

Animal Cruelty Guidelines

Response to consultation

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Foreword

On behalf of the Sentencing Council, I would like to thank all who responded to our consultation on revisions to the animal cruelty guidelines. I would also like to extend my thanks to the members of the judiciary and magistracy who participated in the sentencing exercises that have helped to shape the final guidelines.

The Council has carefully reviewed the responses it has received from a wide range of respondents, including a significant proportion from members of the public. This consultation response document sets out the changes the Council has made after considering the feedback provided.

Animal cruelty is an emotive issue and the range and the volume of responses we have received reflects this. I hope that these revised guidelines provide sentencers with comprehensive guidance to support the change in the statutory maximum sentence for the most serious cases of animal cruelty.

Lord Justice William Davis

Chairman, Sentencing Council

Introduction

In 2021, Parliament passed the Animal Welfare (Sentencing) Act 2021. This increased the statutory maximum sentence for particular animal cruelty offences from six months' to five years' custody. The offences impacted by the change were:

- Causing unnecessary suffering (section 4, Animal Welfare Act 2006)
- Carrying out a non-exempted mutilation (section 5, Animal Welfare Act 2006)
- Docking the tail of a dog except where permitted (section 6(1) and 6(2), Animal Welfare Act 2006)
- Administering a poison to an animal (section 7, Animal Welfare Act 2006), and
- Involvement in an animal fight (section 8, Animal Welfare Act 2006).

Between May and August 2022, the Sentencing Council held a public consultation on the package of proposals to revise the existing animal cruelty sentencing guideline, to take account of the change in the statutory maximum sentence. The previous guideline has been in place since 2017. The proposed revisions were also intended to provide more detailed guidance to sentencers, particularly in relation to the more severe cases of animal cruelty and neglect, and to reflect current trends in offending.

The Council's aim with the revisions to the guidelines has been to reflect the seriousness of the animal cruelty offences, while ensuring that sentences are proportionate in relation to other offences.

Respondents were broadly supportive of the Council's proposals, but many also offered a number of suggestions to further improve the guidelines. In light of the responses received, the Council has made some changes to the revised guidelines and these are summarised throughout the response document.

Summary of research

To help understand the impacts of the proposed revisions on sentencing practice, 14 qualitative interviews were held with Crown Court judges and magistrates. In these exercises, sentencers were asked to consider two hypothetical scenarios detailing different kinds of animal cruelty. Sentencers were asked to consider how they would assess the offender's culpability and the harm caused, any aggravating and mitigating factors they might apply, and what final sentence they might arrive at for each of the two scenarios.

Findings from these sentencing exercises are discussed at relevant points throughout this document.

Updated data tables and a final resource assessment have been published alongside this consultation response document and the definitive guidelines.

Summary of responses

The consultation received 104 responses. A full list of respondents is included at Annex A.

Breakdown of respondents

Type of respondent	Number
Charity/not for profit organisations	18
Legal professionals	7
Judiciary	28
Academics	1
Government	1
Police/law enforcement	1
Parliament	1
Prosecution	1
Local authority	1
Members of the public	39
Trade unions	1
Veterinary / other animal professionals	3
Victims' representative groups	2
Total	104

Animal cruelty guideline

Background

In the consultation, the Council set out its intention to establish a new guideline for section 4-8 offences. This would group together all the offences impacted by the change in statutory maximum which are now triable either way, meaning they can be heard in the Crown Court or the magistrates' courts, while keeping the summary only section 9 offence, of failing to ensure the needs of an animal are met, in a separate guideline of its own.

Culpability

In the consultation, the Council proposed a number of changes to the culpability factors to clearly separate out those that would apply to the most serious cases of animal cruelty and would take account of the change in the maximum penalty. This included elevating factors on particularly sadistic or extreme cases into high culpability, as well as moving a number of factors down into medium culpability to ensure a graduated step up to the most serious cases. A new mechanism was also proposed for medium culpability, to allow cases to be elevated into high culpability where they were particularly serious/severe.

Respondents provided a number of suggestions to further revise the list of culpability factors.

A small number of respondents, including the RSPCA, called for 'ill treatment in a commercial context' to be moved from medium to high culpability, largely to reflect the financial gain involved in these cases. The West London Magistrates' Bench also suggested that factors should be added across the three levels of culpability to reflect differing degrees of financial gain involved, while the Crown Prosecution Service (CPS) proposed a high culpability factor of 'organised criminal activity'.

We believe that whilst the context/situation in which the offence is committed is important, there should be a more explicit culpability factor addressing offences where financial gain is uppermost in the mind of the offender and the suffering of animals is a consequence and a direct result of this financial gain, be it through a direct action or through inaction.

West London Magistrates' Bench

The Council considered these revisions and felt the wording of culpability factors as consulted on is sufficiently broad, allowing sentencers to take the level of financial gain for the offender into consideration. It has, however, included a new aggravating factor to try to capture instances where substantial financial gain is involved - both anticipated and actual - but which might not otherwise fall under the proposed culpability factor of ill treatment in a commercial context.

Two respondents suggested moving 'use of a weapon' from the list of aggravating factors and into high culpability, and widening the wording to bring weapon equivalents into scope. Moving this into culpability was also suggested by one sentencer during road testing interviews. After consideration, the Council believes this factor is best retained in aggravating factors as this will allow sentencers more nuance in how they apply the factor and to what extent they aggravate a sentence to take account of it. The Council also decided to retain the wording of this factor as consulted on, as this is already sufficiently

broad and would allow sentencers to consider a range of instances where tools used in the everyday handling of animals, such as cattle prods, or other objects have been used to injure or inflict harm on an animal.

A number of respondents from animal charities, the legal sector, and sentencers themselves, called for further clarification of terms used in the factors, either by including examples or explaining the difference between differing degrees of force or cruelty. This was also raised in road testing interviews.

...what constitutes serious cruelty as opposed to cruelty and where is the dividing line? What is the difference between significant force and very significant force, I would have thought that significant force exacerbates the use of force anyway, so what is very significant force? **Magistrate**

After careful consideration, the Council does not believe that adding further clarifications or examples to the culpability table will have the intended effect, particularly given the broad scope of this guideline, and as it is not feasible to provide exhaustive examples. However, in recognition of the feedback received, the Council has agreed to amend the wording of particular medium and high culpability factors, so that there is more of a distinction between these levels of culpability. The high culpability factor of 'prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour' has been split in two, so that 'sadistic behaviour' stands alone. The medium culpability factor of 'deliberate or gratuitous attempt to cause suffering' has been shortened, to remove the word 'gratuitous'.

Six respondents, including Battersea Dogs and Cats Home and the Dogs Trust, called for the inclusion of a new high culpability factor for instances where an offender has coerced, intimidated or exploited others to offend, to mirror the lower culpability factor of 'involved through coercion, intimidation or exploitation'.

We also suggest the addition of a high culpability factor to account for abusive and coercive behaviour. 'Offender coerced / intimidated / manipulated another individual to become involved in animal cruelty'. This would effectively mirror the lower culpability factor 'Involved through coercion, intimidation or exploitation' and account for the behaviour of both the abuser and the individual being abused. **Dogs Trust**

The Council agreed and this has now been added to the list of high culpability factors.

The Legal Committee of HM Council of District Judges (Magistrates' Courts) and the Justice Committee suggested making clear that the inclusion of a failure to seek treatment in medium culpability would only cover instances where this was intentional/deliberate, rather than due to other causes. As this wording is included as part of the wider medium culpability factor of a 'deliberate disregard for the welfare of the animal' the Council believes this is already sufficient, but has agreed to slightly amend the wording to make this clear, with the addition of the word 'by', so that the factor reads 'deliberate disregard for the welfare of the animal (including by failure to seek treatment)'.

Harm

In the consultation, the Council proposed moving from two to three tiers of harm, to allow sentencers to make more nuanced decisions when assessing the impact of an offence, along with a number of new factors to clearly distinguish the differences between the varying levels of harm. A new factor was also proposed for category 2 harm, mentioning

tail docking, ear clipping and mutilation, to reflect the wider animal cruelty offences impacted by the change in the statutory maximum penalty.

12 respondents, including major animal charities, argued for a new harm factor to be added covering the psychological or emotional harm caused to the animal. In addition, the West London Magistrates' Bench called for more consideration of the suffering caused to humans, whether this was emotional distress or financial loss caused to the owners, or where the offence was committed in front of children. More broadly, the Justices' Clerks' Society wanted consideration of cases where distress has deliberately been caused to those who witness the cruelty within harm rather than in aggravating factors.

JCS believes another factor that needs to be considered is distress caused to people who witness the cruelty or its effect particularly where that distress may have been one of the purposes of the cruelty. **Justices' Clerks' Society**

On balance, the Council believes that the wording of existing harm factors is broad enough to include physical and non-physical harm caused to animals, particularly through the inclusion of factors covering suffering and distress. The Council is also of the view that it is right to keep the scope of harm factors focused on the animal(s) that have been harmed, with the distress caused to owners or to children who witness the offending already included within aggravating factors. To clarify that harm factors are intended to focus on animals, the wording 'to animal(s)' has been added alongside factors on pain and/or suffering throughout the table of harm factors, in line with a suggestion from the West London Magistrates' Bench.

Two respondents also suggested changing the category 2 harm factor on mutilation so that it mentions 'ear cropping', rather than 'ear clipping', in reflection of the more commonly used term for this type of animal mutilation. The Council agrees and has revised the factor so that it now reads 'offence results in an injury or condition which has a substantial and/or lasting effect (including cases of tail docking, ear cropping and similar forms of mutilation)'.

Two respondents, including the League Against Cruel Sports, cited concern about the 'intensifiers' used in the harm factors, explaining that these might create gaps between category 1 and 2 harm or cause confusion over how to categorise an offence.

...we question the addition of the intensifier 'very', given the difference in adjectives introduced between category 1 and category 2 in relation to pain and suffering. This may risk creating a gap or grey area between the two categories and too high a bar for offences to fall under the highest category... The same concern applies to the use of the intensifier 'particularly' in the category 1 harm of 'particularly grave' injury. 'Grave' injury could already be regarded as a significant step above an injury or condition which has a 'substantial' effect, as specified in category 2, but it is unclear into which category cases involving such a level of injury would or could fall. **League Against Cruel Sports**

While the Council agrees that clarity is important to ensure the guideline supports sentencers in their decision-making, it also believes that the broad wording of the harm factors will allow sentencers to apply these to a wide range of animal cruelty cases. On balance, the Council agrees to amend the factor 'particularly grave or life-threatening injury or condition caused', to remove the word 'particularly' due to the ambiguity it poses.

Four respondents, including the RSPCA, Battersea Dogs and Cats Home and IVC Evidensia, called for the aggravating factor, 'significant number of animals involved' to be included within harm factors rather than at step two of the guideline, with some suggesting

alternative wording. This was also reflected in road testing interviews, where four sentencers considered the number of animals harmed when assessing the level of harm caused. After consideration, the Council believes that this would be best placed within the list of aggravating factors as it would allow sentencers to apply this factor to cases of varying severity, rather than fixing it within one particular level of harm.

As with the culpability factors, a number of respondents called for the wording of harm factors to be clarified, or for examples to be included, with many focusing particularly on factors describing the pain and suffering of the animal. This was also raised in road testing interviews, where some sentencers expressed uncertainty about whether the pain caused in scenarios was ‘substantial’ or ‘very high’.

If it is decided that the level of pain and suffering is to be split between three categories of harm then there needs to be more clarity on how pain and suffering is measured. With a human victim it is assumed that this does not need to be spelled out in any precise form as it will be humans applying their own understanding to quantify pain and suffering. In animal victims there certainly is plenty of scope for common sense to be applied certainly in terms of physical pain although psychological suffering may need more expert input. **4BB Chambers**

After consideration, the Council believes that the wording of factors as consulted on is appropriate in maintaining a balance between being broad enough to allow sentencers to use their discretion when sentencing the wide range of animal cruelty cases that might pass through the courts, and offering clear guidance on the types of harm that will be evident in these cases. Offering examples or further detail may risk narrowing the scope of the types of cases that would fall under the varying levels of harm, or of limiting sentencers’ ability to consider all the facts of a case.

Sentence levels

In the consultation, the Council proposed increasing the top of the category range for the most serious offences, from six months’ to three years’ custody (with a starting point of 1 year 6 months’ custody), to take account of the changes introduced by the Animal Welfare (Sentencing) Act 2021. The consultation set out the Council’s view that it was necessary to retain some headroom between sentence levels featured on the face of the guideline and the statutory maximum of five years, giving sentencers the opportunity to step outside of the guidelines in rare circumstances where a case may be so severe that it would be in the public interest to do so. This upper cap of three years’ custody was also set in order to maintain a level of proportionality when compared to assaults on human victims. The consultation further explained that other starting points and category ranges across the table were uplifted by a degree behind this, with the exception of cases falling under lower culpability and category 2 and 3 harm.

While some respondents agreed with the sentence levels as set out in the draft guideline, many called for increases to the starting points and category ranges, with five respondents providing alternative tables for consideration.

A number of respondents, including the RSPCA and other animal charities, called for the top of the offence range to be increased further, to four or five years, to better reflect the change in statutory maximum.

... 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. **RSPCA**

Although Battersea recognises the important need for graduated sentences, and recognises the need for a range that better affords Courts flexibility than has historically been the case, Battersea does not agree with the proposed changes to the sentencing table. This is because, virtually across the board, it would lead to lesser penalties than is appropriate, based on the change in legislation, and cases of cruelty that Battersea both sees and that are reported. This was not the intention of Parliament, nor of the public, in seeing the law passed. **Battersea Dogs and Cats Home**

Many respondents, including members of the public, called for sentence levels to increase across the table as a whole, citing the seriousness of this type of offending and the need for the guidelines to recognise this.

The Justice Committee suggested an alternative approach, calling for the top of the category range for the most serious sentences to be raised by six months, to 3 years 6 months' custody, with a similar increase to the starting point for these most severe offences:

... 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 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. **Justice Committee**

By contrast, two respondents called for sentences to be retained as under the existing guideline, or to be maintained at a lower level than assaults on human beings. This consideration was also mirrored in road testing interviews, with many sentencers citing a broader need for proportionality with cruelty against humans, and drawing comparisons between animal cruelty and assault guidelines.

The levels in the old guidelines were perfectly adequate. Category 2 and 3 should remain as they were and should always be deemed suitable for summary trial. Category one sentences are far too high. **Legal professional**

Two further respondents argued that sentences needed to focus on helping to rehabilitate offenders and prevent reoffending, rather than just being punitive.

As an organisation that cares deeply about preventing cruelty, we also wish to see approaches that effectively address and prevent offending. We acknowledge that there have been some truly horrific cases of animal cruelty before the courts in recent times. But we see no point in law changes that, though they may appease the public's outrage, have little practical impact in reducing offending. **The Animal Advocacy Project**

... while we support those who deliberately and unnecessarily cause suffering to their animals receiving a proportionate prison sentence, in the majority of equine welfare cases it is not in the public interest to hand down a custodial sentence. In a good proportion of these cases, the offender will have mitigating factors, as they are often vulnerable... In these situations, we believe that the most appropriate sentence to protect the animals involved (and any future animals) – and help prevent the individual from reoffending – is to issue a deprivation order and a disqualification order. **World Horse Welfare**

The Council gave very detailed consideration to all of the views provided by respondents. It recognises the need to convey the seriousness of animal cruelty offences, and to take account of the will of Parliament in raising the statutory maximum sentence. However, there is also a need to maintain proportionality with assault offences committed against human victims, and to keep animal cruelty distinct from this. As such, the Council has agreed to accept the Justice Committee's suggestion and to increase sentences for the most serious offences by six months, raising the starting point for cases of category 1 harm and high culpability (box 1A in the sentencing table) to two years' custody, and the top of the category range for these offences to 3 years 6 months' custody. The Council does not believe it is feasible to raise sentence levels any further without risking animal cruelty offences being treated as equivalent to violent offences or those involving injury to human victims, such as an assault involving a weapon or resulting in serious physical injury.

In line with a suggestion from the Justices' Clerks' Society and responses from individual magistrates, the Council has also agreed to narrow the gap between boxes 1B and 1C in the sentencing table (category 1 harm and medium/lower culpability) to aid sentencers when assessing cases that may sit on the borderline between culpability levels. To do this, the starting point and the top of the category range for cases of category 1 harm-lower culpability (1C) have been increased, to a medium level community order and a high level community order respectively, while the bottom of the category range for cases of category 1 harm-medium culpability (1B) has been widened to include a high level community order, allowing overlap between boxes.

In recognition of the pain and distress that will have been caused to animals in all cases of category 1 harm, even where the offender has a lower level of culpability, the Council has also agreed to raise the bottom of the category range for box 1C to a low level community order, rather than a Band B fine as consulted on, effectively removing fines from the scope of sentences for all cases involving a higher level of harm.

The revised sentence table will therefore read:

STEP 2 – STARTING POINT AND CATEGORY RANGE			
	High culpability A	Medium culpability B	Lower culpability C
Category 1	Starting point 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	Starting point	Starting point

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

Aggravating and mitigating factors

In the consultation, the Council proposed a number of changes to aggravating and mitigating factors to take account of the new statutory maximum sentence. This included adding in new factors to recognise the seriousness of cases involving a significant number of animals and where the offence was committed in the presence of children, as well as expanding or clarifying existing factors, such as the use of technology, including social media, to promote cruelty, and focusing on those who have a professional responsibility for animals.

As with other aspects of the guideline, a number of respondents called for the wording used in the aggravating factors to be further clarified, to make clear how many animals would count as a 'significant number', who would be considered to have 'professional responsibility' for animals, and what would count as a 'significant intervention' required for an animal to recover from an injury or illness. While the Council understands the desire for greater detail in the guidance provided, it does not believe that further clarification of these aggravating factors is necessary, nor that it will be helpful to sentencers. The list of non-statutory aggravating factors is worded intentionally broadly, to allow sentencers to use their discretion when sentencing a variety of cases involving animal cruelty. The lack of specific examples allows sentencers to tailor these factors to the facts of the cases before them and ensures a necessary amount of flexibility.

The RSPCA suggested the addition of an aggravating factor covering cruelty to wildlife, and the CPS similarly called for consideration of whether an animal had been deliberately trapped or restrained. The Council has considered this and is of the view that an additional factor is unnecessary. The Animal Welfare Act 2006 applies to all animals which are under the control of man and so the guideline as a whole will apply to wild animals where they have been captured or are otherwise in the control of a human being. To further aggravate a case because the animal is wild, rather than domesticated, would risk creating a

hierarchy where harm inflicted on wild animals is treated as more severe than that inflicted on a domesticated animal, which the Council does not feel is justified.

Four respondents called for an additional aggravating factor for offending motivated by commercial and/or financial gain, with some arguing that the guideline as drafted would not necessarily capture activities leading up to commercial or organised illegal activity.

If not included within the factors determining culpability, the receipt of financial benefit from the activity should be added as an aggravating factor. Animal fighting offences may involve a profit motive related, for example, to the fighting record of individual animals, breeding and sale of dogs for fighting, and betting, which may not otherwise be adequately captured by the culpability factor of 'ill treatment in a commercial context'. Concern about the large sums of money that can change hands at dog fighting events was raised by Peers during the passage of the Animal Welfare (Sentencing) Act. **League Against Cruel Sports**

In light of this, the Council has added a new aggravating factor, 'motivated by significant financial gain (where not already taken into account at step 1)'. This is intended to cover offending which may not have strictly occurred within a commercial context, but where the offender stands to gain a substantial amount of money through the offending behaviour, such as breeding dogs for organised fights. A caveat has been included at the end of the factor to ensure that this is not double counted alongside the relevant culpability factors at step one of the guideline.

Five respondents called for offending involving a sexual motive or sexualised abuse to be added as a further aggravating factor. After consideration, the Council does not believe it is necessary to include this as a standalone aggravating factor. While abhorrent, animal cruelty motivated by sexual gratification, of the offender or others, is likely to be captured by the proposed factors at step 1 and 2 of the guidelines. This includes the new high culpability factor of 'sadistic behaviour' and the aggravating factor, 'use of technology, including circulating details/photographs/videos etc of the offence on social media, to record, publicise or promote cruelty'.

During road testing interviews, the majority of sentencers who participated expressed the view that an aggravating factor should be included where the offender was under the influence of alcohol. While the list of non-statutory factors is not intended to be exhaustive, the Council has agreed to add this as a new factor in recognition of the fact this is a common aspect of animal cruelty offending.

More generally, there were a number of suggestions for new aggravating and mitigating factors for the guideline. The Council has carefully considered all of these but will not be making any further additions to the list of non-statutory aggravating or mitigating factors. These lists are not intended to be exhaustive and sentencers can – and do – consider other aspects of the cases before them, aggravating or mitigating sentences accordingly when they feel these will increase or decrease the seriousness of an offence. The Council believes that the lists as consulted on, with the small number of additions outlined above, cover the more common factors that are likely to occur in animal cruelty cases.

A number of sentencers warned of the risk of double counting for particular aggravating factors. The Legal Committee of HM Council of District Judges (Magistrates' Courts) and participants in road testing interviews highlighted the interaction between the medium culpability factor, 'ill treatment in a commercial context', and the aggravating factor, 'offender in position of professional responsibility for animals'. The Council agrees that more guidance may be necessary to minimise this risk, and so a caveat has been added,

'(where not already taken into account at step 1)' to this aggravating factor to prevent double counting.

The Chief Magistrate also raised the risk of double counting in relation to the nature of some of the animal fighting offences, particularly where the wording of the offence itself matches what is covered by aggravating factors.

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 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. **Paul Goldspring, Senior District Judge (Chief Magistrate) of England and Wales**

The Council agrees that there is a risk of a number of animal fighting offences being aggravated by default due to the wording of the aggravating factors as consulted on, which is not the purpose of these factors and would lead to disproportionate sentences for these offences purely due to the specific wording of the offence, rather than due to the harm caused or the culpability of the offender. These are the section 8(1)(a) offence of causing an animal fight to take place or attempting to do so, the section 8(1)(f) offence of taking part in an animal fight, and the section 8(3)(a-d) offences of supplying, publishing, showing or possessing (with the intention of supplying) video recordings of animal fights. To minimise this risk, the Council has added offence specific caveats to the aggravating factors, 'use of technology, including circulating details/photographs/videos etc of the offence on social media, to record, publicise or promote cruelty' and 'use of another animal to inflict death or injury'.

Failure to ensure animal welfare guideline

Background

With searchability in mind, the consultation explained that the standalone section 9 guideline would be titled *Failure to ensure animal welfare*, to make it easier for sentencers and others to find when trying to locate this guideline online. As the statutory maximum sentence for this offence has not changed, the Council also explained its intention to largely retain the wording and layout of the existing guideline, with some changes to make sure it is tailored to this offence specifically.

Culpability

In the consultation, the Council proposed making the list of culpability factors relevant to the section 9 offence, such as removing the factor on a deliberate or gratuitous attempt to cause suffering as that would be better suited to the section 4-8 guideline, and expanding the factor on ill treatment in a commercial context to include neglect. It also suggested adding new factors to mirror in places what has been proposed for the section 4-8 guideline, such as a brief lapse in judgment. The medium culpability factor was also revised so that it could better serve as a catch all, intended to cover instances which fall between high and lower culpability.

Respondents made a number of suggestions for new culpability factors, or for amendments to existing factors, with some making comparisons across to what has been proposed for the section 4-8 guideline.

Two respondents called for a new factor for instances where the offender has coerced others to commit an offence.

We would support the inclusion of the aggravating factor in the section 9 guideline also, in recognition (of the fact) that perpetrators are frequently causing the neglect and ill-treatment of animals through economic abuse and limiting survivors' ability to pay for pet food and veterinary costs. **Refuge**

In line with changes to the animal cruelty (section 4-8) guideline, the Council has agreed to add a new high culpability factor, 'involvement of others through coercion, intimidation or exploitation'.

Four respondents, including Battersea Dogs and Cats Home, called for the lower culpability factor of 'brief lapse in judgement' to be expanded to align with what has been proposed for the animal cruelty (section 4-8) guideline. The Council agrees with the need for consistency in wording across the two guidelines and so has amended the factor to 'momentary or brief lapse in judgement'.

The West London Magistrates' Bench called for any financial gain for the offender to be included in culpability factors. However, as with the animal cruelty (section 4-8) guideline, the Council believes a new aggravating factor, 'motivated by financial gain', would be more

appropriate as it would afford sentencers more nuance when assessing the level of potential or actual financial gain involved.

The RSPCA and one other respondent called for consideration of whether the offender failed to provide adequate shelter or meet other basic needs of the animal within the culpability factors.

... 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. **RSPCA**

After consideration, the Council believes that, while this is the type of circumstance intended to be covered by the section 9 guideline, the broad wording of the culpability factors as drafted already allow for this to be considered by sentencers, such as within the high culpability factor of 'prolonged or deliberate ill treatment or neglect'.

For consistency with the section 4-8 guideline, a small number of respondents, including Battersea Dogs and Cats Home, wanted to see a failure to seek veterinary treatment included within the culpability factors. The Council believes the wording of culpability factors as consulted on is sufficiently broad to allow sentencers to take this into consideration already. A failure to seek treatment could occur for a variety of reasons, depending on whether this was due to incompetence or due to active neglect, and the proposed wording of culpability factors allows flexibility in how sentencers take this aspect of the offending into consideration.

In addition, the National Farmers' Union (NFU) and the Justice Committee called for the factor 'ill treatment in a commercial context' to carry equal weight across the two guidelines.

(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 or encourage lenience for those who are able to argue that they do not operate commercially, e.g. a smallholder. **NFU**

In the guidelines as consulted on, this factor sits in medium culpability in the section 4-8 guideline and in high culpability in the section 9 guideline. While the Council agrees the need for consistency is important, it also believes the difference in weighting is justified given the very different sentence levels for the range of offences covered by the two guidelines. The Council is of the view that it is right that those running commercial operations should be held to high standards in ensuring animal welfare, particularly given the number of animals they have responsibility for, and that they stand to gain financially.

The Chief Magistrate called for more detailed factors to be added to the guideline in order to provide greater clarity to sentencers, in addition to the 'catch-all' factors outlined in the consultation.

...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. **Paul Goldspring, Senior District Judge (Chief Magistrate) of England and Wales**

On balance, the Council does not believe that further detail is needed in this guideline, particularly given the statutory maximum sentence of six months' custody for this offence. Sentence levels are unlikely to vary significantly given the narrow range of sentences available and the Council believes that the simplicity of the proposed wording will be beneficial to sentencers.

Harm and sentence levels

The Council did not propose any changes to harm factors or to sentence levels for this guideline, explaining its view that, as the offence retains a six-month statutory maximum sentence, there would be great benefit in retaining the simplicity of a two-tier harm table for sentencers.

However, a small number of respondents provided their general views on the harm factors and sentence levels for this guideline. Four respondents, including the Chief Magistrate and the NFU, called for a three-tier harm table, citing the additional nuance this would allow sentencers when assessing harm in these cases.

Whilst we understand the desire of the SC to keep things simple (and we agree), 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. Here, since the lower harm level is "All other cases" then there should be no difficulty in selecting greater or lesser harm. Therefore we will defer to the SC on their continuing to retain just the two levels of harm. **West London Magistrates' Bench**

On balance, the Council does not believe it would be beneficial to add a third level of harm to this guideline, particularly given the low statutory maximum for this offence, which remains unchanged following the Animal Welfare (Sentencing) Act 2021. The existing harm factors are worded broadly, allowing these to cover the wide range of cases that sentencers may see. Adding further gradation to the harm table, 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.

Aggravating and mitigating factors

As with the culpability factors, the Council proposed a number of revisions to reflect relevant changes to the section 4-8 guideline and to further tailor factors to the nature of the section 9 offence. This included adding in new aggravating factors on a significant number of animals being harmed and specifying where the offender had a professional responsibility for animals, as well as removing factors on the use of a weapon and the use of technology to promote animal cruelty.

Respondents made a number of suggestions, primarily for new aggravating factors, including whether the offending occurred within the wider context of domestic abuse, where the offending occurred in front of children, or where the offender failed to meet the

needs of multiple animals. After careful consideration, however, the Council believes that there is a benefit in keeping the list of aggravating and mitigating factors succinct, particularly as the lists are not intended to be exhaustive. Sentencers can consider other factors that may be relevant to the case and which would increase or decrease the seriousness of the offending, but which are not listed on the face of the guideline.

The Chief Magistrate and the Legal Committee of HM Council of District Judges (Magistrates' Courts) highlighted the interaction between the aggravating factor, 'offender in position of professional responsibility for animals' and the proposed high culpability factor of 'ill treatment or neglect in a commercial context'. The Council agrees that there is a risk of double counting, which might inflate sentences unduly, and so has amended the aggravating factor in question to add the caveat, '(where not already taken into account at step 1)'.

In light of the changes the Council has agreed to make to the section 4-8 guideline, a new aggravating factor has been included to increase the seriousness of an offence if this was motivated by financial gain, but which would not necessarily be captured by the high culpability factor of ill treatment or neglect in a commercial context. The wording the Council has agreed is 'motivated by financial gain (where not already taken into account at step 1)', and this is intended to have a lower threshold than the equivalent factor in the section 4-8 guideline. This is in recognition of the fact that the amount of financial gain is likely to be smaller for the section 9 offence by comparison. This aggravating factor has been included to cover instances such as a pet owner breeding from their own dog with the intention of selling the puppies, and being neglectful of their care.

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 for their animals. On balance, the Council believes that, while this is likely to be a common aspect of section 9 offending, there is a strong justification for not including this on the face of the guideline. There may, for example, be 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.

Miscellaneous issues

In addition to the issues outlined above, respondents raised a number of other concerns relating to animal welfare and the sentencing guidelines which sat outside of any specific proposals made by the Council. Key issues from these responses have been outlined below.

Statutory maximum (section 9 offence)

Both the NFU and the Chief Magistrate asked for clarity on the statutory maximum sentence for the section 9 offence, given the wording in section 32 of the Animal Welfare Act 2006 and the recent increase in magistrates sentencing powers. The NFU also queried the maximum value of fines that could be handed down for this offence.

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**

As suggested by the NFU, the wording on the face of the Animal Welfare Act sets out, at [section 32](#), that the statutory maximum sentence for this offence is 51 weeks' custody. However, this interacts with [section 224 of the Sentencing Act](#), which sets the overriding limit of six months' custody. The statutory maximum for the section 9 offence, therefore, remains unchanged. As the increase in magistrates' sentencing powers only applies to either way offences, this does not have any impact on the summary only section 9 offence.

In addition, the revised guideline also explains that, other than six months' custody, the statutory maximum fine for this offence is 'unlimited'. This is equivalent to level 5 on the standard scale for fines, following the introduction of The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations in 2015. This legislation removed the £5,000 upper limit for all offences committed after 13 March 2015.

Ancillary orders

Two respondents, World Horse Welfare and the academic Mike Radford, called for clearer guidance on ancillary orders, particularly powers to disqualify an offender from keeping animals.

There has long been concern that courts may regard disqualification orders as a means of punishment and, if they have already imposed what they regard to be an adequate and appropriate sentence - regardless of whether this involves, custody, a community order or a fine - they may (be) reluctant to also grant a disqualification order. However, these orders are not intended to be punitive but rather to provide protection for animals in the future. **Mike Radford**

The proposed guidelines already include a link to the [explanatory materials on disqualifications](#) as standard, which provide sentencers with references to relevant legislation. The Council believes there is a fine balance to be struck between providing the necessary guidance to sentencers and avoiding making the face of the guidelines overly complex but also recognises that there is value in providing more support to sentencers, particularly as many may have not sentenced a case of animal cruelty before.

Rather than providing more detail on the face of the guidelines, the Council has revised its explanatory materials on disqualifications from keeping animals, adding further guidance to support sentencers and to reiterate the purpose of disqualifications.

Fixed penalty notices

Two respondents raised the [Animals \(Penalty Notices\) Act 2022](#), calling for the Council to consider how sentence levels in the guidelines might contrast with the new powers to hand out fixed penalty notices of up to £5,000. As a fixed penalty serves a very different purpose to a court-ordered fine, the Council does not believe there is a risk of overlap as such.

Equalities and other impacts

Resource assessment

The [resource assessment](#) published by the Council alongside the definitive guidelines explores the resource impacts of the definitive guidelines in more detail.

Equality and diversity

As with other consultations held by the Council, the consultation included three standard questions on equalities issues, to understand whether there may be any disproportionality or any unintended consequences arising from the proposed revisions. Responses across those three questions have been grouped together and summarised below.

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 had a disability and/or relied on the animal as a support animal. The Council agrees with this view but feels this issue is sufficiently reflected in the proposed aggravating factor of ‘animal being used in public service or as an assistance dog’.

Two respondents, the London Criminal Courts Solicitors’ Association and World Horse Welfare highlighted that the guidelines may potentially have a greater impact on Gypsy, Roma and Traveller (GRT) communities. In revising the guidelines, the Council considered the equalities impacts of the proposals on different ethnic groups where this data was available. However, as outlined in the consultation document, this demographic data included high proportions of unknown or not recorded ethnicity, making it difficult to draw any meaningful conclusions of the likely impact of the guidelines on different ethnic groups. In line with other recent guidelines, the animal cruelty and failure to ensure animal welfare guidelines both include a signpost to the Equal Treatment Bench Book, which provides guidance to sentencers on important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system.

IVC Evidensia suggested 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 alternative sentences be used instead. World Horse Welfare made similar suggestions for offenders who were vulnerable due to age or illness, and where this resulted in neglect of their animals. The guidelines include drop down guidance for sentencers when considering fines, setting out that the financial means of the offender must be taken into consideration. Given this, the Council does not believe that financial vulnerability, where this has been a primary cause of the offending, needs to explicitly be included as a mitigating factor on the face of the guidelines.

Conclusions and next steps

The consultation has been an important part of the Council's consideration of these guidelines. Responses received from a variety of sources have informed changes made to the definitive guidelines. The guidelines are published on the [Council's website](#), alongside the final resource assessment.

The guidelines will apply to all adults aged 18 or over sentenced on or after 01 July 2023, regardless of the date of the offence.

Following the implementation of the definitive guidelines, the Council will monitor their impact.

Annex A: consultation respondents

Lucinda Ellicott JP (magistrate)

Paul Thacker JP (magistrate)

Judge Adrienne Lucking

Meryl Cumber JP (magistrate)

Gary Knight JP (magistrate)

Andy Derwent JP (magistrate)

Sharon Bierer JP (magistrate)

Christopher Turner JP (magistrate)

Sarah Lamb JP (magistrate)

Suffolk Magistrates' Bench

Legal Committee of HM Council of District Judges (Magistrates' Courts)

Hidden-in-Sight

RSPCA

Battersea Dogs and Cats Home

West London Magistrates' Bench

IVC Evidensia

Blue Cross

Justices' Clerks' Society

Refuge

Criminal Sub-Committee of HM Council of Circuit Judges

Criminal Law Solicitors' Association

Paul Goldspring, Senior District Judge (Chief Magistrate) of England and Wales

The Animal Advocacy Project

The Links Group

World Horse Welfare
National Farmers' Union
Magistrates' Association
Crown Prosecution Service
Justice Committee
UK Government
Heather Rothwell JP (magistrate)
Timotej Velkavrh Blazevic JP (magistrate)
Tony Pratt JP (magistrate)
Ian Allott JP (magistrate)
Juliane Montgomery JP (magistrate)
Anonymous legal professionals
Anonymous animal professionals
Frederick Fearn JP (magistrate)
IFAW
Gary Price JP (magistrate)
Liz Blake JP (magistrate)
Simon Monks JP (magistrate)
Jean Watt JP (magistrate)
Sallyann Tuckwell-Allen JP (magistrate)
Chris Clarke JP (magistrate)
The Donkey Sanctuary
Amanda Coneley JP (magistrate)
CB Intelligence Limited
Rainbow Valley Sanctuary
Focus on Animal Law Limited
The Empathy Project
European Link Coalition

Naturewatch Foundation

4BB Chambers

Dogs Trust

UK Centre for Animal Law

London Criminal Courts Solicitors' Association

Mike Radford, University of Aberdeen

Animal Concern Limited

League Against Cruel Sports

Anonymous members of the public

