

Dangerous Dog Offences Consultation



Dangerous Dog Offences Guideline

Consultation

Published on 17 March 2015

This consultation will end on 9 June 2015

A consultation produced by the Sentencing Council.
This information is also available on the Sentencing Council's website:

www.sentencingcouncil.org.uk

About this consultation

To:

This consultation is open to everyone including members of the public, the judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.

Duration:

From 17 March 2015 to 9 June 2015

Enquiries (including requests for this paper in an alternative format) to:

Office of the Sentencing Council

Royal Courts of Justice

(full address as below)

Tel: 020 7071 5793

Email: info@sentencingcouncil.gsi.gov.uk

How to respond:

Please send your response by 9 June 2015 to:

Mandy Banks

Office of the Sentencing Council

Room EB20

Royal Courts of Justice

London WC2A 2LL

DX: 44450 RCJ/Strand

Tel: 020 7071 5793

Email: consultation@sentencingcouncil.gsi.gov.uk

Additional ways to feed in your views:

This consultation exercise is accompanied by a resource assessment and an equality impact assessment and an online questionnaire, all of which can be found at: www.sentencingcouncil.org.uk

A series of consultation meetings is also taking place. For further information please use the 'Enquiries' contact details above.

Response paper:

Following the conclusion of this consultation exercise, a response will be published at:

www.sentencingcouncil.org.uk

Freedom of Information:

We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents' names in any final report we publish. If you wish to submit a confidential response, you should contact us before sending the response.

PLEASE NOTE – we will disregard automatic confidentiality statements generated by an IT system.

© Crown copyright 2015

You may reuse this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence v.3. To view this licence visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/> or email PSI@nationalarchives.gsi.gov.uk.

Contents

Introduction	4
Section one: Overarching issues and the context of the guidelines	6
Section two: Developing the guideline	10
Section three: Dog dangerously out of control in any place where death is caused	14
Section four: Dog dangerously out of control in any place where person is injured	28
Section five: Dog dangerously out of control in any place where an assistance dog is injured or killed	36
Section six: Dog dangerously out of control in any place	44
Section seven: Possession of a prohibited dog, breeding, selling, exchanging or advertising a prohibited dog	50
Annex A: Summary of consultation questions	56
Annex B: Background to guidelines	62
Annex C: Draft guidelines	64
Annex D: Fine bands and community orders	95
Annex E: Explanation of terms	96

Introduction

What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines for the courts to use when passing a sentence. Part of the Council's remit¹ is to conduct public consultations on the sentencing of offenders.

Why dangerous dog offences again?

The Sentencing Council issued a dangerous dog offences guideline in August 2012.² In May 2014 amendments to the Dangerous Dogs Act 1991 were enacted through the Anti-social Behaviour, Crime and Policing Act 2014,³ which made such substantial changes to the offences and the maximum penalties that the Council considered it would be appropriate to revise comprehensively the existing guideline. The Council considered simply updating the existing guideline to reflect the amended legislation, particularly as overall numbers sentenced for these cases are low, but concluded that this option would not give sentencers adequate guidance, because the changes were so wide ranging. We have therefore drafted this revision of the guidelines on which we are now consulting. The principal changes are:

- *Extending the Dangerous Dogs Act 1991 to private property* – previously under section 3(1) of the Act it was an offence to own or be in charge of a dog that was dangerously out of control in a public place or a private place where it had no right to be. As amended it is now an offence to own or be in charge of a dog that is dangerously out of control in any place, including all private property. (The Act as amended provides a defence to householders in the case of trespassers).
- *Increasing the maximum penalties* – the maximum penalties for aggravated offences under section 3 of the Act increase from two years' imprisonment to 14 years where the death of a person occurs, and from two to five years where a person is injured.
- *Extending the law to cover attacks on assistance dogs* – previously an offence may have been committed if an assisted person feared injury to themselves from a dog that was dangerously out of control. The Act as amended made it an offence to own or be in charge of a dog that attacks an assistance dog. Such an attack will be treated as an aggravated offence with a maximum penalty of three years' imprisonment. The definition of an 'assistance dog' includes dogs trained to guide person with a visual impairment, a hearing impairment or other disability.
- *Dangerousness test* – if a dog has been found to be dangerously out of control, or if it belongs to a prohibited type, the owner may apply to the courts for it to be exempt from destruction. The court must consider whether the dog poses a danger to public safety and if so whether it should be put down or returned to the owner under strict conditions. In 2012 a High Court judgment⁴ ruled that the legislation as it then stood did not allow the court to consider the character of the owner when assessing whether the dog posed a danger to public safety. The Act now makes it clear that the character of the owner and any other relevant circumstances should be taken into account, and will mark a return to the law as it was understood to operate prior to the judgment.

1 ss.118-136 Coroners and Justice Act 2009

2 <http://www.sentencingcouncil.org.uk/publications/item/dangerous-dog-offences-definitive-guideline/>

3 <http://www.legislation.gov.uk/ukpga/2014/12/part/7/enacted>

4 R v Sandhu [2012] EWHC 1658 (Admin)

Which offences are covered by the guideline?

The Council carefully considered how to provide sentencing guidance for offences covered by the revised legislation, and decided that there should be five sub-guidelines:

- Dog dangerously out of control in any place causing the death of a person.
- Dog dangerously out of control in any place where a person is injured.
- Dog dangerously out of control in any place where an assistance dog is injured.
- Dog dangerously out of control in any place.
- Possession of a prohibited dog, breeding, selling, exchanging or advertising a prohibited dog.

Consideration was given to grouping certain offences together, such as the first three offences shown above, but the offences are sufficiently different, each with different statutory maxima, for individual guidelines to be more appropriate.

What is the Council consulting about?

The Council has produced this consultation paper in order to seek the views of as many people as possible interested in the sentencing of dangerous dog offences.

However, it is important to clarify that the Council is consulting on sentencing these offences and not the legislation upon which such offences are based. The relevant legislation is a matter for Parliament and is, therefore, outside the scope of this exercise.

Through this consultation process, the Council is seeking views on:

- the principal factors that make any of the offences included within the draft guideline more or less serious;
- the additional factors that should influence the sentence;
- the approach taken to structuring the draft guidelines;
- the sentences that should be passed for dangerous dog offences; and
- anything else that you think should be considered.

A summary of the consultation questions can be found at Annex A.

What else is happening as part of the consultation process?

This is a 12-week public consultation. During the consultation period, the Council will host a number of consultation meetings to seek views from groups with an interest in this area as well as with sentencers. Once the consultation exercise is over and the results considered, a final guideline will be published and used by all adult courts.

Alongside this consultation paper, the Council has produced an online questionnaire which allows people to respond to the consultation questions through the Sentencing Council website. The Council has also produced a resource assessment and an equality impact assessment. The online questionnaire and these documents can be found on the Sentencing Council's website: www.sentencingcouncil.org.uk

Section one: Overarching issues and the context of the guidelines

Background to Dangerous Dog offences

In England and Wales in the last 10 years, at least eight adults and 13 children have died from dog attacks. In the 12 months to January 2014, some 6,740 people required hospital treatment as a result of dog attacks, an increase of six per cent from the previous 12 months.⁵ These cases by their nature are very distressing for all concerned and understandably attract significant attention. The Council has therefore approached the revision of these guidelines with the utmost sensitivity and care.

Dangerous dog offences can be tried in magistrates' courts or in the Crown Court, and prosecutions have risen in the courts in recent years. In England and Wales in 2013, 636 adults were sentenced for having a dog dangerously out of control in a public place, or a private place where the dog was not permitted to be, which caused injury, compared to 333 adults in 2003 for the same offence.

To assist in guideline development, the Council looked in detail at UK cases involving a death from 2005 to 2014, and at a sample of cases of injury from 2012 to 2014. Very few dangerous dog cases involving a death have been prosecuted, as most attacks occurred in a private place where the dog had a right to be (for example, its home) where no prosecution could be brought under the previous legislation. In some dangerous dog cases involving a death, manslaughter charges were brought instead. In a number of cases, offences involving dogs were charged alongside other offences, usually assault offences.

Dangerous dog offences bear some similarity to certain motoring offences, in that cases can be characterised by a range of culpability on the part of offenders, which nevertheless results in high harm to victims.

Dangerous dog offences are strict liability offences, meaning that there does not need to be any intent, premeditation or fault on the part of the offender; the offence can be committed by the fact that the prohibited state of affairs has occurred, and it is caused at least in part through an act or omission of the offender.⁶

In developing the revised guidelines, the Council has retained some of the factors used in the existing definitive guideline, and changed others. In the four years that have passed since the existing guideline was developed it was felt appropriate to revise the approach to the assessment of some of the dangerous dog offences, and of course some changes were necessary due to the changes in legislation.

⁵ <http://www.publications.parliament.uk/pa/cm201314/cmpublic/antisocialbehaviour/memo/asb42.htm>
<http://news.sky.com/story/1354982/dangerous-dogs-heavy-penalties-under-new-law>.

⁶ R v Robinson-Pierre [2013] EWCA Crim 2396

For example, in the existing guideline there is wording which allows sentencers to move up from the starting point for cases of particular gravity. This wording has not been included in the revised guidelines as the revised culpability and harm factors allow for greater consideration of the seriousness of the offence than previously.

Applicability of guidelines

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this draft guideline. Following consultation, when a definitive guideline is produced it will apply to all offenders aged 18 and older, who are sentenced on or after the guideline comes into force, regardless of the date of the offence.

Section 125(1) Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court -

- (a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so.”

When issued as a definitive guideline this guideline will apply only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council’s definitive guideline, *Overarching Principles – Sentencing Youths*.⁷

Structure, ranges and starting points

For the purposes of section 125(3)-(4) of the Coroners and Justice Act 2009, the guideline specifies *offence ranges* – the range of sentences appropriate for each type of offence. Within each offence, the Council has specified a number of categories which reflect varying degrees of seriousness. The offence range is split into category ranges – sentences appropriate for each level of seriousness. The Council has also identified a starting point within each category.

Starting points define the position within a category range from which to start calculating the provisional sentence. As in earlier Sentencing Council definitive guidelines, this guideline adopts an offence-based starting point. Starting points apply to all offences within the corresponding category and are applicable to all offenders, in all cases. Once the starting point is established, the court should consider further aggravating and mitigating factors and previous convictions so as to adjust the sentence within the range. Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial. Credit for a guilty plea is taken into consideration only at step four in the decision making process, after the appropriate sentence has been identified.

Information on community orders and fine bands is set out at Annex D.

7 <http://www.sentencingcouncil.org.uk/publications/item/overarching-principles-sentencing-youths-definitive-guideline/>

The Council's aims

In preparing this draft guideline, the Council has had regard to the purposes of sentencing and to its statutory duties. The Council's aim throughout has been to ensure that all sentences are proportionate to the offence committed and in relation to other offences.

Approach to victims

The Council is required to consider the impact of sentencing decisions on victims of offences. The harm caused by an offence is considered at step one of the guidelines, as a principal factor of the offence. In the development of this guideline, the Council gave very careful thought to how to reflect the often devastating impact these offences can have on victims and their families. The Council considered this issue individually in the context of each offence the draft guideline covers, as the offences differ very significantly.

Data analysis and research

The Council considered the available statistical data from the Ministry of Justice Court Proceedings Database for the existing dangerous dog offences.⁸ However, this data had limitations, because very few cases involving a death have been sentenced. The data also provided little assistance in developing the sentence ranges for the new maxima, given the significant increase in the maximum penalties for offences: from two to 14 years for offences causing death and two to five years for offences causing injury. In addition, the Council had to consider what would be appropriate sentence ranges for a completely new offence of attacks on assistance dogs, for which no sentencing data exists.

The Council was mindful of the factors considered by the Government⁹ in creating the new maxima for dangerous dog offences: the Government referred to the 14 year maximum for causing death by dangerous driving, and the five year maximum for assault occasioning actual bodily harm. Accordingly, in developing the sentence ranges, the Council considered sentencing data for driving, assault and (as some dangerous dog offences were previously charged as manslaughter) manslaughter cases. In the Council's view, however, sentencing data for driving offences is of the most relevance, given that for assault cases, there has to be an element of recklessness or intent, which is not required in either motoring or dangerous dog cases.

To assist the Council in developing the guideline, research was conducted into the following issues:

- At an early stage, a review of international policies and data on dangerous dog offences, in order to find out whether any lessons could be learned from other countries' experiences of enacting and enforcing dangerous dog laws.
- A qualitative content analysis of the transcripts of the sentencing remarks for 20 recent Crown Court cases involving death or injury by a dangerous dog attack, in order to help understand the key factors influencing sentencing decisions in these cases. These factors were compared to the factors within guidelines for other offences involving the most serious level of harm across a broad spectrum of culpability, for example motoring offences causing death.

⁸ <http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=analysis-and-research-bulletin&topic=&year>

⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/253494/dangerous-dogs-max-penalties-dog-attacks-sum-resp-20131029.pdf.

- In-depth telephone interviews with 12 Crown Court judges and district judges who had recently tried a dangerous dog case. Four of these involved a death, and the remaining eight involved injury or injuries. The judges were asked to apply the draft guideline to their case to test what impact it might have on sentencing levels. They explained their thinking and offered critiques and suggestions as they went along. These interviews had a direct bearing on the draft guideline in this consultation.

The Council also discussed its proposals with organisations with specific interests in this field, to help inform the development of the guideline.

Section two: Developing the guideline

Assessing seriousness

The guideline sets out a step-by-step decision-making process for the court to use when sentencing each type of offence. This means that all sentencers are adopting a consistent approach to sentencing across England and Wales.

The particular circumstances of each offence covered by the draft guideline which reaches court will be different. The draft guideline aims to help the court to decide how serious an offence is by reference to a series of factors which in turn determine what the sentence starting point should be.

A number of case studies based on the draft guidelines have been included within the paper. We are particularly interested in views on the suggested sentence ranges in these examples. All input is greatly appreciated, even if you only have time to complete one or two of the case studies.

The first two steps that the sentencer follows are about assessing the seriousness of an individual offence. These two steps are described below.

STEP ONE

Determining the offence category

The first step that the court will take is to consider the principal factors of the offence. These are the factors that the Council considers are the most important in deciding the seriousness of the offence. The offence category reflects the severity of the offence and sets the starting point and range of sentences within which the offender is sentenced. The list of factors at step one is exhaustive.

The draft guideline directs the court to consider the factors relating to the **culpability** of the offender in committing the offence and the **harm** that has been caused. The culpability factors have been developed to assess the very differing levels of culpability which may be present in dangerous dog offences. In broad terms, for this offence culpability relates to how deliberate and irresponsible or otherwise, an offender's behaviour may have been.

In the sentencing ranges contained within the draft guidelines culpability is the principal determinant of the sentence. The more culpable an offender is, the more severe the sentence, although appropriate sentence levels are available for offences where high levels of harm have been caused. Using this principle, an offender who uses their dog as a weapon, but whose dog only

causes minor injury through sheer luck, perhaps because the victim is wearing heavy clothing, will be highly culpable and is likely to be sentenced more severely than an offender who offends through a momentary lapse of control, such as dropping the lead while distracted resulting in their dog causing serious injury.

Some offences may have characteristics which fall into different categories. In these cases culpability is to be assessed by balancing the characteristics and reaching an assessment of the offender's overall culpability. The culpability levels are defined as '*high*', '*medium*' and '*lesser*'.

There are variations in the approach taken to the assessment of harm within the draft guidelines, in order to appropriately assess the harm relevant to each particular offence, given the differing nature of offences, from an offence of the utmost seriousness, where a death has occurred, to an offence of advertising a prohibited dog.

STEP TWO

Starting point and category range

Once the court has determined the offence category the next step is to decide upon a provisional sentence using the relevant starting point and category range. The court must then consider any relevant aggravating and mitigating factors and the weight that they are to be given. The factors at step two are non-exhaustive; therefore the court is able to take into account factors that have not been listed where they are deemed to be pertinent to the particular case.

Once the court has determined the starting point and taken into account relevant aggravating and mitigating factors there are six further steps to follow.

STEP THREE

Consider any factors which indicate a reduction, for assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the Guilty Plea guideline.¹⁰

¹⁰ <http://www.sentencingcouncil.org.uk/publications/item/reduction-in-sentence-for-a-guilty-plea-definitive-guideline/>

STEP FIVE

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.¹¹

STEP SIX

Compensation and ancillary orders

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:

Disqualification from having a dog

The court **may** disqualify the offender from having custody of a dog. The test the court should consider is whether the offender is a fit and proper person to have custody of a dog.

Destruction order/contingent destruction order

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court.

If the dog is a **prohibited dog** refer to the guideline for possession of a prohibited dog in relation to destruction/contingent destruction orders.

The court **shall** make a destruction order unless the court is satisfied that the dog would not constitute a danger to public safety.

In reaching a decision, the court should consider the relevant circumstances which **must** include:

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances.

¹¹ <http://www.sentencingcouncil.org.uk/publications/item/offences-taken-into-consideration-and-totality-definitive-guideline/>

If the court is satisfied that the dog would not constitute a danger to public safety and the dog is not prohibited, it **may** make a contingent destruction order requiring the dog be kept under proper control. A contingent destruction order may specify the measures to be taken by the owner for keeping the dog under proper control, which include:

- muzzling;
- keeping on a lead;
- neutering in appropriate cases; and
- excluding it from a specified place.

Where the court makes a destruction order, it **may** order the offender to pay what it determines to be the reasonable expenses of destroying the dog and keeping it pending its destruction.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Section three: Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place) where death is caused

(Draft guideline at page 65)

This guideline is for sentencing dangerous dog offences in which a person dies. The Council has given very careful thought to developing this guideline, in order to provide appropriate guidance for what is an offence with consequences of the utmost seriousness.

As set out in section one, few cases involving a death have been prosecuted, as most deaths occurred in a private place where the dog had a right to be, which it was not possible to charge under the previous dangerous dog legislation. It is possible that more prosecutions may be brought under the amended legislation, where previously offenders may have been charged with manslaughter, for example, although these cases will be small in number.

STEP ONE

The first step of the guideline is to consider the culpability level of the offender by the assessment of a series of factors.

Culpability factors

Category A – High culpability

As shown in the table on page 16, there are three factors that indicate the highest level of culpability. The focus in this category is on offenders who have acted deliberately; the offence occurs because of an action on their part, such as using a dog as a weapon; breeding or training a dog to be aggressive; or choosing not to comply with orders issued by a court regarding the dog, such as contingency destruction orders requiring the dog to be muzzled.

The factor of a dog bred or trained to be aggressive reflects results from the research with judges (discussed at page 9 in section one). Some judges felt that if a dog is bred or trained to be aggressive, and causes death or injury, this should place the offender in the highest level of culpability. This factor was also seen as capturing the criminal context in which some dangerous dogs are kept, for example drug dealers keeping an aggressive dog as a status symbol and enforcer of their criminal activities.

Category B – Medium culpability

As this offence potentially covers a wide range of offending behaviour, the Council has given careful thought to the factors that should be included in the assessment of culpability, but it is possible that not every case will be captured by the factors specified, so for this reason the wording ‘all other cases where characteristics A or C are not present’ has been included. This wording has been used in a number of other guidelines.

There are five specific factors in this category. The focus here is on offenders who have been negligent or failed to act in some way, who have caused an incident to occur through failing to take actions which could have prevented an incident occurring. Analysis of sentencing transcripts of dangerous dog cases prompted the inclusion of three of these factors: ‘failure to act on prior knowledge of the dog’s aggressive behaviour’, in cases where there were no explicit warnings, but earlier events should have prompted the owner to take suitable measures; ‘ill treatment or failure to ensure welfare needs of dog’ (previously an aggravating feature in the existing guideline); and ‘failure to intervene in an incident, where it would have been reasonable to do so’. This last factor could be an incident where the offender could have safely brought their dog under control, and thereby prevented an incident from happening, but chose not to do so.

The factor ‘failure to respond to warnings or concerns expressed by others about the dogs’ behaviour’ in medium culpability is designed to capture offenders who have chosen to ignore unofficial concerns expressed by others such as family or neighbours regarding the dog, unlike the factor in culpability A, ‘failure to respond to official warnings or to comply with orders concerning the dog’, which captures offenders who have chosen not to comply with official warnings or orders. ‘Lack of safety or control measures taken in situations where an incident could reasonably have been foreseen’ is suggested to cover incidents such as an owner letting the dog run free without a lead or muzzle in an area frequented by children, when they know the dog behaves unpredictably around children.

Category C – Lesser culpability

The lowest level of culpability for this serious offence will include offenders who on the whole may have acted responsibly and taken safety measures, but an incident nevertheless occurs, which could not have been foreseen, or was the result of a freak incident, or once it occurred, the offender tried to intervene to stop the attack.

The inclusion of the factor ‘momentary lapse of control/attention’, which is referred to as a factor indicating lesser seriousness in the causing death by careless driving guideline¹² follows the analysis of the sentencing remarks which suggested that it was appropriate to be included as a factor in the offences dealing with injury cases. The Council felt that this was also an appropriate factor to be included in this guideline, given that this is a strict liability offence. This would capture a situation where a responsible and careful owner is briefly distracted which enables their dog to escape. Offenders will be charged where an offence has been committed, but could be at the very lowest level of culpability. Please see Case Study C at the end of this section for an example of this.

¹² <http://www.sentencingcouncil.org.uk/publications/item/causing-death-by-driving-definitive-guideline/>

STEP ONE
Determining the offence category

In order to determine the category the court should assess **culpability** and **harm**. The court should determine the offence category with reference only to the factors in the tables below.

The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender’s culpability.**

CULPABILITY demonstrated by one or more of the following:

A – High culpability:
Dog used as a weapon or to intimidate people
Dog bred or trained to be aggressive
Failure to respond to official warnings or to comply with orders concerning the dog
B – Medium culpability:
All other cases where characteristics for categories A or C are not present, and in particular:
Failure to respond to warnings or concerns expressed by others about the dog’s behaviour
Failure to act on prior knowledge of the dog’s aggressive behaviour
Lack of safety or control measures taken in situations where an incident could reasonably have been foreseen
Failure to intervene in the incident (where it would have been reasonable to do so)
Ill treatment or failure to ensure welfare needs of dog (where connected to the offence and where not charged separately)
C – Lesser culpability:
Attempts made to regain control of the dog and/or intervene
Provocation of dog without fault of the offender
Evidence of safety or control measures having been taken
Incident could not have reasonably been foreseen by the offender
Momentary lapse of control/attention

Q1

Do you agree that guidance for this offence should be contained within a separate guideline, and not in a combined guideline which includes other offences?

Q2

Do you agree with the proposed approach to the assessment of culpability?

Q3

Are there additional factors that should be included at step one?

Q4

Should any of the factors be considered at step two?

Harm factors

Once the court has determined the level of culpability, the next step is to consider the harm caused by the offence. Given that this offence by its very nature involves a fatality, careful consideration was given by the Council to the assessment of harm. One possible approach was to have more than one level of harm. Clearly the harm involved in this offence is already at the highest level, but the Council considered whether there were any elements to an offence which would elevate the harm involved, such as if the victim was a child or otherwise vulnerable; if more than one dog was involved; more than one death resulted from the same attack; or if it was a sustained attack.

The Council concluded that it was not appropriate to have more than one level of harm. The Council felt that although it could be argued that the defencelessness of a child or other vulnerable person, who may rely on others for their safety, weighed heavily in the consideration of the offence, all deaths are a tragedy to the victims' loved ones and must be assessed as harm at the highest level.

Regarding sustained attacks, all of the cases studied fitted this description or had no witnesses so the information was not available. The Council did not find any cases where more than one death was caused. There were cases where more than one dog had been involved in a death, but as horrific as an attack would be, the Council concluded that this did not cause any greater level of harm than a death caused by one dog.

The Council was also very mindful of appearing to 'rank' or 'grade' one death as worse than another, something which could be viewed as an insensitive and crude way of assessing harm.

This approach is supported by the Council's research. An early draft of the guideline with two levels of harm, as outlined above, was discussed in the research with judges. Several of the judges interviewed who had sentenced dangerous dog cases involving a death did not agree with the inclusion of two levels of harm in cases of death. They felt that one person's death is as serious as another's, and that everyone is vulnerable when faced with a dangerous dog intent on serious attack.

Therefore, the Council is of the view that the most appropriate way to assess the harm caused by the offence is to have one level of harm set at the highest level, with the ability for the initial sentence to be adjusted as appropriate by any aggravating factors that might be relevant. The wording for the treatment of harm can be seen in the box below. The factors mentioned above, 'more than one dog involved' and 'victim is a child or otherwise vulnerable because of personal circumstances' have been included in the list of aggravating factors which can be seen on page 21, so while they should not be used to assess the level of harm, their existence as an aggravating factor could potentially increase the sentence.

Harm

There is no variation in the level of harm caused, as by definition the harm involved in an offence where a death is caused is always of the utmost seriousness.

Q5

Do you agree with the proposed approach to the assessment of harm?

Q6

If not, please tell us why and include any suggested alternative ways to assess harm for this offence.

STEP TWO

Once the court has assessed culpability and harm at step one, the next step is to identify the starting point to reach a sentence within the given category range.

Sentence levels

In developing sentence ranges for this offence, the Council was in the unusual position of creating a sentence range for which the maximum penalty had increased so considerably from two years to 14 years. It has therefore been a more complex exercise than usual to develop the range. The ranges have been formulated from statistical data from the Court Proceedings Database; analysis of the transcripts of sentencing remarks for dangerous dog cases; the research exercise with judges; and reference to the ranges for comparable offences, such as causing death by dangerous driving, which has the same statutory maximum of 14 years. The sentence ranges can be seen in the table on page 20.

The proposed sentence ranges have been decided by the Council after very careful consideration of the issues involved; different views, particularly on what the top of the range should be, were debated and discussed. Following deliberations on the potential options, the Council's proposal is for the sentence range for this offence to extend to the statutory maximum of 14 years' custody. In general the Sentencing Council guidelines have offence ranges that allow for 'headroom', so that exceptionally serious cases can be sentenced outside of a set offence range, up to the statutory maximum. An option the Council considered was setting the top of the range at 12 years, which allows an extra two years on top to the statutory maximum for exceptional cases.

However, with this offence all cases are exceptionally serious in terms of the harm caused, which is death. The Council decided to take a principled approach for this particular guideline to extend the range to the statutory maximum, as the Council felt that there will be no exceptional circumstances that could make the harm more serious.

The seriousness of cases will vary in terms of the culpability of the offender and this is reflected in the ranges in the three culpability levels. This is an offence that is thankfully very rare and the draft guideline has been formulated to cover a very wide range of levels of culpability, from the person who has a momentary lapse of concentration to the person who uses the dog as a weapon to attack the victim. Where an offender is assessed as having high culpability and where there are several aggravating factors present, the Council considers that the guideline should allow for the court to sentence up to the maximum allowed by law for the offence. However, the Council does not envisage that there will be many, if any, cases that will justify the maximum sentence.

A similar approach is taken in the Sentencing Guidelines Council guideline for causing death by dangerous driving,¹³ where the offence range also extends to the maximum sentence of 14 years, and in the guideline for manslaughter by reason of provocation,¹⁴ where the offence range extends to life imprisonment.

At the lowest level of culpability, the sentence ranges go from a high level community order to two years' custody, with a starting point of one year's custody. The Council is mindful that this is a strict liability offence, so feels it is appropriate that sentencers have a non-custodial option for offenders who fall into the lowest level of culpability. Interviews with judges endorsed the inclusion of high level community orders in this category.

This has resulted in fairly broad ranges, which the Council feels will allow courts to sentence offenders appropriately in cases which may cover a wide range of offending behaviour.

The Council is very interested to hear views on the proposed sentence ranges for this offence, recognising that there may be a range of different opinions held on the proposals. Responses will assist the Council in further discussions before issuing a final guideline.

¹³ <http://www.sentencingcouncil.org.uk/publications/item/causing-death-by-driving-definitive-guideline/>

¹⁴ <http://www.sentencingcouncil.org.uk/publications/item/manlaughter-by-reason-of-provocation-definitive-guideline/>

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions.

High culpability	Starting point 8 years' custody	Category range 6 – 14 years' custody
Medium culpability	Starting point 4 years' custody	Category range 2 – 7 years' custody
Lesser culpability	Starting point 1 year's custody	Category range High level community order – 2 years' custody

Scenarios illustrating how the guideline is to be used and the resulting sentence ranges are at pages 24 to 26.

Q7

Do you have any general comments on the sentence ranges and starting points?

Q8

Please tell us your views on the upper boundary of the proposed sentence range for a high culpability offence sitting at the statutory maximum of 14 years. If applicable, please include any alternative suggestions for the top of the sentencing range for a high culpability offence.

Q9

Please tell us your views on the lower boundary of the proposed sentence range for a lesser culpability offence sitting at a high level community order. If applicable, please include any alternative suggestions for the bottom of the sentencing range for a lesser culpability offence.

The court should then consider any adjustment for any aggravating or mitigating factors. These factors are included to give the court the opportunity to consider the wider context of the offence and any relevant circumstances relating to the offender. It is at the court's discretion whether to remain at the starting point or to move up or down from it. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors. These lists are non-exhaustive but are intended to contain the most common factors which provide context to the commission of the particular offence.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors:

Victim is a child or otherwise vulnerable because of personal circumstances

More than one dog involved

Location of the offence

Sustained or repeated attack

Significant ongoing effect on witness(es)

Serious injury caused to others who attempted to intervene in the incident

Offence motivated by, or demonstrating hostility based on, but not limited to, the victim's age, sex, or disability

Failing to take adequate precautions to prevent dog from escaping

Allowing person insufficiently experienced or trained, to be in charge of dog

Dog known to be prohibited

Lack or loss of control of dog due to influence of alcohol or drugs

Offence committed against those working in the public sector or providing a service to the public

Injury to other animals

Established evidence of community/wider impact

Failure to comply with current court orders (other than any referenced in culpability A)

Offence committed on licence

Offences taken into consideration

'Previous convictions' and 'offence committed whilst on bail' are factors which the court is required in statute to consider when assessing the seriousness of an offence and their inclusion is therefore not subject to consultation. As with previous guidelines issued by the Council, these factors are considered at step two after the starting point has been established.

The following factors are standard aggravating factors that have been included in other definitive guidelines and which are self explanatory. They are not subject to consultation.

- Established evidence of community/wider impact
- Failure to comply with current court orders (other than any referenced in culpability A)
- Offence committed on licence
- Offences taken into consideration

The factor 'Victim is a child or otherwise vulnerable because of personal circumstances' is included as an aggravating factor, as discussed earlier on page 18. The fact that the victim is a child or a vulnerable person, may make the offence more serious as they would have less ability to fight off an attack or call for help. Similarly, a 'sustained or repeated attack', or 'more than one dog involved' may make the offence more serious.

The 'location of the offence' may make the offence more serious. These factors do not specify the location as they are offence specific. For example, an attack in the home may be more serious as the victim would have been less likely to get help than if the attack had happened in public, and the home is seen as a place of safety.

The analysis of sentencing remarks suggested that there is appreciable psychological impact on witnesses who see a dangerous dog attack, which prompted the inclusion of 'significant ongoing effect on witness(es)'. There could also be serious injury caused to others who attempted to intervene in the incident, which may make the offence more serious.

'Offence motivated by, or demonstrating hostility based on, but not limited to, the victim's age, sex or disability'. This has been included to reflect the additional seriousness of an offence if it has been motivated by hostility towards a victim based on any characteristics such as age, sex or disability. Similar wording is included in other Council guidelines in the assessment of culpability. It is proposed to include it as an aggravating factor for this offence as it is thought that this factor is less likely to be an integral part of the offence in dangerous dog offences, but nevertheless if the factor is present it can make the offence more serious and can increase the sentence from the starting point.

Additional factors that may make the offence more serious are: 'failing to take adequate precautions to prevent a dog escaping'; 'allowing a person insufficiently experienced to be in charge of a dog'; 'a dog that is known to be a prohibited breed'; 'loss of control in an incident due to influence of alcohol or drugs'; 'injury to other animals in the incident'; and if the 'offence is committed against those working in the public sector or providing a service to the public'.

Q10

Do you agree with the aggravating factors? Please state which, if any, should be removed or added.

Q11

Should any of the factors be considered at step one?

Factors reducing seriousness or reflecting personal mitigation:No previous convictions **or** no relevant/recent convictions

No previous complaints against, or incidents involving the dog

Evidence of responsible ownership

Remorse

Good character and/or exemplary conduct

Serious medical condition requiring urgent, intensive or long-term treatment

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability

Sole or primary carer for dependent relatives

Determination and/or demonstration of steps having been taken to address offending behaviour

There are no statutory mitigating factors. Most of the factors included above within the draft guideline are commonplace within guidelines and are not subject to consultation. Sentencers are experienced in applying these criteria and attaching the appropriate weight (if any) to them.

Two additional mitigating factors have been included for this guideline, 'no previous complaints against, or incidents involving the dog', and 'evidence of responsible ownership' as, if these factors are present in this offence, it may be appropriate for the court to consider them in mitigation when deciding the sentence.

The analysis of sentencing remarks also suggested that 'victim is a close friend or relative' could be included as a mitigating factor, since most deaths occur in the home and are likely to involve a friend or relative of the offender, which can cause the offender considerable anguish. However, the judges interviewed in the research work were divided as to whether this should be included as a mitigating factor, and in some instances judges took account of the offender's anguish under the remorse factor. Although this factor has not been included, as the list is non-exhaustive, courts would be able to take this into account if they consider it appropriate to do so.

Q12**Are there any mitigating factors that should be added?**

Case Study A

R, aged 23 was the owner of a powerful dog, R frequently boasted about how fierce it was. It had killed a neighbour's cat which had come into his garden.

R was in the habit of taking the dog with him when he went out and he kept it on a thick, strong lead. R, accompanied by his dog, was drinking in the beer garden of a pub when he was confronted by his neighbour S, aged 59, who accused him of encouraging his dog to attack his cat. R had consumed a considerable amount of alcohol by this point. The two men argued and the dog became agitated and started to bark and pull at the lead. R was heard by witnesses to say, 'Go on boy, get him', before letting go of the lead.

The dog jumped at S knocking him off balance and then bit his face and neck as he lay on the ground causing fatal injuries. Several bystanders tried to intervene, but although they were able to grab hold of the lead they could not pull the dog away from S. R had left the scene. The bystanders who intervened, and other witnesses to the incident were significantly distressed and upset by the incident.

R later attended a police station where he was arrested. He pleaded guilty at the first hearing to being a person in charge of a dog dangerously out of control injuring a person causing death.

Step one – R used the dog as a weapon to attack S. He had also failed to act on prior knowledge of the dog's behaviour (killing the cat). In a balance of the assessment of culpability, the seriousness of using the dog as a weapon places the offender in high culpability, category A.

Step two – This leads to the starting point of eight years, with a category range of six to 14 years. The offence was aggravated by a loss of control of the dog due to alcohol, and the significant ongoing effect on the witnesses to the attack, which justifies moving the sentence upwards from the starting point to nine years' custody. There are no relevant mitigating factors. With a reduction of one third for an early guilty plea, the sentence is likely to be around six years' custody.

Q13

Do you consider that the sentence passed in Case Study A is proportionate? If you do not agree please tell us what sentence you think should be passed and why.

Case Study B

J, aged 65, was looking after a large rescue dog which belonged to his son who was out of the country for a year. J worked all day and the dog was left shut in his garden. J had originally tried to walk the dog regularly but found it difficult to control, so rarely took it out. When J went away for a weekend he left the dog in the garden for two days. Neighbours later reported hearing the dog whining and scratching at the fence. Some children were having a picnic in a neighbouring garden. The dog broke through the fence into that garden and the dog attacked a seven year old child. Adults came out of the house but were unable to stop the attack before fatal injuries were sustained. The dog was found to be suffering from signs of malnourishment and neglect.

J pleaded guilty at the first hearing to being a person in charge of a dog dangerously out of control injuring a person causing death, and showed signs of great remorse for the incident. He also has some long term health problems.

Step one – J had ill treated and failed to ensure the welfare needs of the dog, by not walking the dog regularly, and leaving the dog alone for two days without food. This would place him in medium culpability.

Step two – This leads to a starting point of four years' custody, with a category range of two to seven years' custody. The offence is aggravated by the fact that the victim was a child, the offence occurred in the victim's own garden which should have been a place of safety, and the offender failed to take adequate precautions to stop the dog from escaping from his garden. In mitigation, there is evidence of the offender's remorse, age and some evidence of ill health. Balancing these factors means the sentence remains at the starting point at four years' custody. With a reduction of one third for an early guilty plea, the likely sentence is around two and a half years' custody.

Q14

Do you consider that the sentence passed in Case Study B is proportionate? If you do not agree please tell us what sentence you think should be passed and why.

Case Study C

After the death of her husband, M felt lonely and afraid at home on her own. Her family suggested that she get a dog for company and security. She visited a re-homing centre run by a charity and after checks that she was able to provide a suitable home, she took on a medium sized dog. M and the dog soon became devoted to each other, but she was aware that it was not good with children, so always kept it on a lead when she was out and on the rare occasions that children visited her home, she kept the dog shut in the kitchen.

She received an unexpected visit from her niece who had a four year old son. She had been about to take the dog for a walk, but instead shut it in the kitchen and invited the guests in. She went into the kitchen to make a drink but failed to secure the door properly and the dog escaped into the dining room where the child was playing under the table. The child screamed and M and her niece rushed to the child's aid but despite M's strenuous attempts to control the dog, the dog mauled the child causing fatal injuries. Her niece was so traumatised by the event that she had to be sedated after the incident by a doctor. Following the incident M was very distressed and was diagnosed with depression and prescribed anti-depressants by her doctor due to the effect of the incident on her.

M pleaded guilty at the first hearing to being a person in charge of a dog dangerously out of control injuring a person causing death.

Step one – M had taken steps to safely control the dog when the visitors arrived, and believed the dog to be safely in the kitchen, but the door wasn't fully secure. M then tried to intervene in the incident and control the dog; this would place her in lesser culpability.

Step two – This leads to a starting point of one year's custody, with a category range of a high level community order to two years' custody. The offence is aggravated by the fact that the victim was a child, and the significant ongoing effect on the victim's mother, but there was significant mitigation in the case: there was evidence of responsible ownership, remorse shown by the offender and no previous complaints or incidents regarding the dog and she had no previous convictions. On balance this case would not cross the custody threshold and a non-custodial sentence would be likely.

Q15

Do you feel that the sentence passed in Case Study C is proportionate? If you do not agree please tell us what sentence you think should be passed and why.

Blank page

Section four:

Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place) where a person is injured

(Draft guideline at page 71)

This guideline is to be used for cases where a dog dangerously out of control injures a person.

There is considerable overlap between this guideline and the previous guideline discussed at section three. Both guidelines could be used to sentence a wide range of offences, from those committed deliberately by an offender, to offences where an offender is at the lowest level of culpability. For this guideline, the type of injury caused could range from a very serious injury just short of death, to a nip on the hand. Due to the similarities between the two offences with regard to culpability, the assessment of culpability and the culpability factors are identical to those used in the guideline for offences causing death. The factors are shown again on the next page, and discussed at pages 14 to 15 in section three.

STEP ONE

Determining the offence category

In order to determine the category the court should assess **culpability** and **harm**. The court should determine the offence category with reference only to the factors in the tables on the next page.

The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

CULPABILITY demonstrated by one or more of the following:

A – High culpability:

- Dog used as a weapon or to intimidate people
- Dog bred or trained to be aggressive
- Failure to respond to official warnings or to comply with orders concerning the dog

B – Medium culpability:

- All other cases where characteristics for categories A or C are not present, and in particular:
 - Failure to respond to warnings or concerns expressed by others about the dog’s behaviour
 - Failure to act on prior knowledge of the dog’s aggressive behaviour
 - Lack of safety or control measures taken in situations where an incident could reasonably have been foreseen
 - Failure to intervene in the incident (where it would have been reasonable to do so)
 - Ill treatment or failure to ensure welfare needs of dog (where connected to the offence and where not charged separately)

C – Lesser culpability:

- Attempts made to regain control of the dog and/or intervene
- Provocation of dog without fault of the offender
- Evidence of safety or control measures having been taken
- Incident could not have reasonably been foreseen by the offender
- Momentary lapse of control/attention

Q16 Do you agree that guidance for this offence should be contained within a separate guideline, and not in a combined guideline which includes other offences?

Q17 Do you agree with the proposed approach to the assessment of culpability for offences causing injury?

Q18 Are there additional factors that should be included at step one?

Q19 Should any of the factors be considered at step two?

Harm factors

Once the court has determined the level of culpability, the next step is to consider the harm caused by the offence. For offences causing injury, the court is asked to make an assessment of harm using three categories, as shown below. The Council gave careful thought to how harm should be assessed for this offence, and decided that the primary harm caused in the offence is the level of injury sustained by the victim. Other factors which may make the offence more serious, such as a sustained or repeated attack, are included as aggravating factors.

Harm category 1 is the highest level where serious injury or psychological harm have been caused to the victim, and could include the transmission of diseases such as rabies or tetanus, life threatening physical injury, or permanent disfigurement or disability. Harm category 3 is for cases where a minor injury has been sustained. Harm category 2 has been designed to capture all other cases. The Council considered articulating these types of cases, by the use of the words ‘some’ or ‘considerable’ injury caused, but felt that it was not appropriate to prescribe exactly what types of injury would cause a case to fall into category 2, but instead would allow courts to decide based on the facts before them.

Harm	
The level of harm is assessed by weighing up all the factors of the case.	
Category 1	Serious injury (which includes disease transmission)
	Serious psychological harm
Category 2	Factors in categories 1 or 3 not present
Category 3	Minor injury

Q20 Do you agree with the proposed approach to the assessment of harm?

Q21 Are there any additional harm factors that should be added?

STEP TWO

Sentence levels

In developing sentence ranges for this offence, similarly to developing ranges for offences causing death, the Council was in the unusual position of creating a sentence range for which the maximum penalty has increased so substantially from two years to five years. The ranges have been formulated using statistical data from the Court Proceedings Database, the findings from the research discussed in section one at page 8 and reference to the ranges for comparable offences, such as causing death by careless driving, and assault occasioning bodily harm, both of which have the same statutory maximum of five years. The sentence ranges can be seen in the table on the next page.

A broad range of sentences are available, from a discharge at the very lowest end, given that this is a strict liability offence, to four years’ custody at the very top of the range. Unlike the sentence range discussed for offences causing death, this range does not go up to the statutory maximum, as the Council felt that it was appropriate to allow room for exceptionally serious cases to be sentenced outside of the offence range as, in general, guidelines are not designed to deal with every type of case that might appear before the court.

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point.

STEP TWO
Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Maximum: 5 years’ custody

Harm	Culpability		
	A	B	C
Category 1	Starting point 3 years’ custody	Starting point 1 year 6 months’ custody	Starting point High level community order
	Category range 2 years 6 months’ – 4 years’ custody	Category range 6 months’ – 2 years 6 months’ custody	Category range Medium level community order – 6 months’ custody
Category 2	Starting point 2 years’ custody	Starting point 6 months’ custody	Starting point Band C fine
	Category range 1 year 6 months’ – 3 years’ custody	Category range High level community order – 1 year 6 months’ custody	Category range Band B fine – High level community order
Category 3	Starting point 1 year 6 months’ custody	Starting point Low level community order	Starting point Band A fine
	Category range 6 months’ – 2 years’ custody	Category range Band C fine – 6 months’ custody	Category range Discharge – Band C fine

Q22 Do you have any general comments on the sentence ranges and starting points?

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

The factors proposed for this guideline, as shown below, are identical to those within the offence causing death guideline discussed in section three at pages 21 to 22 with two exceptions.

Firstly, ‘significant practical and financial effects of offence on relatives/carers’ has been proposed for this guideline to take into account the implications a very serious injury might have; for example, where it results in numerous operations or hospital visits for a child, requiring time off work for the parents. The inclusion of this factor was prompted by the consideration of the analysis of sentencing remarks.

Secondly, ‘serious injury caused to others who attempted to intervene in the incident’ has not been included in this list (but is present in the guideline discussed in section three) as it is thought that any injury caused to someone attempting to intervene in the incident would be charged separately, and therefore should not be included as an aggravating factor.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors:

Victim is a child or otherwise vulnerable because of personal circumstances

More than one dog involved

Location of the offence

Sustained or repeated attack

Significant ongoing effect on witness(es)

Significant practical and financial effects of offence on relatives/carers

Offence motivated by, or demonstrating hostility based on, but not limited to, the victim’s age, sex, or disability

Failing to take adequate precautions to prevent dog from escaping

Allowing person insufficiently experienced or trained, to be in charge of dog

Dog known to be prohibited

Lack or loss of control of dog due to influence of alcohol or drugs

Offence committed against those working in the public sector or providing a service to the public

Injury to other animals

Established evidence of community/wider impact

Failure to comply with current court orders (other than any referenced in culpability A)

Offence committed on licence

Offences taken into consideration

Q23 Do you agree with the aggravating factors? Please state which, if any, should be removed or added.

Q24 Should any of the factors be considered at step one?

The mitigating factors proposed for this offence, as shown below, are identical to those discussed at section three, page 23, with one exception. For this offence, it is suggested that ‘isolated incident’ is a relevant mitigating factor to be considered if it applies. It is not suggested that this factor is included in the guideline for offences causing death as the severity of the incident outweighs any possible mitigation of it being an isolated incident.

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Isolated incident

No previous complaints against, or incidents involving the dog

Evidence of responsible ownership

Remorse

Good character and/or exemplary conduct

Serious medical condition requiring urgent, intensive or long-term treatment

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability

Sole or primary carer for dependent relatives

Determination and/or demonstration of steps having been taken to address offending behaviour

Q25 Are there any mitigating factors that should be added?

Case Study D

B owned a powerful dog, which he knew to be a prohibited breed. He had posted pictures on social media of the dog snarling and biting a padded arm. He frequently cycled around the housing estate where he lived accompanied by the dog on a lead and encouraged the dog to bark and snap at people. While he and the dog were passing the back of some houses a woman came out of a gate immediately in front of them with a small child who let out a loud scream when she saw the dog. The dog pulled towards the child and B lost control of it. The dog locked its jaws around the child's leg and pulled the child to the ground. The woman began to hit the dog with her bag and it let go of the child to snap at her, but then bit the child on the arm. B shouted at the dog and grabbed its lead, but could not pull it away. He then grabbed the dog by the ears and kicked it until it released the child and he was able to regain control of it.

The child suffered serious injury to her leg and arm requiring several operations and leaving permanent disfigurement and some loss to mobility. The dog was found to be a banned breed.

B pleaded guilty at the first hearing to being a person in charge of a dog dangerously out of control injuring a person.

Step one – B had trained the dog to be aggressive, and used it to intimidate people, factors present in high culpability, culpability A. During the incident B did try to intervene and regain control, factors present in lesser culpability, but on balance B would be assessed as being highly culpable, as there are more factors which demonstrate higher culpability.

The child suffered serious injuries of a permanent nature, which places the offence into category 1 harm.

Step two – This leads to a starting point of three years' custody, with a category range of two years six months' to four years' custody. The aggravating factors in this case are: the victim being a child; the dog was a prohibited breed; and there were significant implications following the offence for the child's parents. In mitigation B did intervene and bring the dog under control. The combination of these factors mean that the sentence would be adjusted upwards from the starting point. The likely sentence after the reduction for the early guilty plea would be around two and a half years' custody.

Q26

Do you consider that the sentence passed in Case Study D is proportionate? If you do not agree please tell us what sentence should be passed and why.

Blank page

Section five: Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place) where an assistance dog is injured or killed

(Draft guideline at page 77)

This guideline is to be used for cases where a dog dangerously out of control injures an assistance dog (causing injury or death). The Dangerous Dogs Act 1991 was intended to cover attacks to people. However, the charity Guide Dogs for the Blind estimates that there is an average of 10 dog attacks per month on guide dogs, and there were 16 recorded attacks on other assistance dogs in 2014.

Assistance dogs can guide visually impaired people, alert those with hearing impairments to a fire alarm, alert people to changes in their medical condition, such as diabetes and epilepsy, and assist people with physical disabilities. An injury to an assistance dog can result in the dog being removed from service either temporarily whilst it recovers or permanently if the injury is so severe that the dog must be retired. Any time without a dog that has undergone intensive and specific training can limit the freedom of the assisted person, potentially stopping them from travelling to work, feeling confident in managing their medical condition, or even leaving the home. This is compounded by the impact such an attack can have in reducing the assisted person's general sense of safety. In addition, the financial cost of training an assistance dog often means that those whose dogs are retired face a long wait for another, further limiting their ability to live independently.

The extension to section 3 of the Act to include assistance dogs was in part to recognise the value of an assistance dog and the potential impact on the person it assists, should it be injured as outlined above. Accordingly whether the dog is 'working' at the time it is attacked is not relevant, as it is the consequences of such an attack by a dog that is dangerously out of control that are relevant. The definition¹⁵ of an assistance dog for the purpose of the Dangerous Dogs Act hinges on the training given to the dog and is not dependent on the specific role it is playing at any given time.

Although this guideline deals with attacks on a dog rather than a person, there is overlap in this guideline with the guidelines discussed at sections three and four, for dangerous dog offences

¹⁵ <http://www.legislation.gov.uk/ukpga/2010/15/part/12/chapter/1>

causing death or injury to persons. Both guidelines could be used to sentence a wide range of offences, from those committed deliberately by an offender, to offences where an offender is at the lowest level of culpability. For this guideline, the type of injury caused could range from the death of a dog, to a very minor injury. Due to the similarities between the offences with regard to culpability, the assessment of culpability and the culpability factors are identical to those used in the guideline for offences causing death or injury to people. The factors are shown again below, and discussed at page 14 in section three.

STEP ONE
Determining the offence category

In order to determine the category the court should assess **culpability** and **harm**. The court should determine the offence category with reference only to the factors in the tables below.

The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender’s culpability.**

CULPABILITY demonstrated by one or more of the following:

A – High culpability:

Dog used as a weapon or to intimidate people

Dog bred or trained to be aggressive

Failure to respond to official warnings or to comply with orders concerning the dog

B – Medium culpability:

All other cases where characteristics for categories A or C are not present, and in particular:

Failure to respond to warnings or concerns expressed by others about the dog’s behaviour

Failure to act on prior knowledge of the dog’s aggressive behaviour

Lack of safety or control measures taken in situations where an incident could reasonably have been foreseen

Failure to intervene in the incident (where it would have been reasonable to do so)

Ill treatment or failure to ensure welfare needs of dog (where connected to the offence and where not charged separately)

C – Lesser culpability:

Attempts made to regain control of the dog and/or intervene

Provocation of dog without fault of the offender

Evidence of safety or control measures having been taken

Incident could not have reasonably been foreseen by the offender

Momentary lapse of control/attention

Q27 Do you agree with the proposed approach to the assessment of culpability?

Q28 Are there additional factors that should be included at step one?

Q29 Should any of the factors be considered at step two?

Harm factors

Once the court has determined the level of culpability, the next step is to consider the harm caused by the offence. For this offence, the court is asked to make an assessment of harm using three categories, as shown below. The Council suggests that harm caused in the offence should be assessed both by the level of the injury to the dog, and to the level of impact on the assisted person.

Harm category 1 is the highest level where either the dog is killed or seriously injured, and/or the impact of the offence on the assisted person is severe. As outlined above, an assisted person may be totally reliant on their dog. If the result of the attack is that the dog is no longer able to work, this could have major implications for their everyday lives. The impact of the offence may also be emotional distress/fear caused by the attack, combined with the trauma caused by either the death or serious injury to a dog with which they have a close bond.

Harm category three is for cases where a minor injury has been sustained, or the impact on the assisted person is limited. Harm category two reads ‘factors in categories 1 or 3 not present.’ This category has been designed so that any cases which a court feels are not at the highest or lowest levels of harm, should fall into category 2. As with the guideline discussed at section four, the Council felt that it was appropriate not to prescribe exactly what types of harm would cause a case to fall into category 2, but allow courts to decide based on the facts before them.

Harm	
The level of harm is assessed by weighing up all the factors of the case.	
Category 1	Fatality or serious injury to an assistance dog and/or
	Impact of the offence on the assisted person is severe
Category 2	Factors in categories 1 or 3 not present
Category 3	Minor injury to assistance dog and/or
	Impact of the offence on the assisted person is limited

Q30

Do you agree with the proposed approach to the assessment of harm?

Q31

Are there additional harm factors that should be added?

The draft sentence ranges for this offence are set out on the next page, and the Council is very keen to receive feedback on the proposed ranges. The Council was in the unprecedented position of creating sentence ranges for an entirely new offence. When developing sentence ranges for guidelines generally, as the Council usually has the benefit of being able to consider existing sentencing data, case law and reported cases. For this new offence, much of this data is not available. The range has been developed with close reference to the other four sentence ranges contained in this guideline, suitably adapted to take into account the statutory maxima, type of offence and proportionality between the different offences.

The Council also considered the penalties for other offences where a dog injures other animals, such as those under Dogs (Protection of Livestock) Act 1953,¹⁶ where the maximum penalty is a level three fine or the non-aggravated offence under the Dangerous Dogs Act 1991 where the maximum is six months' imprisonment. As outlined above, Parliament created a maximum penalty of three years for this offence to take into account the harm caused by attacks on assistance dogs, so it is appropriate that these sentence ranges reflect that maximum penalty. After due consideration, the Council has created reasonably broad sentence ranges, from a discharge at the very lowest end, given that this is a strict liability offence, to two years six months' custody at the very top of the range.

As in the sentence range discussed for offences causing injury to people, this range does not go up to the statutory maximum, as the Council felt that it was appropriate to allow room for exceptionally serious cases to be sentenced outside of the offence range as, in general, guidelines are not designed to deal with every type of case that might appear before the court.

¹⁶ <http://www.legislation.gov.uk/ukpga/Elizz/1-2/28>

STEP TWO
Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Maximum: 3 years' custody

Harm	Culpability		
	A	B	C
Category 1	Starting point 2 years' custody	Starting point 9 months' custody	Starting point Medium level community order
	Category range 1 year 6 months' – 2 years 6 months' custody	Category range High level community order – 1 year's custody	Category range Low level community order – High level community order
Category 2	Starting point 1 years' custody	Starting point High level community order	Starting point Band B fine
	Category range 6 months' – 1 year 6 months' custody	Category range Medium level community order – 6 months' custody	Category range Band A fine – Low level community order
Category 3	Starting point 6 months' custody	Starting point Low level community order	Starting point Band A fine
	Category range High level community order – 9 months' custody	Category range Band C fine – High level community order	Category range Discharge – Band B fine

Q32 Do you agree with the proposed sentence ranges and starting points for this new offence?

Q33 If not, please tell us why, and suggest any alternative proposals.

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

The factors proposed for this guideline, as shown below, are identical to those within the offence causing death guideline discussed in section three at pages 21 to 22 with two exceptions.

Firstly, a factor proposed for this guideline is ‘cost of retraining an assistance dog’, as an aggravating factor for this offence is the cost to the charity of retraining another dog to replace a dog killed or so severely injured that it has to be replaced. This cost can be around £48,000 per dog.

Secondly, the factor ‘victim is a child or otherwise vulnerable because of personal circumstances’ has been omitted as it is not relevant to this offence..

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors:

More than one dog involved

Location of the offence

Sustained or repeated attack

Significant ongoing effect on witness(es)

Offence motivated by, or demonstrating hostility based on, but not limited to, the victim’s age, sex, or disability

Failing to take adequate precautions to prevent dog from escaping

Allowing person insufficiently experienced or trained, to be in charge of dog

Dog known to be prohibited

Lack or loss of control of dog due to influence of alcohol or drugs

Offence committed against those working in the public sector or providing a service to the public

Injury to other animals

Cost of retraining an assistance dog

Established evidence of community/wider impact

Failure to comply with current court orders (other than any referenced in culpability A)

Offence committed on licence

Offences taken into consideration

Q34 Do you agree with the aggravating factors? Please state which, if any, should be removed or added.

Q35 Should any of the factors be considered at step one? If so, why?

The mitigating factors proposed for this offence, as shown below, are identical to those discussed at sections three and four at pages 23 and 33.

Factors reducing seriousness or reflecting personal mitigation
No previous convictions or no relevant/recent convictions
Isolated incident
No previous complaints against, or incidents involving the dog
Evidence of responsible ownership
Remorse
Good character and/or exemplary conduct
Serious medical condition requiring urgent, intensive or long-term treatment
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability
Sole or primary carer for dependent relatives
Determination and/or demonstration of steps having been taken to address offending behaviour

Q36 Are there any mitigating factors that should be added?

Case Study E

K was walking his three dogs in a park near his home. The dogs were loose and were playing boisterously. The youngest of the dogs, aged one year, ran away from K, barking excitedly, towards a path on the other side of the park. K called the dog back, but realised that it had caught sight of another dog and was running towards it. K gave chase, shouting and waving his arms and his other two dogs followed. K could see that the object of his dog's attention was an assistance dog in a harness and fluorescent coat and that the person with it was visually impaired. K's dog circled the assistance dog barking, and K's other two dogs joined in the barking. The assistance dog appeared not to react and K's dog ran towards it growling and snapping. K and the owner of the assistance dog both shouted, but this seemed to encourage the dog to become more aggressive and it bit the assistance dog on the shoulder and ear. K eventually managed to grab his dog by the collar and drag it away. He apologised but left the scene.

The assistance dog was whimpering and its owner was upset and confused. A passer-by called the police. The assistance dog was treated for its injuries which were not severe, but it was left frightened and nervous by the attack and had to be retired. Its owner was left without an assistance dog for four months, which had a severe impact on the owner's day-to-day life and ability to live independently.

K was identified by a passer-by and when questioned admitted that his dog had attacked the assistance dog. He pleaded guilty at the first hearing to being a person in charge of a dog dangerously out of control where an assistance dog is injured.

Step one – K behaved irresponsibly by walking three dogs off their leads in a public place when he was unable to reliably control all of them. He walked the three dogs, off the leads in a public park, where there were likely to be other dogs and people around, and although he could not have foreseen this particular incident, it would have been prudent to take some safety measures whilst out with the dogs in public, both factors in medium culpability. K did try to intervene and control the dog, a factor relevant to lesser culpability. On balance this offence falls into medium culpability.

The assistance dog suffered some injury, which meant it could no longer work and the assisted person was without an assistance dog for some time, which had a severe impact on them, so this offence would fall into harm category 1.

Step two – This leads to a starting point of 9 months' custody, with a sentencing range of a high level community order to 1 year's custody. There is an aggravating factor of the cost of retraining a new assistance dog. There is mitigation as the offender had no previous convictions and it was an isolated incident. With a reduction for the early guilty plea the likely sentence would be a high level community order.

Q37

Do you feel that the sentence passed in Case Study E is proportionate? If you do not agree, please tell us what sentence should be passed and why.

Section six: Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place)

(Draft guideline at page 83)

There is guidance in the existing guideline for the offence of having a dog dangerously out of control in a public place, or for allowing a dog to be in a private place where the dog is not permitted to be, which makes a person fear injury. This is a non-aggravated offence where no injury to people has been caused. The numbers sentenced for this offence are low: 174 were sentenced in 2013, a two per cent decrease since 2003.

These offences have been altered by amendments to the legislation. This offence now covers all offences where a dog is dangerously out of control in any place, and may include circumstances where a dog injures another animal. It was not considered necessary to separate out offences against people and animals as in the guidelines discussed at sections four and five.

As a result of the legislative change, the Council decided to make some adjustments to the existing guideline. The layout of the existing guideline has also been updated so that all of the dog offence guidelines are set out in a consistent format.

The Council felt that it was appropriate to keep the two levels of culpability and harm for this offence as set out in the existing guideline, as there is not the range of offending behaviour within this offence to necessitate three levels of culpability and harm.

The two levels of culpability for this offence, as shown on the next page, are 'higher' and 'lower'. The factors in both culpability categories are exactly the same as those proposed in the previous three guidelines discussed (for detailed discussion see page 14 in section three). As outlined above, the Council felt that there was not the range of culpability within this offence to warrant a medium level of culpability; to include one would unnecessarily complicate the assessment.

STEP ONE
Determining the offence category

In order to determine the category the court should assess **culpability** and **harm**. The court should determine the offence category with reference only to the factors in the tables below.

The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender’s culpability.**

CULPABILITY demonstrated by one or more of the following:

A – Higher culpability:

Dog used as a weapon or to intimidate people

Dog bred or trained to be aggressive

Failure to respond to official warnings or to comply with orders concerning the dog

B – Lower culpability:

Attempts made to regain control of dog and/or intervene

Provocation of dog without fault of the offender

Evidence of safety or control measures having been taken

Incident could not have reasonably been foreseen by the offender

Momentary lapse of control/attention

Q38 Do you agree with the proposed approach to the assessment of culpability?

Q39 Are there additional factors that should be included at step one?

Q40 Should any of the factors be considered at step two?

Harm

The two levels of harm for this offence are set out below, and are the ones set out in the existing guideline. The Council felt that it was appropriate to use the harm factors used in the current guidance for this offence. The inclusion of the factor ‘presence of children or others who are vulnerable because of personal circumstances’ is relevant here as the factor is assessing the potential of harm that could be caused by having a dog dangerously out of control. Similarly, the ‘injury to another animal(s)’ is included as a harm factor here, as this guideline includes offences where a dog injures another animal.

Harm	
The level of harm is assessed by weighing up all the factors of the case.	
Greater harm	Presence of children or others who are vulnerable because of personal circumstances
	Injury to other animals
Lesser harm	Low risk to the public

Q41

Do you agree with the proposed approach to the assessment of harm?

Q42

Are there additional harm factors that should be added?

The sentence ranges for this offence are set out on the next page, and replicate the ranges for this offence within the existing guideline, albeit presented in a slightly different format. The bottom of the range is a discharge, and the top of the range is six months’ custody. The Council considered the existing sentencing data for this offence, and decided that there was no reason to make any changes to the sentence ranges. The top of the range goes to the maximum possible for this offence, in common with other ranges in Sentencing Council guidelines where the maximum is six months’ custody or less.

Q43

Do you agree with the proposed sentence ranges and starting points for this offence?

Q44

If not, please tell us why, and suggest any alternative proposals.

STEP TWO
Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Maximum: 6 months’ custody

Harm	Culpability	
	A	B
Greater harm	Starting point Medium level community order	Starting point Band B fine
	Category range Band C fine – 6 months’ custody	Category range Band A fine – Band C fine
Lesser harm	Starting point Band C fine	Starting point Band A fine
	Category range Band B fine – Low level community order	Category range Discharge – Band B fine

The proposed aggravating factors for this offence are as set out on the next page, and are similar to those proposed for the guideline discussed at section three, with factors that refer to an attack taking place such as ‘sustained or repeated attack’ omitted. As discussed above, two factors are considered within the assessment of harm for this offence, which in other guidelines are included as aggravating factors, so do not appear in the list of aggravating factors for this offence. For a full explanation of the remaining aggravating factors, please see pages 21 to 22.

The court should then consider any adjustment for any aggravating or mitigating factors. Below is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

The court should then identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors:

Location of the offence

Significant ongoing effect on the victim and/or others

Offence motivated by, or demonstrating hostility based on, but not limited to, the victim’s age, sex, or disability

Failing to take adequate precautions to prevent dog from escaping

Allowing person insufficiently experienced or trained, to be in charge of dog

Ill treatment or failure to ensure welfare needs of dog (where connected to the offence and where not charged separately)

Dog known to be prohibited

Lack or loss of control of dog due to influence of alcohol or drugs

Offence committed against those working in the public sector or providing a service to the public

Established evidence of community/wider impact

Failure to comply with current court orders (other than any referenced in culpability A)

Offence committed on licence

Offences taken into consideration

Q45

Do you agree with the aggravating factors? Please state which, if any, should be removed or added.

Q46

Should any of the factors be considered at step one? If so, why?

The mitigating factors proposed for this offence are set out below, and are identical to those discussed at section three, page 23, with one exception of ‘isolated incident’ which has been included as it is a relevant factor for consideration for this offence, if it applies.

Factors reducing seriousness or reflecting personal mitigation
No previous convictions or no relevant/recent convictions
Isolated incident
No previous complaints against, or incidents involving the dog
Evidence of responsible ownership
Remorse
Good character and/or exemplary conduct
Serious medical condition requiring urgent, intensive or long-term treatment
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability
Sole or primary carer for dependent relatives
Determination and/or demonstration of steps having been taken to address offending behaviour

Q47 Are there any mitigating factors that should be added?

Section seven: Possession of a prohibited dog, breeding, selling, exchanging or advertising a prohibited dog

(Draft guideline at page 89)

There is guidance for the offence of possessing, breeding, selling, exchanging or advertising a prohibited dog within the existing guideline. The numbers sentenced for this offence are low: 196 were sentenced in 2013 although the numbers have been increasing in recent years.

These offences have not been altered by the amendments to the legislation, therefore the Council decided to largely replicate the existing guidance with some revisions. As with the guideline discussed in the preceding section, the layout of the existing guideline has also been updated so that all of the dog offence guidelines are set out in a consistent format.

The existing guideline has only one level each for assessing culpability and harm, 'higher culpability', and 'greater harm', with three offence categories listed. At the most serious level of offending, category one, the offence would be of both greater harm and higher culpability; for category two, offences would be either greater harm or higher culpability; and for category three, offences would be of neither greater harm nor higher culpability. The Council decided to revise the way this offence is assessed by including two levels of culpability and harm, as set out on pages 51 and 52.

The two levels of culpability for this offence, are 'higher' and 'lower'. The factors in the higher culpability category are the same as used in the current guidance. The emphasis on the first three factors listed is the offenders' knowledge that they possessed, bred from, sold, exchanged, or advertised a dog known to be prohibited. Committing an offence for gain, using the dog to threaten, permitting fighting, and training the dog for fighting would also place the offender in the higher level of culpability.

Lower culpability states 'all other offences'. The Council felt that it would be helpful to have a lower culpability level which offenders could be placed in if they committed offences which were not at the higher end of offending, and felt it was appropriate to leave courts to decide which offences might fall into this category, on the evidence before them.

STEP ONE
Determining the offence category

In order to determine the category the court should assess **culpability** and **harm**. The court should determine the offence category with reference only to the factors in the tables below.

The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender’s culpability.**

CULPABILITY demonstrated by one or more of the following:

A – High culpability:

- Possessing a dog known to be prohibited
- Breeding from a dog known to be prohibited
- Selling, exchanging or advertising a dog known to be prohibited
- Offence committed for gain
- Dog used to threaten or intimidate
- Permitting fighting
- Training and/or possession of paraphernalia for dog fighting

B – Lower culpability:

- All other offences

Q48 Do you agree with the proposed approach to the assessment of culpability?

Q49 Are there additional factors that should be included at step one?

Q50 Should any of the factors be considered at step two?

Harm

There are two levels of harm proposed for this offence, greater and lesser harm, as shown below. The factors listed are ‘high risk to the public and/or other animals’ in greater harm, and ‘low risk to the public and/or other animals’ in lesser harm. The courts will then be able to decide in the context of the particular offence before them, whether there was greater or lesser harm based on an assessment of risk. An example of this may be an offender who possessed a number of prohibited dogs but lived in a very remote part of the country, with few neighbours or visitors, so the risk to the public or other animals was lower than an offender who also had a number of prohibited dogs, but who lived in a densely populated area and who regularly exercised the dogs in a local, busy park.

The harm factors used in the current guidance for injury to a person and injury to other animals, are no longer relevant to this offence; now that charges can be brought for offences which occur in any place under the amended legislation, offenders are likely to be charged instead with the offence of a dog dangerously out of control causing injury to a person, or injury to an assistance dog, or the non-aggravated offence if an animal is injured.

The assessment of the seriousness of this offence at step one, with the addition of a lower level of culpability and harm, can still place offenders into the lowest level of seriousness, the equivalent of category three in the existing guideline, which as outlined in step two on the next page, has the same sentence range. The Council felt that it was appropriate to revise the format and layout of the guidance for the existing offences, so that there would be consistency throughout a new guideline.

Harm

The level of harm is assessed by weighing up all the factors of the case.

Greater harm	High risk to the public and/or other animals
Lesser harm	Low risk to the public and/or other animals

Q51

Do you agree with the proposed approach to the assessment of harm?

Q52

Are there additional harm factors that should be added?

The sentence ranges for this offence are set out on the next page, and replicate the ranges for this offence within the existing guideline, albeit presented in a slightly different format. The bottom of the range is a discharge, and the top of the range is six months’ custody. The Council considered the existing sentencing data for this offence, and decided that there was no reason to make any changes to the sentence ranges. The top of the range goes to the maximum possible for this offence, in common with other ranges in Sentencing Council guidelines where the maximum is six months’ custody or less.

STEP TWO
Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Maximum: 6 months' custody

Harm	Culpability	
	A	B
Greater harm	Starting point Medium level community order	Starting point Band B fine
	Category range Band C fine – 6 months' custody	Category range Band A fine – Low level community order
Lesser harm	Starting point Band C fine	Starting point Band A fine
	Category range Band B fine – Medium level community order	Category range Discharge – Band B fine

Q53

Do you agree with the proposed sentence ranges and starting points for this offence?

Q54

If not, please tell us why, and suggest any alternative proposals.

The aggravating factors for this offence are listed below, and they are the same factors used within the existing guideline. They are similar to those included in the other draft guidelines discussed, with some alterations suitable to the offence. ‘Presence of children or others who are vulnerable because of personal circumstances’ and ‘Ill treatment or failure to comply to ensure welfare needs of dog, where not charged separately’ may make the offence more serious but are not an intrinsic consideration of the initial seriousness of the offence, as they are in other guidelines discussed at sections three to six, so are included as aggravating factors for this offence.

The court should then consider any adjustment for any aggravating or mitigating factors. Below is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

The court should identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors:

Presence of children or others who are vulnerable because of personal circumstances

Ill treatment or failure to ensure welfare needs of dog (where connected to the offence and where not charged separately)

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Q55 Do you agree with the aggravating factors? Please state which, if any, should be removed or added.

Q56 Should any of the factors be considered at step one? If so, why?

The suggested mitigating factors are shown below, and are the same as those used in the current guidance for this offence. There are some mitigating factors specific to this offence which do not appear in the other guidelines discussed in previous sections. These are that the offender was genuinely unaware that the dog was a prohibited type, or took safety precautions with the dog in the home or when in public places, or when the prosecution resulted from owner notification.

Factors reducing seriousness or reflecting personal mitigation
No previous convictions or no relevant/recent convictions
Unaware that dog was prohibited type despite reasonable efforts to identify type
Evidence of safety or control measures having been taken by owner
Prosecution results from owner notification
Evidence of responsible ownership
Remorse
Good character and/or exemplary conduct
Serious medical condition requiring urgent, intensive or long-term treatment
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability
Sole or primary carer for dependent relatives
Determination and/or demonstration of steps having been taken to address offending behaviour
Lapse of time since the offence where this is not the fault of the offender

Q57 Are there any mitigating factors that should be added?

Annex A: Summary of consultation questions

Section three: Dog dangerously out of control in any place where death is caused

- Q1 Do you agree that guidance for this offence should be contained within a separate guideline, and not in a combined guideline which includes other offences?
- Q2 Do you agree with the proposed approach to the assessment of culpability?
- Q3 Are there additional factors that should be included at step one?
- Q4 Should any of the factors be considered at step two?
- Q5 Do you agree with the proposed approach to the assessment of harm?
- Q6 If not, please tell us why and include any suggested alternative ways to assess harm for this offence.
- Q7 Do you have any general comments on the sentence ranges and starting points?
- Q8 Please tell us your views on the upper boundary of the proposed sentence range for a high culpability offence sitting at the statutory maximum of 14 years. If applicable, please include any alternative suggestions for the top of the sentencing range for a high culpability offence.

- Q9** Please tell us your views on the lower boundary of the proposed sentence range for a lesser culpability offence sitting at a high level community order. If applicable, please include any alternative suggestions for the bottom of the sentencing range for a lesser culpability offence.
- Q10** Do you agree with the aggravating factors? Please state which, if any, should be removed or added.
- Q11** Should any of the factors be considered at step one?
- Q12** Are there any mitigating factors that should be added?
- Q13** Do you consider that the sentence passed in Case Study A is proportionate? If you do not agree please tell us what sentence you think should be passed and why.
- Q14** Do you consider that the sentence passed in Case Study B is proportionate? If you do not agree please tell us what sentence you think should be passed and why.
- Q15** Do you consider that the sentence passed in Case Study C is proportionate? If you do not agree please tell us what sentence you think should be passed and why.

Section four: Dog dangerously out of control in any place where person is injured

- Q16** Do you agree that guidance for this offence should be contained within a separate guideline, and not in a combined guideline which includes other offences?
- Q17** Do you agree with the proposed approach to the assessment of culpability for offences causing injury?

Q18 Are there additional factors that should be included at step one?

Q19 Should any of the factors be considered at step two?

Q20 Do you agree with the proposed approach to the assessment of harm?

Q21 Are there any additional harm factors that should be added?

Q22 Do you have any general comments on the sentence ranges and starting points?

Q23 Do you agree with the aggravating factors? Please state which, if any, should be removed or added.

Q24 Should any of the factors be considered at step one?

Q25 Are there any mitigating factors that should be added?

Q26 Do you consider that the sentence passed in Case Study D is proportionate? If you do not agree please tell us what sentence should be passed and why.

Section five: Dog dangerously out of control in any place where an assistance dog is injured or killed

Q27 Do you agree with the proposed approach to the assessment of culpability?

Q28 Are there additional factors that should be included at step one?

Q29 Should any of the factors be considered at step two?

Q30

Do you agree with the proposed approach to the assessment of harm?

Q31

Are there additional harm factors that should be added?

Q32

Do you agree with the proposed sentence ranges and the starting points for this new offence?

Q33

If not, please tell us why, and suggest any alternative proposals.

Q34

Do you agree with the aggravating factors? Please state which, if any, should be removed or added.

Q35

Should any of the factors be considered at step one? If so, why?

Q36

Are there any mitigating factors that should be added?

Q37

Do you consider that the sentence passed in Case Study E is proportionate? If you do not agree, please tell us what sentence should be passed and why.

Section six: Dog dangerously out of control in any place

Q38

Do you agree with the proposed approach to the assessment of culpability?

Q39

Are there additional factors that should be included at step one?

Q40

Should any of the factors be considered at step two?

Q41 Do you agree with the proposed approach to the assessment of harm?

Q42 Are there additional harm factors that should be added?

Q43 Do you agree with the proposed sentence ranges and the starting points for this offence?

Q44 If not, please tell us why, and suggest any alternative proposals.

Q45 Do you agree with the aggravating factors? Please state which, if any, should be removed or added.

Q46 Should any of the factors be considered at step one? If so, why?

Q47 Are there any mitigating factors that should be added?

Section seven: Possession of a prohibited dog, breeding, selling, exchanging or advertising a prohibited dog

Q48 Do you agree with the proposed approach to the assessment of culpability?

Q49 Are there additional factors that should be included at step one?

Q50 Should any of the factors be considered at step two?

Q51 Do you agree with the proposed approach to the assessment of harm?

Q52

Are there additional harm factors that should be added?

Q53

Do you agree with the proposed sentence ranges and the starting points for this offence?

Q54

If not, please tell us why, and suggest any alternative proposals.

Q55

Do you agree with the aggravating factors? Please state which, if any, should be removed or added.

Q56

Should any of the factors be considered at step one? If so, why?

Q57

Are there any mitigating factors that should be added?

Annex B:

Background to guidelines

Statutory requirements

In producing these draft guidelines, the Council has had regard to a number of statutory requirements.

The purposes of sentencing are stated in section 142 of the Criminal Justice Act 2003:

- the punishment of offenders;
- the reduction of crime (including its reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and,
- the making of reparation by offenders to persons affected by their offences.

The Sentencing Council has also had regard to the statutory duties in the Coroners and Justice Act 2009 which set out requirements for sentencing guidelines as follows:

- guidelines may be general in nature or limited to a particular offence;
- the Council must publish them as draft guidelines;
- the Council must consult the following persons about draft guidelines: the Lord Chancellor, such persons as the Lord Chancellor may direct, the Justice Select Committee of the House of Commons, such other persons as the Council considers appropriate;
- after making appropriate amendments, the Council must issue definitive guidelines;
- the Council may review the guidelines and may revise them;¹⁷
- the Council must publish a resource assessment in respect of the guidelines;¹⁸ and,
- the Council must monitor the operation and effect of its sentencing guidelines.¹⁹

Under the previous bodies (the Sentencing Guidelines Council and the Sentencing Advisory Panel), courts had to *'have regard to any guidelines which are relevant to the offender's case'*²⁰ and give reasons if a sentence fell outside of the range.²¹ Section 125(a) of the Coroners and Justice Act 2009 states that, *'every court must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender's case'*. Therefore, courts are required to impose a sentence consistent with the guidelines, unless contrary to the interests of justice to do so. Therefore, the Sentencing Council is keen to ensure that the guidelines are as accessible as possible for sentencers.

¹⁷ s.120 Coroners and Justice Act 2009

¹⁸ s.127(2) *ibid*

¹⁹ s.128(1) *ibid*

²⁰ s.172(1) Criminal Justice Act 2003

²¹ s.174(2) *ibid*

When preparing sentencing guidelines, the Council must have regard to the following matters:

- the sentences imposed by courts in England and Wales for offences;
- the need to promote consistency in sentencing;
- the impact of sentencing decisions on victims of offences;
- the need to promote public confidence in the criminal justice system;
- the cost of different sentences and their relative effectiveness in preventing re-offending; and,
- the results of monitoring the operation and effect of its sentencing guidelines.²²

When publishing any draft guidelines, the Council must publish a resource assessment of the likely effect of the guidelines on:

- the resources required for the provision of prison places;
- the resources required for probation provision; and
- the resources required for the provision of youth justice services.²³

In order to achieve these requirements, the Council has considered case law on the offences included within the guidelines, where it is available, evidence on current sentencing practice and drawn on members' own experience of sentencing practice. The intention is for the decision making process in the proposed guideline to provide a clear structure, not only for sentencers, but to provide more clarity on sentencing for the victims and the public, so that they too can have a better understanding of how a sentence has been reached.

The Council has had regard to these duties throughout the preparation of this draft guideline. In developing an understanding of the cost and effectiveness of different sentences, the Council has considered the available information and evidence and these are contained in the resource assessment which accompanies this consultation paper.

²² s.120(11) Coroners and Justice Act 2009

²³ s.127(3) *ibid*

Annex C: Draft guidelines

List of guidelines

- | | |
|---|----|
| Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place) where death is caused | 65 |
| Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place) where a person is injured | 71 |
| Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place) where an assistance dog is injured or killed | 77 |
| Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place) | 83 |
| Possession of a prohibited dog, breeding, selling, exchanging or advertising a prohibited dog | 89 |

**Owner or person in charge of a dog
dangerously out of control in any place
in England or Wales (whether or not a
public place) where death is caused**
Dangerous Dogs Act 1991 (section 3 (1))

Triable either way

Maximum: 14 years' custody

Offence range: High level community order – 14 years' custody

STEP ONE
Determining the offence category

In order to determine the category the court should assess **culpability** and **harm**. The court should determine the offence category with reference only to the factors in the tables below.

The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender’s culpability.**

CULPABILITY demonstrated by one or more of the following:

A – High culpability:

- Dog used as a weapon or to intimidate people
- Dog bred or trained to be aggressive
- Failure to respond to official warnings or to comply with orders concerning the dog

B – Medium culpability:

- All other cases where characteristics for categories A or C are not present, and in particular:
 - Failure to respond to warnings or concerns expressed by others about the dog’s behaviour
 - Failure to act on prior knowledge of the dog’s aggressive behaviour
 - Lack of safety or control measures taken in situations where an incident could reasonably have been foreseen
 - Failure to intervene in the incident (where it would have been reasonable to do so)
 - Ill treatment or failure to ensure welfare needs of dog (where connected to the offence and where not charged separately)

C – Lesser culpability:

- Attempts made to regain control of dog and/or intervene
- Provocation of dog without fault of the offender
- Evidence of safety or control measures having been taken
- Incident could not have reasonably been foreseen by the offender
- Momentary lapse of control/attention

Harm

There is no variation in the level of harm caused, as by definition the harm involved in an offence where a death is caused is always of the utmost seriousness.

STEP TWO
Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

High culpability	Starting point 8 years' custody	Category range 6 – 14 years' custody
Medium culpability	Starting point 4 years' custody	Category range 2 – 7 years' custody
Lesser culpability	Starting point 1 year's custody	Category range High level community order – 2 years' custody

The court should then consider any adjustment for any aggravating or mitigating factors. On the next page is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

See page 68.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors:

Victim is a child or otherwise vulnerable because of personal circumstances

More than one dog involved

Location of the offence

Sustained or repeated attack

Significant ongoing effect on witness(es)

Serious injury caused to others who attempted to intervene in the incident

Offence motivated by, or demonstrating hostility based on, but not limited to, the victim's age, sex, or disability

Failing to take adequate precautions to prevent dog from escaping

Allowing person insufficiently experienced or trained, to be in charge of dog

Dog known to be prohibited

Lack or loss of control of dog due to influence of alcohol or drugs

Offence committed against those working in the public sector or providing a service to the public

Injury to other animals

Established evidence of community/wider impact

Failure to comply with current court orders (other than any referenced in culpability A)

Offence committed on licence

Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation:

No previous convictions **or** no relevant/recent convictions

No previous complaints against, or incidents involving the dog

Evidence of responsible ownership

Remorse

Good character and/or exemplary conduct

Serious medical condition requiring urgent, intensive or long-term treatment

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability

Sole or primary carer for dependent relatives

Determination and/or demonstration of steps having been taken to address offending behaviour

STEP THREE**Consider any factors which indicate a reduction, for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SIX**Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:**Disqualification from having a dog**

The court **may** disqualify the offender from having custody of a dog. The test the court should consider is whether the offender is a fit and proper person to have custody of a dog.

Destruction order/contingent destruction order

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court.

If the dog is a **prohibited dog** refer to the guideline for possession of a prohibited dog in relation to destruction/contingent destruction orders.

The court **shall** make a destruction order unless the court is satisfied that the dog would not constitute a danger to public safety.

In reaching a decision, the court should consider the relevant circumstances which **must** include:

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances.

If the court is satisfied that the dog would not constitute a danger to public safety and the dog is not prohibited, it **may** make a contingent destruction order requiring the dog be kept under proper control. A contingent destruction order may specify the measures to be taken by the owner for keeping the dog under proper control, which include:

- muzzling;
- keeping on a lead;
- neutering in appropriate cases; and
- excluding it from a specified place.

Where the court makes a destruction order, it **may** order the offender to pay what it determines to be the reasonable expenses of destroying the dog and keeping it pending its destruction.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

**Owner or person in charge of a dog
dangerously out of control in any place
in England or Wales (whether or not a
public place) where a person is injured
Dangerous Dogs Act 1991 (section 3 (1))**

Triable either way

Maximum: 5 years' custody

Offence range: Discharge – 4 years' custody

STEP ONE**Determining the offence category**

In order to determine the category the court should assess **culpability** and **harm**. The court should determine the offence category with reference only to the factors in the tables below.

The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

CULPABILITY demonstrated by one or more of the following:**A – High culpability:**

Dog used as a weapon or to intimidate people

Dog bred or trained to be aggressive

Failure to respond to official warnings or to comply with orders concerning the dog

B – Medium culpability:

All other cases where characteristics for categories A or C are not present, and in particular:

Failure to respond to warnings or concerns expressed by others about the dog's behaviour

Failure to act on prior knowledge of the dog's aggressive behaviour

Lack of safety or control measures taken in situations where an incident could reasonably have been foreseen

Failure to intervene in the incident (where it would have been reasonable to do so)

Ill treatment or failure to ensure welfare needs of dog (where connected to the offence and where not charged separately)

C – Lesser culpability:

Attempts made to regain control of the dog and/or intervene

Provocation of dog without fault of the offender

Evidence of safety or control measures having been taken

Incident could not have reasonably been foreseen by the offender

Momentary lapse of control/attention

Harm

The level of **harm** is assessed by weighing up all the factors of the case.

Category 1 Serious injury (which includes disease transmission)

Serious psychological harm

Category 2 Factors in categories 1 or 3 not present

Category 3 Minor injury

STEP TWO
Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Maximum: 5 years’ custody

Harm	Culpability		
	A	B	C
Category 1	Starting point 3 years’ custody	Starting point 1 year 6 months’ custody	Starting point High level community order
	Category range 2 years 6 months’ – 4 years’ custody	Category range 6 months’ – 2 years 6 months’ custody	Category range Medium level community order – 6 months’ custody
Category 2	Starting point 2 years’ custody	Starting point 6 months’ custody	Starting point Band C fine
	Category range 1 year 6 months’ – 3 years’ custody	Category range High level community order – 1 year 6 months’ custody	Category range Band B fine – High level community order
Category 3	Starting point 1 year 6 months’ custody	Starting point Low level community order	Starting point Band A fine
	Category range 6 months’ – 2 years’ custody	Category range Band C fine – 6 months’ custody	Category range Discharge – Band C fine

The court should then consider any adjustment for any aggravating or mitigating factors. On the next page is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

Factors increasing seriousness**Statutory aggravating factors:**

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors:

Victim is a child or otherwise vulnerable because of personal circumstances

More than one dog involved

Location of the offence

Sustained or repeated attack

Significant ongoing effect on witness(es)

Significant practical and financial effects of offence on relatives/carers

Offence motivated by, or demonstrating hostility based on, but not limited to, the victim's age, sex, or disability

Failing to take adequate precautions to prevent dog from escaping

Allowing person insufficiently experienced or trained, to be in charge of dog

Dog known to be prohibited

Lack or loss of control of dog due to influence of alcohol or drugs

Offence committed against those working in the public sector or providing a service to the public

Injury to other animals

Established evidence of community/wider impact

Failure to comply with current court orders (other than any referenced in culpability A)

Offence committed on licence

Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Isolated incident

No previous complaints against, or incidents involving the dog

Evidence of responsible ownership

Remorse

Good character and/or exemplary conduct

Serious medical condition requiring urgent, intensive or long-term treatment

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability

Sole or primary carer for dependent relatives

Determination and/or demonstration of steps having been taken to address offending behaviour

STEP THREE**Consider any factors which indicate a reduction, for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SIX**Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:**Disqualification from having a dog**

The court **may** disqualify the offender from having custody of a dog. The test the court should consider is whether the offender is a fit and proper person to have custody of a dog.

Destruction order/contingent destruction order

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court.

If the dog is a **prohibited dog** refer to the guideline for possession of a prohibited dog in relation to destruction/contingent destruction orders.

The court **shall** make a destruction order unless the court is satisfied that the dog would not constitute a danger to public safety.

In reaching a decision, the court should consider the relevant circumstances which **must** include:

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances.

If the court is satisfied that the dog would not constitute a danger to public safety and the dog is not prohibited, it **may** make a contingent destruction order requiring the dog be kept under proper control. A contingent destruction order may specify the measures to be taken by the owner for keeping the dog under proper control, which include:

- muzzling;
- keeping on a lead;
- neutering in appropriate cases; and
- excluding it from a specified place.

Where the court makes a destruction order, it **may** order the offender to pay what it determines to be the reasonable expenses of destroying the dog and keeping it pending its destruction.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place) where an assistance dog is injured or killed

Dangerous Dogs Act 1991 (section 3 (1))

Triable either way

Maximum: 3 years' custody

Offence range: Discharge – 2 years 6 months' custody

STEP ONE**Determining the offence category**

In order to determine the category the court should assess **culpability** and **harm**. The court should determine the offence category with reference only to the factors in the tables below.

The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

CULPABILITY demonstrated by one or more of the following:**A – High culpability:**

Dog used as a weapon or to intimidate people

Dog bred or trained to be aggressive

Failure to respond to official warnings or to comply with orders concerning the dog

B – Medium culpability:

All other cases where characteristics for categories A or C are not present, and in particular:

Failure to respond to warnings or concerns expressed by others about the dog's behaviour

Failure to act on prior knowledge of the dog's aggressive behaviour

Lack of safety or control measures taken in situations where an incident could reasonably have been foreseen

Failure to intervene in the incident (where it would have been reasonable to do so)

Ill treatment or failure to ensure welfare needs of dog (where connected to the offence and where not charged separately)

C – Lesser culpability:

Attempts made to regain control of the dog and/or intervene

Provocation of dog without fault of the offender

Evidence of safety or control measures having been taken

Incident could not have reasonably been foreseen by the offender

Momentary lapse of control/attention

Harm

The level of **harm** is assessed by weighing up all the factors of the case.

Category 1

Fatality or serious injury to an assistance dog and/or

Impact of the offence on the assisted person is severe

Category 2

Factors in categories 1 or 3 not present

Category 3

Minor injury to assistance dog and/or

Impact of the offence on the assisted person is limited

STEP TWO
Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Maximum: 3 years’ custody

Harm	Culpability		
	A	B	C
Category 1	Starting point 2 years’ custody	Starting point 9 months’ custody	Starting point Medium level community order
	Category range 1 year 6 months’ – 2 years 6 months’ custody	Category range High level community order – 1 year’s custody	Category range Low level community order – High level community order
Category 2	Starting point 1 years’ custody	Starting point High level community order	Starting point Band B fine
	Category range 6 months’ – 1 year 6 months’ custody	Category range Medium level community order – 6 months’ custody	Category range Band A fine – Low level community order
Category 3	Starting point 6 months’ custody	Starting point Low level community order	Starting point Band A fine
	Category range High level community order – 9 months’ custody	Category range Band C fine – High level community order	Category range Discharge – Band B fine

The court should then consider any adjustment for any aggravating or mitigating factors. On the next page is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors:

More than one dog involved

Location of the offence

Sustained or repeated attack

Significant ongoing effect on witness(es)

Offence motivated by, or demonstrating hostility based on, but not limited to, the victim's age, sex, or disability

Failing to take adequate precautions to prevent dog from escaping

Allowing person insufficiently experienced or trained, to be in charge of dog

Dog known to be prohibited

Lack or loss of control of dog due to influence of alcohol or drugs

Offence committed against those working in the public sector or providing a service to the public

Injury to other animals

Cost of retraining an assistance dog

Established evidence of community/wider impact

Failure to comply with current court orders (other than any referenced in culpability A)

Offence committed on licence

Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Isolated incident

No previous complaints against, or incidents involving the dog

Evidence of responsible ownership

Remorse

Good character and/or exemplary conduct

Serious medical condition requiring urgent, intensive or long-term treatment

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability

Sole or primary carer for dependent relatives

Determination and/or demonstration of steps having been taken to address offending behaviour

STEP THREE**Consider any factors which indicate a reduction, for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SIX**Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:**Disqualification from having a dog**

The court **may** disqualify the offender from having custody of a dog. The test the court should consider is whether the offender is a fit and proper person to have custody of a dog.

Destruction order/contingent destruction order

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court.

If the dog is a **prohibited dog** refer to the guideline for possession of a prohibited dog in relation to destruction/contingent destruction orders.

The court **shall** make a destruction order unless the court is satisfied that the dog would not constitute a danger to public safety.

In reaching a decision, the court should consider the relevant circumstances which **must** include:

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances.

If the court is satisfied that the dog would not constitute a danger to public safety and the dog is not prohibited, it **may** make a contingent destruction order requiring the dog be kept under proper control. A contingent destruction order may specify the measures to be taken by the owner for keeping the dog under proper control, which include:

- muzzling;
- keeping on a lead;
- neutering in appropriate cases; and
- excluding it from a specified place.

Where the court makes a destruction order, it **may** order the offender to pay what it determines to be the reasonable expenses of destroying the dog and keeping it pending its destruction.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place)

Dangerous Dogs Act 1991 (section 3 (1))

Triable only summarily
Maximum: 6 months' custody

Offence range: Discharge – 6 months' custody

STEP ONE**Determining the offence category**

In order to determine the category the court should assess **culpability** and **harm**. The court should determine the offence category with reference only to the factors in the tables below.

The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

CULPABILITY demonstrated by one or more of the following:**A – Higher culpability:**

Dog used as a weapon or to intimidate people
--

Dog bred or trained to be aggressive

Failure to respond to official warnings or to comply with orders concerning the dog

B – Lower culpability:

Attempts made to regain control of dog and/or intervene

Provocation of dog without fault of the offender
--

Evidence of safety or control measures having been taken
--

Incident could not have reasonably been foreseen by the offender
--

Momentary lapse of control/attention

Harm

The level of harm is assessed by weighing up all the factors of the case.

Greater harm

Presence of children or others who are vulnerable because of personal circumstances

Injury to other animals

Lesser harm

Low risk to the public

STEP TWO
Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Maximum: 6 months' custody

Harm	Culpability	
	A	B
Greater harm	Starting point Medium level community order	Starting point Band B fine
	Category range Band C fine – 6 months' custody	Category range Band A fine – Band C fine
Lesser harm	Starting point Band C fine	Starting point Band A fine
	Category range Band B fine – Low level community order	Category range Discharge – Band B fine

The court should then consider any adjustment for any aggravating or mitigating factors. On the next page is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors:

Location of the offence

Significant ongoing effect on the victim and/or others

Offence motivated by, or demonstrating hostility based on, but not limited to, the victim's age, sex, or disability

Failing to take adequate precautions to prevent dog from escaping

Allowing person insufficiently experienced or trained, to be in charge of dog

Ill treatment or failure to ensure welfare needs of dog (where connected to the offence and where not charged separately)

Dog known to be prohibited

Lack or loss of control of dog due to influence of alcohol or drugs

Offence committed against those working in the public sector or providing a service to the public

Established evidence of community/wider impact

Failure to comply with current court orders (other than any referenced in culpability A)

Offence committed on licence

Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Isolated incident

No previous complaints against, or incidents involving the dog

Evidence of responsible ownership

Remorse

Good character and/or exemplary conduct

Serious medical condition requiring urgent, intensive or long-term treatment

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability

Sole or primary carer for dependent relatives

Determination and/or demonstration of steps having been taken to address offending behaviour

STEP THREE**Consider any factors which indicate a reduction, for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SIX**Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:**Disqualification from having a dog**

The court **may** disqualify the offender from having custody of a dog. The test the court should consider is whether the offender is a fit and proper person to have custody of a dog.

Destruction order/contingent destruction order

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court.

If the dog is a **prohibited dog** refer to the guideline for possession of a prohibited dog in relation to destruction/contingent destruction orders.

If the dog is not prohibited and the court is satisfied that the dog would constitute a danger to public safety the court **may** make a destruction order.

In reaching a decision, the court should consider the relevant circumstances which **must** include:

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances.

Where the dog is not a prohibited dog the court **may** make a contingent destruction order requiring the dog be kept under proper control. A contingent destruction order may specify the measures to be taken by the owner for keeping the dog under proper control, which include:

- muzzling;
- keeping on a lead;
- neutering in appropriate cases; and
- excluding it from a specified place.

Where the court makes a destruction order, it **may** order the offender to pay what it determines to be the reasonable expenses of destroying the dog and keeping it pending its destruction.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Possession of a prohibited dog

Dangerous Dogs Act 1991 (section 1 (7))

Breeding, selling, exchanging or advertising a prohibited dog

Dangerous Dogs Act 1991 (section 1 (7))

PROHIBITED DOG

Triable only summarily

Maximum: 6 months' custody

Offence range: Discharge – 6 months' custody

STEP ONE
Determining the offence category

In order to determine the category the court should assess **culpability** and **harm**. The court should determine the offence category with reference only to the factors in the tables below.

The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender’s culpability.**

CULPABILITY demonstrated by one or more of the following:

A – High culpability:
Possessing a dog known to be prohibited
Breeding from a dog known to be prohibited
Selling, exchanging or advertising a dog known to be prohibited
Offence committed for gain
Dog used to threaten or intimidate
Permitting fighting
Training and/or possession of paraphernalia for dog fighting
B – Lower culpability:
All other offences

Harm
 The level of harm is assessed by weighing up all the factors of the case.

Greater harm	High risk to the public and/or other animals
Lesser harm	Low risk to the public and/or other animals

STEP TWO
Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Maximum: 6 months' custody

Harm	Culpability	
	A	B
Greater harm	Starting point Medium level community order	Starting point Band B fine
	Category range Band C fine – 6 months' custody	Category range Band A fine – Low level community order
Lesser harm	Starting point Band C fine	Starting point Band A fine
	Category range Band B fine – Medium level community order	Category range Discharge – Band B fine

See page 92.

The court should then consider any adjustment for any aggravating or mitigating factors. Below is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors:

Presence of children or others who are vulnerable because of personal circumstances

Ill treatment or failure to ensure welfare needs of dog (where connected to the offence and where not charged separately)

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Unaware that dog was prohibited type despite reasonable efforts to identify type

Evidence of safety or control measures having been taken by owner

Prosecution results from owner notification

Evidence of responsible ownership

Remorse

Good character and/or exemplary conduct

Serious medical condition requiring urgent, intensive or long-term treatment

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability

Sole or primary carer for dependent relatives

Determination and/or demonstration of steps having been taken to address offending behaviour

Lapse of time since the offence where this is not the fault of the offender

STEP THREE**Consider any factors which indicate a reduction, for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SIX**Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:**Disqualification from having a dog**

The court **may** disqualify the offender from having custody of a dog for such period as it thinks fit. The test the court should consider is whether the offender is a fit and proper person to have custody of a dog.

Destruction order/contingent destruction order

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court.

The court **shall** make a destruction order unless the court is satisfied that the dog would not constitute a danger to public safety.

In reaching a decision, the court should consider the relevant circumstances which **must** include:

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances.

If the court is satisfied that the dog would not constitute a danger to public safety, it **shall** make a contingent destruction order requiring that the dog be exempted from the prohibition on possession or custody within the requisite period.

Where the court makes a destruction order, it **may** order the offender to pay what it determines to be the reasonable expenses of destroying the dog and keeping it pending its destruction.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Annex D: Fine bands and community orders

FINE BANDS

In this guideline, fines are expressed as one of three fine bands (A, B, C).

Fine Band	Starting point (applicable to all offenders)	Category range (applicable to all offenders)
Band A	50% of relevant weekly income	25 – 75% of relevant weekly income
Band B	100% of relevant weekly income	75 – 125% of relevant weekly income
Band C	150% of relevant weekly income	125 – 175% of relevant weekly income

COMMUNITY ORDERS

In this guideline, community sentences are expressed as one of three levels (low, medium or high). An illustrative description of examples of requirements that might be appropriate for each level is provided below.

Where two or more requirements are ordered, they must be compatible with each other. Save in exceptional circumstances, the court must impose at least one requirement for the purpose of punishment, or combine the community order with a fine, or both (see section 177 Criminal Justice Act 2003).

Low	Medium	High
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate
<p>Suitable requirements might include one or more of:</p> <ul style="list-style-type: none"> 40 – 80 hours unpaid work; prohibited activity requirement; curfew requirement within the lowest range (for example, up to 12 hours per day for a few weeks). 	<p>Suitable requirements might include one or more of:</p> <ul style="list-style-type: none"> greater number of hours of unpaid work (for example, 80 – 150 hours); prohibited activity requirement; an activity requirement in the middle range (20 to 30 days); curfew requirement within the middle range (for example, up to 12 hours for two to three months). 	<p>Suitable requirements might include one or more of:</p> <ul style="list-style-type: none"> 150 – 300 hours unpaid work; activity requirement up to the maximum of 60 days; curfew requirement up to 12 hours per day for four to six months; exclusion order lasting in the region of 12 months.

The *Magistrates’ Court Sentencing Guidelines* includes further guidance on fines and community orders.

Annex E:

Explanation of terms

Aggravating factor

A feature of the offence which indicates an increased seriousness.

Category range

Within the offence range, the range of sentences proposed that may be appropriate for a court to impose on an offender in a case which falls within the category.

Culpability

This means the extent to which an offender is to blame for committing an offence.

Harm

This means the damage, injury or loss that the offence causes to the victim or to society at large.

Mitigating factor

A feature which indicates a decreased seriousness.

Offence category

The different categories of case which illustrate varying degrees of seriousness within one type of offence.

Offence range

The range of sentences proposed that may be appropriate for a court to impose on an offender convicted of that offence.

Seriousness

The seriousness of an offence is determined by the two overarching elements of harm and culpability.

Starting point

The position within category ranges from which the court starts to calculate the provisional sentence. They apply to all offenders, in all cases.

Statutory

As set out in law: statutory factors are those which the court must take into account; statutory maximum penalties are those which cannot be exceeded.

