

Sentencing Council meeting:
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SC(22)OCT06 – Animal Cruelty
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1 ISSUE

1.1 This is the second meeting to discuss responses to the public consultation on the revised animal cruelty sentencing guidelines. While the first meeting considered the guideline covering offences contrary to sections 4-8 of the Animal Welfare Act 2006 (unnecessary suffering, mutilation, poisoning and animal fighting), this meeting will focus on the guideline for the section 9 offence (failure to ensure animal welfare).

1.2 A further meeting is scheduled for November to consider consultation responses on equalities and other issues, with the intention of publishing the final guidelines in spring 2023.

2 RECOMMENDATIONS

2.1 That the Council:

- agrees to amend the culpability factors to provide more guidance to sentencers;
- approves minor changes to the aggravating factors.

3 CONSIDERATION

Background

3.1 In our public consultation, we included two questions on the standalone guideline for the s.9 offence (the guideline as consulted on is included at Annex A), which remains summary-only, with a statutory maximum sentence of six months' custody. While this is similar to the [existing animal cruelty guideline](#), in the consultation we proposed changes to culpability, aggravating and mitigating factors. We did not propose any changes to harm factors or to the sentencing table.

3.2 The s.9 offence focuses on the failure of the person responsible for an animal to ensure its welfare. The Act outlines the necessary requirements to ensure an animal's needs, including providing a suitable environment and diet, allowing it to exhibit normal behaviour patterns, to be housed with – or apart from – other animals as necessary, and to protect it from suffering and disease. Examples of s.9 offences are included at Annex B.

Culpability

3.3 We received 78 responses to our proposals on culpability for the s.9 guideline. 45 respondents agreed with the changes, including the Justices’ Clerks’ Society, the Legal Committee of the Council of District Judges, the Criminal Sub-Committee of the Council of Circuit Judges and the Magistrates’ Association. 24 respondents provided substantive recommendations for change.

Recommended changes

3.4 Two respondents called for a new aggravating factor to be added where the offender has coerced, intimidated or exploited others to offend. Refuge similarly called for more consideration of how victims of domestic abuse may be forced by abusers to neglect animals. In line with changes to the s.4-8 guideline, and to mirror the low culpability factor of “involved through coercion, intimidation or exploitation”, we recommend adding a new high culpability factor on this issue. The inclusion of the lower culpability factor suggests that this is a common aspect of s.9 cases, and so it seems right to reflect this in higher culpability, to make clear that this type of offending is of the highest severity. This would cover instances where offenders have compelled others to neglect animals, but where the harm caused is not significant enough to tip over into the s.4 offence, such as where offenders coerce their partners into neglecting a family pet, or prevent them from providing high quality feed to their animals.

Question 1a: Do you agree to include a high culpability factor on involving others through intimidation, coercion or exploitation?

3.5 For consistency with the wording used in the animal cruelty guideline, four respondents, including Battersea Dogs and Cats Home, called for the widening of the lower culpability factor of “brief lapse in judgement”, to include a momentary lapse. As this is unlikely to unintentionally widen the scope of cases falling under low culpability, with these terms broadly being interchangeable, we recommend making this amendment.

Question 1b: Do you agree to include a momentary lapse in judgement within low culpability?

<p>A High Culpability</p>	<ul style="list-style-type: none"> • Prolonged or deliberate ill treatment or neglect • Ill treatment or neglect in a commercial context • Leading role in illegal activity • Involvement of others through coercion, intimidation or exploitation
<p>B Medium culpability</p>	<ul style="list-style-type: none"> • Cases that fall between categories A or C because: <ul style="list-style-type: none"> ○ Factors are present in A and C which balance each other out, and/or, ○ The offender’s culpability falls between the factors as described in A and C

<p>C Lower culpability</p>	<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
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Areas of no change

3.6 Respondents made a number of suggestions for new culpability factors, such as the hoarding of animals, refusing to comply with an improvement notice, or deliberately exposing the animal to a high risk of suffering.

3.7 West London Magistrates’ Bench called for factors on financial gain to be included across the table. Rather than include this in culpability, at paragraph 3.22 we have recommended adding it as a new aggravating factor, to allow sentencers more nuance when considering this issue.

3.8 The RSPCA called for consideration of whether the offender failed to provide adequate shelter or housing for the animal. While this is the type of circumstance that is intended to be covered by the s.9 guideline, the proposed table already adequately allows for this to be included within all categories. One can imagine extreme instances of a failure to provide adequate shelter falling under the high culpability factor of “prolonged or deliberate ill treatment or neglect”, while lesser cases may be captured by the lower culpability wording of “well-intentioned but incompetent care”.

We suggest that a specific culpability factor should be accommodating animals in an unsuitable environment, which is a common issue in many section 9 AWA cases. This not only has an impact on the animal(s) but in many cases there can be wider public health impacts, for example pest infestations affecting others, and of course the impact on the public purse due to multi-agency approaches needed to deal with these situations. As such we feel there should be a high culpability where there is a ‘consistently inadequate environment that impacts on the health and welfare of the animal, or others’. (RSPCA)

3.9 There were also calls to define the terms used within culpability, or to provide examples, in line with the feedback received on the s.4-8 guideline. In addition, the RSPCA called for the high culpability factor of prolonged or deliberate ill treatment/neglect to be more clearly distinguished from the s.4 offence, by adding the wording “(falling short of causing suffering)”. It is unclear why this clarification would be necessary, however, and it is our view that the proposed wording for the different guidelines – and the associated sentences available – are clearly distinct.

3.10 For consistency with the s.4-8 guideline, a small number of respondents wanted the s.9 culpability table to include a failure to seek treatment (called for by Battersea, with the Magistrates’ Association instead arguing that this should be an aggravating factor). We do

not believe this additional clarification is necessary and, in any event, a failure to seek treatment could fall under any culpability category depending on whether this was due to incompetence or deliberate neglect. The proposed wording for factors is framed broadly enough to already allow sentencers to consider this issue.

'Prolonged or deliberate ill treatment or neglect' should clarify that this includes failure to provide appropriate veterinary care for animals when it is very clear that the animal's suffering could have been avoided. (*Battersea*)

Question 2a: Do you agree to retain the proposed wording for these culpability factors?

3.11 Similarly, the National Farmers' Union (NFU) and the Justice Select Committee called for consistency in the weighting of the factor "ill treatment in a commercial context" across the two guidelines. In the s.4-8 guideline, this factor sits in medium culpability, while in the s.9 guideline, we have placed it in high culpability. While the desire for consistency across the guidelines is understandable, we do not recommend moving this into medium culpability as the threshold for this offence is lower. It is right that those running commercial operations should be held to high standards given the number of animals they have responsibility for, and that they stand to gain financially. The statutory maximum for this offence is also comparatively low, and so moving this down into medium culpability may impact on sentencing practice.

(We) would like to see more equivalence between the definitions in the animal cruelty guideline and the failure to ensure animal welfare guideline. For example, ill treatment in a commercial context is a category A factor in the failure to ensure animal welfare guideline and a category B factor in the animal cruelty guideline. We query if there is justification for this disparity and would suggest that it should be a category B factor in both cases, since the commerciality of an operation should not prejudice it to harsher penalties. (*NFU*)

Question 2b: Do you agree to retain "ill treatment or neglect in a commercial context" within high culpability?

3.12 In the s.9 guideline, we proposed keeping the medium culpability category as a catch all. The Chief Magistrate, however, suggested that specific factors be added, to provide clarity to sentencers:

The potential difficulty is that medium level culpability can become a catch all, particularly with sentencers being reminded of the ability of culpability factors in A and C to cancel each other out and it may be of greater assistance to sentencers to have articulated medium culpability. The cancelling out defaulting into medium approach can also bring cases into medium that perhaps ought not be there, so care will have to be taken to assess if factors really do cancel each other out.

3.13 While we have adopted this principle in the s.4-8 guideline, we do not believe there is a need to add further detail to the s.9 guideline. This disparity can be justified due to the comparatively low statutory maximum for s.9 offences, with a narrower range of sentences available and a smaller likelihood of significant variation in the sentences handed down.

3.14 If, however, the Council is minded to provide further guidance on medium culpability, factors could be drafted which would stand as less severe versions of those in high culpability, such as “repeated incidents of neglect” (as opposed to “prolonged or deliberate ill treatment or neglect”).

Question 2c: Do you agree to retain medium culpability as a catch-all category?

Harm

3.15 In the consultation, we did not propose any changes to the two-tier harm table. Despite this, six respondents provided their views on this aspect of the guideline. West London Magistrates’ Bench called for a separate consultation on the harm factors, while four respondents, including the Chief Magistrate and the NFU, argued for a three-tier harm table, citing the additional nuance this would allow sentencers to consider.

Whilst we understand the desire of the SC to keep things simple... we have mentioned in previous responses to other SC consultations how having a three-level categorisation of harm is preferable and makes it easier to place a particular case into the appropriate harm level. (*West London Magistrates’ Bench*)

Whilst there is a simplicity to this approach and it echoes what is hinted at in culpability, it leaves each option, high and low, having to cover a broader range of instances than a three-box structure would, so sentencers will have to be alive to making appropriate adjustments within range once a sentencing category has been identified... including a third box for medium harm may be of more assistance. (*Chief Magistrate*)

3.16 Given the low statutory maximum for this offence, and the broad wording of the existing harm factors, we do not believe it is necessary to include an additional category of harm. Adding further gradation, when the top of the sentencing table is capped at six months’ custody, would add unnecessary complexity and may, in fact, make it more challenging for sentencers to identify the most severe cases of neglect or ill treatment.

Question 3: Are you content to retain two categories of harm for this offence?

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

Statutory maximum

3.17 Both the NFU and the Chief Magistrate asked for clarity on the statutory maximum for the s.9 offence, citing the increase in magistrates' sentencing powers:

The NFU seeks clarity on the maximum penalty for the section 9 offence. Section 32(2) of the Animal Welfare Act 2006 states a person guilty of an offence under section 9 shall be liable on summary conviction to (a) imprisonment for a term not exceeding 51 weeks, or (b) a fine not exceeding level 5 on the standard scale, or both. Whereas the failure to ensure animal welfare draft guideline states that the maximum penalty is imprisonment for a term not exceeding 6 months and/or an unlimited fine. (NFU)

The maximum suggested sentence on the draft guideline is only 6.5 months (the draft guidelines were no doubt developed before the increase to sentencing powers in the Magistrates' Court was announced). This still leaves a lot of headroom between the guideline and statutory maxima. (Chief Magistrate)

3.18 We believe this confusion arises from the wording on the face of the Animal Welfare Act, which outlines, at [s.32](#), that the statutory maximum is 51 weeks' custody. However, the limit of six months is imposed by [s.224 of the Sentencing Act](#), which remains unchanged following the increase in magistrates' sentencing powers (which is limited to either way offences).

3.19 To avoid any further confusion, and to clarify that this is not an arbitrary limit imposed by the Council, we would suggest explicitly responding to this feedback. Rather than clarifying this on the face of the guideline, we believe it would be most appropriate to include a short explanation for the six month statutory maximum in the formal consultation response. We can also use this opportunity to explain that a level five fine is unlimited for offences committed after March 2015.

Question 4: Are you content with this approach to clarify the statutory maximum sentence for this offence?

Aggravating and mitigating factors

3.20 We received 76 responses to our proposals for aggravating and mitigating factors for the s.9 guideline. 31 respondents agreed with the changes, including the Blue Cross and the Criminal Sub-Committee of the Council of Circuit Judges.

Recommended changes

3.21 In line with what the Council has provisionally agreed for the s.4-8 guideline, we recommend including a caveat for the aggravating factor of "offender in position of professional responsibility for animals", to prevent double counting alongside the culpability

factor covering ill treatment in a commercial context. This reflects feedback from the Chief Magistrate and the Legal Committee for the Council of District Judges.

3.22 In addition, we also suggest including a new aggravating factor to consider where the offending was motivated by financial gain, but which would not be captured by the high culpability factor of ill treatment/neglect in a commercial context. This is intended to cover instances such as a pet owner breeding from their own dog with the intention of selling the puppies. This aligns with the new factor agreed for the s.4-8 guideline (“motivated by significant financial gain”), which aims to cover off activities leading up to dog fights. For the s.9 offence, however, we have suggested a lower threshold as the amounts of money involved are likely to be lower by comparison.

Question 5a: Do you agree to add a new aggravating factor on financial gain and to caveat factors to avoid double counting?

<i>Other aggravating factors</i>
<ul style="list-style-type: none">• Failure to comply with current court orders• Offence committed on licence or post sentence supervision• Significant number of animals involved• Allowing person of insufficient experience or training to have care of animal(s)• Ignores warning/professional advice/declines to obtain professional advice• Offender in position of professional responsibility for animals (where not already taken into account at step 1)• Motivated by financial gain (where not already taken into account at step 1)• Animal requires significant intervention to recover• Animal being used in public service or as an assistance dog• Distress caused to owner where not responsible for the offence

Areas of no change

3.23 Suggestions for new aggravating factors included consideration of whether the offending occurred within the wider context of domestic abuse, where the offender failed to meet the needs of multiple animals or was previously issued an improvement notice, or where the offending was intended as retaliation against the owner. Many of these are already captured under the proposed culpability and aggravating factors, however, or would risk widening the scope of aggravating factors beyond what the Council originally intended.

3.24 The Magistrates’ Association suggested a new mitigating factor, to consider where severe financial distress has made it difficult for the offender to get help or to provide better conditions. While this is likely to be a common aspect of s.9 cases, we do not feel there is a strong justification for including this on the face of the guideline. One can imagine instances where an offender is in financial distress but has chosen to ignore warnings or has refused to rehome their animals, leading to ongoing neglect and suffering.

3.25 Four respondents, including the RSPCA and Refuge, called for the inclusion of factors reflecting whether the offending occurred in the presence of others, particularly children, or where children were involved in the offending. Given the kinds of cases that will fall under the guideline, it is difficult to see how this would apply to the s.9 offence, whether it would be intended to include cases of children simply seeing neglected animals, or would include cases where children were encouraged to provide poor care to animals. This offence stands apart from s.4-8 offences, where there is more active cruelty committed and where it is right to include consideration of the impact on children or others. On balance, we believe this is unlikely to be a common aspect of s.9 cases, and so we do not recommend acting on this feedback.

3.26 A few respondents also called for more consideration of whether the offender was a professional working with animals: one respondent suggested consideration of whether offender is a para-professional, such as a hoof trimmer, with another suggesting a new factor for cases where the offender holds an animal licence. One animal charity also argued for the factor to be widened to include offenders who are unlicensed or untrained, but who portray themselves as professionals. We do not recommend making these changes as they go beyond what the Council intended in proposing this factor.

Question 5b: Are you content to retain all other aspects of aggravating and mitigating factors as consulted on?

4 IMPACTS AND RISKS

4.1 As the suggested revisions to the s.9 guideline are minimal and primarily focus on providing greater clarity to sentencers, they are not anticipated to have an impact on prison or probation resources. A full resource assessment will be shared with the Council alongside the finalised guidelines for sign off.

Annex A: Failure to ensure animal welfare guideline (as consulted on)

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">• Prolonged or deliberate ill treatment or neglect• Ill treatment or neglect in a commercial context• A leading role in illegal activity
B Medium culpability	<ul style="list-style-type: none">• Cases that fall between categories A or C because:<ul style="list-style-type: none">◦ Factors are present in A and C which balance each other out, and/or,◦ The offender's culpability falls between the factors as described in A and C
C Lower culpability	<ul style="list-style-type: none">• Well-intentioned but incompetent care• 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
Factors indicating lesser harm	<ul style="list-style-type: none"> • All other cases

Step 2 – Starting point and category range

	High culpability	Medium culpability	Lower 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

- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Significant number of animals involved
- Allowing person of insufficient experience or training to have care of animal(s)

- Ignores warning/professional advice/declines to obtain professional advice
- Offender in position of professional responsibility for animals
- Animal requires significant intervention to recover
- Animal being used in public service or as an assistance dog
- Distress caused to owner where not responsible for the offence

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
- 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](#). Where the offence has resulted in personal injury, loss or damage the court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

- 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.

Annex B: Examples of cases of s.9 offending (failure to ensure animal welfare)

- A couple kept several pugs in a kennel that was too small and without proper heating or bedding. They were sentenced for this alongside the s.4 offence for animal cruelty and for unlicensed dog breeding.
- A horse trader who was charged for the neglect/ill treatment of 17 horses that, though not injured, were not being properly looked after, and were kept in such conditions that they would have suffered harm if this remained unchanged. He was also charged for s.4 and s.18 offences for causing suffering.
- Unlicensed breeding of dogs, with 30 puppies kept in cramped and dark crates (though there was no evidence of serious injury).
- A large horse farm, with 130 horses kept in an unsuitable/dirty environment. 14 horses had a serious parasitic infection that hadn't been treated. The offender was also sentenced for a number of other charges under s.4.
- An offender who kept his pet dog outside in an overgrown garden, with only a dilapidated wooden kennel for shelter. He was reported by his neighbours and charged for the s.9 offence.
- A poultry farm where ducks and chickens were kept in dark sheds and without the necessary dry litter. Four ducks were injured and had not been euthanised, and there were 32 duckling carcasses that had not been disposed of.
- An American Bully dog was locked in an office for four days while its owner was travelling. The dog was found walking in its own urine and faeces, and was desperate for food and water.
- A young couple had a cocker spaniel that was emaciated and flea ridden. Upon being telephoned by the RSPCA, the owners panicked and put their dog down the next day, falsely claiming it had cancer.
- Two bull terriers were kept in a yard littered with dog faeces and filled with other hazards. The dogs were not provided with clean water or enough food, and were found scavenging in bins by inspectors.

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