

Sentencing Council meeting:
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Lead Council member:
Lead official:

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SC(22)NOV05 – Animal Cruelty
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1 ISSUE

1.1 This is the third meeting to discuss responses to our consultation on the animal cruelty guidelines, with the intention of publishing the final guidelines in spring 2023.

1.2 In this meeting, the Council will be asked to revisit aspects of the s.4-8 guideline, including sentence levels for the most serious offences and how animal fighting offences can be included within scope of the guideline. The Council will also be asked to consider feedback provided on equalities issues and on other miscellaneous issues.

2 RECOMMENDATIONS

2.1 That the Council:

- agrees to increase sentence levels for the most serious animal cruelty offences;
- agrees to keep animal fighting offences within scope of the animal cruelty guideline, but includes caveats to avoid double counting against particular s.8 offences;
- agrees to retain minimal guidance on ancillary orders on the face of the guidelines;
- notes the potential overlap with the new powers for enforcement authorities to issue fixed penalty notices for animal welfare offences;
- notes the responses on equalities issues and other miscellaneous issues that have been raised.

3 CONSIDERATION

Sentence levels

3.1 In the September meeting, the Council agreed to limit the top of the offence range for animal cruelty offences in the s.4-8 guideline to three years' custody. An important consideration in our rationale for recommending retaining this cap was the need to keep sentences for animal cruelty proportionate with violent attacks on human beings.¹ This was despite calls from major stakeholders and members of the public to increase sentence levels

¹ For example, s.47 actual bodily harm has a statutory maximum of five years, and an offence range capped at four years. Grievous bodily harm - unlawful wounding has a statutory maximum of five years and the offence range is capped at 4 years 6 months. By contrast, grievous bodily harm with intent had a statutory maximum of life imprisonment and the offence range is capped at 16 years.

across the table and to bring the top of the offence range into line with the statutory maximum of five years' custody.

3.2 Since the September meeting, Battersea Dogs and Cats Home has publicly called for the Council to increase the top of the range to five years, arguing that the revised guideline should reflect Parliament's intention in raising the statutory maximum and the public's wishes more broadly. We anticipate that other major animal charities will make similar calls for an increase to sentence levels, in addition to having provided strong criticism in response to our consultation (see extracts in Annex A).

3.3 We have also had sight of correspondence sent to MoJ and Defra colleagues from a magistrate arguing that the Council's proposed three year cap thwarts the will of Parliament and that, in practice, going outside of the guidelines is "frowned upon" and can very rarely be justified. It is worth noting that, while multiple respondents referred to the will of Parliament when calling for higher sentences, the Government's justice impact test for the change in statutory maximum did not anticipate a significant increase in sentence levels for s.4-8 offences.

3.4 In the September meeting, we briefly discussed the response to our consultation from the Justice Select Committee (included at Annex B) but would like to revisit its suggestion in light of the renewed calls for an increase to sentence levels:

We would suggest that the Council considers raising the upper end of the highest category to three years and six months and that the starting point is increased to two years for the highest category. We also recommend that the Council includes a reminder above the table, as was included in the recently updated burglary guidelines, that sentences above the top of the range can be appropriate when it would be contrary to the interests of justice to sentence within the relevant category range.

3.5 The JSC's suggestion to increase sentence levels in the most severe cases of animal cruelty sits between the proposals we originally consulted on and calls from stakeholders to go up to the statutory maximum. While increasing the starting point and the top of the category range by six months for box 1A would not necessarily prevent criticism from animal charities or other vocal stakeholders, it would signal that the Council has listened to feedback and acknowledged the strength of feeling relating to this set of offences. Amending box 1A as suggested by the JSC would still also maintain a distinction between animal cruelty offences and violence committed against human beings, though it would narrow this gap somewhat.

3.6 Another aspect of our previous rationale for retaining a three year cap was that, where sentencers have not regularly dealt with an offence, sentences might be skewed towards high or low severity, which may bring a risk of sentence inflation if we were to increase the top of the range significantly. While this still holds true, we do not believe that increasing the top of the range by six months will significantly increase this risk.

3.7 We therefore recommend acting on the JSC’s suggestion for the most serious cases of animal cruelty by uplifting sentences in box 1A by six months. We do not believe that it is necessary to increase sentence levels elsewhere in the table, as there will still be sufficient overlap with the category ranges for boxes 1B and 2A. This would also mirror Parliament’s intention in primarily focusing on the most serious cases of animal cruelty.

3.8 Given that only a small proportion of offenders currently receives immediate custody, and as we do not expect that this change would lead to an increase in the proportion of offenders receiving custodial sentences, it is not anticipated that this will have a significant impact on prison or probation resources. However, any resource impacts will be discussed more fully in the resource assessment which will be circulated at sign off.

3.9 While the JSC has suggested adding in a rubric reminding sentencers that they can step outside prescribed ranges in the interests of justice, the Council made a conscious choice to omit this when approving these guidelines for consultation. We do not think there is a strong argument to revert to the rubric, particularly when more recent Council discussions on other guidelines have reaffirmed this stance. An alternative could be to mirror the approach taken in the manslaughter guideline, where a note is placed below the sentencing table explaining that this is for a single offence of manslaughter resulting in a single fatality and referring to the totality step. This would allow the courts the possibility of passing sentences up to the statutory maximum in cases where multiple animals are harmed or where multiple offences were committed on different occasions.

Question 1: Do you agree to uplift the starting point and the top of the category range for box 1A in the animal cruelty guideline by six months?

	High culpability	Medium culpability	Lower culpability
Category 1	Starting point 1 year 6 months’ 2 years’ custody	Starting point 26 weeks’ custody	Starting point Medium level community order
	Category range 26 weeks’ custody – 3 years 6 months’ custody	Category range High level community order – 1 year’s custody	Category range Low level community order – High level community order
Category 2	Starting point 26 weeks’ custody	Starting point 12 weeks’ custody	Starting point Band C fine

	Category range 18 weeks' – 1 year's custody	Category range Medium level community order – 26 weeks' custody	Category range Band B fine – Low level community order
Category 3	Starting point 12 weeks' custody	Starting point Medium level community order	Starting point Band B fine
	Category range Medium level community order – 26 weeks' custody	Category range Low level community order – High level community order	Category range Band A fine – Band C fine

Animal fighting offences

3.10 s.8 of the Animal Welfare Act covers a range of different offences relating to animal fighting:

- s.8(1) prohibits organising, running or taking part in a fight, including accepting or making bets;
- s.8(2) prohibits attending animals fights;
- s.8(3) prohibits publishing, showing or supplying recordings of animal fights.

3.11 On its website, the RSPCA states that it received over 9,000 reports of organised dog fights between 2015-2020. By contrast, the available sentencing data shows that, over the same time period, only around 20 adults were sentenced for s.8 offences, suggesting that many reports may lack the evidence required for prosecution.

3.12 In the September meeting, the Council asked for further consideration to be given to how animal fighting offences, particularly those under s.8(3), would fit within the proposed culpability table. This followed on from the Chief Magistrate, in his reply to the consultation, querying whether there was a risk of double counting given the nature of the s.8(1)(a) and s.8(3) offence:

A practical observation about two of the non-statutory aggravating factors. The use of another animal is valid as is use of technology to publicise as such factors – but could arguably be double counting if the offence charged was s8 Animal Welfare Act 2006 due to the wording of s8(1)(a) and (3)(a-d) respectively – this perhaps ought to be flagged with a 'save in the case of' or similar.

3.13 Under the [guideline as consulted on](#), the majority of s.8 offences would fall under medium culpability, or potentially high culpability if there was evidence of the offender having a leading role in illegal activity, such as running a large operation to organise dog fights or to

publish and make a significant profit from videos of animal fighting. This would effectively mean that these offences would have a minimum starting point of a medium level community order (as under box 3B in the revised sentencing table). Given the threshold of seriousness required to prosecute one of these cases, and that the nature of this offence means the offender will, in effect, be facilitating and/or promoting animal cruelty, it does not seem disproportionate to place these offences in medium culpability at a minimum.

3.14 In the guideline as consulted on, low culpability factors were intended to cover cases of incompetence or an ill-judged decision on the part of the offender, such as one-off incidents or offending occurring over a short period of time, rather than continued or persistent cruelty. In rare instances, one can imagine these offences falling under the low culpability factor of “momentary or brief lapse in judgement” if, for example, this was an isolated incident where the offender attended a dog fight for the first time or shared a single recording with a small number of others, though it is more likely that this would not reach the courts in the first place.

3.15 An alternative could be to separate out animal fighting offences from the animal cruelty guideline altogether, although, given the low numbers of adults sentenced for this in the past, drafting and consulting on a standalone guideline would require a disproportionate amount of resource compared to other, more pressing work for the Council. On balance, therefore, we suggest retaining the culpability table as proposed and keeping s.8 offences within scope of this guideline.

3.16 In addition, the wording of the proposed aggravating factor on the use of technology/social media to record, publicise or promote cruelty would mean all s.8(3) offences are aggravated by default due to the nature of the offence, which is arguably not the intention of this factor. As such, we recommend including a caveat alongside this factor, “(with the exception of s.8(3) offence)”, to make clear that this does not apply to these cases.

3.17 A similar issue arises for the aggravating factor of “use of another animal to inflict death or injury”, which could cause issues of double counting with the s.8(1)(a) offence of causing an animal fight to take place or attempting to do so, as flagged by the Chief Magistrate, as well as the s.8(1)(f) offence of taking part in an animal fight. We therefore recommend including a caveat of “(with the exception of s.8(1)(a) and (f) offences)” alongside this factor.

Question 2a: Are you content to keep animal fighting offences within scope of the animal cruelty guideline?

Question 2b: Do you agree to add caveats alongside the aggravating factors on using technology to promote animal cruelty and the use of another animal to inflict death/injury, to prevent double counting alongside the relevant s.8 offences?

Miscellaneous issues raised in consultation

Ancillary orders

3.18 Two respondents, World Horse Welfare (WHW) and the academic Mike Radford, wanted clearer guidance on ancillary orders. Radford called for wording to be added to the face of the guidelines to remind sentencers that disqualifications are not a substitute for other penalties for animal cruelty offences, pointing to Scottish legislation as an example. WHW took a different approach, focusing instead on the explanatory guidance on disqualifications rather than the wording on face of the animal cruelty guidelines. WHW called for this guidance to include references and links to the relevant legislation and a reminder to consider whether a disqualification order could minimise the risk of harm to animals. It also made a similar suggestion for the guidance on deprivation orders.

3.19 There is a fine balance to be struck between providing the necessary guidance to sentencers and avoiding making the guidelines overly complex. The proposed guidelines already include a link to the [explanatory materials on disqualifications](#) as standard. It is not clear that further detail from the Act is necessary on the face of the guidelines, or that this will support sentencers any more than the proposed wording currently does, particularly as the Act provides minimal detail on disqualifications.

3.20 We do, however, believe there is value in revisiting the explanatory materials on disqualifications, to see if further detail could be provided to support sentencers. The materials provide minimal guidance, primarily setting out the court's responsibilities when disqualifying offenders from keeping animals and making reference to relevant sections of the Animal Welfare Act. There is also currently no guidance on disqualifications from keeping animals in the Crown Court Compendium, as these offences were previously summary-only. With s.4-8 offences now being triable either way, this may be a timely point to consider what further guidance could be offered to sentencers. If the Council is content with this approach, we could bring draft wording for sign-off alongside finalised versions of the guidelines in early 2023.

Question 3: Are you content to retain minimal guidance to sentencers regarding ancillary orders on the face of the guidelines, and to instead review the guidance on disqualifications provided in the explanatory materials?

Fixed penalty notices

3.21 The National Farmers' Union (NFU) and one other respondent flagged the [Animals \(Penalty Notices\) Act 2022](#), calling for the Council to consider how sentences, particularly in cases of low culpability/low harm, might overlap with the new powers to hand out fixed penalty notices of up to £5,000.

3.22 The 2022 Act is intended to strengthen enforcement measures for offences that do not quite reach the threshold for prosecution, but which are too severe for a warning. Parliamentary debates during the passing of the Act suggest the target of this change will primarily be technical transgressions, such as farmers failing to record their livestock's movements or breeders not microchipping their cats. While s.4-9 animal cruelty offences were originally proposed within the scope of these new powers, stakeholders have voiced concern that this would effectively downgrade animal cruelty offences, and they may yet be removed altogether.

3.23 Given the upper limit of £5,000 for these new FPNs, there is certainly the potential for these penalties, particularly at the upper end, to be greater in value than the fines included in the guidelines at the lower end of offence severity (both guidelines include starting points of Band B to Band C fines which are 100% and 150% of relevant weekly income respectively). However, given the differing purpose of a fixed penalty to a court-ordered fine, this would be justifiable.

3.24 Defra is yet to provide guidance via secondary legislation on exactly which offences the new powers will apply to and the levels of penalties that will be available to enforcement authorities. It does not anticipate that this will be laid before December 2023, following a public consultation. Given this ambiguity, we do not recommend making any pre-emptive changes to the sentencing tables to prevent the appearance of any overlap.

Other issues

3.25 Four members of the public raised the issue of fireworks, citing the negative impact these can have on animals. Where fireworks are used to cause intentional suffering or injury to animals, by being thrown at them, for example, this will likely already be captured by the proposed aggravating factor of "use of a weapon".

3.26 Two magistrates provided positive feedback on the guidelines in general and were supportive of the aim to provide clear, consistent guidance to sentencers. One additional magistrate called for guidelines to be provided for all offences.

Equalities issues raised during consultation

3.27 In line with standard practice, our consultation featured three questions on equalities issues. We received 23 responses across these questions.

Potential discrepancies

3.28 One respondent highlighted that cruelty to animals was likely to have a much greater impact on the owner – where they were not responsible for the offence – if they were disabled and relied on the animal as a support animal or guide dog. The guidelines already reflect this additional impact through the proposed aggravating factor of “animal being used in public service or as an assistance dog”.

3.29 Two respondents also raised the issue of religious slaughter, querying whether this should in fact be considered an act of cruelty, given the non-stun methods used in both kosher and halal slaughter. This was also raised as a general point by one sentencer during road testing interviews. Kosher and halal slaughter methods are protected under separate legislation (the Welfare of Animals (Slaughter or Killing) Regulations 1995), though this sets out that these animals should still be treated humanely. Parliamentary debates from 2014 also reaffirmed that the Animal Welfare Act 2006 is overarching. As such, instances where these animals are subjected to suffering or cruelty will already be captured by the factors proposed in the guidelines, including the culpability factor of “ill treatment in a commercial context”.

3.30 The NFU flagged that the s.9 guideline was too lenient when compared to the s.4-8 guideline, although, as they are intended to cover different offences with very different statutory maximum sentences, this is justifiable. Similarly, the RSPCA argued that cruelty in a commercial context should not be treated more leniently than that in a domestic context. With the proposed factors on offending occurring in a commercial context sitting in medium or high culpability, there does not appear to be a significant risk of disproportionality between the contexts in which cruelty or neglect occurs.

3.31 Two respondents also argued for better recording of ethnicity data for offenders, either on the grounds of the overrepresentation of ethnic minority groups within the justice system, or on the basis that this was necessary to better understand the profile of offenders in cases of animal cruelty or neglect.

Gypsy, Roma and Traveller Communities

3.32 Two respondents highlighted the impact of the guidelines on Gypsy, Roma and Traveller (GRT) communities. WHW cited a media and more general societal bias against GRT communities in cases of animal cruelty when compared to other owners of horses. WHW also urged the Council to consider how it could ensure that juries in cases heard in the Crown Court could deliver verdicts based on the facts of each case, rather than be swayed by bias. In addition, the London Criminal Courts Solicitors Association queried whether

consideration had been given to the potential disproportionate impact on GRT communities in drafting the guidelines.

3.33 In line with standard practice for guidelines, we have signposted to the Equal Treatment Bench Book at the top of both of the revised guidelines. Where data has been available, we have also considered the equalities impacts of the proposals on different ethnic groups, though this data also includes high proportions of unknown ethnicity, making it difficult to draw any meaningful conclusions. We do not know, therefore, what further information would be relevant to sentencing and worth including on the face of the guideline.

Vulnerable offenders

3.34 IVC Evidensia, a veterinary organisation, argued that financial penalties were inappropriate for offenders who do not have financial resources and where this was the original cause of the offending. It suggested that community orders or disqualifications be used as an alternative sentence. WHW made similar suggestions for offenders who were vulnerable due to age or illness, and where this resulted in neglect of their animals.

3.35 In the proposed guidelines, we include the standard drop down guidance on fines, setting out that sentencers must consider the financial means of the offender. While we do not explicitly include financial vulnerability as a mitigating factor on the face of the guidelines, where this has been a primary cause of the offending, sentencers can take this into consideration. As such, we do not suggest including any further mitigation on the face of the guidelines.

4 IMPACTS AND RISKS

4.1 The impacts and risks of the proposed changes to the sentencing table have been outlined earlier in this paper. We do not anticipate that other recommended changes to the aggravating factors will have a significant impact on prison or probation resource.

4.2 A full resource assessment will be prepared for the Council to review alongside the final guidelines at the point of sign off.

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Annex A: Select responses to our proposals for s.4-8 animal cruelty sentence levels

RSPCA:

Generally yes although we feel the category range for 1A offences should be changed to 52 weeks to 4 years. As Magistrates now have the powers to give longer sentences we feel there should be a higher category range for the most serious offences. The starting point for category 1A offences could then be increased proportionally.

We would consider the higher category range to be applicable to those most serious offences such as (but not limited to): serious violence including torture (such as burning with cigarettes), use of a weapon, e.g. bolt gun, crossbow, serious abuse for self gratification, causing repeated serious injuries and serious non-accidental injury (NAI), purposefully administering unlawful drugs which has serious effects on the animal, animal fighting resulting in serious injury to animals.

Battersea Dogs and Cats Home:

It is unclear why it was deemed appropriate to compare animal cruelty sentencing with other sentencing practices not related to the Parliamentary Act, which increased the maximum sentence tenfold in accordance with the will of Parliament. Given the transformative change, and the clear intention of the Act, these comparisons are of limited value and unnecessary.

Serious animal cruelty offenders are a high risk to the public as well as to animals. Academic studies show they are five times more likely to go on to commit other acts of violence, animal abuse is 11 times more likely around domestic violence and pet abuse is concurrent in 88% of families under supervision for physical abuse of their children. 3 years' custody for a Category 1 high culpability offence, the gravest act of animal cruelty, such as torturing an animal to death fails to recognise this wider risk to the public, and the initial onus for changing the law. A short sentence limits the amount of protection to communities, not only because the most high-risk offenders are in prison for a shorter period, with less opportunity for rehabilitation, but also because the deterrent effect is weaker.

Blue Cross:

...we are concerned and disappointed with the Category 1 High Culpability starting range of 1 year 6 months. With many sentences below two years being suspended and guilty pleas resulting in an automatic reduction by a third of any custodial sentence imposed, it will mean that too many perpetrators will not even receive a custodial sentence. We do not believe this adequately reflects the intent and purpose of the Animal Welfare (Sentencing) Act 2021 or will provide enough protection for animals...

As a pet welfare organisation, we see a number of appalling cruelty cases in both our centres and hospitals each year. Our staff have nursed pets who should have been loved but instead have been deliberately burned; tied up in rubbish bags and left to die; thrown out of moving cars; beaten; starved. These cases are not only obviously deeply traumatic and agonising for the animal but are also extremely distressing and emotionally exhausting for the staff involved. Animals who have endured so much suffering deserve justice that truly reflects the heinous nature of the offence.

Dogs' Trust:

It is extremely disappointing to see that the Sentencing Council has proposed a maximum sentence of three years for the most severe offences sitting under High Culpability and Category 1 harm... We urge the Sentencing Council to amend the proposed guidelines so that these better reflect the serious nature of animal abuse and ensure sentences fit the crime and act as a deterrent to offenders.

Annex A: Select responses to our proposals for s.4-8 animal cruelty sentence levels

... we ran through real-life cases of animal cruelty and determined the sentences they would likely be given, according to the Sentencing Council's proposed starting points and category ranges. The sentences that would likely be given in these cases remain woefully inadequate, many equivalent to the sentences issued when the maximum penalty was 6 months imprisonment, indicating that under the current proposed guidelines little would change.



Justice Committee

The Rt Hon Lord Justice William Davis

Chairman, Sentencing Council

22 September 2022

Dear Lord Justice William Davis,

Congratulations on your appointment as Chairman of the Sentencing Council. We look forward to working with you.

Thank you for giving the Justice Committee the opportunity to respond to the Sentencing Council's consultation on the proposed changes to the animal cruelty guidelines. We are grateful also to the Council for sharing the other responses to the consultation with us in advance of our submission.

The Committee supports the Council's decision to respond to Parliament's enactment of the Animal Welfare (Sentencing) Act 2021 by proposing changes to the animal cruelty guidelines. Parliament's intent in passing that legislation was clear: the maximum penalty for five animal cruelty offences should be increased from six months' custody to five years. As a result, it is vital that the relevant sentencing guidelines are updated accordingly. The Act also changed these offences from summary only to either way offences. The fact that these offences can now be tried in the Crown Court also reflects Parliament's intent that the law should recognise the seriousness of these offences.

In relation to the proposed changes to the culpability factors, we would note that there is a risk of confusion between the proposed new culpability B factor of 'Deliberate disregard for the welfare of the animal (including failure to seek treatment)' and the culpability C factor of 'Well-intentioned but incompetent care'. It would be helpful to amend the culpability B factor to include "including a deliberate failure to seek treatment", as suggested by the legal committee of HM Council of District Judges. The Sentencing Council should also consider whether to take a more consistent approach to the culpability factor of 'ill treatment in a commercial context', as it is a medium culpability factor for animal cruelty offences, but a high culpability factor for the offence of failure to ensure animal welfare.

In relation to the sentencing table, the proposed changes raise an important question as to how sentence levels in this guideline should be changed to reflect the significant increase in the statutory maximum by Parliament. We note that a number of responses to the consultation suggest that the maximum sentences and starting points are too low and do not adequately reflect Parliament's intent in enacting the Animal Welfare (Sentencing) Act 2021. We note that the Council decided to set the upper end of the highest category at three years' custody after examining the sentence ranges for serious child cruelty offences. The consultation explains that a higher category range would therefore be disproportionate in the Council's view.

We appreciate the Council's reasoning and recognise that in determining the sentence levels in a guideline, it is important to have regard to other offences and to ensure that the law is



Justice Committee

proportionate. We also recognise the need to give sentencers flexibility and headroom to go above the maximum sentence in exceptional cases. However, this also needs to be balanced against Parliament's clear intent as expressed in the 2021 Act. We would suggest that the Council considers raising the upper end of the highest category to three years and six months and that the starting point is increased to two years for the highest category. We also recommend that the Council includes a reminder above the table, as was included in the recently updated burglary guidelines, that sentences above the top of the range can be appropriate when it would be contrary to the interests of justice to sentence within the relevant category range. We also suggest that in future it would be of assistance if the consultation could list the specific offences that the Council has used as a means of comparison when determining the appropriate sentences levels.

With regard to the aggravating factors, we recommend that abuse conducted for sexual gratification should be included as an aggravating factor.

The Committee would also ask if the Council considered whether any public engagement events on this guideline would be appropriate. We note that these offences give rise to particular public concern and therefore this consultation could be used as an opportunity for a public event on sentencing. We would be happy to work with the Council to organise such a discussion if that would be helpful.

Your sincerely,

Sir Robert Neill MP
Chair
Justice Committee