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# Motoring offences: sentencing guidelines

RoSPA's response to the Sentencing Council's consultation

September 2022



Response to the Sentencing Council's consultation: Motoring offences: sentencing guidelines

## Introduction

This is the response of The Royal Society for the Prevention of Accidents (RoSPA) to the Sentencing Council's consultation on motoring offences sentencing guidelines. It has been produced following consultation with RoSPA's National Road Safety Committee. We have no objection to our response being reproduced or attributed.

The Sentencing Council is consulting on drafts of 12 new and revised sentencing guidelines for motoring offences.

The existing sentencing guidelines for motoring offences were published in 2008 by the Sentencing Guidelines Council, the Sentencing Council's predecessor body and are due for review.

In addition the Police, Crime, Sentencing and Courts (PCSC) Act 2022 has raised the maximum penalties for causing death by dangerous driving and causing death by careless driving whilst under the influence of drink or drugs from 14 years' custody to life imprisonment. There are also new offences which have been created since the current guidelines were published, most recently under the PCSC Act the offence of causing serious injury by careless driving. The Council believes that these sentencing guidelines would be helpful for these newer offences.

The full list of offences covered by the consultation is:

- causing death by dangerous driving;
- causing death by careless driving;
- causing death by careless driving under the influence of drink or drugs;
- causing death by driving whilst disqualified;
- causing death by driving whilst unlicensed or uninsured;
- dangerous driving;
- causing serious injury by dangerous driving;
- causing serious injury by careless driving;
- causing serious injury by driving whilst disqualified;
- causing injury by wanton or furious driving;
- driving or attempting to drive with a specified drug above the specified limit; and
- being in charge of a motor vehicle with a specified drug above the specified limit



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## About you

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### What is your organisation?

The Royal Society for the Prevention of Accidents (RoSPA)



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## Causing death by dangerous driving

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

### RoSPA response

RoSPA agrees with the proposed culpability factors for this and other guidelines involving dangerous driving. Culpability needs to be sufficiently wide to deal appropriately with cases from the lower end of the scale where the dangerous driving was a momentary and inadvertent lapse to those at the extreme end where the dangerous driving was clearly and deliberately (and often persistently) dangerous without any thought for the safety of others. The factors in the high culpability category reflect a very dangerous disregard for the safety of other road users, including greatly exceeding the speed limit, lack of attention to driving for a substantial period of time and a deliberate decision to ignore the rules of the road and disregard for the risk of danger to others.

However, we do not agree with all of the behaviours listed in the medium culpability category. These are again all examples of behaviour which created serious dangers for other road users, but we believe that the sentencing council should consider moving some of the factors from the medium culpability to the higher culpability category, as they are based on deliberate decisions. For us, driving knowing that the vehicle has a dangerous defect or is dangerously loaded, disregarding advice relating to driving when taking medication or as a result of a known medical condition which significantly impaired the offender's driving skills, driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs and driving when knowingly deprived of adequate sleep or rest should be considered as a potential high culpability factors. Choosing to drive in the knowledge of impairment is a deliberate decision that disregards the safety of others.

It seems sensible that the lesser culpability level is applied for cases where the standard of driving was just over the threshold for dangerous driving, and for momentary lapses of concentration. It also seems sensible that seriousness relating to vulnerable road users and driving LGVs, HGVs and PSVs have been removed from culpability and are instead proposed as aggravating features. Driving a heavier vehicle requires great skill, care and concentration, as demonstrated in the new 'hierarchy of road users', outlined in the Highway Code.

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

### RoSPA response

RoSPA agrees that as with other offences where death is caused, only one level of harm is required for this offence.



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**Do you agree with these sentence levels? If not, please tell us why.**

**RoSPA response**

RoSPA is not in a position to comment on the suitability of length of sentences.

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

**RoSPA response**

RoSPA agrees that where more than one death is caused, it will be appropriate to make an upwards adjustment from the starting point within or above the relevant category range before consideration of other aggravating features.

**Do you agree with these aggravating and mitigating factors? If not, please tell us why.**

**RoSPA response**

RoSPA agrees with the proposed aggravating and mitigating factors.

**Do you have any further comments on the proposed guideline for causing death by dangerous driving?**

**RoSPA response**

RoSPA has no further comment.



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## Causing death by careless driving

**Do you agree with the proposed culpability factors for careless driving offences? If not, please tell us why.**

### RoSPA response

RoSPA agrees with the majority of the culpability factors, but would suggest that 'driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs' or 'driving in disregard of advice relating to the effects of medical condition or medication' should be considered high culpability factors.

The deliberate consumption of alcohol or drugs before driving means this offence should always be regarded as more serious than this.

Drinking and driving significantly increases the likelihood of being involved in a crash. Even small amounts of alcohol, well below the legal limit, increase the chances of an accident.

The original maximum blood alcohol limit of 80mg/100ml was based on research<sup>1</sup> which showed that virtually all drivers would be impaired at and above that level. However, there was evidence that many drivers were impaired at much lower levels of alcohol, but in 1967 the limit in Britain was set at 80mg/100ml for pragmatic reasons taking into consideration public attitudes at the time.

Since the original limit was set, a considerable amount of national and international research has been conducted, and there can be little doubt that most drivers are impaired at a blood alcohol level of 50mg. At levels between 50mg and 80 mg drivers are 2 – 2.5 times more likely to be involved in a fatal accident than drivers with no alcohol, and young drivers are up to 5 times more likely to be involved in a crash.

Choosing to drive in disregard of advice relation to the effects of a medical condition or medication is also a deliberate choice.

It is arguable that knowingly driving when deprived of sleep or rest could also be a high culpability factor, given the known effects that fatigue can have on driver safety. Sleepiness increases reaction time (a critical element of safe driving). It also reduces vigilance, alertness and concentration so that the ability to perform attention-based activities (such as driving) is impaired. The speed at which information is processed is also reduced by sleepiness. The quality of decision-making may also be affected.

It is clear that drivers are aware when they are feeling sleepy, and so make a conscious decision about whether to continue driving or to stop for a rest. It may be that those who persist in driving underestimate the risk of actually falling asleep while driving. Or it may be that some drivers choose to ignore the risks (in the way that drink drivers do).

**Do you agree with these sentence levels? If not, please tell us why.**



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**RoSPA response**

RoSPA is not in a position to comment on the suitability of length of sentences.

**Do you have any further comments on the proposed guideline for causing death by careless driving?**

**RoSPA response**

RoSPA has no further comment.



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

**Do you agree with the proposed sentencing levels? If not, please tell us why.**

### **RoSPA response**

RoSPA is not in a position to comment on the suitability of length of sentences.

**Do you have any further comments on the proposed guideline for causing death by careless driving whilst under the influence of drink or drugs?**

### **RoSPA response**

RoSPA has no further comment.





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## Causing serious injury by dangerous driving

**Do you agree with the proposed harm factors for offences involving serious injury? If not, please tell us why.**

### RoSPA response

RoSPA agrees with a two-harm approach, as in the most serious cases, these injuries cause life-long disability for the victim and consequent implications for their families.

**Do you agree with the proposed sentencing levels? If not, please tell us why.**

### RoSPA response

RoSPA is not in a position to comment on the suitability of length of sentences.

**Do you have any further comments on the proposed guideline for causing serious injury by dangerous driving?**

### RoSPA response

RoSPA has no further comment.



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## Causing serious injury by careless driving

**Do you agree with the proposed sentence levels? If not, please tell us why.**

### RoSPA response

RoSPA is not in a position to comment on the suitability of length of sentences. However, we are pleased to see that custodial sentences are available in cases where careless driving has caused injury, especially where there is evidence of persistent careless driving on the part of the offender. In general, we would like to see greater emphasis placed on repeat offending.

**Do you have any further comments on the proposed guideline for causing serious injury by careless driving?**

### RoSPA response

RoSPA has no further comment.



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## Causing injury by wanton or furious driving

**Do you agree with the proposed culpability elements? If not, please tell us why.**

### RoSPA response

RoSPA agrees with the majority of the culpability factors, but would suggest that 'driving impaired by consumption of alcohol or drugs' should be considered a high culpability factor. The deliberate consumption of alcohol or drugs before driving means this offence should always be regarded as more serious than this.

**Do you agree with the proposed harm elements? If not, please tell us why.**

### RoSPA response

RoSPA agrees in principle with the proposed harm elements for this offence, however, we would question whether death should be in a category of its own. It is difficult to comment on this matter given that many other offences are separated if death is caused.

**Do you agree with the proposed sentence levels? If not, please tell us why.**

### RoSPA response

RoSPA is not in a position to comment on the suitability of length of sentences, however, we would expect that for the families of those that have died, or victims and families of those who have been seriously injured, the sentencing for high culpability harm level one offences may seem very lenient. We recognise that a review of the offence itself is outside of scope of this consultation, but believe that it should be considered.

**Do you have any further comments on the proposed guideline for causing injury by wanton or furious driving?**

### RoSPA response

We welcome the proposal for a set of sentencing guidelines for the offence of causing injury by wanton or furious driving. Around 10 offenders were sentenced for causing injury by wanton or furious driving in 2020. It may be charged either where a motorised vehicle causes injury or death off-road, such as in a field or dirt track, or where a cyclist causes injury or death in any setting. Although the offence is low volume, we agree that it would be helpful to provide the courts with sentencing guidelines for those rare occasions where section 35 cases come before them.



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## **Dangerous driving**

**Do you agree with the proposed harm factors? If not, please tell us why.**

### **RoSPA response**

RoSPA agrees with the proposed harm factors. In cases of dangerous driving, it may be the case that no actual harm results to other people or to property. We support a two-category approach to harm, with higher harm cases being those where some actual harm has occurred, whether to persons or property, or where there was a high risk of harm to others. It seems sensible that the lower category is all other cases.

**Do you agree with the proposed sentence levels? If not, please tell us why.**

### **RoSPA response**

RoSPA is not in a position to comment on the suitability of length of sentences.

**Do you have any further comments on the proposed guideline for dangerous driving?**

### **RoSPA response**

RoSPA welcomes the proposed introduction of sentencing guidelines for the offence of dangerous driving that can be referred to in Crown Court and in magistrates' courts. There is an existing magistrates' courts guideline dating from 2008 which is still in force. In 2020, around 3,300 offenders were sentenced for dangerous driving, and the majority (83 per cent) were sentenced in the Crown Court. The high proportion of cases that are sentenced in Crown Court reflects the need for guidance that can be used in the Crown Court.



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## Causing death by driving: disqualified drivers

**Do you agree with the proposed culpability factors? If not, please tell us why.**

### RoSPA response

RoSPA agrees with the proposed culpability factors, although we expect that 'offender genuinely believed that he or she was not disqualified to drive', listed under the lesser culpability category would be difficult to prove and should only be used in extenuating circumstances.

**Do you agree with the proposed sentence levels? If not, please tell us why.**

### RoSPA response

RoSPA is not in a position to comment on the suitability of length of sentences.

**Do you agree with the proposed aggravating and mitigating factors? If not, please tell us why.**

### RoSPA response

RoSPA agrees with the proposed aggravating and mitigating factors.

**Do you have any further comments on the proposed guideline for causing death by driving whilst disqualified?**

### RoSPA response

RoSPA supports the introduction of a guideline for causing death by driving whilst disqualified. An existing guideline covers the offences of causing death by driving whilst disqualified, and causing death by driving whilst unlicensed or uninsured. However, this guideline does not take into account the increase in maximum penalty to 10 years' imprisonment for offences committed after 13 April 2015. As these offences have been split out, it makes good sense to publish a separate guideline for causing death by driving whilst disqualified.



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## **Causing serious injury by driving: disqualified drivers**

**Do you agree with the proposed sentence levels? If not, please tell us why.**

### **RoSPA response**

RoSPA is not in a position to comment on the suitability of length of sentences.

**Do you have any further comments on the proposed guideline for causing serious injury by driving whilst disqualified?**

### **RoSPA response**

As there is no current sentencing guideline for this offence, which was created by the Criminal Justice and Courts Act 2015, RoSPA welcomes the proposal to introduce sentencing guidelines for this offence.



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## **Causing death by driving: unlicensed or uninsured drivers**

**Do you agree with the proposed culpability factors? If not, please tell us why.**

### **RoSPA response**

RoSPA agrees with the proposed culpability factors, although we expect that 'offender genuinely believed that he or she was not disqualified to drive', listed under the lesser culpability category would be difficult to prove and should only be used in extenuating circumstances.

**Do you agree with the proposed sentence levels? If not, please tell us why.**

### **RoSPA response**

RoSPA is not in a position to comment on the suitability of length of sentences.

**Do you have any further comments on the proposed guideline for causing death by driving whilst unlicensed or uninsured?**

### **RoSPA response**

RoSPA has no further comment.



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

**Do you agree with this approach to offence categorisation for the driving/attempting to drive and being in charge of a vehicle with a specified drug above the specified limit guidelines? If not please tell us why.**

### **RoSPA response**

RoSPA agrees with the proposal to use a three tier system to determine seriousness at step one in order to determine a starting point and category range. This is the same approach as is taken in the guidelines for driving or attempting to drive and being in charge of a vehicle whilst being unfit through drink or drugs.

We recognise that this differs from the approach taken in the guidelines for excess alcohol (driving or attempting to drive and in being in charge of a vehicle). That guideline provides for different levels of seriousness based on the levels of alcohol detected from samples. However, we agree that such an approach is not likely to be appropriate with regard to drugs. This is because there is no current consensus in scientific literature about how different levels of drugs impair users.

**Do you agree with the proposed culpability factors? If not please tell us why.**

### **RoSPA response**

RoSPA agrees with the proposed culpability factors.

**Do you agree with the proposed harm factors? If not please tell us why.**

### **RoSPA response**

RoSPA agrees with the proposed harm factors.

**Do you agree with the proposed sentence levels? If not please tell us why.**

### **RoSPA response**

RoSPA is not in a position to comment on the suitability of length of sentences.





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**Do you agree with the proposed aggravating and mitigating factors? If not please tell us why.**

**RoSPA response**

RoSPA agrees with the aggravating factors. However, we do not agree that driving a short distance should be a mitigating factor – regardless of the distance driven, an offence has been committed and a decision has been taken to drive when unfit to do so due to the presence of alcohol or drugs in the body.

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

**RoSPA response**

Given that around 13,300 offenders were sentenced in 2020 for the offence of driving or attempting to drive with a specified drug above the specified limit, RoSPA welcomes the proposal to develop a full set of sentencing guidelines for this offence.



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

**Do you agree with the proposed culpability factors? If not please tell us why.**

### **RoSPA response**

RoSPA agrees with the proposed culpability factors.

**Do you agree with the proposed harm factors? If not please tell us why.**

### **RoSPA response**

RoSPA agrees with the proposed harm factors.

**Do you agree with the proposed sentence levels? If not please tell us why.**

### **RoSPA response**

RoSPA is not in a position to comment on the suitability of length of sentences.

**Do you agree with the proposed aggravating and mitigating factors? If not please tell us why.**

### **RoSPA response**

RoSPA agrees with the proposed aggravating and mitigating factors.

**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?**

### **RoSPA response**

RoSPA has no further comment.



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## Disqualification

**Do you agree with the proposed guidance on the approach to disqualification? If not please tell us why.**

### RoSPA response

RoSPA agrees that there would be merit in including guidance on disqualification in the motoring guidelines. We would support this as this is an area where the courts must consider a variety of factors, not only in relation to what length of disqualification to set, but also in relation to mandatory minimum periods of disqualification for first time and repeat offences, and the interaction with periods spent in custody.

The proposal to include information about mandatory minimum periods of disqualification at the top of the guideline, repeat offences and whether the court must order an extended retest seems a sensible approach.

The sample guideline, following the approach of principles, minimum disqualification period, special reasons (i.e. for not imposing a disqualification, or not imposing a minimum period) and interaction with a custodial sentence for the same or different offence seems a logical approach.



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## Equality and diversity

**Are there any aspects of the draft guidelines that you feel may cause or increase disparity in sentencing?**

### RoSPA response

RoSPA is not in a position to comment.

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

### RoSPA response

RoSPA is not in a position to comment.

**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 guidelines?**

### RoSPA response

RoSPA has no further comments to make on the consultation, other than to thank the Sentencing Council for the opportunity to comment. We have no objection to our response being reproduced or attributed.

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