



INDEPENDENT SENTENCING REVIEW 2024-2025: CALL FOR EVIDENCE

UK Centre for Animal Law Submission



UK Centre for Animal Law: Response to Independent Sentencing Review 2024 to 2025: Call for Evidence

<https://consult.justice.gov.uk/digital-communications/independent-sentencing-review-2024-to-2025-cfe/consultation/intro/>

1. What have been the key drivers in changes in sentencing, and how have these changes met the statutory purposes of sentencing?

Under the Animal Welfare Act 2006, which makes it an offence to cause unnecessary suffering to domesticated animals and animals under human control, the maximum penalty was previously a six-month sentence and/or an unlimited fine. Following a number of serious animal welfare prosecutions, judges expressed their desire to impose a higher penalty than that which the 2006 Act permitted, particularly for crimes relating to deliberate, calculated, and sadistic behaviour,¹ and also to provide a more substantial and appropriate sanction for those involved in cruelty for commercial purposes - for example, puppy farmers – and involvement of organised crime.

In 2017 the Government announced its intention to increase the maximum sentence to five years.² In providing evidence to the Parliamentary Committee stage, the RSPCA submitted that one of the main drivers behind changing the maximum custodial sentence from 6 months to five years was the need for deterrence. Strong cross-party support was expressed for the increase to five years, and strong public support was found to support the increase. Discussions in the Committee stage anticipated Sentencing Council guidance setting out aggravating circumstances which might allow for the maximum five year sentence.³ On 29 June 2021, the Animal Welfare (Sentencing) Act 2021 came into force, having passed through all stages unamended. This increased the statutory maximum penalty for sections 4, 5, 6, 7 and 8 of the Animal Welfare Act 2006 from 6 months' to 5 years' custody.

Despite this, the Sentencing Council introduced guidelines which provided for a maximum of 3 years and 6 months imprisonment. The reason for the reduction was two-fold. First, the Council stated it was necessary to 'retain some headroom' between sentence levels on the face of the guideline and the statutory maximum.⁴ Second, it was to maintain proportionality with sentences for humans.

¹ https://www.legislation.gov.uk/ukpga/2021/21/pdfs/ukpgaen_20210021_en.pdf

² <https://commonslibrary.parliament.uk/research-briefings/cbp-8612/>

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https://publications.parliament.uk/pa/cm201719/cmpublic/AnimalWelfare/PBC410_Animal%20Welfare%20Bill_1-2_Combined_23_07_2019.pdf

⁴ <https://www.sentencingcouncil.org.uk/html-publication/item/animal-cruelty-guidelines-response-to-consultation>

While it is not unusual to provide for ‘headroom’ in sentencing, the degree of headroom provided by the guidance would seem itself to be disproportionate to the extent that it has the effect of frustrating Parliament's intention in increasing the statutory maximum to a level it considered to be appropriate. Moreover, the second rationale of proportionality is arguably a question for Parliament to decide rather than the Sentencing Council, and as such we would question whether the guidance is *intra vires*. The Sentencing Council has not to our understanding presented evidence for the need to distinguish in this manner. We may speculate that it relates to a comparison with the sentence guidelines for Actual Bodily Harm which contain a maximum of five years custody,⁵ but the nature of serious offences relating to animals are more equivalent to those covered by Grievous Bodily Harm or Homicide which have a maximum sentence of life imprisonment.⁶ For example, when the RSPCA presented in the Parliamentary Committee stage, it referred to cases which included ‘man puts kitten in microwave, switches it on and kills it... (and) a recent case involving two men who wanted to kill a dog...but rather than take it to the vet, one chap hammered a nail into the dog’s head. Then they buried the dog, and the dog was still alive.’⁷ We would argue that Parliament had already considered the proportionality of such cases and the level of deterrence needed and had decided, in our view appropriately, that a five year maximum sentence was proportionate.

Moreover, because cruelty to animal offences do not count as serious violent crimes, offenders can be released after 50% of their sentence, and under the revised early release scheme they can be released after 40% of their sentence. If the maximum recommended by the sentencing council is thus used, of 3.5 years, the most serious offender could be released after 16.8 months, with most far less. We understand that the highest sentence given to date has been 2 years nine months, in 2023. Being let out after 40% of such a sentence would entail imprisonment of a mere 13.2 months. While offences related to domestic abuse are excluded from this early release scheme, offences related to animals in a domestic violence context would not appear to be excluded as they do not currently form part of the offence of domestic violence. Imprisonment of just over a year would arguably be far less of a deterrent than the 5 years intended by Parliament.

We would argue that after the reduction in the effective maximum sentence, the offence fails to meet the statutory purpose of sentencing, in particular:

- *To punish the offender* by going to prison. Release after just over a year would arguably not provide adequate punishment for the most serious offences, given that Parliament agreed unanimously that such offences should be punished by five years’ imprisonment.

⁵<https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/assault-occasioning-actual-bodily-harm-racially-or-religiously-aggravated-abh/>

⁶ <https://www.sentencingcouncil.org.uk/outlines/assault/>

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https://publications.parliament.uk/pa/cm201719/cmpublic/AnimalWelfare/PBC410_Animal%20Welfare%20Bill_1-2_Combined_23_07_2019.pdf

- *To reduce crime* by preventing the offender from committing more crime, and putting others off from committing similar offences. As noted, introducing a deterrence was one of the key reasons for increasing the maximum sentence to 5 years. A maximum effective sentence of 16.8 months is arguably significantly less of a deterrent.
- *To reform and rehabilitate offenders.* As set out below under question 4, effective RAR schemes for offences relating to animal cruelty have not yet been adequately researched or developed, and as such it does not seem likely that they are adequate in reforming and rehabilitating offenders. This will be discussed more below.
- *To protect the public* from the offender and from the risk of more crimes being committed by them. Given the well-established link between domestic violence and crimes against animals, together with the established link that offences against animals are often starter crimes before offenders move on to commit escalating violent offences against humans⁸, an effective maximum sentence of 16.8 months for cruelty to animals, with no current offender register for crimes against animals either to warn of risks or to prevent offenders from obtaining further animals, would arguably fail in its intention to protect the public.

In terms of protecting the public, researchers have found empirical evidence supporting two theories regarding the connection between animal abuse and harm to humans: 1) the graduation or progression thesis, and 2) the deviance generalisation hypothesis. According to the progression thesis, an individual's cruelty towards animals in childhood can predict the committing of offences against humans later. "Therefore, individuals who are cruel to animals are thus more likely to behave aggressively towards other people, and those who behave aggressively towards other people are more likely than those who do not to have been cruel to animals previously."⁹ For some time, researchers had observed that many serial killers were cruel to animals in their early lives, and studies have confirmed this strong link between acts of cruelty to animals in childhood and subsequent aggressive behaviour in adulthood.

According to the second hypothesis of deviance generalisation, "individuals who are cruel to animals are likely also to engage in other violent and nonviolent criminal behavior. Reasons postulated for this are that involvement in one form of deviant behavior leads to involvement in others, and these behaviors are motivated by the same factors. Longobardi's research also found empirical support for this theory and particularly that more serious offenses are often committed in addition to animal cruelty."¹⁰ This connection between animal cruelty and other criminal behaviour extends to subjects like illegal trade. The Law Society of Scotland noted in their briefing on the Animals and Wildlife (Penalties, Protections, and Powers)(Scotland) Bill 2020 that there existed "growing evidence that there are connections between the wildlife trade

⁸ C. Longobardi & L. Badenes-Ribera, The Relationship Between Animal Cruelty in Children and Adolescent and Interpersonal Violence: A Systematic Review, 46 AGGRESSION VIOLENT BEHAV. 201, 202 (2019).

⁹ <https://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=4325&context=sclr>

¹⁰ C. Longobardi & L. Badenes-Ribera, The Relationship Between Animal Cruelty in Children and Adolescent and Interpersonal Violence: A Systematic Review, 46 AGGRESSION VIOLENT BEHAV. 201, 202 (2019).

and serious organised crime and it is generally accepted that some wildlife trade, particularly at the international level involves crime groups and trafficking networks.”¹¹

The link between animal cruelty and further violence is thus well documented.¹² A Link study found that 71% of domestic violence victims reported that their abuser also abused their pets,¹³ and research conducted in the United States found that women in domestic violence shelters were nearly eleven times more likely to report that their partner had hurt or killed their pets than a comparison group of women who had not experienced intimate violence.¹⁴ The threat of this often stops domestic violence victims from leaving their abuser. That these types of harm are so often connected makes it critically important that cruelty towards animals be taken seriously by law enforcement. A 1997 study found that animal abusers are five times as likely to harm other humans. Animal abuse is one of the biggest ‘red flag’ warning signs of concurrent or future violent acts, an indicator that other violence is happening to the family or community.¹⁵ Accordingly, in the interest of public safety, it is essential such offences are taken with the utmost seriousness, which current sentencing guidelines arguably do not allow for.

2. How might we reform structures and processes to better meet the purposes of sentencing whilst ensuring a sustainable system?

Several reforms could be made to sentencing for offences involving animal cruelty to better meet the purposes of sentencing while ensuring a sustainable system. These include (i) improved judicial guidance (ii) use of a risk assessment designed for animal cruelty cases, (iii) better use of non-custodial options which requires an improved understanding of what works to rehabilitate offenders in such cases, and (iv) potentially the introduction of an offender register for certain cases.

(i) Judicial guidance

In addition to changing the sentencing guidelines as described above, there needs to be judicial guidance to help Judges determine suitable rehabilitative sentencing for cases involving cruelty against animals. Rehabilitative non-custodial sentencing will be less effective if it is not grounded in a proper foundation in terms of research and expertise.

(ii) Use of a risk assessment especially designed for animal cruelty cases

¹¹<https://www.wwf.org.uk/sites/default/files/2017-01/WWF-UK%20Report%20-Sentencing%20wildlife%20trade%20offences%20in%20England%20and%20Wales.pdf>

¹²https://www.researchgate.net/profile/Eleonora-Gullone/publication/5526754_The_Relationship_Between_Domestic_Violence_and_Animal_Abuse_An_Australian_Study/links/09e4150456f91c9e15000000/The-Relationship-Between-Domestic-Violence-and-Animal-Abuse-An-Australian-Study.pdf

¹³<https://absmentalhealth.com/uncategorized/the-severity-of-animal-abuse-and-the-importance-of-rehabilitation/>

¹⁴ <https://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=4325&context=sclr>

¹⁵ <https://nationallinkcoalition.org/what-is-the-link>

As part of the evidence to consider, Judges should be provided with the assistance of an expert risk assessment designed specifically for animal cruelty cases. Clinicians have begun to design dedicated risk assessment tools for use with animal abuse offenders.¹⁶ It may include determining other risk factors and social issues in the case (e.g. domestic violence, anger management) that can be addressed by established treatment methods. These tools aim to facilitate the estimation of an abuser's risk of future criminal behaviour.

Two such tools have already been developed. The first tool is called Factors of Dangerousness in Perpetrators of Animal Cruelty (FADPAC), published by Lockwood in 2013.¹⁷ This tool, using an actuarial approach, measures "the significance of an individual's involvement in a particular act of animal cruelty as an indicator of dangerousness or possible risk for involvement [in] future acts of violence against others". The second tool is the Animal Abuse Risk Assessment Tool (AARAT), from Tedeschi (2000). This method uses static and dynamic risk factors to determine an offender's risk level, as well as identifying treatment pathways to reduce the determined risk.¹⁸ This second method also encourages clinical judgement to be used when making decisions about the offender's risk. The categories analysed include characteristics of the animal victims, the specifics of the abuse, the logistics of the offence, characteristics of the perpetrator, motivations, criminal history, personal history, and family history. Research in the field strongly supports such a structured approach to animal abusers. Please see attached review of research on animal abuse recidivism by Reid and Alleyne.

(iii) Better understanding of what rehabilitation works in animal abuse cases

Significantly more research needs to be done to understand what rehabilitation works in animal abuse cases. See below for more on this at question 4.

(iv) Consider introducing a register of animal abusers

For both public safety reasons, given the link between animal abuse and child abuse/ domestic violence/ elder abuse, and reducing recidivism against other animals, it would be beneficial to undertake research into the possibility of introducing a register of animal abusers. Workers across a range of fields including child abuse, domestic violence, and elder abuse could apply to access such a record to identify risk. Moreover, pet shops and rehoming facilities could be required to check the register in advance of handing over any animal. Those convicted of animal abuse are often rightly subject to an order preventing them from keeping animals in future, but it is impossible to enforce this order systematically without those responsible for decisions being able to identify convicts. An offender register, available on request by particular types of organisations, may help contribute to resolving this problem. Several examples exist of animal abuse offender lists elsewhere in the world. There are currently some questions over the

¹⁶ Reid & Alleyne, Animal abuse recidivism: a narrative review. The Journal Of Forensic Practice. Vol. 26 No. 1 2024, pp. 18-30, Emerald Publishing Limited, ISSN 2050-8794

¹⁷ Reid & Alleyne, 2024

¹⁸ Reid & Alleyne, 2024

effectiveness of sex offender registers more broadly, and so we would not recommend the introduction of such a list for animal abusers without further investigation. The UK government should undertake further research into how registers might operate with comparative analysis of how different types of registers might be deployed and could link with other information sources to offer the potential to contribute to reducing risk. The research should also develop models and appropriate codes of conduct to prevent any misuse/abuse of a register.

3. How can we use technology to be innovative in our sentencing options, including considering how we administer sentences and manage offenders in the community?

4. How should we reform the use of community sentences and other alternatives to custody to deliver justice and improve outcomes for offenders, victims and communities?

To make better use of rehabilitation and other alternatives to custody, it is essential to understand what methods of rehabilitation can work in cases involving cruelty to animals. In some instances, the psychology may have overlap with other types of violence for which there are proven rehabilitative strategies. Drug use, domestic violence and anger management, for example, may be at play, and these are issues for which strong intervention methods already exist.

To date insufficient research has gone into what works specifically for rehabilitation in animal abuse cases, but some evidence is available and that needs to be built on. In 2018, the RSPCA launched a pilot rehabilitation scheme for animal welfare offenders for offences at magistrates' court level aimed at stopping re-offending. Primarily focused on cases involving neglect (only 7% involved violence), the course sought to teach participants about the basic needs of animals, their feelings and how to be a responsible owner as well as teaching them strategies to make better choices and decisions. It included focused discussion on the specific animal involved in the case and how the offender had treated that animal, together with a risk assessment to identify progress. While the pilot was small, involving only 56 offenders, mainly on a one-to-one basis, it showed some positive results for cases involving neglect and the method should be considered for cases in the magistrates involving neglect. See attachment for a review of the programme.

For more serious offences, community sentences may fail to serve as an adequate deterrent: this should be investigated more closely. For such cases, understanding the motivation may be key to understanding the risk of recidivism and appropriate methods of rehabilitation.¹⁹ Hensley and Tallichet found that criminals were more likely to reoffend if their crime came from a desire to exert control over the animal. Studies have also shown that the risk of reoffending rises for

¹⁹ Reid & Alleyne, 2024

those who abused an animal for fun or for sexual pleasure.²⁰ More research needs to be done on what non-custodial rehabilitative methods can work in serious instances and until there is evidence caution should be taken as the risk in terms of public safety may be significant.

5. How should custodial sentences be reformed to deliver justice and improve outcomes for offenders, victims and communities?

As set out above in detail in answer to question 1, we would question the upper limit provided by the Sentencing Council of 3 years 6 months, and would argue that the statutory limit of 5 years, as intended by Parliament, is appropriate to use as a maximum.

However additionally, to improve outcomes for offenders, victims, and communities, custodial sentences and non-custodial sentences need to work together. Different forms of sentences have different results, and to achieve more than one of the statutory goals of sentencing, you may need to look at more than one potential punishment. In that regard, custodial sentences cannot carry all the expectations of achieving all objectives, but should be part of a package.

6. How should we reform the way offenders progress through their custodial sentences to ensure we are delivering justice and improving outcomes for offenders, victims, and communities?

As set out in question 5, custodial sentences need to be implemented alongside rehabilitative elements.

7. What, if any, changes are needed in sentencing to meet the individual needs of different victims and offenders and to drive better outcomes?

The lack of animal cruelty-focused rehabilitative treatments currently is disappointing and something that needs to be addressed. However there are existing programmes that can address underlying or accompanying syndromes and issues, that have proven success rates, and individual offenders should be assessed to identify the most suitable programme. An effective risk assessment is an essential first step which may include investigating the life circumstances and character attributes that might contribute to risk.²¹ Additional tools that should be used to drive better outcomes include the use and enforcement of orders preventing offenders from keeping animals in future, together with an offender register which could assist with enforcement as set out above.

Attachments

Attachment 1: RSPCA Animal Welfare Pilot Programme, Project Evaluation, 4 March 2022.

Attachment 2: Animal abuse recidivism: a narrative review, Olivia Reid and Emma Alleyne, The Journal Of Forensic Practice. vol. 26 no. 1 2024, pp. 18-30, Emerald Publishing Limited, ISSN 2050-8794

²⁰ Hensley and Tallichet, 2008, Hensley et al., 2011

²¹ Losel & Farrington 2012.

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