

Sentencing Council meeting:
Paper number:
Lead Council member:
Lead official:

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SC(22)MAY03 – Motoring offences
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1 ISSUE

- 1.1 Sign off on draft motoring guidelines for consultation.

2 RECOMMENDATIONS

- 2.1 That Council:

- agree the approach to guidance on driving disqualifications set out below and at **Annex A**;
- consider the provisional findings of the consultation stage resource assessment at (see paragraphs 4.1 to 4.5), noting the significant anticipated impact on prison places; and
- sign off on the draft guidelines at **Annexes B to M** for consultation.

3 CONSIDERATION

Disqualification

3.1 Council discussed how to approach guidance on disqualification at the March meeting. The current Dangerous Driving guideline, like other motoring guidelines used in the magistrates courts, provides disqualification ranges for low and medium seriousness offences (12 to 15 months for low, 15 – 24 months for medium; high seriousness offences are to be committed to the Crown Court). Ranges are also proposed in the drug driving guidelines on which we are consulting, following the lead of the excess alcohol driving guidelines. However, causing death and serious injury guidelines do not currently include any particular guidance on lengths of disqualification.

3.2 The working group has considered what sort of guidance on disqualification could be provided for these guidelines.

3.3 Disqualification serves several of the statutory purposes of sentencing: in earlier years, the focus was on prevention rather than punishment but the case law, statute and guidelines have evolved to include punishment and deterrence. Some of the principles are set out clearly in the case of Islam [2019] EWCA Crim 1494. Notably, the Court of Appeal concluded that “*it remains the position that there is no formula by which a court can measure the right length of a disqualification: it is a judicial decision which should produce a result, tailored to the offender and to the offence.*”

3.4 With that in mind, the working group rejected the idea of providing guideline disqualification ranges within the sentencing table. The necessity for and duration of a disqualification is very fact-sensitive, and will depend on a range of factors which may be particular to the offender: their driving record, the extent to which they acknowledge their error, their immaturity or advanced years, the extent to which not driving prevents rehabilitation or truly represents a punishment etc.

3.5 The new raised minimum disqualification periods of five years for death by dangerous and death by careless under the influence also constrain judicial discretion, particularly if we wanted to base guidance on specific levels on current practice. The relationship between a custodial sentence and disqualification can be complex, in that a shorter period in custody might mean the disqualification constitutes more of the punitive part of the sentence. Equally a longer custodial sentence would serve much of the preventative purpose which a disqualification is intended to provide.

3.6 However, the working group did conclude that fairly detailed general guidance on disqualification would be helpful for sentencers, given the complexity of the law in this area. In particular, there is scope for confusion around the interaction of a disqualification with custodial sentences, being imposed for the same offence as the disqualification, another offence or both.

3.7 The text at **Annex A** brings together guidance borrowed from a variety of sources. It draws on our current magistrates’ [explanatory materials on driving disqualifications](#), as well as relevant case law, most prominently [R v Needham \[2016\] EWCA Crim 455](#). The flowchart on how to determine disqualification periods when imposing sentences for two or more offences is adapted from paragraph 31 of *Needham*.

3.8 This guidance would be inserted as a dropdown in the section of these guidelines at the stage related to ancillary orders. Information about the statutory minimum disqualification period for the offence in question (including repeat offences) would also be included at the

top of the guideline, alongside information about the maximum penalty. For consistency, this would mean removing the current ranges from the (simple) dangerous driving guideline, although it will remain in other magistrates' motoring guidelines.

3.9 Note that the draft at **Annex A** includes information about minimums in cases of repeat offences in the drop-down guidance (section B). This may be helpful general guidance, although it has the potential for confusion as it may not apply to the offence in question. For example, the minimum for causing death by dangerous driving is now five years, regardless of whether the offender has had two or more convictions in the past three years.

3.10 Similarly, the PCSC Act has just made causing death by careless driving under the influence of drink or drugs somewhat of a standalone from the normal repeat rules. For a first time offence it has a minimum of five years; if it is a repeat conviction within 10 years for the exact same offence it is six years. However, if the offender has a previous conviction for another drink/drugs offence the "first time" five year minimum applies (rather than the three year minimum which would apply for most drink/drugs offences).

3.11 There may be an argument either for:

- i) excluding information about repeat offending from this general drop-down guidance and leaving whatever rules apply for the offence in question prominently at the front of the guideline; or
- ii) tailoring this part of the guidance for the individual offence – so, for example omitting anything about drink/drugs repeat offences where that is not relevant. We would need to be clear that the rule being explained is for this specific offence and is not applicable to all offences.

Question 1: does Council agree to include this guidance at the ancillary orders step of the guidelines on which we are consulting?

Question 2: does Council want to include information about repeat offences/disqualifications in the guidance (tailored, if necessary), or only have this information set out at the front of the guideline?

3.12 There is a question about whether to include the guidance more widely in other guidelines, bearing in mind that under section 163 of the Sentencing Code a disqualification could be imposed for any offence.

3.13 As above, this might need careful thought about the extent to which information on disqualification rules for repeat offending were relevant to the offence in question, and the

statutory references used (i.e. whether the rules on interaction with custody are governed by the Road Traffic Offenders Act 1988 or the Sentencing Code).

3.14 I recommend that we consult first on the guidance as it applies to the offences/guidelines on which we are consulting as part of the motoring package, and consider later whether to include the guidance more widely. It may be a candidate for inclusion in a round of miscellaneous amendments, or as part of wider consideration about encouraging more use of ancillary orders where they are appropriate.

Question 3: does Council agree to consult first on this guidance for inclusion in the motoring guidelines, reserving the possibility to include it later at the ancillary orders step of other guidelines?

3.15 The current drafts of the 12 guidelines on which we are consulting are annexed:

- causing death by dangerous driving (s1, Road Traffic Act 1988) **Annex B**;
- causing death by careless driving whilst under the influence of drink or drugs (s3A) **Annex C**;
- causing death by careless driving (s2B) **Annex D**;
- causing serious injury by dangerous driving (s1A) **Annex E**;
- causing serious injury by careless driving (s2C) **Annex F**;
- dangerous driving (s2) **Annex G**;
- causing death by driving whilst disqualified (s3ZC) **Annex H**;
- causing death by driving whilst unlicensed or uninsured (s3ZB) **Annex I**;
- causing serious injury by driving whilst disqualified (s3ZD) **Annex J**;
- causing injury by wanton or furious driving (s35, Offences Against the Person Act 1861) **Annex K**;
- driving or attempting to drive with a specified drug above the specified limit (s5A) **Annex L**; and
- being in charge of a motor vehicle with a specified drug above the specified limit (s5A) **Annex M**.

We have taken the decision to consult on aggravated vehicle taking separately, and the drug driving guidelines (Annexes L and M) are those prepared in 2017 but held back at that point pending further research on drug driving limits.

3.16 Culpability factors are shared between different groups of offences relating to the standard of driving, or to the status of the driver (for example being disqualified), regardless of the harm, injury or death which has resulted. The culpability factors – indeed all the factors – for the drug driving offences are intended to mirror those of the equivalent unfit through drink or drugs guidelines which were revised in 2017, with some alterations to reflect the different ways in which intoxication is measured between drink and drugs.

3.17 For the causing death offences there is only one level of harm, although there is some guidance provided where more than one death has occurred:

“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.”

3.18 For serious injury offences we have agreed two levels of harm, with the top level being:

- 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.

and the lower level being all other cases. The section 35 offence of wanton or furious driving needs three levels of harm to reflect the broader range of harm that may be encountered with that offence.

3.19 Simple dangerous driving has two levels of harm (higher being offence results in injury to others, circumstances of offence created a high risk of serious harm to others, and damage caused to vehicles or property; lower being all other cases). The drugs guidelines refer to “obvious signs of impairment” and “evidence of an unacceptable standard of driving”. These guidelines therefore include elements related to the standard of driving and the offender’s behaviour within harm.

3.20 Sentencing levels for standard of driving and death and injury offences are set bearing in mind the maximum penalty for causing death by dangerous driving is being increased to life imprisonment, putting it on a broad par with manslaughter. At the lower end of seriousness, where maximum penalties go down to 2 years, there is less room for

manoeuvre whilst keeping coherent tables based on the quality of the driving and the harm caused.

3.21 Aggravating and mitigating factors are common across many of the guidelines, although these do vary based on the offence. For example, in the standard of driving offences driving an HGV is an aggravating factor, where it is a high culpability factor in the unlicensed/uninsured and drug driving offences. For some guidelines aggravating or mitigating factors may refer to a victim (where they are a vulnerable road user, or where they are a close friend or relative of the offender) whereas in other guidelines there will be no victim. Again, the drug driving guidelines are drafted to be more in line with their equivalent unfit through drink or drugs guidelines, rather than the other new and revised guidelines on which we are consulting.

Question 4: are there any further comments or suggestions on the draft guidelines in the annexes?

4 IMPACT AND RISKS

4.1 A consultation stage resource assessment is being finalised and will be circulated to Council members separately. Although the assessment is subject to final checks, we expect it to show that the revised guidelines may result in a requirement for additional prison places running into the hundreds, in particular stemming from the guidelines for causing death by dangerous driving, causing death by careless driving when under the influence of drink or drugs, and causing serious injury by dangerous driving.

4.2 For the offences of causing death by careless or inconsiderate driving and dangerous driving, it is anticipated that the draft guidelines may result in an impact on prison and probation resources, although it is not possible to quantify any impact at this stage.

4.3 For the other offences covered by the draft guidelines, it is difficult to estimate the impact of the guidelines, either due to low volumes or due to a lack of data available on how current cases would be categorised under the new guideline.

4.4 The impact of the new and revised guidelines, particularly for causing death by dangerous driving and causing serious injury by dangerous driving, is clearly significant. It is far different to [the assessment the Government made at the point of introducing the legislation](#) that a “high” scenario for raising the penalty for causing death by dangerous driving would involve 30 more prison places. That assessment appears to be based on the assumption that only the worst cases would see an increase in sentencing severity. By contrast, we have increased sentencing levels across most categories.

4.5 Council may be content that this reflects the most rational approach to these guidelines, particularly considering the need for sentencing levels to be set in proportion to other offences (for example, the levels for causing serious injury by dangerous driving need to be higher than those for causing serious injury by careless driving). However, we will need to defend why we have taken this approach, and be clear of the extent to which it flows from the legislative changes in light of the anticipated impacts on prison places.

Question 2: bearing in mind the anticipated impact, is the Council content to sign off the draft guidelines for consultation, subject to the final resource assessment broadly reflecting the findings above?

4.6 We may face criticism from both directions, that our proposed sentence levels are not high enough to reflect the harm caused by dangerous and careless driving, but also that in raising sentencing levels to reflect the new maximum penalties we are contributing to sentence inflation.

4.7 Many of these offences are complex in that harm and culpability can be distinctly out of proportion to each other. Some of the offences relate to the standard of driving, whilst others relate to whether someone should lawfully be on the road, regardless of how they drive. This complexity is compounded by a piecemeal approach to legislating in an emotive area which has resulted in very differing maximum penalties which our guidelines need to navigate. All of this will require careful explanation at consultation, including an upfront explanation of what is in our gift and what the parameters set by Parliament are.

4.8 As above, if the final consultation stage resource assessment confirms the need for several hundred prison places, we will need to prepare lines which defend the approach taken, why our estimates differ from those of the Government, and how the impact is a result of the legislative changes alongside the guidelines.

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