

**Sentencing Council meeting:**  
**Paper number:**  
**Lead Council member:**  
**Lead official:**

**16 December 2022**  
**SC(22)DEC05 – Motoring offences**  
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## **1 ISSUE**

1.1 This is our second meeting looking at responses to the motoring consultation that ran between July and September. This paper focuses on culpability factors for:

- dangerous driving offences (causing death by dangerous driving; causing serious injury by dangerous driving; dangerous driving)
- careless driving offences (causing death by careless driving; causing death by careless driving whilst under the influence of drink or drugs; causing serious injury by careless driving)
- causing injury by wanton or furious driving (which draws on culpability elements for the above two groups)

A summary of the road testing findings is attached at **Annex A**.

1.2 The response now received from the Justice Select Committee is attached at **Annex B** for Council's consideration.

## **2 RECOMMENDATIONS**

2.1 That Council makes amendments to the culpability factors, as set out below, including that:

- the wording on drink/drug driving be standardised across guidelines;
- engaging in a brief but avoidable distraction be removed from culpability B, but "very brief avoidable distraction" be added at culpability C;
- the mitigating factors relating to a medical condition and the effect of medication be combined and the wording standardised;

- the aggravating factor “failed to stop and/or assist or seek assistance at the scene” be changed to “failed to stop and/or obstructed or hindered attempts to assist at the scene”; and
- the mitigating factor “impeccable driving record” be changed to “clean driving record”.

### 3 CONSIDERATION

#### *Justice Select Committee response*

3.1 Since our November meeting we have received a response from the Justice Select Committee (see **Annex B**). They question why we have not simply added a “very high” level of culpability and reserved sentences above the previous maximum for these offences (akin to our approach to the child cruelty revisions).

3.2 We discussed the option of four culpability categories at our last meeting and concluded we should stick with three. There are good reasons why we might increase sentence levels across all degrees of offending: in brief, because these levels were last considered 15 years ago and society’s attitude towards bad driving and its consequences has moved on – the majority of consultation responses would appear to back this up by endorsing our proposals. We are also dealing with a range of offences which need to be kept in proportion to one another.

3.3 Parliament’s intention – to the extent it is decisive – does not seem entirely clear cut. The [Explanatory Notes](#) say:

“Increasing the maximum penalty to life imprisonment for these offences will provide the courts with enhanced powers to sentence appropriately for the most serious cases.”  
(paragraph 79)

[In other contexts](#), the Government has said the aim “is to make sure that the penalties available to the courts for such offences are proportionate and reflect the seriousness of the offences committed” and have stressed the comparison with manslaughter.

3.4 Nonetheless, we may wish to discuss whether we should rethink in light of the Committee’s response, particularly noting the potential impact on the prison population.

**Question 1: what is Council’s initial view on the Justice Select Committee’s response?**

*Culpability – dangerous driving*

3.5 There were many comments and suggestions on culpability elements for dangerous driving offences, not all of which can be discussed in full. I have included a selection of responses on the culpability elements for dangerous driving, careless driving and wanton or furious driving at **Annex C** which I have considered, but do not propose taking any action on. Council members are welcome to raise these, though, if any appear useful to pursue. Brake and Nicole and Chris Taylor in particular have provided comprehensive proposals for reworking the culpability elements.

3.6 A large number of respondents agreed with our proposed culpability table. However, there were several suggestions for change. We have already discussed a widely held view that several of the medium culpability elements belonged in high, and concluded that they were broadly pitched correctly, and that we should explain that there is a spectrum of culpability, even within a descriptor such as “dangerous”. Here is the culpability table for dangerous offences, with my proposed amendments in red over the version we consulted on. As a quick win I have removed “high”, “medium” and “lesser” as category headings:

<b>CULPABILITY</b>	
<p>The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify upwards adjustment from the starting point before consideration of aggravating/mitigating factors.</p>	
<b>A-</b> <b>High culpability</b>	<ul style="list-style-type: none"><li>• Deliberate decision to ignore the rules of the road and disregard for the risk of danger to others [<i>particularly vulnerable road users?</i>].</li><li>• Prolonged, persistent and deliberate course of dangerous driving</li><li>• [<i>Prolonged use of mobile phone or other electronic device?</i>]</li><li>• <del>Consumption of substantial amounts of alcohol or drugs leading to gross high level of impairment</del> Driving highly impaired by consumption of alcohol or drugs</li><li>• Offence committed in course of <b>evading</b> police <del>pursuit</del></li><li>• Racing or competitive driving against another vehicle</li><li>• <b>Persistent</b> disregard <b>of</b> warnings of others</li><li>• Lack of attention to driving for a substantial period of time</li><li>• Speed <b>greatly significantly</b> in excess of speed limit <b>or highly inappropriate for the prevailing road or weather</b></li></ul>

	<p>conditions</p> <ul style="list-style-type: none"> <li>• <i>[Driving created a risk of harm to vulnerable road users?]</i></li> </ul>
<p><b>B-</b> Medium culpability</p>	<ul style="list-style-type: none"> <li>• <del>Brief but obviously highly dangerous manoeuvre</del></li> <li>• <del>Engaging in a brief but avoidable distraction</del></li> <li>• <i>[Brief use of mobile phone or other electronic device?]</i></li> <li>• Driving knowing that the vehicle has a dangerous defect or is dangerously loaded</li> <li>• Driving at a speed that is inappropriate for the prevailing road or weather conditions (where not culpability A)</li> <li>• <del>Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs</del> Driving impaired by consumption of alcohol or drugs (where not culpability A)</li> <li>• <del>Disregarding advice relating to driving when taking medication or as a result of a known medical condition which significantly impaired the offender's driving skills</del> Driving significantly impaired as a result of a known medical condition, and/or disregarding advice relating to the effects of a medical condition or medication</li> <li>• Driving when <del>knowingly</del> deprived of adequate sleep or rest</li> <li>• <del>Disregarding warnings of others (where not culpability A)</del></li> <li>• The offender's culpability falls between the factors as described in <del>high A</del> and <del>C lesser culpability</del></li> </ul>
<p><b>C-</b> Lesser culpability</p>	<ul style="list-style-type: none"> <li>• Standard of driving was just over threshold for dangerous driving</li> <li>• Momentary lapse of concentration or very brief avoidable distraction.</li> </ul>

3.7 Some respondents wanted to see “Brief but obviously highly dangerous manoeuvre” placed in high culpability. Others, such as Cycling UK, thought it should be low. There was confusion in road testing about whether something counted as a brief but dangerous manoeuvre, a brief but avoidable distraction, or a momentary lapse and this led to inconsistency in several scenarios about whether offences were categorised as B or C.

3.8 One possibility could be to add a category C equivalent: “brief but dangerous manoeuvre” (or even “brief dangerous manoeuvre”), which highlights the “obviously highly dangerous” element as being deserving of the middle category. Another option (recommended) would be to delete it altogether and rely on “The offender’s culpability falls

between the factors as described in culpability A and culpability C” to capture offending which is more than just a momentary lapse, but not prolonged, persistent dangerous driving.

3.9 Similarly with “brief but avoidable distraction”. Nicole and Chris Taylor (parents of an RTC victim) thought that this didn’t belong in dangerous driving at all but was rather an example of careless driving. HM Council of Circuit Judges thought this should be in low culpability. We could add the following to culpability C: “momentary lapse or very brief but avoidable distraction”. This would mean anything falling between a “very brief distraction” and “Lack of attention to driving for a substantial period of time” would belong in the middle category.

**Question 2: do you want to delete the factor “brief but obviously highly dangerous manoeuvre”?**

**Question 3: do you want to move “brief but avoidable distraction” to culpability C, to become “momentary lapse or very brief but avoidable distraction”?**

3.10 Following last month’s meeting, we amended the wording for the high culpability element relating to drink/drugs to be “Consumption of ~~substantial amounts of~~ alcohol or drugs leading to gross impairment”. HM Council of District Judges suggested replacing “gross” with “high level of” which is line with the guideline for failing to provide a specimen, and represents a lower bar.

3.11 We have different formulations across the guidelines:

- Consumption of alcohol or drugs leading to gross/high level of impairment (high culpability)
- Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs (medium culpability)
- Driving impaired by consumption of alcohol or drugs (wanton or furious driving)

3.12 One could argue that each has a subtly different meaning but I believe those differences are marginal and there is a case for consistency across guidelines. The third appears to me the most efficient and so I suggest rewording all the alcohol/drug factors accordingly.

3.13 I reiterate that there were calls – including from bereaved widower Chris Barrow and many others – for alcohol/drug consumption automatically to be a high culpability factor. This would certainly reflect the growing intolerance of drink and drug drivers in society. Further, we should logically make a distinction in sentence levels between careless driving under the

influence (in our separate s3A guideline) and dangerous driving when it happens under the influence.

3.14 That said, I have not found a satisfactory way to do this. We could distinguish between levels of alcohol in the blood as we do in the s3A guideline, but that may or may not be directly linked with the impairment, which may or may not be linked with the incident which caused the death. Ultimately, Parliament has set the two offences at the same level and on balance I think distinguishing in this guideline between “impaired” and “highly impaired” is the least worst solution.

**Question 4: are you content to leave a culpability B element renamed “Driving impaired by consumption of alcohol or drugs”, with a culpability A equivalent “Driving highly impaired by consumption of alcohol or drugs” (as opposed to “grossly” impaired)?**

3.15 Several respondents were worried about vulnerable road users now being “relegated” to step two. Cycling UK suggested splitting “Deliberate decision to ignore the rules of the road and disregard for the risk of danger to others” into “Deliberate decision to ignore the rules of the road in ways that cause obviously foreseeable danger” and “Deliberately driving in a manner which endangered other road users, particularly vulnerable road users such as pedestrians, cyclists or equestrians”.

3.16 This is a neat way to get vulnerable road users mentioned at step one, but the first element on its own may capture too much dangerous driving. If we want to mention vulnerable road users we could simply add “particularly vulnerable road users” to the bullet as it is drafted. Alternatively, we could add a new high culpability bullet of “Driving created a risk of harm to vulnerable road users, but again this could capture even relatively low examples of dangerous driving. On balance, I recommend not making any change here.

3.17 I have suggested a form of wording at both high and medium culpability for the use of phones and other electronic devices, as some consultees wanted to see this problem explicitly reflected. On balance I do not believe it is necessary as “Lack of attention to driving for a substantial period of time” and “brief but avoidable distraction” should capture this and other behaviours in a broader way.

**Question 5: are you content not to reference i) vulnerable road users or ii) mobiles/electronic devices under culpability on the basis that they are captured in other ways?**

3.18 HM Council of Circuit Judges thought that the high culpability factor “disregarding warnings of others”, which had been an aggravating factor under the existing guidelines,

could be split across both medium and high culpability, with a high factor of “persistent disregard of warnings of others” and a medium factor of simply “disregarding warnings of others”. I believe this is a fair approach, which allows for more flexibility in the extent to which the offender was given the chance to change behaviour.

**Question 6: do you agree to move “disregarding warnings of others” to culpability B, with a culpability A equivalent of “persistent disregard of warnings of others”?**

3.19 On more detailed drafting points, I have removed the reference to “police pursuits” to become “Offence committed in course of evading police”. I considered whether this could capture too wide a range of circumstances (for example simply hiding in a back street), but the driving would still need to be counted as dangerous to have secured a conviction so I believe this wording is acceptable.

3.20 Some members of the public had thoughtful suggestions for the element “Speed greatly in excess of speed limit”. Justin Clayton thought “greatly” was too high a bar and suggested “significantly”. James Townsend and Ian Hill thought this could be expanded to say “...or highly inappropriate for the prevailing road or weather conditions” to capture the situation where someone has driven far too fast (eg) outside a school or in icy conditions, even if not driving at high speeds. This would provide a more exact counterpart to the medium culpability factor “Driving at a speed that is inappropriate for the prevailing road or weather conditions”.

3.21 Dr Adam Snow and Brake suggested that the word “knowingly” was unnecessary in “Driving when knowingly deprived of adequate sleep or rest”, as someone is either deprived of sleep or they are not, and requiring an assessment of the offender’s knowledge would complicate matters unnecessarily.

3.22 See paras 3.27 to 3.29 below for a discussion on medication and medical conditions.

**Question 7: do you agree to:**

- refer to “offence committed in the course of evading police” as opposed to “police pursuits”;
- amend the existing culpability A speed element to become: “Speed significantly in excess of speed limit or highly inappropriate for the prevailing road or weather conditions”; and
- remove the word “knowingly” from “Driving when knowingly deprived of adequate sleep or rest”?

3.23 There were various comments about terms being too subjective in relation to “gross impairment”, “greatly in excess of the speed limit” and “substantial period of time” etc. These often suggested specific figures in terms of (say) alcohol consumption or cut-offs for what would count as “greatly” excessive speed. I believe we can justify these more general terms on the basis of allowing the courts flexibility to fit the facts of the case. There is a particular risk in motoring offences of creating perverse cliff-edges in relation to speeds and levels of intoxication.

*Culpability – careless driving*

3.24 Here is the culpability table for careless driving, with my proposed changes in red:

<b>CULPABILITY</b>	
<p>The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify upwards adjustment from the starting point before consideration of aggravating/mitigating factors.</p>	
<p><b>A</b> High culpability</p>	<ul style="list-style-type: none"> <li>• Standard of driving was just below threshold for dangerous driving and/or includes extreme example of a <del>medium</del> culpability <b>B</b> factor</li> </ul>
<p><b>B</b> Medium culpability</p>	<ul style="list-style-type: none"> <li>• Unsafe manoeuvre or positioning</li> <li>• Engaging in a brief but avoidable distraction</li> <li>• Driving at a speed that is inappropriate for the prevailing road or weather conditions</li> <li>• Driving while ability to drive is impaired as a result of consumption of alcohol or drugs (<del>where not amounting to a separate charge</del>)</li> <li>• Driving vehicle which is unsafe or where driver’s visibility or controls are obstructed</li> <li>• <del>Driving in disregard of advice relating to the effects of medical condition or medication</del></li> <li>• <del>Driving whilst ability to drive impaired as a result of a known medical condition</del> Driving impaired as a result of a known medical condition, and/or disregarding advice relating to the effects of a medical condition or medication</li> <li>• Driving when deprived of adequate sleep or rest</li> <li>• The offender’s culpability falls between the factors as described in <del>A and C</del> <b>high and lesser culpability</b></li> </ul>
<p><b>C</b> Lesser culpability</p>	<ul style="list-style-type: none"> <li>• Standard of driving was just over threshold for careless driving</li> <li>• Momentary lapse of concentration</li> </ul>



3.25 There were general observations on the culpability elements for causing death by careless driving, repeating the point that several deliberate actions such as drinking, driving an unsafe vehicle, or ignoring medication side effects should be in high culpability. Others, such as Action Vision Zero, thought that there was too much overlap between the dangerous and careless culpability tables, which we touched on at our last meeting.

3.26 Professor Sally Kyd and Dr Adam Snow questioned in particular why there was a reference to drink/drugs in the causing death by careless driving guideline, when that would presumably be captured by a s3A offence. I believe it may be reasonable to add “(where not amounting to a separate charge)” as there may be situations where someone was under the legal limit but still impaired, or for whatever reason a section 3A offence could not be made out. An alternative would be to remove the element altogether.

**Question 8: do you agree to add the words “(where not amounting to a separate charge)” to cover cases where impairment is in the mix, but a charge of causing death by careless driving under the influence has not been brought?**

3.27 The law firm Kennedy’s thought that the two elements “Driving in disregard of advice relating to the effects of medical condition or medication” and “Driving whilst ability to drive impaired as a result of a known medical condition” were interlinked and risked double counting. There was a deliberate decision pre-consultation to split out the medical culpability factor for careless driving, although we have not done the same for dangerous driving.

3.28 (Looking again at the wording of the dangerous driving element the phrase “Disregarding advice relating to driving when taking medication or as a result of a known medical condition which significantly impaired the offender’s driving skills” could be phrased better, although no one picked up on this in consultation.)

3.29 I cannot see a good reason for the elements being split in one guideline but not the other, and am persuaded that they should come under one element with as consistent wording as possible between careless and dangerous. I propose:

“Driving [significantly] impaired as a result of a known medical condition, and/or disregarding advice relating to the effects of a medical condition or medication”

with “significantly” being added for the dangerous driving guidelines.

**Question 9: do you agree to merge the medical condition/medication elements into one, and amend the wording for all guidelines using the wording above?**

3.30 I have considered whether to move “engaging in a brief but avoidable” distraction from B to C culpability and attaching it to “momentary lapse”, for consistency with what I propose to do for dangerous driving (see para 3.9 above). However, I believe it is more likely to be an example of a typical piece of careless driving, with only the most momentary, virtually inexplicable lapses reserved for category C. I therefore propose it remains at culpability B.

**Question 10: are you content that “engaging in a brief but avoidable distraction” remains at culpability B in careless driving cases?**

*Culpability - wanton or furious driving*

3.31 Here is the culpability table for causing injury by wanton or furious driving with my proposed amendments in red:

<b>CULPABILITY</b>	
<p>The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify upwards adjustment from the starting point before consideration of aggravating/mitigating factors.</p> <p>References to driving below include driving or riding any kind of vehicle or carriage, including bicycles and scooters.</p>	
<p><b>A</b> – <del>High culpability</del></p>	<ul style="list-style-type: none"> <li>• Deliberate decision to ignore the rules of the road and/or disregard for the risk of danger to others.</li> <li>• Prolonged, persistent and deliberate course of driving likely to cause a danger to others</li> <li>• Driving <del>grossly highly</del> impaired by consumption of alcohol or drugs</li> <li>• Offence committed in course of <del>evading</del> police <del>pursuit</del></li> <li>• Racing or competitive driving against another vehicle</li> <li>• <del>Persistent</del> disregarding of warnings of others</li> <li>• Lack of attention to driving for a substantial period of time</li> <li>• Speed <del>greatly significantly</del> in excess of speed limit <del>or highly inappropriate for the prevailing road or weather conditions</del></li> <li>• Extreme example of a <del>medium</del> culpability <del>B</del> factor</li> </ul>
<p><b>B</b> – <del>Medium culpability</del></p>	<ul style="list-style-type: none"> <li>• Unsafe manoeuvre or positioning</li> <li>• Engaging in a brief but avoidable distraction</li> <li>• Inappropriate speed for the prevailing conditions <del>(where not culpability A)</del></li> </ul>

	<ul style="list-style-type: none"> <li>• Driving impaired by consumption of alcohol or drugs (where not culpability A)</li> <li>• Visibility or controls obstructed</li> <li>• <del>Driving impaired as a result of a known medical condition</del></li> <li>• <del>Disregarding advice relating to the effects of medical condition or medication</del> Driving impaired as a result of a known medical condition, and/or disregarding advice relating to the effects of a medical condition or medication</li> <li>• Driving when deprived of adequate sleep or rest</li> </ul>
<b>C</b> – Lower culpability	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

3.32 Professor Kyd suggested that we should not have a guideline for this offence given it is rarely prosecuted and is somewhat unusual. Action Vision Zero believed that the highest level of culpability should be reserved for motorised vehicles as opposed to bicycles. I believe that it remains worthwhile producing a guideline for the rare occasions it is prosecuted, production of a guideline was welcomed by others, and given the relatively low statutory maximum penalty it would be wrong to exclude from the highest culpability the rare cyclists who cause serious injury or even death.

3.33 Liz Blake JP wanted clarification about whether the reference to “scooters” applied to motorised scooters. It should have become clear by the time a conviction has been secured about what vehicles the offence applies to. Indeed, it may be helpful to keep the matter broadly open to allow for as broad a range as possible of vehicle types.

3.34 Many of the comments covered above in relation to careless and dangerous apply to the culpability table for causing injury by wanton or furious driving. I propose for consistency that we reflect here the dangerous driving wordings set out above in culpability A:

- Driving highly impaired by consumption of alcohol or drugs
- Offence committed in course of evading police
- Persistent disregard of warnings of others
- Speed significantly in excess of speed limit or highly inappropriate for the prevailing road or weather conditions

3.35 For culpability B, I propose we reflect the careless driving wording and include as one element: “Driving impaired as a result of a known medical condition, and/or disregarding advice relating to the effects of a medical condition or medication”.

3.36 Some respondents thought there should not be a third culpability category, and others thought that rather than simply saying “all other cases” it should reflect the wording of dangerous and careless guidelines by saying “momentary lapse of concentration” and, as proposed by HM Council of District Judges “just over the threshold for careless driving”.

3.37 There is a case for providing assistance to the courts by including “momentary lapse” but there is a risk that we invent a standard for wanton or furious driving that doesn’t exist by comparing it to careless driving. Given the broad range of off-road and on-road circumstances that could conceivably come under this offending (a farmer reversing his tractor without any expectation of someone being there, an unlucky quad biker etc), I am minded to leave category C as it stands.

**Question 11: do you agree to make changes to the wanton and furious culpability table to bring the wording into line with that agreed for careless and dangerous guidelines?**

**Question 12: are there any other points on culpability (including those at annex C) that Council members would like to consider further?**

*Aggravating and mitigating factors*

3.38 Across the standard-of-driving offences, aggravating and mitigating factors are fairly consistent so we can deal with them as one. There were comments received on virtually all the factors, and a full discussion on each point would be impossible: I have annotated the step two factors at **Annex D** with the more common and cogent suggestions received on which I do not propose to take any action.

3.39 A great number of consultees considered some of the standard mitigating factors to be inappropriate. Some said that “Serious medical condition requiring urgent, intensive or long-term treatment” should be an aggravating factor if it contributed to the collision. Similarly “mental disorder or learning disability” was argued to be justification to impose a lengthy disqualification.

3.40 Some said that “age and/or lack of maturity” was irrelevant given someone has (presumably) reached the age that they can drive. The same logic applied to “Offence due to inexperience rather than irresponsibility (where offender qualified to drive)” and I believe there is a stronger argument here that either someone is qualified to drive or they are not. That said, these are simply mitigating factors not a defence so I am minded to keep these and be clear in the consultation response about the distinction between mitigation in relation to the offending and personal mitigating factors.

3.41 Several were sceptical about “Efforts made to assist or seek assistance for victim(s)” and “Remorse”. These were considered to be, respectively, the least that people should do and an act put on for the judge. Action Vision Zero suggested remorse was double-counting an early guilty plea. Eastgate Cycles Cycling Club suggested that lack of remorse should be an aggravating factor.

3.42 On the other hand, HM Council of Circuit Judges shared our concern about the aggravating counterpart “Failed to stop and/or assist or seek assistance at the scene”, that offenders may be in shock and not able to help. They thought we should raise the bar to be “obstructing or hindering attempts to assist at the scene”. Kennedy’s thought this would unfairly capture HGV drivers who may not be aware that they have hit someone, and Action Vision Zero pointed out that failure to stop is a separate offence.

3.43 I am persuaded by HM Council of Circuit Judges that it is unfair to offenders who have just been involved in what may be a major incident to penalise them for not assisting, but I believe the courts can apply a common-sense approach to failure to stop. If we wished to counterbalance this we could remove the mitigating factor of providing assistance, noting that it is open to the courts to apply mitigating factors not listed. However, I think such assistance at the scene is worthy of mitigation.

**Question 13: do you want to change the aggravating factor to “Failed to stop and/or obstructed or hindered attempts to assist at the scene”?**

3.44 One road tester and several respondents asked why motorcyclists were not included in the list of vulnerable road users, as they are in the Highway Code. HM Council of Circuit Judges also suggested including “people working in the road”. Whilst the list was not intended to be exhaustive, as it has been raised I see no harm in adding “motorcyclists”, but add “etc” to the end of the sentence to allow the courts to use some discretion beyond the definitions in the Highway Code.

**Question 14: do you want to add “motorcyclists” to the list of vulnerable road users, but add “etc” so that sentencers know this could apply to others?**

3.45 Two respondents, the West London Magistrates Bench and the Prison Reform Trust, wanted clarification that “Passengers, including children” referred to those travelling in the offender’s car. This is undoubtedly the case as it cannot be right to aggravate for something beyond the offender’s knowledge or control (aside from reflecting the actual increased harm of more victims). So I propose amending the factor to “Passengers in the offender’s vehicle, including children” to put the matter beyond doubt.

**Question 15: do you want to amend the factor to “Passengers in the offender’s car, including children”**

3.46 In road testing, some sentencers questioned why driving an LGV, HGV or PSV or driving for commercial purposes should be an aggravating factor. Kennedy’s also thought that these factors would be double counted unfairly for professional drivers. However, I think these factors can be justified by the increased danger posed by large vehicles, and it is the case that driving for commercial purposes and driving a large vehicle are separate matters. The courts can apply common sense in determining the extent to which they interrelate for an individual.

3.47 On this subject, London Buswatch provided comprehensive evidence about how some of the elements in the guidelines could penalise PSV drivers whose bad driving might be due to their working conditions and aspects of their contracts that prioritise speed over safety. They suggest that, whilst these guidelines may be appropriate for private drivers, they should not apply to bus drivers and the like, and that employers’ culpability should be accounted for in the guidelines. I am unaware of employers being prosecuted for the bad driving of their employees, but this would appear to be a broader issue than our guidelines can deal with.

3.48 Road testers and some consultation responses also questioned why the victim being a close friend or relative was relevant as a mitigating factor. This can be defended on the grounds that part of the punishment for such an offender will be the harm they have caused to themselves and those around them.

3.49 In road testing and consultation responses, people queried the meaning of “impeccable driving record” as a mitigating factor. HM Council of District Judges asked whether it might (for example) apply to points received 20 years ago. Kennedy’s thought it would penalise those who drive for a living and are more likely to receive some kind of endorsement on their licence. Others thought it just rewarded those who had been lucky not to get caught. The Magistrates Association thought “impeccable” was too subjective a term.

3.50 I think there would be merit in changing the wording and agree with the MA that “clean” would be best understood by most sentencers.

**Question 16: do you agree to change the mitigating factor “impeccable driving record” to “clean driving record”?**

## 4 IMPACT AND RISKS

4.1 As set out in the draft resource assessment published alongside the consultation, the revised guidelines as consulted on may result in a requirement for additional prison places running into the hundreds. The new causing death by dangerous driving guideline could result in a requirement for up to around 260 additional prison places, with around 20 additional prison places for causing death by careless driving when under the influence of drink or drugs, and around 80 additional prison places for causing serious injury by dangerous driving.

4.2 These assessments are far different to [the assessment the Government made at the point of introducing the legislation](#) that a “high” scenario for raising the penalty for causing death by dangerous driving would involve 30 more prison places. That assessment appears to be based on the assumption that only the worst cases would see an increase in sentencing severity. By contrast, as the Justice Select Committee highlight, we are proposing to increase sentencing levels across most categories. This is an especially live consideration bearing in mind current prison capacity issues.

4.3 This paper proposes a few amendments to culpability factors, but it is not anticipated that these will have a significant impact on our resource estimates. Had all drink/drug drive cases been placed in culpability A, that may have had a more significant impact. Placing very brief distraction in culpability C may have the effect of drawing some more cases into that category which could bring estimates down, but this is impossible to quantify with certainty.

4.4 Should Council wish to reduce the sentence levels for lesser culpability careless driving cases (for discussion in the new year), that may have some impact on the resource assessment. Subject to what Council decides at this meeting, and in subsequent meetings we will work to refine our estimates of the impacts.

4.5 In terms of handling, there will be some disappointment that factors such as drink/drug driving and driving whilst deprived of sleep have not been placed into high culpability. As discussed at our last meeting, the consultation response document can explain that even serious offending behaviour can (and needs to be) graded in a spectrum.

4.6 We should provide a reply to the Justice Select Committee setting out our rationale for why we are seeking to provide increases across the board (if that remains the preferred approach). On the question of whether a life sentence could be imposed for causing death by dangerous driving and causing death by careless driving under the influence, I propose we answer factually, pointing the Committee to the relevant case law (*Saunders* [2013] EWCA Crim 1027).

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## 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**

<b>Offence</b>	<b>Existing guidelines or guidance</b>
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 applicable<sup>1</sup> 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 <sup>2</sup>	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
<b>Total</b>	<b>22</b>	<b>22</b>

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.<sup>3</sup> It was concluded

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

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

<sup>3</sup> 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



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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,

A handwritten signature in black ink, appearing to read 'R. Neill'.

**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 vehicle<sup>1</sup>
- 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 clear<sup>2</sup>
- Driving with alcohol levels **above the legal limit** or having consumed **illegal** drugs<sup>3</sup>
- **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)<sup>4</sup>
- Driving when **deprived of sleep**, either a) before driving; or b) due to driving with disregard for rules and guidance on taking breaks<sup>5</sup>
- Driving when **using a hand-held device**<sup>6</sup> 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 crash<sup>7</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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.

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

<sup>4</sup> 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.

<sup>5</sup> Commercial drivers have rules they are required to follow.

<sup>6</sup> This is now illegal in entirety, so deserving of its own point.

<sup>7</sup> '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 obstructed<sup>8</sup>
- Driving a vehicle with a **dangerous load**
- **Reversing or otherwise slow manoeuvring** a vehicle dangerously<sup>9</sup>
- 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.

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

<sup>9</sup> 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)*