

Overarching issues and the context of the guidelines

Background to Dangerous Dog offences

In England and Wales in the last 10 years, at least eight adults and 13 children have died from dog attacks. In the 12 months to January 2014, some 6,740 people required hospital treatment as a result of dog attacks, an increase of six per cent from the previous 12 months.¹ These cases by their nature are very distressing for all connected and understandably attract significant attention. The Council has therefore approached the revision of these guidelines with the utmost sensitivity and care.

Dangerous dog offences can be tried in magistrates' courts or in the Crown Court, and numbers have risen in the courts in recent years. In England and Wales in 2013, 636 adults were sentenced for having a dog dangerously out of control in a public place, or a private place where the dog was not permitted to be, which caused injury, compared to 333 adults in 2003 for the same offence.

To assist in guideline development, the Council looked in detail at UK cases involving a death from 2005 to 2014, and at a sample of cases of injury from 2012 to 2014. Very few dangerous dog cases involving a death have been prosecuted, as most attacks occurred in a private place where the dog had a right to be (for example, its home) where no prosecution could be brought under the previous legislation. In some dangerous dog cases involving a death, manslaughter charges were brought instead. In a number of cases, offences involving dogs were charged alongside other offences, usually assault offences.

Dangerous dog offences bear some similarity to certain motoring offences, in that cases can be characterised by a range of culpability on the part of offenders, which nevertheless results in high harm to victims.

Dangerous dog offences are strict liability offences, meaning that there does not need to be any intent, premeditation or fault on the part of the offender; the offence can be committed by the fact that the prohibited state of affairs has occurred, and it is caused at least in part through an act or omission of the offender.²

¹ <http://www.publications.parliament.uk/pa/cm201314/cmpublic/antisocialbehaviour/memo/asb42.htm>
<http://news.sky.com/story/1354982/dangerous-dogs-heavy-penalties-under-new-law>.

² R v Robinson-Pierre [2013] EWCA Crim 2396

In developing the revised guidelines, the Council has retained some of the factors used in the existing definitive guideline, and changed others. In the four years that have passed since the existing guideline was developed it was felt appropriate to revise the approach to the assessment of some of the dangerous dog offences, and of course some changes were necessary due to the changes in legislation.

For example, in the existing guideline there is wording which allows sentencers to move up from the starting point for cases of particular gravity. This wording has not been included in the revised guidelines as the revised culpability and harm factors allow for greater consideration of the seriousness of the offence than previously.

Applicability of guidelines

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this draft guideline. Following consultation, when a definitive guideline is produced it will apply to all offenders aged 18 and older, who are sentenced on or after the guideline comes into force, regardless of the date of the offence.

Section 125(1) Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court -

- (a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so.”

When issued as a definitive guideline this guideline will apply only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council’s definitive guideline, *Overarching Principles – Sentencing Youths*.³

Structure, ranges and starting points

For the purposes of section 125(3)-(4) of the Coroners and Justice Act 2009, the guideline specifies *offence ranges* – the range of sentences appropriate for each type of offence.

³ http://sentencingcouncil.judiciary.gov.uk/docs/web_overarching_principles_sentencing_youths.pdf

Within each offence, the Council has specified a number of categories which reflect varying degrees of seriousness. The offence range is split into category ranges – sentences appropriate for each level of seriousness. The Council has also identified a starting point within each category.

Starting points define the position within a category range from which to start calculating the provisional sentence. As in earlier Sentencing Council definitive guidelines, this guideline adopts an offence-based starting point. Starting points apply to all offences within the corresponding category and are applicable to all offenders, in all cases. Once the starting point is established, the court should consider further aggravating and mitigating factors and previous convictions so as to adjust the sentence within the range. Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial. Credit for a guilty plea is taken into consideration only at step four in the decision making process, after the appropriate sentence has been identified.

Information on community orders and fine bands is set out at Annex D.

The Council's aims

In preparing this draft guideline, the Council has had regard to the purposes of sentencing and to its statutory duties. The Council's aim throughout has been to ensure that all sentences are proportionate to the offence committed and in relation to other offences.

Approach to victims

The Council is required to consider the impact of sentencing decisions on victims of offences. The harm caused by an offence is considered at step one of the guidelines, as a principal factor of the offence. In the development of this guideline, the Council gave very careful thought to how to reflect the often devastating impact these offences can have on victims and their families. The Council considered this issue individually in the context of each offence the draft guideline covers, as the offences differ very significantly.

Data analysis and research

The Council considered the available statistical data from the Ministry of Justice Court Proceedings Database for the existing dangerous dog offences.⁴ **(Footnote to stats bulletin on website when available.)** However, this data had limitations, because very few cases involving a death have been sentenced. The data also provided little assistance in

developing the sentence ranges for the new maxima, given the significant increase in the maximum penalties for offences: from two to 14 years for offences causing death and two to five years for offences causing injury. In addition, the Council had to consider what would be appropriate sentence ranges for a completely new offence of attacks on assistance dogs, for which no sentencing data exists.

The Council was mindful of the factors considered by the Government⁵ in creating the new maxima for dangerous dog offences: a 14 year maximum sentence for causing death by dangerous driving, the Government referred to the 14 year maximum for causing death by dangerous driving, and the five year maximum for assault occasioning actual bodily harm. Accordingly, in developing the sentence ranges, the Council considered sentencing data for driving, assault (and as some dangerous dog offences were previously charged as manslaughter), manslaughter cases. In the Council's view, however sentencing data for driving offences is of the most relevance, given that for assault cases, there has to be an element of recklessness or intent, which is not required in either motoring or dangerous dog cases.

To assist the Council in developing the guideline, research was conducted into the following issues:

- At an early stage, a review of international policies and data on dangerous dog offences, in order to find out whether any lessons could be learned from other countries' experiences of enacting and enforcing dangerous dog laws.
- A qualitative content analysis of the transcripts of the sentencing remarks for 20 recent Crown Court cases involving death or injury by a dangerous dog attack, in order to help understand the key factors influencing sentencing decisions in these cases. These factors were compared to the factors within guidelines for other offences involving the most serious level of harm across a broad spectrum of culpability, for example motoring offences causing death.
- In-depth telephone interviews with 12 Crown Court and district judges who had recently tried a dangerous dog case. Four of these involved a death, and the remaining eight involved injury or injuries. The judges were asked to apply the draft

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/253494/dangerous-dogs-max-penalties-dog-attacks-sum-resp-20131029.pdf.

guideline to their case to test what impact it might have on sentencing levels. They explained their thinking and offered critiques and suggestions as they went along. These interviews had a direct bearing on the draft guideline in this consultation.

The Council also discussed its proposals with organisations with specific interests in this field, to help inform the development of the guidelines.