

## Research to support the development of a revised guideline for sentencing dangerous dog offences

### Introduction

During the development of sentencing guidelines, the Sentencing Council conducts research into current sentencing practice and future sentencing under draft guidelines, in order to ensure that guidelines are evidence-based and will work well in practice.

In advance of issuing a draft guideline for public consultation, a small programme of research was carried out to inform the development of the dangerous dog offences guideline. This research consisted of:

1. A qualitative content analysis of the transcripts of Crown Court judges' sentencing remarks for 20 recent cases involving death or injury by a dangerous dog attack, to gain insights into the key factors influencing sentencing decisions in these cases.
2. In-depth telephone interviews with 12 Crown Court and district judges who had recently sentenced a dangerous dog case involving either death or injury of a person, which aimed to garner judges' views of the draft guideline and to ascertain the impact the draft guideline might have on sentencing levels.

### Background

The Sentencing Council guideline for sentencing dangerous dog offences replaces an earlier Sentencing Council guideline for these offences, in force since August 2012. Revision of the guideline was necessitated by changes in legislation which came into effect in May 2014, whereby the Dangerous Dogs Act 1991 was extended to cover offences committed in all private as well as public places, and the statutory maximum sentence for an owner or person in charge of a dog dangerously out of control causing injury to a person was raised from two years to five years' custody, and 14 years for cases of death.<sup>1</sup>

Whilst the guideline incorporates a number of dangerous dog offences, research focused on offences causing death or injury to a person, because these were the two offences that underwent the greatest change following the change in legislation, necessitating the most extensive revision of the guidelines.<sup>2</sup> This report briefly discussed the analysis of judges' sentencing remarks before describing the primary research with judges in more detail.

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<sup>1</sup> The changes were part of the Anti-social Behaviour, Crime and Policing Act 2014, see: <http://www.legislation.gov.uk/ukpga/2014/12/part/7>

<sup>2</sup> These two offences are: 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) injuring any person (Dangerous Dogs Act 1991 (Section 3 (1)); and, 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) injuring any person causing death (Dangerous Dogs Act 1991 (Section 3 (1)). Throughout this report, the guidelines for these two offences and referred to the 'injury' and 'death' guidelines, respectively.

## 1. Analysis of the sentencing remarks of Crown Court judges

### Aim and method

During the earliest stage of guideline development in 2014, Office of the Sentencing Council researchers undertook a qualitative content analysis of 20 transcripts of Crown Court judges' sentencing remarks for cases of injury or death caused by a dog dangerously out of control in either a public or private place.<sup>3</sup> The aim of this stage of research was to gain a detailed understanding of the features of very serious offences, to help inform decisions about additional factors that may need to be incorporated into the new guideline to reflect the higher culpability and harm signalled by the new statutory maxima, and to reflect the extension of the law to *all* private places. Crown Court cases were chosen because transcripts of circuit judges' sentencing remarks are publicly available, whereas no such transcripts are available for cases heard in the magistrates' courts.

Potential cases were sourced from press articles (2012 to early 2014) and from Ministry of Justice administrative data on sentencing from 2012. The sample was selected to reflect variation in offence seriousness and in some cases, defendants had been prosecuted under other laws e.g. manslaughter. The transcripts were then purchased from various transcription companies who have the right to transcribe court hearings in various regions of the country. In total, five offences involving a death and 15 involving an injury were examined. The analysis was also informed by reviewing the guideline for, and cases of, death and injury caused by dangerous or careless driving. These offences have similar statutory maxima to the most serious dangerous dog offences<sup>4</sup>, and it was felt that they sometimes have similar characteristics (for example, very high harm with low culpability, where there is no *intent* to cause harm) so the sentencing patterns and sentencing factors might potentially read across to dangerous dog offences.

### Limitations of this stage of research

Although 20 dangerous dogs cases is not a large sample it must be borne in mind that these offences are relatively rare and that offences that reached the Crown Court prior to the change in legislation are rarer still: in 2013, around 640 offenders were sentenced for a dangerous dog offence causing injury, and 91 per cent of these cases were heard in the magistrates' courts. Only 13 offenders were sentenced to immediate custody.<sup>5</sup> Nevertheless, twenty cases remains a small sample and it must be noted that we cannot be sure that the findings explained below generalise across to all or even the majority of high level cases of this type.

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<sup>3</sup> Prior to the change in legislation only attacks which happened in public places or private places where the dog did not have a right to be were charged under dangerous dog laws. However, offences occurring in a private place where the dog did have a right to be were sometimes charged under other provisions (e.g. manslaughter), so these were included in the analysis.

<sup>4</sup> The statutory maximum sentences for death by dangerous driving and death by careless driving are 14 and 5 years' custody respectively. The statutory maximum sentence for causing injury by dangerous driving is 5 years' custody.

<sup>5</sup> Dangerous dog offences: Analysis and research bulletin (2015), and accompanying tables. See: <https://www.sentencingcouncil.org.uk/publications/item/dangerous-dog-offences-analysis-and-research-bulletin-2/>

### Findings from the analysis of Crown Court transcripts

The transcript analysis suggested that a number of culpability factors, which were not included in the guideline then in force, warranted inclusion in the injury and death guidelines. These were:

- Failure to act on prior knowledge of the dog's aggressiveness (in cases where there were no explicit warnings, but earlier events should have prompted the owner to take measures);
- Failure to intervene in incident, where it would have been reasonable to do so; and:
- Momentary lapse of control/attention (this is included as a factor indicating lesser seriousness in the guideline for causing death by careless driving,<sup>6</sup> and the analysis of sentencing remarks suggested that it was a feature of some dangerous dog 'injury' cases as well).

The transcript analysis also suggested the following:

- 'Ill treatment or failure to ensure the welfare needs of the dog, where not charged separately' could be changed from an aggravating to a culpability factor, because it was a central factor in several of the cases of dog attacks causing death.
- There were possible problems with two of the factors included under a high level of harm in early drafts of the '*death*' guideline: (i) 'more than one death', and (ii) 'sustained or repeated attack'. This was because, (i) in both the transcripts and in UK press cuttings dating back some years there appeared to be no cases where more than one death was caused (although that is not to say that this *could* happen); and (ii) whether an attack was 'sustained or repeated' appeared difficult to gauge, given that in many cases where there was a death there were no witnesses to the preceding attack.
- There was an appreciable psychological impact on witnesses who saw a dangerous dog attack and those who attended the scene, and also that there could be a long term practical impact when, for example, a parent had to support an injured child through multiple medical appointments and operations as a result of extensive and complex injury.
- 'Victim is a close friend or relative' could be included as a mitigating factor, since deaths in the home were likely to involve a friend or relative of the dog owner, often causing the offender considerable anguish.

As a result of these findings a number of changes were made to early drafts of the '*death*' and '*injury*' guidelines. For example, 'failure to act on prior knowledge of the dog's aggressiveness' was incorporated as a culpability factor in both guidelines, and the higher category of harm in the '*death*' guideline was changed to focus on vulnerability of the victim(s) and injury caused to those attempting to intervene in the incident. The amended draft guidelines were then researched with Crown Court and district judges, as described below.

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<sup>6</sup> Sentencing Guidelines Council (2008). Available at: [http://www.sentencingcouncil.org.uk/wp-content/uploads/web\\_causing\\_death\\_by\\_driving\\_definitive\\_guideline.pdf](http://www.sentencingcouncil.org.uk/wp-content/uploads/web_causing_death_by_driving_definitive_guideline.pdf)

## 2. Telephone interviews with judges to research early draft guidelines for dangerous dog offences causes 'injury' and 'death'

### Aim and method

The aim of this research was to elicit the views of a knowledgeable group of judges (those who had sentenced a dangerous dog case recently) on how well the early draft guidelines would work in practice, in relation to these cases. Feedback was sought on both sentencing factors and on sentencing starting points and ranges, to help determine where these should be pitched in the context of the increased sentences permissible under the new legislation.

To this end, the research team conducted twelve, 30 to 40 minute qualitative, in-depth telephone interviews with judges who had sentenced a relatively serious dangerous dog case since 2012. As with the transcript analysis, because of the rarity of these offences the sample was purposively selected from cases reported in the press (and most cases had already been included in the transcript analysis). Ten cases had been heard in the Crown Court, and two in the magistrates' court. Whilst all the cases were quite serious, the offences were chosen to span a range of levels of culpability across both death and injury. Four judges (two Crown Court, and two district judges) had dealt with cases of death, and the remaining eight Crown Court judges had all dealt with offences causing injury. In some cases, the primary sentence was sentenced under the Dangerous Dogs Act 1991<sup>7</sup>, but in others the sentence was secondary to that for another offence (e.g. manslaughter, assault). In a small number of cases, there was no 'dangerous dog' charge.<sup>8</sup>

During the interviews, sentencers were asked about their spontaneous views or 'gut feel' on where the sentence for their specific case should sit, given the increased maximum. They were then asked to re-sentence their specific case using the draft guideline for either 'death' or 'injury', as appropriate (having been sent transcripts of their sentencing remarks in advance, where available). They were also asked about their spontaneous views of a notional highest and lowest culpability case (e.g. what factors would these include?) and their more general views on each section of on the draft guidelines for both 'injury' and 'death'.

Copies of the two draft guidelines which were tested are at Annex A.<sup>9</sup> The guidelines followed the standard format of Sentencing Council offence-specific guidelines, which gauge the seriousness of the offence at Step 1 on the basis of the level of culpability of the offender and the level of harm caused to victim(s). This iteration of the 'death' guideline incorporated three levels of culpability and two levels of harm, yielding a 3x2 table of sentencing ranges extending from one to 12 years' custody overall. The 'injury' guideline incorporated three levels of culpability and three levels of harm, yielding a sentencing table of 3x3 sentencing ranges, extending from discharge to 4 years' custody overall.

The data on the original sentences the judges gave, their 'gut feel' sentences according to the new statutory maxima and their notional sentences under the draft guidelines were tabulated. The table was then examined to see how the

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<sup>7</sup> Usually the offence was owner or person in charge of a dog which is dangerously out of control in a public place, injuring any person, Dangerous Dogs Act 1991 (Section 3(1))

<sup>8</sup> For example, where an attack happened in a private place where the dog had a right to be, which did not fall within the 1991 Act until after the legislative change in 2014.

<sup>9</sup> The discussion guide for this research is also available on request.

sentences changed, the factors they were using (e.g. the extent to which they were using the new factors in the guideline) and the level of agreement between the sentence given under the draft guideline and the judge's perception of where the revised sentence should be. General views on starting points and ranges, culpability and harm and aggravating and mitigating factors were also collated and analysed thematically, again in a table format. The tables were used as the basis for a narrative account of the findings, summarised below.

### Limitations of this stage of research

Whilst this stage of research provided some valuable evidence to support the development of the guidelines, there are limitations to this work. The sample size was of necessity very small given the rarity of these cases, particularly those involving a death. However, the sample size was very small in absolute terms and was purposively selected. Findings should therefore be interpreted with caution, since they are only the views of a knowledgeable few judges, which should not be taken as representative of the wider population of all judges.

### Findings from the telephone interviews with judges

Overall, the two early guidelines appeared to work well and presented few areas of concern for the judges, either in principle or when they used them to re-sentence their specific case.

As shown in Table 2, in 'injury' cases where it was possible to compare the sentence given under the new guideline with the actual sentence given, there tended to be a high proportionate uplift in sentence for the more serious cases but relatively little change at the lower end of the seriousness spectrum. In most cases of both death and injury, the judges were content with the level of sentence the early draft guideline had taken them to, which (where stated) broadly matched their 'gut feel' for where the sentence should be (see Tables 1 and 2).

It should be noted that the next sections of this analysis does not cover all parts of the two guidelines. Rather, it concentrates on areas of the guidelines where the research suggested there were issues worthy of noting in the context of guideline development.

## 2.1 Sentencing levels in the two guidelines

### i. Lowest level of sentencing in the 'death' guideline

One element that was observed to work well for the judges sentencing two of the four death cases was the inclusion in the 'death' guideline of sentences of two years' custody or less for the lowest culpability offences. This allowed some of the judges to keep the defendant out of immediate custody, by suspending the sentence. In these cases (defendants 2 and 3 in Table 1), the judges were strikingly sympathetic to the defendants, describing them using terms like 'broken', 'cowed' and 'tragic', and they clearly felt that handing down immediate custodial sentences in these instances would be wrong.

Furthermore one or two judges felt they would like the 'death' guideline to incorporate a high level community order. One judge in particular had never

handed down a prison sentence for a death by careless driving, and did not agree that in principle all death offences involving a dangerous dog attack should pass the custody threshold; in the same way, he did not agree that all death by careless driving cases should do so, because he did not believe that punishing a grave but unintentional '*sin of omission*' with immediate custody was beneficial to either the offender or to society.

ii. Starting points and ranges for Culpability B, Harm 1 in both guidelines

There were cases of both death and injury where the judges felt the culpability was higher than the factors in culpability B of the two guidelines allowed them to be. In these cases the judges felt that the risk of attack was so high, and was so flagrantly ignored, that the defendant deserved to be in the highest level of culpability (Culpability A) and receive a commensurate sentence. However the draft guideline's exclusive focus on factors describing *intentional* acts under Culpability A, such as the dog being used as a weapon, precluded this. One judge characterised such offences as the most serious cases of '*willful disregard of the dangers to other people*'. Another judge said he felt that the culpability of someone who deliberately keeps a '*villainous*' dog, bred and trained to be aggressive, but shuts his eyes to the potential consequences, can be equal to that of the person who actively uses the dog as a weapon.

This issue was particularly problematic in the '*injury*' guideline, where several of the judges were frustrated by what they felt was a low starting point (of one year's custody) for a Culpability B, Harm 1 offence, which they were only able to aggravate up to 18 months' custody – a year less than the lower boundary for a Culpability A, Harm 1 offence. In some of these cases, the judges' 'gut feel' sentences were appreciably higher than the sentence they arrived at under the new guideline (e.g. Table 2, Cases 8, 10 and 12). Judges talked about feeling '*under-resourced*' in Culpability B, and the final sentence being '*a bit light*'. These judges were assessing offences that had resulted in serious injury caused by dogs that were known by their owners to be aggressive, where the owners had shown a dangerously high disregard for the welfare of others but stopped short of using the dog as a weapon.

One of the judges who felt that the Culpability B, Harm 1 sentencing range was too low suggested revising this sentence range within the '*injury*' guideline upwards to a starting point of 18 months' custody (from 12 months, as it stood in the guideline used in this research) with a commensurate upward revision of the range. The judge who made this suggestion also noted that this would bring the sentence into line with the sentence for assault occasioning actual bodily harm, which he considered a comparable offence.

2.2 Culpability factors in both guidelines

There was endorsement for the overall spectrum of culpability outlined in the two guidelines, with cases where a dog is kept and used as a weapon, often for criminal purposes, usually seen as the notional 'worst case' a judge could envisage; and cases involving a momentary lapse by an otherwise careful owner, where a dog is uncharacteristically aggressive, as the notional 'least worse' case.

Also, as shown in Tables 1 and 2, the judges spontaneously made use of the new factors suggested by the transcript analysis (see Section 1), such as 'failure to act on prior knowledge of the dog's aggressive behaviour'.

However, linked to the points made in Section 2.2 about overly light sentencing in Culpability B, some of the judges suggested additional culpability factors for the highest level of culpability (Culpability A) which would allow offences which, though falling short of a deliberate act were nonetheless extremely reckless, to fall into Culpability A and attract a higher sentence. These additional factors varied according to the details of the judge's case, but included:

- 'dog is bred or trained to be aggressive' (see further discussion below);
- 'a very serious previous incident, which had shown the dog's aggression' (in the words of one judge, '*he was on notice that the dog was murderous*');
- 'more than one dog' and 'more than one victim in the same incident' (suggested by a judge who presided over a case with multiple dogs, and multiple victims in the same incident); and
- 'defendant's overt choice not to intervene' (where the defendant allowed his dog to attack multiple victims).

A number of the judges also talked about the criminal context in which dangerous dogs are sometimes kept, particularly how they are used by drug dealers as both symbols of status and potentially very effective weapons. One judge pointed out that a dog can be as effective as a gun in that it can be deployed at a long range, without the dealer risking the minimum five year custodial term associated with various firearms offences. There was some sense that the keeping of the dog for criminal purposes could or should be reflected in the two guidelines, and suggestions included elevating and extending the aggravating factor of 'dog is known to be prohibited' to a Culpability A factor along the lines of 'Dog is bred or trained to be aggressive'.

Table 1: Sentencing exercise using the early draft guidelines for 'death' to sentence or re-sentence defendants in four cases involving to the death of a person

Case and Judge	Judge's actual sentence for dog offence causing injury (before guilty plea) <sup>10</sup>	Post-legislative change sentence ('gut feel')	Post-change, hypothetical sentence (using the new guideline)	Classification and key factors
Case 1: Defendant 1 Judge 1	Not applicable (defendant was prosecuted on another charge)	8 years' custody	8 years' custody <sup>11</sup>	<u>Culpability B</u> : 'Failure to respond to warnings or concerns expressed by others about the dog's behaviour'; 'Failure to act on prior knowledge of dog's aggressiveness'. <u>Harm 1</u> : 'Vulnerability of victim', 'Serious injury to those who attempted to intervene'.
Case 1: Defendant 2 Judge 1	Not applicable (defendant was prosecuted on another charge)	2 years' custody (suspended)	18 months or 2 years' custody (suspended)	<u>Culpability B or C</u> : 'Lack of safety or control measures taken in situations where an incident could reasonably have been foreseen' (B) and 'Attempts made to regain control and/or intervene' (C). <u>Harm 1 or 2</u> .
Case 2: Defendant 3 District Judge 1	Not applicable (defendant was prosecuted on another charge)	Judge's instinct would still be to retain the case in magistrates' court	District judge was unsure: possibly 18 months' custody (likely suspended)	<u>Culpability B or C, Harm 1</u> .
Case 3: Defendants 4 and 5 Judge 2	20 months' immediate custody	7 years' immediate custody	8-9 years' custody	<u>Culpability B</u> : 'Failure to respond to warnings or concerns expressed by others about the dog's behaviour' and, 'Lack of safety or control measures taken in situations where an incident could reasonably have been foreseen'. <u>Harm 1</u> : 'Vulnerability of victim' (Judge noted he would prefer the defendants to be placed in Culpability A, to achieve a higher sentence).
Case 4: Defendant 6 District Judge 2	Not known: press reports suggest a fine	Not stated	3-4 years' immediate custody	<u>Culpability B</u> : 'Failure to act on prior knowledge of dog's aggressiveness' and, 'Lack of safety or control measures taken in situations where an incident could reasonably have been foreseen'. <u>Harm 2</u> : 'All other cases where factors in category 1 not present'.

<sup>10</sup> Throughout all three tables, sentences are pre-guilty plea, either as stated by the judge, or, if the judge specified the guilty plea reduction given, as calculated from post-guilty plea sentence. In these calculations, sentences have been rounded to the nearest month.

<sup>11</sup> Custodial sentences are all immediate, unless otherwise stated.



Table 2: Sentencing exercise using the early draft guidelines for 'injury' to sentence or re-sentence defendants in cases involving to the injury of a person

<u>Case and Judge</u>	<u>Judge's actual sentence for dog offence causing injury (before guilty plea)</u>	<u>Post-legislative change sentence ('gut feel')</u>	<u>Post-change, hypothetical sentence (using the new guideline)</u>	<u>Classification and key factors</u>
Case 5: Defendant 7 Judge 3	15 months' immediate custody for dangerous dog offence, concurrent with imprisonment for public protection for assault (minimum 4 years)	Not stated	4 years' custody	<u>Culpability A</u> : 'Dog used as a weapon or to intimidate people'. <u>Harm 1</u> : 'Serious injury' and 'Sustained or repeated attack'.
Case 6: Defendant 8 Judge 4	Low level community order (6 month supervision order and 80 hours of unpaid work)	Not stated	Low to medium level community order	<u>Culpability C</u> : 'Attempts made to regain control of dog and/or intervene'; 'evidence of safety or control measures having been taken'. <u>Harm 1</u> : 'Serious injury' and 'Victim is vulnerable'.
Case 7: Defendant 9 Judge 5	2 months' custody (concurrent with three sentences for assault, totalling 27 months' custody)	Not stated	18 months' custody	<u>Culpability A</u> : 'Dog used to as a weapon or to intimidate people'. <u>Harm 3</u> .
Case 8: Defendant 10 Judge 6	Fine (pre-guilty plea level unknown)	18 months' custody, suspended	12 months' custody, suspended	<u>Culpability B</u> : 'Lack of safety or control measures taken in situations where an incident could reasonably be foreseen'. <u>Harm 1</u> : Victim is vulnerable (although injury was not serious).

Table 2 ctd: Sentencing exercise using the early draft guidelines for 'injury' to sentence or re-sentence defendants in cases involving to the injury of a person

<u>Case and Judge</u>	<u>Judge's actual sentence for dog offence causing injury (before guilty plea)</u>	<u>Post-legislative change sentence ('gut feel')</u>	<u>Post-change, hypothetical sentence (using new guideline)</u>	<u>Classification and key factors</u>
Case 9: Defendant 11 Judge 7	18 months' custody (4.5 months for the first offence and 13.5 months for the second group of offences)	30 months' custody	48 months' custody (30 months for first offence, 18 months for the second group of offences)	<u>First offence: Culpability A</u> : 'Dog used as a weapon or to intimidate people'. <u>Second offence: Culpability B</u> : '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 aggressiveness'. <u>Both offences: Harm 1</u> : 'Serious injury'.
Case 10: Defendant 12, Judge 8	18 months' custody	2.5 years' custody	18 months' custody	<u>Culpability B</u> : absence of Culpability A factors, although judge said he would have liked to place defendant in Culpability A. <u>Harm 1</u> , on all criteria.
Case 11, Defendant 13, Judge 9	29 months' custody (for two dangerous dog offences)	3 years' custody	3 years' custody, plus unspecified consecutive sentence for a second offence	Between <u>Culpability A</u> and <u>B</u> (although the factors the judge mentions are all from Culpability A e.g. 'Failure to respond to warnings or concerns expressed by others about the dog's behaviour'). <u>Harm 1</u> , on all criteria.
Case 12, Defendant 14, Judge 10	22 months' custody	2.5 years' custody	18 months' custody	<u>Culpability B</u> : 'Failure to intervene in the incident (where it would be reasonable to do so)'. <u>Harm 1</u> : 'Serious injury' to a number of people.

### 2.3 Issues around harm in both guidelines

For two of the four examples of cases involving a death, the judges in question were uncomfortable with dividing death, the ultimate harm, into two levels (see the two-level treatment of 'Harm' in the draft 'death' guideline at Annex A. Here factors like the vulnerability of the victim and injuries caused to those intervening elevated the harm to a higher level). These judges felt that one person's death is as serious as another's, and that *everyone* is vulnerable in the face of a dangerous dog bent on attack (a point that was also made by a third judge considering a death case). There was also a sense, from these two judges, that dividing harm in this way could have the effect of downgrading the importance of a victim in relatives' eyes by implying their loved one's death was of lesser seriousness because he or she was not categorised as vulnerable. One judge characterised this as '*sending out the wrong message*'. This judge felt that the harm factors 'victim vulnerability' and 'serious injury caused to others who attempted to intervene' should be included as aggravating factors rather than harm factors. He also felt that the serious psychological effect on others (e.g. parents witnessing an attack, those attending the scene) should also be more strongly represented in the guidelines.

One judge felt that the wording in the definition of harm in the '*death*' guideline should be changed from, 'the harm involved in this offence is very serious' to 'the harm in this offence is *of the most serious*', to bring this into line with involuntary manslaughter. He cited a Court of Appeal judgment in support of this.<sup>12</sup>

Judges were comfortable with the three levels of harm in the injury guideline and the levels worked well in the re-sentencing exercise. However, some found the use of the phrase 'considerable injury' problematic, and could envisage argument in court around what constituted 'considerable' compared to what constituted 'serious'. One judge noted that 'serious' and 'minor' were words that are often used in the context of injury and as such are well understood, whereas 'considerable' has no such currency.

### 2.4 Aggravating and mitigating factors across both guidelines

One or two judges suggested that 'leaving the scene' and 'taking steps to hide their pet's involvement', as happened in several of the cases discussed could be listed as aggravating factors, and the judge in one of these cases felt one of these factors should put the defendant in high culpability.

One judge spontaneously suggested that 'victim is a close friend or relative' should be included as a mitigating factor, as per the guidelines for driving offences, and several others agreed with this when prompted. However, one judge disagreed, thinking that this factor could be construed as mitigating or aggravating. It was striking that in the two 'death' examples where this applied, the fact of the victim's closeness to the defendant seemed to be implicitly taken into account by the emphasis the judges placed on the defendants' demeanours and very obvious pain and remorse resulting from their own negligence towards someone they cared for and about.

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<sup>12</sup> 'In manslaughter culpability may be relatively low, but the harm caused is always at the highest level.' Lord Judge CJ in R v Appleby (Reference under section 36 of the Criminal Justice Act 1988) and others [2009] EWCA Crim 2693 at paragraph 14

With regard to mitigation, a couple of judges cited that the fact that the 'defendant was not present when the incident happened' (in cases where the dogs had escaped), as a possible mitigating factor. A couple of the judges also cited the fact that the owner had 'taken sensible steps after the incident' (to prevent a recurrence) in mitigation.

One judge also drew attention to the inclusion of 'isolated incident' as a mitigating feature in the '*death*' guideline, feeling that this was somewhat irrelevant in cases where the one incident is so serious it results in death.

Lastly, one judge felt that there was potential double counting in the guidelines: between 'failure to respond to warnings or concerns expressed by others' (a culpability factor), and 'failure to comply with current court orders' (an aggravating factor) because the latter might be covered by the earlier culpability factor, in some cases; and between 'lack of safety or control measures taken in situations where an incident could reasonably have been foreseen' (a culpability factor) and 'failing to take adequate precautions to prevent the dog escaping' (an aggravating factor).

### Conclusion

As discussed in section one, a number of additional culpability factors that were initially suggested from the transcript analysis were included in the two final guidelines. These were:

- 'Failure to act on prior knowledge of the dog's aggressive behaviour' (now in Culpability B in both guidelines);
- 'Failure to intervene in the incident (where it would have been reasonable to do so)' (now in Culpability B in both guidelines); and,
- 'Momentary lapse of control/attention' (now in Culpability C in both guidelines).

In addition, partly as a result of the transcript analysis, the factor, 'ill treatment or failure to ensure the welfare needs of dog' was moved from an aggravating factor to a culpability factor, because of its importance in several cases. Similarly, the transcript analysis influenced the inclusion of 'significant practical and financial effect on relatives/carers' and 'significant ongoing effect on witnesses' as aggravating factors in the '*injury*' guideline, to better reflect the magnitude of the offence on those around the victim in some cases.

As a result of some of the findings from the telephone research, in tandem with consideration of responses to the consultation, a number of further changes were made to the guidelines. The main changes that were influenced by the research were:

- Inclusion of a high level community order within the sentencing range for the lowest culpability offences involving death, where the offence was characterised by a mistake with horrific consequences rather than an offence involving intent or cavalier negligence (see section 2.1).
- Raising the starting point and upper boundary of the category range for Culpability B, Harm 1 offences in the '*injury*' guideline: a point in the range where a number of judges (who were interviewed about very serious cases of

injury) felt that the sentencing levels were not high enough to adequately reflect the overall seriousness of the offence (see section 2.1).

- Inclusion of the factor, 'dog is trained to be aggressive' under Culpability A, to reflect the negligent attitude of some owners who train their dogs to maim or kill, often within the context of their criminal activities (see section 2.2).
- Inclusion of 'victim is a child or otherwise vulnerable because of personal circumstances' and 'significant injury to others (where not charged separately)' as aggravating factors, rather than factors indicating a higher level of harm, in both guidelines (see section 2.3).
- Removal of a higher and lower tier of harm in the '*death*' guideline to make it a unitary dimension, reflecting the opinion of several of the judges interviewed about the '*death*' guideline, who did not agree that one person's death should be deemed more serious than another's (see section 2.3).
- Alteration of the factors in Harm 2 in the '*injury*' guideline: replacement of 'considerable injury' and 'some psychological harm' with 'Harm that falls between categories 1 and 3', to reflect difficulties in assessing the magnitude of mid-level harm in this guideline (see section 2.3).

#### Acknowledgements

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## **Dangerous dogs**

### **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) injuring any person causing death**

Dangerous Dogs Act 1991 (section 3 (1))  
Triable either way

Maximum: 14 years custody

Offence range: 1 year to 12 years custody

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## STEP ONE

### Determining the offence category

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

The level of **culpability** is determined by weighing up all the factors of the case to determine the offender's culpability. **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
- Goading, or allowing goading, of dog
- Deliberately encouraging the dog to attack
- Failure to respond to official warnings or to comply with orders concerning the dog.

#### B - Medium culpability:

- Failure to respond to warnings or concerns expressed by others about the dog's behaviour
- Failure to act on prior knowledge of dog's aggressiveness
- 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 not charged separately)
- All other cases where characteristics for categories A or C are not present

#### 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

By definition, the harm involved in this offence is very serious, the factors below reflect the seriousness of these offences. Courts should consider the factors below to determine the appropriate category.

<p><b>Category 1</b></p> <ul style="list-style-type: none"> <li>• Vulnerability of victims.</li> <li>• Serious injury caused to others who attempted to intervene in incident</li> </ul>
<p><b>Category 2</b></p> <ul style="list-style-type: none"> <li>• All other cases where factors in category 1 not present</li> </ul>

**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 - 14 years' custody**

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<p><b>Starting point</b> 9 years' custody</p> <p><b>Category range</b> 8 -12 years' custody</p>	<p><b>Starting point</b> 5 years' custody</p> <p><b>Category range</b> 3-9 years' custody</p>	<p><b>Starting point</b> 2 years' custody</p> <p><b>Category range</b> 18 months -3 years' custody</p>
<b>Category 2</b>	<p><b>Starting point</b> 7 years' custody</p> <p><b>Category range</b> 5-9 years' custody</p>	<p><b>Starting point</b> 4 years' custody</p> <p><b>Category range</b> 2-6 years' custody</p>	<p><b>Starting point</b> 18 months' custody</p> <p><b>Category range</b> 1-2 years' custody</p>

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:**

- More than 1 dog involved
- Injury to other animals
- Location of the offence
- Ongoing effect on witness(es) to the attack
- 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
- 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
- Isolated incident
- No previous complaints against, or incidents involving the dog
- Evidence of responsible ownership
- Remorse
- Good character and/or exemplary conduct
- Serious medical conditions 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, such as 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.

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 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.

## **Dangerous dogs**

**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) injuring any person.**

Dangerous Dogs Act 1991 (section 3 (1))  
Triable either way

Maximum: 5 years

Offence range: Discharge to 4 years' custody

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## STEP ONE

### Determining the offence category

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

The level of **culpability** is determined by weighing up all the factors of the case to determine the offender's culpability. **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
- Goading, or allowing goading, of dog
- Deliberately encouraging the dog to attack
- Failure to respond to official warnings or to comply with orders concerning the dog

#### B - Medium culpability:

- Failure to respond to warnings or concerns expressed by others about the dog's behaviour.
- Failure to act on prior knowledge of dog's aggressiveness
- 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 not charged separately)
- All other cases where characteristics for categories A or C are not present

#### 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 been reasonably foreseen by offender
- Momentary lapse of control/attention

## Harm

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

<p><b>Category 1</b></p> <ul style="list-style-type: none"> <li>• Serious injury (which includes disease transmission)</li> <li>• Serious psychological harm</li> <li>• Sustained or repeated attack</li> <li>• Victim is a child or otherwise vulnerable because of personal circumstances</li> <li>• Serious injury caused to others who attempted to intervene in the incident</li> </ul>
<p><b>Category 2</b></p> <ul style="list-style-type: none"> <li>• Considerable injury</li> <li>• Some psychological harm</li> </ul>
<p><b>Category 3</b></p> <ul style="list-style-type: none"> <li>• Minor injury.</li> </ul>

**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**

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<p><b>Starting point</b> 3 years' custody</p> <p><b>Category range</b> 2 years' 6 months - 4 years' custody</p>	<p><b>Starting point</b> 1 year's custody</p> <p><b>Category range</b> 9 months' custody-1 year 6 months' custody</p>	<p><b>Starting point</b> High level community order</p> <p><b>Category range</b> Medium level community order-1 year's custody</p>
<b>Category 2</b>	<p><b>Starting point</b> 2 years' custody</p> <p><b>Category range</b> 1 year 6 months - 2 years' 6 months' custody</p>	<p><b>Starting point</b> 6 months' custody</p> <p><b>Category range</b> High level community order-1 year's custody</p>	<p><b>Starting point</b> Low level community order</p> <p><b>Category range</b> Band C fine-Medium level community order</p>
<b>Category 3</b>	<p><b>Starting point</b> 1 year's custody order</p> <p><b>Category range</b> 6 months -1 year</p>	<p><b>Starting point</b> Low level community order</p> <p><b>Category range</b> Band C fine to</p>	<p><b>Starting point</b> Band A fine</p> <p><b>Category range</b> Discharge –Band</p>

	6 months' custody	High level community order	C fine
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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:**

- Injury to other animals
- Location of the offence
- Ongoing effect on the victim and/or witnesses to the attack
- 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
- 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
- Isolated incident
- No previous complaints against, or incidents involving the dog
- Evidence of responsible ownership
- Remorse
- Good character and/or exemplary conduct
- Serious medical conditions 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, where not linked to the commission of the offence
- 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, such as 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.

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#### **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.