

Death by Driving Public Consultation: Scottish Sentencing Council

Cycling Scotland response: November 2022

Question 1: Do you agree or disagree that the general structure of the guideline, providing guidance in line with steps 1 to 3 of the sentencing process guideline, is appropriate?

- Agree

Question 2: Do you agree or disagree that the style of the guideline, employing narrative and tables, is helpful?

- Agree

Question 3: Do you agree or disagree that the draft guideline makes the relationship between this guideline and other applicable guidelines clear?

- Agree

Question 4: Is there anything that can be done to make the relationship between this guideline and other applicable guidelines clearer?

- No

Question 5: Do you consider that the offences should be listed within the guideline by order of seriousness, the order they appear in the Road Traffic Act 1988, or in any other order?

- Seriousness

Question 7: Do you agree or disagree that the approach to the assessment of seriousness set out at step 1 for each of the offences covered by the guideline is appropriate?

- Agree

Question 8: Are there any changes that should be made to the features of seriousness listed at step 1 of each offence?

- Yes

Please provide any reasons for your response.

In causing death by dangerous driving, there are several offences listed as category B which should be Category A, specifically: creating a substantial risk or danger to others, aggressive driving, grossly excessive speed, prolonged distraction and ignoring the warnings of others. Where those behaviours have happened, the offender is clearly culpable of the worst category of offence.

The draft guidelines also currently outline a 'single dangerous manoeuvre which could create a significant risk of danger to others' as a Level C in the criteria. This could be changed from C to B as an action such as a close pass only needs to happen once to be fatal. There could also be a change from C to B for the 'Excessive speed for the road, and/or prevailing conditions, and/or the particular vehicle being driven' as again you only need to be slightly over the speed limit to cause damage.

In the offence of causing death by careless, or inconsiderate, driving, while the complexities are noted, the absence of examples of behaviour leaves a gap in the guidance available, in particular for Category A offences.

Question 9: Do you agree or disagree that the difference between the quality of driving under level B seriousness and level C seriousness for death by dangerous driving offences is sufficiently clear?

- Disagree

This should be re-examined. It is arguable that a key gap is in the quality of driving between level C seriousness for death by dangerous driving and level A death by careless driving.

Question 12: Do you agree or disagree with the non-inclusion of starting points within the sentencing ranges?

- Disagree

Please provide any reasons for your response.

- We think that, as in the England and Wales guidelines, starting points should be included to ensure that courts are able to see the full ranges that they can use to sentence. Without them, courts could be more likely to select the middle of sentencing ranges which has the potential to result in shorter sentences. This will also acknowledge the significant gap between the views of sentencers and the views of victims, highlighted in this paper.

Question 13: Do you agree or disagree that the ranges set out within the guideline should reflect current sentencing practice?

- Disagree

Please provide any reasons for your response.

- While we appreciate that the ranges reflect current practice, these need to be monitored as for road safety to be improved it's important that dangerous and careless driving is prosecuted proportionally. The sentencing ranges for death by careless driving and death while driving uninsured are also low.

- Maximum sentences should be included within the guideline to echo recent changes within the law, namely a change of the statutory maximum from 14 years imprisonment to imprisonment for life for the offences of causing death by dangerous driving or careless driving under the influence of alcohol or drugs.

Question 14: Do you agree or disagree that the sentencing ranges specified within the guideline are appropriate for each offence?

Causing death by dangerous driving (pages 4-7)

- Disagree

Causing death by careless driving when under influence of drink or drugs (pages 8-12)

- Disagree

Causing death by careless, or inconsiderate, driving (pages 13-16)

- Disagree

Causing death by driving: unlicensed, uninsured, or disqualified drivers (pages 17-20)
Please provide any reasons for your response.

- Disagree

We disagree with the ranges within the guideline tables as these should have higher ranges available up to the maximum sentence specified in the bullet points under the tables. As the consultation states, as ranges become wider the case becomes stronger for the inclusion of starting points.

While this is unlikely to apply to most cases, the aggravating and mitigating circumstances that could increase or decrease the sentences are set out in the document already, giving flexibility when this is needed.

Question 15: Do you agree or disagree with the non-inclusion of guidance on disqualification periods, the young driver scheme, or the drink driver rehabilitation scheme?

Disqualification periods

- Disagree

Please provide any reasons for your response. If you selected 'disagree', please indicate what guidance should be included within the guideline.

Including guidance on appropriate periods of disqualification must be explored as an additional option that would allow the courts to stay under the maximum possible sentence. Disqualifications would improve road safety and may serve as an additional deterrent against dangerous driving behaviour. RoadPeace has also called for an increase in bans

Death by Driving Public Consultation: Scottish Sentencing Council - FINAL

and for driving to be seen in a new light, as a privilege rather than a right, when sentencing – [they have pointed out that in England Wales 54% fewer driving bans \(of all lengths of duration\) have been given out since 2008](#). In the same period, offences decreased by only 3%.

Young driver scheme

- Agree

Drink driver rehabilitation scheme

- Agree

Question 16: Do you agree or disagree that the aggravating and mitigating factors listed in the table at step 3 for each offence are appropriate?

- Agree

Causing death by dangerous driving

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

Causing death by careless, or inconsiderate, driving

Causing death by driving: unlicensed, uninsured, or disqualified drivers

Please provide any reasons for your response.

Question 17: Do you agree or that the guideline should provide further guidance on the following aggravating and mitigating factors?

- Agree

Previous convictions

- Agree

Remorse

- Agree

The relationship between the offender and victim(s)

- Agree

Question 18: Do you agree or disagree with the approach to listing contributory actions of others as mitigating factors?

- Agree

Question 19: Do you agree or disagree that the voluntary surrender of a licence by an older driver should be listed as a mitigating factor?

- Agree

Please provide any reasons for your response.

This should be considered a mitigating factor as this reduces future harm and because age is taken into account for young people when setting offences. We also support the line that ‘the Council may decide in future to prepare further general guidelines dealing with certain types of an offender, such as for persons with mental welfare difficulties or the elderly’.

Question 22: Do you agree or disagree that the guideline will lead to an increase in public understanding of how sentencing decisions in death by driving cases are made?

- Partially Agree

Please provide any reasons for your response

[Research into public perceptions of sentencing in Scotland](#) shows that the public does not have a consistent understanding of how sentencing is done and has also presumed that sentences would be higher in example cases, the guidelines could help the public understand how sentencing decisions in death by driving cases are made.

In order to increase public understanding, it is vital that further guidance is introduced on driver disqualification periods.

The comment in the consultation document that “Sentencers mentioned that in many of these cases the accused had never been in any trouble before” highlights a gap between the views of sentencers and the general public that Sentencing Guidelines should acknowledge. Fundamentally, it should not be relevant whether an accused has been in trouble before if they are culpable for causing death by dangerous driving. The culpability of an offender convicted of causing death by dangerous driving should not be perceived as any more complex than other offences which result in a fatality.

Question 23: What benefits do you see arising from the introduction of this guideline, if any?

This guideline can make it easier to understand the Scottish legal context and can also help the public see the reasoning for decisions on offences.

Cycling Scotland’s [road safety campaign](#) and other evaluation and research have shown that one of the most powerful deterrents for dangerous driving around people on bikes is the potential risk to themselves – such as points on their licence or a fine.

Question 26: Would you like to make any other comments in relation to any matter arising from this consultation?

This drafting guideline should also include reference to vulnerable road users and the impact of dangerous driving on their real and perceived safety. It is important that court staff are familiar with the context that people cycle in, such as the responsibility of vehicle drivers (identified in the Highway Code hierarchy of road users), and the numbers of killed and

seriously injured people on bikes, when considering the appropriate sentence for drivers who cause deaths of people cycling.

The final guideline could also be beneficial by considering changes to the reflective hardship in death by driving sentences. [Charities such as Brake have called for a re-examination of this and for taking drivers who kill and seriously injure off the road as a condition of bail.](#)

Additional training that includes the awareness of the safety of vulnerable road users could also be added as an option when looking at disqualification and extended driving test requirements, for example, Practical Cycle Awareness Training (PCAT) for professional drivers.