



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



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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