

Assessing the impact and implementation of the Sentencing Council's Dangerous Dog Offences Definitive Guideline

Summary

- Analysis was undertaken to assess the impact on sentence outcomes of the Sentencing Council's *Dangerous Dog Offences Definitive Guideline*, which came into force in July 2016.
- The Dangerous Dogs guideline covers the offences of dog dangerously out of control in any place where death is caused; 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 or killed; dog dangerously out of control in any place; and, possession of a prohibited dog, breeding, selling, exchanging or advertising a prohibited dog.
- The Council had already developed and published a Dangerous Dog Offences guideline covering several of these offences, and which came into force in August 2012. The 2016 updated guideline was produced in response to the legislative changes introduced by Parliament, which came into force in May 2014. The legislation increased the maximum penalty from two years' custody to 14 years for the offence where a dog is dangerously out of control and the death of a person occurs, and from two to five years where a person is injured. It also extended the law to include attacks on private property, and included a new offence related to attacks on assistance dogs (with a maximum penalty of three years' custody).
- It was assumed that as a result of the changes in legislation, there would be an increase in the volume of offenders sentenced for these offences and increases in average custodial sentence lengths for some of the offences. However, the guideline itself was not anticipated to change sentencing practice as it was assumed that any changes observed would be attributable to the legislation.
- For the offence involving a dog dangerously out of control (not causing injury) and for the offence of possession of a prohibited dog or breeding, selling, exchanging or advertising a prohibited dog, average sentencing severity remained relatively stable following the introduction of the guideline.
- For the offence involving a dog dangerously out of control where death is caused, and for the offence where an assistance dog is injured or killed, the number of offenders sentenced since the guideline came into force has been too low to conduct any meaningful analysis.
- For the offence involving a dog dangerously out of control where a person is injured, sentences have increased slightly since the guideline came into force,

although mostly within the bounds of what would be expected based on historical trends. The small increase seems to have been driven by a decreased use of conditional discharges, with very small subsequent increases in the use of more severe sentencing outcomes. The use of conditional discharges had already been decreasing over the five years before the guideline came into force, but decreased more sharply following the introduction of the guideline. It is not clear whether the changes brought about in the legislation, as reflected in the guideline, accelerated the decrease. In addition, as the increases to fines, community orders, suspended sentence orders and immediate custodial sentences were each very small, any impact on prison or probation resources would have been small.

- The Council has concluded that, based on the evidence available, there is no immediate need to revisit the guideline. However, the Council will continue to monitor the impact of the guideline and will be alert to any changes in legislation or trends in sentencing that may affect whether the guideline continues to meet its aims and objectives.

Introduction

The Sentencing Council was set up in 2010 and produces guidelines for use by all members of the judiciary when sentencing after conviction in criminal cases.

One of the Council's first guidelines was the *Dangerous Dog Offences Definitive Guideline*, which came into force in August 2012. However, the Council became aware of imminent legislative changes to offences related to dangerous dogs.

In May 2014 amendments to the Dangerous Dogs Act 1991 were enacted through the Anti-social Behaviour, Crime and Policing Act 2014. The changes included:

- Extending the Dangerous Dogs Act 1991 to private property;
- Increasing the maximum penalties - from two years' custody to 14 years where the death of a person occurs, and from two to five years where a person is injured; and,
- Extending the law to cover attacks on assistance dogs with a maximum penalty of three years' custody.

As a result, the Council considered it necessary to undertake a comprehensive revision of the existing definitive sentencing guideline implemented in 2012.

The revised *Dangerous Dog Offences Definitive Guideline* came into force in July 2016 and includes five guidelines, as listed below:

- Dog dangerously out of control in any place where death is caused;
- 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 or killed;
- Dog dangerously out of control in any place; and,
- Possession of a prohibited dog, breeding, selling, exchanging or advertising a prohibited dog (hereafter collectively referred to as 'possession of a prohibited dog').

The Council's aim in developing the guideline was to ensure that sentences are proportionate to the offence committed and in relation to other offences.

One of the Sentencing Council's statutory duties under the Coroners and Justice Act 2009 is to monitor the operation and effect of its sentencing guidelines and to draw conclusions from this information.¹ No evaluation of the 2012 guideline was undertaken because the Council were aware (at the time) of the imminent legislative changes in this area. Research and analysis have now been undertaken to assess the impact of the 2016 guideline on sentencing outcomes.

Approach

The findings of the analysis should be considered in light of the resource assessment, which was produced to accompany the *Dangerous Dog Offences Definitive Guideline*.²

The Council has a statutory duty to produce a resource assessment³ alongside each definitive sentencing guideline it publishes. The resource assessment is concerned with anticipating any impact on sentencing practice that is expected to occur as a result of the guideline, over and above any changes caused by unrelated issues (e.g. changes in the volume and nature of cases coming before the courts).

The resource assessment associated with the definitive Dangerous Dog Offences guideline expected sentences to increase as a result of the recent legislative changes, but did not expect the guideline itself to cause changes. It was therefore assumed that any changes in correctional resources would be "...attributable to the changes in the legislation, and not the introduction of the guideline".

By comparing the expected impact of the guideline with the actual impact observed in the sentencing data, the Council can determine whether the guideline is working as anticipated and decide whether any further work needs to be conducted.

Methodology

Data from the Ministry of Justice's Court Proceedings Database (CPD)⁴ has been used to explore long term sentencing trends for dangerous dog offences, in particular looking at sentence outcomes and average custodial sentence lengths (ACSLs).⁵

¹ The Council must (a) monitor the operation and effect of its sentencing guidelines, and (b) consider what conclusions can be drawn from the information obtained by virtue of paragraph (a) (Coroners and Justice Act 2009, Section 128).

² See <https://www.sentencingcouncil.org.uk/wp-content/uploads/Dangerous-Dogs-Final-Resource-Assessment.pdf>

³ This was undertaken as part of guideline development work and to fulfil the Sentencing Council's statutory duties under s.127 of the Coroners and Justice Act 2009 to consider the likely effect of its guidelines on prison, probation and youth justice resources.

⁴ Data covers sentences in all courts, for offenders aged 18 or over.

⁵ The CPD data presented in this paper only include cases where the dangerous dog offence was the principal offence committed. When a defendant has been found guilty of two or more offences this is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented in this analysis. It is important to note that the CPD data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection

The CPD data was used to produce descriptive statistics to explore changes in the type of outcomes being imposed for the different offences and the ACSL⁶ for each offence, before and after the guideline came into effect.

However, analysis of trends in outcomes and ACSLs do not take account of ‘normal’ fluctuations in the average severity of sentencing over time due to changes in sentencing practice which are unrelated to guidelines (or in this case, to the legislative changes) e.g. the changing number and seriousness of cases coming before the courts, any changes in charging practice and so on. The data were therefore also used to conduct time series analyses using data from 2011 to 2017.

Time series analysis allowed us to distinguish between these ‘normal’ fluctuations in sentencing and changes that could reasonably be attributed to the legislation and the guideline, by taking historical trends into account and using these to predict what the future values might have been in the absence of the legislation and guideline. These time series models allowed us to forecast likely sentencing outcomes in the absence of any changes in policy and then compare this to what did happen, by seeing if the actual trend in sentencing severity was within the ‘forecasted severity region’ in the model. If average severity stayed within the ‘forecasted severity region’ when the guideline came into force, then this suggests that the legislation and guideline did not have an impact on average sentencing, whereas if average severity went outside of this region, then the legislation and/or guideline may have caused changes to average sentencing. Statistical software⁷ was used to determine the best fitting time series model for the dependent variable of sentencing severity separately for each offence. These models were then used to produce forecasts for sentencing severity.

The type of time series models that were used required sentencing data to be comparable - but the data included a mix of sentences comprising different sentence types and sentence lengths. To overcome this, sentences were converted into a continuous “severity scale” with scores ranging from 0 to 100, representing the full range of sentence outcomes from a discharge (represented by 0) to 20 years’ custody (represented by 100); this allowed the creation of a consistent and continuous measure of sentencing severity that could be used to evaluate changes in sentencing. However, the scale should not be interpreted as an absolute objective measure of sentencing severity.⁸

All references to ‘average sentence severity’ in this paper refer to the mean value of all severity scores of offenders (using the scale described above) sentenced within the period mentioned. For example, if the text says that average sentence severity increased from 2016 to 2017, then this means that the mean value of all severity scores for 2017 was higher than the mean value for 2016.

processes and their inevitable limitations are taken into account when those data are used. Further details of the processes by which MoJ validate the records in the CPD can be found within the guide to their Criminal Justice Statistics publication which can be downloaded via the link: <https://www.gov.uk/government/collections/criminal-justice-statistics>.

⁶ The average custodial sentence length (ACSL) is the average (mean) sentence length for determinate custodial sentences only. It therefore excludes indeterminate sentences (life or Imprisonment for Public Protection, IPPs). This approach for calculating ACSL is consistent with that used for sentencing statistics produced by the Ministry of Justice.

⁷ Statistical Package for Social Sciences (SPSS).

⁸ The sentencing severity scale was created with reference to previous sentencing guidelines to try to ensure it had an empirical basis. It is likely to have limitations, but currently gives our best estimate to quantify the relative severity of different disposals.

The time series charts (figures 2, 3, and 4) show the average sentencing severity in each month over time (represented by a continuous red line). The purple lines (labelled as UCL and LCL for the upper and lower confidence limits) represent the range of values that we would have expected the average sentencing severity line to fall within in the absence of the guideline (and legislation),⁹ referred to in this paper as the “*forecasted severity region*”. By comparing the actual trend (the red line) with the forecasted severity region (the area within the purple lines), the difference between actual and expected sentencing changes can be seen, and can tell us whether the legislation and guidelines may have caused a change.

For the trend analysis, data from 2011 to 2017 have been used where available, as this was when detailed offence data were available for most offences. In some sections, the focus of the analysis is on a shorter period, either from when the data were available or from when legislation was in force. For example, for some of the offences covered by the guideline, data on sentencing practice at the Crown Court were not available until around April 2016 due to issues with the way the offences were coded. Due to this, analysis for these offences should be treated with caution.

Data from 2017 were the most recently available at the point when most of the analysis for this assessment was conducted. However, during the production of this report, data for 2018 and 2019 became available. For the offences where the impact of the guideline was not clear from the initial analysis, further analysis was conducted using the newer data to see if this would provide a clearer picture. Therefore, for some sections of this report, analysis using data up to 2017 is first presented, and then analysis using data for the additional two years is added to provide further insight.

Findings

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

For the offence of a dog dangerously out of control where death is caused, the legislation increased the maximum sentence from two years to 14 years’ custody, and incorporated offences that take place on private property, effective from May 2014.

Prior to 2014, it was not possible to identify this offence within the CPD. Additionally, due to a data coding issue, data are not available for offenders sentenced in the Crown Court from May 2014 to around March 2016,¹⁰ therefore all data on offenders sentenced during this period cover the magistrates’ courts only. The limited data available for 2014 to 2016 were still used in the analysis, but findings should be treated with caution. However, as this is a very low volume offence, and it is clear from magistrates’ court data that only a very small number of defendants were sent for trial or committed for sentence to the Crown Court for this offence during this period, it is expected that only a handful of cases are

⁹ The purple lines represent the 95 per cent confidence interval. Overall, we would usually expect the severity line to stay within the boundaries of this range of values. At the 95 per cent confidence level, over many repeats of a survey under the same conditions, it is expected that the confidence interval would contain the true population value 95 times out of 100. This means that if the line falls outside the region, it is unlikely to have happened due to chance or because of natural fluctuations, and instead more likely to be due to something else, such as the introduction of the guideline.

¹⁰ Offenders were first captured correctly in the data in April 2016 and so it is assumed that the data issue continued until around March 2016.

missing, if any. According to the CPD, fewer than five offenders were sentenced each year from 2015 to 2017; however, this may be an undercount if offenders were sentenced for this offence in the Crown Court, before the data issues were resolved.

For the eight offenders that we have data for, who were sentenced between 2015 and 2017, sentences varied from a fine up to two years' custody, suggesting that by the end of 2017, no offenders had received a sentence above the previous statutory maximum.

However, more recent data have become available since the detailed analysis for this report was conducted, and this shows that volumes have remained low in 2018 and 2019, with a total of three offenders sentenced across the two-year period. One of these offenders was sentenced to 10 years' custody, one was given an SSO and the other was given a fine.

It is not possible to tell from such a small number of cases what effect the legislative changes and guideline may have had on average sentencing practice, except that only one offender had received a sentence above the previous statutory maximum by the end of 2019, according to the data.

Dog dangerously out of control in any place where a person is injured

The 2014 legislation widened the scope of this offence to include offences that take place on private property, so that this offence now applies to a dog that is dangerously out of control and causes injury anywhere in England or Wales. Additionally, the legislation increased the statutory maximum sentence for this offence from two years to five years' custody.

In 2011, around 640 adult offenders were sentenced for the offence of a dog dangerously out of control where a person is injured. Volumes increased to around 950 in 2015, the first year when the new legislation was in force for a full year, but then decreased again to 680 in 2017. Newer data have become available more recently and these show a continued decrease in volumes, with 520 offenders sentenced in 2019. This reflects a wider decrease in sentencing volumes (across all types of offences, not just offences related to dangerous dogs) over the same period.¹¹

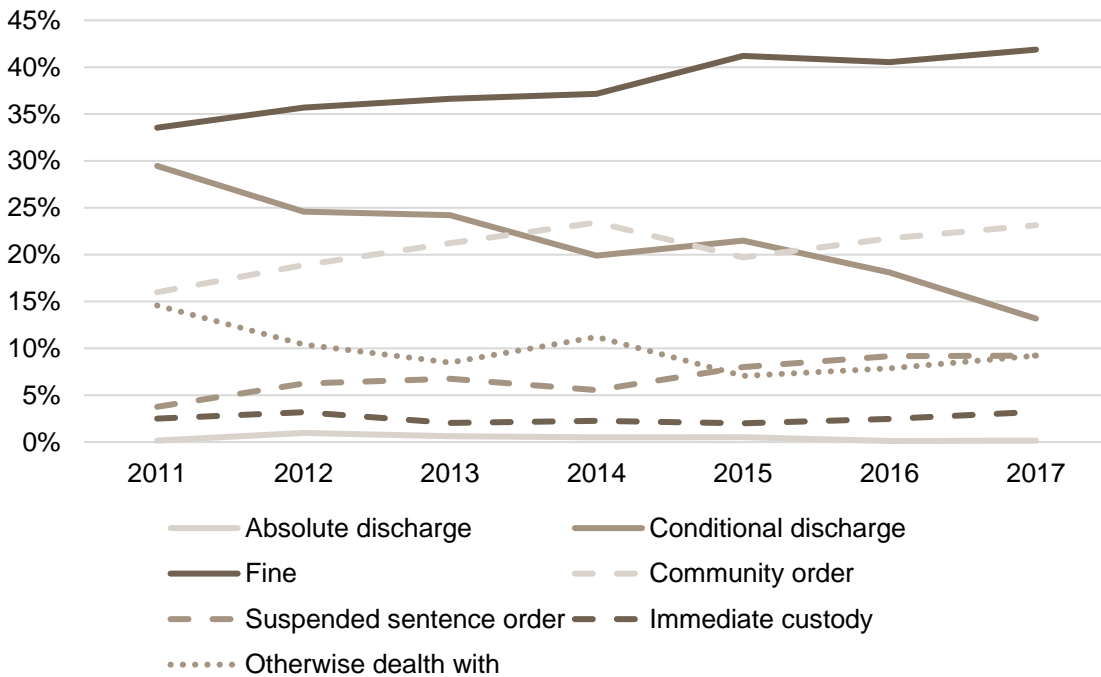
Due to a data coding issue, some offenders sentenced for this offence at the Crown Court from May 2014 to around March 2016 may be missing from the data. It is estimated that these missing records would have accounted for around 5 to 10 per cent of offenders sentenced during this period. However, the database used for this analysis still contains a sufficient number of offenders sentenced at the Crown Court during this period for analysis to have been conducted, and figures from April 2016 onwards contain all offenders sentenced for this offence. Therefore, it is thought that the issue should not affect the conclusions drawn.

The most common sentencing outcome for this offence is a fine, representing 42 per cent of offenders sentenced in 2017. The second most common outcome is a CO (23 per cent) and the third is a conditional discharge (13 per cent). This was broadly similar over the period from 2011 to 2016, although conditional discharges were previously more

¹¹ See the Ministry of Justice's statistical publication Criminal Justice Statistics for further details of wider trends: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2019>

commonly imposed, and have been used less and less since 2011 (in 2011, 29 per cent of offenders were given a conditional discharge).

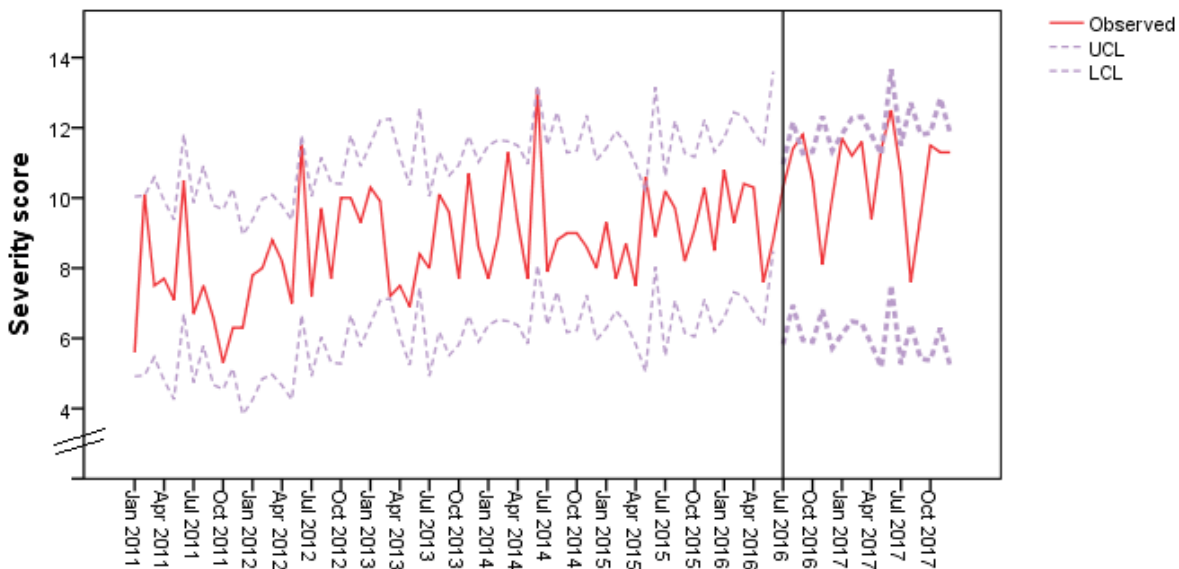
Figure 1 - Adult offenders sentenced for the offence of a dog dangerously out of control causing injury, 2011 to 2017



Each year from 2011 to 2017, around two to three per cent of offenders received an immediate custodial sentence for this offence (between around 10 and 25 offenders per year), and most of these received sentences of one year or less.¹² From May 2014 (when the legislation increased the statutory maximum) to the end of this period, only one offender received a sentence above the previous maximum of two years' custody (the offender's sentence was three years' custody). More recent data, covering 2018 and 2019, show that only one additional offender has received a sentence above the previous statutory maximum during this period (the offender's sentence was 2 years 3 months' custody). However, it is possible that this is an undercount, due to the data issues with Crown Court sentences between May 2014 and March 2016.

¹² It would not be meaningful to calculate an average custodial sentence length for this offence, as so few offenders receive immediate custodial sentences. Any average calculated may fluctuate so much that it would not be possible to isolate the effect of the legislation or the guideline from variations in the cases due to the low volumes.

Figure 2 - Sentencing severity time series analysis for a dog dangerously out of control causing injury¹³



Time series analysis shows that for most of the period after the guideline came into force, average sentencing severity stayed within the forecasted severity region. However, there does seem to be some evidence of a slight increase in severity for this offence after the guideline came into force, with one point outside the forecasted severity region and several points near the upper limit.

This seems to have been driven by a decreased use of conditional discharges, with very small subsequent increases in the use of more severe sentencing outcomes. The use of conditional discharges, as mentioned above, had already been decreasing over the five years before the guideline came into force, but seemed to decrease more sharply following the introduction of the guideline (20 per cent of adult offenders sentenced in the 12 months before the guideline came into force were given a conditional discharge, compared to 15 per cent in the 12 months after).

One possible reason for this is the change in the structure of the guideline. The previous SC guideline had two levels of culpability and two levels of harm, with a sentencing table that contained three categories. The lowest category (representing the least serious offences), had a starting point of a Band B fine, and a range from a discharge up to a Band C fine. This means that a discharge was available within one third of the sentencing ranges.

The revised SC guideline has three levels of culpability and three levels of harm, with a sentencing table containing nine categories. For the very lowest category, the starting point and range is the same as for the lowest category in the previous SC guideline. However, this represents only one ninth of the sentencing ranges in the new guideline. It may be that a possible reason for the decrease in the use of conditional discharges is that they are now only available for an offender that falls into the lowest levels of both harm and culpability.

¹³ The number on the vertical axis is the sentencing severity score. UCL refers to the upper 95% confidence interval limit. LCL refers to the lower 95% confidence interval limit.

It is also possible that the decrease was part of a longer-term reduction in the use of discharges. Other publications have noted a long-term decline in discharges; for example, figures published by the MoJ show that the use of conditional discharges decreased from around 6 per cent of offenders sentenced in 2009 to around 3 per cent in 2019.¹⁴ Therefore, the change observed here may not be isolated to this dangerous dog offence and may be part of a wider trend.

While the use of conditional discharges decreased for this offence, there was no clear subsequent increase to one single other sentencing outcome. Instead, each more severe disposal (fines, COs, suspended sentence orders (SSOs) and immediate custody) increased by a few percentage points. This could be for several reasons, including the following possibilities:

- the cases coming before the courts during this period after the guideline came into force might have been more serious,
- the guideline might have pushed sentences up slightly (either because of the higher statutory maximum sentence or as a result of the structure/content of the guideline itself), or,
- a combination of both.¹⁵

Overall, it is not clear whether the legislation or the guideline accelerated the decrease in the use of conditional discharges or whether this would have happened in absence of these changes, but since the increases to each of the more severe outcomes was very small, and average sentencing severity mostly stayed within the bounds of what would be expected based on historical trends, any impact on prison or probation resources would have been minor.

Additionally, more recent data for this offence, which have recently become available, suggest that use of the use of conditional discharges has fluctuated recently. There was an increased use of discharges in 2018 (representing 16 per cent of offenders), with a decreased use of other outcomes, and then a decrease again (back to 13 per cent) in 2019.

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

Fewer than 20 offenders were sentenced each year for this offence from when it came into effect in May 2014 to the end of 2017, although this may be a slight undercount due to the Crown Court data issues that were resolved in around March 2016.

¹⁴ See Criminal Justice System Statistics quarterly: December 2019. Click on Overview tables, and see table Q5.1a: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2019>

¹⁵ The data issues with sentences at the Crown Court from May 2014 to mid-2016 meant that some of the more serious cases sentenced at the Crown Court are only included in the data from mid-2016 onwards, potentially skewing the trends to show an overall increase in average sentencing severity once these records were included. However, analysis was conducted to look at magistrates' courts records only, to see whether an increase could be identified with the Crown Court cases excluded across the whole period. This still showed an increase in severity following the introduction of the guideline, so we can be confident that the data issues have not affected the conclusions drawn here.

For the very small number of offenders sentenced for this offence so far, sentences have varied from absolute discharges to immediate custody, but volumes have been too low to establish any trends.

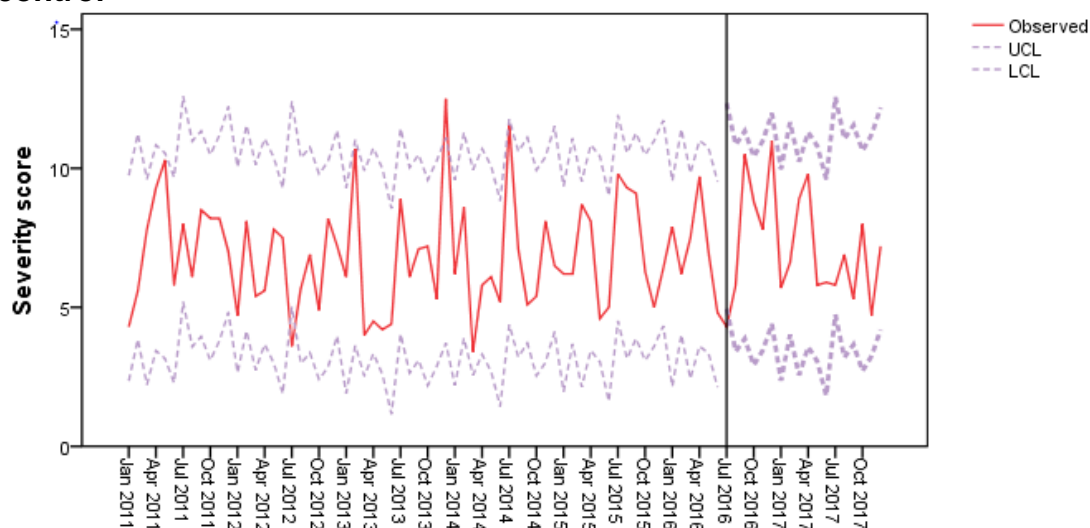
Dog dangerously out of control in any place

For the offence involving a dog dangerously out of control in any place (not causing injury), the legislative changes that came into effect in 2014 expanded the scope to include offences that take place on private property (as with some of the other offences, described earlier). The maximum sentence for this offence remained the same at 6 months' custody.

The number of adult offenders sentenced for this offence fluctuated between around 170 and 230 over the period from 2011 to 2017, with 180 offenders sentenced in 2017.

The most common sentence outcome for this offence is a fine, with 52 per cent of adult offenders receiving a fine in 2017. The second most common is a conditional discharge (23 per cent in 2017) followed by a CO (15 per cent).

Figure 3 –Sentencing severity time series analysis for a dog dangerously out of control



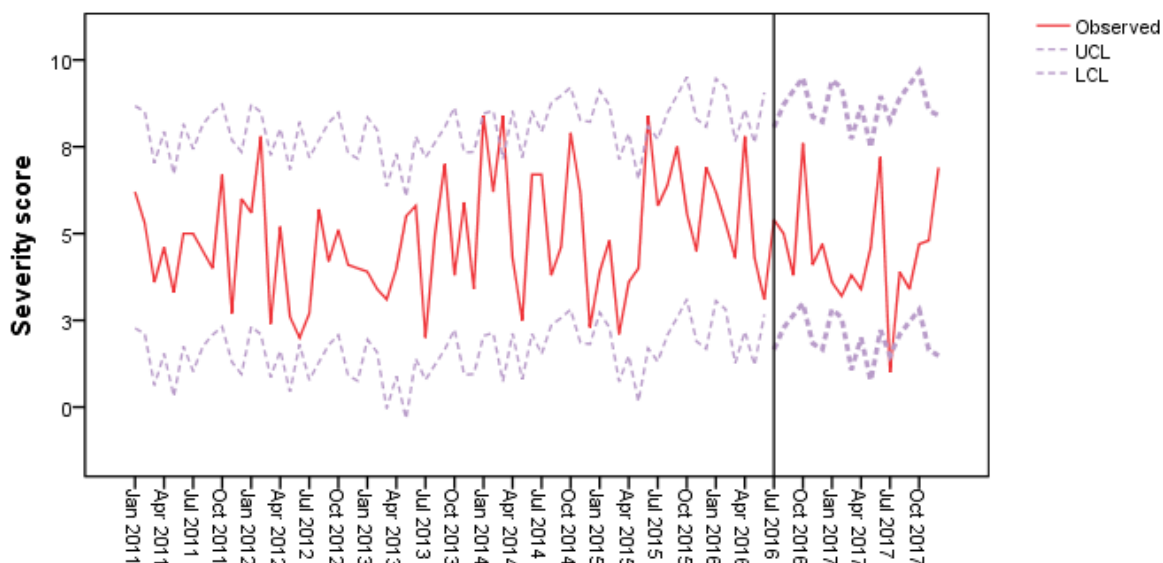
For this offence, average sentencing severity remained relatively stable following the introduction of the guideline and time series analysis suggests that average sentencing severity stayed within the forecasted severity region for the whole post-guideline period of study. Based on this, there is no evidence of the changes causing a shift in average sentencing outcomes for this offence.

Possession of a prohibited dog, breeding, selling, exchanging or advertising a prohibited dog

In 2017, all of the 110 adult offenders sentenced for offences covered by this guideline were sentenced for possession of a prohibited dog, with no offenders sentenced for the offences of breeding, selling, exchanging or advertising a prohibited dog. From 2011 to 2016, when volumes gradually reduced from around 260 to around 130, on average around 98 per cent of offenders were sentenced for possession of a prohibited dog, with only a handful sentenced for any of the other offences covered by this guideline.

The most common sentencing outcome in 2017 was a fine (55 per cent) followed by a conditional discharge (36 per cent) and a community order (CO) (5 per cent). The use of each sentencing outcome has varied slightly from year to year: in some years, conditional discharges were the most commonly used sentence, in some years fine were more common, and in some years, they were used equally. These fluctuations may be as a result of the relatively small number of offenders sentenced for this offence.

Figure 4 – Sentencing severity time series analysis for possession of a prohibited dog or breeding, selling, exchanging or advertising a prohibited dog



The results of the time series analysis for this offence should be treated with caution due to the relatively low number of offenders sentenced, particularly towards the end of the period analysed. The analysis suggests that average sentencing severity stayed within the forecasted severity region for most of the period following the introduction of the guideline. One of the points is below the lower limit, but this seems to be an outlier, as for all of the other points, severity is well within the limits. Overall, there is no evidence of a change in sentencing outcomes for this offence.

Conclusion

For most of the offences covered by the *Dangerous Dog Offences Definitive Guideline*, it seems that the guideline either had no effect on average sentencing severity, or volumes were too low to conduct any meaningful analysis.

However, for the offence of a dog dangerously out of control causing injury, there is some evidence of a slight increase since the guideline came into force, driven by a decrease in the use of conditional discharges. It is difficult to determine what caused this; it may be due to a combination of factors including the legislative changes, a change in the mix of cases coming before the courts, wider trends in sentencing outcomes or the guideline itself.

As the changes observed for this offence did not have a substantial impact on the more severe sentencing outcomes of immediate custody, SSOs or COs, it is expected that even if the guideline did cause the changes, there would have been only a small impact on prison and probation resources.

The Council concludes that, based on the evidence available, there is no immediate need to revisit the guideline. However, the Council will continue to monitor the impact of the guideline and will be alert to any changes in legislation or trends in sentencing that may affect whether the guideline continues to meet its aims and objectives.

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