

# Sentencing Council

## Final resource assessment – Dangerous dogs

### **1 Introduction**

1.1 This document fulfils the Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.<sup>1</sup>

### **2 Rationale and Objectives for New Guideline**

2.1 The Council's rationale for producing a definitive guideline for dangerous dog offences was that it enabled the Council to respond to the increasing demand for guidelines, particularly in the magistrates' courts. Over the past few years, there have been increases in the number of these offences coming before the courts, and as a result, there has been demand from magistrates for a guideline. In producing the definitive guideline, the Council wishes to promote a clear, fair and consistent approach to sentencing.

2.2 The total number of adults sentenced for offences covered by this definitive guideline was 1,192 in 2010, an increase of 39 per cent from 855 in 2009. Currently there are no guidelines for any dangerous dog offences.

2.3 The Council is seeking through the definitive dangerous dog offences guideline to promote a consistent and proportionate approach to the sentencing of these offences. In particular, the Council is aiming to promote consistency of approach taken by the courts on the use of ancillary orders in relation to these offences. This guideline will apply to both the Crown Court and to magistrates' courts, where appropriate.

2.4 The Council considered both case law and current sentencing practice during the development of this guideline. The Council has also taken account of the views expressed by respondents to the consultation exercise in relation to the current severity of sentencing for these offences and how appropriate it is. Having reflected on the sentencing levels proposed in the draft guideline, the Council has decided to change some of the sentencing ranges and starting points in order to ensure that the definitive guideline is proportionate both with other offence types and when comparing the offences with each other. These changes include increasing some sentencing levels at the upper end of the offences involving a dog dangerously out of control causing injury

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<sup>1</sup> s.127 Coroners and Justice Act 2009

as well as the offence of possession of a prohibited dog. The sentencing options proposed for the non-aggravated offence of a dog dangerously out of control remain unchanged from the draft guideline and are designed to leave the aggregate severity of sentencing for that offence unchanged from current sentencing practise. Therefore, the definitive guideline aims to increase the consistency of sentencing across all of the offences covered whilst increasing the aggregate severity of sentencing for offences involving a dog dangerously out of control causing injury as well as offences of possession of a prohibited dog.

### **3 Scope**

3.1 As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guideline on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment. For example, there is a resource cost to enforcing fine payments and administering receipts from fines which is not measured in this document.

### **4 Key assumptions**

4.1 To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is founded on the objectives of the new guideline. However, a number of assumptions must be made, in part due to the inherent unpredictability of human behaviour. Any estimates of the impact of the new guideline are therefore subject to a large degree of uncertainty.

4.2 Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the proposed new guideline, and an assessment of the effects of changes to the structure and wording of the guideline.

4.3 Cost data has been provided by the Analytical Services Directorate at the Ministry of Justice. All costs are expressed in 2011/12 prices. No attempt has been made to make adjustments for possible future changes in the efficiency of the criminal justice system. It is therefore assumed that the real cost of prison and probation services remain at current levels.

4.4 The costs quoted in this document exclude capital build costs and overheads. On this basis, a year in custody is assumed to cost an average of around £30,000, including local maintenance, but excluding capital build expenditure and overheads. The average cost of a community order is assumed to be around £2,800.

4.5 The resource impact of the new guideline is measured in terms of the change in sentencing practice that is expected to occur as a result of the new guideline. Any future changes in sentencing practice which may have occurred whether or not the new guideline was published are therefore not included in the estimates.

4.6 The model used to assess resource effects does not estimate the resource implications of breaches or licence recalls. The resultant resource impact on the prison service are therefore not accounted for in the figures in this document.

4.7 A description and evaluation of the analytical model which has been used to derive the results presented below can be found at the following URL: <http://sentencingcouncil.judiciary.gov.uk/facts/data-and-analysis.htm>.

## **5 Sentencing for dangerous dogs offences**

5.1 The Court Proceedings Database shows that 1,191 adult offenders were sentenced for the dangerous dogs offences covered by the proposed new guideline in 2010. The following table shows the offence types covered by the proposed new guideline, and the number of offenders sentenced within each category:

<b>Offence Description</b>	<b>Number of adult offenders sentenced in 2010</b>
Dangerously out of control, causing injury	632
Dangerously out of control, causing fear of injury	247
Prohibited dogs offences	313

## **6 Changes since the consultation stage assessment**

6.1 The consultation stage resource assessment envisaged that the consultation stage guideline was unlikely to cause aggregate shifts in the severity of sentencing for dangerous dogs offences, and therefore it was estimated that the resource impacts of the guideline would be negligible. This assessment was based on a number of sources of evidence. First, the Council undertook detailed analysis of sentencing statistics to better understand current sentencing levels for dangerous dogs offences. The Sentencing Council also published a summary of these statistics to help inform the consultation process.<sup>2</sup> Second, the Council undertook research with magistrates and District Judges to better understand current sentencing practice.<sup>3</sup> This helped Council to develop guideline sentencing ranges which corresponded to current sentencing practice. Finally, Council itself closely scrutinised the guideline, and debated whether the proposed guideline accorded with their experience of sentencing.

<sup>2</sup> [http://sentencingcouncil.judiciary.gov.uk/docs/Dangerous\\_Dog\\_Data\\_Bulletins.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Dangerous_Dog_Data_Bulletins.pdf)

<sup>3</sup> [http://sentencingcouncil.judiciary.gov.uk/docs/Dangerous\\_Dogs\\_Research\\_Bulletin.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Dangerous_Dogs_Research_Bulletin.pdf)

6.2 The Council has made several modifications to the guideline ranges which were set out in the consultation documents. These changes were made because the Council reflected further on the sentencing levels proposed in the draft guideline and has taken account of the views expressed by respondents to the consultation exercise. The Council believes that the revised sentencing ranges and starting points in the definitive guideline are proportionate both with other offence types and when comparing the offences with each other.

6.3 The changes to the guideline which was consulted on are summarised in the following tables.

Dangerously out of control, causing injury

Category	Range proposed in consultation stage guideline	Range in definitive guideline	Change
Category 1	<p><b>Starting point:</b> High level community order</p> <p><b>Range:</b> Low level community order – 12 months' custody</p>	<p><b>Starting point:</b> 6 months' custody</p> <p><b>Range:</b> Medium level community order – 18 months' custody</p>	Yes
Category 1	<p><b>Starting point:</b> Band C fine</p> <p><b>Range:</b> Discharge – Medium level community order</p>	<p><b>Starting point:</b> Medium level community order</p> <p><b>Range:</b> Band B fine – High level community order</p>	Yes
Category 3	<p><b>Starting point:</b> Band A fine</p> <p><b>Range:</b> Discharge – Band C fine</p>	<p><b>Starting point:</b> Band B fine</p> <p><b>Range:</b> Discharge – Band C fine</p>	Yes

Dangerously out of control, causing fear of injury

Category	Range proposed in consultation stage guideline	Range in definitive guideline	Change
Category 1	<p><b>Starting point:</b> Medium level community order</p> <p><b>Range:</b> Band C fine – 6 months' custody</p>	<p><b>Starting point:</b> Medium level community order</p> <p><b>Range:</b> Band C fine – 6 months' custody</p>	No
Category 1	<p><b>Starting point:</b> Band B fine</p> <p><b>Range:</b> Discharge – Low level community order</p>	<p><b>Starting point:</b> Band B fine</p> <p><b>Range:</b> Discharge – Low level community order</p>	No
Category 3	<p><b>Starting point:</b> Band A fine</p> <p><b>Range:</b> Discharge – Band B fine</p>	<p><b>Starting point:</b> Band A fine</p> <p><b>Range:</b> Discharge – Band B fine</p>	No

## Prohibited dogs offences

Category	Range proposed in consultation stage guideline	Range in definitive guideline	Change
Category 1	<p><b>Starting point:</b> Band C fine</p> <p><b>Range:</b> Band B fine – 3 months' custody</p>	<p><b>Starting point:</b> Medium level community order</p> <p><b>Range:</b> Band C fine – 6 months' custody</p>	Yes
Category 2	<p><b>Starting point:</b> Band B fine</p> <p><b>Range :</b> Discharge – Band C fine</p>	<p><b>Starting point:</b> Band C fine</p> <p><b>Range:</b> Band A fine – Medium level community order</p>	Yes
Category 3	<p><b>Starting point:</b> Band A fine</p> <p><b>Range:</b> Discharge – Band B fine</p>	<p><b>Starting point:</b> Band A fine</p> <p><b>Range:</b> Discharge – Band B fine</p>	No

6.4 The increases in guideline sentencing ranges mean that it is now expected that the guideline will cause some upward shifts in the severity of sentencing, and therefore will not be cost neutral. The following section presents estimates of the possible resource consequences.

## **7 Resource impact – adult offenders**

### 7.1 Dangerously out of control, causing injury

7.2 The new guideline is expected to cause an increase in the severity of sentencing for some offenders who are sentenced under this guideline.

7.3 As a result of the new guideline, each year it is expected that :

- between 30 and 60 sentences that would have been fines will instead be Community Orders;
- between 20 and 40 sentences a year which would have been Community Orders would become Suspended Sentence Orders; and
- between 10 and 20 sentences which would have been Community Orders would become immediate custodial sentences.

7.4 Finally, it is expected that a small number of immediate custodial sentences may become longer by between 1 and 3 months.

7.5 Overall these changes are expected to cause an increase in cost to the Prison Service of between £80,000 and £160,000 a year. They are expected to cause an increase in cost to the probation service of between £50,000 and £100,000 a year.

### 7.6 Dangerously out of control, causing fear of injury

7.7 Guideline sentencing ranges for this offence has been set with reference to data on current sentencing practice with the aim of having no

effect on the average severity of sentencing. As a result, no detailed modelling work has been done on these offences to estimate how average sentence lengths or the use of the various disposal types may change. The central estimate is that the guideline will have a negligible effect on the resources required to enact sentences for these offences.

7.8 As with all the estimates presented in this document, this estimate is subject to the two overarching risks described in section 9.

#### 7.9 Prohibited dogs offences

7.10 The new guideline is expected to cause an increase in the severity of sentencing for some offenders who are sentenced under this guideline. As a result of the guideline it is expected that each year between 25 and 55 sentences which would otherwise have been fines will become Community Orders.

7.11 This is expected to cost the Probation Service between £50,000 and £150,000 a year.

### **8 Resource impact – Youth offenders**

8.1 The proposed new guideline applies to sentences for adults only. Nevertheless, in the absence of a guideline for youths, it is possible that sentencers may consult the adult guideline when sentencing a youth to remind themselves of some the key considerations of sentencing for dangerous dogs offences. This could lead them to come to a different view of harm and culpability, and could potentially influence their sentence. However, any changes are likely to be small because the sentencer should always refer to the 'Overarching Principles – Sentencing for Youths' guidance.

8.2 There are also statistical reasons to believe that the affect of the guideline on the resources required for youth justice services are likely to be small. In 2010, only 40 youths were sentenced for offences under the dangerous dogs guideline in 2010, so even if changes in sentencing practice did occur, the resource effects would be small.

8.3 Since the resource effects of the guideline on the youth justice services are likely to be negligible, no attempt had been made to estimate them.

### **9 Risks**

9.1 Three main risks have been identified:

9.2 Risk 1: The resource effect of an increase in consistency of sentencing is not neutral.

9.3 One of the aims of the new guideline is to increase consistency of sentencing. The Council has considered the possible resource effects of

increases in consistency in a separate analytical note.<sup>4</sup> In summary, to have a neutral resource impact, greater consistency would have to involve some lower end sentences being adjusted upwards, and some higher end sentences being adjusted downwards, with these effects cancelling each another out. However, it is possible that more sentences may be adjusted upwards than downwards, or vice versa, which would result in changes in the cost of sentencing. Please see the referenced document for more details.

9.4 Risk 2: Judges do not interpret the new guideline as intended. This could cause unexpected changes in the average severity of sentencing, with associated resource effects.

9.5 The Council takes a number of precautions in issuing new guidelines to try to ensure that judges interpret them as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing. The Council has several expert advisors from various disciplines who scrutinise the guidelines. The Council has also conducted a research exercise with magistrates to understand the current sentencing process for dangerous dogs offences. Finally, consultees can feedback their views of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment.

9.6 Nevertheless, the possibility of unintended consequences of the new guidelines cannot be ruled out.

9.7 Risk 3: The resource effects of the guideline change due to changes in the volume of dangerous dogs cases coming to court.

9.8 The volume of offenders sentenced for dangerous dogs has been on the increase in recent years. However, the latest sentencing data suggests that volumes may now be levelling off, so it is unclear whether volumes will rise or fall in future years.

9.9 The resource effects of a guideline are roughly proportional to sentencing volumes, so any change in the volume of cases would change the resource effects of the guideline.

#### Quantification of uncertainty

9.10 No attempt has been made to quantify the uncertainty arising from the three risks outlined above. Such an attempt would not add value because it would be heavily reliant on a number of assumptions which could not be verified empirically.

9.11 The risks which have been identified may have a positive or a negative resource effect, and there is no empirical evidence available to suggest which way the effect will go.

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<sup>4</sup> [http://www.sentencingcouncil.org.uk/docs/Consistency\\_in\\_sentencing.pdf](http://www.sentencingcouncil.org.uk/docs/Consistency_in_sentencing.pdf)

## 10 Annex – Transformation Rules

10.1 This annex lists the main assumptions which have been used in this resource assessment about the behavioural change of sentencers in response to the proposed new guideline. These assumptions are described in the form of mathematical rules which define how sentences may change as a result of the proposed new guideline. These ‘transformation rules’ form part of the Sentencing Council resource model, which has been used to derive the estimates presented in this resource assessment. The working of the model is explained in much more detail in a separate document, which can be found at the following URL: <http://sentencingcouncil.judiciary.gov.uk/facts/data-and-analysis.htm>

10.2 In the rules below, the variable  $x$  refers to the sentence length in years in the ‘baseline’ (counterfactual) scenario in which a new guideline is not issued. The changes in sentences are defined relative to this scenario.

### Dangerously out of control, causing injury

Range to which rule applies	Out of control, causing injury - Transformation rules	
	Low scenario	High scenario
Fine	One sixth: Community order Five sixths: No change	One third: Community order Two thirds: No change
Community order	Three quarters: No Change One sixth: SSO One twelfth: 6 months’ custody*	Half: No Change One third: SSO One sixth: 6 months’ custody*
Custody	One half: $x + \frac{1}{8}$ One half: No change	One half: $x + \frac{1}{4}$ One half: No change

\*In reality, those getting custodial sentences would get a range of sentence lengths. The lengths stated are intended to represent an average.

### Prohibited dogs offences

Range to which rule applies	Prohibited dogs offences - Transformation rules	
	Low scenario	High scenario
Fine	One quarter: Community order Three quarters: No change	One half: Community order One half: No change