

Expanded Explanations in Sentencing Guidelines

Response to Sentencing Council consultation by Wildlife and Countryside Link

May 2019

Wildlife and Countryside Link (Link) is the largest environment and wildlife coalition in England, bringing together 52 organisations to use their strong joint voice for the protection of nature. Our members campaign to conserve, enhance and access our landscapes, animals, plants, habitats, rivers and seas. Together we have the support of over eight million people in the UK and directly protect over 750,000 hectares of land and 800 miles of coastline.

This response is supported by the following Link members:

- Amphibian Reptile Conservation
- Angling Trust
- Badger Trust
- Bat Conservation Trust
- Born Free
- Humane Society International UK
- IFAW
- Nature Watch
- RSPB
- Whales & Dolphin Conservation
- Wild Justice
- WWF-UK

Introduction

In 2018, in our response to the Sentencing Council’s consultation on “General Sentencing Guidance for use where there is no offence specific guideline”, Link made the case for three additional aggravating features. All were associated specifically with wildlife crime. One aggravating feature related to cruelty being inflicted on wildlife; the second the impact of offending on the conservation status of protected species; and the third related to the taking and distribution of images of offending.

At present, the Sentencing Council has produced no guidelines that relate specifically to wildlife, although in certain circumstance the guideline to animal cruelty might be relevant. Link hopes that at some point the Sentencing Council might be persuaded to follow the lead of the Scottish Sentencing Council, which has embarked on stage one of production of a wildlife crime guideline.

We feel that the aggravating features of cruelty, conservation impact and the taking and distribution of images should be identified as aggravating features in the proposed expanded explanations guideline. Clearly, the cruelty feature is already present in the existing animal cruelty guidance but in some cases involving animal cruelty, conservation impact might also be of relevance. In any future guidance that relates to wildlife offences, for example guidance on sentencing for offences involving the illegal trade in endangered species, both the conservation and cruelty elements would not require further explanation.

Conservation/Environmental impact

Wildlife crime can have significant impacts on the conservation status of some species. Such impact cannot, and should not, be measured in financial terms. The government's conservation agency the Joint Nature Conservation Committee has identified [four areas](#) of offending where crime is known to impact on conservation status: bats, freshwater pearl mussels, the illegal trade in endangered species and raptors, and these are reflected within the NPCC's wildlife crime policing strategy.

We suggest that where offending relates to one of the UK wildlife crime conservation priorities, this should be considered an aggravating feature of particular consequence. Nonetheless, offending against flora or fauna not identified as a wildlife crime priority species may still have conservation impact. Where this can be demonstrated, it should be considered an aggravating feature of an offence.

A conservation impact statement from an expert witness may be available to advise those who undertake sentencing on the seriousness and impact of offending.

Element of additional cruelty/welfare impacts

Some wildlife crime can involve great cruelty both towards wildlife and to dogs used in the commission of offences, badger baiting or fighting being notable examples. Whilst cruelty to dogs and other domestic animals has already been addressed by the Sentencing Council's guidance on cruelty offences covered by the Animal Welfare Act 2006, this does not extend to wildlife that, in some circumstances, does not come under the scope of the act. The Crown Prosecution Service identify cruelty as an aggravating factor in their [guidance](#) on hare coursing.

We suggest that where offending involves cruelty to wildlife this should be considered an aggravating feature. The guidance within the Sentencing Council's Cruelty to Animals guidelines should be applied to wildlife whether or not under human control at the time of offending. Similarly, such guidance may also be applied to offences under the Wild Mammals (Protection) Act 1996.

Those who commit offences involving cruelty to animals are often engaged in a pattern of such behaviour. Previous convictions will, clearly, always be an aggravating feature of offending as will breaches of any court orders disqualifying possession of dogs. Those who are disqualified from possessing animals do however continue to commit wildlife offences, but will suggest that they do not have possession or control of the dogs involved. As such, it is unlikely that they will face proceedings for breaching disqualification orders. In such cases the fact that defendants are disqualified from possessing animals should, in itself, be an aggravating feature of any offence.

Dogs are commonly used in order to commit some wildlife offences, poaching and badger persecution being good examples. In poaching cases, simply being in possession of a dog for the purposes of taking game can be an offence. Where a dog is used to fight badgers, offences under both the Protection of Badgers Act and the Animal Welfare Act will be committed. However, all too often offenders will be found with dogs in circumstances where it is clearly intended to use them to fight badgers but there is insufficient evidence to prove additional offences. In such cases, possession of dogs in circumstances where it is likely that they would be used to inflict cruelty should be an aggravating feature of any offences.

Use of images

There is substantial evidence to demonstrate that those who engage in animal cruelty take graphic photographs or videos of their offending. Such images are often stored on phones or computers and shared with others. Examination of devices regularly reveals multiple images of offending involving a range of both wild and domestic animals. It is usually the case that mere possession of such images

is insufficient to form the basis of further charges, or may be months or years old, so can no longer be prosecuted. It is suggested that possession of images of animal cruelty should be an aggravating feature of offending. Where it can be evidenced that the offender has shared such images, this should further aggravate matters.

For questions or further information please contact:

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