

25 January 2007

Dear Colleague,

## **CONSULTATION PAPER ON CAUSING DEATH BY DRIVING OFFENCES**

The Sentencing Advisory Panel has been asked by the Sentencing Guidelines Council to produce advice on sentencing for a range of *causing death by driving* offences.

Since the Panel submitted its advice on sentencing for the offence of *causing death by dangerous driving* to the Court of Appeal in 2003, the legislative provisions have changed. The maximum sentence for that offence and for the offence of *causing death by careless driving when under the influence of drink or drugs* was increased from 10 to 14 years' imprisonment in February 2004. There has been some uncertainty about the implications of this for the generality of sentencing which has been addressed in the recent judgment of the Court of Appeal in *Richardson and others* [2006] EWCA Crim 3186; our intention is to provide advice that will enable the Sentencing Guidelines Council to issue comprehensive guidelines on both these offences and on the two new offences described below.

The Road Safety Act 2006 provides for two new offences - *causing death by careless or inconsiderate driving* (maximum penalty 5 years' imprisonment) and *causing death by driving: unlicensed, disqualified or uninsured driver* (maximum penalty 2 years' imprisonment). Sentencers will benefit from guidelines that take into account the difficult balancing exercise between low offender culpability (as reflected in the reduced maximum penalties accorded to these offences by Parliament) and the extreme harm that results when an offence of this nature is committed. The potential imbalance between culpability and harm is one of the key areas of discussion in the consultation paper. The Panel hopes to be able to produce advice that will enable the Council to publish guidelines before these offences start to come before a court for sentence.

The Panel is very interested in your views on a number of important issues; questions are asked throughout the text and are listed at the end of the paper. Please feel free to send in responses to all of the questions or those most relevant to your area of work or interest. We hope that your answers will help to identify an approach to sentencing that can be used to guide decisions made in court.

Please send your response to Mrs Lesley Dix, Secretary to the Panel, at the Sentencing Guidelines Secretariat, either by post to 4<sup>th</sup> Floor, 8 – 10 Great George Street, London SW1P 3AE, or by email to [info@sentencing-guidelines.gsi.gov.uk](mailto:info@sentencing-guidelines.gsi.gov.uk). **Responses should be received by 19 April 2007.**

The names of those who respond to this consultation paper will be listed in the Panel's published advice to the Sentencing Guidelines Council. Responses are not routinely published but, in accordance with the provisions of the Freedom of Information Act 2000, the Panel is required to release copies on request. **If anonymity is required, respondents should make that clear in their response.**

Yours sincerely,

Professor Martin Wasik  
Chairman of the Sentencing Advisory Panel

# DRIVING OFFENCES

## CAUSING DEATH BY DRIVING

### INTRODUCTION

1. In 2003, the Sentencing Advisory Panel proposed a sentencing guideline on *causing death by dangerous driving*<sup>1</sup> and on *causing death by careless driving when under the influence of drink or drugs*,<sup>2</sup> its advice<sup>3</sup> was acted on by the Court of Appeal in its guideline judgment in the case of *Cooksley*.<sup>4</sup>

2. Since that judgment, Parliament has increased the maximum penalty for both offences from 10 to 14 years' imprisonment<sup>5</sup> and introduced new provisions regarding "dangerous offenders" which apply to both the offences. The Panel and the Sentencing Guidelines Council initially took the view that the increase in maximum penalty primarily provided for an increase in the penalty for the most serious offences and did not require a revision of the guideline judgment. A number of subsequent Court of Appeal decisions have demonstrated a need for clearer guidance culminating in the judgment in *Richardson and others*.<sup>6</sup> The first part of this consultation paper (Section A) re-examines the approach to sentencing for causing death by dangerous driving and by careless driving either under the influence of alcohol or drugs or having failed to provide a specimen for analysis without reasonable excuse (both of which are based on the *Cooksley* guideline) in the light of both the increase in maximum penalty and the decision in *Richardson*.

3. More recently, Parliament has introduced a number of changes to the law in the Road Safety Act 2006, including two new offences of causing death by driving. The first of the two new offences is *causing death by careless or inconsiderate driving*, which has a maximum sentence of 5 years' imprisonment. The second is the offence of *causing death by driving: unlicensed, disqualified or uninsured drivers*, which has a maximum sentence of 2 years' imprisonment. The second part of this consultation paper (Section B) proposes sentencing guidelines for the two new offences.

---

<sup>1</sup> Road Traffic Act 1998, s.1 as amended

<sup>2</sup> Road Traffic Act 1998, s.3A as amended

<sup>3</sup> *Causing Death by Dangerous Driving*, published February 2003, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>4</sup> [2004] 1 Cr App R. (S) 1

<sup>5</sup> Criminal Justice Act 2003, s. 285 (brought into force on 27 February 2004).

<sup>6</sup> [2006] EWCA Crim 3186

4. All four offences must be seen in their broader sentencing context. There is, in effect, a ladder of offences that may be charged where death is caused by driving:

- (i) Where there is an intention to kill or to cause serious harm, it may be appropriate to charge *murder*, which has a mandatory sentence of life imprisonment;
- (ii) In cases where the driving was grossly negligent as to causing death, it may be appropriate to charge *manslaughter*, with a maximum sentence of life imprisonment;
- (iii) Then there are the two offences of *causing death by dangerous driving*, and *causing death by careless driving either when under the influence of drink or drugs or having failed to provide a specimen for analysis without reasonable excuse*, which have a maximum sentence of 14 years' imprisonment. It is important to note that those two offences, together with manslaughter, are 'serious offences' under the Criminal Justice Act 2003, so that a court may be required to impose a sentence of imprisonment for public protection if it considers that the (adult) offender presents a significant risk to members of the public of serious harm;<sup>7</sup>
- (iv) There is also an offence of *aggravated vehicle taking where death results*, the maximum sentence for which was also raised to 14 years' imprisonment in February 2004. As with the offences in (iii) above, this is a "serious offence" for the purpose of the "dangerous offender" provisions in the Criminal Justice Act 2003.
- (v) Lower down the ladder come the two new offences of *causing death by careless or inconsiderate driving* (maximum 5 years' imprisonment) and *causing death by driving: unlicensed, disqualified or uninsured drivers* (maximum 2 years' imprisonment).

---

<sup>7</sup> Criminal Justice Act 2003, sections 224 - 226 and Schedule 15 Part 1. The Court of Appeal gave guidance on the sentencing of 'dangerous' offenders in *Lang* [2005] EWCA Crim 2864.

5. These offences all share the same outcome – the death of one or more victims.<sup>8</sup> This is harm of the highest level, and for that reason there are often calls for severe sentences. However, since all the offences result in death, distinguishing between them in terms of the culpability of the offender is the key issue. The task of guidelines is to reflect the different types and levels of culpability for which these offences provide.

6. The most difficult sentencing decisions, which sometimes give rise to public concern, are those where death has been caused by driving that manifests only a relatively low degree of culpability. Parliament has now established a ladder of offences with different grades of culpability and different maximum sentences and this consultation paper aims to canvass opinions on possible starting points and sentence ranges which reflect that overall scheme. The legislative provisions relating to young offenders are very different from those for adults and the Panel has decided to consult separately at a later date on general principles relating to the sentencing of youths. Therefore, the consultation paper deals only with the sentencing of offenders aged 18 and over for these offences.

---

<sup>8</sup> For further discussion concerning the effect on sentence where there is more than one victim, see paragraph 21 below.

## SECTION A

### PROPOSED REVISION OF EXISTING GUIDELINES

7. This part of the paper focuses on the existing guideline for sentencing for the two offences of *causing death by dangerous driving* and *causing death by careless driving either when under the influence of drink or drugs or having failed to provide a specimen for analysis without reasonable excuse*, which was laid down in April 2003 by the Court of Appeal in *Cooksley*.<sup>9</sup> As noted above, the maximum penalty for these offences was raised from 10 to 14 years' imprisonment with effect from February 2004.

8. Normally, when Parliament has raised the maximum penalty for an offence this has not been taken to signal a need to increase all starting points for sentencing *proportionately* (which, in this instance would have meant an increase of 40 per cent - the difference between 10 and 14 years). Thus, when the maxima for these two offences were doubled from 5 to 10 years' imprisonment by the Criminal Justice Act 1993, the Court of Appeal revised the then sentencing guideline<sup>10</sup> by increasing the *highest* starting point from 2 to 5 years' imprisonment, while leaving the lower starting points undisturbed.<sup>11</sup>

9. The *Report on the Review of Road Traffic Penalties*, published by the Government in July 2002, referred to 'a number of serious cases of *causing death by dangerous driving* in which the sentence imposed has approached the maximum penalty of 10 years' imprisonment. In one case the sentencing court even imposed the full maximum penalty.<sup>12</sup> From this, the Panel inferred that the increase in maxima was intended only to give courts greater 'headroom' to deal with cases of the most serious kind and, on this basis, the Council decided in June 2004 that there was no reason to revisit the existing starting points for less serious cases.

10. A number of subsequent decisions in the Court of Appeal (but not all) have suggested that the increase in the maxima should be reflected in all the starting

---

<sup>9</sup> [2004] 1 Cr App R (S) 1, decided on 3 April 2003.

<sup>10</sup> First laid down in *Boswell* (1984) 6 Cr App R (S) 257.

<sup>11</sup> *Attorney-General's References 14 and 24 of 1993 (Shepherd and Wernet)* (1994) 15 Cr App R (S) 640.

<sup>12</sup> see pages 5 and 6

points for these offences.<sup>13</sup> The Court of Appeal has recently taken the opportunity of considering these issues and providing guidance on both the effect of the increase in the maximum penalty and the application of the guidelines in Cooksley to offences under section 3A.<sup>14</sup> In this paper, we seek to bring together that guidance, to extend it to cover a wider range of issues and to apply the principles consistently to the two new offences.

11. Sentencing statistics set out in the tables at Annex A show that average sentence lengths for the offence of *causing death by careless driving when under the influence of drink or drugs* have altered very little in the years 1999-2005, remaining close to an average of 42 months. However, average sentence levels for *causing death by dangerous driving* have shown a gradual increase, from 35 months in 1999 to 44 months in 2004.

12. When sentencing for *causing death by dangerous driving* or *causing death by careless driving when under the influence of drink or drugs*, it should be borne in mind that both offences are ‘serious offences’ for the purposes of sections 224 - 229 of the Criminal Justice Act 2003. This means that a court sentencing an adult offender must impose a sentence of imprisonment for public protection if it is of the opinion that there is a ‘significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences’. Section 229 of that Act provides that there is a presumption of significant risk where the offender’s previous record includes one or more ‘specified offences’.<sup>15</sup>

13. As usual, the starting points are for a first time offender (see Annex C) who has been convicted after a trial and who has not been found to be a “dangerous offender”.

---

<sup>13</sup> Among the many decisions, see *Afzal* [2005] EWCA Crim 384 (right to give some uplift to all starting points), *Gray* [2005] EWCA Crim 1238 (wrong to increase all starting points by 40 per cent), and *Attorney-General’s Reference No. 32 of 2006 (Riding)* [2006] EWCA Crim 1500 (starting point of 4-5 years for ‘higher culpability’ cases should be raised to 5 years).

<sup>14</sup> *Richardson and others* [2006] EWCA Crim 3186

<sup>15</sup> For further details of the approach to interpreting this provision, see the decision in *Lang*, above n. 7.

## Causing Death by Dangerous Driving

14. The Panel has reviewed its approach to assessing the seriousness of this offence, and sees no reason to change its view (endorsed by the Court of Appeal in *Cooksley*) that ‘the offender’s culpability should be the dominant component in the sentencing exercise but that the outcome of the offence should have some effect.’<sup>16</sup> This is also, of course, one of the key generic sentencing principles set out in the Council guideline *Overarching Principles: Seriousness*.<sup>17</sup>

15. The Panel has also reviewed the lists of aggravating and mitigating factors adopted in *Cooksley*, reproduced at Annex B. Although the judgment drew attention to an early guilty plea as a mitigating factor, a subsequent Sentencing Guidelines Council guideline has treated this factor as separate from mitigation and so (as set out in *Richardson*) it has not been included in this paper as a mitigating factor. The Panel has noted the decision in *Richardson* that there should be a further mitigating factor where an offender has behaved responsibly at the scene of the accident by taking direct action to assist one or more of the victims. Finally, the existence of previous convictions may, by statute, aggravate the seriousness of the offence and so this provision does not need to be applied specifically to these offences. The Panel sees no reason to propose any further alterations.

16. The principal question has been whether the sentencing starting points ought to be revised in the light of the increased maximum penalty or as a result of any other changes. Leaving aside the question of disqualification from driving, the *Cooksley* guideline (based on a first time offender convicted after a trial) indicates four starting points:

- (1) 12-18 months’ imprisonment – offences with no aggravating features;
- (2) 2-3 years’ imprisonment – offences of intermediate culpability: momentary dangerous driving/error of judgement/short period of bad driving;

---

<sup>16</sup> Sentencing Advisory Panel, *Causing Death by Dangerous Driving: Advice*, paragraph 13, adopted in *Cooksley* [2004] 1 Cr App R (S) 1, at [13-14] and, using different terminology, in *Richardson* [2006] EWCA Crim 3186.

<sup>17</sup> Page 5, published 16 December 2004, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

(3) 4-5 years' imprisonment – higher culpability: standard of driving more highly dangerous (1 or 2 aggravating factors);

(4) 6 years' plus imprisonment - most serious culpability: standard of driving aggravated by 3 or more factors.

### **Ranges and Starting Points**

17. A different approach from that in *Cooksley* has been adopted by the Sentencing Guidelines Council in constructing sentencing guidelines. Generally, offence guidelines published by the Council have tended to contain a specific starting point with a range within which sentence may be fixed rather than providing the range as the starting point. In *Richardson*, the Court of Appeal considered whether specific starting points should be provided within a wider range. It concluded that the multiple circumstances covered by these offences and the numerous potential aggravating factors led to the conclusion that it would be “unwise to be over prescriptive in the identification of a single starting point which would normally be appropriate for the different categories of culpability and seriousness”.

18. In its recent consultation papers and advice, the Panel has consistently proposed both starting points and ranges, considering that this was of most benefit to those who would be using the guidelines. Recognising that there has been some uncertainty about the purpose and approach to starting points and ranges, the Panel and the Sentencing Guidelines Council have developed a definition which is set out at Annex C to this document. Care should be taken, therefore, in interpreting these terms when they appear in earlier judgments.

19. The Panel considers that the provision of a fixed starting point is generally of greater assistance than the provision of a range as a starting point and is not presently persuaded that these offences have different characteristics from many other offences sufficient to adopt a different approach. Accordingly, this consultation paper includes fixed starting points and ranges for use in accordance with the procedure described in Annex C; this will be reviewed in the light of responses to the consultation.

## Starting Points

20. Paragraph 16 above sets out the starting points provided in *Cooksley* for the four categories of offence seriousness that were set out. In the first category fall those offences in which none of the 16 aggravating factors identified in *Cooksley* is present. These will always be cases in which a death has been caused by driving that falls far below the standard to be expected of a competent and careful driver and, in principle, the causing of death in such circumstances should be marked by the imposition of a custodial sentence. However, at this level the offence usually will involve a dangerous error of judgement or a momentary lapse and the starting point of 12 to 18 months' imprisonment recognises that the level of culpability in the driving is *relatively* low. Where there are strong mitigating factors, such as a good driving record, the sentence would be lower. Only in exceptional circumstances, however, would it be justifiable to impose a community order. In *Richardson*, the Court of Appeal suggested that the appropriate sentencing range for an offence in this category should be within a range of 12 months' to 2 years' imprisonment; the Panel agrees. If a fixed starting point is provided, the Panel's provisional view is that it should be 18 months' imprisonment. .

21. In the second category fall those offences in which the culpability of the driving itself is not significantly greater than that in the first category (i.e. where there was a dangerous error of judgement or brief but dangerous lapse), but the offence is aggravated in some way. For example, the offender might have previous convictions for serious motoring offences, or be driving when not entitled to do so, or the offender may have behaved irresponsibly at the time of the offence. The provisional view of the Panel is that there should be a fixed starting point of 3 years' imprisonment. In *Cooksley*, the Court added that, if more than one death has been caused and other factors were present, a starting point of 5 years' imprisonment might be appropriate.<sup>18</sup> In *Richardson*, the Court of Appeal limited the range for this level to 4 and a half years. However, since that judgment the Sentencing Guidelines Council has agreed a definition of the meaning of *range* and *starting point* which are set out at Annex C. In the light of that definition, it seems

---

<sup>18</sup> [2004] 1 Cr App R (S) 1 at [23]. Since this judgment, the Sentencing Guidelines Council and Sentencing Advisory Panel have agreed a definition of "starting point" and "range" (see Annex C); care should be taken in interpreting these terms as they appear in earlier judgments.

preferable to the Panel to extend the range to 5 years in order to include the circumstances described in *Cooksley*. Our provisional view, therefore, is that a range of between 2 years and 5 years imprisonment is appropriate for this intermediate level. This provides an overlap with the next range which allows the breadth of discretion that is necessary to accommodate circumstances where the standard of driving falls within the intermediate level but there are significant aggravating factors.

It should be noted that, where there is more than one victim, separate charges will be brought in relation to each death caused. Although concurrent sentences are likely to be imposed (in recognition of the fact that the charges relate to one episode of offending behaviour), each individual sentence is likely to be higher because the death has been caused of more than one person. Therefore, the overall sentence is likely to be higher where there has been more than one death.

22. In the third category fall offences of higher culpability, where the offender's driving is more dangerous or more blameworthy. These are cases where either one or two of the following factors relevant to the driving are present:

- drugs or alcohol consumed;
- greatly excessive speed;
- disregard of warnings;
- prolonged course of very bad driving;
- aggressive driving;
- driving while attention avoidably distracted;
- driving when knowingly suffering from impairing medical condition;
- driving when knowingly deprived of adequate sleep or rest; and
- driving a poorly maintained or dangerously loaded vehicle.

A fuller description of the factors listed above can be found at Annex B.

23. The *Cooksley* guideline sets a starting point of 4 to 5 years' imprisonment for this category. The Court of Appeal subsequently suggested that this is a group of cases for which the increased maximum penalty should be reflected by raising

the starting point marginally to 5 years' imprisonment.<sup>19</sup> However, in *Richardson*, this was further developed to provide a range of between 4 and a half years and seven years imprisonment. One justification for increasing the starting point at this level is that these are cases where the culpability of the driving itself is significantly higher than in the two lower categories. It is the manner of the dangerous driving, and the fact that it manifestly fell a long way below an acceptable standard, that places a case in this category whereas in the lower two levels the driving was not so far below the standard set. It is our provisional view that the starting point for the third category should be 5 years' imprisonment within a range of 4 – 7 years imprisonment. Where cases involve additional aggravating factors, such as the death of more than one victim, a bad driving record or irresponsible behaviour at the time of the offence, these would take the sentence above the starting point.

24. In the fourth category are the offences with the most serious culpability. *Cooksley* provided a starting point of 6 years upwards and *Richardson* now provides for a range of 7 years to 14 years. These include not only those offences where three or more of the aggravating factors related to the standard of driving (see paragraph 22 above) are present, but also those where one or two of those factors are present in an extreme form. That will remain a matter for the judgement of the court. This is the category of cases at which the increase in maximum penalty was primarily aimed so we propose that the starting point should be increased to 8 years' imprisonment within a range of 7 to 14 years.

25. In some cases there will be more than three factors aggravating the culpability of the driving, and there may be other aggravating factors too, notably multiple deaths or injuries or a very bad driving record. These will take the sentence above the previous maximum of 10 years' imprisonment. For example, in *Noble*<sup>20</sup> the culpability of the driving was very high because:

- the offender had drunk so much alcohol that he was about two and a half times over the limit;
- his speed was grossly excessive;
- there was a prolonged period of bad driving;

---

<sup>19</sup> *Attorney-General's Reference No. 32 of 2006 (Riding)* [2006] EWCA Crim 1500, at [16].

<sup>20</sup> [2003] 1 Cr App R (S) 312.

- he was disqualified from driving;
- he had three previous drink-driving convictions;
- his dangerous driving killed six people;
- he fled the scene; and
- he told the police that one of the deceased passengers had been driving at the time.

In terms of the *Cooksley* guideline, this amounted to three factors aggravating the culpability of the driving, both aggravating forms of 'driving habitually below an acceptable standard', the aggravating factor of multiple deaths, and two of the aggravating forms of 'irresponsible behaviour at the time of the offence.' There was no mitigation available. The Court of Appeal approved a sentence of 10 years' imprisonment. Following the increase in the maximum penalty, that sentence might now be more appropriately have been 14 years' imprisonment.

26. A recent example of *causing death by dangerous driving* that fell into the most serious category of the *Cooksley* guideline after the increase in the maximum sentence for the offence is *Buckland*,<sup>21</sup> where the Court upheld a sentence of 9 years' imprisonment after a late guilty plea. The offender had never held a driving licence, had a previous conviction for driving whilst disqualified, was disqualified from driving or holding a licence at the time of the offence, had taken ecstasy and cocaine prior to a prolonged period of dangerous driving, ignored the efforts of the police to stop him, fled the scene of the accident and denied responsibility until the day of the trial; he was also wanted by the police for failing to appear in court in connection with other offences. The Court took account of the increased maximum when upholding a starting point of 10 years' imprisonment.

27. The Panel's proposals for revising the starting points for *causing death by dangerous driving* may be set out as follows:

---

<sup>21</sup> [2006] EWCA Crim 2516

## Causing Death by Dangerous Driving: section 1 Road Traffic Act 1988

Maximum penalty: 14 years' imprisonment; minimum disqualification of 2 years with compulsory extended re-test

Mode of trial: Indictment only

This is a serious offence for the purpose of section 224 Criminal Justice Act 2003

The following guideline applies to a first-time offender convicted after trial who has NOT been assessed as dangerous.

When assessing the seriousness of any offence, the court must always refer to the full list of aggravating and mitigating factors in the Council guideline on Seriousness<sup>22</sup> as well as those set out in Annex B as being particularly relevant to this type of offending behaviour.

Nature of offence	Sentencing range
Offence involving 3 or more aggravating factors (or 2 to a very high degree) from the list at Annex B	Starting point – 8 years' imprisonment Sentencing range – 7 to 14 years' imprisonment
Offence involving 1 or 2 of the aggravating factors from the list at Annex B, factors (a) to (i)	Starting point – 5 years' imprisonment Sentencing range – 4 to 7 years' imprisonment
Momentary dangerous driving / error of judgement / short period of bad driving, plus one of the aggravating factors (j) to (o) in Annex B	Starting point – 3 years' imprisonment Sentencing range – 2 to 5 years' imprisonment
Momentary dangerous driving / error of judgement / short period of bad driving, with no aggravating factors	Starting point – 18 months' imprisonment Sentencing range – 12 months' to 2 years' imprisonment
<p align="center"><b>Aggravating factors</b></p> <p align="center">See Annex B</p>	<p align="center"><b>Mitigating factors</b></p> <p align="center">See Annex B</p> <p align="center">Giving direct, positive, assistance at the scene to victim(s)</p>

<sup>22</sup> *Overarching Principles: Seriousness*, published 16 December 2004, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

**Question 1:**

***We have taken the view that significant revision to the existing guideline is necessary only towards the top end of the scale of seriousness. Do you agree? If not, to what extent (if at all) should the current guidance be changed?***

**Question 2:**

***If you agree that the guideline should be revised, do you agree with the starting points and sentencing ranges proposed above? If not, what changes would you make?***

## Causing Death by Careless Driving when under the influence of Drink or Drugs or having failed to provide a specimen for analysis

28. This offence can be committed in one of the following three ways:

- (i) being unfit to drive through drink or drugs;
- (ii) having consumed so much alcohol as to be over the prescribed limit; or
- (iii) failing to provide a specimen for analysis without reasonable excuse within the timescale allowed.

29. Neither the Panel in its Advice nor the Court of Appeal in *Cooksley* offered any specific guidance on sentencing for this offence but, in practice, judges have referred to the *Cooksley* guideline. In *Richardson*,<sup>23</sup> the Court of Appeal considered this offence in more detail concluding that it was on a par with causing death by dangerous driving. The deliberate consumption of alcohol or drugs combined with the carelessness of the driving makes the errors that amount to the careless driving to be culpable in a way which the same errors made by a sober driver would not be.

30. As pointed out in *Richardson*, this offence differs from the offence of *causing death by dangerous driving* in two significant ways: the level of culpability in the actual manner of driving is lower for *careless* driving than for *dangerous* driving but, conversely, culpability is increased in all cases by the element of excess alcohol or of drugs. In effect, there are two separate elements to the offence. The manner of driving itself must be careless, and that must be what caused death, but it must also be shown that the offender was under the influence of drink or drugs or that the offender failed to provide a specimen for analysis following a request under section 7 of the Road Traffic Act 1988.<sup>24</sup> If this is proved, that is taken to render the decision to drive more culpable. The balance in the level of culpability between this offence and the offence of *causing death by dangerous driving* consequently requires elaboration.

---

<sup>23</sup> [2006] EWCA Crim 3186

<sup>24</sup> which requires that it be part of an investigation into whether an offence has been committed concerning driving (or being in charge of a vehicle) when affected by alcohol or drugs

31. Moreover, Parliament has now introduced the offence of causing death by careless driving (see Section B below), which has a maximum sentence of 5 years' imprisonment. This further supports the view that it is the influence of drink or drugs that should be a major factor in sentencing for the current offence, with its higher maximum of 14 years - almost three times the maximum for the new offence.

### **The nature of the bad driving**

32. There has always been an acknowledged difference in levels of culpability between dangerous and careless driving but provisions in the Road Safety Act 2006 aim to clarify this. Section 30 alters the definition of careless and inconsiderate driving by inserting into the Road Traffic Act 1988 a new section (3ZA); this is intended to reduce doubts about the meaning of the phrase 'driving without due care and attention' by aligning the style of definition with that for dangerous driving. Thus, dangerous driving is defined as driving in a way that "falls *far below* what would be expected of a competent and careful driver" and careless driving is now to be defined as driving in a way that "falls *below* what would be expected of a competent and careful driver". This establishes the two offences as different points on a spectrum of bad driving.

### **The influence of drink or drugs**

33. The second culpability factor for this offence is the fact that the driver was under the influence of drink or drugs. We have noted (see paragraph 25) that driving after consuming drink or drugs is a primary aggravating factor in the offence of *causing death by dangerous driving* and, indeed, that it has a considerable effect on sentence by propelling a case immediately into the third or fourth category of seriousness. As we noted in paragraph 31, the new offence of causing death by careless driving has a maximum sentence of 5 years' imprisonment and so it can be taken that the element of driving while under the influence of drink or drugs is a major culpability factor in this offence.

34. The key question is whether it is satisfactory for courts to continue to adapt the guidelines for *causing death by dangerous driving* for this offence, or whether a

separate guideline should be drafted. One difficulty is that the consumption of drink or drugs is an aggravating factor in the offence of *causing death by dangerous driving* whereas it is an inherent element of *causing death by careless driving while under the influence of drink or drugs*. This could be taken to mean that all offences of *causing death by careless driving while under the influence of drink or drugs* fall into the third and fourth *Cooksley* categories, with (proposed) starting points of 5 and 8 years' imprisonment, and that there are no offences of lesser culpability. Such an approach might be difficult to justify given that the standard of driving in this offence is *careless*, as opposed to *dangerous*; adopting this approach might appear particularly harsh if the offender was only just over the legal limit for alcohol.

35. One justification for higher starting points could be the high culpability factor involved in setting out to drive after consuming drink or drugs. Whilst dangerous driving can be momentary or brief, as categories 1 and 2 of the *Cooksley* guideline suggest, driving a car on the road following consumption of drink or drugs is a culpable decision, the effects of which persist so long as the offender continues to drive. This may explain why average sentences for this offence have always been relatively high and, for many years, were higher than for *causing death by dangerous driving* (see paragraph 11).

36. Endorsing these reasons, in *Richardson* the Court of Appeal set out a way of matching seriousness levels with the ranges provided for causing death by dangerous driving. Where the level of impairment was only just in excess of the permitted limit, and there are no other significant aggravating factors, it is likely that this offence would fall within the first category identified in *Cooksley*. Where the level was about double the limit, that would take the case into the second (intermediate) category. At higher levels, the Court of Appeal anticipated that there would be distinct elements of culpability in the driving itself equating to the aggravating factors set out in *Cooksley* which were likely to take the offence into the higher and most serious levels, though it was anticipated that a person reaching three times the limit was likely to have been driving dangerously and to be prosecuted for that offence. If the driving was still careless only, it would normally fall within the two higher levels.

37. This approach is based on the likelihood that it has been possible to measure the extent of alcohol in the offender; equivalent approaches will need to be developed where the prosecution is on the basis of unfitness through alcohol or drugs where no sample has been taken or on the basis that the offender has failed to provide the requisite sample for analysis.

38. For these reasons, and in order to enhance the clarity of the structure of guidelines for all the offences of causing death by driving, the Panel also considers that it is now appropriate to create a separate guideline for this offence. The guideline might appropriately be based on the *Cooksley* guidelines. Following the approach set out in *Richardson* that the highest level of alcohol is likely to result in driving that can be classified as dangerous, our provisional view is that it will be possible to condense the levels of seriousness to three rather than the four needed for causing death by dangerous driving. Following the approach in *Richardson*, the lowest level should cover offences in which the offender was only slightly “over the limit” for alcohol or had consumed a minimal quantity of drugs and where there was either no impairment, or only minimal impairment, to the ability to drive; the next level could cover cases where the offender had consumed a moderate degree of excess alcohol or drugs and there was a moderate level of impairment; the highest level could cater for cases where the offender had consumed a high degree of excess alcohol or drugs leading to a significant impairment of driving ability. The level of drugs tends to be harder to measure than the level of alcohol; whilst it would be possible to construct a guideline on the basis of specific measures, the Panel is not convinced that that would be as helpful as the more general terms we are suggesting.

39. A refusal to supply a specimen may be a calculated step by the offender to avoid prosecution for driving when having consumed in excess of the prescribed amount of alcohol, with a view to seeking to persuade the court that the amount consumed was relatively small. In *Attorney-General's Reference No. 21 of 2000*,<sup>25</sup> the Court of Appeal stated that a court is entitled to draw adverse inferences from a refusal to supply a specimen without reasonable excuse and should treat with caution any attempt to persuade the court that only a limited amount of alcohol had been consumed. In formulating our proposals we have taken into account the view

---

<sup>25</sup> [2001] 1 Cr App R (S) 173

expressed in that case that “*the ordinary inference to be drawn is that the defendant has refused to supply a specimen because he knows that he has consumed alcohol well in excess of the prescribed limit and the court will be likely to draw that inference unless convinced that it should not do so.*” We are, therefore, suggesting that failing to provide a specimen for analysis without reasonable excuse should be regarded as offending behaviour that falls into the most serious category but we are interested to know whether you agree with that approach.

40. The identification of aggravating factors for this offence could draw upon some of the aggravating factors for *causing death by dangerous driving* – particularly those relating to multiple deaths or injuries,<sup>26</sup> to driving habitually below an acceptable standard, and to irresponsible behaviour at the time of the offence, but clearly could not include those closely related to the ‘*dangerous*’ element in dangerous driving.

41. The Panel’s proposals for this offence may be set out as follows:

---

<sup>26</sup> Treated as an aggravating factor for this offence in *Attorney-General’s Reference No. 56 of 2002 (Megwa)* [2003] 1 Cr App R (S) 90: 2 deaths and a serious injury caused by driver falling asleep on motorway.

**Causing Death by Careless Driving when under the influence of Drink or Drugs or having failed to provide a specimen for analysis: section 3A Road Traffic Act 1988**

Maximum penalty: 14 years' imprisonment; minimum disqualification of 2 years with compulsory extended re-test

Mode of trial: Indictment only

This is a serious offence for the purpose of section 224 Criminal Justice Act 2003

The following guideline applies to a first-time offender convicted after trial who has NOT been assessed as dangerous.

Only the most common aggravating factors specifically relevant to this offence are included in the guideline. When assessing the seriousness of any offence, the court must always refer to the full list of aggravating and mitigating factors in the Council guideline on Seriousness<sup>27</sup> as well as those set out in Annex B as being particularly relevant to this type of offending behaviour.

Nature of Offence	Sentencing Range
High degree of excess alcohol or drugs leading to significant impairment OR failure to provide a specimen for analysis	Starting point – 8 years' imprisonment  Sentence range – 7 to 14 years' imprisonment
Moderate degree of excess alcohol or drugs leading to moderate impairment	Starting point – 5 years' imprisonment  Sentence range – 4 to 7 years' imprisonment
Not substantially above the alcohol limit / minimal quantity of drugs consumed and/or minimal impairment	Starting point – 2 years' imprisonment  Sentence range – 1 to 4 years' imprisonment
<p style="text-align: center;"><b>Common aggravating factors</b></p> <p>Factors (f) to (o) from the list at Annex B</p>	<p style="text-align: center;"><b>Mitigating factors</b></p> <p style="text-align: center;">See Annex B</p> <p>Giving direct, positive, assistance at the scene to victim(s)</p>

<sup>27</sup> *Overarching Principles: Seriousness*, published 16 December 2004, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

**Question 3:**

*Do you agree with the definitions of offending behaviour and the starting points and sentence ranges proposed for the offence of causing death by careless driving while under the influence of drink or drugs?*

**Question 4:**

*Do you agree that failing to supply a specimen for analysis should fall into the most serious category?*

## SECTION B

### THE NEW OFFENCES

#### Causing Death by Careless or Inconsiderate Driving

42. Section 20 of the Road Safety Act 2006 introduces this new offence by inserting a new section 2B into the Road Traffic Act 1988 as follows:

‘A person who causes the death of another person by driving a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, is guilty of an offence.’

43. The maximum sentence is 5 years’ imprisonment. The offence is triable either way. In a magistrates’ court, the statute provides that the maximum sentence is 12 months’ imprisonment; this will be revised to 6 months’ imprisonment until such time as the statutory provisions increasing the sentencing powers of a magistrates’ court are implemented.<sup>28</sup> Disqualification of the offender from driving and endorsement of the offender’s driving licence are mandatory, and the offence carries between 3 and 11 penalty points when the court finds special reasons for not imposing disqualification. The section also provides that the new offence may be an alternative (lesser) verdict where the original charge is *causing death by dangerous driving*, or *causing death by careless driving when under the influence of drink or drugs*.

44. The Road Safety Act 2006 also makes other changes to the offence of careless driving. It was noted in paragraph 32 above that the definition of the offence has been clarified so as to emphasise that ‘*dangerous*’ and ‘*careless*’ indicate two different levels or degrees of negligence in driving.<sup>29</sup> The new definition also states that ‘a person is to be regarded as driving without reasonable consideration for other persons only if those persons are inconvenienced by his driving.’ Section 23 of the Act increases the maximum penalty for the offence of

---

<sup>28</sup> Criminal Justice Act 2003, ss.154(1) and 282; Road Safety Act 2006, s.61(5)

<sup>29</sup> Home Office, *Review of Road Traffic Offences involving Bad Driving: a Consultation Paper* (2004), paras. 3.11 – 3.16.

*careless or inconsiderate driving* from a level 4 fine to a level 5 fine. Following changes made by the Criminal Justice Act 2003,<sup>30</sup> the full range of community orders is, potentially, available for this offence.

## Seriousness

45. In accordance with the provisions of section 143 of the Criminal Justice Act 2003 and with the Council guideline on seriousness,<sup>31</sup> there are two major factors to be considered when determining the seriousness of any offence – the harm (actual or foreseeable) caused by the offence and the culpability of the offender in relation to that harm.

46. The harm here – as with all offences on the ladder described in paragraph 4 above - is the death of the victim(s), which is the most serious level of harm. However, the Council guideline on seriousness states that ‘the culpability of the offender in the particular circumstances of an individual case should be the initial factor in determining the seriousness of an offence.’<sup>32</sup> This new offence is likely to encounter a particular difficulty in this respect because of the considerable gap between the outcome of the offence (the death of at least one person) and the degree of the offender’s culpability. There are other more serious offences to cater for greater degrees of culpability – *murder, manslaughter, causing death by dangerous driving, and causing death by careless driving when under the influence of drink or drugs*. The culpability element of this offence is, therefore, relatively low on the scale.

47. As stated in its advice on *causing death by dangerous driving* (see paragraph 14 above), the Panel’s view (and that of the majority of those who responded to the consultation at that time) was that ‘the offender’s culpability should be the dominant element in the sentencing exercise but that the outcome of the offence should have some effect.’<sup>33</sup> This was endorsed by the Court of Appeal in *Cooksley*,<sup>34</sup> (and in *Richardson*<sup>35</sup> though using different terminology) and logic would suggest that the same approach should be adopted here. This would mean

---

<sup>30</sup> s. 177(1)

<sup>31</sup> *Overarching Principles: Seriousness*, published 16 December 2004, paras. 1.15 – 1.19. [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>32</sup> *ibid.* para. 1.19.

<sup>33</sup> *Causing Death by Dangerous Driving*, paragraph 13, published February 2003, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>34</sup> [2004] 1 Cr App R (S) 1, at [14].

<sup>35</sup> [2006] EWCA Crim 3186

that attention should be focussed on the level of culpability in relation to this offence, where the driving was not so bad as to fall *'far below'* the standard of the competent driver, yet was bad enough to fall *below* that standard

48. Many of the cases will involve momentary misjudgement or inattention: the course of bad driving that is often found in cases of dangerous driving is unlikely to feature in many careless driving cases. Information obtained from the CPS suggests that driving is likely to be classed as careless rather than dangerous where a driver fails to notice a hazard or potentially hazardous situation that someone driving at an acceptable standard could reasonably have been expected to see and take action to avoid. There will be no proof that the driving was dangerous or that the driver's actions were deliberate and none of the more obvious factors that would normally suggest driving that fell far below the expected standard for a careful and competent driver will be present. In some cases it will be relatively easy to decide which charge to bring; in others the decision will be much less clear and there is likely to be some overlap of seriousness with the lesser cases of dangerous driving.

49. Towards the bottom of the scale of dangerous driving are cases involving 'a momentary dangerous error of judgement or a short period of bad driving.' Typical cases of careless driving might involve failing to see an oncoming vehicle and turning right across its path,<sup>36</sup> losing control as a result of over-correcting when the vehicle pulls to one side,<sup>37</sup> or momentarily falling asleep at the wheel.<sup>38</sup> Thus the analysis of a typical piece of careless driving may be that it is a momentary negligent error of judgement or a single negligent manoeuvre, so long as neither case falls so far below the standard of the competent and careful driver as to amount to dangerous driving. These are essentially questions of degree, which are unavoidable when there is a ladder of offences graded in this way.

50. As manoeuvres amounting to careless driving frequently take place without any death or injury resulting, it is often argued that taking account of the victim's death when sentencing is to attribute too much importance to chance or

---

<sup>36</sup> *Fleming* [2005] 1 Cr. App. R. (S) 103.

<sup>37</sup> *Thirumaran* [2004] 2 Cr. App. R. (S) 33.

<sup>38</sup> When none of the aggravating features (see paragraph 22) explains this, such as driving without having had proper sleep or driving after consuming alcohol or drugs: cf. *Attorney General's Reference No. 56 of 2002 (Megwa)* [2003] 1 Cr. App. R. (S) 90, and also *Cooksley* [2004] 1 Cr. App. R. (S) 1 at [55].

misfortune. However, the view put forward in the Home Office's consultation paper that preceded the Road Safety Bill was that:

- (i) the rules of the road are designed largely to avoid collisions, injuries and deaths;
- (ii) anyone who falls below the standards set for drivers is culpable;
- (iii) any driver who does so without causing an accident is fortunate; and
- (iv) it is justifiable to punish those whose bad driving does cause death or injury, because that is the risk against which the rules of the road are meant to guard.<sup>39</sup>

Given the structure of the legislation, it is inevitable that the sentencing approach must take account both of the death that has been caused and of the offender's culpability in respect of the standard and circumstances of the driving.

### **Aggravating Factors**

51. The list of possible aggravating factors needs to be limited to situations which constitute careless or inconsiderate driving, not dangerous driving. Some of the aggravating factors may be among those that might equally aggravate dangerous driving, but, for careless driving, they appear in an attenuated form. Possible aggravating factors may be divided into four groups:

#### *Factors increasing the culpability of the driving*

- (a) excessive speed;
- (b) driving while the driver's attention is avoidably distracted, e.g. by reading or by use of a hand-held mobile phone;
- (c) driving when knowingly suffering from a medical condition that could affect the offender's driving skills;

---

<sup>39</sup> Above, footnote 29, paras. 3.24 – 3.25.

### *Other relevant convictions*

- (d) other offences committed at the same time, such as driving without ever having held a licence, driving while disqualified, driving without insurance, driving without supervision while a learner, taking a vehicle without consent, driving a vehicle known to be stolen;
- (e) recent convictions for motoring offences, especially those involving bad driving or the consumption of alcohol or drugs before driving.

### *Outcome of offence*

- (f) more than one person killed as a result of the offence;
- (g) serious injury caused to one or more others, in addition to the death(s).

### *Irresponsible behaviour at the time of the offence*

- (h) irresponsible behaviour such as failing to stop or falsely claiming that someone else caused the offence;

52. These aggravating factors are adapted from those recognised as aggravating the offence of *causing death by dangerous driving*, after removing those solely concerned with *dangerous driving*. Despite the creation of a new offence of *causing death while driving without a licence or insurance or while disqualified*, factor (d) is still relevant in cases where the actual driving is careless, since the maximum penalty for this offence is 5 years' imprisonment compared with 2 years' imprisonment for the other new offence. The *Cooksley* guideline can be taken to establish factor (f), that the sentence should be increased where more than one person is killed as a result of the bad driving.<sup>40</sup> We have not included as a special factor the fact that the offence was committed on bail, although it was included in the list set out in *Cooksley*, since this is now a statutory aggravating factor which applies to all offences.

---

<sup>40</sup> *Cooksley* [2004] 1 Cr App R (S) 1, at [18-19].

**Question 5:**

***Do you agree that the aggravating factors listed in paragraph 51 should apply to the offence of causing death by careless or inconsiderate driving? Are there any other factors that ought to aggravate the seriousness of this offence?***

**Mitigating Factors**

53. Relevant mitigating factors are:

- a. a good driving record;
- b. the offender's youth (in cases where lack of driving experience has contributed to the commission of the offence);
- c. the fact that the offender was also very seriously injured as a result of the accident caused by the careless driving;
- d. genuine shock or remorse, especially where the victim is a close relation or a friend;
- e. giving direct, positive, assistance at the scene to the victim(s).

54. The above factors are all recognised as capable of mitigating an offence of *causing death by dangerous driving*,<sup>41</sup> and for the same reasons they should apply to cases of *causing death by careless or inconsiderate driving*. Factor (c) was confirmed in *Cooksley*, although the Court of Appeal emphasised that 'only very serious, or life-threatening, injury should have a significant effect on sentence.'<sup>42</sup>

**Question 6:**

***Do you agree that the mitigating factors listed in paragraph 53 should apply to the offence of causing death by careless or inconsiderate driving? Are there other factors that should mitigate the seriousness of this offence?***

---

<sup>41</sup> *ibid.* at [15]; *Richardson* [2006] EWCA Crim 3186

<sup>42</sup> *ibid.* at [20].

## The Sentencing Approach

55. Earlier in this paper, the four *Cooksley* starting points were set out, revisions were proposed in order to reflect the increase in the maximum penalty, and a separate guideline was proposed for the offence of *causing death by careless driving whilst under the influence of drink or drugs*. Since the maximum sentence for *causing death by careless or inconsiderate driving* has been set at 5 years' imprisonment, it is clear that the sentence ranges must generally be lower for this offence than for the offences of *causing death by dangerous driving* or *causing death by careless driving whilst under the influence of drink or drugs*, for which the maximum sentence is 14 years' imprisonment. In relation to the standard of the driving, some cases will be on the borderline between dangerous and careless driving, and might have aggravating factors that would belong more naturally to cases of dangerous driving. As a result, the sentencing ranges will overlap.

56. It is proposed that there should be four starting points for sentencing for this offence, the highest of which will overlap with the lower starting points for *causing death by dangerous driving*. Thus, the highest of the proposed starting points is three years' imprisonment. This would be for the most serious cases in which the culpability would be at a high level. It is proposed that this should be the starting point where the driving fell below the required standard and three or more aggravating factors were present. This starting point leaves scope, within the 5 year maximum, to impose longer sentences where the case is particularly bad. However, such cases will be relatively infrequent, and it will be important to keep in view the fact that the sentence must be for an offence where the driving was *careless* as opposed to *dangerous*.

57. The next proposed starting point would be 18 months' imprisonment, for cases involving two of the listed aggravating factors. Below that would be a starting point of 36 weeks' imprisonment for offences of medium seriousness, where perhaps one aggravating factor would be present but the offender's culpability would not be regarded as high. This might be the case where the driving clearly fell below the required standard, such as a single manoeuvre of taking a bend somewhat too fast and losing control (without evidence of any other

bad driving), but where the driver was using a hand-held mobile phone or has no licence.

58. Below that comes the least serious group of cases. This lowest category is needed to deal with the cases that will undoubtedly arise where the level of culpability is low – for example in a case involving an offender with an exemplary driving record who misjudges the speed of another vehicle, or turns without seeing an oncoming vehicle, and where there are no aggravating factors. These are cases of momentary inattention or brief lack of caution.

59. A driver causing a collision in such circumstances would almost inevitably receive a financial penalty, even where there has been serious injury: the offence of *careless driving* cannot result in a prison sentence. The sentence for a driver who causes death in those circumstances should be higher, in order to mark the fact that death was caused, and the Panel therefore proposes a starting point of a community order in the highest range (as defined in the Council's guideline).<sup>43</sup> The Panel considers that, where the level of carelessness is low and there are no aggravating factors, even the fact that death was caused is not sufficient to justify a prison sentence.

### **Question 7:**

***Where should the custody threshold for this offence fall? Do you agree that the starting point for the lowest category of culpability should be a high community order? If not, how should the sentence be approached?***

60. Because this offence is one for which the harm is very great (death) but the degree of culpability will necessarily be rather low (otherwise a more serious offence should have been charged), the sentences we are proposing may be criticised by the deceased's family and by others. The sentence will inevitably seem low if compared only with the magnitude of the harm done by the offender. The proposed guideline recognises that the level of the sentence for careless driving should be given some uplift when death is caused, since that is Parliament's intention in creating this new offence, but it also recognises the need

---

<sup>43</sup> *New Sentences: Criminal Justice Act 2003*, para. 1.1.31, published 16 December 2004, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

to reflect the degree of culpability. Whilst a court will wish to hear about the impact of the offence on those closely connected to the victim(s), decisions in the Court of Appeal<sup>44</sup> and the Practice Direction on Personal Statements of Victims<sup>45</sup> have made it clear that views on what the sentence should be are not to be taken into account.

61. A key issue for consideration in relation to this offence is where the custody threshold should lie. Without wishing to minimise the loss of life resulting from the offence, a sentencer may need to take account of the fact that an offender has an exemplary driving record and is guilty of no more than a momentary lack of attention, albeit with devastating consequences. With this in mind, the Panel has tentatively suggested that a non-custodial sentence is appropriate for the least serious category of offence but we are anxious for your views on whether this would be the correct approach and on circumstances (if any) in which a fine may be appropriate.

62. The Panel's proposals are summarised in the following table:

---

<sup>44</sup> See, for example, *Numm* [1996] 2 Cr. App. R. (S) 136

<sup>45</sup> now part of the Consolidated Criminal Practice Direction last revised on 28 March 2006; see [www.hmcourts-service.gov.uk/cms/files/consolidated\\_criminal\\_practice\\_direction\\_060328.pdf](http://www.hmcourts-service.gov.uk/cms/files/consolidated_criminal_practice_direction_060328.pdf)

## Causing Death by Careless or Inconsiderate Driving: section 2B Road Traffic Act 1988

**Maximum penalty: 5 years' imprisonment; minimum disqualification of 12 months**

**Mode of trial: Triable either way**

The following guideline applies to a first-time offender convicted after trial.

Only the most common aggravating factors specifically relevant to this offence are included in the guideline. When assessing the seriousness of any offence, the court must always refer to the full list of aggravating and mitigating factors in the Council guideline on Seriousness<sup>46</sup> as well as those set out in Annex B as being particularly relevant to this type of offending behaviour.

<b>Nature of offence</b>	<b>Sentencing range</b>
Careless or inconsiderate driving involving 3 or more aggravating factors	Starting point – 3 years' imprisonment  Sentencing range – 2 to 5 years' imprisonment
Careless or inconsiderate driving involving two aggravating factors	Starting point – 18 months' imprisonment  Sentencing range 12 months' to 2 years' imprisonment
Careless or inconsiderate driving involving no more than one aggravating factor	Starting points – 36 weeks' imprisonment  Sentencing range - Custody threshold to 12 months' imprisonment
Careless or inconsiderate driving arising from momentary inattention, with no aggravating factors	Starting point – Community Order (MEDIUM)  Sentencing range – Community Order (LOW) to (HIGH)
<b>Common aggravating factors</b>	<b>Mitigating factors</b>
<ul style="list-style-type: none"> <li>a) excessive speed</li> <li>b) driving while the driver's attention is avoidably distracted, e.g. by reading or by use of a hand-held mobile phone</li> <li>c) driving when knowingly suffering from a medical condition that significantly impairs the offender's driving skills</li> <li>d) other offences committed at the same time, such as driving without ever having held a licence, driving while disqualified, driving without insurance, driving without supervision while a learner, taking a vehicle without consent, driving a vehicle known to be stolen</li> <li>e) recent convictions for motoring offences, especially those involving bad driving or the consumption of alcohol or drugs before driving</li> <li>f) more than one person killed as a result of the offence</li> <li>g) serious injury caused to one or more others, in addition to the death(s)</li> <li>h) irresponsible behaviour such as failing to stop or falsely claiming that one of the victims caused the offence</li> </ul>	<ul style="list-style-type: none"> <li>a) a good driving record</li> <li>c) the offender's youth (where lack of driving experience has contributed to the commission of the offence)</li> <li>d) the fact that the offender was also very seriously injured as a result of the careless driving</li> <li>e) genuine shock or remorse (especially where the victim is a close friend or relative)</li> <li>f) giving direct, positive, assistance at the scene to victim(s).</li> </ul>

<sup>46</sup> *Overarching Principles: Seriousness*, published 16 December 2004; [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

**Question 8:**

***Do you agree with the Panel's proposed starting points for the offence of causing death by careless or inconsiderate driving? If not, where should the sentencing thresholds be placed and why? Is it appropriate to have a non-custodial starting point for this offence? If so, what should that be?***

## Causing Death by Driving: Unlicensed, Disqualified or Uninsured Drivers

63. Section 21 of the Road Safety Act 2006 introduces this offence by inserting into the Road Traffic Act 1988 a new section 3ZB as follows:

'A person is guilty of an offence under this section if he causes the death of another person by driving a motor vehicle on a road and, at the time when he is driving, the circumstances are such that he is committing an offence under –

- i. section 87(1) of this Act (driving otherwise than in accordance with a licence),
- ii. section 103(1)(b) of this Act (driving while disqualified), or
- iii. section 143 of this Act (using motor vehicle while uninsured or unsecured against third party risks).'

The offence is triable either way, and the maximum sentence is 2 years' imprisonment on indictment. The statute provides for a maximum of 12 months' imprisonment if sentenced in a magistrates' court but this is to be revised to 6 months until such time as the provisions increasing the sentencing powers of a magistrates' court are implemented.<sup>47</sup> Disqualification of the offender from driving and endorsement of the offender's driving licence are mandatory, and the offence carries between 3 and 11 penalty points when the court finds special reasons for not imposing disqualification.

### Seriousness

64. Sentencing for this offence is likely to prove particularly difficult because of the wide gap between the harm caused and the underlying culpability.

65. The harm is the death of the victim(s), which is harm of the most serious kind. However, the relationship of culpability to harm for this offence differs from that of the offence of *causing death by careless or inconsiderate driving*. There, it must be the careless or inconsiderate driving that causes the death. Here, the death must be caused by driving, but not by bad driving. The offender may well have

---

<sup>47</sup> Criminal Justice Act, ss.154(1) and 282; Road Safety Act 2006, s.61(5)

been complying meticulously with the Highway Code, and the death may well have been a true 'accident.' The essence of the culpability for this offence is that the offender was driving when he or she should not have been because of the absence of a licence or insurance or because of a disqualification from driving.

66. In putting forward the new provision, the Government's intention was to ensure that drivers falling into this category are held responsible for the consequences of 'the mere fact of having taken the vehicle unlawfully on to the road.' Whereas offences of *careless driving* consist of negligence, offences of *driving while unlicensed, disqualified or uninsured* are usually deliberate in the sense that the offender sets out to drive on a road in full knowledge of the prohibition. However, there is an enormous mismatch between the culpability involved when driving while prohibited from doing so and the harm caused by this offence, which results in a death being caused. The Government's argument was that the additional offence is justified by the risk posed by these drivers; this arises from the two following propositions:

(i) an unlicensed driver has not demonstrated the competence to drive and is between 3 and 9 times more likely to be involved in an accident than other drivers;

(ii) a disqualified driver will have been disqualified from driving for good road safety reasons.<sup>48</sup>

67. Thus, the culpability element of this new offence lies in the offender's decision to drive when prohibited from doing so, which puts other road users at risk. However, because the standard of driving is not called into question by this offence and may have been perfectly acceptable, the maximum penalty of 2 years' imprisonment has been set lower than that for *causing death by careless or inconsiderate driving* (5 years' imprisonment). The connection between the offender's culpability and the victim's death may, therefore, be taken to be weaker than that in the careless driving offence. For example, an unlicensed (and therefore uninsured) driver may take a car on to the road and a child may be killed as a result of running out in front of the car without warning. No charge of *causing*

---

<sup>48</sup> These reasons are extracted from Chapter 4 of the Home Office *Review* (above, n. 29)

*death by careless or inconsiderate driving* would be brought on these facts, but the driver could be convicted of *causing death by driving while unlicensed, disqualified or uninsured*. In terms of culpability, the offender set out deliberately to break the law by driving when prohibited from doing so. It can also be said that the accident would not have occurred but for the presence of the car on the road at that time and place, which stemmed from the offender's decision to break the law by driving. In this way the offender may be said to bear some responsibility for the tragic consequence, even if the degree of responsibility is lower than it would have been if the driving itself had been careless or dangerous.

### **Aggravating Factors**

68. The list of aggravating factors for this offence is shorter than the list for *causing death by careless or inconsiderate driving*, since the emphasis there is on the manner of driving whereas the emphasis here is on the decision to drive by an offender who is not permitted to drive.

#### *Factor increasing the culpability of the decision to drive*

- a) recent convictions for motoring offences, whether involving bad driving or involving an offence of the same kind that forms part of the present conviction (i.e. unlicensed, disqualified or uninsured driving);

#### *Outcome of offence*

- b) more than one person killed as a result of the offence;
- c) serious injury caused to one or more others, in addition to the death(s);

#### *Irresponsible behaviour at the time of the offence*

- d) irresponsible behaviour such as failing to stop or falsely claiming that one of the victims caused the accident;

69. Aggravating factors (b), (c) and (d) are adapted from the *Cooksley* guideline on *causing death by dangerous driving* and seem no less relevant to this offence. Factor (a) shows that the offender has had recent authoritative warnings about driving when prohibited from doing so in the form of convictions and sentences for similar offences, and in line with section 143(2) of the Criminal Justice Act 2003 (previous convictions as aggravating seriousness), they would normally aggravate this offence.

**Question 9:**

***Do you agree that the aggravating factors identified in paragraph 68 are appropriate for the offence of causing death by driving while unlicensed, disqualified or uninsured? Are there any other factors that ought to aggravate the seriousness of this offence?***

## Mitigating Factors

70. Relevant mitigating factors might be:

- a) decision to drive brought about by a genuine and proven emergency;
- b) the offender's youth (in cases where lack of driving experience has contributed to the commission of the offence);
- c) the fact that the offender was also very seriously injured in the accident;
- d) the impact of the offence on the offender, especially where the victim is a close relation or friend;
- e) giving direct, positive, assistance at the scene to the victim(s).

71. Factors (b) to (d) correspond to the mitigating factors for the offence of *causing death by careless or inconsiderate driving*. Factor (e) has been introduced following the decision in *Richardson*.<sup>49</sup> Factor (a) has been added specifically for this offence, in which the offender's decision to drive when prohibited from doing so is a crucial issue. In some cases, the extreme circumstances that led an offender to drive whilst unlicensed, disqualified or uninsured may result in a successful defence of 'duress of circumstances.' In slightly less extreme circumstances, it could be argued that the reasons for the offender's decision to drive should mitigate offence seriousness. In *DPP v Mullally*,<sup>50</sup> the Divisional Court held that the defence of necessity must be strictly controlled and that it must be proved that the actions of the defendant were reasonable in the given circumstances. In *Hasan*,<sup>51</sup> Lord Bingham said "*If it appears at trial that a defendant acted in response to a degree of coercion but in circumstances where the strict requirements of duress were not satisfied, it is always open to the judge to adjust his sentence to reflect his assessment of the defendant's true culpability.*" The Panel is minded to include mitigating factor (a) above but we are interested in your views on this issue.

---

<sup>49</sup> [2006] EWCA Crim 3186

<sup>50</sup> unreported, 6 November 2006

<sup>51</sup> [2005] UKHL 22 on appeal from [2003] EWCA Crim 191

**Question 10:**

***Do you agree that the mitigating factors identified in paragraph 73 should apply to the offence of causing death by driving while unlicensed, disqualified or uninsured? Are there other factors that might mitigate sentence?***

**Consumption of alcohol or drugs**

72. The Panel has given some thought to the generic aggravating factor *Commission of an offence while under the influence of alcohol or drugs* identified in the Council guideline *Overarching Principles: Seriousness*.<sup>52</sup> Whilst this is potentially relevant more widely to the offences discussed in this paper, it is most likely to be of significance to this particular offence and so is considered fully at this point in the paper.

73. Where an offender convicted of causing death by driving had consumed an amount of alcohol within the legal limit, it is questionable whether that should impact on the assessment of offence seriousness at all. If it should, and bearing in mind that the legal limit is set at a level deemed not to impair the driving ability of the average driver, would the relevant factor be the degree to which the consumption of alcohol may have impaired the offender's driving ability (to the extent that this can be measured in an individual case) or the simple fact of having consumed alcohol prior to driving, which has the potential to reduce driving ability and increase reaction times, but which is, as we say, not against the law? The Panel's provisional view is that this aggravating factor does not sit easily with this offence and that, in relation to alcohol, it should apply only where consumption is above the legal limit, but we are most interested to hear your views on this issue.

74. Where drugs have been consumed, diagnostic tests may be able to identify the nature of the drugs and the amounts taken. As there obviously cannot be a legal limit for an illegal substance, the Panel considers that the consumption of illegal drugs should automatically aggravate sentence. Where drugs are legal, the key question will be the degree (to the extent that this can be assessed in an

---

<sup>52</sup> page 6, published 16 December 2004, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

individual case) to which they have impaired driving ability. The fact that the attention of the user has been drawn to the effect on driving may be relevant. Again, we are very interested in your views on this issue.

**Question 11:**

*In relation to all offences of causing death by driving (other than ‘causing death by careless driving when under the influence of drink or drugs or having failed to provide a specimen for analysis without reasonable excuse’, where the consumption of alcohol or drugs is an inherent factor) what is your view of the significance of having taken drugs or having consumed a level of alcohol that is below the prescribed limit if this is not judged to have impaired the offender’s ability to drive?*

**The Sentencing Approach**

75. In paragraphs 55 to 62 above the proposed starting points for sentencing for the offence of *causing death by careless or inconsiderate driving* (maximum 5 years’ imprisonment) were set out, and they were compared with those for the more serious offences of *causing death by dangerous driving* and *causing death by careless driving under the influence of alcohol or drugs* (maximum 14 years’ imprisonment). The sentencing ranges for the offence of *causing death by driving while unlicensed, disqualified or uninsured* (maximum 2 years’ imprisonment) must necessarily be considerably lower and it is probable that many of cases will be sentenced in a magistrates’ court, particularly where there is an early guilty plea.

76. It is proposed that there should be three starting points for sentencing for this offence. It is proposed that the highest starting point should be 12 months’ imprisonment. This would be appropriate for cases where the culpability was at the high end of the scale - those in which the offender has a bad record of driving when prohibited from doing so, and where there is at least one other aggravating factor. Setting the starting point at this level will leave scope for offences with three or more aggravating factors.

77. The next proposed starting point would be 26 weeks' imprisonment. This would be appropriate for cases in which the offence is committed with a single aggravating factor. However, where that aggravating factor is a bad driving record with a history of driving while disqualified, the court may place particular weight on that factor and take a starting point above 26 weeks' imprisonment (bearing in mind that 6 months' imprisonment is the maximum sentence for an offence of driving while disqualified).

78. The lowest starting point proposed would be a community order in the highest range (as defined in the Council's guideline).<sup>53</sup> Clearly any sentence for this offence must mark the fact that death was caused as a result of the offender driving when prohibited from doing so, and a community order in the highest range amounts to a significant restriction on liberty. This lowest starting point is needed for those cases where the level of culpability is relatively low – for example a single driving expedition by someone without a record of such offences and without any aggravating factors.

79. Where an offender is convicted of driving while unlicensed or uninsured, without involvement in an accident, the sentence would probably be a fine. The sentence for a driver who causes death while so driving should be higher, but may not necessarily pass the custody threshold.

80. An offender convicted of driving whilst disqualified is more likely to receive a custodial sentence, because aggravating factor (a) (see paragraph 68) will always be present. The sentence for a driver who causes death while so driving is much more likely to cross the custody threshold.

81. As discussed in paragraph 61 above in relation to *causing death by careless driving*, there will be cases where either a community order or a short custodial sentence for this offence may attract considerable public criticism. The proposed sentencing range appears low when compared with the magnitude of the harm. The guideline we are proposing recognises that the level of sentence should be given some uplift when death is caused, since that is Parliament's intention in creating this new offence. However, it also recognises that the sentence has to be

---

<sup>53</sup> *New Sentences: Criminal Justice Act 2003*, paragraph 1.1.31, published 16 December 2004; [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

adjusted to reflect the degree of culpability in each case, ranging the various starting points within the maximum sentence of 2 years' imprisonment.

82. The Panel's proposals are summarised in the following table:

**Causing Death by Driving: Unlicensed, Disqualified or Uninsured Drivers:  
section 3ZB Road Traffic Act 1988**

**Maximum penalty: 2 years' imprisonment; minimum disqualification of 12 months**

**Mode of trial: Triable either way**

The following guideline applies to a first-time offender convicted after trial.

Only the most common aggravating factors specifically relevant to this offence are included in the guideline. When assessing the seriousness of any offence, the court must always refer to the full list of aggravating and mitigating factors in the Council guideline on Seriousness,<sup>54</sup> as well as those set out in Annex B as being particularly relevant to this type of offending behaviour.

<b>Nature of offence</b>	<b>Sentencing range</b>
The offender has a bad record of driving when prohibited from doing so, and there is at least one other aggravating factor	Starting point – 12 months' imprisonment  Sentencing range – 36 weeks' to 2 years' imprisonment
Offence involves at least one aggravating factor from the list below	Starting point – 26 weeks' imprisonment  Sentencing range – Custody threshold to 36 weeks' imprisonment
Offence with no aggravating factors	Starting point – Community Order (MEDIUM)  Sentencing range – Community Order (LOW) to (HIGH)
<b>Common aggravating factors</b>	<b>Mitigating factors</b>
a) the consumption of a significant amount of alcohol or drugs, short of the legal limit; b) recent convictions for motoring offences, whether involving bad driving or involving an offence of the same kind that forms part of the present conviction (i.e. unlicensed, disqualified or uninsured driving); c) more than one person killed as a result of the offence; d) serious injury caused to one or more others, in addition to the death(s); e) irresponsible behaviour such as failing to stop or falsely claiming that one of the victims caused the accident.	a) decision to drive brought about by some emergency; b) the offender's youth where lack of driving experience has contributed to the commission of the offence; c) the fact that the offender was also very seriously injured in the accident; d) the impact of the offence on the offender, especially where the victim is a close friend or relative e) giving direct, positive, assistance at the scene to victim(s).

<sup>54</sup> *Overarching Principles: Seriousness*, published 16 December 2004, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

**Question 12:**

***Do you agree with the Panel's proposed starting points for the offence of causing death by driving while unlicensed, disqualified or uninsured? If not, where should the sentencing thresholds be placed and why?***

Diversity and Equality

83. The Panel takes seriously its duty to consider any diversity or equality issues connected with offences or matters of sentencing principle in relation to which guidelines are being proposed. We are not currently aware of any particular issues that should be taken into account when formulating an approach to sentencing for causing death by driving offences but would invite those responding to the consultation to draw our attention to anything we might have overlooked.

**Question 13:**

***Do you have any reason to believe that the Panel's proposals are likely to impact disproportionately on certain offenders by reason of their gender, age, disability, race or ethnic group?***

## Death By Dangerous Driving

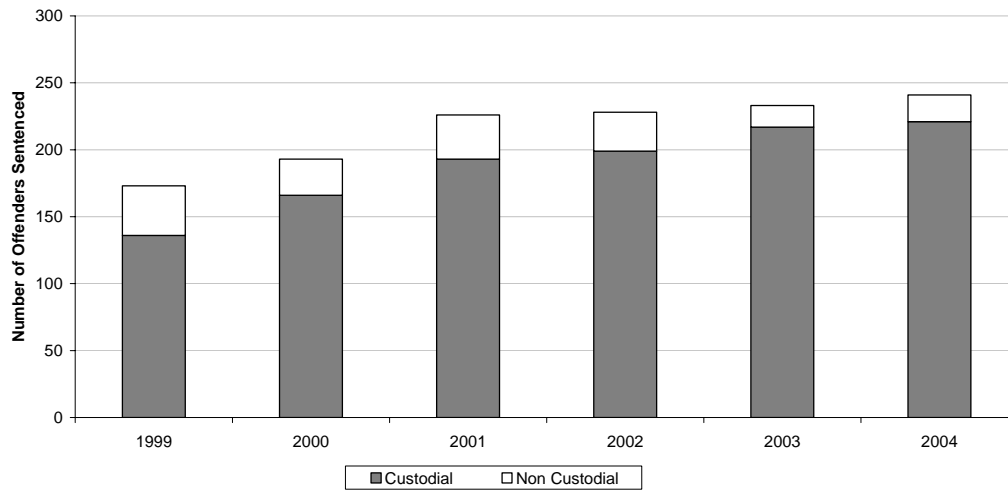
	1999	2000	2001	2002	2003	2004
Custodial Sentences	136	166	193	199	217	221
<i>of which</i>						
Up to one month	0	0	0	0	0	0
Over 1 month up to 2 months	0	1	0	1	0	0
Over 2 months up to 3 months	2	1	1	0	0	0
Over 3 months up to 4 months	2	3	0	3	0	0
Over 4 months up to 5 months	1	0	0	0	1	0
Over 5 months up to 6 months	3	8	5	5	4	3
Over 6 months up to 9 months	5	10	11	7	8	6
Over 9 months up to 12 months	19	17	18	12	8	10
Over 12 months up to 18 months	12	16	16	14	19	22
Over 18 months up to 2 years	22	16	24	32	21	24
Over 2 years up to 3 years	17	25	35	32	38	37
Over 3 years up to 4 years	25	18	27	36	47	44
Over 4 years up to 5 years	14	27	26	35	35	30
Over 5 years up to 6 years	7	10	15	10	18	21
Over 6 years up to 7 years	7	9	11	7	14	14
Over 7 years up to 8 years	0	5	3	5	2	8
Over 8 years up to 9 years	0	0	0	0	1	1
Over 9 years up to 10 years	0	0	1	0	1	1
Over 10 years	0	0	0	0	0	0
Non Custodial Sentences	37	27	33	29	16	20
Total Offenders Sentenced	173	193	226	228	233	241
Average Custody Length (months)	34.3	37.1	39.0	39.2	43.0	44.4

## Death by Careless Driving (Drink or Drugs)

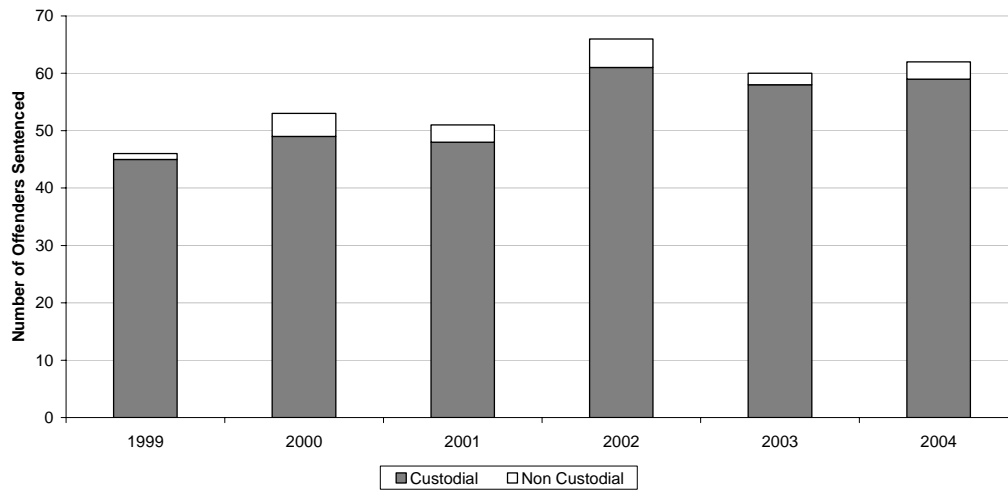
	1999	2000	2001	2002	2003	2004
Custodial Sentences	45	49	48	61	58	59
<i>of which</i>						
Up to 5 months	0	0	0	0	0	0
Over 5 months up to 6 months	1	0	0	1	1	0
Over 6 months up to 9 months	1	0	0	1	1	0
Over 9 months up to 12 months	0	3	3	0	1	2
Over 12 months up to 18 months	2	3	3	2	1	1
Over 18 months up to 2 years	3	5	5	5	3	6
Over 2 years up to 3 years	10	15	13	17	17	15
Over 3 years up to 4 years	19	15	9	24	16	19
Over 4 years up to 5 years	8	6	7	10	13	9
Over 5 years up to 6 years	1	1	6	1	3	6
Over 6 years up to 7 years	0	1	2	0	1	1
Over 7 years up to 8 years	0	0	0	0	1	0
Over 8 years	0	0	0	0	0	0
Non Custodial Sentences	1	4	3	5	2	3
Total Offenders Sentenced	46	53	51	66	60	62
Average Custody Length (months)	41.7	38.3	43.4	40.9	44.0	43.4

## Sentencing Charts

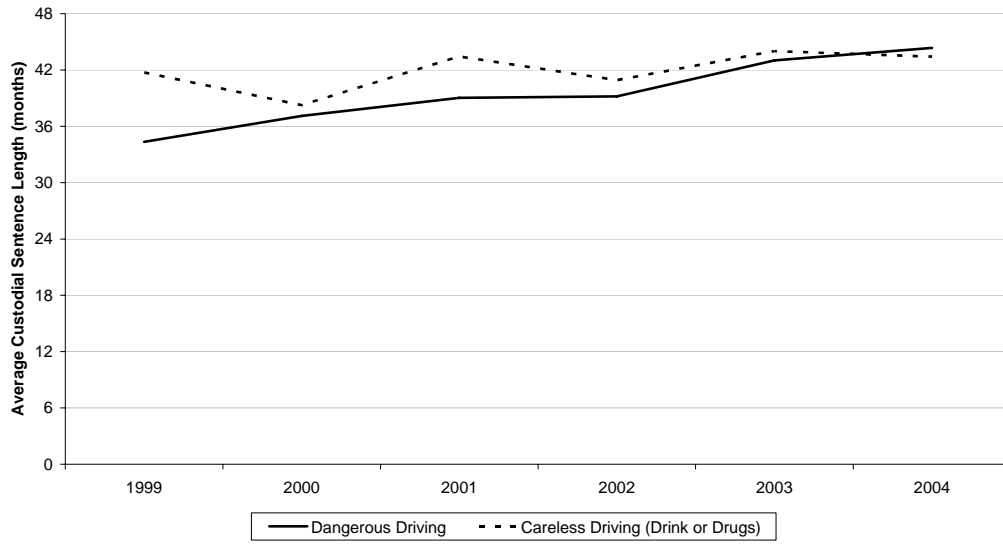
### Custodial and Non Custodial Sentences: Death by Dangerous Driving



### Custodial and Non Custodial Sentences: Death by Careless Driving (Drink or Drugs)

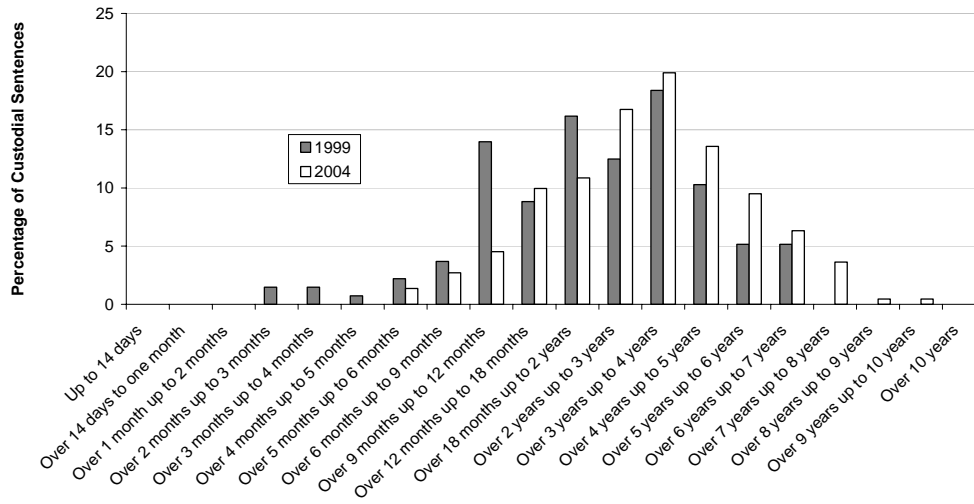


### Average Custodial Sentence Lengths

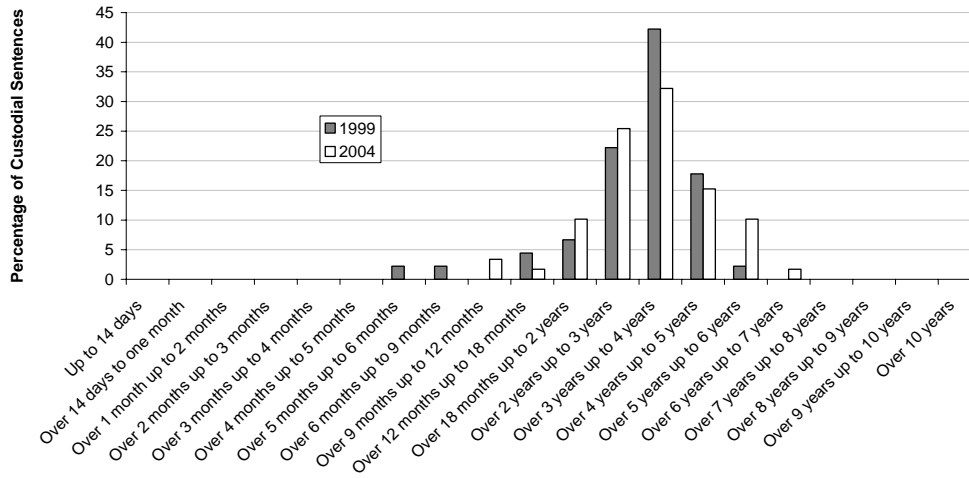


## Distribution of Custodial Sentence Lengths

### Death by Dangerous Driving



### Death by Careless Driving (Drink or Drugs)



**Aggravating and mitigating factors identified by the Court  
in *Cooksley* [2004] 1 Cr App R (S) 1**

**Aggravating factors**

**Highly culpable standard of driving at the time of the offence**

(a) the consumption of drugs (including legal medication known to cause drowsiness) or of alcohol, ranging from a couple of drinks to a 'motorised pub crawl'

(b) greatly excessive speed; racing; competitive driving against another vehicle; 'showing off'

(c) disregard of warnings from fellow passengers

(d) a prolonged, persistent and deliberate course of very bad driving

(e) aggressive driving (such as driving much too close to the vehicle in front, persistent inappropriate attempts to overtake, or cutting in after overtaking)

(f) driving while the driver's attention is avoidably distracted, for example by reading or by use of a mobile phone (especially if hand-held)

(g) driving when knowingly suffering from a medical condition that significantly impairs the offender's driving skills

(h) driving when knowingly deprived of adequate sleep or rest

(i) driving a poorly maintained or dangerously loaded vehicle, especially where this has been motivated by commercial concerns

**Driving habitually below an acceptable standard**

(j) other offences committed at the same time, such as driving without ever having held a licence; driving while disqualified; driving without insurance; driving while a learner without supervision; taking a vehicle without consent; driving a stolen vehicle

(k) previous convictions for motoring offences, particularly offences that involve bad driving or the consumption of excessive alcohol before driving

**Outcome of the offence**

(l) more than one person killed as a result of the offence (especially if the offender knowingly put more than one person at risk or the occurrence of multiple deaths was foreseeable)

(m) serious injury to one or more victims, in addition to the death(s)

### **Irresponsible behaviour at the time of the offence**

(n) behaviour at the time of the offence, such as failing to stop, falsely claiming that one of the victims was responsible for the crash, or trying to throw the victim off the bonnet of the car by swerving in order to escape

(o) causing death in the course of dangerous driving in an attempt to avoid detection or apprehension

[(p) offence committed while the offender was on bail – now a statutory aggravating factor – see paragraph 40 above]

### **Mitigating factors**

(a) a good driving record

(b) the absence of previous convictions

[(c) a timely plea of guilty – now an issue separate from mitigation – see paragraph 14 above]

(d) genuine shock or remorse (which may be greater if the victim is either a close relation or a friend)

(e) the offender's age (but only in cases where lack of driving experience has contributed to the commission of the offence)

(f) the fact that the offender has also been very seriously injured as a result of the accident caused by the dangerous driving.

## MEANING OF “RANGE”, “STARTING POINT” AND “FIRST TIME OFFENDER” WITHIN SENTENCING GUIDELINES COUNCIL GUIDELINES

A Council guideline is generally for a *first time offender* convicted after a trial. It commonly provides a *starting point* based on an assessment of the seriousness of the offence and a *range* within which sentence will normally fall for most cases.

A clear, consistent understanding of each of these terms is essential and the Council and the Sentencing Advisory Panel have agreed the following definitions.

They are set out in a format that follows the structured approach to a sentencing decision which identifies first those aspects that affect the assessment of the seriousness of the offence, then those aspects that form part of personal mitigation and, finally, any reduction for a guilty plea.

In practice, the boundaries between these stages will not always be as clear cut but the underlying principles will remain the same.

In accordance with section 174 of the Criminal Justice Act 2003, a court is obliged to “*state in open court, in ordinary language and in general terms, its reasons for deciding on the sentence passed*”.

In particular, “*where guidelines indicate that a sentence of a particular kind, or within a particular range, would normally be appropriate and the sentence is of a different kind, or is outside that range*” the court must give its reasons for imposing a sentence of a different kind or outside the range.

### Assessing the seriousness of the offence

1.
  - a) A typical Council guideline will apply to an offence that can be committed in a variety of circumstances with different levels of seriousness. It will apply to a **first time offender** who has been convicted after a trial. Within the guidelines, a **first time offender** is a person who does not have a conviction which, by virtue of section 143(2) of the Criminal Justice Act 2003, must be treated as an aggravating factor.
  - b) As an aid to consistency of approach, a guideline will describe a number of types of activity which would fall within the broad definition of the offence. These will be set out in a column generally headed “type/nature of activity”.

- c) The expected approach is for a court to identify the description that most nearly matches the particular facts of the offence for which sentence is being imposed. This will identify a **starting point** from which the sentencer can depart to reflect aggravating or mitigating factors affecting the seriousness of the *offence* (beyond those contained within the column describing the type or nature of offence activity) to reach a **provisional sentence**.
  - d) The range is the bracket into which the **provisional sentence** will normally fall after having regard to factors which aggravate or mitigate the seriousness of the offence. The sentencer is not precluded from going outside the range where the facts justify it.
2. Where the offender has previous convictions which aggravate the seriousness of the current offence, that may take the **provisional sentence** beyond the **range** given particularly where there are significant other aggravating factors present.

### **Personal Mitigation**

3. Once the **provisional sentence** has been identified by reference to those factors affecting the seriousness of the offence, the court will take into account any relevant factors of personal mitigation.

### **Reduction for guilty plea**

4. Where there has been a guilty plea, any reduction attributable to that plea will be applied to the sentence at this stage. This reduction may take the sentence below the **range** provided.

## LIST OF CONSULTEES

Copies of the consultation paper have been sent to the people and organisations listed below. They include the organisations that the Panel is required to consult as a result of the direction of the Sentencing Guidelines Council. In addition, copies have been sent to the Resident Judge at each Crown Court Centre in England and Wales.

Association of Chief Police Officers  
Association of Directors of Social Services  
Association of Women Judges  
Automobile Association  
BRAKE  
Campaign Against Drink Driving  
Centre for Crime and Justice Studies  
Commission for Racial Equality  
Council of District Judges (Magistrates' Courts)  
Council of Her Majesty's Circuit Judges  
Criminal Bar Association  
Crown Prosecution Service  
Department for Transport  
Disability Rights Commission  
Equal Opportunities Commission  
Fawcett Society  
General Council of the Bar  
HM Prison Service  
Howard League for Penal Reform  
Justice  
Justices' Clerks' Society  
Law Commission  
Law Society  
Liberty  
Magistrates' Association  
Mothers Against Dangerous Driving  
NACRO  
National Association of Probation Officers  
National Offender Management Service  
National Probation Service  
Parole Board  
Penal Affairs Consortium  
Police Federation of England and Wales  
Police Superintendents' Association  
Prison Governors' Association  
Prison Officers' Association  
Prison Reform Trust  
Probation Managers' Association  
Road Haulage Association  
Road Peace  
Royal Association for Disability and Rehabilitation  
Royal Automobile Club  
Royal Society for the Prevention of Accidents

SmartJustice  
Transport and General Workers Union  
Victims Advisory Panel  
Victim Support  
YJB (Youth Justice Board)

## SUMMARY OF QUESTIONS

### Question 1:

*We have taken the view that significant revision to the existing guideline is necessary only towards the top end of the scale of seriousness. Do you agree? If not, to what extent (if at all) should the current guidance be changed?*

### Question 2:

*If you agree that the guideline should be revised, do you agree with the starting points and sentencing ranges proposed above? If not, what changes would you make?*

### Question 3:

*Do you agree with the definitions of offending behaviour and the starting points and sentence ranges proposed for the offence of causing death by careless driving while under the influence of drink or drugs?*

### Question 4:

*Do you agree that failing to supply a specimen for analysis should fall into the most serious category?*

### Question 5:

*Do you agree that the aggravating factors listed in paragraph 51 should apply to the offence of causing death by careless or inconsiderate driving? Are there any other factors that ought to aggravate the seriousness of this offence?*

### Question 6:

*Do you agree that the mitigating factors listed in paragraph 53 should apply to the offence of causing death by careless or inconsiderate driving? Are there other factors that should mitigate the seriousness of this offence?*

### Question 7:

*Where should the custody threshold for this offence fall? Do you agree that the starting point for the lowest category of culpability should be a high community order? If not, how should the sentence be approached?*

### Question 8:

*Do you agree with the Panel's proposed starting points for the offence of causing death by careless or inconsiderate driving? If not, where should the sentencing thresholds be placed and why? Is it appropriate to have a non-custodial starting point for this offence? If so, what should that be?*

**Question 9:**

*Do you agree that the aggravating factors identified in paragraph 68 are appropriate for the offence of causing death by driving while unlicensed, disqualified or uninsured? Are there any other factors that ought to aggravate the seriousness of this offence?*

**Question 10:**

*Do you agree that the mitigating factors identified in paragraph 73 should apply to the offence of causing death by driving while unlicensed, disqualified or uninsured? Are there other factors that might mitigate sentence?*

**Question 11:**

*In relation to all offences of causing death by driving (other than ‘causing death by careless driving when under the influence of drink or drugs or having failed to provide a specimen for analysis without reasonable excuse’, where the consumption of alcohol or drugs is an inherent factor) what is your view of the significance of having taken drugs or having consumed a level of alcohol that is below the prescribed limit if this is not judged to have impaired the offender’s ability to drive?*

**Question 12:**

*Do you agree with the Panel’s proposed starting points for the offence of causing death by driving while unlicensed, disqualified or uninsured? If not, where should the sentencing thresholds be placed and why?*

**Question 13:**

*Do you have any reason to believe that the Panel’s proposals are likely to impact disproportionately on certain offenders by reason of their gender, age, disability, race or ethnic group?*