

## Introduction

The Sentencing Council has undertaken research into the sentencing of dangerous dog offences in order to inform the development of a guideline for these offences. Views and experiences of sentencing dangerous dog offences and on the use of Destruction Orders were explored by way of a questionnaire sent to magistrates<sup>1</sup> and district judges<sup>2</sup>. A survey was also undertaken to explore the public's views on sentencing dangerous dog offences.

## Background

The Dangerous Dogs Act 1991 prohibited the ownership of certain types of dogs<sup>3</sup> and created a criminal offence of allowing any dog (regardless of type) to be dangerously out of control in a public place or to cause fear of injury in a private place where the dog is not permitted.<sup>4</sup> Issues surrounding dangerous dogs are sensitive and of significant interest to the public. In 2010, the Department for Environment, Food and Rural Affairs (Defra) published a public consultation exercise which sought views on current legislation relating to dangerous dogs and whether it adequately protects the public and encourages responsible ownership of dogs. The Government is currently considering its position in relation to the legislation.

Official sentencing figures on dangerous dog cases appear to show that such cases are not particularly common.<sup>5</sup> In 2010, there were 313 adults (aged 18 years or above) sentenced where the principal offence involved the possession of a prohibited dog and 632 adults sentenced where the principal offence involved a dog being dangerously out of control causing injury in a public place or causing injury in a private place it is not permitted to be. Although still not common, the number of sentences passed for dangerous dog offences has shown to be on the increase in recent years.<sup>6</sup>

Sentencers can use a range of sentence types in relation to dangerous dog offences. In 2010, 43 per cent of sentences passed for offences involving the possession of a prohibited dog were Conditional Discharges<sup>7</sup>, 35 per cent were fines

1 *'Magistrates are trained, unpaid members of their local community, who work part-time and deal with less serious criminal cases... Magistrates do not require legal training. However, all magistrates must undertake a compulsory programme of practical training...'* For more detail refer to: <http://www.judiciary.gov.uk/about-the-judiciary/the-judiciary-in-detail/judicial+roles/magistrates>

2 District judges (magistrates' courts) are full-time members of the judiciary who hear cases in magistrates' courts. They usually deal with the longer and more complex matters coming before magistrates' courts. For more detail refer to: <http://www.judiciary.gov.uk/about-the-judiciary/the-judiciary-in-detail/judicial+roles/judges/district-judge-mags-ct>

3 The Pit Bull Terrier, Japanese Tosa, Dogo Argentino and Fila Brasileiro.

4 For more information refer to <http://www.defra.gov.uk/publications/2011/04/15/pb13225-dangerous-dogs-law/>.

5 Other sources of information on this issue point to cases being slightly more frequent however (for example figures from the Crown Prosecution Service). It may be that as sentencing figures are based on principal offences only (in other words, the offence that invites the harshest penalty) that dangerous dog cases frequently appear alongside more serious cases and therefore are not particularly visible in these figures. For this reason we asked magistrates and district judges to estimate the number of dangerous dog cases they had sentenced in the past 12 months.

6 Figures taken from the Court Proceedings Database, Ministry of Justice, 2011.

7 The offender is released without punishment on the condition that they must not commit another offence within a specified period (up to three years). If the offender commits another crime within the specified period, the court may impose a sentence for the original offence as well as the new offence. The offender may also be required to pay compensation to the victim and/or the court may impose other ancillary orders.

and 14 per cent were Community Orders<sup>8</sup>. For the offence of a dog being dangerously out of control causing injury, 29 per cent of sentences passed were Conditional Discharges, 29 per cent were fines and 18 per cent Community Orders. Other types of sentence were used for both offence types but to a lesser degree (from Absolute Discharges<sup>9</sup> to immediate custody<sup>10</sup>).

In our research with magistrates and district judges, it was reported that these cases can present a challenge due to their relative rarity but also because of their sometimes complex nature and the lack of sentencing guidance. Therefore, the Sentencing Council is issuing guidance to be used when sentencing dangerous dog offences across England and Wales and believes that introducing sentencing guidelines will enhance consistency in sentencing and benefit courts, victims and offenders.

## Methodology

### *Survey of magistrates and district judges*

A semi-structured questionnaire was designed to capture views on sentencing dangerous dog offences. The questionnaire consisted of a small number of closed questions with pre-defined response options and a large number of open questions allowing more detailed responses. The questions focussed on the following subjects:

- views on the usefulness of providing guidance in the Magistrates' Courts Sentencing Guidelines (MCSG) on sentencing dangerous dog offences;
- the number of relevant cases sentenced in the past 12 months and number of Destruction Orders<sup>11</sup> passed (including circumstances in which a Destruction Order might be made);
- recommended sentences for two offence scenarios, including the reasons for these sentences;<sup>12</sup>
- factors that might either aggravate or mitigate the sentence in a dangerous dog case;
- factors that would result in a custodial sentence<sup>13</sup> for a dangerous dog offence; and
- factors that would lead to the suspension of a custodial sentence.

The questionnaire was sent to 100 magistrates and 10 district judges. Respondents were identified from a research 'pool' held by the Office of the Sentencing Council and were selected for this exercise based on geographical region, number of years experience of sentencing and gender in order to ensure that a range of views and experiences were represented.<sup>14</sup>

In total, 90 questionnaires were completed, a response rate of 82 per cent (this included responses by 80 magistrates and all 10 district judges). Questionnaires could be filled in electronically or on paper depending on the preference of the respondent. The final sample comprised a broad geographical spread across England and Wales (71 magistrates

8 The offender is sentenced to a Community Order that can include one or more of 12 requirements on the offender including carrying out unpaid work, attending rehabilitation programmes, such as alcohol or drug treatment, and adhering to a curfew and/or supervision requirement(s).

9 Where no punishment is imposed on the offender but he may still be required to pay compensation to the victim and/or the court may impose other ancillary orders.

10 Where the offender is immediately sent to prison to start their sentence.

11 When the court orders for the dog to be put to sleep by a qualified veterinary surgeon.

12 The two offence scenarios can be found at Appendix A.

13 This could involve going to prison immediately to start a sentence or being given a Suspended Sentence Order where an offender serves his sentence in the community subject to a number of conditions. If any of these conditions are broken, or the offender commits another offence, then the offender will be sent to prison to serve the sentence.

14 Court areas were asked to put forward a minimum of five volunteers to join the research 'pool'.

from England, 9 magistrates from Wales and 10 district judges from England) with a range of sentencing experience from 1 year to 40 years. Of the respondents, 38 were female (42 per cent) and 52 were male (58 per cent).

Responses were coded and analysed using Microsoft Excel. The analysis largely consisted of running basic frequencies and crosstabulations on the data. The survey instrument can be found by using the following web link: <http://sentencingcouncil.judiciary.gov.uk/facts/research-and-analysis-publications.htm>

### *Survey of the public*

A quantitative survey was undertaken with approximately 1,400 members of the public. A quota sampling method was used – this is when a target number is set for particular sample groups. When a quota is reached (for example x number of women), no further respondents of that particular group are sought. The survey was undertaken by YouGov on behalf of the Sentencing Council.<sup>15</sup> YouGov is a research company that primarily uses online panels for quantitative and qualitative research across a range of topics. The full panel currently comprises over 350,000 UK members of different ages, socio-economic groups and other demographic types. Panel members receive a nominal fee for completing questionnaires online.

Respondents were asked to indicate the sentence they felt an offender should receive for a scenario involving a dog dangerously out of control in a public place where no injury was caused but an adult was scared by the dog (1). The scenario was then altered to introduce the victim being a child (2), a minor injury to the owner (3), a more serious injury to an adult (4), and a more serious injury to a child (5). Each respondent was asked what sentence they felt the offender should receive for two of the variants to the original scenario. Responses were weighted<sup>16</sup> in order for findings to be representative of all British adults (aged 18 years or above). The full survey scenario and variations can be found in Appendix B.

### *Limitations*

Findings from the questionnaire with magistrates and district judges should be treated with caution due to the largely self-selecting nature of members of the research ‘pool’ and the relatively small number of people that completed the survey, especially amongst district judges. Therefore, views should not be treated as representative of these groups as a whole; they are the views of individual sentencers for the purpose of this research. Responses also varied and in some cases may be attributable to some individuals being less familiar with sentencing guidelines.<sup>17</sup> The sample size was also too small for robust analysis to be conducted in a number of areas, for example, separating out findings for magistrates and district judges and the relationship between the sentences proposed and the reasons given for these.

Findings from the YouGov questionnaire should also be treated with caution due to the self-selecting nature of the sample, and the incentivised nature of the research. The online methodology for the YouGov survey is also different to that employed with magistrates and district judges and different offence scenarios were used for each, meaning that the two strands are not strictly comparable. For these reasons, the findings should be regarded as *indicative* only.

The following sections focus on the findings from the questionnaire sent to magistrates and district judges, followed by findings from the YouGov survey.

15 Questions asking about sentencing for dangerous dog offences formed part of a wider survey conducted by YouGov on behalf of the Sentencing Council.

16 Weighting is normal practice in quantitative research in order to ensure that findings are representative of the general population. YouGov weights data by age, social class, region, political party identity and readership of newspapers. More details can be found at : <http://labs.yougov.co.uk/publicopinion/methodology/>

17 This would also be influenced by the method used as respondents were not expected to refer to previous cases or guidelines to inform their suggested sentences.

### Survey with magistrates and district judges

Please note that response categories that received fewer than ten responses have not been discussed in detail in the bulletin. In addition, as respondents often gave multiple reasons for their responses, the number of responses commonly exceeds the number of respondents.

#### *Support for sentencing guidance on dangerous dog offences*

Just over 90 per cent of respondents (N=82<sup>18</sup>) agreed that guidance on the most commonly sentenced dangerous dog offences would be helpful to include in the Magistrates' Courts Sentencing Guidelines. The most common reason for the needing guidance related to the frequency of dealing with dangerous dog cases (30 per cent of reasons provided, N=38 - generally as dangerous dog cases were seen to be quite rare), followed by the contribution of guidance to promoting fairness and consistency in sentencing (26 per cent, N=33). See Table 1, Appendix C showing further details of the reasons in support of guidance.

#### *Experience of sentencing and using Destruction Orders*

Only 34 per cent of respondents had sentenced a dangerous dog case in the previous 12 months (N=31 including all 10 district judges). Just under half of these had used a Destruction Order (DO) as part of their sentences (48 per cent, N=15); the remaining 52 per cent of respondents (N=16) had not used any DOs, or did not indicate that they had, in that period.

Some respondents commented that they had used contingent DOs<sup>19</sup> but the questionnaire did not specifically ask them to state this. This means that there is a possibility that others may also have done so but did not note this.

Respondents were also asked under what circumstances they might make a DO. Answers were given by 86 respondents, offering 245 different reasons. These reasons were grouped by theme for analysis purposes. A dog's bad behaviour was the most common reason provided – 39 per cent (N=95). Within this group, different aspects of the dog attacking someone or another animal, the severity of the attack, and so forth were most prevalent (N=42 of 95). A dog being (dangerously) out of control or aggressive featured highly (N=21 of 95); previous incidents or complaints involving the dog (N=16 of 95) and an unprovoked attack by the dog (N=11 of 95) were also relevant.

The second most frequent type of response was that using a DO would seem to be the only option (N=42). Within this group, the most prevalent response related to the dog being a prohibited breed (N=27 of 42).

Other types of response related to the dog causing injury or harm (N=39), the owner's behaviour (including previous relevant convictions or warnings<sup>20</sup>), using the dog for fighting, to intimidate or as a weapon (N=36), and 'other' (N=22) - a quite diverse group where respondents cited never having made a DO amongst other types of response. Eleven

18 The 'N' numbers shown throughout the report show the actual number of respondents or responses being referred to.

19 Where the dog is not destroyed as long as certain requirements are fulfilled, for example, ensuring the dog is on a lead / muzzled in public.

20 This relates to the owner having previous relevant convictions or warnings as opposed to the dog having been involved in previous other relevant incidents or complaints.

responses related to a group where the use of a DO would be subject to expert advice (from a vet, behaviourist, legal advisor, or other professional). Table 2, Appendix C shows further details of the types of reason that were provided for the circumstances when a DO would be used. Page 7 also provides details of how respondents said they would use DOs for the two specific offence scenarios they were given.

### *Sentences for dangerous dog scenarios*

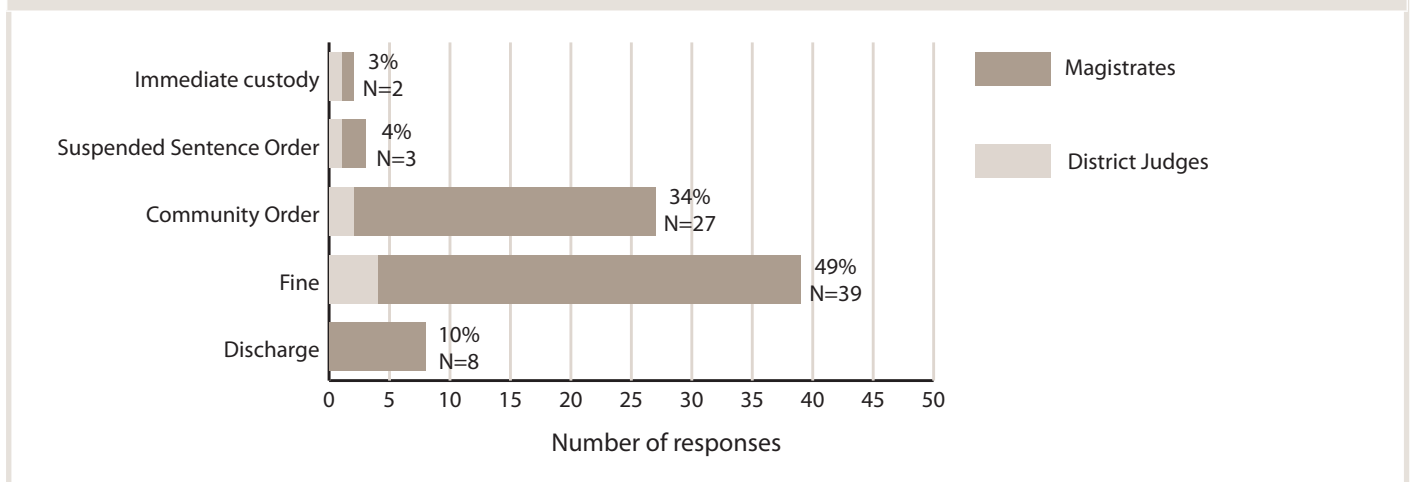
Respondents were asked to sentence two offence scenarios and provide the reasons for this sentence. Scenario A described an offence of possession of a prohibited dog (as per Section 1(3) of the Dangerous Dogs Act 1991). Scenario B described an offence of a dog dangerously out of control in a public place causing injury (as per Section 3(1) of the Dangerous Dogs Act 1991). For full details of the scenarios, please refer to Appendix A.

### *Sentences provided*

Please note that the sentences presented below are based on discrete sentences only, in other words, where a specific sentence has been provided rather than a sentencing range. Details of sentencing ranges have not been included in this section<sup>21</sup>.

Chart 1 below shows the sentence types which were suggested by respondents for **Scenario A** (possession of a prohibited dog):

*Chart 1: Sentences for Scenario A (N=79 respondents)*



For Scenario A, a fine was the most common sentence suggested by respondents (N=39), followed by Community Orders (N=27). An immediate custodial sentence or a Suspended Sentence Order<sup>22</sup> (SSO) were only suggested by five respondents.

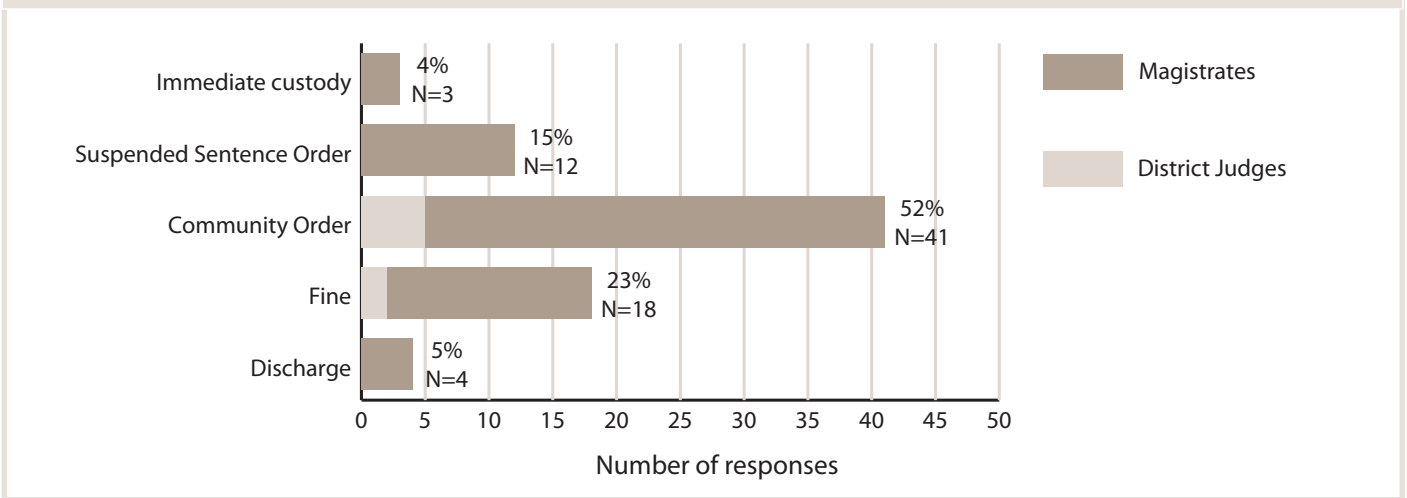
21 A number of respondents gave ranges for a sentence (N=11 for Scenario A and N=12 for Scenario B). These ranges tended to cover the breadth of sentencing options provided.

22 When the offender is sentenced to a prison sentence (of 14 days to one year) but the court chooses to suspend the sentence for up to two years meaning the offender stays in the community but must comply with one or more requirements set by the court. If the offender does not comply with the requirements or commits another offence during the suspension period, they may have to go to prison to serve the original custodial term or a lesser term.

Respondents also listed the requirements they would propose to use as part of their sentence.<sup>23</sup> Of all respondents 36 per cent (N=32) suggested a requirement or multiple requirements for Scenario A – 53 requirements in total. The most common was a ban on owning dogs or confiscation of the dog (23 per cent of requirements, N=12). A requirement for the need to use control measures on the dog in a public place (for example a muzzle or a lead) was the second most frequent (15 per cent, N=8), followed by a contingent DO or unpaid work (both 13 per cent, N=7). Further details of the full list of requirements can be found in Table 3, Appendix C.

Chart 2 below shows the sentence types which were suggested by respondents for **Scenario B** (dog dangerously out of control in a public place causing injury):

Chart 2: Sentences for Scenario B (N=78 respondents)



A Community Order was the most common sentence suggested by respondents (N=41), followed by a fine (N=18) and an SSO (N=12). One respondent suggested a Compensation Order on its own for Scenario B (not shown in Chart 2).

Half of all respondents (N=45) suggested a requirement or multiple requirements be attached to sentences for Scenario B – 85 requirements in total. The most common was compensation to the victim (25 per cent of requirements, N=21). A requirement for the need to use control measures on the dog in a public place (for example a muzzle or a lead) was the second most frequent (20 per cent, N=17), followed by unpaid work (18 per cent, N=15). Further details of the full list of requirements can be observed in Table 4, Appendix C.

From Charts 1 and 2, it is apparent that the most common disposals that were used were fines and Community Orders. As expected, more Community Orders were used for Scenario B, reflecting the more serious nature of the offence. A greater number of SSOs were used for Scenario B (N=12 compared to N=3 for Scenario A). Immediate custody was used only rarely for both scenarios. Each offence attracted a wide range of requirements; however, more were used for Scenario B, again reflecting the more serious nature of the offence.

<sup>23</sup> Under the law, a prohibited dog should be destroyed unless the court decides that it does not constitute any risk to the public in which case it needs to be added to the Index of Exempted Dogs and other requirements in relation to keeping the dog will often be imposed.

### *Reasons for sentences*

Magistrates and district judges were asked to explain the reasoning behind their sentences. Responses were coded and grouped together into common themes.<sup>24</sup> As the question asking about reasons for proposed sentences was an open question, respondents often provided a number of different reasons within the same theme. Therefore, reasons could include both aggravating and mitigating factors. For instance, the theme of 'dog's behaviour' under Scenario B includes 'no evidence of past complaints about the dog', a reason more likely to be used as a mitigating factor than another example provided, 'unprovoked attack'.

Nine themes emerged from the analysis of these reasons; for Scenario A, the owner's behaviour was the most common theme (22 per cent, N=45), with 20 responses relating to it being the offender's first such offence or it being dependant on the owner's previous (relevant) convictions. The dog's behaviour was the second most common theme (18 per cent, N=37) with reasons typically relating to the lack of evidence that the dog had behaved badly or dangerously. Offence specific factors formed the third theme (16 per cent, N=33) – with almost half of the reasons relating to the offence being serious or its seriousness.

For Scenario B, the dog's behaviour was the most common theme (27 per cent, N=57), with the large majority of responses relating to the evidence that the dog was out of control. The injury involved was the second most common theme (23 per cent, N=49) – the lasting nature of the injury (physical or mental harm and scarring) was the most common reason cited. The owner's behaviour was the third most common theme (19 per cent, N=40) – the most common reasons related to a lack of previous convictions, having taken control measures (i.e. dog on lead) or attempts to assist the victim or alleviate the attack. However, these all appeared fewer than 10 times in the responses that were given.

The analysis shows that a wide range of reasons was provided for the sentences given by respondents. Further details of the themes and the number of occasions they were mentioned can be found in Tables 5 and 6 in Appendix C.

### *Destruction Orders*

Destruction Orders (DOs) would be used by 63 per cent of respondents (N=57) for Scenario A and 62 per cent of respondents (N=56) for Scenario B.

When asked to explain why they would make a DO, respondents gave reasons that fell into different themes. For Scenario A, the majority of reasons for sending the dog for destruction were related to the theme of not really having a choice (67 per cent, N=55) – largely due to the dog being prohibited under the Dangerous Dogs Act. The next most common theme was the dog's potentially dangerous behaviour or the future threat posed (20 per cent, N=16).

The large majority of reasons provided for making a DO in Scenario B (71 per cent, N=82) related to the theme of the dog's dangerous behaviour or the future threat posed. Of the responses 24 related to the future threat that the dog posed, 14 of the responses related to evidence that the dog was out of control (dangerously) and 11 responses related to the fact that the attack was on a child.

The next most common theme for Scenario B was that a DO would be made due to the injury or harm caused (18 per cent, N=21) – largely attributed to the lasting effect of the injury – as a result of scarring or the lasting mental or physical harm/trauma. Further detail of the reasons provided for using DOs can be found in Tables 7 and 8 in Appendix C.

<sup>24</sup> Respondents were able to provide multiple reasons for their sentences and therefore the number of reasons provided does not align with the number of sentences awarded.

### *Aggravating factors*

For Scenario A, respondents were asked a direct question relating to the presence of a two year old child and whether this would affect the sentence given for Scenario A. Of all respondents, 83 per cent (N=75) said that the presence of the child would affect the sentence, 16 per cent (N=14) said that it would not and one responded “*not necessarily*”.

Respondents were then asked open questions on each scenario about aggravating and mitigating factors, where they could raise further issues spontaneously.

A range of aggravating factors was provided for each scenario reflecting the different offences and circumstances. Although there were common factors mentioned for both scenarios, the prevalence of different factors varied. The most common aggravating factor for Scenario A was the owner’s use of the dog or its purpose (31 per cent, N=82). Factors most commonly related to evidence of the dog being used for fighting (N=24 of 82), being used to threaten or intimidate (N=20 of 82) or that it was associated to other criminal activity for example offences involving drugs, weapons or gang offences (N=12 of 82).

The most common aggravating factor for Scenario B was the dog’s behaviour (40 per cent, N=102). This often related to the dog being (dangerously) out of control (N=35 of 102). The sustained nature of the attack was also commonly cited (N=23 of 102), followed by if the dog had been involved in previous offences or complaints (N=12 of 102).

For full details of the types of aggravating factors that were stated by respondents, refer to Tables 9 and 10 in Appendix C.

### *Mitigating factors*

When respondents were asked open questions in relation to the mitigating factors for each scenario, again a range of factors was provided. Some of these mirrored themes emerging for aggravating factors (see above). Similar mitigating factors were stated for both scenarios; however, there were some differences, reflecting the different offences and circumstances. The prevalence of certain factors also differed for the two scenarios.

For Scenarios A and B, the owner’s responsible behaviour was the most commonly occurring theme (22 per cent, N=38 for A and 48 per cent, N=79 for B). The majority of responses within this theme (for both scenarios) related to the owner taking safety precautions with the dog (muzzling, on a lead, voluntary destruction/rehoming, other safety measures, etc.). This response occurred 22 times for Scenario A and 33 times for Scenario B. For Scenario B, attempting to assist the victim/alleviate the attack (N=29 of 79) was also a common response within this theme.

For Scenario A, the owner’s use of the dog (for example it was a pet or being looked after for someone else and not involved in fighting) was the second most common theme (14 per cent, N=25). However 20 responses related to there being no mitigating factors. For Scenario B, the dog’s good behaviour was the second most common theme (23 per cent, N=39). For full details of the types of mitigating factors that were stated by respondents refer to Tables 11 and 12 in Appendix C.



*Injury taking the offence beyond the custody threshold*

At the end of the questionnaire, respondents were asked whether the injury sustained in Scenario B would result in a custodial sentence (either immediate or suspended (an SSO)). Of those who responded, 74 per cent (N=67) said that it would not result in a prison sentence and 22 per cent (N=20) that it would. Three respondents did not answer this question.

When asked more generally what level of injury would merit a custodial sentence, respondents sometimes responded with a range of reasons. The most common level of injury that respondents stated would push an offence past the custody threshold was an injury (or injuries) causing lasting mental or physical harm (including scarring: 24 per cent, N=35). The next most common level of injury was one requiring hospital treatment (15 per cent, N=22), followed by facial injuries or serious injuries/more serious injuries than those outlined in Scenario B (both 9 per cent, N=13).

However, it was also clear that some respondents did not think that the level of injury alone would merit a custodial sentence. Some specifically stated that it would not only be the level of injury that would affect whether the custody threshold was passed. Those that gave reasons for this mentioned factors such as the attack being more serious or unprovoked (the third most common theme: 14%, N=20), the dog's poor behaviour, the owner's irresponsible behaviour or if the owner had previous relevant convictions or warnings. Further details on the reasons provided can be found in Table 13 in Appendix C.

*Factors leading to suspension of a custodial sentence*

The final question asked respondents to describe the factors that would lead to the suspension of a custodial sentence (an SSO). Of the 90 respondents, 69 answered this question, including the 15 respondents that awarded immediate custody or an SSO for Scenario B.

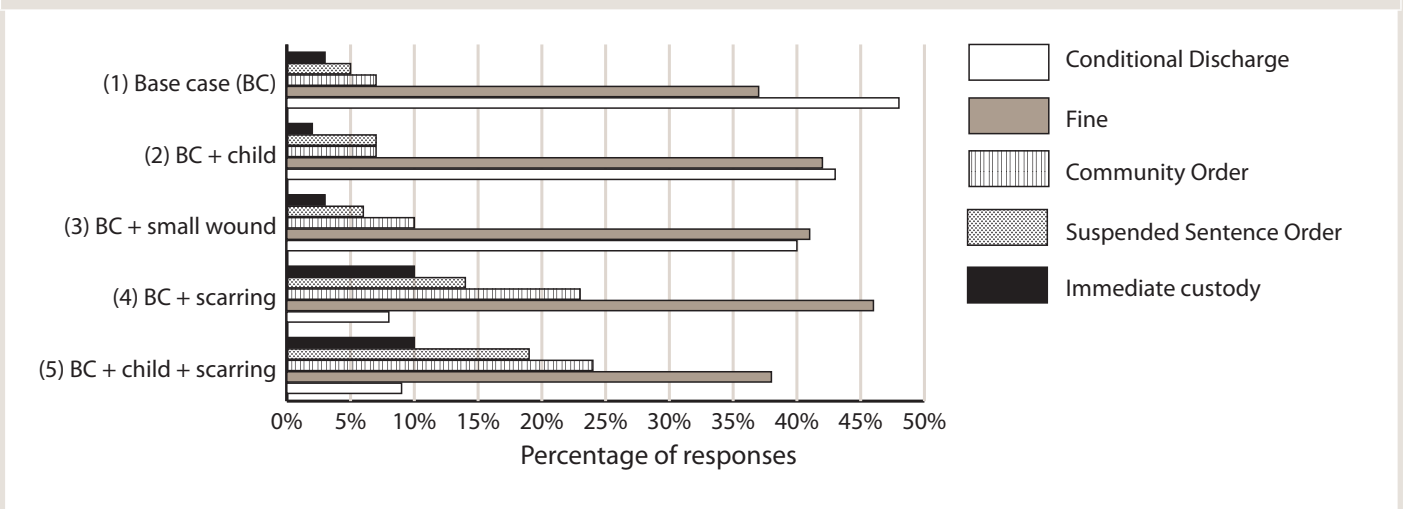
Respondents seemed to consider this question in different ways. Some seemed to respond in terms of what factors may lead them to increase their proposed sentence from non-custodial to custodial. Others seemed to respond in terms of reducing their proposed immediate custodial sentence to an SSO. For example, reasons were given that related to the owner's previous (relevant) convictions or warnings – this both indicated not having previous convictions, as well as circumstances in which they did. The theme of 'dog's good behaviour (including lack of previous incidents or complaints)' included 'attack provoked' and 'attack unprovoked'. As the data in this area is unreliable, no further analysis has been conducted for this question.

## Survey of the public

The survey conducted by YouGov with members of the public was undertaken with approximately 1,400 panel members. Respondents were asked to suggest the sentence they felt an offender should receive for a scenario involving a dog dangerously out of control in a public place where no injury was caused but an adult was scared by the dog (1). The scenario was then altered to introduce the victim being a child (2), a minor injury (small wound) to the owner (3), a more serious injury (scarring) to an adult (4), and a more serious injury (scarring) to a child (5). For each variant, respondents were asked again what sentence they felt the offender should receive. For details of each scenario refer to Appendix B.

Details of the sentences given when respondents were asked the question ‘What sentence do you think the offender should get?’ can be found in Chart 3 below. The ‘base case’ (1) is the scenario that all respondents received – where an adult was scared by a dog. Each variation was then asked of a sub-sample of respondents. For details of the scenario and variations please refer to Appendix B.

Chart 3: Responses to the question “what sentence do you think the offender should get?” for each variation

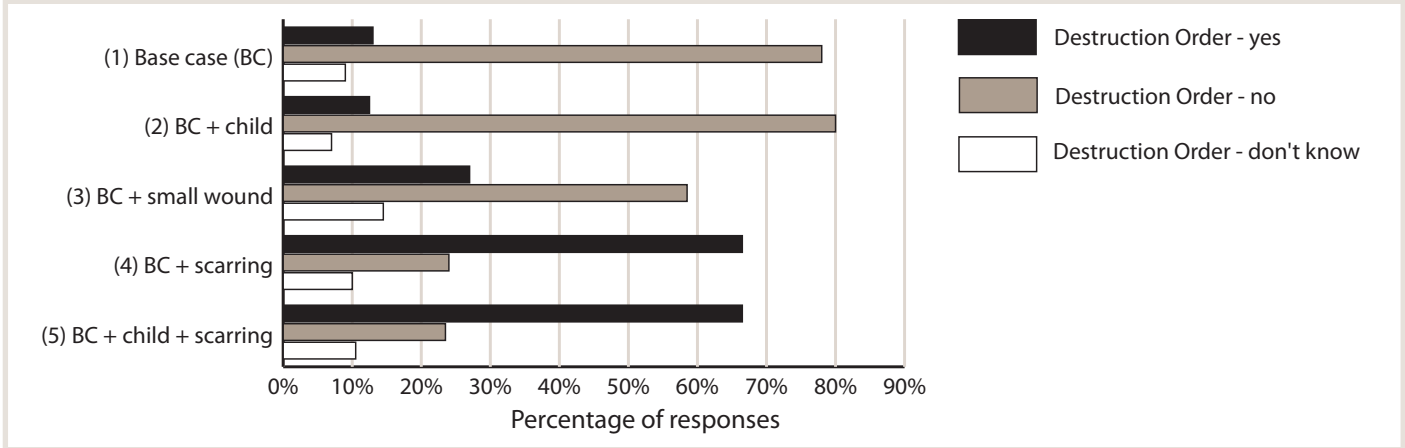


The findings from the survey indicated that the sample of respondents advocated conditional discharges and fines for cases involving either no injury or a minor injury and the use of fines and harsher penalties for cases involving a more serious injury and scarring. Of those responding, 48 used a Conditional Discharge for a case where an adult was scared by a dog (the ‘base case’ – labelled (1) above); this changed to 43 per cent where a child was scared by the dog (2) and 40 per cent where a minor injury was caused to the owner (3). Fines were used in similar proportions to Conditional Discharges for the latter two variations ((4) and (5)).

The use of fines was also high when a more serious injury was caused that resulted in scarring (46 per cent for adult victim (4) and 38 per cent for child victim (5)). However, the number of discharges was greatly reduced and the use of Community Orders, SSOs and custody increased when compared to cases involving no or only minor injuries.

For each variation, the sample was also asked if they thought it would be appropriate to order the destruction of the dog. The findings are shown in Chart 4 below:

Chart 4: Responses to the question "do you think it would be appropriate to make an order for the destruction of the dog?" for each variation



The majority of the sample supported the use of DOs for the most serious variations where either an adult or a child was bitten by the dog and scarring resulted (for both, 67 per cent supported destruction of the dog - (4) and (5) above). However, when the owner was bitten on the hand by the dog only 27 per cent supported the use of a DO (3). As might be expected, support for destruction decreases when the offence meets a lower level of seriousness. When no injury was caused but the victim was frightened by the dog (the base case (1) and variation with a child (2)) only 13 per cent (for each) supported the use of a DO.

## Conclusion

It is clear that there are a range of issues that affect views and proposed sentences of dangerous dog cases. This variation may be attributable to some magistrates and district judges being less familiar with sentencing guidelines, members of the public having limited knowledge of the issues and laws surrounding dangerous dogs and differing general views on sentencing overall.<sup>25</sup>

In addition, it is not possible to compare the findings from the two pieces of research to a great extent due to the different scenarios that were used. However, in general, proposed sentences from all groups, whilst varied, seemed to reflect the nature and seriousness of the offences described in the scenarios, with a rational approach to sentencing in terms of a greater use of more punitive sentences as offence seriousness increased (and in particular where injury was caused to a third party).

Aggravating and mitigating factors were therefore key factors influencing the sentences put forward – an offence resulting in an injury attracting more punitive sentences than if no injury were present. Similarly, an offence resulting in injury to a child attracting a more punitive sentence than an injury to an adult.

The information gained from these studies has informed the development of the aggravating and mitigating factors described in steps one and two of the proposed sentencing guideline for dangerous dog offences in particular. Suggested sentences from magistrates, district judges and members of the public that took part in the research broadly reflect current sentencing practice which has informed the proposed sentencing ranges in the draft guideline.

<sup>25</sup> Please refer to section on 'limitations' on page 3 of the bulletin for further detail. Findings should be interpreted as indicative only due to sample size/methodology.

## Acknowledgements

I would like to express my gratitude to the participants in the two pieces of research – magistrates, district judges and members of the public who gave up their time to take part and also to YouGov for running the survey with members of the public on our behalf.

I would like to thank Huw Margetts, research trainee at the Office of the Sentencing Council, for his dedication and efforts in coding the sometimes complex responses received to the questionnaire with magistrates and district judges and Emma Marshall for her supervision and involvement in the project.

## The Author

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### Appendix A

#### Scenarios used in questionnaire with magistrates and district judges

##### Scenario A

##### **Possession of a prohibited dog**

(Section 1 Dangerous Dogs Act 1991)

- The owner of a Pit Bull terrier (a prohibited dog as defined by the Act) is prosecuted for keeping it.
- The dog is found by police in the owner's two bedroom flat whilst they are searching the premises for unrelated matters.
- The owner denies knowing the dog is prohibited and is convicted following a trial.

##### Scenario B

##### **Dog dangerously out of control in a public place causing injury**

(Section 3(1) Dangerous Dogs Act 1991)

- A dog owner was out walking his Alsatian.
- The dog ran out in front of a nine year old girl (the victim) who was cycling near some shops causing the girl to swerve.
- The owner pulled at the dog's lead in an attempt to regain control of it.
- The girl fell off her bicycle and while she was on the ground the dog bit her on the right thigh; it held on for about 30 seconds.
- The victim was very scared – she saw two puncture wounds and blood coming from her leg through her trousers.
- Her injury was a gash to the leg treated with steri strips and a bandage. The wound healed but the victim was left with scarring.
- The defendant was convicted following a trial.

## Appendix B

### Dangerous dogs scenario for public survey

**(1) Base case:**

A man was walking his Alsatian dog down the high street at 3pm on a Saturday. The dog was on a lead but it was pulling on the lead and the owner was struggling to control it. The owner lost control of the lead for a moment and the dog ran up to an adult shopper in the street and barked at them furiously. The barking made the shopper feel scared.

**Variations:**

- (2) The victim was a seven year old child out shopping with their mother.
- (3) The owner attempted to get the dog back on the leash but the dog bit him on the hand causing a small wound that did not need stitches.
- (4) The dog bit the shopper on the calf requiring three stitches and leaving a permanent scar.
- (5) The victim was a seven year old child out shopping with their mother who was bitten by the dog on the calf requiring three stitches and leaving a permanent scar.

## Appendix C

Please note that where categories received less than ten responses, these have been grouped under 'other'. Due to rounding, percentages may not add up to 100 per cent.

**Table 1: Reasons provided for supporting guidance on dangerous dog offences**

Type of reason	Frequency	Percentage of reasons
Frequency of cases/limited experience	38	30%
Promote fairness and consistency	33	26%
Complexity of cases/confusion/emotive nature	28	22%
Lack of current guidance/information of value	17	13%
Assist/promote sentencing/transparency	10	8%
Other	1	1%
Total	127	100%

**Table 2: Circumstances in which respondents might make a Destruction Order**

Type of circumstance	Frequency	Percentage of reasons
Dog's bad behaviour (inc. involvement in previous relevant incidents/complaints) <i>Of which: 42=dog attacks someone/another animal, severity of attack; 21=dog (dangerously) out of control/aggressive; 16=previous incidents/complaints involving dog; 11=attack unprovoked</i>	95	39%
No Option (dog covered by DD Act, public safety, cannot rehome) <i>Of which: 27=prohibited breed</i>	42	17%
Injury/harm caused <i>Of which: 25=serious injury/harm(inc. lasting mental/physical harm); 10=injury/harm caused to human/animal</i>	39	16%
Owner's poor behaviour (inc. involvement in previous relevant convictions/warnings and treatment of dog)	36	15%
Other	22	9%
Expert advice (legal advisor, vet, behaviourist)	11	4%
Total	245	100%

**Table 3: Requirements used for Scenario A**

Type of requirement	Frequency	Percentage of requirements
Ownership ban/confiscation	12	23%
Control measures in public place (dog on lead, muzzled, etc.)	8	15%
Contingent Destruction Order	7	13%
Unpaid work	7	13%
Owner to pay costs of trial/destruction/re-homing	5	9%
Owner to go on course/programme	3	6%
Dog to be ID'd (tattooed, chipped, etc.)	3	6%
Supervision Order	3	6%
Offender to obtain dog insurance	2	4%
Offender not to commit further offences	1	2%
Offender - curfew	1	2%
Offender - tagging	1	2%
Total	53	100%

**Table 4: Requirements used for Scenario B**

Type of requirement	Frequency	Percentage of requirements
Compensation	21	25%
Control measures in public place (dog on lead, muzzled, etc.)	17	20%
Unpaid work	15	18%
Ownership ban/confiscation	9	11%
Supervision Order	5	6%
Owner to go on course/programme	3	4%
Owner to pay costs of trial/destruction/re-homing	3	4%
Contingent Destruction Order	3	4%
Dog to be ID'd (tattooed, chipped, etc.)	2	2%
Offender to obtain dog insurance	2	2%
Offender - prohibited activity	2	2%
Offender - tagging	1	1%
Offender - curfew	1	1%
Other requirement	1	1%
Total	85	100%



Table 5: Reasons for sentence – Scenario A

Reason	Frequency	Percentage of reasons
Owner's behaviour (inc. previous relevant convictions/warnings) <i>Of which: 20=no previous (relevant) convictions or dependant on previous (relevant) convictions; 14=no evidence dog used inappropriately/trained to be aggressive</i>	45	22%
Dog's behaviour <i>Of which: 19=no evidence dog aggressive/has attacked/out of control; 10=no previous complaints against dog/incidents involving dog</i>	37	18%
Offence specific factors <i>Of which: 13=offence serious/seriousness</i>	33	16%
Awareness of the Dangerous Dogs Act/prohibited dogs <i>Of which: 12=ignorance no excuse</i>	27	13%
Sentence purpose <i>Of which: 11=deterrence</i>	27	13%
Dog prohibited	17	8%
Other	17	8%
Total	203	100%

Table 6: Reasons for sentence – Scenario B

Reason	Frequency	Percentage of reasons
Dog's behaviour <i>Of which: 22=dog dangerous/out of control</i>	57	27%
Injury (both mental and physical) <i>Of which: 21=lasting mental/physical harm/scarring</i>	49	23%
Owner's behaviour	40	19%
Sentence purpose <i>Of which: 10=punishment</i>	30	14%
Offence specific factors	29	14%
Other	8	4%
Total	213	100%

**Table 7: Reasons for making a Destruction Order, Scenario A**

Type of reason	Frequency	Percentage of reasons
No Option (covered by DD Act, dangerous/prohibited, cannot rehome) <i>Of which: 45=prohibited dog</i>	55	67%
Dog's potentially dangerous behaviour/future threat	16	20%
Other	11	13%
Total	82	100%

**Table 8: Reasons for making a Destruction Order, Scenario B**

Type of reason	Frequency	Percentage of reasons
Dog's dangerous behaviour/future threat <i>Of which: 28=future threat posed by dog; 14=evidence dog (dangerously) out of control; 11=attack on child</i>	82	71%
Injury/harm caused	21	18%
Other	13	11%
Total	116	100%

**Table 9: Aggravating factors, Scenario A**

Type of factor	Frequency	Percentage of factors
Owner's purpose/use of dog <i>Of which: 24=dog used as weapon/to threaten or intimidate; 20=dog used for fighting; 12=dog associated to other criminal activity</i>	82	31%
Owner's previous relevant offences/complaints	46	17%
Owner's irresponsible behaviour	43	16%
Owner's poor treatment of dog <i>Of which: 14=evidence of cruelty to dog (poor health, neglect, etc); 14=lack of suitable accommodation for dog</i>	38	14%
Dog's dangerous behaviour (inc. previous offences/complaints) <i>Of which: 13=dog exhibiting aggressive behaviour – either currently or in the past</i>	34	13%
Other	22	8%
Total	265	100%

**Table 10: Aggravating factors, Scenario B**

Type of factor	Frequency	Percentage of factors
Dog's poor behaviour (inc. previous incidents/complaints) <i>Of which: 35=dog (dangerously) out of control; 23=sustained attack; 12=dog previous incidents/complaints</i>	102	40%
Injury/harm caused <i>Of which: 25=lasting effect of injury (mental/physical harm/scarring); 18=serious injury (requiring stitches/hospitalisation, drawing blood); 10=injury to child; 10=injury caused</i>	75	29%
Offence specific factors <i>Of which: 11=age of victim</i>	24	9%
Owner's irresponsible behaviour	22	9%
Owner's previous relevant offences/complaints	17	7%
Other	15	6%
Total	255	100%

**Table 11: Mitigating factors, Scenario A**

Type of factor	Frequency	Percentage of factors
Owner's responsible behaviour <i>Of which: 22=adequate safety precautions taken (lead/muzzle, etc.)</i>	38	22%
Owner's use of dog or pet	25	14%
None	20	12%
Dog's good behaviour (inc. lack of previous offences/complaints)	19	11%
Awareness of Dangerous Dogs Act/Prohibited dogs (inc. genuine doubt/ignorance of breed)	14	8%
Owner's lack of previous relevant convictions/warnings	13	8%
Owner's good treatment of dog (i.e. evidence looked after properly)	11	6%
Dog's age or health (generally old dog or poor health)	10	6%
Other	23	13%
Total	173	100%

**Table 12: Mitigating factors, Scenario B**

Type of factor	Frequency	Percentage of factors
Owner's responsible behaviour <i>Of which: 33=adequate safety precautions; 29=attempts to assist victim/alleviate attack</i>	79	48%
Dog's good behaviour (inc. lack of previous incidents/complaints) <i>Of which: 15=attack provoked/dog scared</i>	39	23%
None	14	8%
Owner genuine remorse	10	6%
Other	24	14%
Total	166	100%

**Table 13: Factors taking the offence past the custody threshold**

Level of injury	Frequency	Percentage of answers
Injuries causing lasting mental/physical harm (inc. scarring)	35	24%
Injury requiring hospital treatment	22	15%
Attack more serious/unprovoked	20	14%
Facial injuries	13	9%
Injury serious/more serious injuries than Scenario B	13	9%
Other	43	29%
Total	146	100%