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SC(22)NOV04 – Motoring offences
Rebecca Crane
Ollie Simpson
ollie.simpson@sentencingcouncil.gov.uk

1 ISSUE

1.1 First meeting considering responses to the motoring guidelines consultation which closed on 29 September. This paper focuses on the broad themes emerging from responses on standard of driving offences (involving dangerous driving and careless driving).

2 RECOMMENDATIONS

2.1 That Council considers the main themes emerging from responses to the consultation, ahead of more detailed drafting decisions in future meetings.

3 CONSIDERATION

3.1 We received a total of 305 responses to the consultation. 159 of these were individualised, standalone responses. 91 were responses with a focus on road safety from a cycling perspective calling for lengthy driving disqualifications. 55 were virtually identical responses expressing concern about road safety and offering general support for the guidelines.

3.2 Several responses were delayed, partly as a result of the consultation being held over the summer, partly because of the period of national mourning. The Justice Select Committee has yet to provide a response.

3.3 We also conducted extensive road testing with sentencers over the consultation period. This involved interviews with 22 magistrates and 22 judges, looking at scenarios across five offences. The findings of this road testing are being finalised, involving as they do writing up the results of a large number of interviews.

3.4 This paper therefore examines some of the clear overarching themes arising from the responses received and analysed on the standard of driving offences, with the intention that we return to detailed drafting points at future meetings. Because of the number of guidelines, their interaction with one another, and the volume of responses, the process of getting to a definitive guideline is likely to be iterative.

Culpability factors

3.5 The culpability factors we proposed for dangerous driving offences are reproduced below:

<p>A- High culpability</p>	<ul style="list-style-type: none"> • Deliberate decision to ignore the rules of the road and disregard for the risk of danger to others. • Prolonged, persistent and deliberate course of dangerous driving • Consumption of substantial amounts of alcohol or drugs leading to gross impairment • Offence committed in course of police pursuit • Racing or competitive driving against another vehicle • Disregarding warnings of others • Lack of attention to driving for a substantial period of time • Speed greatly in excess of speed limit
<p>B- Medium culpability</p>	<ul style="list-style-type: none"> • Brief but obviously highly dangerous manoeuvre • Engaging in a brief but avoidable distraction • Driving knowing that the vehicle has a dangerous defect or is dangerously loaded • Driving at a speed that is inappropriate for the prevailing road or weather conditions • Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs • 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 • Driving when knowingly deprived of adequate sleep or rest • The offender's culpability falls between the factors as described in high and lesser culpability
<p>C- Lesser culpability</p>	<ul style="list-style-type: none"> • Standard of driving was just over threshold for dangerous driving • Momentary lapse of concentration

3.6 A significant number of respondents believed that several of the Culpability B factors for dangerous driving should be moved to Culpability A. By way of a few typical examples:

“I consider some which have been ranked medium as warranting moving to high. In particular, those that involve a specific and deliberate decision, such as engaging in a brief but avoidable distraction, or knowingly driving when deprived of sleep. These are a very specific decision to operate machinery in an obviously dangerous manner.” – *Member of the public*

“Anyone who is over the limit and has made a decision to get in a vehicle, drive and kill someone should be placed in the high culpability category. I don’t think this should be in the medium category at all.” – *Christopher Barrow (widower of RTC victim)*

IAM RoadSmart agrees with the proposed culpability factors for this and other guidelines involving dangerous driving. However we do feel that some of the medium culpability factors are based on deliberate intent and should be reconsidered as potentially requiring 'upgrading' to High Culpability. These would be: driving knowing that the vehicle has a dangerous defect or is dangerously loaded; 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; driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs; and driving when knowingly deprived of adequate sleep or rest.” – *IAM RoadSmart*

“We do not agree with all of the behaviours listed in the medium culpability category. These are again all examples of behaviour which created serious dangers for other road users, but we believe that the sentencing council should consider moving some of the factors from the medium culpability to the higher culpability category, as they are based on deliberate decisions. For us, driving knowing that the vehicle has a dangerous defect or is dangerously loaded, 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, driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs and driving when knowingly deprived of adequate sleep or rest should be considered as a potential high culpability factors. Choosing to drive in the knowledge of impairment is a deliberate decision that disregards the safety of others.” – *Royal Society for the Prevention of Accidents*

3.7 The road safety charity Brake also provided a list of factors that they considered should be considered as high or very high culpability: although worded differently this included many of the factors we have proposed as medium culpability.

3.8 Clearly, recategorizing a number of elements from medium to high could have a substantial impact on sentences imposed and the impact on the prison population. We have already assessed the impact of the revised causing death by dangerous driving guideline at 260 prison places per year and at 80 additional places for causing serious injury by dangerous driving.

3.9 There were some suggestions for reworking the levels. Brake and Roadpeace thought there should be a “very high culpability” level, to place causing death by dangerous driving on a par with manslaughter. There was also the suggestion from a couple of respondents (including Christopher Barrow, cited above) that only two levels of culpability were needed: a “high” category for particularly egregious driving and “all other cases”, with sentence levels corresponding to our proposed two higher levels.

3.10 There may be a case for this latter point: where someone’s driving has fallen far below the standard one would expect of a careful and competent driver resulting in a death, there is arguably a floor underneath which we should not go. A “momentary lapse of concentration” is more properly an example of careless driving by definition, perhaps.

3.11 Equally, there may be a degree of semantics in play. Where someone is found to be in the medium category we propose a starting point of six years’ custody, with a range up to nine years, which represents a substantial prison sentence. The “lesser” range may be rarely used, but it is still useful to cover those cases which may result from fleeting but undeniably dangerous mistakes.

Question 1: does the Council want to consider in principle moving some of the listed medium culpability elements to high (noting the impact on prison resources)?

Question 2: does the Council wish to retain a three level culpability model?

3.12 Many of the above comments about moving medium culpability elements to high also held true for respondents on careless driving. Our proposed culpability table was as follows:

A - High culpability	<ul style="list-style-type: none"> • Standard of driving was just below threshold for dangerous driving and/or includes extreme example of a medium culpability factor
B - Medium culpability	<ul style="list-style-type: none"> • Unsafe manoeuvre or positioning • Engaging in a brief but avoidable distraction

	<ul style="list-style-type: none"> • Driving at a speed that is inappropriate for the prevailing road or weather conditions • Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs • Driving vehicle which is unsafe or where driver's visibility or controls are obstructed • Driving in disregard of advice relating to the effects of medical condition or medication • 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
C – Lesser culpability	<ul style="list-style-type: none"> • Standard of driving was just over threshold for careless driving • Momentary lapse of concentration

3.13 There was some concern about confusion between the culpability elements for careless driving and for dangerous driving.

“There is much overlap with the proposed culpability factors for careless driving. We understand that there will be overlap but urge that greater clarification, including examples, is given. This problem is aggravated by the overlap with the CPS charging standards.” - *Action Vision Zero*

“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 death by careless driving 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 known to an educated driver.” – *Member of the public*

“The culpability factors for careless driving should clearly be seen as being less onerous and should not include any of the culpability factors for dangerous driving ...Whilst we agree with most of the culpability factors [for dangerous driving] ...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

...we also believe some of the culpability factors for careless driving to be dangerous rather than careless. A clear distinction is needed between making a mistake and risky behaviour, for this reason there cannot be any overlap in the culpability factors for dangerous and careless driving.” – *Nicole and Chris Taylor, parents of an RTC victim*

“I strongly disagree with all the medium factors for death by careless driving. Most of these could be placed into Dangerous Driving factors, and in many circumstances would be more appropriate there. If unsure whether a case is Death by Careless driving rather than DD when someone has either fallen asleep at the wheel or using a handheld device, having these factors written down as careless driving will only muddy the water further. These factors do not need to be written down explicitly, but should rely on caselaw and the discretion of the prosecution and court.” – *Member of the public*

3.14 Professor Sally Kyd of Leicester Law School was more relaxed about the overlap but still expressed concern about how this might affect prosecution decisions:

“These factors will inevitably demonstrate overlap with causing death by dangerous driving [CDDD]. This is appropriate, given that where a jury has failed to convict of CDDD, despite the evidence of a factor listed by the CPS as providing evidence of dangerous rather than careless driving, it is important that such a case is catered for in the sentencing guidelines (although in many cases that would warrant it falling in level A High Culpability). I’m not sure about two of the factors within medium culpability:

i) Driving whilst impaired by alcohol or drugs. This would presumably mean that the requirements of the s.3A offence could be made out, so I would not expect this factor to be needed here?

ii) Driving vehicle which is unsafe or where driver’s visibility or controls are obstructed. Technically, there is no equivalent provision to s.2A(4) for careless driving. This is, in my view, a gap in the law, but I’m not sure it is right that sentencing fill this gap without legislation being introduced. I’m not sure that this factor is needed.

I wonder why the Sentencing Council has not drawn on the factors in the CPS legal guidance here, as they have done for CDDD?” – *Professor Sally Kyd*

3.15 There may be a case that there is a confusing amount of overlap between the careless and dangerous guidelines, which feeds into a wider picture of uncertainty about the two standards. Our strongest counter-argument would be that it is not the guidelines' role to provide a taxonomy of bad driving, but that we are listing elements which may be common across both standards depending on the context. For example, someone may drive dangerously whilst deprived of sleep, or they may drive carelessly whilst deprived of sleep – by the point of sentencing, that distinction will have been decided by prosecutors and/or courts based on factors which may or may not be referenced in the guidelines.

3.16 A couple of responses hint at a more radical approach:

“Just merge it with Dangerous driving and just have ‘causing death (or life changing injury) by driving’” – *Member of the public*

“Why do we have Dangerous and Careless Driving? Have one offence of Causing Death by Driving.” - *Roadpeace*

Notwithstanding, these may be referring to legislating for one offence, one could envisage a single guideline that had (for example) four culpability levels (higher dangerous, lesser dangerous, higher careless, lesser careless) and three harm levels (death, high harm, all other cases). Aggravating and mitigating factors could be common across them all.

3.17 In any case, were we to look again at distinguishing the culpability factors between careless and dangerous driving this would represent a fairly fundamental overhaul of our proposals. It may involve further resentencing, road-testing and even needing to go out again for some form of consultation.

Question 3: does the Council wish to look at creating a greater distinction between dangerous and careless culpability elements?

3.18 There are a number of other specific issues that recurred in responses and in road testing. We can return to these when considering specific drafting points, but as an overview they included:

- use of a mobile or handheld device should count as a high culpability factor;
- many of the terms are too subjective, and there should be greater specifics over (eg) excess speeds;

- uncertainty as to the difference between a “momentary lapse of concentration” and “engaging in a brief but avoidable distraction”;
- victim being a vulnerable road user should be a step one consideration.

Question 4: Council is welcome to give preliminary views on these further proposals for culpability (although I plan more detailed discussion for future meetings).

Harm

3.19 Virtually all respondents agreed to our proposal for there being one level of harm for cases involving death, and with our proposed approach to cases involving multiple deaths . This said

“Where more than one death is caused, it will be appropriate to make an upwards adjustment from 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.”

3.20 A majority were content with our two level approach to harm. A few did wish to see a three box system:

“The definition of Category 2 is too broad. At the top end you could have a life threatening injury that the individual does recover from after a lengthy recovery process, but in the meantime has lost their job and/or experienced other significant impacts on their personal circumstances. That would be life changing but would not meet the criteria for Category 1 because they do eventually get back their health and their potential to regain employment. At the bottom end of the range there would be injuries that the individual recovers from without permanent impact on their life.” – *Member of the public*

“There should be 3 sections of harm as it is for a grievous bodily harm (GBH) offence. This range of harm levels as seen with GBH and best reflect the reference to the impact of the victim... If there are 3 levels of harm as seen with GBH, then the lowest level of harm should include some level of community order sentencing within the range... providing a category 3 of harm (like with GBH) would provide a more inclusive sentencing structure. I note this particularly when it comes to serious injury by careless driving as there are only 2 harm levels and the second (which is lower) still only provides a custodial sentence rather than having a range that does include community order sentencing (to be used in discretion on a case by case basis alongside its mitigating factors – if there are any). - *Roadpeace*

For this offence, the council have decided to suggest harm factors that are said to mirror those in the GBH guideline. However, both the s.18 and s.20 OAPA guidelines have three categories for harm covering particularly grave injury, grave injury, and all other cases.

If the harm factors for this offence are meant to mirror that guideline it may be logical to have three categories of harm, not two and to include in a new category 2, offences which gave injury or result in permanent irreversible injury or conditions not falling in category 1, with category 3 reserved for all other cases. – *HM Council of District Judges (Magistrates' Courts)*

“It is not entirely clear why there are only two levels of harm whereas the equivalent non-motoring offence (S.20 GBH) has three levels. It appears that custody is the default position – absent any significant mitigating factors that takes the sentencer out of the sentencing range.

I would support three levels of category harm with starting points and sentencing ranges the same as s.20 OAPA – GBH offence. I cannot understand the rationale for departing from the s.20 guideline considering that the level of injury will be broadly commensurate and the level of mens rea, whilst not exactly similar, is broadly the same (recklessness v dangerousness).” – *Dr Adam Snow*

3.21 Some judges and magistrates in road testing were also concerned about there being only two categories, and that there is too big a gap between the top level and “all other cases”, and thought there should be a middle category to cater for the wide varieties of injury that might result from a collision.

3.22 The West London Bench considered the matter carefully:

“We are not convinced that just because the maximum penalty for this offence (and that for “Causing serious injury by careless driving”) is relatively low compared to other standard of driving offences, a two-level harm approach is satisfactory. We believe it really depends on whether (a) a two-level harm approach gives sufficient sentencing flexibility for the types of cases that will be charged under this offence; and (b) a three-level harm approach offers no real advantages over two levels or makes it unnecessarily complicated by introducing the extra level.

[...]

On careful reflection, it does seem unnecessarily complicated to try and split such injuries into two further categories, as we find it difficult to make distinctions between “grave injury” or “really serious injury or harm”. We therefore agree with just one other harm level (Category 2) to cover all other cases. In this case, Category 1 harm covers serious long-term, life-changing injuries and Category 2 harm covers all other grave and really serious injuries, which could include permanent, irreversible injury but which is not of a life-changing nature. Perhaps it would help sentencers to have information of this sort spelled out for Category 2, so the distinction was clearer.” – *West London Magistrates Bench*

3.23 On balance the weight of opinion is in favour of a two harm model, although we can return in detail to the point if necessary.

3.24 The Criminal Sub-Committee of the Council of HM Circuit Judges questioned why the approach to multiple deaths would not apply to cases involving multiple injuries:

“There will be many cases in which more than one person receives serious injuries – and whilst such instances will no doubt result in separate counts the same applies in relation to multiple fatalities. For consistency we would suggest that some similar wording should apply in the case of multiple injuries as for multiple deaths.” - *Criminal Sub-Committee of the Council of HM Circuit Judges*

3.25 The most obvious difficulty here is that the courts will be constrained by the maximum penalties (five years for causing serious injury by dangerous driving, two years for the new offence of serious injury by careless driving). Nonetheless, multiple injuries could adjust a starting point upwards within or out of a *category* range, our proposed levels allow for headroom of a year above the offence range to cater for this, and there is force in the logic of having a consistent approach.

Question 5: does Council wish to consider further the case for a three harm model in cases of serious injury?

Question 6: does Council wish to apply the upwards adjustment wording for multiple death cases to cases involving multiple injured victims?

Sentence levels

3.26 Our proposed sentence levels for the standard-of-driving offences are set out at **Annex A**. As a very high level summary, the balance of opinion was that we had got the levels for causing death by dangerous driving correct (albeit some, such as Brake, wished to see sentence levels exactly match those for manslaughter). Likewise for causing death by careless driving under the influence of drink or drugs.

3.27 Views were mixed on the levels for other offences. In terms of pure numbers, most thought that sentences were too lenient. Some respondents acknowledged that we were constrained by the statutory maximum penalty, others didn't. Some asked why we were not proposing ranges which went up to the maximum:

"In respect of the offence of Causing Death by Careless Driving whilst Parliament considered that the maximum sentence should be one of 5 years imprisonment the Guideline suggests that 4 years would be appropriate to deal with the worst example of this offence. It would appear that Parliament's proposed maximum sentence has been deliberately ignored... Should the Council choose not to extend the range of sentence to 5 years could they provide guidance when such a sentence would be appropriate? ... The present Council proposals in the above ... examples cannot be said to follow Parliament's will and it is unclear why this should be the case." – *Nicholas Atkinson KC*

3.28 Crucially, many groups, including road safety groups and the families of victims, argued that sentence levels at the lower end of culpability were too high.

"The proposed levels [for causing death by careless driving] all have custody as a starting point with a community order only included in the range proposed for the least culpability level. As shown above, custodial sentences are rarely used with causing death by careless driving convictions. Only one in four drivers convicted of this offence went to prison in 2021. We have argued that careless driving includes human errors and lapses. The Safer System approach, adopted by the DfT and transport authorities across the country, acknowledges people make mistakes and aims to design a transport system so that these mistakes do not prove fatal or serious. We do not think it fair to send drivers to prison because transport operators, politicians and policy makers have allowed excess risk in our system." – *Action Vision Zero*

"The death by careless driving [guideline] does need to include more community orders and not solely custodial orders, especially when it falls under lesser culpability... Overall, these sentencing guidelines [for causing serious injury by dangerous driving] reflect custody sentencing as the default rather than having some sort of community order at the lowest levels of culpability (C – Lesser Culpability) to take into account mitigating factors for example. If there are 3 levels of harm as seen with GBH, then the lowest level of harm should include some level of community order sentencing within the range." - *Roadpeace*

“We believe careless driving should mainly be punished with non-custodial sentences. However, we also believe some of the culpability factors for careless driving to be dangerous rather than careless.” – *Nicole and Chris Taylor, parents of RTC victim*

I think [the penalties for causing death by careless driving] are too high. The proposed levels all have custody as a starting point with a community order only included in the range proposed for the least culpability level. Whilst there was a need to close the gap between causing death by dangerous driving with a higher maximum penalty, and the sentencing for this offence, I think this goes too far. Whilst a prison sentence is appropriate for level A High Culpability, it is not necessarily appropriate for level B medium culpability...

The proposed sentence levels [for causing serious injury by careless driving] are the same as for dangerous driving. If a driver falls far below the standard of a competent and careful driver, they will always display a higher level of culpability than someone who just drives below the standard of a competent and careful driver, no matter the outcome of the driving. Whether a driver causes a RTC is beyond their control (it is reliant on the reactions of other road users in many cases), as is the severity of any injuries that result, as well as whether anyone luckily escapes without injury. The worse the standard of driving, the more likely a collision will ensue, with the risks involved. I would therefore wish to see the sentencing for this offence being below that of dangerous driving, even though the maximum penalty is the same.” – *Professor Sally Kyd*

3.29 Both HM Council of District Judges (Magistrates’ Courts) and the Magistrates’ Association took issue with our description of the proposed increases for causing death by careless driving as a “modest uplift”. However the former agreed with the increase, and the latter were unclear whether they supported it or not.

3.30 Importantly, the above comments come in the context of seeking a more robust use of disqualification (see below).

Question 7: without prejudice to further discussion on specific sentencing levels, does Council wish to consider the principle of adjusting levels downward for lower culpability careless driving?

Aggravating and mitigating factors

3.31 We can consider the detail of individual step two factors at the next meeting. Some themes emerged from responses which may be useful to summarise:

- The wording “impeccable driving record” was thought to be unclear, a finding confirmed in road testing;
- several standard personal mitigating factors were thought to be inappropriate – for example, if someone had a mental condition some queried whether this was in fact an aggravating feature of the offending;
- similarly for youth and immaturity, some suggested that this was irrelevant once an offender had reached the legal age to drive and had passed their test;
- several respondents queried whether the victim being a close friend or relative really merited being a mitigating factor;
- some thought that whilst failing to assist should be aggravating, providing assistance at the scene was simply what one would be expected to do;
- as mentioned above, some road safety groups argued for victim being a vulnerable road user to be moved to step one.

Disqualification

3.32 Perhaps the clearest and most consistent message from responses was about the use of disqualification. The following typifies approaching 100 responses received on the subject:

“I am writing to urge you to include the use of driving bans in the sentencing of motoring offences revised guidelines. I would like to make the following points:

Driving bans would be a just and effective sentence for those who have committed 'dangerous' driving offences, but who are not evidently 'dangerous' people, and who therefore do not need to be locked up for the public's protection.

Long prison sentences should be reserved for more obviously 'reckless' offenders, including those who have flouted previous driving bans - the case of Christopher Gard exemplifies why this is essential.

Using driving bans more widely could result in jurors being likely to convict for 'dangerous' driving offences in the first place, ensuring that the 'objective' definitions of 'careless' and 'dangerous' driving work as Parliament intended when it created them in 1991.”

3.33 Here is a sample of what others said:

“Disqualification, when enforced, prevents reoffending for the duration of the term of the ban. If coupled with restorative justice, training and competency assessment it can also encourage considerate and legal behaviour.

We note that the Sentencing Council offers little guidance on variable, including longer, periods of disqualification and advises that disqualification be minimized in cases where it might impact the offender's employment or other responsibilities – a consideration that might also be applied to custody. Such advice needs re-assessment: if the court is told that an offender's profession requires regular driving then it needs to be assured that the risk of re-offending has been minimized by, for example, training and competency assessment. While in some cases retaking a driving test is mandated, current advice does not, for example, suggest a service vehicle competency assessment or completion of a Safer Urban Driving course as a part of the penalty for professional drivers.

The Sentencing Council advises against using longer driving bans because offenders may choose to disregard them and drive without the authority to do so. Enforcement is matter for the police and legislators and we are concerned that the Sentencing Council's perception of ineffective enforcement should then be considered a factor in determining penalties. The Sentencing Council may wish to advise police and legislators to consider new technologies to monitor and enforce against disqualified drivers using vehicles instead of suggesting more lenient penalties because it considers enforcement is inadequate." – *London Cycling Campaign*

"I cannot see anything about length of driving bans on this document, and this should form part of the approach. Driving bans should have a minimum of 5 years imposed for such offences, with disqualifications for life in relation. There should be an option of lifetime bans, or at least lifetime bans with review every 5-10 years. There should definitely be an option of banning someone from driving larger vehicles, especially LGV, PSV, HGV as a result of causing death by dangerous driving. It should be that anyone convicted of such offences should expect a lifetime ban from this type of vehicle" – *South Yorkshire Police*

"We welcome the inclusion of disqualification and the recognition that it is a sentence. This is a step forward as it has previously been seen as an "ancillary penalty". But in practice, this is a second class sentence with much less information given on its use.

We do not support the guidance saying that the disqualification period should be "not longer than necessary". We urge the Sentencing Council to make more of disqualifications as a sentence, with

- Long disqualification periods used for drivers who have caused death or serious injury

- More bans are given with any exemption requiring the use of telematics such as speed limiters, journey data recorders, or electronic tags
- Judges and magistrates trained in the importance of disqualification as well as the road user hierarchy of responsibility” – *Action Vision Zero*

“I do not disagree with the guidance that is provided. I do think, though, that more work needs to be done on this question. We need to know more about how sentencers currently use disqualification and how they determine lengths of disqualification. How much consistency is there in sentencing practice? What can be done to reduce inconsistency, as sentencing guidelines has achieved in relation to imprisonment. It is true that it is complex (the related work being done by the Sentencing Council to clarify the wording of guidance on statutory minimum periods of disqualification demonstrates this and is welcomed) but an attempt might be made to try to set out more prescriptive guidance. In my view, a change in attitude to disqualification is needed. Driving is a privilege and not a right; it is justifiable to remove that privilege where a driver has shown they have abused that privilege, and it is a far less burdensome way to incapacitate a driver, compared to imprisonment. So it should not be simply about adding disqualification to a prison sentence, and ensuring that provisions are followed to ensure the offender is disqualified after release from prison, but could be about replacing some of the period of imprisonment with a longer period of disqualification in appropriate cases. It is certainly the case that sentencers should not be reluctant to impose life bans on the very worst drivers.” – Professor Sally Kyd

3.34 A great number of responses echoed Professor Kyd’s point about driving being a privilege and not a right, and calling for lengthy minimum disqualification periods and lifetime bans. To reiterate, the use of disqualification (and often lengthy disqualification) was probably the most consistent message from all responses. Although not part of this consultation, respondents also took the opportunity to criticise the use of “exceptional hardship” to avoid disqualification from “totting” disqualifications.

3.35 In road testing, no participants found the guidance we provided without prompting. Once they had read it, they generally felt it was helpful background information, though thought it might not be possible to read through in the time usually available. As suggested above, some respondents thought we could provide more detail on disqualification periods. For example, the Magistrates’ Association thought there should be information about the length of discretionary bans at or after the sentencing table.

3.36 We considered this carefully before consultation. I maintain that providing disqualification ranges would be a complicated matter, and would be highly offender-specific. However, given the strength of feeling there may be a case for developing more extensive standalone guidance on driving disqualifications, providing all the proposed general information, but also possibly using a stepped approach which takes into account i) the seriousness of the offending, ii) the offender's future dangerousness; iii) the offender's prospects for rehabilitation; and iv) the interaction with the penalty imposed.

3.37 Even this approach would not surmount the issue of the very high minimum disqualification periods that have been introduced for causing death by dangerous driving and causing death by careless driving under the influence of drink or drugs. We may also wish to investigate the behavioural implications of imposing lengthy bans. This would obviously take place outside the timeframe envisaged for the current project.

3.38 However, Council members may feel that the general guidance proposed (see [pages 61 to 63 of the consultation document](#)) remains sufficient in providing sentencers with general support on disqualification, with experience and judgecraft assisting to set a disqualification period in individual cases.

Question 8: does the Council think further work on disqualification is necessary, in light of responses received?

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. Around 260 additional prison places would stem from the new causing death by dangerous driving guideline, 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, we have increased sentencing levels across most categories.

4.3 If we were to move a number of medium culpability factors into high culpability, we would need to run further resentencing exercises but would likely see those already high

figures increase. Should Council wish to reduce the sentence levels for lesser culpability careless driving cases, that may have some impact on the resource assessment, but not to a great extent. Subject to what Council decides at this meeting, and in subsequent meetings we will work to refine our estimates of the impacts.

4.4 In terms of handling, whilst some themes emerge clearly, it will be impossible to satisfy all viewpoints. There is clearly a vocal constituency that wants to see ever more severe punishments regardless of the culpability of the offender. Others will see prison sentences as inappropriate for careless drivers in particular, but their desire to see increasingly long disqualifications may be unrealistic without a shift (driven by the Council or otherwise) in how the courts approach driving bans.

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Causing death by dangerous driving

Culpability	Starting point	Range
High	12 years	8 – 18 years
Medium	6 years	4 – 9 years
Lesser	3 years	2 – 5 years

Causing death by careless driving

Culpability	Starting point	Range
High	2 years	1 – 4 years
Medium	1 year	26 weeks – 3 years
Lesser	26 weeks	Medium level community order – 1 year

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

The legal limit of alcohol is 35µg breath (80mg in blood and 107mg in urine)	High culpability	Medium culpability	Lesser culpability
71µg 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	Starting point: 12 years Sentencing range: 8 – 18 years	Starting point: 9 years Sentencing range: 6 – 12 years	Starting point: 6 years Sentencing range: 5 – 10 years
51- 70 µg of alcohol OR Any quantity of a single drug detected	Starting point: 9 years Sentencing range: 6 – 12 years	Starting point: 6 years Sentencing range: 4 – 9 years	Starting point: 4 years Sentencing range: 3 – 7 years
36-50 µg of alcohol	Starting point: 6 years Sentencing range: 4 – 9 years	Starting point: 3 years Sentencing range: 2 – 5 years	Starting point: 1 year 6 months Sentencing range: 26 weeks - 4 years

Causing serious injury by dangerous driving

	Culpability		
	A	B	C
Harm 1	Starting Point: 4 years Category range: 3 – 5 years	Starting Point: 3 years Category range: 2 – 4 years	Starting Point: 2 years Category range: 1 – 3 years
Harm 2	Starting Point: 3 years Category range: 2 – 4 years	Starting Point: 2 years Category range: 1 – 3 years	Starting Point: 1 year Category range: 26 weeks – 2 years

Causing serious injury by careless driving

	Culpability		
	A	B	C
Harm 1	Starting Point: 1 year 6 months Category range: 1 - 2 years	Starting Point: 1 year Category range: 26 weeks – 1 year 6 months	Starting Point: 26 weeks Category range: High level community order – 1 year
Harm 2	Starting Point: 1 year Category range: 26 weeks – 1 year 6 months	Starting Point: 26 weeks Category range: High level community order – 1 year	Starting Point: High level community order Category range: Low level community order – 26 weeks

Dangerous driving

	Culpability		
	A	B	C
Harm 1	Starting Point: 1 year 6 months Category range: 1 – 2 years	Starting Point: 1 year Category range: 26 weeks – 1 year 6 months	Starting Point: 26 weeks Category range: High level community order – 1 year
Harm 2	Starting Point: 1 year Category range: 26 weeks – 1 year 6 months	Starting Point: 26 weeks Category range: High level community order – 1 year	Starting Point: High level community order Category range:

			Low level community order – 26 weeks
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