

Failure to ensure animal welfare

Animal Welfare Act 2006, s.9 (breach of duty of person responsible for animal to ensure welfare)

Effective from: XXXXXX

Triable only summarily

Maximum: Unlimited fine and/or 6 months

Offence range: Band A fine – 26 weeks' custody

Step 1 – Determining the offence category

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

Culpability demonstrated by one or more of the following

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

A High Culpability	<ul style="list-style-type: none"> ● Deliberate or gratuitous attempt to cause suffering ● Prolonged or deliberate ill treatment or neglect ● ill treatment Neglect in a commercial context ● A leading role in illegal activity
B Medium culpability	<ul style="list-style-type: none"> ● All cases not falling into high or low culpability
C Lower culpability	<ul style="list-style-type: none"> ● Well intentioned but incompetent care ● Momentary or brief lapse in judgement ● Involved through coercion, intimidation or exploitation. ● Mental disorder or learning disability, where linked to the commission of the offence

Harm demonstrated by one or more of the following

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

Factors indicating greater harm	<ul style="list-style-type: none"> ● Death or serious injury/harm to animal ● High level of suffering caused
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Factors indicating lesser harm	<ul style="list-style-type: none"> All other cases
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[ALTERNATIVE HARM TABLE]

Factors indicating greater harm	<ul style="list-style-type: none"> Death (including condition necessitating euthanasia) or serious harm to animal; Offence results in a condition which has a substantial and/or lasting effect High level of pain and/or suffering caused
Factors indicating lesser harm	<ul style="list-style-type: none"> All other cases

Step 2 – Starting point and category range

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

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

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

Factors increasing seriousness

Statutory aggravating factors

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the owner/keeper of the animal: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors

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

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity ~~where it affects the responsibility of the offender~~
- Mental disorder or learning disability, where not linked to the commission of the offence
- Sole or primary carer for dependent relatives
- Offender has been given an inappropriate level of trust or responsibility
- Voluntary surrender of animals to authorities
- Cooperation with the investigation
- Isolated incident

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

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

Step 4 – Reduction for guilty pleas

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

Step 5 – Totality principle

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

Step 6 – Compensation and ancillary orders

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

- Ancillary orders – Magistrates' Court

Step 7 – Reasons

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

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

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