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Effective from 20 August 2012

Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all offenders aged 18 and older, who are sentenced on or after 20 August 2012, regardless of the date of the offence.

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

“Every court –

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

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

This guideline applies only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council’s definitive guideline, *Overarching Principles – Sentencing Youths*.

Structure, ranges and starting points

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

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

Information on community orders and fine bands is set out in the annex at page 20.

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

Dangerous Dogs Act 1991 (section 3(1))

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

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

Triable either way
Maximum: 2 years' custody

Offence range: Discharge – 18 months' custody

STEP ONE

Determining the offence category

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

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

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

Factors indicating greater harm

Serious injury (which includes disease transmission and/or psychological harm)

Sustained or repeated attack

Victim is a child or otherwise vulnerable because of personal circumstances

Factor indicating lesser harm

Minor injury

Factors indicating higher culpability

Statutory aggravating factors:

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

Factors indicating higher culpability (continued)

Other aggravating factors:

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

Goading, or allowing goading, of dog

Dog used as weapon or to intimidate victim

Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)

Factors indicating lower culpability

Attempts made to regain control of dog and/or intervene

Provocation of dog without fault of the offender

Evidence of safety or control measures having been taken

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

STEP TWO

Starting point and category range

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

Offence Category	Starting Point (<i>Applicable to all offenders</i>)	Category Range (<i>Applicable to all offenders</i>)
Category 1	6 months' custody	Medium level community order – 18 months' custody
Category 2	Medium level community order	Band B fine – 6 months' custody
Category 3	Band B fine	Discharge – Band C fine

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 1 or 2** offences, the court should also consider the custody threshold as follows:

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

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

- has the community order threshold been passed?

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	No previous convictions or no relevant/recent convictions
Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction	Isolated incident
Offence committed whilst on bail	No previous complaints against, or incidents involving, the dog
<i>Other aggravating factors include:</i>	Remorse
Injury to another animal(s)	Good character and/or exemplary conduct
Location of the offence	Evidence of responsible ownership
Ongoing effect upon the victim and/or others	Determination and/or demonstration of steps taken to address addiction or offending behaviour
Failure to take adequate precautions to prevent dog escaping	Serious medical conditions requiring urgent, intensive or long-term treatment
Allowing person insufficiently experienced or trained, to be in charge of dog	Age and/or lack of maturity where it affects the responsibility of the offender
Ill treatment or failure to ensure welfare needs of dog, where not charged separately	Mental disorder or learning disability, where not linked to the commission of the offence
Dog known to be prohibited	Sole or primary carer for dependent relatives
Lack or loss of control of dog due to influence of alcohol or drugs	
Offence committed against those working in the public sector or providing a service to the public	
Established evidence of community impact	
Failure to comply with current court orders	
Offence committed whilst on licence	

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Compensation and ancillary orders**

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

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence.¹ The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Disqualification from having custody of a dog***

The court **may** disqualify the offender from having custody of a dog.² The test the court should consider is whether the offender is a fit and proper person to have custody of a dog.

Destruction order/contingent destruction order

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court.

The court **shall** make a destruction order unless the court is satisfied that the dog would not constitute a danger to public safety.³

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

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

(step 5 continues on next page)

¹ s.130 Powers of Criminal Courts (Sentencing) Act 2000

² s.4(1)(b) Dangerous Dogs Act 1991

³ s.4(1)(a) *ibid*

STEP FIVE (continued)

If the court is satisfied that the dog would not constitute a danger to public safety, it **shall** make a contingent destruction order imposing certain available conditions.⁴ A contingent destruction order should specify the measures to be taken by the owner for keeping the dog under proper control, which include:

- muzzling;
- keeping on a lead;
- neutering in appropriate cases; and
- excluding it from a specified place.⁵

Where the court makes a destruction order, it **may** order the offender to pay what it determines to be the reasonable expenses of destroying the dog and of keeping it pending its destruction.⁶

STEP SIX**Totality principle**

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

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for remand time**

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

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⁴ s.4A(4) Dangerous Dogs Act 1991

⁵ s.4A(5) *ibid*

⁶ s.4(4)(b) *ibid*

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

Dangerous Dogs Act 1991 (section 3(1))

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

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

Triable summarily only
Maximum: 6 months' custody

Offence range: Discharge – 6 months' custody

STEP ONE**Determining the offence category**

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

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

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

Factors indicating greater harm

Presence of children or others who are vulnerable because of personal circumstances

Injury to another animal(s)

Factors indicating lesser harm

Low risk to the public

Factors indicating higher culpability*Statutory aggravating factors:*

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

Factors indicating higher culpability (continued)*Other aggravating factors:*

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

Goaded, or allowing goading, of dog

Dog used as weapon or to intimidate victim

Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)

Factors indicating lower culpability

Attempts made to regain control of dog and/or intervene

Provocation of dog without fault of the offender

Evidence of safety or control measures having been taken

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

STEP TWO**Starting point and category range**

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

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

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

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

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

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

- has the community order threshold been passed?

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	No previous convictions or no relevant/recent convictions
Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction	Isolated incident
Offence committed whilst on bail	No previous complaints against, or incidents involving, the dog
<i>Other aggravating factors include:</i>	Remorse
Location of the offence	Good character and/or exemplary conduct
Ongoing effect upon the victim and/or others	Evidence of responsible ownership
Failure to take adequate precautions to prevent dog escaping	Determination and/or demonstration of steps taken to address addiction or offending behaviour
Allowing person insufficiently experienced or trained, to be in charge of dog	Serious medical conditions requiring urgent, intensive or long-term treatment
Ill treatment or failure to ensure welfare needs of dog, where not charged separately	Age and/or lack of maturity where it affects the responsibility of the offender
Dog known to be prohibited	Mental disorder or learning disability, where not linked to the commission of the offence
Lack or loss of control of dog due to the influence of alcohol or drugs	Sole or primary carer for dependent relatives
Offence committed against those working in the public sector or providing a service to the public	
Established evidence of community impact	
Failure to comply with current court orders	
Offence committed whilst on licence	

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Compensation and ancillary orders**

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

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence.⁷ The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Disqualification from having custody of a dog***

The court **may** disqualify the offender from having custody of a dog.⁸ The test the court should consider is whether the offender is a fit and proper person to have custody of a dog.

Destruction order/contingent destruction order

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court.

The court **may** make a destruction order.⁹ Alternatively, it **may** make a contingent destruction order imposing certain available conditions.¹⁰ A contingent destruction order should specify the measures to be taken by the owner for keeping the dog under proper control, which include:

- muzzling;
- keeping on a lead;
- neutering in appropriate cases; and
- excluding it from a specified place.¹¹

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

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

Where the court makes a destruction order, it **may** order the offender to pay what it determines to be the reasonable expenses of destroying the dog and of keeping it pending its destruction.¹²

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

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

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

10 s.4A(4) *ibid*

11 s.4A(5) *ibid*

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

STEP SIX**Totality principle**

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

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for remand time**

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

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Possession of a prohibited dog

Dangerous Dogs Act 1991 (section 1(3))

Breeding, selling, exchanging or advertising a prohibited dog

Dangerous Dogs Act 1991 (section 1(2))

Triable only summarily
Maximum: 6 months' custody

Offence range: Discharge – 6 months' custody

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STEP ONE**Determining the offence category**

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

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

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

Factors indicating greater harm

Injury to person

Injury to another animal(s)

Factors indicating higher culpability

Possessing a dog known to be prohibited

Breeding from a dog known to be prohibited

Selling, exchanging or advertising a dog known to be prohibited

Offence committed for gain

Dog used to threaten or intimidate

Permitting fighting

Training and/or possession of paraphernalia for dog fighting

STEP TWO**Starting point and category range**

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

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

* Imprisonment is not available if the provisions of s.1(7) Dangerous Dogs Act 1991 apply

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

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

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

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

- has the community order threshold been passed?

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors include:

Presence of children or others who are vulnerable because of personal circumstances

Ill treatment or failure to ensure welfare needs of dog, where not charged separately

Established evidence of community impact

Failure to comply with current court orders

Offence committed whilst on licence

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Unaware that dog was prohibited type despite reasonable efforts to identify type

Evidence of safety or control measures having been taken by owner

Prosecution results from owner notification

Remorse

Good character and/or exemplary conduct

Evidence of responsible ownership

Determination and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

Age and/or lack of maturity where it affects the responsibility of the offender

Lapse of time since the offence where this is not the fault of the offender

Mental disorder or learning disability

Sole or primary carer for dependent relatives

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STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Ancillary orders**

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

Ancillary orders available include:***Disqualification from having custody of a dog***

The court **may** disqualify the offender from having custody of a dog.¹³ The test the court should consider is whether the offender is a fit and proper person to have custody of a dog.

Destruction order/contingent destruction order

The court **shall** make a destruction order unless the court is satisfied that the dog would not constitute a danger to public safety.¹⁴

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

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

If the court does not make a destruction order, the court **shall** make a contingent destruction order providing that unless the dog is exempted from the prohibition within two months it shall be destroyed.¹⁵ Statutory procedures and conditions automatically apply to exempted dogs and no other conditions can be imposed.¹⁶ Where the offender is the owner of the dog, it would not normally be appropriate to make a contingent destruction order in conjunction with a disqualification order.

Furthermore, the court **must not** transfer ownership of the dog to another.¹⁷

Where the court makes a destruction order, it **may** order the offender to pay what it determines to be the reasonable expenses of destroying the dog and of keeping it pending its destruction.¹⁸

STEP SIX**Totality principle**

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

¹³ s.4(1)(b) Dangerous Dogs Act 1991

¹⁴ s.4(1)(a) *ibid*

¹⁵ s.4A(1) *ibid*

¹⁶ The Dangerous Dogs Compensation and Exemption Schemes Order 1991 SI No. 1744 (as amended by The Dangerous Dogs Compensation and Exemption Schemes (Amendment) Order 1991 SI No. 2297)

¹⁷ s.1(2)(b) Dangerous Dogs Act 1991

¹⁸ s.4(4)(b) *ibid*

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for remand time**

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

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Annex:

Fine bands and community orders

FINE BANDS

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

Fine Band	Starting Point <i>(Applicable to all offenders)</i>	Category Range <i>(Applicable to all offenders)</i>
Band A	50% of relevant weekly income	25–75% of relevant weekly income
Band B	100% of relevant weekly income	75–125% of relevant weekly income
Band C	150% of relevant weekly income	125–175% of relevant weekly income

COMMUNITY ORDERS

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

An illustrative description of examples of requirements that might be appropriate for each level is provided below. Where two or more requirements are ordered, they must be compatible with each other.

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

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