



## Sentencing Council consultation on Motoring Offences

### Action Vision Zero response

Oct 2022

#### Key points

Our response, which is supported by Bristol Cycling Campaign and Push Bikes (the Birmingham Cycling Campaign), is intended to promote an evidence based approach to sentencing which:

- Is effective at reducing harm posed to vulnerable road users and consistent with the government's Safe System approach to transport
- Includes greater use of disqualification and other sentencing options

Our points below focus on where we believe change is most needed with the proposed guidelines.

#### Key offences

1. **Causing death by careless driving**--the proposals raise the ranges for all three culpability levels. These are not supported. At present, 25% of those convicted of this offence are imprisoned. These include those bordering dangerous driving. We want longer disqualification bans to be the norm for this offence, with prison reserved for the highest culpability. The proposed guidelines are not cost-effective, nor consistent with the DfT's Safer System approach where human error is recognised with transport operators responsible for designing out risk so that mistakes do not result in death or serious injury.
2. **Causing serious injury by careless driving**--for this new charge, the proposals have prison as the starting point in five of the six levels. We do not support these. As explained above, given the overlap between careless and dangerous, some offenders will be sent to prison. But we do not think custodial sentences should be the norm for careless driving that results in death or serious injury, or for causing injury by wanton or furious driving.
3. **Causing injury by wanton or furious driving**--this charge is rarely used but applies with crashes caused by cyclists or scooter riders, along with drivers off -road. We do not support prison being proposed as the norm for this offence.

#### Culpability levels and aggravating factors

4. **Speed**--guidelines should clarify what qualifies as "greatly in excess of speed limit" and "inappropriate for the prevailing road or weather conditions" to ensure speeding at lower but deadly levels for pedestrians and cyclists is recognised.
5. **High level culpability**--drink/drug driving, driving against medical advice should qualify as high level culpability.
6. **Vulnerable road user victims**--they are proposed to be treated as an aggravating factor. If this means less priority than in a culpability level. then we oppose it.

#### Disqualification and more

7. **Disqualification lengths**--Guidelines should recommend disqualification lengths, with longer disqualifications given for high levels of culpability and harm
8. **Exemptions**--these should require use of electronic tagging or telematics system
9. **Speed Awareness course attendance** --this should be required where speeding was a factor
10. **Vehicle confiscation and compensation**--guidelines should help support victims by greater use of compensation orders and vehicle confiscation.

## Introduction

AVZ is a community interest company dedicated to reducing traffic harm and road danger. Whilst road safety is focused on reducing road casualties, road danger reduction has a wider remit with the inappropriate and excessive use of motor vehicles which impacts our environment and public health, in addition to crashes and casualties. Road danger reduction prioritises the harm posed to others, so justice is central to it.

AVZ produces [analyses of court prosecutions](#) and sentences ([including driving bans](#)). These are intended to increase awareness and accurate understanding of enforcement and the need for greater use of disqualifications, especially with speeding and careless driving.

AVZ organises monthly meetings with roads policing campaigners working at the local and national level. Please note our response is supported by both Bristol Cycling Campaign and Push Bikes (the Birmingham Cycling Campaign). We dedicated our October 2022 meeting to a webinar on this consultation, with participation from the Sentencing Council, Magistrates Association, National Police Chiefs Council, Cycling UK, a criminal barrister and the leading academic on driving offences, and a presentation on a pilot project trialling electronic tags on disqualified drivers.

We campaign for traffic law enforcement and a justice system that holds drivers accountable for the harm they pose to others. We do not have this at present. Key gaps with our motoring offences and court system include:

- **Out of date.** At a time government is promoting active travel, active road users should be key consideration, not merely an aggravating factor.
- **Inconsistencies.** Our system is much tougher on impaired drivers than unsafe “sober” drivers. We have had [road safety campaigns](#) highlighting how using a mobile phone is more dangerous than drink driving. But the penalty is much less serious. Likewise speeding so extreme that it results in a court summons still rarely results in a ban.
- **Gaps.** There is no summary charge for unsafe but sober (unimpaired) driving that results in a disqualification. Drink/drug drivers are banned with only 2-3% imprisoned. With sober unsafe drivers, it requires a dangerous driving conviction before disqualification is mandatory. But this is an either way offence with some 45% going to prison. It should not take a jury trial or a high risk of prison to get a speeding driver banned. .
- **Overlaps.** As discussed in our response, there is much overlap between the charging standards and sentencing levels for careless and dangerous driving. Yet there is a big gap between how these are sentenced, with very few careless drivers disqualified (6%).
- **Unfair treatment of victims.** The prosecution has no right to appeal with either-way cases, including Causing death by careless driving, although the defence can appeal the conviction or sentence. A hospitalisation of three days is required before an injury is mentioned in a motoring offence.
- **Prison focused.** As seen by this consultation, there is little discussion of alternative sentences. Yet disqualification is the key sanction for driving offences for road safety professionals and road danger reduction campaigners.

For more information on how the justice system discriminates against road crime, see examples included in this [summary](#).

## Sentencing Council consultation

This consultation was prompted by the introduction of maximum lifetime custodial sentences for Causing death by dangerous driving and Causing death by careless driving under the influence. It also offered the opportunity to produce guidelines for 10 other offences, including the new Causing serious injury by careless driving.

### Evidence of sentencing on re-offending

The consultation focused on the use of custodial sentences. But the Sentencing Council has also just published a literature review it commissioned. [The Effectiveness of Sentencing Options on Reoffending](#) concluded that the evidence did not show severe sentences had any significant deterrent effects on either the offender or the general population. Short custodial sentences (under 12 months) were found to be less effective than other sentencing options.

The intent of this consultation is stated as to encourage consistency of sentencing. In light of the lack of evidence on custodial sentences, it should also provide an opportunity to reconsider the use of short custodial sentences.

### AVZ response to consultation

Our response is intended to promote an evidence based approach to sentencing which:

- Is effective at reducing harm posed to vulnerable road users and consistent with the government's Safe System approach to transport
- Includes greater use of disqualification and other sentencing options

In addition to organising the webinar, AVZ has produced two blogs on this consultation

- [Sentencing guidelines on Causing death by driving: How Scotland differs from England and Wales](#) (Oct 2022)
- [Motoring offence sentencing consultation: Careless driving and custody](#) (Aug 2022)

We have also produced a summary of the literature review referenced above.

See Table 1 below for a summary of the outcomes and sentences given for the 12 offences covered in this consultation. Note the much greater use of disqualification than custody.

Table 1: Motoring offences sentencing outcomes, England and Wales (2021)

|   | Total convictions | % convicted at Magistrates Court | % Acquitted at Crown Court | Immediate custody | Suspended sentence | Community sentence | Fine | Disqualified |
|---|-------------------|----------------------------------|----------------------------|-------------------|--------------------|--------------------|------|--------------|
| Causing death by dangerous driving  | 155               | n/a                              | 8%                         | 93%               | 5%                 | 1%                 | 0%   | 100%         |
| Causing death by careless or inconsiderate driving  | 207               | 35%                              | 24%                        | 25%               | 41%                | 31%                | 2%   | 86%          |
| Causing death by careless driving under influence of drink or drugs                                 | 15                | n/a                              | 0%                         | 100%              | 0%                 | 0%                 | 0%   | 100%         |
| Causing serious injury by dangerous driving   | 385               | 26%                              | 5%                         | 65%               | 26%                | 3%                 | 6%   | 87%          |
| Causing bodily harm by furious driving  | 6                 | 0%                               | 25%                        | 33%               | 33%                | 33%                | 0%   | 17%          |
| Dangerous driving   | 4013              | 68%                              | 3%                         | 40%               | 36%                | 18%                | 4%   | 100%         |
| Causing death by driving whilst disqualified  | 1                 | 0%                               | 0%                         | 100%              | 0%                 | 0%                 | 0%   | 100%         |
| Cause serious injury by driving whilst disqualified   | 9                 | 56%                              | 11%                        | 78%               | 22%                | 0%                 | 0%   | 56%          |
| Causing death by driving unlicensed or uninsured drivers  | 4                 | 50%                              | 25%                        | 25%               | 75%                | 0%                 | 0%   | 100%         |
| Drive a motor vehicle with the proportion of specified controlled drug above specified limit        | 20139             | 100%                             | n/a                        | 1%                | 2%                 | 10%                | 85%  | 96%          |
| In charge of a motor vehicle with the proportion of specified controlled drug above specified limit | 496               | 100%                             | n/a                        | 1%                | 1%                 | 4%                 | 91%  | 32%          |

Source: MoJ, 2022

Our response includes the latest sentencing data from 2021, including disqualification lengths. Our responses to the specific questions in the consultation follow.

## Causing death by dangerous driving

As shown below, Causing death by dangerous driving almost always results in a custodial sentence and disqualification is certain. The average custodial sentence length (2021) is five years and two months.

Table 2: Causing death by dangerous driving, England and Wales (E&W)

|  | 2017 | 2018 | 2019 | 2020 | 2021 |
|--|------|------|------|------|------|
| Sentenced                                  | 191  | 157  | 174  | 154  | 153  |
| Imprisoned                                 | 174  | 147  | 164  | 144  | 143  |
| Percent imprisoned                         | 91%  | 94%  | 94%  | 94%  | 93%  |
| Average custodial sentence length (months) | 56.9 | 63.6 | 70.1 | 54.6 | 62.3 |
| Disqualified                               | 191  | 157  | 173  | 154  | 153  |
| Percent disqualified                       | 100% | 100% | 99%  | 100% | 100% |

Source: MoJ (2022)

The government's impact assessment of the recent changes to motoring offences, which included a maximum lifetime custodial sentence for Causing death by dangerous driving and Causing death by careless driving under the influence of drink or drugs, stated:

*Increasing the maximum penalty for this offence may contribute to providing justice for victims and their families and increased levels of public confidence in the justice system. Longer sentences could act as a deterrent, though evidence for the deterrent effect of longer sentences is weak.*

[Ministry of Justice \(2022\), Police, Crime, Sentencing and Courts Act-Driving Offences Impact Assessment.](#)

### **Question 1: do you agree with the proposed culpability factors for this and other guidelines involving dangerous driving? If not, please tell us why.**

There is much overlap with the proposed culpability factors for careless driving. We understand that there will be overlap but urge that greater clarification, including examples, is given. This problem is aggravated by the overlap with the [CPS](#) charging standards.

Key areas requiring greater clarity include speeding. Speed "greatly in excess of speed limit" qualifies as high culpability "inappropriate for the prevailing road or weather conditions" is medium culpability. "Greatly in excess of speed limit" should be defined as speeds which warrant court prosecution (i.e. 50 in a 30mph speed limit).

A few miles above the speed limit can mean the difference between a lifelong disability or death to someone walking or cycling. The sentencing guidelines should reflect this, and support the government's promotion of active travel, as seen in the Highway Code's road user hierarchy. We also note the mention of distraction but no reference to mobile phones or in car technology. We believe this should be added. In addition, impairment, medical fitness, lack of sleep and vehicle condition factors should all be considered for high culpability level. This is especially needed where the offender has been advised not to drive for medical reasons. We appreciate that many of these are in the lesser culpability range at present and the Sentencing Council is proposing to move them into medium culpability. But we think they merit the high culpability level.

We do not think having vulnerable road user victim as an aggravating factor gives active road users sufficient protection. The recent changes to the Highway Code placing more responsibility on drivers and government is keen to promote active travel. The guidelines should reflect this.

**Question 2: do you agree with this approach to harm for this and other causing death guidelines? If not, please tell us why.**

We agree.

**Question 3: do you agree with these sentence levels? If not, please tell us why.**

We agree with the proposed sentence levels. We note these increase the starting points and sentencing ranges for the more serious Levels 2 and 3, but does not affect Level 1. There have been cases in recent years which would have received higher sentences, if possible. But we agree that this should not mean that the less culpable cases receive a longer sentence.

**Question 4: do you agree with the approach to multiple deaths for this and other causing death guidelines? If not please tell us why.**

We note that additional serious injuries caused are treated as an aggravating factor and a different approach is used for multiple deaths. The proposed treatment of multiple deaths may result in a sentence higher than the maximum range proposed. We think this should be possible rather than mandated. There might be cases where the risk was obvious, i.e. several passengers, and the driver should be held to higher account in these cases.

**Question 5: do you agree with these aggravating and mitigating factors? If not, please tell us why.**

Re aggravating factors: Failing to Stop should be prosecuted and convicted as a separate and additional offence, not an aggravating factor. But if not prosecuted separately, then it should be an aggravating factor. And as mentioned previously, we do not think treating vulnerable road users as an aggravating factor is appropriate.

Re mitigating factors: Impeccable driving record should not be included. This is covered in the first "No previous convictions or no relevant/recent convictions".

Remorse is in the interest of the offender to claim. Any evidence of the opposite, including on social media or with further offending, should negate any such claim. It is worth noting that guilty pleas result in a sentence discount of between 10-33%. Giving an additional discount for remorse seems to be double-counting. Voluntary (and early) surrender of driving licence should be promoted as a good indication of remorse.

**Question 6: do you have any further comments on the proposed guideline for causing death by dangerous driving?**

Disqualification ranges should be stated with longer periods for the higher culpability levels. Vehicle confiscation should also be addressed. Please note our additional comments in the section on disqualification.

Exemptions should only be given on the requirement that electronic tagging or another telematics based system is used. And attendance on a speed awareness course should be required before a licence is returned in convictions where speeding was a factor.

## Causing death by careless driving

This offence has the most convictions of the causing death by driving offences. Less than one-third of those convicted are sent to prison.

Table 3: Causing death by careless driving, E&W

|  | 2017 | 2018 | 2019 | 2020 | 2021 |
|--|------|------|------|------|------|
| Sentenced                              | 187  | 184  | 149  | 120  | 211  |
| Imprisoned                             | 59   | 49   | 36   | 37   | 52   |
| Percent imprisoned                     | 32%  | 27%  | 24%  | 31%  | 25%  |
| Average custodial sentence length (mo) | 15.1 | 12.0 | 13.2 | 11.8 | 14.3 |
| Disqualified                           | 161  | 162  | 135  | 103  | 181  |
| Percent disqualified                   | 86%  | 88%  | 91%  | 86%  | 86%  |

Source: MoJ (2022)

### **Question 7: do you agree with the proposed culpability factors for careless driving offences? If not, please tell us why.**

As noted previously, there is too much overlap with the proposed culpability factors for dangerous and careless driving. Cases start out as Causing Death by Dangerous Driving but are then convicted as Causing Death by Careless Driving. Our other comments re culpability levels and aggravating factors hold.

### **Question 8: do you agree with these sentence levels? If not, please tell us why.**

We do not agree. We believe they are too high. The proposed levels all have custody as a starting point with a community order only included in the range proposed for the least culpability level. As shown above, custodial sentences are rarely used with causing death by careless driving convictions. Only one in four drivers convicted of this offence went to prison in 2021.

We have argued that careless driving includes human errors and lapses. The Safer System approach, adopted by the DfT and transport authorities across the country, acknowledges people make mistakes and aims to design a transport system so that these mistakes do not prove fatal or serious. We do not think it fair to send drivers to prison because transport operators, politicians and policy makers have allowed excess risk in our system. Leeds has just launched its new road safety strategy which includes a section on the Safe System as shown below.

#### [Leeds Safe Roads Vision Zero 2040](#)

##### **Safe System approach**

Traditional approaches to road safety assume that people can be taught, persuaded or compelled to behave safely. A Safe System approach is different. It accepts that while roadusers should behave safely and legally, people do sometimes make mistakes, and that some mistakes lead to crashes. This premise helps us to see more clearly what needs to be done:

- a) prevent mistakes happening in the first place
- b) ensure that any mistakes that do happen don't end in fatal or serious injury.

Responsibility for road safety thus extends to anyone who plays a part in shaping the wider traffic environment, as well as the road-users themselves. Those who plan, design, decide, invest, legislate, prioritise, build, maintain, enforce, educate and so on are responsible for ensuring that roads are safe for everyone to use. Acting together, they can reduce traffic risk and create a safe, holistic mobility system that is forgiving of human error and eliminates serious harm.

Liverpool City Region has also just launched a new road safety strategy. It too includes a section explaining the principles underpinning the Safe System (pg 14).

**Question 9: do you have any further comments on the proposed guideline for causing death by careless driving?**

Disqualification is mandatory yet between 14% of drivers convicted of this offence in 2021 were not banned. Reasons for exemptions should be recorded and published. As before, we believe that guidance should be given on recommended disqualification periods, with longer bans for the higher culpability levels.

Exemptions should only be given on the requirement that electronic tagging or another telematics based system is used. And attendance on a speed awareness course should be required before a licence is returned in convictions where speeding was a factor.

## Causing death by careless driving when under the influence of drink or drugs

This offence is not used very often –not compared to Causing death by dangerous driving or Causing death by careless driving.

Table 4: Causing death by careless driving when under the influence of drink or drugs, E&W

|  | 2017 | 2018 | 2019 | 2020 | 2021 |
|--|------|------|------|------|------|
| Sentenced                                  | 22   | 21   | 19   | 19   | 15   |
| Imprisoned                                 | 20   | 20   | 19   | 17   | 15   |
| Percent imprisoned                         | 91%  | 95%  | 100% | 89%  | 100% |
| Average custodial sentence length (months) | 67.4 | 61.7 | 53.9 | 54.3 | 55.3 |
| Disqualified                               | 22   | 21   | 19   | 19   | 15   |
| Percent disqualified                       | 100% | 100% | 100% | 100% | 100% |

Source: MoJ (2022)

### Question 10: do you agree with the proposed sentencing levels? If not, please tell us why.

We agree with the approach suggested. We support keeping the sentencing table similar to that in the existing guideline. There has not been the same increase in long custodial sentences for this offence as there has been with Causing Death by Dangerous Driving.

We welcome treating any deliberate refusal to provide a specimen for analysis as the most serious level of culpability. We also support multiple drugs and or drink and drugs combined also qualifying as the most serious culpability.

### Question 11: do you have any further comments on the proposed guideline for causing death by careless driving whilst under the influence of drink or drugs?

As before, we believe that guidance should be given on recommended disqualification periods, with longer bans for the higher culpability levels. Vehicle confiscation and compensation should also be addressed.

Ban exemptions are very rarely given for this offence. But any that are should be given on the requirement that electronic tagging or another telematics based system is used. And attendance on a speed awareness course should be required before a licence is returned in convictions where speeding was a factor.

Whilst it is good to see deliberate refusal to provide a specimen being treated more seriously, this is what drivers who fail to remain at the scene are doing. Increasing the maximum sentence levels for this offence widens the gap between the sentence with Failing to Stop (six months) and provides an incentive for drink drivers to flee a fatal or potentially fatal crash scene. This justice gap should have been closed before this offence had its maximum custodial sentence increased.



## Causing serious injury by dangerous driving

Two thirds of those convicted of this offence are imprisoned. Its average custodial sentence is two years and four months, not quite half the maximum custodial sentence (5 years) for this offence.

Table 5: Causing serious injury by dangerous driving, E&W

|  | 2017 | 2018 | 2019 | 2020 | 2021 |
|--|------|------|------|------|------|
| Sentenced                                  | 359  | 356  | 357  | 306  | 419  |
| Imprisoned                                 | 248  | 236  | 246  | 206  | 273  |
| Percent imprisoned                         | 69%  | 66%  | 69%  | 67%  | 65%  |
| Average custodial sentence length (months) | 25.9 | 26.4 | 26.7 | 26.2 | 28.3 |
| Disqualified                               | 306  | 304  | 305  | 268  | 363  |
| Percent disqualified                       | 85%  | 85%  | 85%  | 88%  | 87%  |

Source: MoJ (2022)

### **Question 12: do you agree with the proposed harm factors for offences involving serious injury? If not, please tell us why.**

We support the use of two harm levels. But it would be useful if Category 1 could be aligned with the Maximum Abbreviated Injury Scale and/or the CRASH severity scoring used by the hospitals and DfT.

### **Question 13: do you agree with the proposed sentencing levels? If not, please tell us why.**

We do not agree with the proposed sentencing levels. Custody is the only option proposed. We think community sentences should be considered for the lower culpabilities. See the table above which shows that an average of one in three drivers convicted of Causing serious injury by dangerous driving has not been given a custodial sentence.

### **Question 14: do you have any further comments on the proposed guideline for causing serious injury by dangerous driving?**

Disqualification should be mandatory for this offence yet 13-15% are escaping a ban. This is a cause for concern and should be addressed.

As before, we believe that guidance should be given on recommended disqualification periods, with longer bans for the higher culpability levels. We are concerned that some offenders are not being banned. Vehicle confiscation and compensation should also be addressed.

Exemptions should only be given on the requirement that electronic tagging or another telematics based system is used. And attendance on a speed awareness course should be required before a licence is returned in convictions where speeding was a factor.

## Causing serious injury by careless driving

This new charge is an either-way offence which means the accused or the magistrates can request it be heard in the Crown Court. It has a maximum custodial sentence of two years and a minimum disqualification period of one year.

The MoJ has predicted this charge will result in the following annual outcomes:

- 1150 convictions
- 400 imprisoned with an average custodial sentence length of 5.6 months
- 350 suspended sentences
- 350 community sentences, and
- 50 fines.

The cost over ten years is estimated at £107 million, including

- Average annual cost per prisoner place of £49k
- One-off construction cost of new prison place at £250,000

[Source: Ministry of Justice \(2022\), Police, Crime, Sentencing and Courts Act-Driving Offences Impact Assessment.](#)

### **Question 15: do you agree with the proposed sentence levels? If not, please tell us why.**

We do not. As noted in [our blog](#), the proposed sentence levels are the same as for Dangerous Driving. We do not think this is fair. We agree with the [CPS](#) stating that:

*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)*

We understand that there will be overlap between dangerous driving and careless driving. This means the top level of culpability for Harm 1 should include the option of prison.

When the Ministry of Justice consulted on this charge in 2016/17, there were calls from road danger reduction campaign groups (inc. Cycling UK and RoadPeace) for the maximum custodial sentence to be six months, similar to that with drink and drug driving. AVZ thinks longer custodial sentences should be possible in cases where the serious injury was caused by a careless driver under the influence of drink or drugs.

### **Question 16: do you have any further comments on the proposed guideline for causing serious injury by careless driving?**

As before, we believe that guidance should be given on recommended disqualification periods, with longer bans for the higher culpability levels. Vehicle confiscation and compensation should also be addressed.

Exemptions should only be given on the requirement that electronic tagging or another telematics based system is used. And attendance on a speed awareness course should be required before a licence is returned in convictions where speeding was a factor.

## Causing injury by wanton or furious driving

As shown below, and acknowledged in the consultation, this charge, which applies to injury and death caused by off road driving, cycling and scooting (including electric), is very rarely used.

Table 6: Causing bodily harm by furious driving, E&W

|                      | 2017 | 2018 | 2019 | 2020 | 2021 |
|----------------------|------|------|------|------|------|
| Sentenced            | 5    | 4    | 4    | 11   | 6    |
| Imprisoned           | 2    | 1    | 2    | 4    | 2    |
| Percent imprisoned   | 40%  | 25%  | 50%  | 36%  | 33%  |
| Disqualified         | 1    | 2    | 2    | 2    | 1    |
| Percent disqualified | 20%  | 50%  | 50%  | 18%  | 17%  |

Source: MoJ (2022)

**Question 17: do you agree with the proposed culpability elements? If not, please tell us why.**

We think where driving/riding on the pavement should be specified in the culpability levels. . We also believe the higher level of culpability should be reserved for driving of four wheeled motor vehicles which pose so much greater risk due to their speed and weight than do cyclists or e-scooters.

**Question 18: do you agree with the proposed harm elements? If not, please tell us why.**

Yes. We note that this offence has a wider harm range as it includes all injuries, and is not restricted to serious injury or death.

**Question 19: do you agree with the proposed sentence levels? If not, please tell us why.**

The consultation explains that the guidelines proposed for this charge are equivalent to that proposed for Causing serious injury by careless driving. We have already noted that we do not support the proposed guidelines for Causing serious injury by careless driving as they equate to those of Dangerous driving. Likewise, we do not support prison being the starting point for all but one of the sentencing ranges for this offence. We expect prison to be reserved for the greatest harm and highest culpability. The harm posed by people cycling or scooting is less than that of people driving and this should be reflected in the sentencing ranges.

**Question 20: do you have any further comments on the proposed guideline for causing injury by wanton or furious driving?**

This offence is used mainly for cyclists causing serious injury or death by unsafe cycling. We believe licence disqualifications can also be imposed for this offence (assuming the cyclist has a licence) and that they should be. Our other comments re disqualification also apply here.

## Dangerous driving

There are an average of 13 convictions a day of this offence across the county. Less than half are sent to prison whilst disqualification is 100% in recent years. In 2021, as shown in Table 13, the number of lifetime driving bans given for Dangerous Driving soared to 159.

Table 7: Dangerous Driving, E&W

|  | 2017  | 2018  | 2019  | 2020  | 2021  |
|--|-------|-------|-------|-------|-------|
| Sentenced                              | 3,829 | 3,638 | 3,894 | 3,464 | 4,578 |
| Imprisoned                             | 1,771 | 1,695 | 1,901 | 1,620 | 1,822 |
| Percent imprisoned                     | 46%   | 47%   | 49%   | 47%   | 40%   |
| Average custodial sentence length (mo) | 9.5   | 9.9   | 10.2  | 10.2  | 10.0  |
| Disqualified                           | 3,826 | 3,638 | 3,890 | 3,459 | 4,562 |
| Percent disqualified                   | 100%  | 100%  | 100%  | 100%  | 100%  |

Source: MoJ (2022)

**Question 21: do you agree with the proposed harm factors? If not, please tell us why.**

We agree with the proposed two categories

**Question 22: do you agree with the proposed sentence levels? If not, please tell us why.**

We agree. We note the levels are based on those in the existing Magistrates Courts guidelines, and do not include any increase in the use of custody or longer prison sentences. In 2021, only 40% of those convicted for Dangerous Driving were sent to prison, and it has not been over 50% in the last five years.

**Question 23: do you have any further comments on the proposed guideline for dangerous driving?**

As before, we believe that guidance should be given on recommended disqualification periods, with longer bans for the higher culpability levels. Vehicle confiscation and compensation should also be addressed.

Exemptions should only be given on the requirement that electronic tagging or another telematics based system is used. And attendance on a speed awareness course should be required before a licence is returned in convictions where speeding was a factor.

## Causing death by driving: disqualified drivers

This offence was introduced in the last few years but it is very rarely used.

Table 8: Causing death by driving whilst disqualified, E&W

|                      | 2017 | 2018 | 2019 | 2020 | 2021 |
|----------------------|------|------|------|------|------|
| Sentenced            |      |      | 2    | 1    | 1    |
| Imprisoned           |      |      | 2    | 1    | 1    |
| Percent imprisoned   |      |      | 100% | 100% | 100% |
| Disqualified         |      |      | 2    | 1    | 1    |
| Percent disqualified |      |      | 100% | 100% | 100% |

Source: MoJ (2022)

**Question 24: do you agree with the proposed culpability factors? If not, please tell us why.**

We believe that High culpability should include cases where there is evidence that disqualified driving is a repeat/regular activity.

**Question 25: do you agree with the proposed sentence levels? If not, please tell us why.**

Please see our comment below.

**Question 26: do you agree with the proposed aggravating and mitigating factors? If not, please tell us why.**

We agree.

**Question 27: do you have any further comments on the proposed guideline for causing death by driving whilst disqualified?**

As before, we believe that guidance should be given on recommended disqualification periods, with longer bans for the higher culpability levels. Vehicle confiscation should also be addressed.

Exemptions should only be given on the requirement that electronic tagging or another telematics based system is used. And attendance on a speed awareness course should be required before a licence is returned in convictions where speeding was a factor.

## Causing serious injury by driving: disqualified drivers

This offence is another one barely used.

Table 9: Cause serious injury by driving whilst disqualified, E&W

|  | 2017 | 2018 | 2019 | 2020 | 2021 |
|--|------|------|------|------|------|
| Sentenced                                  | 3    | 4    | 5    | 7    | 9    |
| Imprisoned                                 | 3    | 3    | 5    | 6    | 7    |
| Percent imprisoned                         | 100% | 75%  | 100% | 86%  | 78%  |
| Average custodial sentence length (months) | 0.0  | 0.0  | 23.8 | 18.7 | 15.4 |
| Disqualified                               | 2    | 4    | 4    | 7    | 5    |
| Percent disqualified                       | 67%  | 100% | 80%  | 100% | 56%  |

Source: MoJ (2022)

### Question 28: do you agree with the proposed sentence levels? If not, please tell us why.

As with the offence of Causing death by driving: disqualified drivers, this offence is also very rarely used.

We note the Sentencing Council is proposing sentence levels for the medium culpability starting points and ranges with causing serious injury by dangerous driving.

### Question 29: do you have any further comments on the proposed guideline for causing serious injury by driving whilst disqualified?

As before, we believe that guidance should be given on recommended disqualification periods, with longer bans for the higher culpability levels. Vehicle confiscation should also be addressed.

Exemptions should only be given on the requirement that electronic tagging or another telematics based system is used. And attendance on a speed awareness course should be required before a licence is returned in convictions where speeding was a factor.

## Causing death by driving: unlicensed or uninsured drivers

Table 10: Causing death by driving: unlicensed or uninsured drivers, E&W

|                      | 2017 | 2018 | 2019 | 2020 | 2021 |
|----------------------|------|------|------|------|------|
| Sentenced            | 3    | 8    | 6    | 2    | 4    |
| Imprisoned           | 2    | 3    | 3    |      | 1    |
| Percent imprisoned   | 67%  | 38%  | 50%  | 0%   | 25%  |
| Disqualified         | 3    | 5    | 6    | 2    | 4    |
| Percent disqualified | 100% | 63%  | 100% | 100% | 100% |

Source: MoJ (2022)—Check ACSL

### **Question 30: do you agree with the proposed culpability factors? If not, please tell us why.**

We note that unlicensed drivers are treated more leniently than disqualified drivers. We understand disqualified drivers are often prolific criminal offenders/

### **Question 31: do you agree with the proposed sentence levels? If not, please tell us why.**

We note very few drivers are convicted of this offence. And in 2021, only one of the four convicted were imprisoned.

### **Question 32: do you have any further comments on the proposed guideline for causing death by driving whilst unlicensed or uninsured?**

As before, we believe that guidance should be given on recommended disqualification periods, with longer bans for the higher culpability levels. Vehicle confiscation and compensation should also be addressed.

Exemptions should only be given on the requirement that electronic tagging or another telematics based system is used. And attendance on a speed awareness course should be required before a licence is returned in convictions where speeding was a factor.

## Driving or attempting to drive with a specified drug above the specified limit

We note the rise in the numbers sentenced for this offence with only 1% being given a custodial sentence in the last three years. Disqualification rates have been over 95% for the past three years.

Table 11: Drive a motor vehicle with the proportion of specified controlled drug above specified limit, E&W

|  | 2017  | 2018  | 2019   | 2020   | 2021   |
|--|-------|-------|--------|--------|--------|
| Sentenced                              | 5,144 | 9,728 | 11,664 | 13,389 | 20,269 |
| Imprisoned                             | 96    | 158   | 159    | 161    | 215    |
| Percent imprisoned                     | 2%    | 2%    | 1%     | 1%     | 1%     |
| Average custodial sentence length (mo) | 2.4   | 2.1   | 1.9    | 1.9    | 2.2    |
| Disqualified                           | 61    | 5,598 | 11,247 | 12,938 | 19,514 |
| Percent disqualified                   | 1%    | 58%   | 96%    | 97%    | 96%    |

Source: MoJ (2022)

**Question 34: do you agree with the proposed culpability factors? If not please tell us why.**

We agree.

**Question 35: do you agree with the proposed harm factors? If not please tell us why.**

We agree.

**Question 36: do you agree with the proposed sentence levels? If not please tell us why.**

We agree.

**Question 37: do you agree with the proposed aggravating and mitigating factors? If not please tell us why.**

The aggravating factors include “involved in accident”. This should refer to crash or collision as accident implies unfortunate if not inevitable. Given the guidelines are for cases where criminal culpability has been proven, this language should be updated. It has been over 15 years since the CPS adopted the policy of referring to crash or collision, not accident. The DfT has recently announced it too will refer to collision and not accident.

**Question 38: do you have any further comments on the proposed guideline for driving or attempting to drive with a specified drug above the specified limit?**

We welcome the inclusion of disqualification lengths in the guidelines but believe there is public support for longer bans for drug drivers (and drink drivers).



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

The number of drivers sentenced for this offence almost doubled in the last year. But the rate of imprisonment remains extremely low with 1% imprisoned. Disqualification is not mandatory and about one in three convictions result in a ban. This is much higher than the rate of speeding drivers or careless drivers banned.

Table 12: In charge of a motor vehicle with the proportion of specified controlled drug above specified limit, E&W

|                      | 2017 | 2018 | 2019 | 2020 | 2021 |
|----------------------|------|------|------|------|------|
| Sentenced            | 177  | 193  | 220  | 269  | 496  |
| Imprisoned           | 1    | 3    | 2    | 2    | 3    |
| Percent imprisoned   | 1%   | 2%   | 1%   | 1%   | 1%   |
| Disqualified         | 43   | 64   | 74   | 86   | 161  |
| Percent disqualified | 24%  | 33%  | 34%  | 32%  | 32%  |

Source: MoJ (2022)

**Question 39: do you agree with the proposed culpability factors? If not please tell us why.**

We agree.

**Question 40: do you agree with the proposed harm factors? If not please tell us why.**

We agree.

**Question 41: do you agree with the proposed sentence levels? If not please tell us why.**

We agree.

**Question 42: do you agree with the proposed aggravating and mitigating factors? If not please tell us why.**

We agree.

**Question 43: do you have any further comments on the proposed guideline for being in charge of a motor vehicle with a specified drug above the specified limit?**

No further comment.

## Disqualification

**Question 44: do you agree with the proposed guidance on the approach to disqualification? If not please tell us why.**

We welcome the inclusion of disqualification and the recognition that it is a sentence. This is a step forward as it has previously been seen as an “ancillary penalty”.

But in practice, this is a second class sentence with much less information given on its use. Only in 2021, did the MoJ begin providing driving ban data by court service—something they have done for other sentences for many years.

Table 13: Disqualification lengths, E&W (2021)

|   | Under 6 months | 6 months | Over 6 months and less than 1 year | 1 year | Over 1 year and less than 2 years | 2 years and less than 3 years | 3 years | Over 3 years and less than 4 years | 4 years and less than 5 years | 5 years and less than 10 years | 10 years and less than life | Life | Until driving test | Unknown |
|---|----------------|----------|------------------------------------|--------|-----------------------------------|-------------------------------|---------|------------------------------------|-------------------------------|--------------------------------|-----------------------------|------|--------------------|---------|
| Causing death by dangerous driving  |                |          |                                    | 2      | 1                                 | 2                             | 14      |                                    | 3                             | 18                             | 4                           | 6    | 103                |         |
| Causing death by careless driving under influence of drink or drugs                                 |                |          |                                    |        |                                   |                               |         |                                    | 3                             | 3                              |                             |      | 9                  |         |
| Causing death by careless or inconsiderate driving  |                | 3        | 1                                  | 39     | 25                                | 20                            | 20      | 1                                  | 5                             | 3                              |                             | 5    | 43                 | 16      |
| Causing death by driving unlicensed or uninsured drivers  |                |          |                                    | 1      | 1                                 | 1                             |         |                                    |                               |                                |                             |      | 1                  |         |
| Causing death by driving whilst disqualified  |                |          |                                    |        |                                   |                               |         |                                    |                               |                                |                             |      | 1                  |         |
| Causing serious injury by dangerous driving   |                |          | 1                                  | 5      | 8                                 | 33                            | 37      | 10                                 | 18                            | 15                             | 2                           | 21   | 194                | 19      |
| Cause serious injury by driving whilst disqualified   |                |          |                                    |        |                                   |                               | 1       |                                    |                               |                                |                             |      | 4                  |         |
| Causing bodily harm by furious driving  |                |          |                                    | 1      |                                   |                               |         |                                    |                               |                                |                             |      |                    |         |
| Dangerous driving   | 5              | 6        | 10                                 | 622    | 579                               | 472                           | 195     | 105                                | 59                            | 33                             | 1                           | 159  | 2316               |         |
| Drive a motor vehicle with the proportion of specified controlled drug above specified limit        | 4              | 9        | 8                                  | 12140  | 3439                              | 944                           | 2551    | 167                                | 141                           | 50                             | 13                          | 9    | 13                 | 26      |
| In charge of a motor vehicle with the proportion of specified controlled drug above specified limit | 63             | 29       | 7                                  | 44     | 7                                 | 5                             | 4       | 2                                  |                               |                                |                             |      |                    |         |

Source: MoJ, 2022

As seen in the stats provided above, many more drivers convicted of the offences discussed will be disqualified, than be imprisoned. More priority and information should be included, with proposed disqualification lengths, as has been given for drug driving.

We do not support the guidance saying that the disqualification period should be “not longer than necessary”. We urge the Sentencing Council to make more of disqualifications as a sentence, with

- Long disqualification periods used for drivers who have caused death or serious injury
- More bans are given with any exemption requiring the use of telematics such as speed limiters, journey data recorders, or electronic tags
- Judges and magistrates trained in the importance of disqualification as well as the road user hierarchy of responsibility

Guidance should also promote greater use of vehicle confiscation and compensation orders.

Bereavement damages are very restricted in England and Wales and court ordered compensation could help families with the financial losses caused by road death and serious injury.

### Further consultation

The Sentencing Council is urged to undertake a consultation dedicated to driving bans. This should cover the length of bans. There has been regular support for a much longer (five year) ban for first time drink driving offences yet the mandatory minimum has not changed since 1967. Support for longer bans can also be assumed to apply to drug driving and dangerous driving.

Given the backlog in court cases, opportunities for efficiency should be examined. This should include how out of court disqualifications have worked in Canada. Suspensions of driving licenses should not have to require the involvement of a criminal court. We believe roadside suspensions would be supported by the police and public for many offences including extreme speeding, drink and drug driving.

## Equality and diversity

**Question 45: are there any aspects of the draft guidelines that you feel may cause or increase disparity in sentencing?**

We are not able to comment on this.

**Question 46: are there any existing disparities in sentencing of the offences covered in this guideline that you are aware of, which the draft guideline could and should address?**

Our analysis of the use of [driving bans given to drivers convicted of Speeding and Careless driving](#) show wide variation by police service areas. We fear this inconsistency will apply to other offences and monitoring should be undertaken to identify such variation.

**Question 47: are there any other matters relating to equality and diversity that you consider we ought to be aware of and/or that we could and should address in the guideline?**

We are not able to comment on this.