Sentencing Guidelines Council

Causing Death by Driving

Definitive Guideline

FOREWORD

In accordance with section 170(9) of the Criminal Justice Act (CJA) 2003, the Sentencing Guidelines Council issues this guideline as a definitive guideline.

By virtue of section 172 of the CJA 2003, every court must have regard to a relevant guideline. This guideline applies to the sentencing of offenders convicted of any of the offences dealt with herein who are sentenced on or after **4 August 2008**.

This guideline applies only to the sentencing of offenders aged 18 and older. The legislative provisions relating to the sentencing of youths are different; the younger the age, the greater the difference. A separate guideline setting out general principles relating to the sentencing of youths is planned.

The Council has appreciated the work of the Sentencing Advisory Panel in preparing the advice on which this guideline is based and is grateful to those who responded to the consultation of both the Panel and Council.

The advice and this guideline are available on www.sentencing-guidelines.gov.uk or can be obtained from the Sentencing Guidelines Secretariat at 4th Floor, 8–10 Great George Street, London SW1P 3AE.

A summary of the responses to the Council's consultation also appears on the website.

Chairman of the Council
July 2008

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CAUSING DEATH BY DRIVING

Introduction

1. This guideline applies to the four offences of *causing death by dangerous driving, causing death by driving under the influence of alcohol or drugs, causing death by careless driving and causing death by driving: unlicensed, disqualified or uninsured drivers*.

2. The Crown Prosecution Service's *Policy for Prosecuting Cases of Bad Driving* sets out the approach for prosecutors when considering the appropriate charge based on an assessment of the standard of the offender's driving. This has been taken into account when formulating this guideline. Annex A sets out the statutory definitions for dangerous, careless and inconsiderate driving together with examples of the types of driving behaviour likely to result in the charge of one offence rather than another.

3. Because the principal harm done by these offences (the death of a person) is an element of the offence, the factor that primarily determines the starting point for sentence is the culpability of the offender. Accordingly, for all offences other than *causing death by driving: unlicensed, disqualified or uninsured drivers*, the central feature should be an evaluation of the quality of the driving involved and the degree of danger that it foreseeably created. These guidelines draw a distinction between those factors of an offence that are intrinsic to the quality of driving (referred to as "determinants of seriousness") and those which, while they aggravate the offence, are not.

4. The levels of seriousness in the guidelines for those offences based on dangerous or careless driving alone have been determined by reference only to determinants of seriousness. Aggravating factors will have the effect of either increasing the starting point within the sentencing range provided or, in certain circumstances, of moving the offence up to the next sentencing range.[1] The outcome will depend on both the number of aggravating factors present and the potency of those factors. Thus, the same outcome could follow from the presence of one particularly bad aggravating factor or two or more less serious factors.

5. The determinants of seriousness likely to be relevant in relation to *causing death by careless driving under the influence* are both the degree of carelessness and the level of intoxication. The guideline sets out an approach to assessing both those aspects but giving greater weight to the degree of intoxication since Parliament has provided for a maximum of 14 years imprisonment rather than the maximum of 5 years where the death is caused by careless driving only.

6. Since there will be no allegation of bad driving, the guideline for *causing death by driving; unlicensed, disqualified or uninsured drivers* links the assessment of offender culpability to the nature of the prohibition on the offender's driving and includes a list of factors that may aggravate an offence.

7. The degree to which an aggravating factor is present (and its interaction with any other aggravating and mitigating factors) will be immensely variable and the court is best placed to judge the appropriate impact on sentence. Clear identification of those factors relating to the standard of driving as the initial determinants of offence seriousness is intended to assist the adoption of a common approach.

[1] See page 8 for a description of the meaning of range, starting point etc. in the context of these guidelines.

A. Assessing seriousness

(i) Determinants of seriousness

8. There are five factors that may be regarded as determinants of offence seriousness, each of which can be demonstrated in a number of ways. Common examples of each of the determinants are set out below and key issues are discussed in the text that follows in paragraphs 10–18.

Examples of the determinants are:

- **Awareness of risk**

(a) a prolonged, persistent and deliberate course of very bad driving

- **Effect of alcohol or drugs**

(b) consumption of alcohol above the legal limit

(c) consumption of alcohol at or below the legal limit where this impaired the offender's ability to drive

(d) failure to supply a specimen for analysis

(e) consumption of illegal drugs, where this impaired the offender's ability to drive

(f) consumption of legal drugs or medication where this impaired the offender's ability to drive (including legal medication known to cause drowsiness) where the driver knew, or should have known, about the likelihood of impairment

- **Inappropriate speed of vehicle**

(g) greatly excessive speed; racing; competitive driving against another vehicle

(h) driving above the speed limit

(i) driving at a speed that is inappropriate for the prevailing road or weather conditions

(j) driving a PSV, HGV or other goods vehicle at a speed that is inappropriate either because of the nature of the vehicle or its load, especially when carrying passengers

- **Seriously culpable behaviour of offender**

(k) aggressive driving (such as driving much too close to the vehicle in front, persistent inappropriate attempts to overtake, or cutting in after overtaking)

(l) driving while using a hand-held mobile phone

(m) driving whilst the driver's attention is avoidably distracted, for example by reading or adjusting the controls of electronic equipment such as a radio, hands-free mobile phone or satellite navigation equipment

(n) driving when knowingly suffering from a medical or physical condition that significantly impairs the offender's driving skills, including failure to take prescribed medication

(o) driving when knowingly deprived of adequate sleep or rest, especially where commercial concerns had a bearing on the commission of the offence

(p) driving a poorly maintained or dangerously loaded vehicle, especially where commercial concerns had a bearing on the commission of the offence

- **Victim**

(q) failing to have proper regard to vulnerable road users

9. Issues relating to the determinants of seriousness are considered below.

(a) Alcohol/drugs

10. For those offences where the presence of alcohol or drugs is not an element of the offence, where there is sufficient evidence of driving impairment attributable to alcohol or drugs, the consumption of alcohol or drugs prior to driving will make an offence more serious. Where the drugs were legally purchased or prescribed, the offence will only be regarded as more serious if the offender knew or should have known that the drugs were likely to impair driving ability.

11. Unless inherent in the offence or charged separately, failure to provide a specimen for analysis (or to allow a blood specimen taken without consent to be analysed) should be regarded as a determinant of offence seriousness.

12. Where it is established to the satisfaction of the court that an offender had consumed alcohol or drugs unwittingly before driving, that may be regarded as a mitigating factor. However, consideration should be given to the circumstances in which the offender decided to drive or continue to drive when driving ability was impaired.

(b) Avoidable distractions

13. A distinction has been drawn between **ordinary** avoidable distractions and those that are more significant because they divert the attention of the driver for longer periods or to a greater extent; in this guideline these are referred to as a **gross** avoidable distraction. The guideline for *causing death by dangerous driving* provides for a gross avoidable distraction to place the offence in a higher level of seriousness.

14. Any avoidable distraction will make an offence more serious but the degree to which an offender's driving will be impaired will vary. Where the reaction to the distraction is significant, it may be the factor that determines whether the offence is based on *dangerous* driving or on *careless* driving; in those circumstances, care must be taken to avoid "double counting".

15. Using a hand-held mobile phone when driving is, in itself, an unlawful act; the fact that an offender was avoidably distracted by using a hand-held mobile phone when a causing death by driving offence was committed will always make an offence more serious. Reading or composing text messages *over a period of time* will be a *gross* avoidable distraction and is likely to result in an offence of causing death by dangerous driving being in a higher level of seriousness.

16. Where it is proved that an offender was briefly distracted by reading a text message or adjusting a hands-free set or its controls at the time of the collision, this would be on a par with consulting a map or adjusting a radio or satellite navigation equipment, activities that would be considered an avoidable distraction.

(c) Vulnerable road users

17. Cyclists, motorbike riders, horse riders, pedestrians and those working in the road are vulnerable road users and a driver is expected to take extra care when driving near them. Driving too close to a bike or horse; allowing a vehicle to mount the pavement; driving into a cycle lane; and driving without the care needed in the vicinity of a pedestrian crossing, hospital, school or residential home, are all examples of factors that should be taken into account when determining the seriousness of an offence. See paragraph 24 below for the approach where the actions of another person contributed to the collision.

18. The fact that the victim of a causing death by driving offence was a particularly vulnerable road user is a factor that should be taken into account when determining the seriousness of an offence.

(ii) Aggravating and mitigating factors

(a) More than one person killed

19. The seriousness of any offence included in these guidelines will generally be greater where more than one person is killed since it is inevitable that the degree of harm will be greater. In relation to the assessment of culpability, whilst there will be circumstances in which a driver could reasonably anticipate the possible death of more than one person (for example, the driver of a vehicle with passengers (whether that is a bus, taxi or private car) or a person driving badly in an area where there are many people), there will be many circumstances where the driver could not anticipate the number of people who would be killed.

20. The greater obligation on those responsible for driving other people is not an element essential to the quality of the driving and so has not been included amongst the determinants of seriousness that affect the choice of sentencing range. In practical terms, separate charges are likely to be brought in relation to each death caused. Although concurrent sentences are likely to be imposed (in recognition of the fact that the charges relate to one episode of offending behaviour), each individual sentence is likely to be higher because the offence is aggravated by the fact that more than one death has been caused.

21. Where more than one person is killed, that will aggravate the seriousness of the offence because of the increase in harm. Where the number of people killed is high and that was reasonably foreseeable, the number of deaths is likely to provide sufficient justification for moving an offence into the next highest sentencing band.

(b) Effect on offender

22. Injury to the offender may be a mitigating factor when the offender has suffered very serious injuries. In most circumstances, the weighting it is given will be dictated by the circumstances of the offence and the effect should bear a direct relationship to the extent to which the offender's driving was at fault – the greater the fault, the less the effect on mitigation; this distinction will be of particular relevance where an offence did not involve any fault in the offender's standard of driving.

23. Where one or more of the victims was in a close personal or family relationship with the offender, this may be a mitigating factor. In line with the approach where the offender is very seriously injured, the degree to which the relationship influences the sentence should be linked to offender culpability in relation to the commission of the offence; mitigation for this reason is likely to have less effect where the culpability of the driver is particularly high.

(c) Actions of others

24. Where the actions of the victim or a third party contributed to the commission of an offence, this should be acknowledged and taken into account as a mitigating factor.

(d) Offender's age/lack of driving experience

25. The Council guideline *Overarching Principles: Seriousness*[2] includes a generic mitigating factor *"youth or age, where it affects the responsibility of the individual defendant"*. There is a great deal of difference between recklessness or irresponsibility – which may be due to youth – and inexperience in dealing with prevailing conditions or an unexpected or unusual situation that presents itself – which may be present regardless of the age of the offender. The fact that an offender's lack of driving experience contributed to the commission of an offence should be treated as a mitigating factor; in this regard, the age of the offender is not relevant.

(iii) Personal mitigation

(a) Good driving record

26. This is not a factor that automatically should be treated as a mitigating factor, especially now that the presence of previous convictions is a statutory aggravating factor. However, any evidence to show that an offender has previously been an exemplary driver, for example having driven an ambulance, police vehicle, bus, taxi or similar vehicle conscientiously and without incident for many years, is a fact that the courts may well wish to take into account by way of personal mitigation. This is likely to have even greater effect where the driver is driving on public duty (for example, on ambulance, fire services or police duties) and was responding to an emergency.

(b) Conduct after the offence

– Giving assistance at the scene

27. There may be many reasons why an offender does not offer help to the victims at the scene – the offender may be injured, traumatised by shock, afraid of causing further injury or simply have no idea what action to take – and it would be inappropriate to assess the offence as more serious on this ground (and so increase the level of sentence). However, where an offender gave direct, positive, assistance to victim(s) at the scene of a collision, this should be regarded as personal mitigation.

– Remorse

28. Whilst it can be expected that anyone who has caused death by driving would be expected to feel remorseful, this cannot undermine its importance for sentencing purposes. Remorse is identified as personal mitigation in the Council guideline[3] and the Council can see no reason for it to be treated differently for this group of offences. It is for the court to determine whether an expression of remorse is genuine; where it is, this should be taken into account as personal mitigation.

(c) Summary

29. Evidence that an offender is normally a careful and conscientious driver, giving direct, positive assistance to a victim and genuine remorse may be taken into account as personal mitigation and may justify a reduction in sentence.

[2] *Overarching Principles: Seriousness*, paragraph 1.25, published 16 December 2004, www.sentencing-guidelines.gov.uk
[3] ibid., paragraph 1.27

B. Ancillary orders

(i) Disqualification for driving

30. For each offence, disqualification is a mandatory part of the sentence (subject to the usual (very limited) exceptions), and therefore an important element of the overall punishment for the offence. In addition, an order that the disqualification continues until the offender passes an extended driving test order is compulsory[4] for those convicted of causing death by dangerous driving or by careless driving when under the influence, and discretionary[5] in relation to the two other offences.

31. Any disqualification is effective from the date on which it is imposed. When ordering disqualification from driving, the duration of the order should allow for the length of any custodial period in order to ensure that the disqualification has the desired impact. In principle, the minimum period of disqualification should either equate to the length of the custodial sentence imposed (in the knowledge that the offender is likely to be released having served half of that term), or the relevant statutory minimum disqualification period, whichever results in the longer period of disqualification.

(ii) Deprivation order

32. A general sentencing power exists which enables courts to deprive an offender of property used for the purposes of committing an offence.[6] A vehicle used to commit an offence included in this guideline can be regarded as being used for the purposes of committing the offence.

4 Road Traffic Offenders Act 1988, s.36(1)
5 ibid., s.36(4)
6 Powers of Criminal Courts (Sentencing) Act 2000, s.143

C. Sentencing ranges and starting points

1. Typically, a guideline will apply to an offence that can be committed in a variety of circumstances with different levels of seriousness. It will apply to a "*first time offender*" who has been **convicted after a trial**. Within the guidelines, a "*first time offender*" is a person who does not have a conviction which, by virtue of section 143(2) of the Criminal Justice Act 2003, must be treated as an aggravating factor.

2. As an aid to consistency of approach, the guideline describes a number of levels or types of activity which would fall within the broad definition of the offence.

3. The expected approach is for a court to identify the description that most nearly matches the particular facts of the offence for which sentence is being imposed. This will identify a **starting point** from which the sentencer can depart to reflect aggravating or mitigating factors affecting the seriousness of the offence (beyond those contained within the column describing the nature of the offence) to reach a **provisional sentence**.

4. The **sentencing range** is the bracket into which the provisional sentence will normally fall after having regard to factors which aggravate or mitigate the seriousness of the offence. The particular circumstances may, however, make it appropriate that the provisional sentence falls outside the range.

5. Where the offender has previous convictions which aggravate the seriousness of the current offence, that may take the provisional sentence beyond the range given particularly where there are significant other aggravating factors present.

6. Once the provisional sentence has been identified by reference to those factors affecting the seriousness of the offence, the court will take into account any relevant factors of personal mitigation, which may take the sentence beyond the range given.

7. Where there has been a guilty plea, any reduction attributable to that plea will be applied to the sentence at this stage. This reduction may take the sentence below the range provided.

8. A court must give its reasons for imposing a sentence of a different kind or outside the range provided in the guidelines.

The decision making process

The process set out below is intended to show that the sentencing approach for offences of causing death by driving is fluid and requires the structured exercise of discretion.

1. Identify Dangerous Offenders

Offences under s.1 and s.3A of the Road Traffic Act 1988 are specified offences for the purposes of the public protection provisions in the 2003 Act (as amended). The court must determine whether there is a significant risk of serious harm by the commission of a further specified offence. The starting points in the guidelines are a) for offenders for whom a sentence under the public protection provisions is not appropriate and b) as the basis for the setting of a minimum term within an indeterminate sentence under those provisions.

2. Identify the appropriate starting point

Identify the level or description that most nearly matches the particular facts of the offence for which sentence is being imposed.

3. Consider relevant aggravating factors, both general and those specific to the type of offence

This may result in a sentence level being identified that is higher than the suggested starting point, sometimes substantially so.

4. Consider mitigating factors and personal mitigation

There may be general or offence specific mitigating factors and matters of personal mitigation which could result in a sentence that is lower than the suggested starting point (possibly substantially so), or a sentence of a different type.

5. Reduction for guilty plea

The court will then apply any reduction for a guilty plea following the approach set out in the Council's Guideline "Reduction in Sentence for a Guilty Plea" (revised July 2007).

6. Consider ancillary orders

The court should consider whether ancillary orders are appropriate or necessary.

7. The totality principle

The court should review the total sentence to ensure that it is proportionate to the offending behaviour and properly balanced.

8. Reasons

When a court moves from the suggested starting points and sentencing ranges identified in the guidelines, it should explain its reasons for doing so.

D. Offence guidelines

Causing death by dangerous driving

Factors to take into consideration

1. The following guideline applies to a *"first-time offender"* aged 18 or over convicted after trial (see page 8 above), who has **not** been assessed as a dangerous offender requiring a sentence under ss. 224-228 Criminal Justice Act 2003 (as amended).

2. When assessing the seriousness of any offence, the court must always refer to the full list of aggravating and mitigating factors in the Council guideline on Seriousness[7] as well as those set out in the adjacent table as being particularly relevant to this type of offending behaviour.

3. **Levels of seriousness**

   The 3 levels are distinguished by factors related predominantly to the standard of driving; the general description of the degree of risk is complemented by examples of the type of bad driving arising. The presence of aggravating factors or combinations of a small number of determinants of seriousness will increase the starting point within the range. Where there is a larger group of determinants of seriousness and/or aggravating factors, this may justify moving the starting point to the next level.

   Level 1 – The most serious offences encompassing driving that involved a deliberate decision to ignore (or a flagrant disregard for) the rules of the road and an apparent disregard for the great danger being caused to others. Such offences are likely to be characterised by:

   - A prolonged, persistent and deliberate course of very bad driving **AND/OR**
   - Consumption of substantial amounts of alcohol or drugs leading to gross impairment **AND/OR**
   - A group of determinants of seriousness which in isolation or smaller number would place the offence in level 2

   Level 1 is that for which the increase in maximum penalty was aimed primarily. Where an offence involves both of the determinants of seriousness identified, particularly if accompanied by aggravating factors such as multiple deaths or injuries, or a very bad driving record, this may move an offence towards the top of the sentencing range.

   Level 2 – This is driving that created a *substantial* risk of danger and is likely to be characterised by:

   - Greatly excessive speed, racing or competitive driving against another driver **OR**
   - Gross avoidable distraction such as reading or composing text messages over a period of time **OR**
   - Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs, failing to take prescribed medication or as a result of a known medical condition **OR**
   - A group of determinants of seriousness which in isolation or smaller number would place the offence in level 3

   Level 3 – This is driving that created a *significant* risk of danger and is likely to be characterised by:

   - Driving above the speed limit/at a speed that is inappropriate for the prevailing conditions **OR**
   - Driving when knowingly deprived of adequate sleep or rest or knowing that the vehicle has a dangerous defect or is poorly maintained or is dangerously loaded **OR**
   - A brief but obvious danger arising from a seriously dangerous manoeuvre **OR**
   - Driving whilst avoidably distracted **OR**
   - Failing to have proper regard to vulnerable road users

   The starting point and range overlap with Level 2 is to allow the breadth of discretion necessary to accommodate circumstances where there are significant aggravating factors.

4. Sentencers should take into account relevant matters of personal mitigation; see in particular guidance on **good driving record, giving assistance at the scene** and **remorse** in paragraphs 26-29 above.

[7] *Overarching Principles: Seriousness*, published 16 December 2004, www.sentencing-guidelines.gov.uk

Causing death by dangerous driving

Road Traffic Act 1988 (section 1)

THIS IS A SERIOUS OFFENCE FOR THE PURPOSES OF SECTION 224 CRIMINAL JUSTICE ACT 2003

Maximum penalty: 14 years imprisonment
minimum disqualification of 2 years with compulsory extended re-test

Nature of offence	Starting point	Sentencing range
Level 1 The most serious offences encompassing driving that involved a deliberate decision to ignore (or a flagrant disregard for) the rules of the road and an apparent disregard for the great danger being caused to others	**8 years custody**	**7–14 years custody**
Level 2 Driving that created a *substantial* risk of danger	**5 years custody**	**4–7 years custody**
Level 3 Driving that created a *significant* risk of danger *[Where the driving is markedly less culpable than for this level, reference should be made to the starting point and range for the most serious level of causing death by careless driving]*	**3 years custody**	**2–5 years custody**

Additional aggravating factors	Additional mitigating factors
1. Previous convictions for motoring offences, particularly offences that involve bad driving or the consumption of excessive alcohol or drugs before driving 2. More than one person killed as a result of the offence 3. Serious injury to one or more victims, in addition to the death(s) 4. Disregard of warnings 5. Other offences committed at the same time, such as driving other than in accordance with the terms of a valid licence; driving while disqualified; driving without insurance; taking a vehicle without consent; driving a stolen vehicle 6. The offender's irresponsible behaviour such as failing to stop, falsely claiming that one of the victims was responsible for the collision, or trying to throw the victim off the car by swerving in order to escape 7. Driving off in an attempt to avoid detection or apprehension	1. Alcohol or drugs consumed unwittingly 2. Offender was seriously injured in the collision 3. The victim was a close friend or relative 4. Actions of the victim or a third party contributed significantly to the likelihood of a collision occurring and/or death resulting 5. The offender's lack of driving experience contributed to the commission of the offence 6. The driving was in response to a proven and genuine emergency falling short of a defence

Causing death by careless driving when under the influence of drink or drugs or having failed without reasonable excuse either to provide a specimen for analysis or to permit the analysis of a blood sample

Factors to take into consideration

1. The following guideline applies to a *"first-time offender"* aged 18 or over convicted after trial (see page 8 above), who has **not** been assessed as a dangerous offender requiring a sentence under ss. 224-228 Criminal Justice Act 2003 (as amended).

2. When assessing the seriousness of any offence, the court must always refer to the full list of aggravating and mitigating factors in the Council guideline on Seriousness[8] as well as those set out on the facing page as being particularly relevant to this type of offending behaviour.

3. This offence can be committed through:

   (i) being unfit to drive through drink or drugs;

   (ii) having consumed so much alcohol as to be over the prescribed limit;

   (iii) failing without reasonable excuse to provide a specimen for analysis within the timescale allowed; or

   (iv) failing without reasonable excuse to permit the analysis of a blood sample taken when incapable of giving consent.

4. In comparison with c*ausing death by dangerous driving*, the level of culpability in the actual manner of driving is lower but that culpability is increased in all cases by the fact that the offender has driven after consuming drugs or an excessive amount of alcohol. Accordingly, there is considerable parity in the levels of seriousness with the deliberate decision to drive after consuming alcohol or drugs aggravating the *careless* standard of driving onto a par with *dangerous* driving.

5. The fact that the offender was under the influence of drink or drugs is an inherent element of this offence. For discussion on the significance of driving after having consumed drink or drugs, see paragraphs 10-12 above.

6. The guideline is based both on the level of alcohol or drug consumption and on the degree of carelessness.

7. The increase in sentence is more marked where there is an increase in the level of intoxication than where there is an increase in the degree of carelessness reflecting the 14 year imprisonment maximum for this offence compared with a 5 year maximum for causing death by careless or inconsiderate driving alone.

8. A refusal to supply a specimen for analysis may be a calculated step by an offender to avoid prosecution for driving when having consumed in excess of the prescribed amount of alcohol, with a view to seeking to persuade the court that the amount consumed was relatively small. A court is entitled to draw adverse inferences from a refusal to supply a specimen without reasonable excuse and should treat with caution any attempt to persuade the court that only a limited amount of alcohol had been consumed.[9] The three levels of seriousness where the offence has been committed in this way derive from the classification in the Magistrates' Court Sentencing Guidelines.

9. Sentencers should take into account relevant matters of personal mitigation; see in particular guidance on **good driving record, giving assistance at the scene** and **remorse** in paragraphs 26-29 above.

[8] *Overarching Principles: Seriousness*, published 16 December 2004, www.sentencing-guidelines.gov.uk

[9] *Attorney-General's Reference No. 21 of 2000* [2001] 1 Cr App R (S) 173

Causing death by careless driving when under the influence of drink or drugs or having failed either to provide a specimen for analysis or to permit analysis of a blood sample

Road Traffic Act 1988 (section 3A)

THIS IS A SERIOUS OFFENCE FOR THE PURPOSES OF SECTION 224 CRIMINAL JUSTICE ACT 2003

Maximum penalty: 14 years imprisonment; minimum disqualification of 2 years with compulsory extended re-test

The legal limit of alcohol is 35μg breath (80mg in blood and 107mg in urine)	**Careless/ inconsiderate driving arising from momentary inattention with no aggravating factors**	**Other cases of careless/ inconsiderate driving**	**Careless/ inconsiderate driving falling not far short of dangerousness**
71μ or above of alcohol/ high quantity of drugs OR deliberate non-provision of specimen where evidence of serious impairment	**Starting point:** 6 years custody **Sentencing range:** 5–10 years custody	**Starting point:** 7 years custody **Sentencing range:** 6–12 years custody	**Starting point:** 8 years custody **Sentencing range:** 7–14 years custody
51–70 μg of alcohol/ moderate quantity of drugs OR deliberate non-provision of specimen	**Starting point:** 4 years custody **Sentencing range:** 3–7 years custody	**Starting point:** 5 years custody **Sentencing range:** 4–8 years custody	**Starting point:** 6 years custody **Sentencing range:** 5–9 years custody
35–50 μg of alcohol/minimum quantity of drugs OR test refused because of honestly held but unreasonable belief	**Starting point:** 18 months custody **Sentencing range:** 26 weeks–4 years custody	**Starting point:** 3 years custody **Sentencing range:** 2–5 years custody	**Starting point:** 4 years custody **Sentencing range:** 3–6 years custody

Additional aggravating factors	**Additional mitigating factors**
1. Other offences committed at the same time, such as driving other than in accordance with the terms of a valid licence; driving while disqualified; driving without insurance; taking a vehicle without consent; driving a stolen vehicle 2. Previous convictions for motoring offences, particularly offences that involve bad driving or the consumption of excessive alcohol before driving 3. More than one person was killed as a result of the offence 4. Serious injury to one or more persons in addition to the death(s) 5. Irresponsible behaviour such as failing to stop or falsely claiming that one of the victims was responsible for the collision	1. Alcohol or drugs consumed unwittingly 2. Offender was seriously injured in the collision 3. The victim was a close friend or relative 4. The actions of the victim or a third party contributed significantly to the likelihood of a collision occurring and/or death resulting 5. The driving was in response to a proven and genuine emergency falling short of a defence

Causing death by careless or inconsiderate driving

Factors to take into consideration

1. The following guideline applies to a *"first-time offender"* aged 18 or over convicted after trial (see page 8 above).

2. When assessing the seriousness of any offence, the court must always refer to the full list of aggravating and mitigating factors in the Council guideline on Seriousness[10] as well as those set out in the table below as being particularly relevant to this type of offending behaviour.

3. The maximum penalty on indictment is 5 years imprisonment. The offence is triable either way and, in a magistrates' court, statute provides that the maximum sentence is 12 months imprisonment; this will be revised to 6 months imprisonment until such time as the statutory provisions increasing the sentencing powers of a magistrates' court are implemented.[11]

4. Disqualification of the offender from driving and endorsement of the offender's driving licence are mandatory, and the offence carries between 3 and 11 penalty points when the court finds special reasons for not imposing disqualification. There is a discretionary power[12] to order an extended driving test where a person is convicted of this offence.

5. Since the maximum sentence has been set at 5 years imprisonment, the sentence ranges are generally lower for this offence than for the offences of *causing death by dangerous driving* or *causing death by careless driving under the influence*, for which the maximum sentence is 14 years imprisonment. However, it is unavoidable that some cases will be on the borderline between *dangerous* and *careless* driving, or may involve a number of factors that significantly increase the seriousness of an offence. As a result, the guideline for this offence identifies three levels of seriousness, the range for the highest of which overlaps with ranges for the lowest level of seriousness for *causing death by dangerous driving*.

6. The three levels of seriousness are defined by the degree of carelessness involved in the standard of driving. The most serious level for this offence is where the offender's driving fell *not that far short of dangerous*. The least serious group of offences relates to those cases where the level of culpability is low – for example in a case involving an offender who misjudges the speed of another vehicle, or turns without seeing an oncoming vehicle because of restricted visibility. Other cases will fall into the intermediate level.

7. The starting point for the most serious offence of *causing death by careless driving* is lower than that for the least serious offence of *causing death by dangerous driving* in recognition of the different standards of driving behaviour. However, the range still leaves scope, within the 5 year maximum, to impose longer sentences where the case is particularly serious.

[10] *Overarching Principles: Seriousness*, published 16 December 2004, www.sentencing-guidelines.gov.uk
[11] Criminal Justice Act 2003, ss.154(1) and 282; Road Safety Act 2006, s.61(5)
[12] Road Traffic Offenders Act 1988, s.36(4)

8. Where the level of carelessness is low and there are no aggravating factors, even the fact that death was caused is not sufficient to justify a prison sentence.

9. A fine is unlikely to be an appropriate sentence for this offence; where a non-custodial sentence is considered appropriate, this should be a community order. The nature of the requirements will be determined by the purpose[13] identified by the court as of primary importance. Requirements most likely to be relevant include unpaid work requirement, activity requirement, programme requirement and curfew requirement.

10. Sentencers should take into account relevant matters of personal mitigation; see in particular guidance on **good driving record, giving assistance at the scene** and **remorse** in paragraphs 26-29 above.

Causing death by careless or inconsiderate driving

Road Traffic Act 1988 (section 2B)

Maximum penalty: 5 years imprisonment
minimum disqualification of 12 months, discretionary re-test

Nature of offence	Starting Point	Sentencing range
Careless or inconsiderate driving falling not far short of dangerous driving	**15 months custody**	**36 weeks–3 years custody**
Other cases of careless or inconsiderate driving	**36 weeks custody**	**Community order (HIGH)–2 years custody**
Careless or inconsiderate driving arising from momentary inattention with no aggravating factors	**Community order (MEDIUM)**	**Community order (LOW)–Community order (HIGH)**

Additional aggravating factors	Additional mitigating factors
1. Other offences committed at the same time, such as driving other than in accordance with the terms of a valid licence; driving while disqualified; driving without insurance; taking a vehicle without consent; driving a stolen vehicle 2. Previous convictions for motoring offences, particularly offences that involve bad driving 3. More than one person was killed as a result of the offence 4. Serious injury to one or more persons in addition to the death(s) 5. Irresponsible behaviour, such as failing to stop or falsely claiming that one of the victims was responsible for the collision	1. Offender was seriously injured in the collision 2. The victim was a close friend or relative 3. The actions of the victim or a third party contributed to the commission of the offence 4. The offender's lack of driving experience contributed significantly to the likelihood of a collision occurring and/or death resulting 5. The driving was in response to a proven and genuine emergency falling short of a defence

[13] Criminal Justice Act 2003, s.142(1)

Causing death by driving: unlicensed, disqualified or uninsured drivers

Factors to take into consideration

1. The following guideline applies to a *"first-time offender"* aged 18 or over convicted after trial (see page 8 above). An offender convicted of causing death by driving whilst disqualified will always have at least one relevant previous conviction for the offence that resulted in the disqualification. The starting point and range take this into account; any other previous convictions should be considered in the usual way.

2. When assessing the seriousness of any offence, the court must always refer to the full list of aggravating and mitigating factors in the Council guideline on Seriousness[14] as well as those set out in the table below as being particularly relevant to this type of offending behaviour.

3. This offence has a maximum penalty of 2 years imprisonment and is triable either way. In a magistrates' court, statute provides that the maximum sentence is 12 months imprisonment; this will be revised to 6 months imprisonment until such time as the statutory provisions increasing the sentencing powers of a magistrates' court are implemented.[15]

4. Disqualification of the offender from driving and endorsement of the offender's driving licence are mandatory, and the offence carries between 3 and 11 penalty points when the court finds special reasons for not imposing disqualification. There is a discretionary power[16] to order an extended driving test where a person is convicted of this offence.

5. Culpability arises from the offender driving a vehicle on a road or other public place when, by law, not allowed to do so; the offence does not require proof of any fault in the standard of driving.

6. Because of the significantly lower maximum penalty, the sentencing ranges are considerably lower than for the other three offences covered in this guideline; many cases may be sentenced in a magistrates' court, particularly where there is an early guilty plea.

7. A fine is unlikely to be an appropriate sentence for this offence; where a non-custodial sentence is considered appropriate, this should be a community order.

8. Since driving whilst disqualified is more culpable than driving whilst unlicensed or uninsured, a higher starting point is proposed when the offender was disqualified from driving at the time of the offence.

9. Being uninsured, unlicensed or disqualified are the only determinants of seriousness for this offence, as there are no factors relating to the standard of driving. The list of aggravating factors identified is slightly different as the emphasis is on the decision to drive by an offender who is not permitted by law to do so.

[14] *Overarching Principles: Seriousness*, published 16 December 2004, www.sentencing-guidelines.gov.uk
[15] Criminal Justice Act 2003, ss.154(1) and 282; Road Safety Act 2006, s.61(5)
[16] Road Traffic Offenders Act 1988, s.36(4)

10. In some cases, the extreme circumstances that led an offender to drive whilst unlicensed, disqualified or uninsured may result in a successful defence of 'duress of circumstances.'[17] In less extreme circumstances, where the *decision to drive was brought about by a genuine and proven emergency*, that may mitigate offence seriousness and so it is included as an additional mitigating factor.

11. A driver may hold a reasonable belief in relation to the validity of insurance (for example having just missed a renewal date or relied on a third party to make an application) and also the validity of a licence (for example incorrectly believing that a licence covered a particular category of vehicle). In light of this, an additional mitigating factor covers those situations where an offender genuinely believed that there was valid insurance or a valid licence.

12. Sentencers should take into account relevant matters of personal mitigation; see in particular guidance on **good driving record, giving assistance at the scene** and **remorse** in paragraphs 26-29 above.

Causing death by driving: unlicensed, disqualified or uninsured drivers

Road Traffic Act 1988 (section 3ZB)

Maximum penalty: 2 years imprisonment
minimum disqualification of 12 months, discretionary re-test

Nature of offence	Starting point	Sentencing range
The offender was disqualified from driving **OR** The offender was unlicensed or uninsured plus 2 or more aggravating factors from the list below	**12 months custody**	**36 weeks–2 years custody**
The offender was unlicensed or uninsured plus at least 1 aggravating factor from the list below	**26 weeks custody**	**Community order (HIGH)–36 weeks custody**
The offender was unlicensed or uninsured – no aggravating factors	**Community order (MEDIUM)**	**Community order (LOW)–Community order (HIGH)**

Additional aggravating factors	Additional mitigating factors
1. Previous convictions for motoring offences, whether involving bad driving or involving an offence of the same kind that forms part of the present conviction (i.e. unlicensed, disqualified or uninsured driving) 2. More than one person was killed as a result of the offence 3. Serious injury to one or more persons in addition to the death(s) 4. Irresponsible behaviour such as failing to stop or falsely claiming that someone else was driving	1. The decision to drive was brought about by a proven and genuine emergency falling short of a defence 2. The offender genuinely believed that he or she was insured or licensed to drive 3. The offender was seriously injured as a result of the collision 4. The victim was a close friend or relative

[17] In *DPP v Mullally* [2006] EWHC 3448 the Divisional Court held that the defence of necessity must be strictly controlled and that it must be proved that the actions of the defendant were reasonable in the given circumstances. See also *Hasan* [2005] UKHL 22

Annex A: DANGEROUS AND CARELESS DRIVING

Statutory definitions and examples

Dangerous driving

A person is to be regarded as driving dangerously if the standard of driving falls *far below* what would be expected of a competent and careful driver and it would be obvious to a competent and careful driver that driving in that way would be dangerous.

Examples of the types of driving behaviour likely to result in this offence being charged include:

- Aggressive driving (such as sudden lane changes or cutting into a line of vehicles) **or** Racing or competitive driving **or** Speed that is highly inappropriate for the prevailing road or traffic conditions
- Disregard of traffic lights and other road signs which, on an objective analysis, would appear to be deliberate
- Driving a vehicle knowing it has a dangerous defect or with a load which presents a danger to other road users
- Using a hand-held mobile phone or other hand-held electronic equipment when the driver was avoidably and dangerously distracted by that use
- Driving when too tired to stay awake or where the driver is suffering from impaired ability such as having an arm or leg in plaster, or impaired eyesight

Careless driving

Careless driving is driving that "falls *below* what would be expected of a competent and careful driver" and a person is to be regarded as driving without reasonable consideration for other persons "only if those persons are inconvenienced by his driving".[18]

Examples of the types of driving behaviour likely to result in an offence of *causing death by careless or inconsiderate driving* being charged are:

(i) Careless Driving

- overtaking on the inside or driving inappropriately close to another vehicle
- inadvertent mistakes such as driving through a red light or emerging from a side road into the path of another vehicle
- short distractions such as tuning a car radio

(ii) Inconsiderate Driving

- flashing of lights to force other drivers in front to give way
- misuse of any lane to avoid queuing or gain some other advantage over other drivers
- driving that inconveniences other road users or causes unnecessary hazards such as unnecessarily remaining in an overtaking lane, unnecessarily slow driving or braking without good cause, driving with un-dipped headlights which dazzle oncoming drivers or driving through a puddle causing pedestrians to be splashed

Depending on the circumstances, it is possible that some of the examples listed above could be classified as *dangerous* driving (see the revised CPS guidance). However, experience shows that these types of behaviour predominantly result in prosecution for *careless* driving.

A typical piece of *careless* driving may be that it is a momentary negligent error of judgement or a single negligent manoeuvre, so long as neither falls so far below the standard of the competent and careful driver as to amount to *dangerous* driving.

[18] 1988 Act, s.3ZA as inserted by the Road Safety Act 2006

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