

Sentencing Council meeting:
Paper number:
Lead Council member:
Lead official:

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SC(21)NOV03 – Animal Cruelty
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1 ISSUE

1.1 The first meeting looking at the substance of the revised animal cruelty guideline. We have a further discussion scheduled for December to finalise it, before sign-off with a resource assessment in March (subject to decisions about drafting a guideline on animal abduction).

1.2 Considering a draft guideline for animal cruelty offences.

2 RECOMMENDATIONS

2.1 That:

- Council approve the draft guideline at **Annex A** for consultation;
- the guideline should cover the offences of mutilation, tail-docking and poisoning; and
- we should not undertake work on a guideline for the new offence of animal abduction for consultation at this time

3 CONSIDERATION

3.1 In September, Council agreed that we should consider a new animal cruelty guideline in the round, in light of the increase in the maximum penalty from six months to five years. The draft at **Annex A** considers step one and step two factors anew. These draw on the existing guideline where still appropriate, but also consider precedents in other guidelines, in particular child cruelty and assault. The draft moves away from a six box sentencing grid (i.e. two levels of harm and three of culpability) to a nine box grid (three levels each of harm and culpability).

Step one factors

3.2 Informed by discussions with Defra and the RSPCA and comments made in Parliament, I propose that the new maximum penalty (i.e. sentences between six months and five years) should be targeted at particularly sadistic, wanton behaviour, and/or offending carried out in the context of commercial or organised criminal activity.

3.3 The current guideline distinguishes the highest culpability as:

- Deliberate or gratuitous attempt to cause suffering;
- Prolonged or deliberate ill treatment or neglect;
- Ill treatment in a commercial context;
- A leading role in illegal activity.

These may capture too much activity, so the draft takes the first three elements and places them in medium culpability (although sentencing levels for such medium culpability cases will be similar to, or a little higher than they are now when classified as high culpability). The proposed highest culpability elements are:

- Prolonged and/or multiple incidents of serious cruelty and/or sadistic behaviour;
- Use of very significant force;
- A leading role in illegal activity.

3.4 The first two elements are taken from the guidelines for causing or allowing a child to suffer serious physical harm, causing or allowing a child to die and child cruelty (the “child-related guidelines”), with some modifications. In child cruelty the first includes the phrase “including serious neglect”. This might be relevant in section 4 cases, but strictly speaking should be covered by a separate section 9 offence, ensuring that the needs of an animal are met.

3.5 In the child-related guidelines, use of very significant force is complemented by “use of a weapon”. I considered including it at step one, but on balance I think the current guideline is right to include it as an aggravating factor at step two given the legitimate use of weapons to harm and kill animals.

3.6 In the current guideline medium culpability is only defined as anything falling between high and low. I propose expanding this, firstly with the elements moved from high culpability (see above), then an additional element adapted from the child-related guidelines “deliberate disregard for the welfare of the animal”. I have suggested adding “including failure to seek treatment” to this as that is a common factor in these cases. However, this element does run the risk of double-counting what may be covered by a separate section 9 offence.

3.7 Finally, I suggest retaining the equivalent of “All other cases ...” alongside these other elements for full coverage of different circumstances (“Other cases that fall between categories A or C because: factors are present in A and C which balance each other out; and/or the offender’s culpability falls between the factors as described in A and C”).

3.8 In lower culpability I propose retaining the two elements in the current guideline “well-intentioned but incompetent care” and “mental disorder or learning disability, where linked to the commission of the offence”. I would add to these two factors from the child-related guidelines “Momentary or brief lapse in judgement” and “offender is victim of domestic abuse, including coercion and/or intimidation, where linked to the commission of the offence”, although for the latter I suggest removing the explicit reference to domestic abuse: it is not present in the cases I have seen, and if we include it in this guideline we would come under pressure to include it in all guidelines. Coercion/intimidation would be broad enough to cover this scenario in any case.

Question 1: are you content with the proposed culpability table?

3.9 The current harm table has the benefit of simplicity. Greater harm involves either: death or serious injury/harm to animal; or a high level of suffering caused. Lesser harm is all other cases. The proposal at **Annex A** splits this out into three levels, which are drawn from the existing guideline, the child-related guidelines and assault guidelines indicated as follows:

Category 1

- Death (including injury leading to euthanasia) [adapted from existing guideline];
- Particularly grave or life-threatening injury caused [from grievous bodily harm guideline];
- Offence results in a permanent, irreversible injury or condition which has a substantial and long-term effect [adapted from grievous bodily harm guideline];
- Very high level of pain and/or suffering caused [adapted from existing guideline]

Category 2

- Offence results in an injury or condition which has a substantial and/or lasting effect [adapted from grievous bodily harm guideline];
- Substantial level of pain and/or suffering caused [adapted from existing guideline].

Category 3

- Little or no physical, developmental and/or emotional harm [from child cruelty guideline]
- All other levels of pain and/or suffering [adapted from existing guideline]

3.10 This does mean that cases of quite serious and substantial harm could be classified as category 2. This reserves category 1 for the very worst cases and acknowledges that for a case to have been prosecuted a degree of harm is inherent.

3.11 Splitting up harm in this way does open up the possibility of requiring more subjective judgement, and the difficulties of assessing the suffering (including mental suffering) of a victim who cannot give evidence. It may be in practice that courts seek to rely on the injuries sustained.

3.12 Nonetheless, I believe we would be expected to capture in some way the non-physical suffering experienced by animals. That could be captured by a permanent or long-term condition (for example a dog who is perpetually frightened or unable to socialise), but this would not capture the immediate distress caused by some offending. It may be the case that “suffering” is a sufficient catch-all. In many guidelines we would refer to “psychological harm”: I am a little wary of this phrase in the context of animals, and have borrowed “emotional harm” from the child cruelty guidelines above. Another possibility may be “distress”.

3.13 There are a number of ways we could deal with the question of multiple animal victims. It is quite common in the case of offending on farms, or in a commercial context for there to be tens of animals involved. We could be silent on the point and let totality take the strain, or treat it as an aggravating factor. However, I think it is important to acknowledge upfront that some offending causes widespread harm and the sentencer will have to consider tricky comparisons between (say) one animal with very serious, life-changing injuries and 50 animals who have faced unnecessary suffering, but who make full, or differing levels of recoveries.

3.14 I therefore propose the following wording before the harm table, which is adapted from the modern slavery guideline:

“If the offence involved significant numbers of animals sentencers may consider moving up a harm category or moving up substantially within a category range”.

Question 2: are you content with the proposed harm table?

Question 3: do you agree that sentencers should take into account multiple victims as part of the consideration of harm?

Step two

3.15 My guiding principle in setting sentence levels has been to identify the class of serious cases which go beyond the previous six-month limit (based heavily on the culpability of the offender), provide some consequential uplift in medium cases to reflect the increase in

maximum penalty, but ensure that not too many cases are unnecessarily sent to the Crown Court, or result in custodial sentences.

3.16 The current and proposed sentencing tables are set out here for comparison:

Current

	High culpability	Medium culpability	Low culpability
Higher harm	Starting point 18 weeks' custody	Starting point Medium level community order	Starting point Band C fine
	Category range 12-26 weeks' custody	Category range Low level community order – High level community order	Category range Band B fine – Low level community order
Lesser harm	Starting point High level community order	Starting point Low level community order	Starting point Band B fine
	Category range Low level community order – 12 weeks' custody	Category range Band C fine – Medium level community order	Category range Band A fine – Band C fine

Proposed

	High culpability	Medium culpability	Low culpability
Harm 1	Starting point 18 months' custody	Starting point 26 weeks' custody	Starting point Low level community order
	Category range 26 weeks' custody – 3 years' custody	Category range 18 weeks' – 12 months' custody	Category range Band B fine – Medium level community order
Harm 2	Starting point 26 weeks' custody	Starting point 12 weeks' custody	Starting point Band C fine
	Category range 18 weeks' – 12 months' custody	Category range Medium level community order – 26 weeks' custody	Category range Band B fine – Low level community order
Harm 3	Starting point 12 weeks' custody	Starting point Medium level community order	Starting point Band B fine
	Category range Medium level community order – 26 weeks' custody	Category range Low level community order – High level community order	Category range Band A fine – Band C fine

3.17 This is an asymmetric table, but intentionally so with low culpability offenders dealt with by fines or community orders, high culpability offenders by custodial sentences and medium culpability offenders a mix of custody and community orders. The three top left hand categories could merit a sentence outside the powers of the magistrates courts.

3.18 Lower culpability offences are set apart with almost no overlap with medium culpability. This reflects the fact that lower culpability offenders are marked by their misguided or mistaken approach to animal welfare, whereas those in the proposed medium culpability are knowingly and deliberately inflicting unnecessary suffering. Indeed, many of those being categorised as medium culpability would have been in high culpability under the current guideline.

3.19 Current sentencing practice tends towards the upper end of the (previously) available penalties. In a typical year before the increase in penalty, a third of section 4 offenders would receive a custodial sentence (roughly 10% immediate, and 25% suspended). Over a third (and sometimes as many as four in ten) would receive a community order and just over a fifth would receive a fine. Of those that received immediate custody in 2020, it appears that over three quarters received sentences, pre-guilty plea, of over four months. We should therefore be cautious about inflating sentences too far in the table.

3.20 A potential criticism is that the top box does not fill the space of the new maximum penalty. This argues in favour of including the rider “A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below” before the table, to demonstrate that in the most serious cases courts will have the option to select higher starting points.

3.21 However, another reason for caution here is the comparison with sentence levels where the victim of violence, abuse or neglect is a human, including children. As well as being on a par with the lowest levels of GBH with intent, the levels proposed high culpability, Harm 1 category equate roughly with the levels for:

- Causing or allowing a child to suffer serious physical harm: this would equate to category C2 or B3 offending – either serious physical or psychological harm, reduced life expectancy, permanent condition as a result of something just above a mistake, or serious physical harm by (eg) someone who employed significant force, or prolonged multiple incidence of cruelty.
- Child cruelty: compares to a serious A3, B2 or C1 offence. For example, sadistic behaviour, using a weapon, but with no harm; use of force or prolonged/multiple incidents resulting in some harm, or risk of high harm;

something above a mistake/victim of DA resulting in serious physical or psychological harm.

- Grievous bodily harm: equivalent to A3, B2, or C1: this could be a leading role, a premeditated attack, use of serious weapon etc resulting in no permanent injury; use of a lesser weapon, a lesser role, resulting in grave injury or a permanent (but not very serious) condition; or spontaneous self defence resulting in a serious permanent condition and/or lifetime care.
- Actual bodily harm: A2 or B1. Premeditated, a leading role, the use of a highly dangerous weapon, or asphyxiation resulting in medium harm; or a lesser role, the use of some sort of weapon, resulting in serious physical injury or psychological harm.

Question 4: are you content with the proposed sentencing levels?

3.22 I do not think there is any pressing need to rework the aggravating and mitigating factors in the current guideline. I mention above the reasons why I think use of a weapon is rightfully an aggravating factor, rather than a culpability factor. I have proposed refining “Offender in position of responsibility” to “Offender in position of professional responsibility for animal” to reflect better the intention to capture farmers, vets, pet shop owners etc as opposed to people who have general responsibilities.

3.23 One factor which was discussed in Parliament related to offenders who film their offending and circulate it on social media (see extracts from the Commons Committee debate at **Annex B**). The existing aggravating factor is worded “Use of technology to publicise or promote cruelty”. During the Bill’s passage, the Minister suggested using the aggravating factor found in the youth guidelines:

“Deliberate humiliation of victim, including but not limited to filming of the offence, deliberately committing the offence before a group of peers with the intention of causing additional distress or circulating details/photos/videos etc of the offence on social media or within peer groups”.

3.24 Additional distress and humiliation caused by the presence of others or the distribution of video footage would not appear to be relevant to animal victims. Rather, it is the risk of promoting cruelty and copycat violence. The present wording captures this I believe, but if “use of technology” is seen as too broad we could particularise it as follows:

“Use of technology, including circulating details/photos/videos etc of the offence on social media to publicise or promote cruelty”.

Question 5: are you content with the proposed aggravating and mitigating factors?

Question 6: would you like to amend the aggravating factor relating to using technology to publicise or promote cruelty?

3.25 The additional steps would be the standard ones, and the offence has not been added to those for which a dangerousness consideration is necessary.

Mutilation, tail docking and poisoning

3.26 The elements in the draft guideline are primarily aimed at the section 4 cruelty offence but are general enough to be able to cover both the offence of fighting (already covered by the animal cruelty guideline) and the other offences of mutilation, tail docking and poisoning (which are not currently).

3.27 As with fighting, it is perhaps less possible to imagine mutilation or tail docking undertaken as a minor lapse of judgement or as well-intentioned but incompetent care. Nonetheless, it is arguably fitting that the deliberate and calculated injury caused in such cases should be reflected in a finding of at least medium culpability.

3.28 There is a question over more passive participants in these types of offending. For example, it is an offence not just to mutilate or dock a dog's tail, but also to allow this to happen to an animal for which one has responsibility. Arguably there is very little difference in culpability between those cases.

3.29 There is probably a greater question (and one which already exists under the current guideline) about the difference between those who organise dog fights and those who attend. I suspect the courts would interpret "leading role" as being reserved for those who organise fights, with mere attendance falling into medium culpability. I do not propose dealing with this explicitly, particularly given the low volumes of offences, but it is open for discussion.

Question 7: do you agree that the revised guideline can cover mutilation, tail docking and poisoning?

New offence – animal abduction

3.30 We expect the new offence of animal abduction to be introduced via amendment to the Police, Crime, Sentencing and Courts Bill imminently. It would become law in early 2022 although we do not yet know when it would come into force. Depending on how we progress with animal welfare, we are due to have a further discussion at the December Council, followed by sign off (with a consultation stage resource assessment) in March, with consultation running from April to June. Following consideration of responses that would see publication of a definitive guideline in January 2023, coming into force in April of that year.

3.31 There is a timing imperative with producing revised animal welfare guidelines, given that cases will be starting to reach the courts for offending taking place after the maximum penalty was increased in June. Based on our understanding of pet theft prosecution numbers we would not expect many cases of the new animal abduction offence to be sentenced every year.

3.32 A new guideline for animal abduction would coincide with the introduction of the offence. There will be no existing cases to draw on, and certainly no authorities from the higher courts. It is a hybrid of abduction and theft where the victim is a combination of animal and human. This makes it quite an unusual offence and to a large extent we would be defining the terms of the offending before the courts see any cases of it. This may make drafting of a guideline a more complex matter, requiring more heavy input from (eg) the RSPCA and other experts.

3.33 If we made swift progress on an animal abduction guideline then our timetable need not be affected (even pessimistically the in-force date would only slip by three months in 2023). However, the novelty of animal abduction offence may mean that we draft elements of a guideline which are otiose and miss others which would have been useful. On balance, I do not believe we should prioritise producing a guideline for the new offence.

Question 8: do you agree not to consult on a new guideline for animal abduction alongside the revisions to the animal cruelty guideline?

4 EQUALITIES

4.1 There is very limited data on the demographics of animal cruelty offenders because until earlier this year (2021) the offence was summary only. In the vast majority of cases (85 per cent of offenders sentenced in 2020) the ethnicity of the offender was either not recorded or not known. Most offenders sentenced for section 4 offences are under 40 and in a typical year, over a third of offenders are female, which corresponds with the average proportion across all summary non-motoring offences.

4.2 Given the lack of data, we have no evidence or suggestion that there are disproportionate outcomes in terms of age, race or sex. However, we will seek views on this point during consultation, and ask if there are ways the proposed guideline could create or contribute to disparities.

5 IMPACT AND RISKS

5.1 We will present a resource assessment to Council in due course ahead of finalising the guideline, setting out the expected impacts. As well as potential impacts on prison places, this will consider the impact on Crown Court case load.

5.2 As mentioned above, we may face criticism that we have not set sentencing levels for the revised animal welfare guideline high enough within the new maximum set by Parliament. The consultation document can explain in greater or lesser detail why we have set sentencing levels as we have, whilst making clear that it is common to leave “headroom” for the worst types of offending, including offending with significant numbers of victims.

Animal Cruelty

Animal Welfare Act 2006, s.4 (unnecessary suffering), s.5 (mutilation), s.6 (docking of dogs' tails), s.7 (administration of poisons etc), s.8 (fighting etc)

Effective from: XXXXXXXXX

Triable either way

Maximum: 5 years' custody

Offence range: Band A fine – 3 years' custody

Step 1 – Determining the offence category

The court should determine culpability and harm caused with reference **only** to the factors below. 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.

Culpability demonstrated by one or more of the following

The court should weigh all the factors set out below in determining the offender's culpability. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

A High Culpability	<ul style="list-style-type: none"> • Prolonged and/or multiple incidents of serious cruelty and/or sadistic behaviour • Use of very significant force • Leading role in illegal activity
B Medium culpability	<ul style="list-style-type: none"> • Deliberate or gratuitous attempt to cause suffering • Prolonged and/or multiple incidents of cruelty • Ill treatment in a commercial context • Deliberate disregard for the welfare of the animal (including failure to seek treatment) • Other cases that fall between categories A or C because: <ul style="list-style-type: none"> - Factors are present in A and C which balance each other out and/or - The offender's culpability falls between the factors as described in A and C

C Lower culpability	<ul style="list-style-type: none"> • Well intentioned but incompetent care • Momentary or brief lapse in judgement • Involved through coercion, intimidation or exploitation. • Mental disorder or learning disability, where linked to the commission of the offence
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Harm demonstrated by one or more of the following

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

If the offence involved significant numbers of animals sentencers may consider moving up a harm category or moving up substantially within a category range.

Category 1	<ul style="list-style-type: none"> • Death (including injury leading to euthanasia) • Particularly grave or life-threatening injury caused • Offence results in a permanent, irreversible injury or condition which has a substantial and long term effect • Very high level of pain and/or suffering caused
Category 2	<ul style="list-style-type: none"> • Offence results in an injury or condition which has a substantial and/or lasting effect • Substantial level of pain and/or suffering caused
Category 3	<ul style="list-style-type: none"> • Little or no physical, developmental and/or emotional harm [OR distress] • All other levels of pain and/or suffering

Step 2 – Starting point and category range

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

	High culpability	Medium culpability	Low culpability
High harm	Starting point 18 months' custody	Starting point 26 weeks' custody	Starting point Low level community order
	Category range 26 weeks' custody – 3 years' custody	Category range 18 weeks' – 12 months' custody	Category range Band B fine – Medium level community order
Medium harm	Starting point 26 weeks' custody	Starting point 12 weeks' custody	Starting point Band C fine

	Category range 18 weeks' – 12 months' custody	Category range Medium level community order – 26 weeks' custody	Category range Band B fine – Low level community order
Low harm	Starting point 12 weeks' custody	Starting point Medium level community order	Starting point Band B fine
	Category range Medium level community order – 26 weeks' custody	Category range Low level community order – High level community order	Category range Band A fine – Band C fine

The court should then consider further adjustment for any aggravating or mitigating factors. The following is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far.

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
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the owner/keeper of the animal: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors

- Distress caused to owner where not responsible for the offence
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Use of a weapon
- Allowing person of insufficient experience or training to have care of animal(s)
- Use of technology to publicise or promote cruelty [OR Use of technology, including circulating details/photos/videos etc of the offence on social media to publicise or promote cruelty]
- Ignores warning/professional advice/declines to obtain professional advice
- Use of another animal to inflict death or injury
- Offender in position of professional responsibility for animal
- Animal requires significant intervention to recover
- Animal being used in public service or as an assistance dog

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions

- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability, where not linked to the commission of the offence
- Sole or primary carer for dependent relatives
- Offender has been given an inappropriate level of trust or responsibility
- Voluntary surrender of animals to authorities
- Cooperation with the investigation
- Isolated incident

Step 3 – Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) 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 4 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.

Step 5 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

Step 6 – Compensation and ancillary orders

In all cases, the court should consider whether to make compensation and/or other ancillary orders including deprivation of ownership and disqualification of ownership of animals.

- Ancillary orders – Magistrates' Court
- Ancillary orders – Crown Court Compendium

Step 7 – Reasons

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 8 – Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

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Hansard Extract – Commons Committee Stage of Animal Welfare (Sentencing) Bill

3 February 2021

Luke Pollard (Plymouth, Sutton and Devonport) (Lab/Co-op): I beg to move amendment 1, in clause 1, page 1, line 10, at end insert—

“(2A) After subsection (1) insert—

(1A) Subsection (1B) applies where the court is considering for the purposes of sentencing the seriousness of an offence under any of sections 4, 5, 6(1) and (2), 7 and 8, and the person guilty of the offence—

(a) filmed themselves committing the offence, or

(b) posted online a video of themselves committing the offence.

(1B) The court—

(a) must treat the fact mentioned in subsection (1A)(a) or (b) as an aggravating factor (that is to say, a factor that increases the seriousness of the offence), and

(b) must state in open court that the offence is so aggravated.”

[...] This simple amendment would make it a more serious animal cruelty offence for the purpose of sentencing if the guilty person had filmed themselves committing the abuse. In a digital age, we see more and more cases of people filming abuse of animals, partly for their own perverse enjoyment, partly because they want to share the film on social media, and partly because they fail to recognise that in so doing they encourage others to do the same.

The former MP for Redcar, Anna Turley, who campaigned relentlessly on the issue, used a specific example to illustrate the point. If the Committee will forgive me, I shall use it again now. She raised the case of Baby the bulldog, a dog from Redcar that was filmed being horrendously abused. I will borrow a quote from RSPCA inspector Gemma Lynch about what happened to Baby. She said Baby was

“totally submissive throughout, not even making a noise when she lands on the stairs, bouncing to the foot of them where there is a baby gate which she crashes into before hitting the ground.”

Frankish, the abuser,

“is saying... ‘one, two three’ before hurling her down them. He is clearly enjoying himself—he’s laughing and smiling. The whole horrible ordeal seems to be for his and the younger man’s entertainment, for fun.”

One clip

“shows him stamping on her neck repeatedly at the bottom of the stairs, then picking her up and throwing her to the ground with force over and over again. He’s laughing hysterically.... Another clip shows him standing on Baby’s chest with his full body weight at the top of the stairs, before jumping up and down on her. This is the only time you hear her make a noise, and she is crying throughout... The younger man says, ‘See if we can make it scream any more. We should throw it down the stairs by its ears’”

before Frankish

“picks her up against the wall and headbutts her twice, then throws her down the stairs again. Everyone who has seen the video says it’s the most distressing thing they’ve ever seen. These are people who have seen a lot of horrible things.”

I am sorry for putting everyone through that, but it is important to understand the examples that the amendment would deal with and to show just what cruelty and abuse people can inflict on animals.

Sadly, Baby was put down three months later after losing the use of her back legs as a result of her injuries from such abhorrent abuse. What makes the case so cruel and inhumane is that the abusers filmed themselves performing those despicable acts, as though they were proud of what they were doing or wanted to hold on to the memories of that abuse. The two men pleaded guilty to causing unnecessary suffering to Baby the bulldog by subjecting her to unnecessary physical violence, an offence under the Animal Welfare Act 2006. They were given a six-month suspended sentence and were tagged, under a curfew between 8 pm and 6 am, and they paid £300 in costs. Was that justice for Baby?

When Anna promoted the Bill, she referred to Baby’s law. Whether it is for Baby or for the countless other animals that we all know examples of, there is an urgent need to address the lack of a digital component—a filming component—in the legislation. This adds an extra component because it furthers the abuse by building on the power play that the people who abuse animals seek. This is about power. We should not underestimate that.

The need to crack down on filming animal abuse grows more urgent by the day. In 2015, the RSPCA investigated 27 cruelty complaints that involved images or videos shared on Snapchat. By 2019, the figure was 62 —a 130% increase.

A survey for the RSPCA showed that at least 46% of young people have witnessed animal cruelty: 28% have seen it on TV or in a film, and 18% have witnessed it on social media. Nearly one young person in five has witnessed animal abuse on social media. According to the survey, the majority who saw it online saw it on Facebook. That tended to be footage of real cruelty against pet animals shared by a stranger. We cannot stand by and let the abuse of defenceless animals continue and then expose our children to those horrifying acts.

[...]

I want Baby’s law to be passed, and I want it to send a strong message to people who not only abuse animals, but choose to film that and post the images online. Sharing the abuse encourages greater abuse and seeks, by having more people witness it, to desensitise. That makes it worth amending the Bill to provide for an extra consideration in sentencing. I encourage Members to support the amendment, although we shall not press it to a vote, for the reasons I gave. I hope to revisit the matter on Report.

Daniel Zeichner (Cambridge) (Lab): [...] As my hon. Friend has said, there are concerns that we want briefly to explore through our amendments. We very much agree with the previous MP for Redcar, who introduced the first Bill, that the filming of cruelty against animals should be considered an aggravating factor by courts in considering the offence. It is already listed as one in the sentencing guidelines to the 2006 Act, but we think it is important that that should be in the Bill.

We have heard that one of the overwhelming issues in the deeply distressing case of Baby the bulldog was the fact that those involved filmed themselves. People not only abusing animals, but recording it and, nowadays, sharing it on social media, with the intention of glorifying and amplifying the abuse, should be taken into account.

We are in a changing world ... As the available technology changes, the law must keep up. To abuse innocent animals and, not only that, to record the abuse for entertainment shows, I am afraid, a malicious intent that should be considered an aggravating factor in sentencing.

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Victoria Prentis): [...] Aggravating factors are most often dealt with in the sentencing guidelines for an offence, not within the statute. A select number of offences relating to terrorism and domestic violence are exempt from that general rule. For most offences, normal practice is for other aggravating factors to be included in the sentencing guidelines. Those are not unimportant documents. From my experience as a lawyer, I know that the courts are required to follow those guidelines when determining the appropriate sentence in any particular case.

The sentencing guidelines on animal cruelty were drawn up by the Sentencing Council and were last reviewed in April 2017, following public consultation. Those include guidelines on “the use of technology to publicise or promote cruelty”

which is already considered an aggravating factor. The Department for Environment, Food and Rural Affairs has been in contact with the Sentencing Council about the Bill and, if we pass the Bill, the council will need to reassess its guidelines. It will conduct another review. It will also consult publicly on the new guidelines.

I have been looking at other examples of guidelines relating to filming. Perhaps the best, and the one that I suspect I would suggest to the Sentencing Council, is found in the sentencing guidelines for robbery when sentencing children and young people, which includes the aggravating factor of

“the filming of the offence... or circulating details/photos/videos etc of the offence on social media or within peer groups”.

That is to be considered specifically by the court when sentencing the offender.

[...] I should emphasise that the Sentencing Council is of course independent of the Government, but it is only right for the Government to make suggestions. I am outlining the suggestion that I feel would be the best-practice sentencing guideline, which I hope the council will make if we pass the Bill—I very much hope we will. I suggest a guideline similar to the one for the robbery offence that I outlined.

In addition to the sentencing guidelines, legislation—one piece specifically—provides an offence that could cover filming animal cruelty. Section 127(1) of the Communications Act 2003 creates a specific offence of sending grossly offensive, indecent, obscene or menacing messages over a public electronic communications network. It is a matter for the Crown Prosecution Service to decide which charge to bring, but it is possible that someone filming an act of animal cruelty or sharing it could be charged with an offence under that section. That would result in a maximum sentence of six months for the offence of posting the offensive message. I am happy to speak to DCMS colleagues further about this, and I will do so as the Bill progresses.

In brief, there are existing options to ensure that the offenders who film and upload or distribute footage of their animal cruelty are met with an appropriate response. This is an horrific crime, and filming it to share with others is beyond comprehension. We will discuss this matter further with the Sentencing Council, and when it reviews the guidelines we will ensure that this point is raised during the public consultation.

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