

Motoring offence Guidelines

Response to consultation

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Foreword



The Sentencing Council's consultation on motoring offences, which we carried out between July and September last year, elicited over 300 responses. This demonstrates the strength and breadth of feeling about how the courts should deal with those who drive carelessly or dangerously on our roads.

All responses demonstrated a clear desire for safer roads and to see the public protected. Sadly, there are many instances of highly egregious driving, many resulting in injury and fatality, which come before the courts and the proper response to these will usually be significant custodial sentences. However, more difficult questions are raised by those cases involving errors of judgement and lapses in concentration which nonetheless result in death and injury. We received a wide range of views on the issue of how to respond to those offences.

I would like to thank everyone who responded to the consultation, whether on behalf of an organisation or as an individual. In particular, I would like to thank those who contributed their personal views, having lost loved ones in road traffic collisions. Their responses were thoughtful and measured and the Council very much appreciates the courage which it must have taken to respond.

As this consultation response sets out, we have made a number of changes to our proposals in light of many of the responses we received and the sentencing exercises undertaken with judges and magistrates. This demonstrates the value of consultation in

preparing sentencing guidelines, and of testing our proposals with those who will use them.

The Sentencing Council will return to further issues related to motoring in a follow-up consultation, but the publication of this suite of guidelines means that virtually all of the guidelines produced by the Sentencing Guidelines Council, our predecessor body, have been updated and are now in the step by step format familiar to the courts.

Lord Justice William Davis
Chairman, Sentencing Council

Introduction

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 Police, Crime, Sentencing and Courts Act 2022 raised the maximum penalties for causing death by dangerous driving and causing death by careless driving 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. 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.

Between July and September 2022, the Council consulted on a package of new and revised guidelines for a number of these offences and others to ensure that they were up to date. The full list of draft guidelines consulted on is as follows:

- causing death by dangerous driving (section 1, Road Traffic Act 1988 (RTA));
- causing death by careless driving (section 2B, RTA);
- causing death by careless driving under the influence of drink or drugs (section 3A, RTA);
- causing death by driving whilst disqualified (section 3ZC, RTA);
- causing death by driving whilst unlicensed or uninsured (section 3ZB, RTA);
- dangerous driving (section 2, RTA);
- causing serious injury by dangerous driving (section 1A, RTA);
- causing serious injury by careless driving (section 2C, RTA);
- causing serious injury by driving whilst disqualified (section 3ZD, RTA);
- causing injury by wanton or furious driving (section 35, Offences Against the Person Act 1861);
- driving or attempting to drive with a specified drug above the specified limit (section 5A, RTA); and
- being in charge of a motor vehicle with a specified drug above the specified limit (section 5A, RTA)

The Council received 307 responses to the consultation. Around half of these were inspired by a variety of campaigns. Some of these campaign responses had a focus on road safety from the perspective of cyclists and called for lengthy driving disqualifications to be imposed on careless and dangerous drivers. Others expressed concern about road safety and offered general support for the new and revised guidelines.

As a result of the responses received by the Council, and the sentencing exercises carried out with judges and magistrates set out below, we have made several changes to the draft guidelines. These are summarised in this consultation response document. As many of the

changes made are common across different guidelines, this document groups guidelines together as follows:

- dangerous driving offences;
- careless driving offences (including causing injury by wanton or furious driving);
- offences committed whilst the offender is disqualified, unlicensed and/or uninsured;
and
- drug driving offences.

There is then a section on disqualification guidance. Where changes being made in one group of offences have an impact on guidelines in another group, this will be made clear.

Summary of research

To help understand the impacts of the proposed new and revised guidelines on sentencing practice, 44 qualitative interviews were held during the consultation period with Crown Court judges and magistrates. The draft guidelines for the five offences tested were selected based on the following criteria:

- the highest volume offences, because this is where the greatest impact of a new or revised guideline is likely to be felt;
- where there was least evidence available; and
- where there were specific issues to assess.

The offences selected were:

- causing death by dangerous driving;
- causing death by careless or inconsiderate driving;
- causing serious injury by dangerous driving;
- dangerous driving; and
- driving or attempting to drive with a specified drug above the specified limit.

For each offence it was important to understand not only how the draft guidelines are understood and applied, but also how sentencing may change compared to existing practice to inform the resource assessment. There was also specific interest in understanding how sentencers used the disqualification guidance where applicable.

Each interviewee sentenced two scenarios for one type of offence using existing practice (including an existing guideline where there was one) and the proposed draft guideline. The number of interviews undertaken for each offence and the types of sentencers with whom they were carried out is as follows:

Offence	Number of interviews	
	Magistrates	Crown Court Judges
Causing death by dangerous driving	(n/a – indictable only)	7
Causing death by careless or inconsiderate driving	5	5
Causing serious injury by dangerous driving	5	5
Dangerous driving	5	5
Driving or attempting to drive with a specified drug above the specified limit	7	(n/a – summary only)
Total	22	22

Findings from these sentencing exercises are discussed at relevant points throughout this document.

Both before and after consultation, members of the Office of the Sentencing Council also undertook resentencing exercises using transcripts of cases in the Crown Court and the drafts of the new and revised guidelines. Where changes were made to guidelines following consultation, these cases were resentenced again to help assess the possible impacts of the latest versions of the guidelines.

Updated data tables and a final resource assessment have been published alongside this consultation response document and the definitive guidelines.

Summary of responses

The consultation received 307 responses. A full list of respondents is included at Annex A.

Breakdown of respondents

Type of respondent	Number
Academics	3
Charity/not for profit organisations	3
Government	2
Judiciary	4
Legal professionals	3
Magistrates	23
Members of the public	250
Motoring and cycling organisations	7
NHS bodies	1
Parliament	1
Police/law enforcement	3
Prosecution	1
Road safety organisations	6
Total	307

Dangerous driving offences

Background

The Council consulted on guidelines for causing death by dangerous driving (section 1 of the Road Traffic Act 1988 (RTA)), causing serious injury by dangerous driving (section 1A of the RTA) and dangerous driving (section 2 of the RTA).

Guidelines currently exist for causing death by dangerous driving and dangerous driving, dating from 2008. These guidelines do not follow what has become the standard format for sentencing guidelines, including a stepped approach to assessing harm and culpability before considering aggravating and mitigating factors. The guideline for causing death by dangerous driving also reflects the previous maximum penalty of 14 years' custody, which was increased to life imprisonment by the Police, Crime, Sentencing and Courts Act 2022.

There is no current sentencing guideline for causing serious injury by dangerous driving, although the Court of Appeal has established that the courts should sentence by reference to the guideline for causing death by dangerous driving (see *Dewdney* [2014] EWCA Crim 1722; *Shaw* [2018] EWCA Crim 2932; and *Burton* [2019] EWCA Crim 2396).

Culpability

A large number of respondents agreed with our proposed culpability table, which is common across all offences involving dangerous driving. However, there were several suggestions for change. Several respondents believed that some of the factors proposed as being culpability B for dangerous driving should be moved to Culpability A:

“I consider some which have been ranked medium as warranting moving to high. In particular, those that involve a specific and deliberate decision, such as engaging in a brief but avoidable distraction, or knowingly driving when deprived of sleep. These are a very specific decision to operate machinery in an obviously dangerous manner.” **Member of the public**

“Anyone who is over the limit and has made a decision to get in a vehicle, drive and kill someone should be placed in the high culpability category. I don't think this should be in the medium category at all.” **Member of the public**

The Council considered this point carefully, and understood the point made about these elements being examples of deliberate choices rather than simple mistakes. However, on reflection Council felt that it was important to distinguish between different levels of culpability within the context of this “deliberate” dangerous driving. Importantly, being placed in the middle, rather than the top, category should not imply that the offending is not treated seriously. The Council is proposing a starting point of six years' custody for such offences, with a range up to nine years, which represents a substantial prison sentence. As a basic change to help counter the sense that these offences may not be treated seriously, the culpability categories have been renamed simply A, B and C.

However, there were various amendments which the Council has decided to make to the culpability factors following feedback from consultees. Some respondents wanted to see the medium culpability factor “Brief but obviously highly dangerous manoeuvre” placed in the top culpability. Others, such as Cycling UK, thought it should be low. Reflecting this uncertainty, there was confusion in sentencing exercises with judges and magistrates about whether something counted as a brief but dangerous manoeuvre, a brief but avoidable distraction, or a momentary lapse. This led to inconsistency in several scenarios about whether offences were categorised as B or C. To mitigate this confusion, the Council decided to remove the factor from medium culpability, but to add a high culpability factor “obviously highly dangerous manoeuvre”.

Similarly with the medium (B) culpability factor “engaging in a brief but avoidable distraction”. Some respondents argued that this didn’t belong in dangerous driving at all but was rather an example of careless driving, or should belong in low (C) culpability. Considering all these points, the Council decided that there was too much scope for confusion here and with the low culpability factor “momentary lapse of concentration”. In many contexts the brevity of dangerous driving is unrelated to the potential for harm or the culpability of the driver. These two factors have therefore been removed.

There were inconsistencies in the wording of references to being under the influence of drink or drugs across the motoring guidelines. The draft factor proposed in the guidelines for dangerous driving offences referred to “consumption of substantial amounts of alcohol or drugs leading to gross impairment”. The Council considered that the level of impairment was more important than the amount of drugs or alcohol, and noted HM Council of District Judges’ suggestion to replace “gross” with “high level of” which is in line with the guideline for failing to provide a specimen, and represents a lower bar. The new culpability A factor is therefore “Driving highly impaired by consumption of alcohol and/or drugs”, and the equivalent culpability B factor is “Driving impaired by consumption of alcohol and/or drugs (where not culpability A)”. This formula is repeated across other guidelines.

Several respondents wanted the guidelines to mention the use of phones and other electronic devices explicitly. The Council agreed that this is an issue encountered frequently enough in dangerous driving cases to merit a specific culpability factor. As there will be a difference in culpability between (for example) a motorist who quickly attempts to adjust a navigation system and one who is distracted for a lengthy period by watching a film, the Council has added a culpability A factor of “Prolonged use of mobile phone or other electronic device” and a culpability B factor of “Use of mobile phone or other electronic device (where not culpability A)”.

The draft proposed a culpability A factor of “disregarding warnings of others”. HM Council of Circuit Judges thought that this factor, which is an aggravating factor under the existing guidelines, could be split across both medium and high culpability, with a high factor of “persistent disregard of warnings of others” and a medium factor of simply “disregarding warnings of others”. The Council agreed that this would allow for more flexibility in the extent to which the offender was given the chance to change behaviour, but modified the suggestion so that the culpability B factor refers to a single warning.

Some members of the public had suggestions for the culpability factor “Speed greatly in excess of speed limit”. Some thought “greatly” was too high a bar and suggested “significantly”. Others thought the factor could be expanded to say “...or highly inappropriate for the prevailing road or weather conditions” to capture the situation where someone has driven far too fast (for example) outside a school or in icy conditions, even if not driving at high speeds. This would provide a more exact counterpart to the medium

culpability factor “Driving at a speed that is inappropriate for the prevailing road or weather conditions”. The Council agreed and has made those changes.

Some respondents commented on the medium culpability factor “Driving when knowingly deprived of adequate sleep or rest”:

“There is no rationale for the “knowingly” requirement. Surely one is either deprived of sleep or rest or one is not – quite what the requirement to demonstrate knowledge achieves is unknown. It adds a level of complexity into the assessment that is not warranted. It could perhaps be a mitigating factor. However, as a measure of culpability it is hard to conceive of a situation where a driver would not know (in the context of dangerous driving) that they were too tired or had not had a rest.” **Dr Adam Snow**

The Council agreed and has removed the word “knowingly” from the factor.

The Council agreed to amend the wording in relation to offending which takes place in the context of a police pursuit, as it could wrongly be taken to apportion blame to the officers involved. The factor now reads “offence committed in course of evading police”.

Finally, an amendment was also made to the wording of the culpability factor “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” as a result of a suggestion received on the careless driving guidelines. This is discussed below in the section on careless driving offences.

Harm

Virtually all respondents agreed to our proposal for there being one level of harm for cases involving death, and with our proposed approach to cases involving multiple deaths.

However, in looking across this package of guidelines and others, Council noted some discrepancies in the wording of the guidance on multiple deaths so has taken the opportunity to clarify it. It now reads:

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

Where more than one death is caused but they are all charged in a single count, it will be appropriate to make an upwards adjustment from the starting point within the relevant category range before consideration of other aggravating features and mitigation. The court may conclude that it would be contrary to the interests of justice for the final sentence to be limited to the offence range for a single offence. See the Totality guideline and step six of this guideline.”

The Criminal Sub-Committee of the Council of HM Circuit Judges questioned why the approach to multiple deaths would not apply to cases involving multiple injuries:

“There will be many cases in which more than one person receives serious injuries – and whilst such instances will no doubt result in separate counts the same applies in relation to multiple fatalities. For consistency we would suggest that some similar wording should apply in the case of multiple injuries as for multiple deaths.” **Criminal Sub-Committee of the Council of HM Circuit Judges**

One point to observe here is that the courts will be constrained by the maximum penalties (five years’ custody in the case of causing serious injury by dangerous driving). Nonetheless, multiple injuries could adjust a starting point upwards within or out of a category range, our proposed levels allow for headroom of a year above the offence range to cater for this, and there is value in having a consistent approach. The Council has therefore included this guidance, duly modified, in all motoring guidelines involving serious injury.

The majority of respondents were content with our two level approach to harm in guidelines for offences where serious injury is caused. A few did wish to see a three box system:

“The definition of Category 2 is too broad. At the top end you could have a life threatening injury that the individual does recover from after a lengthy recovery process, but in the meantime has lost their job and/or experienced other significant impacts on their personal circumstances. That would be life changing but would not meet the criteria for Category 1 because they do eventually get back their health and their potential to regain employment. At the bottom end of the range there would be injuries that the individual recovers from without permanent impact on their life.” **Member of the public**

“There should be 3 sections of harm as it is for a grievous bodily harm (GBH) offence. This range of harm levels as seen with GBH and best reflect the reference to the impact of the victim... If there are 3 levels of harm as seen with GBH, then the lowest level of harm should include some level of community order sentencing within the range... providing a category 3 of harm (like with GBH) would provide a more inclusive sentencing structure. I note this particularly when it comes to serious injury by careless driving as there are only 2 harm levels and the second (which is lower) still only provides a custodial sentence rather than having a range that does include community order sentencing (to be used in discretion on a case by case basis alongside its mitigating factors – if there are any).” **Roadpeace**

Some judges and magistrates who took part in sentencing exercises using the draft guidelines were also concerned about there being only two categories, believing that there was too big a gap between the top level and “all other cases”. Some thought there should be a middle category to cater for the wide varieties of injury that might result from a collision.

The West London Magistrates Bench considered the matter carefully:

“We are not convinced that just because the maximum penalty for this offence (and that for “Causing serious injury by careless driving”) is relatively low compared to other standard of driving offences, a two-level harm approach is satisfactory. We believe it really depends on whether (a) a two-level harm approach gives sufficient sentencing flexibility for the types of cases that will be charged under this offence; and (b) a three-level harm approach offers no real advantages over two levels or makes it unnecessarily complicated by introducing the extra level.

[...]

On careful reflection, it does seem unnecessarily complicated to try and split such injuries into two further categories, as we find it difficult to make distinctions between “grave injury” or “really serious injury or harm”. We therefore agree with just one other harm level (Category 2) to cover all other cases. In this case, Category 1 harm covers serious long-term, life-changing injuries and Category 2 harm covers all other grave and really serious injuries, which could include permanent, irreversible injury but which is not of a life-changing nature. Perhaps it would help sentencers to have information of this sort spelled out for Category 2, so the distinction was clearer.” **West London Magistrates Bench**

Having considered the views expressed, noting the weight of opinion was in favour of the two harm model proposed, the Council decided to retain it for the definitive guidelines.

Sentence levels

For causing death by dangerous driving, some respondents thought that the sentence levels proposed were too low. Some made the comparison with unlawful act manslaughter:

“There must be parity between offences that are dangerous and cause death; it is therefore very important that the guidelines give parity with manslaughter.

For manslaughter, there are 4 culpability factor categories, with the highest being very high culpability with a max. sentence of 24 years.

The definition of very high culpability manslaughter cases is that there must be an ‘extreme character’ to the culpability factor, i.e. a death caused ‘in the course of an unlawful act which carried a high risk of death or GBH which was or ought to have been obvious to the offender.’

The SC is proposing that a close 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. The SC is proposing that, rather than have a category of very high culpability factors for death by dangerous driving, a broader range of sentencing is provided for high culpability death by dangerous driving cases, with a maximum 18 years ‘bearing in mind how serious the worst cases of dangerous driving can be.’” **Brake**

Even respondents who in other contexts said they wanted to see less use of custody for motoring offences did not disagree with the sentence levels we proposed for this offence.

On the other hand, the Justice Select Committee queried why sentence levels were being increased in more categories than just the highest:

“[We] note that the increase in the maximum penalties for these two offences appears to have had an inflationary effect on the starting points and category ranges beyond the most serious cases and have had an effect on sentencing levels for other motoring offences. It was Parliament’s intention to increase the penalties for the most serious cases by raising the maximum, but it is not necessarily the case that this should increase the penalties for cases that fall into the medium and lesser categories. We note that the Council took a different approach to revising the Child Cruelty Guidelines in creating a new very high culpability category to give effect to the revised maximum penalties enacted by Parliament. We would be interested to understand why the Council decided against that approach for these guidelines.” **Justice Select Committee**

The Council does consider Parliament’s intention when a maximum penalty is set or revised, alongside current sentencing practice (which it is obliged to consider), and the extent to which current sentencing powers are deemed insufficient across different levels of seriousness of offending. In this case the Council did not think the intention of Parliament was entirely clear cut. The Explanatory Notes say:

“Increasing the maximum penalty to life imprisonment for these offences will provide the courts with enhanced powers to sentence appropriately for the most serious cases.” (paragraph 79)

However, in its policy paper on the Police, Crime, Sentencing and Courts Bill, the Government said its aim was “to make sure that the penalties available to the courts for such offences are proportionate and reflect the seriousness of the offences committed” and stressed the comparison with manslaughter.

The guideline for causing death by dangerous driving was due for revision regardless of the change in maximum penalties. Sentence levels for this offence were last considered 15 years ago and the Council wishes to reflect society’s attitude towards bad driving and its consequences, as demonstrated by numerous cases highlighted by MPs and others.

The culpability factors that the Court must consider have been considerably revised in the new guidelines, and the Council has considered carefully what penalties are proportionate for the different levels of offending. The majority of consultation responses would appear to back this up by broadly endorsing our proposals. The proposed approach explains the difference between the Council’s resource assessment and the impact assessment produced by the Government alongside the legislation, which assumed only a small number of cases would exceed the previous maximum, with all other cases being unaffected by the change.

The Council believes that the sentencing table proposed strikes the right balance given the sorts of cases typically seen by the courts. The worst cases of causing death by dangerous driving will rarely (if ever) involve any intent to cause harm, but equally even the lowest sentence levels must reflect the inherent risks involved in driving and the responsibility that dangerous drivers must take for their actions. Given the maximums of other offences, such as five years’ custody for causing serious injury by dangerous driving, increasing sentence levels any further, as some respondents wished, would create the risk of a disproportionate gap between sentences for different offences.

The Justice Select Committee also asked a question in relation to life sentences:

“We note that it is not clear from the face of the guidelines how the possibility of a life sentence for the offences of causing death by dangerous driving and causing death by careless driving under the influence has been incorporated into the relevant guidelines. We note that step 5 of the draft guideline asks the court to consider whether it would be appropriate to impose an extended sentence. The Police, Crime, Sentencing and Courts Act 2022 did not add the offences of causing death by dangerous driving and causing death by careless driving under the influence to Schedule 19 of the Sentencing Code, which lists the offences where a life sentence must be imposed if it meets the conditions included in section 285, including that “the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences”. We are concerned that this lack of a trigger could result in some difficulties for sentencers. We understand that the court retains the residual discretion to impose a discretionary life sentence, but we would welcome any clarification the Council could provide on this point.” **Justice Select Committee**

The Committee has itself set out the position clearly. Parliament has provided for life sentences, and the courts therefore have the power to impose them where they would be justified. The offences of causing death by dangerous driving and causing death by careless driving have not been added to Schedule 19 to the Sentencing Code and therefore the statutory “dangerousness” provisions (where a court must assess whether there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences, under section 308 of the Sentencing Code) do not apply to imposing a life sentence for these offences.

For causing serious injury by dangerous driving, again many respondents wanted higher sentence levels than those proposed, some not appreciating the limits imposed by the statutory maximum. There were, however, several respondents, including road safety campaigners such as RoadPeace and Action Vision Zero, who wanted to see more community orders in the offence range, albeit with longer disqualifications as a counterbalance. Again, bearing in mind the need to retain proportionality with other guidelines, the Council decided to keep sentence levels as consulted on.

For the dangerous driving guideline (i.e. with no death or injury), some of the judges and magistrates who took part in sentencing exercises felt that the sentences arrived at were a little too high. The Magistrates’ Association also thought that the levels proposed represented more than a “modest uplift” to the levels in the current guideline, which was the phrase used in the consultation document to describe the amendment. This view was backed up by the findings of the transcript analysis, which suggested that the new guideline published for consultation would increase sentencing severity for this offence.

Analysis of 21 dangerous driving transcripts indicated that one factor contributing to the increase in severity was the proposed high harm factor “circumstances of offence created a high risk of serious harm to others”. Furthermore, in all of the cases analysed where an offender fell into the culpability A category, they also fell into harm category 1. (It is important to note that the number of transcripts analysed represents a very small proportion (1 per cent) of the total number of offenders sentenced, and these are purely based on Crown Court cases, so these findings should be viewed as indicative only.)

Given the Council had no intention of increasing sentence severity for this offence, it has looked carefully at the guideline and decided to remove the high harm factor “circumstances of offence created a high risk of serious harm to others”, and adjust the sentence levels in most categories to try and retain consistency with current sentencing

practice. The starting point and category range in the top A1 box, capturing the most serious cases, would remain the same as consulted on.

The revised sentence table therefore is as follows:

	A	B	C
Category 1	Starting point 1 year 6 months' custody	Starting point 36 weeks' custody	Starting point High level community order
	Category range 1 – 2 years' custody	Category range High level community order – 1 year 6 months' custody	Category range Medium level community order – 36 weeks' custody
Category 2	Starting point 36 weeks' custody	Starting point High level community order	Starting point Medium level community order
	Category range High level community order – 1 year 6 months' custody	Category range Medium level community order – 36 weeks' custody	Category range Low level community order – high level community order

Aggravating and mitigating factors

The aggravating and mitigating factors proposed across guidelines for dangerous and careless driving offences are almost identical, so the issues raised here will apply equally to guidelines related to careless driving.

A number of consultees considered some of the standard mitigating factors (which are used in many of the Council's guidelines) to be inappropriate in a motoring context. Some said that "serious medical condition requiring urgent, intensive or long-term treatment" should be an aggravating factor if it contributed to the collision. Similarly, "mental disorder or learning disability" was argued to be justification to impose a lengthy disqualification. Some said that "age and/or lack of maturity" was irrelevant given someone has (presumably) reached the age that they can drive.

It is important to remember that these are mitigating factors and not a defence. Moreover they are "personal mitigating factors" related to the offender and not the offending, and will be looked at by the courts in their consideration of the impact that a penalty will have on an offender.

A few respondents expressed reservations about the aggravating factor “Failed to stop and/or assist or seek assistance at the scene”. HM Council of Circuit Judges shared the concern flagged by the Council in its consultation document that offenders may be in shock themselves and therefore not able to help. They thought we should raise the bar to be “obstructing or hindering attempts to assist at the scene”. The Council agreed that the factor as drafted could be unfair to offenders who have just been involved in what may be a major incident, and that they should not be penalised for not assisting. The test has therefore been revised to “failed to stop and/or obstructed or hindered attempts to assist at the scene”.

One participant in the sentencing exercises and several respondents asked why motorcyclists were not included in the list of vulnerable road users, as they are in the Highway Code. Whilst the list was not intended to be exhaustive, the Council was content to add “motorcyclists”, and “etc” to the end of the factor, which will allow the courts to use some discretion beyond the definitions in the Highway Code.

Some responses sought clarification that the aggravating factor “passengers, including children” referred to those travelling in the offender’s car. This was indeed the Council’s intention, as it would in most cases be unjust to aggravate a sentence in this way for something beyond the offender’s knowledge or control. The Council has agreed to amend the factor to “passengers in the offender’s vehicle, including children” to put the matter beyond doubt.

Judges and magistrates who took part in interviews, as well as some consultation responses also questioned why the victim being a close friend or relative was relevant as a mitigating factor. The Council considered this point, but concluded that it was justified as a mitigating factor on the grounds that part of the punishment for such an offender will be the harm they have caused to themselves and those around them.

Finally, in testing the draft guidelines with judges and magistrates and in some consultation responses, the meaning of “impeccable driving record” as a mitigating factor was queried. HM Council of District Judges asked whether it might (for example) apply to points received 20 years ago. The law firm Kennedy’s thought it would overly penalise those who drive for a living and are more likely to receive some kind of endorsement on their licence. The Magistrates Association thought “impeccable” was too subjective a term. The Council noted these concerns and agreed with the Magistrates Association that “good” would be the term best understood by most sentencers.

Careless driving offences

Background

The consultation covered three guidelines for offences involving careless driving: causing death by careless driving (section 2B of the RTA), causing death by careless driving whilst under the influence of drink or drugs (section 3A of the RTA) and causing serious injury by careless driving (section 2C of the RTA). Guidelines dating from 2008 already exist for the former two, but the latter was introduced via the Police, Crime, Sentencing and Courts Act 2022 and came into force on 28 June 2022 so no guideline currently exists.

This section will also cover responses received relating to the proposed guideline for causing injury by wanton or furious driving (section 35 of the Offences Against the Person Act 1861). Although low volume, this offence is typically relied on when someone is injured by a cyclist. No guideline exists to date.

Culpability

There were various general observations in responses on the culpability elements proposed for guidelines involving careless driving, repeating the point that several deliberate actions such as drinking, driving an unsafe vehicle, or ignoring medication side effects should be treated as high culpability.

For the guidelines of causing death by careless driving, some respondents questioned why there was a reference to drink/drugs in the causing death by careless driving guideline, when that would normally be captured by the offence of causing death by careless driving whilst under the influence of drink or drugs (section 3A of the RTA).

The Council considered that there may be situations, even if remote, where someone was under the legal limit but still impaired, or for another reason a section 3A offence could not be made out. It therefore decided to retain the culpability factor but add the wording “(where not amounting to a separate charge)” to cover such situations.

One response contained a suggestion for the two Culpability B elements “Driving in disregard of advice relating to the effects of medical condition or medication” and “Driving whilst ability to drive impaired as a result of a known medical condition”:

“The sixth listed factor (Driving in disregard of advice relating to the effects of medical condition or medication) and the seventh listed factor (Driving whilst ability to drive impaired as a result of a known medical condition) relate to similar issues and would overlap. We wonder whether these should be combined.” **Kennedy’s law firm**

The same response made a similar point in relation to the guideline for causing injury by wanton or furious driving, highlighting the risk of “unfair double counting, as they are effectively the same mischief”.

The Council agreed with this, noting that a related culpability factor was combined in the guideline related to dangerous driving. The elements are therefore combined in the careless driving guidelines, as well as the guideline for causing injury by wanton or furious driving, and amended to be: “Driving impaired as a result of a known medical condition

and/or in disregard of advice relating to the effects of medical condition or medication (where the medication does not form a basis of the offence)". The equivalent factor in the dangerous driving guidelines is also changed, with a reference to the driving being "significantly impaired".

A number of changes made to the guidelines for dangerous driving offences had a consequential impact on the culpability A elements for causing injury by wanton or furious driving. There is now a reference to "Obviously highly dangerous manoeuvre" and "Persistent disregard of warnings of others", and the wording of the factors relating to drink/drugs and police pursuits has been amended.

Some respondents thought there should not be a third culpability category for this guideline. Others thought that rather than simply saying "all other cases" it should reflect the wording of dangerous and careless guidelines by saying "momentary lapse of concentration" and, as proposed by HM Council of District Judges "just over the threshold for careless driving".

The Council's concern was that there was a risk of inventing a legal standard for wanton or furious driving by comparing it to careless driving. Given the broad range of off-road and on-road circumstances that could conceivably come under this offending (for example a farmer reversing a tractor without any expectation of someone being there), the Council decided to leave category C as it stands.

Harm

Issues raised in relation to harm were identical to those already discussed above with regard to guidelines for dangerous driving offences (see the section on dangerous driving offences above).

Sentence levels

There were mixed views on our proposals for sentence tables for the guidelines for causing death by careless driving and causing serious injury by careless driving. Some wanted to see higher sentences reflecting the serious harm caused in these cases. However, many groups, including road safety groups and the families of victims, argued that sentence levels at the lower end of culpability were too high.

"The proposed levels [for causing death by careless driving] all have custody as a starting point with a community order only included in the range proposed for the least culpability level. As shown above, custodial sentences are rarely used with causing death by careless driving convictions. Only one in four drivers convicted of this offence went to prison in 2021.

We have argued that careless driving includes human errors and lapses. The Safer System approach, adopted by the DfT and transport authorities across the country, acknowledges people make mistakes and aims to design a transport system so that these mistakes do not prove fatal or serious. We do not think it fair to send drivers to prison because transport operators, politicians and policy makers have allowed excess risk in our system." **Action Vision Zero**

“The death by careless driving [guideline] does need to include more community orders and not solely custodial orders, especially when it falls under lesser culpability.”

Roadpeace

“I think [the penalties for causing death by careless driving] are too high. The proposed levels all have custody as a starting point with a community order only included in the range proposed for the least culpability level. Whilst there was a need to close the gap between causing death by dangerous driving with a higher maximum penalty, and the sentencing for this offence, I think this goes too far. Whilst a prison sentence is appropriate for level A High Culpability, it is not necessarily appropriate for level B medium culpability.”

Professor Sally Kyd

The Council considered carefully the balance of views on the levels for causing death by careless driving. Noting that it would be open to the court to suspend most of the sentences being proposed where there is a realistic prospect of rehabilitation, and noting the need to reflect the loss of life involved in these offences, the Council concluded that it was not appropriate to make any amendments to the sentencing table for causing death by careless driving.

For the levels in the guideline for causing serious injury by careless driving, many agreed with our proposals. However, many of the same points were repeated about greater use of community orders, with at least as much force as for causing death by careless driving:

“I do not agree that a culpability C, harm 2 should attract a custodial sentence. Given the potential minor behaviour that may have led to such a conviction then I do not believe that prison is an effective punishment for this type of offender. I would like to see a community order range instead for this factor.

Starting Point - Mid Level Community Order

Range - Low level Community Order - High level Community Order”

Dr Adam Snow

Professor Kyd made this point:

“The proposed sentence levels are the same as for dangerous driving. If a driver falls far below the standard of a competent and careful driver, they will always display a higher level of culpability than someone who just drives below the standard of a competent and careful driver, no matter the outcome of the driving. Whether a driver causes a [road traffic collision] is beyond their control (it is reliant on the reactions of other road users in many cases), as is the severity of any injuries that result, as well as whether anyone luckily escapes without injury. The worse the standard of driving, the more likely a collision will ensue, with the risks involved. I would therefore wish to see the sentencing for this offence being below that of dangerous driving, even though the maximum penalty is the same. Although I appreciate the Sentencing Council needs to be mindful of what Parliament has set as the maximum penalty, I would suggest that all but the most serious examples of this offence (where the higher level of harm is caused) would not warrant a prison sentence.”

Professor Sally Kyd

Action Vision Zero and others also thought that non-custodial sentences should make up the majority of the table.

The Council agreed that it would be useful to review the sentence table for causing serious injury by careless driving in light of these comments, mindful also of the need for penalties to be proportionate with those for causing serious injury by dangerous driving.

Whilst leaving the top of the offence range at the statutory maximum of two years, and the bottom of the offence range as a low level community order the Council has decided to adjust the starting points downwards by six months for categories A1, A2 and B1; the starting points for categories B2 and C1 have been amended from 26 weeks' custody to a high level community order; and the starting point for category C2 has been changed from a high level to a medium level community order.

The revised sentence table for causing serious injury by careless driving therefore is as follows:

	A	B	C
Category 1	Starting point 1 year's custody	Starting point 26 weeks' custody	Starting point High level community order
	Category range 26 weeks – 2 years' custody	Category range High level community order – 1 year's custody	Category range Medium level community order – 26 weeks' custody
Category 2	Starting point 26 weeks' custody	Starting point High level community order	Starting point Medium level community order
	Category range High level community order – 1 year's custody	Category range Medium level community order – 26 weeks' custody	Category range Low level community order – high level community order

The sentence levels for causing injury by wanton or furious driving cases were set by reference to the levels for causing serious injury by careless driving, so there have been consequential amendments made to the starting points and range for culpability B and C cases in that guideline. Culpability B3 cases now have a medium rather than a high level community order as a starting point and the top of the range for C3 cases is now a medium rather than a high level community order.

	A	B	C
Category 1	Starting point 1 year 6 months' custody	Starting point 26 weeks' custody	Starting point High level community order
	Category range 1 – 2 years' custody	Category range High level community order – 1 year's custody	Category range Medium level community order – 26 weeks' custody
Category 2	Starting point 1 year's custody	Starting point High level community order	Starting point Medium level community order
	Category range 26 weeks – 1 year 6 months' custody	Category range Medium level community order – 26 weeks' custody	Category range Low level community order – high level community order
Category 3	Starting point 26 weeks' custody	Starting point Medium level community order	Starting point Low level community order
	Category range High level community order – 1 year's custody	Category range Low level community order – high level community order	Category range Band B fine – medium level community order

The Council has made some changes to the sentence table for the guideline for causing death by careless driving whilst under the influence of drink or drugs, although the sentence levels are unchanged from those consulted on.

Firstly, whilst the table in the draft guideline (like the existing guideline) contained a stepped approach to seriousness by reference only to alcohol detected in the breath, equivalent figures are also now provided for equivalent volumes in blood and urine.

The middle level of intoxication in the consultation draft referred to detection of a single drug. Following user feedback on the proposed drug driving guidelines (see the section on those guidelines below), the Council has clarified that the middle category (amongst other things) should capture detection of a single drug *above the legal limit*; the bottom level of intoxication should capture instances of a single drug detected *below the legal limit*. In practice this last situation is unlikely to apply to many cases, but covers off the situation

envisaged by section 3A of the RTA that an offender is unfit to drive even if under the legal limit.

Aggravating and mitigating factors

Issues raised in relation to aggravating and mitigating factors were identical to those already discussed above with regard to guidelines for dangerous driving offences (see the section above on dangerous driving offences).

Disqualified, unlicensed, and uninsured offences

Background

The consultation sought views on three proposed guidelines for offences committed whilst a driver is disqualified, unlicensed or uninsured: causing death by driving whilst disqualified (section 3ZC of the RTA), causing serious injury by driving whilst disqualified (section 3ZD); and death by driving whilst unlicensed or uninsured (section 3ZB).

The Sentencing Guidelines Council produced a guideline for causing death by driving whilst disqualified, unlicensed or uninsured in 2008. However, this guideline does not take into account the increase in maximum penalty to 10 years' imprisonment for offences of causing death by driving whilst disqualified committed after 13 April 2015. The Council therefore consulted on a separate guideline for that offence. No guideline currently exists for causing serious injury by driving whilst disqualified which came into force on 13 April 2015.

Culpability

In terms of offences committed whilst disqualified, various respondents suggested a high culpability factor relating to repeated breaches of the disqualification:

"We agree with the culpability factors. However we suggest adding a further 'high culpability' factor for cases where the driver is known to have driven on more than one occasion while disqualified." **Cycling UK**

"Agree but would believe high culpability should include cases of a recidivist nature." **Transport for London**

The Council had proposed an aggravating factor of "history of disobedience to disqualification orders (where not already taken into account as a previous conviction)" and considered that this was sufficient to capture this point. It could be difficult to determine whether an offender had in fact driven on more than one occasion if they were not prosecuted for it. Where an offender was facing multiple counts, this could be considered as part of totality.

Another theme of some responses centred on the culpability A element "driving shortly after disqualification imposed". Respondents asked whether the time elapsed since imposition of a ban was relevant:

"Driving whilst disqualified whether 1 day after disqualification or 6 months should increase culpability equally" **Member of the public**

“With driving shortly after being disqualified cited as a high culpability reason, there is a danger that someone who is close to the end of their driving ban will be regarded more leniently.” **Member of the public**

“We consider that driving shortly after disqualification has been imposed will not always be a higher culpability factor. There will be situations as envisaged in the lower culpability factors proposed where driving takes place that could be immediately after disqualification is imposed but that nevertheless ought not to be aggravated by the driving taking place soon after disqualification. We consider there is a tension between the two, for example between the second lower culpability factor (Decision to drive was brought about by a genuine and proven emergency) and driving again shortly after a disqualification is imposed. It may be useful for there to be some clarification on what “shortly after” would mean in this context.” **Kennedy’s law firm**

This was a point the Council considered in some detail. Arguably, there is some difference in culpability at least between someone reaching the end of a lengthy driving disqualification and someone breaching a disqualification which had just been imposed by the court, the latter example demonstrating a more immediate and clearer rejection of the court’s authority. However, the Council was persuaded that the seriousness of the offending should not be influenced significantly by the point in time during a period of disqualification that an offence takes place. The factor has therefore been removed.

A further question for consultees was the extent to which the standard of driving should be reflected in the guidelines, at either step one or step two.

“Although the quality of driving does not affect culpability for the offence, I believe that some characteristics of dangerous or careless driving should be included as an aggravating factor.” **Member of the public**

Again, the Council considered this point carefully both before and after consultation. Factors related to whether the driving was careless or dangerous were deliberately not referred to in the proposed guidelines, as it was felt they should be the subject of separate charges, and therefore taken into account as part of totality, or otherwise irrelevant to the offence in question. On reflection, the Council concluded this remained the right approach given the focus of the offences, which is essentially whether the driver should have been on the road.

Sentence levels

As with several of the other guidelines, many wanted to see sentence levels increased for these offences. In particular, several respondents questioned why we had not increased the range for causing death by driving whilst disqualified to the 10 years’ imprisonment provided for by the RTA. Cycling UK believed that high culpability cases for this offending should have a starting point of eight years, and medium cases five years.

The complexity of sentencing in these cases is that the nexus between the offending and the harm caused is weak, and there may well be little evidence of bad driving (though enough of a link between the driver’s actions and the death for a charge to be brought). The Council is mindful that levels for this offence need to be in proportion with those for causing death by careless and dangerous driving, taking into account the respective maximum penalties. In practice, it is quite likely that such a conviction for these offences

will sit alongside a conviction for causing death by dangerous or careless driving; in these cases a sentence for one of the offences is highly likely to aggravate the other under the principle of totality.

For the other offences in this group, various respondents wanted to see higher sentences, but often these did not take into account the statutory maximum penalty, particularly in the case of the two year maximum sentence for causing death whilst unlicensed or uninsured.

In terms of specific suggestions for amendments, the West London Bench thought the lowest level for causing death whilst unlicensed/uninsured should be raised from a medium community order to 13 weeks' custody (with a range of a medium community order up to 26 weeks). On the other hand, the Magistrates Association thought the lowest culpability levels for causing serious injury by driving whilst disqualified "should have the same sentence as just driving while disqualified. This is especially as the standard of driving is not relevant." This would mean decreasing what was proposed to a starting point of 12 weeks' custody (even where life threatening injuries may have resulted) and a range of a high level community order to 26 weeks. The Council believed this would place this category out of proportion to the other levels.

Given the balance of responses, the Council has decided to retain the sentence levels for these offences as proposed in consultation. However, the guidance provided on dealing with multiple fatalities or injuries has been revised, in line with other guidelines (see the section above on harm in relation to dangerous driving offences).

Aggravating and mitigating factors

On step two factors, several respondents raised the same sorts of general issues we considered in relation to standard of driving offences (for example, whether the victim being a close friend or relative was relevant, or whether "sole or primary carer" should mitigate). The Council has amended aggravating factors in these guidelines by making specific reference to motorcyclists as vulnerable road users, adding obstructing or hindering attempts to assist at the scene, and clarifying that "passengers" means those travelling in the offender's vehicle.

Whilst the mitigating factor relating to an offender's driving record would not be relevant in cases of driving whilst disqualified, the wording has been changed from "impeccable" to the more easily understood "good" in the guideline for causing death whilst unlicensed or uninsured.

In relation to guidelines for offences committed whilst disqualified, several respondents, including the CPS, pointed out that the mitigating factor "No previous convictions or no relevant convictions" could not apply to this offence. (As HM Council of District Judges pointed out in its response, there is the possibility of imposing a driving disqualification for failure to pay child maintenance, but this is rare.)

The Council considered the counter argument that the previous conviction has been taken into account in setting the starting point, and the offender therefore has a right to the mitigation that another offender would have at step 2. However, on balance it believed that respondents were correct that this mitigation simply was not relevant in offences involving driving whilst disqualified and it should be removed.

Drug driving offences

Background

The consultation sought views on two proposed guidelines relating to drug driving offences under section 5A(1) of the RTA: driving or attempting to drive with a specified drug above the specified limit, and being in charge of a motor vehicle with a specified drug above the specified limit. These offences were created by the Crime and Courts Act 2013 and came into force in 2015. The proposed guidelines would replace guidance produced by the Council in 2016.

Culpability

Most respondents were content with the proposed approach to culpability, working within the current limitations of understanding of how different amounts of different drugs affect driving.

In testing the guidelines with sentencers, an issue arose in relation to the high culpability factor “evidence of another specified drug or of alcohol in the body”. In a drop down explanation the Council proposed saying (among other things), “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.” However, in sentencing a fictitious scenario magistrates were unclear on whether a small level of drink not proven to be above the legal limit (taken alongside cocaine) met the test for this factor.

Given the confusion, the Council has provided extra clarification by amending the factor as follows (addition in bold): “Evidence of another specified drug or of alcohol in the body **(whether or not the ‘other’ specified drug or alcohol is present at a level that could give rise to separate charges).**”

As mentioned above in relation to the guideline for causing death by careless driving whilst under the influence of drink or drugs, in practice the likelihood of detection of drugs below the legal limit is low. However, the Council also wanted to ensure that where naturally occurring trace levels of alcohol or drugs were detected these should be discounted. A note has therefore been added to the drug drive guidelines to say: “Trace levels of alcohol or drugs, which may occur naturally in the body or through accidental exposure, should be disregarded for these purposes”.

Some further discrete points were made about culpability. One magistrate questioned the proposed note on not “double counting” certain drugs which may be present as the result of taking one drug. The proposed explanatory note was:

“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.”

The respondent said:

“Diazepam and Temazepam (and Lorazepam) are three different chemical compounds in the same family. To allow them to be linked as proposed is akin to saying whisky and beer don't both count towards a total alcohol consumption or that skunk and leaf cannabis should not both be considered.

The indications are erroneous. All part of benzodiazepine group but different. Temazepam (Normison, normies) is a short acting drug properly prescribed for very short medical procedures (eg tooth extraction) or to assist inability to get to sleep. Diazepam (Valium) is a longer acting drug. Lorazepam (Ativan) is used for longer surgical procedures to assist memory loss (eg colonoscopy). None of these products is the derivative of any other (unlike the cocaine and heroin examples).” **Benjamyn Damazer JP**

The Council noted this point and has removed the reference to Diazepam and Temazepam in the note.

Two respondents queried the proposed wording of the culpability factor “driving for hire or reward”, which was different to “driving for commercial purposes”, used across the other motoring guidelines on which we consulted. The Council agreed that “commercial purposes” is clearer, potentially broader and in any case consistent with the other guidelines, so has amended the wording of that factor accordingly.

HM Council of District Judges (Magistrates’ Courts) thought it would be helpful to “make clear whether the higher culpability factors apply to driving or *attempting* to drive”. The Council did not wish to make a distinction between the two for the purposes of assessing culpability, but for clarity has amended the factors as follows (additions in bold):

- Driving **or attempting to drive** an LGV, HGV or PSV etc
- Driving **or attempting to drive** for commercial purposes

Harm

The West London Bench proposed assistance to magistrates in what counts as “obvious signs of impairment”. They suggested a list of descriptors, potentially as a drop down with what these signs may be, such as aggressive or erratic driving, pupil dilation, slurred speech, mental confusion, dizziness etc. Some sentencers in interviews also sought further guidance on what impairment meant in this context.

However, the Council felt such an approach would run the risk of opening up a checklist exercise, whilst omitting other signs that could result from drug use. On balance, the Council believed that this should be left open to cater to the facts of a variety of cases.

A more general issue with harm raised by some respondents is that in these guidelines harm and culpability arguably overlap: the focus is on what the offender has done and not the impact on victims (if any). This is because any harm which has been caused by the driving is not an element of the offence.

The Council had proposed an aggravating factor “involved in accident (where not taken into account at step 1)” and concluded that this was the appropriate place to reflect any actual harm caused. If injury caused to others, damage caused to property, and/or the quality of the driving were not such as to attract separate charges or convictions, then Council took the view that they do not merit being counted at step one. However, the wording of this aggravating factor was commented upon (see below).

Sentence levels

Generally, respondents were content with the proposals consulted on for drug driving levels. They were identical to those which exist for the equivalent offences of driving/attempting to drive and in charge whilst unfit through drink or drugs, which is the best comparator given the unknown link between quantities of drug and impairment.

The West London Bench made a general point related to the proposed levels for being in charge of a vehicle:

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

We don't fundamentally disagree with this, because there is an argument to be made that driving or being in charge of a vehicle with an illegal drugs impairment is more serious than driving or being in charge of a vehicle with excess alcohol, as the act of taking those drugs is itself illegal and can have serious and complex effects on an individual and their sensory and decision-making processes. It does however mean that the SC is not treating the offences of “Driving or attempting to drive with a specified drug above the specified limit” and “Being in charge of a motor vehicle with a specified drug above the specified limit” as regards sentence alignment with their excess alcohol equivalents.

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

As mentioned above, the levels for the proposed guideline are the same as for the current guideline for Unfit through drink or drugs (in charge), so the point highlighted by the West London Bench already exists. The Council agrees that this is something which should be looked at. Considering the overall support for the proposed sentence levels for drug driving, the Council has decided to keep the levels as consulted on, and return to the question of sentence levels for Excess alcohol (in charge) in the near future.

Aggravating and mitigating factors

Several respondents noted the use of the word “accident” in the aggravating factor “Involved in accident”:

“This should refer to crash or collision as accident implies unfortunate if not inevitable. Given the guidelines are for cases where criminal culpability has been proven, this language should be updated. It has been over 15 years since the CPS adopted the policy of referring to crash or collision, not accident. The DfT has recently announced it too will refer to collision and not accident.” **Action Vision Zero**

The Council agreed that the language needs revision and has changed the word “accident” to “collision” as suggested.

Some respondents questioned the mitigating factor “very short distance driven”. They felt it was irrelevant whether the journey was a short or a long one given the potential for harm. Another consultee suggested that it was the intention to drive a long journey that was the critical aggravation. The Council noted these points, but believed that where a very short distance was travelled, this justified some mitigation. Proving how far someone intended to travel could also be difficult in practice.

The West London Bench proposed a mitigating factor to match “spiked drinks” which appears in the guidelines for excess alcohol:

“We believe there should be an equivalent for drugs of the mitigating factor “Spiked drinks” for alcohol. It is possible that certain illegal drugs may be placed in drinks or food for criminal purposes – for example GHB (gamma hydroxybutyric acid – also known as liquid ecstasy). Since many of these types of drugs lead to symptoms such as mental confusion and loss of inhibitions, it is quite possible that an otherwise innocent person might try and drive after consuming such substances unknowingly. We suggest an additional mitigating factor here:

- Illegal drugs consumed unknowingly”

West London Bench

The Council agreed that this was a fair amendment to bring parity with the equivalent guidelines for alcohol, but believed mitigation should also apply to prescription drugs. The mitigating factor therefore now reads “Drugs consumed unknowingly”.

Disqualification

The Council consulted on overall principles related to imposing disqualification to be found at the ancillary orders stage of each proposed motoring guideline for offences where disqualification was mandatory. These would be tailored to the specific offence and would cover:

- Principles
- Minimum disqualification periods
- Special reasons (not to impose a disqualification or a required minimum period)
- Interaction with a custodial period (same offence)
- Interaction with a custodial period (different offence)

Driving disqualification was a major theme of responses. The following typifies approaching 100 responses received on the subject:

“I am writing to urge you to include the use of driving bans in the sentencing of motoring offences revised guidelines. I would like to make the following point

Driving bans would be a just and effective sentence for those who have committed 'dangerous' driving offences, but who are not evidently 'dangerous' people, and who therefore do not need to be locked up for the public's protection.

Long prison sentences should be reserved for more obviously 'reckless' offenders, including those who have flouted previous driving bans - the case of Christopher Gard exemplifies why this is essential.

Using driving bans more widely could result in jurors being likely to convict for 'dangerous' driving offences in the first place, ensuring that the 'objective' definitions of 'careless' and 'dangerous' driving work as Parliament intended when it created them in 1991.”

Other responses picked up on the question:

“We note that the Sentencing Council offers little guidance on variable, including longer, periods of disqualification and advises that disqualification be minimized in cases where it might impact the offender’s employment or other responsibilities – a consideration that might also be applied to custody. Such advice needs re-assessment: if the court is told that an offender’s profession requires regular driving then it needs to be assured that the risk of re-offending has been minimized by, for example, training and competency assessment. While in some cases retaking a driving test is mandated, current advice does not, for example, suggest a service vehicle competency assessment or completion of a Safer Urban Driving course as a part of the penalty for professional drivers.” **London Cycling Campaign**

"I cannot see anything about length of driving bans on this document, and this should form part of the approach. Driving bans should have a minimum of 5 years imposed for such offences, with disqualifications for life in relation. There should be an option of lifetime bans, or at least lifetime bans with review every 5-10 years. There should definitely be an option of banning someone from driving larger vehicles, especially LGV, PSV, HGV as a result of causing death by dangerous driving. It should be that anyone convicted of such offences should expect a lifetime ban from this type of vehicle" **South Yorkshire Police**

"The proposed guidelines provide only very limited guidance to sentencers on determining the length of driving disqualification.

The proposal set out in the consultation from pages 60 – 63 is to provide general guidance within the guidelines for each offence but not set out any further guidance such as aggravating factors or culpability etc.

At present only minimum periods of driving disqualification are proposed for inclusion in each guideline.

There is no guidance proposed to guide sentencers in determining a longer period of disqualification where it is warranted. The guidance could suggest that sentencers consider the aggravating and/or culpability factors set out in the proposed guidelines for determining the other available sentences." **Osbornes Law**

"I do not disagree with the guidance that is provided. I do think, though, that more work needs to be done on this question. We need to know more about how sentencers currently use disqualification and how they determine lengths of disqualification. How much consistency is there in sentencing practice? What can be done to reduce inconsistency, as sentencing guidelines has achieved in relation to imprisonment. It is true that it is complex (the related work being done by the Sentencing Council to clarify the wording of guidance on statutory minimum periods of disqualification demonstrates this and is welcomed) but an attempt might be made to try to set out more prescriptive guidance. In my view, a change in attitude to disqualification is needed. Driving is a privilege and not a right; it is justifiable to remove that privilege where a driver has shown they have abused that privilege, and it is a far less burdensome way to incapacitate a driver, compared to imprisonment. So it should not be simply about adding disqualification to a prison sentence, and ensuring that provisions are followed to ensure the offender is disqualified after release from prison, but could be about replacing some of the period of imprisonment with a longer period of disqualification in appropriate cases. It is certainly the case that sentencers should not be reluctant to impose life bans on the very worst drivers."

Professor Sally Kyd

A great number of responses echoed Professor Kyd's point about driving being a privilege and not a right, calling for lengthy minimum disqualification periods and greater use of lifetime disqualifications. Although not part of this consultation, respondents also took the opportunity to criticise the use of "exceptional hardship" to avoid points-based ("totting") disqualifications.

As suggested by the responses above, some respondents thought we could provide more detail on specific disqualification periods within the guidelines. For example, the

Magistrates' Association thought there should be information about the length of discretionary bans at or after the sentencing table. The Justice Select Committee noted this view:

"We were also interested by several respondents' suggestion of there being a greater focus on the use of disqualification periods as opposed to short custodial sentences in appropriate cases and also the suggestions for there to be further guidance provided regarding recommended lengths of disqualification periods." **Justice Select Committee**

Given the clear, consistent and widespread message, the Council recognises that there may be a case for developing more extensive or specific guidance on driving disqualifications, building on the general information already being proposed. Given most respondents were content with the guidance provided insofar as it went (subject to some specific points made below), the Council agreed to provide this general guidance but also to undertake further work to consider what else may usefully be provided to sentencers on the subject of disqualification.

In terms of the guidance the Council did propose, consultees did offer some specific recommendations for change. Most notably, there were strong views amongst many respondents about two of the principles set out in the first section of the guidance:

- 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.

The latter in particular provoked strong criticism from several members of the public:

"This seems to bias disqualification periods lower inappropriately. Driving vehicles inappropriately is dangerous and should not be treated as a "semi-crime". Would a judge reduce the length of a custodial sentence because a long sentence may tempt the offender to abscond from prison? I think not?" **Member of the public**

"This is tantamount to blackmail of society by offenders – 'give me a short ban or I'll just drive anyway'. The point being that long bans cause serious thought in would-be offenders and during the duration of the ban, increases the jeopardy of being caught whilst banned leading to custodial punishments." **Member of the public**

The London Cycling Campaign echoed the views of others:

"The Sentencing Council advises against using longer driving bans because offenders may choose to disregard them and drive without the authority to do so. Enforcement is matter for the police and legislators and we are concerned that the Sentencing Council's perception of ineffective enforcement should then be considered a factor in determining penalties. The Sentencing Council may wish to advise police and legislators to consider new technologies to monitor and enforce against disqualified drivers using vehicles instead of suggesting more lenient penalties because it considers enforcement is inadequate." **London Cycling Campaign**

On the related subject of rehabilitation some members of the public questioned the extent to which this was a relevant factor:

“In my view, as a non-essential activity that requires training and licensing to legally undertake, longer terms of disqualification should be considered. Part of the problem with the danger on our roads is the false assumption that driving a motor vehicle is a fundamental right, not a privilege or responsibility, leading to instances of aggression against vulnerable road users, disqualified drivers continuing to drive and cases where those convicted of a driving offence who were able to continue driving legally then go on to cause death or injury at a later date.

There are many people in the UK that are unable to drive a motor vehicle due to disability or poverty that are not excluded from society, and instead must use public transport or active travel such as walking, yet the guidelines here would suggest that those people who have committed an offence would be unfairly hindered by a lack of access to a private, personal motor vehicle.” **Member of the public**

“Individuals are capable of making decisions regarding the way they conduct themselves in society and also of calculating the risks involved in breaking the law, for example by driving dangerously. Allowing defendants to rely (often repeatedly) on mitigation due to the impacts of disqualification on employment is egregious and undermines the public's confidence in the judiciary. If the defendant needs to drive for employment purposes, they should exercise greater caution when driving and should not expect to receive a lesser or no disqualification merely because they need to drive for work.” **Member of the public**

These principles reflect long-established case law, as rehearsed in cases such as *Backhouse* [2010] EWCA Crim 1111, *Needham* [2016] EWCA Crim 455 and *Mohammed* [2016] EWCA Crim 1380. The case of *Cooksley* [2003] 996 EWCA Crim 996 borrowed heavily from advice provided by the Sentencing Advisory Panel (SAP). At paragraph 43 of that case the then Lord Chief Justice, referring to the SAP advice, said:

“we accept that to extend the ban for a substantial period after release can be counter-productive particularly if it is imposed on an offender who is obsessed with cars or who requires a driving licence to earn his or her living because it may tempt the offender to drive while disqualified.”

The Council has looked again at the guidance provided in light of the relevant case law, which can be traced back over forty years. Over that period, the purpose of a disqualification has undoubtedly evolved from being purely prospective, intended to protect the public from future harm, into an order which is also intended to punish. The Council believed that the first principle, related to rehabilitation, remained valid. Where an offender has the prospect of employment, training, or even settled family life which could assist in rehabilitation, but which requires the ability to drive, this is a legitimate factor for the courts to consider in setting the length of a disqualification.

However, the Council sees force in the argument that the second proposed principle needs reconsideration. Whilst punishment, public protection, rehabilitation and other factors may be relevant to the length of a disqualification, temptation to breach a court order ought not to form the basis of that consideration. This may be a matter the Council returns to in any future work on disqualification, but it has agreed to remove it from the disqualification guidance provided with these guidelines.

The West London Magistrates Bench believed the information provided was useful, and had suggestions for additional guidance on “special reasons” not to impose a disqualification, or not to impose a minimum. They suggested providing examples on common reasons, including:

- Very short distance driven (for example, moving a car a few yards to safety).
- Driving due to an emergency (medical or otherwise) – if this falls short of a defence.
- A drivers’ drink being laced or spiked without their knowledge.

The Council’s concern with this suggestion was that, even though the bar is a high one, there may be a variety of special reasons and they are fact-sensitive. On the one hand, those examples may not automatically amount to special reasons. Equally, there may be a variety of – by definition, unusual – circumstances which cannot be envisaged but that could reasonably amount to special reasons.

A suggestion was made in relation to the situation where a disqualification needs to take account of time spent in custody. This pointed out a variant of the scenario where the custodial sentence is not for the offence for which disqualification is being imposed, and suggested this addition (new text in bold):

“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 **or the offender may already be serving a custodial sentence for another offence. In either of these circumstances,** under section 35B of the Road Traffic Offenders Act 1988, the Court 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”. **HM Council of District Judges (Magistrates’ Courts)**

The Council agreed that this would be a helpful clarification and has made that amendment.

Equalities and other impacts

Resource assessment

The [resource assessment](#) published by the Council alongside the definitive guidelines explores the resource impacts of the definitive guidelines in more detail.

Equality and diversity

As with other consultations undertaken by the Council, the consultation included three standard questions on equalities issues, to understand whether there may be any disproportionality or any unintended consequences arising from the proposed revisions. Responses across those three questions have been grouped together and are summarised here.

The vast majority of respondents to the consultation could not identify any issues in relation to the guidelines which might cause disparities in relation to sentencing specific groups. Many made the point that sentencing should apply to all equally, and that the guidelines in their view achieved this. Participants in exercises using the draft guidelines commended them on being neutral.

It was noted by some respondents that motoring offences are committed in the main by young males and that therefore the guidelines would have a particular impact on offenders with those characteristics:

“From a quick look at the data, it seems that males and younger people are overrepresented in those receiving these sentences. This disparity is likely to be true for the new guidelines too, though stricter conditions around being allowed to drive again would help disincentivise the offences and hopefully remove the disparity.” **Member of the public**

Other respondents picked up on the fact that age (both being young and being old) was a factor directly and indirectly covered by aggravating and mitigating factors:

“The only protected characteristic that is explicitly cited in these draft guidelines is that of age. The privilege of driving should be one that is applied and enforced uniformly irrespective of age. Being particularly elderly or young should not be a mitigating factor because that is discriminatory to those of other ages and ignores the fact that if a person is unfit to drive then they must not drive.” **Member of the public**

“There is a small risk of age discrimination for the unlicensed driving crimes and mitigation given that an elderly driver may not be aware of their licence requiring renewal which doesn't apply equally to younger drivers. This actually discriminates slightly against the younger drivers.” **Eastgate Cycles Cycling Club**

Respondents and participants in qualitative interviews picked up on other mitigating factors, many of which are standard in sentencing guidelines:

“Mitigation factor on Remorse is highly subjective and can see this affecting minorities in different ways to white middle and upper class demographics.” **Member of the public**

“I would think that there are more people of Asian heritage who would be carers and therefore [...] would get that as another mitigating feature because of the way their society and their nuclear family often works...you may well find that the white or professional man...with children at university rather than at home would then be more severely dealt with.” **Participant in qualitative interview**

Others noted that the mitigating factor of being a sole or primary carer was more likely to apply to female offenders than male offenders.

In relation to the proposed drug driving guidelines interviewees raised some general points of interest in this area. One felt that certain cultures may be more likely to use drugs and they would therefore be caught for the offence. However, they did not reference any point within the guideline where this may have an impact, and noted: “I don't think the guideline expects us to give credit for those elements, either somebody who has an addiction or who has a religious or cultural reason for taking drugs.”

Following publication in January 2023 of a report by the University of Hertfordshire on [Equality and diversity in the work of the Sentencing Council](#), the Council is undertaking work to review a number of aggravating and mitigating factors and expanded explanations in sentencing guidelines. For example, the Council is considering extending the expanded explanation for remorse to include consideration of learning disability, communication difficulties and cultural differences, and specifying pregnancy and maternity as a discrete factor, separating this out from sole or primary carer of dependent relatives. The report from this research will be published in Winter 2023.

Conclusions and next steps

The consultation has been an important part of the Council's consideration of these guidelines. Responses received from a variety of sources have informed changes made to the definitive guidelines. The guidelines are published on the [Council's website](#), alongside the final resource assessment and updated data tables.

The guidelines will apply to all adults aged 18 or over sentenced on or after 1 July 2023, regardless of the date of the offence.

Following the implementation of the definitive guidelines, the Council will monitor their impact.

The Council intends to consult on draft guidelines for aggravated vehicle taking offences in the near future. As set out above, the Council will also consider whether further guidance on driving disqualifications can usefully be provided for the courts, beyond that being provided in this suite of guidelines.

Annex A: consultation respondents

Action Vision Zero

Anne Addison JP

Nicholas Atkinson KC

Liz Blake JP

Brake

Guy Cecil JP

Criminal Sub-Committee of the Council of His Majesty's Circuit Judges

Crown Prosecution Service

Cycling UK

Benjamyn H Damazer JP DL

Steve Duddell (Tribunal Judge)

Eastgate Cycles Cycling Club

Ely Cycling Campaign

Paul Heywood JP

HM Council of District Judges (Magistrates Courts)

Julia Hurrell JP

IAM RoadSmart

Imperial College London

Institute of Advanced Motorists

Justice Select Committee

Kennedys

Kent Police

Gary Knight JP

Professor Sally Kyd (Leicester Law School)

LondonBusWatch

London Cycling Campaign

Katharine Long JP

James Macnamara JP

Magistrates Association

Philip Mickelborough JP

Ministry of Justice

Simon Monks JP

Motorcycle Action Group

Motor Insurers Bureau

National Police Chiefs Council (Roads Policing Portfolio)

Osbornes Law

HHJ John Pini KC

Gary Price JP

Prison Reform Trust

Roadpeace

The Royal Society for the Prevention of Accidents

Salisbury NHS Foundation Trust

Neil Antony Shaw JP

Dr Adam Snow (Liverpool John Moores University)

South Yorkshire Police

Suffolk Magistrates Bench

Paul Tabinor JP

Transport for London

Simon Walker JP

West London Magistrates Bench

Nigel Woof JP

250 members of the public

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