

Dangerous Dog
Offences
Response to Consultation

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Foreword



On behalf of the Sentencing Council, I would like to thank everyone who responded to our consultation on the sentencing guidelines for dangerous dog offences. I would also like to thank those who attended our consultation events and who contributed to the consultation process in that way. The volume of responses has been very encouraging and a broad range of views and experiences has been submitted.

The consultation exercise was designed to be accessible to the judiciary, legal practitioners and the police, as well as members of the public with an interest in, or first-hand experience of, the issues involved. The consultation attracted 95 written responses. We also published an

online questionnaire which attracted 407 responses. The comments and feedback received have been very valuable in assessing whether the Council's proposals delivered against its aims and in shaping the definitive guideline.

I am very pleased that the consultation and draft guideline were generally well received by those who took part and I am grateful to all of the respondents for sharing the benefit of their experiences, both as practitioners and as members of the public affected by dangerous dog offences.

The Rt Hon Lord Justice Leveson
Chairman of the Sentencing Council

Introduction

The Sentencing Council for England and Wales, set up in April 2010, is the independent body responsible for developing sentencing guidelines and promoting greater transparency and consistency in sentencing, whilst maintaining the independence of the judiciary.

Section 125(1) (a) of the Coroners and Justice Act 2009 provides that:

“Every court –

- (a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

The guideline will apply to all offenders aged 18 and older, who are sentenced on or after 20 August 2012, regardless of the date of the offence. However, the duty of the court in relation to the guideline differs depending on

whether the offence was committed before or after 6 April 2010. When sentencing offences committed *after* 6 April 2010 the court must follow the guideline unless it is satisfied that it would be contrary to the interests of justice to do so. When sentencing offences committed *prior* to 6 April 2010, the court is to have regard to the guideline.

In December 2011, in accordance with sections 120 and 121(2) of the Coroners and Justice Act 2009, the Sentencing Council published a consultation on a draft guideline for dangerous dog offences. The Coroners and Justice Act 2009 set out the following matters which the Council must have regard to when preparing sentencing guidelines:

- the sentences imposed by courts in England and Wales for offences;
- the need to promote consistency in sentencing;
- the impact of sentencing decisions on victims of offences;
- the need to promote public confidence in the criminal justice system;
- the cost of different sentences and their relative effectiveness in preventing re-offending; and
- the results of monitoring the operation and effects of its sentencing guidelines.¹

¹ s.120(11) Coroners and Justice Act 2009

The Council sought views on the draft guideline from members of the judiciary, legal practitioners and organisations involved in the criminal justice system as well as members of the public and organisations with an interest in dogs and animal welfare. A number of consultation events were arranged between February and March involving magistrates, district judges and representatives of animal welfare organisations, the police and other interested parties.

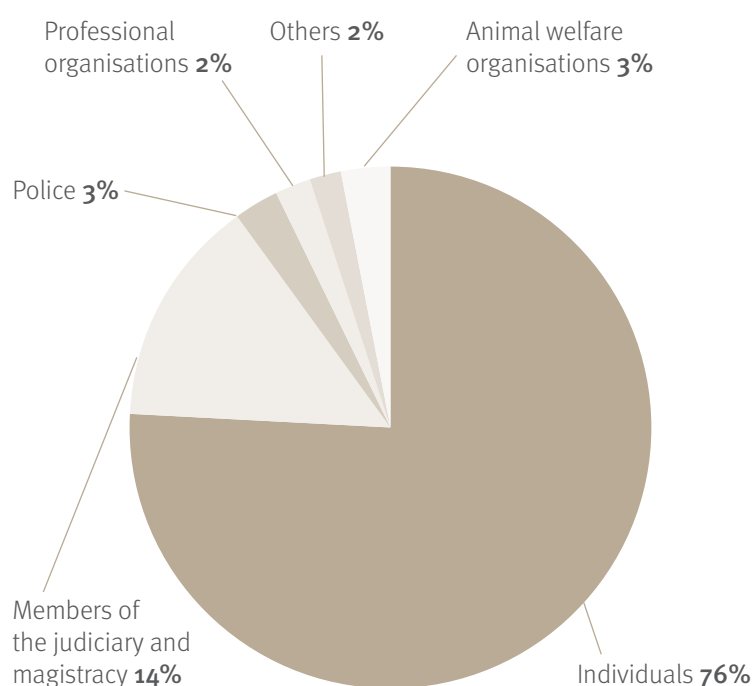
At the same time as publishing its consultation paper containing the draft guideline, the Council also published a draft resource assessment, an equality impact assessment, research into sentencing dangerous dog offences and an analysis and research bulletin. The consultation period closed on 8 March 2012. This report summarises the responses to the questions asked in the consultation paper as well as those expressed during the consultation events, and sets out the Sentencing Council's decisions on key points raised and the next steps for the guideline.

Summary of responses

The consultation sought responses to specific questions on the dangerous dog offences draft guideline, including its structure and content. The questions focused on three main areas: the factors which courts should take into account; the sentence ranges and starting points contained within each offence specific guideline; and the proposed guidance on compensation and ancillary orders. The guidance on orders was of particular interest as it was considered to be more important in this guideline than any previous guidelines produced by the Council due to the emphasis in dangerous dog offences on destruction orders which are often contested. The consultation also sought views on the guideline's consideration of victims as well as any identifiable equality and diversity matters.

The Council received a total of 502 responses. Consultees included members of the full time judiciary, the magistracy and other professionals within the criminal justice system as well as a broad range of animal welfare organisations and dog campaign groups. The breakdown of responses is shown here.

A more detailed breakdown of responses can be found at Annex A.



Category	Number of Responses
Animal welfare organisations	16
Individuals	380
Members of the judiciary and magistracy:	73
Judges	(7)
Magistrates	(66)
Others:	10
Government	(3)
Legal professionals	(4)
Postal Service	(1)
Public Sector Union	(1)
Voluntary organisations	(1)
Police	14
Professional organisations	9
Total responses	502

A number of consultation events were held with magistrates, district judges and representatives of animal welfare organisations including the RSPCA and Dogs Trust, the police and other interested parties including the Crown Prosecution Service and the Greater London Authority, which provided valuable feedback for the Council in relation to the draft guideline.

The responses have generally welcomed the Council's development of a guideline for dangerous dog offences, many magistrates and district judges in particular commenting that such a guideline will be very helpful as the number of such offences coming before the courts continues to increase. Most respondents felt that the Council had developed a model for assessing the seriousness of dangerous dog offences which would work well and which captured the most important elements of the offences covered. The vast majority of respondents also welcomed the Council's extended guidance on the use of compensation and ancillary orders within this guideline. This guidance was thought to be helpful in promoting

a consistent approach to the use of such orders which are often an integral part of the sentencing process in dangerous dog offence cases.

Views on the proposed sentencing options within the draft guideline were mixed and many respondents expressed views that the Council's decision to reflect existing sentencing practice in the draft guideline should be reconsidered when producing the definitive guideline. The Council recognises that there are often complex issues for courts to consider when sentencing dangerous dog offences where the consideration of the harm and culpability involved in the offence can be difficult to balance. In light of the responses to the consultation, the Council decided to revise some of the starting points and sentencing ranges. Further detail of these changes can be found in the next section.

The next section discusses the responses to specific questions and sets out in more detail the decisions reached by the Council as a result of views received during the consultation.

Responses to specific questions

Q1 Do you agree with the harm and culpability factors proposed at step one for the two offences of a dog being dangerously out of control? If not, please specify which you would add or remove and why.

Respondents were generally in agreement with the factors set out in the draft guideline. However, a number of amendments to existing factors and new factors were suggested. The main changes made in the definitive guideline are set out below.

Factors indicating greater harm

Some respondents suggested that “serious injury (including psychological harm)” should be extended along the same lines as in the Council’s previous *Assault Definitive Guideline* to include disease transmission. The wording has been changed to “injury (which includes disease transmission and/or psychological harm)” in the definitive guideline.

It was also suggested that the factor “sustained attack” should replicate the wording used in the *Assault Definitive Guideline* which was “sustained or repeated”. This has been changed in the definitive guideline.

The inclusion of the factor “more than one dog involved in offence, where not charged separately” was thought by some respondents to be unhelpful as such cases would invariably result in separate charges being brought. For that reason, the factor has not been included in the definitive guideline.

Many respondents including the CPS, ACPO, the Ministry of Justice and the Council of HM Circuit Judges felt that the factor “victim is a child” should be broadened to include cases where the “victim is vulnerable”. The wording used in the *Assault Definitive Guideline* was “victim is particularly vulnerable because of personal circumstances”. Strong representations were made by the Guide Dogs for the Blind Association, supported by the Mayor of London and others, for the guideline to emphasise the increased harm potentially resulting from attacks on guide dogs and their owners. Revising the wording would enable the court to treat attacks on other vulnerable individuals including the elderly, disabled and blind or visually impaired people more seriously; however, the Council was keen to retain the emphasis on children which it had used in the draft guideline. Therefore, the factor has been altered in the definitive guideline to “victim is a child or otherwise vulnerable because of personal circumstances”.

“The draft guideline recognises that injury sustained by a child will have a greater impact dependent on their age. Similarly an injury caused to a vulnerable person, for example an aged or disabled person, would also have a detrimental effect which would merit specific inclusion in the guideline.”

Crown Prosecution Service

A large number of respondents argued that the factor “dog used as weapon or to intimidate victim” would be more appropriately listed as a factor indicating higher culpability rather than greater harm and the factor has been moved in the definitive guideline.

The factor “prohibited type of dog” indicating greater harm prompted significant debate among respondents as well as at the consultation events. Most respondents and attendees at the consultation events felt that it should not be included since the harm caused would be unaffected by the type of the dog causing it and if the dog were prohibited, there would be a separate charge. However, it was argued by ACPO and others that if the owner knew that his dog was a prohibited type then he could be considered to be more culpable. Furthermore, if the dog had already been registered on the Index of Prohibited Dogs then the owner would already have been involved in a court process relating to the dog, highlighting the potential danger to public safety should they fail to retain full control of the dog. The Council decided that the factor “dog known to be prohibited” should be included but would be more suitable as a factor increasing seriousness at step two of the definitive guideline.

There was very strong support in a large number of responses including the CPS, ACPO and the Mayor of London, as well as at consultation events for the definitive guideline to include “injury to another animal(s)” as a factor indicating greater harm. It is envisaged that this factor could encompass incidents involving an attack on another dog as well as on other animals, for example, horses. The factor has been added

to the definitive guideline for both offences involving a dog dangerously out of control – at step two for the guideline involving injury, and at step one for the non-aggravated offence.

Factors indicating higher culpability

The draft guideline included the factor of “deliberate goading of dog immediately prior to or during incident”. The factor has been amended in the definitive guideline to read “deliberate goading, or allowing goading, of dog” to encompass a scenario where a group or gang is involved and the dog is goaded by another member of the group with the consent of the dog owner. The timing of the goading has also been broadened by the removal of the words “immediately prior to or during incident”.

A number of respondents argued that the offence should be aggravated where it was motivated by race, religion, disability or sexual orientation. These statutory factors were included in the Council’s earlier definitive guidelines for assault and burglary offences. The Council had decided not to include them in the draft dangerous dog guideline because the nature of the offences is such that the intent inherent in an assault is absent from a dangerous dog offence where no such intent is normally present. However, the Council has decided to include these factors in the definitive guideline in order that where a dangerous dog offence has been charged in a case which has involved an element of intent, that fact can rightly be reflected by the court in its sentencing.

“Both the assault and burglary guidelines refer to racial, sexual, and hate aggravation at some point and these factors seem no less relevant in this offence.” Magistrates’ Association

A recurring theme throughout a number of responses and at the consultation events was that the guideline should in some way reflect an owner’s failure to employ reasonable measures to control the dog as a factor indicating higher culpability. This could encompass an owner allowing a child or other person without the

physical strength to control it, to be in charge of the dog. The Council decided that this aspect of the offence was not a principal element for inclusion at step one but decided to include the factor “allowing person insufficiently experienced or trained to be in charge of dog” at step two of the definitive guideline.

Factors indicating lower culpability

A common theme raised in responses and at events was that of the possible goading of the dog by the victim or by others that are *not* associated with the owner or person in charge. There was significant support for including this factor to indicate lower culpability whether the goading was by the victim or a third party. Therefore, the Council has included the factor “provocation of dog without fault of the offender” in the definitive guideline.

Q2 Do you agree with the aggravating and mitigating factors proposed at step two for the two offences of a dog being dangerously out of control? If not, please specify which you would add or remove and why.

Respondents generally agreed with the step two factors included in the draft guideline. Again, there were a number of suggestions made regarding the factors included in both offences and the main changes made in the definitive guideline are set out below.

Factors increasing seriousness

Many respondents and attendees at consultation events, including many animal welfare organisations such as the Kennel Club, Dogs Trust and the RSPCA, argued that the factor “failure to train dog” should be rephrased to reflect the very different ways, both positive and negative, in which dogs can be trained.

Following much consideration, the Council decided to remove the factor altogether on the basis that other factors included in the guideline already allow the court to take account of such evidence where it is available. For example, some animal welfare organisations argued that the wording of the factor “cruelty to dog, where not charged separately” should be changed to mirror the language used in animal welfare legislation and guidance. Therefore, the Council amended the factor for inclusion in the definitive guideline to “ill treatment or failure to ensure welfare needs of dog, where not charged separately”. This could encompass aspects of training of the dog. Conversely, a factor relating to responsible ownership has also been added to the factors reducing seriousness and this is explained below.

“In our experience, and that of a number of police forces, there is overlap of dog control and welfare problems and this point [cruelty to dog] should be extended to cover welfare. The two dog codes of practice in England and Wales could provide useful frameworks for courts to consider the welfare issues. Thus failure to meet the welfare needs of a dog (as per section 9 of the 2006 Act) should also be an aggravating factor.” RSPCA

It was suggested by Battersea Dogs and Cats Home that “failure to legally identify the dog” should be added as a factor increasing seriousness since under section 2 of the Control of Dogs Order 1992, all dogs in public places should be identified through them wearing a collar and tag identifying the dog to an owner’s name and address. The Council decided that rather than being an aggravating factor, a new mitigating factor “evidence of responsible ownership” should be included at step two which would encompass not only this suggestion but also evidence of veterinary treatment, training or insurance.

The Council qualified another factor increasing seriousness by changing “failure to take *any* precautions to prevent dog escaping” to “failure

to take *adequate* precautions to prevent the dog escaping”.

The Council included the factor “presence of children, where not victims” in the draft guideline but on reflection, and in response to the consultation, the Council has decided that the factor, “location of the offence”, already allows for offences in the vicinity of children’s playgrounds or public parks to be taken into account. Therefore, the factor has been removed from the definitive guideline.

A recurring theme in responses and at the consultation events was how the guideline might reflect gang related offending. The Council deliberated on this aspect of offending and concluded that it is very difficult for the court to assess whether the offender belongs to a gang and whether this was significant to the commission of the offence. The Council concluded that the range of other factors included in the guideline, as well as the fact that the list of factors at step two is non-exhaustive, meant that the addition of this factor was unnecessary.

Factors reducing seriousness or reflecting personal mitigation

Some respondents and attendees at consultation events questioned whether the factor “determination, and/or demonstration of steps taken to address addiction or offending behaviour” could reflect efforts made by the offender to prevent further offending through steps taken to rehabilitate the dog’s behaviour. Some respondents requested an additional factor specifically referring to the rehabilitation of the dog. The Council decided that this issue was linked to the assessment to be made by the court whether the owner is sufficiently responsible to continue to own a dog and is therefore better considered by the court in the context of ancillary orders.

Q3 Do you agree with the extent of the guidance provided in each of the guidelines on the use of ancillary orders? If not, what further guidance should be provided?

The guidance on the use of ancillary orders within the draft guideline was generally very well received by the majority of respondents and attendees at the consultation events. In response to this question, 73 per cent of respondents to the consultation agreed that the guidance provided was useful.

“The CWU welcomes these proposals which have been a long time coming.”

Communication Workers Union

“We think that the guidance proposed on ancillary orders is particularly valuable.”

West London Magistrates

A number of respondents requested guidance on the levels of compensation to be applied. However, the Council decided that since the standard compensation amounts are already included on pages 166–7 of the *Magistrates’ Court Sentencing Guidelines* and that as these are readily applicable to the dangerous dog offences covered, no change to the definitive guideline in this regard was necessary.

There were a number of respondents who also asked for additional guidance to be included in relation to the length of disqualification from dog ownership available to the courts and even in some cases suggestions that the length of disqualification could be based on the offence category in some way. There is no maximum length of disqualification set out in statute and it is a matter for the court to assess, taking into account various aspects of the offender’s character and circumstances. Therefore, no such guidance has been added to the definitive guideline.

Minor amendments have been made to the guidance on ancillary orders in the possession of a prohibited dog guideline to make it clearer that a contingent destruction order cannot be made in conjunction with a disqualification order. Similarly, if the offender is sentenced to immediate custody then a contingent destruction order should not be made and this has been made clear in the definitive guideline. Furthermore, it has been clarified in the definitive guideline that statutory conditions apply to any prohibited dog once it is on the Index of Exempted Dogs and that there is no power to impose other conditions.²

Q4 Do you agree with the category model for the offence of possession of a prohibited dog?

The Council's proposed model for the offence of possession of a prohibited dog was well received by the majority of respondents; 78 per cent of respondents agreed with the model adopted. Therefore, the Council has decided to replicate the model in the definitive guideline.

"We agree that as the offence of possession of a prohibited dog is one of strict liability, [the...] starting point should be level three – 'neither greater harm nor higher culpability' as suggested." Solihull Magistrates

"We agree that the category model set out is fair and reasonable and will allow for cases presented within the courts to be sentenced in a proportionate manner." Criminal Justice Alliance

"We agree as this is a statutory offence of strict liability. It would be sensible to deal with this offence in the way suggested." Crown Prosecution Service

Q5 Do you agree with the harm and culpability factors proposed at step one for the offence of possession of a prohibited dog? If not, please specify which you would add or remove and why.

As with the guidelines for the offences involving a dog dangerously out of control, respondents were generally in agreement with the factors included in the draft guideline for the offence of possession of a prohibited dog. There were a number of suggestions made regarding the factors included and the main changes made in the definitive guideline are set out below.

Factors indicating greater harm

It was argued in several responses and at the consultation events that "more than one prohibited dog" should be removed as it should always be charged separately. Therefore, the Council has decided to remove the factor from the definitive guideline.

As in the guidelines involving a dog dangerously out of control, it is suggested that where the dog has been "used to threaten and intimidate others" it should be a factor indicating higher culpability rather than a harm factor. This change has also been effected in the definitive guideline for this offence.

The issue of the offender's knowledge that the dog was prohibited prompted a lot of debate among respondents and attendees of the consultation events. For example, there was a recurring suggestion that the guideline should distinguish between those who knowingly breed from prohibited dogs for commercial gain, and those who may inadvertently breed from, and subsequently sell, prohibited dogs for minimal, if any, financial gain.

² The Dangerous Dogs Compensation and Exemption Schemes Order 1991 SI No. 1744 (as amended by The Dangerous Dogs Compensation and Exemption Schemes (Amendment) Order SI 1991 No. 2297)

The wording of several factors has been amended in the definitive guideline responding to the various arguments put forward by respondents; “knowingly possessing prohibited type of dogs” has been changed to “possessing a dog known to be prohibited” and “breeding from prohibited dogs” has become “breeding from a dog known to be prohibited”. The Council decided that the most important aspect of these factors was the offender’s knowledge and that the factors should therefore indicate higher culpability rather than greater harm.

In addition to retaining the factor “injury to other animal”, the Council decided to add an extra factor, “injury to person”, to the definitive guideline. This decision was influenced by a number of consultation responses as well as discussions at the consultation events. In some cases, a person may be injured by a prohibited dog on private property where the dog is permitted to be and where no offence has been committed apart from the possession of a prohibited dog. The court should be able to take account of the fact that a person has been injured by the prohibited dog in order to assess the harm caused by the possession offence appropriately. The addition of this factor allows the court to identify greater harm in such cases.

Factors indicating higher culpability

Further distinction between those offences where the offender was consciously breaking the law and profiting from doing so has been encouraged in the definitive guideline by the addition of the factor that an “offence committed for commercial gain” should indicate higher culpability. This is intended to capture cases where breeding and selling is an integral element of the offender’s culpability.

Several respondents including the Police Federation and the Mayor of London argued that advertising a prohibited dog should be added as an additional factor indicating higher culpability. The advertising of a prohibited dog is an offence set out in s.1(2)(b) of the Dangerous Dogs Act 1991 together with the selling or exchanging of

a prohibited dog. It was highlighted in a number of responses that there are some online sites where prohibited dogs can be readily sourced. The Council decided that the factor “selling or exchanging prohibited dogs” should be changed to “selling, exchanging or advertising a dog known to be prohibited” in order to encompass such offending behaviour.

A number of respondents, again including the Police Federation and the Mayor of London, argued that as well as actual evidence of fighting, factors indicating higher culpability should include evidence of fighting paraphernalia. Therefore, the Council decided to add the factor “training and/or possession of paraphernalia for dog fighting” to the definitive guideline.

“Evidence of possession of equipment and paraphernalia used for the training of fighting dogs such as treadmills, flirt poles, break sticks, fighting videos and books, and training in public parks by encouraging the dog to clamp its jaws on tree branches and play equipment to become stronger, must also be a factor indicating higher culpability.” Mayor of London

Q6 Do you agree with the aggravating and mitigating factors proposed at step two for the offence of possession of a prohibited dog? If not, please specify which you would add or remove and why.

The most common criticism of the factors included at step two of the draft guideline for the possession of a prohibited dog offence centred around the potential problem created by having “failure to take steps to identify type of dog” as a factor increasing seriousness, and “unaware that dog was prohibited type” as a factor reducing

seriousness. The Council decided to remove the factor “failure to take steps to identify type of dog” from the definitive guideline in order to eliminate this potential conflict and also decided to change the factor “unaware that dog was prohibited type” to “unaware that dog was prohibited type despite reasonable efforts”.

There were a number of other suggestions made regarding the factors included and the main changes made in the definitive guideline are set out below.

Factors increasing seriousness

The factor “presence of children” invited differing views from respondents to the consultation. On the one hand, a number of respondents argued that the factor should be expanded in order to include other vulnerable people for reasons along the lines set out in question 1. On the other hand, a number of respondents argued that a significant percentage of cases would involve a family pet and therefore the presence of children should not be a factor increasing seriousness. The Council decided to include the broader factor incorporating other vulnerable people in the definitive guideline.

Factors reducing seriousness or reflecting personal mitigation

There were a number of amendments suggested to the factor “safety precautions taken by owner” which was included in the draft guideline. Many respondents felt that it should be expanded to take account of evidence of care of the dog, for example, appropriate veterinary treatment, training and insurance. The Council agreed to amend the wording to replicate the factor used in the other two offence guidelines and that the new factor “evidence of responsible ownership” added at step two of the other offence guidelines should also be added to the guideline for the possession offence.

Several respondents, including Dogs Trust, suggested that where a case has come to court as a result of the dog owner themselves alerting the authorities to the fact that their dog may be

a prohibited type, then that should be included as a factor reducing seriousness. The Council agreed with this argument and has therefore included the factor “prosecution results from owner notification” in the definitive guideline.

Q7 Do you agree with the proposed sentences (starting points and category ranges) for the offence of a dog being dangerously out of control causing injury?

The sentencing levels proposed in the draft guideline received a mixed reception, particularly for the offence involving a dog dangerously out of control causing injury, but also the possession offence which is dealt with at question 9. Just over half of respondents agreed with the sentencing proposed in the draft guideline.

A number of responses disagreed with the starting points and ranges on the basis that they were too lenient to reflect the perceived gravity of the offence. Many respondents compared the proposed sentencing levels to the sentencing levels contained within the Council’s assault guideline on the basis that the level of harm caused to the victim can be similar.

Many respondents argued that there should be a custodial starting point for category 1 and that the top of the offence range should be 18 months or two years rather than one year as proposed in the draft guideline. The Council reflected on the range of views expressed during the consultation period and decided to introduce a starting point of six months’ custody for category 1 offences as well as increasing the top of the offence range to 18 months in the definitive guideline.

“In the absence of convictions for other offences potentially fatal or serious life changing injuries will be punishable by a maximum of 12 months custody in the very worst cases under this proposal. Such sentences would therefore have little deterrent effect upon irresponsible dog owners.” Metropolitan Police Service

“At its most serious, starting points and ranges should be similar to GBH. We believe that the range of category 1 offences should be low level community penalty to crown court, to reflect the maximum penalty of 2 years available and the either way nature of the offence.” Gloucestershire, Bristol & South Somerset and Mendip Magistrates

In order to maintain proportionality between the categories, it was decided that the starting point for category 2 should correspondingly be raised to a medium level community order in the definitive guideline.

Furthermore, many respondents including the CPS and the National Bench Chairmen’s Forum felt that the inclusion of the option to give a discharge in cases falling within category 2 was wrong given that there must have been either greater harm or higher culpability. This option has been removed from the definitive guideline and discharge remains an option for the court only in category 3 cases.

“We do not consider that a Discharge is an appropriate penalty for a Category 2 offence where injury has been caused, particularly as these cases for example could be dealing with a sustained attack, serious injury or deliberate goading of a dog. We would suggest that the range is amended to a Band B fine to a High level community order.”

National Bench Chairmen’s Forum

“Guideline ranges that start at Discharges for this type of offence do not promote public confidence.” South Yorkshire Magistrates

Q8 Do you agree with the proposed sentences (starting points and category ranges) for the offence of a dog being dangerously out of control?

The sentences proposed for the non-aggravated offence in the draft guideline were agreed by 67 per cent of all respondents to the consultation and most of those who attended our consultation events.

Nevertheless, there remained some respondents who argued that the proposed sentencing levels were too lenient. In particular, attention focused on starting points for categories 1 and 2 which some respondents felt should be custody and community order accordingly. However, the Council decided not to make any changes to the starting points proposed for this offence as it was felt that the proposals remain proportionate with the revised sentencing options for the aggravated offence and in line with the views expressed by most respondents.

As in question 7, many respondents argued that the inclusion of the option to give a discharge in cases falling within category 2 was wrong for the non-aggravated offence. The Council agreed that in line with the decision for the aggravated offence, the option of a discharge would only be available to the court in category 3 cases of the non-aggravated offence. The category range for category 2 in the definitive guideline reflects this change.

Q9 Do you agree with the proposed sentences (starting points and category ranges) for the offence of possession of a prohibited dog?

More than half of all responses to the consultation disagreed with the Council's proposed starting points and ranges for the offence of possession of a prohibited dog on the basis that they were too lenient to reflect the perceived gravity of the offence.

Many respondents argued that the starting point for a category 1 offence should be a low or medium level community order rather than a fine. There was also a large number of respondents arguing in favour of the top of the offence range being raised to the statutory maximum of six months' custody. The Council reflected upon the various submissions received during the consultation and decided to increase the starting point for category 1 offences to a medium level community order as well as the top of the offence range to six months in the definitive guideline.

"We would be in favour of significant rises in available sentences of custody for possession of these potentially very dangerous animals." Criminal Bar Association

There were many respondents including the CPS and the National Bench Chairmen's Forum who felt that the option of a discharge should only be available within the category range for category 3 offences. The preference of many was to change the category range for category 2 offences to band A fine – community order. Responding to this, the Council decided that the definitive guideline should include a category 2 range of a band A fine – medium level community order.

"The NBCF is of the opinion that the proposed sentences are too lenient. We would like to see the range for Category 1 increased to six months custody. In relation to Category 2, we suggest an increase of the starting point to a low level community order. In our view, Category 3 should be amended so that the top of the range is a Band C fine, with a starting point of a Band B fine." National Bench Chairmen's Forum

Q10 Are there further ways in which you think victims can or should be considered?

The majority of respondents did not suggest any further ways in which the Council could consider victims in relation to this guideline.

A number of respondents commented that when the court is directed to consider compensation for the victim, a guide to levels of compensation would be beneficial. Specifically, dogs often target the victim's face resulting in permanent physical and attendant psychological scarring and sentencers should be particularly sensitive to the issues of facial scarring and award compensation accordingly. As set out in the summary of the responses to question 3 above, the Council decided that since the standard compensation amounts are already included on pages 166–7 of the *Magistrates' Court Sentencing Guidelines*, additional guidance was unnecessary.

Others highlighted the need for victim impact statements to be referred to in court. The Council considered that existing guidance in the Consolidated Criminal Practice Direction and the decision of the Court of Appeal in *Perks*³ covers the use of these statements in court. Therefore, it is not necessary to replicate this in the guideline.

The Council decided that no changes were required to the guideline in this regard.

Q11 Are there any equality or diversity matters that the Council should consider? (please provide evidence where possible)

The Council published an Equality Impact Assessment to accompany the consultation but did not identify any equality matters.

A total of 78 per cent of respondents felt that there were no equality or diversity matters that needed to be specifically considered.

A number of respondents referred to the potential inclusion of the targeting of victims because of their race, religion, disability and/or sexual orientation in response to this question. This matter has been covered within the Council's response to question 1 above.

"We suggest that the Council should consider those circumstances where deliberate attacks take place as a result of a person's ethnic background, gender, sexual orientation and/or disability." Crown Prosecution Service

Some respondents also made reference to attacks on guide dogs and other therapy dogs being included as an aggravating feature in responding to this question. The Council amended the factors indicating higher harm to include "victim is a child or otherwise vulnerable because of personal circumstances" in order to enable the court to take account of this feature of an offence.

Q12 Are there any further comments you wish to make?

This question elicited a wide range of different comments including a large number relating to the dangerous dog legislation, changes to which are not a matter for the Sentencing Council. Some respondents took the opportunity to make other comments in relation to the general approach to sentencing taken by the Council in its draft guideline.

"The committee found that this was a well constructed and helpful document which should assist the courts in the sentencing process."
Solihull Magistrates

Conclusion and next steps

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

The definitive guideline has been published both in a Crown Court version and as an update to the *Magistrates' Court Sentencing Guidelines* and will be implemented on 20 August 2012.

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

Annex A

List of consultation reponses

Hard copy and e-mail responses were received from the following organisations:

- Ashby de la Zouch and Market Bosworth Magistrates
- Association of Chief Police Officers
- Battersea Dogs & Cats Home
- Bedford and Mid-Bedfordshire Magistrates
- Birmingham Magistrates
- Blue Cross
- Bristol Magistrates
- British Small Animal Veterinary Association
- Bromsgrove and Redditch Magistrates
- Central Kent Magistrates
- Cleveland Magistrates
- Communication Workers Union
- Council of HM Circuit Judges
- Coventry Magistrates
- Criminal Bar Association
- Criminal Justice Alliance
- Crown Prosecution Service
- Derbyshire Police
- Dogs Trust
- Gloucestershire, Bristol & South Somerset and Mendip Magistrates
- Gloucestershire Magistrates
- Grimsby and Cleethorpes Magistrates
- Guide Dogs
- Hampshire Police
- IPC Dog Services
- Justices' Clerks' Society
- The Kennel Club
- Lancashire Police
- London Criminal Courts Solicitors' Association
- Loughborough, Melton, Belvoir and Rutland Magistrates
- Macclesfield Magistrates
- Magistrates' Association
- Mayor of London
- Metropolitan Police
- Mid and South East Northumberland Magistrates
- Ministry of Justice (incorporating response from the Home Office and the Attorney General's Office)
- National Bench Chairmen's Forum
- North and East Hertfordshire Magistrates
- North and South Durham Magistrates
- North Avon Magistrates
- North East Suffolk Magistrates
- North Essex Magistrates
- North Staffordshire Magistrates
- Police Federation of England and Wales
- Probation Association
- Probation Chiefs' Association
- Rottweiler Welfare Association
- Royal Mail
- RSPCA
- Sefton Magistrates
- Solihull Magistrates
- South Cambridgeshire Magistrates
- South East London Magistrates
- South London Local Justice Area Magistrates' Courts
- South Tyneside Magistrates
- South Wales Police
- South Yorkshire Magistrates
- Staffordshire Central and West Magistrates
- Staffordshire Police
- Suffolk Police
- Sussex (Northern) Magistrates

Taunton Deane, West Somerset and Sedgemoor Magistrates
 Trafford Magistrates
 West and Central Hertfordshire Magistrates
 West London Magistrates
 York and Selby Magistrates

Hard copy and e-mail responses were also received from the following individuals:

Judge David Morris, Newport Crown Court
 Judge Pawlak, Wood Green Crown Court
 Judge Robinson, Woolwich Crown Court

District Judge Martin Brown, Gloucestershire Magistrates' Court
 District Judge Gillibrand, Aldershot Magistrates' Court
 District Judge McGarva, Birmingham Magistrates' Court

Benjamyn Damazer, Magistrate
 Michelle Fox-Rousell, Magistrate
 Caroline Leonard, Magistrate
 Georgia Martin, Magistrate

Robert Banks
 Suzanne Churchill
 Pat Dobedoe
 Neil Everitt
 Mrs S Giles
 Vincent Goodwin
 Brian Jowett
 Wendy Monaghan
 Kim Mughan
 Chris Rose
 Pamela Rose
 Kendal Shepherd
 Aaron Smith
 Andrew Smith
 George Tranter
 John Volleamere
 Helen White
 Kenneth Wyatt

Online questionnaire responses

We have not individually listed respondents who submitted their responses via the online questionnaire for data protection reasons. However, the table below provides a breakdown of the organisations and professionals who provided their details.

Category	Number of Responses
Animal welfare organisations	7
Government	1
Magistrates	28
Legal professionals	2
Police	6

All responses received in hard copy, by e-mail and via the online questionnaire were given equal consideration by the Council when drafting the definitive guideline.

Consultation Co-ordinator contact details

If you have any comments about the way this consultation was conducted you should contact the Sentencing Council Consultation Co-ordinator at:
consultation@sentencingcouncil.gsi.gov.uk

Alternatively, you may wish to write to:

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 Steel House
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 London
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