Sentencing Council

Aggravated vehicle taking offences guidelines, disqualification and other motoring related matters

Consultation response

February 2025

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This publication is available at www.sentencingcouncil.org.uk.

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Foreword

On behalf of the Sentencing Council I would like to thank all those who responded to the consultation on these new and revised guidelines relating to motoring offences. I also extend my thanks to the judges and magistrates who gave their time to participate in the research exercise undertaken to test and inform the development of the guidelines.

The revised sentencing guidelines for aggravated vehicle taking offences and vehicle registration fraud represent a milestone. When they come into force all the pre-2010 guidelines produced by the Sentencing Guidelines Council, the Sentencing Council's predecessor body, will have been updated and replaced with guidelines in the stepped format now familiar to the courts.

In consulting on a new overarching guideline, the Council received many views on the use of driving disqualifications. These suggested that disqualifications should be imposed more frequently than they are currently, that they should be longer, and that there should be more use of lifetime disqualifications. As with all Sentencing Council consultations, these views were carefully considered, but for the reasons set out in this consultation response, the Council believed it should provide general guidance on the rules and principles to follow when imposing disqualifications, without mandating their increased use.

As always, the range of views and expertise from consultees were of great value in informing the finalised new and revised guidelines. Because of those views, some changes have been made to the Council's original proposals. The detail of those changes is set out within this document.

The Council believes these new and revised guidelines will provide the courts with a consistent approach when dealing with these offences and imposing disqualifications.

Lord Justice William Davis

Chairman, Sentencing Council

Introduction

In 2023 the Sentencing Council published new and revised sentencing guidelines for a range of motoring offences relating to dangerous and careless driving. This was a wide-ranging package, which updated various guidelines dating back to 2008 and reflected new maximum penalties and offences introduced by Parliament. However, there remained several motoring-related offences for which guidelines did not exist or were out of date.

Magistrates' courts sentencing guidelines for aggravated vehicle taking offences involving dangerous driving, accident causing injury, and causing damage to vehicle/property already existed. However, these were published in 2008 by the Sentencing Guidelines Council, the Sentencing Council's predecessor body, and do not follow the detailed, step-by-step format now familiar to the courts. They also do not provide sentence levels for the Crown Court.

A further guideline which dated back to 2008 and required updating related to vehicle licence and registration fraud. The scope of this offence changed since the publication of this guideline to relate only to vehicle registration fraud, as tax discs (and therefore related frauds) have fallen out of use.

Following its 2022 consultation on new and revised motoring guidelines, the Council had committed to look at what further guidance could be given to the courts on imposing driving disqualifications.

In February 2024, the Council therefore consulted on a comprehensive package of new and revised guidelines for aggravated vehicle taking offences, for use in both the magistrates' courts and in the Crown Court, as well as a revised offence-specific guideline for vehicle registration fraud. It also consulted on a new overarching guideline on driving disqualifications, covering matters such as when disqualification is available, the principles to follow when setting the length of a disqualification (including interaction with time spent in custody), and when exemptions may or may not apply. The package also sought views on several other miscellaneous matters relating to motoring which had been raised with the Council, or which arose following the Council's earlier consultation on motoring guidelines in 2022.

The consultation closed in May 2024 and the Council has carefully considered the responses received in finalising the guidelines and the miscellaneous revisions. The rationale for the changes which the Council has made following consultation is explained in this consultation response document and the anticipated impacts are highlighted in the accompanying resource assessment.

Applicability of guidelines

The guidelines will be in force from 1 April 2025 and will apply only to offenders aged 18 and older sentenced on or after that date. General principles to be considered in the sentencing of children and young people are set out in the Sentencing Council's definitive guideline, Sentencing children and young people.

Summary of analysis and research

Several research exercises were carried out to support the Council in developing the guidelines. Content analysis was conducted of judges' sentencing remarks for offenders sentenced for the relevant aggravated vehicle taking offences, where available, and for vehicle registration fraud offences. This provided valuable information on some of the key factors influencing sentencing decisions for these cases.

Existing Council guidance formed the basis for some of the proposed driving disqualification guideline, which also drew on case law.

During the consultation period, small-scale qualitative research interviews were carried out with seven magistrates and four Circuit Judges to help gauge how the guidelines for aggravated vehicle taking – vehicle/property damage and vehicle registration fraud might work in practice. Participants were also asked for their views on the proposed overarching guideline on driving disqualifications.

A statistical summary and draft resource assessment were published alongside the consultation, and updated data tables and a final resource assessment have been published alongside the definitive guideline and this consultation response document.

Summary of responses

There were 68 responses to the consultation. Some of the responses were from groups or organisations, and some from individuals.

Breakdown of respondents

Type of respondent	Number of responses
Academic	1
Charity or non-governmental organisation	4
Government	2
Judges	4
Legal professional	4
Magistrates	13
Member of the public/unknown	39
Prosecutor or police	1

Equality and diversity

The Sentencing Council considers matters relating to equality and diversity to be important in its work. The Council is always concerned if it appears that the guidelines have different outcomes for different groups. The Council published the report 'Equality and diversity in the work of the Sentencing Council' in January 2023, designed to identify and analyse any potential for the Council's work to cause disparity in sentencing outcomes across demographic groups.

In addition, the available demographic data, (sex, age group and ethnicity of offenders) is examined as part of the work on each guideline, to see if there are any concerns around potential disparities within sentencing. For some offences it may not be possible to draw any conclusions on whether there are any issues of disparity of sentence outcomes between different groups caused by the guidelines, for example because of a lack of available data or because volumes of data are too low. However, the Council takes care to ensure that the guidelines operate fairly and includes reference to the Equal Treatment Bench Book in all guidelines:

> Guideline users should be aware that the Equal Treatment Bench Book covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

The demographic data on sex, age and ethnicity have been presented for the years 2019-2023 due to low volumes for most offences, except the data for aggravated vehicle taking involving dangerous driving which cover the year 2023. The statistics discussed below can be found within the data tables published on the Council's website.

Sex

The vast majority of offenders sentenced for aggravated vehicle taking and vehicle registration fraud offences were male. The immediate custody rate (proportion of offenders receiving immediate custody) and average custodial sentence lengths (ACSL) were generally higher for males than for females, although the volumes of female offenders were much smaller. The average fine amounts received by offenders sentenced for vehicle registration fraud were also higher for males compared to females (the median fine value was £164 for males and £120 for females).

Age

While more than half of offenders sentenced for aggravated vehicle taking offences were aged under 30, the age profile was slightly older for vehicle registration fraud. Around 40 per cent of offenders sentenced for vehicle registration fraud were aged under 30.

For some offences, the immediate custody rate was generally lower for younger offenders. For example, the immediate custody rate was 7 per cent for 18 to 20 year olds sentenced

for aggravated vehicle taking causing damage not exceeding £5,000, compared with just under half of offenders aged between 30 and 49. For aggravated vehicle taking causing injury, around a quarter of 18 to 20 year olds received immediate custody, while the proportion was 41 per cent for offenders aged 30 to 39. However, the ACSLs received by offenders were broadly similar across different age groups.

The average fine amount imposed for vehicle registration fraud was generally higher for older offenders. Offenders aged 18 to 20 and 21 to 24 received a median fine amount of £138 and £120 respectively, compared to a median fine amount of £200 for those aged between 50 and 59.

Ethnicity

The ethnicity was not recorded or known for at least a quarter of offenders across the offences. However, where ethnicity was known, the vast majority of offenders sentenced were white (over 80 per cent across the offences).

There was some variation in sentence outcomes and ACSLs between ethnicity groups for some of these offences. However, the volumes for ethnicity groups other than white were very low. As a result, the proportions and ACSLs derived for these groups are more sensitive to small changes in volume and these data should be interpreted with caution.

The Council has had regard to its duty under the Equality Act 2010 in developing the guideline, specifically with respect to any potential effect of the proposals on victims and offenders with protected characteristics. The consultation sought views from respondents as to whether any factors within the guideline would disproportionately impact any offenders based on sex, age or ethnicity. The guidelines are intended to apply equally to all offenders aged 18 or over.

Aggravated vehicle taking offences

Culpability factors

The Council consulted on four new and revised guidelines for aggravated vehicle taking offences under section 12A of the Theft Act 1968. These covered the following ways in which the offence can be committed:

- dangerous driving
- vehicle or property damage caused
- injury caused
- death caused

While most respondents broadly agreed with the culpability factors the Council proposed in the draft aggravated vehicle taking guidelines, there were some specific suggestions for amendments.

A number of respondents believed there should be more factors at step one reflecting how the vehicle was taken, rather than the circumstances relating to the driving or collision. HM Council of District Judges thought that there should be more in the culpability factors in relation to the taking of the vehicle, and queried why there wasn't read across from the non-aggravated vehicle taking guideline. This echoed a point made by a magistrate that there should be an equivalent in higher culpability categories of the low culpability factors 'Exceeding authorised use' and 'Retention of hire car for short period beyond return date'.

The proposed culpability factors did draw on some of the factors in the existing guidelines and which appear, albeit in a slightly different form, in the Council's non-aggravated vehicle taking guideline, so there were some factors reflecting the "taking" element of the offending. The exception was the draft Aggravated vehicle taking - dangerous driving guideline, which was dominated by elements relating to the standard of driving.

However, Council did agree that there could be more of a focus on the manner of taking in at step one and have adapted a factor from the Theft guideline, adding in

- Vehicle taking involved intimidation or the use or threat of force

to the high culpability category of all four of the guidelines.

An issue raised in a few responses was how to deal with the standard of driving, particularly where there is no evidence of careless or dangerous driving (with the obvious exception of the Aggravated vehicle taking - dangerous driving guideline). The CPS proposed that there be high and medium culpability equivalents of the low culpability factor "vehicle not driven in an unsafe manner", which appears in all the drafts except that for dangerous driving:

> "specific reference should be made at levels A and B to whether the vehicle was driven dangerously or carelessly, rather than treating it as a factor to be considered at the aggravating features stage (other driving offences committed)."

Professor Sally Kyd of the University of Leicester queried the low culpability factor which appears in three of the proposed guidelines "vehicle not driven in an unsafe manner":

> "I would suggest that it would be preferrable to use the terminology that the courts have experience of using in relation to driving offences, rather than the imprecise term "unsafe". What does unsafe mean here? … So "vehicle not driven in unsafe manner" should be replaced by "vehicle not driven below the standard of a competent and careful driver". […]
>
> According to R v Taylor 1 WLR 2461, for D to be liable for this offence, there must be something to be criticised about D's driving and which linked to the cause of the collision. As such, I would query if this factor (whether defined as "not unsafe" or in a way I have suggested above) is relevant here."

The Council saw the merit of Professor Kyd's suggestion and considered carefully how to achieve the desired aim of getting across the fact that driving has not been careless or dangerous (whilst there has been some level of blameworthiness for the harm caused), without encouraging lengthy arguments about the standard of driving.

Ultimately, the Council decided to remove the factor "vehicle not driven in an unsafe manner" and not replace it with a differently formulated factor. Where there has been careless or dangerous driving, some of the higher culpability factors proposed may be relevant, and there may be separate charges which will aggravate this offending. In the limited range of circumstances where there has been no bad driving, but there is some sort of link between the driving and the collision, damage or injury the courts will be able to reflect that in limiting culpability and setting sentence levels.

Several respondents picked up on the proposed factor "risk of serious injury caused to persons" which appeared in the draft guidelines involving offences where injury or death has been caused. The Chief Magistrate thought this would be complicated and hard to prove, especially given that a risk of injury is inherent in any unsafe driving. As the Criminal Law Solicitors' Association (CLSA) pointed out, the risk of injury has evidently materialised where death or serious injury has actually been caused. The Magistrates Association (MA) questioned whether "risk of serious injury" in the Aggravated vehicle taking – death caused guideline referred to the risk to others aside from the victim.

The Council agreed that the factor as drafted could be a source of confusion. The Chief Magistrate preferred the factor in the existing guideline "deliberate disregard for safety of others". The Council agreed that this sufficiently conveys high culpability without causing confusion so has included it as a high culpability factor in the guidelines where death or injury has been caused.

Harm factors

The Justices Clerks' Society (JCS), the CLSA and the MA believed that there should be specific guidance about what counts as 'High value damage', a high harm factor in the proposed Aggravated vehicle taking - vehicle/property damage caused guideline. This was a point echoed by some participants in the research conducted by the Council, who generally thought this factor was subjective. Some suggested that extra guidance would be helpful.

The JCS also asked whether the Council should be explicit as to whether 'value' in this context extends beyond pure financial value. Participants in the research exercises generally said they would in practice look beyond pure monetary value, considering matters such as the victim being unable to travel to work due to the damage to their vehicle, or a shop owner forced to cease trading due to damage to their premises. However, one judge said that if the intention of the guideline was to cover harm beyond pure financial value, it should state this explicitly.

The Council did consider whether to provide a specific figure that would reflect high value damage, but concluded that this was context-specific, depending on a variety of factors, including the means of the victim. The Council was, however, persuaded that the guideline should be clear that value may extend beyond pure monetary loss. Again, wording from the theft guideline was thought to be appropriate to capture the wider harm that may be caused:

- High value damage caused (including economic, commercial, cultural or personal value to the victim)

Sentence levels

Many of the responses received by the Council on the sentence levels proposed in the draft aggravated vehicle taking guidelines ultimately reflected the restrictions caused by legislation. There were various calls for starting points and ranges that would go beyond those available under the statutory maximum penalties set out in law.

HHJ Crane echoed the MA and several other individuals who thought the levels for injury-caused were too low when compared with the levels in the sentencing guidelines for Grievous bodily harm, Actual bodily harm, and Causing serious injury by dangerous driving. One respondent thought the levels for Aggravated vehicle taking where injury has been caused were too similar to those for where vehicle or property damage has resulted. Others pointed out the "big step" from nearly killing someone to actually killing them. Yet another thought custody should be the starting point for any injury.

With a category A1 starting point of 1 year 6 months and a range going up to the 2 year maximum penalty, and custodial starting points in all but three categories Council took the view that there was very limited scope to increase sentence levels in the injury-caused guideline. The Council noted that the levels proposed for this guideline are generally a bit

higher than those for causing serious injury by careless driving which the Council thought was appropriate.

The Council did consider whether it should reconsider sentence levels in the vehicle/property damage guideline to distinguish them from offences where injury has been caused. Again, however, there was little scope to make changes whilst maintaining proportionality with other offending. For situations where the damage caused exceeded £5,000 the levels proposed were already lower than for the equivalent criminal damage offence (where the damage is more likely to be intentional, but where a vehicle will not have been taken). Equally, as the Chief Magistrate pointed out in his response, the top of the range for a category 3A case is 18 weeks, which is lower than the 26 weeks upper range limit in the guideline for non-aggravated vehicle taking, meaning the damage caused is not reflected.

Strict proportionality across all these offences represents a difficult balancing act. The Council has left almost all the sentence levels in the vehicle/property damage guideline as consulted on, but has increased the top of the range for category 3A harm to 26 weeks in line with the Chief Magistrate's suggestion.

There were mixed views on the proposed sentence levels for cases where death has been caused. Some respondents, like the Warwickshire Road Safety Partnership, wanted more severe sentences to reflect the serious harm caused, coupled with the fact that a vehicle has been taken, and one respondent argued for the lowest starting point to be five years. Professor Kyd thought the Council should look to the older levels for Causing death by dangerous driving, and that the range should go up to the maximum 14 years. On the other hand, the London Criminal Courts Solicitors' Association (LCCSA) welcomed the two year headroom proposed by the Council.

Offering a contrary view, the CLSA thought sentence levels should be lower (in this and in the other guidelines consulted on) to alleviate prison capacity problems. The LCCSA considered the sentence levels for low culpability to be too high for an offender who was a passenger and, like the CPS, asked the Council to compare levels with those for causing death by careless driving. A magistrate echoed this point with regard to an offender who had kept a hire car beyond the agreed period.

The Council saw the strength of the argument for aligning sentences for the lowest levels of culpability for aggravated vehicle taking where a death has been caused with the highest levels for Causing death by careless driving, It has therefore amended the levels for low culpability cases, resulting in a starting point of two years' custody, with a range of one to four years.

Aggravating and mitigating factors

There were various suggestions made by respondents for amendments to the proposed step two factors across the aggravated vehicle taking guidelines.

The LCCSA thought having a good driving record should provide mitigation in these offences (as they are in the standard of driving guidelines). Several respondents did not

like sole/primary carer being a mitigating factor, which is a standard personal mitigating factor in virtually all guidelines. Indeed, the Warwickshire Road Safety Partnership thought the victim being a carer should be an aggravating factor. They also suggested the impact on the road network, community impact, and historic preservation as aggravating factors.

Some respondents did not like the mitigating factor “actions of a third party/victim contributed to collision” and asked whether this contradicted the aggravating factor of wrongly blaming others. Professor Kyd pointed out that this factor does appear in the simple Dangerous driving guideline but not in the Aggravated Vehicle Taking version and said that these should be consistent. Some wanted to remove the mitigating factor “victim was a close friend or relative”.

The Chief Magistrate thought “sophisticated nature of offending/significant planning” should be included as an aggravating factor in the Dangerous driving guideline to help distinguish this from cases of dangerous driving that have not involved a taken vehicle.

A point made by some who took part in the research exercises the Council conducted was that the aggravating factor ‘Victim was a vulnerable road user’ does not necessarily make sense in the context of offences where a vehicle or property has been damaged.

The Council agreed with some of these suggestions, in particular to ensure there was as much consistency between these guidelines and other motoring guidelines as possible, where appropriate. It therefore agreed that the mitigating factor “actions of a third party/victim contributed to collision” should appear in the guideline for Aggravated vehicle taking involving dangerous driving. The Council also agreed with the Chief Magistrate that significant planning should aggravate those offences, and provides another means of distinguishing them from dangerous driving cases where a vehicle has not been taken. The Council has also removed the aggravating factor ‘Victim was a vulnerable road user’ from the guideline involving vehicle or property damage.

The MA pointed out that the proposed wording at step 6 of the draft guidelines (“the court should consider whether to make compensation and/or other ancillary orders, including disqualification from driving and a deprivation order”) made it seem like disqualification was optional. The Council agreed this was incorrect, and has amended this to reflect the wording in other motoring guidelines:

- “In all cases the court should consider whether to make compensation and/or other ancillary orders”

plus fuller guidance on disqualification and a link to the new overarching guideline (see below).

Vehicle registration fraud

Culpability and harm

Whilst most respondents were content with the proposals for a revised Vehicle registration fraud guideline, there were some questions related to the proposed culpability and harm factors. One respondent queried whether vehicle registration fraud could ever be "opportunistic" with little or no planning. HHJ Crane asked where "some planning" fitted in: she suggested retaining the proposed higher culpability factors with a low category "all other cases" box. On the other hand, HM Council of District Judges thought there should be a middle category of culpability.

The Council of HM Circuit Judges thought "Used to avoid detection of very serious crimes" should be a high culpability factor. Similarly, the MA thought "Intention to avoid criminal prosecution" should be included in high culpability. However, the Council noted that the draft guideline already refers to the impact on a criminal investigation as part of the harm assessment.

For harm, the MA thought the guideline should provide figures for financial loss, as in other fraud guidelines. A problem they saw was that individual ULEZ avoidance (for example) was not significant for a large body such as Transport for London, but the cumulative effect of many people avoiding it would be, in which case the guideline should make that clear. The MA also thought that "inconvenience" to a victim was too broad a term, which could cover everything from a parking ticket to a dangerous driving prosecution. The CLSA were unclear what "serious impact on criminal investigation" meant and suggested "Fraudulent activity used to circumvent other criminal proceedings".

Ultimately, the Council was unpersuaded to make any substantive amendments to the culpability and harm factors proposed. The responses elicited from judges and magistrates in the research exercises showed that the guideline has the flexibility to allow for a range of situations. The Council did agree, though, to split out the factor "Sophisticated nature of offence/significant planning" to become two separate factors for the purposes of clarity.

Sentence levels

Many respondents noted that category A1 was somewhat of a standalone, although there were different views about how to deal with this. Some participants in research said they wanted to see some "middle ground". HHJ Crane thought sentence levels were too low generally, given the criminal activity being facilitated. The Council of HM Circuit Judges agreed, saying the top box should go up to 18 months for those cases covering a long period frustrating a criminal investigation. The Chief Magistrate thought that these new levels were more lenient than the current ones, and the MA asked us to compare these levels with those for possessing/making/supplying articles for use in fraud.

On the other hand, the CLSA thought the A1 starting point should be a community order, and the LCCSA were concerned that benches would commit too readily to the Crown Court. There was, indeed, confusion in responses and in research about why magistrates could not impose custodial or community sentences, but this is a limit imposed in the

legislation. The Council has agreed to make this clear in wording above the sentence table.

The proposed levels are similar to those in the fraud guideline for someone in an intermediate or peripheral role, with some or limited planning, with financial harm of up to £20,000. The Council believed this was proportionate, even though fraud by false representation carries up to 10 years' custody. Bearing in mind the fact that most sentences imposed for this offending are fines, Council did not agree there should be a general uplift in sentence levels. It did, however, agree that the top of the A1 range could be increased to 18 months to make more use of the sentencing powers available to the Crown Court. The Council noted that where this offending accompanies or facilitates more serious offending, that offending will also be sentenced and the court will have to take into account the principle of totality.

Aggravating and mitigating factors

There were few comments received from consultees on the aggravating and mitigating factors proposed in the draft guideline.

HHJ Crane did not think that established evidence of wider/community impact was relevant here. The Council had originally proposed this on the basis that it appeared in the general fraud guideline, but on reflection believed that HHJ Crane was right. It has therefore removed it.

Driver disqualification

A major theme of responses to the consultation paper was the matter of providing for more, and longer, driving disqualifications.

"The Sentencing Council needs to make better use of disqualifications to reduce illegal and unsafe driving. At present across the UK, too few bans are given to drivers convicted of offences where disqualification is discretionary, including speeding and careless driving. In 2022, only 15,816 bans were given where it was discretionary. This was only 3% of the 534,799 offences sentenced that could have had a discretionary ban…

The role of bans will increase if the government ends the use of prison sentences of 12 months or under. At present, 84% of custodial sentences given for motoring offences are 12 months and under. This guideline needs to promote the use of disqualifications, especially with speeding and careless driving. Overall bans are a key sanction for reducing road danger and greater use should be made of discretionary bans than is the case. The danger that unsafe use of motor vehicles is too readily accepted in our society and has contributed to a lack of reduction in road casualties in recent years. More work is needed to deter dangerous and unsafe driving." – Individual response

"The guidelines need to actively encourage disqualification as a form of punishment and rehabilitation. There are currently too many dangerous acts committed by drivers that receive little to no consequences for their actions. There needs to be a greater consideration of the dangers drivers cause to themselves and others when sentencing and the risks they will pose in the future." – Individual response

"A codification of guidance for courts around the imposition of driving bans is…very welcome and long overdue, as are updates to protocols for sentencing of offences related to aggravated vehicle taking. The proposals made in these documents, however, fall short of the radical changes needed to achieve justice for the victims of reckless and dangerous drivers on our streets.

It is critical to appreciate that driving is neither a right nor a necessity, but a privilege obtained by demonstrating a suitable standard of technical skill and appreciation of the rules by which it can be publicly undertaken.

Sentencing guidance contains crucial safeguards against unnecessary deprivation of liberty. But liberty is a right, and it is therefore vital in a free and fair society that extreme caution is exercised in removing it. The same is not true of driving, which is a permission that can be earned by adhering to a code of conduct and should be just as easily forfeited if those same obligations are wantonly disregarded.

The idea, therefore, as expressed in the guidance, that consideration should be given to "the extent to which not driving prevents rehabilitation" and the impact of a ban on third parties fails to appreciate that driving is a privilege rather than a right.

There is no other potentially lethal licensable activity where regard would be given to these factors when disqualifying someone for violating a code of conduct, and there is no reason that driving should be any different…" – Better Streets for Birmingham

Action Vision Zero, supported by the London Cycling Campaign and the Road Danger Reduction Forum, provided a detailed response focusing on disqualification, and their recommendations were echoed by many responses to the consultation. Action Vision Zero concluded:

"This draft general guideline does not go far enough. It should promote the use of bans. especially with speeding and careless driving bordering on dangerous. With government legislating against the use of custodial sentences of 12 months or less, disqualifications will and should play an even greater role in sentencing.

In addition,

- Further consultations updating the Magistrates' Courts Sentencing Guidelines for key offences, especially speeding and careless driving, are needed. It has been over seven years since the last consultation. In this time, over one million speeding offences have been sentenced at court.

- The Sentencing Council should also consult on disqualification lengths for causing death/serious injury by driving

- Research should also be undertaken to determine the number of exceptional hardships still being given and how this varies across the country.

- Given the dominance of motoring offences at court (they account for 61% offences sentenced at court), the Sentencing Council should appoint a Transport Advisor. They could help ensure the Sentencing Council has up to date information on related government policies (e.g. Highway Code changes), trends in driving licence rates, and efforts to reduce dependency on driving)."

The Council is grateful to all who expressed their views on disqualification and is in no doubt about the strength of feeling on this issue. However, having considered these

responses carefully and reviewed the matter of disqualification (further to detailed discussion in 2023 following its earlier consultation on motoring guidelines), the Council disagrees that more disqualifications should be imposed, and imposed for longer.

The key difficulty remains that lengthy driving disqualifications are a blunt tool to address bad driving. On the one hand, for low level examples of careless driving by otherwise responsible drivers, lengthy disqualifications will be a disproportionate means of protecting the public and deterring them and others from reoffending. This is particularly true for those who are unable to rely on alternative means of transport, or who rely on driving to support themselves and may have caring responsibilities. For this group, it is likely that the process of having been prosecuted and the prospect of even having received a short disqualification will be sufficient to improve their driving in future.

At the other end of the spectrum there are serial dangerous drivers for whom no amount of disqualifications, of whatever length, will alter their behaviour. Of course, long disqualifications beyond the statutory minimums should be available to the courts for these offenders as a means of punishment and public protection. The proposed guideline makes this clear. However, it has long been acknowledged by the courts that it is futile to impose repeated disqualifications on this type of offender in the hope that they will eventually comply. Experience suggests that increasing the length of disqualifications to many years, and certainly to a lifetime disqualification, may in practice increase the likelihood of breach. On top of this, long term disqualifications may be counter-productive if they prevent an offender securing training and employment which may provide the basis for a more grounded lifestyle away from criminal activity, whether driving-related or otherwise.

The Council understands that this may seem unsatisfactory to those who look to the greater use of disqualification as a means of making roads safer and protecting the public. The Council also notes that the independent sentencing review currently being undertaken may look to the more widespread use of ancillary orders, including driver disqualifications, as non-custodial punishment options (indeed, the Council's proposed overarching guideline reminds the courts of the very broad circumstances where a disqualification is available to them). It remains open to Parliament both to increase the use and length of obligatory disqualifications, and to increase the available penalties for driving whilst disqualified. However, this would not change the situation as described above, and in practice could see more breaches committed, with the potential for lower level offenders and their dependents being punished disproportionately.

In the context of these limitations of disqualification as an effective road safety tool, the Council remains of the view that the proposed overarching guideline is well placed to provide a consistent set of considerations for the courts to take into account when setting a disqualification.

In terms of the detail of the guideline, respondents made several drafting suggestions with which the Council agreed:

- the wording in the Road Traffic Act 1998 is "obligatory" disqualification, whereas the draft had used "mandatory" throughout; the Council agreed to reflect the statutory language

- the draft had referred to aggravated vehicle taking as carrying discretionary disqualification, which was incorrect: it is obligatory (although an extended retest is discretionary). The Council agreed to amend the reference to careless driving and speeding

- in table 1, to be clearer that not all disqualifications will trigger the repeat disqualification provisions, a reference has been added to “qualifying” disqualifications.

An individual respondent suggested that we provide more examples of when a section 163 disqualification would be imposed (such as domestic assault or burglary). The Magistrates Association echoed this and highlighted examples from the Bench book such as kerb crawling and abandoned vehicles. The Council considered this, but did not wish implicitly to limit the use of the power any further than the draft text does (“it should generally be reserved for cases which have involved the offender driving a vehicle or otherwise using a vehicle to commit the offence for which he or she is being sentenced”).

Some individual respondents thought there should be an escalating scale for driving disqualifications, as exist for drink drive disqualifications. Given the statute does already provide for this in certain situations (including totting up disqualifications) the Council believed it was more appropriate for Parliament to set this out in legislation. The court is, however, invited to consider the offender’s history by the second bullet point under ‘Principles’.

Further motoring related matters

In addition to the proposed new guidelines and revisions, the Council proposed a number of amendments to existing guidelines stemming from feedback received from sentencers and others.

Fail to stop/report road accident

The Council proposed to amend the high culpability factor in the guideline for the offence of Failing to stop/report a road accident (under section 170 of the Road traffic Act 1988) as follows:

- offender knew or suspected that personal injury caused ~~and/or left injured party at scene~~

This was because leaving the scene is inherent in the offending and if the offender does not even suspect an injury has been caused this is not deserving of high culpability (with the harm reflected in the harm assessment).

In response, several individuals and magistrates thought that any careful driver ought to be aware enough of their surroundings to know whether they have collided with or injured someone. Someone thought the burden should be on the offender to prove they couldn't have known there was a collision. Push Bikes Birmingham picked up on the consultation's example of an HGV driver feeling a bump, believing the onus is on the driver to investigate.

Others recognised the scope for confusion but suggested other remedies. One individual thought we could simply delete "/or", and the CLSA suggested "Offender knew that personal injury caused OR a reasonable and competent driver would have had cause to believe that personal injury had been caused".

The Council saw the merit in some of these proposals, but concluded that its initial proposal was the most efficient way of getting across that higher culpability arises where the offender knows or suspects an injury has been caused.

Fail to provide specimen for analysis (drive/attempt to drive)

The Council proposed adding to the guideline for Fail to provide a specimen (drive/attempt to drive) (section 7(6) of the 1988 Act) the low culpability factors which appear in the "in charge" equivalent of that guideline:

- honestly held belief but unreasonable excuse
- genuine attempt to comply

as well as "all other cases" which is there currently.

Several respondents were opposed to including “honestly held belief” and, like HM Council of District Judges, could not envisage when it would apply but believed it would be prayed in aid frequently. Even in agreeing in principle, the MA wanted more detail on what such a belief might be. Professor Kyd disagreed with the addition of these factors, but conceded consistency would argue for them.

The Council agreed that this factor could be problematic to apply in practice, but still wanted to provide assistance to magistrates about what a low culpability case might involve. It considered that a suitable alternative wording might be similar to that found in the guidelines for bladed article and offensive weapon possession:

- Failure falls just short of reasonable excuse.

The Council sought follow-up feedback from those consultees who had objected to the earlier proposed wording, and most agreed that this was a better formulation which could usefully be included in both the drive/attempt to drive and in charge guidelines for this offending. The Council will therefore add the above wording to the low culpability box of the drive/attempt to drive guideline, and amend the in charge guideline so that they are identical.

Excess alcohol (in charge)

The Council consulted on an increase to the most serious starting point and range for the Excess alcohol (in charge) guideline (section 5(1)(b) of the 1988 Act) to bring it into line with the equivalent sentence levels for being In charge with a specified drug over a specified limit and Unfit through drink or drugs (in charge) equivalents. This would mean increasing the starting point from a medium level community order to a high level community order; with a range of a medium community order to 12 weeks’ custody, up from the existing low level community order to six weeks’ custody.

Some respondents wanted to see higher penalties and longer disqualifications in general for these offences. Another respondent suggested the lowest levels could be decreased from a Band B to a Band A fine, with 2 to 3 points considered to allow for accidental exposure to alcohol. The CLSA thought that the penalties should be decreased in the other guidelines to help ease the prison population. The MA also suggested the idea of “levelling down” would be acceptable to them, but also noted a further potential discrepancy: in the drug and unfit guidelines the endorsement guidance is “consider disqualification or 10 points”; in excess alcohol it is 6-12 months disqualification.

Ultimately, the Council reflected that it had consulted on the sentence levels for being in charge with a specified drug over a specified limit drug in 2022, levels which were supported and agreed at the time. There was no justification for a difference between the levels in the guidelines, so the Council concluded it would bring the excess alcohol guideline into line with the others. The slight inconsistency identified by the MA could be justified, as being unfit and over the (zero tolerance) drug limit could cover a variety of levels of intoxication, where an alcohol breath reading of 120µg or over must objectively indicate serious impairment.

Speeding

The consultation sought views on reformatting the sentence table for Speeding (section 89 of the Road Traffic Regulation Act 1984) to read left to right in terms of severity. Most respondents were content with this. The MA were content but said that most guidelines have the most serious offending at the top, going down to least serious at the bottom. However, the speeding table starts at the circumstances where the speed limit is 20mph, going down to the circumstances where it is 70mph. The Council did not necessarily agree that violating a 70mph limit was inherently more serious than violating a 20mph one.

Use of mobile telephone

The Council consulted on raising the starting point for Use of a mobile phone while driving (section 41D of the 1988 Act) from a Band A to a Band B fine. This followed the increase in penalty points to be imposed for this offence from 3 to 6 in 2017. Most respondents were in agreement with the increase; indeed several suggested a Band C starting point (i.e. 150% of relevant weekly income, range of 125% to 175%) was more appropriate. Others suggested automatic disqualification of three months and an “awareness test”.

Some responses highlighted that this was just a starting point and considered that higher fine levels could be provided for repeat offences. The MA thought a note could mention that aggravating features such as busy traffic and pedestrians present would increase that starting point. Looking across to the Careless driving guideline, any example of “carrying out other tasks while driving” will result in a Band B starting point, with injury, damage, or a high level of traffic/pedestrians increasing that to Band C, so the Council agreed with the MA’s logic.

The only other summary motoring offences in the group for which a fine or discharge is appropriate that carry a Band C starting point are driving in reverse or the wrong way on the motorway, or making a u-turn on the motorway. The Council did not think that the “default” starting point for this offending should merit a Band C fine, but did see the argument for such a starting point in particularly serious situations. It will therefore add

“A Band C fine may be appropriate where there was a high level of traffic or pedestrians in vicinity; or for a repeat offence”

to the special considerations column in this guideline.

List of respondents

Action Vision Zero

Better Streets for Birmingham – Safe Streets Now

CPS

HHJ Rebecca Crane

Criminal Law Solicitors' Association

Criminal Sub-Committee of HM Council of Circuit Judges

HM Council of District Judges

Justices Clerks Society

Professor Sally Kyd

London Criminal Courts Solicitors' Association

Magistrates Association

Ministry of Justice

Push Bikes – the Birmingham Cycle Campaign

Senior District Judge of England and Wales

Suffolk Magistrate Bench

Walk Ride Greater Manchester

Warwickshire Road Safety Partnership

39 members of the public

11 individual magistrates

Individual legal adviser

The Office of the Sentencing Council, EB12–16, Royal Courts of Justice, Strand, London WC2A 2LL

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