

# Sentencing Council

## **Dangerous Dog Offences**

### **Response to consultation**

March 2016

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# Foreword



On behalf of the Sentencing Council I would like to thank all those who responded to the consultation on dangerous dog offences, and those who attended the consultation events.

As with all Sentencing Council consultations, the views put forward by all consultees were carefully considered, and the range of views and expertise provided by respondents were of great value, particularly in relation to the completely new offence of attacks on assistance dogs.

As a result of this work, the general approach outlined in the consultation has been maintained, with some small amendments made to the guidelines, reflecting points made by respondents on certain issues. In particular, step six of the guideline for the offence of possessing a prohibited dog has been expanded, to include additional information to help courts assess whether or not someone is a fit and proper person to be in charge of a dog. This was in response to suggestions made during the consultation that more information on these orders would be useful to the courts.

The Council hopes that these revised guidelines will be helpful to those sentencing these cases, as the Council of HM Circuit Judges commented in their consultation response: *'We (therefore) welcome the introduction of guidelines for these new offences that may be unlikely to come frequently before the Crown Court but will raise considerable public concern when they do.'*

Lord Justice Treacy  
Chairman, Sentencing Council

# Introduction

In 2012 the Sentencing Council issued a dangerous dog offences guideline. In May 2014, amendments to the Dangerous Dogs Act 1991 were enacted through the Anti-social Behaviour, Crime and Policing Act 2014,<sup>1</sup> which, as well as introducing a completely new offence, made such substantial changes to the offences and to the maximum penalties that the Council considered it was necessary to revise comprehensively the existing guideline.

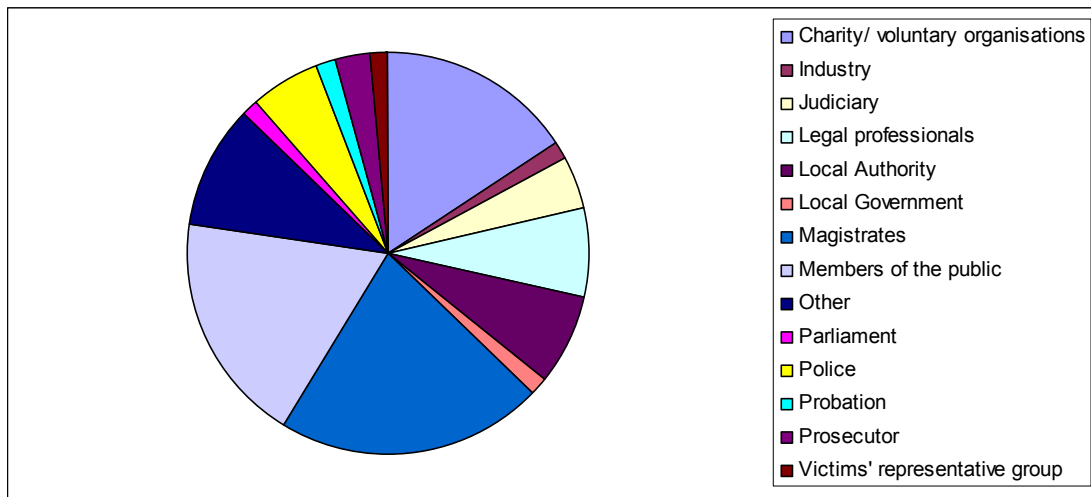
In March 2015 the Sentencing Council published a 12-week consultation on draft guidelines on sentencing dangerous dog offences. Engagement events were held with interested parties as part of the consultation, as detailed below. The response to the draft guidelines was favourable. The Association of Lawyers for Animal Welfare commented: *'ALAW would (firstly) like to commend the Sentencing Council for the care that has clearly been taken in drafting the new proposed dangerous Dog Offences Guidelines.'*

1 June 2015	Magistrates and legal practitioners	Portsmouth
5 June 2015	Magistrates	Kidderminster
24 June 2015	Magistrates	Wales

In total 70 responses were received to the consultation; most of these were submitted by e-mail or letter, with 28 responses submitted online.

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2014/12/part/7/enacted>



### Breakdown of respondents

Type of respondent	Number
Charity/voluntary organisation	11
Industry	1
Judiciary (2 representative bodies and 1 individual response)	3
Legal professionals (3 collective responses and 2 individual responses)	5
Local Authority	5
Local Government	1
Magistrates (10 collective responses, 5 individual responses)	15
Members of the public	13
Other	7
Parliament	1
Police (3 collective responses and 1 individual)	4
Probation (individual response)	1
Prosecutor (1 representative response and 1 individual response)	2
Victims' representative group	1

# Research

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 was conducted, 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 was undertaken 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.
- In-depth telephone interviews were held with 12 Crown Court 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. In order to establish what impact the revised guideline might have on sentencing levels, the judges were asked to re-sentence their case using an early draft of the guideline, explaining their thinking and offering critiques and suggestions as they went along. These interviews had a direct bearing on the guideline proposed in the consultation.

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

# Approach

In the consultation the Council proposed that there should be five sub-guidelines, as set out below:

- 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; and
- Possession of a prohibited dog, breeding, selling, exchanging or advertising a prohibited dog.

Given the large number of positive responses to the proposed structure of the revised guideline, the Council decided to maintain this structure.

# Culpability

For three of the guidelines (offences causing death to a person, offences causing injury to a person and attack on an assistance dog, causing injury or death) the approach consulted on was to assess culpability as high, medium, or lesser and the culpability factors were identical in all three. For two of the guidelines (offences of dog dangerously out of control where no injury is caused, and possessing a prohibited dog) there were two levels proposed: higher and lesser. Respondents to the consultation generally agreed with the approach taken to culpability; a small number of issues were raised regarding the culpability factors, which are discussed below.

## **Cross cutting issues**

A number of respondents requested that '*dog known to be prohibited*', which was included as an aggravating factor within all of the guidelines except the possession of a prohibited dog guideline where it was a high culpability factor, should be moved to high culpability. It was suggested that an attack committed by a known prohibited dog makes an offender more culpable, as they should have taken greater care and adopted greater safety measures than other dog owners, given that the dog was a

prohibited breed. In light of these comments, which were expressed by a number of respondents, the Council decided to place *'dog known to be prohibited'* within high culpability in all of the guidelines, and remove the factor from the list of aggravating factors.

The wording of the factor *'dog bred or trained to be aggressive'*, a factor within high culpability in all of the guidelines except the possession of a prohibited dog guideline, was questioned by a number of respondents. Respondents commented that it is misleading to suggest that a dog can be bred to be aggressive. They took the view that although some dogs are born with inherited tendencies that might, if not controlled, make aggressive behaviour more likely, it is a dog's upbringing, treatment or training, rather than its heritage at birth, which dictates whether or not it will be aggressive. For these reasons, the Council has reworded this factor, removing the reference to 'bred', so that the factor in high culpability reads *'dog trained to be aggressive.'* This factor will still reflect the Council's intention that where a dog has been trained to be aggressive and causes death or injury, this could place the offender in the highest level of culpability.

The Council also decided to reword the factor within high culpability of *'failure to respond to official warnings or to comply with orders concerning the dog'* to *'offender disqualified from owning a dog, or failed to respond to official warnings, or to comply with orders concerning the dog'*. This is so that an offender who has ignored a court order disqualifying them from owning a dog, who is then convicted of dangerous dog offences, can be placed within the highest level of culpability. This reflects a recently sentenced dangerous dog case, at Cardiff Crown Court, *R v Greve*. The draft guideline previously only referred to offenders who had ignored orders concerning the dog, rather than themselves.

A small number of respondents suggested that *'failure to take adequate precautions to prevent dog from escaping'*, which was an aggravating factor in the first four guidelines, should be moved to be a culpability factor instead. The Council considered this point, but concluded that the factor in medium culpability of *'lack of safety or control measures taken in situations where an incident could reasonably have been foreseen'* could cover a failure to prevent a dog from escaping and that no other specific reference was required.

The Council decided to remove the aggravating factor of *'failure to take adequate precautions to prevent dog from escaping'* from the guidelines for offences causing death to a person, offences causing injury to a person and attack on an assistance dog causing injury or death, as this could lead to double counting on the same issue.



This aggravating factor in the guideline for the offence of dog dangerously out of control where no injury is caused remains, as there is no medium culpability factor of *'lack of safety or control measures taken in situations where an incident could reasonably have been foreseen'* within that guideline.

## **Offence where an assistance dog is injured or killed**

A small number of respondents suggested that the culpability factors for this guideline should be more tailored to the specific offence of an attack on an assistance dog resulting in injury or death: it was noted that there was no reference to dogs or the targeting of assistance dogs or their owners, due to their disability. It was suggested that the words *'or dogs'*, should be added to the first high culpability factor, so that it would read *'dog used as a weapon or to intimidate people or dogs.'*

The Council considered these points carefully, and has adopted the form of wording proposed above. The Council also decided to include an additional high culpability factor within this guideline only of *'offence motivated by, or demonstrating hostility to the victim (the assisted person) based on their disability (or presumed disability)'*. The high culpability factors focus on deliberate intent within this guideline. If an offender targets someone due to perceptions of their disability and then uses their dog to bully or harass the assistance dog and their owner, leading to an attack on an assistance dog, this factor should place them within high culpability.

For the rest of the guidelines, there is a revised aggravating factor of *'offence motivated by, or demonstrating hostility based on any of the following characteristics of the victim: religion, race, disability, sexual orientation or transgender identity'* (discussed further in the aggravating factors section below). This is included as an aggravating factor as it is less likely to be an integral part of the offending for the rest of the dangerous dog offences within the guideline.

## **Dog dangerously out of control, no injury caused**

A number of respondents questioned why there were only two levels of culpability for this guideline, stating that they thought there should be three levels, as in the guidelines dealing with the offences of an attack on a person causing death, offences causing injury to a person and attack on an assistance dog. In the consultation document, the Council set out for the rationale for this decision, which was that the two level model reflected the approach in the 2012 guideline and that three culpability levels could over complicate the offence. The Council considered the point carefully, but concluded that the proposed structure should remain unchanged, for the reasons given in the consultation document.

# Harm

Respondents to the consultation largely supported the proposed approach to the assessment of harm within the draft guideline. Accordingly only minor changes have been made to the harm factors throughout the guidelines, mainly for clarification purposes.

Within the guideline for offences causing injury to a person, the wording of category two harm has been made clearer: it has been changed from *'factors in categories 1 or 3 not present'* to *'harm that falls between categories 1 and 3'*. Category three of this guideline has also been reworded to read *'minor injury and no significant psychological harm.'*

Within the guideline for attack on an assistance dog causing injury or death, the same change as discussed above has also been made to the wording in category two. The factor in category one, *'impact of the offence on the assisted person is severe'* has been reworded to improve clarity, to: *'serious impact on the assisted person (whether psychological or other harm caused by the offence)'*. The two bullet points in category three have now been combined, to read *'Minor injury to assistance dog **and** impact of the offence on the assisted person is limited.'* This change has been made to aid clarity, so that if there is only a minor injury to the dog and the impact on the assisted person is limited, this would be assessed as category three. If there was only a minor injury to the dog but the offence still had a serious impact on the assisted person, for example because its owner was afraid to leave their home following an incident, this would be classed as category one.

No changes were made to the harm assessments for the remaining offences within the guideline.

# Aggravating Factors

Respondents strongly supported the proposed aggravating factors, which are very similar across the guidelines. One factor that a number of respondents did comment on was the aggravating factor of *'offence motivated by, or demonstrating hostility based on, but not limited to, the victim's age, sex or disability.'* This was included across all the guidelines except for the offence of possessing a prohibited dog. Respondents proposed that all the statutory aggravating factors listed in sections 145 and 146 of the Criminal Justice Act should be listed.

The Council agreed with this suggestion, and a new statutory aggravating factor has been included which reads: *'offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity.'* This has been included within all the guidelines except the offence of possessing a prohibited dog. Within the guideline for the offence of attack on an assistance dog causing injury or death, the word 'disability' is omitted from the list, as this is included separately within the assessment of culpability at step one.

The Council decided to add an additional aggravating factor of *'serious injury caused to others (where not charged separately)'* within the guideline for offences causing injury to a person, to reflect a situation where additional injuries have been caused to someone other than the victim, from the same incident, but which are not part of the charge before the court. Accordingly, the wording of the aggravating factor in the guideline for offences causing death has been reworded for consistency to *'serious injury caused to others (where not charged separately)'*, from the previous wording of *'serious injury caused to others who attempted to intervene in the incident'*.

As discussed in the section on culpability on page seven, the aggravating factors of *'dog known to be prohibited'* and *'failing to take adequate precautions to stop the dog from escaping'* have been removed. The Council also decided to remove the factor of *'more than one dog involved'* from the guidelines, having concluded that if an incident involved more than one dog, then separate charges are likely to be brought.

# Mitigating Factors

Respondents to the consultation supported the vast majority of the proposed mitigating factors, which are very similar throughout the guidelines. A small number of respondents suggested that additional mitigating factors should be added, such as if the dog had acted out of control due to an undiagnosed illness or condition, or if the victim was a close friend or relative of the defendant. The Council considered these suggestions, but concluded that it was not necessary to add any of these factors because the list of mitigating factors is not exhaustive and courts are always able to take additional factors into account as appropriate in individual cases.

# Sentence Levels

In setting the sentence levels in the consultation, the Council considered the available statistical data from the Ministry of Justice Court Proceedings Database (CPD) for the existing dangerous dog offences. However this data was limited and in addition, very few cases involving a death had been sentenced. The data also provided little assistance in developing the sentence ranges, given the significant increase in the maximum penalties for offences committed after May 2014. The Council also considered sentencing data for driving, assault and manslaughter cases. Following the consultation, sentencing data for dangerous dog offences remains limited.

The majority of respondents agreed with the proposed starting points and ranges for the offences within the guidelines. Of those who disagreed, some thought the sentence ranges were too high and others thought they were too low. A number of respondents expressed concern regarding the statutory maxima set out in legislation for dangerous dog offences, which is a matter for Parliament and therefore outside the scope of the guideline or the consultation.

Following consultation, the Council reviewed the proposed sentence ranges for the offences, considering relevant case law, and using their collective expertise in sentencing. Where available, the Council also considered updated sentence data

from the CPD.<sup>2</sup> The sentence levels were also compared across the offences within the guidelines to ensure proportionality.

For the guideline for offences causing death to a person, after careful consideration, the Council decided not to make any amendments to the sentence ranges proposed in the consultation. The ranges are fairly broad, which will allow courts to sentence offenders appropriately in cases which may cover a wide range of offending behaviour, from those who are very culpable, to cases of the lowest possible levels of culpability.

For the guideline for offences causing injury to a person, following consideration of the available sentencing data, the Council has slightly lowered the sentence levels within some of the ranges.

For the guideline for the offence of attack on an assistance dog causing injury or death, following consideration of the sentencing data for this new offence, the Council slightly lowered the sentence levels within some of the ranges.

No changes were made to the sentence levels for the remaining offences within the guideline.

New wording has been included immediately below the sentencing tables in the guidelines for offences causing death to a person and offences causing injury to a person, regarding cases where more than one person is injured or killed in the same incident. Although separate charges may be brought, the court will ordinarily pass a concurrent sentence because the offending arises out of the same incident. The new wording reads:

*'The table is for single offences. Concurrent sentences reflecting the overall criminality of offending will ordinarily be appropriate where offences arise out of the same incident or facts: please refer to the Offences Taken into Consideration and Totality guideline'.*

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<sup>2</sup> This sentencing data covered the period May 2014-April 2015 for magistrates' courts only. A data coding issue meant that data for the Crown Court was not available. A small sample of cases committed to the Crown Court either for trial or sentence, between January-August 2015, for offences resulting in injury to persons was also used.

# Conclusion and Next Steps

The consultation has been a vital part of the Council's consideration of the guideline. Responses received from a variety of organisations and individuals have informed the changes made to the definitive guideline.

The definitive guideline will apply to all individual offenders aged 18 and older and organisations sentenced on or after 1 July 2016, regardless of the date of the offence.

The online version of the Magistrates' Court Sentencing Guidelines will be updated on the day of publication of the definitive guideline, as well as a downloadable PDF, and a black and white hard copy will be available on request.

Following the implementation of the definitive guideline, the Council will assess the impact of the guideline.

The Equality Impact Assessment Initial Screening is available on the Sentencing Council website. No evidence was provided during the consultation period which suggested that the guideline would have any adverse impact on equalities issues which would warrant a full Equality Impact Assessment.

# Annex A:

## List of consultation respondents

Anonymous (x4)	HHJ Martyn Levett
Association of Lawyers for Animal Welfare	Marilyn Lewis
Hannah Austyn-Prys	London Criminal Courts Solicitors' Association
Joe Bailey	Ann-Marie Luckhurst
Battersea Dogs and Cats Home	Felicity Lynch
Debbie Bell	Magistrates' Association
Black Country Magistrates' Bench	Metropolitan Police Service
Blue Cross for Pets	National Bench Chairmen's Forum
Rachel Booth	National Policing Lead for Dangerous Dogs
British Transport Police	Baroness Newlove – Victims' Commissioner
Michael Cadman	North London Magistrates' Bench
Central and South Staffordshire Magistrates	Martin Pantling JP
Dawnn Chung	People's Dispensary for Sick Animals
Communication Workers Union (NW Safety Forum)	Pupils 2 Parliament
Criminal Sub Committee of the Council of HM Circuit Judges	Steve Priestley
Crown Prosecution Service	Pamela Rose
Philip Davies MP	Royal Mail
Bob Davis	Royal Society for the Prevention of Cruelty to Animals
Dogs Trust	Sefton Magistrates' Bench
Steve Feary	Kendal Shepherd
Kenneth A Fletcher JP	Somerset Magistrates' Bench
Michelle Fox-Rousell	South and East Cheshire Magistrates' Bench
Stephen Greenhalgh – Deputy Mayor for Policing and Crime in London	South East London Magistrates' Bench
Guide Dogs for the Blind Association	South West London Magistrates
Hampshire and Isle of Wight Dog Wardens Group	Stolen and Missing Pets Alliance
Anna Hardy	Support Dogs
Susan Holland	Noel Sweeney
E.A.S House	Tracy (no surname supplied)
Justices' Clerks' Society	Adrian Toole
Rosalind Kadir	David Tucker
Kennel Club	Harriet Webzel
Kathleen Kingston	West Lancashire Borough Council
Kingston Crown Court Judges	Paul Whitfield
Chieko Kuribara	