

THE MATRIX RELOADED

Making sense of Guidelines in Road Traffic and Health & Safety cases

Scottish Sentencing Guidelines

- 6 Approved Guidelines
- Principles and Purposes of Sentencing
- The Sentencing Process
- Statutory Offences of Causing Death by Driving

scottishsentencingcouncil.org.uk

sentencingcouncil@scotcourts.gov.uk

@ScotSentencing / LinkedIn

Scottish Sentencing Council

Building Blocks

The Principles and Purposes of Sentencing (not ordered or exhaustive)

- Protection of the public
- Punishment
- Rehabilitation of offenders
- Giving the offender the opportunity to make amends
- Expressing disapproval of offending behaviour

The sentencing process
Arriving at the headline sentence (steps 1 - 4)
Step 1. Assess the seriousness of the offence
Step 2. Select the sentencing range
Step 3. Identify aggravating and mitigating factors
Step 4. Determine the headline sentence
Other considerations (steps 5 - 7)
Step 5. Take into account a plea of guilty
Step 6. Consider time spent in custody
Step 7. Consider ancillary orders
Imposing sentence (step 8)
Step 8. Impose sentence and give reasons



Scotland's first offence-specific sentencing guideline: what it covers and how Judges use it

- Approved by the High Court 31 October 2023
- In force for all offenders who are sentenced on or after 16 January 2024
- 4 Sections of the Road Traffic Act 1998
- Introduction to the Death by Driving Guideline by Lord Matthews on YouTube

Statutory Offences of Causing Death by Driving

Applicability

- Section 1A Causing death by dangerous driving
- Section 3A Causing death by careless driving when under influence of drink or drugs
- Section 2B Causing death by careless, or inconsiderate, driving
- Section 3ZB and 3ZC Causing death by driving: unlicensed, uninsured, or disqualified drivers

Step 1: Assess the seriousness of the offence

- In determining seriousness the court should consider the following table, which lists a number of features which might be present in offences of causing death by dangerous driving. This is not an exhaustive list.

- The court should determine which level of seriousness – A, B, or C – the case before it falls into, having regard to these features, or to any other features which the court considers relevant to its assessment of seriousness.

	SERIOUSNESS		
	LEVEL A	LEVEL B	LEVEL C
NATURE OR MANNER OF DRIVING	Prolonged and deliberate course of bad or aggressive driving, with a disregard for the danger being caused to others	Driving that created a very significant risk of danger to others	Single dangerous manoeuvre, or other driving which created a significant risk of danger to others
	Racing	Aggressive driving (for example, persistent tailgating)	
		Grossly excessive speed for the road, and/or prevailing conditions, and/or the particular vehicle being driven	Excessive speed for the road, and/or prevailing conditions, and/or the particular vehicle being driven
		Repeated disregard of road signals or signs (for example, traffic lights or a 'Give Way' sign)	
CAPACITY OF DRIVER	Gross impairment through the voluntary consumption of alcohol or illegal drugs, or through the consumption of legal drugs or medication where the offender knew, or should have known, about the likelihood of impairment, or through other causes	Impairment through the voluntary consumption of alcohol or illegal drugs, or through the consumption of legal drugs or medication where the offender knew, or should have known, about the likelihood of impairment, or through other causes	Driving while knowingly deprived of rest
		Driving while avoidably distracted for a prolonged period (for example, through use of a mobile phone or similar device)	Driving while avoidably but momentarily distracted (for example, through use of a mobile phone or similar device)
		Impairment as a result of driving when knowingly suffering from a medical or physical condition, including a failure to follow medical advice or take prescribed medication	
OTHER		Ignoring warnings from others (for example, passengers)	Knowingly driving a vehicle which is in a dangerous state

Section 1 RTA 1998 – Causing Death By Dangerous Driving

Step 2: Select the sentencing range

This is the range of sentences within which the appropriate headline sentence for the offence appears to fall, having regard to the assessment of seriousness at step 1.

	LEVEL	RANGE
SERIOUSNESS	A	7 – 12 years' custody
	B	4 – 7 years' custody
	C	2 – 5 years' custody

Section 1 RTA 1998 – Causing Death By Dangerous Driving

Step 3: Identify aggravating and mitigating factors

a **non-exhaustive** list of additional factual elements which may
apply to the offence and the offender.

The court should consider which of these factors apply, together with any other factors which, in the view of the court, aggravate or mitigate the offence or sentence.

In some cases this may move the headline sentence outside the range selected at step 2.

	AGGRAVATING	MITIGATING
CONSEQUENCES	More than one person killed	
	Serious injury caused to another person or persons (excluding the driver)	Driver sustained serious injury
RECORD AND CIRCUMSTANCES OF DRIVER	Relevant previous convictions (not necessarily limited to convictions for road traffic offences)	Previous good driving record
		Deceased was family member or close friend of driver
		Remorse
		Voluntary surrender of licence (where applicable)
CIRCUMSTANCES OF OFFENCE AND ACTIONS AT THE SCENE	Other offences committed at the same time (for example, driving while disqualified or without insurance, or leaving the scene of the offence with a view to evading detection)	
	Victim was a vulnerable road user (for example, a pedestrian, cyclist, horse rider, or motorcyclist)	
	Offence committed while being pursued by the police	
		Providing assistance at the scene
		Driving in an emergency, whether in a designated emergency vehicle or otherwise

Step 4: Determine the headline sentence

At the end of this process, the court will have determined the headline sentence

- Guidelines in Action – back to building blocks

HM Advocate v GH [2023] HCJAC 45 – Lady Dorian

HM Advocate v Palfreman [2023] HCJAC 10 – Lady Dorian

HM Advocate v Harvey [2026] HCJAC 3 – Lord Beckett

First instance cases

- HMA v Ciaran Dickson (Lord Colbeck, Feb 2024): 6 years.
- HMA v Darren Sturgeon (Lord Colbeck, Mar 2024): Level A, 7–12 years range, 8 years imposed.
- HMA v Stephen McGuire (Lord Colbeck, Nov 2024): Level A, 8 years.
- HMA v Die Huang (Lord Harrower, Nov 2024): pled guilty, Lower Level C 21 months to 14 months.
- HMA v Steven Allan (Lady Carmichael, Oct 2025): Level C after trial, 4 years.
- HMA v Joshua Findlay (Lady Drummond, Dec 2025): 4 years pled guilty to causing death by dangerous driving and other motoring offences.

Successful appeals

Unreported case – *Scott Nugent v HMA*

- convicted of causing death and serious injury by dangerous driving after falling asleep at the wheel of his vehicle
- Sentenced to 5 years imprisonment reduced on appeal to 4 years and 1 month

More than one applicable guideline ?

Unreported case – *Evan Davies v HMA*

- Both Death by Driving and Young Persons guideline applied
- Sentenced to 45 months imprisonment reduced on appeal to 3 years

Food for thought ..

Culpability

- What level ?
- Where within the level ?

Weight given to aggravating or mitigating features

- Appropriate shift applied post assessment of seriousness ?

Statutory Offences of Causing Death by Driving



Sentencing Guidelines in Health and Safety Cases

The Courts

Appeals rare

- Few prosecutions
- Lower fines

Sentencing statements

- Inconsistency in approach
- Extremes: Only referring to the 2016 Guideline; not referring to it at all!

The sentencer

- Experience
- Training

The primacy of guidelines

Criminal Justice and Licensing (Scotland) Act 2010

6. (1) A court (whether at first instance or on appeal) **must**—

(a) in sentencing an offender in respect of an offence, have regard to any sentencing guidelines which are applicable in relation to the case,

(b) in carrying out any other function relating to the sentencing of offenders, have regard to any sentencing guidelines applicable to the carrying out of the function.

(2) If the court decides not to follow the guidelines, or to depart from them in accordance with provision contained in them under section 3(3)(d), it must state the reasons for its decision.

1. Relevant Scottish guidelines

- The "Principles and purposes of sentencing" Guideline (26 November 2018)– Cardinal principle: *"Throughout the sentencing process, the court should seek to ensure that the sentence to be imposed is fair and proportionate."*
- *"Impact on victim and others affected by the case"* (cf. s.50 of VW&JR Act 2025, amending s.14 of CJ(S) act 2003)–in the case of solemn proceedings, all offences
- The "Sentencing process" Guideline (22 September 2021)
  - Step 1: Assess the seriousness of the offence (culpability and harm)
  - Step 2: Select the sentencing range
  - Step 3: Identify aggravating and mitigating features
  - Step 4: Determine the headline sentence
  - Step 5: Take into account a plea of guilty

2. Precedent and Practice

- "*It is important to look at existing Scottish precedent to discover what levels of penalty are appropriate, albeit that this task may involve a cross-check with any relevant guidelines*" Scottish Power Generation v HMA (2017) JC 85

- "*While the sheriff did not base his approach explicitly on the Definitive Sentencing Guideline issued by the Sentencing Council for England andWales, he was not bound to do so, particularly since the Guideline was not relied upon by the appellant at the sentencing diet.*" St David's Care Forfar Ltd v HMA [2023] HCJAC 17, (para 48)

- *'We stress that the Guideline should not be used in a mechanistic manner; it can be used as a broad cross-check against the sentence that would be considered appropriate according to current Scottish sentencing practice*"(para 53)

- Precedent. e.g. Scottish Seafarms Ltd & Logan Inglis Ltd v HMA, 2012 SLT 299; lists factors

- Sentencing statements (esp. for public authorities)

3. The 2016 Guideline

- Importance of written submission
- Liaise with PF
  - Importance of narrative. Front-load mitigation where possible (esp. remedial steps)
  - Views on culpability?
- Don't mention figures
- Avoid "railroading"
- Realism with client
- Credibility with the court

Step 1 – Determining offence category

- Culpability
  - High – Fell "far short",
    - failing to put in place, measures that are recognised standards in the industry;
    - Ignoring concerns raised by employees or others (HSE)
    - Failing to make changes following prior incidents
    - Allowing breaches to subsist over a long period of time (dates in charge)
    - Serious or systemic failure within the organisation to address risks to health and safety
  - Medium –
    - Fell short, somewhere between high and low
    - Systems were in place but not sufficiently adhered to/implemented
  - Low - Offender did not fall far short
    - Significant efforts were made to address the risk but fell short on this occasion
    - There was no warning /circumstance indicating a risk to health and safety

    Failings were minor and occurred as an isolated incident (single day)
- Harm
  - On likelihood on a statistical basis, the singularity of the event
  - Significant cause of actual harm - * one which than minimally, negligibly or trivially contributed.

Step 2 – Starting point and category range

- Starting point based on turnover.
- Adjust for aggravating and mitigating circumstances
  - *"In particular, relevant recent convictions are likely to result in a substantial upward adjustment."*

    Relevance is the key aspect.
  - Downward adjustment

Step 3 – Stepping back

Check whether the proposed fine based on turnover is proportionate to the overall means of the offender.

The fine must be sufficiently substantial to have a real economic impact

- Importance of profitability
- Responsibility on accused:

  "… it is for the company to place before the court sufficiently detailed information about its financial position to enable the court to see the complete picture without having to resort to speculation" HMA v Munro & Sons [2009] HCJAC 10 (para 30)

- Alternatively, section 203A of 1995 Act

  "(1)This section applies where an organisation is convicted of an offence.

  (2)Before dealing with the organisation in respect of the offence, the court may obtain a report into the organisation's financial affairs and structural arrangements.

  (3)The report is to be prepared by a person appointed by the court."

- Avoid a data-dump. P/L account
- Pitfalls in the accounts: Directors remuneration; cash
- Report from Forensic Accountant
- Accompanying letter from FD (esp. public authority)

Step 4 – Other factors

All leading to downward adjustment.

- Impact on steps to improve conditions;
- Impact on jobs and local economy;
- A fine on a public or charitable body, the fine should normally be substantially reduced, if it can be demonstrated that it would have a significant impact on the provision of its services.

Public bodies

- HMA v Police Service of Scotland: 7 September 2021 (per Lord Beckett)
- *"Such a sustained breach of health and safety laws which ultimately gave rise to such a serious outcome might ordinarily be met with a very substantial fine, perhaps running into millions. In this case there is an acute problem in taking that course. The Police Service of Scotland is not a commercial enterprise pursuing profit, but a public body whose purpose is to protect the public.*
- *In short, for failure to comply with the requirements of the Health and Safety at Work etc Act which exposed the public to risk with the awful consequences of this case, the normal level of fine would reduce the ability of the Police Service of Scotland to protect and serve the public. Any fine will in effect be paid out of public funds generated from taxes paid by members of the public who rely on the police force to protect them."*



Parliament House

Edinburgh

EH1 1RF

DX 549302, Edinburgh 36

LP 3, Edinburgh 10

www.compasschambers.com

Murdo MacLeod KC

Rebecca Osborne, Advocate

Gavin Herd

Practice Manager

Phone: 0131 260 5648

Fax: 0131 225 3642

gavin.herd@compasschambers.com