

Causing death by careless driving whilst under the influence of drink or drugs

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

Road Traffic Act 1988 (section 3A)

Triable on indictment only

Maximum: life imprisonment

Offence range: 26 weeks – 18 years' custody

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

STEP ONE**Determining the offence category****HARM**

For all cases the harm caused will inevitably be of the utmost seriousness. The loss of life is taken into account in the sentencing levels at step two.

STEP ONE – DETERMINING THE OFFENCE CATEGORY

There are two aspects to assessing culpability for this offence.

1) The court should first determine the standard of driving with reference to the factors below, which comprise the principal factual elements of the offence.

High

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

Medium

- Unsafe manoeuvre or positioning
- Engaging in a brief but avoidable distraction
- Driving at a speed that is inappropriate for the prevailing road or weather conditions, although not greatly excessive
- Driving vehicle which is unsafe or where drivers visibility or controls are obstructed
- Driving in disregard of advice relating to the effects of medical condition or medication (where the medication does not form a basis of the offence)
- Driving whilst ability to drive impaired as a result of a known medical condition
- Driving when deprived of adequate sleep or rest
- The offender's culpability falls between the factors as described in high and lesser culpability

Lesser

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

2) Factors relevant to the presence of alcohol or drugs or a failure to provide a sample for analysis should then be considered to identify the appropriate offence category and starting point of sentence in accordance with the table below

The starting points and category ranges below relate to a single offence resulting in a single death. Where another offence or offences arise out of

<p>the same incident or facts, concurrent sentences reflecting the overall criminality will ordinarily be appropriate.</p> <p>Where more than one death is caused, it will be appropriate to increase the starting point within or above the relevant category range before consideration of other aggravating features. In the most serious cases, the interests of justice may require a total sentence in excess of the offence range for a single offence. See the Totality guideline and step six of this guideline</p>			
<p>The legal limit of alcohol is 35µg breath (80mg in blood and 107mg in urine)</p>	<p>Careless driving -High culpability</p>	<p>Careless driving -Medium culpability</p>	<p>Careless driving -Lesser culpability</p>
<p>H71µ or above of alcohol OR Deliberate refusal to provide specimen for analysis OR Evidence of substantial impairment and/or multiple drugs or combination of drugs and alcohol</p>	<p>Starting point: 12 years</p> <p>Sentencing range: 8 – 18 years</p>	<p>Starting point: 9 years</p> <p>Sentencing range: 6 – 12 years</p>	<p>Starting point: 6 years</p> <p>Sentencing range: 5 – 10 years</p>
<p>51- 70 µg of alcohol OR Any quantity of a single drug detected</p>	<p>Starting point: 9 years</p> <p>Sentencing range: 6 – 12 years</p>	<p>Starting point: 6 years</p> <p>Sentencing range: 4 – 9 years</p>	<p>Starting point: 4 years</p> <p>Sentencing range: 3 – 7 years</p>
<p>35-50 µg of alcohol</p>	<p>Starting point: 6 years</p> <p>Sentencing range: 4 – 9 years</p>	<p>Starting point: 3 years</p> <p>Sentencing range: 2 – 5 years</p>	<p>Starting point: 1 year 6 months</p> <p>Sentencing range: 26 weeks - 4 years</p>

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors:

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail
- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Disregarding warnings of others
- Driving for commercial purposes
- Driving LGV, HGV, PSV
- Other driving offences committed at the same time as the careless driving
- Blame wrongly placed on others
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Serious injury to one or more victims, in addition to the death(s) (see step 6 on totality when sentencing for more than one offence)
- Offence committed on licence or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation

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

STEP THREE

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

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

STEP FOUR

Reduction for guilty pleas

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

STEP FIVE

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 6 of Part 10 of the Sentencing Code it would be appropriate to impose an extended sentence (sections 266 and 279) When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX

Totality principle

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

STEP SEVEN

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Ancillary orders – Crown Court Compendium

STEP EIGHT

Reasons

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE

Consideration for time spent on bail (tagged curfew)

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

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