



Sentencing Guidelines Council

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# **Causing Death by Driving**

***Response to Consultation***

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**July 2008**



## Foreword

The guideline has been agreed by the Council after careful consideration of advice from the Sentencing Advisory Panel (and of the independent research that it conducted) and of responses to its consultation guideline, published simultaneously on 9 January 2008.

This document sets out the main issues raised in the responses, the conclusions of the Council and the reasoning behind the conclusions.

The Council is grateful for the comments and suggestions received which have resulted in the development of some parts of the guideline.

The definitive guideline can be found at [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk) or can be obtained from the Sentencing Guidelines Secretariat, 4<sup>th</sup> Floor, 8-10 Great George Street, London SW1P 3AE.

Chairman  
Sentencing Guidelines Council  
July 2008



1. The consultation guideline was published on 9 January 2008. Those invited to respond were:
  - Lord Chancellor and Secretary of State for Justice
  - Home Secretary
  - Attorney General
  - Justice Committee
  - Party Leaders and the Convenor of the Crossbench Peers in the House of Lords
2. A response was received from the Justice Committee (the Committee) which derived from an oral evidence session and written submissions from a number of organizations which by and large expressed support for the proposals for sentencing the offences included in the guideline.
3. The Lord Chancellor responded to the consultation, incorporating the views of the Home Secretary and Attorney General (the Ministers' response). This response also indicated broad support for the approach in the guideline.
4. Additional responses were received from:
  - HM Council of Circuit Judges, Criminal Committee
  - J Clucas
  - Sheriff F R Crowe
  - Magistrates' Association
  - CTC, National Cyclists' Organisation
  - Crown Prosecution Service
  - Dr M Wright
  - RoadPeace
  - Brake
  - Royal Society for the Prevention of Accidents
5. There was broad support in the responses for the majority of the guidance contained in the guideline. Many of the responses acknowledged the difficulty faced by the Council in terms of balancing culpability and harm given the severe consequences of the offences, and in reflecting the wide spectrum of offending covered by the four offences.
6. The main points raised by respondents are detailed below under the appropriate section heading drawn from the consultation guideline, along with the decision of the Council. The large number of unsolicited responses was of concern as it demonstrated that additional work had been undertaken by those who chose to respond, and obliged the Council to consider a wider range and number of issues than should be appropriate at this stage of the process. The purpose and scope of the consultation by the Council is limited, and the appropriate and most helpful time for wider input to the guideline development process is when the Panel publishes a consultation paper that is open to all.

## Determinants of seriousness

7. A number of comments were made in relation to the specific determinants of seriousness described on pages 4/5 of the consultation guideline and then used as examples which might typically characterise the 3 levels of seriousness for causing death by dangerous driving. Most related to matters that had been given extensive consideration by the Panel and Council and insufficient basis was provided to justify making changes to the guideline.
8. **Awareness of risk** - One respondent suggested that it should not be necessary to prove (and may be impossible in any event due to lack of witnesses) that the course of very bad driving was prolonged or persistent as many examples of very bad driving are short in terms of their duration, such as overtaking at speed in a dangerous place.

**As the purpose of the definitions was to assist a court in determining relative levels of seriousness and the actual test is defined in terms of the degree of risk, no change to the guideline was required.**

9. **Effect of Alcohol or Drugs** – a view was expressed that any driver consuming alcohol or illegal drugs is aware their driving may be impaired. The fact that a person knowingly puts the lives of others at risk should constitute a high level of seriousness, regardless of whether it can be shown the *drugs* actually impaired their ability to drive safely and drug-taking per se should be a determinant of seriousness.

**This issue was considered extensively by the Panel and included consideration of whether the consumption of alcohol or drugs by itself should affect culpability. It was recognised that the law prohibits driving following consumption only where specified limits are passed. The Council accepted the advice of the Panel and decided that no change to the guideline was required.**

10. **Inappropriate speed of vehicle** – One response invited the Council to consider whether there should be an additional element to this determinant of seriousness in relation to particular types of vehicle of '*driving at a speed beyond the capabilities of a PSV, HGV or other goods vehicle, especially when vehicles are carrying passengers or loads*'. It was submitted that there is a higher risk involved in the driving of such vehicles at speed given that their dynamic capabilities are less than those of cars.

**The Council agreed to add the additional example as proposed.**

11. **Seriously culpable behaviour - Avoidable distractions** – In two responses it was suggested that the words 'over a period of time' are not required in the explanatory text for this factor as any use of a hand held (or hands free) mobile as described is a voluntary choice and will be a gross avoidable distraction.

**The Council considered that the period of time over which a distraction occurred is used to distinguish between behaviour that falls within level 2 and level 3 for the offence of causing death by dangerous driving. This**

**approach had commanded general support and consequently, no change was required.**

12. **Victim - Vulnerable road users** – Suggestions were made that the guideline should distinguish between an apparently non-intentional failure to have regard to a vulnerable road user's safety (e.g. failing to spot a cyclist) and showing a clear disregard for their safety (e.g. driving past in an obviously dangerous manner), and that such behaviours should be represented in different levels of seriousness to those proposed. It was also proposed that failure to have proper regard to vulnerable road users should be in level 1, at least for crashes occurring in urban areas and villages.

**The three levels of seriousness for the offence of causing death by driving are determined and distinguished by the degree of risk and the Council considered that no change to the guideline was required.**

### **Mitigating factors**

13. *Ministers* were concerned that the mitigating factor "Actions of others" was not sufficiently nuanced in relation to the offence of causing death by driving unlicensed, disqualified or uninsured, since this offence, unlike the others in the guideline, required no fault in driving.

**The Council accepted that the distinction should be clear and decided to omit reference to that particular offence from the paragraph.**

### **Starting points and sentencing ranges**

14. *Ministers* expressed concern at the removal of the 4th level of seriousness for causing death by dangerous driving which was described as *brief but obvious danger arising from a serious dangerous manoeuvre*. This had been included in the Panel's advice following the approach in previous Court of Appeal guidelines.

15. However, in September 2007, provisions in the Road Safety Act 2006 were implemented which introduced a new definition for careless driving as driving that fell **below** the standard of a competent and careful driver whereas dangerous driving was that which fell **far below** that standard. As a result, the Council considered that it would be inappropriate to have a starting point for careless driving above that for an offence of dangerous driving but that a rider should be added to the third level of causing death by dangerous driving linking it to death by careless driving where it was found to be based on driving well below that required for Level 3.

**The Council determined that the description of offence cited in paragraph 14 above should come within the description of driving that "created a significant risk of danger" and, therefore, should be included in the bullet point list for driving that might characterise a level 3 offence, but that there should be no change in the number of levels or in the starting point or range.**

16. The *Justice Committee* noted that witnesses supported non-custodial starting points for some of the offences but were keen that use of community orders for these offences should be monitored and evaluated to ensure that bereaved families have confidence in the sentences.

**The Council agreed that the monitoring and evaluation proposed was desirable. There were considerable practical difficulties in accomplishing this at present but will explore ways in which it can be done.**

17. There was general support from other responses for the Council's approach in relation to the least serious forms of the two new offences; several specifically agreed that community orders may be appropriate in order to reflect the enormous spectrum of offending. One respondent proposed the option of a fine should be available at the lower ends of the sentencing ranges for the new offences noting that drivers will only be fined in injury cases where a victim is left in a permanent coma or with a much reduced quality of life.

**The Council decided not to change the guideline. Whilst a fine is not precluded, the guideline provides that such a sentence would be unusual and, since it would be outside the range prescribed, would trigger the obligation to give reasons. The prescribed maximum sentence is substantially above a fine because of the degree of harm and there has been broad consensus that a fine would not normally be an appropriate sentence in such circumstances.**

18. As regards causing death by careless/inconsiderate driving, one respondent suggested that the lowest starting point for any offence should be a custodial sentence to reflect the extreme level of harm and to provide a significant deterrent, and proposed higher starting points and ranges. Ministers and others expressed disappointment that the guideline stops the range at 3 years for the most serious level when the maximum sentence set by Parliament is 5 years. *Ministers* referred to text in the Panel's advice that set out the circumstances in which a sentence might be above the range – perhaps where charged with causing death by dangerous driving and convicted of causing death by careless driving, and suggested that this be included in the guideline.

19. Typically, Council guidelines tend not to encompass the maximum sentence in order to leave headroom for those serious offences where there is a combination of aggravating factors that suggest a sentence beyond the normal sentencing parameters. Guidelines generally set out to encompass the majority of cases likely to come before a court but recognise that there will be a small number that are substantially more or less serious for which a sentence outside the overall range will be appropriate. However, the other 3 guidelines all take the range up to the maximum.

**The Council decided that there was strong support for a non-custodial starting point at the lowest level of seriousness and that no change was required. It confirmed that the top of the range was also appropriate but that further emphasis should be given to the circumstances in which a sentence beyond that range would be appropriate.**

20. In relation to causing death by driving unlicensed etc., one respondent disagreed with the fundamental principle that those who drive while disqualified are more culpable than those who drive without a licence as both are driving when they should not be on the road. They also submitted that all starting points for this offence should be a prison sentence and the length of such a sentence should be long enough to act as a deterrent to others and reflect the extreme harm caused.

**The principle is consistent with the Panel's consultation and research findings and the relative seriousness of the offence has been extensively considered. The Council agreed that no change to the guideline was required.**

## **Ancillary orders**

### **(i) Disqualification**

21. Several responses drew attention to the importance of disqualification as part of the sentence. The Council had accepted advice from the Panel that, when ordering disqualification from driving (the purpose of which is primarily public protection), the duration of the order should allow for the length of any custodial period in order to ensure that the disqualification has the desired impact. The consultation guideline drew attention to the importance of allowing for any custodial period when fixing the length of a disqualification in order to ensure that the desired impact was achieved. Ministers requested that the text be strengthened to give greater emphasis to the approach.
22. The Justice Committee noted that witnesses raised issues in relation to current application of driving disqualifications. A response was sought by the Committee in relation to adding guidance on the length of disqualifications and the use of interim disqualifications (as in the Magistrates' Court Sentencing Guidelines in relation to other offences where disqualification is mandatory), and as to the aims of disqualification to help sentencers determine what period may be necessary to have the 'desired impact'.
23. Some responses suggested that the guideline must make it clear that a driving ban must outlast any custodial sentence imposed and, whilst the guidelines give the minimum disqualification periods required by law, they could and should also state minimum post custody disqualification periods.
24. An additional contribution (not submitted as a response to the consultation) noted that the two existing offences carry mandatory disqualification for 2 years **and** a compulsory extended re-test. The two new offences carry a minimum mandatory disqualification of 12 months but no compulsory re-test. There is a discretionary power to order an extended driving test/re-test where a person is convicted of an offence that involves obligatory endorsement (under s.36(4) Road Traffic Offenders Act 1998). It was recommended that it would be helpful to add reference to the discretionary power under s.36(4).

**The Council confirmed its earlier approach that the length of disqualification should reflect any period to be spent in custody. In order to clarify the approach, the Council agreed that further text would be**

**added regarding the calculation of the minimum length of disqualification where a custodial sentence is imposed.**

**The Council also agreed to include reference in the guideline to the discretionary power detailed above.**

**(ii) Confiscation**

25. One respondent suggested that vehicles of drivers convicted of a causing death by driving offence or driving illegally and involved in a fatal crash should be confiscated.

**The Council considered that confiscation is a general sentencing power not especially appropriate to these offences. However, it may be overlooked in the circumstances and it would be helpful to draw attention to it.**

**Miscellaneous**

26. The *Justice Committee* noted that questions were raised as to how the offences in the guideline fit with other offences which have the same culpability in terms of level of driving but do not result in death. One view was that the gap between the same kind of culpability that involves injury or no injury has widened. A response was sought concerning the extent to which that had been taken into account in developing the revised MCSG.

**The approach in this guideline and in the Magistrates' Court Sentencing Guidelines has to follow the statutory provisions which provide for the more serious offences only where death results.**

27. The *Justice Committee* also noted that there is a considerable gap between current sentencing practice and public knowledge of sentencing. It concluded that there is a need for an authoritative body to ensure greater clarity and understanding both as to what sentences are actually handed down and why. A response was sought as to whether a brief statement to this effect could be added to the guideline?

**The Council considered that this is an important point but is not suitable for inclusion within a definitive guideline.**