

Sentencing Council meeting:
Paper number:

19 November 2021
SC(21)NOV02 – Motoring offences
causing death or injury

Lead Council member:
Lead official:

Rebecca Crane
Lisa Frost
0207 071 5784

1 ISSUE

1.1 This meeting will ask the Council to consider issues relating to the timescale of the motoring project and ask if the scope of the project should be revised. Further consideration of step one and step two factors for careless driving offences will also be undertaken. Finally, the Council will be asked to confirm the approach to assessing seriousness of causing death by careless driving under the influence.

2 RECOMMENDATION

2.1 The Council is asked to:

- Consider and agree to revise the scope of the motoring project;
- Consider and agree step one and two factors for careless driving offences causing death and serious injury and;
- Consider and confirm the approach to assessing culpability in offences of causing death by careless driving under the influence.

3 CONSIDERATION

3.1 The scope of the motoring project currently includes fifteen guidelines, and it was initially envisaged that more resources would be allocated to development of the guidelines. However, this has not been possible and it is not possible to achieve the current timescale for developing the guidelines with the resources available. The Council is asked to consider a proposal to detach some offences from the project.

3.2 At the last meeting the Council began consideration of step one and two factors for revised guidelines for careless driving offences. It was agreed that further consideration of these would be undertaken at this meeting. The Council is asked to consider revised factors.

3.3 Finally, the Council will be asked to consider the approach to assessing seriousness for the offence of careless driving under the influence to inform development of this guideline. Specifically, the Council is asked to consider if the approach in the existing guideline should be maintained before further work is undertaken to develop this guideline.

Scope of project

3.4 The Council agreed the scope of the Motoring project at the June meeting. It was agreed that fifteen offences should be included, as well as consideration of whether improved drug driving guidance could be developed. The offences within scope are as follows:

1. Dangerous driving
2. Causing death by dangerous driving
3. Causing death by careless driving
4. Causing death by careless driving under the influence of drink or drugs
5. Causing death by driving whilst unlicensed or uninsured
6. Causing death by driving whilst disqualified
7. Causing serious injury by dangerous driving
8. Causing serious injury by careless driving (new offence)
9. Causing serious injury by driving whilst disqualified
10. Wanton and furious driving
11. Aggravated vehicle taking without consent – death caused
12. Aggravated vehicle taking without consent – injury caused
13. Aggravated vehicle taking without consent – dangerous driving
14. Aggravated vehicle taking without consent – vehicle/property damage of £5,000 or over
15. Aggravated vehicle taking without consent – vehicle/property damage of less than £5,000

3.5 The current timetable for the project is to sign off the draft guidelines in April 2022. At the commencement of the project it was envisaged that two policy leads would work on developing the guidelines to achieve the timetable. However, resources have been unable to provide for this and all policy leads are at full capacity on other projects until at least April.

Limited progress has so far been made on the guidelines considered, and there will be further complex issues to discuss over the coming months.

3.6 It is considered that at this point it would be necessary to detach some of the offences to enable the timetable to be achieved, and provide revised guidelines to sentencers for the more common offences as quickly as possible. Another option is to extend the timetable for the project, but as the PCSC Bill is likely to come into force early in 2022, it is thought that the Council will wish to be responsive to proposed legislative changes for some offences as soon as possible.

3.7 It is thought that the guidelines should be split into two projects and offences related to aggravated vehicle taking should be detached and work on their development postponed. These offences have overlap with some other guidelines including theft and criminal damage and could potentially be complex. While the offences involving death and injury are relevant to other guidelines under development, their volumes are low:

	2015	2016	2017	2018	2019	2020 ¹
Aggravated vehicle taking without consent – death caused	2	0	0	0	2	1
Aggravated vehicle taking without consent – injury caused	101	90	65	53	55	34

3.8 The offences would remain a workplan priority to be commenced as soon as resources allow, but separating them into a separate project would avoid delaying consulting on draft guidelines for the other ten offences. If the Council agrees it would be clarified in the consultation document that work to develop these guidelines is imminent and the other guidelines have been prioritised to respond to changes to legislation for relevant offences, and to trends in offending.

Question 1: Does the Council agree to revise the scope of the project and that the offences related to aggravated vehicle taking should be undertaken as a separate project and detached from the guidelines under development?

¹ Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

Careless driving offences

3.9 At the last meeting the Council began consideration of step one factors for careless driving offences. In the existing SGC guideline Careless driving causing death there are three seriousness categories, which are defined as follows:

- Careless or inconsiderate driving falling not far short of dangerous driving
- Other cases of careless or inconsiderate driving
- Careless or inconsiderate driving arising from momentary inattention with no aggravating factors

3.10 It was agreed that three culpability categories should be included in the revised and new guidelines for careless driving offences. It was proposed that many of the dangerous driving culpability factors would also be relevant to careless driving, as cases illustrated that acts within the two offences are often similar. The Council debated some factors and agreed to resume their consideration at this meeting. Decisions made were as follows:

- The highest culpability category should capture offences just under the threshold for dangerous driving. It was agreed that examples should not be provided.
- It was agreed that the lowest culpability category should provide for cases just over the threshold for careless driving, and for momentary lapses of concentration.
- It was agreed that medium culpability should include examples of offences and, based on transcripts which had been considered, it was proposed that many of these should be the same as for dangerous driving factors.

3.11 For context, the dangerous driving factors agreed were as follows:

High

- Deliberate decision to ignore the rules of the road and disregard for the risk of danger to others.
- Prolonged, persistent and deliberate course of dangerous driving
- Consumption of substantial amounts of alcohol or drugs leading to gross impairment
- Offence committed in course of police pursuit
- Racing or competitive driving against another vehicle
- Disregarding warnings of others
- Lack of attention to driving for a substantial period of time
- Speed greatly in excess of speed limit

Medium

- Brief but obviously highly dangerous manoeuvre
- Engaging in a brief but avoidable distraction
- Driving knowing that the vehicle has a dangerous defect or is dangerously loaded

- Driving at a speed that is inappropriate for the prevailing road or weather conditions, although not greatly excessive
- Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs
- Disregarding advice relating to driving when taking medication or as a result of a known medical condition which significantly impaired the offender's driving skills
- Driving when knowingly deprived of adequate sleep or rest
- The offender's culpability falls between the factors as described in high and lesser culpability

Lesser

- Standard of driving was just over threshold for dangerous driving
- Momentary lapse of concentration

3.12 Discussion took place as to whether some factors for careless driving should be phrased differently than for dangerous driving. One point noted by the Council was that the factor 'brief but obviously dangerous manoeuvre' should be rephrased, as it may suggest a threshold of dangerous driving. It is proposed this factor be rephrased as 'unsafe manoeuvre', which was a phrase used by the Court of Appeal in a number of cases of careless driving which have been considered.

3.13 It was also suggested that medium culpability dangerous factors should be high culpability factors for careless driving offences. Work has been undertaken to test this suggestion.

3.14 Examples of careless driving cases considered by the Court of Appeal, and transcript cases provided at the last meeting, have been cross referenced against medium culpability dangerous driving factors. These illustrate that offences of careless driving involving the same features as may be present in a medium culpability dangerous driving offence are not currently all assessed as just falling short of dangerous driving. As was highlighted at the last meeting the context of the offence is usually the key issue as to whether an offence was dangerous or careless, and not just the act involved. While some careless driving offences involving medium culpability dangerous driving factors are assessed in the highest culpability category, this is not the case for every offence, or even a high proportion of offences.

3.15 A sample of cases is provided below, including categorisations in both first instance and Court of Appeal cases, or points raised which illustrate the difficulty with categorising some offences. It is important to note and take account of current sentencing practice to avoid inflating offence categorisations, as for some offences this would have a considerable impact upon sentences.

Unsafe manoeuvre

R v Geale 2012 EWCA Crim 2663 D, who was a professional driver, had been driving a coach when a white van in the same lane as him slowed down but D continued to move forward on the inside before turning into an access road. The manoeuvre was unsafe as it led to the coach being in the path of oncoming traffic in the access road and to there being a significant blind spot on the coach's nearside. Although the coach was going relatively slowly, at no more than 10 mph, D was unable to avoid a collision with the victim who was walking past and had fallen into the blind spot; he fell down and was run over by the rear wheels of the coach. Held: The nature of D's driving went beyond mere momentary inattention because after he had been distracted by the white van, he continued his inherently unsafe manoeuvre which led both to the coach being in the path of any oncoming traffic in the access road and to the victim being in a blind spot and unnoticed by him. That in turn led to the victim falling underneath the back wheels of the coach. Furthermore, the unsafe manoeuvre was performed by the driver of a large coach which was inherently more likely to cause damage if unsafely manoeuvred. Offence fell between categories 2 and 3 for death by careless driving in the guideline, so far as culpability is concerned, i.e. between "careless or inconsiderate driving arising from momentary inattention with no aggravating factors" and "other cases of careless or inconsiderate driving".

R v Elliot 2012 EWCA Crim 243 D was driving on an A-road, in a 40 mph zone, behind four other vehicles. The vehicles entered a derestricted zone, at which point the vehicle in front of D decided to overtake all the cars in front. D decided to do the same. As he did so he collided with a motor-cycle. The rider fell underneath the following car. D stated that he did not see the motor-cycle, but the accident investigator described a line of sight of 850 metres. D said he had attempted to avoid the motor-cycle when he saw it, but he could not explain why he didn't pull into the gap left by the other overtaking vehicle. The Judge accepted that the accident was partly caused by the other overtaker and said offence was at the top end of the middle category of the guideline.

R v Ritchie 2014 EWCA Crim 2114 Court said it is difficult to understand precisely how this accident could have occurred. The weather was fine and bright. The expert analysis established that there was nothing wrong with either vehicle. D was driving well within the speed limit. He had initially alleged that V was driving at an excessive speed and that was his impression, supported to some extent by the impression of another witness. Conclusion of the expert investigator was that the only realistic cause of the collision was the result of the car being driven by D losing control and going into a spin. For reasons which remain quite inexplicable, the appellant seems to have carried out some kind of steering or swerve manoeuvre at a point when V was not in fact in view. This caused the car to go into the spin

and it ended on the incorrect side of the carriageway. Judge categorised as level 2: Court of Appeal upheld and said “It was your steering input that caused the loss of control. And such a failure cannot be described as ‘momentary inattention’ or ‘standard carelessness’.”

Motorcyclist was trying to overtake when he thought it was quite safe. D decided, as he had indicated he was going to do albeit late in the day, that he was going to undertake a U-turn and go back in the opposite direction by turning across the carriageway into a layby on the other side of the road. Signs saying no u turns - ill-judged and careless. No contributing factors such as defects or speeding, failed to see what was behind him. Level 2 - Flagrantly ignoring warning signs, disobeying a traffic sign and attempting manoeuvre.

D was driving an HGV vehicle in the course of employment, along a single-carriageway road. D saw an HGV vehicle coming in the other direction, and moved vehicle off the road, onto the verge. Weight of HGV combined with the gradient of the verge caused vehicle to tip; D over-corrected and steered back towards the road, veering onto the opposite side of the road and tipped over in collision with V's car. Level 2 - Judge initially says it's at the top of cat 3, but then says that it crosses the custody threshold, and due to the circumstances of the case, appropriate starting point is category 2.

Engaging in a brief but avoidable distraction

V came off her bike as she was about to leave the roundabout at a time when D on the roundabout approaching from behind her. D driving a pickup intending to take the same route as her, did not see her either before she came off her bike or after she had done so and was lying towards the side of the road in his path. As a result, his vehicle drove over her. D had been distracted by mobile phone seconds before collision, other driver had seen him looking to his left, and using one hand to drive. Pleaded to careless driving as alternative to dangerous. Level 2 - Middle category - not a momentary lapse but avoidably distracted.

Disregarding advice relating to driving when taking medication or as a result of a known medical condition which significantly impaired the offender's driving skills

R v Rigby 2013 EWCA Crim 34 Another motorist saw D's car drifting from lane to lane. D's car stopped at some red lights and the motorist left her car and remonstrated with D about his driving. D's car then rolled back into the car behind him. The driver of that car found D unresponsive. D was described as messing about with the gear stick looking straight ahead. The police were called. D continued to drive. It was dark but the streets were illuminated. The pavements were covered with ice and pedestrians were walking in the road. V was walking in the road, which was straight and subject to a 30 mph limit. There was no problem

with visibility. D hit and killed V. D claimed he suffered a hypoglycaemic episode without warning. He had been suffering stress as wife had had surgery for breast cancer. His blood sugar level was unusually high and he did not know how to correct it. Court of Appeal said trial judge wrong to say culpability high and same as someone who drinks and drives, but held D had chosen to drive knowing there was some risk of a hypoglycaemic attack. They said sentencing guidelines were not applicable to the case, where culpability lay in the failure to take precautions before driving, rather than in the driving itself, which in the instant case could be termed unconscious.

Driving at a speed that is inappropriate for the prevailing road or weather conditions, although not greatly excessive

R v Waseem 2014 EWCA Crim 247 D pleaded to death by careless driving. One evening V, aged 9½ years, was sitting on the handlebars of his brother's mountain bike. The two, neither helmeted, had travelled the wrong way along a residential road. D drove his car along a road to a T-junction with the road V was on. The speed limit was 20 mph. Nearby, there was a well-used park and there was a good deal of pedestrian traffic. V and his brother travelled into D's road. D braked and tried to steer clear but struck the front wheel of the bike. V hit the windscreen and was thrown into the air before landing on the ground. D lost control of the car and drove into a parked vehicle. D and his passenger decamped. An expert placed D's speed at between 33 and 39 mph, not only in excess of the limit, but too fast for the prevailing conditions. Higher end of category 2.

Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs²

R v Williams 2014 EWCA Crim 147 D pleaded to death by careless driving when over the prescribed limit. After drinking in a pub with some friends, at about 1.45 am he drove home. The journey was about 2 miles. There were four passengers in his car. They were driving on a narrow country road and, having left the 30 mph restricted zone, D increased his speed. He approached a right-hand bend and failed to manoeuvre the car correctly as he went around the bend. He tried to correct the manoeuvre but lost control of the car and it mounted the verge. The car overturned and came to rest on the passenger side. D had been driving at 35-39 mph around the bend. An expert concluded that the maximum speed at which the

² Careless driving under the influence of alcohol or drugs offences causing death would be charged as the substantive offence. However, a factor to capture cases under the new offence which is imminent of causing serious injury by careless driving may be appropriate. Examples of offences related to the existing under the influence offence are included to demonstrate the levels which may still result in a careless driving (rather than a dangerous driving) charge.

bend could be safely negotiated was 39 mph. At 4.50 am, reading was 57µg in breath, which was just over 1.5 times the legal limit. D's driving came within the lowest level of carelessness. The driving amounted to an error of judgement as he travelled around a bend at speed. It was a bad error but it was not combined with any bad driving beforehand, nor was the speed so excessive as to elevate it into the next category. This should not have been elevated to the middle category of the guidelines.

R v Samuel 2015 EWCA Crim 487 D pleaded to drink-related causing death by careless driving. D spent the evening celebrating V's 22nd birthday. V was D's cousin and friend. V had set up his own successful business and was due to be married. At about 5 am, they tried to book a taxi but were told it would take 50 minutes. V asked D to drive them to his home in V's car and V gave D the keys. On the way, D managed to negotiate a series of bends and then failed to identify a bend or miscalculated a bend due to intoxication. There was no evidence of excessive speed. The car hit a tree and V died. A backtracked blood test had an alcohol reading of 159 mg. The legal limit is 80 mg. Level 3. Court of Appeal held there was no evidence of excessive speed. Because of the alcohol reading, offence at the very top of the range for lowest category. In truth it was on the cusp between the two categories as there were considerable aggravating factors.

Driving when knowingly deprived of adequate sleep or rest

R v Crew 2009 EWCA Crim 2851

D pleaded to causing death by careless driving. D arrived at Heathrow airport following a flight. In the preceding 24 hours D had 4½ to 5 hours' sleep. D hired a car and began driving with his two young children in the car to Lincolnshire. V, aged 21, was travelling in the opposite direction. D momentarily fell asleep, veered across the road and collided head-on with V's vehicle, forcing it off the road and into a tree. The carelessness was of a high order bordering on dangerous driving. There were no aggravating features but D's culpability was very high.

R v Fleury 2013 EWCA Crim 2273

Frenchman living in France. Drove to UK to visit girlfriend. Awake for 16 hours, travelling for 6 or 6½ hours. Short period of sleep whilst crossing the channel. Head-on collision with another car after driving on the wrong side of the road for 200-400 metres. Both cars travelling at 40 mph. 60 mph limit. Held. Terribly serious careless driving, but culpability markedly lower than if he was a British driver.

3.16 To avoid inflating offence categorisations and sentences it is not proposed that the suggestion to include medium culpability dangerous factors as high culpability careless factors is adopted. However, an alternative approach could be to ensure serious or extreme examples of medium culpability factors are assessed as high culpability, which is an approach used in other guidelines. This could be provided for by expanding the high culpability factor 'standard of driving was just below threshold for dangerous driving' to:

'Standard of driving was just below threshold for dangerous driving and/or includes extreme example of a medium culpability factor.'

This would enable cases involving such features and not far short of dangerous to be categorised appropriately while avoiding inflating seriousness categorisations for other offences.

3.17 At the last meeting the Council discounted the suggestion that a similarly flexible model to the existing guideline be included, with very broad definitions for each category. An alternative approach would be not to define medium culpability factors, but to define high and low culpability and for medium culpability to provide for cases falling between these. However, this could also result in inflated categorisations as offences falling just short of dangerous driving are very difficult to define as the facts and circumstances of the offence are highly relevant. Lesser culpability cases would be equally difficult to define explicitly.

3.18 Proposed culpability factors are as follows:

<p>High</p> <ul style="list-style-type: none"> • Standard of driving was just below threshold for dangerous driving and/or includes extreme example of a medium culpability factor
<p>Medium</p> <ul style="list-style-type: none"> • Unsafe manoeuvre • Engaging in a brief but avoidable distraction • Driving at a speed that is inappropriate for the prevailing road or weather conditions, although not greatly excessive • Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs • Disregarding advice relating to driving when taking medication or as a result of a known medical condition which significantly impaired the offender's driving skills • Driving when knowingly deprived of adequate sleep or rest • The offender's culpability falls between the factors as described in high and lesser culpability
<p>Lesser</p> <ul style="list-style-type: none"> • Standard of driving was just over threshold for careless driving • Momentary lapse of concentration

Question 2: Does the Council agree with the proposed culpability factors?

Other medium culpability/current level 2 cases

3.19 Case analysis has also identified other examples of careless driving offences. As discussed at the last meeting, it is not possible to provide an exhaustive list of every act which may constitute an offence and ensure it is appropriately categorised, as the context of the offence is highly relevant to assessing seriousness.

3.20 The following examples illustrate the point regarding the breadth of acts which can constitute careless driving, and how the context is relevant to the seriousness categorisation. The Council is asked to consider if these situations should specifically be provided for by factors, or if the proposed guideline would provide sufficient flexibility to assess seriousness.

Stopped carelessly

R v Gordon 2012 EWCA Crim 772

D drove his flatbed lorry across the central reservation of a dual carriageway to turn right into the southbound carriageway. It was 6.30pm in January and the road was unlit. There was no signage at the entries to the central reservation. He waited there but the back of the lorry protruded into the northbound carriageway by 1.8 metres. D knew it was so protruding. A number of motorists saw the hazard and avoided it. V in his car did not, and hit the lorry. 1st instance Judge assessed as higher end of middle category, but Court of Appeal said middle category not top end.

R v Jenkins 2012 EWCA Crim 2909

D working as a delivery driver for a builder's merchant. He was making a delivery to a property on a single carriageway two-lane A-road. The driveway was inaccessible partly because vehicles were already parked there and partly because snow had collected on the sides of the carriageway. The sky was clear but the sun was very low. Several witnesses who had driven towards D had stated that visibility was seriously impaired. D parked his lorry on the road adjacent to the address and in doing so blocked the majority of that side of the road. The lorry was parked at or just before a right-hand bend in the road. D had left the engine running, his headlights and hazard lights on and was away from the vehicle for about 10 minutes. V was driving a van in the same direction as D had been driving and collided with his vehicle. It was impossible to be precise about the speed but it was estimated at 50-

60 mph. V suffered catastrophic injuries and died. Another vehicle had earlier had to execute an emergency stop to avoid hitting D's vehicle. Court of Appeal said could not fault the Judge's placing of the case in the highest category. It was little short of dangerous driving to park on that bend in those conditions.

Inadvertent mistake

R v Coveney 2012 EWCA Crim 843

D drove his 34-ton lorry on a motorway with the cruise control engaged. He left the motorway at a proper speed at an uphill slip road which led to a roundabout. D disengaged the cruise control at a suitable time. He meant to press the brake pedal but in fact he pressed the accelerator at 100, 70 and 40 metres from the junction and again virtually at the point of impact. D thought his brakes had failed. He waved and sounded his horn but hit the vehicle in front. The lorry 'toppled over' and hit another car. Held. This case was at the upper part of the middle category or in the lower/middle of the upper category.

Lost control or did not react appropriately

R v Smart 2014 EWCA Crim 1119

At about 1.30 pm, D was driving along a road. She was not speeding, nor was she distracted by a mobile phone or other distraction. V was crossing the road. A witness stated that V seemed unaware of D's vehicle approaching but also saw that D made no attempt to avoid V or to brake or stop. It seemed that D simply did not see V. She drove into V, who suffered a spinal injury and subsequently died. D brought her car to a stop and remained at the scene. When interviewed, she admitted that she had not seen V but could not explain why. D would have had a clear view of V for six seconds before impact. Judge determined that it fell within the top category, saying that since the victim had been in her sight for six seconds, this gave ample opportunity to stop or swerve and the fact that she had not seen him for what he described as an extended period of time put the case into the category of careless driving falling not far short of dangerous driving. Held. This was not a Category 1 case. In this case, D was driving in a perfectly lawful fashion without any aggravating features and her fault was an unexplained failure to stop or steer her vehicle during the six seconds that V was in her sight.

V driving home in good weather when without explanation D's car drove onto the carriageway where V was driving in the opposite direction. Nothing in relation to V's driving a concern - both cars were driving between 40-50 mph. No difficulties with road surface, visibility or traffic and no evidence of earlier bad driving, rush or distraction. No explanation for D's car to cross over white line and cause a head on collision. Judge inferred D ceased to concentrate on the road and drifted into opposing carriageway. Level 2 - Judge struggled with categorisation - was unable to say that 'it falls not far short of dangerous driving' - the fact the car was fully in the other carriageway suggests not a momentary inattention that would bring it into the lowest category, so not categories 1 or 3.

D was working as a taxi driver; driving with passenger in the dark but good weather conditions. Drove through a red traffic light at pedestrian crossing and hit the victim who was crossing the road. Level 2 - D should have taken care around crossing, was working as a professional, carrying passenger, potential hazards clearly marked.

Failed to see V as he stepped into the road to cross it; in the road for something between six or nine seconds before the collision occurred. D must have seen V at the very last moment because he braked and swerved and the impact was at a very low speed. Not speeding but driver behind saw V, so D should have done. Not under influence of alcohol or drugs. Issues with vision (incipient cataracts) but no issues raised that he shouldn't have been driving. Bottom of level 2/top of level 3 - not momentary lapse of concentration.

D's vehicle crossed the central white line of a relatively narrow A-road which winds its way through the countryside and collided with V's motorcycle. V had no prospect of avoiding D. Quite why vehicle crossed central white line 'a mystery'. Driving before not inappropriate as evidenced by dashcam of vehicle behind, and not speeding. Road conditions were good, spring day in March, light good, nothing to contribute to vehicle collision other than driver error or fault. No alcohol, no mobile phone to distract him, no pre cons. Had his daughter in back of car. Level 3 – momentary lapse of concentration.

D aged 19, had been driving four of her friends, aged 19-22, in her car. While going round a bend on the approach to a junction, D lost control of the car which swerved several times, collided with trees and spun round onto the opposite carriageway. Two of the passengers were thrown from the car and killed instantly, a third passenger was thrown from the car and knocked unconscious. She was in coma for several weeks and suffered life-changing injuries. A fourth passenger was unhurt physically, but suffered psychology trauma. D was

unharmful. The road conditions and visibility had been good and there had been no aggravating factors. The appellant said she could not remember what had happened and did not accept responsibility for the incident. Level 2.

Question 3: Should any other culpability factors be included or does the Council think the model and factors agreed provide sufficient flexibility to ensure appropriate seriousness assessments?

Aggravating and mitigating factors

3.21 Existing SGC aggravating and mitigating factors for careless driving causing death or injury are as follows:

Additional aggravating factors	Additional mitigating factors
<ol style="list-style-type: none"> 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 	<ol style="list-style-type: none"> 1. Offender 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

3.22 Proposed factors reflect those agreed for dangerous driving offences save for some minor differences.

3.23 Proposed aggravating factors are as follows:

- | |
|---|
| <ul style="list-style-type: none"> • Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction • Offence committed whilst on bail |
|---|

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Driving for commercial purposes
- Driving LGV, HGV, PSV
- Other driving offences committed at the same time as the careless driving
- Blame wrongly placed on others
- Failed to stop or summon assistance
- Passengers, including children
- More than one person killed as a result of the offence (*death by careless only*)
- Serious injury to one or more victims, in addition to the death(s) (*death by careless only*)
- Offence committed on licence or while subject to court order(s)

Question 4: Does the Council agree with the proposed aggravating factors for careless driving offences causing death or serious injury?

3.24 Proposed mitigating factors are as follows:

- No previous convictions or no relevant/recent convictions
- Impeccable driving record
- The victim was a close friend or relative
- Actions of the victim or a third party contributed significantly to collision
- Offence due to inexperience rather than irresponsibility (where offender qualified to drive)
- Genuine emergency
- Efforts made to assist or seek assistance for victim(s)
- Remorse
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

Question 5: Does the Council agree with the proposed mitigating factors for careless driving offences causing death or serious injury?

Causing death by careless driving under the influence

3.25 This point was included in the paper for the last meeting but the Council did not have time to consider.

3.26 Section 3A of the Road Traffic Act 1988 provides for the offence of Causing death by careless driving under the influence:

(1) If a person causes the death of another person by driving a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, and—

(a) he is, at the time when he is driving, unfit to drive through drink or drugs, or

(b) he has consumed so much alcohol that the proportion of it in his breath, blood or urine at that time exceeds the prescribed limit, or

(ba) he has in his body a specified controlled drug and the proportion of it in his blood or urine at that time exceeds the specified limit for that drug, or

(c) he is, within 18 hours after that time, required to provide a specimen in pursuance of section 7 of this Act, but without reasonable excuse fails to provide it, or

(d) he is required by a constable to give his permission for a laboratory test of a specimen of blood taken from him under section 7A of this Act, but without reasonable excuse fails to do so,

he is guilty of an offence.

(2) For the purposes of this section a person shall be taken to be unfit to drive at any time when his ability to drive properly is impaired.

3.27 The culpability model for the offence of causing death by careless driving under the influence will differ from the other careless driving offences, as both the standard of driving and the level of impairment or manner of failing to provide a specimen for analysis are intrinsic elements of this offence.

3.28 The existing guideline for this offence includes all elements in the seriousness assessment:

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

It is proposed that the approach to assessing seriousness should be maintained in the revised guideline (although the model is likely to differ due to more specific culpability factors), with reference to both the driving standard and drug or drink driving levels. As the Council is aware, work is being undertaken to explore whether improved guidance can be provided in respect of drug driving offences, which will be relevant to proposals in respect of this guideline. Before further development work is undertaken the Council is asked to confirm if it agrees with maintaining the existing approach.

Question 6: Does the Council agree the culpability assessment for careless driving under the influence should relate to the standard of driving and the level of impairment or failure to provide a specimen for analysis?

4 IMPACT AND RISKS

4.1 Given the complexities of assessing the seriousness of careless driving it is important to note the risk of categorisation inflation and increased sentences. Research will be undertaken to identify the impact of any factors agreed during the consultation period.

4.2 The passage of the Police, Crime, Sentencing and Courts Bill continues to be monitored closely as will have an impact upon when some draft guidelines can be finalised.

4.3 There are no equality and diversity issues identified in relation to points covered in this paper.