

Sentencing Council meeting:
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Lead Council member:
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SC(23)JAN08 – Motoring offences paper 2
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1 ISSUE

1.1 Considering consultation responses on sentence levels across motoring offences.

2 RECOMMENDATIONS

2.1 That Council keep most of the sentence levels the same as those on which we consulted, but adjust downwards those for causing serious injury by careless driving and causing injury by wanton or furious driving.

3 CONSIDERATION

Standard of driving offences

3.1 The sentence tables we proposed for consultation are set out at **Annex A**.

3.2 In terms of pure volumes of response across most offences there were calls for sentence levels to be higher than our proposals. That said, as discussed in November, there were calls for careless and lower culpability driving to be dealt with not by short custodial sentences but by means of more use of lengthy disqualifications. We will return to disqualification as part of a separate project.

3.3 For causing death by dangerous driving, some respondents, such as the charity Brake, wanted to see exact parity with unlawful act manslaughter (i.e. a very high culpability level with a starting point of 18 years and a range of 11 -24 years' custody). The National Police Chiefs' Council also thought our levels were too low. Others picked up on their desire to see several of our medium culpability factors put into high (thinking, for example, of the person who drives dangerously while over the limit being placed in medium culpability).

3.4 Even amongst those who wanted to see less use of custody generally there was not much complaint that these levels were too high. However, I believe what we have proposed remains justified. The worst cases of dangerous driving will still rarely (if ever) involve any intent to cause harm. Moreover, given the maximums of other offences (such as 5 years for causing serious injury by dangerous) we risk creating a disproportionate gap by inflating these sentences even more. If there is any case for change it may be to raise the middle

category levels marginally (noting that we are keeping deliberate decisions to (eg) drive over the limit or in a defective vehicle or drink over the limit in that category), but I do not recommend this.

3.5 Given they share the same maximum penalties, we based our levels for causing death by careless driving under the influence on these levels. These received more support, and attracted many of the same criticisms. I therefore do not propose making any amendments to those sentence levels either.

Question 1: are you content to leave the sentence levels for death by dangerous and death by careless under the influence unamended?

3.6 For causing serious injury by dangerous driving, again many respondents wanted higher sentences, some not appreciating the limits imposed by the statutory maximum.

3.7 There, were however, several voices – including road safety campaigners such as RoadPeace and Action Vision Zero – who wanted more community orders in the offence range, particularly in the lowest (2C) box (remembering that they would expect more and longer disqualifications as a counterbalance).

3.8 There may be a case for adjusting the lowest box slightly and allowing the range to reach down for a high level community order where (for example) there was significant mitigation and the injury was just over the threshold for serious. I am mindful, however, that our proposed category 2A of causing serious injury by careless driving is already illogically identical to category 2C of causing serious injury by dangerous driving, and think a more pressing question is the levels for careless driving offences (see below).

3.9 Few people took specific issue with our proposals on simple dangerous driving. Many respondents wanted higher sentences but appeared not to recognise the statutory maximum. The Magistrates Association took issue with us describing the levels as a “modest uplift” on those in the current guidelines, but did not indicate they were opposed.

3.10 Building on the point made about causing serious injury by dangerous, several respondents wanted to see less use of custodial sentences alongside greater use of disqualification for careless driving offences. Nicole and Chris Taylor, parents of a road traffic collision victim, said that they wanted to see careless driving mainly punished by non-custodial sentences. Action Vision Zero said of the proposed causing death by careless driving levels:

“We do not agree. We believe [the sentence levels] 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. 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.”

(Note that the “one in four drivers”/rarely used statistic does not take into account how many offenders may have had a suspended sentence in the ranges we are proposing – likely a highly pertinent consideration with this sort of offending.)

3.11 Professor Sally Kyd backed this up:

I think [the sentence levels] 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 CDDD 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. Greater reliance on disqualification (with retest) as a punishment to satisfy utilitarian and retributive aims of sentencing is appropriate here and, again, i would press the Sentencing Council to attempt to provide periods of disqualification in its guidelines, especially for this offence (reducing the reliance on imprisonment).

3.12 By contrast, other voices thought that the levels were too low to reflect the taking of a life. The West London Bench thought that there needed to be more distinction between this and causing serious injury by careless driving, suggesting a fully custodial range for culpability C offences. Nicholas Atkinson KC believed Parliament’s will was being ignored by the offence range not reaching the full 5 year maximum.

3.13 Again, both the Magistrates Association and HM Council of District Judges (Magistrates’ Courts) queried our description of these levels as “modest” uplifts on those currently in force, but neither body said they wanted to see them decreased.

3.14 Bearing in mind the balance of views, and remembering that it is open to the court to suspend most of the sentences we propose where there is a realistic prospect of rehabilitation, I do not recommend making any amendments to the table for causing death by careless driving.

3.15 Although many agreed with our proposals, many of the points already considered about greater use of community orders were made, by the same people but with at least as

much force for causing serious injury by careless driving. Dr Adam Snow believed that the lowest (2C) box should be fully non-custodial, whilst Action Vision Zero and others thought that non-custodial sentences should make up the majority of this table. 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 RTC 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.”

3.16 I am more persuaded of the case for non-custodial sentences, particularly where harm and culpability are lower. It is the case that Parliament has set a maximum of 2 years, but equally Parliament has set a maximum of a fine for the summary offence of simple careless driving. Our guideline for that offence goes up to a Band C fine.

3.17 A table adjusted downwards to reflect the points made about the lower culpability of careless driving could look as follows (amendments in red):

	Culpability		
	A	B	C
Harm 1	Starting Point: 1 year 6 months Category range: 4 26 weeks - 2 years	Starting Point: 1-year 26 weeks Category range: 26-weeks High level community order – 1 year 6 months	Starting Point: 26-weeks High level community order Category range: High Low level community order – 4 year 26 weeks
Harm 2	Starting Point: 1-year 26 weeks Category range: 26-weeks High level community order – 1 year 6 months	Starting Point: 26-weeks High level community order Category range: High Low level community order – 4 year 26 weeks	Starting Point: High Medium level community order Category range: Low-level community order Band C Fine – 26-weeks High level community order

3.18 Note that this follows diagonally when read alongside the table for causing serious injury by dangerous driving. The Band C fine overlap in box 2C with the simple careless driving guideline can be justified as in that guideline Band C fines are reserved for the worst cases of careless driving where there may have been some injury or property damage, where here these are for borderline cases of careless driving.

3.19 Against this, one might be uneasy about the prospect of someone inflicting lifelong infirmity on someone, even if by the most momentary of mistakes, receiving a community order.

Question 2: do you want to make the changes to the sentencing table for causing serious injury by careless driving as above?

3.20 The levels for causing injury by wanton or furious driving were set in proportion to the other guidelines (culpability A aligning with dangerous driving, B with careless driving and C being all other cases; Harm 1 being death and the equivalent of higher harm in the serious injury guidelines; 2 being other cases of serious harm to the GBH standard; and 3 being all other cases). Similar points were therefore made on our proposals.

3.21 Many responses expressed disbelief about the levels (particularly where a death may have been caused), whilst acknowledging that the statute severely limits what the Council can do. Others suggested there may be a case for distinguishing between the inherent risk of harm caused by bicycle riders compared to motorised vehicles.

3.22 If you agree to make the changes suggested above for causing serious injury by careless driving I would recommend the following changes for wanton or furious:

	Culpability		
	A	B	C
Harm 1	Starting Point: 1 year 6 months Category range: 1 - 2 years	1 year Starting Point: 26 weeks 26 weeks Category range: High level community order – 1 year 6 months	26 weeks Starting Point: High level community order High Category range: Low level community order – 1 year 26 weeks
Harm 2	Starting Point: 1 year Category range: 26 weeks – 1 year 6 months	26 weeks Starting Point: High level community order High Category range: Low level community order – 4 year 26 weeks	High Starting Point: Medium level community order Low level Category range: community order Band C Fine – 26 weeks High level community order

Harm 3	<p>Starting Point: 26 weeks</p> <p>Category range: High level community order – 1 year</p>	<p>Starting Point: Starting Point: High Medium level community order</p> <p>Category range: Low level community order Band C Fine – 26 weeks High level community order</p>	<p>Starting Point: Low level community order</p> <p>Category range: Band B-A fine – High Medium level community order</p>
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Question 3: do you agree to make those changes (subject to your response on question 2)?

Whilst disqualified, unlicensed or uninsured offences

3.23 Again, the weight of opinion wanted to see sentence levels increased for these offences. In particular, several respondents (including Roadpeace) questioned why we had not used the full 10 year space provided by Parliament for causing death by driving whilst disqualified. Dr Adam Snow was one respondent who made a suggestion for reworking the levels:

“I would propose the high culpability starting point of 7 years, with a category range of 5 – 9 years”... Accordingly I would reassess the medium culpability as follows: Starting Point – 4 years, Category Range – 2-5 years custody and lesser: Starting Point 2 years, Category Range High Level Community Order – 3 years custody.”

Heather Rothwell JP thought the range should be only custodial. Cycling UK, whilst generally pushing for lower sentences in their response, thought high culpability cases should have a starting point of 8 years, and medium cases five years. Only Professor Kyd argued for lower sentences.

3.24 In practice, it is quite likely that such a charge/conviction will be brought alongside one for causing death by dangerous or careless driving; in the latter case it will be the more serious charge, but even in the former it is quite possible that the sentence for the “whilst disqualified” offence will be more severe than for the standard of driving. In any case one will aggravate the other.

3.25 Beyond being responsive to consultation replies and Parliament’s will, I am unpersuaded that these levels should be raised. The nexus between the offending and the harm is weak, and where there is not enough evidence of bad driving (though enough of a link between the driver’s actions and the death for a charge to be brought) the levels we propose could already be seen as being on the severe side. We also need to keep

proportion between this and the causing death by careless and dangerous levels, hindered in this as we are by the respective maximum penalties.

Question 4: are you content to leave the levels for causing death whilst disqualified unamended as consulted on?

3.26 For the other offences in this group, various respondents wanted to see higher sentences, but often without any recognition of the maximum penalty (particularly in the case of the 2 year limit for causing death whilst unlicensed or uninsured). The Motor Insurers Bureau, for example, wanted an increase up to three years of the statutory maximum. There were calls for causing serious injury whilst disqualified to be treated as on a par with causing serious injury whilst driving dangerously.

3.27 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).

3.28 The Magistrates Association thought the lowest culpability levels for causing serious injury whilst disqualified "*should have the same sentence as just driving while disqualified. This is especially as the standard of driving is not relevant.*". Assuming they mean the highest level of that offence, this would mean decreasing what we have proposed to a starting point of 12 weeks' custody (where life threatening injuries may have resulted) and a range of a high level community order to 26 weeks. This would place this category out of proportion to the other levels.

3.29 Given the weight of responses wanting increased levels for these offences, I certainly do not recommend any downwards changes to the levels we have proposed. For the same reasons as set out for death whilst disqualified I do not believe we should increase levels either, but if we do want to be responsive to people's views there may be a case for adjusting the levels for death whilst unlicensed/uninsured upwards (perhaps to the levels that we *had* proposed for the top harm levels of causing serious injury by careless driving, or at least raising the lowest range to include a custodial sentence).

Question 5: are you content to leave the levels for causing death whilst unlicensed/uninsured and causing serious injury whilst disqualified unamended as consulted on?

Drug driving

3.30 Generally, respondents were content with our proposals 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 (the best comparator given the unknown link between quantities of drug and impairment).

3.31 In terms of specific suggestions, Lilian Hobbs JP proposed increases for drive/attempting to drive. She thought category 2 should include custody and a minimum 3 year ban and that category 1 should have a minimum 5 year ban. Heather Rothwell JP thought there should be a starting point of Band D fine (presumably for category C, where we had proposed a Band C starting point).

3.32 Of the few specific comments made about being in charge of a vehicle, some thought that “consider disqualification” in the top and middle boxes was too weak and we should mandate disqualification. The Magistrates Association suggested a mandatory disqualification of 6 -12 months.

3.33 The West London Bench made a more general point:

“[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.”

3.34 As mentioned above, the levels for in charge with drugs over the limit are the same as for unfit through drink or drugs. So this anomaly (if we accept the characterisation) already exists. The main justification may be something similar to that proposed by the West London Bench: that being over the limit or unfit through drugs is inherently more unsafe, with the effect if an offender is called on to drive more unknowable.

3.35 This feels a little weak, and I believe there is a case for consistency between the two guidelines. We could change the top level of in charge whilst over the drug limit to that for the excess alcohol equivalent, and change the lowest level to consolidate the two lower levels. This would mean adjusting that level downwards as follows:

Level of seriousness	Starting point	Range	Disqualification/points
Category 1	High Medium level community order	Medium Low level community order – 12-6 weeks' custody	Consider disqualification (extend if imposing immediate custody) OR 10 points
Category 2	Band C fine	Band B fine – Medium level community order	Consider disqualification OR 10 points
Category 3	Band B fine	Band B A fine - Band C fine	10 points

3.36 However, there may be a stronger case, given the overall tenor of responses on drug driving, to increase the levels for the existing excess alcohol guideline to the levels we proposed for drugs. We could do this either as part of the next round of miscellaneous amendments, or as part of the next set of motoring offences. On balance I recommend this approach. We may be accused of encouraging sentence inflation (the vast majority of offenders for in charge with excess alcohol receive a fine), but that point can be put to the test in consultation.

Question 6: are you content to leave the levels for in charge as they are, but consult in future on adjusting the levels for in charge with excess alcohol?

4 IMPACT AND RISKS

4.1 As set out in the draft resource assessment published alongside the consultation, the revised guidelines as consulted on may result in a requirement for additional prison places running into the hundreds. The new causing death by dangerous driving guideline could result in a requirement for up to around 260 additional prison places, with around 20 additional prison places for causing death by careless driving when under the influence of drink or drugs, and around 80 additional prison places for causing serious injury by dangerous driving.

4.2 These assessments are 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, as the Justice Select Committee highlight, we are proposing to increase sentencing levels across most categories. This is an especially live consideration bearing in mind current prison capacity issues.

4.3 The decisions that the Council makes post-consultation may affect the final resource assessment. Depending on how consideration of consultation responses proceeds, we aim to present Council with a revised version of the resource assessment at the 31 March meeting.

Causing death by dangerous driving

Culpability	Starting point	Range
A	12 years	8 – 18 years
B	6 years	4 – 9 years
C	3 years	2 – 5 years

Causing death by careless driving

Culpability	Starting point	Range
A	2 years	1 – 4 years
B	1 year	26 weeks – 3 years
C	26 weeks	Medium level community order – 1 year

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

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

Causing serious injury by dangerous driving

	Culpability		
	A	B	C
Harm 1	Starting Point: 4 years Category range: 3 – 5 years	Starting Point: 3 years Category range: 2 – 4 years	Starting Point: 2 years Category range: 1 – 3 years
Harm 2	Starting Point: 3 years Category range: 2 – 4 years	Starting Point: 2 years Category range: 1 – 3 years	Starting Point: 1 year Category range: 26 weeks – 2 years

Causing serious injury by careless driving

	Culpability		
	A	B	C
Harm 1	Starting Point: 1 year 6 months Category range: 1 - 2 years	Starting Point: 1 year Category range: 26 weeks – 1 year 6 months	Starting Point: 26 weeks Category range: High level community order – 1 year
Harm 2	Starting Point: 1 year Category range: 26 weeks – 1 year 6 months	Starting Point: 26 weeks Category range: High level community order – 1 year	Starting Point: High level community order Category range: Low level community order – 26 weeks

Dangerous driving

	Culpability		
	A	B	C
Harm 1	Starting Point: 1 year 6 months Category range: 1 – 2 years	Starting Point: 1 year Category range: 26 weeks – 1 year 6 months	Starting Point: 26 weeks Category range: High level community order – 1 year
Harm 2	Starting Point: 1 year Category range: 26 weeks – 1 year 6 months	Starting Point: 26 weeks Category range: High level community order – 1 year	Starting Point: High level community order Category range: Low level community order – 26 weeks

Causing injury by wanton or furious driving

	Culpability		
	A	B	C
Harm 1	<p>Starting Point: 1 year 6 months</p> <p>Category range: 1 - 2 years</p>	<p>Starting Point: 1 year</p> <p>Category range: 26 weeks – 1 year 6 months</p>	<p>Starting Point: 26 weeks</p> <p>Category range: High level community order – 1 year</p>
Harm 2	<p>Starting Point: 1 year</p> <p>Category range: 26 weeks – 1 year 6 months</p>	<p>Starting Point: 26 weeks</p> <p>Category range: High level community order – 1 year</p>	<p>Starting Point: High level community order</p> <p>Category range: Low level community order – 26 weeks</p>
Harm 3	<p>Starting Point: 26 weeks</p> <p>Category range: High level community order – 1 year</p>	<p>Starting Point: High level community order</p> <p>Category range: Low level community order – 26 weeks</p>	<p>Starting Point: Low level community order</p> <p>Category range: Band B fine – High level community order</p>

Causing death by driving whilst disqualified

Culpability	Starting point	Range
A	5 years	4 – 7 years
B	3 years	2 – 5 years
C	1 year 6 months	High level community order to 2 years

Causing death by driving whilst unlicensed or uninsured

Culpability	Starting point	Range
A	1 year	36 weeks to 2 years
B	26 weeks	High level community order – 36 weeks
C	Medium level community order	Low level community order – high level community order

Causing serious injury by driving whilst disqualified

	Culpability		
	A	B	C
Harm 1	Starting Point: 3 years Category range: 2 – 4 years	Starting Point: 2 years Category range: 1 – 3 years	Starting Point: 1 year Category range: High level community order – 2 years
Harm 2	Starting Point: 2 years Category range: 1 – 3 years	Starting Point: 1 year Category range: High level community order – 2 years	Starting Point: 26 weeks Category range: Low level community order – 1 year

Driving/attempting to drive with a specified drug above the specified limit

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

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

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

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