Contemporary Dog-fighting Law in the UK

Dr Angus Nurse and Dr Simon Harding
Middlesex University School of Law[1]

This article considers the law relating to dog-fighting in England and Wales, examining the nature and extent of dog-fighting offences within UK legislation. Dog-fighting has historically been a working class pursuit which arose as a consequence of urbanization in the late 18th and early 19th centuries as the popularity of bull-baiting declined and rural labourers migrated to the cities bringing their love of blood sports with them.[2] 'Pit sports' such as dog-fighting offered not only the entertainment of the fight but also the release and excitement of associated gambling activities and the opportunity for workers to hold evening matches indoors while being able to return to work the following day.[3] Accordingly, dog-fighting existed within a predominantly white, working-class subculture of like-minded enthusiasts and represented a distinct type of organised animal exploitation. However, the Royal Society for the Prevention of Cruelty to Animals (RSPCA) and others, report that contemporary dog-fighting has moved away from its organised pit-based origins to encompass street dog-fighting in the form of chain fighting or chain rolling, the use of dogs as status or weapon dogs.[4]

A cursory analysis of UK legislation identifies that the specific offence of 'dog-fighting' does not exist. Instead, dog-fighting is contained within the broader offence of 'animal fighting' prohibited by provisions of the Animal Welfare Act 2006 (which came into force in 2008). However, beyond the actual activity of pitting dogs against each other or allowing them to attack humans, there are a range of other offences associated with dog-fighting including: illegal gambling; attending dog-fighting events; harms caused to the dogs; and the breeding and selling of dogs for fighting. This article's analysis examines how the law deals with these issues and also discusses the extent to which illegal fieldsports

> **contemporary dog-fighting has moved away from its organised pit-based origins to encompass street dog-fighting**

(e.g. dog-fighting and cock-fighting) are dominated by gambling and distinctly masculine subcultures through which a hierarchy of offending is established and developed.[5] This includes discussion of dog-fighting 'Dogmen' and the cultural imperative of animal harm which influences when and where offences are committed.[6]

Contextualizing Dog-fighting Offences

Previous research has identified mistreatment of nonhuman animals as occurring for many reasons; being

[1] The research on which this article is based was commissioned and funded by the League Against Cruel Sports and was carried out solely by Middlesex University researchers into the current law and the nature and extent of dog-fighting in England and Wales. The full research report is available online at http://www.league.org.uk/~/media/Files/LACS/Publications/Dog-Fighting-Report-2015.pdf

[2] F Ortiz, 'Making the Dogman Heel: Recommendations for Improving the Effectiveness of Dogfighting Laws' (2010) *Stanford Journal of Animal Law and Policy*, 3

[3] Ibid; RD Evans and CJ Forsythe, 'The Social Milieu of Dogmen and Dogfights',(1998) *Deviant Behavior*, 51, pp.51-52.

[4] S Harding, Unleashed: The Phenomena of Status Dogs and Weapon Dogs (Policy Press 2012)

[5] See, for example E Gullone, Animal Cruelty, Antisocial Behaviour and Aggression (Palgrave Macmillan 2012); N Groombridge, 'Masculinities and Crimes against the Environment' (1998), *Theoretical Criminology*, 2(2) 249-267

[6] A. Nurse, Animal Harm Perspectives on Why People Harm and Kill Animals (Ashgate 2013).

either active or passive.[7] *Active* mistreatment covers various deliberate acts and intended consequences that cause harm to nonhuman animals. *Passive* mistreatment can include neglect caused by 'failure to act' such that nonhuman animals are insufficiently cared for and harm is caused either as a result of misunderstanding an animal's needs or through deliberate neglect.

Animal law has been identified as 'legal doctrine in which the legal, social or biological nature of nonhuman animals is an important factor'[8] with animal law being socially constructed according to specific notions of animals' value within society. Most countries have laws protecting domestic animals primarily through anti-cruelty laws codifying prohibited activities and criminalizing actions inflicting pain or suffering on companion animals. In some jurisdictions legal terminology defines this as causing 'unnecessary suffering' reflecting the fact that within domestic settings human harm to nonhuman animals frequently occurs, while also reflecting a contemporary reality that much animal exploitation and harm remains legal. Indeed some forms of accidental harm or harm that constitutes a 'necessary' part of human–companion animal relationships (such as neutering, spaying or castrating domestic companions) may constitute legalized suffering.[9] Animal protection legislation has developed in part to implement such recognition, providing a legal framework within which harms against animals are codified, albeit generally falling short of providing animals with actual rights.[10] Thus 'animal protection legislation serves multiple purposes and is intended to address a variety of human activities considered harmful towards animals'[11] while at the same time preserving anthropocentric interests in the continued exploitation of animals, for example for food. Neglect involving companion nonhuman animals, which includes both acts and omissions which inflict harm and cause unnecessary suffering to nonhuman animals whether deliberate or accidental, are relevant factors in dog-fighting activity given that fighting dogs are legally classed as companions. Fighting dogs are 'owned' or have a human 'responsible' for their well-being, thus the same principles and duties of care that apply to 'pets' under current law apply to fighting dogs irrespective of their more aggressive nature. Dog-fighting laws in their broader context also indicate that a link exists between animal abuse and other offences, arguing that much abuse of companion nonhuman animals, including fighting dogs, is caused by a conception of animals as property. An anthropocentric view of animals also exists which fails to adequately consider their status as sentient beings with specific needs and which influences much animal welfare offending.[12]

Direct Animal Fighting Offences

Within the UK, dog-fighting laws exist within animal welfare and cruelty statutes to the extent that dog-fighting laws do not exist independently of general anti-cruelty statutes as is the case in the US where dog-fighting is generally a felony and carries much stiffer penalties than general anti-cruelty laws.[13] UK law makes it not only illegal to actually coordinate or promote a dog fight, but also to keep, possess or train a dog for fighting or to attend a dog fight as a spectator. This section considers *direct* dog-fighting offences; i.e. actual participation in dog-fighting which is primarily covered by Section 8 of the Animal Welfare Act 2006 as follows:

1. A person commits an offence if he –

a) causes an animal fight to take place, or attempts to do so;
b) knowingly receives money for admission to an animal fight;
(c) knowingly publicises a proposed animal fight;
(d) provides information about an animal fight to another with the intention of enabling or encouraging attendance at the fight;
(e) makes or accepts a bet on the outcome of an animal fight or on the likelihood of anything occurring or not occurring in the

[7] See A Nurse and D Ryland 'Cats and the Law: Evolving Protection for Cats and Owners', (2014) *Journal of Animal Welfare Law,* pp.1-6; A Nurse, Animal Harm Perspectives on Why People Harm and Kill Animals (Ashgate 2013); ML Petersen and DP Farrington, 'Types of Cruelty: Animals and Childhood Cruelty', in A Linzey (ed.) The Link Between Animal Abuse and Human Violence (Sussex Academic Press 2009) 25-37.

[8] J Schaffner, An Introduction to Animals and the Law (Palgrave Macmillan 2011) 5

[9] While the 'necessity' of such procedures can be contested on animal rights grounds, animal law generally exempts recognised animal medical procedures from definitions of animal abuse and cruelty.

[10] See M Radford Animal Welfare Law in Britain: Regulation and Responsibility (Oxford University Press 2001); S Wise, Rattling the Cage (Profile Books 2000); H Kean, *Animal Rights* (Reaktion Books Ltd. 1998)

[11] A Nurse, Animal Harm Perspectives on Why People Harm and Kill Animals (Ashgate 2013) 6

[12] See A Linzey, The Link Between Animal Abuse and Human Violence (Sussex Academic Press 2009); S Wise, Rattling the Cage (Profile Books 2000)

[13] J Schaffner, An Introduction to Animals and the Law (Palgrave Macmillan 2011); F Ortiz, 'Making the Dogman Heel: Recommendations for Improving the Effectiveness of Dogfighting Laws' *Stanford Journal of Animal Law and Policy,* 3 (2010), pp.1-75

course of an animal fight;
(f) takes part in an animal fight;
(g) has in his possession anything designed or adapted for use in connection with an animal fight with the intention of its being so used;
(h) keeps or trains an animal for use for in connection with an animal fight;
(i) keeps any premises for use for an animal fight.

It is worth noting that the Act contains a definition of animal fighting that defines an animal fight as 'an occasion on which a protected animal is placed with an animal, or with a human, for the purpose of fighting, wrestling or baiting'. The wording used makes clear that animal fighting is a tightly defined activity which in part is dependent on proving the intent of those involved in order to prove the commission of an offence. Arguably the specific wording 'placed *with*' [our emphasis] would place 'impromptu' street fights and chain rolling outside of a strict Animal Welfare Act 2006 definition of animal fighting, albeit such activities would be caught by other legislation. Thus commensurate with other areas of criminal law and animal law, *mens rea* becomes a factor in prosecuting certain offences. However, even where this is not the case a challenge exists in prosecuting for 'taking part' in an animal fight, not least clearly identifying the human participants in an event with multiple participants and spectators. These provisions, however, do capture the activities of the key participants in dog-fighting those who: enter their dogs into a fight; organise or hold a fight, referee a fight; and arguably 'veterinary' advisers. The clear intent of the law is to criminalize both the act of dog-fighting and the support network of fights whose activities are also caught in legislation which indirectly captures dog-fighting related activity.

Indirect and Associated Dog-Fighting Offences

A number of secondary or indirect offences also exist within animal protection legislation such that those present at dog-fights also commit indirect offences under Section 8(2) of the Animal Welfare Act. The precise wording of this section is that 'A person commits an offence if, without lawful authority or reasonable excuse, he is present at an animal fight'. Section 8 also states that:

3. A person commits an offence if, without lawful authority or reasonable excuse, he –
a) knowingly supplies a video recording of an animal fight,
b) knowingly publishes a video recording of an animal fight,
c) knowingly shows a video recording of an animal fight to another, or
d) possesses a video recording of an animal fight, knowing it to be such a recording, with the intention of supplying it.

> **A person commits an offence if, without lawful authority or reasonable excuse, he is present at an animal fight**

4. Subsection (3) does not apply if the video recording is of an animal fight that took place –
a) outside Great Britain, or
b) before the [Act's] commencement date.

The wording of Section 8 in respect of spectators and supporters captures the activities of those providing secondary support through, for example the distribution and sale of dog-fighting videos. However the use of the word 'knowingly' is problematic, again requiring investigators and prosecutors to prove an offender's intent and 'guilty mind'. Arguably, substituting 'knowingly or recklessly' would better reflect a need to only prove an offender's actions and participation in dog-fighting related activities and to consider whether they failed to take adequate steps not to commit an offence.[14] Following the decision in *R v G* [2003] UKKHL 50; [2004] 1 AC 1034, a defendant has acted recklessly as to a given consequence if they have foreseen the risk of a consequence but goes on 'unjustifiably' to take the risk. As an established principle of the mental elements of offending in the law of England and Wales arguably 'knowingly or recklessly' serves the purpose of capturing offences where the possibility of an offence is an aggravating factor, should a defendant proceed to commit the act. There is, however, also an argument for using 'intentionally or recklessly' as the Law Commission originally proposed in respect of other elements of wildlife law. (However the

[14] There are exemptions in the Act that would apply to journalistic and undercover investigations into dog-fighting so that filming and broadcast of dog-fighting as part of a 'programme service' is allowed. Thus the Act distinguishes between the intent of dog-fighting enthusiasts and the intent to show film of dog-fighting to educate, expose or inform on illegal activities.

Commission's 2015 proposals for wildlife law reform instead talk about 'deliberate' action.)[15]

It is perhaps worth noting that the Act's definition of 'video recording' means 'a recording, in any form, from which a moving image may by any means be reproduced and includes data stored on a computer disc or by other electronic means which is capable of conversion into a moving image'. Thus the Act applies to mobile phone and tablet recordings and not just 'professional' filming. The Act also specifies that its references to supplying or publishing a video recording extend to 'supplying or publishing a video recording in any manner, including, in relation to a video recording in the form of data stored electronically, by means of transmitting such data' and that this extends to 'showing a moving image reproduced from a video recording by any means'. Thus the Act creates offences in relating to publishing dog-fighting clips on the internet, to sending images by text, tablet, mobile phone or email and communication through social media, even where this is arguably done as a private form of communication – e.g. a subscriber-only service or private Facebook page.

Arguably the provisions of the Communications Act 2003 are also relevant to prosecuting distribution of audio-visual dog-fighting material. Section 127(1)(a) relates to sending a message etc. that is grossly offensive or of an indecent, obscene or menacing character.[16] For the purposes of the Communications Act it is irrelevant whether the message is received, sending is enough for prosecution. The test for whether a message is 'grossly indecent' was decided by the House of Lords in *DPP v Collins* [2006] 1 WLR 2223 was one of whether the message would cause gross offence to those to whom it relates (which in that specific case was ethnic minorities), who need not be the recipients. As animals cannot be victims of a crime due to their status as 'property'[17] there are challenges in using the Communications Act in respect of the notion of 'grossly offensive' messages. But an argument can be made for dog-fighting as 'indecent' given the deliberate intent to inflict harm on animals (and indeed to see how much they can endure) and the graphic nature of some images.

Welfare Offences Related to Dog-Fighting

The reality of dog-fighting is that animal welfare offences likely dominate the prosecution and investigation of dog-fighting offences. Under section 4(1) of the Animal Welfare Act 2006, it is a summary offence to cause unnecessary suffering to a protected animal or if being responsible for a protected animal to permit any unnecessary suffering to be caused to any such animal.[18] This encompasses several potential offences relating to dog-fighting and it is worth further outlining the detail of section 4 which is as follows:

> **an argument can be made for dog-fighting as 'indecent' given the deliberate intent to inflict harm on animals**

1. A person commits an offence if –

a) an act of his, or a failure of his to act, causes an animal to suffer,
b) he knew, or ought reasonably to have known, that the act, or failure to act, would have that effect or be likely to do so,
c) the animal is a protected animal, and
d) the suffering is unnecessary.

2. Subsection (3) does not apply if the video recording is of an animal fight that took place –

a) he is responsible for an animal,
b) an act, or failure to act, of another person causes the animal to suffer,
c) he permitted that to happen or failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all the circumstances to prevent that happening, and
d) the suffering is unnecessary.

A range of dog-fighting activities are caught by section 4 of the Act which applies to companion animals (i.e. those dependent on humans for food and/or shelter whether actually 'owned' or merely those animals for whom humans have accepted some responsibility to provide food, shelter or veterinary treatment). Given that much exploitation and use of animals is legal under current laws that allow for continued animal exploitation, precisely defining

[15] Law Commission, Wildlife Law: Interim Statement, L(Law Commission 2013), 5-6

[16] This section of the Communications Act 2003 has been used in respect of indecent phone calls and emails.

[17] See M Radford Animal Welfare Law in Britain: Regulation and Responsibility (Oxford University Press 2001); S Wise, Rattling the Cage (Profile Books 2000)

[18] CPS, Offences involving Domestic and Captive Animals, 2014 <http://www.cps.gov.uk/legal/d_to_g/offences_involving_domestic_and_captive_animals/> accessed 16 December 2015

animal abuse and cruelty poses some challenges[19] particularly in distinguishing between the lawful and unlawful and between active and passive harms. Dog-fighting offences will also often encompass a range of acts or omissions that adversely impact on the dogs involved. These may not be specifically defined in law as dog-fighting offences but will be caught by the broadly used animal law term of 'unnecessary suffering', consistent with Ascione's definition of animal abuse and cruelty which contextualizes animal abuse as being 'socially unacceptable behaviour that intentionally causes unnecessary pain, suffering, or distress to and/or death of an animal'.[20] Academic and policy discussions of animal abuse tend to concentrate either on *active* mistreatment or *deliberate* neglect where intent to cause animal harm is a significant factor and an indicator of either anti-social personality disorder, mental illness or of other forms of abuse, particularly within domestic contexts.[21] However, within dog-fighting, passive or unintended harm linked to neglect of an animal is a key element of investigatory and prosecutorial scrutiny of dog-fighting activities. During our research into dog-fighting we identified that relatively few prosecutions are taken for the Section 8 Animal Welfare Act offence of animal fighting and identifying the specific dog-fighting element within Section 8 prosecutions is also problematic. Accordingly harm caused to dogs by fighting and/or dog-fighting training activities is an important dog-fighting offence to consider, as is the failure of dog fighters and supporters to prevent such harm whether caused directly or indirectly.

While dog-fighters may argue that fighting is a natural state for their particular breed of dog and claim that the dogs enjoy the fight[22] the Animal Welfare Act's consideration of whether suffering is 'unnecessary' includes the Section 4(3) qualifications on:

- whether the suffering could reasonably have been avoided or reduced;
- whether the conduct which caused the suffering was in compliance with any law or license; and
- whether the conduct which caused the suffering was for a legitimate purpose.

Thus the prohibitions on animal fighting and possession and use of fighting dogs contained in Section 8 of the Animal Welfare Act and in the Dangerous Dogs Act 1991 are relevant. Dog-fighting, as a prohibited activity, does not constitute a 'legitimate purpose' and so any suffering or harm caused to the dogs cannot be considered as incurred in pursuit of a legitimate purpose. In *R (on the application of Gray and another) v Aylesbury Crown Court* [2013] EWHC 500 (Admin) a former horse trader who had 115 equines seized from his premises under section 18a of the Animal Welfare Act 2006, on grounds that it was necessary to do so to prevent their likely suffering, appealed against his convictions for unnecessary suffering. Gray argued that sections 4 and 9 of the 2006 Act required either *actual* knowledge or a form of constructive knowledge that

harm caused to dogs by fighting and/or dog-fighting training activities is an important dog-fighting offence to consider

the animal was showing signs of unnecessary suffering, and that negligence was not sufficient. The court, however, held that Section 4(1)(b) of the 2006 Act clearly aimed to impose criminal liability for unnecessary suffering caused to an animal either by an act or omission which the person responsible either had known or should have known was likely to cause unnecessary suffering whether by negligent act or omission. Section 9(1) also sets an *objective* standard of care which a person responsible for an animal is required to provide. This being the case, the distinction between section 4 and 9 is whether the animal had suffered unnecessarily, not the mental state or beliefs of the person concerned.

Elsewhere in animal law, the Law Commission has recommended transposing the word 'deliberate' into UK wildlife law as a means of capturing action in respect of wildlife that relates to a range of intentional acts.[23] While it is beyond the scope of this article to engage in exhaustive application of the 'deliberate' principle to dog-fighting, the range of dog-fighting related offences and manner in which they are investigated is such that both intentional and negligent acts are important, particularly in respect of the associated animal welfare offences for which offenders are often caught. Applying the logic of *Gray*

[19]See A Nurse, Animal Harm Perspectives on Why People Harm and Kill Animals (Ashgate 2013); R. Agnew, 'The causes of animal abuse: A social-psychological analysis', Theoretical Criminology, 2(2)(1998) 177-210

[20]FR Ascione, Children Who are Cruel to Animals: A Review of Research and Implications for Developmental Psychopathology (1993) *Anthrozoos,* 4, 228

[21]A Nurse, Animal Harm Perspectives on Why People Harm and Kill Animals (Ashgate 2013) 94

[22]T Wyatt, T. Wildlife Trafficking: A Deconstruction of the Crime, the Victims and the Offenders (Palgrave Macmillan 2013).

[23]Law Commission, Wildlife Law Volume 1: Report (Law Commission 2015) 65-69

and Others to dog-fighting, the intentions of those involved are irrelevant, the only consideration is whether the animal has been caused injuries (and their associated suffering) that could have been avoided. Thus, while investigators and prosecutors may find it problematic to prove beyond reasonable doubt (the criminal standard of proof) that a person had organised or knowingly taken part in illegal dog-fighting, proving harm caused to a dog may be a relatively straight forward matter. This offence could be demonstrated, for example, by veterinary surgeon examination that proves and documents the existence of fighting-related injuries that would be admissible in court. Thus animal welfare offences of unnecessary suffering or a failure to provide for appropriate animal welfare are likely easier to prove and prosecute than specific animal fighting offences. Anecdotal evidence from animal welfare investigators suggests that the wording and nature of legislation may lead them to use these 'lesser' offences as a tool to secure progress in a case and remove dogs from the dog-fighter's possession as was the case for the horses in the *Gray* case (see appendices). Thus there is a risk that the reality of dog-fighting is obscured by the use of 'lesser' offences by investigators and prosecutors, albeit the animal welfare provisions are an important toolkit in addressing illegal dog-fighting.

> **the only consideration is whether the animal has been caused injuries (and their associated suffering) that could have been avoided**

Associated dog-fighting Offences

Another range of arguably 'lesser' and preparatory offences relating to dog-fighting also exist within the form of the Dangerous Dogs Act 1991. The long title of the Act is: *An Act to prohibit persons from having in their possession or custody dogs belonging to types bred for fighting; to impose restrictions in respect of such dogs pending the coming into force of the prohibition; to enable restrictions to be imposed in relation to the types of dogs which present a serious danger to the public; to make further provision for securing that dogs are kept under proper control; and for connected purposes.*

Section 1 of the Act specifically controls dogs classified as 'fighting' dogs; namely the pit bull terrier; the Japanese Tosa; the Dogo Argentina; and the Fila Braziliero. Controls enacted under Section1 make it a summary offence to:

- possess such a dog, except for purposes permitted by the Act;
- breed, or breed from, such a dog;
- sell exchange or advertise such a dog;
- give away a fighting dog as a gift, or advertise such a purpose;
- allow a fighting dog to be in a public place without being muzzled and placed on a lead; and
- abandon a fighting dog or allow it to stray.

The provisions of the Act arguably criminalise possession of fighting dogs except under tightly controlled circumstances, and prosecutions data obtained from the CPS indicate that prosecutions for failing to control fighting dogs are relatively commonplace. From an investigatory and prosecutions perspective, an advantage of the Dangerous Dogs Act provisions is that while courts may have to determine whether a particular dog is actually a fighting dog, a reverse burden of proof[24] effectively exists where the onus is placed on the defendant to show that his dog is not a fighting dog (Section 5 of the Act). This matter has been considered in some detail by the courts and hinges on the wording and intentions of the Act. In *R v Knightsbridge Crown Court, Ex parte, Dunne; Brock v Director of Public Prosecutions* [1994] 1 WLR 296 the court considered arguments that: a) the word 'type' should be treated as being synonymous with the word 'breed' and; b) that whether or not a dog showed dangerous proclivities was relevant to determining whether it was a pit bull and thus arguably in determining whether it was a kind of fighting dog.

The Court concluded that the meaning of 'type' within Section 1(1)(a) of the Dangerous Dogs Act was wider than the issue of 'breed' and that whether or not a dog was 'of the type known as the pit bull terrier' within the Act's confines was a matter of fact. In reaching a decision on whether a dog was a pit bull, the court could take into account the breed standard of the American Dog Breeders Association (ADBA) even where the evidence did not suggest that a dog conformed to every criterion of the ADBA's standard for being a 'pure' pit bull.

[24]D Hamer, 'The Presumption of Innocence and Reverse Burdens: A Balancing Act' (2007) *Cambridge Law Journal* 66(1), 142-171

The court in *Dunne* and *Brock* noted that the ADBA standard identifies that pit bulls should have the following characteristics:

i) Gameness;
ii) aggressiveness
iii) stamina
iv) wrestling ability
v) biting ability

In assessing the weight that should be applied to considering such fighting dog cases the Court held that:
On appropriate evidence, a court would be entitled to express its conclusion in such words as: "We find that this dog has most of the physical characteristics of a pit bull terrier. The fact that it appears not to be game or aggressive is not sufficient to prove, on balance, that it is not a dog of the type of the pit bull terrier."

The Sentencing Council for England and Wales published proposals on dangerous dog offences in March 2015 following changes to the Dangerous Dogs Act 1991 which came into force in 2014, substantially increasing the maximum sentences for dog offences. While it is beyond the scope of this article to assess the full detail and impact of these changes, they arguably represent a more punitive criminal justice approach to dog-fighting and its consideration by jurists. However, we note that UK sentencing tariffs for dog-fighting lag behind those of some other European countries and the recommended sentences for serious wildlife crime offences recommended by the Law Commission.[25] There is, therefore, a case for increasing the level of available sentencing options on grounds of consistency.[26]

A Legal Typology of Dog-fighting
Based on our analysis of the activities and prohibited behaviours that exist in dog-fighting laws, arguably a legal typology of dog-fighting exists that distinguishes between active and passive dog-fighting and direct and indirect dog fighting according to the offences committed. Accordingly our research classifies dog-fighting offenders according to offence type as follows:

a) **Active Participant –** those with a direct (and sometimes personal financial) benefit from dog-fighting activities whose activities are directly defined within law as active dog-fighting (i.e. physical engagement in dog-fighting). This includes: fanciers/Dogmen, handlers and seconds as offenders.[27]
b) **Passive Participant –** those who are involved in dog-fighting activities but whose activities are legally defined as 'secondary' activities for example those who facilitate the commission of *Active Participant* activities by holding or organizing dog fighting events and those who cause dog-fighting events to occur through the facilitation of the subsequent physical event. This includes: fight promoters, fight organizers, referees and timekeepers.
c) **Active Supporter –** those who directly support dog-fighting activities but who may not necessarily be directly engaged in or participate in the activity. This category would include, for example, secondary animal fighting offences such as gambling on the outcome of an event, providing secondary or support services such as veterinary services. This includes: yard boys, spectators, street surgeons, those putting up or holding the money (the money man) and enforcers (those who collect debts and bets).
d) **Passive Supporter –** those whose support for dog-fighting is removed from active engagement such as a video supplier, editor or retailer not present at a dog-fight but who nevertheless falls within the remit of Section 8(3) of the Animal Welfare Act by distributing dog-fighting film and material or who runs a dog-fighting appreciation website. This includes those involved in the dog-fighting 'film industry': filmers, distributors, reviewers and bloggers.
e) **Indirect Participant and Associated Offenders –** those who commit offences defined within dog-fighting legislation but who are not directly involved in dog-fighting events and are arguably removed from the activity and associated with dog-fighting at arms length. This includes those who possess, breed or sell 'fighting' dogs as defined by the Dangerous Dogs Act 1991 and who by default are caught within dog-fighting statistics and prosecutions even where there is no direct fighting involved. It also includes dog-fighting sympathizers who may not be directly involved in dog-fighting.

[25] Law Commission, Wildlife Law Volume 1: Report (Law Commission 2015)

[26] Our full dog-fighting report makes such a recommendation.

[27] For a full discussion of individual offender types see our full research report on dog-fighting available online at: http://www.league.org.uk/~/media/Files/LACS/Publications/Dog-Fighting-Report-2015.pdf The detailed research report extends beyond the discussion of dog-fighting laws which is the focus of this article and incorporates discussion of the history of dog-fighting, the rules of dog-fighting and contemporary criminality.

These preliminary categories are fluid and reflect the notion that animal offenders can exist in more than one category and have a range of motivations and behaviours that sometimes defy 'neat' classification.[28] However, the manner in which UK laws are constructed broadly distinguishes between different offences type and categorizes dog-fighting activities according to perceived seriousness and the extent of engagement with actual fighting activity. Analysis of cases is likely required to develop these categories further but this preliminary legal typology illustrates the manner in which contemporary law classifies different dog-fighting activities.

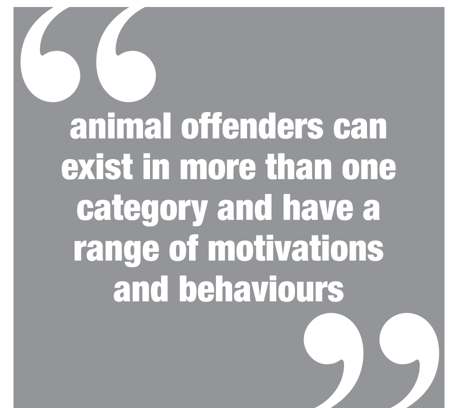
The Extent of Dog-fighting

Arguably 'we only have a fuzzy notion of the stereotypical rural criminal and find it difficult to acknowledge the existence of a rural criminal underclass'.[29] Yet the opportunities for criminality provided to rural criminals make it likely that specific types of offending endemic to rural areas and the fieldsports industry exist, multiple classifications of and perspectives on rural crime notwithstanding. Previous research, for example, identified distinct types of offender involved in animal crimes, concluding that in addition to the 'traditional' criminal who commits offences for financial gain, other specific offender types exist.[30] Masculinities criminals – those who commit offences involving harm to animals as a representation of their male power and identity – are naturally drawn to animal harm or urban bloodsports activities where vulnerable quarry (e.g. game or wild birds, badgers, hares) can be found and where their criminal behaviour exhibits a stereotypical masculine nature[31] both in terms of their exercise of power over animals and the links to sport and gambling involved in such activities as dog-fighting, hare coursing, badger-baiting and badger-digging.

Motivations or involvement in dog-fighting or animal cruelty vary depending upon the offender. Offenders involved in the exploitation of animals and wildlife generally commit their crimes for the following broad reasons:

- profit or commercial gain;
- thrill or sport;
- necessity of obtaining food;
- antipathy towards governmental and law enforcement bodies;
- tradition and cultural reasons.[32]

While these are the primary motivations others may be involved, e.g. revenge attacks against animals in a domestic violence scenario, certain specific types of offending can only take place in rural areas as they are inherently reliant on countryside and wild species (e.g. hare coursing, badger-baiting, illegal fox-hunting and bushmeat hunting). But a specific urban conception on animal offending also exists and this research concludes that assessing the extent of this is problematic for the following reasons.



Producing clear quantitative data on the number of dog-fighting offices is problematic because it is difficult to establish both nationally and regionally. Problems of definition and in varied recording practices are factors; as with other areas of animal and wildlife crime, offences are sometimes excluded from 'official' crime statistics produced by justice agencies (police, Ministry of Justice, CPS) or are subject to variations in recording practice. In the UK, for example, police forces have historically not been required to record wildlife and animal crimes leading to some inconsistency and reliability issues.[33] Where wildlife crime figures were produced they were historically included within 'other indictable offences' making direct analysis of wildlife crime levels problematic.[34] The recording of dog-fighting is further complicated by the fact that the offence of dog-fighting, arguably does not exist with that specific definition. Instead, as the preceding text identifies, dog-fighting is incorporated into the broader offence of 'animal fighting' (under

[28] A Nurse, Animal Harm Perspectives on Why People Harm and Kill Animals (Ashgate 2013); T Wyatt, Wildlife Trafficking: A Deconstruction of the Crime, the Victims and the Offenders (Palgrave Macmillan 2013)

[29] R Smith, 'Policing the changing landscape of rural crime: a case study from Scotland' (2010), *International Journal of Police Science and Management,* 12 (3) , 373-387.

[30] A. Nurse, Animal Harm Perspectives on Why People Harm and Kill Animals, (Ashgate 2013); T Wyatt, T. (2013) Wildlife Trafficking: A Deconstruction of the Crime, the Victims and the Offenders (Palgrave Macmillan 2013).

[31] M Kimmell, J. Hearn and RW Connell, Handbook of Studies on Men & Masculinities (Sage 2005); N Groombridge, 'Masculinities and Crimes against the Environment', (1998) *Theoretical Criminology,* 2(2), 249-267

[32] See A Nurse, Animal Harm Perspectives on Why People Harm and Kill Animals (Ashgate 2013); A Nurse, 'Policing Wildlife: Perspectives on Criminality in Wildlife Crime' (2011), Papers from the British Criminology Conference, 11

[33] E Conway, The Recording of Wildlife Crime in Scotland (Scottish Office 1999)

[34] Ibid., M Roberts, D Cook and J Lowther, *Wildlife Crime in the UK: Towards a National Crime Unit* (Department for the Environment, Food and Rural Affairs/Centre for Applied Social Research 2001); A Nurse, The Nature of Wildlife Crime (Enforcing Wildlife Crime in the UK), Faculty Working Paper No 9, Faculty of Law & Social Sciences, (University of Central England 2003)

the Animal Welfare Act 2006) and within a range of other offences so that dog-fighting might variously be categorised as 'animal crime', 'animal welfare crime', 'environmental crime', or within more mainstream crime categories, for example, indictable offences, customs and revenue and gambling offences. The unreliability of official figures is partially negated by animal crime figures produced individually by those environmental and animal welfare NGOs that are directly involved in monitoring animal crime. At a national level, the RSPCA and SSPCA produce figures relating to the number of reported incidents of dog fighting and also produce prosecutions data. The Crown Prosecution Service (CPS) also produces data on public prosecutions and some data are available from police forces on seizures of dogs and dog-fighting activity within their force area.

However the range of organisations involved in compiling various animal crime figures means that producing a comprehensive analysis of the extent and nature of dog-fighting is problematic. The exact position regarding the recording of animal crime is complex and the impression given of animal crime and dog-fighting crime can be distorted by a number of factors which this section discusses. Lea and Young in their *classic text What is to be done about Law and Order?*[35] explain that before a crime is officially recorded it must go through a number of stages. The process is as follows:

1. Acts known to the public
2. Crimes known to the public
3. Crimes reported to the police
4. Crimes registered by the police
5. Crimes deemed so by the courts
6. The 'official' statistics

Lea and Young argue that at any of these stages it is possible for interpretation of the illegal act to halt the process of its 'official' recording:

[D]oes the member of the public think it worth reporting to the police (that is, is it a real crime and even if it is, will the police do anything about it?) Do the police think it is a real crime worthy of committing resources? And does the court concur? At each stage there is a subjective interpretation, very often involving conflict (for instance the police may think the crime not worth bothering about but the member of the public will) and often a reclassification (for instance, the crime begins as suspected murder and ends up as manslaughter).[36]

These arguments take on increased validity in the case of animal crime; Padfield notes that 'the public's reporting of crime varies by offence'.[37] In some jurisdictions much reporting of animal crime by the public is direct to NGOs perceived as being directly involved in enforcement and monitoring and not to policing agencies. Factors influencing reporting include the high profile of some organisations in the 'fight' against animal crime. For example, the high visibility of the RSPCA's uniformed inspectorate, SSPCA officers and other NGOs, such as the League Against Cruel Sport (LACS), who have achieved public recognition due to extensive media coverage, means that they may be perceived as likely to take action in the event of an animal crime report. A secondary factor is public perception of animal crime and the role of the police in its enforcement. Media interest in policing and criminal justice predominantly focuses on public order issues such as anti-social behaviour, riots and policing of public protests and 'serious crime' priorities such as murder, rape, and even terrorism.[38] Lea and Young argued that 'the focus of official police statistics is street crime, burglary, inter-personal violence – the crimes of the lower working class'.[39] This continues to be the case with public perception of animal crime possibly being something which falls outside their expectations of mainstream policing. (In developing countries, corruption issues may also mean that NGOs are trusted by the public and will receive information on wildlife crime, whereas state policing and conservation agencies are treated with mistrust[40] accordingly public reporting of animal crime often bypasses state agencies, leading to under-representation of animal and wildlife crime in official figures.

> **the recording of animal crime is complex and the impression given of animal crime and dog-fighting crime can be distorted**

[35] J Lea and J Young, What is to be done about Law Order? (Pluto Press 1993) 14

[36] Ibid.

[37] N Padfield, Texts and Materials on the Criminal Justice Process (Oxford University Press 2008) 2.

[38] P Joyce, Policing: Development and Contemporary Practice (Sage 2010); T Newburn, Policing: Key Readings (Willan Publishing 2004)

[39] J Lea and J Young, What is to be done about Law Order? (Pluto Press 1993) 89

[40] See ST Garnett, LN Joseph, JEM Watson and KK Zander KK 'Investing in Threatened Species Conservation: Does Corruption Outweigh Purchasing Power?' (2011) *PLoS ONE* 6(7): e22749. doi:10.1371/journal.pone.0022749; ML Gore, J Ratsimbazafy, and ML Lute, M. L. 'Rethinking Corruption in Conservation Crime: Insights from Madagascar' (2013), *Conservation Letters,* 6, 430–438. doi: 10.1111/conl.12032

Contemporary Dog-fighting Laws and Offences: Some Preliminary Conclusions

Our research identifies that far from being a single, easily identifiable offence; dog-fighting incorporates a range of different offences in law, a range of different offence types, and a range of different offenders. Commensurate with previous research that identifies different offender behaviours and offending within animal and wildlife crime[41] the Middlesex research concludes that variation exists in the nature of dog-fighting to the extent that a single approach to offending is unlikely to be successful. Instead, policy approaches need to consider the level and type of participation of individual offenders and the manner in which legislation codifies various dog-fighting activities. American dog-fighting scholars identified that 'prosecution of the crime is also made difficult by the secrecy of hobbyist and professional dog-fighting, the spontaneity of street-fighting, the unwillingness of many witnesses to come forward, and the necessity of using indirect evidence to prove most cases'.[42] Thus arguably US states should amend their statutes to strengthen penalties for dog-fighting and related offences but the Middlesex research identified that, as with numerous other animal, wildlife and animal welfare crimes,[43] it is in enforcement and understanding of the nature of dog-fighting offences that problems most commonly occur.

> the level of dog-fighting remains an unknown quantity given the varied manner in which offences are recorded

Our research concluded that the level of dog-fighting remains an unknown quantity given the varied manner in which offences are recorded and prosecuted. Dog-fighting falls within the category of 'animal fighting' under Section 8 of the Animal Welfare Act 2006 and the available data does not distinguish between dog-fighting and other forms of animal fighting. In respect of applying dog-fighting law, we identified that dog-fighting offences may not always be prosecuted or identified as such given the nature of harms caused to dogs during fighting activities and the availability of 'lesser' but more easily provable offences such as failure to provide animal welfare under the Animal Welfare Act 2006. Thus a conclusion of our research is that not only is the level of dog-fighting difficult to quantify, but it is probable that dog-fighting is both under-reported *and* under-recorded given the very real likelihood of dog-fighting offences being recorded under other legislation – e.g. as animal welfare and animal harm offences. Indeed it is also clear that in some circumstances dog-fighting offences are not required to be recorded as such. A logical inference from the preceding conclusion is that there is likely a lack of recording of the links between dog-fighting and other offences. But, analysis of the law and case law illustrates that dog-fighting and other offences/activities are linked. Within the data we examined, the largest element of known and recorded dog-fighting activity relates to the possession or custody of fighting dogs. It should be noted that the data do not distinguish between custody of dogs in an *actual* fight setting and possession and custody of dogs in a 'benign' or domestic setting. It is beyond the scope of our current project to interrogate the data any further (to do so would likely involve large scale analysis of case files with the attendant access problems in doing so). But we propose further research that distinguishes between reported offences and actual offences/prosecutions and looks at the behaviour and decision-making processes of investigators and prosecutors.

Our research also concluded that a legal typology of dog-fighting exists such that the historical conception of dog-fighting as a 'pit sport' is inadequate to describe the contemporary reality in which dog-fighting has evolved. In its enforcement, contemporary dog-fighting is as much about animal welfare and the harm caused to the dogs as it is about the act of fighting. Thus both the law and our legal typology distinguish between active and indirect engagement in dog-fighting. In doing so we contend that dog-fighting is an animal welfare law problem as is evident by the classification of dog-fighting within various legal categories and offences linked to animal welfare.

[41] A Nurse, Animal Harm Perspectives on Why People Harm and Kill Animals (Ashgate 2013); A Nurse, 'Policing Wildlife: Perspectives on Criminality in Wildlife Crime' (2011) *Papers from the British Criminology Conference,* 11; M Radford, Animal Welfare Law in Britain: Regulation and Responsibility (Oxford University Press 2001).

[42] F Ortiz, 'Making the Dogman Heel: Recommendations for Improving the Effectiveness of Dogfighting Laws' (2010) *Stanford Journal of Animal Law and Policy,* 3, 75

[43] see A Nurse, Animal Harm Perspectives on Why People Harm and Kill Animals (Ashgate 2013); A Nurse, A. Policing Wildlife: Perspectives on the Enforcement of Wildlife Legislation (Palgrave Macmillan 2015)