



Criminal Bar Association Response to the Dangerous Dogs Guideline Consultation

Introduction

1. The Criminal Bar Association ('CBA') represents about 3,600 employed and self employed members of the Bar who prosecute and defend the most serious cases across the whole of England and Wales. It is the largest specialist bar association. The high international reputation enjoyed by our criminal justice system owes a great deal to the professionalism, commitment and ethical standards of our practitioners. The technical knowledge, skill and quality of advocacy guarantee the delivery of justice in our courts; ensuring on our part that all persons enjoy a fair trial and that the adversarial system, which is at the heart of criminal justice, is maintained
2. The Criminal Bar Association welcomes this opportunity to contribute to the consultation on this Guideline which aims to provide consistency of sentencing in this growing area of offending. We acknowledge that, to date, the assessment of seriousness of a dangerous dog offence has been disjointed and without uniformity.
3. There are seemingly increasing incidents of dangerous dogs reported to have attacked vulnerable people especially children in their homes or the homes of those in whose care they are or nominally are. Equally there is a perception of dogs being used by criminals or those in gangs as "weapons" or at least status symbols particularly in circumstances where unlawful drugs are being used or traded. Public concern over the ownership of and accessibility of dangerous dogs has led to increasing levels of anxiety if reports in the press and media are to be believed. One of the consequences of this general feeling of apprehension is that certain breeds of dog are being increasingly feared and mistreated when mistaken for prohibited dogs under the legislation.
4. Generally, we are of the opinion that sentences are insufficient for these offences as the general and individual damage that may be done by offenders is significant and sometimes long term. We would

support raising the maximum custodial sentences, where significant harm has been caused by a dangerous dog.

Question 1

Do you agree with the harm and culpability factors proposed at step one for the two offences of a dog being dangerously out of control? If not, please specify which you would add or remove and why.

We broadly support the harm and culpability factors proposed. However, we would suggest that there ought to be more recognition of a failure to control a dangerous dog; for example where the offender has allowed the dog to roam free or to has no proper control or command ability over the dog. Equally, where an owner lends the dog to someone without the necessary skill to control it, this should be recognised under factors indicating lower culpability of the person placed, sometimes unfairly, in charge of the dog. In addition, very little recognition is currently available for the harm caused by a dangerous dog attacking another dog, often causing fatal injuries. For many dog owners, this can be extremely upsetting and in some cases deeply psychologically harmful for the owner who often will have seen at close quarters the damage done to their dog by the offending animal.

Accordingly, we would recommend:

- 1) For the aggravated offence of dogs being dangerously out of control and causing injury, the factors indicating greater harm are focused and sensible. However, those factors indicating lesser harm should include "brief incident" to distinguish from "sustained attack". As to factors indicating higher culpability, these should include "failure to attempt to regain control or restrain the dog" to match the converse included in factors indicating lower culpability, and also "failure to be able to command/control the dog". Those factors indicating lower culpability should consider the situation where a dog has been provoked or goaded by the complainant or the complainant's dog or another person/dog unknown to the owner. Many incidents arise owing to a dog reacting to being goaded/teased/provoked by another dog or person in a public place. Accordingly, we would recommend the inclusion of "dog reacting to provocation by another dog/person". In addition, lower culpability should include "person in charge of dog not sufficiently experienced/trained to control it".
- 2) For the simple offence of dogs being dangerously out of control, we would reiterate the comments made at paragraph 1 above. In addition, the factors indicating greater harm should include injury to another animal to reflect those incidents where the danger is presented by a dog or dogs attacking another dog and members of

the public become involved. (The aggravated offence only applies to injury to another person but many incidents result in injury to another dog which should be reflected in the guideline.)

Question 2

Do you agree with the aggravating and mitigating factors proposed at step two for the two offences of a dog being dangerously out of control? If not, please specify which you would add or remove and why.

Subject to our observations above, we agree with the aggravating and mitigating factors as proposed. In relation to the factors reducing seriousness, the CBA would propose in addition attempts made to assist or compensate victim, for example, to reflect any attempts made by the offender to seek or pay for medical care for any injuries as a result of the incident. This is particularly relevant where the offending dog has injured another dog and the owner offers to pay, and/or does pay, the veterinary bill for that injured dog. In addition, the CBA would suggest that some consideration be given to an offender who was simply in temporary charge of the dog, was not the owner and/or has little experience of handling dogs.

Question 3

Do you agree with the extent of the guidance provided in each of the guidelines on the use of ancillary orders? If not, what further guidance should be provided?

We are of the opinion that there should be a far greater emphasis on the defendant's culpability in this regard than any direction concerning the destruction of the dog. While we agree with the principle that the safety of the public is paramount, some attempt or effort should properly be made to seek professional/expert opinion as to the potential rehabilitation/retraining of a dog that is not prohibited but has been classed as a Dangerous Dog. It is all too often the reckless behaviour and/or poor training by the dog owner that has caused the dog to become dangerous.

We agree that compensation orders should be considered in all cases where personal injury, loss or damage has resulted from the offence. In addition, we would add cases where injury has been caused to another dog (such injuries often incur extensive veterinary expenses for the owner of the injured dog).

Under Contingent Destruction Orders, the guidelines should emphasise that expert reports on dogs should play an important part in this decision. Such orders might include a certain form of dog training if available.

Relevant circumstances should also include the current living conditions and relationships with human beings experienced by the dog and the likely impact of these upon its future behaviour.

We agree that the owner on conviction should be ordered to pay the cost of destruction and the dog's incarceration pending destruction as the cost to, usually the police, a public authority and thereby the public is becoming out of control.

Question 4

Do you agree with the category model for the offence of possession of a prohibited dog?

The CBA supports the different category model for this offence.

Question 5

Do you agree with the harm and culpability factors proposed at step one for the offence of possession of a prohibited dog? If not, please specify which you would add or remove and why.

Culpability based on knowledge of the breed being prohibited is still a difficult concept. Knowledge of the owner that the dog is a prohibited breed clearly implies higher culpability. It is all too easy for an owner to deny knowledge of the breed and robust enquiry should be made of an owner who denies knowledge. Factors as to how/where the dog was obtained, how and where it is kept, how it is treated, who is allowed to be close to the dog and where it is allowed to go may be of assistance to the sentencing tribunal in presuming the knowledge of the owner.

The factors indicating higher culpability should also include any issues as to whether the dog had been kept or trained for the purpose of fighting; for example, "dog kept or trained for the purpose of fighting".

Question 6

Do you agree with the aggravating and mitigating factors proposed at step two for the offence of possession of a prohibited dog? If not, please specify which you would add or remove and why.

Aggravating factors should include both cruelty to **and** neglect of the dog. Otherwise, the CBA agrees with these factors.

Question 7

Do you agree with the proposed sentences (starting points and category ranges) for the offence of a dog being dangerously out of control causing injury?

The CBA submits that the category range for Category 1 should start from a medium level community order up to 12 months' custody, to reflect the higher level of harm and culpability.

Question 8

Do you agree with the proposed sentences (starting points and category ranges) for the offence of a dog being dangerously out of control?

Similarly, the CBA submits that the category range for Category 1 should start from a low level community order up to 6 months' custody, thereby reserving the range of fines to Categories 2 and 3.

Question 9

Do you agree with the proposed sentences (starting points and category ranges) for the offence of possession of a prohibited dog?

As indicated above in our introductory remarks, possessing/breeding/selling/exchanging a prohibited breed of dog is a serious breach of a law specifically designed to protect the public and custody should be encouraged in order to deter ownership. This prohibition is one of the few areas of criminal prohibition where sentencing can be used to effectively deter breaking the law and yet the message sent out in the sentencing generally in this regard is not punitive or a real deterrent. We would be in favour of significant rises in available sentences of custody for possession of these potentially very dangerous animals.

Given the remit of this consultation however, in relation to the range of categories as currently constituted, there should be some reference to community orders, as the maximum sentence is custodial. The CBA would simply recommend that the starting point for Category 1 be a low level Community Order, whilst maintaining the range from a Band B fine to 3 months custody.

Question 10

Are there further ways in which you think victims can or should be considered?

As observed above, we would urge that more consideration be given to victim dog owners whose dogs sustain injury during an attack by a dangerous dog. To this extent, there should be greater emphasis on promoting good and responsible dog ownership, and sentences in the lower culpability ranges could be tailored to this end in order to protect victims or potential future victims.

Question 11

Are there any equality or diversity matters that the Council should consider? (please provide evidence where possible)

The CBA has no comment to make in relation to this.

Question 12

Are there any further comments you wish to make?

As outlined above, the CBA believes that the sentencing ranges should be higher in order to reflect the significant harm often caused, to both persons and other animals, by the reckless or irresponsible actions of dog owners. In this regard we are of the opinion that the offence of 'dog dangerously out of control causing injury' should carry a maximum sentence of 5 years. The offence of 'dog dangerously out of control' should be an either way offence carrying a maximum sentence of 2 years. The offence of possession of a prohibited dog should become an either way offence and carry a maximum sentence of 4 years in recognition of the nature of the breach of a public protection prohibition.