

Annex A

R v Le (Van Binh) and Stark (Rudi) [1999] 1 Cr. App. R. (S.) 422**Nb Stat max at the time of sentencing was 7 years**

In the instant cases, the sentences of V and S would be reduced to two and a half years' imprisonment and three and a half years' imprisonment respectively.

An offence contrary to s.25(1)(a) would, in relation to all but the most minor of offences, inevitably attract an immediate custodial sentence.

Aggravating features were (1) it was a repeat offence; (2) it was committed for financial gain; (3) the defendant took a prominent role; (4) it involved the facilitation of the entry of strangers rather than family members; (5) it involved a large number of illegal entrants; (6) a high degree of organisation and planning was evident, and (7) the defendant proffered a not guilty plea.

It would often be necessary to impose a deterrent sentence.

Attorney General's Reference (Nos 49 and 50 of 2015) [2015] EWCA Crim 1402

Also known as: R. v Howard (John), R. v Bakht (Kenan)

Nb Stat max at the time of sentencing was 14 years

Sentences of two-and-a-half years' and five years' imprisonment imposed on offenders convicted of conspiracy to facilitate a breach of immigration law were increased to **five and eight years** respectively, due to their callous disregard for immigration law and the acute **impact on innocent victims**. [The offenders were convicted after a trial].

For approximately a year, B had recruited non-EU students seeking post-study work visas to attend lectures at the college where he worked or a university with which the college had links; the students paid him course fees and received false certificates for use in their visa applications. Some were deported as a result, including some who genuinely believed they had completed a university or college course. B possessed false university acceptance letters, certificates and visa letters. H, an external examiner at the university, had handed out the fraudulent certificates. In sentencing, the recorder assessed the value of the fraud at around £300,000. She found that **B had acted in a leading role**, and H's role in providing the required legitimacy was no less important. **The offences were designed to circumvent the immigration rules, which was a matter of grave public concern**. That was the gravamen of the case, not the profit margin or the fraudulent behaviour.

Attorney General's Reference (No.28 of 2014) [2014] EWCA Crim 1723**Nb Stat max at the time of sentencing was 14 years**

A total sentence of four-and-a-half years' imprisonment for conspiracy to facilitate a breach of immigration law and using unlicensed security operatives was unduly lenient where an offender had created false identity documentation, had played a central role in the

conspiracy and had exploited people who were not in a position to bargain. The sentence was increased to **eight years' imprisonment** [the offender was convicted after trial]. The following considerations were taken into account:

- Whether the offence is isolated or repeated
- The duration of offending
- Whether the offender had previous similar convictions
- Whether the offender's motivation was commercial or humanitarian
- The number of individuals involved in the breach of immigration law
- Whether they were strangers or family
- The degree of organisation involved
- Whether the offender recruited others
- The offender's role
- Whether the offender's conduct involved exploitation of or pressure put upon others

Regina v Junjie Kao; Khaled Mahmud; Tareq Mahmud; Wei Xing [2010] EWCA Crim 2617

Kao, count 1, conspiracy, **7 years' imprisonment and 4 years for the money laundering, concurrent, giving a total sentence of 7 years; Xing received the same sentence in respect of each count; Tareq Mahmud received 4 years' imprisonment following his trial and Khaled Mahmud received 7 years' imprisonment. The application succeeds in respect of Tareq Mahmud. We grant permission and allow the appeal and reduce the sentence from 4 years to **3 years**. The other applications fail in respect of the other three applicants**

Nb Stat max at the time of sentencing was 14 years

The applicants entered into a conspiracy to assist persons who were already legally within the United Kingdom for limited periods to extend the time they could lawfully remain here. They did this by providing false documentation to the Home Office which led the Home Office to grant visas so that the individuals in respect of whom the visas were granted were ostensibly allowed to remain in the country to pursue education.

At the heart of the conspiracy was a company known as Thames College London Limited, or Thames College London. The guiding light behind that organisation, and the company secretary, was Khalid Mahmud. The college purported to offer genuine courses of education leading to legitimate qualifications for foreign students. In fact they provided no legitimate teaching courses of any kind. They had very small premises and the whole operation was a sham. For substantial payments of money the applicants provided false documentation to overseas national students in order to obtain these visas.

Another company involved in the sham was Virgil Legal Services, the directors of whom were Kao and Xing, and in fact Khaled Mahmud had been involved in a predecessor of this company at an earlier stage. They processed fraudulent visa applications using false details. They would represent to the Home Office, through the fraudulent documentation, that Thames College was providing a minimum of 15 hours of full-time study per week, which

was the minimum requirement needed to secure further leave to remain in the country. The applicants used false identity documents, certificates from non-existent teaching institutions and official looking stamps and stickers. It was clear from the evidence that these conspirators had worked hand in glove, with the Mahmuds producing the false documentation at the request of Kao and Xing for the use of Virgil.

This was a sophisticated and successful operation. It continued, as the judge found, at least for a period of three and a half years and there were at the minimum 574 applications which were fraudulently made by Virgil to the Home Office on behalf of foreign students, almost all of whom were Chinese nationals. It was made clear to the students who applied for these extensions that they would not have to attend courses, and most, if not all, of them came to realise that the Thames College was bogus. They were not in that sense exploited because they realised that these sham representations were taking place.

The turnover, assessed by the judge, of the whole operation was not less than £3 million. £2.7 million had passed through nine bank accounts in the name of or linked to Xing. Over £1 million passed through bank accounts in the name of or linked to Kao, and £1.1 million passed through bank accounts linked to or in the name of Khalid Mahmud.

Tareq Mahmud played a more limited role. He was involved in this conspiracy for just over 6 months towards the end of the conspiracy. He was brought into it by his brother Khaled. He knew that the Thames College was bogus. The judge found that he worked enthusiastically to help his brother, and was more than a foot soldier, but his role was, the judge found, far less significant than that of his brother. He may have received some small sums with respect to his involvement, but it is clear that they were very small beer indeed compared with the amounts received by the other conspirators.

We bear in mind, as did the judge, that this was not a case, as in Saini, where illegal immigrants were brought into the country, and for the reasons we have given it is right to say that the adverse impact on the public in relation to this conspiracy was less than in the two cases which we have mentioned.

However, this was a conspiracy carried out over many years with a massive number of false documents submitted to the Home Office with very, very considerable profits gained by those who were participating, and with a large number of students obtaining these visas illegally. It was a sophisticated operation and indeed it has almost all the aggravating features that were identified by Lord Bingham in the case of Van Binh Le and Stark . We have little doubt that had these students been brought in from abroad then the sentence in a case of this kind would justifiably have been very close to the maximum of 14 years before the discount permissible for guilty pleas.

We see nothing wrong with this approach and thus refuse the application in respect of those three principal conspirators.

R v Oliveira, Oramulu, Cina [2012] EWCA Crim 2279

Nb Stat max at the time of sentencing was 14 years

In the case of Oliveira and Oramulu: 3 and a half years after trial reduced to **2 and a half years** each on appeal

Both these defendants were convicted after a trial of conspiracy to facilitate the breach of immigration law. The essence of the allegation was that they had entered into a sham

marriage. The woman, Oliveira, had Dutch nationality by virtue of her birth in Curacao in the Antilles. Accordingly, she enjoyed as a citizen of an EU Member State free movement within the Union. The man, Oramulu, was Nigerian. He was present in the United Kingdom. There existed no record of his ever having entered lawfully, although he said that he had come originally on a six month visa of which there was no record. Even if he had, it had long since expired, so he was illegally here.

In the case of Cina: 7 and a half years after trial (appeal dismissed)

This defendant is a Czech man living in Bradford. Over a period of about 15 months he recruited five different Czech women, already as we understand it in this country, and arranged for sham marriages to take place between them and Nigerian men who wanted to evade the immigration controls and to acquire the rights of movement, residence and employment which come with marriage to an EU citizen. Cina charged the men substantial sums. All the indications are that his "going rate" was about £4,000 or £4,500, by way of charge to the men, although of course we recognise that individual cases may have varied. So far as it goes, the evidence suggests that he promised the women something of the order of £2,000. However, although that is what he promised, in the two cases where there was evidence of what he had actually paid, it appears to have been half that or less. He paid one of them £500 and the other £900. In other words, **this was a commercial operation for gain and it had the added feature that he cheated the women.**

There was also in this case a definite element of exploitation of the women in the manner in which he carried on the business. First of all, he recruited them and induced them to commit quite a serious criminal offence which put them in likelihood of imprisonment. However, there was an additional feature because the evidence showed that if they showed signs of second thoughts, Mr Cina did not balk at persuading them. He visited them and certainly in one case there is reasonably clear evidence that he pressured the woman to stick to her original agreement, saying to her among other things that if she did not she might expect trouble from the Nigerian population who might visit her at home.

The court indicated that the aggravating factors set out in R v Le and Stark (see above) apply to sham marriage cases, to which the following factors should be added:

- The recruitment of others to assist in the crime.
- Any measure of exploitation or pressure.
- A racket providing services to others for money: it will be necessary to look at the role of the defendant within the organisation.
- At the bottom of the range of offences involving sham marriages were cases of single bogus ceremonies entered into in circumstances which could carry a substantial degree of personal mitigation, such as where one party to the ceremony has been morally blackmailed into doing it.
- There is frequently no distinction to be made between a sham marriage case and a case of the provision of forged or falsified documents for the purposes of evasion of immigration control. The purpose of the marriage is, like the purpose of the forged document, to provide a bogus authentication for presence.
- A very large number of the 'own marriage' cases without organisation or facilitation of others may well fall into the very broad bracket around 18 months to three years.

R v Bani [2021] EWCA Crim 1958

Nb Stat max at the time of sentencing was 14 years

A sentence of six years' imprisonment imposed following an asylum seeker's conviction for assisting unlawful immigration to a Member State, after he was intercepted in control of an inflatable boat carrying other adults and a child in the English Channel, was reduced to **five years' imprisonment** after trial. The offender had made no financial gain and the judge had erred in his assessment of harm and culpability. **The court stressed that deterrence remained an important factor in deciding the length of sentence.**

Abstract

The appellant, an Iranian national, appealed against a sentence of six years' imprisonment imposed following his conviction for assisting unlawful immigration to a Member State.

The appellant had been in control of an inflatable boat carrying four other men and a nine-year-old child when it was intercepted in the English Channel. The appellant claimed that he was a genuine asylum seeker. The judge concluded that the appellant had bought the boat for the benefit of others and that he was heavily involved in the planning of his own and other expeditions that night. The judge found that the appellant was not going to receive any direct financial reward for what he did. The craft was a rudimentary craft with no safety or navigation equipment and was unsafe to travel across one of the busiest shipping lanes. The judge said that the fact that the appellant was a man of good character and had been planning to seek asylum on arrival, saved him from what otherwise would have been a more serious sentence.

The appellant submitted that the sentencing authorities on which the judge relied were in respect of more serious offending and that greater allowance should have been made for the fact that he would have claimed asylum and that he had not organised the trip for personal profit.

Appeal allowed.

The offence was not committed for financial gain, but to share the costs with fellow Iranian nationals who wanted to make the same trip. However, the offence was **planned, organised and sophisticated** and the appellant played a prominent part in the whole operation, *R. v Le (Van Binh)* [1999] 1 Cr. App. R. (S.) 422, [1998] 10 WLUK 73 applied. The appellant was involved in a **dangerous act, but that had to be weighed against the fact that each person in the boat, and whoever was responsible for the welfare of the child, must have realised the dangers they faced**. The judge erred in concluding that the offending fell into the highest level of harm and at the very highest level of culpability. The sentence was manifestly excessive and was replaced with one of five years' imprisonment. **Deterrence remained an important factor in deciding the length of sentence.**

NB Bani subsequently sought permission to appeal against his conviction which was granted and his conviction was in fact quashed.

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Facilitation

Assisting unlawful immigration to the United Kingdom

Immigration Act 1971 section 25

Helping asylum-seeker to enter the United Kingdom

Immigration Act 1971 section 25A

Triable either way

Maximum: life imprisonment

Offence range: high-level community order – 16 years' custody

STEP ONE Determining the offence category
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CULPABILITY	
A- High Culpability	<ul style="list-style-type: none"> • Leading role in a commercial activity • Sophisticated nature of offence/ significant planning • Significant financial gain/ expectation of significant financial gain
B- Medium culpability	<ul style="list-style-type: none"> • Significant role in a commercial activity • Some planning • Some financial gain/ expectation of financial gain
C- Lower culpability	<ul style="list-style-type: none"> • Facilitating a breach of immigration law by family members • Humanitarian motivation • Minor role in group activity • Involved due to coercion or pressure

HARM	
Category 1	<ul style="list-style-type: none"> • Endangerment to life • Facilitating large numbers of individuals to illegally enter/ arrive in the UK • Exploited/ put pressure on others
Category 2	<ul style="list-style-type: none"> • Assisted individuals to remain unlawfully <p>Other cases that fall between categories 1 and 3 because:</p> <ul style="list-style-type: none"> • Factors are present in 1 and 3 which balance each other out and/or • The harm caused falls between the factors as described in 1 and 3
Category 3	<ul style="list-style-type: none"> • Isolated incident • Facilitated the entry/ arrival of asylum seekers

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions

Harm	Culpability		
	A	B	C
Category 1	Starting Point 14 years' custody Category Range 10 - 16 years' custody	Starting Point 12 years' custody Category Range 9 - 14 years' custody	Starting Point 8 years' custody Category Range 6 - 10 years' custody
Category 2	Starting Point 8 years' custody Category Range 6 - 10 years' custody	Starting Point 5 years' custody Category Range 4 - 7 years' custody	Starting Point 3 years' custody Category Range 2 - 5 years' custody
Category 3	Starting Point 5 years' custody Category Range 4 - 7 years' custody	Starting Point 3 years' custody Category Range 2 - 5 years' custody	Starting Point 18 months' custody Category Range 12 months' custody – 2 years' custody

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.

Care should be taken to avoid double counting factors already taken into account in assessing culpability

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

Annex B

- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors:

- Repeat offending (unless charged as separate offences)
- Offending went on for a lengthy duration
- Abuse of position of trust
- Recruited others to take part in offending (unless already taking into account at step 1)

Factors reducing seriousness or reflecting personal mitigation

- No recent or relevant convictions
- Good character and/or exemplary conduct
- Remorse
- Sole or primary carer for dependent relatives
- Age/lack of maturity
- Mental disorder or learning disability
- Physical disability or serious medical condition requiring urgent, intensive or long-term treatment
- Offender co-operated with investigation, made early admissions and/or voluntarily reported offending
- Limited understanding of scale of activity

Annex B

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**Ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

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**

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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Immigration offences

These data tables provide statistics on the outcomes and demographics of offenders sentenced for offences covered by the Sentencing Council draft guidelines for immigration offences.

Section 1: Assisting unlawful immigration to a member state or the UK (Immigration Act 1971, s25)

Table 1.1	Number of adult offenders sentenced for assisting unlawful immigration to a member state or the UK (Immigration Act 1971, s25), all courts, 2011-2021
Table 1.2	Number and proportion of adult offenders sentenced for assisting unlawful immigration to a member state or the UK (Immigration Act 1971, s25), by sentence outcome, 2011-2021
Table 1.3	Average custodial sentence lengths (ACSL) received by adult offenders sentenced for assisting unlawful immigration to a member state or the UK (Immigration Act 1971, s25), 2011-2021
Table 1.4	Sentence lengths received by adult offenders sentenced to immediate custody for assisting unlawful immigration to a member state or the UK (Immigration Act 1971, s25), 2011-2021
Table 1.5	Demographics of adult offenders sentenced for assisting unlawful immigration to a member state or the UK (Immigration Act 1971, s25), by sex, age and ethnicity, 2021
Table 1.6	Number and proportion of adult offenders sentenced for assisting unlawful immigration to a member state or the UK (Immigration Act 1971, s25), by sex, age and ethnicity and sentence outcome, 2021
Table 1.7	Average custodial sentence lengths (ACSL) received by adult offenders sentenced for assisting unlawful immigration to a member state or the UK (Immigration Act 1971, s25), by sex, age and ethnicity, 2021
Table 1.8	Sentence lengths received by adult offenders sentenced to immediate custody for assisting unlawful immigration to a member state or the UK (Immigration Act 1971, s25), by sex, age and ethnicity, 2021

Section 2: Facilitating entry by asylum seekers to the UK (Immigration Act 1971, s25A)

Table 2.1	Number of adult offenders sentenced for facilitating entry by asylum seekers to the UK (Immigration Act 1971, s25A), Crown Court, 2011-2021
Table 2.2	Number and proportion of adult offenders sentenced for facilitating entry by asylum seekers to the UK (Immigration Act 1971, s25A), by sentence outcome, 2011-2021
Table 2.3	Average custodial sentence lengths (ACSL) received by adult offenders sentenced for facilitating entry by asylum seekers to the UK (Immigration Act 1971, s25A), 2017-2021
Table 2.4	Sentence lengths received by adult offenders sentenced to immediate custody for facilitating entry by asylum seekers to the UK (Immigration Act 1971, s25A), 2011-2021
Table 2.5	Demographics of adult offenders sentenced for facilitating entry by asylum seekers to the UK (Immigration Act 1971, s25A), by sex, age and ethnicity, 2017-2021
Table 2.6	Number and proportion of adult offenders sentenced for facilitating entry by asylum seekers to the UK (Immigration Act 1971, s25A), by sex, age and ethnicity and sentence outcome, 2017-2021
Table 2.7	Average custodial sentence lengths (ACSL) received by adult offenders sentenced for facilitating entry by asylum seekers to the UK (Immigration Act 1971, s25A), by sex, age and ethnicity, 2017-2021
Table 2.8	Sentence lengths received by adult offenders sentenced to immediate custody for facilitating entry by asylum seekers to the UK (Immigration Act 1971, s25A), by sex, age and ethnicity, 2017-2021

Notes

Data sources and quality

The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the source of the data for these data tables. Every effort is made by MoJ and the Sentencing Council to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

These data reflect the original sentencing outcome and do not include any changes on appeal from either magistrates' courts or the Crown Court. Sentence outcomes may be reduced, increased, changed or the conviction quashed (resulting in the sentence falling away) on appeal, and so users should note that these statistics might not be accurate when considering, for example, the highest sentence for an offence. Published statistics on the outcome of individual cases referred under the Unduly Lenient Sentence scheme (for appealing certain eligible offences) can be found here:

<https://www.gov.uk/government/publications/unduly-lenient-sentence-annual-case-outcomes-data>

However, there are no available published statistics broken down by offence regarding the appeal outcomes from other routes of appeal, although quarterly volumes of criminal appeals against magistrates' decisions dealt with at the Crown Court are published in table C11 of the MoJ's Criminal Court Statistics Quarterly publication here:

<https://www.gov.uk/government/collections/criminal-court-statistics>

Annual volumes of appeals heard at the Court of Appeal Criminal Division, by type and result, are published in the Royal Courts of Justice Annual Tables within MoJ's Civil Justice Statistics quarterly: January to March publication, which can be found here:

<https://www.gov.uk/government/collections/civil-justice-statistics-quarterly>

Figures presented for 2020 and 2021 include the time period from March 2020 in which restrictions were initially placed on the criminal justice system due to the COVID-19 pandemic, and the ongoing courts' recovery since. These restrictions resulted in reduction of court activity to adhere to new rules on movement and social interaction and the prioritisation of certain types of cases that are more likely to result in custody. Despite these restrictions having now been eased, we have seen a continued impact on the courts as they recover from the impact of the pandemic on processes and prioritisation. This means that the figures presented on an offence specific basis may be reflecting these restrictions and subsequent impacts to varying degrees depending on the offence in question and whether these cases continued to be heard throughout the time period. Therefore, it is important to note that certain trends might mostly reflect the impact of the pandemic on court processes and prioritisation, and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

Summary only offences are almost always sentenced in magistrates' courts, although there are limited circumstances in which they would be sentenced in the Crown Court. Where summary only offences are recorded as being sentenced in the Crown Court we are aware that in some instances this may be due to data recording issues. It is not always possible to investigate individual cases, therefore users should treat such data with caution.

From September 2020, some cases started to be recorded on the new Common Platform (CP) case management system, but could not initially be included in the CPD. Data processing development is now complete and the CPD has been revised to include these cases. As such, volumes for 2020 may not be consistent with figures previously published.

Further details of the processes by which the Ministry of Justice validate the records in the Court Proceedings Database can be found within the guide to their Criminal Justice Statistics publication which can be downloaded via the link:

<https://www.gov.uk/government/collections/criminal-justice-statistics>

Volumes of sentences

The data presented in this bulletin only include cases where the specified offence was the principal offence committed. When an offender has been found guilty of two or more offences this is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented in this bulletin.

Sentence outcomes

The outcomes presented are the final sentence outcomes, after taking into account all factors of the case, including whether a guilty plea was made. This is because the sentence length information available in the Court Proceedings Database is the final sentence imposed, after any reduction for guilty plea. Sentence outcomes presented in these tables are therefore not directly comparable to outcomes in the sentencing guideline tables, which instead show starting point sentences before a guilty plea has been entered.

The sentence outcome shown is the most severe sentence or order given for the principal offence (i.e. the principal sentence); secondary sentences given for the principal offence are not included in the tables.

Offender demographics

The proportions reflected amongst those for whom data were provided may not reflect the demographics of the full population sentenced.

Due to the small number of offenders sentenced for some offences, care should be taken when comparing figures across different groups. This is particularly true where there are only a small number of offenders within a specific demographic group, as small numerical changes can present as large percentage changes when they are calculated using small volumes. This should be considered when comparing percentages across groups.

Ethnicity

The availability of information relating to ethnicity is constrained by data coverage. For offenders sentenced for less serious offences which are mostly sentenced at magistrates' courts, ethnicity data are less readily available: there are different police processes in place for these offences and often offenders are sentenced without attending a police station or the court, meaning there is little or no opportunity to collect ethnicity data. For offenders sentenced for more serious offences that appear in the Crown Court (triable-either-way and indictable only offences), there are more available data on ethnicity as the likelihood of offenders attending a custody interview is higher. Overall, this means that coverage is inconsistent across different offences. Statistics for offences with lower coverage should also be treated with caution, as it is less likely that the available data on ethnicity are representative of all offenders sentenced for those offences.

Ethnicity is the self-identified ethnicity as defined by the individual. The ethnicity categories used in these data tables for self-identified ethnicity are: 'Asian', 'black', 'mixed', 'other', 'white' and 'not recorded/not known' (referred to as the 5+1 classification). The 'not recorded/not known' category includes all offenders for whom ethnicity information is not available, either because they have chosen not to state their ethnicity or because no information has been recorded. Prior to May 2020, ethnicity was collected using the 16+1 classification which was used in the 2001 census. Since May 2020, this has been replaced by the 18+1 classification used in the 2011 Census. The data collected using the 18+1 format are then aggregated into the 5+1 classification for analysis. This has caused two key changes to the data presented in our publications:

- 1) The data now capture a further two ethnicity classifications: Gypsy or Irish Traveller which falls into the broader category of 'white' and Arab which falls into the broader category of 'other'. These ethnic groups are captured in the data from 2021 onwards.
- 2) The movement of the Chinese ethnicity classification from the broad category of 'Chinese and other' into 'Asian'. Due to the small number of offenders sentenced who identified as Chinese, this change has had little impact on overall trends presented in the data. This change has been applied to the whole timeseries presented, to allow for continued comparison across years. However, it means that the 'Chinese and other' category has been renamed 'other' within our data tables to account for this change.

More information on the 18+1 classification can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691544/self-defined-ethnicity-18plus1.pdf

Age

In the CPD, prior to 2017, adults of unknown ages were defaulted to 25. From 2017 onwards, the majority of records where the age is unknown have been grouped within an 'age unknown' variable; however, there may still be some cases where the age is unknown and has therefore defaulted to 25.

The sentencing guidelines only directly apply to adults aged 18 years or over at the date of conviction, although exceptions apply where stated. However, in the CPD, the age of the offender is calculated from the sentence date. Users should be aware this means there could be a small number of offenders aged under 18 included within the published figures as adults for whom the guideline did not apply at sentencing, if they turned 18 between the date of conviction and the date of sentence.

General conventions

The following conventions have been applied to the data:

- Percentages derived from the data have been provided in the tables to the nearest whole percentage, except when the nearest whole percentage is zero. In some instances, this may mean that percentages shown do not add up to 100 per cent.
- Where the nearest whole per cent is zero, the convention '<0.5' has been used.
- Where totals have been provided, these have been calculated using unrounded data and then rounded.

Uses made of the data

Data provided in the Council's range of statistical bulletins and tables are used to inform public debate of the Council's work.

Background information

Further information on the Sentencing Council and its work, as well as information on general sentencing practice in England and Wales can be found on the Council's website at:

<https://sentencingcouncil.org.uk>

The Ministry of Justice publishes a quarterly statistical publication, Criminal Justice Statistics, which includes a chapter focusing on sentencing in England and Wales. This chapter includes information on the number of offenders sentenced by offence group and by demographic factors such as age, sex and self-identified ethnicity. The full publication can be accessed via the Ministry of Justice website at:

<https://www.gov.uk/government/collections/criminal-justice-statistics-quarterly>

Detailed sentencing data from the Ministry of Justice's Court Proceedings Database can be accessed via the data tool published alongside the annual Criminal Justice Statistics publication. The latest tool enables data covering the last five years to be viewed by offence, sex, age range and ethnicity, and can be accessed via the following link (for example, see the 'Outcomes by Offence data tool'):

<https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2021>

Contact points for further information

Statistical contact:

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Table 1.1: Number of adult offenders sentenced for assisting unlawful immigration to a member state or the UK (Immigration Act 1971, s25), all courts, 2011-2021[Index](#)

Court	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ¹	2021
Magistrates' court	2	0	1	1	0	1	2	0	0	0	1
Crown Court	204	179	208	231	236	263	235	226	184	107	141
Total	206	179	209	232	236	264	237	226	184	107	142

Court	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ¹	2021
Magistrates' court	1%	0%	<0.5%	<0.5%	0%	<0.5%	1%	0%	0%	0%	1%
Crown Court	99%	100%	100%	100%	100%	100%	99%	100%	100%	100%	99%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

Table 1.2: Number and proportion of adult offenders sentenced for assisting unlawful immigration to a member state or the UK (Immigration Act 1971, s25), by sentence outcome, 2011-2021[Index](#)

Outcome	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ¹	2021
Absolute and conditional discharge	2	0	0	0	0	0	0	0	0	0	0
Fine	1	0	0	0	3	0	0	0	0	0	0
Community sentence	2	8	0	2	0	1	0	2	2	0	0
Suspended sentence	45	28	32	60	33	41	31	21	20	8	16
Immediate custody	155	143	177	170	200	220	201	203	160	99	124
Otherwise dealt with ²	1	0	0	0	0	2	5	0	2	0	2
Total	206	179	209	232	236	264	237	226	184	107	142

Outcome	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ¹	2021
Absolute and conditional discharge	1%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Fine	<0.5%	0%	0%	0%	1%	0%	0%	0%	0%	0%	0%
Community sentence	1%	4%	0%	1%	0%	<0.5%	0%	1%	1%	0%	0%
Suspended sentence	22%	16%	15%	26%	14%	16%	13%	9%	11%	7%	11%
Immediate custody	75%	80%	85%	73%	85%	83%	85%	90%	87%	93%	87%
Otherwise dealt with ²	<0.5%	0%	0%	0%	0%	1%	2%	0%	1%	0%	1%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

2) The category 'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

Table 1.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for assisting unlawful immigration to a member state or the UK (Immigration Act 1971 s25), 2011-2021¹[Index](#)

ACSL (years) ²	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ³	2021
Mean	1.7	1.8	1.9	2.0	2.0	2.5	2.8	3.1	3.3	2.8	3.2
Median	1.3	1.3	1.3	1.5	1.5	2.0	2.1	2.6	2.7	2.5	2.6
Indeterminates as percentage of custodial sentences ⁴	-	-	-	-	-	-	-	-	-	-	-

- = not applicable

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) The statutory maximum sentence has increased to life imprisonment under the Nationality and Borders Act 2022, however, during the time period covered, the statutory maximum was 14 years' custody.
- 2) The ACSL calculation excludes life and indeterminate sentences, for offences where these types of sentences apply.
- 3) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.
- 4) For 2013 onwards this is calculated as the number of offenders given life sentences, out of the number of offenders given a sentence of immediate custody. For 2011-2012, this is calculated as the number of offenders sentenced to Imprisonment for Public Protection (IPP), Extended Sentences for Public Protection (EPP) and life sentences, out of the number of offenders given a sentence of immediate custody. IPP and EPP sentences were introduced in 2005 and abolished in 2012.

Table 1.4: Sentence lengths received by adult offenders sentenced to immediate custody for assisting unlawful immigration to a member state or the UK (Immigration Act 1971, s25), 2011-2021¹

[Index](#)

Sentence length (years) ²	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ³	2021
Less than 2 years	125	114	140	119	142	116	100	77	52	39	32
2 to 4	18	20	24	38	42	73	59	83	68	45	68
4 to 6	11	6	4	11	9	22	25	30	26	12	15
6 to 8	1	2	3	2	2	6	15	9	10	1	7
8 to 10	0	1	6	0	5	3	2	3	4	2	1
10 to 12	0	0	0	0	0	0	0	1	0	0	1
12 to 14	0	0	0	0	0	0	0	0	0	0	0
Total	155	143	177	170	200	220	201	203	160	99	124

Sentence length (years) ²	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ³	2021
Less than 2 years	81%	80%	79%	70%	71%	53%	50%	38%	33%	39%	26%
2 to 4	12%	14%	14%	22%	21%	33%	29%	41%	43%	45%	55%
4 to 6	7%	4%	2%	6%	5%	10%	12%	15%	16%	12%	12%
6 to 8	1%	1%	2%	1%	1%	3%	7%	4%	6%	1%	6%
8 to 10	0%	1%	3%	0%	3%	1%	1%	1%	3%	2%	1%
10 to 12	0%	0%	0%	0%	0%	0%	0%	<0.5%	0%	0%	1%
12 to 14	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) The statutory maximum sentence has increased to life imprisonment under the Nationality and Borders Act 2022, however, during the time period covered, the statutory maximum was 14 years' custody.

2) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 2 years' includes sentence lengths less than or equal to 2 years, and '2 to 4' includes sentence lengths over 2 years, and up to and including 4 years.

3) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

DELETE IF NO INDETERMINATES 4) This includes life sentences and, for the period 2011-2012, Imprisonment for Public Protection (IPPs), and Extended Sentences for Public Protection (EPPs). IPP and EPP sentences were introduced in 2005 and abolished in 2012.

[Index](#)**Table 1.5: Demographics of adult offenders sentenced for assisting unlawful immigration to a member state or the UK (Immigration Act 1971, s25), by sex, age and ethnicity, 2021**

Sex	Number of adults sentenced	Percentage of all adults sentenced¹
Female	15	11%
Male	127	89%
Not recorded/not known	0	
Total	142	100%

Age group	Number of adults sentenced	Percentage of all adults sentenced¹
18 to 20	4	3%
21 to 24	14	10%
25 to 29	19	13%
30 to 39	47	33%
40 to 49	37	26%
50 to 59	19	13%
60 to 69	2	1%
70 and over	0	0%
Not recorded/not known	0	
Total	142	100%

Ethnicity²	Number of adults sentenced	Percentage of all adults sentenced¹
Asian	7	13%
Black	3	5%
Mixed	4	7%
Other	7	13%
White	35	63%
Not recorded/not known ³	86	
Total	142	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) Percentage calculations do not include cases where sex, age group or ethnicity was unknown.
- 2) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.
- 3) For a proportion of adults sentenced (61%), their ethnicity was either not recorded or it was not known. Therefore the proportions amongst those for whom data was provided may not reflect the demographics of the full population, and these figures should be treated with caution.

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Table 1.6: Number and proportion of adult offenders sentenced for assisting unlawful immigration to a member state or the UK (Immigration Act 1971, s25), by sex, age and ethnicity, and sentence outcome, 2021

[Index](#)

Sex	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	
Female	0	0	0	8	7	0	15
Male	0	0	0	8	117	2	127
Not recorded/not known	0	0	0	0	0	0	0

Age group	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	
18 to 20	0	0	0	1	3	0	4
21 to 24	0	0	0	0	14	0	14
25 to 29	0	0	0	1	18	0	19
30 to 39	0	0	0	7	39	1	47
40 to 49	0	0	0	5	32	0	37
50 to 59	0	0	0	2	16	1	19
60 to 69	0	0	0	0	2	0	2
70 and over	0	0	0	0	0	0	0
Not recorded/not known	0	0	0	0	0	0	0

Ethnicity ²	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	
Asian	0	0	0	0	6	1	7
Black	0	0	0	1	2	0	3
Mixed	0	0	0	0	4	0	4
Other	0	0	0	0	7	0	7
White	0	0	0	3	32	0	35
Not recorded/not known	0	0	0	12	73	1	86

Sex	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	
Female	0%	0%	0%	53%	47%	0%	100%
Male	0%	0%	0%	6%	92%	2%	100%
Not recorded/not known	-	-	-	-	-	-	-

Age group	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	
18 to 20	0%	0%	0%	25%	75%	0%	100%
21 to 24	0%	0%	0%	0%	100%	0%	100%
25 to 29	0%	0%	0%	5%	95%	0%	100%
30 to 39	0%	0%	0%	15%	83%	2%	100%
40 to 49	0%	0%	0%	14%	86%	0%	100%
50 to 59	0%	0%	0%	11%	84%	5%	100%
60 to 69	0%	0%	0%	0%	100%	0%	100%
70 and over	-	-	-	-	-	-	-
Not recorded/not known	-	-	-	-	-	-	-

Ethnicity ²	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	
Asian	0%	0%	0%	0%	86%	14%	100%
Black	0%	0%	0%	33%	67%	0%	100%
Mixed	0%	0%	0%	0%	100%	0%	100%
Other	0%	0%	0%	0%	100%	0%	100%
White	0%	0%	0%	9%	91%	0%	100%
Not recorded/not known	0%	0%	0%	14%	85%	1%	100%

Source: Court Proceedings Database, Ministry of Justice

-- No proportions have been calculated as no offenders were sentenced.

Notes:

1) The category 'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volume and proportions should be treated with caution.

2) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

Table 1.7: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for assisting unlawful immigration to a member state or the UK (Immigration Act 1971, s25), by sex, age and ethnicity, 2021

[Index](#)

Sex	ACSL (years) ²	
	Mean	Median
Female	2.8	2.0
Male	3.2	2.6
Not recorded/not known	-	-

Age group	Mean	Median
18 to 20	*	*
21 to 24	3.2	3.0
25 to 29	2.5	2.5
30 to 39	3.1	2.6
40 to 49	3.2	2.5
50 to 59	4.1	3.9
60 to 69	*	*
70 and over	-	-
Not recorded/not known	-	-

Ethnicity ³	Mean	Median
Asian	4.2	4.0
Black	*	*
Mixed	*	*
Other	3.2	2.7
White	3.2	3.0
Not recorded/not known	3.1	2.5

Source: Court Proceedings Database, Ministry of Justice

* = ACSL has not been calculated where the number of offenders sentenced to a determinate immediate custodial sentence is fewer than 5.

- = No offenders were sentenced to a determinate immediate custodial sentence.

Notes:

1) The statutory maximum sentence has increased to life imprisonment under the Nationality and Borders Act 2022, however, during the time period covered, the statutory maximum was 14 years' custody.

2) The ACSL calculation excludes life and indeterminate sentences, for offences where these types of sentences apply.

3) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

Table 1.8: Sentence lengths received by adult offenders sentenced to immediate custody for assisting unlawful immigration to a member state or the UK (Immigration Act 1971, s25), by sex, age and ethnicity, 2021¹

[Index](#)

Sex	Number of adults sentenced to each sentence length (years) ²							Total
	Less than 2 years	2 to 4	4 to 6	6 to 8	8 to 10	10 to 12	12 to 14	
Female	4	2	1	0	0	0	0	7
Male	28	66	14	7	1	1	0	117
Not recorded/not known	0	0	0	0	0	0	0	0

Age group	Number of adults sentenced to each sentence length (years) ²							Total
	Less than 2 years	2 to 4	4 to 6	6 to 8	8 to 10	10 to 12	12 to 14	
18 to 20	3	0	0	0	0	0	0	3
21 to 24	0	13	0	1	0	0	0	14
25 to 29	6	12	0	0	0	0	0	18
30 to 39	11	19	7	2	0	0	0	39
40 to 49	9	17	3	2	1	0	0	32
50 to 59	3	6	5	2	0	0	0	16
60 to 69	0	1	0	0	0	1	0	2
70 and over	0	0	0	0	0	0	0	0
Not recorded/not known	0	0	0	0	0	0	0	0

Ethnicity ³	Number of adults sentenced to each sentence length (years) ²							Total
	Less than 2 years	2 to 4	4 to 6	6 to 8	8 to 10	10 to 12	12 to 14	
Asian	1	2	2	1	0	0	0	6
Black	1	1	0	0	0	0	0	2
Mixed	0	3	1	0	0	0	0	4
Other	3	1	3	0	0	0	0	7
White	4	22	5	0	1	0	0	32
Not recorded/not known	23	39	4	6	0	1	0	73

Sex	Number of adults sentenced to each sentence length (years) ²							Total
	Less than 2 years	2 to 4	4 to 6	6 to 8	8 to 10	10 to 12	12 to 14	
Female	57%	29%	14%	0%	0%	0%	0%	100%
Male	24%	56%	12%	6%	1%	1%	0%	100%
Not recorded/not known	-	-	-	-	-	-	-	-

Age group	Number of adults sentenced to each sentence length (years) ²							Total
	Less than 2 years	2 to 4	4 to 6	6 to 8	8 to 10	10 to 12	12 to 14	
18 to 20	100%	0%	0%	0%	0%	0%	0%	100%
21 to 24	0%	93%	0%	7%	0%	0%	0%	100%
25 to 29	33%	67%	0%	0%	0%	0%	0%	100%
30 to 39	28%	49%	18%	5%	0%	0%	0%	100%
40 to 49	28%	53%	9%	6%	3%	0%	0%	100%
50 to 59	19%	38%	31%	13%	0%	0%	0%	100%
60 to 69	0%	50%	0%	0%	0%	50%	0%	100%
70 and over	-	-	-	-	-	-	-	-
Not recorded/not known	-	-	-	-	-	-	-	-

Ethnicity ³	Number of adults sentenced to each sentence length (years) ²							Total
	Less than 2 years	2 to 4	4 to 6	6 to 8	8 to 10	10 to 12	12 to 14	
Asian	17%	33%	33%	17%	0%	0%	0%	100%
Black	50%	50%	0%	0%	0%	0%	0%	100%
Mixed	0%	75%	25%	0%	0%	0%	0%	100%
Other	43%	14%	43%	0%	0%	0%	0%	100%
White	13%	69%	16%	0%	3%	0%	0%	100%
Not recorded/not known	32%	53%	5%	8%	0%	1%	0%	100%

Source: Court Proceedings Database, Ministry of Justice

- = No proportions have been calculated as no offenders were sentenced to immediate custody.

Notes:

- 1) The statutory maximum sentence has increased to life imprisonment under the Nationality and Borders Act 2022, however, during the time period covered, the statutory maximum was 14 years' custody.
- 2) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 2 years' includes sentence lengths less than or equal to 2 years, and '2 to 4' includes sentence lengths over 2 years, and up to and including 4 years.
- 3) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

Table 2.1: Number of adult offenders sentenced for facilitating entry by asylum seekers to the UK (Immigration Act 1971, s25A), Crown Court, 2011-2021[Index](#)

Court	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ¹	2021
Crown Court	2	0	2	0	7	2	9	6	3	2	2
Total	2	0	2	0	7	2	9	6	3	2	2

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

Table 2.2: Number and proportion of adult offenders sentenced for facilitating entry by asylum seekers to the UK (Immigration Act 1971, s25A), by sentence outcome, 2011-2021[Index](#)

Outcome	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ¹	2021
Absolute and conditional discharge	0	0	0	0	0	1	0	0	0	0	0
Fine	0	0	0	0	0	0	0	0	0	0	0
Community sentence	0	0	0	0	0	0	0	0	0	0	0
Suspended sentence	0	0	0	0	1	0	0	1	0	0	0
Immediate custody	2	0	2	0	6	1	8	4	3	2	2
Otherwise dealt with ²	0	0	0	0	0	0	1	1	0	0	0
Total	2	0	2	0	7	2	9	6	3	2	2

Outcome	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ¹	2021
Absolute and conditional discharge	0%	-	0%	-	0%	50%	0%	0%	0%	0%	0%
Fine	0%	-	0%	-	0%	0%	0%	0%	0%	0%	0%
Community sentence	0%	-	0%	-	0%	0%	0%	0%	0%	0%	0%
Suspended sentence	0%	-	0%	-	14%	0%	0%	17%	0%	0%	0%
Immediate custody	100%	-	100%	-	86%	50%	89%	67%	100%	100%	100%
Otherwise dealt with ²	0%	-	0%	-	0%	0%	11%	17%	0%	0%	0%
Total	100%	-	100%	-	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

2) The category 'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

Table 2.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for facilitating entry by asylum seekers to the UK (Immigration Act 1971, s25A), 2017-2021^{1,2,3,4}

[Index](#)

ACSL (years)	2017-2021
Mean	3.8
Median	3.5
Indeterminates as percentage of custodial sentences ⁵	-

- = not applicable

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) The statutory maximum sentence has increased to life imprisonment under the Nationality and Borders Act 2022, however, during the time period covered, the statutory maximum was 14 years' custody.
- 2) The ACSL calculation excludes life and indeterminate sentences, for offences where these types of sentences apply.
- 3) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.
- 4) These statistics are provided for the period 2017-2021, rather than for a single year, due to the small number of offenders sentenced for this offence each year.
- 5) For 2013 onwards this is calculated as the number of offenders given life sentences, out of the number of offenders given a sentence of immediate custody. For 2011-2012, this is calculated as the number of offenders sentenced to Imprisonment for Public Protection (IPP), Extended Sentences for Public Protection (EPP) and life sentences, out of the number of offenders given a sentence of immediate custody. IPP and EPP sentences were introduced in 2005 and abolished in 2012.

Table 2.4: Sentence lengths received by adult offenders sentenced to immediate custody for facilitating entry by asylum seekers to the UK (Immigration Act 1971, s25A), 2011-2021¹[Index](#)

Sentence length (years) ²	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ³	2021
Less than 2 years	2	0	1	0	2	0	3	0	2	0	0
2 to 4	0	0	1	0	0	1	1	4	1	2	0
4 to 6	0	0	0	0	2	0	2	0	0	0	0
6 to 8	0	0	0	0	2	0	2	0	0	0	2
Greater than 8 years	0	0	0	0	0	0	0	0	0	0	0
Total	2	0	2	0	6	1	8	4	3	2	2

Sentence length (years) ²	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ³	2021
Less than 2 years	100%	-	50%	-	33%	0%	38%	0%	67%	0%	0%
2 to 4	0%	-	50%	-	0%	100%	13%	100%	33%	100%	0%
4 to 6	0%	-	0%	-	33%	0%	25%	0%	0%	0%	0%
6 to 8	0%	-	0%	-	33%	0%	25%	0%	0%	0%	100%
Greater than 8 years	0%	-	0%	-	0%	0%	0%	0%	0%	0%	0%
Total	100%	-	100%	-	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) The statutory maximum sentence has increased to life imprisonment under the Nationality and Borders Act 2022, however, during the time period covered, the statutory maximum was 14 years' custody.

2) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 2 years' includes sentence lengths less than or equal to 2 years, and '2 to 4' includes sentence lengths over 2 years, and up to and including 4 years.

3) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

DELETE IF NO INDETERMINATES 4) This includes life sentences and, for the period 2011-2012, Imprisonment for Public Protection (IPPs), and Extended Sentences for Public Protection (EPPs). IPP and EPP sentences were introduced in 2005 and abolished in 2012.

Table 2.5: Demographics of adult offenders sentenced for facilitating entry by asylum seekers to the UK (Immigration Act 1971, s25A), by sex, age and ethnicity, 2017-2021^{1,2}

[Index](#)

Sex	Number of adults sentenced	Percentage of all adults sentenced³
Female	1	5%
Male	21	95%
Not recorded/not known	0	
Total	22	100%

Age group	Number of adults sentenced	Percentage of all adults sentenced³
18 to 20	0	0%
21 to 24	1	5%
25 to 29	1	5%
30 to 39	8	36%
40 to 49	10	45%
50 to 59	2	9%
60 to 69	0	0%
70 and over	0	0%
Not recorded/not known	0	
Total	22	100%

Ethnicity⁴	Number of adults sentenced	Percentage of all adults sentenced³
Asian	2	40%
Black	0	0%
Mixed	1	20%
Other	1	20%
White	1	20%
Not recorded/not known ⁵	17	
Total	22	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

2) These statistics are provided for the period 2017-2021, rather than for a single year, due to the small number of offenders sentenced for this offence each year.

3) Percentage calculations do not include cases where sex, age group or ethnicity was unknown.

4) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

5) For a proportion of adults sentenced (77%), their ethnicity was either not recorded or it was not known. Therefore the proportions amongst those for whom data was provided may not reflect the demographics of the full population, and these figures should be treated with caution.

OFFICIAL - SENSITIVE

Table 2.6: Number and proportion of adult offenders sentenced for facilitating entry by asylum seekers to the UK (Immigration Act 1971, s25A), by sex, age and ethnicity, and sentence outcome 2017-2021^{1,2}

[Index](#)

Sex	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ³	
Female	0	0	0	0	1	0	1
Male	0	0	0	1	18	2	21
Not recorded/not known	0	0	0	0	0	0	0

Age group	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ³	
18 to 20	0	0	0	0	0	0	0
21 to 24	0	0	0	0	1	0	1
25 to 29	0	0	0	0	1	0	1
30 to 39	0	0	0	0	7	1	8
40 to 49	0	0	0	1	8	1	10
50 to 59	0	0	0	0	2	0	2
60 to 69	0	0	0	0	0	0	0
70 and over	0	0	0	0	0	0	0
Not recorded/not known	0	0	0	0	0	0	0

Ethnicity ⁴	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ³	
Asian	0	0	0	0	2	0	2
Black	0	0	0	0	0	0	0
Mixed	0	0	0	1	0	0	1
Other	0	0	0	0	1	0	1
White	0	0	0	0	1	0	1
Not recorded/not known	0	0	0	0	15	2	17

Sex	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ³	
Female	0%	0%	0%	0%	100%	0%	100%
Male	0%	0%	0%	5%	86%	10%	100%
Not recorded/not known	-	-	-	-	-	-	-

Age group	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ³	
18 to 20	-	-	-	-	-	-	-
21 to 24	0%	0%	0%	0%	100%	0%	100%
25 to 29	0%	0%	0%	0%	100%	0%	100%
30 to 39	0%	0%	0%	0%	88%	13%	100%
40 to 49	0%	0%	0%	10%	80%	10%	100%
50 to 59	0%	0%	0%	0%	100%	0%	100%
60 to 69	-	-	-	-	-	-	-
70 and over	-	-	-	-	-	-	-
Not recorded/not known	-	-	-	-	-	-	-

Ethnicity ⁴	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ³	
Asian	0%	0%	0%	0%	100%	0%	100%
Black	-	-	-	-	-	-	-
Mixed	0%	0%	0%	100%	0%	0%	100%
Other	0%	0%	0%	0%	100%	0%	100%
White	0%	0%	0%	0%	100%	0%	100%
Not recorded/not known	0%	0%	0%	0%	88%	12%	100%

Source: Court Proceedings Database, Ministry of Justice

- = No proportions have been calculated as no offenders were sentenced.

Notes:

- 1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.
- 2) These statistics are provided for the period 2017-2021, rather than for a single year, due to the small number of offenders sentenced for this offence each year.
- 3) The category 'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.
- 4) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

Table 2.7: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for facilitating entry by asylum seekers to the UK (Immigration Act 1971, s25A), by sex, age and ethnicity, 2017-2021^{1,2,3,4}

[Index](#)

Sex	ACSL (years)	
	Mean	Median
Female	*	*
Male	3.9	3.5
Not recorded/not known	-	-

Age group	Mean	Median
18 to 20	-	-
21 to 24	*	*
25 to 29	*	*
30 to 39	2.6	3.0
40 to 49	5.2	6.5
50 to 59	*	*
60 to 69	-	-
70 and over	-	-
Not recorded/not known	-	-

Ethnicity ⁵	Mean	Median
Asian	*	*
Black	-	-
Mixed	-	-
Other	*	*
White	*	*
Not recorded/not known	4.0	3.6

Source: Court Proceedings Database, Ministry of Justice

* = ACSL has not been calculated where the number of offenders sentenced to a determinate immediate custodial sentence is fewer than 5.

- = No offenders were sentenced to a determinate immediate custodial sentence.

Notes:

1) The statutory maximum sentence for this offence is XXX.

2) The ACSL calculation excludes life and indeterminate sentences, for offences where these types of sentences apply.

3) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

4) These statistics are provided for the period 2017-2021, rather than for a single year, due to the small number of offenders sentenced for this offence each year.

5) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

Table 2.8: Sentence lengths received by adult offenders sentenced to immediate custody for facilitating entry by asylum seekers to the UK (Immigration Act 1971, s25A), by sex, age and ethnicity, 2017-2021^{1,2,3}

[Index](#)

Sex	Number of adults sentenced to each sentence length (years) ⁴					Total
	Less than 2 years	2 to 4	4 to 6	6 to 8	Greater than 8 years	
Female	1	0	0	0	0	1
Male	4	8	2	4	0	18
Not recorded/not known	0	0	0	0	0	0

Age group	Number of adults sentenced to each sentence length (years) ⁴					Total
	Less than 2 years	2 to 4	4 to 6	6 to 8	Greater than 8 years	
18 to 20	0	0	0	0	0	0
21 to 24	1	0	0	0	0	1
25 to 29	0	1	0	0	0	1
30 to 39	2	5	0	0	0	7
40 to 49	2	0	2	4	0	8
50 to 59	0	2	0	0	0	2
60 to 69	0	0	0	0	0	0
70 and over	0	0	0	0	0	0
Not recorded/not known	0	0	0	0	0	0

Ethnicity ⁵	Number of adults sentenced to each sentence length (years) ⁴					Total
	Less than 2 years	2 to 4	4 to 6	6 to 8	Greater than 8 years	
Asian	0	2	0	0	0	2
Black	0	0	0	0	0	0
Mixed	0	0	0	0	0	0
Other	0	1	0	0	0	1
White	1	0	0	0	0	1
Not recorded/not known	4	5	2	4	0	15

Sex	Number of adults sentenced to each sentence length (years) ⁴					Total
	Less than 2 years	2 to 4	4 to 6	6 to 8	Greater than 8 years	
Female	100%	0%	0%	0%	0%	100%
Male	22%	44%	11%	22%	0%	100%
Not recorded/not known	-	-	-	-	-	-

Age group	Number of adults sentenced to each sentence length (years) ⁴					Total
	Less than 2 years	2 to 4	4 to 6	6 to 8	Greater than 8 years	
18 to 20	-	-	-	-	-	-
21 to 24	100%	0%	0%	0%	0%	100%
25 to 29	0%	100%	0%	0%	0%	100%
30 to 39	29%	71%	0%	0%	0%	100%
40 to 49	25%	0%	25%	50%	0%	100%
50 to 59	0%	100%	0%	0%	0%	100%
60 to 69	-	-	-	-	-	-
70 and over	-	-	-	-	-	-
Not recorded/not known	-	-	-	-	-	-

Ethnicity ⁵	Number of adults sentenced to each sentence length (years) ⁴					Total
	Less than 2 years	2 to 4	4 to 6	6 to 8	Greater than 8 years	
Asian	0%	100%	0%	0%	0%	100%
Black	-	-	-	-	-	-
Mixed	-	-	-	-	-	-
Other	0%	100%	0%	0%	0%	100%
White	100%	0%	0%	0%	0%	100%
Not recorded/not known	27%	33%	13%	27%	0%	100%

Source: Court Proceedings Database, Ministry of Justice

- = No proportions have been calculated as no offenders were sentenced to immediate custody.

Notes:

1) The statutory maximum sentence has increased to life imprisonment under the Nationality and Borders Act 2022, however, during the time period covered, the statutory maximum was 14 years' custody.

2) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

3) These statistics are provided for the period 2017-2021, rather than for a single year, due to the small number of offenders sentenced for this offence each year.

4) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 2 years' includes sentence lengths less than or equal to 2 years, and '2 to 4' includes sentence lengths over 2 years, and up to and including 4 years.

5) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

Totality

Effective from: tbc

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

Sentencers should have this in mind in relation to individual sentences but also when considering the total sentence.

Applicability - DROPDOWN

The principle of totality applies when sentencing an offender for multiple offences or when sentencing an offender who is already serving an existing sentence.

General principles

When sentencing for more than one offence, the overriding principle of totality is that the overall sentence should:

- reflect all of the offending behaviour with reference to overall harm and culpability, together with the aggravating and mitigating factors relating to the offences and those personal to the offender; and
- be just and proportionate.

Sentences can be structured as **concurrent** (to be served at the same time) or **consecutive** (to be served one after the other). There is no inflexible rule as to how the sentence should be structured.

- If consecutive, it is usually impossible to arrive at a just and proportionate sentence simply by adding together notional single sentences. Ordinarily some downward adjustment is required.
- If concurrent, it will often be the case that the notional sentence on any single offence will not adequately reflect the overall offending. Ordinarily some upward adjustment is required **and may have the effect of going outside the category range appropriate for a single offence.**

General approach (as applied to determinate custodial sentences)

1. **Consider the sentence for each individual offence, referring to the relevant sentencing guidelines.**
2. **Following the guidance provided below, determine whether the case calls for concurrent or consecutive sentences. When sentencing more than two offences, a combination of concurrent and consecutive sentences may be appropriate.**
3. **Test the overall sentence against the requirement that the total sentence is just and proportionate to the offending as a whole.**
4. **Consider and explain how the sentence is structured in a way that will be best understood by all concerned.**

Concurrent sentences will ordinarily be appropriate where:

- a. offences arise out of the same incident or facts.

Examples include: [dropdown]

- a single incident of dangerous driving resulting in injuries to multiple victims;

- robbery with a weapon where ~~the weapon offence is ancillary to the robbery and is not distinct and independent of it~~ **the use of a weapon has been taken into account in categorising the robbery**
- fraud and associated forgery **or possession or making an article used in the fraud**
- separate counts of supplying different types of drugs of the same class as part of the same transaction

- b. there is a series of offences of the same or similar kind, especially when committed against the same person **(but note this may not apply in all cases – see below under consecutive sentences at point c.)**

Examples include: [dropdown]

- repetitive small thefts from ~~the same person, such as by an employee~~ **an employer**
- repetitive benefit frauds of the same kind, committed in each payment period
- **repeated sexual offences against the same victim where the lead offence can be aggravated sufficiently to take account of the overall criminality**

Where concurrent sentences are to be passed the lead sentence should reflect the overall criminality involved which may take the lead offence outside the category range appropriate for a single offence to ensure the sentence length is just and proportionate.

Concurrent custodial sentences: examples [dropdown]

Examples of concurrent custodial sentences include:

- a single incident of dangerous driving resulting in injuries to multiple victims where there are separate charges relating to each victim. The sentences should generally be passed concurrently, but each sentence should be aggravated to take into account the harm caused
- repetitive fraud or theft, where charged as a series of small frauds/thefts, would be properly considered in relation to the total amount of money obtained and the period of time over which the offending took place. The sentences should generally be passed concurrently, each one reflecting the overall seriousness
- robbery with a weapon where the weapon offence is ancillary to the robbery and is not distinct and independent of it. The principal sentence for the robbery should properly reflect the presence of the weapon. The court must avoid double-counting and may deem it preferable for the possession of the weapon's offence to run concurrently to avoid the appearance of under-sentencing in respect of the robbery
- **Repeated sexual offences against the same victim. The sentences can be passed concurrently, but the lead offence should be aggravated to take into account the overall criminality**

Structuring concurrent sentences:

When sentencing for two or more offences of differing levels of seriousness the court can consider structuring the sentence using concurrent sentences, for example:

- consider whether some offences are of such very low seriousness that they can be recorded as 'no separate penalty' (for example technical breaches or minor driving offences not involving mandatory disqualification). **See also the 'Multiple fines' guidance below.**
- consider whether some of the offences are of lesser seriousness such that they can be ordered to run concurrently so that the sentence for the most serious offence(s) can be clearly identified.

Consecutive sentences will ordinarily be appropriate where:

a. offences arise out of unrelated facts or incidents.

Examples include: [dropdown]

- where the offender commits a theft on one occasion and a common assault against a different victim on a separate occasion
- an attempt to pervert the course of justice in respect of another offence also charged
- where one of the offences is a Bail Act offence
- offences committed within a prison context should be ordered to run consecutively to any sentence currently being served ~~any offence committed within the prison context~~

b. offences that are unrelated because while they were committed simultaneously they are distinct and there is an aggravating element that requires separate recognition.

Examples include: [dropdown]

- an assault on a constable committed to try to evade arrest for another offence also charged
- where the offender is convicted of drug dealing and possession of a firearm offence. The firearm offence is not the essence or the intrinsic part of the drugs offence and requires separate recognition
- where the offender is convicted of threats to kill in the context of an indecent assault on the same occasion, the threats to kill could be distinguished as a separate element

c. offences that are of the same or similar kind but where the overall criminality will not sufficiently be reflected by concurrent sentences.

Examples include: [dropdown]

- where offences committed against different people, such as repeated thefts involving attacks on several different shop assistants
- where offences of domestic violence ~~violence~~ abuse or sexual offences are committed against the same individual

d. one or more offence(s) qualifies for a statutory minimum sentence and concurrent sentences would improperly undermine that minimum

Examples include: [dropdown]

- other offences sentenced alongside possession of a prohibited weapon (which attracts a five year minimum term) – any reduction on grounds of totality should not reduce the effect of properly deterrent and commensurate sentences. The court should not reduce an otherwise appropriate consecutive sentence for another offence so as to remove the impact of the mandatory minimum sentence for the firearms offence.

However, it is **not** permissible to impose consecutive sentences for offences committed **in a single incident** in order to evade the statutory maximum penalty.

Examples include: [dropdown]

- more than one offence of causing serious injury in a single incident of dangerous driving.
- possession of several prohibited weapons and/or ammunition acquired at the same time

Where consecutive sentences are to be passed, add up the sentences for each offence and consider the extent of any downward adjustment required to ensure the aggregate length is just and proportionate.

Structuring consecutive sentences:

When sentencing for similar offence types or offences of a similar level of severity the court can consider structuring the sentence using consecutive sentences, for example:

- consider whether all of the sentences can be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively
- consider whether, despite their similarity, a most serious principal offence can be identified and the other sentences can all be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively in order that the sentence for the lead offence can be clearly identified

Sentencing for offences committed prior to other offences for which an offender has been sentenced [Dropdown]

The court should first reach the appropriate sentence for the instant offences, taking into account totality in respect of the instant offences alone. The court then has a discretion whether to make further allowance to take into account the earlier sentence (whether or not that sentence has been served in full). The court should consider all the circumstances in deciding what, if any, impact the earlier sentence should have on the new sentence. It is not simply a matter of considering the overall sentence as though the previous court had been ~~seized of~~ able to sentence all the offences and deducting **the earlier sentence** from that figure ~~the sentence already imposed~~.

A non-exhaustive list of circumstances could include:

- (a) how recently the earlier sentence had been imposed, **taking account of the reason for the gap and the offender's conduct in the interim;**
- (b) the similarity of the offences sentenced earlier to the instant offences;
- (c) whether the offences sentenced earlier and instant offences overlapped in time;
- (d) whether on a previous occasion the offender could have "cleaned the slate" by bringing the instant offences to the police's attention;
- (e) whether taking the earlier sentences into account would give the offender an undeserved bonus - this will particularly be the case where a technical rule of sentencing has been avoided or where, for example, the court has been denied the opportunity to consider totality in terms of dangerousness;
- (f) the offender's age and health **at the point of sentence**, and whether their health ~~had~~ **has** significantly deteriorated;
- (g) whether, if the earlier and instant sentences had been passed together as consecutive sentences, the **overall sentence would have required downward adjustment to achieve a just and proportionate sentence** ~~totality principle would have been offended~~.

If the offender is still subject to the previous sentence:

1. Where the offender is currently serving a custodial sentence for the offence(s) sentenced earlier, consider whether the new sentence should be concurrent with or consecutive to that sentence taking into account the circumstances set out above and the general principles in this guideline.
2. Where the offender is serving an indeterminate sentence for the offence(s) sentenced earlier, see also the guidance in the section ‘Indeterminate sentences’ below.
3. Where the offender has been released on licence or post sentence supervision from a custodial sentence for the offence(s) sentenced earlier **a custodial sentence for the instant offences cannot run consecutively to that earlier sentence** – see also the relevant guidance in the section below ‘Existing determinate sentence, where determinate sentence to be passed’.

Specific applications – custodial sentences

Existing determinate sentence, where determinate sentence to be passed [Dropdown]

Existing determinate sentence, where determinate sentence to be passed	
Circumstance	Approach
Offender serving a determinate sentence (Instant offence(s) committed after offence(s) sentenced earlier)	Generally the sentence will be consecutive as it will have arisen out of an unrelated incident. The court must have regard to the totality of the offender’s criminality when passing the second sentence, to ensure that the total sentence to be served is just and proportionate. Where a prisoner commits acts of violence in custody, any reduction for totality is likely to be minimal.
Offender subject to licence, post sentence supervision or recall	The new sentence should start on the day it is imposed: section 225 of the Sentencing Code of the Sentencing Code prohibits a sentence of imprisonment running consecutively to a sentence from which a prisoner has been released. If the new offence was committed while subject to licence or post sentence supervision, the sentence for the new offence should take that into account as an aggravating feature. However, the sentence must be commensurate with the new offence and cannot be artificially inflated with a view to ensuring that the offender serves a period in custody additional to any recall period (which will be an unknown quantity in most cases); this is so even if the new sentence will in consequence add nothing to the period actually served.
Offender subject to an existing suspended sentence order	Where an offender commits an additional offence during the operational period of a suspended sentence and the court orders the suspended sentence to be activated, the additional sentence will generally be consecutive to the activated suspended sentence, as it will arise out of unrelated facts.

Extended sentences [dropdown]

Extended sentences	
Circumstance	Approach
Extended sentences – using multiple offences to calculate the requisite determinate term	<p>In the case of extended sentences, providing there is at least one specified offence, the threshold requirement under sections 267 or 280 of the Sentencing Code is reached if the total determinate sentence for all offences (specified or not) would be four years or more. The extended sentence should be passed either for one specified offence or concurrently on a number of them. Ordinarily either a concurrent determinate sentence or no separate penalty will be appropriate to the remaining offences.</p> <p>The extension period is such as the court considers necessary for the purpose of protecting members of the public from serious harm caused by the offender committing further specified offences. The extension period must not exceed five years (or eight for a sexual offence). The whole aggregate term must not exceed the statutory maximum. The custodial period must be adjusted for totality in the same way as determinate sentences would be. The extension period is measured by the need for protection and therefore does not require adjustment.</p>

Indeterminate sentences [dropdown]

Indeterminate sentences	
Circumstance	Approach
Imposing multiple indeterminate sentences on the same occasion and using multiple offences to calculate the minimum term for an indeterminate sentence	<p>Indeterminate sentences should start on the date of their imposition and so should generally be ordered to run concurrently. If the life sentence provisions in sections 272-274 or sections 283 – 285 of the Sentencing Code apply then:</p> <ol style="list-style-type: none"> 1. first assess the notional determinate term for all offences (specified or otherwise), adjusting for totality in the usual way 2. ascertain whether any relevant sentence condition is met and 3. the indeterminate sentence should generally be passed concurrently on all offences to which it can apply, but there may be some circumstances in which it suffices to pass it on a single such offence.
Indeterminate sentence (where the offender is already serving an existing determinate sentence)	<p>It is generally undesirable to order an indeterminate sentence to be served consecutively to any other period of imprisonment on the basis that indeterminate sentences should start on their imposition.</p> <p>The court should instead order the sentence to run concurrently but can adjust the minimum term for the new</p>

	<p>offence to reflect any period still remaining to be served under the existing sentence (taking account of the relevant early release provisions for the determinate sentence). The court should then review the minimum term to ensure that the total sentence is just and proportionate.</p>
<p>Indeterminate sentence (where the offender is already serving an existing indeterminate sentence)</p>	<p>It is generally undesirable to order an indeterminate sentence to be served consecutively to any other period of imprisonment on the basis that indeterminate sentences should start on their imposition. However, where necessary (such as where the offender falls to be sentenced while still serving the minimum term of a previous sentence and an indeterminate sentence, if imposed concurrently, could not add to the length of the period before which the offender will be considered for release on parole in circumstances where it is clear that the interests of justice require a consecutive sentence), the court can order an indeterminate sentence to run consecutively to an indeterminate sentence passed on an earlier occasion (section 384 of the Sentencing Code). The second sentence will commence on the expiration of the minimum term of the original sentence and the offender will become eligible for a parole review after serving both minimum terms (Section 28(1B) of the Crime (Sentences) Act 1997). The court should consider the length of the aggregate minimum terms that must be served before the offender will be eligible for consideration by the Parole Board. If this is not just and proportionate, the court can adjust the minimum term.</p>
<p>Ordering a determinate sentence to run consecutively to an indeterminate sentence</p>	<p>The court can order a determinate sentence to run consecutively to an indeterminate sentence. The determinate sentence will commence on the expiry of the minimum term of the indeterminate sentence and the offender will become eligible for a parole review after becoming eligible for release from the determinate sentence. The court should consider the total sentence that the offender will serve before becoming eligible for consideration for release. If this is not just and proportionate, the court can reduce the length of the determinate sentence, or alternatively, can order the second sentence to be served concurrently.</p>

Specific applications – non-custodial sentences

Multiple fines for non-imprisonable offences [dropdown]

Multiple fines for non-imprisonable offences

Circumstance	Approach
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<p>Offender convicted of more than one offence where a fine is appropriate</p>	<p>The total is inevitably cumulative. The court should determine the fine for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the court (section 125 of the Sentencing Code). The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate total is not just and proportionate the court should consider how to reach a just and proportionate fine. There are a number of ways in which this can be achieved.</p> <p>For example:</p> <ul style="list-style-type: none"> • where an offender is to be fined for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a fine which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences. • where an offender is to be fined for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate fine for each of the offences. The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the court should consider whether all of the fines can be proportionately reduced. Separate fines should then be passed. <p>Where separate fines are passed, the court must be careful to ensure that there is no double-counting.</p> <p>Where compensation is being ordered, that will need to be attributed to the relevant offence as will any necessary ancillary orders.</p>
<p>Multiple offences attracting fines – crossing the community threshold</p>	<p>If more than one of the offences being dealt with are all imprisonable, then the community threshold can be crossed by reason of multiple offending, when it would not be crossed for a single offence (section 204(2) of the Sentencing Code). However, if the all offences are non-imprisonable (e.g. driving without insurance) the threshold cannot be crossed (section 202 of the Sentencing Code).</p>

Fines in combination with other sentences [dropdown]

Fines in combination with other sentences	
Circumstance	Approach
<p>A fine may be imposed in addition to any other</p>	<ul style="list-style-type: none"> • a hospital order • a discharge • a sentence fixed by law (murder)

<p>penalty for the same offence <u>except</u>:</p>	<ul style="list-style-type: none"> • a minimum sentence imposed under section 311, 312, 313, 314, or 315 of the Sentencing Code • a life sentence imposed under section 274 or 285 of the Sentencing Code or a sentence of detention for life for an offender under 18 under section 258 of the Sentencing Code • a life sentence imposed under section 273 or 283 Sentencing Code • a serious terrorism sentence under section 268B or 282B of the Sentencing Code <p>(Sections 118 to 121 of the Sentencing Code)</p>
<p>Fines and determinate custodial sentences</p>	<p>A fine should not generally be imposed in combination with a custodial sentence because of the effect of imprisonment on the means of the offender. However, exceptionally, it may be appropriate to impose a fine in addition to a custodial sentence where:</p> <ul style="list-style-type: none"> • the sentence is suspended or • a confiscation order is not contemplated and • there is no obvious victim to whom compensation can be awarded and • the offender has, or will have, resources from which a fine can be paid

Community orders [dropdown]

Community orders	
Circumstance	Approach
<p>Multiple offences attracting community orders – crossing the custody threshold</p>	<p>If the offences are all imprisonable and none of the individual sentences merit a custodial sentence, the custody threshold can be crossed by reason of multiple offending (section 230(2) of the Sentencing Code). If the custody threshold has been passed, the court should refer to the offence ranges in sentencing guidelines for the offences and to the general principles.</p>
<p>Multiple offences, where one offence would merit immediate custody and one offence would merit a community order</p>	<p>A community order should not be ordered to run consecutively to or concurrently with a custodial sentence. Instead the court should generally impose one custodial sentence that is aggravated appropriately by the presence of the associated offence(s). The alternative option is to impose no separate penalty for the offence of lesser seriousness.</p>
<p>Offender convicted of more than one offence where a community order is appropriate</p>	<p>A community order is a composite package rather than an accumulation of sentences attached to individual counts. The court should generally impose a single community order that reflects the overall criminality of the offending behaviour. Where it is necessary to impose more than one community order, these</p>

	<p>should be ordered to run concurrently and for ease of administration, each of the orders should be identical.</p>
<p>Offender convicted of an offence while serving a community order</p>	<p>The power to deal with the offender depends on his the offender being convicted while the order is still in force; it does not arise where the order has expired, even if the additional offence was committed while it was still current. (Paragraphs 22 and 25 of Schedule 10 to the Sentencing Code)</p> <p>Community order imposed by magistrates' court If an offender, in respect of whom a community order made by a magistrates' court is in force, is convicted by a magistrates' court of an additional offence, the magistrates' court should ordinarily revoke the previous community order and sentence afresh for both the original and the additional offence.</p> <p>Community order imposed by the Crown Court Where an offender, in respect of whom a community order made by the Crown Court is in force, is convicted by a magistrates' court, the magistrates' court may, and ordinarily should, commit the offender to the Crown Court, in order to allow the Crown Court to re-sentence for the original offence. The magistrates' court may also commit the new offence to the Crown Court for sentence where there is a power to do so. Where the magistrates' court has no power to commit the new offence it should sentence the new offence and commit the offender to the Crown Court to be re-sentenced for the original offence.</p> <p>When sentencing both the original offence and the new offence the sentencing court should consider the overall seriousness of the offending behaviour taking into account the additional offence and the original offence. The court should consider whether the combination of associated offences is sufficiently serious to justify a custodial sentence. If the court does not consider that custody is necessary, it should impose a single community order that reflects the overall totality of criminality. The court must take into account the extent to which the offender complied with the requirements of the previous order.</p>

Disqualifications from driving [dropdown]

Disqualifications from driving	
Circumstance	Approach
Offender convicted of two or more obligatory disqualification offences	The court must impose an order of disqualification for each offence unless for special reasons it does not disqualify the offender. All orders of disqualification imposed by the

(s34(1) Road Traffic Offenders Act 1988)	court on the same date take effect immediately and cannot be ordered to run consecutively to one another. The court should take into account all offences when determining the disqualification periods and should generally impose like periods for each offence.
<p>Offender convicted of two or more offences involving either:</p> <ol style="list-style-type: none"> 1. discretionary disqualification and obligatory endorsement from driving, or 2. obligatory disqualification but the court for special reasons does not disqualify the offender <p>and the penalty points to be taken into account number 12 or more (sections 28 and 35 Road Traffic Offenders Act 1988)</p>	Where an offender is convicted on same occasion of more than one offence to which section 35(1) of the Road Traffic Offenders Act 1988 applies, only one disqualification shall be imposed on him. However the court must take into account all offences when determining the disqualification period. For the purposes of appeal, any disqualification imposed shall be treated as an order made on conviction of each of the offences. (Section 35(3) of the Road Traffic Offenders Act 1988)
Other combinations involving two or more offences involving discretionary disqualification	As orders of disqualification take effect immediately, it is generally desirable for the court to impose a single disqualification order that reflects the overall criminality of the offending behaviour.

Compensation orders [dropdown]

Compensation orders	
Circumstance	Approach
Global compensation orders	The court should not fix a global compensation figure unless the offences were committed against the same victim. Where there are competing claims for limited funds, the total compensation available should normally be apportioned on a pro rata basis.
The court may combine a compensation order with any other form of order (Section 134 of the Sentencing Code)	
Compensation orders and fines	Priority is given to the imposition of a compensation order over a fine (section 135(4) of the Sentencing Code). This does not affect sentences other than fines. This means that the fine should be reduced or, if necessary, dispensed with altogether, to enable the compensation to be paid.

Compensation orders and confiscation orders	A compensation order can be combined with a confiscation order where the amount that may be realised is sufficient. If such an order is made, priority should be given to compensation (Section 135 of the Sentencing Code).
Compensation orders and community orders	A compensation order can be combined with a community order.
Compensation orders and suspended sentence orders	A compensation order can be combined with a suspended sentence order.
Compensation orders and custody	A compensation order can be combined with a sentence of immediate custody where the offender is clearly able to pay or has good prospects of employment on his release from custody.

Totality

Effective from: tbc

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

Sentencers should have this in mind in relation to individual sentences but also when considering the total sentence.

Applicability - DROPDOWN

The principle of totality applies when sentencing an offender for multiple offences or when sentencing an offender who is already serving an existing sentence.

General principles

When sentencing for more than one offence, the overriding principle of totality is that the overall sentence should:

- reflect all of the offending behaviour with reference to overall harm and culpability, together with the aggravating and mitigating factors relating to the offences and those personal to the offender; and
- be just and proportionate.

Sentences can be structured as **concurrent** (to be served at the same time) or **consecutive** (to be served one after the other). There is no inflexible rule as to how the sentence should be structured.

- If consecutive, it is usually impossible to arrive at a just and proportionate sentence simply by adding together notional single sentences. Ordinarily some downward adjustment is required.
- If concurrent, it will often be the case that the notional sentence on any single offence will not adequately reflect the overall offending. Ordinarily some upward adjustment is required **and may have the effect of going outside the category range appropriate for a single offence.**

General approach (as applied to determinate custodial sentences)

1. **Consider the sentence for each individual offence, referring to the relevant sentencing guidelines.**
2. **Following the guidance provided below, determine whether the case calls for concurrent or consecutive sentences. When sentencing more than two offences, a combination of concurrent and consecutive sentences may be appropriate.**
3. **Test the overall sentence against the requirement that the total sentence is just and proportionate to the offending as a whole.**
4. **Consider and explain how the sentence is structured in a way that will be best understood by all concerned.**

Concurrent sentences will ordinarily be appropriate where:

- a. offences arise out of the same incident or facts.

Examples include:

V

- b. there is a series of offences of the same or similar kind, especially when committed against the same person.

Examples include:	V
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Where concurrent sentences are to be passed the lead sentence should reflect the overall criminality involved which may take the lead offence outside the category range appropriate for a single offence.

Concurrent custodial sentence examples:	V
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Structuring concurrent sentences:

When sentencing for two or more offences of differing levels of seriousness the court can consider structuring the sentence using concurrent sentences, for example:

- consider whether some offences are of such very low seriousness that they can be recorded as 'no separate penalty' (for example technical breaches or minor driving offences not involving mandatory disqualification)
- consider whether some of the offences are of lesser seriousness such that they can be ordered to run concurrently so that the sentence for the most serious offence(s) can be clearly identified.

Consecutive sentences will ordinarily be appropriate where:

- a. offences arise out of unrelated facts or incidents.

Examples include:	V
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- b. offences that are unrelated because whilst they were committed simultaneously they are distinct and there is an aggravating element that requires separate recognition.

Examples include:	V
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- c. offences that are of the same or similar kind but where the overall criminality will not sufficiently be reflected by concurrent sentences.

Examples include:	V
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- d. one or more offence(s) qualifies for a statutory minimum sentence and concurrent sentences would result in an overall sentence that undermines the statutory minimum sentence.

Examples include:	V
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However, it is **not** permissible to impose consecutive sentences for offences committed **in a single incident** in order to evade the statutory maximum penalty.

Examples include:	V
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Where consecutive sentences are to be passed, add up the sentences for each offence and consider the extent of any downward adjustment required to ensure the aggregate length is just and proportionate.

Structuring consecutive sentences:

When sentencing for similar offence types or offences of a similar level of severity the court can consider structuring the sentence using consecutive sentences, for example:

- consider whether all of the sentences can be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively
- consider whether, despite their similarity, a most serious principal offence can be identified and the other sentences can all be proportionately reduced (with particular reference to the

category ranges within sentencing guidelines) and passed consecutively in order that the sentence for the lead offence can be clearly identified

Sentencing for offences committed prior to other offences for which an offender has been sentenced	V
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Specific applications – custodial sentences

Existing determinate sentence, where determinate sentence to be passed	V
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Extended sentences	V
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Indeterminate sentences	V
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Specific applications – non-custodial sentences

Multiple fines for non-imprisonable offences	V
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Fines in combination with other sentences	V
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Community orders	V
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Disqualifications from driving	V
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Compensation orders	V
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Justice Committee

The Rt Hon. Lord Justice William Davis

Chairman, Sentencing Council

By email only

14 March 2023

Dear William,

The Committee welcomes the opportunity to contribute to the Sentencing Council's consultation on changes to the totality guideline. We would also like to thank the Council for sharing the responses to the consultation with the Committee. Overall, we are supportive of the changes proposed by the Council which will make the totality guideline more accessible and easier to use.

The Committee welcomes the decision to revisit the totality guideline, which came into force in 2012. The guideline is notable for the fact that it is relevant to a significant proportion of cases, and therefore it is right that the Council should re-examine it, evaluate how it is working and ensure that any changes are informed by the best possible evidence, wide consultation and public scrutiny.

The Committee decided to take [oral evidence](#) on the changes proposed by the Council in order to inform its response as well as its ongoing inquiry on public opinion and understanding of sentencing. Accordingly, on 7 March 2023, we heard from Professor Andrew Ashworth CBE KC (Hon), Emeritus Vinerian Professor of English Law, Faculty of Law, University of Oxford; Professor Mandeep Dhimi, Professor in Decision Psychology, Middlesex University London; and Dr Rory Kelly, Lecturer in Criminal Evidence and Criminal Law, Faculty of Laws, University College London.



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Data on totality

The Council's consultation explains that the proposed revisions to the guideline are based on the findings of the research *Exploring sentencers' views of the Sentencing Council's Totality guideline*. That research provided some valuable insights that have helped to inform the Council's proposed changes. The research appeared to indicate that sentencers generally do not rely on the guideline itself to inform their approach to sentencing more than one offence on the same occasion, or when sentencing an offender who is already serving a sentence. The report set out that the majority of sentencers said that they mainly apply its principles and consult it only for difficult or unusual cases. Given this finding, it would have been useful if the Council had been able to gather and analyse a larger data sample to see how the totality principle is being used and applied and, in particular, what difference, if any, there was when the totality guideline was directly referred to by the sentencer.

It was notable that a number of responses to the Council's consultation highlighted the lack of data on multiple offences. The lack of official data on sentencing for multiple offences and, in particular, the sentences imposed for secondary/non principal offences is a significant problem, which we will raise with the Ministry of Justice. We welcome the fact that the Council is planning to gather some data on multiple offences in its pilot data collection exercise, but the Committee would hope that the Common Platform should be able to provide better data to analyse sentencing for multiple offences. We would be grateful if the Council could keep the Committee informed on any developments in this area.

Despite the valuable research conducted by the Council in 2021, the Committee regrets the limited data, and therefore analysis, that has informed the Council's revision of the Totality guideline. The Council's resource assessment does not



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provide any assistance to the Committee, or indeed to the public, in assessing how the proposed changes may affect sentencing. The resource assessment sets out that the Council is unable to provide a reliable estimate of how many cases the guideline is relevant to. The Council then says that it estimates that the changes will have “no resource impact”. While we recognise that the Council is not responsible for the lack of data on sentencing multiple offences, it is a regrettable state of affairs that there is so little useful data to inform the assessment of how changes to such a significant guideline may affect sentencing in the future.

Professor Dhami’s response to the Council’s consultation draws attention to the fact that the lack of data on multiple offences impinges analysis of the potential for the guideline to cause or increase disparity in sentencing. One of the Council’s five strategic aims for 2021-26 is “to explore and consider issues of equality and diversity relevant to our work and take any necessary action in response within our remit”. It is therefore especially problematic that the Council cannot undertake such analysis to inform its revision of this guideline.

We would also like to draw attention to the qualitative analysis included in the Office of the Attorney General’s response. This states that:

In preparation for our response, we reviewed 67 sentences passed between 13 January 2022 to 15 September 2022 that we had referred to the Court of Appeal and where leave was granted. Of the 67 cases, the AGO submitted that there were issues with the way totality was addressed in 32 of the cases, and the Court of Appeal mentioned the issue of totality in 21 cases.



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This highlights the value of qualitative analysis in informing the Council's work and we would be keen to know if the Council had undertaken any analysis of judgments that applied the principle of totality prior to revising the guideline.

Public understanding

The Council's 2021 research on *Exploring sentencers' views of the Sentencing Council's Totality guideline* reported concerns about the general lack of public understanding of the principles of totality and the perception that it results in leniency. As the Council is aware, the Committee is conducting an inquiry on public opinion and public understanding of sentencing. The Committee is concerned that the totality principle is poorly understood by the public in general, and that it can also be difficult for victims and defendants to understand how it works. We agree with Dr Rory Kelly's submission that clear explanations of the principles of totality are vital so that victims understand how harms they have suffered are reflected in the sentence and the public has a clear grasp of how concurrent sentences work. Dr Kelly also points out that judges' considerable discretion in deciding how to apply the principles of totality makes the clarity of explanation particularly valuable to public understanding. The Committee therefore welcomes the Council's decision to make explicit reference in the totality guideline, in the general approach section, to the need for the sentencer to "explain how the sentence is structured in a way that will be best understood by all concerned".

We would recommend that the Council considers going further and includes within the guideline specific reference to the elements that the sentencer should explain when applying the totality guideline, or the principles of totality more generally. We would recommend that there is a stand-alone principle in the general approach section on how to explain the application of totality to the sentence, as was recommended by the Justices' Legal Advisers and Court Officers' Service. We also



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support the Ministry of Justice's suggestion of an inclusion of a further explanation box to assist sentencers with explaining how sentences are constructed in the context of totality. The principle and the box should set out what the explanation of the application of totality to the sentence should cover. Giving evidence to the Committee, Professor Andrew Ashworth, said that the Council's guidance on the explanation of the application of the principles should also ask the sentencer to explain how the sentence is calculated. The Office of the Attorney General also recommended included a reminder that "greater clarity may be achieved by explaining the effect of totality on the notional sentence". The Crown Prosecution Service also welcomed the emphasis on explaining how the sentence is structured, but recommended consideration of whether this could be taken further:

Where consecutive sentences are imposed, is it good practice to identify and explain in open court what the notional sentence on each count is, and then indicate where any downward adjustment has been made and to what extent, so that the application of totality is clear?

Where concurrent sentences are imposed, is it good practice to identify and explain in open court what sentence would have been imposed for a notional single offence, and what upward adjustment and to what extent has been made to reflect the commission of more than a single offence?

The Committee supports these proposals and suggests that the guidance on the explanation should state how the sentencer should explain the application of the totality principles affected the way in which the length of the sentence was calculated and how the sentence was structured.



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The same victim

A number of responses draw attention to the revised guideline's references to the application of the totality principles to cases involving multiple offences against the same victim in the general approach section, where it says that: "Concurrent sentences will ordinarily be appropriate where [...] there is a series of offences of the same or similar kind, especially when committed against the same person". The Office of Attorney General's response suggested that the general approach section should include a reference to cases with repeated sexual offences against the same victim: "the sentences can be passed concurrently, but the lead offence should be aggravated to take into account the overall criminality carried out". We agree. We also support the point made by the CPS that when concurrent sentences are used in cases of serious sexual offending, it is particularly important that there is a clear explanation so that victims understand how the sentence has been reached.

We would also draw the Council's attention to the point made by Professor Mandeep Dhimi in her evidence to the Committee that by recommending concurrent sentences for offences committed against the same person there is a risk that "you could be introducing a bias against victims who suffer from these types of crimes; these victims are likely to be women who are subject to stalking and harassment, and domestic abuse, as well as children subjected to abuse and neglect" ([Q36](#)). This again highlights the need for the Council to have access to better data to be able to test these claims about the potential disproportionate effect of the guidance within the guideline.

General principles

We are not convinced that there is much value in the statement that "there is no inflexible rule governing whether sentences should be structured as concurrent or consecutive". Dr Rory Kelly, in his evidence to the Committee, rightly praised the



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revised guideline for including more detailed examples and guidance on when a concurrent sentence is more appropriate and when a consecutive sentence is more appropriate. There does seem to be a risk of some confusion arising from the inclusion of the statement about “no inflexible rule” alongside statements such as “concurrent sentences will ordinarily be appropriate where offences arise out of the same incident or facts”. At the very least, the statement of “there is no inflexible rule” is superfluous when the relevant guidance uses the language of “will ordinarily be appropriate”. Removing the “there is no inflexible rule” statement could encourage sentencers to make greater use of the expanded guidance and examples included in the guideline.

Reaching a just and proportionate sentence

We support the aim of seeking to make the guidance on reaching a just and proportionate sentence more prominent within the guidelines. However, the Council should consider whether this point might be more prominent if it was integrated within each section, as the “golden thread” that runs throughout the guideline, rather than as a standalone section.

Professor Dhami, in her evidence to the Committee and her response to the Council’s consultation, argued that the guideline did not provide sufficient guidance on what constitutes a just and proportionate sentence. We note the proposed amendment to the just and proportionate test in the general principles section suggested by the Office of Attorney General, so that it would read:

The overriding principle is that the overall sentence must be just and proportionate, taking into account the aggregate effect of all offending. A sentence that is just and proportionate would generally reflect whether the multiple offending had arisen out of the same facts and incidents, or not.



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This could provide helpful additional guidance. They also suggest that it would be valuable to include a reminder within the guideline that reaching a just and proportionate sentence can include upwards as well as downwards adjustments. The CPS's suggestion to include the following in the general principles, to expand the just and proportionate test, would also add clarity in our view:

If consecutive, it is usually impossible to arrive at a just and proportionate sentence for more than a single offence simply by adding together notional single sentences. Ordinarily some downward adjustment is required.

If concurrent, it will often be the case that the notional sentence on any single offence will not adequately reflect the commission of more than a single offence. Ordinarily some upward adjustment is required.

Evaluation

The Committee would be keen to hear if the Council has any plans to monitor the effect of the changes proposed to the Totality guideline. It would be particularly interesting and valuable to understand what effect the new guidance on explaining the application of totality principles was having.

Yours sincerely,

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

Sir Robert Neill MP

Chair

Justice Committee

Requirements Table

Requirement	Requirement overview	Volume / Length range	Considerations / Factors to consider
Unpaid work requirement (UPW)	<p>An unpaid work requirement requires offenders to undertake work projects in their local community. In some regions, a small proportion of these hours can be spent on education, training or employment activities for eligible offenders.</p> <p>“Community Payback” is the term used to describe the delivery of an Unpaid Work requirement.</p>	Between 40 – 300 hours to be completed within 12 months.	<p>Work as part of an unpaid work requirement must be suitable for an offender to perform, and this suitability must be assessed by Probation. Probation will also be able to advise what type of projects are available in the region. The court must consider whether the offender is in employment, has any disabilities or limitations, has any dependants, or whether there are any other circumstances that may make an unpaid work requirement unsuitable.</p> <p>If unpaid work hours are not completed within 12 months (unless extended or revoked by the court), the requirement remains ‘live’ and will need to be returned to the court for the operational period to be extended so the remaining hours can be worked. Sentencers should consider this when considering any other requirements to ensure that it is realistic for an offender to complete all unpaid work hours within the operational period.</p>
Rehabilitation activity requirement (RAR)	<p>A rehabilitation activity requirement (RAR) requires the offender to participate in rehabilitative activities designed to address the behaviours and needs that contributed to the offence, and attend supervision appointments with the Probation Service.</p> <p>A court will specify the maximum number rehabilitative activity days the offender must complete. Post-sentence, Probation will assess the offender and produce a tailored activity plan based on their needs. Activities can include probation-led toolkits or group structured</p>	Minimum of 1 RAR day; no maximum, to be completed within the length of the order.	<p>A rehabilitation activity requirement should be imposed when the offender has rehabilitative needs that cannot be addressed by other requirements.</p> <p>The specific type of activities that the offender will be required to participate in will be determined post-sentence by an assessment of these rehabilitative needs, and as such sentencers should consider the number of RAR days recommended by Probation to ensure this number is suitable and proportionate to the level of need and any eligibility requirements for commissioned rehabilitative services that may be relevant.</p> <p>Structured rehabilitative activity appointments are complemented by supervision appointments with Probation which ensure contact is maintained, Probation can track the offender’s progress in completing activities and offer support where necessary.</p>

	interventions, or referral to external organisations providing rehabilitative services.		The court needs only to specify the number of 'RAR' or rehabilitative activity days, and Probation will manage supervision appointments alongside these days.
Programme requirement	A programme requirement requires an offender to complete an offending behaviour programme or intervention. These are intensive structured programmes, designed to tackle the attitudes, thinking and behaviours of certain criminogenic needs. Programmes are usually delivered in groups by a trained facilitator.	The court must specify the number of days on which the offender must participate in the programme up to the length of the order.	An accredited programme should be recommended by the Probation Service, as each programme has specific eligibility criteria that must be met and different regions have different programmes that may be suitable with different eligibility criteria that may or may not apply. Probation will specify to the court how many days are required to complete a suitable programme to ensure a suitable programme can be completed in full.
Prohibited activity requirement	A prohibited activity requirement prohibits the offender from participating in any activity specified by the court.	Duration set by the court, up to the length of the order.	The court must consult the Probation Service before imposing this requirement. Electronic monitoring may be considered to monitor compliance with the prohibited activity if it is suitable (see electronic monitoring below).
Curfew requirement	A curfew requirement requires an offender to remain at a particular place (or places) for a specified period (or periods) of time. Different places or different curfew periods may be specified for different days. The curfew period should be targeted to reflect the punishment intended, support rehabilitation where relevant, and protect victims and the public.	For an offence of which the offender was convicted on or after 28 June 2022: 2 – 20 hours in any 24 hours; maximum 112 hours in any period of 7 days beginning with the day of the week on which the requirement first takes effect; and maximum term 2 years; - or - For an offence of which the offender was convicted before 28 June 2022: 2 – 16 hours in any 24 hours; maximum term 12 months.	Where the court imposes a curfew requirement, it must also impose an electronic monitoring requirement to monitor compliance, unless in the circumstances of the case, it considers it inappropriate to do so. In all cases, the court must consider those likely to be affected, such as any dependants. Prior to the imposition of a curfew requirement, Probation must carry out safeguarding and domestic abuse enquiries on any proposed curfew address, to ensure the accommodation is suitable, others will not be put at risk and the homeowner agrees to the curfew, particularly where vulnerable adults and children are involved.

Exclusion requirement	<p>An exclusion requirement prevents an offender from going into a particular place or area.</p> <p>The exclusion zone can include more than one prohibited place/area, more than one exclusion period and different prohibited places/areas for different exclusion periods or different days.</p>	<p>Up to 2 years. May either be continuous or only during specified periods.</p>	<p>Where the court imposes an exclusion requirement, it must also impose an electronic monitoring requirement to monitor compliance, unless in the particular circumstances of the case, it considers it inappropriate to do so (see note on electronic monitoring below).</p>
Residence requirement	<p>A residence requirement provides that the offender must reside at a particular place (i.e. a private address or HMPPS provided temporary accommodation, including an approved premises or Bail accommodation Support Services) for a specified period.</p>	<p>Duration set by the court, up to the length of the order.</p> <p>The maximum placement length of an approved premises is 12 weeks.</p>	<p>Courts are encouraged to engage with Probation to understand what type of HMPPS provided temporary accommodation is available in their region to support these orders.</p> <p>Where a residence requirement provides that the offender reside at a private address, there is no requirement that the offender to be at the address at a specific time. A curfew requirement would be necessary for this. However, where a residence requirement is for an approved premises (AP), an offender is bound by the rules of the AP, which may include an overnight curfew and drug and/or alcohol testing.</p>
Foreign travel prohibition requirement	<p>An offender is prohibited from travelling to a country (or countries) or territory (or territories) outside the British Islands (that is the United Kingdom, the Channel Islands and the Isle of Man).</p>	<p>Duration set by the court, up to a maximum of 12 months.</p>	<p>Unlikely to be suitable for an offender who does not have a passport, rarely travels, or has no apparent international connections.</p>
Mental health treatment requirement	<p>A mental health treatment requirement provides treatment to an offender with a mental health condition. Treatment may be residential or non-residential and must be provided by or under the direction of a registered medical practitioner or chartered psychologist.</p>	<p>Duration set by the court, up to the length of the order.</p>	<p>The court must be satisfied: (a) that the mental condition of the offender is such as requires and may be susceptible to treatment but is not such as to warrant the making of a hospital or guardianship order; (b) that arrangements for treatment have been or can be made; (c) that the offender has expressed willingness to comply. Probation should be consulted to ensure these factors are met, and to assess the offender to ensure that any eligibility requirements for the treatment are satisfied before imposing this requirement.</p>

			<p>Most MHTRs are provided by Secondary Care Mental Health Services and are available in every court. MHTRs can be used in combination with other treatment requirements (for example drug and alcohol rehabilitation requirements) for offenders with multiple needs.</p>
<p>Drug rehabilitation requirement</p>	<p>A drug rehabilitation requirement provides treatment to an offender who is dependent on drugs or has a propensity to misuse drugs. Treatment can be residential or non-residential, and the offender must participate in court reviews of the order, as directed by the court.</p>	<p>Duration set by the court, up to the length of the order.</p>	<p>A drug rehabilitation requirement (DRR) may be imposed on an offender for whom the court is satisfied that the offender is dependent on or has a propensity to misuse drugs (as defined by s.2 of the Misuse of Drugs Act 1971) where the dependency or propensity requires and may be susceptible to treatment.</p> <p>The court must ensure that necessary arrangements have been or can be made for the proposed treatment, and the offender must express willingness to comply with the treatment.</p> <p>Probation should be consulted to ensure these factors are met, and to assess the offender to ensure that any eligibility requirements for the treatment are satisfied before imposing this requirement.</p> <p>DRRs can be used in combination with other treatment requirements (for example, mental health treatment requirement) for offenders with multiple needs.</p>
<p>Alcohol treatment requirement</p>	<p>An alcohol treatment requirement may be imposed on an offender who is dependent on alcohol, where that dependency requires and may be susceptible to treatment.</p> <p>The treatment may be residential or non-residential.</p>	<p>Duration set by the court, up to the length of the order.</p>	<p>An alcohol treatment requirement (ATR) may be imposed on an offender for whom the court is satisfied is dependent on alcohol and this dependency is such that it requires and is susceptible to treatment.</p> <p>The court must ensure that necessary arrangements have been or can be made for the proposed treatment, and the offender must express willingness to comply with the treatment.</p> <p>Probation should be consulted to ensure these factors are met, and to assess the offender to ensure that any eligibility requirements for the treatment are satisfied before imposing this requirement.</p> <p>ATRs can be used in combination with other treatment requirements (for example, mental health treatment requirement) for offenders with multiple needs. However, an ATR cannot be imposed alongside an</p>

			alcohol abstinence and monitoring requirement (AAMR).
Alcohol abstinence and monitoring requirement (where available)	An alcohol abstinence and monitoring requirement imposes a total ban on alcohol consumption and requires the offender to have their compliance with the requirement electronically monitored.	Up to 120 days.	<p>It is generally recommended that an alcohol abstinence and monitoring requirement (AAMR) is not a standalone requirement and sits alongside other measures that support rehabilitation.</p> <p>The court must be satisfied that the offender is not alcohol dependant. If the offender is alcohol dependant, an ATR may be more appropriate. Probation should be consulted to assess the rehabilitative need and advise on the most relevant and available treatment.</p> <p>An AAMR cannot be imposed alongside an ATR alcohol treatment requirement.</p>
Electronic monitoring: electronic whereabouts monitoring requirement and electronic compliance monitoring requirement	<p>The electronic whereabouts monitoring requirement is a requirement for the offender to submit to electronic monitoring of their whereabouts (other than for the purpose of monitoring compliance with any other requirement included in the order) during a period specified in the order.</p> <p>The electronic compliance monitoring requirement is imposed to monitor compliance with another requirement on an order.</p>	Up to 2 years.	<p>The electronic whereabouts monitoring requirement may be imposed without the imposition of another requirement and involves monitoring an offender's whereabouts with the imposition of a GPS tag, save for circumstances in which the consent of a person whose co-operation is required is withheld.</p> <p>Where the court makes a relevant order imposing a curfew requirement or exclusion requirement it must also impose an electronic compliance monitoring requirement for monitoring compliance with it, save where:</p> <ul style="list-style-type: none"> • there is a person (other than the offender) without whose co-operation it will not be practicable to secure the monitoring and that person does not consent; and/or • electronic monitoring is unavailable and/or impractical; and/or • in the particular circumstances of the case, the court considers it inappropriate to do so. <p>Prior to the imposition of a curfew requirement, Probation must carry out safeguarding and domestic abuse enquiries on any proposed curfew address, to ensure the accommodation is suitable, others will not be put at risk and the homeowner agrees to the curfew, particularly where vulnerable adults and children are involved.</p>

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Causing death by dangerous driving

Road Traffic Act 1988 (section 1)

Triable only on indictment

Maximum: life imprisonment

Offence range: 2 – 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

Obligatory disqualification: minimum 5 years with compulsory extended re-test

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. 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.

A	<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 • Obviously highly dangerous manoeuvre • Prolonged use of mobile phone or other electronic device • Driving highly impaired by consumption of alcohol and/or drugs • Offence committed in course of evading police • Racing or competitive driving against another vehicle • Persistent disregard of warnings of others • Lack of attention to driving for a substantial period of time • Speed significantly in excess of speed limit or highly inappropriate for the prevailing road or weather conditions
B	<ul style="list-style-type: none"> • Brief but obviously highly dangerous manoeuvre • Engaging in a brief but avoidable distraction • Use of mobile phone or other electronic device (where not culpability A) • 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 (where not culpability A) • Driving impaired by consumption of alcohol and/or drugs (where not culpability A) • Driving significantly impaired as a result of a known medical condition, and/or disregarding advice relating to the effect of a medical condition or medication • Driving when deprived of adequate sleep or rest • Disregarding a warning of others • The offender's culpability falls between A and C

C	<ul style="list-style-type: none"> • Momentary lapse of concentration • Standard of driving was just over threshold for dangerous driving

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 TWO

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 the same incident or facts, concurrent sentences reflecting the overall criminality will ordinarily be appropriate.

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. See the Totality guideline and step six of this guideline.

Starting point and category range

Culpability	Starting point	Range
A	12 years	8 – 18 years
B	6 years	4 – 9 years
C	3 years	2 – 5 years

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:

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders, **motorcyclists etc**

- Driving for commercial purposes
- Driving an LGV, HGV or PSV etc
- Other driving offences committed at the same time as the dangerous driving
- Blame wrongly placed on others
- Failed to stop and/or obstructed or hindered attempts to assist at the scene
- Passengers in the offender's vehicle, including children
- Vehicle poorly maintained
- 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
- Good driving record
- 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
- 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

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 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.

Disqualification guidanceA Principles

Disqualification is part of the sentence. Accordingly when setting the “discretionary” element of the disqualification (i.e. disregarding any period being spent in custody – see below) the court must have regard to the purposes of sentencing in section 57 of the Sentencing Code, which include: the punishment of offenders, the reduction of crime, the reform and rehabilitation of offenders and the protection of the public, when deciding the length of any disqualification.

In setting the length of any disqualification, sentencers should not disqualify for a period that is longer than necessary and should bear in mind the need for rehabilitation (for example, by considering the effects of disqualification on employment or employment prospects).

~~Sentencers should also be mindful of the risk of long disqualifications leading to further offences being committed, by reason of a temptation to drive unlawfully.~~

B Minimum disqualification period

The minimum disqualification period for this offence is five years.

C Special reasons

The period of disqualification may be reduced or avoided if there are special reasons. These must relate to the offence; circumstances peculiar to the offender **cannot** constitute special reasons. To constitute a special reason, a matter must:

- be a mitigating or extenuating circumstance;
- not amount in law to a defence to the charge;
- be directly connected with the commission of the offence;
- be one which the court ought properly to take into consideration when imposing sentence.

D Interaction with custodial period – same offence

Under section 35A of the Road Traffic Offenders Act 1988 where a court imposes a disqualification in addition to a custodial sentence or a detention and training order for this offence, it must extend the disqualification period to take account of the custodial term imposed by:

- **one half** of the custodial term imposed for an immediate standard determinate sentence (except where release is at the two thirds point – see below); no extension period should be imposed where a sentence is suspended.
- **two thirds** of the custodial term for:
 - o an extended sentence; or
 - o a standard determinate sentence of over seven years (for offences committed on or after 28 June 2022)
- **the term specified** in the minimum term order of a life sentence.

This will avoid the disqualification expiring, or being significantly diminished, during the period the offender is in custody. The table at [section 166 of the Sentencing Code](#) provides further detail. (Note: this table applies to disqualification for non-Road Traffic Act 1988 offences but the principles apply to disqualifications imposed under that Act as well.)

Periods of time spent on remand or subject to an electronically monitored curfew are generally ignored. However, if the time spent on remand would lead to a disproportionate result in terms of the period of disqualification, then the court may consider setting the discretionary element (i.e. the period which would have been imposed but for the need to extend for time spent in custody) to take account of time spent on remand. This should not reduce the discretionary term below the statutory minimum period of disqualification.

E Interaction with custodial period – different offence

The Court may be imposing a custodial sentence on the offender for another offence, which is not the one for which they are being disqualified **or the offender may already be serving a custodial sentence for another offence. In either of these circumstances,** under section 35B of the Road Traffic Offenders Act 1988 **the Court** should have regard to "the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence".

Where the court is intending to impose a disqualification and considering a custodial sentence for that and/or another offence, the following checklist may be useful:

- Step 1 – does the court intend to impose a custodial term for the offence for which they are imposing a disqualification?

YES – the court must impose the appropriate extension period and consider step 2.

NO – go to step 3.

- Step 2 – does the court intend to impose a custodial term for another offence (which is longer or consecutive) or is the defendant already serving a custodial sentence?

YES – consider what uplift in the period of discretionary disqualification (i.e. the period which would have been imposed but for the need to extend for time spent in custody) is required, having regard to the diminished effect of disqualification as a distinct punishment. Ignore any custodial term imposed for the offence for which disqualification is being imposed. **Discretionary period + extension period + uplift = total period of disqualification**

NO – no further uplift required. **Discretionary period + extension period = total period of disqualification**

- Step 3 – does the court intend to impose a custodial term for another offence or is the defendant already serving a custodial sentence?

YES – then consider what uplift in the period of discretionary disqualification is required, having regard to the diminished effect of disqualification as a distinct punishment. **Discretionary period + uplift = total period of disqualification**

NO – no increase is needed to the discretionary period.

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

Obligatory disqualification: minimum 5 years with compulsory extended re-test

(Minimum 6 years disqualification if the offender has been convicted of this same offence in the 10 years preceding commission of the present offence)

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

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. 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.

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 at step two.

A	<ul style="list-style-type: none"> • Standard of driving was just below threshold for dangerous driving and/or includes extreme example of a culpability B factor
B	<ul style="list-style-type: none"> • 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 • Driving vehicle which is unsafe or where driver's visibility or controls are obstructed • Driving impaired as a result of a known medical condition and/or 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 when deprived of adequate sleep or rest • The offender's culpability falls between the factors as described in culpability A and C
C	<ul style="list-style-type: none"> • Standard of driving was just over threshold for careless driving • Momentary lapse of concentration

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 TWO

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 the same incident or facts, concurrent sentences reflecting the overall criminality will ordinarily be appropriate.

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. See the Totality guideline and step six of this guideline.

Starting point and category range
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The legal limit of alcohol is 35µg breath (80mg in blood and 107mg in urine)	Culpability A	Culpability B	Culpability C
71µg/163mg/216mg or above of alcohol OR Deliberate refusal to provide specimen for analysis OR Evidence of substantial impairment 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/117-162mg/156-215mg of alcohol OR Any quantity of a single drug detected above the legal limit	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/81-116mg/108-155mg of alcohol OR A single drug detected below the legal limit	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

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:

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders, **motorcyclists etc**
- Disregarding warnings of others
- Driving for commercial purposes
- Driving an LGV, HGV or PSV
- Other driving offences committed at the same time as the careless driving
- Blame wrongly placed on others
- Failed to stop **and/or obstructed or hindered attempts to assist at the scene**
- Passengers **in the offender's vehicle**, including children
- Vehicle poorly maintained
- 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
- **Good** driving record
- Alcohol or drugs consumed unwittingly
- 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
- 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

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, 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.

Disqualification guidance

A Principles

Disqualification is part of the sentence. Accordingly when setting the “discretionary” element of the disqualification (i.e. disregarding any period being spent in custody – see below) the court must have regard to the purposes of sentencing in section 57 of the Sentencing Code, which include: the punishment of offenders, the reduction of crime, the reform and rehabilitation of offenders and the protection of the public, when deciding the length of any disqualification.

In setting the length of any disqualification, sentencers should not disqualify for a period that is longer than necessary and should bear in mind the need for rehabilitation (for example, by considering the effects of disqualification on employment or employment prospects).

~~Sentencers should also be mindful of the risk of long disqualifications leading to further offences being committed, by reason of a temptation to drive unlawfully.~~

B Minimum disqualification period

The minimum disqualification period for this offence is five years. This is increased to six years’ disqualification if the offender has been convicted of this same offence in the 10 years preceding commission of the present offence.

C Special reasons

The period of disqualification may be reduced or avoided if there are special reasons. These must relate to the offence; circumstances peculiar to the offender **cannot** constitute special reasons. To constitute a special reason, a matter must:

- be a mitigating or extenuating circumstance;
- not amount in law to a defence to the charge;
- be directly connected with the commission of the offence;
- be one which the court ought properly to take into consideration when imposing sentence.

D Interaction with custodial period – same offence

Under section 35A of the Road Traffic Offenders Act 1988 where a court imposes a disqualification in addition to a custodial sentence or a detention and training order for this offence, it must extend the disqualification period to take account of the custodial term imposed by:

- **one half** of the custodial term imposed for an immediate standard determinate sentence (except where release is at the two thirds point – see below); no extension period should be imposed where a sentence is suspended.
- **two thirds** of the custodial term for:
 - o an extended sentence; or
 - o a standard determinate sentence of over seven years (for offences committed on or after 28 June 2022)
- **the term specified** in the minimum term order of a life sentence.

This will avoid the disqualification expiring, or being significantly diminished, during the period the offender is in custody. The table at [section 166 of the Sentencing Code](#) provides further detail. (Note: this table applies to disqualification for non-Road Traffic Act 1988 offences but the principles apply to disqualifications imposed under that Act as well.)

Periods of time spent on remand or subject to an electronically monitored curfew are generally ignored. However, if the time spent on remand would lead to a disproportionate result in terms of the period of disqualification, then the court may consider setting the discretionary element (i.e. the period which would have been imposed but for the need to extend for time spent in custody) to take account of time spent on remand. This should not reduce the discretionary term below the statutory minimum period of disqualification.

E Interaction with custodial period – different offence

The Court may be imposing a custodial sentence on the offender for another offence, which is not the one for which they are being disqualified **or the offender may already be serving a custodial sentence for another offence. In either of these circumstances,** under section 35B of the Road Traffic Offenders Act 1988 **the Court** should have regard to "the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence".

Where the court is intending to impose a disqualification and considering a custodial sentence for that and/or another offence, the following checklist may be useful:

- Step 1 – does the court intend to impose a custodial term for the offence for which they are imposing a disqualification?
 - YES – the court must impose the appropriate extension period and consider step 2.
 - NO – go to step 3.
- Step 2 – does the court intend to impose a custodial term for another offence (which is longer or consecutive) or is the defendant already serving a custodial sentence?
 - YES – consider what uplift in the period of discretionary disqualification (i.e. the period which would have been imposed but for the need to extend for time spent in custody) is required, having regard to the diminished effect of disqualification as a distinct punishment. Ignore any custodial term imposed for the offence for which disqualification is being imposed. **Discretionary period + extension period + uplift = total period of disqualification**
 - NO – no further uplift required. **Discretionary period + extension period = total period of disqualification**
- Step 3 – does the court intend to impose a custodial term for another offence or is the defendant already serving a custodial sentence?
 - YES – then consider what uplift in the period of discretionary disqualification is required, having regard to the diminished effect of disqualification as a distinct punishment. **Discretionary period + uplift = total period of disqualification**
 - NO – no increase is needed to the discretionary period.

Causing death by careless or inconsiderate driving

Road Traffic Act 1988 (section 2B)

Triable either way

Maximum: 5 years' custody

Offence range: Community order – 4 years' custody

Obligatory disqualification: minimum 12 months.

(Minimum 2 years disqualification if the offender has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence)

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. 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.

A	<ul style="list-style-type: none"> Standard of driving was just below threshold for dangerous driving and/or includes extreme example of a culpability B factor
B	<ul style="list-style-type: none"> 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 Driving impaired by consumption of alcohol and/or drugs (see step 6 on totality where this is the subject of a separate charge) Driving vehicle which is unsafe or where driver's visibility or controls are obstructed Driving impaired as a result of a known medical condition and/or in disregard of advice relating to the effects of medical condition or medication Driving when deprived of adequate sleep or rest The offender's culpability falls between the factors as described in culpability A and C
C	<ul style="list-style-type: none"> Standard of driving was just over threshold for careless driving Momentary lapse of concentration

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 TWO

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 the same incident or

facts, concurrent sentences reflecting the overall criminality will ordinarily be appropriate.

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. See the Totality guideline and step five of this guideline.

Starting point and category range

Culpability	Starting point	Range
A	2 years	1 – 4 years
B	1 year	26 weeks – 3 years
C	26 weeks	Medium level community order – 1 year

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:

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders, **motorcyclists etc**
- Disregarding warnings of others
- Driving for commercial purposes
- Driving an LGV, HGV or PSV etc
- Other driving offences committed at the same time as the careless driving
- Blame wrongly placed on others
- Failed to stop **and/or obstructed or hindered attempts to assist at the scene**
- Passengers **in the offender's vehicle**, including children
- Vehicle poorly maintained
- 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)

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- **Good** driving record
- 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
- 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

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 – 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.

Disqualification guidance

A Principles

Disqualification is part of the sentence. Accordingly when setting the “discretionary” element of the disqualification (i.e. disregarding any period being spent in custody – see below) the court must have regard to the purposes of sentencing in section 57 of the Sentencing Code, which include: the punishment of offenders, the reduction of crime, the reform and rehabilitation of offenders and the protection of the public, when deciding the length of any disqualification.

In setting the length of any disqualification, sentencers should not disqualify for a period that is longer than necessary and should bear in mind the need for rehabilitation (for example, by considering the effects of disqualification on employment or employment prospects).

~~Sentencers should also be mindful of the risk of long disqualifications leading to further offences being committed, by reason of a temptation to drive unlawfully.~~

B Minimum disqualification period

The minimum disqualification period for this offence is 12 months.

An offender must be disqualified for at least **two years** if he or she has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence. The following disqualifications are to be disregarded for the purposes of this provision:

- interim disqualification;
- disqualification where vehicle used for the purpose of crime;
- disqualification for stealing or taking a vehicle or going equipped to steal or take a vehicle.

~~For this offence, the court has discretion to disqualify until an extended driving test is passed. The discretion to order an extended re-test is likely to be exercised where there is evidence of inexperience, incompetence or infirmity, or the disqualification period is lengthy (that is, the offender is going to be ‘off the road’ for a considerable time). Where an offender has an extended driving test that is still outstanding, the court cannot order another extended re-test.~~

C Special reasons

The period of disqualification may be reduced or avoided if there are special reasons. These must relate to the offence; circumstances peculiar to the offender **cannot** constitute special reasons. To constitute a special reason, a matter must:

- be a mitigating or extenuating circumstance;
- not amount in law to a defence to the charge;
- be directly connected with the commission of the offence;
- be one which the court ought properly to take into consideration when imposing sentence.

D Interaction with custodial period – same offence

Under section 35A of the Road Traffic Offenders Act 1988 where a court imposes a disqualification in addition to a custodial sentence or a detention and training order for this offence, it must extend the disqualification period by **one half** of the custodial term imposed; no extension period should be imposed where a sentence is suspended.

This will avoid the disqualification expiring, or being significantly diminished, during the period the offender is in custody.

Periods of time spent on remand or subject to an electronically monitored curfew are generally ignored. However, If the time spent on remand would lead to a disproportionate result in terms of the period of disqualification, then the court may consider setting the discretionary element (i.e. the period which would have been imposed but for the need to extend for time spent in custody) to take account of time spent on remand. This should not reduce the discretionary term below the statutory minimum period of disqualification.

E Interaction with custodial period – different offence

The Court may be imposing a custodial sentence on the offender for another offence, which is not the one for which they are being disqualified **or the offender may already be serving a custodial sentence for another offence. In either of these circumstances,** under section 35B of the Road Traffic Offenders Act 1988 **the Court** should have regard to "the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence".

Where the court is intending to impose a disqualification and considering a custodial sentence for that and/or another offence, the following checklist may be useful:

- Step 1 – does the court intend to impose a custodial term for the offence for which they are imposing a disqualification?
 - YES – the court must impose the appropriate extension period and consider step 2.
 - NO – go to step 3.
- Step 2 – does the court intend to impose a custodial term for another offence (which is longer or consecutive) or is the defendant already serving a custodial sentence?
 - YES – consider what uplift in the period of discretionary disqualification (i.e. the period which would have been imposed but for the need to extend for time spent in custody) is required, having regard to the diminished effect of disqualification as a distinct punishment. Ignore any custodial term imposed for the offence for which disqualification is being imposed. **Discretionary period + extension period + uplift = total period of disqualification**
 - NO – no further uplift required. **Discretionary period + extension period = total period of disqualification**
- Step 3 – does the court intend to impose a custodial term for another offence or is the defendant already serving a custodial sentence?
 - YES – then consider what uplift in the period of discretionary disqualification is required, having regard to the diminished effect of

disqualification as a distinct punishment. **Discretionary period + uplift = total period of disqualification**
NO – no increase is needed to the discretionary period.

Causing serious injury by dangerous driving

Road Traffic Act 1988 (section 1A)

Triable either way

Maximum: 5 years' custody,

Offence range: 26 weeks – 5 years' custody

Obligatory disqualification: minimum 2 years with compulsory extended re-test

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. 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>A</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 • Obviously highly dangerous manoeuvre • Prolonged use of mobile phone or other electronic device • Driving highly impaired by consumption of alcohol and/or drugs • Offence committed in course of evading police • Racing or competitive driving against another vehicle • Persistent disregard of warnings of others • Lack of attention to driving for a substantial period of time • Speed significantly in excess of speed limit or highly inappropriate for the prevailing road or weather conditions
<p>B</p>	<ul style="list-style-type: none"> • Brief but obviously highly dangerous manoeuvre • Engaging in a brief but avoidable distraction • Use of mobile phone or other electronic device (where not culpability A) • 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 (where not culpability A) • Driving impaired by consumption of alcohol and/or drugs (where not culpability A) • Driving significantly impaired as a result of a known medical condition, and/or disregarding advice relating to the effect of a medical condition or medication • Driving when deprived of adequate sleep or rest • Disregarding a warning of others • The offender's culpability falls between A and C

C	<ul style="list-style-type: none"> • Momentary lapse of concentration • Standard of driving was just over threshold for dangerous driving

HARM	
Category 1	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • All other cases

STEP TWO

The starting points and category ranges below relate to a single offence resulting in injury to a single victim. Where another offence or offences arise out of the same incident or facts, concurrent sentences reflecting the overall criminality will ordinarily be appropriate.

Where there is more than one victim injured, 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. See the Totality guideline and step six of this guideline.

Starting point and category range

	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

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:

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders, **motorcyclists etc**
- Driving for commercial purposes
- Driving an LGV, HGV, or PSV etc
- Other driving offences committed at the same time as the dangerous driving
- Blame wrongly placed on others
- Failed to stop **and/or obstructed or hindered attempts to assist at the scene**
- Passengers **in the offender's vehicle**, including children
- Vehicle poorly maintained
- 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
- **Good** driving record
- Actions of the victim or a third party contributed significantly to collision or injury
- 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
- 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

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.

Disqualification guidanceA Principles

Disqualification is part of the sentence. Accordingly when setting the “discretionary” element of the disqualification (i.e. disregarding any period being spent in custody – see below) the court must have regard to the purposes of sentencing in section 57 of the Sentencing Code, which include: the punishment of offenders, the reduction of crime, the reform and rehabilitation of offenders and the protection of the public, when deciding the length of any disqualification.

In setting the length of any disqualification, sentencers should not disqualify for a period that is longer than necessary and should bear in mind the need for

rehabilitation (for example, by considering the effects of disqualification on employment or employment prospects).

~~Sentencers should also be mindful of the risk of long disqualifications leading to further offences being committed, by reason of a temptation to drive unlawfully.~~

B Minimum disqualification period

The minimum disqualification period for this offence is two years.

C Special reasons

The period of disqualification may be reduced or avoided if there are special reasons. These must relate to the offence; circumstances peculiar to the offender **cannot** constitute special reasons. To constitute a special reason, a matter must:

- be a mitigating or extenuating circumstance;
- not amount in law to a defence to the charge;
- be directly connected with the commission of the offence;
- be one which the court ought properly to take into consideration when imposing sentence.

D Interaction with custodial period – same offence

Under section 35A of the Road Traffic Offenders Act 1988 where a court imposes a disqualification in addition to a custodial sentence or a detention and training order for this offence, it must extend the disqualification period by **one half** of the custodial term imposed; no extension period should be imposed where a sentence is suspended.

This will avoid the disqualification expiring, or being significantly diminished, during the period the offender is in custody.

Periods of time spent on remand or subject to an electronically monitored curfew are generally ignored. However, if the time spent on remand would lead to a disproportionate result in terms of the period of disqualification, then the court may consider setting the discretionary element (i.e. the period which would have been imposed but for the need to extend for time spent in custody) to take account of time spent on remand. This should not reduce the discretionary term below the statutory minimum period of disqualification.

E Interaction with custodial period – different offence

The Court may be imposing a custodial sentence on the offender for another offence, which is not the one for which they are being disqualified **or the offender may already be serving a custodial sentence for another offence. In either of these circumstances,** under section 35B of the Road Traffic Offenders Act 1988 **the Court** should have regard to "the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence".

Where the court is intending to impose a disqualification and considering a custodial sentence for that and/or another offence, the following checklist may be useful:

- Step 1 – does the court intend to impose a custodial term for the offence for which they are imposing a disqualification?

YES – the court must impose the appropriate extension period and consider step 2.

NO – go to step 3.

- Step 2 – does the court intend to impose a custodial term for another offence (which is longer or consecutive) or is the defendant already serving a custodial sentence?

YES – consider what uplift in the period of discretionary disqualification (i.e. the period which would have been imposed but for the need to extend for time spent in custody) is required, having regard to the diminished effect of disqualification as a distinct punishment. Ignore any custodial term imposed for the offence for which disqualification is being imposed. **Discretionary period + extension period + uplift = total period of disqualification**

NO – no further uplift required. **Discretionary period + extension period = total period of disqualification**

- Step 3 – does the court intend to impose a custodial term for another offence or is the defendant already serving a custodial sentence?

YES – then consider what uplift in the period of discretionary disqualification is required, having regard to the diminished effect of disqualification as a distinct punishment. **Discretionary period + uplift = total period of disqualification**

NO – no increase is needed to the discretionary period.

Causing serious injury by careless or inconsiderate driving

Road Traffic Act 1988 (section 2C)

Triable either way

Maximum: 2 years' custody

Offence range: Community order – 2 years' custody

Obligatory disqualification: minimum 12 months

(Minimum 2 years disqualification if the offender has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence)

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. 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.

A	<ul style="list-style-type: none"> • Standard of driving was just below threshold for dangerous driving and/or includes extreme example of a culpability B factor
B	<ul style="list-style-type: none"> • 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 • Driving impaired by consumption of alcohol and/or drugs • Driving vehicle which is unsafe or where driver's visibility or controls are obstructed • Driving impaired as a result of a known medical condition and/or in disregard of advice relating to the effects of medical condition or medication • Driving when deprived of adequate sleep or rest • The offender's culpability falls between the factors as described in culpability A and C
C	<ul style="list-style-type: none"> • Standard of driving was just over threshold for careless driving • Momentary lapse of concentration

HARM

Category 1	<ul style="list-style-type: none"> • 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
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Category 2	<ul style="list-style-type: none"> All other cases
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STEP TWO

The starting points and category ranges below relate to a single offence resulting in injury to a single victim. Where another offence or offences arise out of the same incident or facts, concurrent sentences reflecting the overall criminality will ordinarily be appropriate.

Where there is more than one victim injured, 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. See the Totality guideline and step five of this guideline.

Starting point and category range

	Culpability		
	A	B	C
Harm 1	<p>Starting Point: 1-year 6 months 1 year</p> <p>Category range: 1-year 26 weeks - 2 years</p>	<p>Starting Point: 1-year 26 weeks</p> <p>Category range: 26-weeks High level community order – 1 year 6 months</p>	<p>Starting Point: 26-weeks High level community order</p> <p>Category range: Low Medium level community order – 4 year 26 weeks</p>
Harm 2	<p>Starting Point: 1-year 26 weeks</p> <p>Category range: 26-weeks High level community order – 1 year 6 months</p>	<p>Starting Point: 26-weeks High level community order</p> <p>Category range: Low Medium level community order – 4 year 26 weeks</p>	<p>Starting Point: High Medium level community order</p> <p>Category range: Low level community order – 26-weeks high level community order</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:

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders, **motorcyclists etc**
- Disregarding warnings of others
- Driving for commercial purposes
- Driving an LGV, HGV or PSV etc
- Other driving offences committed at the same time as the careless driving
- Blame wrongly placed on others
- Failed to stop **and/or obstructed or hindered attempts to assist at the scene**
- Passengers **in the offender's vehicle**, including children
- Vehicle poorly maintained
- 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
- **Good** driving record
- Actions of the victim or a third party contributed significantly to collision or injury
- 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
- 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

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.

Disqualification guidance

A Principles

Disqualification is part of the sentence. Accordingly when setting the “discretionary” element of the disqualification (i.e. disregarding any period being spent in custody – see below) the court must have regard to the purposes of sentencing in section 57 of the Sentencing Code, which include: the punishment of offenders, the reduction of crime, the reform and rehabilitation of offenders and the protection of the public, when deciding the length of any disqualification.

In setting the length of any disqualification, sentencers should not disqualify for a period that is longer than necessary and should bear in mind the need for rehabilitation (for example, by considering the effects of disqualification on employment or employment prospects).

~~Sentencers should also be mindful of the risk of long disqualifications leading to further offences being committed, by reason of a temptation to drive unlawfully.~~

B Minimum disqualification period

The minimum disqualification period for this offence is 12 months.

An offender must be disqualified for at least **two years** if he or she has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence. The following disqualifications are to be disregarded for the purposes of this provision:

- interim disqualification;
- disqualification where vehicle used for the purpose of crime;
- disqualification for stealing or taking a vehicle or going equipped to steal or take a vehicle.

For this offence, the court has discretion to disqualify until an extended driving test is passed. The discretion to order an extended re-test is likely to be exercised where there is evidence of inexperience, incompetence or infirmity, or the disqualification period is lengthy (that is, the offender is going to be 'off the road' for a considerable time). Where an offender has an extended driving test that is still outstanding, the court cannot order another extended re-test.

C Special reasons

The period of disqualification may be reduced or avoided if there are special reasons. These must relate to the offence; circumstances peculiar to the offender **cannot** constitute special reasons. To constitute a special reason, a matter must:

- be a mitigating or extenuating circumstance;
- not amount in law to a defence to the charge;
- be directly connected with the commission of the offence;
- be one which the court ought properly to take into consideration when imposing sentence.

D Interaction with custodial period – same offence

Under section 35A of the Road Traffic Offenders Act 1988 where a court imposes a disqualification in addition to a custodial sentence or a detention and training order for this offence, it must extend the disqualification period by **one half** of the custodial term imposed; no extension period should be imposed where a sentence is suspended.

This will avoid the disqualification expiring, or being significantly diminished, during the period the offender is in custody.

Periods of time spent on remand or subject to an electronically monitored curfew are generally ignored. However, if the time spent on remand would lead to a disproportionate result in terms of the period of disqualification, then the court may consider setting the discretionary element (i.e. the period which would have been imposed but for the need to extend for time spent in custody) to take account of time spent on remand. This should not reduce the discretionary term below the statutory minimum period of disqualification.

E Interaction with custodial period – different offence

The Court may be imposing a custodial sentence on the offender for another offence, which is not the one for which they are being disqualified **or the offender may already be serving a custodial sentence for another offence. In either of these circumstances,** under section 35B of the Road Traffic Offenders Act 1988 **the Court** should have regard to "the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence".

Where the court is intending to impose a disqualification and considering a custodial sentence for that and/or another offence, the following checklist may be useful:

- Step 1 – does the court intend to impose a custodial term for the offence for which they are imposing a disqualification?

YES – the court must impose the appropriate extension period and consider step 2.

NO – go to step 3.

- Step 2 – does the court intend to impose a custodial term for another offence (which is longer or consecutive) or is the defendant already serving a custodial sentence?

YES – consider what uplift in the period of discretionary disqualification (i.e. the period which would have been imposed but for the need to extend for time spent in custody) is required, having regard to the diminished effect of disqualification as a distinct punishment. Ignore any custodial term imposed for the offence for which disqualification is being imposed. **Discretionary period + extension period + uplift = total period of disqualification**

NO – no further uplift required. **Discretionary period + extension period = total period of disqualification**

- Step 3 – does the court intend to impose a custodial term for another offence or is the defendant already serving a custodial sentence?

YES – then consider what uplift in the period of discretionary disqualification is required, having regard to the diminished effect of disqualification as a distinct punishment. **Discretionary period + uplift = total period of disqualification**

NO – no increase is needed to the discretionary period.

Causing injury by wanton or furious driving

Offences Against the Person Act 1861 (section 35)

Triable only on indictment

Maximum: 2 years' custody

Offence range: Fine – 2 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

CULPABILITY

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.

References to driving below include driving or riding any kind of vehicle or carriage, including bicycles and scooters.

<p>A</p>	<ul style="list-style-type: none"> • Deliberate decision to ignore the rules of the road and/or disregard for the risk of danger to others. • Prolonged, persistent and deliberate course of driving likely to cause a danger to others • Obviously highly dangerous manoeuvre • Driving highly impaired by consumption of alcohol and/or drugs • Offence committed in course of evading police • Racing or competitive driving against another vehicle • Persistent disregard of warnings of others • Lack of attention to driving for a substantial period of time • Speed significantly in excess of speed limit or highly inappropriate for the prevailing conditions • Extreme example of a culpability B factor
<p>B</p>	<ul style="list-style-type: none"> • Unsafe manoeuvre or positioning • Inappropriate speed for the prevailing conditions (where not culpability A) • Driving impaired by consumption of alcohol and/or drugs • Visibility or controls obstructed • Driving impaired as a result of a known medical condition, and/or disregarding advice relating to the effects of a medical condition or medication • Driving when deprived of adequate sleep or rest
<p>C</p>	<ul style="list-style-type: none"> • All other cases

HARM

<p>Category 1</p>	<ul style="list-style-type: none"> • Death • Grave and/or life-threatening injury caused • Injury results in physical or psychological harm
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	<p>resulting in lifelong dependency on third party care or medical treatment</p> <ul style="list-style-type: none"> • Offence results in a permanent, irreversible injury or condition
Category 2	<ul style="list-style-type: none"> • Other cases of serious harm
Category 3	<ul style="list-style-type: none"> • All other cases

STEP TWO

The starting points and category ranges below relate to a single offence resulting in injury to a single victim. Where another offence or offences arise out of the same incident or facts, concurrent sentences reflecting the overall criminality will ordinarily be appropriate.

Where there is more than one victim injured, 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. See the Totality guideline and step five of this guideline.

Starting point and category range

	Culpability		
	A	B	C
Harm 1	<p>Starting Point: 1 year 6 months Category range: 1 - 2 years</p>	<p>Starting Point: 1 year 26 weeks Category range: 26 weeks High level community order – 1 year 6 months</p>	<p>Starting Point: 26 weeks High level community order Category range: High Medium level community order – 4 year 26 weeks</p>
Harm 2	<p>Starting Point: 1 year Category range: 26 weeks – 1 year 6 months</p>	<p>Starting Point: 26 weeks High level community order Category range: High Medium level community order – 4 year 26 weeks</p>	<p>Starting Point: High Medium level community order Category range: Low level community order – 26 weeks High level community order</p>
Harm 3	<p>Starting Point: 26 weeks Category range: High level community order – 1 year</p>	<p>Starting Point: High Medium level community order Category range: Low level community order – 26 weeks High level community order</p>	<p>Starting Point: Low level community order Category range: Band B fine – High Medium level community order</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:

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders, **motorcyclists etc**
- Driving for commercial purposes
- Driving an LGV, HGV or PSV etc
- Other driving offences committed at or about the same time
- Blame wrongly placed on others
- Failed to stop **and/or obstructed or hindered attempts to assist at the scene**
- Passengers **in the offender's vehicle**, including children
- 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
- **Good** driving record
- Actions of the victim or a third party contributed significantly to collision
- Offence due to inexperience rather than irresponsibility
- Genuine emergency
- 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 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).

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 – Magistrates' Court
- 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.

Dangerous driving

Road Traffic Act 1988 (section 2)

Triable either way

Maximum: 2 years' custody

Offence range: Community order – 2 years' custody

Obligatory disqualification: minimum 1 year with compulsory extended re-test

(Minimum 2 years disqualification if the offender has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence)

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. 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>A</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 • Obviously highly dangerous manoeuvre • Prolonged use of mobile phone or other electronic device • Driving highly impaired by consumption of alcohol and/or drugs • Offence committed in course of evading police • Racing or competitive driving against another vehicle • Persistent disregard of warnings of others • Lack of attention to driving for a substantial period of time • Speed significantly in excess of speed limit or highly inappropriate for the prevailing road or weather conditions
<p>B</p>	<ul style="list-style-type: none"> • Brief but obviously highly dangerous manoeuvre • Engaging in a brief but avoidable distraction • Use of mobile phone or other electronic device (where not culpability A) • 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 (where not culpability A) • Driving impaired by consumption of alcohol and/or drugs (where not culpability A) • Driving significantly impaired as a result of a known medical condition, and/or disregarding advice relating to the effect of a medical condition or medication • Driving when deprived of adequate sleep or rest • The offender's culpability falls between A and C

C	<ul style="list-style-type: none"> • Momentary lapse of concentration • Standard of driving was just over threshold for dangerous driving
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HARM	
Category 1	<ul style="list-style-type: none"> • Offence results in injury to others • Circumstances of offence created a high risk of serious harm to others • Damage caused to vehicles or property
Category 2	<ul style="list-style-type: none"> • All other cases

STEP TWO**Starting point and category range**

	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

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
- Offence committed whilst on bail

Other aggravating factors:

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders, **motorcyclists etc**
- Driving for commercial purposes
- Driving an LGV, HGV or PSV
- Other driving offences committed at the same time as the dangerous driving
- Blame wrongly placed on others
- Failed to stop **and/or obstructed or hindered attempts to assist at the scene**
- Passengers **in the offender's vehicle**, including children
- Vehicle poorly maintained
- 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
- **Good** driving record
- The victim was a close friend or relative
- Actions of the victim or a third party contributed significantly to collision
- 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
- 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

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.

Disqualification guidance

A Principles

Disqualification is part of the sentence. Accordingly when setting the “discretionary” element of the disqualification (i.e. disregarding any period being spent in custody – see below) the court must have regard to the purposes of sentencing in section 57 of the Sentencing Code, which include: the punishment of offenders, the reduction of crime, the reform and rehabilitation of offenders and the protection of the public, when deciding the length of any disqualification.

In setting the length of any disqualification, sentencers should not disqualify for a period that is longer than necessary and should bear in mind the need for rehabilitation (for example, by considering the effects of disqualification on employment or employment prospects).

~~Sentencers should also be mindful of the risk of long disqualifications leading to further offences being committed, by reason of a temptation to drive unlawfully.~~

B Minimum disqualification period

The minimum disqualification period for this offence is 12 months.

An offender must be disqualified for at least **two years** if he or she has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence. The following disqualifications are to be disregarded for the purposes of this provision:

- interim disqualification;
- disqualification where vehicle used for the purpose of crime;
- disqualification for stealing or taking a vehicle or going equipped to steal or take a vehicle.

C Special reasons

The period of disqualification may be reduced or avoided if there are special reasons. These must relate to the offence; circumstances peculiar to the offender **cannot** constitute special reasons. To constitute a special reason, a matter must:

- be a mitigating or extenuating circumstance;
- not amount in law to a defence to the charge;
- be directly connected with the commission of the offence;
- be one which the court ought properly to take into consideration when imposing sentence.

D Interaction with custodial period – same offence

Under section 35A of the Road Traffic Offenders Act 1988 where a court imposes a disqualification in addition to a custodial sentence or a detention and training order for this offence, it must extend the disqualification period by: **one half** of the custodial term imposed; no extension period should be imposed where a sentence is suspended.

This will avoid the disqualification expiring, or being significantly diminished, during the period the offender is in custody.

Periods of time spent on remand or subject to an electronically monitored curfew are generally ignored. However, if the time spent on remand would lead to a disproportionate result in terms of the period of disqualification, then the court may consider setting the discretionary element (i.e. the period which would have been imposed but for the need to extend for time spent in custody) to take account of time spent on remand. This should not reduce the discretionary term below the statutory minimum period of disqualification.

E Interaction with custodial period – different offence

The Court may be imposing a custodial sentence on the offender for another offence, which is not the one for which they are being disqualified **or the offender may already be serving a custodial sentence for another offence. In either of these circumstances, under section 35B of the Road Traffic Offenders Act 1988 the Court should have regard to "the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence"**.

Where the court is intending to impose a disqualification and considering a custodial sentence for that and/or another offence, the following checklist may be useful:

- Step 1 – does the court intend to impose a custodial term for the offence for which they are imposing a disqualification?

YES – the court must impose the appropriate extension period and consider step 2.

NO – go to step 3.

- Step 2 – does the court intend to impose a custodial term for another offence (which is longer or consecutive) or is the defendant already serving a custodial sentence?

YES – consider what uplift in the period of discretionary disqualification (i.e. the period which would have been imposed but for the need to extend for time spent in custody) is required, having regard to the diminished effect of disqualification as a distinct punishment. Ignore any custodial term imposed for the offence for which disqualification is being imposed. **Discretionary period + extension period + uplift = total period of disqualification**

NO – no further uplift required. **Discretionary period + extension period = total period of disqualification**

- Step 3 – does the court intend to impose a custodial term for another offence or is the defendant already serving a custodial sentence?

YES – then consider what uplift in the period of discretionary disqualification is required, having regard to the diminished effect of disqualification as a distinct punishment. **Discretionary period + uplift = total period of disqualification**

NO – no increase is needed to the discretionary period.

Causing death by driving; disqualified drivers

Road Traffic Act 1988 (section 3ZC)

Triable only on indictment

Maximum: 10 years' custody

Offence range: Community order – 7 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.

Obligatory disqualification: minimum 2 years with compulsory extended re-test

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.	
A	<ul style="list-style-type: none"> • Driving shortly after disqualification imposed • Vehicle obtained during disqualification period • Driving for commercial purposes • Driving an LGV, HGV or PSV etc • Significant distance driven
B	<ul style="list-style-type: none"> • Cases falling between higher and lesser culpability because: <ul style="list-style-type: none"> ○ 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 culpability A and C
C	<ul style="list-style-type: none"> • 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 • Driving whilst disqualified by pressure, coercion or intimidation (where not amounting to a defence)

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 TWO

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 the same incident or facts, concurrent sentences reflecting the overall criminality will ordinarily be appropriate

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. See the Totality guideline and step six of this guideline.

Starting point and category range		
Culpability	Starting point	Range
A	5 years	4 – 7 years
B	3 years	2 – 5 years
C	1 year 6 months	High level community order to 2 years

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, **motorcyclists etc**
- 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 **obstructed or hindered attempts to assist at the scene**
- Passengers **in the offender's vehicle**, 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) (not including the current order for disqualification)

Factors reducing seriousness or reflecting personal mitigation

- ~~No previous convictions or no relevant/recent convictions~~
- 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
- 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 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**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).

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.

Disqualification guidance

A Principles

Disqualification is part of the sentence. Accordingly when setting the “discretionary” element of the disqualification (i.e. disregarding any period being spent in custody – see below) the court must have regard to the purposes of sentencing in section 57 of the Sentencing Code, which include: the punishment of offenders, the reduction of crime, the reform and rehabilitation of offenders and the protection of the public, when deciding the length of any disqualification.

In setting the length of any disqualification, sentencers should not disqualify for a period that is longer than necessary and should bear in mind the need for rehabilitation (for example, by considering the effects of disqualification on employment or employment prospects).

~~Sentencers should also be mindful of the risk of long disqualifications leading to further offences being committed, by reason of a temptation to drive unlawfully.~~

B Minimum disqualification period

The minimum disqualification period for this offence is two years.

Note: An offender must also be disqualified for at least **two years** if he or she has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence. The following disqualifications are to be disregarded for the purposes of this provision:

- interim disqualification;
- disqualification where vehicle used for the purpose of crime;
- disqualification for stealing or taking a vehicle or going equipped to steal or take a vehicle.

C Special reasons

The period of disqualification may be reduced or avoided if there are special reasons. These must relate to the offence; circumstances peculiar to the offender **cannot** constitute special reasons. To constitute a special reason, a matter must:

- be a mitigating or extenuating circumstance;
- not amount in law to a defence to the charge;
- be directly connected with the commission of the offence;
- be one which the court ought properly to take into consideration when imposing sentence.

D Interaction with custodial period – same offence

Under section 35A of the Road Traffic Offenders Act 1988 where a court imposes a disqualification in addition to a custodial sentence or a detention and training order for this offence, it must extend the disqualification period to take account of the custodial term imposed by:

- **one half** of the custodial term imposed for an immediate standard determinate sentence no extension period should be imposed where a sentence is suspended;
- **two thirds** of the custodial term for an extended sentence

This will avoid the disqualification expiring, or being significantly diminished, during the period the offender is in custody.

Periods of time spent on remand or subject to an electronically monitored curfew are generally ignored. However, If the time spent on remand would lead to a disproportionate result in terms of the period of disqualification, then the court may consider setting the discretionary element (i.e. the period which would have been imposed but for the need to extend for time spent in custody) to take account of time spent on remand. This should not reduce the discretionary term below the statutory minimum period of disqualification.

E Interaction with custodial period – different offence

The Court may be imposing a custodial sentence on the offender for another offence, which is not the one for which they are being disqualified **or the offender may already be serving a custodial sentence for another offence. In either of these circumstances,** under section 35B of the Road Traffic Offenders Act 1988 **the Court** should have regard to "the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence".

Where the court is intending to impose a disqualification and considering a custodial sentence for that and/or another offence, the following checklist may be useful:

- Step 1 – does the court intend to impose a custodial term for the offence for which they are imposing a disqualification?
 - YES – the court must impose the appropriate extension period and consider step 2.
 - NO – go to step 3.
- Step 2 – does the court intend to impose a custodial term for another offence (which is longer or consecutive) or is the defendant already serving a custodial sentence?
 - YES – consider what uplift in the period of discretionary disqualification (i.e. the period which would have been imposed but for the need to extend for time spent in custody) is required, having regard to the diminished effect of disqualification as a distinct punishment. Ignore any custodial term imposed for the offence for which disqualification is being imposed. **Discretionary period + extension period + uplift = total period of disqualification**
 - NO – no further uplift required. **Discretionary period + extension period = total period of disqualification**
- Step 3 – does the court intend to impose a custodial term for another offence or is the defendant already serving a custodial sentence?
 - YES – then consider what uplift in the period of discretionary disqualification is required, having regard to the diminished effect of disqualification as a distinct punishment. **Discretionary period + uplift = total period of disqualification**
 - NO – no increase is needed to the discretionary period.

Causing death by driving: unlicensed or uninsured drivers

Road Traffic Act 1988 (section 3ZB)

Triable either way

Maximum: 2 years' custody

Offence range: Community order – 2 years' custody

Obligatory disqualification: minimum 12 months

(Minimum 2 years disqualification if the offender has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence)

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.	
A	<ul style="list-style-type: none"> • Driving for commercial purposes • Driving an LGV, HGV or PSV etc • Significant distance driven
B	<ul style="list-style-type: none"> • Cases falling between higher and lesser culpability because: <ul style="list-style-type: none"> ○ 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 culpability A and C
C	<ul style="list-style-type: none"> • The offender genuinely believed that he or she was insured or licensed to drive • Decision to drive was brought about by a genuine and proven emergency • Driving whilst unlicensed or uninsured by pressure, coercion or intimidation (where not amounting to a defence)

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 TWO

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 the same incident or facts, concurrent sentences reflecting the overall criminality will ordinarily be appropriate.

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. See the Totality guideline and step five of this guideline.

Starting point and category range

Culpability	Starting point	Range
A	1 year	36 weeks to 2 years
B	26 weeks	High level community order – 36 weeks
C	Medium level community order	Low level community order – high level community order

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:

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders, **motorcyclists etc**
- Disregarding warnings of others about driving whilst unlicensed or uninsured
- Blame wrongly placed on others
- False details given
- Failed to stop and/or **obstructed or hindered attempts to assist at the scene**
- Passengers **in the offender's vehicle**, including children
- 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)

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- **Good** driving record
- 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
- 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

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.

Disqualification guidanceA Principles

Disqualification is part of the sentence. Accordingly when setting the “discretionary” element of the disqualification (i.e. disregarding any period being spent in custody – see below) the court must have regard to the purposes of sentencing in section 57 of the Sentencing Code, which include: the punishment of offenders, the reduction of

crime, the reform and rehabilitation of offenders and the protection of the public, when deciding the length of any disqualification.

In setting the length of any disqualification, sentencers should not disqualify for a period that is longer than necessary and should bear in mind the need for rehabilitation (for example, by considering the effects of disqualification on employment or employment prospects).

~~Sentencers should also be mindful of the risk of long disqualifications leading to further offences being committed, by reason of a temptation to drive unlawfully.~~

B Minimum disqualification period

The minimum disqualification period for this offence is 12 months.

An offender must be disqualified for at least **two years** if he or she has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence. The following disqualifications are to be disregarded for the purposes of this provision:

- interim disqualification;
- disqualification where vehicle used for the purpose of crime;
- disqualification for stealing or taking a vehicle or going equipped to steal or take a vehicle.

~~For this offence, the court has discretion to disqualify until an extended driving test is passed. The discretion to order an extended re-test is likely to be exercised where there is evidence of inexperience, incompetence or infirmity, or the disqualification period is lengthy (that is, the offender is going to be 'off the road' for a considerable time). Where an offender has an extended driving test that is still outstanding, the court cannot order another extended re-test.~~

C Special reasons

The period of disqualification may be reduced or avoided if there are special reasons. These must relate to the offence; circumstances peculiar to the offender **cannot** constitute special reasons. To constitute a special reason, a matter must:

- be a mitigating or extenuating circumstance;
- not amount in law to a defence to the charge;
- be directly connected with the commission of the offence;
- be one which the court ought properly to take into consideration when imposing sentence.

D Interaction with custodial period – same offence

Under section 35A of the Road Traffic Offenders Act 1988 where a court imposes a disqualification in addition to a custodial sentence or a detention and training order for this offence, it must extend the disqualification by **one half** of the custodial term imposed; no extension period should be imposed where a sentence is suspended.

This will avoid the disqualification expiring, or being significantly diminished, during the period the offender is in custody.

Periods of time spent on remand or subject to an electronically monitored curfew are generally ignored. However, if the time spent on remand would lead to a disproportionate result in terms of the period of disqualification, then the court may consider setting the discretionary element (i.e. the period which would have been imposed but for the need to extend for time spent in custody) to take account of time spent on remand. This should not reduce the discretionary term below the statutory minimum period of disqualification.

E Interaction with custodial period – different offence

The Court may be imposing a custodial sentence on the offender for another offence, which is not the one for which they are being disqualified **or the offender may already be serving a custodial sentence for another offence. In either of these circumstances,** under section 35B of the Road Traffic Offenders Act 1988 **the Court** should have regard to "the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence".

Where the court is intending to impose a disqualification and considering a custodial sentence for that and/or another offence, the following checklist may be useful:

- Step 1 – does the court intend to impose a custodial term for the offence for which they are imposing a disqualification?

YES – the court must impose the appropriate extension period and consider step 2.

NO – go to step 3.

- Step 2 – does the court intend to impose a custodial term for another offence (which is longer or consecutive) or is the defendant already serving a custodial sentence?

YES – consider what uplift in the period of discretionary disqualification (i.e. the period which would have been imposed but for the need to extend for time spent in custody) is required, having regard to the diminished effect of disqualification as a distinct punishment. Ignore any custodial term imposed for the offence for which disqualification is being imposed. **Discretionary period + extension period + uplift = total period of disqualification**

NO – no further uplift required. **Discretionary period + extension period = total period of disqualification**

- Step 3 – does the court intend to impose a custodial term for another offence or is the defendant already serving a custodial sentence?

YES – then consider what uplift in the period of discretionary disqualification is required, having regard to the diminished effect of disqualification as a distinct punishment. **Discretionary period + uplift = total period of disqualification**

NO – no increase is needed to the discretionary period.

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

**Obligatory disqualification: minimum 2 years with compulsory
extended re-test**

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.	
A	<ul style="list-style-type: none"> • Driving shortly after disqualification imposed • Vehicle obtained during disqualification period • Driving for commercial purposes • Driving an LGV, HGV or PSV etc • Significant distance driven
B	<ul style="list-style-type: none"> • Cases falling between higher and lesser culpability because: <ul style="list-style-type: none"> ○ 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 culpability A and C
C	<ul style="list-style-type: none"> • 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 • Driving whilst disqualified by pressure, coercion or intimidation (where not amounting to a defence)

HARM	
Category 1	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • All other cases

STEP TWO

The starting points and category ranges below relate to a single offence resulting in injury to a single victim. Where another offence or offences arise out of the same incident or facts, concurrent sentences reflecting the overall criminality will ordinarily be appropriate.

Where there is more than one victim injured, 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. See the Totality guideline and step five of this guideline.

Starting point and category range			
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	Culpability		
	A	B	C
Harm 1	Starting Point: 3 years Category range: 2 – 4 years	Starting Point: 2 years Category range: 1 – 3 years	Starting Point: 1 year Category range: High level community order – 2 years
Harm 2	Starting Point: 2 years Category range: 1 – 3 years	Starting Point: 1 year Category range: High level community order – 2 years	Starting Point: 26 weeks Category range: Low level community order – 1 year

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, **motorcyclists etc**
- 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 **obstructed or hindered attempts to assist at the scene**
- Passengers **in the offender's vehicle**, 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~~
- Actions of the victim or a third party contributed significantly to collision or injury
- 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 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.

Disqualification guidance

A Principles

Disqualification is part of the sentence. Accordingly when setting the “discretionary” element of the disqualification (i.e. disregarding any period being spent in custody – see below) the court must have regard to the purposes of sentencing in section 57 of the Sentencing Code, which include: the punishment of offenders, the reduction of crime, the reform and rehabilitation of offenders and the protection of the public, when deciding the length of any disqualification.

In setting the length of any disqualification, sentencers should not disqualify for a period that is longer than necessary and should bear in mind the need for rehabilitation (for example, by considering the effects of disqualification on employment or employment prospects).

~~Sentencers should also be mindful of the risk of long disqualifications leading to further offences being committed, by reason of a temptation to drive unlawfully.~~

B Minimum disqualification period

The minimum disqualification period for this offence is two years.

Note: an offender must also be disqualified for at least **two years** if he or she has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence. The following disqualifications are to be disregarded for the purposes of this provision:

- interim disqualification;
- disqualification where vehicle used for the purpose of crime;
- disqualification for stealing or taking a vehicle or going equipped to steal or take a vehicle.

C Special reasons

The period of disqualification may be reduced or avoided if there are special reasons. These must relate to the offence; circumstances peculiar to the offender **cannot** constitute special reasons. To constitute a special reason, a matter must:

- be a mitigating or extenuating circumstance;
- not amount in law to a defence to the charge;
- be directly connected with the commission of the offence;
- be one which the court ought properly to take into consideration when imposing sentence.

D Interaction with custodial period – same offence

Under section 35A of the Road Traffic Offenders Act 1988 where a court imposes a disqualification in addition to a custodial sentence or a detention and training order for this offence, it must extend the disqualification by **one half** of the custodial term imposed; no extension period should be imposed where a sentence is suspended.

This will avoid the disqualification expiring, or being significantly diminished, during the period the offender is in custody.

Periods of time spent on remand or subject to an electronically monitored curfew are generally ignored. However, If the time spent on remand would lead to a disproportionate result in terms of the period of disqualification, then the court may consider setting the discretionary element (i.e. the period which would have been imposed but for the need to extend for time spent in custody) to take account of time spent on remand. This should not reduce the discretionary term below the statutory minimum period of disqualification.

E Interaction with custodial period – different offence

The Court may be imposing a custodial sentence on the offender for another offence, which is not the one for which they are being disqualified **or the offender may already be serving a custodial sentence for another offence. In either of these circumstances,** under section 35B of the Road Traffic Offenders Act 1988 **the Court** should have regard to "the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence".

Where the court is intending to impose a disqualification and considering a custodial sentence for that and/or another offence, the following checklist may be useful:

- Step 1 – does the court intend to impose a custodial term for the offence for which they are imposing a disqualification?
 - YES – the court must impose the appropriate extension period and consider step 2.
 - NO – go to step 3.
- Step 2 – does the court intend to impose a custodial term for another offence (which is longer or consecutive) or is the defendant already serving a custodial sentence?
 - YES – consider what uplift in the period of discretionary disqualification (i.e. the period which would have been imposed but for the need to extend for time spent in custody) is required, having regard to the diminished effect of disqualification as a distinct punishment. Ignore any custodial term imposed for the offence for which disqualification is being imposed. **Discretionary period + extension period + uplift = total period of disqualification**
 - NO – no further uplift required. **Discretionary period + extension period = total period of disqualification**
- Step 3 – does the court intend to impose a custodial term for another offence or is the defendant already serving a custodial sentence?
 - YES – then consider what uplift in the period of discretionary disqualification is required, having regard to the diminished effect of

disqualification as a distinct punishment. **Discretionary period + uplift = total period of disqualification**
NO – no increase is needed to the discretionary period.

Driving or Attempting to Drive with a specified drug above the specified limit

Road Traffic Act 1988, 5A

Triable only summarily

Maximum: Unlimited fine and/or 6 months' custody

Offence range: Band B fine – 26 weeks' custody

Obligatory disqualification: minimum 12 months

(Minimum 3 years disqualification if the offender has been convicted of any of:

- **causing death by careless driving when under the influence of drink or drugs;**
- **driving or attempting to drive while unfit**
- **driving or attempting to drive with excess alcohol,**
- **driving or attempting to drive with concentration of specified controlled drug above specified limit**
- **failing to provide a specimen) where that is an offence involving obligatory disqualification,**
- **failing to allow a specimen to be subjected to laboratory test) where that is an offence involving obligatory disqualification**

in the 10 years preceding commission of the current offence.

Otherwise minimum 2 years disqualification if the offender has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence)

STEP ONE**Determining the offence category**

The Court should determine the offence category using the table below.

Category 1	Higher culpability and greater harm
Category 2	Higher culpability and lesser harm or lower culpability and greater harm
Category 3	Lower culpability and lesser harm

The court should determine the offender's culpability and the harm caused with reference **only** to the factors below. 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.

Culpability demonstrated by one or more of the following**Factors indicating higher culpability**

- Driving **or attempting to drive** an LGV, HGV or PSV etc
- Driving **or attempting to drive** for commercial purposes
- Evidence of another specified drug or of alcohol in the body (**whether or not the 'other' specified drug or alcohol is present at a level that could give rise to separate charges**).

- For these purposes where the following pairs of drugs appear together they shall be treated as one drug as they may appear in the body as a result of a single drug use: Cocaine and benzoylecgonine (BZE); 6-Monoacetyl-morphine and morphine. **or ~~Diazepam and Temazepam.~~**
- **Trace levels of alcohol or drugs, which may occur naturally in the body or through accidental exposure, should be disregarded for these purposes**
- Regard should be had to totality (see step 5) if sentencing for more than one offence.

Factors indicating lower culpability

- All other cases

Harm demonstrated by one or more of the following:

Note: It is not possible to draw a direct connection between the levels of a substance detected and the level of harm

The limits for illegal drugs are set in line with a zero tolerance approach but ruling out accidental exposure. The limits for drugs that may be medically prescribed are set in line with a road safety risk-based approach, at levels above the normal concentrations found with therapeutic use. This is different from the approach taken when setting the limit for alcohol, where the limit was set at a

<p>level where the effect of the alcohol would be expected to have impaired a person's driving ability.</p> <p>The analysis of drugs in blood is more complex than that for alcohol and there is a larger margin of uncertainty in the measurements. Concentrations of specified substances in blood for the purposes of this offence are expressed in terms of 'not less than' which takes account of the margin of uncertainty for the particular substance.</p>
<p>Factors indicating greater harm</p> <ul style="list-style-type: none"> • Obvious signs of impairment • Evidence of an unacceptable standard of driving
<p>Factors indicating lesser harm</p> <ul style="list-style-type: none"> • All other cases

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the appropriate starting point to reach a sentence within the category range in the table below.

- Must endorse and disqualify for at least 12 months
- Must disqualify for at least 2 years if offender has had two or more disqualifications for periods of 56 days or more **imposed** in the 3 years preceding the commission of the current offence – refer to [disqualification guidance](#) and consult your legal adviser for further guidance
- Must disqualify for at least 3 years if offender has been **convicted** of a relevant offence in the 10 years preceding the **commission** of the current offence – consult your legal adviser for further guidance
- [Extend disqualification](#) if imposing immediate custody

If there is a delay in sentencing after conviction, consider interim disqualification
The starting point applies to all offenders irrespective of plea or previous convictions.

Level of seriousness	Starting point	Range	Disqualification	Disqual. 2 nd offence in 10 years
Category 1	12 weeks' custody	High level community order – 26 weeks' custody	29 – 36 months (Extend if imposing immediate custody)	36 – 60 months (Extend if imposing immediate custody)
Category 2	Medium level community order	Low level community order – High level community order	17 – 28 months	36 – 52 months
Category 3	Band C fine	Band B fine – Low level community order	12 – 16 months	36 – 40 months

Note: when considering the guidance regarding the length of disqualification in the case of a second offence, the period to be imposed in any individual case will depend on an assessment of all the relevant circumstances, including the length of time since the earlier ban was imposed and the gravity of the current offence but disqualification must be for at least three years.

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
- Offence committed whilst on bail

Other aggravating factors:

- High level of traffic or pedestrians in the vicinity
- Poor road or weather conditions
- Involved in **collision** (where not taken into account at step 1)
- Carrying passengers
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Very short distance driven
- Genuine emergency established
- Genuine misunderstanding about safe dosage of prescribed medication
- **Drugs consumed unknowingly**
- Remorse
- Good character and/or exemplary conduct
- 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

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](#) including offering a [drink/drive rehabilitation course](#), [deprivation](#), and /or [forfeiture or suspension of personal liquor licence](#). Where the offence has resulted in personal injury, loss or damage the court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

Ancillary orders – Magistrates' Court

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.

Being in charge of a motor vehicle with a specified drug above the specified limit

Road Traffic Act 1988, 5A

Triable only summarily

Maximum: Level 4 fine and/or 3 months

Offence range: Band B fine – 12 weeks' custody

STEP ONE**Determining the offence category**

The Court should determine the offence category using the table below.

Category 1	Higher culpability and greater harm
Category 2	Higher culpability and lesser harm or lower culpability and greater harm
Category 3	Lower culpability and lesser harm

The court should determine the offender's culpability and the harm caused with reference **only** to the factors below. 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.

Culpability demonstrated by one or more of the following**Factors indicating higher culpability**

- High likelihood of driving
- In charge of LGV, HGV or PSV etc.
- Offering to drive for commercial purposes
- Evidence of another specified drug or of alcohol in the body (**whether or not the 'other' specified drug or alcohol is present at a level that could give rise to separate charges.**)

- For these purposes where the following pairs of drugs appear together they shall be treated as one drug as they may appear in the body as a result of a single drug use: Cocaine and benzoylecgonine (BZE); 6-Monoacetyl-morphine and morphine ~~or Diazepam and Temazepam.~~
- **Trace levels of alcohol or drugs, which may occur naturally in the body or through accidental exposure, should be disregarded for these purposes**
- Regard should be had to totality (see step 5) if sentencing for more than one offence.

Factors indicating lower culpability

- All other cases

Harm demonstrated by one or more of the following**Factors indicating greater harm**

- Obvious signs of impairment

Factors indicating lesser harm

- All other cases

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the appropriate starting point to reach a sentence within the category range in the table below.

- Must endorse and may disqualify. If no disqualification impose 10 points
- [Extend disqualification](#) if imposing immediate custody

The starting point applies to all offenders irrespective of plea or previous convictions.

Level of seriousness	Starting point	Range	Disqualification/points
Category 1	High level community order	Medium level community order – 12 weeks' custody	Consider disqualification (extend if imposing immediate custody) OR 10 points
Category 2	Band C fine	Band B fine – Medium level community order	Consider disqualification OR 10 points
Category 3	Band B fine	Band B fine	10 points

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
- Offence committed whilst on bail

Other aggravating factors:

- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Genuine misunderstanding about safe dosage of prescribed medication
- **Drugs consumed unknowingly**
- Remorse

- Good character and/or exemplary conduct
- Age and/or lack of maturity
- 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**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](#) including offering a [drink/drive rehabilitation course](#), [deprivation](#), and /or [forfeiture or suspension of personal liquor licence](#). Where the offence has resulted in personal injury, loss or damage the court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

Ancillary orders – Magistrates' Court

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.

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Aggravated vehicle taking - vehicle/property damage

Theft Act 1968, ss.12A(2)(c) and (d)

Triable either way (triable only summarily if damage under £5,000)

Maximum when tried summarily: 6 months' custody

Maximum when tried on indictment: 2 years' custody

Obligatory disqualification: 12 months

Harm	Factors
Category 1	<ul style="list-style-type: none"> High value damage
Category 2	<ul style="list-style-type: none"> Value of damage falls between categories 1 and 3
Category 3	<ul style="list-style-type: none"> Total damage caused of under £5,000

Culpability	Factors
High	<ul style="list-style-type: none"> Vehicle or property deliberately destroyed Intention to cause serious damage Driving impaired by consumption of alcohol and/or drugs Significant planning Offence committed in course of evading police Leading role in group offending
Medium	<ul style="list-style-type: none"> Cases that fall between categories A or C because: <ul style="list-style-type: none"> Factors are present in A and C which balance each other out, and/or, The offender's culpability falls between the factors as described in A and C
Lower	<ul style="list-style-type: none"> Vehicle not driven in unsafe manner Minor role in group offending Exceeding authorised use of e.g. employer's or relative's vehicle Retention of hire car for short period beyond return date

Rubric: Where the total damage caused is valued under £5,000, this will be a summary-only offence with a statutory maximum penalty of six months' custody. This is reflected in the starting points and ranges for category 3 harm in the sentencing table below.

Harm/culpability	High culpability A	Medium culpability B	Lower culpability C
Harm category 1	<p>Starting point: 1 year's custody</p> <p>Category range: 18 weeks' custody – 2 years' custody</p>	<p>Starting point: 18 weeks' custody</p> <p>Category range: High level community order – 1 year's custody</p>	<p>Starting point: High level community order</p> <p>Category range:</p>

			Medium level community order – 12 weeks' custody
Harm category 2	Starting point: 12 weeks' custody Category range: High level community order – 1 year's custody	Starting point: High level community order Category range: Medium level community order – 12 weeks' custody	Starting point: Medium level community order Category range: Low level community order – High level community order
Harm category 3	Starting point: High level community order Category range: Medium level community order – 18 weeks' custody	Starting point: Medium level community order Category range: Low level community order – High level community order	Starting point: Low level community order Category range: Band B fine – Medium level community order

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 on bail

Other aggravating factors

- Vehicle taken as part of burglary
- Taken and/or damaged vehicle was an emergency vehicle
- Taken and/or damaged vehicle belongs to a vulnerable person
- Disregarding warnings of others
- Damage caused in moving traffic accident
- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders **and motorcyclists**
- Taken vehicle is an LGV, HGV or PSV etc
- Other driving offences committed at the same time (see step 6 on totality)
- Blame wrongly placed on others
- Failed to stop and/or **obstructed or hindered attempts to assist at the scene**
- Passengers **in the offender's vehicle**, including children
- Offence committed on licence or while subject to court order(s)

Mitigating factors

- Actions of the victim or a third party contributed significantly to collision or damage
- Efforts made to assist or seek assistance for victim(s)
- No previous convictions or no relevant/recent convictions
- 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 relatives

Disqualification guidance

A Principles

Disqualification is part of the sentence. Accordingly when setting the “discretionary” element of the disqualification (i.e. disregarding any period being spent in custody – see below), the court must have regard to the purposes of sentencing in section 57 of the Sentencing Code, which include: the punishment of offenders, the reduction of crime, the reform and rehabilitation of offenders and the protection of the public, when deciding the length of any disqualification.

In setting the length of any disqualification, sentencers should not disqualify for a period that is longer than necessary and should bear in mind the need for rehabilitation (for example, by considering the effects of disqualification on employment or employment prospects).

B Minimum disqualification period

The minimum disqualification period for this offence is **12 months**.

An offender must be disqualified for at least **two years** if he or she has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence. The following disqualifications are to be disregarded for the purposes of this provision:

- interim disqualification (s.26 of the Road Traffic Offenders Act 1988 (RTOA));
- disqualification where vehicle used for the purpose of crime (s.164 of the Sentencing Code);
- disqualification for stealing or taking a vehicle or going equipped to steal or take a vehicle (ss. 12, 25 or 178 RTOA) or an attempt to commit such an offence).

For this offence, the court has discretion to disqualify until an extended driving test is passed. The discretion to order an extended re-test is likely to be exercised where there is evidence of inexperience, incompetence or infirmity, or the disqualification period is lengthy (that is, the offender is going to be 'off the road' for a considerable time). **Where an offender has an extended driving test that is still outstanding, the court cannot order another extended re-test.**

C Special reasons

The period of disqualification may be reduced or avoided if there are special reasons. These must relate to the offence; circumstances peculiar to the offender **cannot** constitute special reasons. To constitute a special reason, a matter must:

- be a mitigating or extenuating circumstance;
- not amount in law to a defence to the charge;
- be directly connected with the commission of the offence;
- be one which the court ought properly to take into consideration when imposing sentence.

The fact that the offender did not drive the vehicle in question at any particular time, or at all, must not be regarded as a special reason

D Interaction with custodial period – same offence

Under section 35A of the Road Traffic Offenders Act 1988. where a court imposes a disqualification in addition to a custodial sentence or a detention and training order for this offence, it must extend the disqualification period to take account of the custodial

term imposed by **one half** of the custodial term imposed; no extension period should be imposed where a sentence is suspended.

This will avoid the disqualification expiring, or being significantly diminished, during the period the offender is in custody.

Periods of time spent on remand or subject to an electronically monitored curfew are generally ignored. However, If the time spent on remand would lead to a disproportionate result in terms of the period of disqualification, then the court may consider setting the discretionary element (i.e. the period which would have been imposed but for the need to extend for time spent in custody) to take account of time spent on remand. This should not reduce the discretionary term below the statutory minimum period of disqualification.

E Interaction with custodial period - different offence

The Court may be imposing a custodial sentence on the offender for another offence, which is not the one for which they are being disqualified **or the offender may already be serving a custodial sentence for another offence. In either of these circumstances,** under section 35B of the Road Traffic Offenders Act 1988 the Court should have regard to "the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence".

Where the court is intending to impose a disqualification and considering a custodial sentence for that and/or another offence, the following checklist may be useful:

- Step 1 – does the court intend to impose a custodial term for the offence for which they are imposing a disqualification?
 - YES – the court must impose the appropriate extension period and consider step 2.
 - NO – go to step 3.
- Step 2 – does the court intend to impose a custodial term for another offence (which is longer or consecutive) or is the defendant already serving a custodial sentence?
 - YES – consider what uplift in the period of discretionary disqualification (i.e. the period which would have been imposed but for the need to extend for time spent in custody) is required, having regard to the diminished effect of disqualification as a distinct punishment. Ignore any custodial term imposed for the offence for which disqualification is being imposed. **Discretionary period + extension period + uplift = total period of disqualification**
 - NO – no further uplift required. **Discretionary period + extension period = total period of disqualification**
- Step 3 – does the court intend to impose a custodial term for another offence or is the defendant already serving a custodial sentence?
 - YES – then consider what uplift in the period of discretionary disqualification is required, having regard to the diminished effect of disqualification as a distinct punishment. **Discretionary period + uplift = total period of disqualification**
 - NO – no increase is needed to the discretionary period.

Aggravated vehicle taking – injury caused

Theft Act 1968, s.12A(2)(b)

Triable either way

Maximum: 2 years' custody

Obligatory disqualification: 12 months

Harm	Factors
Cat 1	<ul style="list-style-type: none"> 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
Cat 2	<ul style="list-style-type: none"> Other cases of serious harm
Cat 3	<ul style="list-style-type: none"> All other cases

Culpability	Factors
High	<ul style="list-style-type: none"> Risk of serious injury caused to persons Driving impaired by consumption of alcohol and/or drugs Significant planning Offence committed in course of evading police Leading role in group offending
Medium	<ul style="list-style-type: none"> Other cases that fall between categories A or C because: <ul style="list-style-type: none"> Factors are present in A and C which balance each other out, and/or, The offender's culpability falls between the factors as described in A and C
Lower	<ul style="list-style-type: none"> Vehicle not driven in unsafe manner Minor role in group offending Exceeding authorised use of e.g. employer's or relative's vehicle Retention of hire car for short period beyond return date

Harm/culpability	High culpability A	Medium culpability B	Lower culpability C
Harm category 1	<p>Starting Point: 1 year 6 months' custody</p> <p>Category range: 1 - 2 years' custody</p>	<p>Starting Point: 1 year's custody</p> <p>Category range: 26 weeks' – 1 year 6 months' custody</p>	<p>Starting Point: 26 weeks' custody</p> <p>Category range: High level community order – 1 year's custody</p>
Harm category 2	<p>Starting Point: 1 year's custody</p>	<p>Starting Point: 26 weeks' custody</p>	<p>Starting Point:</p>

	Category range: 26 weeks' – 1 year 6 months' custody	Category range: High level community order – 1 year's custody	High level community order Category range: Medium level community order – 26 weeks' custody
Harm category 3	Starting Point: 26 weeks' custody Category range: High level community order – 1 year's custody	Starting Point: High level community order Category range: Medium level community order – 26 weeks' custody	Starting Point: Medium level community order Category range: Low level community order – High level community order

Statutory aggravating factors	
<ul style="list-style-type: none"> • 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 on bail 	
Other aggravating factors	
<ul style="list-style-type: none"> • Vehicle taken as part of burglary • Taken vehicle was an emergency vehicle • Taken vehicle belongs to a vulnerable person • Disregarding warnings of others • Multiple victims involved (see step 6 on totality when sentencing more than one offence) • Victim was providing a public service or performing a public duty at the time of the offence, or was an emergency worker • Victim was a vulnerable road user, including pedestrians, cyclists, horse riders, motorcyclists etc • Taken vehicle is an LGV, HGV or PSV etc • Other driving offences committed at the same time (see step 6 on totality) • Blame wrongly placed on others • Failed to stop and/or obstructed or hindered attempts to assist at the scene • Passengers in the offender's vehicle, including children • Offence committed on licence or while subject to court order(s) 	
Mitigating factors	
<ul style="list-style-type: none"> • Actions of the victim or a third party contributed significantly to collision or injury • Efforts made to assist or seek assistance for victim(s) • No previous convictions or no relevant/recent convictions • Remorse • 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 	

Disqualification guidance

A Principles

Disqualification is part of the sentence. Accordingly when setting the “discretionary” element of the disqualification (i.e. disregarding any period being spent in custody – see below), the court must have regard to the purposes of sentencing in section 57 of the Sentencing Code, which include: the punishment of offenders, the reduction of crime, the reform and rehabilitation of offenders and the protection of the public, when deciding the length of any disqualification.

In setting the length of any disqualification, sentencers should not disqualify for a period that is longer than necessary and should bear in mind the need for rehabilitation (for example, by considering the effects of disqualification on employment or employment prospects).

B Minimum disqualification period

The minimum disqualification period for this offence is **12 months**.

An offender must be disqualified for at least **two years** if he or she has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence. The following disqualifications are to be disregarded for the purposes of this provision:

- interim disqualification (s.26 of the Road Traffic Offenders Act 1988 (RTOA));
- disqualification where vehicle used for the purpose of crime (s.164 of the Sentencing Code);
- disqualification for stealing or taking a vehicle or going equipped to steal or take a vehicle (ss. 12, 25 or 178 RTOA) or an attempt to commit such an offence).

For aggravated vehicle taking offences, the court has discretion to disqualify until an extended driving test is passed. The discretion to order an extended re-test is likely to be exercised where there is evidence of inexperience, incompetence or infirmity, or the disqualification period is lengthy (that is, the offender is going to be 'off the road' for a considerable time). **Where an offender has an extended driving test that is still outstanding, the court cannot order another extended re-test.**

C Special reasons

The period of disqualification may be reduced or avoided if there are special reasons. These must relate to the offence; circumstances peculiar to the offender **cannot** constitute special reasons. To constitute a special reason, a matter must:

- be a mitigating or extenuating circumstance;
- not amount in law to a defence to the charge;
- be directly connected with the commission of the offence;
- be one which the court ought properly to take into consideration when imposing sentence.

The fact that the offender did not drive the vehicle in question at any particular time, or at all, must not be regarded as a special reason

D Interaction with custodial period – same offence

Under section 35A of the Road Traffic Offenders Act 1988. where a court imposes a disqualification in addition to a custodial sentence or a detention and training order for this offence, it must extend the disqualification period to take account of the custodial

term imposed by **one half** of the custodial term imposed; no extension period should be imposed where a sentence is suspended.

This will avoid the disqualification expiring, or being significantly diminished, during the period the offender is in custody.

Periods of time spent on remand or subject to an electronically monitored curfew are generally ignored. However, If the time spent on remand would lead to a disproportionate result in terms of the period of disqualification, then the court may consider setting the discretionary element (i.e. the period which would have been imposed but for the need to extend for time spent in custody) to take account of time spent on remand. This should not reduce the discretionary term below the statutory minimum period of disqualification.

E Interaction with custodial period - different offence

The Court may be imposing a custodial sentence on the offender for another offence, which is not the one for which they are being disqualified **or the offender may already be serving a custodial sentence for another offence. In either of these circumstances,** under section 35B of the Road Traffic Offenders Act 1988 the Court should have regard to "the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence".

Where the court is intending to impose a disqualification and considering a custodial sentence for that and/or another offence, the following checklist may be useful:

- Step 1 – does the court intend to impose a custodial term for the offence for which they are imposing a disqualification?
 - YES – the court must impose the appropriate extension period and consider step 2.
 - NO – go to step 3.
- Step 2 – does the court intend to impose a custodial term for another offence (which is longer or consecutive) or is the defendant already serving a custodial sentence?
 - YES – consider what uplift in the period of discretionary disqualification (i.e. the period which would have been imposed but for the need to extend for time spent in custody) is required, having regard to the diminished effect of disqualification as a distinct punishment. Ignore any custodial term imposed for the offence for which disqualification is being imposed. **Discretionary period + extension period + uplift = total period of disqualification**
 - NO – no further uplift required. **Discretionary period + extension period = total period of disqualification**
- Step 3 – does the court intend to impose a custodial term for another offence or is the defendant already serving a custodial sentence?
 - YES – then consider what uplift in the period of discretionary disqualification is required, having regard to the diminished effect of disqualification as a distinct punishment. **Discretionary period + uplift = total period of disqualification**
 - NO – no increase is needed to the discretionary period.

Aggravated vehicle taking – death caused

Theft Act 1968, s.12A(2)(b)

Triable either way

Maximum: 14 years' custody

Obligatory disqualification: 12 months

Harm
For all cases of aggravated vehicle taking causing death, 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.

Culpability	Factors
High	<ul style="list-style-type: none"> • Risk of serious injury caused to persons • Driving impaired by consumption of alcohol and/or drugs • Significant planning • Offence committed in course of evading police • Leading role in group offending
Medium	<ul style="list-style-type: none"> • Other cases that fall between categories A or C because: <ul style="list-style-type: none"> ◦ Factors are present in A and C which balance each other out, and/or, ◦ The offender's culpability falls between the factors as described in A and C
Lower	<ul style="list-style-type: none"> • Vehicle not driven in unsafe manner • Minor role in group offending • Exceeding authorised use of e.g. employer's or relative's vehicle • Retention of hire car for short period beyond return date

Culpability	Starting point	Range
High	10 years	7 – 12 years
Medium	5 years	3 – 8 years
Lower	3 years	2 – 4 years

Note: The table is for a single offence of aggravated vehicle taking causing death, resulting in a single fatality. 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 six 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. Care should be taken to avoid double counting factors already taken into account in assessing culpability.

Statutory aggravating factors
<ul style="list-style-type: none"> • 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 on bail
Other aggravating factors
<ul style="list-style-type: none"> • Vehicle taken as part of burglary • Taken vehicle was an emergency vehicle • Taken vehicle belongs to a vulnerable person • Disregarding warnings of others • Multiple victims involved (see step 6 on totality when sentencing more than one offence) • Victim was providing a public service or performing a public duty at the time of the offence, or was an emergency worker • Victim was a vulnerable road user, including pedestrians, cyclists, horse riders, motorcyclists etc • Taken vehicle is an LGV, HGV or PSV etc • Other driving offences committed at the same time (see step 6 on totality) • Blame wrongly placed on others • Failed to stop and/or obstructed or hindered attempts to assist at the scene • Passengers in the offender's vehicle, including children • Offence committed on licence or while subject to court order(s)
Mitigating factors
<ul style="list-style-type: none"> • Actions of the victim or a third party contributed significantly to collision or death • Efforts made to assist or seek assistance for victim(s) • No previous convictions or no relevant/recent convictions • Remorse • 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

Disqualification guidance

A Principles

Disqualification is part of the sentence. Accordingly when setting the “discretionary” element of the disqualification (i.e. disregarding any period being spent in custody – see below), the court must have regard to the purposes of sentencing in section 57 of the Sentencing Code, which include: the punishment of offenders, the reduction of crime, the reform and rehabilitation of offenders and the protection of the public, when deciding the length of any disqualification.

In setting the length of any disqualification, sentencers should not disqualify for a period that is longer than necessary and should bear in mind the need for rehabilitation (for example, by considering the effects of disqualification on employment or employment prospects).

B Minimum disqualification period

The minimum disqualification period for this offence is **12 months**.

An offender must be disqualified for at least **two years** if he or she has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence. The following disqualifications are to be disregarded for the purposes of this provision:

- interim disqualification (s.26 of the Road Traffic Offenders Act 1988 (RTOA));
- disqualification where vehicle used for the purpose of crime (s.164 of the Sentencing Code);
- disqualification for stealing or taking a vehicle or going equipped to steal or take a vehicle (ss. 12, 25 or 178 RTOA) or an attempt to commit such an offence).

For aggravated vehicle taking offences, the court has discretion to disqualify until an extended driving test is passed. The discretion to order an extended re-test is likely to be exercised where there is evidence of inexperience, incompetence or infirmity, or the disqualification period is lengthy (that is, the offender is going to be 'off the road' for a considerable time). **Where an offender has an extended driving test that is still outstanding, the court cannot order another extended re-test.**

C Special reasons

The period of disqualification may be reduced or avoided if there are special reasons. These must relate to the offence; circumstances peculiar to the offender **cannot** constitute special reasons. To constitute a special reason, a matter must:

- be a mitigating or extenuating circumstance;
- not amount in law to a defence to the charge;
- be directly connected with the commission of the offence;
- be one which the court ought properly to take into consideration when imposing sentence.

The fact that the offender did not drive the vehicle in question at any particular time, or at all, must not be regarded as a special reason

D Interaction with custodial period – same offence

Under section 35A of the Road Traffic Offenders Act 1988. where a court imposes a disqualification in addition to a custodial sentence or a detention and training order for this offence, it must extend the disqualification period to take account of the custodial term imposed by:

- **one half** of the custodial term imposed for an immediate standard determinate sentence; no extension period should be imposed where a sentence is suspended.
- **two thirds** of the custodial term for an extended sentence.

This will avoid the disqualification expiring, or being significantly diminished, during the period the offender is in custody. The table at [section 166 of the Sentencing Code](#) provides further detail. (Note: this table applies to disqualification for non-Road Traffic Act 1988 offences but the principles apply to disqualifications imposed under that Act as well.)

Periods of time spent on remand or subject to an electronically monitored curfew are generally ignored. However, If the time spent on remand would lead to a

disproportionate result in terms of the period of disqualification, then the court may consider setting the discretionary element (i.e. the period which would have been imposed but for the need to extend for time spent in custody) to take account of time spent on remand. This should not reduce the discretionary term below the statutory minimum period of disqualification.

E Interaction with custodial period - different offence

The Court may be imposing a custodial sentence on the offender for another offence, which is not the one for which they are being disqualified **or the offender may already be serving a custodial sentence for another offence. In either of these circumstances,** under section 35B of the Road Traffic Offenders Act 1988 the Court should have regard to "the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence".

Where the court is intending to impose a disqualification and considering a custodial sentence for that and/or another offence, the following checklist may be useful:

- Step 1 – does the court intend to impose a custodial term for the offence for which they are imposing a disqualification?
 - YES – the court must impose the appropriate extension period and consider step 2.
 - NO – go to step 3.
- Step 2 – does the court intend to impose a custodial term for another offence (which is longer or consecutive) or is the defendant already serving a custodial sentence?
 - YES – consider what uplift in the period of discretionary disqualification (i.e. the period which would have been imposed but for the need to extend for time spent in custody) is required, having regard to the diminished effect of disqualification as a distinct punishment. Ignore any custodial term imposed for the offence for which disqualification is being imposed. **Discretionary period + extension period + uplift = total period of disqualification**
 - NO – no further uplift required. **Discretionary period + extension period = total period of disqualification**
- Step 3 – does the court intend to impose a custodial term for another offence or is the defendant already serving a custodial sentence?
 - YES – then consider what uplift in the period of discretionary disqualification is required, having regard to the diminished effect of disqualification as a distinct punishment. **Discretionary period + uplift = total period of disqualification**
 - NO – no increase is needed to the discretionary period.

Aggravated vehicle taking - dangerous driving

Theft Act 1968, s.12A(2)(a)

Triable either way

Maximum: 2 years' custody

Obligatory disqualification: 12 months

HARM	
Category 1	<ul style="list-style-type: none"> • Offence results in injury to others • Circumstances of offence created a high risk of serious harm to others • Damage caused to vehicles or property
Category 2	<ul style="list-style-type: none"> • All other cases

CULPABILITY	
A- High Culpability	<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 • Obviously highly dangerous manoeuvre • Prolonged use of mobile phone or other electronic device • Driving highly impaired by consumption of alcohol and/or drugs • Offence committed in course of evading police • Racing or competitive driving against another vehicle • Persistent disregard of warnings of others • Lack of attention to driving for a substantial period of time • Speed significantly in excess of speed limit or highly inappropriate for the prevailing road or weather conditions • Leading role in group offending
B- Medium culpability	<ul style="list-style-type: none"> • Brief but obviously highly dangerous manoeuvre • Engaging in a brief but avoidable distraction • Use of mobile phone or other electronic device (where not culpability A) • 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 (where not culpability A) • Driving impaired by consumption of alcohol and/or drugs

	<p>(where not culpability A)</p> <ul style="list-style-type: none"> Driving significantly impaired as a result of a known medical condition, and/or disregarding advice relating to the effect of a medical condition or medication Driving when deprived of adequate sleep or rest The offender's culpability falls between the factors as described in high and lower culpability
C- Lower culpability	<ul style="list-style-type: none"> Standard of driving was just over threshold for dangerous driving — Momentary lapse of concentration Minor role in group offending

Harm/culpability	High culpability A	Medium culpability B	Lower culpability C
Harm category 1	<p>Starting point: 1 year 6 months' custody</p> <p>Category range: 1 – 2 years' custody</p>	<p>Starting point: 1 year's custody</p> <p>Category range: 26 weeks' – 1 year 6 months' custody</p>	<p>Starting point: 26 weeks' custody</p> <p>Category range: High level community order – 1 year's custody</p>
Harm category 2	<p>Starting point: 1 year's custody</p> <p>Category range: 26 weeks' – 1 year 6 months' custody</p>	<p>Starting point: 26 weeks' custody</p> <p>Category range: High level community order – 1 year's custody</p>	<p>Starting point: High level community order</p> <p>Category range: Low level community order – 26 weeks' custody</p>

Statutory aggravating factors
<ul style="list-style-type: none"> 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 on bail
Other aggravating factors
<ul style="list-style-type: none"> Vehicle taken as part of burglary Taken vehicle was an emergency vehicle Taken vehicle belongs to a vulnerable person Victim was a vulnerable road user, including pedestrians, cyclists, horse riders motorcyclists etc Taken vehicle is an LGV, HGV or PSV etc Other driving offences committed at the same time (see step 6 on totality) Blame wrongly placed on others Failed to stop and/or obstructed or hindered attempts to assist at the scene Passengers in the offender's vehicle, including children Offence committed on licence or while subject to court order(s)

Mitigating factors
<ul style="list-style-type: none"> • 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 injury • 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 relatives

Disqualification guidance

A Principles

Disqualification is part of the sentence. Accordingly when setting the “discretionary” element of the disqualification (i.e. disregarding any period being spent in custody – see below), the court must have regard to the purposes of sentencing in section 57 of the Sentencing Code, which include: the punishment of offenders, the reduction of crime, the reform and rehabilitation of offenders and the protection of the public, when deciding the length of any disqualification.

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C Special reasons

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D Interaction with custodial period – same offence

Under section 35A of the Road Traffic Offenders Act 1988. where a court imposes a disqualification in addition to a custodial sentence or a detention and training order for this offence, it must extend the disqualification period to take account of the custodial term imposed by **one half** of the custodial term imposed; no extension period should be imposed where a sentence is suspended.

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- Step 2 – does the court intend to impose a custodial term for another offence (which is longer or consecutive) or is the defendant already serving a custodial sentence?
 - YES – consider what uplift in the period of discretionary disqualification (i.e. the period which would have been imposed but for the need to extend for time spent in custody) is required, having regard to the diminished effect of

disqualification as a distinct punishment. Ignore any custodial term imposed for the offence for which disqualification is being imposed. **Discretionary period + extension period + uplift = total period of disqualification**

NO – no further uplift required. **Discretionary period + extension period = total period of disqualification**

- Step 3 – does the court intend to impose a custodial term for another offence or is the defendant already serving a custodial sentence?

YES – then consider what uplift in the period of discretionary disqualification is required, having regard to the diminished effect of disqualification as a distinct punishment. **Discretionary period + uplift = total period of disqualification**

NO – no increase is needed to the discretionary period.

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