

# **Causing serious injury by driving: disqualified drivers**

**Road Traffic Act 1988 (section 3ZD)**

**Triable either way**

**Maximum: 4 years' custody**

**Offence range: Community order – 4 years' custody**

**STEP ONE****Determining the offence category****CULPABILITY**

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence.

**High**

- Driving shortly after disqualification imposed
- Vehicle obtained during disqualification period
- Driving for commercial purposes
- Driving LGV, HGV, PSV
- Significant distance driven

**Medium**

- Cases falling between higher and lesser culpability because:
  - Factors are present in higher and lesser culpability which balance each other out and/or
  - The offender's culpability falls between the factors as described in higher and lesser culpability

**Lesser**

- The offender genuinely believed that he or she was not disqualified to drive
- Decision to drive was brought about by a genuine and proven emergency
- Forced to drive whilst disqualified by pressure, coercion or intimidation

**HARM**

## Category 1

- Particularly grave and/or life-threatening injury caused
- Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment
- Offence results in a permanent, irreversible injury or condition which has a substantial and long term effect on the victim's ability to carry out normal day to day activities or on their ability to work

## Category 2

- All other cases

## STEP TWO

## Starting point and category range

|        | Culpability  |  |  |
|--------|--|--|--|
|        | A  | B  | C  |
| Harm 1 | <b>Starting Point:</b><br>3 years<br><b>Category range:</b><br>2 – 4 years | <b>Starting Point:</b><br>2 years<br><b>Category range:</b><br>1 – 3 years                         | <b>Starting Point:</b><br>1 year<br><b>Category range:</b><br>High level community order – 2 years |
| Harm 2 | <b>Starting Point:</b><br>2 years<br><b>Category range:</b><br>1 – 3 years | <b>Starting Point:</b><br>1 year<br><b>Category range:</b><br>High level community order – 2 years | <b>Starting Point:</b><br>26 weeks<br><b>Category range:</b><br>Low level community order – 1 year |

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Totality* guideline and step five of this guideline.

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
- **Note:** An offender convicted of this offence will always have at least one relevant previous conviction for the offence that resulted in disqualification. The starting points and ranges take this into account; any other previous convictions should be considered in the usual way.
- Offence committed whilst on bail

*Other aggravating factors:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- History of disobedience to disqualification orders (where not already taken into account as a previous conviction)
- Disregarding warnings of others about driving whilst disqualified
- Blame wrongly placed on others
- False details given
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Offence committed on licence or while subject to court order(s) (not including the current order for disqualification)

**Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- The victim was a close friend or relative
- Actions of the victim or a third party contributed significantly to collision or death
- Efforts made to assist or seek assistance for victim(s)
- Remorse
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relative(s)

### **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**

#### **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 SIX**

#### **Compensation and ancillary orders**

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

- Ancillary orders – Magistrates' Court
- Ancillary orders – Crown Court Compendium

### **STEP SEVEN**

#### **Reasons**

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

### **STEP EIGHT**

#### **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.