



Department of
Justice
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CONSULTATION ON A SENTENCING GUIDELINES MECHANISM

Comments are invited and should be made to the following address by 18 January 2011:

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INDEX

Ministerial Foreword	2
Section 1 Current Sentencing Arrangements for Criminal Cases	4
Section 2 Drivers for a Sentencing Guidelines Mechanism	9
Section 3 Other Jurisdictions	16
Section 4 Consideration of Options	24
Section 5 Equality Implications and Next Steps	38
Section 6 Consultation Arrangements	39
<u>Annexes:</u>	
Annex A Sentencing Decision Process Map	
Annex B Example of Court of Appeal Guideline Judgment	
Annex C Guideline issued by Sentencing Guidelines Council	
Annex D Northern Ireland Court Structure	
Annex E Court of Appeal Guideline Judgment Process Map	
Annex F Results from Northern Ireland Crime Survey	
Annex G Numbers holding Judicial Office	
Annex H Sentencing in Crown and magistrates' courts by disposal	
Annex I Proposed new Guideline Judgment Process Map	



Foreword

I am delighted to be launching this public consultation on possible options for a Sentencing Guidelines Mechanism. The importance of public confidence in sentencing was recognised in the Hillsborough Agreement which made a commitment that the establishment of a Sentencing Guidelines Council would be considered for Northern Ireland. This consultation meets that commitment.

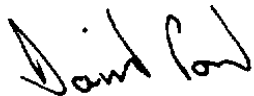
The selection of the appropriate sentence in individual cases, taking into account all relevant considerations, is quite rightly a matter for the judiciary. I know how seriously judges take their sentencing responsibilities and it is essential that their independence in making these decisions is maintained. This consultation does not seek to alter that position. It also acknowledges steps the Lord Chief Justice is already taking.

Sentencing affects the offender, the victim and society as a whole. Both offenders and victims should expect that crimes of a similar nature, committed in similar circumstances, should attract broadly similar sentences. We need consistency across a whole range of offences, as even less serious offences have a real impact on victims and communities. Sentencing is an issue on which most people in Northern Ireland, if asked, will have a view. For some, their view is informed by personal experience of crime, but for most people it is influenced by what they read in the papers and hear on the news. A lack of public information about sentencing practice in general means that views are often formed without any real knowledge of the factors or processes involved.

Media coverage understandably focuses on high profile cases and outcomes. Very little of the everyday work of sentencing in the courts is considered particularly newsworthy or comes to public attention. It is against this background that perceptions of leniency in sentencing are often formed. That is not unique to Northern Ireland. Experience elsewhere however has demonstrated that greater public awareness of sentencing issues can often have an impact on how people view the appropriateness of particular sentences.

I want to see how public confidence in sentencing can be increased which is why the consultation paper considers the range of issues impacting on confidence and the effective delivery of justice and seeks views on what role a sentencing guidelines mechanism might have in addressing them.

This is an opportunity for you to have your say on what is a very important aspect of the administration of justice and I would encourage everyone to contribute their views to help inform the debate.

A handwritten signature in black ink, appearing to read 'David Ford', written in a cursive style.

David Ford
Minister of Justice

SECTION 1: CURRENT SENTENCING ARRANGEMENTS FOR CRIMINAL CASES

1.1 The justice system has clearly defined roles in dealing with the investigation and prosecution of crime and equally well defined roles in the arena of sentencing. It is the role of Government to determine the legislative framework for sentencing and ensure that there is a sufficient range of sentencing disposals available to enable the judiciary, which is wholly independent of Government, to direct the most appropriate sentence in individual cases. Government regularly reviews the sentencing framework, creating offences and establishing the maximum, and sometimes minimum, penalties permissible in law for those convicted of criminal offences. It is a transparent process, with the legislation establishing offences and penalties subject to public consultation and scrutinised and debated by elected representatives in the Legislative Assembly. (Figure 1 below shows the range of disposals available to the courts.)

1.2 The selection of the appropriate sentence and its duration (within the maximum terms set in law) is for the judiciary to decide taking into account all relevant considerations - including the nature of the offence, the history of the offender and the impact of the crime on the victim - in individual cases. The judiciary are often supported in determining the appropriate sentence by guideline judgments from the Court of Appeal in respect of the sentence imposed for a similar offence.

Court Hearing

1.3 The court in which a case is heard is determined primarily by the offence. Some offences, by statute, must always be tried summarily. These are less serious offences tried in a magistrates' court by a district judge (formerly known as a magistrate) and involve no jury. In magistrates' courts sitting as youth courts, the case is heard by a district judge and two lay magistrates.

1.4 More serious crimes, e.g. murder, manslaughter, rape, robbery, are tried on indictment in the Crown Court by a judge, and before a jury, unless the defendant has pleaded guilty. In certain other circumstances (s1 Justice & Security (NI) Act 2007), where the Public Prosecution Service (PPS) so certifies, a trial may be held before a judge sitting without a jury.

1.5 There is a third category of offence – offences which are triable summarily or on indictment. These can be tried either in a magistrates' court or the Crown Court under one of three sets of circumstances:

- some offences normally tried summarily can be tried on indictment if the offence is one for which a person, if convicted, can be sent to prison for more than 6 months; and the defendant chooses to be tried on indictment
- some offences normally tried on indictment can be tried summarily if the district judge considers it expedient to deal with the offence summarily, and the defendant and the PPS both agree to a summary trial
- in many cases the legislation which creates a crime expressly states that it can be tried summarily or on indictment. It is then up to the PPS to decide whether the case is heard in the Crown or magistrates' court.

Sentencing

1.6 The sentencing powers in the magistrates' courts are restricted. Generally, on conviction of a summary offence, the maximum sentence a district judge has the power to impose is six months imprisonment. For an indictable offence being tried summarily, the maximum sentence that can be imposed is 12 months imprisonment, unless consecutive terms of imprisonment are imposed for more than one offence, when the limit is extended to 18 months. By far the most common disposal in the magistrates' courts, which deals predominantly with less serious offences, is the fine. In 2006, 66% of all disposals were fines.

1.7 In the Crown Court the judge may impose any sentence from the range of available options subject to the maximum (or sometimes minimum) possible sentence available in law for the particular offence. The only offences which carry a mandatory sentence are murder and genocide for which the court must impose life imprisonment.

Appeals

1.8 A person convicted of an offence in the magistrates' court has the right to appeal against conviction, sentence or both. Where leave to appeal is granted, it is heard in the County Court. The Court of Appeal hears cases from the magistrates' court only where there is a disputed point of law. A person convicted of an offence in the Crown Court can apply for leave to appeal against conviction, sentence or both. Appeal cases are considered by the Court of Appeal.

1.9 The PPS has no right of appeal against the acquittal of a defendant tried on indictment but can refer a case to the Court of Appeal if it considers that the sentence imposed was unduly lenient.

1.10 The giving of reasons in open court and the reporting of these by the media, under the principle of open justice, are the system by which sentencing decisions are made known. All sentencing decisions in which written decisions are given are also published on the Northern Ireland Courts and Tribunals Service website.

Guidance available to the Courts

1.11 In making sentencing decisions, judges take into account a number of factors. (**Annex A** provides a process map of the sentencing decision.) These include: the seriousness of the offence; the maximum, and sometimes minimum, penalty set by law; the range of available disposals; the circumstances of the offender including previous convictions; the protection of the public; the impact on the victim; and any aggravating or mitigating factors in the case. Judges are also guided by guideline judgments from the Court of Appeal (an extract from a Court of Appeal guideline judgment is given at

Annex B). The judiciary may also rely, to a lesser extent, on guidelines issued by the Sentencing Council (formerly the Sentencing Guidelines Council) in England and Wales, where those guidelines accord with local experience and the judge considers it appropriate in a particular case (an example of a guideline issued by the Sentencing Guidelines Council is available at **Annex C**).

1.12 Judgments or decisions in the Court of Appeal are binding on the High Court and the Crown Court, and their decisions in turn are binding on the County Courts and the magistrates' courts (See **Annex D** for Court Structure). The judgment or decision sets out the factors and sentence appropriate to the individual appeal and is a definitive statement on an aspect of sentencing law. It is given as the 'ratio decidendi' of a case, literally the 'reason for deciding' and is the only part of it that is binding on lower courts.

1.13 However, the binding authority of these decisions on subsequent cases is limited. In all areas of law, a previous decision is only binding if the facts cannot be distinguished in some way from the previous case. The system of binding authority applies less rigorously in sentencing cases, because it is recognised that they are so heavily fact-dependant.

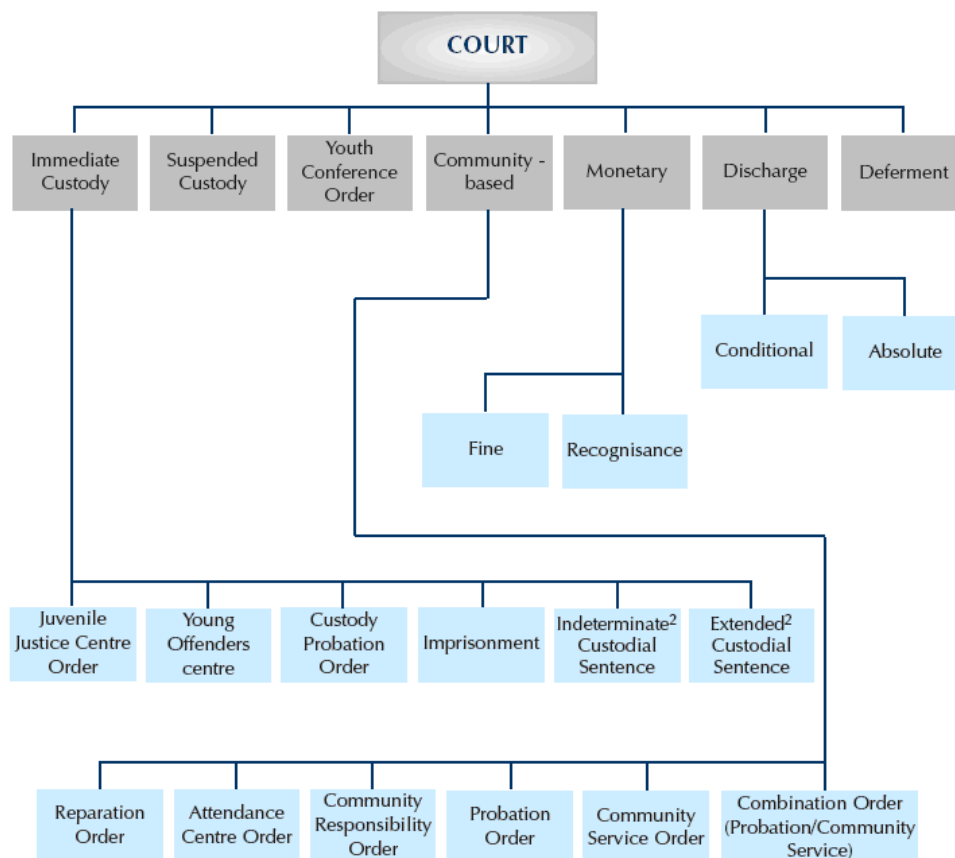
1.14 Guideline judgments are the exception to this rule in that they give both the decision in the case and provide guidelines. They will state the reason for deciding the appropriate sentence for that offender, but will also provide guidelines to sentencers which are influential in indicating the appropriate approach in a similar case. (**Annex E** provides a guideline judgment process map.) Guideline judgments may be used to provide guidance in relation to new offences in respect of which there is little or no previous guidance available. They may also be given to ensure that existing sentencing guidance for established offences is appropriate as new trends in society emerge.

1.15 Sentencing guidelines may provide judges with starting points for sentences where the circumstances of the case differ, or identify a range of

sentences that may be appropriate depending on the seriousness of the offence. They may also set out the aggravating or mitigating factors to be taken into account in particular cases. Guidelines are used to guide or structure the sentencing process and to make the sentencing process more transparent and sentences more consistent.

1.16 The Judicial Studies Board has a dual role in the current process. It provides workshops and lectures to the judiciary on sentencing issues which assist in promoting consistency. It also publishes sentencing guideline decisions on its publicly available website. (www.jsbni.com)

Figure 1 Disposals available to the courts



² These disposals came into effect on 15 May 2008 under the Criminal Justice (Northern Ireland) Order 2008

SECTION 2: DRIVERS FOR A SENTENCING GUIDELINES MECHANISM

2.1 Aside from the commitment in the Hillsborough Castle Agreement to consider the establishment of a Sentencing Guidelines Council, this paper considers what the possible drivers are for changing the current arrangements for sentencing in Northern Ireland.

Public Confidence

2.2 Published statistics would appear to indicate that public confidence in sentencing in the criminal courts is generally low.

In the 2008/09 Northern Ireland Crime Survey¹:

- Only **24%** of respondents believed that the courts are effective 'at giving punishments which fit the crime'. (See Figure 1.1 **Annex F**. Comparative figures for E & W:24%)
- Only **24%** felt that the Criminal Justice System achieved the 'correct balance between the rights of offenders and victims'. (See Figure 1.2 **Annex F**. Comparative figures for E & W 36%)
- When asked what the Criminal Justice System could do to improve its public confidence rating, the largest proportion of respondents cited the need for 'tougher sentences'. (See Figure 1.3 **Annex F**)

2.3 Looking at these statistics, it is interesting to note that of respondents' perceptions of the effectiveness of the criminal justice system, the lowest confidence levels across all measures in these areas related to sentences handed down by the courts. This is not unique to Northern Ireland. In England & Wales (E&W), which has had some form of Sentencing Guidelines body since 1999, the British Crime Survey showed that only 24% of respondents believed that the courts are 'effective at giving punishments which fit the crime' – the same figure as for Northern Ireland. Indeed, it may be that the status of the courts in Northern Ireland has suffered as a result of media

¹ Research & Statistical Bulletin 1/2010. Perceptions of Crime Findings: from the Northern Ireland Crime Survey

reporting in the national press of sentencing in the English courts. There is no doubt that over recent years, both here and in Great Britain, there has been a consistent theme in media coverage that the courts are 'soft on crime'. Such coverage understandably tends to focus on high profile cases with a resultant unbalanced view of sentencing. Most people have no direct experience of the criminal justice system. Their opinions about crime and sentencing are often based on what they read in the papers and hear on the radio, where there is little focus on the offences being dealt with on a daily basis by the courts. This leads to a public perception that the courts are unresponsive to community concerns, which tend to focus more on the punitive aspects of sentencing and less on prospects for minimising an offender's risk of re-offending.

Transparency and Community Engagement

2.4 International research has shown that high levels of dissatisfaction with sentencing are associated with underestimation of the severity of sentences and poor knowledge of sentencing options. Recent research commissioned by the Sentencing Advisory Panel (SAP) in England & Wales² found that people are seriously misinformed about sentencing practice, and believe that the courts are much more lenient than they actually are. Certainly, in Northern Ireland, there would appear to be a gap between perception and reality. Public perception belies the reality of an increased prison population. Between 2001 and 2009 the average immediate custody prison population rose by 52%³. The rate of imprisonment per head of population has also increased. In 2002, Northern Ireland had 62 prisoners for every 100,000 people in the population. In 2008 that figure stood at 88. The number of prosecutions and convictions in magistrates' courts has fallen by 15% between 1996 and 2006 and yet over the same period, custody rates have risen to 6% (from 5%). All this against a backdrop of falling crime rates. (Levels of overall crime for 09/10 -109,139 crimes - have decreased by 7.6% since 2004/05 and are 23.4% lower than that recorded in 2002/2003.)

² SAP Research Report: 6 Public Attitudes to the Principles of Sentencing June 2009

³ Research and Statistical Bulletin 2/2010. Northern Ireland Prison Population in 2009

2.5 Criticism of sentences handed down in individual cases is easy to make but difficult to deflect or defend when little information is available about sentencing, or the factors taken into account by sentencers in individual cases. However, considerable research has shown that when members of the public are asked to consider example cases, or are given more detailed information about crime and punishment issues, then their decisions usually reflect the sentences that were actually given in these cases, sometimes even being more lenient (Roberts and Hough 2005, Hutton 2008). Education and information clearly have a role to play in improving public perceptions of sentencing and providing for better informed public opinion. (Roberts and Hough 2008)

2.6 Other jurisdictions have sought to address this through the establishment of sentencing bodies with a particular remit for the provision of education and information, indeed for sentencing advisory bodies established in Australia, it is their primary role. In E & W, which has had sentencing guidelines bodies since 1999, the newly established Sentencing Council has been given, for the first time, a statutory function to promote awareness of sentencing practice.

2.7 Consideration of the information flow on sentencing issues should not be confined to providing for better informed public opinion. It could be argued that there should be a channel which provides for community engagement on sentencing policy. Community engagement is an issue which is of particular relevance in Northern Ireland, where it has had a significant impact on increasing public confidence in policing.

2.8 There is debate about the extent to which public opinion should influence the judiciary. Case law indicates that while courts do not have to reflect public opinion, they cannot disregard it. In *R v Broady*⁴, it was stated:

⁴ *R v Broady* (1988) 10 Cr.App.R (S) 495

‘Judges are not here to gain approval or disapproval from the public, and thus decide their sentences perhaps on the basis of the lowest common denominator of public opinion. But at the same time, public abhorrence of behaviour...should not be, and must not be, disregarded by the courts, who have a duty to the public to pass judgment in a way which is generally acceptable amongst right-thinking, well informed persons.’

2.9 The views of the public are already taken into account in determining the sentencing framework within which the judiciary operate. When changes in sentencing law are being considered – new disposals; new crimes; maximum/minimum sentences - proposals are issued for public consultation. Sometimes indeed changes in legislation are influenced by media debate. However, there is little opportunity for community input to sentencing policy within the legislative framework, whether that be from the general public or from criminal justice practitioners.

2.10 Sentencing decisions are not taken in isolation, they have an impact beyond the punishment of the offender. They have significant impacts for the agencies dealing with the offenders – for the police, for prisons, for probation - and for the community. Sentencing guideline and advisory bodies in other jurisdictions have provided for public participation in sentencing policy through diverse membership with a mix of judicial and non-judicial – usually people with experience of criminal justice and victims’ issues. Wider public engagement is achieved through consultation on draft guidelines.

Consistency

2.11 Another issue which impacts significantly on public confidence is that of consistency in sentencing. There is an absence of evidence on the extent of consistency or inconsistency between courts of the same tier, which in itself is an indicator of a lack of transparency in current arrangements. There is much information available in the public domain on the number of sentences handed down and on the various disposals given, but little data on sentencing practice and the decision making process.

2.12 While judicial discretion in the individual case must be safeguarded, both victims and offenders should expect that crimes of the same seriousness, committed in similar circumstances by comparable offenders, should attract similar sentences. There is certainly a public perception that inconsistency exists and plenty of anecdotal allegations about varying standards. Lack of transparency allows these perceptions to persist.

2.13 Guideline judgments, the right of an offender to appeal, and the ability of the Director of Public Prosecutions (formerly Attorney General pre-devolution) to refer, to the Court of Appeal, sentences handed down in the Crown Court which are regarded as unduly lenient⁵, all currently contribute to the promotion of consistency in sentencing. Consistency in magistrates' courts is contributed to by the small size of the jurisdiction and a professional district judiciary which facilitates communication and discussion of experience between judges. (See **Annex G** for numbers holding judicial office)

2.14 The Judicial Studies Board⁶ also plays an important role through the provision of training across all tiers of the judiciary and by the publication of guideline judgments on the judicial intranet and the JSB website.

2.15 However, guideline judgments relate only to cases on appeal from the Crown Court or PPS references and are issued in the context of an individual case. Thus, Court of Appeal rulings are limited by the number of cases that come before it. (See Tables 1 & 2 below for Crown Court appeals lodged and heard in 2009. Please note appeals lodged in 2009 will not necessarily be heard in 2009. Cases dealt with in 2009 may relate to appeals lodged in 2008)

⁵ There were 12 'unduly lenient' cases referred in 2009

⁶ The JSB is responsible for judiciary training in NI. Its aims and objectives are to provide suitable and effective programmes of practical studies for full and part time members of the judiciary and to improve the system of disseminating information to them.

Table 1: Types of criminal appeal lodged in 2009

	Appeal against			Total
	Sentence	Conviction	Conviction and sentence	
Scheduled	7	-	1	8
Non-Scheduled	38	11	27	76
Total	45	11	28	84

Table 2: Results of criminal appeals by type in 2009

	Appeal pursuant to Article 17 of Criminal Justice (NI) Order 2004	Conviction only or conviction & sentence		Sentence only	
		Scheduled	Non-Scheduled	Scheduled	Non-Scheduled
Conviction Quashed	-	-	14	-	-
Appeal Dismissed	1	-	3	3	12
Sentence Affirmed	-	-	-	-	-
Sentence Varied	-	1	-	3	10
Withdrawn/Abandoned	-	-	4	1	6
Refused	-	-	4	1	2
Total	1	1	25	8	30

2.16 Appeals from the Crown Court relate only to the more serious cases and do not provide guidance on the majority of cases heard in the magistrates' courts. (Appeals from the magistrates' court are referred to the Court of Appeal only where there is a disputed point of law.) Yet these courts deal with the majority of offences. In 2006, the magistrates' courts dealt with almost **95% of all prosecutions**; handed down **95% of all sentences**; and of all those receiving sentences of immediate custody in all courts, 65% were sentenced in the magistrates' courts. (See **Annex H** for sentencing levels in courts.) **There are no guideline judgments for the majority of routine offences being dealt with on a daily basis by the magistrates' courts.** Any mechanism established in Northern Ireland should be in a position to address this gap in provision.

Summary

2.17 We have explored the drivers for change to the current sentencing arrangements: public confidence; transparency; public engagement; and consistency; and consider that any sentencing guidelines mechanism developed in Northern Ireland should make a contribution to the following objectives:

- to promote public confidence in sentencing;
- to provide greater transparency in sentencing practice;
- to engage the community in, and raise awareness of, sentencing issues; and
- to promote consistency in sentencing for similar offences committed in similar circumstances.

Q.1 Do you agree with the objectives for a sentencing guidelines mechanism? If not, what alternatives would you suggest?

Q.2 Are there other drivers for change to current sentencing arrangements which you consider have not been identified? Please comment.

SECTION 3: OTHER JURISDICTIONS

3.1 Other jurisdictions have sought to address issues of lack of public confidence, transparency and consistency in sentencing through the establishment of sentencing advisory bodies or sentencing guidelines councils.

Sentencing Guidelines Bodies

3.2 The following jurisdictions have legislated for sentencing guidelines bodies with the power to produce and promulgate sentencing guidelines.

England & Wales

3.2.1 Until recently, England and Wales operated a two tier system for the production of sentencing guidelines – the Sentencing Advisory Panel (SAP) which provided draft guidelines, after consultation, to the Sentencing Guidelines Council (formerly the Panel provided advice to the Court of Appeal). The Council, after further consultation, was responsible for the final content of guidelines.

3.2.2 The SAP was established by sections 80 and 81 of the Crime and Disorder Act 1998. It was an independent, advisory and consultative body with a membership of between 12 to 14 judicial and non-judicial members, with a non-judicial chair. Its main objectives were to promote consistency and transparency in sentencing through the provision of researched, objective advice to the Court of Appeal. The terms of the Act provided for the Panel to propose guidelines to the Court of Appeal for a particular category of offence and the choice of offences was largely that of the Panel, except where the Court of Appeal referred an offence to the Panel before it delivered a guideline judgment for that offence. The Home Secretary could also make a referral to the Panel. The Panel, after wide consultation, would submit its advice to the Court of Appeal for acceptance.

3.2.3 In 2003, the system changed, based on the recommendations of the Halliday Review of the Sentencing Framework for England & Wales (2001).

The Criminal Justice Act 2003 established the Sentencing Guidelines Council (SGC). Membership (12) was again a mix of judicial and non-judicial with the Lord Chief Justice as Chair and the addition of an observer appointed by the Secretary of State for Justice. Under these changes the SAP provided draft guidelines to the Council, rather than the Court of Appeal. The Council, after further consultation, published the definitive guidelines. The establishment of the Sentencing Advisory Council separated the function of creating guidelines from that of deciding individual appeal cases.

3.2.4 In 2008 the Ministry of Justice consulted on further reforms, which have now been included in the Coroners and Justice Act 2009. The Act establishes a Sentencing Council and abolishes the SAP and the SGC. The new Council consists of 14 members - 8 judicial members, 6 non-judicial with a judicial chair. Functions are enhanced with a requirement that guidelines have regard to the impact of sentencing on victims of offences and a remit to promote awareness of sentencing practice. When publishing guidelines, the Council must also publish an assessment of the resource implications of the implementation of the guidelines on prison places and on probation and youth justice services. The Council must also monitor the operation and effect of its sentencing guidelines and promote awareness of matters relating to sentencing, including publishing information on sentencing practice in local Crown and magistrates' courts.

3.2.5 The reforms also sought to secure greater consistency, transparency and predictability in sentencing by placing a duty on the court **to follow** any relevant guidelines, unless it is not in the interests of justice to do so, as opposed to the previous requirement to **have regard to** guidelines.

United States

3.2.6 The United States (US) Sentencing Commission was established in the Sentencing Reform Act 1984 to address disparity in federal sentencing. It has 7 members, with a non-judicial majority - a maximum of 3 judges. The legislation, for some offences, requires the Commission in developing guidelines to consider 'the community view of the gravity of the offence.'

Judges are required to follow the guidelines unless there is an aggravating or mitigating factor not taken into account by the Commission in drawing up the guidelines. Following a Congressional ruling in 2003 that there were unacceptably high downward departure rates from the guidelines, subsequent legislation directed the Commission to revise the guidelines to reduce the incidence of downward departures.

3.2.7 The federal guidelines operate on a grid system with two axes – one for the number and type of previous offences, the other for the seriousness of the offence. Where the two intercept on the grid determines the range of sentence. The guidelines severely restrict judicial discretion and force offences which vary widely in seriousness into relatively narrow ranges of sentences. Research has shown that the guidelines have made a substantial contribution to sentences for federal offences becoming more severe.⁷

3.2.8 States within the US have also introduced state sentencing guidelines bodies: e.g. The Minnesota Sentencing Guidelines Commission is a statutory body legislated for in 1978. It consists of 11 members – a mix of judicial and non-judicial. The aims of the guidelines are to assure public safety; to promote uniformity and proportionality; to provide truth and certainty in sentencing and; to co-ordinate sentencing practices with correctional resources. The guidelines again operate on a grid system and can be departed from only in ‘substantial and compelling’ circumstances.

New Zealand

3.2.9 In New Zealand (NZ), where there are similarities with UK systems of law, a Sentencing Council was provided for by statute in 2007 with powers to produce sentencing and parole guidelines. Under the legislation (Sentencing Council Act 2007), there were to be 10 members - 4 judicial, the chairperson of the parole board and 5 lay members. Its aims were to promote consistency and transparency in sentencing and Parole Board practice and to promote public confidence through the provision of information and education about

⁷ The Sentencing Commission for Scotland: The Scope to Improve Consistency in Sentencing 2006

sentencing and parole policies and practice. One of the key objectives in its development was to enable considerations of cost effectiveness to be taken into account in determining sentence severity levels. A notable area where it differed from the SGC in E & W, is that the guidelines were to be approved by Parliament (by negative resolution). In E & W, Parliament is given a scrutiny role only. However, while legislated for, the NZ Council has not yet been established. After the 2008 elections, the new government signalled that it did not wish to proceed with the Council.

Scotland

3.3 Scotland has legislated for a sentencing guidelines mechanism which will draft sentencing guidelines for the approval of the High Court acting as the Court of Appeal.

3.3.1 The Criminal Justice and Licensing (Scotland) Act 2010 provides for the establishment of a Sentencing Council. These provisions follow a long period of review of sentencing in Scotland. The Sentencing Commission for Scotland, (launched in November 2003 with a remit to review and make recommendations to the Scottish Executive on a number of criminal justice issues), examined the scope to improve consistency in sentencing and made recommendations for the creation of a statutory Sentencing Advisory Panel. In 2007, the Scottish Prisons Commission, established to examine the purpose and impact of imprisonment, recommended the establishment of a National Sentencing Council⁸. The Scottish Government then published a consultation paper "[Sentencing Guidelines and a Scottish Sentencing Council](#)" which set out plans for the establishment of a Sentencing Guidelines Council.

3.3.2 The Act provides for a Scottish Sentencing Council which will draft guidelines for the approval of the High Court. Under the provisions, there will be 6 judicial members (including the chair), 3 justice professionals and 3 lay members, one whom must have a knowledge of victims' issues. In carrying

⁸ Scotland's Choice: Report of the Scottish Prisons Commission July 2008

out its functions, the Council must seek to promote consistency in sentencing practice; assist the development of policy in relation to sentencing; and promote greater awareness and understanding of sentencing policy and practice. In preparing guidelines, the Council must also prepare an assessment of the costs and benefits of the proposed guidelines and an assessment of their likely impact on the criminal justice system generally. The requirement on the court when sentencing an offender will be to **have regard to** any applicable sentencing guidelines.

Advisory Bodies

3.4 Others bodies, particularly in territories in Australia, have no delegated powers to produce guidelines, but instead focus on research, advice and education (both judicial and public).

Victoria

3.4.1 In Victoria, an independent statutory Sentencing Advisory Council (SAC) was established in 2004 under amendments to the Sentencing Act 1991. Its mission is to bridge the gap between the community, the courts and Government by informing, educating and advising on sentencing issues.

3.4.2 The SAC was established following a review of Victoria's sentencing laws (Pathways to Justice – Sentencing Review 2002), which was carried out in the context of community and media calls to increase the use and severity of imprisonment. The review recommended a number of improvements to the sentencing system, including the establishment of a Sentencing Advisory Council, and emphasised the need for properly informed public opinion to be taken into account in the criminal justice process.⁹ Due to the opposition of the judiciary and the legal profession, the Council has no remit to produce guidelines, but in preparing to make a guideline judgment, the Court of Appeal is required to notify the SAC and to take notice of its advice. In practice the Court of Appeal has yet to exercise this power. Instead, the SAC appears to have concentrated its efforts on public education, research,

⁹ www.sentencingcouncil.vic.gov.au

production of statistical publications and interface with the media on sentencing matters. Express provision is made for the Council to gauge public opinion. Research takes up the majority of its budget.

3.4.3 The Council has an entirely non-judicial membership of between 9 and 12 members. Membership includes representatives from academia, the legal profession, victim advocacy groups; and those with experience of community issues and the criminal justice system.

New South Wales

3.4.4 The New South Wales Sentencing Council, established in 2003, is a statutory body whose members (13) include representatives of victims' support groups and the community; government agencies (e.g. police, prisons); former judges and legal practitioners (e.g. Director of Public Prosecutions). Its objective is to strengthen public acceptance, understanding and confidence in the sentencing process.

Broadly its functions are:

- to advise and consult with the Attorney General(AG) on standard non-parole periods;
- to advise and consult with the AG on guideline judgments;
- to monitor and report annually to AG on sentencing trends and practices; and
- at the request of the AG to prepare research papers or reports on particular sentencing matters

3.4.5 The Council does not have the right to initiate advice to the AG on sentencing matters generally. When advice is furnished the AG decides to what extent, if at all, that advice will be accepted or adopted and implemented. Legislation was amended in 2007 to give the Council express statutory function for the education of the public on sentencing matters and gauging public opinion. Its functions do not include conducting independent research or disseminating information to bodies other than the AG. It has no reporting role to Parliament and no role with the Court of Appeal.

Tasmania

3.4.6 Tasmania is in the process of establishing a non-statutory Sentencing Advisory Council, accountable to the Attorney General. Its establishment was recommended following a long period of review of sentencing¹⁰, initiated in 2001 by the Attorney General against a background of community concern about the adequacy of sentences for violent and property crimes, and criticism of bail decisions.

3.4.7 As in other jurisdictions in Australia, its primary role will be to inform, educate and advise on sentencing matters. It is not intended that the Council will act as a source of advice to the judiciary. However, it will provide the Attorney General with advice on sentencing issues and practice and one of its first priorities will be to establish a robust sentencing information system to support policy making, research and judicial decision making. It will also be responsible for informing public opinion on crime and sentencing issues and will engage in community consultation and education. The Council will also provide advice to any government agency developing new offences or revising or establishing a penalty regime.

3.4.8 Nominees for Council membership will be invited from the University of Tasmania, the legal profession, the judges and magistrates, the Legal Aid Commission, the Commissioner of Police, the Director of Public Prosecutions and the community.

3.4.9 Tasmania has no separate Appeal Court, no guideline judgments and no statistical secretariat with the capacity to produce sentencing statistics or data¹⁰.

3.5 In essence, responses to sentencing concerns in other jurisdictions have developed to take account of different legal systems, different cultural, social, economic and political factors. There is no 'one size fits all' solution.

¹⁰ Sentencing: Final Report 11. Tasmania Law Reform Institute. June 2008

Republic of Ireland

3.6 There is no sentencing guidelines body in the Republic of Ireland. However, the Department of Justice, Equality and Law Reform has recently issued a Discussion Paper on Criminal Sanctions (February 2010) which considers a number of issues around sentencing. These include: sentencing guidelines and the value they might provide; and how public understanding of the principles and processes involved in sentencing might be promoted. Feedback on this Discussion Paper (and others not yet issued) will feed into the development of a White Paper on Crime.

3.6.1 The judiciary has been developing a system to gather relevant criteria and access information about the range of sentences and other penalties which have been imposed for particular types of offence. This will support judges when considering the sentence to be imposed in an individual case. A number of pilot projects have been run in several court jurisdictions, including Dublin, Cork and Limerick Circuit Criminal Courts; the Dublin District Court; and the Court of Criminal Appeal. The pilot outcomes will be reviewed and assessed by judges prior to final evaluation and establishment of a website. It is envisaged that the website will contain references to leading cases on sentencing, summaries and links to significant judgments on sentencing law, some statistical data and academic material on sentencing.

SECTION 4: CONSIDERATION OF OPTIONS

4.1 This paper looks at three possible options for a sentencing guidelines mechanism. In summary, these options are:

- Option 1** The establishment of an independent Sentencing Guidelines Council with a statutory remit to produce and publish definitive sentencing guidelines after a process of consultation. Guidelines would take account of the need to promote consistency and public confidence in sentencing; the impact of guidelines on victims; and the effectiveness and relative cost of sentences. The Council would also have public education and research functions. Membership of the Council would be a mix of judicial and non-judicial members with a judicial chair.
- Option 2** The establishment of an independent Sentencing Advisory Panel with a statutory remit to draft sentencing guidelines for consideration by the Court of Appeal. The draft guidelines would be produced after a process of consultation and, as in Option 1, would take account of the need to promote consistency and public confidence in sentencing; the impact of guidelines on victims; and the effectiveness and relative cost of sentences. The Panel would also have public education and research functions. Membership of the Panel would be a mix of judicial and non-judicial members with a non-judicial chair. This option maintains the position of the Court of Appeal as it would retain the final decision on sentencing guidelines.
- Option 3** A mechanism for sentencing guidelines based on measures being introduced by the Lord Chief Justice (LCJ) – as head of the judiciary - to enhance procedures for monitoring and developing sentencing guidance.

A Sentencing Working Group was independently established by the LCJ in September 2009 to: review the adequacy of existing arrangements for the reporting, collation and distribution of sentencing decisions and guideline cases; to consider ways of enhancing consistency in sentencing; and to make recommendations. Following its report, in June 2010, the LCJ has recently announced that he has accepted the recommendations in their entirety, and will proceed to implement the measures detailed at 4.3. This option proposes that we use these measures as the mechanism for sentencing guidelines with the commitment that the issue will be revisited in two years to allow for LCJ review of the operation of the measures.

OPTION 1

An Independent Sentencing Guidelines Council with a statutory remit to produce sentencing guidelines.

Membership

4.1.1 The members of the Council would be a mix of judicial and non-judicial members with a judicial chair. Judicial members, nominated by the Lord Chief Justice after consultation with the Justice Minister, would be drawn from all court tiers. Non-judicial members, appointed by the Justice Minister after consultation with the Lord Chief Justice, would be drawn from the criminal justice agencies, the Attorney General's office, defence counsel, academics and those with experience of victims' issues. Membership would be for a fixed term, with no renewal of membership after completion of the fixed term. Based on examples in other jurisdictions, the Panel should consist of 10-14 members. The more members on a Council, the more representative it is likely to be. Too many members might lead to a lack of both cohesion and decisiveness. The balance of judicial to non-judicial members will be further considered, subject to the views expressed in the consultation.

4.1.2 Broad-based membership would ensure that the development of sentencing guidelines would be informed, not only by judicial expertise, but by a wider resource of knowledge and expertise, would allow community engagement and give victims' interests a voice.

Function

4.1.3 The Council would have a statutory function to produce, publish and promulgate sentencing guidelines. The Council would have the remit to prepare guidelines on any offence or category of offences (without waiting for a 'live' case), but would also act on referrals from the Court of Appeal and the Justice Minister. The Appeal Court would continue to issue guideline judgments on the cases coming before it.

Aspects of Sentencing

4.1.4 The Council would have a statutory requirement to consider, when preparing guidelines, various aspects of sentencing. These would include:

- current sentencing practice;
- the need to promote consistency in sentencing;
- the need to promote public confidence in sentencing;
- the effectiveness of various sentences in reducing offending (and their relative cost); and
- the impact of sentencing decisions on victims of offences.

4.1.5 Consideration of cost and effectiveness when drafting guidelines is contentious. There is a view that it would be inappropriate for sentencers to take matters of cost into account. It is right that sentencing of individual offenders should not be driven by availability of resources. However, in the current economic climate, it could be argued that the judiciary has a responsibility to ensure that prison and probation resources are being directed to the best possible effect e.g. information to the judiciary on the effectiveness of disposals in dealing with particular offenders might provide for better informed decisions on the management of less serious offenders.

Consultation

4.1.6 Once guidelines were prepared, the Council would be required to publish them as draft guidelines for public consultation. There would be a list of specified persons or bodies with whom the Council is required to consult. The list would be compiled at the direction of the Justice Minister in consultation with the Attorney General. This would not preclude wider public consultation. When the Council had taken account of respondents' views, as appropriate, the guidelines would be published and promulgated as definitive sentencing guidelines.

4.1.7 A process of wide consultation would ensure that sentencing benchmarks were transparent to all and provide for community engagement.

Public Education

4.1.8 The Council could also be given a public education/engagement function. This could be made statutory by placing a duty on the Council to promote public understanding or awareness of sentencing. Making it a statutory function would ensure that a proactive communications strategy would be developed, rather than limiting it to publication of guidelines/information on the Council website. This strategy could draw together the various initiatives currently ongoing across the criminal justice system to provide a coherent approach, learning from best practice in other jurisdictions.

4.1.9 The media and the general public would receive co-ordinated accurate information about sentencing policy and practice. While the Council would not comment on an individual case, as part of this remit, a member of the Council, or the Head of the Secretariat, would be available to respond to radio/TV interviews on sentencing issues, attracting the media spotlight.

Research

4.1.10 The Council should have the power to commission, carry out and publish research. In sentencing bodies in other jurisdictions, research and its role in informing both the development of guidelines and public opinion on sentencing issues forms a vital part of their remit.

Duty of the Court

4.1.11 The legislation would place a duty on the Court to **have regard to** any relevant guidelines and, where the sentence differs from the guideline, to state the reasons in court.

Cost

4.1.12 Annual running costs for a Sentencing Council are estimated at £470,000

Breakdown of Costs

Member fees and expenses - £16,000

Secretariat

Head of Secretariat £90,000

Secretary to Sentencing Council £44,000

Research/Policy Officers (2) £88,000

Community Engagement Officer £35,000

Admin Support (2) £37,000

Office expenditure, training and meetings £60,000

External research, publications and website £100,000

Q.3.1 Do you consider that Option 1 would meet any/all of the objectives detailed in paragraph 2.17? If not, what additional/alternative measures would you suggest?

If you agree that Option 1 meets some or all of the objectives, please consider the following questions.

Q.3.2 Do you consider that there should be a judicial chair for the Council? Please comment.

Q.3.3 What are your views on the balance of judicial to non-judicial members on the Council?

Q.3.4 Do you consider that the proposed functions for the Council are appropriate. If not, what alternatives would you suggest?

Q.3.5 What are your views on the aspects of sentencing to be considered by the Council when drafting guidelines?

Q.3.6 Should the Council be given a statutory duty to promote public awareness/understanding of sentencing practice?

Q.3.7 In the current economic climate, do you consider that the potential benefits from implementation of Option 1 represent value for money?

Option 2

The establishment of an independent Sentencing Advisory Panel with a remit to draft sentencing guidelines for the approval of the Court of Appeal

The remit for the Panel would differ from Option 1 in the following areas:

Membership

4.2.1 The membership of the Panel would be a mix of academics, judges, justice professionals and those outside the criminal justice system, who might include someone with experience in victims' issues. Based on examples in other jurisdictions, the Panel should consist of 10-12 members. Given that the Court of Appeal has the ultimate sanction on the guidelines, the balance of judicial to non-judicial might be more heavily weighted towards non-judicial members. In England & Wales, when a Sentencing Advisory Panel was established in 1999, there was a non-judicial majority, with an academic chair. In Scotland, the legislation provides for a judicial, non-judicial balance on its Sentencing Council, with a judicial chair.

Function

4.2.2 The Panel would have a statutory function to draft guidelines **for the approval of the Court of Appeal**. Referrals to the Panel for guidelines would be made by the Court of Appeal. The Panel, either on its own initiative or at the direction of the Justice Minister, would also be able to propose to the Court of Appeal that guidelines for a particular category of offence should be drafted.

Aspects of Sentencing

4.2.3 As in Option 1, the Panel would have a statutory requirement to consider, when drafting guidelines, various aspects of sentencing i.e.

- current sentencing practice;

- the need to promote consistency in sentencing;
- the need to promote public confidence in sentencing;
- the effectiveness of various sentences in reducing offending (and their relative cost); and
- the impact of sentencing decisions on victims of offences.

4.2.4 The Panel would be required to consult on the draft guidelines and, having taken account of any relevant views, submit them to the Court of Appeal for approval. The Court of Appeal would decide whether to accept the guidelines or not.

Public Education/Research

4.2.5 As in Option 1, the Panel would have public education and research functions.

Duty of the Court

4.2.6 As in Option 1, there would be a statutory duty on the Court to have regard to any relevant guidelines.

Cost

4.2.7 No significant savings over Option 1.

Q.4.1 Do you consider that Option 2 would meet any/all of the objectives detailed in paragraph 2.17? If not, what additional/alternative measures would you suggest?

If you agree that Option 2 meets some or all of the objectives, please consider the following questions.

Q.4.2 Do you consider that there should be a non-judicial chair for the Panel? Please comment.

Q.4.3 What are your views on the balance of judicial to non-judicial members on the Panel?

Q.4.4 Do you consider that the proposed functions for the Panel are appropriate. If not, what alternatives would you suggest?

Q.4.5 What are your views on the aspects of sentencing to be considered by the Panel when drafting guidelines?

Q.4.6 Should the Panel be given a statutory duty to promote public awareness/understanding of sentencing practice?

Q.4.7 In the current economic climate, do you consider that any potential benefits from implementation of Option 2 represent value for money?

Option 3: A mechanism for sentencing guidelines based on measures being introduced by the Lord Chief Justice to enhance procedures for monitoring and developing sentencing guidance

4.3.1 A Sentencing Working Group was established by the Lord Chief Justice (LCJ) to: review the adequacy of existing arrangements for the reporting, collation and distribution of sentencing decisions and guideline cases; to consider ways of enhancing consistency in sentencing; and to make recommendations. The LCJ intends to implement the recommendations of the Working Group, which will provide a mechanism for him to draw up a list of priority areas in which guidance on sentencing is needed, with the help of the judiciary and the public. New mechanisms will allow the Court of Appeal and lower courts (including the magistrates' court) to target cases in this area, to have additional research support, and to provide a body of written judgments which will be able to be produced quickly. Additional support can be provided to the judiciary through Judicial Studies Board workshops, and the new judgments will be available to them and to the public (as guideline judgments are currently) on the JSB website. The additions to the system are designed to allow the concerns of the public and the judiciary to be dealt with flexibly and responsively. This option proposes that we use these measures as the mechanism for sentencing guidelines, with the commitment that the issue will be revisited in two years to allow for LCJ review of the operation of the measures.

Sentencing Group

4.3.2 A judicial oversight committee will be established, referred to as the Sentencing Group, which will oversee the various procedures for identifying and disseminating the guidance produced by the courts. It will be made up of representatives of all court tiers and be chaired by a judge from the Court of Appeal. The Group will have 3 main functions:

- to take views from their peers and the public on priority areas in which sentencing guidelines are needed;

- to provide the LCJ, on an annual basis, with priority areas identified; and
- to consider Court of Appeal and first instance sentencing cases which might merit inclusion on the JSB website.

Published List of Priorities

4.3.3 The LCJ will consider the views of the Sentencing Group and publish annually a list of priority areas in which sentencing guidelines and guidance should be developed during that year. Views will be invited from the public and representative groups on other areas which might be included in the list. Sentencing guidance will then be produced in the listed areas when the next relevant case comes before a court. The LCJ has just recently published (4 October 2010) his first provisional priority list for consultation. A copy of the consultation is available on the Northern Ireland Courts and Tribunal Service website (www.courtsni.gov.uk). The areas for guidance provisionally included in this list are:

- domestic violence
- serious sexual offences
- people trafficking
- attacks on public workers and vulnerable people
- duty evasion and smuggling
- environmental crime

Guidelines and Guidance on priority areas in the Crown Court

4.3.4 Where there is no guideline on a priority area in the Crown Court, the Court of Appeal will seek opportunities to give guidance to sentencers by way of ‘obiter dicta’¹¹ in cases on related areas.

4.3.4.1. Where cases do not or have not yet come before the Court of Appeal, and where there are accordingly no guidelines, first instance judgments¹², subject to the approval of the Sentencing Group, will be

¹¹ Literally ‘something said by the way’ – whatever is said incidentally by the judges which is not crucial to the reason for deciding the sentence

¹² These are sentencing decisions made by the Crown Court on conviction of the offender

published on the JSB website and made available to the judiciary as an additional resource for guidance in making sentencing decisions.

(**Annex I** provides the proposed new guideline judgment process map.)

Written decisions in priority areas in magistrates' courts

4.3.5 A system will be put in place to identify likely cases in priority areas which could be used for the delivery of written judgments at first instance¹³ or County Court appeal¹⁴. Subject to the approval of the Sentencing Group, the judgments will be published on the JSB website as guidance for district judges hearing cases in the magistrates' courts.

4.3.5.1 Due to the potential practical difficulties inherent in this proposal, it will be reviewed at the end of 12 months and adjusted as required.

Training Workshops

4.3.6 The use of training workshops by JSB will be increased for sentencers at appropriate tiers to address priority areas.

Development of the JSB website

4.3.7 The current review to update existing material on the website will continue.

4.3.7.1 Consideration will be given as to how the website can be developed to maximise both usability and availability of material on sentencing issues.

Research and Statistics

4.3.8 The LCJ's Legal Unit will be available to assist judges in the lower courts giving a written sentencing judgment in a priority area. (Currently the Legal Unit provides research support on case law and legislation to the Court of Appeal.)

¹³ Sentencing decision when offender is convicted in the magistrate's court

¹⁴ Magistrates' court cases are appealed to the County Court

4.3.8.1 Consideration will be given in guideline and guidance cases to the suitable use of statistics on social trends in appropriate cases – statistical information on the prevalence of offending can, for example, show offending trends over time, or demonstrate the geographic variation of the incidence of certain types of offending.

4.3.8.2 The use of statistics as a guidance tool for sentencers will be reviewed after 3 years.

Cost

4.3.9 These measures will be delivered with limited extra cost to the criminal justice system.

Q.5.1 Do you consider that Option 3 meets any/all of the objectives detailed in paragraph 2.17? If not, what additional measures would you suggest?

Q.5.2 Should the effectiveness of these measures be reviewed before further consideration is given to a formal Sentencing Guidelines Council or Advisory Panel?

SECTION 5: EQUALITY IMPLICATIONS AND NEXT STEPS

5.1 This paper sets out options for a sentencing guidelines mechanism in Northern Ireland. As the guidelines would relate to existing offences and existing disposals, there would consequently be a greater impact on young males than any other Section 75 category because they form the largest grouping in the offending population. In light of comments received, any more specific policy proposals developed would be subject to formal equality impact screening. We would welcome views from respondents who might identify any area in which they feel the proposal could have adverse equality impacts.

Q.6 Do you consider that the introduction of a formal sentencing guidelines mechanism might give rise to any equality issue concerns?

5.2 The consultation period concludes on 18 January 2011. All responses should be made to the address identified at paragraph 6.1 on page 39. A pro forma listing the questions raised has been attached for those who might find it a convenient way to respond, but we would of course welcome responses in whatever form respondents find most suitable.

5.3 Responses will be analysed and a summary of responses published on the Department's website. The responses will inform further policy consideration of the establishment of a sentencing guidelines mechanism.

SECTION 6: CONSULTATION ARRANGEMENTS

Responding to Consultation

6.1 Your views are specifically sought on the options given and the specific questions posed, but would also be widely welcomed on any aspect of the matters raised in the paper. All comments should be returned by **5pm 18 January 2011** to:

Sentencing Guidelines Mechanism Consultation
Criminal Policy Unit
Massey House
Stoney Road
Belfast BT4 3SX

Telephone: 028 90 527336
Fax: 028 90 527507
Text phone: 028 90 527668
E-mail: jpd.public@dojni.x.gsi.gov.uk

6.2 **If you have any queries about the information provided in this document please contact the Criminal Policy Unit (whose details are listed above) for assistance.** However if you have any queries or concerns about the way in which the consultation process itself has been handled, you may raise these separately with the Consultation Co-ordinator at the following address:

Mark Higgins
Equality Branch
Central Management Unit
Central Co-ordination Division
Room A42
Castle Buildings
Stormont Estate
Belfast
BT4 3SG
E- mail: mark.higgins@dojni.x.gsi.gov.uk
Telephone: 02890 765784
Text phone: 028 90 527668

Alternative Formats

6.3 An electronic version of this document is available to view and

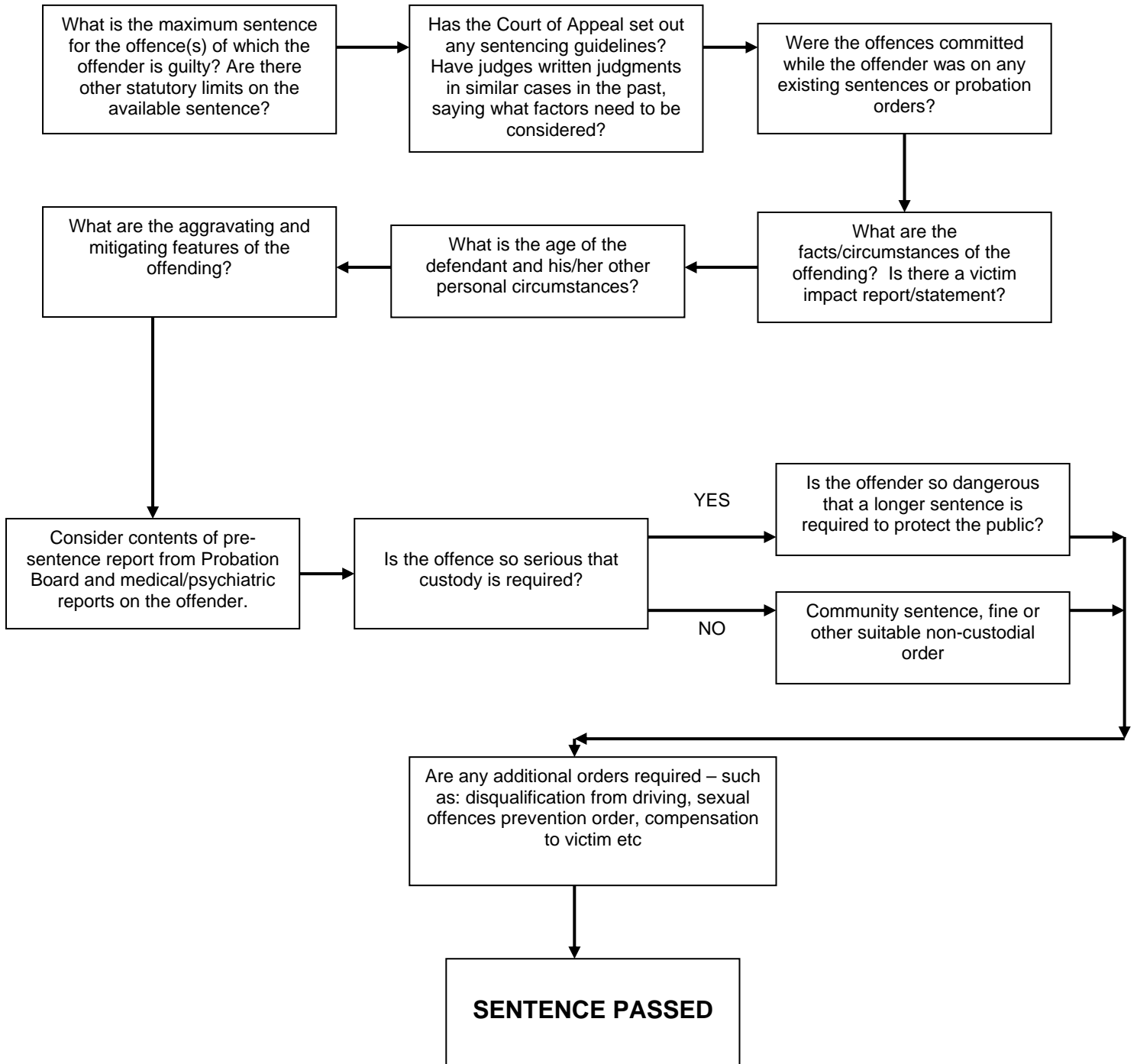
download from the Department's website (www.dojni.gov.uk). Hard copies will be posted on request. Copies in other formats, including Braille, large print, computer disc etc may be made available on request. If it would assist you to access the document in an alternative format or a language other than English, please let us know, and we will do our best to assist you.

Confidentiality of Responses

6.4 A summary of responses will be published following the completion of the consultation process. Unless individual respondents specifically indicated that they wish their response to be treated in confidence, the nature of their response may be included in any published summary of responses.

Respondents should also be aware that our obligations under the Freedom of Information Act may require that any responses, not subject to specific exemptions in the Act, may be disclosed to other parties on request.

Sentencing the guilty
Issues for the judge to consider



In R v. Q [2006] NICA 27 the offender applied for leave to appeal to the Court of Appeal against a sentence of four years imprisonment imposed on him by the Crown Court following his conviction for manslaughter. The case involved the manslaughter of a young man by the delivery of a single blow by a closed fist.

Extract from judgment

'Sentencing levels in cases where death has occurred as the result of a single blow were reviewed recently by the Court of Appeal in England in R v Furby [2005] EWCA Crim 3147. In that case Lord Phillips CJ commented on the difficult sentencing exercise that cases such as this can present: -

"11. The judge was right to say that cases such as this present a difficult sentencing exercise. A sentence must reflect the seriousness of the offence. The seriousness depends on the culpability of the offending conduct and on the harm that has resulted from it. Difficulty arises where there is a wide disparity between the culpability of the offender and the harm that he has caused. In the crime of manslaughter the harm caused is an element of the offence. No harm can be more serious than the death of a victim. Its impact usually extends, as it does in this case, to the relatives who have lost a loved one. They may, understandably, feel that no sentence can properly reflect the harm that has been caused. Because of the harm caused, the offence of manslaughter will usually, though not inevitably, attract a custodial sentence, regardless of the nature of the wrongdoing that has caused the death."

The tension between a relatively modest level of culpability and calamitous consequences of criminal behaviour was recognised by this court in the different context of causing death by dangerous driving in Attorney General's reference (Nos 2 – 8 of 2003) [2003] NICA 28 where it was stated that there were logical difficulties in imposing a heavier sentence on a driver whose driving has caused a death than on one whose driving was just as dangerous but did not result in the same tragic consequence. Likewise there are sound reasons for questioning the justice of imposing a more severe sentence on someone who has struck a blow that caused death than on a person whose similar blow fortuitously failed to cause serious injury. But, as this court said in the Attorney General's reference, such an outcome has to be accepted as a pragmatic approach which reflects the sense of justice of the general public.'

'Given that the consequences of the criminal action must be reflected in the sentence, it is clear that where death has resulted, this must weigh heavily in the choice of penalty. The judge at first instance in Furby said that it had recently been recognised that too little attention had been paid in the past to the loss of human life, implying that there had been too much concentration on the culpability of the offender.'

The judge's sentencing remarks

'The learned trial judge in this case had been referred to the case of R v Coleman [1992] Cr App R (S) 502 as the principal guideline authority in this area....(In Coleman a starting point of twelve months' imprisonment had been proposed for cases where there was a plea of guilty and the single blow had caused the victim to fall and sustain injuries that brought about the death.)

R v Furby

In the recent case of Furby the Court of Appeal in England and Wales analysed sentencing in single blow death cases since the decision in Coleman and gave the following guidance: -

"28. To summarise these authorities, Coleman, where a sentence of twelve months was imposed is the starting point where there is a guilty plea and no aggravating circumstances. But where there are aggravating circumstances an appropriate sentence can rise as high as four years, depending on the particular facts. Getting drunk and resorting to violent behaviour under the influence of drink will be a significant aggravating factor, particularly where the violence occurs in a public place. Lord Lane drew a distinction between the facts in Coleman, where the victim sustained his fatal injury as a result of being knocked to the ground by the blow and striking his head, and the case where the injury that results in death is directly caused by the punch. That may be a valid distinction where the fatal injury is caused because the blow is particularly severe. However, we can see no reason to draw that distinction where the severity of the injury was not reasonably to have been foreseen."

The remark in this passage that "getting drunk and resorting to violent behaviour under the influence of drink will be a significant aggravating factor" must be viewed with some caution since, later in its judgment, the court questioned the correctness of the trial judge's treatment of the offender's intoxication as a significantly aggravating factor. This was on the basis that there was no evidence to show that he was prone to violent behaviour while

drunk and because he had been sleeping off the effects of alcohol for some hours before the offence occurred.

Should the guidelines in Coleman and Furby be followed in Northern Ireland?

The decisions in Coleman and Furby, while of course not binding on this court, are of considerable persuasive authority. But in this difficult area of striking a balance between, on the one hand, the culpability of the offender, and, on the other, the public's sense of justice, this court must reflect conditions encountered in our community and the expectations of its citizens. As we have said, it is now, sadly, common experience that serious assaults involving young men leading to grave injury and, far too often, death occur after offenders and victims have been drinking heavily. The courts must respond to this experience by the imposition of penalties not only for the purpose of deterrence but also to mark our society's abhorrence and rejection of the phenomenon.

As the court in Furby said, however, where the consequences of a single blow were not foreseeable, care must be taken to ensure that the sentence imposed is not disproportionate. While acknowledging the strength of this factor, we cannot believe that a starting point of twelve months imprisonment adequately caters for the considerations that we have outlined in the preceding paragraph. We consider that a more suitable starting point in Northern Ireland for this type of offence is two years' imprisonment and that this should rise, where there are significant aggravating factors, to six years.

We agree with the view of the Court of Appeal in Furby, however, that no valid distinction can be drawn between the case where a light or moderate blow unexpectedly causes death and that where the blow causes the victim to fall and sustain, as a result of the fall, injuries which prove fatal. Such a distinction is, of course, justified, where the blow is particularly severe...'

Having set out its guidance the court then proceeded to review the sentence – having regard to the background facts of the offending, the aggravating and mitigating factors e.g. the offender's previous good character; the unprovoked nature of the attack; the offender was under the influence of alcohol; and the effect on the bereaved relatives.

Extract from judgment

Conclusion

'The sentence imposed by the judge could not be described as lenient but neither can it be characterised as manifestly excessive, in our opinion. Substantial sentences are required to deter young men from engaging in this type of wanton violence and to remind them that if the effects of their actions go beyond what they in their drunken condition intended, they must face the consequences of that eventuality. Severe sentences are also required to mark society's outright rejection of such behaviour and to reflect the ultimate

and terrible tragedy of a young life brought shamefully to an end. The application for leave to appeal against sentence is therefore dismissed.'



Sentencing Guidelines Council

**Causing Death by
Driving**

Definitive Guideline

FOREWORD

In accordance with section 170(9) of the Criminal Justice Act (CJA) 2003, the Sentencing Guidelines Council issues this guideline as a definitive guideline.

By virtue of section 172 of the CJA 2003, every court must have regard to a relevant guideline. This guideline applies to the sentencing of offenders convicted of any of the offences dealt with herein who are sentenced on or after 4 August 2008.

This guideline applies only to the sentencing of offenders aged 18 and older. The legislative provisions relating to the sentencing of youths are different; the younger the age, the greater the difference. A separate guideline setting out general principles relating to the sentencing of youths is planned.

The Council has appreciated the work of the Sentencing Advisory Panel in preparing the advice on which this guideline is based and is grateful to those who responded to the consultation of both the Panel and Council. The advice and this guideline are available on www.sentencing-guidelines.gov.uk or can be obtained from the Sentencing Guidelines Secretariat at 4th Floor, 8–10 Great George Street, London SW1P 3AE.

A summary of the responses to the Council's consultation also appears on the website.

Chairman of the Council

July 2008

CONTENTS

Foreword	i
Introduction	2
A. Assessing seriousness	3–6
(i) Determinants of seriousness	3–5
• Awareness of risk	3
• Effect of Alcohol or Drugs	3
• Inappropriate speed of vehicle	3
• Seriously culpable behaviour of offender	3
• Victim	3
(a) Alcohol/drugs	4
(b) Avoidable distractions	4
(c) Vulnerable road users	4–5
(ii) Aggravating and mitigating factors	5–6
(a) More than one person killed	5
(b) Effect on offender	5
(c) Actions of others	5
(d) Offender's age/lack of driving experience	6
(iii) Personal mitigation	6
(a) Good driving record	6
(b) Conduct after the offence	6
– Giving assistance at the scene	6
– Remorse	6
(c) Summary	6
B. Ancillary orders	7
(i) Disqualification for driving	7
(ii) Deprivation order	7
C. Sentencing ranges and starting points	8
The decision making process	9
D. Offence guidelines	
– Causing death by dangerous driving	10–11
– Causing death by careless driving when under the influence of drink or drugs etc.	12–13
– Causing death by careless or inconsiderate driving	14–15
– Causing death by driving: unlicensed, disqualified or uninsured drivers	16–17
Annex A Dangerous and careless driving – definitions	18

CAUSING DEATH BY DRIVING

Introduction

1. This guideline applies to the four offences of *causing death by dangerous driving*, *causing death by driving under the influence of alcohol or drugs*, *causing death by careless driving* and *causing death by driving: unlicensed, disqualified or uninsured drivers*.
2. The Crown Prosecution Service's *Policy for Prosecuting Cases of Bad Driving* sets out the approach for prosecutors when considering the appropriate charge based on an assessment of the standard of the offender's driving. This has been taken into account when formulating this guideline. [Annex A](#) sets out the statutory definitions for dangerous, careless and inconsiderate driving together with examples of the types of driving behaviour likely to result in the charge of one offence rather than another.
3. Because the principal harm done by these offences (the death of a person) is an element of the offence, the factor that primarily determines the starting point for sentence is the culpability of the offender. Accordingly, 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. These guidelines draw a distinction between those factors of an offence that are intrinsic to the quality of driving (referred to as "determinants of seriousness") and those which, while they aggravate the offence, are not.
4. The levels of seriousness in the 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.¹ 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.
5. 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 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 than the maximum of 5 years where the death is caused by careless driving only.
6. Since there will be no allegation of bad driving, the 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.
7. 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. Clear identification of those factors relating to the standard of driving as the initial determinants of offence seriousness is intended to assist the adoption of a common approach.

¹ See page 8 for a description of the meaning of range, starting point etc. in the context of these guidelines.

A. Assessing seriousness**(I) Determinants of seriousness**

8. There are five factors that may be regarded as determinants of offence seriousness, each of which can be demonstrated in a number of ways. Common examples of each of the determinants are set out below and key issues are discussed in the text that follows in paragraphs 10–18.

Examples of the determinants are:

- **Awareness of risk**

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

- **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
- (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

- **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
- (j) driving a PSV, HGV or other goods vehicle at a speed that is inappropriate either because of the nature of the vehicle or its load, especially when carrying passengers

- **Seriously culpable behaviour of offender**

- (k) aggressive driving (such as driving much too close to the vehicle in front, persistent inappropriate attempts to overtake, or cutting in after overtaking)
- (l) driving while using a hand-held mobile phone
- (m) 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
- (n) driving when knowingly suffering from a medical or physical condition that significantly impairs the offender's driving skills, including failure to take prescribed medication
- (o) driving when knowingly deprived of adequate sleep or rest, especially where commercial concerns had a bearing on the commission of the offence
- (p) driving a poorly maintained or dangerously loaded vehicle, especially where commercial concerns had a bearing on the commission of the offence

- **Victim**

- (q) failing to have proper regard to vulnerable road users
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Sentencing Guidelines Council

9. Issues relating to the determinants of seriousness are considered below.
- (a) Alcohol/drugs**
10. For those offences where the presence of alcohol or drugs is not an element of the offence, where there is sufficient evidence of driving impairment attributable to alcohol or drugs, 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.
11. 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.
12. Where it is established to the satisfaction of the court that an offender had consumed alcohol or drugs unwittingly before driving, that may be regarded as a mitigating factor. However, consideration should be given to the circumstances in which the offender decided to drive or continue to drive when driving ability was impaired.
- (b) Avoidable distractions**
13. A distinction has been drawn 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; in this guideline these are referred to as a **gross** avoidable distraction. The guideline for *causing death by dangerous driving* provides for a **gross** avoidable distraction to place the offence in a higher level of seriousness.
14. Any avoidable distraction will make an offence more serious but the degree to which an offender's driving will be impaired will vary. Where the reaction to the distraction is significant, it may be the factor that determines whether the offence is based on *dangerous driving* or on *careless driving*; in those circumstances, care must be taken to avoid "double counting".
15. Using a hand-held mobile phone when driving is, in itself, an unlawful act; 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. Reading or composing text messages *over a period of time* will be a **gross** avoidable distraction and is likely to result in an offence of causing death by dangerous driving being in a higher level of seriousness.
16. Where it is proved that an offender was briefly distracted by 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 or satellite navigation equipment, activities that would be considered an avoidable distraction.
- (c) Vulnerable road users**
17. Cyclists, motorbike riders, horse riders, pedestrians and those working in the road are vulnerable road users and a driver is expected 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. See paragraph 24 below for the approach where the actions of another person contributed to the collision.

18. 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.
- (ii) Aggravating and mitigating factors**
- (a) More than one person killed*
19. The seriousness of any offence included in these guidelines will generally be greater where more than one person is killed since it is inevitable that the degree of harm will be greater. In relation to the assessment of culpability, 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.
20. The greater obligation on those responsible for driving other people 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. 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.
21. 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.
- (b) Effect on offender*
22. Injury to the offender may be a mitigating factor when the offender has suffered very serious injuries. In most circumstances, the weighting it is given will be dictated by the circumstances of the offence and the effect should bear a direct relationship to the extent to which the offender's driving was at fault – the greater the fault, the less the effect on mitigation; this distinction will be of particular relevance where an offence did not involve any fault in the offender's standard of driving.
23. Where one or more of the victims was in a close personal or family relationship with the offender, this may be a mitigating factor. In line with the approach where the offender is very seriously injured, the degree to which the relationship influences the sentence should be linked to offender culpability in relation to the commission of the offence; mitigation for this reason is likely to have less effect where the culpability of the driver is particularly high.
- (c) Actions of others*
24. 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.
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- (d) *Offender's age/lack of driving experience*
25. The Council guideline *Overarching Principles: Seriousness*² includes a generic mitigating factor "youth or age, where it affects the responsibility of the individual defendant". 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 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.
- (iii) Personal mitigation**
- (a) *Good driving record*
26. 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 an ambulance, police vehicle, bus, 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. This is likely to have even greater effect where the driver is driving on public duty (for example, on ambulance, fire services or police duties) and was responding to an emergency.
- (b) *Conduct after the offence*
- *Giving assistance at the scene*
27. 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). However, where an offender gave direct, positive, assistance to victim(s) at the scene of a collision, this should be regarded as personal mitigation.
- *Remorse*
28. Whilst it can be expected that anyone who has caused 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 guideline³ and the Council 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.
- (c) *Summary*
29. Evidence that an offender is normally a careful and conscientious driver, giving direct, positive assistance to a victim and genuine remorse may be taken into account as personal mitigation and may justify a reduction in sentence.

² *Overarching Principles: Seriousness*, paragraph 1.25, published 16 December 2004, www.sentencing-guidelines.gov.uk

³ *ibid.*, paragraph 1.27

B. Ancillary orders*(i) Disqualification for driving*

30. For each offence, disqualification is a mandatory part of the sentence (subject to the usual (very limited) exceptions), and therefore an important element of the overall punishment for the offence. In addition, an order that the disqualification continues until the offender passes an extended driving test order is compulsory⁴ for those convicted of causing death by dangerous driving or by careless driving when under the influence, and discretionary⁵ in relation to the two other offences.
31. Any disqualification is effective from the date on which it is imposed. When ordering disqualification from driving, 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. In principle, the minimum period of disqualification should either equate to the length of the custodial sentence imposed (in the knowledge that the offender is likely to be released having served half of that term), or the relevant statutory minimum disqualification period, whichever results in the longer period of disqualification.

(ii) Deprivation order

32. A general sentencing power exists which enables courts to deprive an offender of property used for the purposes of committing an offence.⁶ A vehicle used to commit an offence included in this guideline can be regarded as being used for the purposes of committing the offence.

⁴ Road Traffic Offenders Act 1988, s.36(1)

⁵ *ibid.*, s.36(4)

⁶ Powers of Criminal Courts (Sentencing) Act 2000, s.143

C. Sentencing ranges and starting points

1. Typically, a 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.
2. As an aid to consistency of approach, the guideline describes a number of levels or types of activity which would fall within the broad definition of the offence.
3. 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 within the column describing the nature of the offence) to reach a **provisional sentence**.
4. The **sentencing 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.
5. 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.
6. Once the provisional sentence has been identified by reference to those factors affecting the seriousness of the offence, the court will take into account any relevant factors of personal mitigation, which may take the sentence beyond the range given.
7. 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.
8. A court must give its reasons for imposing a sentence of a different kind or outside the range provided in the guidelines.

The decision making process

The process set out below is intended to show that the sentencing approach for offences of causing death by driving is fluid and requires the structured exercise of discretion.

1. Identify Dangerous Offenders

Offences under s.1 and s.3A of the Road Traffic Act 1988 are specified offences for the purposes of the public protection provisions in the 2003 Act (as amended). The court must determine whether there is a significant risk of serious harm by the commission of a further specified offence. The starting points in the guidelines are a) for offenders for whom a sentence under the public protection provisions is not appropriate **and** b) as the basis for the setting of a minimum term within an indeterminate sentence under those provisions.

2. Identify the appropriate starting point

Identify the level or description that most nearly matches the particular facts of the offence for which sentence is being imposed.

3. Consider relevant aggravating factors, both general and those specific to the type of offence

This may result in a sentence level being identified that is higher than the suggested starting point, sometimes substantially so.

4. Consider mitigating factors and personal mitigation

There may be general or offence specific mitigating factors and matters of personal mitigation which could result in a sentence that is lower than the suggested starting point (possibly substantially so), or a sentence of a different type.

5. Reduction for guilty plea

The court will then apply any reduction for a guilty plea following the approach set out in the Council's Guideline "Reduction in Sentence for a Guilty Plea" (revised July 2007).

6. Consider ancillary orders

The court should consider whether ancillary orders are appropriate or necessary.

7. The totality principle

The court should review the total sentence to ensure that it is proportionate to the offending behaviour and properly balanced.

8. Reasons

When a court moves from the suggested starting points and sentencing ranges identified in the guidelines, it should explain its reasons for doing so.

D. Offence guidelines

Causing death by dangerous driving

Factors to take into consideration

1. The following guideline applies to a "first-time offender" aged 18 or over convicted after trial (see page 8 above), who has **not** been assessed as a dangerous offender requiring a sentence under ss. 224-228 Criminal Justice Act 2003 (as amended).
2. 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 on 'Seriousness' as well as those set out in the adjacent table as being particularly relevant to this type of offending behaviour.
3. **Levels of seriousness**

The 3 levels are distinguished by factors related predominantly to the standard of driving; the general description of the degree of risk is complemented by examples of the type of bad driving arising. 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**
 - A brief but obvious danger arising from a seriously dangerous manoeuvre **OR**
 - Driving whilst avoidably distracted **OR**
 - Failing to have proper regard to vulnerable road users

The starting point and range overlap with Level 2 is to allow the breadth of discretion necessary to accommodate circumstances where there are significant aggravating factors.
4. Sentencers should take into account relevant matters of personal mitigation; see in particular guidance on **good driving record, giving assistance at the scene and remorse** in paragraphs 26-29 above.

[†] Overarching Principles: Seriousness, published 16 December 2004, www.sentencing-guidelines.gov.uk

Causing death by dangerous driving**Road Traffic Act 1988 (section 1)****THIS IS A SERIOUS OFFENCE FOR THE PURPOSES OF SECTION 224 CRIMINAL JUSTICE ACT 2003****Maximum penalty: 14 years imprisonment
minimum disqualification of 2 years with compulsory extended re-test**

Nature of offence	Starting point	Sentencing range
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	8 years custody	7-14 years custody
Level 2 Driving that created a <i>substantial</i> risk of danger	5 years custody	4-7 years custody
Level 3 Driving that created a <i>significant</i> risk of danger <i>[Where the driving is markedly less culpable than for this level, reference should be made to the starting point and range for the most serious level of causing death by careless driving]</i>	3 years custody	2-5 years custody

Additional aggravating factors	Additional mitigating factors
<ol style="list-style-type: none"> 1. Previous convictions for motoring offences, particularly offences that involve bad driving or the consumption of excessive alcohol or drugs before driving 2. More than one person killed as a result of the offence 3. Serious injury to one or more victims, in addition to the death(s) 4. Disregard of warnings 5. 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; taking a vehicle without consent; driving a stolen vehicle 6. The offender's irresponsible behaviour 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 7. Driving off in an attempt to avoid detection or apprehension 	<ol style="list-style-type: none"> 1. Alcohol or drugs consumed unwittingly 2. Offender was seriously injured in the collision 3. The victim was a close friend or relative 4. Actions of the victim or a third party contributed significantly to the likelihood of a collision occurring and/or death resulting 5. The offender's lack of driving experience contributed to the commission of the offence 6. The driving was in response to a proven and genuine emergency falling short of a defence

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

Factors to take into consideration

1. The following guideline applies to a "first-time offender" aged 18 or over convicted after trial (see page 8 above), who has **not** been assessed as a dangerous offender requiring a sentence under ss. 224-228 Criminal Justice Act 2003 (as amended).
2. 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 on Seriousness⁸ as well as those set out on the facing page as being particularly relevant to this type of offending behaviour.
3. This offence can be committed through:
 - (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.
4. In comparison with *causing death by dangerous driving*, the level of culpability in the actual manner of driving is lower but that culpability is increased in all cases by the fact that the offender has driven after consuming drugs or an excessive amount of alcohol. Accordingly, there is considerable parity in the levels of seriousness with the deliberate decision to drive after consuming alcohol or drugs aggravating the careless standard of driving onto a par with *dangerous driving*.
5. The fact that the offender was under the influence of drink or drugs is an inherent element of this offence. For discussion on the significance of driving after having consumed drink or drugs, see paragraphs 10-12 above.
6. The guideline is based both on the level of alcohol or drug consumption and on the degree of carelessness.
7. 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 reflecting the 14 year imprisonment maximum for this offence compared with a 5 year maximum for causing death by careless or inconsiderate driving alone.
8. 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. 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.⁹ The three levels of seriousness where the offence has been committed in this way derive from the classification in the Magistrates' Court Sentencing Guidelines.
9. Sentencers should take into account relevant matters of personal mitigation; see in particular guidance on **good driving record, giving assistance at the scene and remorse** in paragraphs 26-29 above.

⁸ *Overarching Principles: Seriousness*, published 16 December 2004, www.sentencing-guidelines.gov.uk

⁹ *Attorney-General's Reference No. 21 of 2000* [2001] 1 Cr App R (S) 173

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

Road Traffic Act 1988 (section 3A)

THIS IS A SERIOUS OFFENCE FOR THE PURPOSES OF SECTION 224 CRIMINAL JUSTICE ACT 2003

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

The legal limit of alcohol is 35µg breath (80mg in 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 custody Sentencing range: 5–10 years custody	Starting point: 7 years custody Sentencing range: 6–12 years custody	Starting point: 8 years custody Sentencing range: 7–14 years custody
51–70 µg of alcohol/ moderate quantity of drugs OR deliberate non-provision of specimen	Starting point: 4 years custody Sentencing range: 3–7 years custody	Starting point: 5 years custody Sentencing range: 4–8 years custody	Starting point: 6 years custody Sentencing range: 5–9 years custody
35–50 µg of alcohol/minimum quantity of drugs OR test refused because of honestly held but unreasonable belief	Starting point: 18 months custody Sentencing range: 26 weeks–4 years custody	Starting point: 3 years custody Sentencing range: 2–5 years custody	Starting point: 4 years custody Sentencing range: 3–6 years custody
Additional aggravating factors		Additional mitigating factors	
<ol style="list-style-type: none"> 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; taking a vehicle without consent; driving a stolen vehicle Previous convictions for motoring offences, particularly offences that involve bad driving or the consumption of excessive alcohol before driving More than one person was killed as a result of the offence Serious injury to one or more persons in addition to the death(s) Irresponsible behaviour such as failing to stop or falsely claiming that one of the victims was responsible for the collision 		<ol style="list-style-type: none"> Alcohol or drugs consumed unwittingly Offender was seriously injured in the collision The victim was a close friend or relative The actions of the victim or a third party contributed significantly to the likelihood of a collision occurring and/or death resulting The driving was in response to a proven and genuine emergency falling short of a defence 	

Causing death by careless or inconsiderate driving**Factors to take into consideration**

1. The following guideline applies to a "first-time offender" aged 18 or over convicted after trial (see page 8 above).
2. 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 on Seriousness¹⁰ as well as those set out in the table below as being particularly relevant to this type of offending behaviour.
3. The maximum penalty on indictment is 5 years imprisonment. The offence is triable either way and, 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.¹¹
4. 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. There is a discretionary power¹² to order an extended driving test where a person is convicted of this offence.
5. Since the maximum sentence has been set at 5 years imprisonment, the sentence ranges are generally 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 range for the highest of which overlaps with ranges for the lowest level of seriousness for *causing death by dangerous driving*.
6. The three levels of seriousness are defined by the degree of carelessness involved in the standard of driving. The most serious level for this offence is 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.
7. The starting point 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* 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.

¹⁰ *Overarching Principles: Seriousness*, published 16 December 2004, www.sentencing-guidelines.gov.uk

¹¹ Criminal Justice Act 2003, ss.154(1) and 282; Road Safety Act 2006, s.61(5)

¹² Road Traffic Offenders Act 1988, s.36(4)

8. 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.
9. A fine is unlikely to be an appropriate sentence for this offence; where a non-custodial sentence is considered appropriate, this should be a community order. The nature of the requirements will be determined by the purpose¹³ identified by the court as of primary importance. Requirements most likely to be relevant include unpaid work requirement, activity requirement, programme requirement and curfew requirement.
10. Sentencers should take into account relevant matters of personal mitigation; see in particular guidance on **good driving record, giving assistance at the scene and remorse** in paragraphs 26-29 above.

Causing death by careless or inconsiderate driving

Road Traffic Act 1988 (section 2B)

**Maximum penalty: 5 years imprisonment
minimum disqualification of 12 months, discretionary re-test**

Nature of offence	Starting Point	Sentencing range
Careless or inconsiderate driving falling not far short of dangerous driving	15 months custody	36 weeks–3 years custody
Other cases of careless or inconsiderate driving	36 weeks custody	Community order (HIGH)–2 years custody
Careless or inconsiderate driving arising from momentary inattention with no aggravating factors	Community order (MEDIUM)	Community order (LOW)–Community order (HIGH)

Additional aggravating factors	Additional mitigating factors
<ol style="list-style-type: none"> 1. 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; taking a vehicle without consent; driving a stolen vehicle 2. Previous convictions for motoring offences, particularly offences that involve bad driving 3. More than one person was killed as a result of the offence 4. Serious injury to one or more persons in addition to the death(s) 5. Irresponsible behaviour, such as failing to stop or falsely claiming that one of the victims was responsible for the collision 	<ol style="list-style-type: none"> 1. Offender was seriously injured in the collision 2. The victim was a close friend or relative 3. The actions of the victim or a third party contributed to the commission of the offence 4. The offender's lack of driving experience contributed significantly to the likelihood of a collision occurring and/or death resulting 5. The driving was in response to a proven and genuine emergency falling short of a defence

¹³ Criminal Justice Act 2003, s.142(1)

Causing death by driving: unlicensed, disqualified or uninsured drivers**Factors to take into consideration**

1. The following guideline applies to a "first-time offender" aged 18 or over convicted after trial (see page 8 above). 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.
2. 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 on Seriousness¹⁴ as well as those set out in the table below as being particularly relevant to this type of offending behaviour.
3. This offence has 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.¹⁵
4. 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. There is a discretionary power¹⁶ to order an extended driving test where a person is convicted of this offence.
5. Culpability arises from the offender driving a vehicle on a road or other public place when, by law, not allowed to do so; the offence does not require proof of any fault in the standard of driving.
6. Because of the significantly lower maximum penalty, the sentencing ranges are considerably lower than for the other three offences covered in this guideline; many cases may be sentenced in a magistrates' court, particularly where there is an early guilty plea.
7. A fine is unlikely to be an appropriate sentence for this offence; where a non-custodial sentence is considered appropriate, this should be a community order.
8. Since 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.
9. 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 as the emphasis is on the decision to drive by an offender who is not permitted by law to do so.

¹⁴ *Overarching Principles: Seriousness*, published 16 December 2004, www.sentencing-guidelines.gov.uk

¹⁵ Criminal Justice Act 2003, ss.154(1) and 282; Road Safety Act 2006, s.61(5)

¹⁶ Road Traffic Offenders Act 1988, s.36(4)

10. 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'.¹⁷ In less extreme circumstances, where the *decision to drive was brought about by a genuine and proven emergency*, that may mitigate offence seriousness and so it is included as an additional mitigating factor.
11. 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 incorrectly believing that a licence covered a particular category of vehicle). In light of this, an additional mitigating factor covers those situations where an offender genuinely believed that there was valid insurance or a valid licence.
12. Sentencers should take into account relevant matters of personal mitigation; see in particular guidance on **good driving record, giving assistance at the scene and remorse** in paragraphs 26-29 above.

Causing death by driving: unlicensed, disqualified or uninsured drivers

Road Traffic Act 1988 (section 3ZB)

**Maximum penalty: 2 years imprisonment
minimum disqualification of 12 months, discretionary re-test**

Nature of offence	Starting point	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	12 months custody	36 weeks–2 years custody
The offender was unlicensed or uninsured plus at least 1 aggravating factor from the list below	26 weeks custody	Community order (HIGH)–36 weeks custody
The offender was unlicensed or uninsured – no aggravating factors	Community order (MEDIUM)	Community order (LOW)–Community order (HIGH)

Additional aggravating factors	Additional mitigating factors
<ol style="list-style-type: none"> 1. 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) 2. More than one person was killed as a result of the offence 3. Serious injury to one or more persons in addition to the death(s) 4. Irresponsible behaviour such as failing to stop or falsely claiming that someone else was driving 	<ol style="list-style-type: none"> 1. The decision to drive was brought about by a proven and genuine emergency falling short of a defence 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 a close friend or relative

¹⁷ In *DPP v Mullally* [2006] EWHC 3448 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. See also *Hasan* [2005] UKHL 22

Annex A: DANGEROUS AND CARELESS DRIVING

Statutory definitions and examples

Dangerous driving

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.

Examples of the types of driving behaviour likely to result in this offence being charged include:

- Aggressive driving (such as sudden lane changes or cutting into a line of vehicles) **or** Racing or competitive driving **or** Speed that is highly inappropriate for the prevailing road or traffic conditions
- Disregard of traffic lights and other road signs which, on an objective analysis, would appear to be deliberate
- Driving a vehicle knowing it has a dangerous defect or with a load which presents a danger to other road users
- Using a hand-held mobile phone or other hand-held electronic equipment when the driver was avoidably and dangerously distracted by that use
- Driving when too tired to stay awake or where the driver is suffering from impaired ability such as having an arm or leg in plaster, or impaired eyesight

Careless driving

Careless driving is driving that "falls *below* what would be expected of a competent and careful driver" and a person is to be regarded as driving without reasonable consideration for other persons "only if those persons are inconvenienced by his driving".¹⁸

Examples of the types 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 or driving inappropriately close to another vehicle
- inadvertent mistakes such as driving through a red light or emerging from a side road into the path of another vehicle
- short distractions such as tuning a car radio

(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
- driving that inconveniences other road users or causes unnecessary hazards such as unnecessarily remaining in an overtaking lane, unnecessarily slow driving or braking without good cause, driving with un-dipped headlights which dazzle oncoming drivers or 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* (see the revised CPS guidance). However, experience shows that these types of behaviour predominantly result in prosecution for *careless driving*.

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*.

¹⁸ 1988 Act, s.3ZA as inserted by the Road Safety Act 2006

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Northern Ireland Court Structure

Annex D

UK Supreme Court Office

Hears appeals on points of law in cases of major public importance

Court of Appeal

Hears appeals on points of law in criminal and civil cases from all courts

The High Court

Hears complex or important civil cases in and appeals from County Court

County Courts

Hear a wide range of civil actions including Small Claims and family cases
Hears appeals from the magistrates' courts

The Crown Court

Hears all serious criminal cases.

Magistrates' Courts (including Youth Courts and Family Proceedings)

Hears less serious criminal cases, cases involving juveniles and civil and family cases.

Coroners' Court

Investigate unexplained deaths.

The Enforcement of Judgments Office

Enforces civil judgments

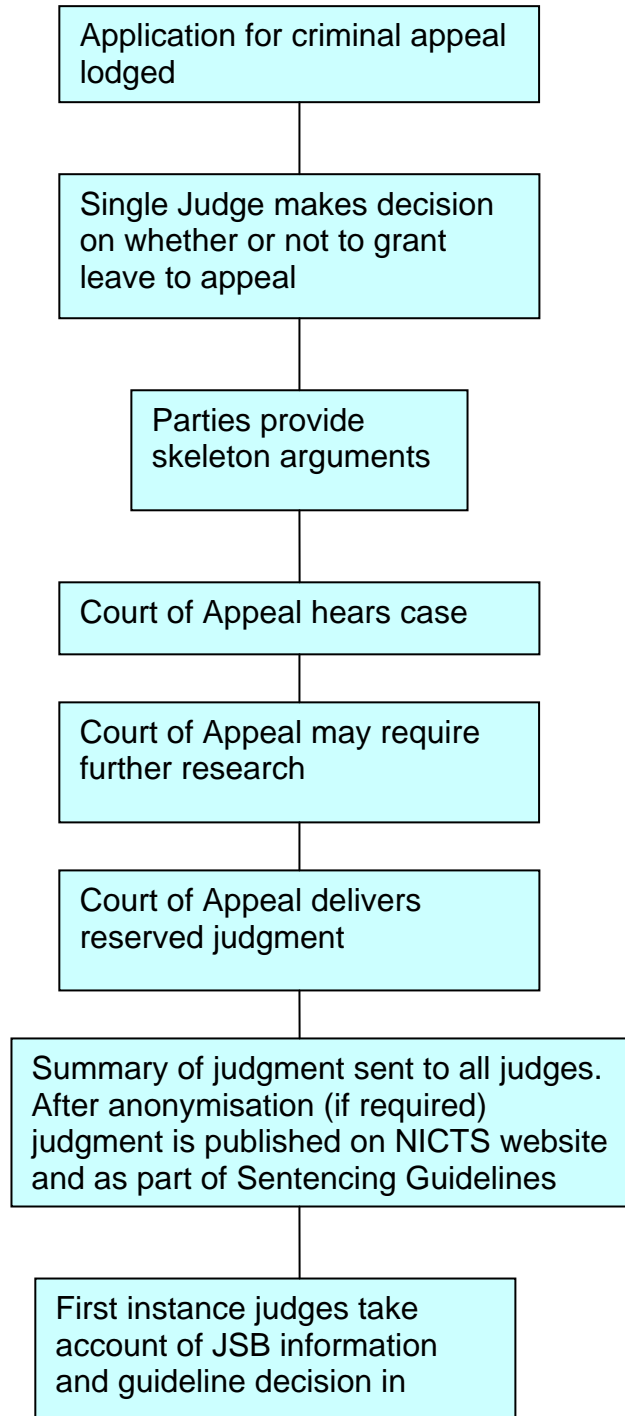
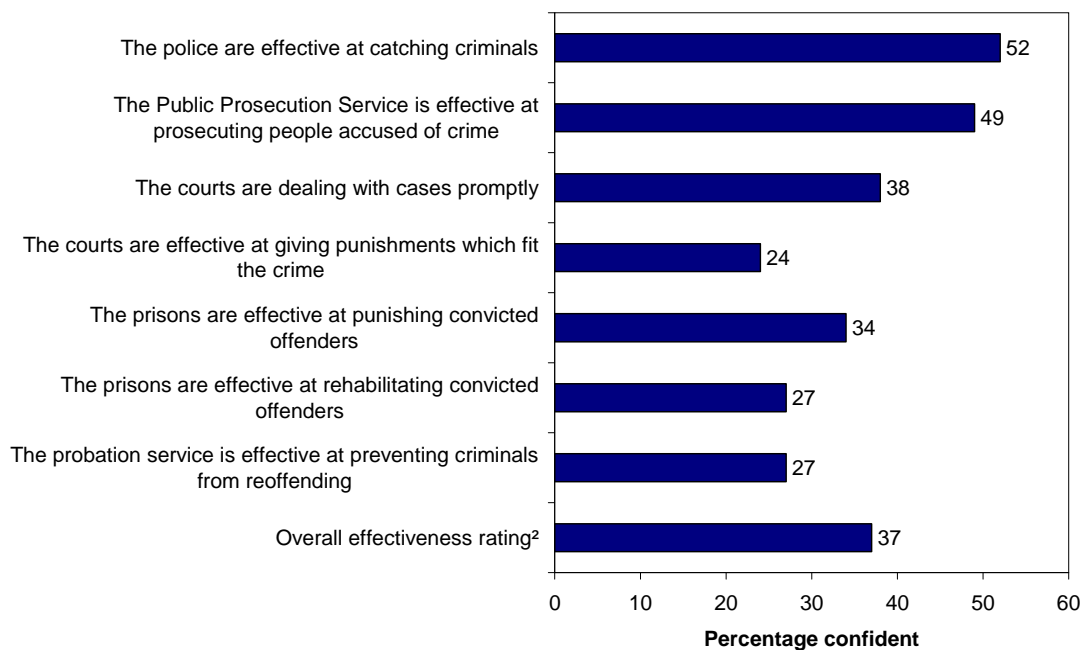


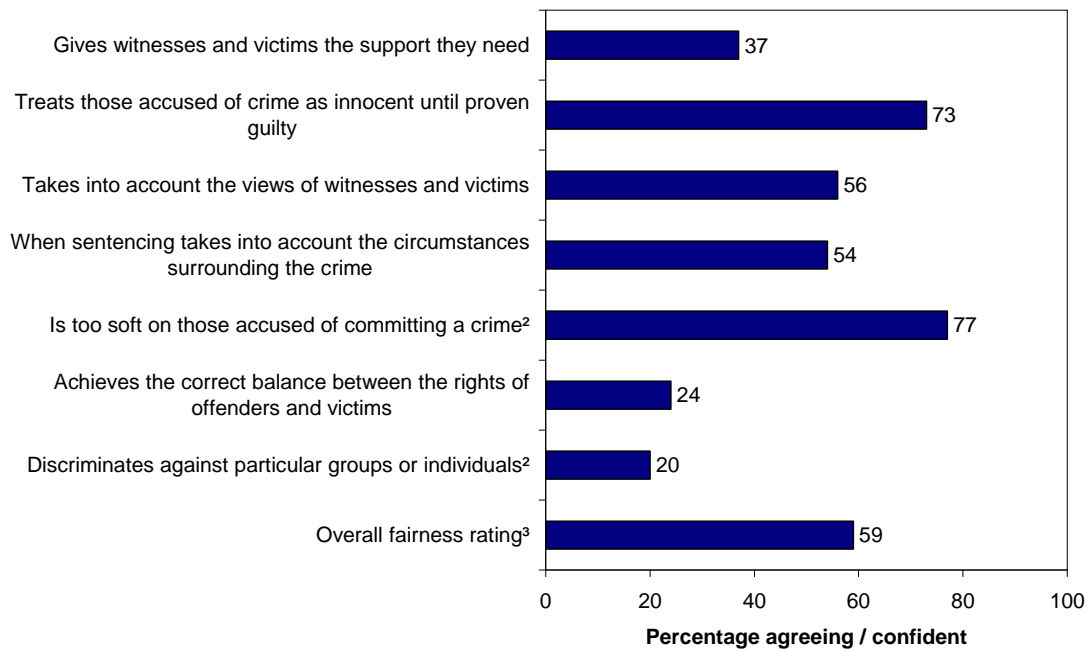
Fig 1.1 Confidence in the effectiveness of the criminal justice system (%)¹



Source: NICS 2008/09

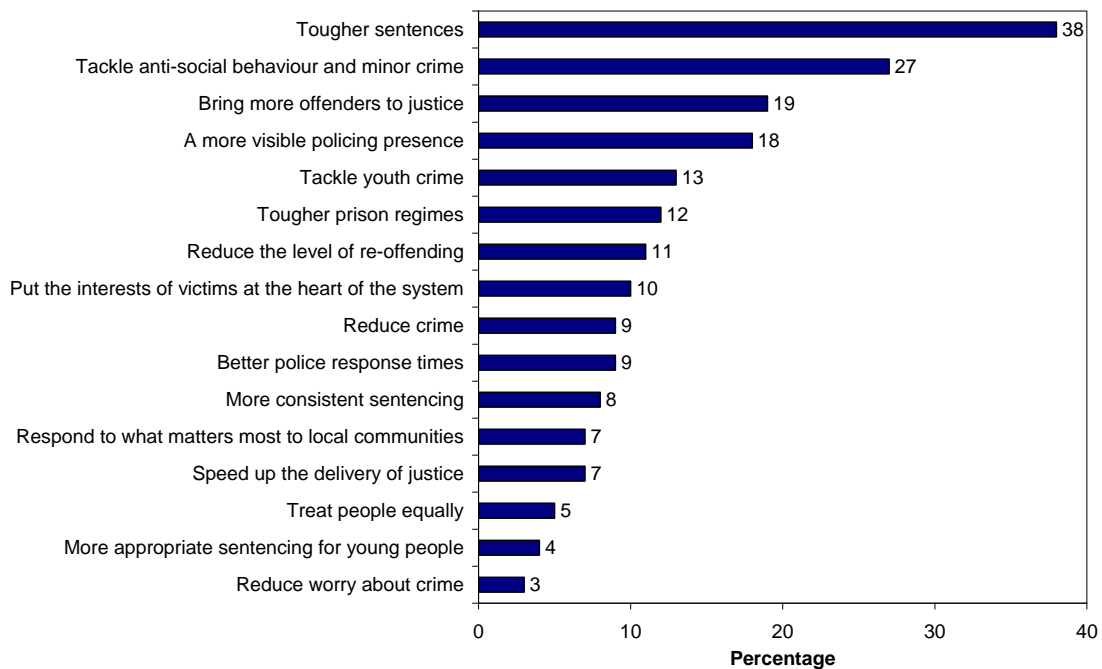
1. Results exclude don't knows and refusals.
2. Based on respondents saying they are very / fairly confident that 'the criminal justice system as a whole is effective'.

Fig 1.2 Confidence in the fairness of the criminal justice system (%)¹



Source: NICS 2008/09

1. Results exclude don't knows and refusals.
 2. As these would be perceived as negative outcomes, a high rating would be undesirable. 3. Based on respondents saying they are very / fairly confident that 'the criminal justice system as a whole is fair'.
- Fig 1.3 Perceptions of how the CJS could increase its confidence rating (%)^{1,2,3}



Source: NICS 2008/09

1. Results exclude don't knows and refusals.
2. Measure combines responses regarding the most and second most important things the criminal justice system could do to improve its public confidence rating.
3. As the measure relates to two questions, the percentages add to more than 100%.

Numbers Holding Judicial Office

Annex G

Judicial Office Number in Post as at 22 June 2010

Court of Appeal and High Court

Lord Chief Justice	1
Lord Justices of Appeal	3
High Court Judge*	9
Temporary Judge of the High Court	2
Master	7
	22

.....

County Court

County Court Judge	17
Deputy County Court Judge	26
District Judge	4
Deputy District Judge	10
	57

.....

Coroner's Court

Presiding Coroner	1
Coroner**	4
	5

.....

Magistrate's Court

District Judge (Magistrates' Courts)***	21
Deputy District Judge (Magistrates' Courts)	17
Lay Magistrate	208
	246

* One vacancy

** One post is fixed term

*** Includes two part-time

Sentencing in all courts by disposal 1996-2006*

Annex H

SENTENCE	NUMBER OF PERSONS										
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Prison⁽¹⁾	1472	1464	1516	1664	1877	1455	1517	1371	1360	1225	1336
Custody Probation Order^(1,2)	-	-	(220)	(251)	(309)	(239)	(285)	338	339	379	428
Young Offenders' Centre	549	541	389	310	223	251	311	446	503	457	404
Training School Order	147	152	138	13	-	-	-	-	-	-	-
Juvenile Justice Centre Order	-	-	-	22	78	72	60	48	50	50	36
Total immediate custody	2168	2157	2043	2009	2178	1778	1888	2203	2252	2111	2204
Prison Suspended	1975	1726	1224	1265	1560	1477	1498	1647	1731	1844	1959
YOC Suspended	515	521	188	145	141	114	135	251	444	420	377
Attendance Centre Order	91	66	55	14	20	37	85	91	108	127	133
Combination Order	-	-	51	13	55	29	54	130	111	146	155
Probation/Supervision Order⁽³⁾	1183	1202	1543	1289	1164	1118	1054	1037	1084	1056	1136
Community Service Order	645	598	655	702	755	632	668	650	680	659	629
Fine⁽⁴⁾	20653	21353	17981	18096	17756	16477	16000	17595	18628	17288	17362
Recognizance	1210	1277	1141	1089	1361	821	924	1099	919	862	701
Conditional Discharge	1709	1628	1561	1456	1324	1595	1517	1550	1569	1354	1126
Absolute Discharge	509	425	309	223	245	209	169	202	184	154	133
Youth Conference Order⁽⁵⁾	-	-	-	-	-	-	-	-	21	74	309
Community Responsibility Order	-	-	-	-	-	-	-	-	1	32	71
Reparation Order	-	-	-	-	-	-	-	-	-	-	1
Other⁽⁶⁾	18	11	130	223	59	63	108	220	193	128	67
All sentences	30676	30964	26881	26524	26618	24350	24100	26675	27925	26255	26363

Notes:

(1) Separate figures for those sentenced to prison and to custody probation orders are not available from 1998 to 2002 but are included within the 'prison' total.

(2) Bracketed data for 1998 to 2002 are provided by the Probation Board for Northern Ireland and should not be combined with other data in this table due to the differing information sources.

(3) Supervision orders were abolished with the introduction of the Criminal Justice (Children) NI Order 1998.

(4) From 2000 includes 'fine plus disqualification' and 'fine plus penalty points'.

(5) Refers to the number of youth conference orders completed.

(6) Includes 'fine plus disqualification' prior to 2000.

*Research and Statistical Bulletin 11/2008: Court Prosecutions and Sentencing 2006

Sentencing in the Crown Court by disposal 1996-2006

SENTENCE	NUMBER OF PERSONS										
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Prison⁽¹⁾	469	475	520	386	521	407	410	238	259	248	318
Custody Probation Order⁽¹⁾	-	-	-	-	-	-	-	331	332	370	416
Young Offenders' Centre	106	111	63	67	32	42	23	51	47	41	38
Training School Order	0	4	2	0	-	-	-	-	-	-	-
Juvenile Justice Centre Order	-	-	0	0	0	0	2	0	0	0	1
Total immediate custody	575	590	585	453	553	449	435	620	638	659	773
Prison Suspended	253	220	199	185	313	262	220	240	262	260	267
YOC Suspended	71	60	49	41	48	37	35	50	72	45	42
Attendance Centre Order	0	0	0	0	0	0	1	0	0	0	1
Combination Order	-	-	13	6	7	5	18	34	33	40	22
Probation/Supervision Order⁽²⁾	49	47	70	43	68	48	49	63	93	79	91
Community Service Order	54	37	33	24	29	45	25	27	33	31	32
Fine⁽³⁾	39	40	25	20	40	38	32	49	108	57	51
Recognizance	7	10	7	0	4	11	12	8	6	9	8
Conditional Discharge	30	31	23	17	38	36	20	24	45	28	33
Absolute Discharge	0	1	6	0	3	0	6	1	1	6	4
Youth Conference Order⁽⁴⁾	-	-	-	-	-	-	-	-	0	0	5
Community Responsibility Order	-	-	-	-	-	-	-	-	0	0	0
Reparation Order	-	-	-	-	-	-	-	-	-	-	0
Other⁽⁵⁾	3	3	7	2	2	2	4	5	3	6	6
All sentences	1081	1039	1017	791	1105	933	857	1121	1294	1220	1335

Notes:

- (1) Custody probation orders cannot be separately identified from 'prison' sentences from 1998 to 2002. Thus during this time frame figures for 'prison' include custody probation orders.
- (2) Supervision orders were abolished with the introduction of the Criminal Justice (Children) NI Order 1998.
- (3) From 2000 includes 'fine plus disqualification' and 'fine plus penalty points'.
- (4) Refers to the number of youth conference orders completed.
- (5) Includes 'fine plus disqualification' prior to 2000.

Sentencing in magistrates' courts by disposal 1996-2006*

SENTENCE	NUMBER OF PERSONS										
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Prison⁽¹⁾	1003	989	996	1278	1356	1048	1107	1133	1101	977	1018
Custody Probation Order⁽¹⁾	-	-	-	-	-	-	-	7	7	9	12
Young Offenders' Centre	443	430	326	243	191	209	288	395	456	416	366
Training School Order	147	148	136	13	-	-	-	-	-	-	-
Juvenile Justice Centre Order	-	-	-	22	78	72	58	48	50	50	35
Total immediate custody	1593	1567	1458	1556	1625	1329	1453	1583	1614	1452	1431
Prison Suspended	1722	1506	1025	1080	1247	1215	1278	1407	1469	1584	1692
YOC Suspended	444	461	139	104	93	77	100	201	372	375	335
Attendance Centre Order	91	66	55	14	20	37	84	91	108	127	132
Combination Order	-	-	38	7	48	24	36	96	78	106	133
Probation/Supervision Order⁽²⁾	1134	1155	1473	1246	1096	1070	1005	974	991	977	1045
Community Service Order	591	561	622	678	726	587	643	623	647	628	597
Fine⁽³⁾	20614	21313	17956	18076	17716	16439	15968	17546	18520	17231	17311
Recognizance	1203	1267	1134	1089	1357	810	912	1091	913	853	693
Conditional Discharge	1679	1597	1538	1439	1286	1559	1497	1526	1524	1326	1093
Absolute Discharge	509	424	303	223	242	209	163	201	183	148	129
Youth Conference Order⁽⁴⁾	-	-	-	-	-	-	-	-	21	74	304
Community Responsibility Order	-	-	-	-	-	-	-	-	1	32	71
Reparation Order	-	-	-	-	-	-	-	-	-	-	1
Other⁽⁵⁾	15	8	123	221	57	61	104	215	190	122	61
All sentences	29595	29925	25864	25733	25513	23417	23243	25554	26631	25035	25028

Notes:

(1) Custody Probation Orders cannot be separately identified from 'prison' sentences from 1998 to 2002. Thus during this time frame

figures for 'prison' include custody probation orders.

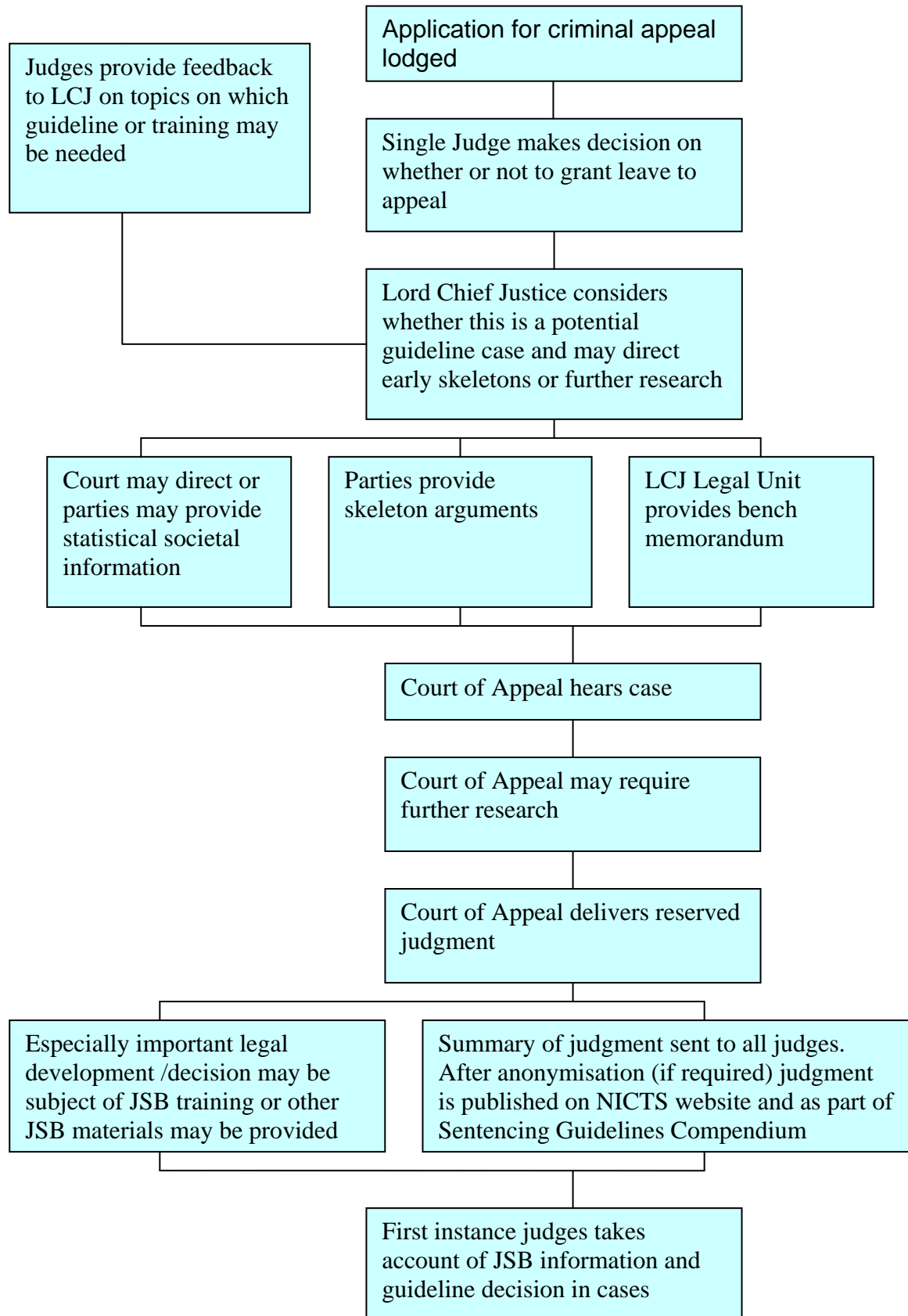
(2) Supervision orders were abolished with the introduction of the Criminal Justice (Children) NI Order 1998.

(3) From 2000 includes 'fine plus disqualification' and 'fine plus penalty points'.

(4) Refers to the number of youth conference orders completed.

(5) Includes 'fine plus disqualification' prior to 2000.

*Research and Statistical Bulletin 11/2008: Court Prosecutions and Sentencing 2006



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