

Dangerous Dog Offences Guideline Consultation

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The consultation will end on 8 March 2012

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

www.sentencingcouncil.org.uk

About this consultation

To:

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

Duration:

From 15 December 2011 to 8 March 2012

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Additional ways to feed in your views:

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

www.sentencingcouncil.org.uk

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

Response paper:

Following the conclusion of this consultation exercise, a response will be published on our website.

Freedom of Information:

We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents' names in any final report we publish. If you wish to submit a confidential response, you should contact us before sending the response. PLEASE NOTE – we will disregard automatic confidentiality statements generated by an IT system.

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Introduction

What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines for the courts to use when passing a sentence.

Why dangerous dog offences?

The Council wants to promote consistent sentencing of dangerous dog offences across England and Wales. Courts currently have no guidelines for such offences and there have been concerns raised with the Sentencing Council by magistrates and legal advisers that the absence of guidelines is a problem for courts given the increasing number of such offences now appearing before them.

Ministry of Justice data show a significant increase in the number of dangerous dog offences sentenced in 2010. The total number of adults sentenced for offences covered by this draft guideline increased by 39 per cent from 855 in 2009 to 1,192 in 2010¹. This increasing number of cases highlights the importance of providing courts with guidance for this type of offending.

The Council believes that introducing guidelines will not only meet the demands of courts but will also benefit victims in setting out a clear process for the sentencing of dangerous dog offences which can be followed by those who may not have any legal training or background.

The Council recognises that dangerous dog offences can have a significant impact on victims and on the wider society. It also recognises that the public is very concerned about such offences and the way in which offenders are dealt with by the courts. In March 2010, the Department

for Environment, Food and Rural Affairs (Defra) published a public consultation on dangerous dogs asking *Does current dangerous dogs legislation adequately protect the public and encourage responsible dog ownership?*², and received 4,250 responses.

What is the Council consulting about?

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

It is important to clarify that the Council is consulting on sentencing for dangerous dog offences and not the legislation upon which such offences are based. The relevant legislation, including the Dangerous Dogs Act 1991, was the subject of the Defra consultation and is ultimately a matter for Parliament. Therefore, it is outside the scope of this consultation.

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

- the principal factors that make a dangerous dog offence more or less serious;
- the additional factors that should influence the sentence;
- the extent of guidance which should be provided on the use of compensation and other orders such as disqualification from dog ownership;
- the sentences that should be given for dangerous dog offences; and,
- anything else that you think should be considered.

¹ Court Proceedings Database, Ministry of Justice, 2010

² Public Consultation on Dangerous Dogs, Defra, 2010

A summary of the consultation questions can be found at annex A and an explanation of some of the terms used in this paper is at annex B.

What else is happening as part of the consultation process?

This is a 12 week public consultation. During the consultation period, the Council will organise a number of consultation meetings to seek views from criminal justice organisations and other groups with an interest in this area as well as magistrates. Once the consultation exercise is over and the guideline revised, a definitive guideline will be published and used by all adult courts.

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

Section one: Dangerous dog offences

It is proposed that there should be three groups of dangerous dog offences covered by the guideline. These are set out below.

1. Dog dangerously out of control causing injury, including:

- owner or person in charge of a dog which was dangerously out of control in a public place injuring any person - *Dangerous Dogs Act 1991 (section 3(1))*; and
- owner or person in charge allowing a dog to be in a private place where dog not permitted to be, injuring any person - *Dangerous Dogs Act 1991 (section 3 (3)(a))*.

This offence is committed where a person is injured by a dog in a private place that the dog is not supposed to be, or by a dog which is dangerously out of control in a public place.

The maximum sentence is two years' custody. This offence is triable either way (the offender may be tried in the Crown Court or the magistrates' court).

2. Dog dangerously out of control, including:

- owner or person in charge of a dog which was dangerously out of control in a public place - *Dangerous Dogs Act 1991 (section 3(1))*; and
- owner or person in charge allowing a dog to be in a private place where dog not permitted to be which makes a person fear injury - *Dangerous Dogs Act 1991 (section 3 (3)(b))*.

This offence is committed where an owner or person in charge allows their dog to be dangerously out of control in a public place, or where a person fears injury by a dog in a private place that the dog is not permitted to be. A dog can be regarded as being dangerously out of control on any occasion where it causes fear or apprehension to a person that it may injure them.

The maximum sentence is six months' custody. This offence is triable summarily only (the offender will be tried in the magistrates' court).

3. Possession of a prohibited dog, including:

- possession of a prohibited dog - *Dangerous Dogs Act 1991 (section 1(3))*; and
- breeding, selling or exchanging a prohibited dog - *Dangerous Dogs Act 1991 (section 1(2))*.

This offence is committed where anyone has a prohibited dog in his or her possession, except where a court has previously placed the dog on the Index of Exempted Dogs. The breeding, selling or exchanging of prohibited dogs is also an offence. The four prohibited types of dog set out in legislation are the Pit Bull Terrier, Japanese Tosa, Dogo Argentino, and Fila Brasileiro³.

The maximum sentence is six months' custody. This offence is triable summarily only (the offender will be tried in the magistrates' court).

³ s.1 (1) Dangerous Dogs Act 1991

Applicability of the guideline

The Council proposes that the guideline will apply to all dangerous dog offences covered irrespective of the date of the offence. It is to be used in both the Crown Court and magistrates' courts, and updates to the Magistrates' Court Sentencing Guidelines (MCSG) will be issued for the offences covered.

Dangerous dog offences sentencing data and research

In formulating the draft guideline, the Council was keen to take account of a number of sources of information including the available data on current sentencing practice. The Council was also keen to understand the views of the public in terms of sentencing for dangerous dog offences as well as the views of magistrates and District Judges who are the sentencers who most commonly deal with dangerous dog offences. Therefore, research was conducted with both groups and the results of both exercises contributed to the proposals in the draft guideline.

The research with magistrates and District Judges was in the form of a questionnaire while the research with members of the public was in the form of an online survey. Both focussed on the use of scenarios for which respondents were asked to put forward a suggested sentence. Neither piece of research should be considered as representative of all magistrates/District Judges or of the public as a whole due to the sample sizes and/or methods used.

Further data on current sentencing practice and the findings of the research carried out are in the accompanying analysis and research bulletins which can be found on the Sentencing Council's website: **www.sentencingcouncil.org.uk**.

Section two: Assessing seriousness

Every dangerous dog offence which reaches court is different. The draft guideline aims to help the court to decide how serious an offence is (in the context of other dangerous dog offences), and what the sentence should be.

The guideline sets out a step-by-step decision making process for the court to use when sentencing each type of offence. This means that all courts will be following the same approach to sentencing across England and Wales.

The two guidelines for the offences involving a dog being dangerously out of control are structured alike. The offence of possession of a prohibited dog is slightly different and the guideline reflects the different nature of this offence.

In order to illustrate the proposed methods for the court to assess the seriousness of an offence and reach an appropriate sentence, there follows a step-by-step process for sentencing the offence involving a dog dangerously out of control causing injury, and another for the offence of possession of a prohibited dog.

EXAMPLE ONE Dog dangerously out of control causing injury

The first two steps that the court follows when deciding the sentence are about assessing the seriousness of an individual offence. These two steps are described below.

STEP ONE Determining the offence category

The first step that the court will take is to consider the principal factors of the offence. The guideline directs the court to consider the factors relating to the **harm** that has been caused and the **culpability** of the offender in committing the offence. Harm can be defined as the damage, injury or loss that the offence causes to the victim or to society at large. Culpability can be defined as how blameworthy the offender is.

The draft guideline lists the principal factors relevant to each offence, in relation to harm and culpability. These are the factors that the Council thinks are the most important in deciding the seriousness of the offence. The Council drew upon the research conducted with magistrates and District Judges in compiling these lists and is seeking views on whether you agree with the factors that are being proposed.

The lists of factors used in this section to illustrate steps one and two are for the offence involving injury; the non-aggravated version of the offence without injury has slightly different factors as the lists have been tailored for each offence. Full versions of each of the guidelines are at annex D.

Harm factors

The Council recognises that the primary harm caused in such an offence is the level of the injury sustained by the victim. However, the harm caused should not be assessed solely by reference to the victim's injury. For example, the nature of the attack is highly relevant and a sustained attack could be viewed as more serious than a very brief incident on the basis that the fear and trauma experienced by the victim is likely to be increased. The Council also believes that where the victim is a child, the harm should be assessed as being greater.

Listed below are the principal features of **harm** that the Council believes make an offence involving injury more serious. Where one or more of these factors are present they are likely to result in a more serious sentence for the offender than where they are not present.

Factors indicating greater harm

Serious injury (including psychological harm)
Sustained attack
More than one dog involved in offence, where not charged separately
Victim is a child
Dog used as weapon or to intimidate victim
Prohibited type of dog

Sometimes the offence may not involve any of the factors indicating greater harm set out above and there may be limited evidence of harm. Whilst any conviction for an offence involving injury to a person will be treated seriously by the court, in cases where the injury is considered to be minor, the court may deem the offence to be less serious.

Factor indicating lesser harm

Minor injury

Culpability factors

When considering how serious the offence is the court will also look at the offender's culpability, that is how blameworthy the offender is for what he or she has done. For example, the Council considers that where the offender has been warned by others about the behaviour of the dog in the past and has failed to take adequate steps to control such behaviour, then the offender's culpability is raised.

The Council also considers that incidents resulting from an offender's deliberate goading of their dog should indicate that the offender's culpability is raised.

These factors are listed below as the principal features of **culpability** that the Council believes make an offence involving injury more serious. Where one or more of these factors are present they are likely to result in a more serious sentence for the offender.

Factors indicating higher culpability

Failure to respond to warnings or concerns expressed by others about the dog's behaviour
Deliberate goading of dog immediately prior to or during incident

Sometimes the offender may be less culpable (blameworthy) for what has happened. He or she may have attempted to prevent such behaviour by voluntarily muzzling the dog, or may have taken steps to regain control of the dog in the course of the incident in order to reduce the severity of the attack. The features below are those that the Council believes make an offence less serious.

Factors indicating lower culpability

Attempts made to regain control of dog and/or intervene

Evidence of safety/control measures having been taken by owner

Mental disorder or learning disability, where linked to the commission of the offence

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.

Determining the category

It is by looking at the principal factors relating to harm and culpability set out above, that the court will identify which one of the three categories in the guideline the offence should be placed in. It is the identification of this category that informs the court’s decision about what sentence should be passed. The Council proposes to use the category model which it has employed in its earlier guidelines for assault and burglary offences and with which sentencers are now familiar. The categories are:

Category 1	Greater harm and higher culpability
Category 2	Greater harm and lower culpability; or Lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

These categories are the same for both offences of a dog being dangerously out of control. The categories for possession of a prohibited dog are a slight variation on this and are explained in example two below.

STEP TWO

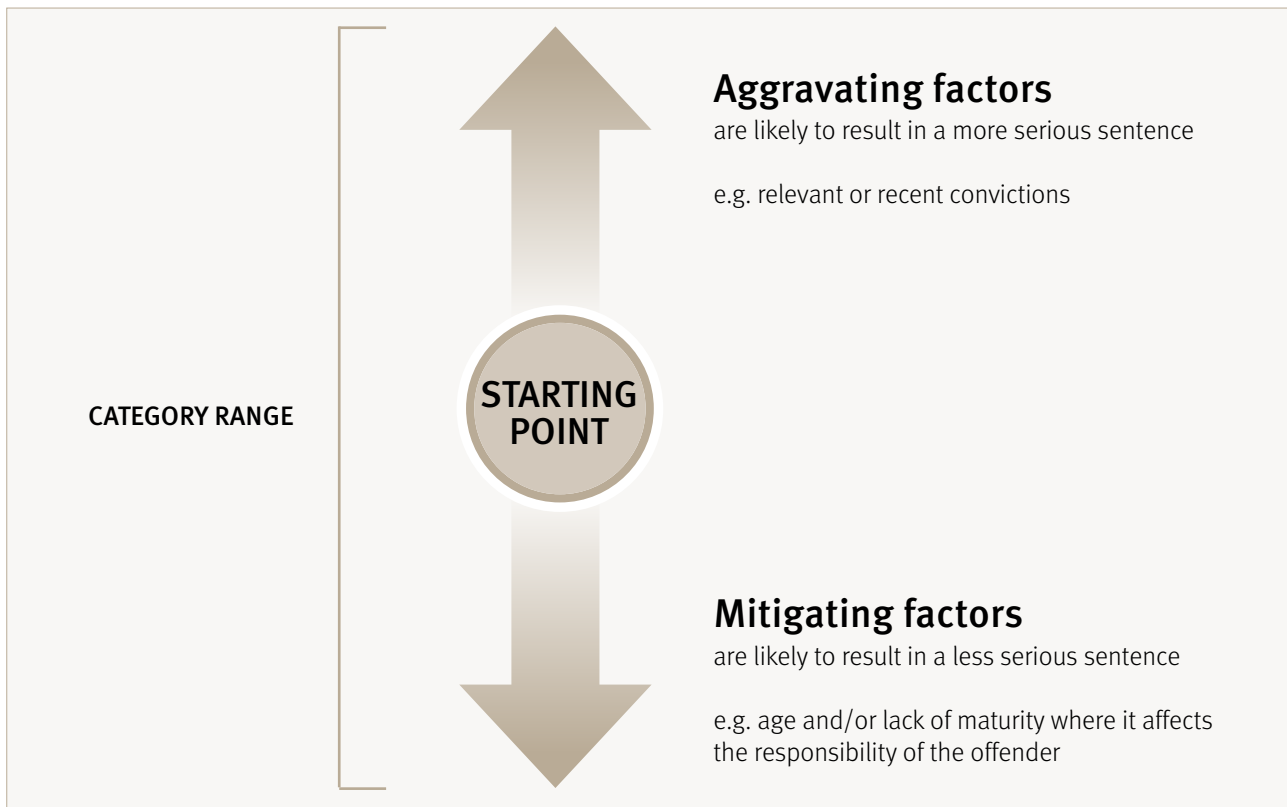
Starting point and category range

The guideline sets out a range of sentences for each category with a starting point (see Section Three). Having identified the appropriate category, the court then identifies whether there are additional factors which might make the offence more or less serious within the category. This leads them to decide whether the sentence should be higher or lower than the starting point set out in the guideline. The factors that might increase the sentence at this stage are referred to as aggravating factors. The factors that might decrease the sentence at this stage are referred to as mitigating factors.

These aggravating and mitigating factors relate to the wider circumstances of the offence and also include factors relating to the offender. The lists at this step are not intended to be exhaustive and any other factors present should be taken into account by the court at this step. In some cases, having considered these factors, the court might decide to move outside the identified category range.

The Council’s intention is to highlight factors which are likely to be relatively common in such cases in order to ensure that they are considered equally by different courts. The Council has included aggravating factors relating to the context of the offence such as where the incident resulted from the owner’s failure to prevent the dog escaping or the fact that the owner lost control of the dog as a result of being under the influence of alcohol at the time.

Factors relating to the offender include his or her background such as any relevant previous convictions the offender may have and where the offender has failed to comply with any current court orders.



The table below sets out the **aggravating** factors being proposed at step two for an offence involving injury.

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 include:

Location of the offence

Ongoing effect upon the victim

Failure to train dog

Failure to take any precautions to prevent dog escaping

Cruelty to dog, where not charged separately

Lack/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

Presence of children, where not victims

Established evidence of community impact

Failure to comply with current court orders

Offence committed whilst on licence

The Council has included mitigating factors relating to the context of the offence such as where there have been no previous incidents involving the dog or any complaints about the dog’s behaviour which may have alerted the owner to a potential risk.

Factors relating to the offender again include his or her background such as the absence of previous convictions as well as the offender being of good character or having demonstrated remorse.

The table below sets out the **mitigating** factors being proposed at step two for an offence involving injury.

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
Remorse
Good character and/or exemplary conduct
Determination, and/or demonstration of steps taken to address alcohol/drug addiction or offending behaviour
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

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.

Further steps in the process of deciding the sentence

Having arrived at a provisional sentence through the two steps described above, the court will ordinarily consider the following additional steps:

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

Compensation and ancillary orders

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

STEP SIX

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 offending behaviour.

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 remand time

Sentencers should take into consideration any remand time served in relation to the final sentence at this step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Compensation and ancillary orders

Step five of the process is where the court should consider making a compensation order to the victim and/or other ancillary orders. This step is particularly important in dangerous dog offences and therefore the Council has decided to include expanded guidance to courts on this part of the process within the draft guideline.

The Council believes that the availability of compensation orders should be emphasised in this guideline where it could comprise a substantial part of the overall sentence.

There is a wide range of ancillary orders available to the court but the Council proposes to focus guidance on two orders which are especially relevant for dangerous dog offences and upon which guidance will be particularly welcomed by sentencers: disqualification from future dog ownership and destruction orders. The draft guideline provides a logical process for determining the suitability or otherwise of these two types of order in relation to each of the offences.

The Council proposes to direct courts to give very careful consideration to the issue of destruction orders. It is critical that the court makes a considered decision in the best interests of the general public. The guidance proposed encourages the court to consider each case on its individual merits and to consider the possibility of certain control measures allowing any destruction order made to be contingent where appropriate.

The most important issue for the court to consider in each of the offences is the risk posed by the dog to the public. For offences involving injury and the offence of possession of a prohibited dog, the guidance makes it clear that the court *shall* make a destruction order in all cases unless satisfied that the dog would not constitute a risk to the public. The proposed guidance suggests the relevant circumstances which should be taken into account when making such a decision. It is important that the court considers all of its options including contingent destruction orders, which allow the owner to keep the dog provided certain conditions are met. These can include keeping the dog muzzled and on a leash at all times in public or the neutering of male dogs where it is thought appropriate. Failure to meet these conditions can lead to the destruction of the dog.

For the non-aggravated offence involving no injury, the guidance is slightly different and the court is reminded that it *may* order the destruction of the dog but is not required to order destruction if it is satisfied that the dog would not constitute a danger to public safety.

Furthermore, the guidance reminds the court that it may order costs to be paid by the offender to cover the expenses relating to the destruction of a dog and the costs of kennelling pending its destruction.

The guidance is tailored for each of the offences and the guidance given by way of illustration in the table below is for the offence involving injury.

Table: Compensation and ancillary orders (dog dangerously out of control causing injury)

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.

Ancillary orders

Disqualification from future dog ownership

The court may disqualify the offender from owning or keeping dogs in the future. The test the court should consider is whether the owner is a fit and proper person to own 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 of being present and making representations to the court on what orders to impose.

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

If the court is satisfied that the dog would not constitute a danger to public safety, it may consider making a contingent destruction order imposing certain available conditions. A contingent destruction order should specify the measures to be taken by the owner for keeping the dog under proper control whether by muzzling, keeping it on a lead, neutering in appropriate cases, or excluding it from a specified place or otherwise.

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

- the incident – what degree of harm was caused by the dog’s behaviour?
- past behaviour of the dog – is this an isolated incident or have there been previous warnings or incidents? and
- owner’s character – is the owner a fit and proper person to own this particular dog?

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

The Council is very keen that this section is as helpful as possible to the courts and would particularly welcome the views of sentencers and legal professionals on the draft guidance provided.

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?

EXAMPLE TWO
Possession of a prohibited dog

As in the first example set out above, the first two steps that the court follows when deciding the sentence for this type of offence are about assessing the seriousness of an individual offence. These two steps are described below.

STEP ONE
Determining the offence category

The first step within the guideline for the offence of possession of a prohibited dog is very similar to that set out above. The guideline directs the court to consider the factors relating to the **harm** that has been caused and the **culpability** of the offender in committing the offence.

Determining the category

As in the guideline for a dog dangerously out of control, it is by looking at the principal factors relating to harm and culpability that the court will identify into which of the three categories in the guideline the offence should be placed. However, the category model is slightly different for the offence of possession of a prohibited dog. In this guideline, the Council proposes that as an offence of strict liability, offences should fall into category 3 unless there are factors to indicate greater harm, higher culpability or both. Therefore, the categories are:

Category 1	Greater harm and higher culpability
Category 2	Greater harm or higher culpability
Category 3	Neither greater harm nor higher culpability

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

Harm factors

Listed below are the principal features of **harm** that the Council believes make an offence of possession of a prohibited dog more serious. Where one or more of these factors are present they are likely to result in a more serious sentence for the offender than where they are not present. The Council has included the breeding, selling or exchanging of prohibited dogs as factors indicating greater harm as it believes that such an offence is more serious than that of simple possession.

Factors indicating greater harm
More than one prohibited dog, where not charged separately
Dog used to threaten/intimidate others
Breeding from prohibited dogs
Selling or exchanging prohibited dogs
Injury to other animals, where not charged separately

Culpability factors

When considering how serious the offence is the court will also look at the offender’s culpability. The Council believes that the principal consideration is the offender’s knowledge of the fact that the dogs in question were prohibited. Where it is clear that the offender has knowingly possessed the prohibited type of dog, then the offender’s culpability should be raised.

In addition, where the dog has been used in dog fighting, regardless of whether the offender knew the dog was of a prohibited type, the Council believes that their culpability should be raised.

Listed below are the principal features of **culpability** that the Council believes make an offence of possession of a prohibited dog more serious. Where one or more of these factors are present they are likely to result in a more serious sentence for the offender.

Factors indicating higher culpability

Knowingly possessing prohibited type of dogs

Permitting fighting, where not charged separately

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.

STEP TWO

Starting point and category range

The guideline for possession of a prohibited dog also sets out a range of sentences for each category with a starting point. Again, having identified the appropriate category, the court then identifies whether there are additional factors which might make the offence more or less serious within the category.

As in the other guidelines, the lists at this step are not intended to be exhaustive and any other factors present should be taken into account by the court at this step. In some cases, having considered these factors, the court might decide to move outside the identified category range.

In this guideline, the Council has included aggravating factors relating to the context of the offence such as where the owner has failed to take appropriate steps to identify the type of dog or the fact that the dog has been kept in an environment where there are children present. Factors relating to the offender again include his or her background such as any relevant previous convictions the offender may have and where the offender has failed to comply with any current court orders.

The table below sets out the **aggravating** factors being proposed at step two for an offence of possession of a prohibited dog.

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 include:

Failure to take steps to identify type of dog

Presence of children

Cruelty to dog, where not charged separately

Established evidence of community impact

Failure to comply with current court orders

Offence committed whilst on licence

The Council has included mitigating factors relating to the context of the offence such as where the owner was genuinely unaware that the dog was a prohibited type or where the owner took safety precautions with the dog such as ensuring suitable safeguards in the home or when in public places.

Factors relating to the offender again include his or her background such as the absence of previous convictions as well as the offender being of good character or having demonstrated remorse.

The table below sets out the **mitigating** factors being proposed at step two for an offence of possession of a prohibited dog.

Factors reducing seriousness or reflecting personal mitigation
No previous convictions or no relevant/recent convictions
Unaware that dog was prohibited type
Safety precautions taken by owner
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
Lapse of time since the offence where this is not the fault of the offender
Mental disorder or learning disability, where not linked to the commission of the offence
Sole or primary carer for dependent relatives

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.

Section three: Sentences for dangerous dog offences

The Council seeks to promote a consistent approach to sentencing for dangerous dog offences. The Council has reviewed the data on current sentencing for the offences covered by this draft guideline, together with the research on sentencers' views and the views of the public on sentencing of these offences, and believes that the level of current sentencing is broadly appropriate. Therefore, the Council is proposing to maintain the current level of sentencing for these offences and through the guideline reinforce a consistent approach to the sentencing of these offences while setting out a much clearer position on the use of compensation and ancillary orders. It should be noted that the offence ranges for some of the offences allow movement between the top of the offence range (the top of category 1) and the maximum set out in the law for cases that are exceptionally serious within the context of the offence.

Dog dangerously out of control causing injury

The sentencing data for 2010 indicate that for the offences causing injury to a person, 29 per cent of offenders received a conditional discharge, 29 per cent received a fine, 18 per cent of offenders received a community order and just two per cent of offenders were sentenced to immediate custody⁴. Research with members of the public showed that respondents felt that a fine was the most suitable disposal type for offences involving injury to a third party but that there should be fewer discharges.

The most serious category of offence has a proposed starting point of a community order and makes custody available for such offences reflecting significantly raised harm and culpability. However, the proposed guideline also maintains the availability of a wide range of sentencing options including conditional discharges with appropriate ancillary orders within the ranges for categories 2 and 3.

The Council is proposing the following starting points and category ranges for offences involving injury to a person.

Starting points and category ranges for offences involving injury to a person		
Offence Category	Starting Point (applicable to all offenders)	Category Range (applicable to all offenders)
Category 1	High level community order	Low level community order – 12 months' custody
Category 2	Band C fine	Discharge – Medium level community order
Category 3	Band A fine	Discharge – Band C fine

⁴ Court Proceedings Database, Ministry of Justice, 2010

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?

Dog dangerously out of control

The Council’s proposed sentencing options for the non-aggravated offence are lower than for the offence involving injury, to reflect the reduced seriousness of the offence. Again, the most serious category of offence has a proposed starting point of a community order and the availability of custody for very serious cases where they arise.

The Council is proposing the following starting points and category ranges for non-aggravated offences of a dog being dangerously out of control.

The proposed starting points again reflect current sentencing practice which indicates that in 2010, 38 per cent of offenders received a fine and 14 per cent received a community order⁵. The findings of the research into public attitudes towards sentencing also reflect this as only 15 per cent of respondents felt that a sentence more serious than a fine would be suitable when asked to provide a sentence for a scenario of this type of offence.

Starting points and category ranges for offences of a dog being dangerously out of control		
Offence Category	Starting Point (applicable to all offenders)	Category Range (applicable to all offenders)
Category 1	Medium level community order	Band C fine – 6 months’ custody
Category 2	Band B fine	Discharge – Low level community order
Category 3	Band A fine	Discharge – Band B fine

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

⁵ Court Proceedings Database, Ministry of Justice, 2010

Possession of a prohibited dog

For offences of possession, the Council proposes the starting point for each category should be a fine. However, the range of sentences available within each category reflects the differing severity of the offences committed and allows courts flexibility to sentence appropriately. For example, custody is an option at the very top of the range reflecting current practice but there would need to be significant factors at step two increasing the seriousness of the offence to justify crossing the necessary threshold.

There are no direct victims in this offence and therefore there will be no compensation orders. The most appropriate penalty for this offence is considered to be a fine and this is reflected in the proposed guideline.

Current sentencing practice indicates that in 2010, 35 per cent of offenders received a fine while 43 per cent received a conditional discharge⁶. The proposed guideline includes the option of a conditional discharge within the category ranges for two of the three categories.

The Council is proposing the following starting points and category ranges for possession of a prohibited dog.

Starting points and category ranges for possession of a prohibited dog

Offence Category	Starting Point (applicable to all offenders)	Category Range (applicable to all offenders)
Category 1	Band C fine	Band B fine – 3 months' custody
Category 2	Band B fine	Discharge – Band C fine
Category 3	Band A fine	Discharge – Band B fine

Q9

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

⁶ Court Proceedings Database, Ministry of Justice, 2010

Section four: Other issues

Victims

When preparing guidelines, the Council must have regard to the impact of sentencing decisions on victims⁷. The Council has sought to have full regard to the impact on victims of both the offences involving dogs being dangerously out of control. These considerations have been set out above in relation to the factors included in steps one and two.

Step five of the guideline for both offences involving dogs being dangerously out of control states that in all cases, the court must consider whether to make a compensation order to the victim if the offence has resulted in personal injury (including distress), loss or damage.

The Council also recognises the impact that dangerous dogs can have on the wider community. In order to take account of this, 'established evidence of community impact' has been included as a factor increasing seriousness at step two. The consideration of this factor is reliant upon the provision of a community impact statement or equivalent document to the court, which sets out the concerns of a particular community regarding the impact of crime in the area.

The Council would welcome views on whether it can do more in the guideline in relation to the impact on victims, in particular from victims themselves and organisations that represent victims.

Q10

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

Equality and diversity

Alongside this consultation document and the draft guideline the Council has published an equality impact assessment. This assessment has been informed by a review of the relevant literature and data; however, this is very limited. No equality matters have been identified to date in relation to the development of the guideline but the Council is keen to hear of any matters that should be considered.

Q11

Are there any equality or diversity matters that the Council should consider?

(please provide evidence where possible)

Q12

Are there any further comments you wish to make?

⁷ s.120 (11)(c) Coroners and Justice Act 2009

Annex A:

Summary of consultation 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.
- 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.
- 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?
- Q4 Do you agree with the category model for the offence of possession of a prohibited dog?
- 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.
- 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.
- 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?
- Q8 Do you agree with the proposed sentences (starting points and category ranges) for the offence of a dog being dangerously out of control?
- Q9 Do you agree with the proposed sentences (starting points and category ranges) for the offence of possession of a prohibited dog?
- Q10 Are there further ways in which you think victims can or should be considered?
- Q11 Are there any equality or diversity matters that the Council should consider? (please provide evidence where possible)
- Q12 Are there any further comments you wish to make?

Annex B:

Explanation of terms

Aggravating factor

A feature of the offence which indicates increased seriousness.

Category range

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

Culpability

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

Harm

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

Mitigating factor

A feature which indicates decreased seriousness.

Offence category

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

Offence range

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

Seriousness

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

Starting point

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

Statutory

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

Annex C:

Background to guidelines

Sentencing Guidelines Council and Sentencing Advisory Panel

The Sentencing Council was created to bring together the functions of the two previous bodies, the Sentencing Guidelines Council (SGC) and Sentencing Advisory Panel (SAP), which have now been disbanded. In 2003, the SGC and the SAP had been established to work together to produce sentencing guidelines that encouraged consistency in sentencing throughout England and Wales and to support sentencers in their decision making. The SAP's role was to advise on sentencing guidelines for particular offences and other sentencing issues, and following a period of wide consultation and research if required, the panel would produce advice for the SGC to consider. The SGC would receive advice from the SAP and use this to formulate sentencing guidelines on the subject. The SGC would publish draft guidelines for consultation and then issue final guidelines for sentencers.

The Sentencing Council is a more streamlined body with a greater remit to take forward work on sentencing not only through improvements to guidelines but also through the development of a robust evidence base and engaging more with the public to improve understanding about sentences. The Council brings together wide experience in sentencing and comprises eight judicial members and six non-judicial members.

Statutory requirements

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

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

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

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

- guidelines may be general in nature or limited to a particular offence;
- the Council must publish them as draft guidelines;
- the Council must consult the following persons about draft guidelines: the Lord Chancellor, such persons as the Lord Chancellor may direct, the Justice Select Committee of the House of Commons, such other persons as the Council considers appropriate;
- after making appropriate amendments, the Council must issue definitive guidelines;
- the Council may review the guidelines and may revise them;⁸
- the Council must publish a resource assessment in respect of the guidelines;⁹ and,
- the Council must monitor the operation and effect of its sentencing guidelines.¹⁰

⁸ s. 120 Coroners and Justice Act 2009

⁹ s. 127(2) *ibid*

¹⁰ s. 128(1) *ibid*

Under the previous bodies (the SGC and SAP), courts had to “have regard to any guidelines which are relevant to the offender’s case”¹¹ and give reasons if a sentence fell outside of the range.¹² Section 125(a) of the Coroners and Justice Act 2009 states that, “every court must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case”. Therefore, courts are required to impose a sentence consistent with the guidelines, unless contrary to the interests of justice to do so. Therefore, the Sentencing Council is keen to ensure that the guidelines are as accessible as possible for sentencers.

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

- the sentences imposed by courts in England and Wales for offences;
- the need to promote consistency in sentencing;
- the impact of sentencing decisions on victims;
- the need to promote public confidence in the criminal justice system;
- the cost of different sentences and their relative effectiveness in preventing re-offending; and,
- the results of monitoring the operation and effect of its sentencing guidelines.¹³

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

- the resources required for the provision of prison places;
- the resources required for probation provision; and
- the resources required for the provision of youth justice services.¹⁴

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

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

¹¹ s. 172(1) Criminal Justice Act 2003

¹² s. 174(2) *ibid*

¹³ s. 120(11) Coroners and Justice Act 2009

¹⁴ s. 127(3) *ibid*

Annex D: Draft guideline

Applicability of the Guideline
In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this draft guideline. When issued as a definitive guideline, it will apply to all offenders aged 18 and older, who are sentenced on or after [date to be confirmed], regardless of the date of the offence.

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

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

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

Structure, ranges and starting points

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

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

Information on community orders and fine bands is set out in the annex at page 46.

Owner or person in charge of a dog which was dangerously out of control in a public place injuring any person

Dangerous Dogs Act 1991 (section 3(1))

Owner or person in charge allowing a dog to be in a private place where dog not permitted to be injuring any person

Dangerous Dogs Act 1991 (section 3(3)(a))

Triable either way
Maximum: 2 years' custody

Offence range: Discharge – 12 months' custody

STEP ONE**Determining the offence category**

The court should determine the offence category using the table below.

Category 1	Greater harm and higher culpability
Category 2	Greater harm and lower culpability; or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

Factors indicating greater harm

Serious injury (including psychological harm)

Sustained attack

More than one dog involved in offence, where not charged separately

Victim is a child

Dog used as weapon or to intimidate victim

Prohibited type of dog

Factor indicating lesser harm

Minor injury

Factors indicating higher culpability

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

Deliberate goading of dog immediately prior to or during incident

Factors indicating lower culpability

Attempts made to regain control of dog and/or intervene

Evidence of safety/control measures having been taken by owner

Mental disorder or learning disability, where linked to the commission of the offence

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Offence Category	Starting Point (<i>applicable to all offenders</i>)	Category Range (<i>applicable to all offenders</i>)
Category 1	High level community order	Low level community order – 12 months' custody
Category 2	Band C fine	Discharge – Medium level community order
Category 3	Band A fine	Discharge – Band C fine

The table below contains 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. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 1** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 2** offences, the court should also consider the community order threshold as follows:

- has the community order threshold been passed?

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	No previous convictions or no relevant/recent convictions
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	Isolated incident
Offence committed whilst on bail	No previous complaints against or incidents involving the dog
<i>Other aggravating factors include:</i>	Remorse
Location of the offence	Good character and/or exemplary conduct
Ongoing effect upon the victim	Determination, and/or demonstration of steps taken to address alcohol/drug addiction or offending behaviour
Failure to train dog	Serious medical conditions requiring urgent, intensive or long-term treatment
Failure to take any precautions to prevent dog escaping	Age and/or lack of maturity where it affects the responsibility of the offender
Cruelty to dog, where not charged separately	Mental disorder or learning disability, where not linked to the commission of the offence
Lack/loss of control of dog due to influence of alcohol or drugs	Sole or primary carer for dependent relatives
Offence committed against those working in the public sector or providing a service to the public	
Presence of children, where not victims	
Established evidence of community impact	
Failure to comply with current court orders	
Offence committed whilst on licence	

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**Compensation and ancillary orders**

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

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence¹⁵. The court must give reasons if it decides not to award compensation in such cases.

Ancillary orders**Disqualification from future dog ownership**

The court may disqualify the offender from owning or keeping dogs in the future¹⁶. The test the court should consider is whether the owner is a fit and proper person to own 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 of being present and making representations to the court on what orders to impose.

The court shall make a destruction order unless the court is satisfied that the dog would not constitute a danger to public safety¹⁷.

If the court is satisfied that the dog would not constitute a danger to public safety, it may consider making a contingent destruction order imposing certain available conditions¹⁸. A contingent destruction order should specify the measures to be taken by the owner for keeping the dog under proper control whether by muzzling, keeping it on a lead, neutering in appropriate cases, or excluding it from a specified place or otherwise¹⁹.

¹⁵ s. 130 Powers of Criminal Courts (Sentencing) Act 2000

¹⁶ s. 4(1)(b) Dangerous Dogs Act 1991

¹⁷ s. 4(1)(a) *ibid*

¹⁸ s. 4A(4) *ibid*

¹⁹ s. 4A(5) *ibid*

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

- the incident – what degree of harm was caused by the dog’s behaviour?
- past behaviour of the dog – is this an isolated incident or have there been previous warnings or incidents? and,
- owner’s character – is the owner a fit and proper person to own this particular dog?

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 of keeping it pending its destruction²⁰.

STEP SIX

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 offending behaviour.

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 remand time

Sentencers should take into consideration any remand time served in relation to the final sentence at this step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

²⁰ s. 4(4)(b) Dangerous Dogs Act 1991

Owner or person in charge of a dog which was dangerously out of control in a public place

Dangerous Dogs Act 1991 (section 3(1))

Owner or person in charge allowing a dog to be in a private place where dog not permitted to be which makes a person fear injury

Dangerous Dogs Act 1991 (section 3(3)(b))

Triable summarily only
Maximum: 6 months' custody

Offence range: Discharge – 6 months' custody

STEP ONE**Determining the offence category**

The court should determine the offence category using the table below.

Category 1	Greater harm and higher culpability
Category 2	Greater harm and lower culpability; or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

Factors indicating greater harm	Factors indicating higher culpability
More than one dog involved in offence, where not charged separately	Failure to respond to warnings or concerns expressed by others about the dog's behaviour
Presence of children	Deliberate goading of dog immediately prior to or during incident
Dog used as weapon or to intimidate victim	Factors indicating lower culpability
Prohibited type of dog	Attempts made to regain control of dog and/or intervene
Factors indicating lesser harm	Evidence of safety/control measures having been taken by owner
Low risk to the public	Mental disorder or learning disability, where linked to the commission of the offence

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Offence Category	Starting Point (<i>applicable to all offenders</i>)	Category Range (<i>applicable to all offenders</i>)
Category 1	Medium level community order	Band C fine – 6 months' custody
Category 2	Band B fine	Discharge – Low level community order
Category 3	Band A fine	Discharge – Band B fine

The table below contains 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. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 1** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 1 and 2** offences, the court should also consider the community order threshold as follows:

- has the community order threshold been passed?

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	No previous convictions or no relevant/recent convictions
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	Isolated incident
Offence committed whilst on bail	No previous complaints against or incidents involving the dog
<i>Other aggravating factors include:</i>	Remorse
Location of the offence	Good character and/or exemplary conduct
Failure to train dog	Determination, and/or demonstration of steps taken to address alcohol/drug addiction or offending behaviour
Failure to take precautions to prevent dog escaping	Serious medical conditions requiring urgent, intensive or long-term treatment
Cruelty to dog, where not charged separately	Age and/or lack of maturity where it affects the responsibility of the offender
Lack/loss of control of dog due to the influence of alcohol or drugs	Mental disorder or learning disability, where not linked to the commission of the offence
Offence committed against those working in the public sector or providing a service to the public	Sole or primary carer for dependent relatives
Presence of children, where not victims	
Established evidence of community impact	
Failure to comply with current court orders	
Offence committed whilst on licence	

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**Compensation and ancillary orders**

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

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence²¹. The court must give reasons if it decides not to award compensation in such cases.

Ancillary orders:**Disqualification from future dog ownership**

The court **may** disqualify the offender from owning or keeping dogs in the future²². The test the court should consider is whether the owner is a fit and proper person to own 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 of being present and making representations to the court on what orders to impose.

The court **may** order the destruction of the dog but is not required to order destruction if it is satisfied that the dog would not constitute a danger to public safety²³.

If the court is satisfied that the dog would not constitute a danger to public safety, it may consider making a contingent destruction order imposing certain available conditions²⁴. A contingent destruction order may specify the measures to be taken by the owner for keeping the dog under proper control whether by muzzling, keeping it on a lead or excluding it from a specified place or otherwise.

21 s. 130 Powers of Criminal Courts (Sentencing) Act 2000

22 s. 4(1)(b) Dangerous Dogs Act 1991

23 s. 4(1)(a) *ibid*

24 s. 4A(4) *ibid*

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

- the incident – what degree of harm was caused by the dog’s behaviour?
- past behaviour of the dog – is this an isolated incident or have there been previous warnings or incidents? and,
- owner’s character – is the owner a fit and proper person to own this particular dog?

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 of keeping it pending its destruction²⁵.

STEP SIX

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 offending behaviour.

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 remand time

Sentencers should take into consideration any remand time served in relation to the final sentence at this step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

25. s. 4(4)(b) Dangerous Dogs Act 1991

Possession of a prohibited dog

Dangerous Dogs Act 1991 (section 1(3))

Breeding, selling or exchanging a prohibited dog

Dangerous Dogs Act 1991 (section 1(2))

Triable only summarily
Maximum: 6 months' custody

Offence range: Discharge – 3 months' custody

STEP ONE**Determining the offence category**

The court should determine the offence category using the table below.

Category 1	Greater harm and higher culpability
Category 2	Greater harm or higher culpability
Category 3	Neither greater harm nor higher culpability

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

Factors indicating greater harm

More than one prohibited dog, where not charged separately

Dog used to threaten/intimidate others

Breeding from prohibited dogs

Selling or exchanging prohibited dogs

Injury to other animals, where not charged separately

Factors indicating higher culpability

Knowingly possessing prohibited type of dogs

Permitting fighting, where not charged separately

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Offence Category	Starting Point (<i>applicable to all offenders</i>)	Category Range (<i>applicable to all offenders</i>)
Category 1	Band C fine	Band B fine – 3 months' custody
Category 2	Band B fine	Discharge – Band C fine
Category 3	Band A fine	Discharge – Band B fine

The table below contains 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. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 1** offences, the court should also consider:

The custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

The community order threshold as follows:

- has the community order threshold been passed?

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	No previous convictions or no relevant/recent convictions
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	Unaware that dog was prohibited type
Offence committed whilst on bail	Safety precautions taken by owner
<i>Other aggravating factors include:</i>	Remorse
Failure to take steps to identify type of dog	Good character and/or exemplary conduct
Presence of children	Serious medical conditions requiring urgent, intensive or long-term treatment
Cruelty to dog where not charged separately	Age and/or lack of maturity where it affects the responsibility of the offender
Established evidence of community impact	Lapse of time since the offence where this is not the fault of the offender
Failure to comply with current court orders	Mental disorder or learning disability, where not linked to the commission of the offence
Offence committed whilst on licence	Sole or primary carer for dependent relatives

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**Ancillary orders**

In all cases, the court should consider whether to make any ancillary orders.

Disqualification from future dog ownership

The court may disqualify the offender from owning or keeping dogs in the future²⁶. The test the court should consider is whether the owner is a fit and proper person to own a dog.

Destruction order/contingent destruction order

The court **shall** order the destruction of the dog unless satisfied that the dog would not constitute a danger to public safety²⁷.

If the court is satisfied that the dog would not constitute a danger to public safety, the court may make a contingent destruction order providing that unless the dog is exempted from the prohibition within two months it shall be destroyed²⁸.

However, if the owner is not a suitable person to keep the prohibited dog, the court should make a destruction order. Furthermore, the court must not transfer ownership or lifelong possession (“keepership”) of the prohibited dog to another as it is illegal to do so.

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

- danger to the public – what is the potential risk of harm posed by the dog?
- behaviour of the dog – have there been any warnings or incidents involving the dog? and
- owner’s character – is the owner a fit and proper person to own this particular dog?

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 of keeping it pending its destruction²⁹.

26 s. 4(1)(b) Dangerous Dogs Act 1991

27 s. 4(1)(a) *ibid*

28 s. 4A(1) *ibid*

29 s. 4(4)(b) *ibid*

STEP SIX**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 offending behaviour.

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Fine bands and community orders

FINE BANDS

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

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

COMMUNITY ORDERS

In this guideline, community sentences are expressed as one of three levels (low, medium and high).

A non-exhaustive description of examples of requirements that might be appropriate for each level is provided below. Where two or more requirements are included, they must be compatible with each other.

LOW	MEDIUM	HIGH
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary.		More intensive sentences which combine two or more requirements may be appropriate.
Suitable requirements might include: <ul style="list-style-type: none"> • 40 – 80 hours unpaid work; • curfew requirement within the lowest range (e.g. up to 12 hours per day for a few weeks); • exclusion requirement, without electronic monitoring, for a few months; • prohibited activity requirement; and • attendance centre requirement (where available). 	Suitable requirements might include: <ul style="list-style-type: none"> • greater number of hours of unpaid work (e.g. 80 – 150 hours); • an activity requirement in the middle range (20 to 30 days); • curfew requirement within the middle range (e.g. up to 12 hours for 2 – 3 months); • exclusion requirement, lasting in the region of 6 months; and • prohibited activity requirement. 	Suitable requirements might include: <ul style="list-style-type: none"> • 150 – 300 hours unpaid work; • activity requirement up to the maximum of 60 days; • curfew requirement up to 12 hours per day for 4 – 6 months; and • exclusion order lasting in the region of 12 months.

The tables above are also set out in the *Magistrates' Court Sentencing Guidelines* which includes further guidance on fines and community orders.