

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

**31 March 2023**  
**SC(23)31MAR06 – Motoring offences**  
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## **1 ISSUE**

- 1.1 Signing off current drafts of the motoring guidelines, subject to Council's view on the estimated impact of the guideline on dangerous driving.
- 1.2 Scope of the next motoring consultation.

## **2 RECOMMENDATIONS**

### **2.1 That:**

- Council sign off the motoring guidelines as revised post-consultation, subject to any further work required to finalise the resource assessment of the dangerous driving guideline;
- the scope of the next motoring consultation be:
  - revised aggravated vehicle taking guidelines;
  - revised vehicle licence/registration fraud guideline;
  - disqualification guidance; and
  - consequential changes to the unfit through drink/drugs guidelines.

## **3 CONSIDERATION (SIGN OFF)**

3.1 We have now considered all points related to the motoring guidelines on which we consulted last year. The guidelines as amended post-consultation are at **Annex A** with changes marked in red.

3.2 As a (non-exhaustive) summary of the main changes which we have made as a result of consultation responses and road testing:

- the culpability factors of dangerous driving guidelines have been altered:
  - removing “brief but obviously highly dangerous manoeuvre” and “engaging in a brief but avoidable distraction” from medium culpability and adding “obviously highly dangerous manoeuvre” to high culpability
  - adding specific reference to mobile phones and electronic devices at high and medium culpability;
  - removing “momentary lapse of concentration” from low culpability.
- amendments have been made to the aggravating and mitigating factors:
  - to refer to motorcyclists as vulnerable road users;
  - to raise the bar to “obstructed or hindered attempts to assist”, rather than just failing to help at the scene as an aggravating factor;
  - changing “impeccable” driving record to “good” driving record;
  - the mitigating factor “no previous convictions” has been removed for the “whilst disqualified” offences;
  - the reference to accident in the drug driving guideline is changed to “collision”
- there is wording in the causing injury/serious injury offences on the approach to multiple victims, similar to that found in the causing death guidelines.
- the sentencing levels for causing serious injury by careless driving and causing injury by wanton or furious driving have been adjusted downwards;
- in the drug driving guidelines we clarify that the high culpability “mixing” factor is activated even where one element does not meet the legal limit, remove the erroneous reference to diazepam and temazepam co-occurring, and warn against counting trace readings of alcohol or drugs;
- amended disqualification guidance, taking out the reference to not imposing lengthy disqualifications which may encourage reoffending, and expanding the guidance to situations where the offender is already serving a custodial sentence. I have also added a paragraph into the disqualification guidance for causing death by careless driving and causing serious injury by careless driving providing the principles for requiring an extended retest, based on that agreed for the draft aggravated vehicle taking offences.

3.3 One further possible addition to the aggravating factors in the causing death or causing serious injury guidelines could be “victim was providing a public service or

performing a public duty at the time of the offence, or was an emergency worker”. This was not raised in consultation, but is included in the current draft of the aggravated vehicle taking guidelines for death and injury.

3.4 However, that factor has particular relevance to the aggravated vehicle-taking offences, and adding it to the general motoring guidelines risks creating a hierarchy of victims based on occupation. In many cases the occupation of the victim will be entirely unconnected to the standard of driving. I therefore recommend not including it in these guidelines.

3.5 We have conducted some further re-sentencing exercises in the office following these changes. Although the post-consultation amendments did not change outcomes across the board some cases were affected, principally because of the changes to the dangerous driving culpability factors.

3.6 A few of these cases had the potential to move from medium to high culpability because a “brief but obviously highly dangerous manoeuvre” would now simply be classed as an “obviously highly dangerous manoeuvre”, and in one case because of the use of a mobile phone. However, as a counter balance some cases might have moved from Culpability B to C because they were clearly “brief manoeuvres” that could be classed as just over the threshold for dangerous driving.

3.7 In most cases our resentencing kept offences in the same category as at consultation stage, but I flag the potential for some recategorization, particularly in light of the wider discussion around impacts (see ‘impact and risks’ section below).

**Question 1: is Council content not to add “victim was providing a public service or performing a public duty at the time of the offence, or was an emergency worker” to the aggravating factors for the causing death or causing injury guidelines?**

**Question 2: (without prejudice to the later discussion) are there any further amendments which Council members would like to make at this stage, or any changes that Council members do not think have been reflected?**

## **4 IMPACT AND RISKS**

4.1 The draft resource assessment published alongside the consultation estimated significant impact on prison resources. We said then that the new causing death by dangerous driving guideline could result in a requirement for up to around 260 additional prison places, with around 20 additional prison places for causing death by careless driving when under the influence of drink or drugs, and around 80 additional prison places for

causing serious injury by dangerous driving. We are in the process of revising these figures for the final resource assessment, noting that for some of the more serious offences part of that assessment takes into account the two-thirds release provisions that would now apply following commencement of the Police, Crime, Sentencing and Courts Act 2022.

4.2 We did not quantify the impact caused by simple dangerous driving at the draft stage but noted that sentence outcomes using the draft guideline “are broadly in line with the outcomes given by sentencers prior to the guideline”. We also noted that there might be an increase in sentence length for offenders receiving a suspended sentence order and for some offenders sentenced to immediate custody. Although the increases in immediate custodial sentence lengths were small, we acknowledged that there was the potential for a large resource impact due to the fact that dangerous driving is a high volume offence. However, we urged caution as this was based on a very small sample of transcripts and we committed to doing further analysis.

4.3 We have now looked at more transcripts, done further analysis and reviewed the results of the research with sentencers and this has confirmed our initial findings that there could be a significant impact on prison places as a result of the revised guideline, driven by the fact this is a high volume offence (around 1,800 immediate custodial sentences were imposed in 2021, 41% of all 4,400 sentences). Analysts will present a more refined estimate at the meeting, but it has the potential to at least double the 360 prison places already quantified as part of this project.

4.4 Council may be comfortable with this. All sentences for dangerous driving are suspendable (38% of sentences imposed in 2021 were SSOs); we need to reflect the seriousness of the offending, where only luck means serious injury or death are avoided; we need to keep in proportion with causing death by dangerous driving, causing serious injury by dangerous driving and other offences; and consultees were generally content with the levels we proposed.

4.5 We will in any event continue work in April to refine this figure to ensure we have the most accurate picture of the projected impact on the prison population of the current draft. Getting the clearest picture possible is especially important here given the impact is relatively high and bearing in mind the capacity issues currently facing the prison estate.

4.6 If, however, the possible impact does give concern that the proposed guideline is increasing sentences more than intended, we could consider what effect further revisions to the guideline would have. For example, we could consider revising sentence levels down, which would a) reduce them below the levels of the equivalent aggravated vehicle taking guideline as currently drafted, which are equal to those in the draft dangerous driving

guideline, and b) bring them into proportion to the levels for [simple careless driving](#), which range from a Band A to a Band C fine. As an opening suggestion:

	<b>Culpability</b>		
	<b>A</b>	<b>B</b>	<b>C</b>
Harm 1	<p><b>Starting Point:</b> 1 year <del>6 months</del></p> <p><b>Category range:</b> <del>1—2 years</del> 6 months – 1 year 6 months</p>	<p><b>Starting Point:</b> <del>1 year</del> 26 weeks</p> <p><b>Category range:</b> <del>26 weeks—1 year 6 months</del> High level community order – 1 year</p>	<p><b>Starting Point:</b> <del>26 weeks</del></p> <p>High level community order</p> <p><b>Category range:</b> <del>High level community order—1 year</del> Low level community order – 26 weeks</p>
Harm 2	<p><b>Starting Point:</b> <del>1 year</del> 26 weeks</p> <p><b>Category range:</b> <del>26 weeks—1 year 6 months</del> High level community order – 1 year</p>	<p><b>Starting Point:</b> 26 weeks</p> <p>High level community order</p> <p><b>Category range:</b> <del>High level community order—1 year</del> Low level community order – 26 weeks</p>	<p><b>Starting Point:</b> <del>High</del> Low level community order</p> <p><b>Category range:</b> <del>Low level community order—26 weeks</del> Band C fine – high level community order</p>

Arguably, however, these levels are too low given the culpability of offenders is precisely the same as where death or serious injury has occurred.

4.7 Beyond sentence levels, whilst keeping culpability elements consistent across all guidelines involving dangerous driving, there may be scope to look at harm factors. Most notably, the category 1 harm factor “circumstances of offence created a high risk of serious harm to others” arguably double-counts culpability - there is usually something inherent in high culpability dangerous driving which creates a high risk of serious harm - resulting in too many offences being placed by default in the top box. Removing it would mean high harm is focussed on harm *actually* caused.

4.8 Alternatively that factor could be amended. In the simple careless driving guideline we have “high level of traffic or pedestrians in vicinity” which effectively narrows down the circumstances where risk qualifies an offender for high harm. Or we could raise the bar, for example: “circumstances of offence created a **very** high risk of serious harm to others”, or “circumstances of offence created a **very** high risk of **death or serious injury** to others”.

4.9 I am unconvinced on the grounds of impact on prison places alone that we should change the guideline we consulted on. If Council *did* want to explore an amendment, I would recommend it being a change to that harm factor to make it more likely cases would fall into category A2 rather than A1.

4.10 Depending on what Council decides, we can present the results of the revised/final resource assessment back to Council on the papers ahead of the May meeting and could set aside some time for discussion then if Council thought revisions were needed in light of the updated figures. This should allow us then to publish the definitive guidelines in June ahead of coming into force on 1 July. However, if any further work is needed beyond that we would be looking to push publication back, with an in-force date of 1 October at the earliest.

**Question 3a: ahead of formally signing off the dangerous driving guideline, should we undertake further work to assess the impact of a revised version of the draft guideline?**

**Question 3b: if so, would you like to:**

- **adjust sentence levels downwards; or**
- **amend the harm factors by altering or removing the reference to risk in high harm?**

## **5 CONSIDERATION (SCOPE OF NEXT MOTORING CONSULTATION)**

5.1 In 2021 Council decided to split off aggravated vehicle taking offences from the other motoring offences being consulted on. The latest drafts of these guidelines, which take into account the revisions made to the other guidelines, are at **Annex B**.

5.2 The language on consumption of alcohol and/or drugs and evading police under culpability has been aligned with that of the other motoring guidelines. The aggravated vehicle taking dangerous driving guideline culpability factors now mirror the latest for dangerous driving (for example, mentioning electronic devices, and omitting “momentary lapse”). In aggravating factors, motorcyclists are added to the list of vulnerable road users, the bar “failing to assist” at the scene is raised to obstructing attempts to assist (understanding that offenders may be too shocked to assist themselves), and it is clarified that “passengers, including children” refers to passengers in the offender’s vehicle.

5.3 As currently drafted we are providing slightly different wording for the guidance related to multiple fatalities between the aggravated vehicle taking (death) guideline:

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

and the other motoring causing death guidelines:

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

This difference may be related to the impossibility of going outside the offence range for an offence with a 14 year maximum (though this is equally true of causing death by careless driving). We also do not have equivalent text for the aggravated vehicle taking (injury) guideline, which was in line with our initial approach on motoring generally. "Multiple victims" is currently an aggravating factor in both the death and injury aggravated vehicle taking guidelines.

**Question 4: does Council wish to harmonise the wording between all the motoring and aggravated vehicle-taking guidelines on the approach to take to multiple deaths and injured victims?**

5.4 There are further motoring-related matters which could be included within scope of this follow-up consultation. Firstly, Council considered that we should respond to the strength of feeling in consultation responses on the use of disqualification by considering further guidance for sentencers. This might take the form of starting points and ranges, and/or provide a more thorough set of factors to take into account in relation to the offender and the offence in setting a disqualification period.

5.5 A more discrete part of the consultation could be to revise the [vehicle licence/registration fraud magistrates guideline](#) which dates from 2008 and would, alongside the aggravated vehicle taking guidelines, be the last of the Sentencing Guidelines Council guidelines still in force to be revised.

5.6 The offence is triable either way. When heard summarily the maximum penalty is a fine; on indictment it is two years' imprisonment. There were around 120 offenders sentenced in 2021, and the majority (60 per cent) received fines. The average (median) fine in 2021 was £200. This guideline is really more related to fraud than motoring, but the link is

arguably close enough to include in scope, and this presents the likeliest means of updating this guideline.

5.7 The drug driving guidelines on which we consulted were based on the existing equivalent guidelines for unfit through drink or drugs. Some post-consultation amendments made at this point to the drug driving guidelines should probably be retrofitted to the unfit guidelines:

- clarifying that the high culpability factors apply to both driving *and* attempting to drive;
- changing the word “accident” to “collision” in aggravating factors;
- adding “alcohol or drugs consumed unknowingly” to the mitigating factors [arguably – there may be a case that anyone “unfit” should know that they are unfit]

5.8 There are discrepancies in the sentencing levels between in charge (excess alcohol) and in charge (unfit through drink and drugs): the former has a lower starting point and range at high seriousness (and a range between Band A and Band C fines at low seriousness). There is no clear reason why there should be a difference in the levels between these offences.

5.9 These are relatively minor changes, and we could simply announce that we are going to make them, without seeking views.

5.10 Issues around penalty points and offenders avoiding totting-up disqualifications arise frequently. Many respondents to the 2022 consultation raised the point, saying that the use of exceptional hardship should be restricted. The Council’s guidance on this was revised in 2020, and we are refining the guidance on prioritising a totting disqualification over another disqualification as part of the latest round of miscellaneous amendments. It is hard to see what more we can do in this area, so I would not recommend including anything on it in the forthcoming consultation.

**Question 5: do you agree the scope of the next motoring consultation should be:**

- **revised aggravated vehicle taking guidelines**
- **revised vehicle licence/registration fraud guideline**
- **disqualification guidance**
- **consequential changes to unfit through drink/drugs guidelines**

**Are there any other motoring-related matters Council members believe could be included?**



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

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

### 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 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.

### 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:

## Annex A

- 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.

<b>A</b>	<ul style="list-style-type: none"> <li>• Standard of driving was just below threshold for dangerous driving and/or includes extreme example of a culpability B factor</li> </ul>
<b>B</b>	<ul style="list-style-type: none"> <li>• Unsafe manoeuvre or positioning</li> <li>• Engaging in a brief but avoidable distraction</li> <li>• Driving at a speed that is inappropriate for the prevailing road or weather conditions</li> <li>• Driving vehicle which is unsafe or where driver's visibility or controls are obstructed</li> <li>• Driving impaired as a result of a known medical condition <b>and/or</b> in disregard of advice relating to the effects of medical condition or medication (where the medication does not form a basis of the offence)</li> <li>• Driving when deprived of adequate sleep or rest</li> <li>• The offender's culpability falls between the factors as described in culpability A and C</li> </ul>
<b>C</b>	<ul style="list-style-type: none"> <li>• Standard of driving was just over threshold for careless driving</li> <li>• Momentary lapse of concentration</li> </ul>

**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.

<b>Starting point and category range</b>
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<b>The legal limit of alcohol is 35µg breath (80mg in blood and 107mg in urine)</b>	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.

<b>A</b>	<ul style="list-style-type: none"> <li>• Standard of driving was just below threshold for dangerous driving and/or includes extreme example of a culpability B factor</li> </ul>
<b>B</b>	<ul style="list-style-type: none"> <li>• Unsafe manoeuvre or positioning</li> <li>• Engaging in a brief but avoidable distraction</li> <li>• Driving at a speed that is inappropriate for the prevailing road or weather conditions</li> <li>• Driving impaired by consumption of alcohol and/or drugs (see step 6 on totality where this is the subject of a separate charge)</li> <li>• Driving vehicle which is unsafe or where driver's visibility or controls are obstructed</li> <li>• 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</li> <li>• Driving when deprived of adequate sleep or rest</li> <li>• The offender's culpability falls between the factors as described in culpability A and C</li> </ul>
<b>C</b>	<ul style="list-style-type: none"> <li>• Standard of driving was just over threshold for careless driving</li> <li>• Momentary lapse of concentration</li> </ul>

**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.

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

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

<b>HARM</b>	
Category 1	<ul style="list-style-type: none"> <li>• Particularly grave and/or life-threatening injury caused</li> <li>• Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</li> <li>• 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</li> </ul>
Category 2	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

**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**

	<b>Culpability</b>		
	<b>A</b>	<b>B</b>	<b>C</b>
Harm 1	<b>Starting Point:</b> 4 years <b>Category range:</b> 3 – 5 years	<b>Starting Point:</b> 3 years <b>Category range:</b> 2 – 4 years	<b>Starting Point:</b> 2 years <b>Category range:</b> 1 – 3 years
Harm 2	<b>Starting Point:</b> 3 years <b>Category range:</b> 2 – 4 years	<b>Starting Point:</b> 2 years <b>Category range:</b> 1 – 3 years	<b>Starting Point:</b> 1 year <b>Category range:</b> 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 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.

### 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.

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

**HARM**

Category 1	<ul style="list-style-type: none"> <li>• Particularly grave and/or life-threatening injury caused</li> <li>• Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</li> <li>• 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</li> </ul>
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Category 2	<ul style="list-style-type: none"> <li>All other cases</li> </ul>
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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><b>Starting Point:</b> <del>1-year 6 months</del> 1 year</p> <p><b>Category range:</b> <del>1-year 26 weeks</del> - 2 years</p>	<p><b>Starting Point:</b> <del>1-year 26 weeks</del></p> <p><b>Category range:</b> <del>26-weeks</del> High level community order – 1 year <del>6 months</del></p>	<p><b>Starting Point:</b> <del>26-weeks</del> High level community order</p> <p><b>Category range:</b> <del>Low</del> Medium level community order – 4 year 26 weeks</p>
Harm 2	<p><b>Starting Point:</b> <del>1-year 26 weeks</del></p> <p><b>Category range:</b> <del>26-weeks</del> High level community order – 1 year <del>6 months</del></p>	<p><b>Starting Point:</b> <del>26-weeks</del> High level community order</p> <p><b>Category range:</b> <del>Low</del> Medium level community order – 4 year 26 weeks</p>	<p><b>Starting Point:</b> <del>High</del> Medium level community order</p> <p><b>Category range:</b> Low level community order – <del>26-weeks</del> 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.**

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

**HARM**

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

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

**A**

- 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**

- ~~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

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

**STEP TWO****Starting point and category range**

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

## Annex A

- 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**

<b>CULPABILITY</b>	
<b>The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence.</b>	
<b>A</b>	<ul style="list-style-type: none"> <li>• <del>Driving shortly after disqualification imposed</del></li> <li>• Vehicle obtained during disqualification period</li> <li>• Driving for commercial purposes</li> <li>• Driving an LGV, HGV or PSV etc</li> <li>• Significant distance driven</li> </ul>
<b>B</b>	<ul style="list-style-type: none"> <li>• Cases falling between higher and lesser culpability because: <ul style="list-style-type: none"> <li>○ Factors are present in higher and lesser culpability which balance each other out and/or</li> <li>○ The offender's culpability falls between the factors as described in culpability A and C</li> </ul> </li> </ul>
<b>C</b>	<ul style="list-style-type: none"> <li>• The offender genuinely believed that he or she was not disqualified to drive</li> <li>• Decision to drive was brought about by a genuine and proven emergency</li> <li>• Driving whilst disqualified by pressure, coercion or intimidation (where not amounting to a defence)</li> </ul>

**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**

<b>CULPABILITY</b>	
<b>The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence.</b>	
A	<ul style="list-style-type: none"> <li>• Driving for commercial purposes</li> <li>• Driving an LGV, HGV or PSV etc</li> <li>• Significant distance driven</li> </ul>
B	<ul style="list-style-type: none"> <li>• Cases falling between higher and lesser culpability because:               <ul style="list-style-type: none"> <li>○ Factors are present in higher and lesser culpability which balance each other out and/or</li> <li>○ The offender's culpability falls between the factors as described in culpability A and C</li> </ul> </li> </ul>
C	<ul style="list-style-type: none"> <li>• The offender genuinely believed that he or she was insured or licensed to drive</li> <li>• Decision to drive was brought about by a genuine and proven emergency</li> <li>• Driving whilst unlicensed or uninsured by pressure, coercion or intimidation (where not amounting to a defence)</li> </ul>

**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 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 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**

<b>CULPABILITY</b>	
The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence.	
<b>A</b>	<ul style="list-style-type: none"> <li>• <del>Driving shortly after disqualification imposed</del></li> <li>• Vehicle obtained during disqualification period</li> <li>• Driving for commercial purposes</li> <li>• Driving an LGV, HGV or PSV etc</li> <li>• Significant distance driven</li> </ul>
<b>B</b>	<ul style="list-style-type: none"> <li>• Cases falling between higher and lesser culpability because: <ul style="list-style-type: none"> <li>○ Factors are present in higher and lesser culpability which balance each other out and/or</li> <li>○ The offender's culpability falls between the factors as described in culpability A and C</li> </ul> </li> </ul>
<b>C</b>	<ul style="list-style-type: none"> <li>• The offender genuinely believed that he or she was not disqualified to drive</li> <li>• Decision to drive was brought about by a genuine and proven emergency</li> <li>• Driving whilst disqualified by pressure, coercion or intimidation (where not amounting to a defence)</li> </ul>

<b>HARM</b>	
Category 1	<ul style="list-style-type: none"> <li>• Particularly grave and/or life-threatening injury caused</li> <li>• Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</li> <li>• 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</li> </ul>
Category 2	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

**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	<b>Starting Point:</b> 3 years <b>Category range:</b> 2 – 4 years	<b>Starting Point:</b> 2 years <b>Category range:</b> 1 – 3 years	<b>Starting Point:</b> 1 year <b>Category range:</b> High level community order – 2 years
Harm 2	<b>Starting Point:</b> 2 years <b>Category range:</b> 1 – 3 years	<b>Starting Point:</b> 1 year <b>Category range:</b> High level community order – 2 years	<b>Starting Point:</b> 26 weeks <b>Category range:</b> 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.

<b>Category 1</b>	Higher culpability <b>and</b> greater harm
<b>Category 2</b>	Higher culpability <b>and</b> lesser harm <b>or</b> lower culpability <b>and</b> greater harm
<b>Category 3</b>	Lower culpability <b>and</b> 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><b>Factors indicating greater harm</b></p> <ul style="list-style-type: none"> <li>• Obvious signs of impairment</li> <li>• Evidence of an unacceptable standard of driving</li> </ul>
<p><b>Factors indicating lesser harm</b></p> <ul style="list-style-type: none"> <li>• All other cases</li> </ul>

## 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 <sup>nd</sup> offence in 10 years
<b>Category 1</b>	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)
<b>Category 2</b>	Medium level community order	Low level community order – High level community order	17 – 28 months	36 – 52 months
<b>Category 3</b>	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.

<b>Category 1</b>	Higher culpability <b>and</b> greater harm
<b>Category 2</b>	Higher culpability <b>and</b> lesser harm <b>or</b> lower culpability <b>and</b> greater harm
<b>Category 3</b>	Lower culpability <b>and</b> 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
<b>Category 1</b>	High level community order	Medium level community order – 12 weeks’ custody	Consider disqualification (extend if imposing immediate custody) <b>OR</b> 10 points
<b>Category 2</b>	Band C fine	Band B fine – Medium level community order	Consider disqualification <b>OR</b> 10 points
<b>Category 3</b>	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"> <li>High value damage</li> </ul>
Category 2	<ul style="list-style-type: none"> <li>Value of damage falls between categories 1 and 3</li> </ul>
Category 3	<ul style="list-style-type: none"> <li>Total damage caused of under £5,000</li> </ul>

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

*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>

## Annex B

			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
<ul style="list-style-type: none"> <li>• Previous convictions, having regard to a) the <b>nature</b> of the offence to which the conviction relates and its <b>relevance</b> to the current offence; and b) the <b>time</b> that has elapsed since the conviction</li> <li>• Offence committed on bail</li> </ul>
Other aggravating factors
<ul style="list-style-type: none"> <li>• Vehicle taken as part of burglary</li> <li>• Taken and/or damaged vehicle was an emergency vehicle</li> <li>• Taken and/or damaged vehicle belongs to a vulnerable person</li> <li>• Disregarding warnings of others</li> <li>• Damage caused in moving traffic accident</li> <li>• Victim was a vulnerable road user, including pedestrians, cyclists, horse riders <b>and motorcyclists</b></li> <li>• Taken vehicle is an LGV, HGV or PSV etc</li> <li>• Other driving offences committed at the same time (see step 6 on totality)</li> <li>• Blame wrongly placed on others</li> <li>• Failed to stop and/or <b>obstructed or hindered attempts to assist at the scene</b></li> <li>• Passengers <b>in the offender's vehicle</b>, including children</li> <li>• Offence committed on licence or while subject to court order(s)</li> </ul>
Mitigating factors
<ul style="list-style-type: none"> <li>• Actions of the victim or a third party contributed significantly to collision or damage</li> <li>• Efforts made to assist or seek assistance for victim(s)</li> <li>• No previous convictions or no relevant/recent convictions</li> <li>• Remorse</li> <li>• Serious medical condition requiring urgent, intensive or long-term treatment</li> <li>• Age and/or lack of maturity</li> <li>• Mental disorder or learning disability</li> <li>• Sole or primary carer for dependent relatives</li> </ul>

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

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

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>

## Annex B

	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"> <li>• Previous convictions, having regard to a) the <b>nature</b> of the offence to which the conviction relates and its <b>relevance</b> to the current offence; and b) the <b>time</b> that has elapsed since the conviction</li> <li>• Offence committed on bail</li> </ul>	
Other aggravating factors	
<ul style="list-style-type: none"> <li>• Vehicle taken as part of burglary</li> <li>• Taken vehicle was an emergency vehicle</li> <li>• Taken vehicle belongs to a vulnerable person</li> <li>• Disregarding warnings of others</li> <li>• Multiple victims involved (see step 6 on totality when sentencing more than one offence)</li> <li>• Victim was providing a public service or performing a public duty at the time of the offence, or was an emergency worker</li> <li>• Victim was a vulnerable road user, including pedestrians, cyclists, horse riders, <b>motorcyclists etc</b></li> <li>• Taken vehicle is an LGV, HGV or PSV etc</li> <li>• Other driving offences committed at the same time (see step 6 on totality)</li> <li>• Blame wrongly placed on others</li> <li>• Failed to stop and/or <b>obstructed or hindered attempts to assist at the scene</b></li> <li>• Passengers <b>in the offender's vehicle</b>, including children</li> <li>• Offence committed on licence or while subject to court order(s)</li> </ul>	
Mitigating factors	
<ul style="list-style-type: none"> <li>• Actions of the victim or a third party contributed significantly to collision or injury</li> <li>• Efforts made to assist or seek assistance for victim(s)</li> <li>• No previous convictions or no relevant/recent convictions</li> <li>• Remorse</li> <li>• Victim was a close friend or relative</li> <li>• Serious medical condition requiring urgent, intensive or long-term treatment</li> <li>• Age and/or lack of maturity</li> <li>• Mental disorder or learning disability</li> <li>• Sole or primary carer for dependent relatives</li> </ul>	

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

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"> <li>• Previous convictions, having regard to a) the <b>nature</b> of the offence to which the conviction relates and its <b>relevance</b> to the current offence; and b) the <b>time</b> that has elapsed since the conviction</li> <li>• Offence committed on bail</li> </ul>
Other aggravating factors
<ul style="list-style-type: none"> <li>• Vehicle taken as part of burglary</li> <li>• Taken vehicle was an emergency vehicle</li> <li>• Taken vehicle belongs to a vulnerable person</li> <li>• Disregarding warnings of others</li> <li>• Multiple victims involved (see step 6 on totality when sentencing more than one offence)</li> <li>• Victim was providing a public service or performing a public duty at the time of the offence, or was an emergency worker</li> <li>• Victim was a vulnerable road user, including pedestrians, cyclists, horse riders, <b>motorcyclists etc</b></li> <li>• Taken vehicle is an LGV, HGV or PSV etc</li> <li>• Other driving offences committed at the same time (see step 6 on totality)</li> <li>• Blame wrongly placed on others</li> <li>• Failed to stop and/or <b>obstructed or hindered attempts to assist at the scene</b></li> <li>• Passengers <b>in the offender's vehicle</b>, including children</li> <li>• Offence committed on licence or while subject to court order(s)</li> </ul>
Mitigating factors
<ul style="list-style-type: none"> <li>• Actions of the victim or a third party contributed significantly to collision or death</li> <li>• Efforts made to assist or seek assistance for victim(s)</li> <li>• No previous convictions or no relevant/recent convictions</li> <li>• Remorse</li> <li>• Victim was a close friend or relative</li> <li>• Serious medical condition requiring urgent, intensive or long-term treatment</li> <li>• Age and/or lack of maturity</li> <li>• Mental disorder or learning disability</li> <li>• Sole or primary carer for dependent relatives</li> </ul>

## 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**

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

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

	<p>(where not culpability A)</p> <ul style="list-style-type: none"> <li>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</li> <li>Driving when deprived of adequate sleep or rest</li> <li>The offender's culpability falls between the factors as described in high and lower culpability</li> </ul>
<b>C-</b> Lower culpability	<ul style="list-style-type: none"> <li>Standard of driving was just over threshold for dangerous driving</li> <li>— Momentary lapse of concentration</li> <li>Minor role in group offending</li> </ul>

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

Mitigating factors
<ul style="list-style-type: none"> <li>• No previous convictions or no relevant/recent convictions</li> <li>• The victim was a close friend or relative</li> <li>• Actions of the victim or a third party contributed significantly to collision or injury</li> <li>• Efforts made to assist or seek assistance for victim(s)</li> <li>• Remorse</li> <li>• Serious medical condition requiring urgent, intensive or long-term treatment</li> <li>• Age and/or lack of maturity</li> <li>• Mental disorder or learning disability</li> <li>• Sole or primary carer for dependent relatives</li> </ul>



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  - 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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