

## Annex C - Animal Cruelty: s.4 Unnecessary suffering road testing

### Introduction

The current animal cruelty guideline covers offences contrary to sections 4 (causing unnecessary suffering), 8 (involvement in an animal fight) and 9 (breach of duty of person responsible for animal to ensure animal welfare) of the Animal Welfare Act 2006. In 2021, Parliament raised the maximum penalty for offences subject to sections 4-8 to five years' custody and changed the mode of trial from summary only to triable either way. For section 9 offences, the statutory maximum remains unchanged, with a statutory maximum of 6 months custody, as summary only.

The Sentencing Council consulted on the decision to create two new guidelines. The first covers offences contrary to sections 4-8 and the second, section 9 alone. As the relevant offences were previously summary offences, a limited number of sentencing transcripts are available. Therefore, it was decided that further research was needed to explore the potential impacts of the new guideline on sentencing practice. As the section 9 guideline remains largely similar to the existing guideline, and sections 5-8 have lower offence volumes, the scope of this research was limited to s.4 of the Animal Welfare Act 2006, unnecessary suffering.

The resource assessment estimated that "the increase in the statutory maximum reflected in the guideline may result in an increase in sentence severity for a very small subset of offences at the highest end of severity, for offending contrary to sections 4-8"<sup>1</sup>. However, as there are only a small number of these offences and a small proportion of these result in custodial sentences, it was estimated that the guideline was unlikely to have a significant impact on prison or probation places. However, as a result of the changes brought about by the Animal Welfare (sentencing) Act outlined above, it was estimated that there may be an increase in the proportion of cases referred to the Crown Court. It is anticipated that a high proportion of cases would remain within the eligible threshold for a suspended sentence.

### Methodology

Participants were randomly selected from the Council's research pool. Fourteen qualitative interviews with seven magistrates and seven Circuit Judges, were conducted via MS Teams. Sentencers considered two hypothetical sentencing scenarios (A and B) relating to s.4, Unnecessary suffering, using the animal cruelty draft guideline. Following the consideration of Scenario A, brief additional information was shared with sentencers to assess the level of severity at which a case would be committed to the Crown Court as well as the impact of additional factors on the final sentence.

Sentencers with experience of animal cruelty cases were asked additional questions, to inform an assessment of the impact that the introduction of the guideline may have on allocation and sentencing severity, as well as whether the guideline reflects the levels of seriousness of cases seen within the courts. Responses are outlined later in this report.

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<sup>1</sup> [Animal cruelty consultation stage resource assessment \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk/resources/animal-cruelty-consultation-stage-resource-assessment/)

## Findings

### Key findings:

- The draft guideline road tested well, and judges and magistrates found it to be clear and useable.
- Scenario A: Just over half of participants categorised the scenario as expected by policy. Variation occurred primarily in the categorization of harm. Due to uncertainty surrounding the subjectivity of the factors, two sentencers stated the scenario to be borderline of two categories. Following the additional information, the majority of participants categorised harm to be high, rather than medium as expected. Due to this, final sentences appear elevated in comparison to that expected.
- Scenario B: Variation against what was expected occurred in the categorisation of culpability in the scenario, with the majority of sentencers selecting high culpability rather than medium as was expected by policy. Similarly to scenario A, it is due to this that the final sentences appear elevated compared to what was expected. Little variation in harm was observed, however, four sentencers unexpectedly considered “multiple” or “substantial” numbers of animals involved to be a question of harm, rather than aggravation.
- The proposed factors for culpability and harm were largely accepted by participants. A general concern of subjectivity was raised regarding the medium and high factors within culpability and harm. A further point was made by multiple sentencers for increased clarity between factors which appear similar in wording across two categories. For example, “use of very significant force” in high culpability in comparison to “use of significant force” which is in medium culpability (more details can be found on page 17). One sentencer suggested that the aggravating factor “use of a weapon” may be better placed in culpability.
- Aggravating and mitigating factors were applied consistently across the scenarios and were considered to be appropriate and comprehensive. A large proportion of sentencers expressed their surprise that the following factor did not appear in the guideline: “commission of offence whilst under the influence of alcohol or drugs”. However, sentencers acknowledged that the list of factors is not exhaustive.
- The sentencing table was widely accepted. A small number of amendments were suggested which are outlined on page 18 of this report. The theme of a need for proportionality of animal cruelty and the assault guidelines presented across multiple interviews.
- Half of the participants in the exercise had previous experience of sentencing cases of animal cruelty. Amongst these participants, it was generally thought that the proposed starting points reflected the level of seriousness of cases seen in court and that, in the context of the increase in the statutory maximum, sentencing severity for the offence could increase. However, due to the recent increase in magistrates’ sentencing powers it was thought that the majority of cases would remain in the magistrates’ court – reserving the most serious cases to be committed to the Crown Court.
- The majority of sentencers were content that there were not any phrases within the guideline that could contribute to possible disparities in sentencing. Small points were noted surrounding disparity between the private individual and farmer as well as consistency in the application of the guideline for rural and urban cases.

## Scenario A

A 25-year-old male with no previous convictions repeatedly punched and slapped his medium-sized pet dog on the head and used his phone to record the incident in a 10-minute video in which he could be heard laughing. The offender had been drinking heavily and the dog was hit with enough force to become dizzy. Immediately after the incident, the offender emailed the video to a friend and made jokes about teaching his dog to be obedient. He then went to bed for the night showing no concern for the dog's health.

The partner of the offender's friend contacted the RSPCA to report her concerns about the dog's welfare. After the dog was seized by the RSPCA, a medical examination showed fractures to its skull.

At arrest, the offender acknowledged that what he did was wrong, admitting that he perhaps "went a little too far" and pleading guilty at the earliest opportunity. A pre-sentence report showed that he accepted responsibility and co-operated fully with the RSPCA in getting the dog rehomed after the incident. It also showed an insight into his offending, including the link with alcohol, and that he was at a low risk of reoffending character. The dog fully recovered from its physical injuries but was left acting withdrawn and anxious around humans; it has since been rehomed with a family and is said to be doing well.

Scenario A was expected to be placed in category B2, with a 12 weeks' custodial starting point. Use of technology to record the cruelty may aggravate the offence, whilst the offenders' lack of previous convictions and cooperation with the investigation may mitigate. The sentence could be one of 12 weeks, reduced to 8 weeks' post application of credit for a guilty plea.

- Eight of the fourteen participants categorised the scenario to be of category B2, as expected. Of those who did not categorise the scenario as expected, there was a level of variation, displayed below:

Offence categorisation	Number of sentencers (6)
B1	1
B1 or B2	1
B2 or B3	1
B3	1
A2	2

- Two sentencers considered the scenario to constitute the highest level of culpability. The first did so on account of the following factors: Prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour and use of very significant force. The second sentencer considered the following factors: leading role in illegal activity and use of very significant force.
- The sentencer who regarded the scenario to be of a high level of harm did so on account of the assessment of injury to be particularly grave or life-threatening and possibly a very high level of pain and/or suffering caused. The sentencer who selected high/medium harm did so due to uncertainty about whether the level of pain was 'substantial' or 'very high'. Those who selected the lowest category of harm did so because they thought the case was borderline between categories two and three due to the full recovery of the animal.

- Aggravating factors were applied fairly consistently by sentencers. The majority of sentencers stated that they believed that ‘offender under the influence of alcohol’ should appear in the guideline. The following factors were applied: use of technology, use of a weapon, animal requires significant intervention to recover. As the list of aggravating factors in the guideline is not exhaustive, the factors applied broadly reflect those anticipated by the policy team. In a similar nature, mitigating factors were applied fairly consistently. Factors applied included: no previous convictions, remorse, good character, voluntary surrender of animals to authorities, cooperation with investigation, isolated incident, age and/or lack of maturity.
- Final sentences for Scenario A (post application of credit for guilty plea) ranged between a Community Order (HLCO) and 28 weeks custody. The variation in sentence compared with that expected by policy is predominantly thought to be a direct result of the small inconsistency in offence categorisation.
- Overall, participants thought their final sentence using the draft guideline was appropriate and as expected. Two sentencers thought the sentences “*ended up on the low side*”: one, due to not being able to reach the top of the selected category range and the second as the statutory maximum is five years, whereas “no categories go above 3 years”.

### Scenario A – Additional information

The video also showed the dog being thrown against a brick wall. The medical examination later showed that this had shattered its pelvis.

With the additional information, aggravating and mitigating factors were expected to remain consistent with that expected for Scenario A. An elevation was expected of culpability from medium to high account for an increased level of force. Therefore, the offence categorisation would rise from B2 to A2. A slight increase in the level of harm was expected however, due to the broad scope of injuries that may fall within the medium harm category it was anticipated that the additional information would not be categorised as high harm. The final sentence was expected to increase in response to the increased categorisation: 26 weeks’ custody, reduced to 18 weeks’ following the application of credit for guilty plea entered at the earliest opportunity.

Most sentencers did not categorise the extension of Scenario A as expected by policy, with the majority increasing the categorisation of harm. Nine sentencers determined the offence category to be A1, rather than A2 as expected. The categorisation is as follows:

Offence categorisation	Number of sentencers (14)
A1	9
A1 or A2	2
A1 or B1	1
B1	1
B2	1

- One sentencer who categorised culpability as medium did so based on prolonged and/or repeated incidents of cruelty or neglect. The second, did not consider there were any additional harm or culpability factors to be applied over and above those already applied

for the main scenario; however, they stated that they would aggravate the offence. One sentencer considered the classification to be borderline between medium and high culpability.

- The majority of sentencers (11) regarded the additional information for Scenario A to constitute a high level of harm due to the following factors: particularly grave or life-threatening injury or condition caused and a very high level of pain and/or suffering caused. One sentencer applied the factor of death (including injury necessitating euthanasia), as the injuries were likely to lead to euthanasia.
- The majority (13) of final sentences (post application of credit for guilty plea) for the extension of Scenario A ranged between 18 weeks and 1 year and 6 months custody. However, one judge (number five in Table 1) thought there to be justification to go outside the guidelines: *“I would probably take [multiple incidents] as reason to take me outside the guideline. I would probably be going up from the starting point in the guideline right up to the top of the range, if not beyond before adjustment for any mitigating factors”*. The judge imposed a final sentence of 3 years. Two magistrates stated that they would commit the case to the Crown Court for sentence.
- After sharing the additional information, the majority of sentencers increased the categorisation of culpability (12) and harm (10), by one category. It should be noted that the two sentencers who did not increase the category of culpability had already assessed the scenario as high culpability prior to receiving the additional information. As a result, thirteen sentencers increased the final sentence imposed previously for Scenario A. Two magistrates believed that the additional information increased the sentence beyond their powers and would therefore commit the case to the Crown Court. The sentence of five participants also increased such that it now crossed the custody threshold: three increased their sentence from a community order to immediate custody, one increased their sentence from a fine to custody, one from a community order to a suspended sentence order. One sentencer also changed their sentence from a suspended sentence to an immediate custodial sentence. Five sentencers imposed immediate custodial sentences for Scenario A and all increased the length of the sentence after considering the additional information; the extension in relation to the additional information ranged between 8 weeks and 2.5 years. Full details of the sentencing of judges and magistrates’ can be seen in Table 1, below.
- Overall, participants thought their final sentence using the draft guideline was appropriate and as expected. Yet, a few sentencers thought that although the sentence was not considered too high in isolation however, when compared to offences involving assault and similar against humans, “it does seem higher”.

**Table 1: Scenario A**

September 2022

	Culpability	Factors:	Harm	Factors:	Starting point	Aggravation	Mitigation	Pre-GP sentence	Final sentence
Expected <sup>2</sup>	B	<ul style="list-style-type: none"> <li>Deliberate disregard for welfare of animal</li> <li>Deliberate/gratuitous attempt to cause suffering</li> <li>Prolonged incident of cruelty</li> </ul>	2	<ul style="list-style-type: none"> <li>Offence results in an injury or condition which has a substantial and/or lasting effect</li> </ul>	12 weeks'	<ul style="list-style-type: none"> <li>Use of technology</li> </ul>	<ul style="list-style-type: none"> <li>No previous convictions</li> <li>Cooperation with the investigation</li> </ul>	12 weeks'	8 weeks'
	A	<ul style="list-style-type: none"> <li>Use of very significant force</li> </ul>	2	<ul style="list-style-type: none"> <li>Substantial level of pain and/or suffering caused</li> </ul>	26 weeks	No additional	No additional	26 weeks	18 weeks
<b>Circuit Judges</b>									
1 <sup>3</sup>	B	<ul style="list-style-type: none"> <li>Deliberate or gratuitous attempt to cause suffering</li> <li>Prolonged and/or repeated incidents of cruelty or neglect</li> <li>Deliberate disregard for the welfare of the animal</li> </ul>	2	<ul style="list-style-type: none"> <li>Substantial level of pain and/or suffering caused</li> </ul>	12 weeks'	<ul style="list-style-type: none"> <li>Use of technology</li> <li><i>Under the influence of alcohol</i></li> </ul>	<ul style="list-style-type: none"> <li>No previous convictions</li> <li>Cooperation with the investigation</li> </ul>	12 weeks'	HLCO (UPW and curfew)
	A	<ul style="list-style-type: none"> <li>Use of very significant force</li> </ul>	1	<ul style="list-style-type: none"> <li>Offence results in an injury or condition which has a substantial and/or lasting effect</li> </ul>	1 year, 6 months	No additional	No additional	1 year	35 weeks'
2* 4	B	<ul style="list-style-type: none"> <li>Deliberate or gratuitous attempt to cause suffering</li> <li>Prolonged and/or repeated incidents of cruelty or neglect</li> <li>Use of significant force</li> </ul>	2	<ul style="list-style-type: none"> <li>Substantial level of pain and/or suffering caused</li> <li><i>Distress at the time of offence</i></li> </ul>	12 weeks'	<ul style="list-style-type: none"> <li>Use of technology</li> <li><i>Under the influence of alcohol</i></li> </ul>	<ul style="list-style-type: none"> <li>No previous convictions</li> <li>Remorse</li> <li><i>Insight into offending shown</i></li> </ul>	16 weeks'	11/12 weeks'
	A/B	<ul style="list-style-type: none"> <li>Use of very significant force</li> </ul>	1	<ul style="list-style-type: none"> <li>Particularly grave or life-threatening injury or condition caused</li> </ul>	26 weeks	<ul style="list-style-type: none"> <li>Use of a weapon (possibly include)</li> </ul>	No additional	44 weeks – 1 year	30 – 35 weeks
3	B	<ul style="list-style-type: none"> <li>Prolonged and/or repeated incidents of cruelty or neglect</li> </ul>	2	<ul style="list-style-type: none"> <li>Offence results in an injury or condition which has a substantial and/or lasting effect</li> </ul>	12 weeks'	<ul style="list-style-type: none"> <li><i>Under the influence of alcohol</i></li> </ul>	<ul style="list-style-type: none"> <li>Remorse</li> <li><i>Insight into offending shown</i></li> </ul>	MLCO (1 year 6 months) (Ban on ownership)	Fine (UPW)
	A	<ul style="list-style-type: none"> <li>Prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour (probably)</li> </ul>	1	<ul style="list-style-type: none"> <li>Particularly grave or life-threatening injury or condition caused</li> </ul>	1 year 6 months	No additional	No additional	1 year 6 months	1 year 6 months

4*	B	<ul style="list-style-type: none"> <li>Deliberate or gratuitous attempt to cause suffering</li> <li>Momentary or brief lapse in judgement</li> </ul>	2 or 3	<ul style="list-style-type: none"> <li>Offence results in an injury or condition which has a substantial and/or lasting effect</li> </ul>	MLCO (1 year)	<ul style="list-style-type: none"> <li>Use of technology</li> <li><i>Under the influence of alcohol</i></li> </ul>	<ul style="list-style-type: none"> <li>No previous convictions</li> </ul>		CO 1 year (ATR; 80hrs UPW)
	A	<ul style="list-style-type: none"> <li>Use of very significant force</li> </ul>	1 or 2	<ul style="list-style-type: none"> <li>Particularly grave or life-threatening injury or condition caused</li> <li>Very high level of pain and/or suffering caused</li> </ul>	12 weeks	No additional	No additional	1 year	8 months'
5	A	<ul style="list-style-type: none"> <li>Prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour</li> <li>Use of very significant force</li> </ul>	2	<ul style="list-style-type: none"> <li>Offence results in an injury or condition which has a substantial and/or lasting effect</li> </ul>	26 weeks	<ul style="list-style-type: none"> <li>Use of a weapon</li> <li><i>Under the influence of alcohol</i></li> </ul>	<ul style="list-style-type: none"> <li>Remorse</li> <li>Cooperation with the investigation</li> <li>Isolated incident</li> </ul>	42 weeks	28 weeks
	A	No change	1	<ul style="list-style-type: none"> <li>Very high level of pain and/or suffering caused (<i>on more than one occasion</i>)</li> </ul>	5 years	<ul style="list-style-type: none"> <li>Animal requires significant intervention to recover</li> </ul>	No additional	3 years	
6	B	<ul style="list-style-type: none"> <li>Deliberate or gratuitous attempt to cause suffering</li> <li>Prolonged and/or repeated incidents of cruelty or neglect</li> <li>Use of significant force</li> <li>Deliberate disregard for the</li> </ul>	1 or 2	<ul style="list-style-type: none"> <li>Very high level of pain and/or suffering caused OR</li> <li>Substantial level of pain and/or suffering caused</li> </ul>	12 or 26 weeks	<ul style="list-style-type: none"> <li>Use of technology</li> <li><i>Under the influence of alcohol</i></li> </ul>	<ul style="list-style-type: none"> <li>Cooperation with the investigation</li> </ul>	20-26 weeks	12-15 weeks SSO (1 year)
	A	<ul style="list-style-type: none"> <li>Use of very significant force</li> </ul>	1	<ul style="list-style-type: none"> <li>Very high level of pain and/or suffering <i>anticipated</i></li> </ul>	1 year 6 months	<ul style="list-style-type: none"> <li>Animal requires significant intervention to recover</li> </ul>	No additional	1 year 6 months	1 year

<sup>2</sup> Shaded rows display additional sentencing factors considered for Scenario A after the following additional information had been shared with the sentencer: "The video also showed the dog being thrown against a brick wall. The medical examination later showed that this had shattered its pelvis."

<sup>3</sup> Text in italics refers to factors not included within the animal cruelty draft guideline.

<sup>4</sup> \* denotes sentencers with experience of sentencing cases of animal cruelty. However, no particular difference was observed in sentencing practice was observed between those with and those without experience.

7	B	<ul style="list-style-type: none"> <li>Deliberate or gratuitous attempt to cause suffering</li> <li>Prolonged and/or repeated incidents of cruelty or neglect</li> <li>Use of significant force</li> <li>Deliberate disregard for the welfare of the animal</li> </ul>	2	<ul style="list-style-type: none"> <li>Substantial level of pain and/or suffering caused</li> </ul>	12 weeks	<ul style="list-style-type: none"> <li>Use of technology</li> <li><i>Under the influence of alcohol</i></li> </ul>	<ul style="list-style-type: none"> <li>No previous convictions</li> <li>Remorse</li> <li>Voluntary surrender of animals to authorities</li> <li>Cooperation with investigation</li> </ul>	18 weeks	12 weeks SSO (1 year) (100hrs UPW; Deprivation of ownership and prohibit ownership for 5 years)
	B	No change	2	No change (would aggravate)	22 weeks	No additional	No additional	30 weeks	20 weeks SSO (1 year) RAR/ 150hrs UPW
<b>Magistrates'</b>									
8 <sup>5</sup>	B	<ul style="list-style-type: none"> <li>Prolonged and/or repeated incidents of cruelty or neglect</li> </ul>	2	<ul style="list-style-type: none"> <li>Offence results in an injury or condition which has a substantial and/or lasting effect</li> </ul>	12 weeks'	<ul style="list-style-type: none"> <li>Use of technology</li> </ul>	<ul style="list-style-type: none"> <li>No previous convictions</li> <li>Remorse</li> <li>Cooperation with investigation</li> <li>Age and/or lack of maturity</li> <li><i>Low risk of re-offending</i></li> </ul>	12 weeks'	MLCO
	A	<ul style="list-style-type: none"> <li><i>A deliberate act</i></li> </ul>	1	<ul style="list-style-type: none"> <li>Particularly grave or life-threatening injury or condition caused</li> <li>Very high level of pain and/or suffering caused</li> </ul>	1 year 6 months	<ul style="list-style-type: none"> <li>No additional</li> </ul>	<ul style="list-style-type: none"> <li><del>Remorse</del><sup>6</sup></li> </ul>	26 weeks	18 weeks
9*	B	<ul style="list-style-type: none"> <li>Deliberate or gratuitous attempt to cause suffering</li> <li>Use of significant force</li> <li>Deliberate disregard for the welfare of the animal</li> </ul>	1	<ul style="list-style-type: none"> <li>Particularly grave or life-threatening injury or condition caused</li> <li>Very high level of pain and/or suffering caused (possibly include)</li> </ul>	26 weeks	<ul style="list-style-type: none"> <li>Animal requires significant intervention to recover</li> <li><i>Under the influence of alcohol</i></li> </ul>	<ul style="list-style-type: none"> <li>No previous convictions</li> <li>Remorse</li> <li>Cooperation with investigation</li> </ul>	18 weeks	12 weeks
	A	<ul style="list-style-type: none"> <li>Prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour</li> </ul>	1	<ul style="list-style-type: none"> <li>Death (including <i>injury which may necessitate euthanasia</i>)</li> </ul>	26 weeks	<ul style="list-style-type: none"> <li><i>Sustained assault</i></li> </ul>	No additional	Commit to the Crown Court	Commit to the Crown Court

<sup>5</sup> Text in italics refers to factors not included within the animal cruelty draft guideline.

<sup>6</sup> Text with a strikethrough indicates factor(s) considered for Scenario A that were not thought to be relevant following knowledge of the additional information.



10 *	B	<ul style="list-style-type: none"> <li>• Prolonged and/or repeated incidents of cruelty or neglect</li> <li>• Deliberate disregard for the welfare of the animal</li> </ul>	2	<ul style="list-style-type: none"> <li>• Offence results in an injury or condition which has a substantial and/or lasting effect</li> <li>• Substantial level of pain and/or suffering caused</li> </ul>	12 weeks	<ul style="list-style-type: none"> <li>• Use of technology</li> <li>• Animal requires significant intervention to recover</li> </ul>	<ul style="list-style-type: none"> <li>• No previous convictions</li> <li>• Remorse</li> <li>• Good character</li> <li>• Voluntary surrender of animals to authorities</li> <li>• Isolated incident</li> </ul>	12 weeks	12 weeks SSO (12 months) (UPW, banned from ownership for 5 years)
	A	<ul style="list-style-type: none"> <li>• Use of very significant force</li> </ul>	1	<ul style="list-style-type: none"> <li>• Particularly grave or life-threatening injury or condition caused</li> </ul>	1 year 6 months	<ul style="list-style-type: none"> <li>• No additional</li> </ul>	<ul style="list-style-type: none"> <li>• No additional</li> </ul>	2 years	Commit to the Crown Court.
11 *	A	<ul style="list-style-type: none"> <li>• Use of very significant force</li> <li>• Leading role in illegal activity</li> </ul>	2	<ul style="list-style-type: none"> <li>• Offence results in an injury or condition which has a substantial and/or lasting effect</li> </ul>	26 weeks		<ul style="list-style-type: none"> <li>• No previous convictions</li> <li>• Remorse</li> </ul>	26 weeks	1 year 6 months' SSO (2 years)
	A	<ul style="list-style-type: none"> <li>• Prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour</li> </ul>	1	<ul style="list-style-type: none"> <li>• Very high level of pain and/or suffering caused</li> </ul>	1 year 6 months	<ul style="list-style-type: none"> <li>• No additional</li> </ul>	<ul style="list-style-type: none"> <li>• No additional</li> </ul>	1 year 6 months	1 year 6 months SSO (2 years)
12	B	<ul style="list-style-type: none"> <li>• Deliberate or gratuitous attempt to cause suffering</li> <li>• Prolonged and/or repeated incidents of cruelty or neglect</li> <li>• Use of significant force</li> <li>• Deliberate disregard for the welfare of the animal</li> </ul>	3	<ul style="list-style-type: none"> <li>• <i>Full recovery</i></li> </ul>	26 weeks	<ul style="list-style-type: none"> <li>• Use of a weapon</li> <li>• Use of technology</li> </ul>	<ul style="list-style-type: none"> <li>• No previous convictions</li> <li>• Remorse</li> <li>• Good character</li> <li>• Age and/or lack of maturity</li> </ul>	MLCO (UPW 80 - 100hrs)	MLCO (UPW 53-67hrs)
	A	<ul style="list-style-type: none"> <li>• Prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour</li> </ul>	1 or 2	<ul style="list-style-type: none"> <li>• Not stated</li> </ul>	26 weeks	<ul style="list-style-type: none"> <li>• No additional</li> </ul>	<ul style="list-style-type: none"> <li>• No additional</li> </ul>	24 weeks	26 weeks SSO (1 year)
13 *	B	<ul style="list-style-type: none"> <li>• Deliberate or gratuitous attempt to cause suffering</li> <li>• Use of significant force</li> <li>• Deliberate disregard for the welfare of the animal</li> </ul>	2	<ul style="list-style-type: none"> <li>• Substantial level of pain and/or suffering caused</li> </ul>	12 weeks	<ul style="list-style-type: none"> <li>• Use of technology</li> <li>• <i>Under the influence of alcohol</i></li> <li>• <i>Lack of remorse, except for after the event</i></li> </ul>	<ul style="list-style-type: none"> <li>• No previous convictions</li> <li>• Voluntary surrender of animals to authorities</li> <li>• Cooperation with investigation</li> <li>• <i>Accepted responsibility</i></li> </ul>	21 weeks	12 weeks

	A	<ul style="list-style-type: none"> <li>• Use of very significant force</li> </ul>	1	<ul style="list-style-type: none"> <li>• Particularly grave or life-threatening injury or condition caused</li> </ul>	1 year 6 months	<ul style="list-style-type: none"> <li>• No additional</li> </ul>	<ul style="list-style-type: none"> <li>• No additional</li> </ul>	1 year 6 months	1 year
14*	B	<ul style="list-style-type: none"> <li>• Prolonged and/or repeated incidents of cruelty or neglect</li> <li>• Use of significant force</li> </ul>	2	<ul style="list-style-type: none"> <li>• Substantial level of pain and/or suffering caused</li> <li>• <i>No long-term implications</i></li> </ul>	12 weeks	<ul style="list-style-type: none"> <li>• Use of a weapon</li> <li>• Use of technology</li> <li>• Animal requires significant intervention to recover</li> <li>• <i>Under the influence of alcohol</i></li> </ul>	<ul style="list-style-type: none"> <li>• No previous convictions</li> <li>• Cooperation with investigation</li> <li>• Isolated incident</li> </ul>	12 weeks	8 weeks
	B	<ul style="list-style-type: none"> <li>• No additional</li> </ul>	1	<ul style="list-style-type: none"> <li>• Particularly grave or life-threatening injury or condition caused</li> <li>• Very high level of pain and/or suffering caused</li> </ul>	26 weeks	<ul style="list-style-type: none"> <li>• No additional</li> </ul>	<ul style="list-style-type: none"> <li>• No additional</li> </ul>	26 weeks	16 weeks

## Scenario B

The offender, a 47-year-old male with no previous convictions, was found to have caused the death and suffering of turkeys on his poultry farm.

The offender is a poultry farmer with over 25 years' experience. He had previously been visited by the RSPCA after a neighbouring farmer reported ongoing concerns about the neglected appearance of parts of the farm. RSPCA inspectors visited the farm three times over the 12 months prior to the final arrest. On these visits, they had noted cramped and dark housing for the turkey flock and low-quality feed and gave warnings about the wire debris littering the floors of the turkey housing. At each visit, inspectors had offered the offender advice regarding the potential detrimental impact of the environment on animals' health and had suggested ways to improve conditions. Each time, the offender made little attempt to heed any of the advice, instead becoming argumentative and defensive, and complaining about the potential cost of any improvements to the housing. RSPCA inspectors also noted that the offender's flock of 200 chickens, housed in a separate building in much better condition, seemed healthy and well cared for.

The offender was arrested after the neighbouring farmer reported turkey carcasses on the farm. When the RSPCA arrived, they found that 50 turkeys had died over a period of two months, with the surviving flock showing signs of severe stress and heat exhaustion. The offender had dumped the carcasses in a pile behind the turkey housing, making no attempt to dispose of them or to prevent the surviving turkeys from going near the pile. Of the surviving turkeys, 50 were weak and suffering to the point where they had to be euthanised.

When arrested, the offender admitted he could have addressed the risks on his farm but chose not to save money and pleaded guilty at the earliest opportunity. The surviving turkeys have since been moved to neighbouring farms and have fully recovered. The offender has continued to care for his remaining flock of chickens.

Scenario B was expected to be placed in offence category B1 with a 26 weeks' custodial starting point. The following factors were anticipated to aggravate the offence: significant number of animals involved; ignores warning/professional advice/declines to obtain professional advice; and offender in position of professional responsibility for animals. The only expected mitigation was the offenders' lack of previous convictions. The sentence could be that of 48 weeks' custody reduced to 32 weeks' following application of credit for guilty plea.

- Four sentencers selected the expected offence category of B1. Of those who did not, the categorisation is as follows:

Offence categorisation	Number of sentencers (10)
A1	9
B2	1

- The majority of sentencers considered Scenario B to be of high culpability on account of one or more of the following factors: prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour; leading role in illegal activity; ill treatment in commercial context; and the extreme nature of one or more medium culpability factors, as follows: deliberate or gratuitous attempt to cause suffering; deliberate disregard for

the welfare of the animals; use of significant force. A breakdown of sentencing decisions can be seen within the tables on pages 13 - 16.

- Little variance in the categorisation of harm was observed. Sentencers predominantly assessed harm to be high, as expected and applied the following factors: death (including injury necessitating euthanasia), very high level of pain and/or suffering caused, and particularly grave or life-threatening injury or condition caused. However, one sentencer considered the scenario to reflect medium harm, applying the following harm factors: offence results in an injury or condition which has a substantial and/or lasting effect. When outlining their reasoning for the categorisation of harm, four sentencers mentioned cruelty to multiple animals which appears as an aggravating factor ('significant number of animals involved'), rather than harm.
- Final sentences (post application of credit for guilty plea) for Scenario B ranged from a Medium Level Community order to 1 year 4 months' custody. Table 2 displays the sentences imposed. The majority of sentencers were content with the sentence reached through application of the draft guideline. Two sentencers felt that the sentence was too high and two felt that the final sentences were slightly too low.

**Table 2: Scenario B**

September 2022

	Culpability	Factors:	Harm	Factors:	Starting point	Aggravation	Mitigation	Pre-GP sentence	Final sentence
Expected	B	<ul style="list-style-type: none"> <li>• Prolonged and/or repeated incidents of cruelty or neglect</li> <li>• Ill treatment in a commercial context</li> <li>• Deliberate disregard for the welfare of the animal</li> </ul>	1	<ul style="list-style-type: none"> <li>• Death (including injury necessitating euthanasia)</li> </ul>	26 weeks	<ul style="list-style-type: none"> <li>• Significant number of animals involved</li> <li>• Ignores warning/professional advice/declines to obtain professional advice</li> <li>• Offender in position of professional responsibility for animals</li> </ul>	<ul style="list-style-type: none"> <li>• No previous convictions</li> </ul>	48 weeks	32 weeks
	<b>Circuit Judges</b>								
1	A	<ul style="list-style-type: none"> <li>• Deliberate or gratuitous attempt to cause suffering</li> <li>• Prolonged and/or repeated incidents of cruelty or neglect</li> <li>• Ill treatment in a commercial context</li> <li>• Deliberate disregard for the welfare of the animal</li> </ul>	1	<ul style="list-style-type: none"> <li>• Death (including injury necessitating euthanasia)</li> </ul>	1 year 6 months	<ul style="list-style-type: none"> <li>• Significant number of animals involved</li> <li>• Offender in position of professional responsibility for animals</li> </ul>	<ul style="list-style-type: none"> <li>• No previous convictions</li> <li>• Voluntary surrender of animals to authorities (possibly include)</li> </ul>	1 year 9 months	1 year 2 months
2 <sup>7</sup> *	B	<ul style="list-style-type: none"> <li>• Prolonged and/or repeated incidents of cruelty or neglect</li> <li>• Ill treatment in a commercial context</li> <li>• Deliberate disregard for the welfare of the animal</li> </ul>	1	<ul style="list-style-type: none"> <li>• Death (including injury necessitating euthanasia)</li> </ul>	26 weeks	<ul style="list-style-type: none"> <li>• Ignores warning/professional advice/declines to obtain professional advice</li> </ul>	<ul style="list-style-type: none"> <li>• No previous convictions</li> </ul>	1 year	35 weeks
3 <sup>8</sup>	A	<ul style="list-style-type: none"> <li>• Prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour</li> </ul>	1	<ul style="list-style-type: none"> <li>• <i>Multiple</i> death(s) (including injury necessitating euthanasia)</li> </ul>	1 year 6 months	<ul style="list-style-type: none"> <li>• Ignores warning/professional advice/declines to obtain professional advice</li> <li>• Offender in position of professional responsibility for animals</li> </ul>	<ul style="list-style-type: none"> <li>• No previous convictions</li> </ul>	1 year 6 months	1 year SSO
4*	A	<ul style="list-style-type: none"> <li>• Prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour</li> </ul>	1	<ul style="list-style-type: none"> <li>• Death (including injury necessitating euthanasia)</li> </ul>	1 year 6 months	<ul style="list-style-type: none"> <li>• Significant number of animals involved</li> <li>• Ignores warning/professional advice/declines to obtain professional advice</li> </ul>	<ul style="list-style-type: none"> <li>• No previous convictions</li> </ul>	1 year 6 months	1 year
5	A	<ul style="list-style-type: none"> <li>• Deliberate or gratuitous attempt to cause suffering</li> <li>• Ill treatment in a commercial context</li> </ul>	1	<ul style="list-style-type: none"> <li>• Death (including injury necessitating euthanasia)</li> </ul>	1 year 6 months	<ul style="list-style-type: none"> <li>• Significant number of animals involved</li> <li>• Ignores warning/professional advice/declines to obtain professional advice</li> </ul>	<ul style="list-style-type: none"> <li>• Voluntary surrender of animals to authorities</li> </ul>	2 years	1 year 4 months

		<ul style="list-style-type: none"> <li>Deliberate disregard for the welfare of the animal</li> <li>Extreme nature of one or more medium culpability factors</li> </ul>				<ul style="list-style-type: none"> <li>Offender in position of professional responsibility for animals</li> <li>Animal requires significant intervention to recover</li> </ul>	(possibly include)		
6	B	<ul style="list-style-type: none"> <li>Prolonged and/or repeated incidents of cruelty or neglect</li> <li>Ill treatment in a commercial context</li> <li>Deliberate disregard for the welfare of the animal</li> </ul>	1	<ul style="list-style-type: none"> <li>Death of a <i>substantial number of animals</i> (including injury necessitating euthanasia)</li> </ul>	26 weeks	<ul style="list-style-type: none"> <li>Significant number of animals involved</li> <li>Ignores warning/professional advice/declines to obtain professional advice</li> <li>Animal requires significant intervention to recover</li> </ul>	<ul style="list-style-type: none"> <li>No previous convictions</li> <li>Voluntary surrender of animals to authorities</li> <li>Cooperation with investigation</li> </ul>	44 weeks SSO (1 year 3 months)	26 weeks SSO (1 year)
7	A	<ul style="list-style-type: none"> <li>Prolonged and/or repeated incidents of cruelty or neglect</li> <li>Ill treatment in a commercial context</li> <li>Deliberate disregard for the welfare of the animal</li> </ul>	1	<ul style="list-style-type: none"> <li>Death (including injury necessitating euthanasia)</li> </ul>	1 year 6 months <sup>7</sup>	<ul style="list-style-type: none"> <li>Significant number of animals involved</li> <li>Ignores warning/professional advice/declines to obtain professional advice</li> </ul>	<ul style="list-style-type: none"> <li>No previous convictions</li> <li>Good character</li> </ul>	2 years	1 year 4 months <sup>7</sup> SSO (2 years) Deprivation order, disqualification of 15 years. Minimum provision for appeal set to 10 years.
<b>Magistrates<sup>7</sup></b>									
8	A	<ul style="list-style-type: none"> <li>Prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour</li> <li>Ill treatment in a commercial context (possibly include)</li> </ul>	1	<ul style="list-style-type: none"> <li><i>Multiple</i> death(s) (including injury necessitating euthanasia)</li> <li>Very high level of pain and/or suffering caused</li> </ul>	1 year 6 months	<ul style="list-style-type: none"> <li>Significant number of animals involved</li> <li>Ignores warning/professional advice/declines to obtain professional advice</li> <li>Offender in position of professional responsibility for animals</li> <li><i>No evidence of remorse</i></li> </ul>	<ul style="list-style-type: none"> <li>No previous convictions</li> </ul>	1 year 6 months	1 year
9*	B	<ul style="list-style-type: none"> <li>Prolonged and/or repeated incidents of cruelty or neglect</li> </ul>	1	<ul style="list-style-type: none"> <li><i>Multiple</i> death(s) (including injury necessitating euthanasia)</li> </ul>	26 weeks	<ul style="list-style-type: none"> <li>Significant number of animals involved</li> </ul>	<ul style="list-style-type: none"> <li>No previous convictions</li> </ul>	26 weeks	17 or 18 weeks

<sup>7</sup> \* denotes sentencers with experience of sentencing cases of animal cruelty. However, no particular difference was observed in sentencing practice was observed between those with and those without experience.

<sup>8</sup> Text in italics refers to factors not included within the animal cruelty draft guideline.

		<ul style="list-style-type: none"> <li>• Ill treatment in a commercial context</li> </ul>		<ul style="list-style-type: none"> <li>• Very high level of pain and/or suffering caused</li> </ul>		<ul style="list-style-type: none"> <li>• Ignores warning/professional advice/declines to obtain professional advice</li> <li>• Offender in position of professional responsibility for animals</li> </ul>			
10*	B	<ul style="list-style-type: none"> <li>• Prolonged and/or repeated incidents of cruelty or neglect</li> <li>• Ill treatment in a commercial context</li> <li>• Deliberate disregard for the welfare of the animal</li> </ul>	1	<ul style="list-style-type: none"> <li>• Death (including injury necessitating euthanasia)</li> <li>• Particularly grave or life-threatening injury or condition caused</li> <li>• Very high level of pain and/or suffering caused</li> </ul>	26 weeks	<ul style="list-style-type: none"> <li>• Significant number of animals involved</li> <li>• Ignores warning/professional advice/declines to obtain professional advice</li> <li>• Offender in position of professional responsibility for animals</li> <li>• Animal requires significant intervention to recover</li> </ul>	<ul style="list-style-type: none"> <li>• No previous convictions</li> </ul>	1 year	34 weeks (surrender of chickens)
11*	A	<ul style="list-style-type: none"> <li>• Prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour</li> <li>• Leading role in illegal activity</li> </ul>	1	<ul style="list-style-type: none"> <li>• Death (including injury necessitating euthanasia)</li> </ul>	1 year 6 months	<ul style="list-style-type: none"> <li>• Failure to comply with current court orders (possibly include)</li> <li>• Ignores warning/professional advice/declines to obtain professional advice</li> <li>• <i>Impact on surviving animals</i></li> <li>• <i>No regard for incorrect treatment</i></li> </ul>	<ul style="list-style-type: none"> <li>• No previous convictions</li> </ul>	1 year 6 months	Commit to the Crown Court.
12	B	<ul style="list-style-type: none"> <li>• Deliberate or gratuitous attempt to cause suffering</li> <li>• Prolonged and/or repeated incidents of cruelty or neglect</li> <li>• Ignored advice</li> <li>• <i>Offender aware of the impact</i></li> </ul>	2	<ul style="list-style-type: none"> <li>• Offence results in an injury or condition which has a substantial and/or lasting effect</li> </ul>	26 weeks	<ul style="list-style-type: none"> <li>• Ignores warning/professional advice/declines to obtain professional advice</li> <li>• Animal requires significant intervention to recover</li> </ul>	<ul style="list-style-type: none"> <li>• No previous convictions</li> <li>• Good character (possibly include)</li> <li>• Age (no previous convictions in this time)</li> </ul>	26 weeks	MLCO (UPW 80hrs, prosecution costs)
13*	A	<ul style="list-style-type: none"> <li>• Deliberate or gratuitous attempt to cause suffering</li> <li>• Deliberate disregard for the welfare of the animal</li> <li>• The extreme nature of one or more medium culpability factors</li> </ul>	1	<ul style="list-style-type: none"> <li>• Death (including injury necessitating euthanasia)</li> <li>• Particularly grave or life-threatening injury or condition caused</li> </ul>	1 year 6 months	<ul style="list-style-type: none"> <li>• Significant number of animals involved</li> <li>• Ignores warning/professional advice/declines to obtain professional advice</li> <li>• Animal requires significant intervention to recover</li> </ul>	<ul style="list-style-type: none"> <li>• No previous convictions</li> </ul>	2 years	1 year 4 months

14 *	A	<ul style="list-style-type: none"> <li>• Leading role in illegal activity</li> <li>• Prolonged and/or repeated incidents of cruelty or neglect</li> <li>• Ill treatment in a commercial context</li> <li>• The extreme nature of one or more medium culpability factors</li> </ul>	1	<ul style="list-style-type: none"> <li>• Death (including injury necessitating euthanasia)</li> </ul>	1 year 6 months	<ul style="list-style-type: none"> <li>• Significant number of animals involved</li> <li>• Ignores warning/professional advice/declines to obtain professional advice</li> <li>• Offender in position of professional responsibility for animals</li> </ul>	<ul style="list-style-type: none"> <li>• No previous convictions</li> </ul>	Commit to the Crown Court (2 years)	Commit to the Crown Court (1 year 4 months)
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### General comments on the guideline:

- The guideline was considered clear and useable and was one sentencer commented it was *“as helpful as can be”*. Concerns were raised about the possibility of double counting with the combination of factors of ‘ill treatment in a commercial context’ in medium culpability and ‘offender in position of professional responsibility’ in aggravation. Clarity was asked for on the issue of totality relating to whether a case involving more than one animal should be considered as multiple separate offences or as one offence then aggravated to reflect multiple animals.

### Culpability and harm:

- A point of subjectivity was raised by multiple sentencers on the following factors of culpability and harm:
  - ‘Use of very significant force’ in comparison to ‘use of significant force’.
  - ‘Particularly grave or life-threatening injury or condition caused’ in comparison to ‘offence results in an injury or condition which has a substantial and/or lasting effect’.
  - ‘Very high level of pain and/or suffering’ and ‘substantial level of pain and/or suffering’.
  - ‘Serious harm’.
- It was suggested by one sentencer that the factor ‘use of a weapon’ may be better placed in culpability, rather than as a factor increasing seriousness: *“[the] sentencer might be slightly misdirected and get the wrong culpability figure if they're not considering use of a weapon until a further stage”*. Another sentencer thought that the aggravating factor could be amended to the following: ‘use of a weapon or any instrument e.g., crooks or cattle prods’.
- Wording of the header of the harm table was noted to refer to ‘the victim’, rather than ‘the animal’.
- It was suggested by one sentencer that there was a cause for concern around a slight duplication of the two factors ‘prolonged and repeated incidents of cruelty’ and ‘deliberate or gratuitous attempt to cause suffering’.

### Aggravating and mitigating factors:

- Aggravating factors were considered appropriate and comprehensive. Sentencers acknowledged that the list of factors is not exhaustive and therefore other factors may be considered. The majority of sentencers, particularly in the context of Scenario A, expressed surprise that the factor ‘commission of offence whilst under the influence of alcohol or drugs’ was not present in the draft guideline and suggested that this should be included. There was a consensus that the proposed mitigating factors were appropriate and complete.
- One sentencer suggested an additional aggravating factor relating to an offence committed against an emergency services animal: *“a police horse or a police dog by way of example. And people do that – football supporters and demonstrators, the more aggressive ones, do injure emergency service animals”*.

### Starting points:

- The sentencing table was widely accepted. One sentencer expressed their surprise at the lower starting point for A1 in relation to the statutory maximum of 5 years for the offence. In addition, a small number of amendments were suggested as follows (each point was mentioned by only one sentencer):
  1. Culpability could be labelled as A, B or C to “make it easier at a glance” within the sentencing table.
  2. A1 should be “at least 2, if not 2.5 years”.
  3. B2 could be increased to 2 years and the sentencing table graduated accordingly.
  4. 2A should be increased to ‘30 or 36 weeks’.
  5. B1 and 2A *‘feel quite tight’*. As there is a *‘huge range of criminality in both categories’*, the range of B1 could be increased to 18 months.
- A broader issue of need for proportionality with cruelty against humans was raised during discussion in many of the interviews. Many sentencers drew comparisons between the proposed animal cruelty and assault guidelines. Comments included: the starting points felt high across all categories, especially when cross-referenced to assault against the person offences in general: the sentencing table felt disproportionate when compared to assault directed at humans - *“You [are] still sentencing more severely than if we’d seen a section 47 domestic violence attack that had resulted in a fractured skull and or, you know, fractured [pelvis]”*; there should not be a difference in terms of the sentence between the animal equivalent of a s.20 GBH. It was acknowledged that *“there is an element of public horror and opprobrium [in relation to animal cruelty], which I think one shouldn’t be led by, but ... be conscious of. It is well known; I mean people do get very upset about cruelty to animals”*.
- It was noted by multiple sentencers that there is an issue of the nature or type of animal as the victim of a case which is not accounted for within the guideline. One sentencer noted: *“there is a difference between turkeys [as demonstrated in Scenario B] and killing 100 dogs”*, implying that there should be consideration to whether the animal is domesticated or a farm animal.

Half of the participants had experience of sentencing cases of animal cruelty or unnecessary suffering. This subgroup of participants was therefore asked the following additional questions regarding whether: the proposed starting points reflected the level of seriousness of cases seen in court, whether sentencing severity may increase, decrease or stay the same, and whether they thought that the draft guideline could lead to more cases being committed to the Crown Court for sentence.

There was general agreement that the guideline reflected the level of seriousness of cases seen within courts as well as a suggestion that, for the more serious cases, sentencing severity could increase following the introduction of the guideline. However, this was noted within the context of the increase in the statutory maximum. It was thought that most cases could be dealt with in the magistrates’ courts, especially following the recent increase in magistrates’ sentencing powers, reserving the most serious cases to be committed to the Crown Court. In turn, sentencers largely thought that there would not be a large increase in the number of cases committed to the Crown Court for sentence.

## Equality and Diversity

The majority of sentencers were content that there were not any phrases in the guideline that could contribute to possible disparities in sentencing. A few broader points were noted surrounding the following: ensuring consistency in sentencing between rural and urban cases given the differing prevalence and types of cases seen within the court; differences between the type of animal (as outlined above); due to subjectivity, use of the word 'prolonged' within high and medium culpability could risk disparity between the private individual and the farmer: *“One has to be careful that one is not more penalized than the other. The way these great guidelines have [been] drafted, there's still scope for the farmer who has incompetent care [and the private individual]. I don't see any apparent unfairness with it”*.

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