

Unfit through drink or drugs (in charge) (Revised 2017)

Road Traffic Act, 1988, s.4(2)

Effective from: 24 April 2017

Triable only summarily:

Maximum: Level 4 fine and/ or 3 months

Offence range: Band B fine – 12 weeks' custody

Step 1 – Determining the offence category

The Court should determine the offence category using the table below.

Category 1 Higher culpability **and** greater harm

Category 2 Higher culpability **and** lesser harm **or** lower culpability **and** greater harm

Category 3 Lower culpability **and** lesser harm

The court should determine the offender's culpability and the harm caused with reference **only** to the factors below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

CULPABILITY demonstrated by one or more of the following:

Factors indicating higher culpability

- High likelihood of driving
- In charge of LGV, HGV or PSV etc.
- Offering to drive for hire or reward

Factors indicating lower culpability

- All other cases

HARM demonstrated by one or more of the following:

Factors indicating greater harm

- High level of impairment

Factors indicating lesser harm

- All other cases

Step 2 – Starting point and category range

Having determined the category at step one, the court should use the appropriate starting point to reach a sentence within the category range in the table below.

- **Must endorse and may disqualify. If no disqualification impose 10 points**
- **Extend disqualification if imposing immediate custody**

The starting point applies to all offenders irrespective of plea or previous convictions.

| 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 |

The court should then consider further adjustment for any aggravating or mitigating factors. The following is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far.

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors:

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

Factors reducing seriousness or reflecting personal mitigation

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

Step 3 – Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

Step 4 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

Step 5 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

Step 6 – Compensation and ancillary orders

In all cases, the court should consider whether to make compensation and/or other ancillary orders including offering a drink/drive rehabilitation course, deprivation, and /or forfeiture or suspension of personal liquor licence.

Step 7 – Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 8 – Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.