

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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