

# Sentencing Council

**Sentencing Council meeting:** 23 October 2015  
**Paper number:** SC(15)OCT06 – Dangerous Dogs  
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## 1 ISSUE

1.1 This is the second consideration of the guidelines post consultation, and will consider the responses to all the guidelines on sentence levels and aggravating and mitigating factors. All of the changes to the culpability and harm factors agreed at the last meeting have been made, and can be seen in track changes on the guidelines at **Annexes A-E**. Sentencing statistics for these offences are attached at **Annex F**.

1.2 The timetable is for the guidelines to be signed off by December, and published in March 2016.

## 2 RECOMMENDATION

- The Council is asked to note the comments and agree the changes to the sentence levels, as discussed at **para 3.2, page two onwards**
- The Council is asked to agree the changes to the aggravating and mitigating factors, as discussed at **para 3.27, page 11 onwards**
- The Council is asked to agree the changes proposed to step six regarding destruction orders/contingent destruction orders at **Annex E**, as discussed at **para 3.33, page 12 onwards**.

## 3 CONSIDERATION

### *Sentence ranges within the guidelines*

3.1 The Council will recall that there was a lack of data to assist in the development of the ranges for the revised guideline so existing dangerous dog sentencing data was used, along with data for assault and dangerous driving offences, as these two offences were considered by the Government when deciding

on the increased maxima for dangerous dog offences. The ranges were developed so that culpability is the principal determinant of the sentence, the more culpable the offender is, the more severe the sentence (although appropriate sentence levels are available for offences where high levels of harm have been caused). The 'law of the diagonal' applies within the ranges, so that the ranges moving diagonally from C, B to A are either the same as, or increasingly more severe, as culpability increases. There is generally a small overlap between the sentence ranges, to reflect the fact that some offences sit on the cusp between the top of one range and the bottom of the next, higher range.

#### *Sentence levels - Offence causing death- Annex A*

3.2 The majority of respondents to the consultation agreed with the starting points and ranges (which can be seen at page three of **Annex A**) proposed for this offence. Of those that disagreed, there was no consensus: a few people felt the ranges and starting points should be higher, and a few felt that they should be lower. Only two respondents disagreed with the range going up to the statutory maximum of 14 years. The majority of respondents agreed that the bottom of the range starting at a high level community order was appropriate. Of those that disagreed with the proposed bottom of the range, there was no consensus: some felt it was too high, including the Magistrates Association, who thought it should start at a low level community order to mirror the lowest range for causing death by careless driving. A small number felt it was too low, including the Communication Workers Union (CWU) and that the bottom of the range should be custody.

3.3 Three sentencing case studies<sup>1</sup> concerning a death were included in the consultation, providing scenarios which fell into each of the three levels of culpability. Respondents who commented on the scenarios provided a range of views on the suggested sentences, but of those that disagreed, most thought that the suggested sentence levels were too low.

3.4 The Council will recall from the pre consultation work on this guideline that, prior to the legislation changing, there were few prosecutions of dangerous dog offences causing death and the few cases sentenced were of limited use in determining sentence levels due to the large increase in the statutory maximum. Since the legislation changed in May 2014 only one case has been sentenced, that of Craig Greve. Greve was sentenced to five and a half years' imprisonment, with

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<sup>1</sup> <https://www.sentencingcouncil.org.uk/publications/item/dangerous-dog-offences-consultation-2/>.

maximum credit for a guilty plea (sentence prior to discount of eight years, three months' custody). The main facts of the case are as follows:

*Greve, aged 23, had previously been convicted twice of having a dog dangerously out of control, which led to him being disqualified indefinitely from owning a dog. However Greve at some point obtained another dog, an American bulldog named Solo. Greve lived with his grandmother, Rhona Greve, who Solo had attacked on four previous occasions, Solo had also attacked Mrs Greve's own dog. One night Solo attacked Mrs Greve as Greve was returning to the house; Greve intervened and got the dog off Mrs Greve, but failed to call an ambulance. It was suggested that Greve was reluctant to alert the authorities to this incident, as he knew he had contravened the court order by having Solo. Neighbours called the police, who in turn called an ambulance. Mrs Greve had been bitten over 15 times, causing severe blood loss, broken bones and trauma. Her cause of death was identified as cardiac arrest following multiple dog bites. Mrs Greve, aged 64, had been in poor health and suffered from heart disease. Greve had other previous convictions, including one for assaulting his grandmother. He had coerced his grandmother into saying that Solo was her dog, when visiting the vet, and so on. In mitigation, Greve's extreme remorse was highlighted, and some immaturity and learning difficulties.*

3.5 The Judge in this case concluded that Greve's culpability was high, referencing the fact that he was disqualified from owning a dog, he had previous convictions for having a dog dangerously out of control, and that the dog had previously attacked Mrs Greve. The Judge referred to the consultation proposals in the sentencing remarks.

3.6 As the Council discussed at the last meeting, the high culpability factors only referred to offenders failing to comply with orders concerning a dog, not an order concerning themselves, namely that they had been banned from owning a dog. This factor has now been revised, and can be seen on page two of **Annex A**. This rewording would allow for an offender such as Greve to be placed in high culpability (without the addition of this wording, the case may have fallen into medium culpability). However, the facts of the case show how the culpability factors have to be balanced: in this case, Greve did intervene and gain control of the dog, a factor in lesser culpability, but had failed to act on prior knowledge of the dog's aggressive behaviour, a factor in medium culpability. The inclusion of the new factor in high culpability would apply to Greve, as he had deliberately ignored a court order regarding dog ownership, an act which ultimately led to his grandmother's death.

3.7 As only one dangerous dog case causing death has been sentenced post the legislative changes, it may be helpful to consider three other cases where a death occurred. The first was sentenced whilst the statutory maximum was still two years, the second the defendant was charged with manslaughter and the third was prosecuted for animal welfare offences.

#### **Case study one**

*Clifford Clarke, aged 79 was killed in his garden by his neighbour's dog, a Presa Canario cross breed. The two owners had not fed the dog for 45 hours before the incident. The dog had been left in the owners' garden on a hot day without food, water or shade. The dog got through a gap in the fence, and went into Mr Clarke's garden and attacked him. Mr Clarke died from multiple injuries and blood loss. The dog was subsequently destroyed. The two owners pleaded guilty, there was some mitigation in that both owners showed great remorse and were primary carers for dependant relatives.*

*Actual Sentence - each offender was sentenced to 12 months custody, after the Judge gave a reduction of 25 per cent for the guilty plea, so a total sentence of 16 months.*

*Possible sentence using draft guideline – SP of four years custody and range of two to seven years. The offence places the offenders in medium culpability, due to the ill treatment of the dog/failing to ensure its welfare needs, and a lack of safety or control measures to stop the dog escaping from the garden. There was no evidence of previous aggressive behaviour by the dog and the owners did not actively cause the incident by using the dog to intimidate the victim. There are aggravating factors of the location of the offence, the victim's own garden, (it may have been more difficult for him to get help than if it had occurred in public) and the victim's vulnerability (his age), which increase it from the SP. Within this sentence range there would be a reduction for the guilty plea and the mitigating factors mentioned above. Using the guideline, a sentence of around three years is likely (from a SP of four years, with the aggravating and mitigating factors cancelling each other out and a 25 per cent reduction for the guilty plea).*

#### **Case Study two**

*Ellie Lawrenson, aged five, was killed by a pit-bull terrier, a prohibited breed, whilst at her grandmother's home. The grandmother, Jacqueline Simpson, broke a family rule by allowing the dog into the house while Ellie was there. Ellie sustained 72 injuries leading to her death. The grandmother was charged with manslaughter. She had*

*drunk a considerable amount and taken drugs on the evening of the incident. The dog had previously bitten another relative, and attacked another dog. The dog was destroyed. The grandmother was acquitted of manslaughter. It was not possible to bring charges under the dangerous dogs legislation in force at the time as the attack happened where the dog had a right to be but it now would be possible now to bring charges under the amended legislation. (The uncle of Ellie was prosecuted for possession of a prohibited breed and sentenced to eight weeks imprisonment).*

*Possible sentence using the draft guideline* – *SP of eight years' custody with a range of six to 14 years. The draft guidelines would place the offender in high culpability, as the dog was a prohibited breed. There are also factors pertinent to medium culpability; failing to act on prior knowledge of the dog's aggressiveness, given the dog had previously attacked on two other occasions and ignoring the family ban on the dog entering the house when the victim was present, and in lower culpability as she tried to intervene in the incident. There would be considerable aggravating factors which would likely increase the sentence from the starting point (the victim being a child, a sustained attack, loss of control due to alcohol or drugs, the ongoing effect of the incident on the victim's parents, the location of the offence). There is mitigation in the effect on the grandmother of seeing her granddaughter killed in this way and she suffered severe injuries herself in trying to intervene (after the incident she was described as a broken woman due to the events). A possible sentence would be around eight years' custody, against a statutory maximum of 14 years.*

### **Case Study three**

*Jade Anderson, aged 14 was killed by four dogs, two bull mastiffs and two Staffordshire bull terriers whilst at a friend's house. The dogs were not walked and kept in a confined space all day. The defendant, Beverley Concannon, the friend's mother, had previously been warned about the condition in which she kept her dogs; neighbours had complained to the local Council. Concannon received a 16 week suspended sentence for causing unnecessary suffering to the dogs in her care. It was decided that there was insufficient evidence for a charge of manslaughter through gross negligence, and a dangerous dog prosecution could not be brought at the time as the incident took place in the home.*

*Sentence using the draft guideline* – *If the offender had ignored an official warning regarding the dogs issued by the local Council, as opposed to ignoring concerns raised by neighbours (information about the case is not clear on this point) then under the draft guidelines this would place the offender in high culpability, with a SP of 8 years' custody with a range of six to 14 years. If the offender had ignored*

*concerns expressed by others, this would place her within medium culpability, with a SP of 4 years custody, in a range of two to seven years' custody. There is considerable aggravation: the victim was a child, there was more than one dog involved, it was a sustained attack, the offender left her daughter in charge of the four dogs. There may have been some mitigation, although this is not known from the facts of the case.*

3.8 Given that the majority of the respondents to the consultation agreed with the proposed sentence ranges and starting points, and that the guideline, albeit needing a few small adjustments, seems to work appropriately for the only case sentenced involving death so far, it is suggested that no changes are made to the sentence levels for this offence. The ranges are fairly broad which will allow for courts to sentence offenders appropriately in cases which may cover a wide range of offending behaviour.

***Question 1- Does the Council agree that no changes should be made to the sentence levels for this offence?***

*Offences causing injury –Annex B*

3.9 The majority of consultation respondents provided no comments on the starting points and ranges for this offence, which can be seen at page three of **Annex B**. There was no consensus between those who did offer comments, the police, Council of Circuit Judges and some magistrates' benches all proposed that category 1A should go to the statutory maximum. However, the Justices' Clerks Society and the Blue Cross agreed that there should be headroom between the top of the range and the maximum. Other respondents, mainly the public, thought the sentences were too low, others thought they were too high.

3.10 One sentencing case study regarding an injury offence was provided in the consultation (with culpability A and category 1 harm and a suggested sentence of around two and a half years' custody) to which 64 per cent of respondents agreed. All those that disagreed thought the suggested level was too low.

3.11 The sentencing statistics for these offences can be seen at page two of **Annex F**. These figures only include data from magistrates' courts; it is not currently possible to obtain full data from the Crown Court for this offence due to a data recording issue which we understand will not be fixed until February 2016 at the earliest. It is estimated that the missing Crown Court cases may only number around 60, based on the split of cases between the magistrates' and Crown Court in 2013

and the number of cases that seem to have been sent to the Crown Court for trial. We therefore do not recommend postponing the guideline until such time as data becomes available from the CPD.

3.12 Some indicative information from dangerous dog cases in the Crown Court has been obtained, and can be seen on page 1 of **Annex F**. This indicates that in the majority of cases the sentence outcome was within the magistrates' courts sentencing powers.

3.13 In addition to the sentencing data available a small transcript exercise has been conducted, using injury cases<sup>2</sup> sentenced in the Crown Courts prior to the legislative changes. This exercise compared the sentences actually given by the sentencer, against what the likely sentences would be using the new guideline. This revealed broadly similar, or slightly increased sentences in a few cases, using the new guideline. It is therefore suggested that the combination of data shown on pages one and two, and the findings from the transcript exercise is sufficient to review the sentence levels for this offence.

3.14 If the Council is concerned with the gaps in the data, it would be possible to gather some more data on sentencing levels for these offences by obtaining and studying transcripts of recent cases reported in the media, and by doing some observational research, once suitable cases had been identified in the courts. As this would be a lengthy and time consuming process which is unlikely to add a substantial amount of additional hard data, it is not recommended that we undertake this; instead we recommend that we use the available evidence to review the ranges.

3.15 Looking at the distribution of sentence outcomes on page two of **Annex F**, 43 per cent of offenders received a fine, 23 per cent received a discharge, 19 per cent a community order and only 5 per cent received a suspended sentence or immediate custody. Accordingly, some amendments to the ranges are suggested, as can be seen on page three of **Annex B**. These amendments increase the availability of fines as a sentencing option within the ranges and reduce the proportion of custody and community orders. Some of the custody ranges have also been slightly reduced, although most of the ranges at the upper end of the table, A1, A2, A3, B1 remain unchanged to allow for appropriate sentencing for the most serious of offences.

***Question 2 - Is the Council content to proceed on the basis of the data that is currently available? If so, is the Council content with the proposed changes to the sentence ranges for this offence?***

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<sup>2</sup> Some cases were sentenced under Dangerous Dog legislation, others were charged as assault cases.

3.16 During the consultation the Chairman raised an issue regarding cases where two people are injured or killed in the same attack. Although separate charges may be brought the court will ordinarily pass a concurrent sentence because the offending arises out of the same incident. If more than one fatality occurred (and there have not been any cases to date) then the maximum sentence of 14 years for this offence ought to be able to cater for this situation. However, this situation may arise more acutely in the causing injury offence if two people were seriously injured in the same incident.

3.17 It may therefore be helpful to including some wording on this point from the *Offences Taken Into Consideration and Totality Definitive* Guideline,<sup>3</sup> underneath the sentencing table, as follows:

*'The table is for single offences. Concurrent sentences will ordinarily be appropriate where offences arise out of the same incident or facts: please refer to the Offences Taken Into Consideration and Totality guideline.'*

The wording can also be seen on page four of **Annex C**.

3.18 In addition, an aggravating factor of *'Injury caused to others during the incident (where not taken into account at step one)'* could be added. This could be relevant if there are additional injuries caused from the same incident, which do not form a charge before the court.

***Question 3 – Does the Council wish to include the wording regarding consecutive sentences? And should the additional aggravating factor regarding injury caused to others be added?***

*Offence of attacks on assistance dogs – Annex C*

3.19 Over half of the respondents either provided no comments on the sentence levels for this offence, or agreed with the proposed ranges. The sentence ranges can be seen at page three of **Annex C**. A number of respondents, including a police officer, a small number of magistrates' benches, and the RSPCA all thought that the sentence range should go to the statutory maximum. There was no consensus on other views expressed on the ranges although a small number of respondents thought that the ranges and starting points were too low. One respondent thought that there should be a non-custodial penalty for all starting points, another respondent said that there was an over-emphasis on custody within the ranges. One

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<sup>3</sup> <http://www.sentencingcouncil.org.uk/publications/item/offences-taken-into-consideration-and-totality-definitive-guideline/>.

sentencing scenario for this offence was provided (with medium culpability and harm category one, giving a suggested sentence of a high level community order) to which 65 per cent of respondents agreed. The large majority of those that disagreed thought the suggested sentence was too low.

3.20 The Association of Lawyers for Animal Welfare (ALAW) said that if the harm factors for this offence remained unchanged, a high proportion of cases will be category one, due to the impact on the assisted person, therefore the bottom end of the sentencing range should be lowered.

3.21 As set out above in paragraph 3.11, sentencing data is only available for cases in magistrates' courts sentenced for this offence. This data shows only seven cases have been sentenced since May 2014, as can be seen on page three of **Annex F**. Although we cannot be sure, we think it is unlikely that many of these cases will have been sentenced in the Crown Court, given that this is a completely new offence and volumes will probably be low, so again it is recommended that the data that is available is used to review these ranges.

3.22 Using the limited data available to review the sentence ranges, it is suggested that the ranges generally remain unaltered, with just a slight broadening of the ranges within culpability B, as can be seen on page three. Unless offenders commit a very deliberate act, or are very unlucky, most offenders will probably fall into culpability B<sup>4</sup> so this justifies broad ranges.

**Question 4 – Does the Council agree with the limited changes made to the sentence levels for this offence?**

3.23 At the last meeting the wording in category one harm for this offence '*impact of the offence on the assisted person is severe*' was discussed. The Council did not agree with the wording that was proposed at the last meeting in order to clarify this factor. However, while the factor is clear to the Council as currently drafted, in light of concerns raised by some sentencers that the drafting was ambiguous and may not be interpreted as intended, officials and Council members have given further thought to this point and a new form of wording is proposed: '*Serious impact on the assisted person (whether psychological or other harm caused by the offence).*'

**Question 5 – Does the Council agree to the new wording for the category one harm factor for this offence?**

*Offence of dog dangerously out of control (no injury caused) –Annex D*

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<sup>4</sup> Three press reports of sentenced cases of an attack on assistance dogs indicate that all three offenders fell into medium culpability

3.24 The majority of consultation respondents agreed with the sentence levels, or made no comment on the proposals. The sentence levels can be seen at page 3 of **Annex D**. Of those that disagreed, a small number, including Battersea Dogs Home, thought that the ranges were too low and that they should be higher to deter offenders from becoming involved in more serious dangerous dog offences in the future. The current sentencing statistics for this offence are at page four of **Annex F**. These show that 62 per cent of those sentenced received a fine, 17 per cent received a discharge, 12 per cent a community order and only a very small number received custody. The ranges proposed in consultation were based on the sentence ranges in the existing guideline as the maximum for this offence was not amended by the changes to legislation. It is suggested that the sentence levels for this offence are not changed.

***Question 6 – Does the Council agree to leave the sentence levels for this offence unchanged?***

*Offence of possessing, breeding, selling, exchanging or advertising a prohibited dog – Annex E*

3.25 The majority of respondents either had no comment on, or agreed with the proposed sentence levels for this offence. The sentence levels for this offence can be seen at page three of **Annex E** (and are very similar to the ranges for the offence discussed in the paragraph above). Some comments referred to the levels being too low, although this was mainly due to dissatisfaction with legislation and the statutory maximum being six months only. Battersea Dogs Home again thought that the starting points were too low, stating that the cases are serious and offenders may go on to commit offences resulting in serious injury in the future if not dealt with adequately at this stage. The current sentencing statistics for this offence can be seen at page five of **Annex F**. These show that 39 per cent of those sentenced received a fine, 43 per cent received a discharge and there were broadly similar levels of community orders and custody as the previous offence.

3.26 The ranges proposed in consultation were based on the sentence levels in the existing guideline as again the maximum for this offence was not amended by the changes to the legislation. Although there is some difference in sentencing outcomes between this offence and the offence discussed in the preceding paragraph, it is suggested that the ranges for this offence are appropriate as they are; the ranges are fairly broad within the confines of a six month statutory maximum and there is limited scope to make further adjustments.

**Question 7 – Does the Council agree to leave the sentence levels unchanged for this offence?**

*Aggravating factors*

3.27 Respondents strongly supported the proposed aggravating factors across the guidelines, with only a few comments and suggestions. The only factor that a number of respondents commented on was the aggravating factor of '*Offence motivated by, or demonstrating hostility based on, but not limited to, the victim's age, sex or disability,*' which was included across all the guidelines except for the offence of possessing, breeding, selling, exchanging or advertising a prohibited dog (**Annex E**). Respondents said that all the statutory aggravating factors listed in sections 145 and 146 of the Criminal Justice Act 2003 should be listed. It is recommended therefore that a new factor of '*Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity*' should be placed within the list of statutory aggravating factors, as can be seen on page four of **Annex A**. This would be replicated throughout all the guidelines except for **Annex E**. Within the offence of attacks on assistance dogs, as agreed at the last meeting, a factor regarding offences motivated by a person's disability has been added as a high culpability factor for this offence, as can be seen on page two of **Annex C**, so the reference to disability would be removed from the list of statutory aggravating factors.

3.28 Given the facts of the Craig Greve case discussed earlier in the paper, it is suggested that a factor of '*failure to call for medical assistance*' could be added to the list of aggravating factors for **Annexes A and B**.

3.29 Following the discussion last month, the factor of '*failing to take adequate precautions to stop the dog escaping*' has been removed from the list of aggravating factors, and '*dog known to be prohibited*' has moved to high culpability.

**Question 8 – Does the Council agree to the proposed changes to the aggravating factors?**

*Mitigating factors*

3.30 Respondents supported the majority of the proposed mitigating factors. The most commonly suggested additional mitigating factor was if the dog had acted out of character due to an undiagnosed illness or condition. This was suggested by the MA, RSPCA and the National Bench Chairmen's Forum.

3.31 There was also some support for a mitigating factor regarding the victim being a close friend or relative. The Council will recall that consideration was given to the inclusion of this factor prior to consultation, but on balance it was decided not to include it, as the list is non-exhaustive. However, there was some support for this factor from the Council of Circuit Judges and the Kennel Club, so the Council may wish to reconsider its inclusion.

3.32 A small number of respondents, including the Police and Royal Mail, also suggested that evidence of responsibility following an incident, by voluntarily handing the dog over for destruction, should be included within the list of mitigating factors.

***Question 9 - Does the Council wish to include any of the three additional mitigating factors suggested?***

*Destruction order/contingent destruction orders - offence of possessing a prohibited dog –Annex E*

3.33 During the consultation two organisations suggested that additional wording is included within step six of **Annex E**, for the offence of possessing a prohibited dog, specifically within the text relating to disqualification from having a dog/destruction orders and contingent destruction orders. Lawyers at DEFRA, the department who were responsible for the recent amendments to the legislation suggested that it may be helpful to courts to include some additional wording regarding the fit and proper person test, as this is a new statutory requirement and to clarify that the court is able to appoint a person to undertake destruction in accordance with s.4(4) of the Dangerous Dog Act. The suggested wording can be seen in track changes on page six of **Annex E**.

3.34 The CPS suggested that some wording should be included to guide courts that a fit and proper person must be someone who can demonstrate that they are the owner or person ordinarily in charge of the dog at the time the court considers whether the dog is a danger to public safety. Someone who has previously not been in charge of the dog should not be considered for this assessment because it is an offence under the 1991 Act to gift a prohibited dog. This suggested wording can also be seen in track changes on page six of **Annex E**. This information (except that relating to appointing a person to undertake destruction) would just be contained within the possessing a prohibited dog guideline, the rest of the guidelines would signpost to this guideline if a prohibited dog is involved.

***Question 10 - Does the Council agree with the new wording at step six of the guideline at Annex E?***

#### **4 IMPACT/RISKS**

4.1 As set out earlier in the paper, there are some gaps in the sentencing data and some of the data used to review the sentence ranges are indicative only. However, it is not thought that there is a significant advantage in postponing the work on this guideline, to wait for, or to try to source further data. The gap in the sentencing data is thought to relate to a small number of Crown Court cases only, and any potential impact on correctional resources is thought to be low, given the proportion of offenders that receive custodial sentences. The delay to the timetable would be significant, as the courts will only start recording the missing data in February 2016. Once the definitive guideline is in force, an assessment of whether to evaluate the guideline will be taken, although any evaluation may be limited in its scope due to the lack of time series data for this offence.

4.2 It also remains the case that it would be very challenging to distinguish any changes to sentences as a result of the guideline from those attributable to the introduction of the legislation and the Council will need to bear this in mind when deciding whether to evaluate the guideline.

***Question 11 – Is the Council satisfied that the risks arising from the data limitations do not merit postponing the guideline, and is it content to proceed as planned? Are there any other actions that should be undertaken at this stage?***

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## Annex A

# Dangerous dog offences

### **Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place) where death is caused**

Dangerous Dogs Act 1991 (section 3 (1))

Triable either way

Maximum: 14 years' custody

Offence range: High level community order – 14 years' custody

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## STEP ONE

### Determining the offence category

In order to determine the category the court should assess **culpability** and **harm**. The court should determine the offence category with reference only to the factors in the tables below

The level of **culpability** is determined by weighing up all the factors of the case. **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.**

**Culpability** demonstrated by one or more of the following:

#### A - High culpability:

- Dog used as a weapon or to intimidate people
- [Dog known to be prohibited](#)
- Dog trained to be aggressive
- [Offender disqualified from owning a dog, or failed to respond to official warnings, or to comply with orders concerning the dog](#)

**Deleted:** bred or

**Deleted:** Failure to respond to official warnings or to comply with orders concerning the dog

#### B - Medium culpability:

- All other cases where characteristics for categories A or C are not present, and in particular:
- Failure to respond to warnings or concerns expressed by others about the dog's behaviour
- Failure to act on prior knowledge of the dog's aggressive behaviour
- Lack of safety or control measures taken in situations where an incident could reasonably have been foreseen
- Failure to intervene in the incident (where it would have been reasonable to do so)
- Ill treatment or failure to ensure welfare needs of dog (where connected to the offence and where not charged separately)

#### C - Lesser 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
- Incident could not have reasonably been foreseen by the offender
- Momentary lapse of control/attention

## Harm

There is no variation in the level of harm caused, as by definition the harm involved in an offence where a death is caused is always of the utmost seriousness.

### STEP TWO

#### 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.

<b>High culpability</b>	<b>Starting point</b> 8 years' custody	<b>Category range</b> 6 –14 years' custody
<b>Medium culpability</b>	<b>Starting point</b> 4 years' custody	<b>Category range</b> 2 – 7 years' custody
<b>Lesser culpability</b>	<b>Starting point</b> 1 year's custody	<b>Category range</b> High level community order – 2 years' custody

The court should then consider any adjustment for any aggravating or mitigating factors. Below 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 starting point.

### 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 victim: religion, race, disability, sexual orientation or transgender identity](#)

#### Other aggravating factors:

- Victim is a child or otherwise vulnerable because of personal circumstances.
- More than 1 dog involved
- Location of the offence
- Sustained or repeated attack
- Significant ongoing effect on witness(es)
- Serious injury caused to others who attempted to intervene in the incident
- [Allowing person insufficiently experienced or trained, to be in charge of dog](#)
- [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
- Injury to other animals
- Established evidence of community/wider impact
- Failure to comply with current court orders (other than any referred to at step one)
- Offence committed on licence
- Offences taken into consideration

**Deleted:** <#>Offence motivated by, or demonstrating hostility based on, but not limited to, the victim's age, sex, or disability¶  
<#>Failing to take adequate precautions to prevent dog from escaping¶

**Deleted:** <#>Dog known to be prohibited¶

## Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- No previous complaints against, or incidents involving the dog
- Evidence of responsible ownership
- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address offending behaviour

### 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

#### 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.

### STEP SIX

#### Compensation and ancillary orders

In all cases, the court must 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. The court must give reasons if it decides not to award compensation in such cases.

**Other ancillary orders available include:**

***Disqualification from having a dog***

The court **may** disqualify the offender from having custody of a dog for such period as it thinks fit. 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.

If the dog is a **prohibited dog** refer to the guideline for possession of a prohibited dog in relation to destruction/contingent destruction orders.

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

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

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances

If the court is satisfied that the dog would not constitute a danger to public safety and the dog is not prohibited, it **may** make a contingent destruction requiring the dog be kept under proper control. A contingent destruction order may 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.

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

**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 time spent on bail**

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

## Annex B

### Dangerous dog offences

#### **Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place) where a person is injured**

Dangerous Dogs Act 1991 (section 3 (1))

Triable either way

Maximum: 5 years' custody

Offence range: Discharge – 4 years' custody

---

## STEP ONE

### Determining the offence category

In order to determine the category the court should assess **culpability** and **harm**. The court should determine the offence category with reference only to the factors in the tables below.

The level of culpability is determined by weighing up all the factors of the case. **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.**

**Culpability** demonstrated by one or more of the following:

#### A - High culpability:

- Dog used as a weapon or to intimidate people
- [Dog known to be prohibited](#)
- Dog trained to be aggressive
- [Offender disqualified from owning a dog, or failed to respond to official warnings, or to comply with orders concerning the dog.](#)

**Deleted:** bred or

**Deleted:** Failure to respond to official warnings or to comply with orders concerning the dog

#### B - Medium culpability:

- All other cases where characteristics for categories A or C are not present, and in particular:
- Failure to respond to warnings or concerns expressed by others about the dog's behaviour.
- Failure to act on prior knowledge of the dog's aggressive behaviour
- Lack of safety or control measures taken in situations where an incident could reasonably have been foreseen
- Failure to intervene in the incident (where it would have been reasonable to do so)
- Ill treatment or failure to ensure welfare needs of dog (where connected to the offence and where not charged separately)

#### C - Lesser 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
- Incident could not have been reasonably foreseen by offender
- Momentary lapse of control/attention

## Harm

The level of harm is assessed by weighing up all the factors of the case.

### Category 1

- Serious injury (which includes disease transmission)
- Serious psychological harm

### Category 2

- [Harm that falls between categories 1 and 3](#)

### Category 3

- Minor injury [and no significant psychological harm](#)

**Deleted:** Factors in categories 1 or 3 not present

**STEP TWO**

**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.

**Maximum 5 years custody**

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 1 year 6 months' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> 2 years 6 months' – 4 years' custody	<b>Category range</b> 6 months' – 2 years 6 months' custody	<b>Category range</b> Band C fine – 6 months' custody
Category 2	<b>Starting point</b> 2 years' custody	<b>Starting point</b> High level community order	<b>Starting point</b> Band B fine
	<b>Category range</b> 1 year – 3 years' custody	<b>Category range</b> Band C fine – 1 years' custody	<b>Category range</b> Band A fine – High level community order
Category 3	<b>Starting point</b> 1 year's custody	<b>Starting point</b> Low level community order	<b>Starting point</b> Band A fine
	<b>Category range</b> 6 months' – 1 year 6 months' custody	<b>Category range</b> Band B fine – High level community order	<b>Category range</b> Discharge – Band B fine

- Deleted: High
- Deleted: Medium level community order
- Deleted: C
- Deleted: 6 months' custody
- Deleted: 6 months'
- Deleted: High level community order
- Deleted: B
- Deleted: 6 months
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- Deleted: 2
- Deleted: B
- Deleted: C
- Deleted: 6 months' custody

The table is for single offences. Concurrent sentences will ordinarily be appropriate where offences arise out of the same incident or facts: please refer to the Offences Taken Into Consideration and Totality guideline.

The court should then consider any adjustment for any aggravating or mitigating factors. Below 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 starting point.

## 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 victim: religion, race, disability, sexual orientation or transgender identity](#)

### Other aggravating factors:

- Victim is a child or otherwise vulnerable because of personal circumstances
- More than 1 dog involved
- Location of the offence
- Sustained or repeated attack
- Significant ongoing effect on witness(es)
- Significant practical and financial effects of offence on relatives/carers
- [Allowing person insufficiently experienced or trained, to be in charge of dog](#)
- 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
- Injury to other animals
- Established evidence of community/wider impact
- Failure to comply with current court orders (other than any referred to at step one)
- Offence committed on licence
- Offences taken into consideration

**Deleted:** <#>Offence motivated by, or demonstrating hostility based on, but not limited to, the victim's age, sex, or disability¶  
<#>Failing to take adequate precautions to prevent dog from escaping¶

## Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Isolated incident
- No previous complaints against, or incidents involving the dog
- Evidence of responsible ownership

- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address offending behaviour

### **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**

#### **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.

### **STEP SIX**

#### **Compensation and ancillary orders**

In all cases, the court must 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. The court must give reasons if it decides not to award compensation in such cases.

#### **Other ancillary orders available include:**

#### ***Disqualification from having a dog***

The court **may** disqualify the offender from having custody of a dog. 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.

If the dog is a **prohibited dog** refer to the guideline for possession of a prohibited dog in relation to destruction/contingent destruction orders.

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

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

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances

If the court is satisfied that the dog would not constitute a danger to public safety and the dog is not prohibited, it **may** make a contingent destruction order requiring the dog be kept under proper control. A contingent destruction order may 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.

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

## **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 time spent on bail**

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

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## Annex C

### Dangerous dog offences

**Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place) where an assistance dog is injured or killed**

Dangerous Dogs Act 1991 (section 3 (1))

Triable either way

Maximum: 3 years' custody

Offence range: Discharge – 2 years 6 months' custody

---

## STEP ONE

### Determining the offence category

In order to determine the category the court should assess **culpability** and **harm**. The court should determine the offence category with reference only to the factors in the tables below.

The level of culpability is determined by weighing up all the factors of the case. **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.**

**Culpability** demonstrated by one or more of the following:

#### A - High culpability:

- Dog used as a weapon or to intimidate people or dogs
- Dog known to be prohibited
- Dog trained to be aggressive
- Defendant was disqualified from owning a dog or failed to respond to official warnings or to comply with orders concerning the dog.
- Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

**Deleted:** bred or

**Deleted:** Failure to respond to official warnings or to comply with orders concerning the dog

#### B - Medium culpability:

- All other cases where characteristics for categories A or C are not present, and in particular:
- Failure to respond to warnings or concerns expressed by others about the dog's behaviour
- Failure to act on prior knowledge of the dog's aggressive behaviour.
- Lack of safety or control measures taken in situations where an incident could reasonably have been foreseen
- Failure to intervene in the incident (where it would have been reasonable to do so)
- Ill treatment or failure to ensure welfare needs of the dog (where connected to the offence and where not charged separately)

#### C - Lesser 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
- Incident could not reasonably have been foreseen by the offender
- Momentary lapse of control/ attention

## Harm

The level of harm is assessed by weighing up all the factors of the case.

### Category 1

- Fatality or serious injury to an assistance dog and/or
- Serious impact on the assisted person (whether psychological or other harm caused by the offence).

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### Category 2

- Harm that falls between categories 1 and 3

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### Category 3

- Minor injury to assistance dog and,
- Impact of the offence on the assisted person is limited.

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**STEP TWO**

**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.

**Maximum three years' custody**

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 9 months' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> 1 year – 2 years 6 months' custody	<b>Category range</b> <u>Medium</u> level community order – 1 years' custody	<b>Category range</b> Low level community order – High level community order
<b>Category 2</b>	<b>Starting point</b> 1 year's custody	<b>Starting point</b> High level community order	<b>Starting point</b> Band B fine
	<b>Category range</b> 6 months' – 1 year 6 months' custody	<b>Category range</b> <u>Low</u> level community order – 6 months' custody	<b>Category range</b> Band A fine – Low level community order
<b>Category 3</b>	<b>Starting point</b> 6 months' custody	<b>Starting point</b> Low level community order	<b>Starting point</b> Band A fine
	<b>Category range</b> High level community order – 9 months' custody	<b>Category range</b> Band <u>B</u> fine – High level community order	<b>Category range</b> Discharge – Band B fine

**Deleted:** 6 months'

**Deleted:** High

**Deleted:** Medium

**Deleted:** C

The court should then consider any adjustment for any aggravating or mitigating factors. Below 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 starting point.

## 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 victim: religion, race, sexual orientation or transgender identity](#)

### Other aggravating factors:

- More than 1 dog involved
- Location of the offence
- Sustained or repeated attack
- Significant ongoing effect on witness(es)
- [Allowing person insufficiently experienced or trained, to be in charge of dog](#)
- [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
- Injury to other animals
- Cost of retraining an assistance dog
- Established evidence of community/wider impact
- Failure to comply with current court orders (other than any referred to at step one)
- Offence committed on licence
- Offences taken into consideration

**Deleted:** <#>Offence motivated by, or demonstrating hostility based on, but not limited to, the victim's age, sex or disability¶  
<#>Failing to take adequate precautions to prevent dog from escaping¶

**Deleted:** <#>Dog known to be prohibited¶

## Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Isolated incident
- No previous complaints against, or incidents involving the dog
- Evidence of responsible ownership
- Remorse

- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address offending behaviour

**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**

**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.

**STEP SIX**

**Compensation and ancillary orders**

In all cases, the court must 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. The court must give reasons if it decides not to award compensation in such cases.

**Other ancillary orders available include:**

***Disqualification from having a dog***

The court **may** disqualify the offender from having custody of a dog. 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.

If the dog is a **prohibited dog** refer to the guideline for possession of a prohibited dog in relation to destruction/contingent destruction orders.

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

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

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances

If the court is satisfied that the dog would not constitute a danger to public safety and the dog is not prohibited, it **may** make a contingent destruction requiring the dog be kept under proper control. A contingent destruction order may 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.

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

#### **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 time spent on bail**

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

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## Annex D

### Dangerous dog offences

#### **Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place)**

Dangerous Dogs Act 1991 (section 3 (1))

Triable only summarily

Maximum: 6 months' custody

Offence range: Discharge – 6 months' custody

---

## STEP ONE

### Determining the offence category

In order to determine the category the court should assess **culpability** and **harm**. The court should determine the offence category with reference only to the factors in the tables below.

The level of culpability is determined by weighing up all the factors of the case. **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.**

**Culpability** demonstrated by one or more of the following:

#### A - Higher culpability:

- Dog used as a weapon or to intimidate people
- [Dog known to be prohibited](#)
- Dog trained to be aggressive
- [Offender disqualified from owning a dog, or failed to respond to official warnings, or to comply with orders concerning the dog.](#)

**Deleted:** bred or

**Deleted:** Failure to respond to official warnings or to comply with orders concerning the dog

#### B - 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
- Incident could not have reasonably been foreseen by the offender
- Momentary lapse of control/attention

## Harm

**The level of harm is assessed by weighing up all the factors of the case.**

#### Greater harm

- Presence of children or others who are vulnerable because of personal circumstances
- Injury to other animals

#### Lesser harm

- Low risk to the public

**STEP TWO****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.

**Maximum 6 months' custody**

Harm	Culpability	
	A	B
<b>Greater harm</b>	<b>Starting point</b> Medium level community order  <b>Category range</b> Band C fine – 6 months' custody	<b>Starting point</b> Band B fine  <b>Category range</b> Band A fine – Band C fine
<b>Lesser harm</b>	<b>Starting point</b> Band C fine  <b>Category range</b> Band B fine – Low level community order	<b>Starting point</b> Band A fine  <b>Category range</b> Discharge – Band B fine

The court should then consider any adjustment for any aggravating or mitigating factors. Below 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 starting point.

### 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 victim: religion, race, disability, sexual orientation or transgender identity](#)

#### Other aggravating factors:

- Location of the offence
- Significant ongoing effect on the victim and/or others
- [Failing to take adequate precautions to prevent dog from escaping](#)
- Allowing person insufficiently experienced or trained, to be in charge of dog
- Ill treatment or failure to ensure welfare needs of dog, (where connected to the offence and where not charged separately)
- [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/wider impact
- Failure to comply with current court orders (other than any referred to at step one)
- Offence committed on licence
- Offences taken into consideration

**Deleted:** <#>Offence motivated by, or demonstrating hostility based on, but not limited to, the victim's age, sex, or disability¶

**Deleted:** <#>Dog known to be prohibited¶

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Isolated incident
- No previous complaints against, or incidents involving the dog
- Evidence of responsible ownership
- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address offending behaviour

### **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**

#### **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.

### **STEP SIX**

#### **Compensation and ancillary orders**

In all cases, the court must 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. The court must give reasons if it decides not to award compensation in such cases.

#### **Other ancillary orders available include:**

***Disqualification from having a dog***

The court **may** disqualify the offender from having custody of a dog. 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.

If the dog is a **prohibited dog** refer to the guideline for possession of a prohibited dog in relation to destruction/contingent destruction orders.

If the dog is not prohibited and the court is satisfied that the dog would constitute a danger to public safety the court **may** make a destruction order

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

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:  
other relevant circumstances

Where the dog is not a prohibited dog the court **may** make a contingent destruction order requiring the dog be kept under proper control. A contingent destruction order may 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.

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

**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 time spent on bail**

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

## Annex E

### Dangerous dog offences

#### **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

---

**STEP ONE****Determining the offence category**

In order to determine the category the court should assess **culpability** and **harm**. The court should determine the offence category with reference only to the factors in the tables below.

The level of culpability is determined by weighing up all the factors of the case. **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.**

**Culpability** demonstrated by one or more of the following:

**A - 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

**B - Lower culpability:**

- All other offences

**Harm**

**The level of harm is assessed by weighing up all the factors of the case.**

**Greater harm**

- High risk to the public and/or other animals

**Lesser harm**

- Low risk to the public and/or other animals

**STEP TWO****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.

**Maximum 6 months' custody**

Harm	Culpability	
	A	B
<b>Greater harm</b>	<b>Starting point</b> Medium level community order  <b>Category range</b> Band C fine – 6 months' custody	<b>Starting point</b> Band B fine  <b>Category range</b> Band A fine – Low level community order
<b>Lesser harm</b>	<b>Starting point</b> Band C fine  <b>Category range</b> Band B fine – Medium level community order.	<b>Starting point</b> Band A fine  <b>Category range</b> Discharge – Band B fine

The court should then consider any adjustment for any aggravating or mitigating factors. Below 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 starting point.

### **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:**

- Presence of children or others who are vulnerable because of personal circumstances
- Ill treatment or failure to ensure welfare needs of dog, (where connected to the offence and where not charged separately)
- Established evidence of community/wider impact
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration

### **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
- Evidence of responsible ownership
- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address offending behaviour
- Lapse of time since the offence where this is not the fault of the offender

### **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**

#### **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.

### **STEP SIX**

#### **Compensation and ancillary orders**

In all cases, the court must 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. The court must give reasons if it decides not to award compensation in such cases.

##### **Other ancillary orders available include:**

##### ***Disqualification from having a dog***

The court **may** disqualify the offender from having custody of a dog for such period as it thinks fit. 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.

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

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances

In determining whether a person is a fit and proper person to be in charge of a dog the following non-exhaustive factors may be relevant:

- any relevant previous convictions, cautions or penalty notices;
- the nature and suitability of the premises that the dog is to be kept at by the person;
- where the police have released the dog pending the court's decision whether the person has breached conditions imposed by police; and
- any relevant previous breaches of court orders by the person.

Note: the court must be satisfied that the person who is assessed by the court as a fit and proper person can demonstrate that they are the owner or the person ordinarily in charge of that dog at the time the court is considering whether the dog is a danger to public safety. Someone who has previously not been in charge of the dog should not be considered for this assessment because it is an offence under the Dangerous Dogs Act 1991 to gift a prohibited dog.

If the court is satisfied that the dog would not constitute a danger to public safety, it **shall** make a contingent destruction order requiring that the dog be exempted from the prohibition on possession or custody within the requisite period.

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

## **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 time spent on bail**

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

**Number of adult offenders sentenced in magistrates' courts for dangerous dog offences covered by the guideline, 2013 and May 2014-April 2015 <sup>1</sup>**

Offence	Jan - Dec 2013		May 2014 - April 2015 <sup>2</sup>	
	Number of offenders sentenced	Proportion of total	Number of offenders sentenced	Proportion of total
Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place) where death is caused	N/A	N/A	0	0%
Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place) where a person is injured	577	61%	514	62%
Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place) where an assistance dog is injured or killed	N/A	N/A	7	1%
Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place)	167	18%	130	16%
Possession of a prohibited dog, breeding, selling, exchanging or advertising a prohibited dog	195	21%	180	22%
<b>Total</b>	<b>939</b>	<b>100%</b>	<b>831</b>	<b>100%</b>

Source: Court Proceedings Database, Ministry of Justice

Notes

- 1) Includes offenders sentenced in magistrates' courts only. This is due to a data coding issue in the Crown Courts, which means that since these new offences came into effect in May 2014, MoJ's Court Proceedings Database is missing cases which were sentenced in the Crown Court.
- 2) Data shown covers the period May 2014 to April 2015, in order to show 12 months of data since the new legislation came into effect.

**Sample of Crown Court cases**

A sample of 21 cases which were committed to the Crown Court either for trial or sentence, in the period January to August 2015, have been analysed. The offences related to being in charge of a dog dangerously out of control, where injury was caused. In the majority of cases, the sentence outcome was within magistrates' courts' sentencing powers.

**Sentence outcomes received by adult offenders sentenced in magistrates' courts for the offence dog out of control causing injury, 2013 and May 2014 - April 2015<sup>1</sup>**

Outcome	Jan - Dec 2013		May 2014 - April 2015 <sup>2,3</sup>	
	Number of offenders	Proportion of total	Number of offenders	Proportion of total
Absolute and conditional discharge	150	26%	120	23%
Fine	221	38%	221	43%
Community order	115	20%	96	19%
Suspended sentence	29	5%	25	5%
Immediate custody	10	2%	1	0%
Otherwise dealt with	52	9%	51	10%
<b>Total</b>	<b>577</b>	<b>100%</b>	<b>514</b>	<b>100%</b>

Source: Court Proceedings Database, Ministry of Justice

Notes

1) Includes offenders sentenced in magistrates' courts only. This is due to a data coding issue in the Crown Courts, which means that since these new offences came into effect in May 2014, MoJ's Court Proceedings Database is missing cases which were sentenced in the Crown Court.

2) Data shown covers the period May 2014 to April 2015, in order to show 12 months of data since the new legislation came into effect.

3) Custodial sentence length was 3 months.

## Annex F

### Sentence outcomes received by adult offenders sentenced in magistrates' courts for the offence dog out of control where an assistance dog is injured or killed, May 2014 - April 2015<sup>1,2</sup>

Outcome	Number of offenders	Proportion of total
Absolute and conditional discharge	2	29%
Fine	2	29%
Community order	3	43%
<b>Total</b>	<b>7</b>	<b>100%</b>

Source: Court Proceedings Database, Ministry of Justice

#### Notes

- 1) Includes offenders sentenced in magistrates' courts only. This is due to a data coding issue in the Crown Courts, which means that since these new offences came into effect in May 2014, MoJ's Court Proceedings Database is missing cases which were sentenced in the Crown Court.
- 2) Data shown covers the period May 2014 to April 2015, in order to show 12 months of data since the new legislation came into effect.

**Sentence outcomes received by adult offenders sentenced in magistrates' courts for the offence dog out of control, no injury caused, 2013 and May 2014 - April 2015<sup>1</sup>**

Outcome	Jan - Dec 2013		May 2014 - April 2015 <sup>2,3</sup>	
	Number of offenders	Proportion of total	Number of offenders	Proportion of total
Absolute and conditional discharge	44	26%	22	17%
Fine	79	47%	80	62%
Community order	26	16%	16	12%
Suspended sentence	0	0%	1	1%
Immediate custody	3	2%	1	1%
Otherwise dealt with	15	9%	10	8%
<b>Total</b>	<b>167</b>	<b>100%</b>	<b>130</b>	<b>100%</b>

Source: Court Proceedings Database, Ministry of Justice

Notes

1) Includes offenders sentenced in magistrates' courts only. This is due to a data coding issue in the Crown Courts, which means that since these new offences came into effect in May 2014, MoJ's Court Proceedings Database is missing cases which were sentenced in the Crown Court.

2) Data shown covers the period May 2014 to April 2015, in order to show 12 months of data since the new legislation came into effect.

3) Custodial sentence length was 1 month.

**Sentence outcomes received by adult offenders sentenced in magistrates' courts for offences related to possession of a prohibited dog, 2013 and May 2014 - April 2015<sup>1</sup>**

Outcome	Jan - Dec 2013		May 2014 - April 2015 <sup>2,3</sup>	
	Number of offenders	Proportion of total	Number of offenders	Proportion of total
Absolute and conditional discharge	89	46%	77	43%
Fine	86	44%	71	39%
Community order	14	7%	17	9%
Suspended sentence	3	2%	2	1%
Immediate custody	2	1%	2	1%
Otherwise dealt with	1	1%	11	6%
<b>Total</b>	<b>195</b>	<b>100%</b>	<b>180</b>	<b>100%</b>

Source: Court Proceedings Database, Ministry of Justice

Notes

1) Includes offenders sentenced in magistrates' courts only. This is due to a data coding issue in the Crown Courts, which means that since these new offences came into effect in May 2014, MoJ's Court Proceedings Database is missing cases which were sentenced in the Crown Court.

2) Data shown covers the period May 2014 to April 2015, in order to show 12 months of data since the new legislation came into effect.

3) Custodial sentence lengths were 1 month and 2 months.

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