	17 – 28 months	36 – 52 months
Category 3	Band C fine	Band B fine – Low level community order	12 – 16 months	36 – 40 months

Further guidance around disqualification in cases of repeat offending is proposed at this point, as appears in other magistrates' courts drink- and drug-driving guidelines:

“Note: when considering the guidance regarding the length of disqualification in the case of a second offence, the period to be imposed in any individual case will depend on an assessment of all the relevant circumstances, including the length of time since the earlier ban was imposed and the gravity of the current offence but disqualification must be for at least three years.”

**Question 36: do you agree with the proposed sentence levels? If not please tell us why.**

## Aggravating and mitigating factors

The below step two factors are largely drawn and adapted from existing guidelines for driving/attempting to drive with excess alcohol and being unfit through drink or drugs.

Factors increasing seriousness
<i>Statutory aggravating factors:</i>
<ul style="list-style-type: none"> <li>• 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</li> <li>• Offence committed whilst on bail</li> </ul>

***Other aggravating factors:***

- High level of traffic or pedestrians in the vicinity
- Poor road or weather conditions
- Involved in accident (where not taken into account at step 1)
- Carrying passengers
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision

**Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Very short distance driven
- Genuine emergency established
- Genuine misunderstanding about safe dosage of prescribed medication
- Remorse
- Good character and/or exemplary conduct
- 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

***Question 37: do you agree with the proposed aggravating and mitigating factors? If not please tell us why.***

***Question 38: do you have any further comments on the proposed guideline for driving or attempting to drive with a specified drug above the specified limit?***

# Being in charge of a motor vehicle with a specified drug above the specified limit

Being in charge of a motor vehicle with a specified drug above the specified limit is an offence under section 5A(1)(b) of the Road Traffic Act 1988. It has a maximum penalty of three months' imprisonment and is triable only summarily.

In 2020, around 270 offenders were sentenced for being in charge with a specified drug above the specified limit.

As noted above for the proposed guideline for driving or attempting to drive with a specified drug above the specified limit, the offence is currently the subject [of guidance for the magistrates' courts](#), but not a specific guideline. The proposed guideline can be found [here](#).

The approach of three seriousness categories at step one is shared with the guideline for driving or attempting to drive with a specified drug above the specified limit for the reasons set out above.

<b>Category 1</b>	Higher culpability <b>and</b> greater harm
<b>Category 2</b>	Higher culpability <b>and</b> lesser harm <b>or</b> lower culpability <b>and</b> greater harm
<b>Category 3</b>	Lower culpability <b>and</b> lesser harm

## Culpability

The higher culpability factors for this offence are similar to those for driving or attempting to drive with a specified drug above the specified limit. The addition of "high likelihood of driving" is tailored for the offence (and shared with the guideline for being in charge while unfit through drink or drugs), with the fact that no driving will have taken place reflected in lower sentencing levels.

## Culpability demonstrated by one or more of the following

### Factors indicating higher culpability

- High likelihood of driving
- In charge of an LGV, HGV or PSV etc
- Offering to drive for hire or reward
- Evidence of another specified drug or of alcohol in the body
  - For these purposes where the following pairs of drugs appear together they shall be treated as one drug as they may appear in the body as a result of a single drug use: Cocaine and benzoylecgonine (BZE); 6-Monoacetyl-morphine and morphine; or Diazepam and Temazepam.
  - This factor may apply whether or not the ‘other’ specified drug or alcohol is present at a level that could give rise to separate charges.
  - Regard should be had to totality (see step 5) if sentencing for more than one offence.

### Factors indicating lower culpability

- All other cases

**Question 39: do you agree with the proposed culpability factors? If not please tell us why.**

## Harm

As with driving or attempting to drive with a specified drug above the specified limit, we propose two harm levels, although as no driving will have taken place, signs of impairment are proposed as the only factor placing an offence in higher harm.

## Harm demonstrated by one or more of the following

**Note: It is not possible to draw a direct connection between the levels of a substance detected and the level of harm**

The limits for illegal drugs are set in line with a zero tolerance approach but ruling out accidental exposure. The limits for drugs that may be medically prescribed are set in line with a road safety risk-based approach, at levels above the normal concentrations found with therapeutic use. This is different from the approach taken when setting the limit for alcohol, where the limit was set at a level where the effect of the alcohol would be expected to have impaired a person's driving ability.

The analysis of drugs in blood is more complex than that for alcohol and there is a larger margin of uncertainty in the measurements. Concentrations of specified substances in blood for the purposes of this offence are expressed in terms of ‘not less than’ which takes account of the margin of uncertainty for the particular substance

### Factors indicating greater harm

- Obvious signs of impairment

### Factors indicating lesser harm

- All other cases

**Question 40: do you agree with the proposed harm factors? If not please tell us why.**

### Sentence levels

The majority of offenders (91 per cent) sentenced in 2020 for being in charge of a motor vehicle with a specified drug above the specified limit received a fine. A further 7 per cent received a community order, 1 per cent received a discharge, 1 per cent were sentenced to immediate custody, and less than 1 per cent were recorded as 'otherwise dealt with'. Over the period 2016-2020 the ACSL for this offence was 3 weeks.

The sentence levels proposed below equate to those for the existing guideline of being in charge of a motor vehicle when unfit through drink or drugs. The starting points and ranges are lower than the equivalent levels for driving or attempting to drive with a specified drug above the specified limit reflecting the lower maximum penalty and the fact that no driving will have taken place.

Whilst disqualification is not obligatory for this offence, sentencers are prompted to consider it for the two higher categories; if disqualification is not imposed penalty points are obligatory and 10 points are proposed as a guideline at each level of seriousness.

Level of seriousness	Starting point	Range	Disqualification/points
<b>Category 1</b>	High level community order	Medium level community order – 12 weeks' custody	Consider disqualification (extend if imposing immediate custody) <b>OR</b> 10 points
<b>Category 2</b>	Band C fine	Band B fine – medium level community order	Consider disqualification <b>OR</b> 10 points
<b>Category 3</b>	Band B fine	Band B fine	10 points

**Question 41: do you agree with the proposed sentence levels? If not please tell us why.**

## Aggravating and mitigating factors

Given the limited common factual situations which may arise in cases of being in charge of a vehicle, and the fact that no driving will have taken place, few bespoke aggravating factors are proposed. This is in line with the approach taken to the guideline for being in charge of a vehicle while unfit through drink or drugs.

### 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:*

- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Genuine misunderstanding about safe dosage of prescribed medication
- Remorse
- Good character and/or exemplary conduct
- 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

***Question 42: do you agree with the proposed aggravating and mitigating factors? If not please tell us why.***

***Question 43: do you have any further comments on the proposed guideline for being in charge of a motor vehicle with a specified drug above the specified limit?***

# Disqualification

The Council believes there would be merit in including guidance on disqualification in the motoring guidelines. This is an area where the courts must consider a variety of factors, not only in relation to what length of disqualification to set, but also in relation to mandatory minimum periods of disqualification for first time and repeat offences, and the interaction with periods spent in custody whether for the offence for which disqualification is imposed or for other offences for which the offender is being sentenced at the same time. Indeed, the rules governing how to account for time spent in custody have recently changed with the coming into force of the Police, Crime, Sentencing and Courts Act 2022.

We propose that all guidelines on which we are consulting should include information about mandatory minimum periods of disqualification at the top of the guideline. This will include information about repeat offences and also indicate whether the court must order an extended retest.

Whilst magistrates' courts guidelines provide ranges for disqualification periods within the sentencing tables, the Council believes that for the offences on which we are consulting there are too many offence- and offender-specific factors which may influence the length of a period of disqualification. As the Court of Appeal has acknowledged, there is no simple formula by which discretionary periods of disqualification can be calculated.<sup>7</sup> It was also felt that broad ranges of disqualification period would be of little to no use for sentencers.

However, there are general principles and guidance which may be helpful to the courts in approaching the process of setting a disqualification period. The Council proposes putting these at the ancillary orders step of each of the guidelines on which it is consulting. The guidance would consist of several sections:

A – Principles

B – Minimum disqualification period

C – Special reasons (i.e. for not imposing a disqualification, or not imposing a minimum period)

D – Interaction with custodial period – same offence

E – Interaction with custodial period – different offence

However, the guidance would be tailored to the individual offence, where some information relevant to one guideline (for example in relation to repeat drink-drive offences) may not be relevant to another.

The proposed guidance draws on existing Sentencing Council explanatory material for magistrates, as well as relevant case law, most prominently *R v Needham* [2016] EWCA

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<sup>7</sup> See *Islam* [2019] EWCA Crim 1494



Crim 455. The guidance is not intended to be exhaustive, but to provide an overview of the sorts of areas where the Council felt the courts would most likely welcome assistance. A full sample of the guidance is set out below, but a tailored version of it is included in each guideline at either step six or step seven.

## Disqualification

### *A Principles*

Disqualification is part of the sentence. Accordingly when setting the “discretionary” element of the disqualification (i.e. disregarding any period being spent in custody – see below) the court must have regard to the purposes of sentencing in section 57 of the Sentencing Code, which include: the punishment of offenders, the reduction of crime, the reform and rehabilitation of offenders and the protection of the public, when deciding the length of any disqualification.

In setting the length of any disqualification, sentencers should not disqualify for a period that is longer than necessary and should bear in mind the need for rehabilitation (for example, by considering the effects of disqualification on employment or employment prospects).

Sentencers should also be mindful of the risk of long disqualifications leading to further offences being committed, by reason of a temptation to drive unlawfully.

### *B Minimum disqualification period*

The minimum disqualification period for this offence is x years.

An offender must be disqualified for at least two years if he or she has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence. The following disqualifications are to be disregarded for the purposes of this provision:

- interim disqualification;
- disqualification where vehicle used for the purpose of crime;
- disqualification for stealing or taking a vehicle or going equipped to steal or take a vehicle.

An offender must be disqualified for at least three years if they have been convicted of any of the following offences once or more in the 10 years preceding the commission of the current [drink/drug-drive] offence

- causing death by careless driving under the influence of drink or drugs
- driving or attempting to drive while unfit;
- driving or attempting to drive with excess alcohol;
- driving or attempting to drive with concentration of specified controlled drug above specified limit;
- failing to provide a specimen (where that is an offence involving obligatory disqualification); or

- failing to allow a specimen to be subjected to laboratory test (where that is an offence involving obligatory disqualification).

### *C Special reasons*

The period of disqualification may be reduced or avoided if there are special reasons. These must relate to the offence; circumstances peculiar to the offender cannot constitute special reasons. To constitute a special reason, a matter must:

- be a mitigating or extenuating circumstance;
- not amount in law to a defence to the charge;
- be directly connected with the commission of the offence;
- be one which the court ought properly to take into consideration when imposing sentence.

### *D Interaction with custodial period – same offence*

Under section 35A of the Road Traffic Offenders Act 1988 where a court imposes a disqualification in addition to a custodial sentence or a detention and training order for this offence, it must extend the disqualification period to take account of the custodial term imposed by:

- one half of the custodial term imposed for an immediate standard determinate sentence; no extension period should be imposed where a sentence is suspended.
- two thirds of the custodial term for an extended sentence;
- the custodial element of a serious terrorism sentence or extended sentence for a serious terrorism offence (i.e. one which carries a maximum of life imprisonment);  
or
- the term specified in the minimum term order of a life sentence.

This will avoid the disqualification expiring, or being significantly diminished, during the period the offender is in custody. The table at section 166 of the Sentencing Code provides further detail. (Note: this table applies to disqualification for non-Road Traffic Act 1988 offences but the principles apply to disqualifications imposed under that Act as well.)

Periods of time spent on remand or subject to an electronically monitored curfew are generally ignored. However, if the time spent on remand would lead to a disproportionate result in terms of the period of disqualification, then the court may consider setting the discretionary element (i.e. the period which would have been imposed but for the need to extend for time spent in custody) to take account of time spent on remand. This should not reduce the discretionary term below the statutory minimum period of disqualification.

### *E Interaction with custodial period – different offence*

The Court may be imposing a custodial sentence on the offender for another offence, which is not the one for which they are being disqualified. In this instance, under section 35B of the Road Traffic Offenders Act 1988, it should have regard to "the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence".

Where the court is intending to impose a disqualification and considering a custodial sentence for that and/or another offence, the following checklist may be useful:

- Step 1 – does the court intend to impose a custodial term for the offence for which they are imposing a disqualification?

YES – the court must impose the appropriate extension period and consider step 2.

NO – go to step 3.

- Step 2 – does the court intend to impose a custodial term for another offence (which is longer or consecutive) or is the defendant already serving a custodial sentence?

YES – consider what uplift in the period of discretionary disqualification (i.e. the period which would have been imposed but for the need to extend for time spent in custody) is required, having regard to the diminished effect of disqualification as a distinct punishment. Ignore any custodial term imposed for the offence for which disqualification is being imposed. Discretionary period + extension period + uplift = total period of disqualification

NO – no further uplift required. Discretionary period + extension period = total period of disqualification

- Step 3 – does the court intend to impose a custodial term for another offence or is the defendant already serving a custodial sentence?

YES – then consider what uplift in the period of discretionary disqualification is required, having regard to the diminished effect of disqualification as a distinct punishment. Discretionary period + uplift = total period of disqualification

NO – no increase is needed to the discretionary period.

***Question 44: do you agree with the proposed guidance on the approach to disqualification? 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<sup>8</sup> 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 Council has commissioned an independent external contractor to undertake a project to review our work for any potential to cause disparity in sentencing across demographic groups. Aspects to be examined will include those such as the language used, factors, offence context, expanded explanations and structure of sentencing guidelines. The work will also consider whether any aspects of our processes of guideline development and revision have any implications for equalities and disparity in sentencing and how the Council can best engage with under-represented groups to increase awareness and understanding of sentencing guidelines.

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.

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<sup>8</sup> The Public Sector Equality Duty (PSED) is a duty set out in section 149 of the Equality Act 2010 (the 2010 Act) which came into force on 5 April 2011. It is a legal duty which requires public authorities (and those carrying out public functions on their behalf) to have “due regard” to three “needs” or “limbs” when considering a new policy or operational proposal. Complying with the duty involves having due regard to each of the three limbs:

The first is the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the 2010 Act. The second is the need to advance equality of opportunity between those who share a “protected characteristic” and those who do not. The third is to foster good relations between those who share a “protected characteristic” and those who do not.

Under the PSED the protected characteristics are: race; sex; disability; age; sexual orientation; religion or belief; pregnancy and maternity; and gender reassignment. The protected characteristic of marriage and civil partnership is also relevant to the consideration of the first limb of the duty.

Section 149 of the Equality Act 2010 contains further detail about what is meant by advancing equality of opportunity and fostering good relations

The Council has produced information on the demographic makeup (specifically age group, ethnicity and sex) of adult offenders sentenced for the motoring offences covered by these proposed guidelines. This can be seen within the data tables at <https://www.sentencingcouncil.org.uk/publications/item/motoring-offences-statistical-bulletin/>.

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 motoring 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 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.

***Question 45: are there any aspects of the draft guidelines that you feel may cause or increase disparity in sentencing?***

***Question 46: are there any existing disparities in sentencing of the offences covered in this guideline that you are aware of, which the draft guideline could and should address?***

***Question 47: 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 guideline?***





