



AVZ Blog (August 2022) Motoring offence sentencing consultation: Careless driving and custody (Consultation closes 29th September)

Key points

- **Sentencing guidelines for motoring offences are being consulted upon – for the first time in 15 years.**
- **In general, the Sentencing Council is proposing higher starting points and sentencing ranges with more use of custodial sentences.**
- **With Causing death and serious injury by careless driving, all the ranges proposed include a custodial sentence, including those with the least culpability.**
- **Disqualification is discussed in the consultation with more information proposed to be included in sentencing guidelines. But proposed disqualification durations are only provided in the consultation with drug driving.**

AVZ call

- **Sentencing Guidelines should not rely on custodial sentences to punish careless driving, even when it has resulted in death or serious injury. Longer driving bans, not prison, should be used with those convicted of Causing serious injury or death by careless driving.**
- The level of criminality involved in careless driving does not merit custody. It is prohibitively expensive and unlikely to deter others. Nor is it consistent with the Safer System approach adopted by government.

[Sentencing Council consultation on motoring offences](#)

Causing death and serious injury by careless driving are two of the 12 offences included in the Sentencing Council's consultation on sentencing guidelines for motoring offences. This is the first consultation on motoring offences sentencing in over 15 years and is long overdue. These new guidelines will be based on culpability and harm, to make them consistent with other sentencing guidelines.

Do you think careless driving should lead to prison? We don't. Not even when it results in a serious injury or even a death. Note: a serious injury is similar to that of Grievous Bodily Harm and requires three nights hospitalisation.

No need

The statistics show no need for an increase in custodial sentences and longer sentences - not for Causing death by careless driving.

This consultation follows the government increasing the maximum custodial sentence to lifetime for Causing death by Dangerous Driving. The proposed sentencing range for this offence now starts at two years and goes up to 18 years. An increase was expected. In recent years, there have been sentences that were near the maximum sentence possible (after a guilty plea discount) and where judges said their hands were tied.

But this is not the case with Causing death by careless driving. Only 25% of those convicted of Causing death by careless driving in 2021 received a custodial sentence, with another 41% receiving a suspended sentence. See below for the lengths of custodial sentences given in recent years for this offence.

Table 1. Custodial sentences and Causing death by careless driving, England and Wales

	2017	2018	2019	2020	2021
Not imprisoned	128	135	113	83	159
Over 1 month and up to and including 2 months					1
Over 2 months and up to and including 3 months	1	1			
Over 3 months to less than 6 months	4	1	2	3	1
6 months	2	7	2	5	2
Over 6 months and up to and including 9 months	15	13	10	12	10
Over 9 months to less than 12 months	4	6	3	5	5
12 months	8	4	3	2	11
Over 12 months and up to and including 18 months	8	9	9	3	12
Over 18 months and up to and including 2 years	9	7	6	4	6
Over 2 years and up to and including 3 years	7	1	1	3	4
Over 3 years to less than 4 years					
4 Years					
Over 4 years and up to and including 5 years	1				
Total	187	184	149	120	211
Imprisoned (%)	32%	27%	24%	31%	25%

Source: [\(MoJ, 2022\)](#)

It is very rare for a driver to be given more than two years custodial sentence, even though the maximum for Causing Death by Careless Driving is five years. Even if all those convicted had made early guilty pleas and had 33% off their sentence, this still means it is rare for a driver convicted of this offence to be sentenced to more than three years in prison.

The guidelines propose raising the starting point and range for Causing Death by Careless Driving. We have called for longer disqualifications rather than prison for drivers whose lack of care results in a death or serious injury.

Causing serious injury by careless driving is a new offence so there is no data on sentences given. But the [government has estimated that 40%](#) of convictions for Causing serious injury by careless driving will result in a custodial sentence.

Not consistent with Crown Prosecution Service (CPS) policy

Very importantly, the CPS guidelines don't support the proposed approach by the Sentencing Council. See the current CPS legal guidance (AVZ bold)

[CPS Legal Guidance Road Traffic Charging](#)

Factors that are not relevant in deciding whether an act is dangerous or careless. The following factors are not relevant when deciding whether an act of driving is dangerous or careless:

- **the injury or death of one or more persons involved in a road traffic collision. Importantly, injury or death does not, by itself, turn a collision into careless driving or turn careless driving into dangerous driving.** ([CPS, 2019](#))

Yet the sentencing ranges proposed for Causing Serious Injury by Careless Driving are the same as those being proposed for Dangerous Driving.

Table 2. Starting point and range for Causing Serious Injury by Careless Driving and Dangerous Driving

	Culpability A	Culpability B	Culpability C
Harm 1	1.5 yrs (1-2 yrs)	1 yr (0.5-1.5 yr)	0.5 (High level community order-1 yr)
Harm 2	1 yr (0.5-1.5 yr)	0.5 yr (High level community order-1 yr)	High level community order (Low Level Community Order-0.5 yr).

So, this appears to AVZ what the Sentencing Council is proposing to do—punish careless driving as dangerous driving, when a death or serious injury is involved.

Purposes of sentencing

The purposes of sentencing are stated in the Sentencing Code (Section 57) and include the:

- Punishment of offenders
- Reduction of crime
- Reform and rehabilitation of offenders
- Protection of the public.

Punishment of offenders

Does careless deserve custody? When the Ministry of Justice consulted on the new charge of Causing Serious Injury by Careless Driving, the road danger reduction based organisations like RoadPeace and Cycling UK called for a maximum of six months custody, similar to that for drink and drug driving.

What qualifies as Careless driving? See below for the examples the CPS give of careless driving.

[CPS Legal Guidance Road Traffic Charging](#)

The following examples are typical of what we are likely to regard as careless driving:

- overtaking on the inside;
- driving inappropriately close to another vehicle;
- inadvertently driving through a red light;
- emerging from a side road into the path of another vehicle;
- tuning a car radio;
- when the driver was avoidably distracted by this action;
- using a hand-held mobile phone or other hand-held electronic equipment when the driver was avoidably distracted by that use (note that this is an offence itself under Regulation 110 Road Vehicles (Construction and Use) (Amendment) (No. 4) Regulations 2003). If this is the only relevant aspect of the case it is more appropriate to use the specific offence;
- selecting and lighting a cigarette or similar when the driver was avoidably distracted by that action. (CPS, 2019)

Do these actions deserve prison?

Reduction of crime (deterrence)

There is little evidence to show tougher sentences deter others. This is what the government says. Their [Police, Crime, Sentencing and Courts Act-Driving Offences Impact Assessment](#) stated *Longer sentences could act as a deterrent, though evidence for the deterrent effect of longer sentences is weak.*

This makes sense. More drivers are killed in crashes than imprisoned for causing a death. The death sentence does not deter unsafe driving.

Reform and rehabilitation of offenders

Rehabilitation and reform are only possible with long term prison sentences. The vast majority of prison sentences given to offender drivers are relatively short.

Unaffordable

And then there is the cost of prison. The annual cost of a prison place is £49,000. Additional prison places cost £250,000 in construction. These were the costs provided in [the government's impact assessment](#) produced earlier this year.

Not consistent with Safer System approach

The [Safe System approach](#), adopted by the Department for Transport (DfT), other countries and the World Health Organisation (WHO), accepts humans make errors and it is the responsibility of system providers and operators to design out danger. This is a key difference with the traditional road safety approach which focused on individual responsibility.

Disqualification

The consultation includes a section on disqualification. Compared to prison, this is a much more affordable way of keeping the public safe. But the consultation proposes only general information to be included in the guidelines on disqualification—information that is standard for each offence. It takes what AVZ argues is an outdated and inappropriate approach to disqualifications stating that:

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

Sentencers should also be mindful of the risk of any long disqualifications leading to further offences being committed, by reason of a temptation to drive unlawfully. ([Sentencing Council, 2022](#))

It is the driver, not the state, who should worry about the effect of disqualification on employment. This should be a deterrent to unsafe driving.

AVZ call

AVZ believes that careless driving, if defined properly, should rarely result in a custodial sentence. There will be borderline cases, but prison should not be the default for careless driving that has resulted in death or serious injury.

AVZ will be publishing a draft response. Please add your voices to those calling for sensible sentencing guidelines that help make our roads safer. Urge the Sentencing Council to rely on disqualification, not prison, when careless driving has caused a death or serious injury.

Consultation closes 29th September