

ADVICE TO THE SENTENCING GUIDELINES COUNCIL

Driving Offences – Causing Death by Driving



The Panel's Advice to the Court of Appeal

Environmental Offences	March 2000
Offensive Weapons Offences	May 2000
Importation and Possession of Opium	June 2000
Racially Aggravated Offences	August 2000
Handling Stolen Goods	March 2001
Extended Sentences	November 2001
Minimum Terms in Murder Cases	April 2002
Domestic Burglary	May 2002
Rape	May 2002
Offences involving Child Pornography	August 2002
Causing Death by Dangerous Driving	February 2003
Alcohol and Tobacco Smuggling	July 2003

The Panel's published Advice to the Sentencing Guidelines Council

Robbery	May 2004
Reduction in Sentence for a Guilty Plea	September 2004
New Sentences: Criminal Justice Act 2003	September 2004
Manslaughter by Reason of Provocation	May 2005
Allocation Guidelines	February 2006
Custodial Sentences of less than 12 Months	March 2006
Domestic Violence	April 2006
Sexual Offences Act 2003	June 2006
Reduction in Sentence for a Guilty Plea	January 2007
Sentencing for Bail Act Offences	May 2007
Sentencing for Assault and Other Offences Against the Person	June 2007

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FOREWORD BY THE CHAIRMAN

This Advice from the Sentencing Advisory Panel to the Sentencing Guidelines Council proposes guidelines for sentencing adult offenders convicted of a causing death by driving offence.

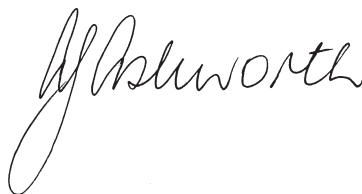
Such offences result in some of the most difficult sentencing decisions for the courts: because they involve the ultimate level of harm – the death of one or more victims – there are often calls for extremely long custodial sentences, but the harm caused must always be weighed against the degree of fault and danger involved in the offender's driving. The Panel's proposals have inevitably also been guided by the different maximum penalties accorded to these offences in statute.

This is an area of sentencing in which the public quite rightly takes a great deal of interest. In order to make sure that our proposals would be based on a clear understanding of the views of the public, the Panel commissioned independent research to test public opinion. I would like to express my gratitude to everyone who took part in that research, especially the relatives of victims, who must have found the experience very difficult. Commissioning additional research has delayed the Panel's advice to the Council but there is a very real benefit in the degree to which the findings have strengthened our proposals.

One of the most difficult issues for the Panel to consider was how best to structure a guideline that could differentiate between the factors that led the Crown Prosecution Service to charge a particular offence (which is not within the Panel's remit) and any additional factors that might have made that offence more or less serious. The assessment of seriousness of these offences, especially those involving dangerous driving, requires the court to consider a significant number of factors that combine to form an overall picture of the offence and the offender that can be difficult to unravel.

The Panel's approach is first to identify those factors that relate to the quality of driving (broadly affecting the way in which the vehicle was driven or the offender's ability to drive); these factors are referred to as 'determinants of seriousness' and are used to differentiate between levels of seriousness within each offence. Other factors, largely related to the offender's behaviour or the outcome of the offence, are treated as aggravating and mitigating factors. We hope that the approach we have adopted will help to guide sentencers through this complex consideration process.

The one exception to our approach is in relation to the offence of *causing death by driving: unlicensed, disqualified or uninsured drivers*, which does not involve any fault in the standard of driving of the offender; here the levels of seriousness are guided by the nature of the unlawfulness of the offender's driving, with driving while disqualified generally being the most serious category.



Professor Andrew Ashworth
Chairman of the Sentencing Advisory Panel

DRIVING OFFENCES – CAUSING DEATH BY DRIVING

THE PANEL'S ADVICE TO THE SENTENCING GUIDELINES COUNCIL

INTRODUCTION

1. Following a request from the Sentencing Guidelines Council, the Sentencing Advisory Panel has produced advice on sentencing for four causing death by driving offences – *causing death by dangerous driving*,¹ *causing death by careless driving when under the influence of drink or drugs or having failed to provide a specimen for analysis without reasonable excuse*² (hereafter referred to as *causing death by careless driving under the influence*),³ *causing death by careless or inconsiderate driving*,⁴ and *causing death by driving: unlicensed, disqualified or uninsured drivers*.⁵ The latter two offences were introduced by the Road Safety Act 2006 but are not yet in force.
2. The Crown Prosecution Service (CPS) has recently consulted on its Prosecution Policy and Practice for the offences covered by this advice.⁶ Later this year, the CPS will publish a Policy for Prosecuting Cases of Bad Driving and new guidance to prosecutors on the appropriate charge to bring for an individual offence based on an assessment of the standard of the offender's driving. The outcome of the CPS consultation anticipates some changes to current CPS policy and this has been taken into account when formulating our proposals.
3. As the legislative provisions relating to young offenders are very different from those for adults,⁷ this advice deals only with the sentencing of offenders aged 18 and over. Section One of the Panel's advice covers the relative seriousness of the four offences, identifies the factors that a court is most likely to be asked to take into account and deals with a number of other issues relevant to sentencing. Section Two outlines the Panel's proposals and includes draft guideline tables for the Crown Court; draft Magistrates' Court Sentencing Guidelines for the two new offences are included at Annex A. A summary of the Panel's recommendations is at Annex E.
4. In 2003, the Sentencing Advisory Panel submitted advice to the Court of Appeal in relation to sentencing for the offence of *causing death by dangerous driving*.⁸ This advice was largely adopted in *Cooksley*,⁹ generally speaking, the courts have relied on the principles established in that guideline judgment when sentencing offences of *causing death by careless driving under the influence*.
5. Parliament increased the maximum penalty for *causing death by dangerous driving* and *causing death by careless driving under the influence* from 10 to 14 years imprisonment in 2003;¹⁰ the new provisions in the Criminal Justice Act 2003 regarding "dangerous offenders"¹¹ apply to both offences. Last year, the Court of Appeal took the view that

¹ Road Traffic Act 1988, s.1 as amended

² since the conclusion of the Panel's consultation, this offence has been extended so that it now includes situations where a person fails to give permission for the analysis of a blood sample taken at a time when that person was incapable of giving consent. This does not appear to the Panel to raise any new issue as regards sentencing.

³ *ibid.* s.3A as amended

⁴ *ibid.* new section 2B

⁵ *ibid.* new section 3ZB

⁶ *Prosecuting Bad Driving: A Consultation on CPS Prosecution Policy and Practice*, published December 2006

⁷ The Panel intends to consult separately on sentencing principles for young offenders

⁸ *Causing Death by Dangerous Driving*, published February 2003, www.sentencing-guidelines.gov.uk

⁹ [2004] 1 Cr App R. (S) 1

¹⁰ Criminal Justice Act 2003, s. 285 (brought into force on 27 February 2004)

¹¹ *ibid.* ss. 224–229. Both offences are 'serious offences' and a court may be required to impose a sentence of imprisonment for public protection if it considers that an adult offender presents a significant risk to members of the public of serious harm

clearer guidance about the significance of the increase in maximum penalty for sentence lengths across the range of offence seriousness was urgently required and this immediate need was met by the judgment in *Richardson and others*.¹²

6. The Panel's advice builds upon that judgment, extends it to cover a wider range of issues and applies the emerging principles to the two new offences. For the sake of consistency and coherence, individual guidelines are proposed for all four offences and take into account both relative seriousness and the features that may aggravate or mitigate each offence.
7. Convictions for causing death by driving offences result in some of the most difficult sentencing decisions because the assessment of the seriousness of an offence must balance the very high level of harm – the death of a victim or victims – against infinitely varying levels of offender culpability. Deciding on the most appropriate sentence will be at its most difficult where culpability is considered to be at its lowest but where the actions of the offender have nevertheless resulted in a tragic loss of life.
8. In recognition of the public concern surrounding these difficult sentencing decisions, the Panel decided to supplement its normal consultation process by commissioning independent research to test public opinion; the research was conducted by the Institute of Criminal Policy Research (ICPR) and GfK NOP. It was comprised of a survey of a representative sample of 1,030 adults in England and Wales, 12 focus groups of the general public and 11 in-depth interviews with the relatives of victims. We are extremely grateful to the large number of people who

were prepared to contribute to this process; we were especially moved by the testimony of the relatives of those who had lost their lives as a result of an offence of this type.

9. The research report is being published at the same time as this advice and we have considered the findings carefully alongside the 57 written responses to the consultation paper. Details of the consultation process, including a list of those who responded, are set out in Annex F.
10. The independent research revealed that, when research participants were asked to give an initial opinion before being provided with any information about patterns of sentencing, more than 50% believed that sentences imposed for causing death by driving offences are normally too lenient. However, after considering the full details of sample cases and discussing the impact of various aggravating and mitigating factors, the majority of participants came to the conclusion that the sentences proposed by the Panel in its consultation paper (which are not far removed from current sentencing practice) were broadly acceptable. Responses to the consultation paper were also generally supportive.
11. Nevertheless, certain differences of opinion and some interesting suggestions have been highlighted by both methods of consultation; a number of those who responded to the consultation had taken obvious care in putting together alternative sentencing tables with levels of offence seriousness linked to differing aggravating factors. All of these have been considered carefully by the Panel and some issues are discussed in detail in the advice.

¹² [2006] 1 Cr App R (S) 36

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12. The relatives of victims – both those interviewed as part of the research and those responding to the consultation – tended to express dissatisfaction not just with the sentences imposed but with all stages of the criminal justice process; there is much to be learned from their testimony.
 13. Relatives may be encouraged to make the sentencing court aware of the impact of an offence but their views cannot determine the sentence imposed; this has been acknowledged in decisions in the Court of Appeal¹³ and the Practice Direction on Personal Statements of Victims.¹⁴ We understand that some relatives and friends of victims may have difficulty in accepting the Panel's sentencing proposals; having been closely affected by the harm arising from an offence of this type, many have suggested much more stringent sentences, sometimes outside the provisions laid down in statute. The sentences proposed by the Panel will inevitably seem low if compared only with the magnitude of the harm done by the offender but, as will be discussed in more detail later in the advice, the culpability of the offender is the initial factor when determining the seriousness of any criminal offence.
 14. The analysis of the findings from the research commissioned by the Panel identified the proportion of respondents who were 'tolerant of' the Panel's proposals by combining the number of respondents who 'spontaneously agreed' with the Panel's sentencing proposals (that is, those who initially chose a sentence no more severe than that proposed by the Panel) with those who, having been asked to consider specific sentencing options, decided that they would 'possibly' or 'definitely' find the Panel's proposals acceptable. This demonstrated that the proportion of respondents finding the Panel's proposals broadly acceptable ranged from 75% for *causing death by dangerous driving* to 47% for *causing death by careless driving under the influence*. It should be noted that these percentages include a small number who considered the Panel's proposals too harsh.
 15. As mentioned in paragraph 10, the researchers concluded that, whilst a significant minority might be calling for very long sentences, participants generally could accept the Panel's proposals for all four of the offences under consideration. The Panel was greatly reassured by this finding.

¹³ See, for example, Nunn [1996] 2 Cr. App. R. (S) 136, per Lord Justice Judge

¹⁴ now part of the Consolidated Criminal Practice Direction last revised in April 2007; see www.hmcourts-service.gov.uk/cms/files/ccpd_260407.pdf

SECTION ONE: PRINCIPLES OF SENTENCING

Seriousness

16. The offences of *causing death by dangerous driving* and *causing death by careless driving under the influence* both have a maximum sentence of 14 years imprisonment. When in force, the offence of *causing death by careless or inconsiderate driving* will have a maximum sentence of 5 years imprisonment and that of *causing death by driving: unlicensed, disqualified or uninsured drivers* will have a maximum sentence of 2 years imprisonment.
17. The Criminal Justice Act 2003 establishes seriousness as the key determinant of the appropriate sentence for an offence: a community order can be imposed only if the court considers that the offence is serious enough to justify it¹⁵ and a custodial sentence can be imposed only if the court considers that a community order or a fine alone cannot be justified in view of the seriousness of the offence.¹⁶ The Sentencing Guidelines Council has published a definitive guideline on seriousness that guides sentencers on determining whether the respective sentencing thresholds have been crossed.¹⁷
18. The Act states that, when assessing the seriousness of any offence, a court must consider the offender's culpability and any harm which the offence caused, was intended to cause or might foreseeably have caused.¹⁸ In relation to causing death by driving offences, the offence is committed only where death

has resulted and, therefore, the Panel remains of the view (recently endorsed by the Court of Appeal in *Richardson*) that '*the offender's culpability should be the dominant component in the sentencing exercise but that the outcome of the offence should have some effect.*'¹⁹

19. In relation to causing death on the roads, *Murder* (requiring an intention to kill or to cause serious harm), which has a mandatory sentence of life imprisonment and *Manslaughter* (requiring the driving to have been grossly negligent as to causing death), which has a maximum sentence of life imprisonment, are rarely charged.
20. A number of those who responded to the Panel's consultation suggested that the offence of *manslaughter* should be charged more often when 'bad driving' results in death. The decision on charging is outside the Panel's remit and is an issue that the CPS has considered as part of its own review but the Panel understands that it will continue to be rare for the offence of manslaughter to be charged in relation to a death by driving offence. This is the reason why the Panel consultation considered only the four *causing death by driving* offences.

Harm and Culpability

21. The assessment of the seriousness of an offence requires consideration of both the harm caused and the culpability of the offender. The four offences all share the same outcome – the death of one or more victims;²⁰ this is harm of the highest level and

¹⁵ Criminal Justice Act 2003, s.148(1)

¹⁶ *ibid*, s.152(2)

¹⁷ *Overarching Principles: Seriousness* published on 16 December 2004; www.sentencing-guidelines.gov.uk

¹⁸ Criminal Justice Act 2003, s.143(1)

¹⁹ Sentencing Advisory Panel, *Causing Death by Dangerous Driving: Advice*, paragraph 13, adopted in *Cooksley* [2004] 1 Cr App R (S) 1, at [13-14] and, using different terminology, in *Richardson* [2006] 1 Cr App R (S) 36

²⁰ For further discussion concerning the effect on sentence where there is more than one victim, see paragraphs 77–81

it is apparent from the research findings that large numbers of the general public are likely to consider that to be the primary indicator of offence seriousness.

22. However, since Parliament has prescribed different maximum penalties to reflect different levels of culpability and because the degree of harm is less variable, it is inevitable that greater emphasis will be placed on aspects of culpability in sentencing guidelines. The Council guideline²¹ makes it clear that, where there is an imbalance between culpability and harm, as will be the case in many causing death by driving offences, culpability should be the initial consideration.
23. The responses to both the consultation and the research revealed a greater level of agreement about offence seriousness where offender culpability is seen to be high but more divergent views about the circumstances in which culpability might be deemed to be lower and about the impact that this should have on sentence. However, when those taking part in the research were asked to consider specific issues relating to offender culpability, they tended to see the importance of this in relation to the assessment of offence seriousness; the degree to which an offender's actions could be said to have been wilful (as opposed to negligent or careless) generally increased the severity of the sentence they thought should be imposed. Thus, research respondents generally could be said to accept the principle that, given the framework of offences, the culpability of the offender in an individual causing death by driving offence is the key issue when deciding on the most appropriate sentence.

24. The offences provide for different levels of culpability – the task of guidelines is to create a coherent hierarchy of sentencing ranges to support them.

The relative seriousness of the four offences

25. The Panel's consultation paper discussed a number of issues relating to offence seriousness. These included:
- (i) the relative seriousness of *causing death by dangerous driving* and *causing death by careless driving under the influence*;
 - (ii) the types of driving behaviour that might be defined as *dangerous* or *careless*;
 - (iii) what defines culpability for the offence of *causing death by driving whilst unlicensed, disqualified or uninsured*; and
 - (iv) the aggravating and mitigating factors most likely to be present in relation to each of the four offences.
26. In terms of an initial assessment of offence seriousness, the primary consideration will be the standard of driving; this will determine the offence that is charged. Guidance on the circumstances in which a particular offence should be charged is a matter for the CPS. However, when deciding what the appropriate sentence for an offence should be, a clear understanding of the nature of the offending behaviour that will fall within an offence category is essential. The disquiet expressed by some of those responding to the Panel's consultation paper about some of the offence descriptions and associated sentencing proposals may be alleviated by

²¹ *Overarching Principles: Seriousness*, page 5, published 16 December 2004; www.sentencing-guidelines.gov.uk

the greater degree of certainty in the CPS approach following its recent independent consultation;²² the outcome of the CPS consultation has been used to inform the offence descriptions that follow.

Causing death by dangerous driving

27. Section 2A of the Road Traffic Act 1988 states that a person is to be regarded as driving dangerously if the standard of driving falls *far below* what would be expected of a competent and careful driver and it would be obvious to a competent and careful driver that driving in that way would be dangerous. The offence carries a maximum penalty of 14 years imprisonment. Examples of driving behaviour likely to result in this offence being charged are:

- Aggressive driving, such as sudden lane changes, cutting into a line of vehicles or driving much too close to the vehicle in front
- Callous behaviour at the time such as throwing a victim off the vehicle or failing to stop
- Disregard of traffic lights and other road signs which, on an objective analysis, would appear to be deliberate
- Disregard of warnings from fellow passengers
- Driving a vehicle with a load which presents a danger to other road users
- Driving a vehicle knowing it has a dangerous defect
- Driving in an attempt to escape or avoid detection

- Driving when too tired to stay awake
- Overtaking which could not have been carried out safely
- Racing or competitive driving
- Speed that is highly inappropriate for the prevailing road or traffic conditions
- Using a mobile phone whether as a phone or to compose or read text messages
- Where the driver is suffering from impaired ability such as having an arm or leg in plaster, or impaired eyesight

Causing death by careless driving when under the influence of drink or drugs or having failed without reasonable excuse either to provide a specimen for analysis or to permit the analysis of a blood sample

28. This offence also carries a maximum penalty of 14 years imprisonment. It can be committed in one of the following four ways:

- (i) being unfit to drive through drink or drugs;
- (ii) having consumed so much alcohol as to be over the prescribed limit;
- (iii) failing without reasonable excuse to provide a specimen for analysis within the timescale allowed; or
- (iv) failing without reasonable excuse to permit the analysis of a blood sample taken when incapable of giving consent

²² See para. 2 above

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29. The statutory definition of the standard of driving that is to be regarded as *careless* will be the same for this offence as for the offence of *causing death by careless or inconsiderate driving* (see the discussion that follows) but the factor of key importance in relation to this offence is the fact that the offender's driving was impaired by the consumption of alcohol or drugs.
30. The Court in *Richardson* noted that this offence differs from the offence of *causing death by dangerous driving* in two significant ways: the level of culpability in the actual manner of driving is lower but, conversely, culpability is increased in all cases by the fact that the offender has driven after consuming drugs or an excessive amount of alcohol. In effect, there are two separate elements to the offence. The manner of driving itself must be careless, and that must be what caused death, but it must also be shown that the offender was under the influence of drink or drugs or that the offender either failed to provide a specimen for analysis following a request under section 7 of the Road Traffic Act 1988²³ or failed to permit analysis of a blood sample taken under section 7A of that Act.²⁴ If this is proved, that is taken to render the decision to drive more culpable.
31. Moreover, the fact that Parliament has introduced a new offence of *causing death by careless or inconsiderate driving*, which has a maximum sentence of 5 years imprisonment – significantly lower than the 14 year maximum penalty for this offence – reinforces the suggestion that the major culpability factor for this offence is the decision to drive whilst under the influence of drink or drugs.
32. As was pointed out in the Panel's consultation paper, for many years average sentences for *causing death by driving under the influence* were higher than for *causing death by dangerous driving* and it is interesting to note from the research findings that participants viewed *causing death by careless driving under the influence* as the most serious of the four offences.²⁵ Deciding to drive a car after consuming too much (or in some cases, any) alcohol was widely viewed as irresponsible. Most of those taking part in the research took the view that deciding to drive in the full knowledge that driving ability is likely to be impaired places offender culpability at the very highest level. Where an offender is found guilty of this offence, our research identified a disinclination to show compassion for the driver or, generally, to give much credence to any claimed mitigation.
33. In *Richardson*, the Court discussed whether the parity in maximum penalties for *causing death by dangerous driving* and *causing death by careless driving under the influence* indicated identical levels of offence seriousness. Clearly the level of harm is the same and the Court concluded that they are generally the same also in terms of culpability, with the deliberate decision to drive after consuming alcohol or drugs aggravating the *careless* standard of driving onto a par with *dangerous* driving.

²³ which requires that it be part of an investigation into whether an offence has been committed concerning driving (or being in charge of a vehicle) when affected by alcohol or drugs

²⁴ included as part of the offence with effect from 24 September 2007

²⁵ Those taking part in the research were asked to assess the seriousness of each offence by giving it a score on a scale of 1 to 20; a mean (average) score was then calculated. The mean score for *causing death by careless driving under the influence* was 18.2 out of 20; the mean score for *causing death by dangerous driving* was 17.3 out of 20

Causing death by careless or inconsiderate driving

34. The maximum penalty for this offence is 5 years imprisonment. The offence is introduced by section 20 of the Road Safety Act 2006, which inserts a new section 2B into the Road Traffic Act 1988 as follows:

'A person who causes the death of another person by driving a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, is guilty of an offence.'

The section also provides that the new offence may be an alternative (lesser) verdict where the original charge is *causing death by dangerous driving*, or *causing death by careless driving under the influence*.

35. The Road Safety Act 2006 also clarifies the definition of the offence so as to emphasise that *dangerous* and *careless* indicate two different levels or degrees of bad driving. Section 3ZA of the 1988 Act (as inserted) defines careless driving as driving in a way that "falls *below* what would be expected of a competent and careful driver" and states that 'a person is to be regarded as driving without reasonable consideration for other persons only if those persons are inconvenienced by his driving.'

36. It is interesting to note from the research report that although, on average,²⁶ participants regarded this offence as the least serious of the four, views about the relative seriousness of this offence were spread more evenly across the spectrum than for any of the other three

offences. It seems that the public finds the assessment of offence seriousness/offender culpability most difficult in relation to this offence.

37. Examples of driving behaviour likely to result in an offence of *causing death by careless or inconsiderate driving* being charged are:

(i) Careless Driving

- overtaking on the inside
- driving inappropriately close to another vehicle
- driving through a red light
- emerging from a side road into the path of another vehicle
- tuning a car radio
- reading a newspaper/map
- selecting and lighting a cigarette/cigar/pipe
- talking to and looking at a passenger

(ii) Inconsiderate Driving

- flashing of lights to force other drivers in front to give way
- misuse of any lane to avoid queuing or gain some other advantage over other drivers
- unnecessarily remaining in an overtaking lane
- unnecessarily slow driving or braking without good cause

²⁶ The mean (average) seriousness score for this offence was 13.3 out of 20

- driving with un-dipped headlights which dazzle oncoming drivers
- driving through a puddle causing pedestrians to be splashed

Depending on the circumstances, it is possible that some of the examples listed above could be classified as *dangerous* driving and the revised CPS guidance is likely to make this clear. However, experience shows that these types of behaviour predominantly result in prosecution for *careless* driving.

Causing death by driving: unlicensed, disqualified or uninsured drivers

38. This offence is introduced by section 21 of the Road Safety Act 2006, which inserts a new section 3ZB into the Road Traffic Act 1988; the maximum penalty is 2 years imprisonment. The circumstances in which it will be charged are clearly defined in statute; the facts to be proved are that:
- (i) the accused was driving a vehicle involved in a collision that caused the death of one or more victims; and
 - (ii) the accused was unlicensed, disqualified or uninsured at the time.
39. The culpability for this offence lies in the fact that the offender was driving a vehicle on a road or other public place when, by law, not allowed to do so; the offence does not involve any fault in the standard of driving and could be charged, for example, where a pedestrian runs out in front of an offender's vehicle without warning. (Where the standard of driving was at fault, a charge involving *careless* or *dangerous* driving usually would be brought and the fact that the offender was unlicensed, disqualified or uninsured would be treated as an aggravating factor when sentencing.)
40. Some respondents to the Panel's consultation (largely but not exclusively sentencers) commented that the title of this offence is a misnomer because there is no direct causal link between the nature of the offending behaviour and the unintended outcome – if the offender's driving is not at fault, he or she cannot be said to have 'caused' the victim's death. They expressed concern that offenders would be inappropriately punished; the lowest possible penalties were urged and there were suggestions that the offence should not be implemented.
41. Conversely, some respondents (largely but not exclusively individuals and groups or organisations), and a significant number of those who took part in the research, expressed astonishment bordering on disbelief at what they believed to be a low maximum penalty for this offence. Of those surveyed, 36% considered this to be the most serious of the four offences, although its mean average score was 16.8 out of 20 – placing it considerably higher than *causing death by careless or inconsiderate driving* (13.3) but lower than *causing death by dangerous driving* (17.3) and *causing death by careless driving under the influence* (18.2).
42. Despite explanations that the behaviour this offence seeks to capture is the decision to drive when not permitted to do so by law in circumstances where no culpability can be attached to the standard of the offender's driving, as has already been noted, members of the public (both research participants

and those responding to the consultation paper) regarded the death of the victim as the issue of paramount importance. In their view, offender culpability in such cases is high because it was the offender's decision to drive in breach of the law that resulted in the collision taking place – they identified a distinct and direct causal link because the victim would not have died if the offender had not driven the vehicle.

43. Evidence from the focus groups taking part in our research suggests a perception amongst the public that those who drive when unlicensed, disqualified or uninsured are more likely to be less careful drivers and more likely to be involved in a collision. In this regard, they took the view that driving whilst disqualified was the most culpable element of this offence; whilst they were prepared to accept that there could be a reasonable explanation for not having valid insurance, driving without a licence was seen as highly culpable behaviour and the attitude to driving whilst disqualified was one of complete intolerance on the basis that this reflects a culpable decision to disobey an order of the court. These views were echoed by some of the respondents to the consultation paper.
44. When proposing this new offence, the Government's stated intention was to ensure that drivers falling into this category would be held responsible for the consequences of 'the mere fact of having taken the vehicle unlawfully on to the road'. The Government's argument was that the additional offence is justified by the risk posed by these drivers; this arises from the two following propositions:
 - (i) an unlicensed driver has not demonstrated the competence to drive and is between 3 and 9 times more likely to be involved in an accident than other drivers; and
 - (ii) a disqualified driver will have been disqualified from driving for good road safety reasons.²⁷
45. Thus, the offence is based on the premise that the culpability element lies in the offender's decision to drive when prohibited from doing so, which puts other road users at risk. The offender may be said to bear some responsibility for the tragic consequences, even if the degree of responsibility is lower than it would have been if the driving itself had been *careless* or *dangerous*. Parliament has decided that a lower level of culpability is involved in this offence when compared with the other causing death by driving offences and has, therefore, accorded to it a lower maximum penalty of 2 years imprisonment (as opposed to 5 years for *causing death by careless or inconsiderate driving*).
46. Whilst acknowledging the fact that 36% of those surveyed in the Panel's research considered this to be the most serious offence of the four and that the average assessment of seriousness placed it above *causing death by careless driving*, the Panel's sentencing proposals must be based on the law as enacted by Parliament, which has determined that this is the least serious of the four causing death by driving offences and, therefore, that it should attract the lowest maximum penalty.

²⁷ These reasons are extracted from Chapter 4 of the Home Office *Review of Road Traffic Offences involving Bad Driving: a Consultation Paper* (2004)

The nature of the proposed guidelines

47. Although the Panel's proposed guidelines for these offences met with broad support, the Panel has had further thoughts about the way in which they were expressed. Following the approach adopted by the Court of Appeal in *Cooksley* and recently endorsed in *Richardson*, the proposed guidelines distinguished between the different levels of seriousness by reference to the number of aggravating factors that were present in each case. This might give the false impression, especially in relation to *causing death by dangerous driving* (which included the largest number of potential aggravating factors), that sentencing for these offences is a mechanical process, whereas the Panel believes that, for all offences other than *causing death by driving: unlicensed, disqualified or uninsured drivers*, the central feature should be an evaluation of the quality of the driving involved and the degree of danger that it foreseeably created. Thus, a really bad example of one of the aggravating factors listed in the consultation paper could properly be evaluated as worse than two or three of the aggravating factors that were present in another case.
48. The Panel has decided, therefore, to adapt the proposed guidelines in a way that clarifies the evaluative judgement that the sentencer must undertake, while keeping faith with the general levels proposed in the consultation paper and accepted by those who commented. This should ensure that sentencers adopt a consistent approach to the evaluation that they must perform.
49. We have re-examined the list of aggravating factors set out in the consultation paper for each of the four offences. Leaving aside *causing death by driving; unlicensed, disqualified or uninsured drivers*, which does not involve any fault in the standard of driving of the offender, the Panel wishes to draw a distinction between those factors of an offence that are intrinsic to the quality of driving and those which, while they aggravate the offence, are not. A typical example of the former would be *excessive speed*, whereas a typical example of the latter would be *failure to stop after an accident*. The Panel has decided to categorise the former as *determinants of seriousness* whereas the latter continue to be referred to as *aggravating factors*.
50. The levels of seriousness in the proposed guidelines for those offences based on dangerous or careless driving alone have been determined by reference only to determinants of seriousness. Aggravating factors will have the effect of either increasing the starting point within the sentencing range provided or, in certain circumstances, of moving the offence up to the next sentencing range.²⁸ The outcome will depend on both the number of aggravating factors present and the potency of those factors. Thus, the same outcome could follow from the presence of one particularly bad aggravating factor or two or more less serious factors.
51. The determinants of seriousness likely to be relevant in relation to *causing death by careless driving under the influence* are both the degree of carelessness and the level of intoxication. The proposed guideline sets out an approach to assessing both those aspects but giving greater weight to the degree of intoxication since Parliament has provided for a maximum of 14 years imprisonment rather

²⁸ See Annex C for a description of the meaning of range, starting point etc. in the context of the guidelines.

than the maximum of 5 years where the death is caused by careless driving only.

52. In relation to *causing death by careless driving*, the range of factors likely to be present is narrower than where the driving was dangerous. The proposed approach is to provide 3 levels of seriousness with the most serious being those cases where the driving was close to being dangerous and the least serious being those where the collision was the result of momentary inattention. Other cases would fall into the intermediate level.
53. Since there will be no allegation of bad driving, the proposed guideline for *causing death by driving; unlicensed, disqualified or uninsured drivers*, links the assessment of offender culpability to the nature of the prohibition on the offender's driving and includes a list of factors that may aggravate an offence.

Determinants of seriousness

54. In the Panel's consultation paper, the factors that are now to be determinants of seriousness in relation to *causing death by dangerous driving* were discussed and subsequently commented upon as aggravating factors. A significant number of respondents challenged the validity of some of the factors identified or questioned the degree to which they should impact on offence seriousness and the issues raised are addressed in the sections that follow. Those factors that the Panel has now classified as aggravating factors are discussed separately.

Consumption of alcohol or drugs

55. In our consultation paper, we expressed the tentative view that consumption of alcohol

below the prescribed legal limit should not aggravate a causing death by driving offence but we sought views on this suggestion and about the link between the consumption of alcohol and impaired driving ability. There were some pleas for 'zero tolerance' and suggestions for the legal limit to be reduced (which is not within the Panel's remit). Others suggested that a sliding scale of seriousness should be linked to various blood alcohol levels. In addition, there was a range of wholly divergent views as to whether the consumption of alcohol below the limit should always aggravate or never aggravate an offence or should only aggravate if the offender's driving was impaired.

56. The Panel takes the view that it would be unjust to additionally penalise a driver for having consumed an amount of alcohol 'below the legal limit' unless this had some bearing on the commission of the offence. However, the degree to which the consumption of alcohol affects an individual's ability to drive will vary widely and we have concluded that the key issue is not whether the amount of alcohol consumed was above or below the limit but the extent to which driving ability was impaired, i.e. whether the defendant was fit to drive.
57. The degree to which driving after consuming drugs will make an offence more serious could appear to be more difficult to determine bearing in mind that there is no legal limit associated with such activity; the few responses to questions about this in the consultation paper were mixed. However, driving whilst unfit through drugs is essentially the same as driving whilst unfit through alcohol – the key issue is whether the offender's driving ability was impaired

– whatever the intoxicant consumed. Field Impairment Tests (FIT) can support evidence of impaired driving.

58. The Panel is aware that concerns have been raised²⁹ about the FIT process which is currently used by the police to support any evidence of impaired driving by assessing the degree to which driving skills are impaired. The Panel has noted that these accuracy concerns are not supported by the police, who consider that an FIT provides an officer with additional evidence to support the opinion formed, and the evidence gathered, at the scene or immediately before. The tests are assessments of the degree of impairment and are only used to support the original evidence of impaired driving.
59. However, concerns that there are no 'driving impairment' devices and that there is no simple offence of driving with illegal drugs in the body have been aired in public more recently by the police. We understand that, in response to a Department for Transport study into the Effectiveness of UK Field Impairment Testing, the FIT process and training is constantly under review to identify any areas where improvement could and should be made. It will be a matter of evidence in any given case whether the consumption of alcohol or drugs was responsible for impaired driving skills at the time of the offence.
60. Having concluded that the key issue in relation to the consumption of alcohol or drugs is the degree of impairment, the question of whether the drugs consumed were illegal or legal loses

much of its significance. However, we take the view that, whereas impairment resulting from the consumption of illegal drugs should always make an offence more serious, impairment resulting from the consumption of legally purchased or prescribed drugs should only make an offence more serious if the offender knew or should have known that driving impairment was a likely side-effect.

Recommendation 1

Where there is sufficient evidence of driving impairment, the consumption of alcohol or drugs prior to driving will make an offence more serious. Where the drugs were legally purchased or prescribed, the offence will only be regarded as more serious if the offender knew or should have known that the drugs were likely to impair driving ability.

Failing to provide a specimen for analysis

61. In its consultation paper, the Panel discussed failure to provide a specimen for analysis³⁰ only in the context of the offence of *causing death by careless driving under the influence* and the extent to which this makes that offence more serious is covered later in this advice. However, a number of respondents suggested that this should make an offence more serious where *causing death by dangerous driving* or *causing death by driving: unlicensed, disqualified or uninsured drivers* is charged, especially as the failure to provide a specimen will often be an attempt to disguise the amount of any intoxicant consumed and to avoid a more serious charge.

²⁹ BRAKE referred to the Department for Transport research (*Road Safety Part 1: Alcohol, drugs, aging and fatigue, DFT (2003)*) that noted the subjectivity of such tests and suggested a 67% disagreement between the results of FIT tests carried out by a police officer at the roadside and the opinion of the police surgeon

³⁰ since the conclusion of the Panel's consultation, this offence has been extended so that it now includes situations where a person fails to give permission for the analysis of a blood sample taken at a time when that person was incapable of giving consent. This does not appear to the Panel to raise any new issue as regards sentencing.

62. In relation to *causing death by dangerous driving* the Panel understands that it is normal CPS practice to charge *failing to provide a specimen* separately where the offence was not based solely on that failure.³¹ However, the Panel agrees that, where failing to provide a specimen is neither inherent in a causing death by driving offence nor separately charged, it may be treated as a factor that influences the assessment of seriousness of an offence.

Recommendation 2

Unless inherent in the offence or charged separately, failure to provide a specimen for analysis (or to allow a blood specimen taken without consent to be analysed) should be regarded as a determinant of offence seriousness.

Speeding

63. Some respondents suggested that the degree to which speeding should make an offence more serious should be assessed on a sliding scale of miles per hour above the limit and questioned the restrictive nature of the aggravating factor *greatly excessive speed*, which is linked with racing against other drivers. The Panel agrees that factors related to speed will be a significant determinant of offence seriousness in relation to *causing death by dangerous driving*. In relation to *causing death by careless driving*, it is likely that the speed of the vehicle will be inextricably linked with the assessment that the standard of driving was careless. We are content to rely on the courts to take a common sense approach when deciding the relationship between the actual speed at which a vehicle was being driven at the time of, or leading up to, the collision and the sentence imposed.

64. In addition, the road or weather conditions at the time of an offence (for example where the roads are wet or covered in snow or where fog restricts visibility) may be of more importance than the actual speed of the vehicle. The fact that an offender was *driving at an inappropriate speed for the prevailing road or weather conditions* (even though this was within the normal speed limit for the road concerned), has, therefore, been included as a determinant of offence seriousness.

Avoidable distractions

65. Using a hand-held mobile phone when driving (in itself an unlawful act) was cited in the consultation paper as an example of an occasion when an offence would be aggravated on the grounds that the driver's attention was avoidably distracted. A number of respondents suggested that using a hand-held mobile phone should always result in a defendant's actions being classified as *dangerous*. As with any other form of distraction, the degree to which an offender's driving will be impaired will vary; it will be the standard of driving that influences the choice of charge. Where there is evidence that the use of a mobile phone resulted in a standard of driving that was *dangerous, causing death by dangerous driving* may well be charged, but any avoidable distraction will always make the *dangerous* and *careless* categories of this offence more serious.

66. A number of respondents also suggested that using a hands-free mobile phone should be treated as an aggravating factor. If it is proved that an offender was reading a text message or adjusting a hands-free set or its controls at the time of the collision, this would be on a par with consulting a map or adjusting a radio

³¹ *causing death by careless driving under the influence* could also be an alternative charge in such circumstances

or satellite navigation equipment, activities that would be considered an avoidable distraction. Some respondents suggested that using a hand-held mobile phone to compose text messages is more dangerous than making a phone call. The Panel considers that it is possible to distinguish between ordinary avoidable distractions and those that are more significant because they divert the attention of the driver for longer periods or to a greater extent. Accordingly, the guideline for *causing death by dangerous driving* provides for a gross avoidable distraction to place the offence in a higher level of seriousness.

Recommendation 3

The fact that an offender was avoidably distracted by using a hand-held mobile phone when a causing death by driving offence was committed will always make an offence more serious. Similarly, adjusting the controls of a hands-free mobile phone or any other electronic equipment will be an avoidable distraction. Reading or composing text messages over a period of time will be a gross avoidable distraction.

Vulnerable road users

67. A significant number of respondents suggested that sentences should be increased to reflect the particular vulnerability of some victims, for example pedestrians and those riding motorbikes, bicycles or horses. The fact that a victim is particularly vulnerable is recognised as a generic aggravating factor³² and it is arguable that a special case does not need to be made in relation to these offences.
68. However, the Panel takes the view that it is appropriate to consider the vulnerability of other road users in terms of offender

culpability. It is important that the courts generally should treat cyclists, motorbike riders, horse riders and pedestrians as being vulnerable road users (but see the discussion on contributory negligence that follows) and take into account the responsibility of drivers to take extra care when driving near them. Driving too close to a bike or horse; allowing a vehicle to mount the pavement; driving into a cycle lane; and driving without the care needed in the vicinity of a pedestrian crossing, hospital, school or residential home, are all examples of factors that should be taken into account when determining the seriousness of an offence.

Recommendation 4

The fact that the victim of a causing death by driving offence was a particularly vulnerable road user is a factor that should be taken into account when determining the seriousness of an offence.

69. After careful consideration, the Panel has concluded that there are five factors that may be regarded as determinants of offence seriousness, each of which can be demonstrated in a number of ways. Those most likely to occur are set out below:

1. Awareness of risk

- (a) a prolonged, persistent and deliberate course of very bad driving

2. Effect of Alcohol or Drugs

- (b) consumption of alcohol above the legal limit
- (c) consumption of alcohol at or below the legal limit where this impaired the offender's ability to drive
- (d) failure to supply a specimen for analysis

³² *Overarching Principles: Seriousness*, pages 5-6, published 16 December 2004, www.sentencing-guidelines.gov.uk

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- (e) consumption of illegal drugs, where this impaired the offender's ability to drive
 - (f) consumption of legal drugs or medication where this impaired the offender's ability to drive (including legal medication known to cause drowsiness) where the driver knew, or should have known, about the likelihood of impairment

3. Inappropriate speed of vehicle

- (g) greatly excessive speed; racing; competitive driving against another vehicle
- (h) driving above the speed limit
- (i) driving at a speed that is inappropriate for the prevailing road or weather conditions

4. Seriously culpable behaviour of offender

- (j) aggressive driving (such as driving much too close to the vehicle in front, persistent inappropriate attempts to overtake, or cutting in after overtaking)
- (k) driving while using a hand-held mobile phone
- (l) driving whilst the driver's attention is avoidably distracted, for example by reading or adjusting the controls of electronic equipment such as a radio, hands-free mobile phone or satellite navigation equipment
- (m) driving when knowingly suffering from a medical condition that significantly impairs the offender's driving skills, including failure to take prescribed medication
- (n) driving when knowingly deprived of adequate sleep or rest, especially where commercial concerns had a bearing on the commission of the offence

- (o) driving a poorly maintained or dangerously loaded vehicle, especially where commercial concerns had a bearing on the commission of the offence

5. Victim

- (p) failing to have proper regard to vulnerable road users

Aggravating and mitigating factors

70. The Council has published a list of generic aggravating and mitigating factors³³ (see Annex B) and a court must always pay due regard to that list. A list of aggravating and mitigating factors most likely to be present in a causing death by driving offence was identified in *Cooksley* and confirmed in *Richardson*. A large number of those factors are now in the Panel's proposals as determinants of seriousness. However, the presence of other factors – some of which relate to the offender's behaviour and some of which relate to the outcome of the offence – will affect the seriousness of an individual offence; these may suggest that a sentence should be higher or lower within the suggested range or, in some combinations, that the sentence should move outside that range.³⁴
71. The majority of aggravating factors identified in *Cooksley* were based on the Panel's earlier advice to the Court of Appeal which had followed wide consultation and considerable discussion. The reduction for a guilty plea is now treated as a matter separate from mitigation, by virtue of a Council guideline,³⁵ and the existence of previous convictions

³³ *ibid*, pages 6–7, published 16 December 2004, www.sentencing-guidelines.gov.uk

³⁴ See Annex C, paras.. 1(d) and 2

³⁵ *Reduction in Sentence for a Guilty Plea*, published 16 December 2004, revised 20 July 2007, www.sentencing-guidelines.gov.uk

or the commission of an offence whilst on bail are now statutory aggravating factors.³⁶ Therefore, previous convictions for offences other than motoring offences are excluded from the list in this advice.

72. As already mentioned, a significant number of respondents challenged the validity of some of the factors identified in the consultation paper. Some respondents suggested additional aggravating and mitigating factors; these have been considered carefully by the Panel and some have been accepted as a sensible addition or improvement.
73. The Panel did not agree with the suggestion that some aggravating factors should be accorded more weight than others **automatically**; the degree to which an aggravating factor is present and its interaction with any other aggravating and mitigating factors will be immensely variable and the court is best placed to judge the appropriate impact on sentence. However, the Panel hopes that the decision to separate out those factors relating to the standard of driving as the initial determinants of offence seriousness will do much to alleviate the concerns raised.
74. In this regard it was interesting to note the findings of the independent research, which specifically tested the relative importance of various aggravating factors. The fact that an offender had previous convictions was seen to be the most serious form of aggravation and likely to add 13 months to a notional sentence. As already mentioned, previous convictions are now a statutory aggravating factor and, as such, are not included in the Panel's proposed

guideline. However, as can be seen from Annex C, it is accepted that the existence of previous convictions can increase the assessment of offence seriousness to such a degree that they move a sentence above the normal sentencing range.

75. Those who took part in the research were inclined to give very little credit for any of the proposed mitigating factors. The one exception was in relation to the offence of *causing death by driving: unlicensed, disqualified or uninsured drivers*, where 51% of those surveyed thought that the fact that an offender was driving in an emergency situation at the time justified a reduction in sentence.
76. In general, the seriousness with which the four offences are viewed meant that the participants tended to focus on the factors that might make an offence more serious and to be less interested in any suggestion that certain factors might make an offence less serious; sympathy for this category of offenders was in short supply. The researchers suggested that the general perception that sentences for these offences are normally too lenient might possibly have coloured the responses.

Aggravating factors

(The consultation paper listed a number of aggravating factors, most of which are now treated as determinants of seriousness; issues raised by respondents in relation to those factors are addressed in paragraphs 54 to 69 above. There is only one aggravating factor that needs to be discussed in detail here.)

³⁶ *Criminal Justice Act 2003*, ss. 143(2) and 143(3)

More than one victim

77. It has been commonly accepted that the seriousness of an offence such as those under consideration in this advice will generally be greater where more than one person is killed. The fact that more than one person died as the result of an offence was seen by those taking part in the research survey as making an offence significantly more serious, increasing a notional sentence by, on average, 11 months.
78. However, some of those who responded to the consultation did not consider that the death of more than one victim should aggravate an offence and a number of those taking part in the *focus groups* were also troubled by the inclusion of this as an aggravating factor; the fact that the number of victims normally would be a matter of chance was discussed in some depth. Focus group participants generally concluded that, where an offender was driving a vehicle such as a bus, coach or mini-bus, and, therefore, the responsibility to take care of passengers might be said to increase both the foreseeability of harm and the obligation to drive safely, the death of more than one of those passengers in addition to any other third parties, should be an aggravating factor.
79. Although it is inevitable that the degree of harm will be greater, the Panel considers that a more difficult issue arises when considering the assessment of culpability, the other aspect of the determination of the seriousness of an offence. Whilst there will be circumstances in which a driver could reasonably anticipate the possible death of more than one person (for example, the driver of a vehicle with passengers (whether that is a bus, taxi or private car) or a person driving badly in an

area where there are many people), there will be many circumstances where the driver could not anticipate the number of people who would be killed.

80. Whilst the Panel recognises the greater obligations of those responsible for driving other people, this is not an element essential to the quality of the driving and so has not been included amongst the determinants of seriousness that affect the choice of sentencing range. However, the number of people killed will aggravate the harm caused by the offence and, where that number is high (particularly where that was reasonably foreseeable), this might justify moving an offence into a higher sentencing range.
81. In practical terms, separate charges are likely to be brought in relation to each death caused. Although concurrent sentences are likely to be imposed (in recognition of the fact that the charges relate to one episode of offending behaviour), each individual sentence is likely to be higher because the offence is aggravated by the fact that more than one death has been caused.

Recommendation 5

Where more than one person is killed, that will aggravate the seriousness of the offence because of the increase in harm. Where the number of people killed is high and that was reasonably foreseeable, the number of deaths is likely to provide sufficient justification for moving an offence into the next highest sentencing band.

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82. In summary, the aggravating factors most likely to be present in a causing death by driving offence are:

Bad driving record

- (a) previous convictions for motoring offences, particularly offences that involve bad driving or the consumption of excessive alcohol before driving

Outcome of the offence

- (b) more than one person killed as a result of the offence
- (c) serious injury to one or more person(s), in addition to the death(s)

Irresponsible behaviour at the time of the offence

- (d) disregard of warnings from fellow passengers
- (e) other offences committed at the same time, such as driving other than in accordance with a valid licence; driving while disqualified; driving without insurance; driving while a learner without supervision; taking a vehicle without consent; driving a stolen vehicle
- (f) the offender's behaviour at the time of the offence, such as failing to stop, falsely claiming that one of the victims was responsible for the crash, or trying to throw the victim off the car by swerving in order to escape
- (g) offence committed in an attempt to avoid detection or apprehension

Mitigating factors

83. The Court in *Richardson* added an additional mitigating factor – that an offender behaved responsibly at the scene of the collision, perhaps by taking direct action to assist one or more of the victims (see the later discussion at paragraphs 91-92). Some respondents raised concerns about this and other factors identified in the Panel's consultation paper and some suggested additional factors.

Alcohol or drugs consumed unwittingly

84. A few respondents pointed to the fact that a driver may have been given alcohol or drugs unwittingly – for example where drinks are spiked – and that this should be regarded as a mitigating factor. In cases where consumption of alcohol is an essential element of an offence, this may amount to a defence. In other circumstances, the Panel considers that, where there is independent evidence to support such a claim, the court would take this into account when assessing the degree to which the consumption of alcohol or drugs should aggravate the sentence, but consideration would need to be given to the offender's decision to drive or continue to drive if driving ability was obviously impaired.

Recommendation 6

The fact that an offender may have consumed alcohol or drugs unwittingly before driving may be regarded as a mitigating factor but consideration should be given to the circumstances in which the offender decided to drive or continue to drive when driving ability was impaired.

Serious injury to the offender

85. Some respondents questioned why injury to an offender should be treated as a mitigating factor, bearing in mind that any injury sustained is a direct result of the offender's own actions; those surveyed in the research considered this factor to be of low relevance, only suggesting a reduction in the notional sentence of about 1 month. We see no reason to exclude this mitigating factor, which relates only to very serious injuries, but consider that the weighting it is given should be dictated by the circumstances of the offence. We take the view that the degree of mitigation accorded to an offender's injuries should bear a direct relationship to the extent to which the offender's driving was at fault – the greater the fault, the less the degree of mitigation; this distinction will be of particular relevance where an offence did not involve any fault in the offender's standard of driving.

Recommendation 7

The degree to which serious injuries sustained by an offender will justify a reduction in sentence will depend upon the degree of fault in the offender's driving in relation to the commission of the offence.

The fact that the victim is a close friend or relative

86. In its consultation on charging, the CPS proposed revisions to its 'nearest and dearest policy'. At the time of consultation, the policy was based on a presumption against prosecution where the victim was a close friend or relative unless other road users were imperilled by the offender's dangerous driving or there was a continuing risk to road users; this policy was based on the rationale that *'the driver has suffered such enormous personal loss that it would be oppressive and insensitive*

to prosecute him or her for the offence that led to the death.' The consultation proposed that prosecution should be the normal course subject to exceptions in particularly compelling cases, *'leaving it to the court to consider the personal circumstances of the driver when deciding on sentence.'*

87. In light of the responses received, the CPS has decided that the 'nearest and dearest' policy should be revised and, whilst reserving the right to exercise discretion in cases where prosecution would be oppressive or insensitive, has concluded that the public interest will normally demand a prosecution for offences of *causing death by dangerous driving* or *causing death by careless driving under the influence*. In relation to *causing death by careless or inconsiderate driving* and *causing death by driving: uninsured, disqualified or unlicensed*, where the degree of culpability is low or where other mitigating circumstances are strong, there is less likelihood of prosecution. Where any case involving the death of a person in a close personal or family relationship with the driver is prosecuted, it will be for the sentencing court to determine whether or not the relationship between the parties should be a mitigating factor.³⁷

88. The survey findings from our research reveal that only 24% of the public regarded the fact that the victim was a friend or family member as mitigation; views were more mixed in the focus groups and amongst those who responded to the consultation. The Panel can see no justification for excluding this

³⁷ Of the 50 (out of a maximum 139) respondents who answered this question in the CPS consultation, all but one supported the proposed revision of the 'nearest and dearest policy' but, in line with the proposal in the CPS consultation, assumed that the courts would take the relationship into account by way of mitigation

mitigating factor but, following the reasoning in relation to *serious injury sustained by the offender* discussed above, we consider that the degree to which the relationship influences the sentence should be linked to offender culpability in relation to the commission of the offence; in cases where culpability is high, a decision not to make a sentence reduction might be justified.

Recommendation 8

Normally, the fact that the victim of an offence was in a close personal or family relationship with the offender should be treated as a mitigating factor. The degree to which this factor should influence sentence will vary according to the culpability of the offender and, where culpability is high, a reduction in sentence may not be justified.

Actions of others

89. The Panel's consultation paper did not discuss the relevance of actions taken by others that may have contributed to the commission of an offence but this was an issue raised both by those who responded to the consultation and by those taking part in the research. Various actions on the part of the victim (for example, not wearing a crash helmet, seat belt or reflective clothing) or a third party (for example, the offender was blinded by the full beam headlights of another vehicle) have been identified as factors that should be taken into account by way of mitigation.
90. The Panel agrees that where the actions of the victim or a third party contributed to the commission of an offence, this should be acknowledged and taken into account as a mitigating factor. In relation to the offence of *causing death by driving: unlicensed, uninsured, disqualified drivers*, this could cover

situations where the collision was wholly the fault of the victim or a third party and also where the lack of insurance cover was wholly the fault of another person.

Recommendation 9

Any actions on the part of the victim(s) or a third party that contributed to the commission of an offence may be taken into account as a mitigating factor.

Giving assistance at the scene

91. As mentioned in paragraph 83, the Court in *Richardson* added an additional mitigating factor relating to an offender's responsible behaviour at the scene of the crash. Some participants in the research focus groups questioned whether this was appropriate, on the basis that giving assistance at the scene is the least one could expect of an offender, taking the view that failing to assist should be regarded as an aggravating factor. However, the survey indicated that, on average, the public would allow a four month reduction on a notional sentence where an offender helped the victim(s) and/or called the emergency services.
92. There may be many reasons why an offender does not offer help to the victims at the scene – the offender may be injured, traumatised by shock, afraid of causing further injury or simply have no idea what action to take – and it would be inappropriate to assess the offence as more serious on this ground (and so increase the level of sentence). *The Panel agrees with the Court of Appeal that, where an offender behaves responsibly and gives direct, positive assistance to assist the victim(s) at the scene of a collision, this should be regarded*

as a mitigating factor and may result in a reduction in sentence.

Recommendation 10

Where an offender gave direct, positive, assistance to victim(s) at the scene of a collision, this should be regarded as a mitigating factor.

The offender's age/lack of driving experience

93. One of the mitigating factors identified in Cooksley and endorsed in *Richardson* is “the offender's age (but only in cases where lack of driving experience has contributed to the commission of the offence).” The Council guideline *Overarching Principles: Seriousness*³⁸ includes a generic mitigating factor “youth or age, where it affects the responsibility of the individual defendant”.
94. A significant number of respondents sought clarity about this area of mitigation as it applies to causing death by driving offences; some suggested that, as the majority of collisions are caused by young inexperienced drivers, it would be invidious to make allowance for youth. It was also pointed out that a driving test is supposed to result in drivers who know the rules of the road and who can drive to the required standard; where a driver falls short of that standard, allowance should not be made for youth or inexperience. Similarly, some collisions are caused by elderly drivers, whose reaction times may not be as good as they once were; as they have made a conscious decision to continue to drive, no allowance should be made. It was suggested that allowing age or inexperience to mitigate would be discriminatory.

95. In this regard, it is interesting to note the mixed message in the research findings – some members of the public suggested that the fact that an offender had learned to drive only recently should reduce a notional sentence by about 2 months but also, conversely, others suggested that the fact that an offender was known to be an experienced driver should reduce a notional sentence by about 1 month.
96. Some respondents to the consultation suggested that, if any mitigation is to be attributed in this area at all, it should relate only to the relative inexperience of the offender and should not be linked in any way to youth or age. The fact that this might benefit younger drivers disproportionately would be an indirect outcome resulting from the age at which people generally learn to drive and thus would not be unfair or discriminatory.
97. The Panel considers that there is a great deal of difference between recklessness or irresponsibility – which may be due to youth – and inexperience in dealing with prevailing conditions or an unexpected or unusual situation that presents itself – which may be present regardless of the age of the offender. *The Panel has concluded that, where a lack of experience has contributed to a collision, this may be taken into account by way of mitigation.*

Recommendation 11

The fact that an offender's lack of driving experience contributed to the commission of an offence should be treated as a mitigating factor; in this regard, the age of the offender is not relevant.

³⁸ *Overarching Principles: Seriousness*, page 7, published 16 December 2004, www.sentencing-guidelines.gov.uk

98. In summary, the Panel has concluded that the following factors may mitigate an offence of causing death by driving:

- (a) alcohol or drugs consumed unwittingly
- (b) the offender was seriously injured as a result of the collision
- (c) the victim was a close relative or friend
- (d) the actions of the victim or a third party contributed to the commission of the offence
- (e) the offender gave direct, positive, assistance at the scene to the victim(s)
- (f) the offender's lack of driving experience contributed to the commission of the offence

Personal mitigation

The offender's normal standard of driving

99. A mitigating factor identified in *Cooksley* was *a good driving record*. In so far as this relates to an absence of previous convictions, the Panel shares the concern of some of those who responded to the consultation paper that this is not a factor that automatically should be treated as a mitigating factor, especially now that the presence of previous convictions is a statutory aggravating factor. However, any evidence to show that an offender has previously been an exemplary driver, for example having driven a bus, ambulance, taxi or similar vehicle conscientiously and without incident for many years, is a fact that the courts may well wish to take into account by way of personal mitigation.

Remorse

100. Many respondents and research participants pointed to the fact that remorse should be the normal reaction to having caused the death of a third party and that it should be neutral for sentencing purposes. Some suggested that an expression of remorse often may be nothing more than a calculated attempt to secure a reduced sentence and proposed that, rather than remorse being treated as a mitigating factor, lack of remorse should be an aggravating factor. Whilst the Panel agrees that anyone found guilty of causing death by driving would be expected to feel remorseful, this cannot undermine its importance for sentencing purposes. Remorse is identified as personal mitigation in the Council guideline³⁹ and the Panel can see no reason for it to be treated differently for this group of offences. It is for the court to determine whether an expression of remorse is genuine; where it is, this should be taken into account as personal mitigation.

Recommendation 12

Genuine remorse on the part of an offender or evidence that an offender is normally a careful and conscientious driver may both be taken into account as personal mitigation and may justify a reduction in sentence.

Other issues

Disqualification from driving

101. The penalties for all four of the offences covered in this advice include mandatory disqualification from driving. A significant

³⁹ *ibid.*, page 7, published 16 December 2004, www.sentencing-guidelines.gov.uk

number of those who responded to the consultation sought to identify periods of disqualification on a sliding scale in line with the severity of the sentence imposed, up to and including permanent disqualification for the most serious offences. The Panel does not consider that making such a direct and automatic link between the sentence and the length of the ban would be appropriate. Although disqualifying an offender from driving may be regarded as punitive, the primary purpose of the disqualification is to protect the public from future risk and it is not inevitable that the offender's standard of driving will suggest that such a risk would exist in all cases.

102. Many respondents and a majority of research participants considered that the period of disqualification should take effect only at the point of release from custody, on the basis that a ban is meaningless during a period of imprisonment. The Panel appreciates this sentiment but the law requires this ancillary order to run from the date on which it is imposed. *However, bearing in mind that statute prescribes minimum and not maximum periods for disqualification, a court should always ensure that the length of any custodial sentence is taken into account when deciding the overall period of disqualification from driving in order to ensure that it has the desired impact.*

Recommendation 13

When ordering disqualification from driving, the purpose of which is primarily public protection, the duration of the order should allow for the length of any custodial period in order to ensure that the disqualification has the desired impact.

Suspension of licence pending conviction

103. Another suggestion put forward by a significant number of respondents and focus group members was that the accused's driving licence ordinarily should be suspended pending the outcome of the trial. There is no statutory power to suspend someone's licence prior to conviction but a driving ban can be imposed as a requirement of granting bail; this is most likely to be the case where the driving of the accused is alleged to have been *dangerous or careless under the influence* and the court considers that allowing the accused to continue to drive would present a risk of further harm to the public.

Diversity and Equality

104. In the consultation paper, we asked whether any of the Panel's proposals would be likely to have a disproportionate impact by reason of an offender's gender, age, disability, race or ethnic group. As discussed earlier, some respondents took the view that making allowance for the inexperience of young drivers would discriminate against older people who have only just learned to drive. The Panel has concluded that inexperience should be treated as a mitigating factor for all groups of offender, thus eliminating the potential for discrimination. The age of the offender will only be relevant in so far as it is a generic factor included in the Council guideline.⁴⁰ No other areas of potential discrimination were identified.

⁴⁰ *ibid.*

SECTION TWO: THE PANEL'S PROPOSALS

Causing Death by Dangerous Driving

105. *Causing death by dangerous driving* carries a maximum penalty of 14 years imprisonment and is triable on indictment only. Disqualification from driving and endorsement of the offender's driving licence are mandatory and an offender must pass an extended re-test before being allowed to drive again when the disqualification lapses.
106. As mentioned earlier, Parliament increased the maximum penalty of this offence from 10 to 14 years imprisonment in the Criminal Justice Act 2003. Normally, such an increase has not been taken to signal a need to increase all starting points for sentencing *proportionately* but rather to allow more headroom for sentencing at the top end of the range of seriousness. Thus, when the maxima for this offence and for *causing death by driving under the influence* were doubled from 5 to 10 years imprisonment, the Court of Appeal revised the then sentencing guideline⁴¹ by increasing the *highest* starting point from 2 to 5 years imprisonment, while leaving the lower starting points undisturbed.⁴²
107. The *Report on the Review of Road Traffic Penalties*, published by the Government in July 2002, referred to 'a number of serious cases of *causing death by dangerous driving* in which the sentence imposed has approached the maximum penalty of 10 years imprisonment. In one case the sentencing court even imposed the full maximum penalty.'⁴³ From this, the

Panel inferred that the increase in maxima was intended only to give courts greater 'headroom' to deal with cases of the most serious kind and, on this basis, the Council decided in June 2004 that there was no reason to revisit the existing starting points for less serious cases.

108. A number of (but not all) subsequent decisions in the Court of Appeal suggested that the increase in the maxima should be reflected in all the starting points for these offences.⁴⁴ This was an issue considered by the Court of Appeal in *Richardson*; the Court concluded that:

"if the level of sentence in cases of the utmost gravity is significantly increased (as it should be) there should be some corresponding increase in sentences immediately below this level of gravity, continuing down the scale to the cases where there are no aggravating features at all."

109. The Court also stated that proportion needed to be maintained between this offence and other crimes of violence resulting in death and suggested some adjustment of sentences at the lower levels of seriousness.
110. One of the principal questions asked in the Panel's consultation was whether the whole range of sentencing starting points ought to be revised for this offence or whether, in line with the Panel's provisional view, a *significant* increase is needed only towards the top end of the scale of seriousness. Responses were a little mixed with some respondents preferring

⁴¹ First laid down in *Boswell* (1984) 6 Cr App R (S) 257.

⁴² *Attorney-General's References 14 and 24 of 1993* (Shepherd and Wernet) (1994) 15 Cr App R (S) 640.

⁴³ see pages 5 and 6

⁴⁴ Among the many decisions, see *Afzal* [2005] EWCA Crim 384 (right to give some uplift to all starting points), *Gray* [2006] 1 Cr App R (S) 21 (wrong to increase all starting points by 40 per cent), and *Attorney-General's Reference No. 32 of 2006 (Riding)* [2006] EWCA Crim 1500 (starting point of 4–5 years for 'higher culpability' cases should be raised to 5 years).

higher sentences across the range and others finding the proposed sentences at the bottom end of the range too high but, overall, there was general support for the Panel's proposals. The views of research participants and the Panel were most closely aligned for this offence; a key finding was that 70% of participants were broadly in agreement with⁴⁵ the proposed starting point of 5 years imprisonment for an offence involving one aggravating factor.

[Recommendation 14](#)

The sentencing starting points and ranges for the offence of causing death by dangerous driving require significant revision only towards the top of the scale of seriousness.

111. The Panel's proposed guideline for this offence includes starting points and ranges⁴⁶ which cover four levels of seriousness. In principle, the different levels of seriousness should reflect the different degrees of risk or danger foreseeably created by the offender's driving. The greater the danger to others, the higher the starting point for sentence. In practice, however, it would not be sufficient to indicate the different levels of seriousness by abstract descriptions of the degree of risk (high, substantial, significant, low), and the Panel has therefore decided to use examples of the type of bad driving that might be expected to fall into each range to complement the more general description.

112. *Causing death by dangerous driving* is a 'serious offence' for the purposes of sections 224 – 229 of the Criminal Justice Act 2003. A court sentencing an adult offender must impose a sentence of imprisonment for public protection if it is of the opinion that there is a 'significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences'. Section 229 of that Act provides that there is a presumption of significant risk where an adult offender's previous record includes one or more 'specified offences'.

⁴⁵ As before (see para. 15), respondents were identified as 'tolerating' the Panel's proposals if they spontaneously identified a sentence in line with, or below, the Panel's proposal or said that it would be 'definitely' acceptable when specifically asked about the proposal

⁴⁶ See Annex C for definitions of these terms

Causing Death by Dangerous Driving: section 1 Road Traffic Act 1988

Levels of seriousness

The 4 levels are distinguished by factors related predominantly to the standard of driving. In each case, the presence of aggravating factors or combinations of a small number of determinants of seriousness will increase the starting point within the range. Where there is a larger group of determinants of seriousness and/or aggravating factors, this may justify moving the starting point to the next level.

Level 1

The most serious offences encompassing driving that involved a deliberate decision to ignore (or a flagrant disregard for) the rules of the road and an apparent disregard for the great danger being caused to others. Such offences are likely to be characterised by:

- A prolonged, persistent and deliberate course of very bad driving **AND/OR**
- Consumption of substantial amounts of alcohol or drugs leading to gross impairment **AND/OR**
- A group of determinants of seriousness which in isolation or smaller number would place the offence in level 2

Level 1 is that for which the increase in maximum penalty was aimed primarily. Where an offence involves both of the determinants of seriousness identified, particularly if accompanied by aggravating factors such as multiple deaths or injuries, or a very bad driving record, this may move an offence towards the top of the sentencing range.

Level 2

This is driving that created a *substantial* risk of danger and is likely to be characterised by:

- Greatly excessive speed, racing or competitive driving against another driver **OR**
- Gross avoidable distraction such as reading or composing text messages over a period of time **OR**
- Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs, failing to take prescribed medication or as a result of a known medical condition **OR**

A group of determinants of seriousness which in isolation or smaller number would place the offence in level 3

Level 3

This is driving that created a *significant* risk of danger and is likely to be characterised by:

- Driving above the speed limit/at a speed that is inappropriate for the prevailing conditions **OR**
- Driving when knowingly deprived of adequate sleep or rest or knowing that the vehicle has a dangerous defect or is poorly maintained or is dangerously loaded **OR**
- Driving whilst avoidably distracted **OR**
- Failing to have proper regard to vulnerable road users

The proposed starting point and range overlap with Level 2 to allow the breadth of discretion necessary to accommodate circumstances where there are significant aggravating factors.

Level 4

These are likely to be characterised by driving which creates a brief but obvious danger resulting from a single dangerous manoeuvre or from being momentarily (but avoidably) distracted.

The starting point recognises that the level of culpability in the driving is *relatively* low. Where there are strong mitigating factors, such as giving assistance at the scene, the sentence may be lower than this but a community order would be justified only in the most exceptional circumstances.

Causing Death by Dangerous Driving: section 1 Road Traffic Act 1988

Maximum penalty: 14 years imprisonment; minimum disqualification of 2 years with compulsory extended re-test

Mode of trial: Indictment only

This is a serious offence for the purpose of section 224 Criminal Justice Act 2003.

The following guideline applies to a first-time offender convicted after trial who has NOT been assessed as a dangerous offender.

When assessing the seriousness of any offence, the court must always refer to the full list of aggravating and mitigating factors in the Council guideline *Seriousness*⁴⁷ as well as those set out in the table below as being particularly relevant to this type of offending behaviour.

Nature of offence	Sentencing range
Level 1	Starting point – 8 years imprisonment Range – 7 to 14 years imprisonment
Level 2	Starting point – 5 years imprisonment Range – 4 to 7 years imprisonment
Level 3	Starting point – 3 years imprisonment Range – 2 to 5 years imprisonment
Level 4	Starting point – 18 months imprisonment Range – 12 months to 2 years imprisonment
<p>Offence-specific aggravating factors</p> <p>(a) previous convictions for motoring offences, particularly offences that involve bad driving or the consumption of excessive alcohol or drugs before driving</p> <p>(b) more than one person killed as a result of the offence</p> <p>(c) serious injury to one or more victims, in addition to the death(s)</p> <p>(d) disregard of warnings</p> <p>(e) other offences committed at the same time, such as driving other than in accordance with the terms of a valid licence; driving while disqualified; driving without insurance; driving while a learner without supervision; taking a vehicle without consent; driving a stolen vehicle</p> <p>(f) the offender's irresponsible behaviour at the time of the offence, such as failing to stop, falsely claiming that one of the victims was responsible for the collision, or trying to throw the victim off the car by swerving in order to escape</p> <p>(g) driving in an attempt to avoid detection or apprehension</p>	<p>Offence-specific mitigating factors</p> <p>(a) alcohol or drugs consumed unwittingly</p> <p>(b) offender was seriously injured in the collision</p> <p>(c) the victim was in a close personal or family relationship with the offender</p> <p>(d) actions of the victim or a third party contributed significantly to the likelihood of a collision occurring and/or death resulting</p> <p>(e) the offender gave direct, positive, assistance at the scene to victim(s)</p> <p>(f) the offender's lack of driving experience contributed to the commission of the offence</p>

⁴⁷ *Overarching Principles: Seriousness*, published 16 December 2004, www.sentencing-guidelines.gov.uk

Causing Death by Careless Driving when under the influence of Drink or Drugs or having failed without reasonable excuse either to provide a specimen for analysis or to permit the analysis of a blood sample

113. This offence, under section 3A of the Road Traffic Act 1988, carries the same maximum penalty as *causing death by dangerous driving* – 14 years imprisonment – and is also triable on indictment only. Again, disqualification from driving, endorsement and an extended re-test are mandatory. However, in light of the significant differences between the nature of the two offences, the Panel consulted on separate sentencing proposals and is proposing a separate guideline.
114. The fact that the offender was under the influence of drink or drugs is an inherent element of this offence. The significance of driving after having consumed drink or drugs was discussed earlier. Substantial consumption will generally cause an offence of *causing death by dangerous driving* to be assessed as in the most serious category of seriousness. In its consultation, the Panel questioned whether sentences for all offences of *causing death by careless driving under the influence* should have the same starting points as the most serious offences of *causing death by dangerous driving*.
115. The guideline proposed in the Panel's consultation paper linked levels of driving impairment (minimal, moderate and high) to parallel levels of alcohol or drug consumption; it did not refer to the levels of carelessness involved in the standard of driving. This approach was based on the assumption that the key factor in this offence, and that which makes it as serious as *causing death* by *dangerous driving*, is the consumption of alcohol or drugs; the fact that the offence involves a less culpable standard of driving was considered to be of lesser importance.
116. The starting points and ranges for the top two levels in the consultation paper equated to the top two levels for *causing death by dangerous driving*; the bottom level had a higher starting point and a higher top end to the sentencing range. Views were divided among those who responded, with almost as many respondents disagreeing as agreeing with the proposed sentencing ranges. Of those who disagreed, most found the proposed sentences too lenient, especially as they considered that some of the elements of the offence as described would amount to *dangerous* rather than *careless* driving. A significant number of respondents favoured four levels of seriousness with sentences more closely linked to the *dangerous* offence.
117. We have reconsidered our approach to the proposed guideline for this offence both in the light of the responses received and in the light of the change of emphasis towards guidelines based on factors related to the standard of driving. We now propose a guideline based both on the level of alcohol or drug consumption and on the degree of carelessness. The increase in sentence is more marked where there is an increase in the level of intoxication than where there is an increase in the degree of carelessness; this reflects the apparent intention of Parliament which has provided a 14 year imprisonment maximum for this offence compared with a 5 year maximum for causing death by careless or inconsiderate driving alone. We have maintained the approach of having three levels of seriousness for this offence (as compared with the four levels for *causing*

death by dangerous driving) on the basis that the highest level of alcohol consumption is likely to result in driving that can be classified as *dangerous*.

118. As already mentioned, the research participants considered this to be the most serious offence of the four; driving a car on a public road following consumption of drink or drugs is a culpable decision, the effects of which persist so long as the offender continues to drive. More than 75% of those surveyed thought that an offender should get a custodial sentence for this offence; when made aware of the maximum penalty and asked to state what sentence should be imposed after trial for an offence involving no aggravating factors, the average length of custody preferred was 5 years. However, almost 50% could accept the starting point of 2 years proposed by the Panel for such an offence.⁴⁸
119. A refusal to supply a specimen for analysis may be a calculated step by an offender to avoid prosecution for driving when having consumed in excess of the prescribed amount of alcohol, with a view to seeking to persuade the court that the amount consumed was relatively small. In *Attorney-General's Reference No. 21 of 2000*,⁴⁹ the Court of Appeal stated that a court is entitled to draw adverse inferences from a refusal to supply a specimen without reasonable excuse and should treat with caution any attempt to persuade the court that only a limited amount of alcohol had been consumed. In formulating the proposals in our consultation paper we took

account of the view expressed in that case that:

"the ordinary inference to be drawn is that the defendant has refused to supply a specimen because he knows that he has consumed alcohol well in excess of the prescribed limit and the court will be likely to draw that inference unless convinced that it should not do so."

120. Accordingly, in the consultation, we suggested that failing to provide a specimen for analysis without reasonable excuse should be regarded as offending behaviour that falls into the most serious category.⁵⁰ The majority of respondents agreed, although some sentencers pointed to the approach adopted in the Magistrates' Court Sentencing Guidelines as being more proportionate. **Three levels of seriousness are identified in those guidelines:**
- (i) defendant refused test when had honestly held but unreasonable excuse;
 - (ii) deliberate refusal or deliberate failure; and
 - (iii) deliberate refusal or deliberate failure where evidence of serious impairment.

The Panel has decided to merge these descriptions into the three primary levels of seriousness of the offence described above.

⁴⁸ In the case studies used for the research, the offender was presumed to have been 1.5 times over the legal limit (approx. 52 µg)

⁴⁹ [2001] 1 Cr App R (S) 173

⁵⁰ since the conclusion of the Panel's consultation, this offence has been extended so that it now includes situations where a person fails to give permission for the analysis of a blood sample taken at a time when that person was incapable of giving consent. This does not appear to the Panel to raise any new issue as regards sentencing.

Causing Death by Careless Driving when under the influence of Drink or Drugs or having failed either to provide a specimen for analysis or to permit analysis of a blood sample: s. 3A Road Traffic Act 1988

Maximum penalty: 14 years imprisonment; minimum disqualification of 2 years with compulsory extended re-test

Mode of trial: Indictment only

This is a serious offence for the purpose of section 224 Criminal Justice Act 2003; the following guideline applies to a first-time offender convicted after trial who has NOT been assessed as dangerous.

When assessing the seriousness of any offence, the court must always refer to the full list of aggravating and mitigating factors in the Council guideline *Seriousness*⁵¹ as well as those set out on the facing page as being particularly relevant to this type of offending behaviour.

The legal limit of alcohol is 35µg (80mg in the blood and 107mg in urine)	Careless/inconsiderate driving arising from momentary inattention with no aggravating factors	Other cases of careless/inconsiderate driving	Careless/inconsiderate driving falling not far short of dangerousness
71µ or above of alcohol/ high quantity of drugs OR deliberate non-provision of specimen where evidence of serious impairment	Starting point – 6 years imprisonment Sentencing range – 5 to 10 years imprisonment	Starting point – 7 years imprisonment Sentencing range – 6 to 12 years imprisonment	Starting point – 8 years imprisonment Sentencing range – 7 to 14 years imprisonment
51– 70µg of alcohol/ moderate quantity of drugs OR deliberate non-provision of specimen	Starting point – 4 years imprisonment Sentencing range – 3 to 7 years imprisonment	Starting point – 5 years imprisonment Sentencing range – 4 to 8 years imprisonment	Starting point – 6 years Sentencing range – 5 to 9 years imprisonment
35–50µg of alcohol/ minimum quantity of drugs OR test refused because of honestly held but unreasonable belief	Starting point – 18 months imprisonment Sentencing range – 6 months to 4 years imprisonment	Starting point – 3 years imprisonment Sentencing range – 2 to 5 years imprisonment	Starting point – 4 years imprisonment Sentencing range – 3 to 6 years imprisonment

⁵¹ *Overarching Principles: Seriousness*, published 16 December 2004, www.sentencing-guidelines.gov.uk

Offence-specific aggravating factors	Offence-specific mitigating factors
<p>(a) other offences committed at the same time, such as driving other than in accordance with the terms of a valid licence; driving while disqualified; driving without insurance; driving while a learner without supervision; taking a vehicle without consent; driving a stolen vehicle</p> <p>(b) previous convictions for motoring offences, particularly offences that involve bad driving or the consumption of excessive alcohol before driving</p> <p>(c) more than one person was killed as a result of the offence</p> <p>(d) serious injury to one or more persons in addition to the death(s)</p> <p>(e) irresponsible behaviour at the time of the offence, such as failing to stop, falsely claiming that one of the victims was responsible for the collision</p>	<p>(a) alcohol or drugs consumed unwittingly</p> <p>(b) offender was seriously injured in the collision</p> <p>(c) the victim was in a close personal or family relationship with the offender</p> <p>(d) the actions of the victim or a third party contributed significantly to the likelihood of a collision occurring and/or death resulting</p> <p>(e) the offender gave direct, positive, assistance at the scene to victim(s)</p> <p>(f) the offender's lack of driving experience contributed to the commission of the offence</p>

Causing Death by Careless or Inconsiderate Driving

121. This offence carries a maximum penalty of 5 years imprisonment and is triable either way. In a magistrates' court, statute provides that the maximum sentence is 12 months imprisonment; this will be revised to 6 months imprisonment until such time as the statutory provisions increasing the sentencing powers of a magistrates' court are implemented.⁵²

Disqualification of the offender from driving and endorsement of the offender's driving licence are mandatory, and the offence carries between 3 and 11 penalty points when the court finds special reasons for not imposing disqualification.

122. As discussed earlier, this is one of the most difficult offences to sentence because of the imbalance between culpability and harm. The majority of those taking part in our research identified this as the least serious of the four offences because of the lack of any intention or wilful element in the offender's behaviour. As manoeuvres amounting to an offence of *careless driving* frequently take place without any death or injury resulting, it is often argued that taking account of the victim's death when sentencing an offence of *causing death by careless driving* is to attribute too much importance to chance or misfortune.

123. However, the view put forward in the Home Office's consultation paper that preceded the Road Safety Bill was that:

- (i) the rules of the road are designed largely to avoid collisions, injuries and deaths;

- (ii) anyone who falls below the standards set for drivers is culpable;

- (iii) any driver who does so without causing an accident is fortunate; and

- (iv) it is justifiable to punish those whose bad driving does cause death or injury, because that is the risk against which the rules of the road are meant to guard.⁵³

124. Given the structure of the legislation, it is inevitable that the sentencing approach must take account both of the death that has been caused and of the offender's culpability in respect of the standard and circumstances of the driving. However, as has been said before, the culpability of the offender must be the primary determinant of offence seriousness and a notable finding of the research is that, where the standard of driving of an offender was said to have been *careless*, people were generally more ready to accept a lower assessment of offender culpability on the basis that the offender's behaviour was not wilful or obviously reckless. In such cases, research participants were more willing to accept that certain mitigating factors might be taken into account, even though any suggested reduction in sentence was often minimal.

125. Some of those who responded to the consultation expressed the view that it is only human for people to make errors of judgement when driving; the more driving a person does, the more likely it will be for mistakes to be made. Mercifully, most of these errors do not result in collisions; where they do, the majority do not result in the death of a third party, or even serious injury. Whilst

⁵² Criminal Justice Act 2003, ss.154(1) and 282; Road Safety Act 2006, s.61(5)

⁵³ Above, footnote 12, paras. 3.24 – 3.25.

acknowledging the tragedy of any death that is caused, these respondents were fearful that the maximum penalty for this offence could result in sentences that are too severe and wholly disproportionate to the culpability of the offender. With this in mind, they found the Panel's proposed sentencing ranges too high.

126. Conversely, bearing in mind the statutory provision for *causing death by careless or inconsiderate driving* to be an alternative (lesser) verdict where a more serious offence was charged, some respondents expressed concern that the Panel's proposals were too lenient to allow for cases where the standard of driving had, in fact, been *dangerous*.
127. The type of behaviour likely to be captured by this offence is described in paragraph 37. The general analysis of a typical piece of *careless* driving may be that it is a momentary negligent error of judgement or a single negligent manoeuvre, so long as neither falls so far below the standard of the competent and careful driver as to amount to *dangerous* driving. These are essentially questions of degree, which are unavoidable when there is a ladder of offences graded in this way.
128. Since the maximum sentence for *causing death by careless or inconsiderate driving* has been set at 5 years imprisonment, it is clear that the sentence ranges must generally be lower for this offence than for the offences of *causing death by dangerous driving* or *causing death by careless driving under the influence*, for which the maximum sentence is 14 years imprisonment. However, it is unavoidable that some cases will be on the borderline between *dangerous* and *careless* driving, or may involve a number of factors that significantly increase the seriousness of an offence. As a result, the

guideline for this offence identifies three levels of seriousness, the highest of which overlaps with the lower starting points for *causing death by dangerous driving*.

129. A driver convicted of *careless or inconsiderate driving* that does not result in death is likely to receive a financial penalty, even where there has been serious injury: section 23 of the Road Safety Act 2006 has increased the maximum penalty for the offence from a level 4 fine (£2,500) to a level 5 fine (£5,000) (from 24 September 2007) but imprisonment cannot be imposed. The Panel maintains the view put forward in the consultation paper that the sentence where an offence resulted in death should be higher but that, whilst in no way seeking to minimise the loss of life resulting from an offence, a community order might be an appropriate sentence for the least serious category of offence. The Panel considers that a fine is most unlikely to be an appropriate sentence for an offence of this kind; where a non-custodial sentence is considered appropriate, this normally should be a community order.

Recommendation 15

A fine is most unlikely to be an appropriate sentence for an offence of causing death by careless or inconsiderate driving; where a custodial sentence is not justified, a community order normally should be imposed.

130. A key issue for consultation was where the custody threshold should lie, bearing in mind that a sentencer may need to take account of an offender's exemplary driving record and the fact that the offence involved no more than a momentary lack of attention, albeit with devastating consequences.

131. Notwithstanding the fact that research participants assessed this as the least serious of the four offences, 38% still favoured a custodial sentence; the average prison term suggested was 3 years imprisonment. 48% favoured a community order, which the Panel had proposed for the least serious examples of this offence. Of those responding to the consultation, the largest number agreed with the sentencing ranges proposed, slightly fewer (mainly groups or organisations and private individuals) suggested higher starting points and a lesser number (largely sentencers) suggested lower starting points.

132. In view of the mixed responses and the research finding that 61% of the public would broadly accept the sentences proposed by the Panel, we have decided to maintain the thrust of our original proposals and have concluded that, where the level of carelessness is low and there are no aggravating factors, even the fact that death was caused is not sufficient to justify a prison sentence. However, we have decided to amend the guideline proposed in the consultation paper in favour of three levels of seriousness linked to the degree of carelessness involved in the standard of driving.

Levels of seriousness

133. The most serious level for this offence is now defined as one where the offender's driving fell *not that far short of dangerous*. The least serious group of offences relates to those cases where the level of culpability is low – for example in a case involving an offender who misjudges the speed of another vehicle, or turns without seeing an oncoming vehicle because of restricted visibility. Other cases will fall into the intermediate level.

134. Despite the creation of a new offence of *causing death while driving: unlicensed, disqualified or uninsured drivers*, factor (a) is still relevant in cases where the actual driving is careless, since the maximum penalty for this offence is 5 years imprisonment compared with 2 years imprisonment for the other new offence.

Starting points and sentencing ranges

135. The starting point for sentencing for the most serious level of offences is 15 months imprisonment, within a range of 36 weeks to 3 years. The sentencing range for the most serious offence of *causing death by careless driving* is lower than that for the least serious offence of *causing death by dangerous driving* (starting point – 18 months; sentencing range – 12 months to 2 years), in recognition of the different standards of driving behaviour. However, the range still leaves scope, within the 5 year maximum, to impose longer sentences where the case is particularly serious. Cases at the top end of the seriousness spectrum will be relatively infrequent, most often being those where an offender was charged with *causing death by dangerous driving* but was found guilty of the lesser offence. It will be important to keep in view the fact that the sentence must be for an offence where the driving was *careless* as opposed to *dangerous*.

136. The starting point for cases in the intermediate level is 36 weeks imprisonment, within a range of Community Order (HIGH) to 2 years; in such cases there may be more than one aggravating factor present, but the offender's culpability would not be high. This might be the case where the driving clearly fell below the required standard, for example where the

offender drove through a red light (without evidence of any other bad driving) or where the driver was in a poorly maintained vehicle.

137. For cases involving momentary inattention or brief lack of caution, a starting point of a medium community order is proposed, within a range of Low to High community order (see the Council guideline).⁵⁴

⁵⁴ *New Sentences: Criminal Justice Act 2003*, para. 1.1.31, published 16 December 2004, www.sentencing-guidelines.gov.uk

Causing Death by Careless or Inconsiderate Driving: section 2B Road Traffic Act 1988

Maximum penalty: 5 years imprisonment; minimum disqualification of 12 months

Mode of trial: Triable either way

The following guideline applies to a first-time offender convicted after trial.

When assessing the seriousness of any offence, the court must always refer to the full list of aggravating and mitigating factors in the Council guideline *Seriousness*⁵⁵ as well as those set out in the table below as being particularly relevant to this type of offending behaviour.

Nature of offence	Sentencing range
Careless or inconsiderate driving falling not far short of dangerous driving	Starting point – 15 months imprisonment Sentencing range – 36 weeks to 3 years imprisonment
Other cases of careless or inconsiderate driving	Starting point – 36 weeks imprisonment Sentencing range – Community Order (HIGH) to 2 years imprisonment
Careless or inconsiderate driving arising from momentary inattention with no aggravating factors	Starting point – Community Order (MEDIUM) Sentencing range – Community Order (LOW) to (HIGH)
Offence-specific aggravating factors	Offence-specific mitigating factors
<p>(a) other offences committed at the same time, such as driving other than in accordance with the terms of a valid licence; driving while disqualified; driving without insurance; driving while a learner without supervision; taking a vehicle without consent; driving a stolen vehicle</p> <p>(b) previous convictions for motoring offences, particularly offences that involve bad driving</p> <p>(c) more than one person was killed as a result of the offence</p> <p>(d) serious injury to one or more persons in addition to the death(s)</p> <p>(e) irresponsible behaviour at the time of the offence, such as failing to stop, falsely claiming that one of the victims was responsible for the collision</p>	<p>(a) offender seriously injured in the collision</p> <p>(b) the victim was in a close personal or family relationship with the offender</p> <p>(c) the actions of the victim or a third party contributed to the commission of the offence</p> <p>(d) the offender gave direct, positive, assistance at the scene to victim(s)</p> <p>(e) the offender's lack of driving experience contributed significantly to the likelihood of a collision occurring and/or death resulting</p>

⁵⁵ *Overarching Principles: Seriousness*, published 16 December 2004, www.sentencing-guidelines.gov.uk

Causing Death by Driving: Unlicensed, Disqualified or Uninsured Drivers

138. This offence carries a maximum penalty of 2 years imprisonment and is triable either way. In a magistrates' court, statute provides that the maximum sentence is 12 months imprisonment; this will be revised to 6 months imprisonment until such time as the statutory provisions increasing the sentencing powers of a magistrates' court are implemented.⁵⁶ Disqualification of the offender from driving and endorsement of the offender's driving licence are mandatory, and the offence carries between 3 and 11 penalty points when the court finds special reasons for not imposing disqualification.
139. Because of the significantly lower maximum penalty accorded to this offence, the sentencing ranges must be considerably lower than for the other three offences covered by this advice and it is probable that many cases will be sentenced in a magistrates' court, particularly where there is an early guilty plea. As discussed in relation to *causing death by careless or inconsiderate driving*, there will be cases where either a community order or a short custodial sentence for this offence may attract considerable public criticism; the proposed sentencing range appears low when compared with the magnitude of the harm.
140. The guideline we are proposing recognises that the level of sentence should be increased beyond that for the basic offence when death is caused, since that is Parliament's intention in creating this new offence. However, it also recognises that the sentence has to be adjusted to reflect the degree of culpability in
- each case, the various starting points ranging within the maximum sentence of 2 years imprisonment.
141. The Panel consulted on three starting points for sentencing. The highest starting point – 12 months imprisonment – was proposed for cases where the culpability was at the high end of the scale, where the offender has a bad record of driving when prohibited from doing so, and where there was at least one other aggravating factor. Setting the starting point at this level was intended to leave scope for offences with three or more aggravating factors.
142. The next starting point – 26 weeks imprisonment – was proposed for cases involving a single aggravating factor. However, it was suggested that, where that aggravating factor was a bad driving record with a history of driving while disqualified, the court might place particular weight on that one factor and take a starting point above 26 weeks imprisonment (bearing in mind that 6 months imprisonment is the maximum sentence for an offence of *driving while disqualified*).
143. The lowest starting point was proposed for cases where the level of culpability was relatively low, for example a single journey by someone without a record of such offences and without any aggravating factors. Where an offender is convicted of driving while unlicensed or uninsured, without involvement in a collision, the sentence would probably be a fine. The Panel took the view that, whilst the sentence for a driver who causes death while so driving should be higher to reflect the loss of life, this does not necessarily mean that an offence must inevitably cross the custody

⁵⁶ Criminal Justice Act 2003, ss.154(1) and 282; Road Safety Act 2006, s.61(5)

threshold; a community order in the medium range (as defined in the Council's guideline)⁵⁷ was proposed. This amounts to a significant restriction on liberty, especially as it will be imposed in conjunction with the mandatory disqualification from driving.

144. As with the offence of *causing death by careless or inconsiderate driving*, the Panel considers that a fine is unlikely to be an appropriate sentence for the offence of *causing death by driving: unlicensed, disqualified or uninsured drivers*; where a non-custodial sentence is considered appropriate, this should be a community order.

Recommendation 16

A fine will rarely be an appropriate sentence for an offence of causing death by driving: unlicensed, disqualified or uninsured drivers; where a custodial sentence is not justified, a community order should be imposed.

145. Those responding to the consultation paper held mixed views about the sentencing ranges proposed; slightly more respondents disagreed than agreed. Of those who disagreed, views were split as to whether the proposals were too lenient or too severe. As discussed in Section One, those taking part in the research considered this offence to be more serious than *causing death by careless or inconsiderate driving* and only marginally less serious than *causing death by dangerous driving*; they were astonished by the low maximum penalty. Their reasoning appears to be linked to the fact that this offence includes an inherent avoidance or disobedience of the law which is deemed highly culpable; the degree to which the Panel's proposed sentencing ranges would be

acceptable decreased in line with an increase in culpability linked to the three elements of the offence.

146. Participants were more likely to accept that an offender might have made a genuine mistake about insurance provision. The Panel agrees that a driver may hold a reasonable belief in relation to the validity of insurance (for example having just missed a renewal date or relied on a third party to make an application) and also the validity of a licence (for example falsely believing that a licence covered a particular category of vehicle). In light of this, we have decided to include an additional mitigating factor for this offence to cover those situations where an offender genuinely believed that he or she was insured or licensed to drive.
147. Among those surveyed, 63% found the proposed community order acceptable for an offender who was uninsured; where an offender was unlicensed, 56% accepted that a community order would be a suitable sentence. The perception of participants was that driving whilst disqualified was the most serious element of the new offence and the average sentence preferred for an offence involving no aggravating factors was 3 years (which is beyond the statutory maximum sentence of 2 years). However, 49% stated that they could accept a starting point of 6 months, as suggested by the researchers.
148. The Panel has considered all of the competing arguments very carefully and has concluded that driving whilst disqualified is more culpable than driving whilst unlicensed or uninsured; a higher starting point is proposed when the offender was disqualified from driving at the time of the offence.

⁵⁷ *New Sentences: Criminal Justice Act 2003*, paragraph 1.1.31, published 16 December 2004; www.sentencing-guidelines.gov.uk

Recommendation 17

The sentencing starting point for the offence of causing death by driving: unlicensed, disqualified or uninsured drivers should be higher where the offender was disqualified than where the offender was unlicensed or uninsured.

149. The inherent factors of being uninsured, unlicensed or disqualified are the only determinants of seriousness for this offence, as there are no factors relating to the standard of driving. The list of aggravating factors identified is slightly different from that for the offence of *causing death by careless or inconsiderate driving* as the emphasis here is on the decision to drive by an offender who is not permitted by law to do so. Bearing in mind that the decision to drive is a crucial element of this offence, an additional mitigating factor – *decision to drive brought about by a genuine and proven emergency* – is included in this guideline. In some cases, the extreme circumstances that led an offender to drive whilst unlicensed, disqualified or uninsured may result in a successful defence of 'duress of circumstances.' In slightly less extreme circumstances, it could be argued that the reasons for the offender's decision to drive should mitigate offence seriousness.

150. In *DPP v Mullally*,⁵⁸ the Divisional Court held that the defence of necessity must be strictly controlled and that it must be proved that the actions of the defendant were reasonable in the given circumstances. In *Hasan*,⁵⁹ Lord Bingham said

"If it appears at trial that a defendant acted in response to a degree of coercion but in circumstances where the strict requirements of duress were not satisfied, it is always open to the judge to adjust his sentence to reflect his assessment of the defendant's true culpability."

151. This mitigating factor was accepted by the majority of those responding to the consultation and was viewed by research participants to be the most legitimate reason for deciding to drive in breach of the law; 51% thought that deciding to drive in an emergency situation might justify a reduction in sentence. Some pointed to the fact that there must be objective evidence to support the claimed emergency – it must be a proven and genuine emergency, affecting the driver or one of the passengers in the driver's vehicle, which is sufficiently acute to justify the offender's decision to drive the vehicle.

Recommendation 18

Where an offender is convicted of causing death by driving while unlicensed, disqualified or uninsured, the fact that the decision to drive was prompted by a genuine emergency affecting the offender or a passenger in the offender's vehicle may be treated as mitigation.

⁵⁸ [2006] EWHC 3448

⁵⁹ [2005] UKHL 22 on appeal from [2003] EWCA Crim 191

Causing Death by Driving: Unlicensed, Disqualified or Uninsured Drivers: section 3ZB Road Traffic Act 1988

Maximum penalty: 2 years imprisonment; minimum disqualification of 12 months

Mode of trial: Triable either way

The following guideline applies to a first-time offender* convicted after trial.

When assessing the seriousness of any offence, the court must always refer to the full list of aggravating and mitigating factors in the Council guideline *Seriousness*⁶⁰ as well as those set out in the table below as being particularly relevant to this type of offending behaviour.

Nature of offence	Sentencing range
The offender was disqualified from driving OR The offender was unlicensed or uninsured plus 2 or more aggravating factors from the list below	Starting point – 12 months imprisonment Sentencing range – 36 weeks to 2 years imprisonment
The offender was unlicensed or uninsured plus at least 1 aggravating factor from the list on the facing page	Starting point – 26 weeks imprisonment Sentencing range – Community Order (HIGH) to 36 weeks imprisonment
The offender was unlicensed or uninsured – no aggravating factors	Starting point – Community Order (MEDIUM) Sentencing range – Community Order (LOW) to (HIGH)
Offence-specific aggravating factors	Offence-specific mitigating factors
(a) previous convictions for motoring offences, whether involving bad driving or involving an offence of the same kind that forms part of the present conviction (i.e. unlicensed, disqualified or uninsured driving) (b) more than one person was killed as a result of the offence (c) serious injury to one or more persons in addition to the death(s) (d) irresponsible behaviour at the time of the offence, such as failing to stop, falsely claiming that someone else was driving	(a) the decision to drive was brought about by a proven and genuine emergency affecting the offender or a passenger in the offender's vehicle (b) the offender genuinely believed that he or she was insured or licensed to drive (c) the offender was seriously injured as a result of the collision (d) the victim was in a close personal or family relationship with the offender (e) the actions of the victim or a third party contributed to the commission of the offence (f) the offender gave direct, positive, assistance at the scene to victim(s)

* An offender convicted of causing death by driving whilst disqualified will always have at least one relevant previous conviction for the offence that resulted in the disqualification. The starting point and range take this into account; any other previous convictions should be considered in the usual way.

⁶⁰ *Overarching Principles: Seriousness*, published 16 December 2004, www.sentencing-guidelines.gov.uk

Diversity and Equality

152. The majority of those responding to the Panel's consultation did not identify any diversity or equality issues that need to be taken into account when formulating sentencing guidelines for causing death by driving offences.
153. Some respondents suggested that the Panel's proposals would impact disproportionately on young male drivers but that this would be justified as it reflects the reality of offending rates; the Panel agrees. As mentioned earlier, some respondents objected to treating the youth and inexperience of an offender as a mitigating factor on the grounds that this discriminates against newly qualified drivers who are more mature; the Panel has responded to this by proposing a mitigating factor linked only to inexperience and not to age.
154. The Panel is satisfied that its proposals will not impact unfairly on any offenders by reason of race, ethnic group, gender, sexual orientation, age or disability.

The impact of the Panel's proposals

155. The Panel has decided that, in so far as it is possible, consultation papers and advice to the Council should include projections about the likely impact of proposed guidelines on prison and probation resources. Such calculations will always involve a number of variables and occasional unknown quantities and will need to be treated with a certain amount of caution, but they may nevertheless prove to be a helpful tool for future planning.
156. The evidence about existing sentencing practice for the four offences covered by this advice is variable. For *causing death by dangerous driving* and *causing death by careless driving under the influence* it has been possible to gauge the impact of the proposed new starting points and sentencing ranges against the spread of sentences previously imposed using the *Cooksley* guideline.⁶¹ This shows that it is likely that the proposals will make little difference to the overall level of sentencing for these offences (see Annex D).
157. As *causing death by driving: unlicensed, disqualified or uninsured drivers* is a new offence, and current data for offences of driving whilst uninsured, unlicensed or disqualified does not record whether the offence involved the death of a victim, it is not possible to assess the degree to which that factor currently increases a sentence or to make any informed predictions about the likely impact of the proposed guideline. However, it is not unreasonable to assume that the guideline would be likely to result in proportionately more community orders and custodial sentences being imposed although experience suggests that the numbers are unlikely to exceed 100 in any year.
158. In relation to *causing death by careless or inconsiderate driving*, the Panel was allowed access to some CPS files being used in connection with the research into charging practice. Details of the information obtained are set out in Annex D. By extrapolating the data from the CPS files,⁶² it is estimated that just over **70** cases a year will be charged as

⁶¹ statistical data about the impact of the judgment in *Richardson* is not yet available

⁶² an explanation of the base data and the calculations used can be found at Annex D

causing death by careless or inconsiderate driving. Assuming a conviction rate of 75% (that currently obtaining for cases of *driving without due care and attention*) this translates to an estimated 55 sentences per year. If these cases are randomly distributed, and charging practice is unchanged, between 40 and 70 such cases can be expected in any given year.

dangerous driving, the Panel has been unable to find any information on the extent to which such verdicts are entered.

159. **Assessment of the key factors in the cases considered suggests that the guideline will result in between 14 and 24 custodial sentences and between 26 and 46 community orders per year. If all offenders are sentenced at the starting points of the ranges in the guideline, then the custodial sentences for this offence will require between 6 and 10 prison places⁶³ at any given time. The limited nature of the analysis means these results must be considered as indicative only.**

160. The estimate does not include any displacement effect, i.e. cases originally charged as *causing death by dangerous driving* resulting in a conviction for *causing death by careless or inconsiderate driving* nor has account been taken of the extent to which a person acquitted of causing death by dangerous driving may be found guilty of causing death by careless driving. When the relevant provisions are in force, such an alternative verdict will be possible.

161. In 2006, approximately 29 defendants were acquitted of causing death by dangerous driving. Whilst under the present law it is possible for alternative verdicts of either dangerous driving or careless driving to be entered on acquittal of causing death by

⁶³ assuming that offenders serve half their sentence in custody

MAGISTRATES' COURT SENTENCING GUIDELINES

Causing death by careless or inconsiderate driving	Road Traffic Act 1988 s.2B
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Triable either way:

Maximum when tried summarily: 6 months and/or level 5 fine Maximum when tried on indictment: 5 years

Minimum disqualification: 12 months

OFFENCE SERIOUSNESS (CULPABILITY AND HARM) A. IDENTIFY THE APPROPRIATE STARTING POINT Starting points based on first time offender pleading not guilty		
Examples of nature of activity	Starting point	Range
Careless or inconsiderate driving arising from momentary inattention	Community Order (Medium)	Community Order (Low) to Community Order (High)
Other cases of careless or inconsiderate driving	36 weeks	Community Order (High) to Crown Court
Careless or inconsiderate driving falling not far short of dangerous driving	Crown Court	Crown Court

OFFENCE SERIOUSNESS (CULPABILITY AND HARM) B. CONSIDER THE EFFECT OF AGGRAVATING AND MITIGATING FACTORS (OTHER THAN THOSE WITHIN EXAMPLES ABOVE) Common aggravating and mitigating factors are identified in the pullout card. The following may be particularly relevant:	
<p><u>Factors indicating higher culpability</u></p> <ol style="list-style-type: none"> 1. Other offences committed at the same time e.g. driving other than in accordance with a valid licence; driving while disqualified/ uninsured/ unlicensed; driving while a learner without supervision; taking a vehicle without consent; driving a stolen vehicle 2. Previous convictions for motoring offences, particularly offences that involve bad driving 3. Irresponsible behaviour at the time of the offence e.g. failing to stop, falsely claiming that one of the victims was responsible for the crash <p><u>Factors indicating greater degree of harm</u></p> <ol style="list-style-type: none"> 1. More than one person was killed as a result of the offence 2. Serious injury to one or more victims in addition to the death(s) 	<p><u>Factors indicating lower culpability</u></p> <ol style="list-style-type: none"> 1. The offender was seriously injured as a result of the collision 2. The victim was in a close personal or family relationship with the offender 3. The actions of the victim or a third party contributed to the commission of the offence 4. The offender gave direct, positive, assistance at the scene to the victim(s) 5. The offender's lack of driving experience contributed to the likelihood of a collision occurring and/or death resulting <p><u>Personal Mitigation</u></p> <p>Evidence that the offender is normally a careful and conscientious driver</p>

FORM A PRELIMINARY VIEW OF THE APPROPRIATE SENTENCE, THEN CONSIDER OFFENDER MITIGATION Common factors are identified in the pullout card
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CONSIDER A REDUCTION FOR A GUILTY PLEA

CONSIDER ANCILLARY ORDERS, INCLUDING COMPENSATION AND DISQUALIFICATION (3-11 PENALTY POINTS MAY BE IMPOSED IF THERE ARE SPECIAL REASONS FOR NOT MAKING A DISQUALIFICATION ORDER) Refer to pages 102-106 for guidance on available ancillary orders
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DECIDE SENTENCE GIVE REASONS

Causing death by driving: Unlicensed, Disqualified or Uninsured Drivers	Road Traffic Act 1988 s.3ZB
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Triable either way:

Maximum when tried summarily: 6 months and/or level 5 fine Maximum when tried on indictment: 2 years

Minimum disqualification: 12 months

OFFENCE SERIOUSNESS (CULPABILITY AND HARM) A. IDENTIFY THE APPROPRIATE STARTING POINT Starting points based on first time offender pleading not guilty		
Examples of nature of activity	Starting point	Range
Offender was unlicensed or uninsured – no aggravating factors	Community Order (Medium)	Community Order (Low) to Community Order (High)
Offender was unlicensed or uninsured plus at least 1 aggravating factor from the list below	26 weeks	Community Order (High) to 36 weeks
Offender was unlicensed or uninsured plus 2 or more aggravating factors from the list below OR Offender was disqualified from driving	12 months	36 weeks to Crown Court

OFFENCE SERIOUSNESS (CULPABILITY AND HARM) B. CONSIDER THE EFFECT OF AGGRAVATING AND MITIGATING FACTORS (OTHER THAN THOSE WITHIN EXAMPLES ABOVE) Common aggravating and mitigating factors are identified in the pullout card. The following may be particularly relevant:	
<u>Factors indicating higher culpability</u> 1. Previous convictions for motoring offences, particularly offences, whether involving bad driving or involving an offence of the same kind that forms part of the present conviction (i.e. unlicensed, disqualified or uninsured driving) 2. Irresponsible behaviour at the time of the offence e.g. failing to stop, falsely claiming that one of the victims was responsible for the crash <u>Factors indicating greater degree of harm</u> 1. More than one victim was killed as a result of the offence 2. Serious injury to one or more persons in addition to the death(s)	<u>Factors indicating lower culpability</u> 1. The decision to drive was brought about by a proven and genuine emergency affecting the offender or a passenger in the offender's vehicle 2. The offender genuinely believed that he or she was insured or licensed to drive 3. The offender was seriously injured as a result of the collision 4. The victim was in a close personal or family relationship with the offender 5. The actions of the victim or a third party contributed to the commission of the offence 6. The offender gave direct, positive, assistance at the scene to the victim(s) <u>Personal Mitigation</u> Evidence that the offender is normally a careful and conscientious driver

FORM A PRELIMINARY VIEW OF THE APPROPRIATE SENTENCE, THEN CONSIDER OFFENDER MITIGATION
Common factors are identified in the pullout card

CONSIDER A REDUCTION FOR A GUILTY PLEA

CONSIDER ANCILLARY ORDERS, INCLUDING COMPENSATION AND DISQUALIFICATION (3–11 PENALTY POINTS MAY BE IMPOSED IF THERE ARE SPECIAL REASONS FOR NOT MAKING A DISQUALIFICATION ORDER)
Refer to pages 102–106 for guidance on available ancillary orders

DECIDE SENTENCE
GIVE REASONS

AGGRAVATING AND MITIGATING FACTORS IDENTIFIED IN THE SENTENCING GUIDELINES COUNCIL GUIDELINE 'OVERARCHING PRINCIPLES: SERIOUSNESS'

Aggravating factors

Factors indicating higher culpability:

- Offence committed whilst on bail for other offences
- Failure to respond to previous sentences
- Offence was racially or religiously aggravated
- Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
- Offence motivated by, or demonstrating, hostility based on the victim's disability (or presumed disability)
- Previous conviction(s), particularly where a pattern of repeat offending is disclosed
- Planning of an offence
- An intention to commit more serious harm than actually resulted from the offence
- Offenders operating in groups or gangs
- 'Professional' offending
- Commission of the offence for financial gain (where this is not inherent in the offence itself)
- High level of profit from the offence
- An attempt to conceal or dispose of evidence
- Failure to respond to warnings or concerns expressed by others about the offender's behaviour
- Offence committed whilst on licence
- Offence motivated by hostility towards a minority group, or a member or members of it
- Deliberate targeting of vulnerable victim(s)
- Commission of an offence while under the influence of alcohol or drugs
- Use of a weapon to frighten or injure victim
- Deliberate and gratuitous violence or damage to property, over and above what is needed to carry out the offence
- Abuse of power
- Abuse of a position of trust

Factors indicating a more than usually serious degree of harm:

- Multiple victims
- An especially serious physical or psychological effect on the victim, even if unintended
- A sustained assault or repeated assaults on the same victim
- Victim is particularly vulnerable
- Location of the offence (for example, in an isolated place)
- Offence is committed against those working in the public sector or providing a service to the public
- Presence of others e.g. relatives, especially children or partner of the victim
- Additional degradation of the victim (e.g. taking photographs of a victim as part of a sexual offence)
- In property offences, high value (including sentimental value) of property to the victim, or substantial consequential loss (e.g. where the theft of equipment causes serious disruption to a victim's life or business)

Mitigating factors

Factors indicating significantly lower culpability:

- A greater degree of provocation than normally expected
- Mental illness or disability
- Youth or age, where it affects the responsibility of the individual defendant
- The fact that the offender played only a minor role in the offence

Personal mitigation

- Genuine remorse
- Admissions to police in interview
- Ready co-operation with authorities

MEANING OF "RANGE", "STARTING POINT" AND "FIRST TIME OFFENDER" WITHIN SENTENCING GUIDELINES COUNCIL GUIDELINES

A Council guideline is generally for a *first time offender* convicted after a trial. It commonly provides a *starting point* based on an assessment of the seriousness of the offence and a *range* within which sentence will normally fall.

A clear, consistent understanding of each of these terms is essential and the Council and the Sentencing Advisory Panel have agreed the following definitions.

They are set out in a format that follows the structure of a sentencing decision which identifies first those aspects that affect the assessment of the seriousness of the offence, then those aspects that form part of personal mitigation and, finally, any reduction for a guilty plea.

In practice, the boundaries between these stages will not always be as clear cut but the underlying principles will remain the same.

In accordance with section 174 of the Criminal Justice Act 2003, a court is obliged to "*state in open court, in ordinary language and in general terms, its reasons for deciding on the sentence passed*".

In particular, "*where guidelines indicate that a sentence of a particular kind, or within a particular range, would normally be appropriate and the sentence is of a different kind, or is outside that range*" the court must give its reasons for imposing a sentence of a different kind or outside the range.

Assessing the seriousness of the offence

1. (a) A typical Council guideline will apply to an offence that can be committed in a variety of circumstances with different levels of seriousness. It will apply to a **first time offender** who has been convicted after a trial. Within the guidelines, a **first time offender** is a person who does not have a conviction which, by virtue of section 143(2) of the Criminal Justice Act 2003, must be treated as an aggravating factor.
- (b) As an aid to consistency of approach, a guideline will describe a number of types of activity falling within the broad definition of the offence. These will be set out in a column generally headed "type/nature of activity".
- (c) The expected approach is for a court to identify the description that most nearly matches the particular facts of the offence for which sentence is being imposed. This will identify a **starting point** from which the sentencer can depart to reflect aggravating or mitigating factors affecting the seriousness of the *offence* (beyond those contained in the description itself) to reach a **provisional sentence**.

-
- (d) The range is the bracket into which the **provisional sentence** will normally fall after having regard to factors which aggravate or mitigate the seriousness of the offence. The particular circumstances may, however, make it appropriate that the **provisional sentence** falls outside the **range**.
2. Where the offender has previous convictions which aggravate the seriousness of the current offence, that may take the **provisional sentence** beyond the **range** given particularly where there are significant other aggravating factors present.

Personal Mitigation

3. Once the **provisional sentence** has been identified (by reference to the factors affecting the seriousness of the **offence**), the court will take into account any relevant factors of **personal** mitigation. Again, this may take the provisional sentence outside the range.

Reduction for guilty plea

4. Where there has been a guilty plea, any reduction attributable to that plea will be applied to the sentence at this stage. This reduction may take the sentence below the **range** provided.

Sentencing Guidelines Council
Sentencing Advisory Panel
May 2007

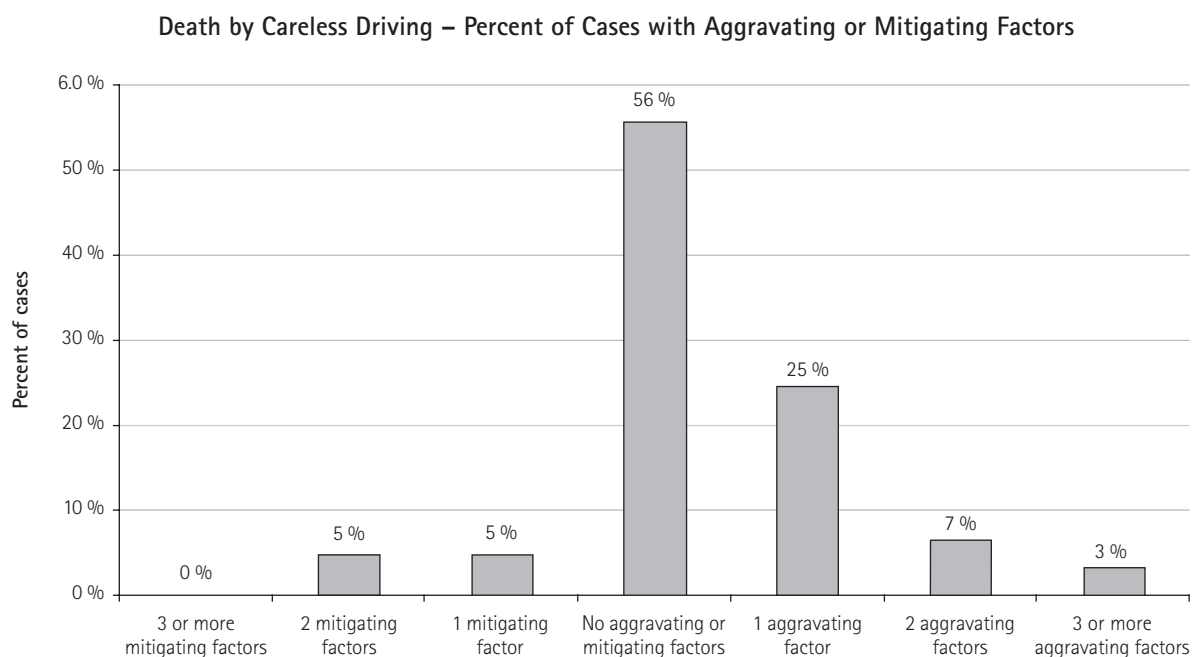
IMPACT OF THE PANEL'S PROPOSALS

Causing death by Careless or Inconsiderate Driving

Base Data

1. The CPS has been collecting details of all cases for which a charge of careless driving was deemed appropriate in which a death occurred. These records cover the period July 2006 to April 2007. The information is held in paper records, and varies in the level of detail and style of presentation. The CPS allowed the secretariat access to these files, and the analysis below is based on notes taken on that occasion.
2. Not all cases will be prosecuted and, of those that are, some may result in a not guilty verdict. The information collected represents the prosecution case, and some of the information may be disputed by the defence.

3. Aggravating and mitigating factors have been assigned on a cursory reading of the case files, and are not based on a considered legal opinion. In many cases the defendant's previous driving record (a potential aggravating or mitigating factor) was not immediately available and so this has in general not been considered. In the few cases where it was mentioned, this was because it was a particularly noteworthy factor of the case.
4. Brief details of the cases are given below in paragraph 6. The following figure shows the distribution of aggravating and mitigating factors:



5. The seriousness of the offence, and the appropriate starting point, was judged from the number of aggravating and mitigating factors and these results should be considered indicative only. They are based on anecdotal interpretation of a limited dataset, and do not take into account any representations which may be made on behalf of the defendant.⁶⁴

⁶⁴ Except insofar as it is assumed that a proportion of defendants will be acquitted.

CPS Cases

6. Cases described in *shaded italics* are those for which the CPS recommended no prosecution. The numbers are for internal reference only, as within the CPS cases are identified by the name of the defendant. In a small number of cases, the details have been recorded as 'unclear'. In these cases the details were not apparent on a first reading of the files, and to spend the extra time needed to interpret these files would have prejudiced summarising other cases.

Number	Brief Details	Aggravating	Mitigating
1	Motorist knocked down and killed cyclist on pedestrian crossing	-	a,d
2	Motorist pulled out into path of speeding motorcyclist. Motorcyclist killed	-	-
3	Taxi driver ran over and killed pedestrian collapsed in roadway. Possibly distracted by other pedestrians waving	-	-
4	Motorist lost control of vehicle, car rolled over and passenger killed. Driver uninsured. Tyre defective, but this not the cause of the accident	b	-
5	Motorist hit back of lorry in front, rendered immobile. Subsequently hit from behind by another lorry and killed. Witnesses state car hazard lights on, implying motorist was alive after the first collision. Second lorry took no avoiding action.	-	-
6	Motorist crossed centre of road and collided with oncoming car. Passenger in oncoming car killed	-	-
7	Van hit stationary cyclists at side of road – one killed.	-	-
8	Motorist hit two women on pelican crossing. Driver states he was temporarily blinded by the sun but this disputed.	-	-
9	Motorist hit and killed a teenage cyclist. Did not stop, and subsequently torched vehicle. Driver admitted 40mph in 30mph zone.	g,g,h	-
10	<i>Motor cyclist crossed carriageway and collided with oncoming van. Motor cyclist killed. Recommended no prosecution of van driver</i>	-	<i>g</i>
11	<i>Pedestrian crossed road at traffic lights as they changed to green – hit and killed by lorry. Recommended no prosecution</i>	-	<i>g</i>
12	Motorist pulled out of side road and collided with passing motorcycle and sidecar. Witnesses say car driven normally but just did not see motorcycle	-	-

Number	Brief Details	Aggravating	Mitigating
13	Motorist hit and killed pedestrian on road. Pedestrian was probably drunk. Driver had previous motoring convictions, but in this case no evidence of speeding	c	-
14	Motorist crossed centre of road and collided with oncoming vehicle, driver killed. Witnesses say he accelerated hard, but no evidence of speeding,	-	-
15	Motorist hit teenage cyclists riding two on a bike – conflicting evidence as to whether they were at side or in middle of road. Witnesses describe car speed as excessive.	h	g
16	Lorry hit pedestrian who was probably standing in carriageway on unlit road. Lorry speed 55mph, road limit 50mph and vehicle limit 40mph.	h	-
17	Lorry crossed centre of road and collided with van. Van driver killed. Lorry driver on medication but had not been back to doctor within 12 months. No warning on medication that it may induce drowsiness.	-	-
18	Motorist turned right into path of motorcycle. Rider killed.	-	-
19	Motorist crossed centre of road and caused multiple collisions. One fatality. Motorist was diabetic and may have suffered a hypoglycaemic attack, but cannot prove this was foreseeable	-	-
20	Motorist turned right into path of motorcycle. Rider killed.	-	-
21	Motorist lost control of vehicle, hit and killed pedestrian waiting at bus stop. Driver unlicensed and uninsured. May be speeding but cannot prove it.	b,b	-
22	Lorry hit car in traffic queue from behind. Passenger in car killed, and other passenger injured. Witnesses state lorry was previously being driven erratically and at speed.	e,h	-
23	Motorist hit and killed cyclist in marked (but not segregated) cycle lane at side of road. No licence or insurance.	b,b	-
24	Motorist entered staggered junction into path of motorcycle. Motorcyclist killed. Defendant's children in car.	-	-
25	Lorry crossed centre of road and hit motorcycle. Rider killed. Accident happened at notorious black spot, where road looks like a dual carriageway but isn't.	-	-
26	Motorist collided with van on motorway. Unclear who was victim. Cannabis in driver's blood, speed 80–90mph.	h	-
27	<i>Lorry hit cyclist riding without lights – cyclist killed. Recommended no prosecution</i>	-	g
28	Lorry turned right into path of motor cycle. Rider killed	-	-
29	Motorist lost control of vehicle, passenger killed. Some evidence of excessive speed but cannot be proved. Victim not wearing a seat belt.	h	g

Number	Brief Details	Aggravating	Mitigating
30	Details unclear. Case involves a lorry driver, and the victim was a 7 year old girl. The lorry driver had driven excessive hours.	b	-
31	Motorist did a U-turn in face of oncoming traffic. Motorcyclist killed	-	-
32	Motorist pulled out of garage forecourt and collided with motor cyclist. Rider killed. Implied motorist had good driving record and showed remorse.	-	a,d
33	Motorist pulled out of side road and hit two teenage pedestrians who were crossing the side road in front of him. One killed, one injured. Windscreen of vehicle tinted beyond legal limits.	b,e	-
34	Van parked partially on pavement (illegally) reversed into and killed pedestrian	-	-
35	Motorist turned right into path of speeding motorcyclist. Motorcyclist killed – head injuries, helmet not fastened properly.	-	g,g
36	Inexperienced driver braked and lost control of car. Passenger killed	-	e
37	Details unclear. Case involves a motorist hitting two pedestrians in the road, both killed	d	-
38	Details unclear. Case involves tailgating on a motorway. Two fatalities	d	-
39	Motorist pulled out to overtake, glancing blow to motorcyclist who was already overtaking motorist. Motorcyclist lost control and collided with car coming in opposite direction. Motorcyclist killed.	-	-
40	<i>Motorist on motorway lost control, killed his 2 year old daughter who was a passenger. Claimed to be taking evasive action against an untraced second vehicle. Recommended no prosecution</i>	-	g
41	Motorist lost control, collided with another car. Passenger in second car killed. Motorist was driving at excessive speed on wet road.	h	-
42	Motorist turned right into path of motorcyclist. Rider killed. Car passengers state car was being driven safely and no-one saw the motor cycle.	-	-
43	Motorist hit lorry on motorway. Lorry crossed central reservation and collided head on with another car. Driver of second car killed	-	-
44	Motorcyclist hit pedestrian. Pillion passenger killed, driver and pedestrian injured. Pedestrian was drunk, motorcyclist was probably speeding but can't prove this.	e	-
45	Motorist reversing in hospital A&E car park hit patient in wheelchair being taken from ambulance. Patient killed. Manoeuvre was carried out at high speed, and immediately previously the car had hit a parked camper van. The driver was an elderly lady with a previously unblemished driving record who seemed to be unaware of what was happening	f	a

Number	Brief Details	Aggravating	Mitigating
46	Van crossed centre of road and hit oncoming car. Car driver killed. Van had defective brakes, but this does not seem to be factor in causing the accident.	-	-
47	Motorist collided with and killed a pedal cyclist on a mini roundabout	-	-
48	Van reversed on garage forecourt and hit pedestrian. Pedestrian seemed unaware of the danger. Pedestrian's death two days later recorded as 'natural causes'	-	-
49	Van turned into road in path of scooter. Rider killed. Van did not stop, and was later burned. Van had no MoT, driver had no insurance and a provisional licence only.	b,b,b,g,g	-
50	<i>Pedestrian stepped in front of vehicle and killed. Recommended not prosecuted</i>	-	<i>g</i>
51	Motorist hit and killed pedestrian crossing road. Motorist made no attempt to avoid the pedestrian. Motorist 17 years old, but this is not a case of inexperience, so not a mitigating factor?	-	-
52	Motorist turned right into path of motorcycle. Rider killed.	-	-
53	Motorist lost control and hit signpost. Passenger killed, another passenger injured. Tyres under inflated. Driver 17 years old.	b,e	e
54	Motorist parked car on slight incline without handbrake. It rolled down hill and killed a pedestrian	-	-
55	Details unclear. Case involves a bus driver who hit and killed a pedestrian.	-	-
56	Driver dropped off passenger then accidentally reversed into her and killed her.	-	-
57	Lorry hit pedestrian on pelican crossing. Lights were green to vehicles and there were other pedestrians crossing. Lorry driver sounded horn but made no attempt to slow down. Victim stepped onto crossing at last minute. Victim was deaf.	-	g
58	Motorist turned right into path of speeding car. Passenger in right turning car killed, driver injured. Victim's family do not want the driver prosecuted. Passenger in the oncoming car injured. Driver of oncoming car prosecuted.	e	-
59	Motorist turned right into path of oncoming car. Notes unclear as to victim. Sun was very low and road was wet, so there was a significant glare from the road	-	-
60	Motorist crossed centre of road and hit oncoming car, killing the driver. The motorist had just drunk 1 pint of lager, and had recent previous convictions for drink driving, having only had his licence restored six weeks previously	c	-
61	Motorist on motorway hit car in front. Passenger in front car killed. Defendant's speed was about 70mph, victim's about 50mph. Motorist was uninsured.	b	-

Number	Brief Details	Aggravating	Mitigating
62	Motorist lost control and hit tree. Passenger killed. Tyres under inflated. Motorist was probably driving too fast for the road conditions. Driver 17 years old.	b,h	e
63	Motorist turned right into path of motorcycle. Rider killed. Motorist did not stop. When arrested he was over the alcohol limit, claimed this was due to post accident drinking, but likely consumption (ie amount missing from vodka bottle) does not explain the total blood alcohol level	g	-
64	Lorry crossed centre of road and collided with military vehicle, which then collided with following lorry. Victim?	-	-
65	Motorist lost control and hit electricity pole. Passenger killed. Motorists claimed he was distracted by the passenger. Passenger not wearing a seat belt.	-	g
66	Motorist crossed road, collided with oncoming car. Driver of oncoming car killed. No witnesses	-	-

Aggravating and Mitigating Factors

7. The aggravating and mitigating factors used in this calculation are listed below those defined in the Panel's consultation paper, plus an additional aggravating factor of driving at excessive speed. The proposals in this advice are constructed on a different basis but is likely that the outcome will be broadly the same.

Offence-specific aggravating factors		
		<i>Highly culpable standard of driving at the time of the offence</i>
	(a)	driving whilst the driver's attention is avoidably distracted, for example by reading or adjusting the controls of a radio or other electronic equipment such as a hands-free mobile phone or satellite navigation equipment
		<i>Driving habitually below an acceptable standard</i>
	(b)	other offences committed at the same time, such as driving without ever having held a licence; driving while disqualified; driving without insurance; driving while a learner without supervision; taking a vehicle without consent; driving a stolen vehicle
	(c)	previous convictions for motoring offences, particularly offences that involve bad driving or the consumption of excessive alcohol before driving
	(h)	driving at excessive speed
		<i>Outcome of the offence</i>
	(d)	more than one person killed as a result of the offence (especially if the offender knowingly put more than one person at risk or the occurrence of multiple deaths was foreseeable)
	(e)	serious injury to one or more victims, in addition to the death(s)
	(f)	the victim was particularly vulnerable (especially if the offence took place in circumstances where a driver is expected to exercise extra vigilance)
		<i>Offender's behaviour at the time of the offence</i>
	(g)	irresponsible behaviour at the time of the offence, such as failing to stop, falsely claiming that one of the victims was responsible for the crash, or trying to throw the victim off the bonnet of the car by swerving in order to escape
Offence-specific mitigating factors		
	(a)	good driving record
	(b)	absence of previous convictions
	(d)	genuine shock or remorse
	(e)	the offender's lack of driving experience contributed to the commission of the offence
	(f)	the offender was seriously injured as a result of the collision
	(g)	actions of the victim or a third party contributed to the commission of the offence
	(h)	giving direct, positive, assistance at the scene to victim(s)

Causing death by dangerous driving or by careless driving under the influence

- 8. The Panel's sentencing proposals have been compared against the published sentencing data for the period January to December 2006.
- 9. The proposals are expressed as a series of starting points each surrounded by a range. The starting points are determined by the severity of the offence derived from the standard of driving. The sentencing statistics do not contain any information about offence seriousness, and so cannot be compared directly with the proposals. To accommodate this mismatch, the Panel's proposals for each offence have been combined into a single range covering all the starting points. A second range stretches between the extremes of all the individual ranges. So, for example, for causing death by dangerous driving, the Panel's proposals are given in the table below:

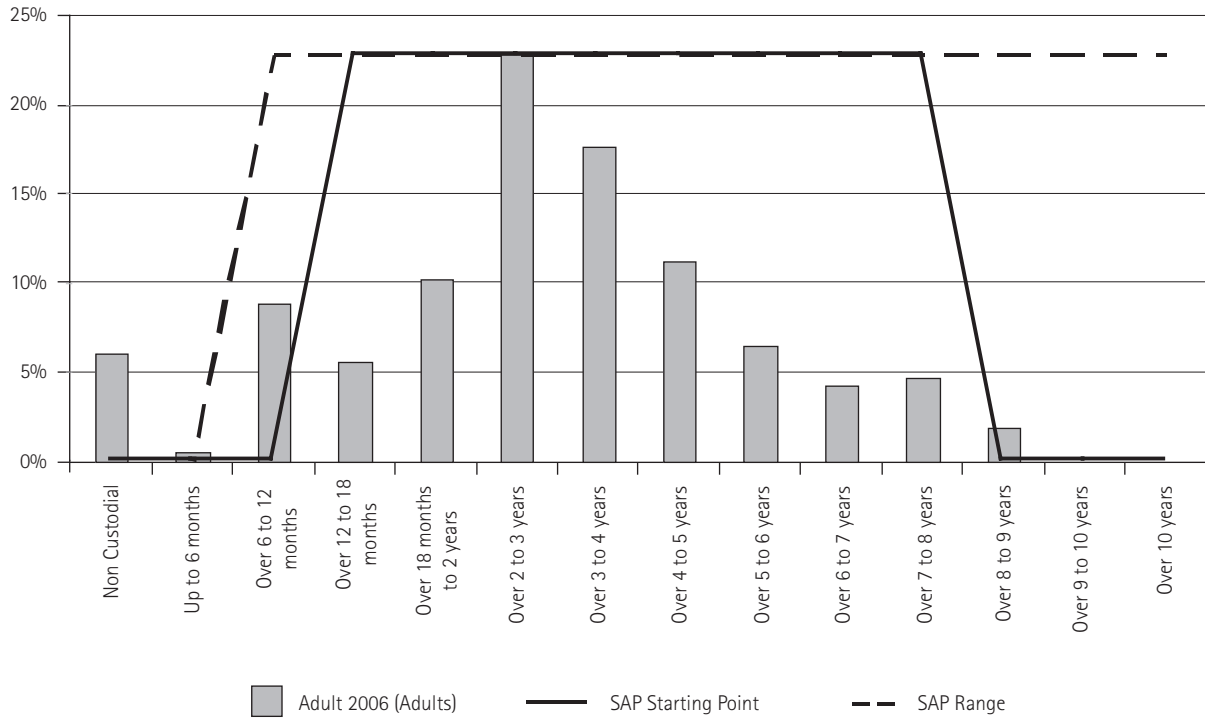
Nature of offence	Sentencing range
Level 1	Starting point – 8 years imprisonment Sentencing range – 7 to 14 years imprisonment
Level 2	Starting point – 5 years imprisonment Sentencing range – 4 to 7 years imprisonment
Level 3	Starting point – 3 years imprisonment Sentencing range – 2 to 5 years imprisonment
Level 4	Starting point – 18 months imprisonment Sentencing range – 12 months to 2 years imprisonment

These would be combined into the ranges:

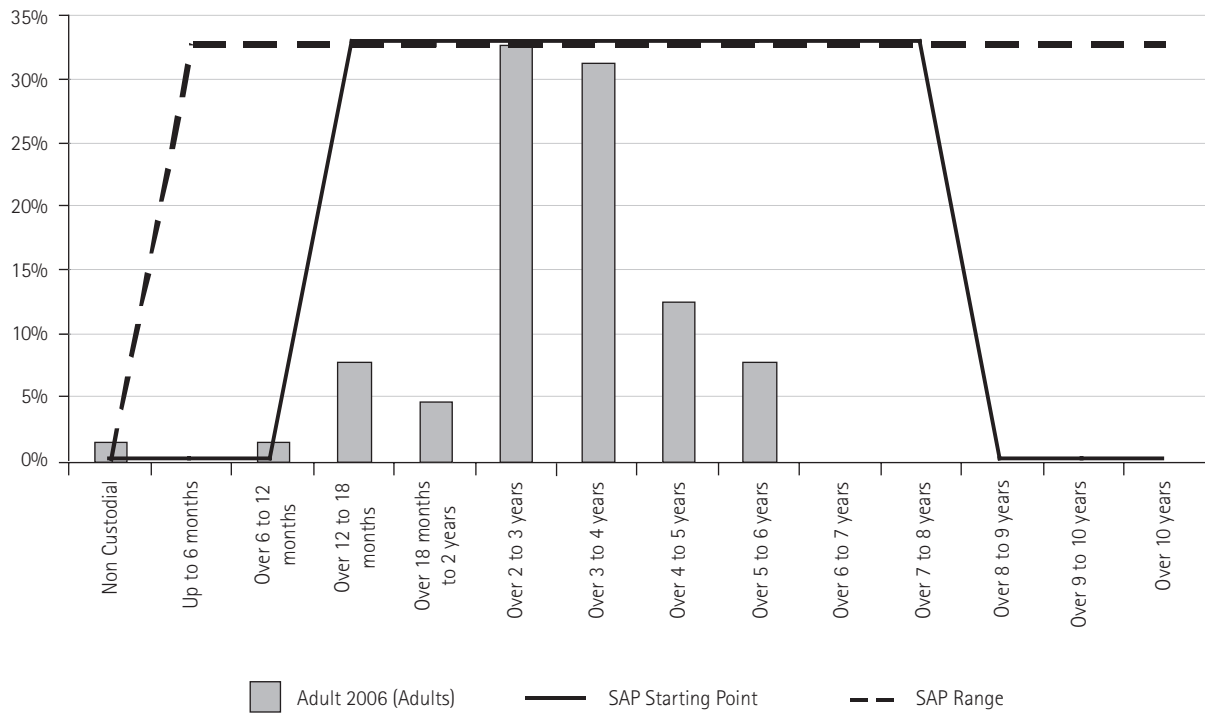
Starting point	18 months to 8 years
Range	12 months to 14 years

- 10. The charts below show how these ranges map onto sentencing practice during 2006. The bars denote the actual percentage of offenders receiving each disposal while the lines denote the envelopes defined by the proposed starting points and ranges.
- 11. It can be seen that, generally, actual sentences are within the proposed starting point range, although there are a small proportion of sentences which are more lenient than the proposed minimum. There are very few sentences which exceed the maximum proposed starting point, and none which are anywhere near the maximum proposed for the most serious offences. As most sentences are already within the proposed ranges, it is likely that the proposals will make little difference to the overall level of sentencing for these offences.
- 12. Intuitively it may appear that sentences are biased towards the lower end of the proposals and so would be driven up. While this would be a credible outcome, in the absence of data on the actual seriousness of offences there are no specific grounds for such a conclusion.

Causing Death by Dangerous Driving



Causing Death by Careless Driving when under the influence of Drink or Drugs



SUMMARY OF THE PANEL'S RECOMMENDATIONS

Recommendation 1

Where there is sufficient evidence of driving impairment, the consumption of alcohol or drugs prior to driving will make an offence more serious. Where the drugs were legally purchased or prescribed, the offence will only be regarded as more serious if the offender knew or should have known that the drugs were likely to impair driving ability.

Recommendation 2

Unless inherent in the offence or charged separately, failure to provide a specimen for analysis (or to allow a blood specimen taken without consent to be analysed) should be regarded as a determinant of offence seriousness.

Recommendation 3

The fact that an offender was avoidably distracted by using a hand-held mobile phone when causing death by driving offence was committed will always make an offence more serious. Similarly, adjusting the controls of a hands-free mobile phone or any other electronic equipment will be an avoidable distraction. Reading or composing text messages over a period of time will be a gross avoidable distraction.

Recommendation 4

The fact that the victim of a causing death by driving offence was a particularly vulnerable road user is a factor that should be taken into account when determining the seriousness of an offence.

Recommendation 5

Where more than one person is killed, that will aggravate the seriousness of the offence because of the increase in harm. Where the number of people killed is high and that was reasonably foreseeable, the number of deaths is likely to provide sufficient justification for moving an offence into the next highest sentencing band.

Recommendation 6

The fact that an offender may have consumed alcohol or drugs unwittingly before driving may be regarded as a mitigating factor but consideration should be given to the circumstances in which the offender decided to drive or continue to drive when driving ability was impaired.

Recommendation 7

The degree to which serious injuries sustained by an offender will justify a reduction in sentence will depend upon the degree of fault in the offender's driving in relation to the commission of the offence.

Recommendation 8

Normally, the fact that the victim of an offence was in a close personal or family relationship with the offender should be treated as a mitigating factor. The degree to which this factor should influence sentence will vary according to the culpability of the offender and, where culpability is high, a reduction in sentence may not be justified.

Recommendation 9

Any actions on the part of the victim(s) or a third party that contributed to the commission of an offence may be taken into account as a mitigating factor.

Recommendation 10

Where an offender gave direct, positive, assistance to victim(s) at the scene of a collision, this should be regarded as a mitigating factor.

Recommendation 11

The fact that an offender's lack of driving experience contributed to the commission of an offence should be treated as a mitigating factor; in this regard, the age of the offender is not relevant.

Recommendation 12

Genuine remorse on the part of an offender or evidence that an offender is normally a careful and conscientious driver may both be taken into account as personal mitigation and may justify a reduction in sentence.

Recommendation 13

When ordering disqualification from driving, the purpose of which is primarily public protection, the duration of the order should allow for the length of any custodial period in order to ensure that the disqualification has the desired impact.

Recommendation 14

The sentencing starting points and ranges for the offence of causing death by dangerous driving require significant revision only towards the top of the scale of seriousness.

Recommendation 15

A fine is most unlikely to be an appropriate sentence for an offence of causing death by careless or inconsiderate driving; where a custodial sentence is not justified, a community order should be imposed.

Recommendation 16

A fine will rarely be an appropriate sentence for an offence of causing death by driving: unlicensed, disqualified or uninsured drivers; where a custodial sentence is not justified, a community order normally should be imposed.

Recommendation 17

The sentencing starting point for the offence of causing death by driving: unlicensed, disqualified or uninsured drivers should be higher where the offender was disqualified than where the offender was unlicensed or uninsured.

Recommendation 18

Where an offender is convicted of causing death by driving while unlicensed, disqualified or uninsured, the fact that the decision to drive was prompted by a genuine emergency affecting the offender or a passenger in the offender's vehicle may be treated as mitigation.

THE CONSULTATION

In accordance with the duty imposed by 171(3) of the Criminal Justice Act 2003, the Panel issued a consultation paper on 25 January 2007. The Panel's provisional views on sentencing guidelines for causing death by driving offences were set out.

Copies of the consultation paper were sent to 184 individuals and organisations including the Panel's 33 regular consultees and Resident Judges at each Crown Court Centre in England and Wales. It was also published on the Panel's website and in the Justice of the Peace journal. 57 responses were received.

Responses were received from the following:

Automobile Association
BRAKE
Council of District Judges (Magistrates' Courts)
Council of Her Majesty's Circuit Judges
Criminal Bar Association
Crown Prosecution Service
HH Judge Peter Jacobs, Resident Judge at Norwich
Justices' Clerks' Society
Magistrates' Association
HH Judge Ronald Moss, Resident Judge at Harrow
NACRO
National Offender Management Service
Road Peace
Road Peace, Exeter
Royal Society for the Prevention of Accidents
HH Judge Russell QC, Resident Judge at Preston
HH Judge Simon Tonking, Resident Judge at Stafford

Responses were also received from:

George and Giuletta Galli Atkinson, private individuals
Pat Bentley, private individual
Mrs. J. Brain, private individual
Simon Brooke, private individual
Jay Calascione, private individual
Communication Workers Union
CTC, the national cyclists' organisation
Dr. Sally Cunningham, University of Leicester
HH Judge Alasdair Darroch
John Echlin, private individual
Anthony Edwards, defence solicitor and member of the Sentencing Guidelines Council
HH Judge Anthony Goldstaub QC
David Haywood JP
Professor Michael Hirst, De Montfort University, Leicester
Mr. & Mrs. Hopkins, private individuals
IAM Motoring Trust
A. J. E. Jaffey, private individual
R. M. Jameson FRCS and Dr. F. M. Jameson, private individuals

Norman Jones, private individual
Enid Lindsey, private individual, former JP
London Cycling Campaign
Mrs. Ruth Martin, private individual
Chief Inspector Christopher Moorehouse-Everett
Nick Moss, private individual
Norwich Union
Parliamentary Advisory Council for Transport Safety
Margaret Pedler, private individual
HH Judge David Richardson
David Searby, private individual
Alec Samuels JP
SafeSpeed
George Tranter, solicitor and former Justices' Clerk
Bridget M. J. Wall, private individual
Laurence Lee Watts, private individual
Inspector John Williams, Greater Manchester Police
Judge Richard Williams
Clive Wynne-Hughes, South Wales Police

2 anonymous responses were also received

The Sentencing Advisory Panel is an independent advisory and consultative body originally constituted under sections 80 and 81 of the Crime and Disorder Act 1998 (which came into force on 1 July 1999) and now constituted under section 169 of the Criminal Justice Act 2003. Its function, prior to implementation of the relevant provisions in the Criminal Justice Act 2003, was to provide fully researched, objective advice to the Court of Appeal to assist the Court when it framed or revised sentencing guidelines.

The Criminal Justice Act 2003 established a Sentencing Guidelines Council with responsibility for issuing sentencing guidelines. With effect from 27 February 2004, the Sentencing Advisory Panel submits its advice to the Council rather than to the Court of Appeal.

The following were members of the Panel at the time this advice was delivered to the Sentencing Guidelines Council:

Professor Andrew Ashworth (Chairman)

His Honour Judge Anthony Ansell

His Honour Judge Philip Clegg

John Crawford

Ms Joanna Wallace

Amritlal Devani

Mrs Anne Fuller OBE JP

Professor Frances Heidensohn

David Mallen CBE

Michael Morgan

Judge Howard Riddle

John Staples

Ms Joan Webster QPM

Christopher Woolley

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Head of Sentencing Guidelines Secretariat: Kevin McCormac OBE
Secretary to the Panel: Mrs Lesley Dix

