

Causing or allowing a child to suffer serious physical harm/ Causing or allowing a child to die

Domestic Violence, Crime and Victims Act 2004, s.5

Effective from: XXXXXXXXX

Causing or allowing a child to suffer serious physical harm

Indictable only

Maximum: 14 years' custody for offences committed after 28 June 2022; otherwise 10 years' custody

Offence range: Community order – 12 years' custody

Causing or allowing a child to die

Indictable only

Maximum: life imprisonment for offences committed after 28 June 2022; otherwise 14 years' custody

Offence range: 1 year's custody – 18 years' custody

These are specified offences for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

For offences committed on or after 3 December 2012, these are offences listed in Part 1 of Schedule 15 for the purposes of sections [273](#) and [283](#) (life sentence for second listed offence) of the Sentencing Code.

For offences committed on or after 28 June 2022, causing or allowing a child to die is a Schedule 19 offence for the purposes of sections 274 and 285 (required life sentence for offence carrying life sentence) of the Sentencing Code.

This guideline applies only when the victim of the offence is aged 15 or under.

[User guide for this offence](#)

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.

Applicability

Step 1 – Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category, the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated

A Very high culpability

Very high culpability may be indicated by:

- the extreme character of one or more culpability B factors and /or
- a combination of culpability B factors

B High culpability

- Prolonged and/or multiple incidents of serious cruelty, including serious neglect
- Gratuitous degradation of victim and/or sadistic behaviour
- Use of very significant force
- Use of a weapon
- Deliberate disregard for the welfare of the victim
- Failure to take any steps to protect the victim from offences in which the above factors are present
- Offender with professional responsibility for the victim (where linked to the commission of the offence)

C Medium culpability

- Use of significant force
- Prolonged and/or multiple incidents of cruelty, including neglect

- Limited steps taken to protect victim in cases with category B factors present
- Other cases falling between B and D because:
- Factors in both high and lesser categories are present which balance each other out; and/or
- The offender's culpability falls between the factors as described in high and lesser culpability

D Lesser culpability

- Offender's responsibility substantially reduced by mental disorder or learning disability or lack of maturity
- Offender is victim of domestic abuse, including coercion and/or intimidation (where linked to the commission of the offence)
- Steps taken to protect victim but fell just short of what could reasonably be expected
- Momentary or brief lapse in judgement including in cases of neglect
- Use of some force or failure to protect the victim from an incident involving some force
- Low level of neglect

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Psychological, developmental or emotional harm A finding that the psychological, developmental or emotional harm is **serious** may be based on a clinical diagnosis but the court may make such a finding based on other evidence from or on behalf of the victim that serious psychological, developmental or emotional harm exists. It is important to be clear that the absence of such a finding does **not** imply that the psychological/developmental harm suffered by the victim is minor or trivial.

Category 1

- Death

Category 2

- Serious physical harm which has a substantial and/or long term effect
- Serious psychological, developmental and/or emotional harm
- Significantly reduced life expectancy
- A progressive, permanent or irreversible condition

Category 3

- Serious physical harm that does not fall into category 2

Step 2 – Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where a case does not fall squarely within a category, adjustment from the starting point may be required before adjustment for aggravating or mitigating features.

Harm	Culpability			
	A	B	C	D
Category 1	Starting point 14 years' custody	Starting point 9 years' custody	Starting point 5 years' custody	Starting point 2 years' custody
	Category range 12 – 18 years' custody	Category range 7 – 14 years' custody	Category range 3 – 8 years' custody	Category range 1 – 4 years' custody
Category 2	Starting point 9 years' custody	Starting point 7 years' custody	Starting point 3 years' custody	Starting point 1 year 6 months' custody
	Category range 7 – 12 years' custody	Category range 5 – 9 years' custody	Category range 1 year 6 months – 6 years' custody	Category range 6 months – 3 years' custody
Category 3	Starting point 7 years' custody	Starting point 3 years' custody	Starting point 1 year 6 months' custody	Starting point 9 months' custody
	Category range 5 – 9 years' custody	Category range 1 year 6 months – 6 years' custody	Category range 6 months – 3 years' custody	Category range High level community order – 2 years' custody

Community orders

Custodial sentences

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors

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

Other aggravating factors

- Failure to seek medical help (where not taken into account at step one)
- Prolonged suffering prior to death
- Commission of offence whilst under the influence of alcohol or drugs
- Deliberate concealment and/or covering up of the offence
- Blame wrongly placed on others
- Failure to respond to interventions or warnings about behaviour
- Threats to prevent reporting of the offence
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Offences taken into consideration
- Offence committed in the presence of another child

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Determination and demonstration of steps having been taken to address addiction or offending behaviour, including co-operation with agencies working for the welfare of the victim
- Sole or primary carer for dependent relatives (**see step five for further guidance on parental responsibilities**)
- Good character and/or exemplary conduct (where previous good character/exemplary conduct has been used to facilitate or conceal the offence, this should not normally constitute mitigation and such conduct may constitute aggravation)

- Serious medical condition requiring urgent, intensive or long-term treatment
- Mental disorder, learning disability or lack of maturity (where not taken into account at step one)
- Co-operation with the investigation

Step 3 – Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

Step 4 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

Step 5 – Parental responsibilities of sole or primary carers

In the majority of child cruelty cases the offender will have parental responsibility for the victim.

When considering whether to impose custody the court should step back and review whether this sentence will be in the best interests of the victim (as well as other children in the offender's care). This must be balanced with the seriousness of the offence and all sentencing options remain open to the court but careful consideration should be given to the effect that a custodial sentence could have on the family life of the victim and whether this is proportionate to the seriousness of the offence. This may be of particular relevance in lower culpability cases or where the offender has otherwise been a loving and capable parent/carer.

Where custody is unavoidable consideration of the impact on the offender's children may be relevant to the length of the sentence imposed. For more serious offences where a substantial period of custody is appropriate, this consideration will carry less weight.

Step 6 – Dangerousness

The court should consider:

1) for offences of causing or allowing the death of a child committed on or after 28 June 2022, whether having regard to the criteria contained in Chapter 6 of Part 10 of the Sentencing Code it would be appropriate to impose a life sentence (sections 274 and 285);

2) for offences committed on or after 3 December 2012, whether having regard to sections 273 and 283 of the Sentencing Code it would be appropriate to impose a life sentence.

3) whether having regard to the criteria contained in Chapter 6 of Part 10 of the Sentencing Code it would be appropriate to impose an extended sentence (sections 266 and 279).

When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

Step 7 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Totality](#) guideline.

Step 8 – Ancillary orders

In all cases the court should consider whether to make ancillary orders.

- [Ancillary orders – Crown Court Compendium](#)

Step 9 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 10 – Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).

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Cruelty to a child – assault and ill treatment, abandonment, neglect, and failure to protect

Children and Young Persons Act 1933, s.1(1)

Effective from: XXXXXXXXXXXX

Triable either way

Maximum: 14 years' custody for offences committed on or after 28 June 2022; otherwise 10 years' custody

Offence range: Community order – 12 years' custody

This is a specified offence for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

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.

Applicability

Step 1 – Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated

A Very high culpability

- Very high culpability may be indicated by:
- the extreme character of one or more culpability B factors and /or
- a combination of culpability B factors

B High culpability

- Prolonged and/or multiple incidents of serious cruelty, including serious neglect
- Gratuitous degradation of victim and/or sadistic behaviour
- Use of very significant force
- Use of a weapon
- Deliberate disregard for the welfare of the victim
- Failure to take any steps to protect the victim from offences in which the above factors are present
- Offender with professional responsibility for the victim (where linked to the commission of the offence)

C Medium culpability

- Use of significant force
- Prolonged and/or multiple incidents of cruelty, including neglect
- Limited steps taken to protect victim in cases with category B factors present
- Other cases falling between B and D because:
- Factors in both high and lesser categories are present which balance each other out; and/or
- The offender's culpability falls between the factors as described in high and lesser culpability

D Lesser culpability

- Offender's responsibility substantially reduced by mental disorder or learning disability or lack of maturity
- Offender is victim of domestic abuse, including coercion and/or intimidation (where linked to the commission of the offence)
- Steps taken to protect victim but fell just short of what could reasonably be expected
- Momentary or brief lapse in judgement including in cases of neglect
- Use of some force or failure to protect the victim from an incident involving some force
- Low level of neglect

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Psychological, developmental or emotional harm

A finding that the psychological, developmental or emotional harm is **serious** may be based on a clinical diagnosis but the court may make such a finding based on other evidence from or on behalf of the victim that serious psychological, developmental or emotional harm exists. It is important to be clear that the absence of such a finding does **not** imply that the psychological, developmental or emotional harm suffered by the victim is minor or trivial.

Category 1

- Serious psychological, developmental, and/or emotional harm
- Serious physical harm (including illnesses contracted due to neglect)

Category 2

- Cases falling between categories 1 and 3
- A high likelihood of category 1 harm being caused

Category 3

- Little or no psychological, developmental, and/or emotional harm
- Little or no physical harm

Step 2 – Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where a case does not fall squarely within a category, adjustment from the starting point may be required before adjustment for aggravating or mitigating features.

Culpability				
Harm	A	B	C	D
Category 1	Starting point 9 years' custody	Starting point 6 years' custody	Starting point 3 years' custody	Starting point 1 year's custody
	Category range 7 – 12 years' custody	Category range 4 – 8 years' custody	Category range 2 – 6 years' custody	Category range High level community order – 2 years 6 months' custody
Category 2	Starting point 6 years' custody	Starting point 3 years' custody	Starting point 1 year's custody	Starting point High level community order
	Category range 4 – 8 years' custody	Category range 2 – 6 years' custody	Category range High level community order – 2 years 6 months' custody	Category range Medium level community order – 1 year's custody
Category 3	Starting point 3 years' custody	Starting point 1 year's custody	Starting point High level community order	Starting point Medium level community order
	Category range 2 – 6 years' custody	Category range High level community order – 2 years 6 months' custody	Category range Medium level community order – 1 year's custody	Category range Low level community order – 6 months' custody

Community orders

Custodial sentences

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors

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

Other aggravating factors

- Failure to seek medical help (where not taken into account at step one)
- Commission of offence whilst under the influence of alcohol or drugs
- Deliberate concealment and/or covering up of the offence
- Blame wrongly placed on others
- Failure to respond to interventions or warnings about behaviour
- Threats to prevent reporting of the offence
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Offences taken into consideration
- Offence committed in the presence of another child

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Determination and demonstration of steps having been taken to address addiction or offending behaviour, including co-operation with agencies working for the welfare of the victim
- Sole or primary carer for dependent relatives (**see step five for further guidance on parental responsibilities**)
- Good character and/or exemplary conduct

(where previous good character/exemplary conduct has been used to facilitate or conceal the offence, this should not normally constitute mitigation and such conduct may constitute aggravation)

- Serious medical condition requiring urgent, intensive or long-term treatment
 - Mental disorder, learning disability
- or
- lack of maturity
(where not taken into account at step one)
- Co-operation with the investigation

Step 3 – Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

Step 4 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

Step 5 – Parental responsibilities of sole or primary carers

In the majority of child cruelty cases the offender will have parental responsibility for the victim.

When considering whether to impose custody the court should step back and review whether this sentence will be in the best interests of the victim (as well as other children in the offender's care). This must be balanced with the seriousness of the offence and all sentencing options remain open to the court but careful consideration should be given to the effect that a custodial sentence could have on the family life of the victim and whether this is proportionate to the seriousness of the offence. This may be of particular relevance in lower culpability cases or where the offender has otherwise been a loving and capable parent/carer.

Where custody is unavoidable consideration of the impact on the offender's children may be relevant to the length of the sentence imposed. For more

serious offences where a substantial period of custody is appropriate, this consideration will carry less weight.

Step 6 – Dangerousness

The court should consider whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#)).

Step 7 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Totality](#) guideline.

Step 8 – Ancillary orders

In all cases the court should consider whether to make ancillary orders.

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

Step 9 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 10 – Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).

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Consultation Stage Resource Assessment

Child Cruelty Offences

Introduction

This document fulfils the Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.¹

Rationale and objectives for new guideline

In February 2008, the Sentencing Guidelines Council (SGC) published '*Overarching Principles: Assaults on children and Cruelty to a child*', covering the offence of cruelty to a child (section 1 of the Children and Young Persons Act 1933). This guideline did not cover the offence of causing or allowing a child to die (section 5 of the Domestic Violence and Crime Act 2004).

In July 2012, the offence of causing or allowing a child to die was expanded to include causing or allowing a child to suffer serious physical harm as part of the Domestic Violence, Crime and Victims (Amendment) Act 2012. The Council subsequently produced guidelines to cover this wider offence, along with revisions to the previous SGC guideline for cruelty to a child. These were published in September 2018, to come into effect in courts in England and Wales from 1 January 2019.

Under the Police, Crime, Sentencing and Courts (PCSC) Act 2022, for offences committed on or after 28 June 2022, the statutory maxima have increased from 10 years' custody to 14 years' custody for both cruelty to a child and causing or allowing a child or vulnerable adult² to suffer serious physical harm, and from 14 years' custody to life imprisonment for causing or allowing a child or vulnerable adult² to die. The Council is now consulting on revised sentencing guidelines for these offences, to reflect these increases in the statutory maximum sentences: a Cruelty to a child guideline for sentencing child cruelty offences contrary to section 1(1) of the Children and Young Persons Act 1933, for use in all courts, and another guideline covering both causing or allowing a child to die and causing or allowing a child to suffer serious physical harm, contrary to section 5 of the Domestic Violence, Crime and Victims Act 2004, for use in the Crown Court.

¹ Coroners and Justice Act 2009 section 127: www.legislation.gov.uk/ukpga/2009/25/section/127

² The increase in statutory maximum sentence covers offenders sentenced for causing or allowing a *child or vulnerable adult* to die or suffer serious physical harm, while the guideline is only applicable for offenders sentenced for causing or allowing a *child* to die or suffer serious physical harm. Analysis of Crown Court judges' sentencing remarks suggests the majority of cases involve child victims, rather than vulnerable adults.

The Council's aim in developing these guidelines is to provide sentencers with a clear approach to sentencing these offences which will ensure that sentences are proportionate to the offence committed and in relation to other offences. They should also promote a consistent approach to sentencing in relation to the increases in statutory maximum sentence.³

Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guidelines on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

This resource assessment covers the following offences:

- Causing or allowing a child to die or suffer serious physical harm, Domestic Violence, Crime and Victims Act 2004 (section 5); and
- Cruelty to a child, Children and Young Persons Act 1933 (section 1(1)).

These guidelines apply to sentencing adults only; they will not directly apply to the sentencing of children and young people.

Current sentencing practice

To ensure that the objectives of the guidelines are realised, and to understand better the potential resource impacts of the guidelines, the Council has carried out analytical and research work in support of them.

The intention is that the guidelines will encourage consistency of sentencing, in relation to the increase in statutory maximum sentences, and also to ensure that, for all offences, sentences are proportionate to the severity of the offence committed and in relation to other offences, whilst incorporating the changes in legislation.

Knowledge of recent sentencing was required to understand how the draft guidelines may impact sentences. Sources of evidence have included the analysis of transcripts of Crown Court judges' sentencing remarks for offenders sentenced for child cruelty

³ The Ministry of Justice impact assessment, drafted in conjunction with the Home Office, for the increase in statutory maximum sentence for these child cruelty offences can be found here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1073333/MOJ_Criminal_Law_IA_2022_Final.pdf

offences, as well as sentencing data from the Court Proceedings Database.^{4,5} Knowledge of the sentences and factors used in previous cases, in conjunction with Council members' experience of sentencing, has helped to inform the development of the guidelines.

Detailed sentencing statistics for the offences covered by the draft guidelines have been published on the Sentencing Council website at the following link:
<http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=statistical-bulletin&topic=&year.>

Causing or allowing a child to die or suffer serious physical harm⁶ (section 5)

This is a low volume offence. In the years since the existing guideline has been in force (2019 and 2020), around 30 offenders were sentenced for this offence, of which fewer than 10 were sentenced for causing or allowing a child to die. This offence is indictable only, and so all offenders are sentenced at the Crown Court.

For causing or allowing a child to die, all offenders were sentenced to immediate custody in 2019 and 2020. In the same years, for causing or allowing a child to suffer serious physical harm, 50 per cent of offenders received immediate custody, 44 per cent received a suspended sentence order and the remaining offenders were 'Otherwise dealt with'.⁷

For those receiving immediate custody in 2019 and 2020, the average (mean) custodial sentence length (ACSL) was 6 years 7 months for causing or allowing a child to die.⁸ For causing or allowing a child to suffer serious physical harm, the ACSL over the same period was 3 years 9 months.⁹

⁴ The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When a defendant has been found guilty of two or more offences this is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here. The average custodial sentence lengths presented in this resource assessment are average custodial sentence length values for offenders sentenced to determinate, immediate custodial sentences, after any reduction for guilty plea. Further information about this sentencing data can be found in the accompanying statistical bulletin and tables published here:
<http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin.>

⁵ 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.

⁶ Users should be aware that the underlying data may contain volumes for offenders sentenced for this offence where the victim was a vulnerable adult, for which the guideline does not apply, but analysis of Crown Court judges' sentencing remarks suggests the majority of cases involve child victims, rather than vulnerable adults.

⁷ The category 'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

⁸ The statutory maximum sentence for this offence increased from 14 years' custody to life imprisonment under the PCSC Act 2022 in relation to offences committed on or after 28 June 2022. The latest full year of data available for analysis at the time of publication was from 2020, before this increase in statutory maximum sentence, so there are no cases exceeding 14 years' custody included in these figures.

⁹ The statutory maximum sentence for this offence increased from 10 years' custody to 14 years' custody under the PCSC Act 2022 in relation to offences committed on or after 28 June 2022. The latest full year of data

Cruelty to a child (section 1)

This is a higher volume offence. In 2020, around 330 offenders were sentenced for cruelty to a child, of which the majority (61 per cent) were sentenced in the Crown Court. Most offenders received a community order (35 per cent), around a third (33 per cent) a suspended sentence order and one fifth (20 per cent) were sentenced to immediate custody. A further 9 per cent were recorded as 'Otherwise dealt with',¹⁰ and 1 per cent of offenders received each of either a discharge or a fine respectively.

The statutory maximum sentence for cruelty to a child was 10 years' custody for the period covered by these statistics.¹¹ In 2020, the ACSL for those offenders sentenced to immediate custody was 2 years 2 months for this offence.

Key assumptions

To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the new guidelines and draws upon analytical and research work undertaken during guideline development. However, some assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the revised guidelines are therefore subject to a substantial degree of uncertainty.

Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. In addition, for low volume offences, there are limited data available. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the proposed revised guidelines, and an assessment of the effects of revising the guidelines by adding a new culpability level.

The resource impact of the draft guidelines is measured in terms of the changes in sentencing practice that are expected to occur as a result of them. Any future changes in sentencing practice which are unrelated to the publication of the draft guidelines are therefore not included in the estimates.

In developing sentence levels for the 'Very high culpability' level of the revised guidelines, data on current sentence levels have been considered, although this covers the period before the increase in statutory maximum sentence under the

available for analysis at the time of publication was from 2020, before this increase in statutory maximum sentence, so there are no cases exceeding 10 years' custody included in these figures.

¹⁰ The category 'Otherwise dealt with' covers miscellaneous disposals which, for this offence, includes disposals such as hospital orders and compensation. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

¹¹ The statutory maximum sentence for this offence increased from 10 to 14 years' custody under the PCSC Act 2022 in relation to offences committed on or after 28 June 2022. The latest full year of data available for analysis at the time of publication was from 2020, before this increase in statutory maximum sentence, so there are no cases exceeding 10 years' custody included in these figures.

PCSC Act 2022. Existing guidance and case studies, as well as transcripts of judges' sentencing remarks, have also been reviewed.

While data exist on the number of offenders and the sentences imposed, due to a lack of data available regarding the seriousness of current cases, assumptions have been made about how current cases would be categorised across the levels of culpability proposed in the draft guidelines using relevant transcripts. As a consequence, it is difficult to ascertain how sentence levels may change under the draft guidelines.

It therefore remains difficult to estimate with any precision the impact the guidelines may have on prison and probation resources. Nevertheless, the consultation responses should hopefully provide more information on which to base the final resource assessment accompanying the definitive guidelines.

Resource impacts

This section should be read in conjunction with the draft guidelines available at: <http://www.sentencingcouncil.org.uk/consultations/>.

Overall impacts

The expected impact of each guideline is provided in detail below.

Overall, the guidelines are intended to reflect the increase in statutory maxima through the addition of a further culpability level, above the existing 'High culpability' level in both guidelines. As such, the impact is intended to be isolated to those offenders already at the highest culpability of offending behaviour.

Causing or allowing a child to die or suffer serious physical harm (section 5)

The current section 5 guideline covers both ways of committing this offence and contains three levels of culpability and three levels of harm, leading to a 9-box sentencing table. The highest harm level is reserved for causing or allowing a child to die, with a range of starting points from 2 years' custody for C1 up to 9 years' custody for the highest category A1. For causing or allowing a child to suffer serious physical harm, the lowest starting point is 9 months' custody for category C3 and the highest is category A2 with a starting point of 7 years' custody.

Under the PCSC Act 2022, the statutory maximum sentence for this offence has increased, from 10 to 14 years' custody for causing or allowing a child to suffer serious physical harm and from 14 years' custody to life imprisonment for causing or allowing a child to die. An additional culpability level ('Very high culpability') has been inserted above the existing 'High culpability' level in the draft guideline, to reflect the new statutory maximum sentences set by Parliament. The revised draft guideline therefore has four levels of culpability but maintains three levels of harm, leading to a 12-box sentencing table, with a starting point for A1 of 14 years' custody and a range of 12 – 18 years. The rest of the sentencing table below the new culpability level A remains unchanged from the existing guideline, although the culpability levels have been renamed accordingly.

Analysis of a sample of Crown Court judges' sentencing remarks¹² has been undertaken to understand the possible effects of the guideline on sentencing practice. This offence is indictable only and, as such, all offenders are sentenced at the Crown Court. Therefore, we can assume the findings from this analysis are likely to be representative of all offending.

This transcript analysis indicated that there is likely to be negligible resource impacts relating to the addition of this new 'Very high culpability' level, as there are very few offenders currently falling into 'High culpability', across all levels of harm, for whom it would be appropriate. This is supported by analysis of the CPD data. In 2019 and 2020, for causing or allowing a child to suffer serious physical harm, only two offenders were sentenced to an immediate custodial sentence of 7 years or more, which is the starting point for the A2 offence category in the existing guideline. These might be the types of cases for which an offender could be placed in the new 'Very high culpability' category under the draft guideline, which has a starting point 5 years higher than the existing guideline. However, it is anticipated that only a subset of offenders currently assessed as 'High culpability' across all levels of harm would be suitable for the new 'Very high culpability' category.

Furthermore, over the same period, for causing or allowing a child to die, no offenders received a final sentence of 9 years or more, which is the starting point for the highest offence category A1 in the existing guideline and remains as such for the comparable B1 offence category of the draft guideline (the sentence ranges for both are also identical).

Given that almost all offenders already receive immediate custody, the draft guideline is not anticipated to change the proportion of offenders who receive immediate custodial sentences. It is likely that there may be a very small number of offenders at the highest level of culpability across both offences who will receive longer custodial sentences under the draft guideline. However, these increases in sentence levels are driven by the recent legislative changes, which have been reflected in the guidelines.

Cruelty to a child (section 1)

The existing guideline for sentencing offences of cruelty to a child contains three levels of culpability and three levels of harm leading to a 9-box sentencing table with a range in starting points from a medium level community order for offence category C3, up to a starting point of 6 years' custody for the highest category A1. The draft guideline mirrors the approach for causing or allowing a child to die or suffer serious physical harm, and inserts a new 'Very high culpability' level above the existing 'High culpability', with a range of starting points from 3 years' custody for the new category A3, up to a starting point of 9 years' custody for the new A1 offence category, thus creating a 12-box sentencing table. As with the Causing or allowing a child to die or suffer serious physical harm guideline, the starting points and ranges in the rest of the sentencing table remain unchanged.

¹² 22 transcripts of Crown Court sentencing remarks covering 35 offenders sentenced for causing or allowing a child to die or suffer serious physical harm were initially analysed in order to assess the impact these guidelines may have on prison and probation services. For the years when the existing guideline was in force, 2019 and 2020, the analysed transcripts covered 100% of offenders sentenced over this period. Of these, 8 cases where the offender fell into the highest culpability category were resentenced, to understand how the new culpability category might be used (5 for causing or allowing a child to die and 3 for causing or allowing a child to suffer serious physical harm).

Analysis of a sample of Crown Court judges' sentencing remarks¹³ has been undertaken to understand the possible effects of the draft guideline on sentencing practice. The analysis suggested that under the revised guideline, there may be a very small impact on prison and probation resources as a subset of offenders who would be within the 'High culpability' level currently may receive longer sentences under the draft guideline if the new 'Very high culpability' category is appropriate instead, which has a starting point three years higher for harm levels 1 and 2 and two years higher for harm level 3, reflecting the increase in statutory maximum sentence. There is no indication that the guideline will lead to a change in sentencing outcomes for these offences; the majority of offenders are likely to continue receiving a community order or suspended sentence order since the guideline remains largely unchanged.

These findings are supported by CPD analysis. In 2019 and 2020, fewer than 1 per cent of offenders received an immediate custodial sentence of 6 years or more: the starting point for the highest offence category A1 under the existing guideline. Given that so few offenders are committing offences of cruelty to a child at the highest level of culpability currently, it is anticipated that the impact of this guideline on prison and probation resources is likely to be minimal, although any increases will be driven by the recent legislative changes which are now reflected in the guideline.

Risks

Risk 1: The Council's assessment of current sentencing practice is inaccurate

An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the revised guidelines comes into effect.

This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase. This includes analysis of 43 transcripts of judges' sentencing remarks, which have provided a more detailed picture of current sentencing practice for these offences. This analysis has formed a large part of the evidence base on which the resource impacts for these guidelines have been estimated.

Risk 2: Sentencers do not interpret the new guidelines as intended

If sentencers do not interpret the guidelines as intended, this could cause a change in the average severity of sentencing, with associated resource effects.

The Council takes a number of precautions in issuing new guidelines to try to ensure that sentencers interpret them as intended. For the draft guidelines, the sentencing ranges for the new 'Very high culpability' level have been decided on by considering case studies, sentencing data and Council members' experience of sentencing.

¹³ A total of 21 transcripts of Crown Court sentencing remarks covering 28 offenders sentenced for cruelty to a child were initially analysed. Of these, 7 cases from 2019 and 2020, where the offender was in the highest culpability category under the existing guideline, were resentenced to assess the impact the revised guideline may have on prison and probation services.

Transcripts of sentencing remarks of relevant child cruelty cases have also been studied to gain a greater understanding of current sentencing practice and to understand how the guidelines may be implemented in practice.

Consultees can also feed back their views of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines.

Motoring offences road testing report

Introduction

The Sentencing Council is developing guidelines for 12 motoring offences. The draft guidelines for these offences were consulted upon in Summer to Autumn 2022 and during this period the Council road tested a selection of the guidelines, to assess how they work in practice. The five offences for which guidelines were tested were selected based on the following criteria:

- the highest volume offences, because this is where the greatest impact of the new guideline is likely to be felt
- where there is least evidence available
- where there are specific issues to assess

The offences selected were:

- Causing death by dangerous driving, Road Traffic Act 1988 (section 1)
- Causing death by careless or inconsiderate driving, Road Traffic Act 1988 (section 2B)
- Causing serious injury by dangerous driving, Road Traffic Act 1988 (section 1A)
- Dangerous driving, Road Traffic Act 1988 (section 2)
- Driving or attempting to drive with a specified drug above the specified limit, Road Traffic Act 1988 (section 5A)

Current sentencing practice

Until now the sentencing support available for sentencing the motoring offences for which guidelines are being consulted upon has been mixed. Table 1 summarises whether or not guidelines or guidance currently exist for the five offences selected for road testing.

Table 1: Existing guidelines and guidance by date of issue for each motoring offence

Offence	Existing guidelines or guidance
Causing death by dangerous driving, Road Traffic Act 1988 (section 1)	Sentencing Guideline Council (SGC) August 2008
Causing death by careless or inconsiderate driving, Road Traffic Act 1988 (section 2B)	SGC August 2008
Causing serious injury by dangerous driving, Road Traffic Act 1988 (section 1A)	None
Dangerous driving, Road Traffic Act 1988 (section 2)	Magistrates' Court Sentencing Guidelines (MCSG) May 2008
Driving or attempting to drive with a specified drug above the specified limit, Road Traffic Act 1988 (section 5A)	Sentencing Council general guidance

The evidence from the road-testing interviews will supplement information gathered from the consultation responses to understand how the guidelines are used in practice, determine whether the guideline supports consistency of sentencing and whether the sentences given are proportionate to the severity of the offence committed and in relation to other offences.

This paper summarises the evidence gathered during road testing.

Methodology

Small-scale qualitative road testing for each of the five selected offences took place via Microsoft Teams in August 2022 with a sample of sentencers from the Council's research pool. The sample was designed to ensure the recruitment of a balance of sentencers from magistrates' courts and the Crown Court.

For each offence it was important to understand not only how the draft guidelines are understood and applied, but also how sentencing may change compared to existing practice to inform the resource assessment. There was also specific interest in understanding how sentencers used the disqualification guidance where applicable¹ and whether the wording leading into the culpability factors could be improved.

Each interviewee sentenced two scenarios (see Annex) for one type of offence using existing practice and the draft guideline. The number of interviews undertaken for each offence and the types of sentencers with whom they were carried out are summarised in Table 2.

Table 2: Number of interviews by offence and court

Offence	Number of interviews	
	Magistrates	Crown Court Judges
Causing death by dangerous driving, Road Traffic Act 1988 (section 1)	N/R ²	7
Causing death by careless or inconsiderate driving, Road Traffic Act 1988 (section 2B)	5	5
Causing serious injury by dangerous driving, Road Traffic Act 1988 (section 1A)	5	5
Dangerous driving, Road Traffic Act 1988 (section 2)	5	5
Driving or attempting to drive with a specified drug above the specified limit, Road Traffic Act 1988 (section 5A)	7	N/R
Total	22	22

It is recognised that the number of interviews conducted for each offence by sentencer is slightly lower than would normally be expected for road testing. This reflects a decision to take an iterative approach to determining the number of interviews undertaken based on monitoring the level of variation in views of interviewees during fieldwork.³ It was concluded

¹ Disqualification guidance was not applicable for driving or attempting to drive with a specified drug above a specified limit.

² N/R - Not relevant, offence cannot be tried in this court

³ The responses to interviews were monitored to observe whether interviewees were consistently making the same points or whether there were diverse opinions. Where there is little diversity in views around a topic the saturation point for views is reached fairly quickly and conducting additional interviews is unlikely to produce much in the way of new evidence. However, if there is a high level of diversity in the initial responses conducting more interviews is recommended to ascertain the full range of views/responses and support meaningful analysis.

that the number of interviews specified above provided a full enough range of views on which to base meaningful analysis.

Key findings

Causing death by dangerous driving

- Judges generally found the revised guideline clear and easy to interpret
- Using the revised guideline, there was generally good consistency between judges for **culpability** categorisation
- Judges had no difficulty identifying the relevant **aggravating and mitigating factors** applicable to the scenarios using the revised guideline
- Some judges expressed concerns about the **aggravating factors** of driving for commercial purposes and to a lesser extent, driving an HGV. They queried why these should be viewed differently to a private motorist committing the same offence, or that they were relevant factors but not aggravating in the same way as, for example, a vehicle being poorly maintained
- All judges made an **upwards adjustment for multiple deaths** under scenario A, in line with the guideline
- With two exceptions, judges applied the one-third credit for an early **guilty plea** as anticipated
- Almost all the judges imposed higher **final sentences** using the revised guideline compared to the existing guideline. This was the case across both scenarios
- Across both scenarios **final sentences** had some variation, which was largely driven by the choice of culpability categorisation. Final sentences were broadly consistent and within range of the anticipated final sentences, with one exception for scenario A
- Judges held broadly positive views on the **final sentences** reached under the revised guideline. However, while several were “satisfied” with the final sentences, one felt they were too high. Some judges commented that death by dangerous driving cases were “extremely difficult” to judge and made identifying culpability challenging
- Five of the seven judges did not notice the change in the minimum term for **disqualification** in the revised guideline and because of this imposed incorrect disqualification sentences across both scenarios, which they corrected after reviewing the guidance during the interview
- Judges felt the **sentencing table** starting points and ranges were appropriate, although one commented that they felt very few cases would fall under lesser culpability

Causing death by careless or inconsiderate driving

- Sentencers generally found the revised guideline “helpful” and “very straightforward”
- Using the revised guideline, there was some variation in **culpability** categorisation across scenario A and B, reflecting the expectation that culpability could fall within either medium or lesser categories
- Judges and magistrates had no difficulty identifying the relevant **aggravating and mitigating factors** for scenario A and B using the revised guideline, but there was quite a lot of variation in phrasing for the impeccable driving record factor
- Sentencers referred to impeccable, ‘clean’ and ‘good’ licences or records interchangeably. Several sentencers asked what the difference between a clean driving record and an impeccable one was, with one judge saying that the guideline phrasing “confuses” rather than assists

- Some sentencers questioned the **aggravating factor** of driving for commercial purposes and why such drivers should be seen as having greater responsibility. Two queried the purpose of separating children out from other passengers
- **Final sentences** were higher across both scenarios for judges and magistrates using the revised guideline than for the existing guideline
- Judges and magistrates held mixed views on the **final sentences** reached under the revised guideline. Some found the sentences “uncomfortable” or “a bit on the harsher side”, others felt they were “fair” and “appropriate”.
- Most judges and magistrates did not refer to the **disqualification** guidance, with some citing familiarity with the guidance and others commenting that they had failed to notice it
- Mostly, judges and magistrates felt the **sentencing table** was “straightforward” and used “reasonable” ranges. One judge felt that having custodial starting points better reflected the loss of life, and several felt the higher table ranges reflected a move to more punitive sentences. One magistrate felt the table was asking them to “push boundaries” to avoid sending cases to Crown Court

Causing serious injury by dangerous driving

- As expected, there was some variation in the **culpability** categorisations (within B and C) selected by judges and magistrates in three of the four scenarios, while there was full agreement on the fourth
- For the two scenarios sentenced by the magistrates and scenario A sentenced by the judges, there was a good level of consistency in the **harm** categories selected. However, there was more variability in the harm categories selected by judges sentencing scenario B: three selected harm category 1 and two judges category 2, with debate centring on whether the injuries caused would have a lifelong impact.
- Some of the judges and magistrates expressed concerns about there only being two categories for harm, saying that there was “quite a leap” between the two categories and that category one is only for “the really dire situation”
- Neither judges nor magistrates experienced any difficulty identifying the relevant **aggravating and mitigating factors** for the scenarios, although a few made suggestions for minor wording changes to the factors
- The **final sentences** imposed by the judges were primarily driven by the culpability and harm categorisations. The final sentences imposed by magistrates for scenario B were fairly similar, however those imposed for scenario A were more varied, ranging between 18 weeks and 1 year. This variation could not be explained entirely by the categorisations selected or the aggravating and mitigating factors identified
- For scenario A, the judges imposed sentences that were similar to those that would have been handed down under existing practice. However, for scenario B, judges’ sentences were more varied. Only three of the five magistrates interviewed stated what their final sentences would be for the magistrates’ scenarios A and B under existing practice and these were quite different to the final sentences imposed using the draft guideline. On balance, the sentences were more severe under the draft guideline
- The majority of judges were content with the sentences imposed using the draft guideline. However, the majority of magistrates felt the sentences handed down under the draft guideline were too severe for the scenarios tested
- Most of the judges and magistrates imposed the minimum 2-year **disqualification period**. For judges there was no difference between the driving disqualification periods imposed under existing practice and the draft guideline. However, the

majority of driving disqualification periods imposed by magistrates increased when using the draft guideline

- Overall, the judges were content with the **sentencing table**, but the magistrates were less happy. In particular, some sentencers (judges and magistrates) thought community orders should be included at the lower end of the table
- None of the judges and only two of the magistrates looked at the **disqualification guidance** while sentencing the scenarios. For two judges and one magistrate this may have been because they were using printed draft guidelines, but some suggestions were made that signposting to the guidance could be improved
- Overall, the guideline was welcomed as an improvement on existing practice and sentencers found it clear and easy to interpret

Dangerous driving

- Most sentencers found the guideline “clear” and “familiar”
- Using the revised guideline, there was generally good consistency in **culpability and harm categorisation** for scenario B, but it was a more varied picture for both judges and magistrates for scenario A
- Judges and magistrates had no difficulty identifying relevant **aggravating and mitigating factors** across all scenarios using the revised guideline
- Some sentencers were concerned about several of the listed **aggravating factors**, questioning why the victim being a close friend or relative of the offender was relevant as mitigation and what a genuine emergency would constitute
- Judges and magistrates sentenced different scenarios. There was little difference in the **final sentences** imposed by judges using existing practice and the draft guideline across both of their scenarios. In contrast, the final sentences imposed by magistrates were higher using the revised guideline compared to the existing guideline across their scenarios
- Judges and magistrates held mixed views on the **final sentences** reached under the revised guideline. Several judges felt they were similar to what they imposed using the existing guideline or practice. There were both judges and magistrates who felt that the sentences under the revised guideline were “tougher”, “harsh” and “too high”
- Across all scenarios, none of the judges or magistrates had looked at the **disqualification** guidance when sentencing
- Judges’ and magistrates’ views on the **sentencing table** were varied. Magistrates generally felt it ensured consistency. Several judges commented on the maximum sentence of 2 years, with one suggesting it would be better if it was 5 years to allow for more “nuanced” sentences. Some sentencers felt that many cases would fall under high culpability due to cases often involving a deliberate decision to ignore the rules of the road

Driving or attempting to drive with a specified drug under a specified limit

- Overall, magistrates found the draft guideline clear and easy to interpret
- There was a degree of variation in the culpability categorisation of scenario A, but less so for scenario B. This occurred primarily from magistrates’ judgment of the applicability of the culpability factor, evidence of another specified drug or of alcohol in the body. Magistrates asked for clarification of the phrasing “evidence of” and questioned whether the drug need be identified as being over the specified limit. Due to the variation in the categorisation of culpability, final sentences for scenario A ranged more than was expected

- No further difficulties were outlined for **culpability**, however magistrates did note that they felt the factors for culpability and harm were quite restrictive. On **harm**, magistrates sought clarification on the factor obvious signs of impairment, specifically regarding who the impairment should be obvious to
- A large amount of variation occurred in the application of credit for the guilty plea for both scenarios but primarily scenario A. This was due partly to the community orders imposed. Some magistrates reduced the fine band, whereas some reduced the level of the community order or length of specific attachments e.g. unpaid work. Across the two scenarios, two magistrates reduced the period of disqualification, whilst others applied it to the main aspect of the sentence e.g. fine or community order
- **Aggravating and mitigating factors** were applied consistently for both scenarios. One magistrate applied a factor ('location') which did not appear in the draft guideline. A point of subjectivity was raised for the factor very short distance driven. Magistrates suggested a small number of additions
- Participants noted information on the minimum disqualification period and applied this correctly. There was slight variation between the disqualification periods imposed using the current guidance in comparison to the draft guideline as well as between final sentences
- On the whole, magistrates were happy with the proposed **sentencing table** and thought it reflected current practice. A small number of amendments were suggested

Annex: Scenarios

Causing death by dangerous driving

Scenario A

The offender, a 60-year-old man, was driving an HGV which was heavily loaded along the motorway. He was an experienced, professional driver with no previous convictions and a clean driving record.

He was driving at around 50 miles per hour, not unreasonable for the overall conditions, and had been travelling at a sensible distance behind the Peugeot 208 in front, driven by two of the victims (a married couple). However, the traffic in front began to slow and for some reason which was not established, though certainly not mobile phone use, the offender's attention was not on the road for an estimated 10 seconds.

This led to a collision with the Peugeot which killed the two victims as they were pushed into the van in front of them. Only at this point did the offender apply the brakes, but it also meant his HGV crashed past the Peugeot and also collided directly with the van in front. Its driver was treated at the scene but later died of his injuries in hospital.

The offender remained in the cab of his HGV at the scene, apparently unable to move and later in police interviews spoke of "being shell-shocked". At first, in interviews he said that the vehicles in front had braked too quickly, but in subsequent interviews and in a letter to you he has expressed heartfelt remorse. He entered a guilty plea at the earliest opportunity.

The victim impact statements of all victims' families speak of the heartbreak and loss, especially at not being able to say goodbye to their parents and grandparents. The offender himself has a weak heart and a bad back (though these did not contribute in any way to the incident, and he was considered fit to drive).

Scenario B

The offender, a 47-year-old male, was driving with his brother as a passenger in his Volvo along a single-lane A road. The speed limit was 60 miles an hour and the offender was driving within that limit. It was a sunny day and the traffic was relatively busy.

The offender was in traffic behind a slow-moving caravan. Three cars in front of him overtook, and after a short period of time the offender pulled out to overtake. But immediately coming towards him on the other carriageway was the victim, riding a motorcycle. The witness, driving behind the offender did see the motorcyclist beforehand, but the offender later said he did not see him at all. In line with this, he took no action to swerve out of his path – it was a head on collision. The motorcyclist was thrown onto the windscreen of the offender's car and onto the road.

The offender was in shock but called the emergency services to the scene. The victim, who had no known relatives, was dead on arrival at the local hospital. The offender gave a full and frank account to police, has expressed his profound regret at what happened, and admitted his guilt at the earliest opportunity.

The offender has a clean driving record and no previous convictions. There were no defects found to the vehicle, the offender's eyesight was found to be in good condition, and there was no suggestion that anything else had affected his line of sight. The prosecution therefore urges

that this demonstrated a serious lapse of concentration, particularly bearing in mind that others had seen the victim approaching.

Causing death by careless or inconsiderate driving

Scenario A

The offender was a 67-year-old woman who was driving home from volunteering at the local library. The victim was a 62-year-old man, with a wife and grown-up daughter who had just got married and was pregnant with his first grandchild.

The victim was cycling his usual one-mile journey home from work. As with the offender this was a familiar route; his bike was in good working order and he was described as an experienced cyclist. He wore a high visibility jacket.

The car in front of the offender overtook the victim on his bicycle without issue. However, when the offender began to overtake, for some reason the car veered suddenly to the left – an action that neither the offender nor witnesses could explain. This meant the front bumper collided with the rear wheel of the victim's bicycle causing it to buckle and him to be thrown into the air and over onto the road. The offender waited at the scene, badly shaken whilst a passer-by called an ambulance.

He was conscious and taken to the local hospital. X-rays revealed significant and concerning damage to his back, but whilst waiting for an operation the following day he developed asymptomatic deep vein thrombosis which caused a pulmonary embolism resulting in a heart attack. This resulted in his death before his family had time to be called.

The victim's wife of 35 years describes having lost "the love of her life, her soul-mate" and his daughter describes her immense sadness at how her daughter will never meet her grandad. The offender (who has no previous convictions and a clean driving record) did not plead guilty and did not express any profound remorse at the trial, although she understands how sad this is for the victim's family. It remains unclear precisely why she veered to the left: the prosecution urge that it was a lapse of concentration, exacerbated by a degree of tiredness at the end of a long day.

Scenario B

Offender is 48 and a family man with a clean licence and no criminal record. One day he was driving his Audi and trying to merge into a busy ring road. He was facing behind him to the right looking for a gap in the traffic and judging when it would be possible to pull out.

The offender did not look ahead of him and drove at a very low speed into an elderly pedestrian crossing to a traffic island with shopping bags (this was not a pedestrian crossing). She was pushed to the ground. The offender stayed at the scene and was described by witnesses as being shocked and upset and provided assistance to the victim until the ambulance came. The victim suffered a complex pelvic fracture; there was an accumulation of blood in the stomach, and her body reacted by multiple organ failure, which led to the loss of her life.

The loss of the victim has been described as an "utter tragedy" by her family. The offender has expressed sincere remorse and described the negative impact it has had on him and his family. He pleaded guilty at the earliest opportunity.

Causing serious injury by dangerous driving

Judges

Scenario A (judges)

The offender, a 33-year-old woman, was driving home from work as a nurse on roads with which she was familiar. There is no suggestion that she was tired or distracted. She found herself behind a slow-moving petrol tanker. She drove behind it, well below the 40 mph speed limit for 10 minutes and then pulled out in an attempt to overtake.

At that point however, there was a sweeping bend ahead and the road started going downhill. This meant that the tanker started moving faster than the offender had anticipated, and her Corsa was unable to accelerate quickly enough. The victim's car came from the opposite direction and there was a head on collision which resulted in the victim's car's engine being forced off its mountings and pushed inside the car's interior. The offender injured herself and in a state of shock stayed in her car, and a passing motorist stopped, provided immediate assistance to the victim and called an ambulance.

The victim, 23, a student studying to be a teacher, suffered two broken femurs, complex fractures of both feet, a fractured knee and a fractured elbow. These, together with other associated injuries, resulted in ten-hour surgery and three months in a full plaster cast. Throughout this time, the victim was at first confined to a bed for several weeks, then required a wheelchair and had to undergo physiotherapy.

In her victim personal statement, she wrote about the loss of dignity and embarrassment from having to be bathed over those months as well as the isolation she felt, and the feeling of being a burden on others. She could not finish the second year of her studies and is fearful she may not enjoy future sporting activities (skiing and rowing), and whether she will be able to (for example) kneel down to speak with small children in a classroom.

The offender has a clean criminal record and a clean driving record. She suffered a broken leg in the incident, which involved being in a cast and using crutches for two months. Although she did not seek to blame others, she contested that this was dangerous driving, did not express particular remorse, and was convicted after a trial. You have received several positive character references.

Scenario B (judges)

On a winter's evening, around 10:00pm, the offender, a 26 year old man, was driving along a country lane coming back from his job as a lifeguard. The victim, aged 78, was walking his dog along the road when the offender drove past him. The victim shouted at him that he had driven far too close and waved his arms at him whilst flashing his torch. The offender stopped about 30 feet down the road and reversed back towards the victim. He misjudged the distance – this was exacerbated by the lack of street lighting and his rear window being misted up. Although reversing at a relatively low speed, he struck the victim who fell into a ditch by the side of the road.

At first it was suggested that the offender had deliberately set out to hit the victim. However, the police accepted that he simply intended to come back to talk with the victim - whether to remonstrate or ask what the matter was can never be known, but the offender expressed remorse and regret for what he admitted was "a very silly piece of driving". He has a clean criminal and driving record.

The victim suffered fractures to the lower leg bones of his right leg. He spent about a week in hospital having these fixated using a metal pin. Whilst he has made a good physical recovery, he describes having been reluctant to go walking with his dog in that area as he had before. He found it hard to sleep and suffered from what he called anxiety attacks and flashbacks. The pin remains in his leg, and he finds it painful to stand for any lengthy period of time. He says it has affected his physical fitness and his ability to take part in social activities.

The offender has repeatedly expressed remorse for what happened and pleaded guilty at the earliest opportunity. He has no previous convictions and a clean driving record. He has caring responsibilities (not sole) for a young son and several supportive letters have been sent in, including from his employer, about what a good role model for young people and others he is in his job and sports volunteering work.

Magistrates

Scenario A (magistrates)

The offender, a 47 year old male, was driving with his brother as a passenger in his Volvo along a single-lane A road. The speed limit was 60 miles an hour and the offender was driving well within that limit. It was a sunny day and the traffic was relatively busy.

The offender was in traffic behind a slow moving caravan. Three cars in front of him overtook, then a motorcycle overtook both the offender and the caravan at speed which, the offender said, gave him a false sense of security that the road ahead was clear. The offender pulled out to overtake, but immediately coming towards him on the other carriageway was the victim, driving his car at the speed limit. The offender saw him too late and tried to swerve out of his path back into his lane. The other driver also tried to avoid a collision by swerving, narrowly missing the offender's car. He drove his car up into the verge and came to an abrupt halt.

The offender was in shock, but called the emergency services to the scene. The offender has a clean driving record and no previous convictions. He gave a full and frank account to police, has expressed his profound regret at what happened, and admitted his guilt at the earliest opportunity. There were no defects found to the vehicle, the offender's eyesight was found to be in good condition. His brother says that he was focussed fully on the road and had undertaken several similar "textbook" manoeuvres earlier in their journey.

The victim had a fracture to the sternum, four fractures to his toes, and a lot of bruising. Although he did not provide a victim impact statement, he is said to be recovering well and is undertaking physiotherapy.

Scenario B (magistrates)

The offender was a 52 year old woman who was driving home from work. The victim was cycling his usual one mile journey home from work. As with the offender this was a familiar route; his bike was in good working order and he was described as an experienced cyclist. He wore a high visibility jacket.

The car in front of the offender overtook the victim on his bicycle without issue. However, at the point when the offender began to overtake, her phone began to ring: she glanced down and reached across to the passenger seat to turn it off, meaning she momentarily steered her car to the left. This meant she overtook very close to the cyclist and cut him up. He had to steer onto the bank and fell off his bicycle. This was estimated to take place over no more than three seconds. The offender stopped and got out to check on the cyclist; she applied basic first aid to a cut, and immediately called an ambulance

The victim had four fractures to his toes, a chipped tooth and a lot of bruising. He is said to be recovering well and undertaking physiotherapy.

The offender (who has no previous convictions and a clean driving record) is very sorry about what happened and pleaded guilty at the earliest opportunity. She is the primary carer for two teenagers.

Dangerous driving

Judges

Scenario A (judges)

The offender, a 32-year-old male, had had an argument with his partner and was driving too fast at around 9pm when he was pulled over by police. He stopped but was uncooperative and would not wind down his window or talk with the officer. They called for support.

The offender reversed his car which smashed into the parked police car, narrowly missing one of the officers, and then drove off. Avoiding the other officer in the road and another car in front of him, the offender mounted the pavement and drove over a short garden fence, knocking over some wheelie bins. He then returned to the road and drove off at some speed – the police officers estimated it was at least 50 mph in a 30-mph zone.

The Police attempted to follow but lost the offender after the next street. It is not known how long he fled, or at what speed. His car was found one mile away.

The offender pleaded guilty at the earliest opportunity. He has some previous (non-driving related) convictions, all older than three years ago, but received a caution for a criminal damage matter last year. He has a partner, and two young children who depend financially on his work as a crane driver.

Scenario B (judges)

The offender was caught on CCTV on his 350cc motorbike riding around a housing estate (with a helmet), performing dangerous turns and a succession of wheelies. It was the middle of a sunny Saturday afternoon and there were various pedestrians, including children, walking around the estate, as well as other motorcyclists. He had fake numberplates on the bike. Witnesses suggest that the offender was tacitly encouraging other motorcyclists to copy his manoeuvres. In all, the footage suggests he was driving in this manner for 20 – 25 minutes.

The offender is 28, and has previous convictions, dating back seven years for dangerous driving and driving with excess alcohol. He was disqualified at that point and needed to take an extended retest, which he has not done, and is therefore also driving without a licence for the purposes of the present offence. Nonetheless the motorbike was purchased at some point the past year.

The offender pleaded guilty at the earliest opportunity. He has a supportive partner who has written a letter highlighting his new job and saying he is determined to turn his life around.

Magistrates

Scenario A (magistrates)

The defendant, a 20-year-old male, was driving along a dual carriageway at 11:30pm when he pulled up behind the scene of a very recent head-on collision. The police had closed that lane whilst they and the ambulance dealt with the serious injuries which had occurred involving three people.

The offender had just secured a job as a security guard and was desperate to get to his shift on time: reversing and making a circuitous trip would have made him more than 30 minutes late. He slowly crossed the central reservation and made his way for 100 yards driving the wrong way along the other carriageway before re-joining the correct carriageway, after the crash site. As one would expect for this time of night, it was clear there were no vehicles coming in the opposite direction.

The police witnessed this and noted his numberplate, tracking him down the following day. He admitted what he had done, accepted that the driving was dangerous and explained that he could not afford to lose his job. He pleaded guilty at the earliest opportunity and has said he is very sorry for 'doing such a stupid thing'. He has no previous convictions and a clean driving record (he has only been driving for a year). His employers have provided a glowing reference.

Scenario B (magistrates)

The offender is a 49-year-old male who was driving his mini on the M5. Dashcam footage was handed to the police by another motorist who was driving along the same stretch of road, in response to a road safety campaign.

The footage shows the offender overtaking the other motorist in the fast lane and then veering abruptly into the middle lane. One minute later, the offender repeats the manoeuvre overtaking the same car again which causes the filming motorist to veer slightly into the other lane to avoid him. The offender then drives off. The motorway at this point is not busy.

The offender said that he had been provoked by the other driver after he had made rude hand gestures to him and beeped his horn repeatedly: he claimed that in fact the other driver had earlier cut him up in a far worse manner, although there is no evidence of this.

The offender has no previous convictions and a clean driving licence. He is on medication for a weak heart and the Defence point out that he was suffering personal difficulties at the time of the incident as his father had recently passed away. He pleaded guilty at the earliest opportunity, but it is clear he still feels hard done by.

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

Scenario A

The offender is 38. He was riding his motorcycle along a main road on the half mile journey between his work and home at rush hour. He was driving behind a trailer when he attempted to overtake. A car emerged from a junction and knocked him off his bike causing him serious injuries. The car drove off and has never been traced.

When the police arrived the offender admitted he had had a drink earlier in the day and smoked a small bit of weed. He did not test over the limit for alcohol at the roadside but positive for drugs. At the police station a drugs test revealed he had 114 microgrammes of Benzoyllecgonine (a cocaine derivative) in his bloodstream. This appears to have been the result of drug taking three days previously. The specified limit is 50 microgrammes. He was not over the limit for the cannabis he admitted taking.

The offender was convicted of driving with excess alcohol in 2010 and of possession of a class A drug in 2016. The defence point out that he has suffered a great deal from his injuries (a broken back and pelvis). He has lost his job as a warehouse operative and been unemployed since the incident. He pleaded guilty at the earliest opportunity and has said he did not think the cocaine would still be in his system after three days.

Scenario B

The police stopped the offender (aged 53) as he drove his car along the front of a busy seaside town. The offender admitted it was not his car and that he was unlicensed. A roadside drugs test was conducted which was positive. At the police station, a blood test found a reading of 650 microgrammes of Benzoyllecgonine (a cocaine derivative). The prosecution reminds you that the specified limit is 50 microgrammes.

The driver has previous convictions for failing to provide a specimen for analysis (2008), driving with excess alcohol (2013) and driving with a specified drug over the specified limit (2017). He was disqualified on each occasion.

The defence point out there was no evidence of substandard driving, and that the offender now rarely drives following his last disqualification in 2017, ordinarily using a push bike. He admits fully that getting in the car on this occasion was a silly mistake. He is currently homeless and staying where he can with friends. He was trying to drive his friend's car (with permission) across town on this occasion where he had secured casual labouring work. He pleaded guilty at the earliest opportunity.

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Justice Committee

The Rt Hon Lord Justice William Davis

Chairman, Sentencing Council

By email only

30 November 2022

Dear William,

Thank you for giving the Justice Committee the opportunity to respond to the Sentencing Council's consultation on motoring offences. We are grateful to the Council for sharing the other responses to the consultation with us in advance of our submission.

We support the Council's decision to update the guidelines, particularly to reflect the increased statutory maximum penalty for the offences of (i) causing death by dangerous driving and (ii) causing death by careless driving when under the influence of drink or drugs, from 14 years to life imprisonment. However, we note that the increase in the maximum penalties for these two offences appears to have had an inflationary effect on the starting points and category ranges beyond the most serious cases and have had an effect on sentencing levels for other motoring offences. It was Parliament's intention to increase the penalties for the most serious cases by raising the maximum, but it is not necessarily the case that this should increase the penalties for cases that fall into the medium and lesser categories. We note that the Council took a different approach to revising the Child Cruelty Guidelines in creating a new very high culpability category to give effect to the revised maximum penalties enacted by Parliament. We would be interested to understand why the Council decided against that approach for these guidelines. We note with interest the responses to the consultation which propose the introduction of a very high culpability category for the



Justice Committee

offence of causing death by dangerous driving and believes the suggestion merits further consideration by the Council.

The resources assessment produced by the Council suggests a greater impact on prison resources than the impact assessment for the Police, Crime, Sentencing and Courts Bill had originally outlined. For example, regarding the increase in the maximum penalty for the offence of causing death by dangerous driving to life imprisonment, the impact assessment suggests that in a high scenario it is anticipated that a steady state will be reached in 2031/32 with an additional 30 prison places required. However the resource assessment anticipates for this offence that a further 260 prison places per year will be required as a result of the guideline being updated. It would be useful to know if the Council could explain why Government's impact assessment and the Council's resource assessment have arrived at different views on the number of prison places required.

We are concerned that the increase in the maximum will lead to more short-term prison sentences for the medium and lesser culpability categories. We were also interested by several respondents' suggestion of there being a greater focus on the use of disqualification periods as opposed to short custodial sentences in appropriate cases and also the suggestions for there to be further guidance provided regarding recommended lengths of disqualification periods. We believe that both of these matters require further consideration by the Council, and we look forward to reading the Council's response on these points.

We note that it is not clear from the face of the guidelines how the possibility of a life sentence for the offences of causing death by dangerous driving and causing death by careless driving under the influence has been incorporated into the relevant guidelines. We note that step 5 of the draft guideline asks the court to consider



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whether it would be appropriate to impose an extended sentence. The Police, Crime, Sentencing and Courts Act 2022 did not add the offences of causing death by dangerous driving and causing death by careless driving under the influence to Schedule 19 of the Sentencing Code, which lists the offences where a life sentence must be imposed if it meets the conditions included in section 285, including that “the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences”. We are concerned that this lack of a trigger could result in some difficulties for sentencers. We understand that the court retains the residual discretion to impose a discretionary life sentence, but we would welcome any clarification the Council could provide on this point.

Yours sincerely,

Sir Robert Neill MP
Chair
Justice Committee

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Further comments on culpability factors

Dangerous driving

“The failure to stop should be set at the highest level. In the death of my son, the factor that [the offender] had been drinking, but by leaving the scene and delaying his surrender he made sure he could not be convicted as a drink driver and reduce his sentence.” - *James Regan*

“Evidence of aggression i.e. road rage should also be a high culpability factor and certainly warrants the offence sitting within Dangerous driving rather than careless driving.” – *Eastgate Cycle Cycling Club*

“There is a huge gap between 'prolonged, persistent and deliberate' and 'brief, dangerous manoeuvre'. I think it needs to be prolonged, or persistent or deliberate not all 3 for [high culpability]” – *Dr Lilian Hobbs JP*

“There was a discussion amongst the Committee regarding situations where multiple medium culpability factors may be present. The committee’s view was that where there are a number of culpability B factors present “*multiple medium culpability factors present*” should be added to the Culpability A factors list.” – *HM Council of District Judges*

“Brake is advised by leading road safety academic research and understands the breadth of driver behavioural crash causation. Considering the proposed list from this evidenced perspective, and its use within law application, it has:

- omissions of categories of actions by drivers that create significant risk and danger
- inconsistency of terminology in different categories
- vagueness, to a degree of meaning loss

From a safety perspective, we offer **the below list** of culpability factors that we think should be considered as ‘very high’ and ‘high’, which may or may not be useable in entirety in sentencing advice. We recognise that the nature of the laws behind the proposed guidelines may affect the practicality of all aspects of this list being adopted. However, it is important that the SC understands the breadth and danger of driver behavioural causation factors and considers their applicability and inclusion.

Footnotes are also provided for reference.

Culpability factors that we think should be considered as ‘very high’ and ‘high’, with those most likely to be ‘very high’ listed first:

- Multiple, prolonged, repeated, or otherwise particularly extreme culpability factors that were, or ought to have been, obvious to the offender as dangerous, from the below culpability factors

- Racing or competitive driving against another vehicle, or offence committed in course of police pursuit
- Disregarding warnings of others or automated warnings by the vehicle relating to one or more culpability factors from the high and medium culpability lists
- Driving at a speed that was above the speed limit and that would have been obvious to a careful and competent driver was too fast for safety, considering factors such as the road design, road condition, weather conditions and the vehicle¹
- Deliberately carrying out an obviously high-risk manoeuvre or driving behaviour, a particular example being **overtaking on the wrong side of the road** where it is not possible, within the speed limit, to know the road ahead will remain clear²
- Driving with alcohol levels **above the legal limit** or having consumed **illegal** drugs³
- **Knowingly driving with a medical condition** that makes it dangerous to drive (inclusive of uncorrected poor eyesight below the standard required to hold a driving licence)⁴
- Driving when **deprived of sleep**, either a) before driving; or b) due to driving with disregard for rules and guidance on taking breaks⁵
- Driving when **using a hand-held device**⁶ or **other distraction** from driving for a length of time that would have been obvious to a careful and competent driver would have prevented ability to brake and stop in time to avoid a crash⁷

¹ Speed is a presiding contributing factor to the outcome of crashes and this factor in particular needs clarity with a focus on the danger of speed over the limit and for the conditions. The slower we drive, the more chance we have to avoid hitting; and if we do hit, the lower the chance of death or serious injury. The SGC wording 'speed greatly in excess of speed limit' is open to far too much interpretation. Interpretation of the danger of speed requires an understanding of physics to be interpreted correctly. Braking distance depends on how fast a vehicle is travelling before the brakes are applied, and is proportional to the square of the initial speed. This means that even small increases in speed mean significantly longer braking distances. Braking distances can be much longer for larger and heavier vehicles, and in wet or icy conditions. Thinking distances can be affected by visibility, including in bright conditions.

² This is a particularly deliberate, obviously dangerous act, that is a notable causation of fatal and serious injury crashes, and worthy of distinct mention and high culpability.

³ It is appropriate to have a zero tolerance of alcohol and illegal drugs when driving. Proving impairment should not be required.

⁴ There should be no distinction between the gravity of culpability between illegal drugs and medical problems that are known to impair in ways that are obvious to the driver, inclusive of failure to correct eyesight using glasses a driver knows they should wear.

⁵ Commercial drivers have rules they are required to follow.

⁶ This is now illegal in entirety, so deserving of its own point.

⁷ 'A substantial period of time' is neither clear nor appropriate in this factor. A vehicle can travel a significant distance in a very short amount of time, and the higher the speed, the further this is. Also, attention is a significant requirement at all speeds, e.g., in urban environments with high densities of Vulnerable Road Users.

- Driving a vehicle with a **dangerous mechanical defect**, due to failure to carry out checks listed in the Highway Code or have the vehicle inspected in line with legal requirements. Driving with visibility or controls obstructed⁸
- Driving a vehicle with a **dangerous load**
- **Reversing or otherwise slow manoeuvring** a vehicle dangerously⁹
- Failure to **secure children** in a vehicle correctly in legally-required child restraints
- Evidence of any other **deliberate decision** to ignore the rules of the road, such as running a red light purposefully
- Evidence of any other disregard for the risk of danger to others”

- *Brake*

“Whilst we agree with most of the culpability factors, for the reasons highlighted on pages 1 and 2, we believe the following to be careless rather than dangerous driving:

- brief but avoidable distractions
- driving at speed that is inappropriate for prevailing road or weather conditions
- momentary lapses of concentration

the following to be dangerous rather than careless driving:

- driving whilst ability is impaired as a result of alcohol or drugs
- driving in disregard of advice relating to the effects of medical condition or medication
- driving when deprived of adequate sleep or rest

the following should also be considered as dangerous driving

- driving at excessive speed, especially when inappropriate for road or weather conditions
- using a mobile device (irrespective of duration)
- long conversations on hands held phones
- carrying passengers not wearing a safety belt”

- *Nicole and Chris Taylor (Parents of RTC victim)*

“State how many of the factors need to be met for the offender to be placed in a particular category. Any more than one should increase the culpability.

Judges need tangible guidelines to help ensure consistency and to stop overzealous defence barristers exaggerating the actions of the offender.

⁸ Vehicle maintenance is a driver responsibility and must be given the same culpability levels as other legal requirements.

⁹ Vehicle reversing must be undertaken in safety. It is a particular risk for larger vehicles, and should be avoided wherever possible.

The police say you must follow the evidence. Most factors stated can be measured for example the amount of alcohol in the blood stream but for those factors that are intangible more guidance needs to be given. Extra guidance reduces interpretation, increases consistency, and provides clarification to victim's families as to why the offender is placed in a particular category." – *Chris Barrow (Widower of RTC victim)*

Careless driving

"Yes I think size and weight of vehicle needs addressing though. People who drive massive vehicles on our country's roads can cause death just by the size of the vehicle. I see Germany are taking this in to account in sentences." – *Matthew Hart*

I believe every listed culpability factor should qualify for the dangerous driving standard. Driving under influence amounting to "careless" is an insult to sense of right and wrong. Likewise every incident of DbCD which happened while a Highway Code violation can be shown. No causative connection necessary. Careless standard could only apply when the driver "did nothing wrong" but did not anticipate a risk factor which should have been know to an educated driver." – *Anton Isopoulos*

"As with Death by Dangerous Driving, the culpability factors should include any prior history of aggression towards vulnerable road users. Where extreme evidence exists then this should create a presumption towards aggression being a significant factor and either evaluate the offence to Death by Dangerous Driving or, moving to high culpability here." – *Chris Hesketh*

"The Committee struggled to identify examples of cases where an extreme example of a medium culpability factor would not result in an offence involving dangerous driving. If such an approach is to be taken, some members considered that "highly significant/substantial" would be more appropriate than "extreme".

As with our response to question 2 we considered that where the standard of driving involved "multiple" examples of medium culpability factors, this could warrant the case being positioned as high culpability.

A medium culpability factor is "Engaging in a brief but avoidable distraction". A lesser culpability factor is "Momentary lapse of concentration". The references in both to a very short period of time may confuse the sentencer. We think that the focus of the medium culpability factor is on the engagement in an avoidable distraction and that the brief length of time over which this occurs is intended to distinguish a medium from a high culpability case; but we wonder whether this could be made clearer." – *HM Council of District Judges*

“Our one concern is the expression “includes extreme example of a medium culpability factor” within the categorisation of high culpability. It is difficult to envisage an “extreme example” of – for example unsafe manoeuvring or consumption of alcohol or drugs – that would not also amount to dangerous driving, or at the very least fall just short of dangerous driving in which case we wonder whether the wording adds very much to the categorisation that has gone before – ie “standard of driving was just below threshold for dangerous driving ...”. If some enhanced qualification is to be given to medium culpability factors to raise them into the higher bracket then perhaps wording such as “a particularly serious example of” would be sufficient?” – *Council of HM Circuit Judges*

“We consider that in its current form and in the absence of clarification and/or explanation, the first listed factor (Unsafe manoeuvre or road position) is too wide. The fifth listed factor (Driving vehicle which is unsafe or where driver’s visibility or controls are obstructed) refers to the vehicle being unsafe. Clarification is required as to whether this is an objective test.” – *Kennedy’s*

Causing injury by wanton or furious driving

“Generally yes. But as the offense covers cyclists then I would suggest being explicit that "racing against the clock" (eg chasing a Strava segment personal best or leader board place) is a high culpability factor (or at least medium). I state this as a cyclist who does on occasion try and improve my personal best Strava segments.” – *Justin Antony Clayton*

“Yes, though there is no need to be strict with road worthiness when it comes to active transportation. Eg a 10kg bicycle with only one brake is not the same as a car with a worn breaking surface. Anticipated levels of risk and consequence should weigh more than pseudo “mot” for small relatively harmless bikes, scooters, mobility devices etc” – *Anton Isopoulos*

“Whilst there is no definition for wanton and furious it would appear more aligned to dangerous driving than careless driving. Assuming there was a clear distinction between culpability factors for dangerous and careless driving, as outlined in our answer to Question 1. The high and medium culpability factors are best aligned to the high and medium factors for dangerous driving with the low culpability factors being aligned to the high and medium culpability factors for careless driving.” – *Nicole and Chris Taylor*

“We think where driving/riding on the pavement should be specified in the culpability levels. . We also believe the higher level of culpability should be reserved for driving of four wheeled motor vehicles which pose so much greater risk due to their speed and weight than do cyclists or e-scooters.” – *Action Vision Zero*

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Further comments on aggravating and mitigating factors

Aggravating factors:

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Disregarding warnings of others
- Driving for commercial purposes
- Driving an LGV, HGV or PSV etc
Add Private Hire Vehicles (Dr Adam Snow) – they have an extra duty of care to passengers
- Other driving offences committed at the same time as the careless driving
Bring out driving whilst disqualified here in particular (Highbury Corner Magistrates)
- Blame wrongly placed on others
- Failed to stop and/or assist or seek assistance at the scene
Passengers, including children
- Vehicle poorly maintained
Be clear this is not cosmetic issues but poor maintenance not amounting to MOT failures – heating/defrosting problems, badly working windscreen wipers (CPS)
- Serious injury to one or more victims, in addition to the death(s) (see step 5 on totality when sentencing for more than one offence)
- Offence committed on licence or while subject to court order(s)
This is irrelevant to driving and shouldn't be considered (Prison Reform Trust)

Suggestions for additional aggravating factors:

- *[In dangerous driving] include "more than one vehicle damaged" (West London Bench)*
- *Never passed test or disqualified (Lilian Hobbs JP)*
- *Lack of insurance (Amanda Seims)*
- *Vehicle itself uninsured as an agg factor in death by driving whilst unlicensed/uninsured and evidence of previous knowledge that vehicle was uninsured (eg police warning) (MIB)*
- *Victim is emergency worker/police officer (Alistair Borland)*
- *Add "uncooperative, including no comment interviews (Chris Barrow)*

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Impeccable driving record
- Actions of the victim or a third party contributed significantly to collision or death
This might be used for victim blaming (John Courouble)
Rewrite to "Actions of another driver contributed significantly to collision or death" (Brake)

- Offence due to inexperience rather than irresponsibility (where offender qualified to drive)
Include counterpart of advanced age (Nigel Woof JP)
- Genuine emergency
This means one life prioritized over another (Brake)
Provide examples: childbirth, escaping road rage, on route to hospital with serious injury? (Prison Reform Trust); also raised in road testing
- Efforts made to assist or seek assistance for victim(s)
- Remorse
- The victim was a close friend or relative
- 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
Then they should have been particularly careful (multiple respondents)

Further points on mitigating factors:

- *Good character/exemplary conduct arises in some guidelines, but not others. Clarification required for what falls within this factor, especially noting the potential for disparities (Prison Reform Trust)*

Current Deferred Sentences Explanatory Materials

Deferred Sentences

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.

Always consult your legal adviser if you are considering deferring a sentence.

The court is empowered to defer passing sentence for up to six months ([Sentencing Code, s.5](#)). The court may impose any conditions during the period of deferment that it considers appropriate. These could be specific requirements as set out in the provisions for community sentences, restorative justice activities ([Sentencing Code, s.3](#)) or requirements that are drawn more widely. The purpose of deferment is to enable the court to have regard to the offender's conduct after conviction or any change in his or her circumstances, including the extent to which the offender has complied with any requirements imposed by the court.

The following conditions must be satisfied before sentence can be deferred ([Sentencing Code, s.5](#)):

1. the offender must consent (and in the case of restorative justice activities the other participants must consent);
2. the offender must undertake to comply with requirements imposed by the court; and
3. the court must be satisfied that deferment is in the interests of justice.

Deferred sentences will be appropriate only in very limited circumstances.

- deferred sentences are likely to be relevant predominantly in a small group of cases close to either the community or custodial sentence threshold where, should the offender be prepared to adapt his behaviour in a way clearly specified by the sentencer, the court may be prepared to impose a lesser sentence;
- sentencers should impose specific and measurable conditions that do not involve a serious restriction on liberty;
- the court should give a clear indication of the type of sentence it would have imposed if it had decided not to defer;
- the court should also ensure that the offender understands the consequences of failure to comply with the court's wishes during the deferment period.

If the offender fails to comply with any requirement imposed in connection with the deferment, or commits another offence, he or she can be brought back to court before the end of the deferment period and the court can proceed to sentence.

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The Effectiveness of Sentencing Options on Reoffending, Sentencing Council, page 56-57

7.4 Females and the impacts of disposals

Research has suggested females have different criminogenic needs. This may have implications for the effectiveness of sentencing and what works to reduce reoffending. Notably, in 2007, the influential Corston Report called particular attention to the plight of vulnerable women caught up in a criminal justice system that was largely designed for men. Accordingly, imprisonment may be a less effective sentence for women if it fails to address their needs.

Additionally, women may experience prison more harshly due to their histories of trauma and feeling greater discord at being distant (both farther away geographically than males due to fewer women's prisons and physically in a personal relationship perspective) from family and children. This different experience may also mean that custodial sentences have different effects based on gender. Concerningly, the negative effects of imprisonment may be amplified for females. Indeed, officials are concerned with the high rate of women committing self-harm in English prisons, with almost 12,000 self-harm incidents recorded in the fiscal year ended 2021. It is also relevant to the general lack of female-oriented treatment programming such that any such services typically offered to females were originally designed for men, despite there being treatment-relevant differences between the genders. A further difference is of relevance, as indicated in an MoJ report. In the two years ending in fiscal 2021, MoJ found that women were more likely than men upon release from custody to be either homeless or rough sleeping and less than half as likely as men to be employed.

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