



**Causing Death by Driving
England & Wales**

**Sentencing Guide
for Bereaved Families**

February 2017

Foreword

If you have been bereaved by a road crash, then please accept our deepest condolences. Road deaths are sudden, violent deaths. The devastation is further aggravated by families rarely having the chance to say goodbye.

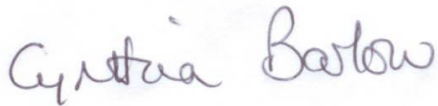
And whilst road deaths have halved since RoadPeace was founded in 1992, this provides no comfort to those families whose loved ones are still being killed on our roads, especially those deaths caused by the actions of another.

Drivers should be held accountable for their actions, particularly when they result in death. Their poor choices and mistakes can end another's life and shatter a family forever.

This guide presents the government's latest data on the use and length of prison sentences and driving bans for the most common Causing death by driving offences. It also includes data on suspended sentences and community sentences.

RoadPeace works to reduce the suffering of victims. This includes helping bereaved families avoid being misled about possible punishments that could be given to those convicted of causing a death.

At present, bereaved families are given information on the maximum sentences possible by law, but these are of little relevance as they are almost never used. We hope that the information in this guide will help spare bereaved families further shock and disappointment.

A handwritten signature in blue ink that reads "Cynthia Barlow".

Cynthia Barlow, OBE
RoadPeace Chair



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Introduction

This guide explains how sentences are decided by the courts for causing death by driving offences and gives details of the sentences given in England & Wales last year (2015).

Sentencing information here covers the three most common offences¹:

- ▶ Causing Death by Dangerous Driving
- ▶ Causing Death by Careless Driving Under the Influence of Drink or Drugs
- ▶ Causing Death by Careless Driving

For each offence, we have provided both the relevant section of the sentencing guidelines and the sentencing data from the latest year. The sentencing data is published by the Ministry of Justice².

How sentences are decided

The maximum and minimum sentences for an offence are determined by law. The court decides what sentence is given. In this, it follows sentencing guidelines. These promote greater consistency in the way similar cases are handled and increase public understanding of the sentencing process. The current guidelines³ were produced in 2008.

Here we explain the main steps involved in sentencing⁴.

Step 1: Determine level of seriousness and starting point.

All causing death by driving offences are very serious in their impact. The level of seriousness of the offence itself is judged in relation to the culpability of the offender. General factors affecting seriousness include:

- awareness of risk (e.g. a prolonged, persistent and deliberate course of very bad driving),
- inappropriate speed of vehicle,
- aggressive driving, or
- driving while using a hand-held mobile phone.

For each offence, the level of seriousness gives the starting point for the sentence, e.g. 36 weeks custody or 3 years custody, and a sentencing range⁵.

Step 2: Consider aggravating and mitigating factors.

Aggravating factors are features of the case that suggest a higher level of culpability or blame. For example, blame will be greater if there were multiple deaths and the risk of this was foreseeable. Aggravating factors will tend to push the sentence higher within the sentencing range or to the next sentencing level.

Mitigating factors suggest a lower level of blame and reduce the sentence. These could include:

- very serious injury to the offender,

¹ The offence *Causing Death by Driving Whilst Unlicensed, Disqualified and Uninsured* has not been covered in this guide. In 2015, only two drivers were prosecuted for this offence. Nor does this guide cover Causing Death by Aggravated Vehicle Taking or the recently introduced Causing Death by Driving Whilst Disqualified.

² MoJ (2016a)

³ Sentencing Council (2008)

⁴ More information is available from the website of the Sentencing Council. This includes a short film explaining how sentences are determined (Sentencing Council, 2016).

⁵ Guidelines are for first time offenders. Sentencing above the sentencing range can be given to repeat offenders.



- the deceased being family or in a close personal relationship with the offender (particularly where driver culpability is low),
- the driver was not the solely responsible for the collision or the driver had limited driving experience.

In addition there are personal mitigating factors: good driving record, helping at the scene and remorse. Remorse does not have to be confirmed by the bereaved family.

Step 3: Reduction for assistance.

Determine if sentence should be reduced due to assistance offered by the offender to the prosecutor.

Step 4: Reduction for guilty plea.

If an offender pleads guilty at an early stage, the sentence can be reduced. The general argument for this is that victims and witnesses are spared having to appear at court to testify and it reduces costs to the police and Crown Prosecution Service. Current sentencing guidance gives a 33% discount for a guilty plea at the first opportunity, 25% after the trial date is set and 10% at the door of court/after trial begun⁶. This reduction applies only to the punitive elements of the penalty, not ancillary orders (see next).

Step 5: Indeterminate or extended sentence.

Consider if the offender meets the criteria for an indeterminate or extended sentence.

Step 6: Apply the totality principle.

If an offender is being sentenced for more than one offence, the court is required to ensure that the total sentence is just and proportionate to the offending behaviour⁷. This will rarely be a simple addition of the sentences for each offence.

Step 7: Consider compensation and ancillary orders.

These are restrictions placed on the offender in addition to their main sentence. For all causing death offences disqualification from driving is considered mandatory⁸.

For offences committed on or after 13 April 2015, any driving ban period imposed by the court must be extended by half of any custodial term. For example where a court imposes a 12 month custodial sentence and a disqualification period of 24 months, the ban will be extended to 30 months. This is so that the ban period is not shortened by the period the offender is in custody.

In addition, the court can require that the disqualification to continue until the offender passes an extended driving test.

Step 8: Reduction for time in remand or bail.

It is rare that those accused of causing a death by driving are held on remand in custody. But any time spent in custody on bail is taken off the sentence imposed by the court.

⁶ In early 2016, there was a public consultation on timing and size of discounts available in different circumstances. The government's response to this is expected in mid 2017. Changes may then be introduced.

⁷ Sentencing Council (2012)

⁸ In exceptional circumstances, points may be given.



After sentencing--Things to Remember

Appeals against a sentence

The justice system allows appeals against a sentence from the offender, and in certain cases, from the prosecution side.

Offenders can appeal to a higher court to have their sentences reduced. Appeals against sentences in Magistrates' courts are heard in the Crown Court. Appeals against sentences in the Crown Court are heard in the Court of Appeal Criminal Division. The offender will need to persuade the higher court that the lower court came to the wrong decision on the evidence. They may face a higher sentence and additional court costs if they fail.

Unduly lenient sentence

Families can appeal an unduly sentence for convictions of Causing Death by Dangerous Driving or Causing Death by Careless Driving Whilst Under the Influence of Drink/Drugs.

But no such right of appeal exists for Causing Death by Careless Driving, Causing Death by Driving Whilst Unlicensed, Disqualified or Uninsured, nor for the new charge of Causing Death by Disqualified Driving. These are all either-way offences and even if the trial is held in the Crown Court, there is no right to appeal—not on the prosecution side. This can cause families much grief.

Where it is possible to appeal an unduly lenient sentence, this must be done within 28 days of the sentence.

Sentences served

Families must also remember that it is government policy to release offenders from prison half-way through their custodial sentence. The remainder of the custodial sentence will be served on license and under supervision in the community. .

Offenders can also apply for early return of their driving licence. Whilst bereaved families should be consulted over an early release from prison, they do not have to be informed of an application for an early return of the driving licence. No data is published on how often a driving license is returned early.

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Please see the RoadPeace website or contact us for more information. Any suggestions for how to improve this guide would be most welcomed by RoadPeace.



Guidelines and Sentences for Specific Offences

Causing death by dangerous driving

The offence of causing death by dangerous driving is committed under section 1 of the Road Traffic Act 1988 when the suspects driving is a cause or factor in the death of another person and the driving was dangerous.

Dangerous driving is defined as driving of a standard that 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. Sometimes driving is very clearly dangerous. At others, it can be debated whether the driving is dangerous or just careless.

Sentencing Guidelines – Causing death by dangerous driving

Maximum penalty: 14 years imprisonment

Minimum disqualification: 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 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 risk</i> of danger	5 years custody	4-7 years custody
Level 3 Driving that created a <i>significant risk</i> of danger (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)	3 years custody	2-5 years custody

Additional aggravating factors	Additional mitigating factors
1. Previous convictions for motoring offences, particularly offences that involve bad 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. 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	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 to the commission of the offence 5. The offender's lack of driving experience contributed significantly to the likelihood of a collision occurring and/or death resulting 6. The driving was in response to a proven and genuine emergency falling short of a defence

Source: Sentencing Guidelines Council (2008)



What happens at Court

How often prosecuted

- ▶ There were 188 prosecutions for *Causing death by dangerous driving* in 2015.
- ▶ This was the second successive year of increase, following the recent low of 144 in 2013.
- ▶ It accounted for 45% of all *Causing death by driving* offences.
- ▶ It had been 34% of the total in 2010, following the introduction of the offence of *Causing death by careless driving*.

Chances of conviction

- ▶ With 122 findings of guilt, the conviction rate is 65%. This figure is low because a case can start as *Causing a death by dangerous driving* and be downgraded to *Causing death by careless driving*.
- ▶ This is a drop from 70% in the previous year.
- ▶ Conviction rates in the period 2005-09 were consistently over 80% and as high as 93% in 2005. This was before the introduction of the alternative charge of *Causing death by careless driving*.

Sentences given

- ▶ All convicted drivers were given either immediate custody (114, 94%) or a suspended sentence (7, 6%).
- ▶ This was the same proportions as in 2014.
- ▶ The most common custodial sentence (42, 37%) was 3+ to 5 years, as it was in 2014.
- ▶ Only 15% of sentences fell into the range for the highest level of seriousness⁹.
- ▶ Immediate custody has been more than 90% in all years since 2005, except 2010.
- ▶ Average custodial sentences was 57 months, down slightly from the previous year.

Driving bans

- ▶ 121 received bans.
- ▶ 80% of drivers were banned for an unknown period. This is believed due to the requirement to take an extended driving test before they could apply for return of their license.
- ▶ 20 received bans between 2 and 10 years.
- ▶ 3 drivers were banned for over 10 years.
- ▶ No drivers were banned for life.

Table 1: Causing death by dangerous driving: Prosecutions and convictions

Prosecutions	Convictions	Conviction Rate	Sentenced
188	122	65%	122

⁹ Early guilty plea discounts will play a role in this.



Table 2: Causing death by dangerous driving: Sentences

Immediate Custody	Suspended Sentences	Community Sentences	Fines	All other disposals
114	7	-	-	-

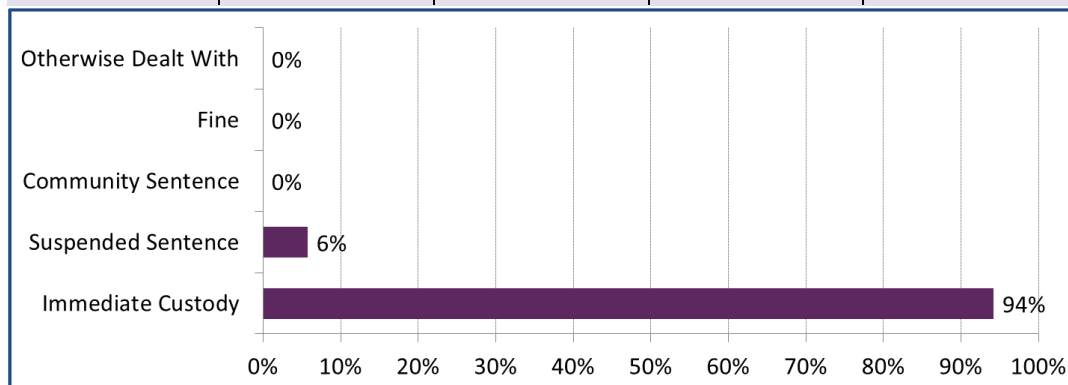


Table 3: Causing death by dangerous driving: Custodial sentences

12 months and under	12+ to 18 months	18+ to 24 months	2+ to 3 years	3+ to 5 years	5+ to 7 years	7+ to 10 years	10+ years
3	1	8	19	42	24	15	2

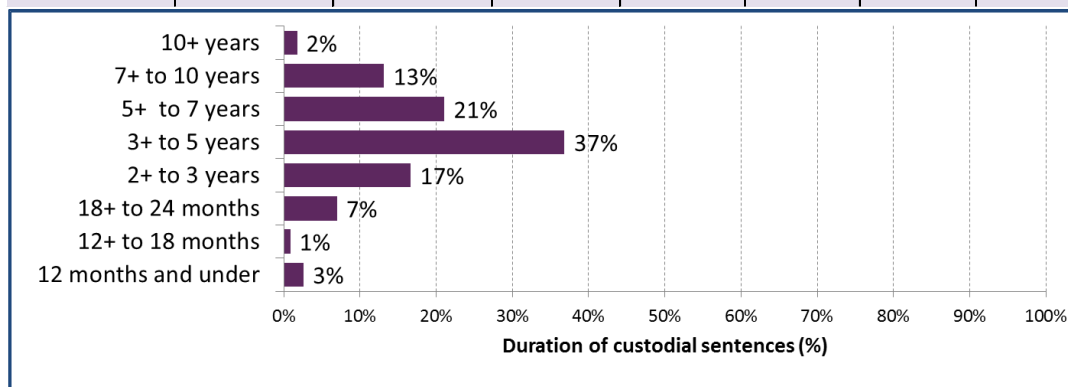
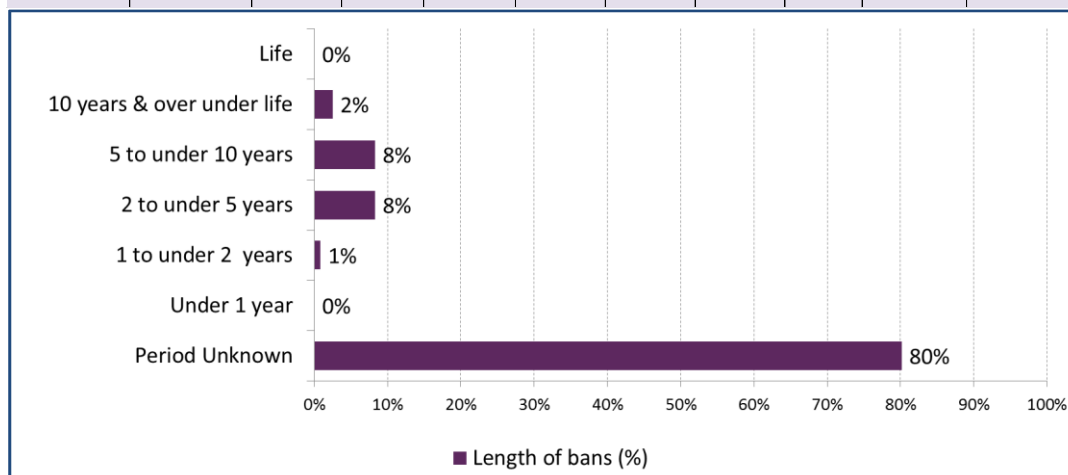


Table 4: Causing death by dangerous driving: Endorsements, bans and driving test Requirements

No endorsement No ban	Endorsement, No ban	Bans								Extended driving test requirement
		Period Unknown	Under 1 year	1 to under 2 years	2 to under 5 years	5 to under 10 years	10 years & over under life	Life	Driving test requirement	
-	1	97	-	1	10	10	3	-	121	119





Causing death by careless driving under influence of drink or drugs

This offence is defined under section 3A of the RTA 1988. There are three elements:

- the driving has caused the death of another person; and
- the driving was without due care and attention or without reasonable consideration for other road users; and
- the driver is either unfit through drink or drugs, or the alcohol concentration is over the prescribed limit, or there has been a failure to provide a specimen.

Levels of seriousness are linked to both three defined levels of impairment and three levels of carelessness in the driving. Impairment is determined by breath tests in micrograms of alcohol per one hundred millilitres of breath (abbreviated as μg below) or direct evidence of impairment when this measure is not available. The most serious level starts at twice the legal alcohol limit.

Sentencing Guidelines – Causing death by careless driving under influence of drink or drugs

Maximum penalty: 14 years imprisonment

Minimum disqualification: 2 years with compulsory extended re-test

The legal limit of alcohol in 35 μg 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
71 μg 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/moderate 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"> 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, falsely claiming that one of the victims was responsible for the collision 	<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 to the commission of the offence 5. The driving was in response to a proven and genuine emergency falling short of a defence

Source: Sentencing Guidelines Council (2008)



What happens at Court

How often

- ▶ There were 23 prosecutions *Causing death by careless driving under influence of drink or drugs* in 2015.
- ▶ This was an increase from 2014 when there were only 17 prosecutions, but well below the 34 prosecutions in 2010.

Chances of conviction

- ▶ With 21 convictions, the conviction rate was 91%.

Sentences given

- ▶ Nearly all (20) those convicted were given immediate custody.
- ▶ Only 2 drivers were given a sentence of less than 2 years.
- ▶ Six received sentences of more than 5 to 7 years.
- ▶ The average custodial sentence was 53.5 months.
- ▶ One person was given a suspended sentence.

Driving bans

- ▶ All convicted drivers received a driving ban.
- ▶ Two thirds were banned for an unknown period.
- ▶ Where specified, the most common ban period was 2 to 5 years.
- ▶ Almost all (20) were also required to take an extended driving test before they could get their license back.

Table 5: Causing death by careless driving under influence of drink or drugs: Prosecutions and convictions

Prosecutions	Convictions	Conviction Rate	Sentenced
23	21	91%	21

Table 6: Causing death by careless driving under influence of drink or drugs: Sentences

Immediate Custody	Suspended Sentences	Community Sentences	Fines	All other disposals
20	1	-	-	-

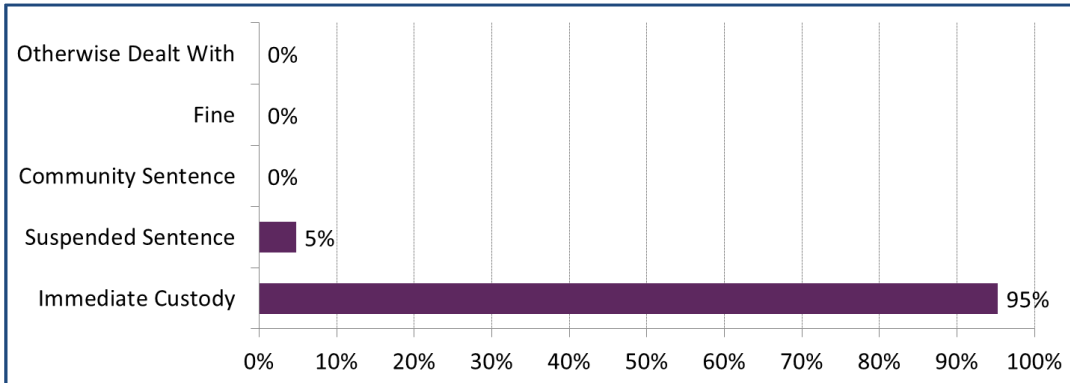


Table 7: Causing death by careless driving under influence of drink or drugs: Custodial sentences

12 months and under	12+ to 18 months	18+ to 24 months	2+ to 3 years	3+ to 5 years	5+ to 7 years	7+ to 10 years	10+ years
-	-	2	6	5	6	1	-

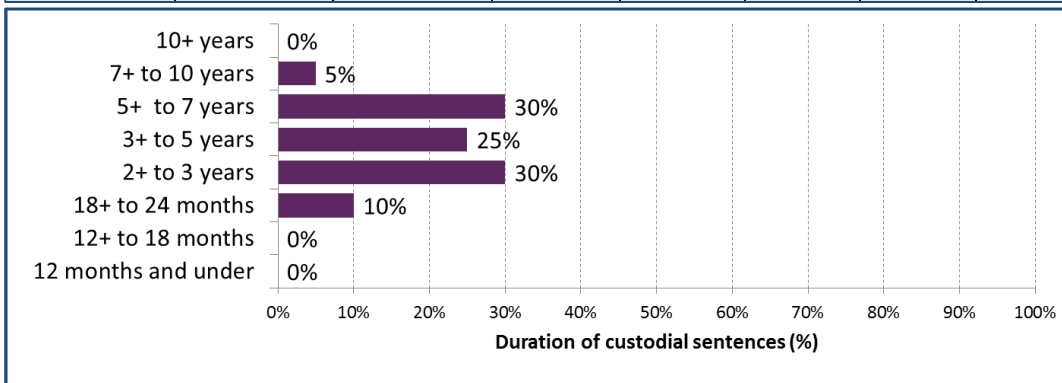
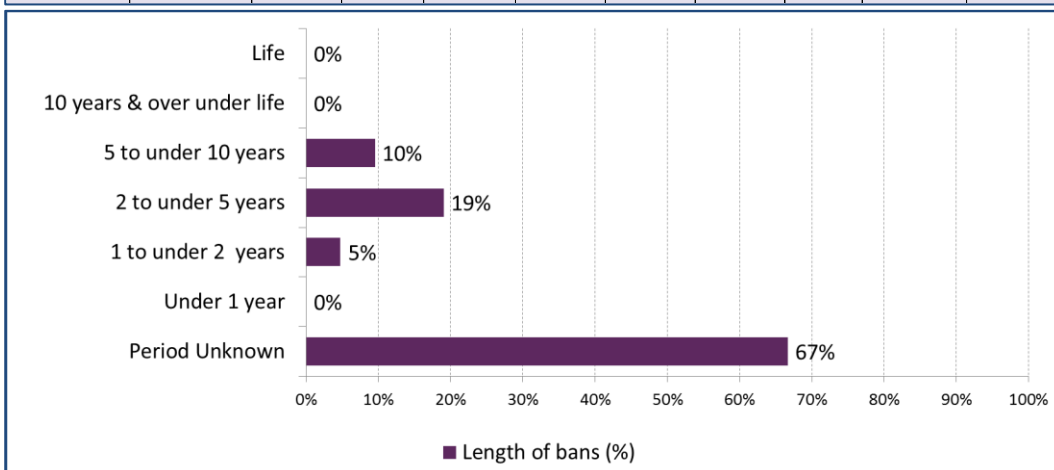


Table 8: Causing death by careless driving under influence of drink or drugs: Endorsements, bans and driving test requirements

No endorsement No ban	Endorsement, No ban	Bans								Extended driving test requirement
		Period Unknown	Under 1 year	1 to under 2 years	2 to under 5 years	5 to under 10 years	10 years & over under life	Life	Driving test requirement	
-	-	14	-	1	4	2	-	-	21	20





Causing death by careless or inconsiderate driving

The offence of *Causing death by careless driving* is defined under section 2B of the RTA 1988. There are two elements:

- the suspect’s driving causes the death of another person
- they were driving without due care and attention

In law, a driver is driving without due care and attention “if (and only if) the way he or she drives falls below what would be expected of a competent and careful driver”.

This contrasts with dangerous driving, where the standard of driving must fall far below what would be expected of a competent and careful driver. Though the courts are given guidance on this, differences in interpretation are common.

Sentencing Guidelines – Causing death by careless or inconsiderate driving

Maximum penalty: 5 years imprisonment
Minimum disqualification: 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 of 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

Source: Sentencing Guidelines Council (2008)



What happens at Court

How often

- ▶ The offence of Causing Death by Careless Driving was prosecuted 201 times, slightly less than the 205 in 2014. It accounted for 48% of causing death by driving offences, down from 51% in 2014 and 56% at its peak in 2010.

Chances of conviction

- ▶ With 176 convictions, nearly nine out of ten drivers (88%) prosecuted were convicted. But this will include cases where the driver was prosecuted for Causing Death by Dangerous Driving but found guilty of Causing Death by Careless Driving.
- ▶ One in four cases were prosecuted at the Magistrates Court.

Sentences given

- ▶ 46 drivers were given immediate custody and 55 were given a suspended sentence.
- ▶ The proportion of shorter custodial sentences (12 months and under) has declined from 80% to 54% since 2014; while those getting a longer custodial sentence has risen correspondingly.
- ▶ Average length of custodial sentence has increased to 14 months, from 10.4 months in 2014.
- ▶ 66 guilty drivers (39%) were given a community sentence, up in absolute and percentage terms from 2014.
- ▶ Relative to 2010, prison sentences (immediate and suspended) have increased, while community sentences have declined.

Driving bans

- ▶ Sentencing Council Guidelines advise a minimum ban of one year. But only 79% of those found guilty received a ban: 19 (11%) received neither a ban nor an endorsement, whilst 17 (10%) received only an endorsement.
- ▶ 53 (40%) of those banned were required to take an extended driving test before getting their license back.

Table 9: Causing death by careless or inconsiderate driving: Prosecutions and convictions

Prosecutions	Convictions	Conviction Rate	Sentenced
201	176	88%	173



Table 10: Causing death by careless or inconsiderate driving: Sentences

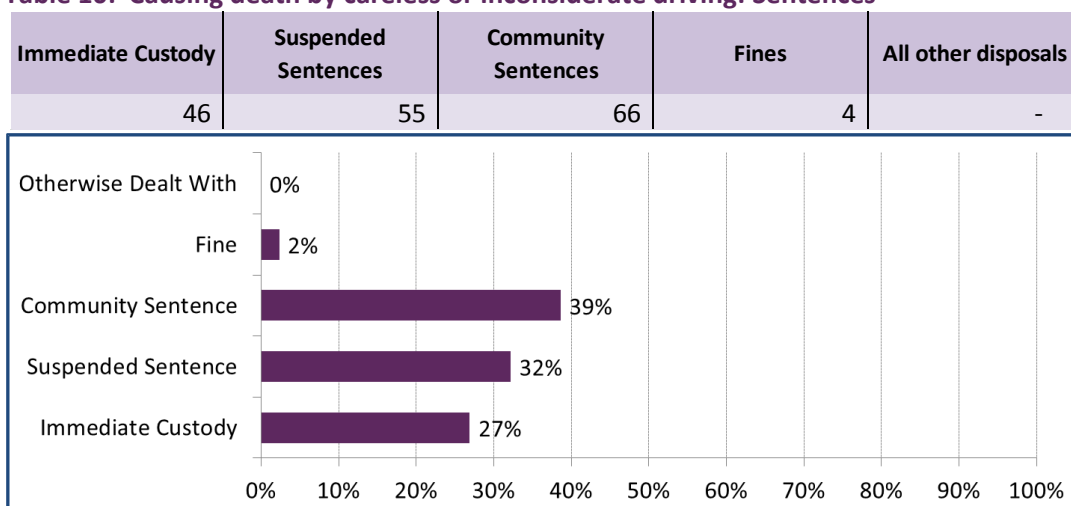


Table 11: Causing death by careless or inconsiderate driving: Custodial sentences

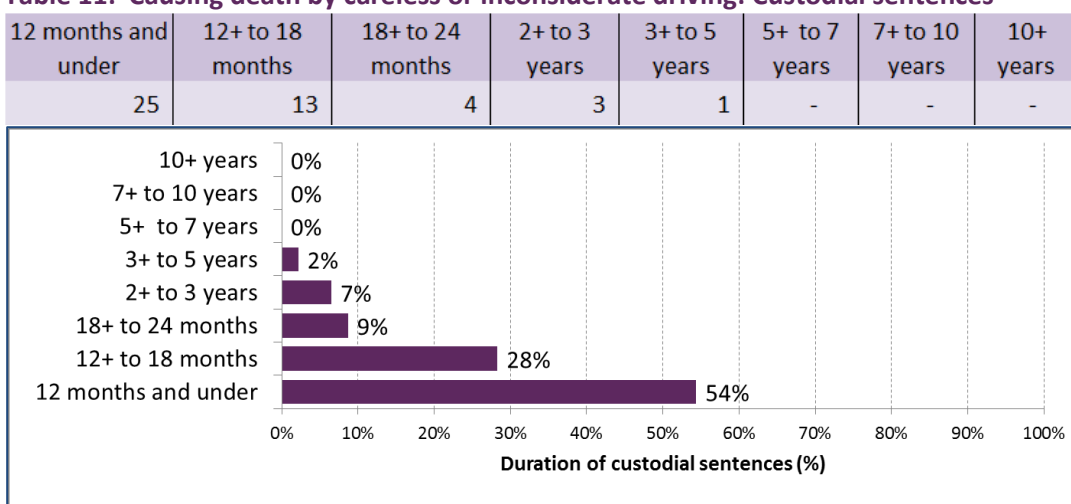
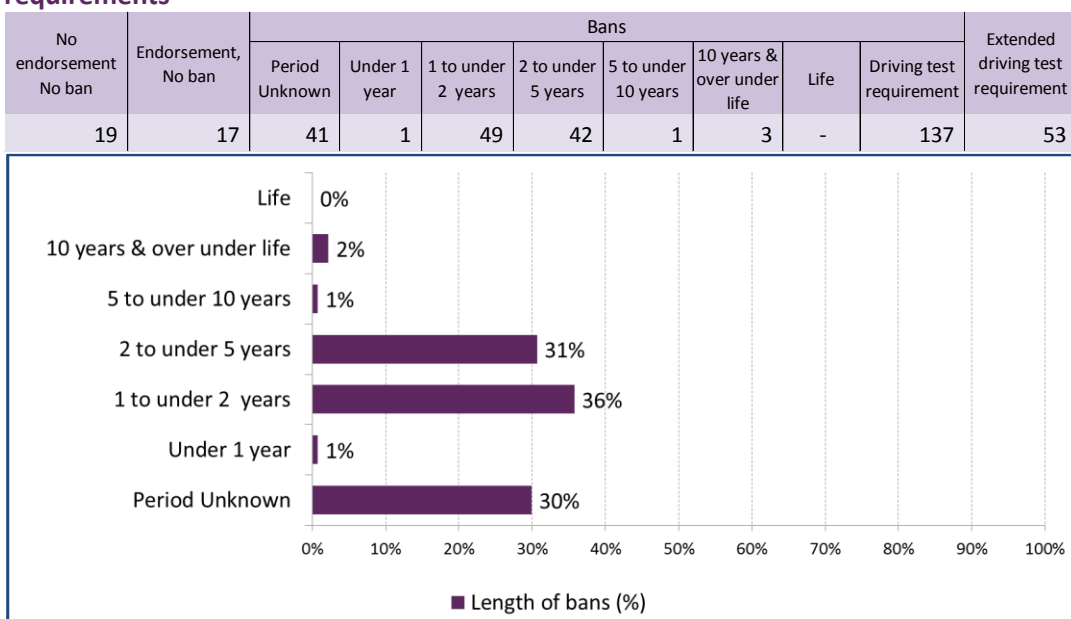


Table 12: Causing death by careless or inconsiderate driving: Endorsements, bans and driving test requirements





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## About RoadPeace

RoadPeace, the national charity for road crash victims, has been helping the families cope with the aftermath of road death and injury since 1992. We provide emotional support and information to help the bereaved and injured understand the justice system. RoadPeace also campaigns for the justice system and for society in general to take road danger more seriously.