National Driver Offender Retraining Scheme (NDORS): ACPO Guidelines on Eligibility Criteria for NDORS Courses

The Association of Chief Police Officers has agreed to these revised guidelines being circulated to, and adopted by, Police Forces in England, Wales & Northern Ireland.

It is NOT PROTECTIVELY MARKED under the Government Protective Marking Scheme and it is disclosable under the Freedom of Information Act 2000.

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These guidelines have been produced by the National Policing Uniformed Operations Business Area and was originally approved by ACPO Cabinet in December 2007. The purpose of these guidelines is to provide information on the eligibility criteria for NDORS courses. ACPO Supports appropriate and proportionate diversion from prosecution for relevant Road Traffic offences, as offered by the various courses available under the ACPO NDORS scheme. It will be updated and re-published as necessary.

Any queries relating to this document should be directed to either the author detailed above or the ACPO Programme Support Office on 020 7084 8959/8958.
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### Appendix 1

Use of Fixed Penalty and Strategic Framework for Road Safety
1. **SECTION 1 – BACKGROUND**

1.1 ACPO support appropriate and proportionate diversion from prosecution for relevant Road Traffic offences, as offered by the various courses available under the ACPO National Driver Offender Retraining Scheme (NDORS). A key theme in the Government’s Strategic Framework For Road Safety (2011) is driver education for suitable offending.

1.2 These guidelines are provided by ACPO NDORS and endorsed by the Crown Prosecution Service (CPS).

1.3 Further assistance on legal interpretation can be found on the PNLD website at: www.pnld.co.uk.

1.4 Some of the courses on offer cater for the same type of offences and therefore attendance and completion on one course will preclude the offender from attendance on a similar course within three years from the date of the original offence. These courses have been linked within the DORS system. Current examples are data from the National Driver Improvement Course which is linked with the National Driver Alertness Course.

2. **SECTION 2 – DRIVING WITHOUT DUE CARE & REASONABLE CONSIDERATION OFFENCES WITNESSSED BY A POLICE OFFICER – CRITERIA FOR FIXED PENALTY AND/OR DIVERSION TO COURSES WHEN APPLICABLE**

2.1 Currently, officers are either charging and bailing a driver in cases where the driving matter is linked to a more serious offence, reporting drivers for a summons after seeing and stopping the driver due to an act of careless driving, or in those cases where the offending was at the lower end, offering a diversion course after a collision.

2.2 The Government has now introduced the ability for the Police to offer of a fixed penalty in some careless and inconsiderate cases. This brings into scope driver education for offences of careless and inconsiderate driving, with education being the preferred outcome when appropriate. Fixed penalty guidance has been updated and includes factors for consideration by the officer before they issue a fixed penalty, or recommend diversion into education.

2.3 It is anticipated that the officer witnessing an offence of this nature will consider the fixed penalty guidance first, deciding to either summons or issue a fixed penalty (report for process). The back office decision maker will take those fixed penalties or reports and, unless the officer has intimated that it is not appropriate for consideration of education, use the guidance in NDORS to decide which course is appropriate for the offending.

2.4 The fixed penalty guidance is appended at Appendix 1.

3. **SECTION 3 – COURSES ON OFFER**

3.1 **NATIONAL DRIVER ALERTNESS COURSE (MAINLY COLLISION OR 3RD PARTY COMPLAINT) (NOT MOTORCYCLIST)**

3.1.1 The National Driver Alertness Course has been designed to accommodate those situations or incidents **involving a collision** whereby there is sufficient evidence available that would justify a prosecution for an offence contravening Section 3, Road Traffic Act 1988.

3.1.2 The decision to offer an offender a place on a National Driver Alertness Course should be based on the individual's driving which led to the offence. It is usually unjustified to place an offender before the court mainly because of the consequences and aftermath of a collision or incident. There are, however, exceptions to this rule, especially if the incident causes serious bodily harm or fatal injury to a third party. In such instances, a non court disposal might affect public confidence.
3.2 NATIONAL SPEED AWARENESS COURSE

3.2.1 The National Speed Awareness Course is designed to cover appropriate offences detected by Automatic Camera Devices and Police Officers at the roadside within the range of (10% +2) mph to (10% +9) mph over the limit. They apply to all environments (with the exception of 20 mph zones and limits) and all classes of vehicles. Any collision involving excess speed would be more appropriate to the National Driver Alertness Course than Speed Awareness.

3.3 WHAT’S DRIVING US COURSE (NON-COLLISION) (NOT MOTORCYCLIST)

3.3.1 The What's Driving Us Course is for those drivers where the evidence suggests by an act or omission their mischief was intentional or deliberate i.e. the driver knew their actions amounted to an offence.

3.3.2 In reaching this decision, the officer or decision maker must decide whether or not the offender’s actions amounted to high risk or high harm, (taking into account all the evidence and the attendant circumstances surrounding the nature of the offending as well as the environment in which the offence took place). If the evidence suggests that it amounted to a high risk or high harm then a course offer is inappropriate and normal prosecution should follow.

3.4 DRIVING 4 CHANGE COURSE (NON-COLLISION) (NOT MOTORCYCLIST)

3.4.1 This course is for the driver who demonstrates carelessness or under performance.

3.4.2 Motorcyclists MUST NOT be offered National Driver Alertness, Driving 4 Change or What’s Driving Us and must be referred to the RIDE Course instead.

3.4.3 The decision to offer this course should always be based on an objective assessment of the offender’s act or omission as to whether it amounts to:

- A lapse of concentration;
- An error of judgement;
- A general mistake, or
- A lack of awareness of the law pertaining to the offence that he or she has committed, that has not had wider consequences (i.e. a collision).

3.4.4 The statutory definition for careless or inconsiderate driving reads:

- A person is to be regarded as driving without due care and attention if (and only if) the way he drives falls below what would be expected of a competent and careful driver. Road Traffic Act 1988 3ZA(2);
- In determining for the purposes of subsection (2) above what would be expected of a careful and competent driver in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused. Road Traffic Act 1988 3ZA(3);
- A person is to be regarded as driving without reasonable consideration for other persons only if those persons are inconvenienced by his driving. Road Traffic Act 1988 3ZA(4).

3.4.5 The operative word here is “below” and that is an objective test which should be applied to any moving traffic offence. A good example will be to benchmark the persons driving against what will be required in the driving test, and if by an act or omission it would have amounted to a failure in the test environment, it could qualify for the Driving 4 Change course, or where there has been a collision, the National Driver Alertness Course.
4. **SECTION 4 – COURSES FOR ‘AT RISK’ GROUPS**

4.1 From time to time analysis of collisions and casualties as well as causation factors, will identify groups who are at specific risk and more likely to have collisions or cause collisions than other groups in the road user category. When this happens NDORS will, at the request of the police service, provide bespoke courses aimed at the identified behaviour/group. This is not provided as education for the targeted offender only, it is provided for the group in place of the normal courses which will be offered to those committing similar lapses or chosen behaviour who are not in that group.

4.2 An example of this is where an offender would be offered the Driver Alertness Course (DAC). If a motorcyclist is identified as appropriate for education then instead of attending the DAC he or she will be offered RIDE, whereas a non-motorcyclist will be offered DAC.

4.3 **RIDE COURSE (RIDER INTERVENTION DEVELOPING EXPERIENCE)**

4.3.1 The RIDE course has been designed as a bespoke intervention for those motorcyclists whose behaviour has brought them to the attention of the Police. This course is designed to address the behaviour of those motorcyclists whose riding could be described as thrill or sensation seeking and also those who by the very nature of their riding could be defined as anti-social or careless, thereby attracting a criminal prosecution.

4.4 **OFFENCE CODES**

4.4.1 The Driving 4 Change and the What's Driving Us? courses will normally attract the same offence coding so therefore it is difficult to be prescriptive about which category of offence will be eligible for which course. The eligibility for referral to either of these courses will hinge on the evidence and any recommendation of the officer, whilst the decision-maker will decide on which course to offer if appropriate. Other factors to take into consideration will include the nature of the offence and the offending, any aggravating or mitigating circumstances and of course the explanation of the offender. As mobile phone offences are a deliberate action by the driver these offenders should be assigned to the What's Driving Us? course.

4.5 **TRAFFIC SIGNAL OFFENCES DETECTED BY AUTOMATIC CAMERA DEVICES**

4.5.1 The guidance is that on an activation of 3 seconds or more on red the offender should be referred for prosecution. Anything below that threshold can be considered for diversion to a course.

4.6 **YOUR BELT – YOUR LIFE COURSE**

4.6.1 This course provides an intervention for prosecution for those offenders detected for failing to wear a seatbelt, where there is no exemption. The course is completed either online or by a workbook. The course provider maintains the national database of offender completions. Seatbelt Offences detected in Northern Ireland attract three points on conviction and will be the subject of a classroom based course, which will include additional theory lessons. A person offending in Northern Ireland will only be eligible to take their course in Northern Ireland irrespective of which licensing authority issued their driving licence.

4.7 **GENERAL CONSIDERATIONS ALL COURSES**

4.7.1 In deciding a course of action, a constable or decision maker should take account of:

- The circumstances of the act/omission;
- Additional evidence e.g. speed, witness evidence, short or prolonged acts of driving;

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1 There **must** be a constable in the process to make the decision to divert from due process to a NDORS Course and this is a mandated requirement under Section 75 RTOA 1988 to offer a COFPN. This may be delegated authority by the Chief Constable in accordance with documented local force policy.
Admissions or interview evidence from the driver.

4.7.2 Where an offender's driving cannot be aligned against the eligibility criteria for one of the above courses, the officer or decision maker should conclude that the driving amounts to such a high degree of carelessness, or is so dangerous, that the case must be referred for prosecution. A careful assessment of the offender’s culpability and the evidential standard meeting the Crown Prosecution Service (CPS) Full Code Test, as outlined in the Code for Crown Prosecutors, must be made in choosing the preferred charge. Police should only charge Dangerous Driving if it is an anticipated guilty plea suitable for sentence in the magistrates’ court. Any other type of Dangerous Driving case must be referred to the CPS for advice on charge.

4.7.3 The legal definition of dangerous driving can only be applied in these circumstances which are as follows:

- Section 2A of the Road Traffic Act 1988 defines the term ‘dangerous driving’ for the purposes of the offences of causing death by dangerous driving under section 1 and dangerous driving under section 2 of the Act;
- 2A(1) For the purposes of sections 1 and 2 above a person is to be regarded as driving dangerously if (and, subject to subsection (2) below, only if):-
  (a) the way he drives falls far below what would be expected of a competent and careful driver, and
  (b) it would be obvious to a competent and careful driver that driving in that way would be dangerous.
- 2A(2) A person is also to be regarded as driving dangerously for the purposes of section 1 and 2 above if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous.
- 2A(3) In subsections 1 and 2 above ‘dangerous’ refers to danger either of injury to any person or of serious damage to property; and in determining for the purposes of those subsections what would be expected of, or obvious to, a competent and careful driver in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.

4.7.4 In deciding whether to offer a course, the following criteria must be applied:

- There must be a realistic prospect of conviction for the offence alleged. You cannot offer an NDORS course for one offence, and prosecute or issue fixed penalties for other offences arising from the same incident. You may take no further action in relation to other offences revealed at the time however they must be of a minor nature (see 6.2);
- A course cannot be offered within 3 years of any previous offence that has been dealt with by a similar NDORS accredited national course;
- There will be occasions where an offender is considered for an offer of a NDORS course within the life of an existing uncompleted course. If this is the case the second offer will be regarded as inappropriate and the conditional offer or summons process will deal with the second offence;
- At the time of the offence, the driver or rider must be the holder of a current driving licence or process a certificate of competence to drive or ride, (with the exception of passenger’s eligible for the Your Belt – Your Life course).

4.7.5 To confirm the acceptance of a driver onto a course, the following conditions must be met:

- The driver must be prepared to pay the course fee. (This condition is a matter between the course provider and the individual. The police will not enter into negotiations regarding an individual’s ability to pay nor will the subsequent default of a payment constitute a failure to complete the course);
- The driver must agree to complete the course in accordance with the conditions set by the provider of their choice. He/she must also permit their details to be kept on the national database and retained for the specified periods as declared in the offer letter.
4.8 YOUNG PERSONS

4.8.1 An “offer” of a course can be made to a young person (i.e. under the age of 18 years) provided they meet the required qualification criteria as above. If he/she defaults the matter reverts to a fixed penalty offer (only if the original offence was to be dealt with by a fixed penalty notice) or straight to prosecution. If prosecution (i.e. not fixed penalty) is being considered because he/she refused to attend or did not complete a course then in theory the police should consider the reprimand/final warning procedure because an offence above the fixed penalty threshold carries a high enough score on the National Matrix to justify not using diversion. There is no legal obligation to notify parents of the decision to send a young person on a National Driver Offender Retraining Course, however it may be that local force policy mandates this requirement.

5. SECTION 5 – THE ROLE OF THE POLICE

5.1 It is the responsibility of the police to investigate allegations of crime and to gather evidence. The police may also charge certain offences (including road traffic) under the provisions of the Director’s (Director of Public Prosecutions) Guidance on Charging. In doing so, they will consider the evidence and the public interest factors for and against prosecution.

5.2 The police also have discretion whether to commence a prosecution or deal with the matter by way of an out-of-court-disposal. Under s.3(2)(a) of the Prosecution of Offences Act 1985, fixed penalty road traffic offences and other minor road traffic offences are specified offences unless proceedings commence in the magistrates Court. Specified offences are therefore instituted by the police.

6. SECTION 6 – THE ROLE OF THE CROWN PROSECUTION SERVICE

6.1 CASES NOT INITIALLY REFERRED FOR DIVERSION TO NDORS

6.1.1 After considering the evidence and public interest factors, the police may decide an offence is too serious for diversion to NDORS and charge/summons the offender and refer the file to the CPS for prosecution. This would include the scenario where at the time of the offending, there are several offences revealed. If the Prosecutor, having applied the Full Code Test, decides it is in the public interest to offer an NDORS course rather than any prosecution taking place, the police must proceed via the NDORS route. This will not apply where the matter is excluded as a result of not meeting the requirements listed above in 4.7.1 and 4.7.2. In accordance with the Director’s Guidance on Charging, it is the responsibility of the CPS to decide charges in the most serious cases. Prosecutors will work with the police to ensure that serious driving cases are identified as early as possible so that the correct charging decisions can be made. The CPS will not be allocated the file until it becomes de-specified (as defined by the Prosecution of Offences Act 1985). Until that stage, the responsibility for the processing of the case will be that of the police, which is why the 6 month limitation period needs to be carefully monitored by the relevant police processing units.

6.2 POST NDORS REFERRAL CASES WHERE THERE IS NON-COMPLIANCE BY THE OFFENDER

6.2.1 This will apply to cases where the police have initially decided to divert the offender to an NDORS course, but the offender has failed to comply. Where it is determined that there is no reasonable excuse for non-compliance with the NDORS course, the offender may be charged with the original offence by the police if it is still within the 6 month limitation period.

6.2.2 When the matter is referred to the CPS for prosecution following non-compliance with NDORS, the file should contain:

- Information as to why prosecution is the preferred option;
- Any information of non-compliance with the NDORS course;
- Any reasons given by the offender for non-compliance;
• Details as to why the offence initially attracted an offer of an NDORS Course (by reference to the NDORS Policy), and why this is no longer an option.

6.2.3 This will provide the Prosecutor, when reviewing the case and applying the Full Code Test, an explanation why the public interest now favours prosecution in a case which would initially have been diverted to NDORS.

6.2.4 As the course is an alternative to a prosecution, it should ordinarily follow that unless there is a reasonable excuse why the course has not been accepted or completed, it is in the public interest that a prosecution should follow. However, each case must be considered on its own facts and circumstances.

6.2.5 The police should clearly endorse the MG6 detailing the decision and outlining why it is in the public interest to proceed by way of a prosecution.

7. SECTION 7 – MAGISTRATES’ COURTS POWERS

7.1 The magistrates have no power to offer NDORS. This has been communicated to all Bench Legal Managers, Justices’ Clerks and Legal Advisors as follows:

• When considering Section 3, Road Traffic Act 1988 offences (Careless and Inconsiderate Driving), courts have purported to refer defendants back to the police with an instruction that the defendant be offered or re-offered a course under the National Driver Offender Retraining Scheme. This is not an option for the court so this practice should not take place. In many cases the defendant will have had an offer of a course before they reach court and may have been ineligible or have already refused the offer made by the Police;

• The Police have operated the Scheme since 1991 as a pre-court disposal option for suitable offenders that have been deemed to have made a mistake or displayed an error of judgement whilst driving. The decision to offer this disposal rests with the police or the CPS. Any offender referred to a course by the police has to meet strict eligibility criteria and agree to take the course. They have to pay for the course and fully participate in it. An offender who completes a course has their name placed on a national register which is shared by all police forces. Once they have completed it they are ineligible for another course anywhere within 3 years of the original offence. The original offence is no longer proceeded with as the course is deemed to be sufficient. If they reoffend (including another offence that might otherwise have met the criteria above) the matter is dealt with in the normal manner (by way of prosecution).

7.2 Sections 34 and 35 of the Road Safety Act 2006 make provision for post court courses for drivers to be offered as part of a sentence. These provisions are yet to come into force.
Careless Driving – Use of Fixed Penalty Notice

In August 2013 the Government introduced a fixed penalty notice for careless and inconsiderate driving; it is anticipated this will result in an increase in the use of the national driver offender retraining scheme (NDORS) courses; What’s Driving Us and Driving for Change. It is necessary to provide guidance to help consistency and fairness and this guidance will cover the use and diversion to education.

The NDORS courses for careless driving have been developed and previously rolled out. Forces must provide/use both courses together to avoid claims that either deliberate or mistaken behaviours are being dealt with inconsistently.

Government Strategic Framework for Road Safety

Educational Interventions for Offenders

Education can be more effective than punishment in avoiding reoffending for some lower level violations that have taken place through a mistake or a lack of awareness. Our priorities are:

To divert more people guilty of minor road traffic infractions into remedial training, as an alternative to prosecution, by increasing the range of offences that have an educational alternative.

To work with the police and other agencies to develop effective national models for remedial courses that can be taken locally and are linked to the national standards for safe and responsible driving.

Careless Driving

In recent years convictions for careless driving have fallen significantly without evidence of a corresponding improvement in driver behaviour. To address this we intend to introduce a fixed penalty notice for careless driving to make it more efficient and less time consuming for the police to enforce. Providing the option of a fixed penalty notice for the offence would enable more people to be offered rehabilitative education to combat behaviour such as ‘tail-gating’ or ‘undertaking’. Some offenders would continue to be summoned to appear in court and we are not proposing to change the boundary between careless and dangerous driving. The latter will continue to always be dealt with by a court appearance. We will develop robust guidelines to ensure that the circumstances in which a fixed penalty notice is appropriate are clearly defined.

With the introduction of courses and fixed penalties for low harm careless and inconsiderate driving there are five ways in which a driver who commits an offence could be dealt with:

**SUMMONS** – the driver chooses whether to plead guilty and accept the fine awarded or not guilty and attend the Magistrates Court for the case to be heard and decided. This would be appropriate for the most extreme cases where the finding of guilt would necessitate a court to consider the level of fine and points awarded.

**SUMMONS WITH OFFER OF DRIVER OFFENDER RETRAINING** – the offender is reported at the roadside for summons (short form similar to FPN, Traffic Officer Report (TOR)). In the back office, having considered the level of offending, a decision is made whether to offer a NDORS option (Driving 4 Change or What’s Driving Us). If the offender is eligible (no previous course within the preceding 3 years), the course is accepted and attended successfully, the matter is closed as ‘no further action’ with the offender added to the DORS database. The offender may refuse the course and request a hearing, where a summons will be issued as above.
**Fixed Penalty** – if a fixed penalty ticket is offered by the officer the offender may choose to accept the fixed penalty, request summons to Court and then plead either guilty, accepting the court fine, or not guilty and the case is heard and decided. These will be the low harm cases referred to later in this guidance.

**Fixed Penalty with offer of National Driver Offender Retraining** – in this scenario when a Traffic Offence Report or similar is used at the roadside, the offender will be given a conditional offer fixed penalty, or the officer may issue a roadside fixed penalty (not the preferred option as it does have a level of bureaucracy that hinders the offer of a course). When submitted to the “back office” a decision will be made as to whether the situation meets the criteria (not possible with a roadside FPN) and if it does, the offender will be offered an NDORS option. If the course is accepted the matter is closed as ‘no further action’, on completion the offender is added to the DORS database.

The offender may refuse the course or fail to complete and either accepts the conditional offer fixed penalty, is summonsed if the course is not completed or if the offender requests a hearing; on receipt of the summons they may plead guilty and accept the fine awarded by the court or plead not guilty and the evidence be heard and the case decided by the Magistrate.

**Warning and no further action** – the officer may feel advice is appropriate and warn the driver before finalising the offence as no further action.

**When would the fixed penalty and summons routes be used?**

The introduction of the fixed penalty is not intended to alter current situations where serious offenders are summoned to Magistrates Court and all current levels of offending where summonses are progressed are expected to remain as is. The intention is that other, lower level careless driving offences, currently either ignored or simply dealt with by way of warning or advice, are considered for a fixed penalty or conditional offer fixed penalty notice; and that in the most appropriate cases, and in fact the majority of cases, the offender offered driver education.

The use of either a simple ‘report for process’ notice, recently introduced traffic offence report or fixed penalty (Conditional Offer the preferred way as a fixed penalty issued at the roadside does not lend itself to driver diversion and back office decision processes) rather than a full prosecution file will, we hope, reduce the time and in suitable cases the bureaucracy for officers, thereby increasing the opportunity for more investigations and reporting of those lower level careless driving offences and place the majority into driver education. If successful, there may be an improvement in compliance levels and safer driving/improved standards thus reducing the number and severity of collisions.

As mentioned previously the intention is to raise the number of offences identified and the action taken by the police against inconsiderate and lower level aggressive driving, to improve overall driving standards and reduce the number of times other road users are endangered or inconvenienced by careless and inconsiderate driving.

Report for process (not an easy process), fixed penalties or conditional offer fixed penalties will be issued in situations that are observed by police officers where there are no victims, no collisions and no public complaint, and not those which are only witnessed by other drivers or road users or after collisions (these being summoned before a Magistrate as now). As previously outlined, it is intended that fixed penalty situations will in most scenarios be converted to a period of driver training. The officer at the roadside must not intimate or offer a course as this can only be done when DORS has been checked for a previous offer/attendance.

Officers at the scene should have considered the offending and the need for summons or fixed penalty/traffic offence reports, the police decision makers in the ‘back-office’ will need to consider the cases submitted on merit, comparing the behaviour with the following guidelines and then considering the criteria for each course to ensure the diversion of the offender meets the desired outcome.
REPORT/CONDITIONAL OFFER/FIXED PENALTY NOTICE - OFFICER OBSERVED LOW LEVEL CARELESS DRIVING OR ALL INCONSIDERATE DRIVING. Situations of lower level aggressive and inconsiderate driving where other drivers are not unduly affected, such as driving too close to the vehicle in front, failing to give way at a junction (no evasive action by another driver) overtaking and forcing into a queue of traffic, wrong lane at a roundabout, ignoring a lane closed sign and forcing into an orderly queue, lane discipline such as remaining in lane two or three when lane one is empty and there is no other vehicle to overtake, inappropriate speed, wheel spins, hand brake turns as well as other similar careless driving manoeuvres.

REPORT/SUMMONS – INCLUDING OFFICER OBSERVED, WITNESSED ONLY AND COLLISIONS. Situations of more aggressive driving where other drivers are endangered or have to take real evasive action, such as fast overtakes and lane hopping/weaving with other driving having to evade, pulling out in front of other moving vehicle that needs to brake, overtaking and causing the approaching vehicle to brake or take evading action or pulling in causing the overtaken vehicle to brake or swerve, wrong lane at roundabout causing another vehicle on the roundabout to brake or swerve, staying in lane two or three with vehicles behind being held up or forced to pass on nearside and other similar situations.