

# Striking the balance: The Dangerous Dogs Act, Dog Welfare and Public Protection

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There has surely never been any doubt that the Dangerous Dogs Act 1991 (DDA) is an Act primarily concerned with protecting the public rather than with promoting the welfare of dogs. Whether one agrees with the contention that the Act 'is a cardinal example of poor, ill-thought-out regulation',<sup>1</sup> whether one agrees with the assertion that the ban on certain types of dogs is (stripped to its core aim of eradicating certain types of dog), justifiably likened to Nazism,<sup>2</sup> one cannot reasonably doubt the fact that the DDA was not, as originally conceived, concerned with the welfare of dogs in any meaningful way. No law which put to death loving family pets, regardless of their behaviour, simply because they had certain characteristics and had not

been added to an exemption list which requires them to be spayed or castrated to prevent them from breeding,<sup>3</sup> could truly be said to be concerned with animal welfare.

The Dangerous Dogs (Amendment) Act 1997 attempted to restore some balance by removing the original mandatory nature of destruction orders for banned dogs not added to the Index of Exempted Dogs and for other dogs which had caused injury to a person (even if only on a single occasion and due, not to the nature of the dog, but to the poor standard of care and control exercised by the owner) whilst (i) dangerously out of control in a public place<sup>4</sup> or (ii) in a non-public place it was not permitted to be.<sup>5</sup> As such, no dog should now be put to death under the DDA if the court is satisfied that it does not pose

a danger to public safety,<sup>6</sup> and, in this sense, the Act shows a modicum of concern for the welfare of dogs.

However, the 1997 amendment did nothing to address that which is, it is submitted, the fundamental flaw of the DDA: viz., the assumption that it is dogs themselves, whether of a banned type, having simply shown

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<sup>1</sup> C. Hood, 'Assessing the Dangerous Dogs Act: When Does a Regulatory Law Fail?' [2000] *Public Law* 282, 282. Hood actually suggests that, from the point-of-view of assessing it as a regulatory law, the DDA is not the universal failure it is often portrayed to be.

<sup>2</sup> S. Hallsworth, 'Then They Came for the Dogs' (2011) *55 Crime Law and Society Change* 391, 392. Of course, many people will have an immediate aversion to such a comparison, believing it to be rather sensationalist and perhaps even in bad taste. However, it must be noted that there are philosophical similarities in approach. Some might wish to distinguish the two situations on the basis that one course of action was directed towards people and one is directed towards dogs. It is submitted that such an approach is inappropriate because it inherently sanctions the belief that the lives of dogs, and non-human animals generally, are worth less than the lives of humans. There is no doubt that society and the law do take this approach. For, e.g., it is not a crime, in

itself, to kill and eat a cow, or to destroy a perfectly healthy dog, but it would be a crime to carry out such action in relation to a human. However, it is submitted that there is no moral justification for such a view. Nonetheless, it must be recognised that there are some genuine and important differences between the approach under the DDA and in Nazi Germany. First and foremost, the possibility of exemption has always existed for banned dogs. This is not to say that the approach of destroying completely innocent dogs not on the exempted lists, or requiring dogs to be put on the exempted list (and thus spayed or castrated) in order to live, is appropriate. Second, the scope of the institutionalised murder under the DDA is far less extreme in numerical terms. Nonetheless, it must be recognised that these differences are differences in scope; they do not distinguish the philosophical approach taken by the DDA and the Nazis: viz., eradication of certain types of living creatures.

<sup>3</sup> DDA, ss.1 and 4, as originally enacted.

<sup>4</sup> *Ibid.*, s.3(1).

<sup>5</sup> *Ibid.*, s.3(3).

<sup>6</sup> *Ibid.*, ss.4(1A) and 4A; *R v. Flack* [2008] EWCA Crim 204, *R v. Davies* [2010] EWCA Crim 1923, *Kelleher v. DPP* [2012] EWHC 2978 (Admin), *R v. Baballa* [2010] EWCA Crim 1950, *R v. Ashman* (unreported, 18th October, 2007). If the court imposes a contingent destruction order because satisfied that the dog would not constitute a danger to the public, the dog will nonetheless be subject to immediate destruction if the conditions are breached, even if the dog still does not pose a danger to public safety. Whilst punishment of an owner who breaches the conditions is appropriate, it is submitted that the court should still not have to order destruction if satisfied that the dog does not pose a danger to public safety; a dog should only ever be subjected to a destruction order if it poses a danger to the public.

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some "aggression"<sup>7</sup> outside of their home, or otherwise, which pose the real danger to public safety. As many people know, it is irresponsible, sometimes neglectful or even cruel, owners and carers which are the real problem.<sup>8</sup> Therefore, this is the problem that the law should be seeking to solve.

It will be considered below whether (and, if so, how) the law, either as it stands or with appropriate amendment, can be used to tackle the true problem, ensuring the appropriate balance between the welfare of dogs and public safety. However, before this analysis, it must be noted that, whilst any contention that dogs (or any species of non-human animals) are intrinsically less important than people is summarily

rejected, this is not to say that a concern for public safety can never trump a concern for animal welfare. Without wishing to become embroiled in a utilitarian debate, if destroying thousands of dogs would save millions of lives (human and/or non-human), it must be legitimate for the legislature to *consider* this option. But only if there is no less harmful way to save the lives.

A (surely uncontroversial) contention of this article is that there are far less harmful ways to protect the public than destroying innocent<sup>9</sup> dogs. Indeed, it is contended that there are methods of protecting the public, not at the expense of the welfare of dogs, but by improving their welfare.<sup>10</sup> It will be argued that some of the case law under the DDA regime has attempted to strike a balance between public safety and welfare by maximising the protection from destruction under the 1997 amendment, without compromising protection of the public.<sup>11</sup> Moreover, it will be suggested that this case law could have been used to extend further the concern for welfare, again without increasing danger to the public.<sup>12</sup> However, this approach is hindered by the (unfortunately, correct) interpretation of the

legislation by the Court of Appeal in *R v. Donnelly*,<sup>13</sup> which holds that, in considering whether a dog poses a danger to public safety (and thus whether it should be immediately destroyed), the court is bound to consider only the present circumstances (albeit including the *immediate* effect of any conditions that could be imposed under a contingent destruction order), rather than any change of circumstances which would lead to a *future* improvement in the behaviour of the dog or the standard of care and control exercised by the owner.

As such, it will be argued that, whilst some minor improvement in the law's concern for the welfare of dogs can be achieved without statutory reform, reform is ultimately needed

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<sup>7</sup> By s.10(3) DDA, 'a dog shall be regarded as dangerously out of control on any occasion on which there are grounds for reasonable apprehension that it will injure any person, whether or not it actually does so'. Clearly, this definition could be satisfied even if a dog is acting in an entirely defensive fashion, in response to what it perceives to be a threat to it or a companion (human or otherwise). As S. Wise (*Drawing the Line: Science and the Case for Animal Rights*, Massachusetts, USA: Perseus Books, 2002, 116) states, the problem is that people often do not understand 'that what appears [to people] to be vicious behaviour...may be something altogether different from a dog's point of view'. Of course, such behaviour can still endanger the public, but any given instance(s) of such behaviour is/are not in any way indicative of the likelihood of a dog posing any danger to anyone in the future, provided that it is properly controlled.

<sup>8</sup> As noted by, e.g., Anne McIntosh, MP, chair of the Environment, Food and Rural Affairs committee reviewing proposals for reform of the current DDA regime. See <http://www.bbc.co.uk/news/uk-politics-21464402>, accessed on 27/03/13.

<sup>9</sup> It is submitted that, in truth, even aggressive dogs are innocent, because the aggression will have been caused by improper care and/or control by humans.

<sup>10</sup> E.g., by educating owners how to care for and control their dogs properly.

<sup>11</sup> E.g., *R v. Flack* [2008] EWCA Crim 204, *R v. Davies* [2010] EWCA Crim 1923 and *Kelleher v. DPP* [2012] EWHC 112978 (Admin) require the court to consider whether imposing conditions on the care, control and ownership of a dog in relation to which a s.3 offence has been committed (and which is thus subject to the possibility of a destruction order under s.4) would prevent it from posing a danger to public safety, thereby sparing the dog from immediate destruction (with a s.4A contingent destruction order being favoured), when, without such conditions, the dog would be deemed a danger and therefore destroyed. *R v. Baballa* [2010] EWCA Crim 1950 is to similar effect for a s.1 banned dog in relation to which the conditions for exemption have been breached (but the court can only consider whether compliance with the existing statutory conditions for exemption would prevent the dog posing a danger; it cannot impose

additional conditions, even if this would ensure that the dog is not dangerous: *R (On the Application of Sandhu) v. Isleworth Crown Court* [2012] EWHC 1658 (Admin)). Moreover, *R v. Ashman* (unreported, 18th October, 2007) allows the court to refuse an order for immediate destruction of a dog in relation to which a s.1 offence has been committed (imposing a contingent order instead) if satisfied that a transfer of "keepership" of the dog would prevent it from posing a danger to public safety, when it would otherwise be deemed a danger and therefore destroyed. *R (On the Application of Housego) v. Canterbury Crown Court* [2012] EWHC 255 (Admin) is to similar effect for non-banned dogs.

<sup>12</sup> E.g., by imposing attendance at dog-training and owner-education classes as a condition to prevent destruction, when this would ensure that a dog which would otherwise pose a danger to public safety (and thus be subjected to immediate destruction) does not, and can therefore be spared destruction.

<sup>13</sup> [2007] EWCA Crim 2548.

in order to strike the appropriate balance and ensure sufficient concern for welfare. Yet there remains the burning question of whether society possesses the resources and inclination to improve the welfare of dogs in this regard.

### **Striking the Balance: Protecting the Public and Maximising Animal Welfare**

As far as I am aware, there are no useful statistics comparing incidents of (i) attacks by dogs who (and whose owners, by attending training classes with the dog) have been properly trained and (ii) attacks by dogs which have received no training. Moreover, statistics recording dog attacks do not normally seek to record whether the dog involved had been trained, how it was cared for, or whether it has any history of mistreatment by humans. Given the many problems noted with the recording of dog-attack statistics,<sup>14</sup> this is not surprising. However, regardless of the lack of empirical data, it surely cannot be seriously doubted that well-trained dogs which are properly cared for and controlled (in and out of their homes) are far less likely to show aggression towards humans and are, thus, less likely to pose a danger to public safety. Indeed, it is contended that requiring owners to attend, with their dogs, training classes designed to educate human and dog alike, would be a far more effective way to protect the public than to destroy dogs of a certain type or which have shown instances of aggression in contravention of the DDA. Moreover, this would improve the welfare of dogs even if we retain the current destruction regime, as it would lead

to an overall better standard of care and control of dogs and a consequent reduction in offences (and thus destruction) under the DDA.

Nonetheless, it must immediately be appreciated that such a universal requirement is unlikely to be accepted. If the government did decide to reintroduce mandatory dog licensing (either for all dogs or for, e.g., section 1 DDA banned dogs), attending classes could be a condition of acquiring a licence.<sup>15</sup> However, there are a number of reasons why such an approach might not be appropriate. First, it is those who would be likely to comply with the law who would be most likely to care for their dogs properly in the first place; those whose dogs would be more likely to pose a danger to the public because of a lack of proper care and control would probably be more likely to ignore the licensing requirements by failing to attend the training sessions. Second, it is doubtful whether, particularly in the current economic climate, the government would be willing to spend the necessary money to put such a scheme in place, even assuming that the costs would ultimately be met by dog owners.

Third, there is the possibility that such a scheme could actually have negative welfare consequences. For example, although it is contended that better education of dog owners and better training of dogs would lead to fewer DDA offences being committed (and thus fewer dogs becoming the subject of a destruction order), it is possible that requiring attendance at classes would

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lead to fewer people being willing to adopt a dog, particularly if the cost of the sessions had to be borne by the owner. Eventually, this would lead to professional breeders breeding fewer dogs (thereby reducing the dog population in this respect), as they would not be able to sell as many dogs. However, it would also lead to fewer people being willing to adopt dogs from shelters or from the homes of people whose dogs have had puppies. From a welfare perspective, it is, in one sense, desirable to dissuade from adopting a dog people who do not have the necessary resources and/or inclination to care for that dog properly. Yet this would surely lead to shelters, whose resources are already stretched, having to care for more and more dogs, reducing the standard of care for dogs in shelters.<sup>16</sup> The ultimate horror of such a position would be if it reached the stage at which it would be better for a dog (potentially including dogs who would never have become the subject of a destruction order under the DDA if they had been adopted) to be destroyed than to continue to live in inadequate conditions; from a welfare perspective, it would not make any difference if the inadequate standard of care were due to neglect, cruelty or a simple lack of resources in those who desperately want to care for the dogs to the best of their ability.

It is, of course, not submitted that educating dogs and their owners should be ignored; education and

<sup>14</sup>See, e.g., S. Collier, 'Breed-specific Legislation and the Pit Bull Terrier: Are the Laws Justified?' [2006] 1 *Journal of Veterinary Behaviour* 17.

<sup>15</sup>Or a condition for obtaining an exemption certificate, if licensing were not to be re-introduced and

educational/training requirements were limited to owners of banned dogs.

<sup>16</sup>The Dogs' Trust, a leading UK dogs' charity, argues that '[t]he licensing regime was essentially a tax on dog ownership[;] it did not encourage a more responsible

attitude towards dog ownership in the long term, nor did it protect in any way the welfare of dogs in the short term.' See <http://www.dogstrust.org.uk/az/d/doglicences/#.UVKyBIwgGSM>, accessed on 27/03/13.

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training remains a fundamentally important step towards improving the welfare of dogs and protecting the public from dogs reacting dangerously to improper care and control. Indeed, it is contended that more should be done to increase the number of education/training classes available.<sup>17</sup> However, it seems unrealistic to expect Parliament, in the foreseeable future, to ensure an increase in the availability of, and incentives to attend, dog-training and owner-education classes on a scale sufficient to secure the required balance between improving the welfare of dogs and protecting the public.<sup>18</sup> Therefore, an alternative method of striking the necessary balance must be found.

In this regard, it will be argued that, by using existing case law, judges can legitimately mandate an increase in attendance at dog-training classes, to prevent the need to destroy a dog which has been involved in committing a section 3 DDA offence (and which might, considering its present condition in isolation, potentially pose a danger to public safety), whilst ensuring better protection of the public (by ensuring that the dog does not pose a danger).<sup>19</sup> However, as noted above,

it will be explained that this beneficial principle cannot extend as far as one would like, because the amended DDA still marginalises a concern for the welfare of dogs. As such, it will be contended that legislative reform is still appropriate to ensure proper respect for welfare, but *an* improvement can be made without the necessary reform.

### Striking the Balance Using the Existing Law

Under sections 3 and 4 of the DDA, any dog (i) which is dangerously out of control in a public place or (ii) which, whilst in a non-public place it is not permitted to be, gives grounds for reasonable apprehension that it will injure someone (whether it does or not)<sup>20</sup> can be destroyed. If the dog actually injures someone, it is subject to a "quasi-mandatory" destruction order (that is, it must be destroyed unless the court is satisfied, in the words of section 4(1A), 'that the dog would not constitute a danger to public safety').<sup>21</sup> If the dog does not injure someone, the court should not order destruction unless satisfied that the dog would pose a danger to public safety.<sup>22</sup> Crucially, in either case, the court can, even if minded to impose a destruction order, impose a contingent destruction order under section 4A(4), by which the dog will only be destroyed if the owner fails to keep it under proper control (including satisfying any conditions imposed by the court under section 4A(5)).

Moreover, case law makes it clear that, in determining whether a dog would pose a danger to public safety, the court must consider whether imposing any conditions under a contingent destruction order would, if those conditions are complied with,<sup>23</sup> prevent it from posing a danger to public safety.<sup>24</sup> That is to say, for quasi-mandatory destruction orders, the court should not order destruction if the appellant proves that the dog would not pose a danger to public safety if not destroyed. If the appellant cannot satisfy this burden purely in relation to the dog's present circumstances, he must still be given the chance to prove that, with the imposition of appropriate conditions, the dog would not pose a danger. If he cannot prove this, an immediate destruction order will be made; if he can prove this, a contingent destruction order will be made. For completely discretionary destruction orders, the court should not order destruction unless it is satisfied (on the evidence before it,

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<sup>17</sup>For example, perhaps some of the increase to the fee for adding a s.1 banned dog to the Index of Exempted Dogs could be used to subsidise classes educating owners and training dogs, either generally or in relation to banned dogs.

<sup>18</sup>Under the Control of Dogs (Scotland) Act 2010, s.2, a dog control order can require an owner to attend training classes with his dog, but the recent DEFRA consultation (see n.41, below) did not recommend such an approach for England.

<sup>19</sup>It will be shown why, unfortunately, this approach cannot be used for s.1 banned dogs. However, amendment to the Dangerous Dogs Compensation and Exemptions Schemes Order 1991 is all that would

be required for the approach to work in relation to banned dogs.

<sup>20</sup>It can be seen that this replicates the s.10(3) DDA definition of being dangerously out of control. (See n.7, above.)

<sup>21</sup>In such cases, the burden to prove that the dog would not pose a danger is on the party arguing against destruction and requires proof on the balance of probabilities: *R v. Davies* [2010] EWCA Crim 1923, at [14].

<sup>22</sup>*Kelleher v. DPP* [2012] EWHC 2978 (Admin), at [12]. It is important to note that the burden is not on the party arguing against destruction to prove that the dog

would not pose a danger; the court must start from the position that the dog would not pose a danger and order destruction only if satisfied otherwise.

<sup>23</sup>The court will inevitably consider the likelihood of compliance, which will thus require the conditions to be reasonably practicable.

<sup>24</sup>*R v. Flack* [2008] EWCA Crim 204 (aggravated offences: i.e., those involving actual injury to a person); *Kelleher v. DPP* [2012] EWHC 2978 (Admin), especially at [24] (non-aggravated offences: i.e., those not involving injury).

starting from the position that the dog is not dangerous) that the dog would pose a danger to public safety. If the court is satisfied of this on the basis purely of the dog's present circumstances, it must still satisfy itself that imposing any appropriate conditions<sup>25</sup> would not prevent it from posing a danger. If the court is so satisfied, an immediate destruction order will be made; if the court is not so satisfied, a contingent destruction order will be made.

It is submitted that the significance of this case law is that the court can and should consider imposing attendance at dog-training/owner-education classes under a contingent destruction order.<sup>26</sup> Imposing such a condition would be the most effective way of ensuring that a dog which could (looking at its present circumstances in isolation) potentially be a danger to public safety would not actually be a danger. There is nothing in the DDA to prevent such a condition being imposed, and any caring and responsible owner would be willing to comply with such a condition to save his dog.<sup>27</sup>

However, there is a potential obstacle in the current case law, in the form of *R v. Donnelly*, in which the Court of Appeal held that, when considering whether to impose a destruction order, the court has to consider whether the dog, 'in the condition in which he [or she] [is] and having regard to the circumstances in which he [or she] live[s], constitute[s] a danger to public safety'.<sup>28</sup> The court should not, it was held, accept the

argument that a destruction order should not be made simply because any danger posed to the public comes, not from the inherent nature of the dog, but from its behaviour in response 'to the care the dog had received'.<sup>29</sup> Therefore, it would seem that the argument that a dog which currently does pose a danger to public safety should not be destroyed because, in the future, it will not, if it is properly trained and its owner is properly educated, would fall foul of *Donnelly*. That is to say, a contingent destruction order can, and should, be utilised when the imposition of appropriate conditions (potentially including dog and owner attendance at training classes) would immediately prevent the dog from posing a danger to public safety, but it cannot be used when the conditions would not achieve this immediately.

Section 4(1A) states that the court is not obliged to order destruction of a dog in respect of which the section 3 aggravated offence has been committed (and which is thus subject to a quasimandatory destruction order) 'if...satisfied...that the dog would not constitute a danger to public safety'. Use of the subjunctive 'would' raises issues as to timing, but it is submitted that, given the purpose of section 4(1A), the appropriate time is surely the time at which the destruction order is, or is not, made. That is to say, it seems that the court should be satisfied that the dog would not constitute an *immediate or future* danger to public safety if an immediate destruction order is not made (taking into

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account any conditions which could be imposed under a contingent destruction order and which would have an immediate effect in preventing the dog from posing a danger to the public). As such, arguments that the dog should be spared destruction because it would not pose a danger after, say, a few months' (or even weeks' or days') training will surely not be accepted in relation to a dog which is deemed to pose an immediate danger to the public.

However, it is submitted that there is another line of case law which the courts could utilise to spare from destruction a dog which is the victim of poor care and control, whilst requiring attendance at owner-education/dog-training classes and thereby improving the dog's welfare and protecting the public. Consider the example of a dog which the court is satisfied does not, by its nature, pose a danger to public safety (because it is not generally aggressive towards humans), but which is dangerous when subjected to the poor standard of care and control it receives from its present

<sup>25</sup>Inevitably, although the burden is on the court to satisfy itself that the dog does pose a danger to public safety, it will be for the party opposing destruction to raise any conditions other than those listed in s.4A(5) (i.e., muzzling, keeping on a lead, banning from certain places, or castration). The court would then have to satisfy itself that such a condition or

conditions would not prevent the dog from posing a danger to public safety.

<sup>26</sup>Clearly, the court would have to be satisfied that the classes are properly run by appropriately qualified experts, and attendance would have to be monitored, but there is no reason why this should present a problem.

<sup>27</sup>Of course, issues of cost might have to be addressed for owners who cannot afford to pay for the classes. In such cases, government or charity subsidisation might be required.

<sup>28</sup>[2007] EWCA Crim 2548, at [15].

<sup>29</sup>*Ibid.*

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owner. It seems that, under Donnelly, the court would have to order immediate destruction even if the owner is willing to attend training classes as soon as practicable. Attendance at such classes would teach the owner how to care for and control the dog properly, to ensure that it does not pose a danger to public safety. Along with attendance by the dog, this could work to remove any danger from the public within a short space of time. Nonetheless, the dog would, in the interim, pose a danger to public safety, so it would seemingly have to be destroyed. It would perhaps be possible to impose additional, stringent control conditions, such as preventing the dog from being in a public place (other than on the way to, and attendance at, training classes, when it would have to be muzzled and appropriately restrained, unless otherwise required at the sessions) until training has been completed, provided that such conditions would not themselves

unduly compromise the dog's welfare.<sup>30</sup> Indeed, it is contended that a court should consider imposing such conditions where practicable and if satisfied by expert evidence that the dog's welfare would not be unduly hindered (bearing in mind that the alternative is death). However, it is accepted that a court might well not be willing to do so, for fear that the interim control measures would not work to protect the public. For example, as noted, it would surely be necessary for the dog to be in a public place on the way to the classes,<sup>31</sup> and judges might be concerned that the owner's poor standard of care and control in this situation could lead to the dog being a danger to the public.<sup>32</sup>

Nonetheless, in cases in which the problem is the owner, it is submitted that the court could utilise the transfer of "keepership" case law developed in relation to section 1 banned dogs. For example, in *R v. Ashman*,<sup>33</sup> the court held that a banned dog in relation to which the conditions of exemption have been breached can be spared destruction if the court is satisfied that it would not pose a danger to public safety if "keepership" (effectively, full responsibility for care and control of the dog) is passed from the owner to someone else (and the conditions for exemption are satisfied within two months or such longer period as the court provides for under section 4A(2)).<sup>34</sup> If an owner is willing to give

care and control of a non-banned dog to a more responsible person (who is willing to assume responsibility for the dog) whilst he secures the necessary training by attending classes with the dog (and the interim keeper, to ensure that the dog is properly controlled on the way to, and at, the sessions), the court could impose this as a condition under a contingent destruction order, with the owner allowed to resume care and control of the dog when he has satisfactorily completed the class. The dog will not pose a danger to public safety whilst the owner is being educated, as it will be in the care and control of a responsible person, and it will not pose a danger when the owner is properly educated.<sup>35</sup>

Indeed, in *R (On the Application of Housego) v. Canterbury Crown Court*,<sup>36</sup> the High Court accepted that courts have the power to consider the effect of transfer of ownership/keepership of a non-banned dog when determining whether or not it is dangerous and thus whether a contingent destruction order is appropriate. Moreover, the Court recognised the generality of conditions which can be imposed under section 4A(5).<sup>37</sup> Therefore, there is nothing in the DDA or the case law to prevent the court from utilising the approach suggested above to balance the welfare of dogs with protection of

<sup>30</sup>For example, if the owner had a secure garden in which the dog could be exercised.

<sup>31</sup>An important part of the training, for dog and owner, would of course be ensuring that the owner can control the dog outside of its home environment.

<sup>32</sup>If keeping the dog on a lead and muzzle in public were thought to be sufficient to prevent this, there would be no need for any other conditions, such as attendance at classes, to be imposed.

<sup>33</sup>Unreported, 18th October, 2007.

<sup>34</sup>T. Latham, 'Dangerous Dogs Law' (2010) 174 *JPN* 212 rightly notes that, in relation to s.1 banned dogs, this case law can cause problems (i) as amounting to a *de*

*facto* transfer of ownership (when transfer of ownership by sale or gift is prohibited under s.1) and (ii) by complicating the requirement to ensure third-party liability in respect of the dog (which is required as a condition for exemption under the Dangerous Dogs Compensation and Exemption Schemes Order 1991). However, first, it is submitted that these concerns are outweighed by the positive effect on welfare, without any negative effect on public safety, as the law applies to spare from destruction only dogs which the court is satisfied are not dangerous. Second, such problems obviously do not arise for dogs in relation to which a s.3 offence has been committed but which are not of a type banned under s.1.

<sup>35</sup>Of course, if an owner is not willing or able to attend education classes, the court could still utilise the transfer of "keepership" case law, requiring transfer of ownership to a responsible person as a condition of saving the dog, if the current owner and prospective owner are both willing.

<sup>36</sup>[2012] EWHC 255 (Admin).

<sup>37</sup>*Ibid.*, at [15].

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the public.<sup>38</sup> There is established case law allowing the dog to be spared when transfer of permanent control of it to a responsible person would prevent it from being a danger to the public and this is imposed as a condition of a contingent order. Furthermore, there is no reason why transfer of temporary control of the dog, whilst the owner secures the necessary education (with the dog also attending, under the proper supervision of the responsible person) could not be imposed, provided that there is a responsible person willing to assume care and control of the dog.<sup>39</sup>

However, it is arguable that many judges might well be reluctant to use such a condition to save a dog they think otherwise does pose a danger to public safety, even where the evidence suggests that the poor standard of care and control of the dog was the reason for the offence.<sup>40</sup> For example, they might not be sure that such training/education would work to prevent the dog posing a danger to public safety; they might not be sure how to identify whether the dog or the owner is the main problem; they might not be sure how to determine whether the proposed

interim keeper is an appropriately responsible person. Of course, expert evidence would be relevant to assessment of these concerns, and the second and third issues have not proved to be insurmountable problems in cases in which permanent transfer of ownership or keepership has been ordered. Yet the extra step of allowing return of the dog to the original owner might prove an interpretive step too far for many judges. Therefore, it is contended that reform, to place the suggested principles on a statutory footing, would be preferable. It remains to be seen whether convincing judges to adopt this approach or convincing Parliament to enact the necessary reform is more likely (or whether perhaps neither is possible).

Before the necessary statutory reform is considered, it is contended that, even if imposition of a requirement to attend dog-training/owner-education classes is not to be used to save dogs that would otherwise be subjected to an immediate destruction order, it could potentially be routinely used as part of a contingent destruction order in any case in which the owner's care and/or control of a dog has been shown to have played a part in the dog's dangerous behaviour. For, the court could still impose such a condition even if satisfied that imposition of other conditions, without a

requirement to attend classes, would prevent the dog from posing a danger to the public. Provided that the owner has the resources and inclination to attend classes, such a condition would surely improve the welfare of the dog, both by raising the standard of care it receives and by reducing the likelihood of any future incident that could lead to destruction. The problem with this is that failure to comply with the condition would render the dog liable to be immediately destroyed even if the failure does not mean that it poses a danger to public safety. As such, it is submitted that statutory reform is surely needed to introduce a satisfactory scheme allowing imposition of court-ordered attendance at training classes.

### Legislative Reform

Last year, DEFRA concluded a consultation into the working of the DDA.<sup>41</sup> The proposals resulting from

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<sup>38</sup>It must be noted that, although the court has similar discretion not to order destruction of a section 1 banned dog which has not been properly added to the Index of Exempted Dogs, it does not have power to impose conditions in addition to those imposed for exemption under the Dangerous Dogs Compensation and Exemptions Schemes Order 1991 (see, e.g., R (On the Application of Sandhu) v. Isleworth Crown Court [2012] EWHC 1658 (Admin)). However, in R v. Baballa [2010] EWCA Crim 1950, at [22-23], the Court of Appeal confirmed that the approach to contingent destruction orders set down in Flack should apply to s.1 banned dogs. That is to say, destruction should not be ordered if the court is satisfied that the statutory conditions would ensure that the dog will not pose a danger to public safety. It

is submitted that the Secretary of State should consider adding attendance at training classes as one of the conditions for exemption.

<sup>39</sup>A condition could be that, if the owner does not satisfactorily complete the training, ownership of the dog will pass to the responsible person, or the dog will be destroyed if that person or some other appropriate person (who would have to prove his suitability to the court) is not willing to assume ownership.

<sup>40</sup>Of course, if a dog is generally aggressive towards people (and thus poses a danger to public safety), because of the poor standard of care it has received, the court would probably not accept the argument that the dog should not be destroyed because proper training, even if accompanied by a transfer of

ownership, will, in the future, control that aggression. For, the court would have to be persuaded that there would be no realistic chance of the dog posing a danger to public safety in the interim, which would seem unlikely unless the new owner had appropriate accommodation on which the dog could be permanently kept without being likely to come into contact with the public and without its welfare being unduly compromised. If keeping the dog on a lead and muzzled were enough, then a contingent destruction order would surely be imposed, anyway.

<sup>41</sup>See 'Dog Ownership - Measures to Encourage More Responsible Behaviour': <http://www.defra.gov.uk/wildlife-pets/pets/dog-ownership/>, accessed 25/03/13.

this consultation recommend some reform of the existing legislation. One proposal is to extend the scope of the offence of being the owner, or in charge, of a dog which is dangerously out of control, to include incidents in any location. There is little doubt that this makes sense,<sup>42</sup> but it will be important to ensure that judges recognise that any seemingly aggressive behaviour which a dog exhibits inside his or her home or at some other familiar private location might well be strongly motivated by defensive instincts. Of course, this should not prevent a person from being liable to criminal sanctions for failing to control a dog, but it must be a crucial factor in determining whether a dog should be deemed dangerous and become the subject of a destruction order.

The second proposal for legislative reform is one that can have a potentially positive effect on the welfare of dogs, as it allows the police discretion not to seize a dog they suspect is of a banned type and in relation to which the conditions

for exemption have not been satisfied. This proposal would allow the police to leave a dog with, or return it to, its owner 'where they are completely satisfied that it does not pose a risk to the public and is in the care of a responsible owner.'<sup>43</sup>

However, the proposals do not address the key welfare concerns noted above. In particular, after receiving responses to the consultation, DEFRA did not propose any substantive amendment in relation to (i) the banning of certain types of dog or (ii) the destruction of dogs involved in the commission of an offence under the Act.<sup>44</sup>

The Dangerous Dogs (Amendment) Bill does propose an amendment relevant to determining whether a dog poses a danger to public safety, and thus whether it should be destroyed after having been involved in the commission of an offence or having been seized under section 5 of the DDA. The proposed amendment would require the court to consider the temperament and past behaviour of a dog, as well as whether the owner or person for the time being in charge of it 'is a fit and proper person to be in charge of the dog'. Additionally, it would authorise the court to consider 'any other relevant circumstances. Whilst it is important for the temperament of dog to be considered when determining whether it should be destroyed, first, it is clear that the courts already considered this as a relevant factor.'<sup>45</sup> More importantly, there is nothing in

**One proposal is to extend the scope of the offence of being the owner, or in charge, of a dog which is dangerously out of control**

<sup>42</sup>The recent incident leading to the death of a girl in Wigan, widely reported in the UK media, highlights that serious incidents can take place in private places in which a dog is allowed to be. Moreover, it emphasises, yet again, the need to ensure proper care and control of dogs, for the welfare of dogs and for protection of the public.

<sup>43</sup>DEFRA, 'Dog Ownership - Measures to Encourage More Responsible Behaviour', at n.41, above.

<sup>44</sup>Whether a s.1 (banned dogs of a type putatively bred for fighting), 2 (other banned dogs of a putatively dangerous type) or 3 (being the owner, or in charge, of a dog dangerously out of control in a public place or private place the dog is not allowed to be) offence.

<sup>45</sup>E.g., *R v. Flack* [2008] EWCA Crim 204. Note that the character of the owner was also considered as relevant to determination of whether an immediate destruction order should be imposed (i.e., in deciding whether the

**“ Under the current regime, any dog of a section 1 banned 'type' is subject to a quasi-mandatory destruction order ”**

the amendment which seeks to address the key welfare concern of subjecting to a destruction order a dog which is a victim of poor care and control.

It is submitted that the first crucial reform, to improve the welfare of dogs without in any way reducing protection of the public, would be to repeal the section 1 ban on types of dogs which are deemed to be dangerous because they have apparently historically been bred for fighting.<sup>46</sup> Under the current regime, any dog of a section 1 banned 'type'<sup>47</sup> is subject to a quasi-mandatory destruction order if the owner does not properly comply with the exemption criteria. It is strongly contended that there is no such thing as a dangerous breed or type of dog; any dog which is properly cared for and controlled will be a loving companion which will not pose a danger to public safety. However, there is no doubt that certain types of dog can inflict greater damage if they attack. As such, it would be appropriate to retain the requirement that particular types of dog are kept on a lead and muzzle whenever they are in a public place. Indeed, it is submitted that the requirement should be extended to include any unenclosed private place, which should be defined as any private place which lacks physical

dog would pose a danger to public safety).

<sup>46</sup>S.2 empowers the Secretary of State to enact legislation imposing conditions on other types of dog he deems pose 'a serious danger to the public', but no order has been made under this section.

<sup>47</sup>'Type' has always been interpreted more widely than 'breed': see, e.g., *R v. Knightsbridge Crown Court, ex parte Dunne* [1993] 4 All ER 491.



barriers sufficient to keep the dog within it.<sup>48</sup>

Moreover, it is suggested that, in place of a ban on certain types of dogs (with the possibility of destruction if the conditions of exemption, including spaying of females and castration of males, are not satisfied), it would be appropriate to have a requirement that anyone who wishes to own one of these types of dog must attend training classes with the dog. The classes would be designed to educate the owner to care for and control the dog properly, including basic training for the dog. The current Index of Exempted Dogs (IED) would be modified, requiring owners to register their dog with proof of satisfactory completion of the necessary training<sup>49</sup> within the stipulated time.<sup>50</sup>

Mandatory attendance at education and training classes<sup>51</sup> will improve the welfare of dogs, first, by ensuring that their owners know how to care for and control them properly and, second, by reducing the possibility that they will become the subject of a destruction order. This latter purpose will be achieved by (i) ensuring that fewer previously banned dogs act in a way which would be deemed legally dangerous (and which would thus

render them subject to the possibility of destruction), and (ii) reform of the circumstances in which the court can order destruction of a dog.<sup>52</sup>

Moreover, mandatory attendance at training classes will improve public safety by ensuring that fewer dogs attack.

It is submitted that, if the owner<sup>53</sup> of a dog to which mandatory attendance at classes applies refuses or fails to comply with the conditions (i.e., attendance at classes and keeping the dog muzzled and on a lead in all public, and unenclosed private, places), the dog should not on this basis become subject to the possibility of a destruction order. If the owner<sup>54</sup> refuses to comply, the court should have the power, and be obliged, permanently to remove the dog from his ownership and control and give the dog to an appropriate

person who has, or is willing to acquire (within the stipulated period), the necessary training.<sup>55</sup>

If an owner fails to comply with the requirement satisfactorily to complete training within the stipulated period, he should be subjected to a fine and the court should have the same power permanently to remove the dog from his care, control and ownership. However, it should also have discretion (i) to remove the dog temporarily (giving responsibility for it to an appropriate person with the necessary expertise) and allow the owner a further prescribed period to complete the training, or (ii) to allow the dog to remain with the owner whilst<sup>56</sup> he is given additional time to complete the training.<sup>57</sup> At this stage, permanent removal should only be imposed when the dog would otherwise have to be destroyed because there are no other reasonably practicable conditions which would prevent it from being dangerous.<sup>58</sup>

A second failure to comply should also attract a fine and give the court similar discretion (i) to remove the dog permanently, (ii) to remove the dog temporarily and allow the owner additional time to complete the classes with the dog and temporary carer, and with the dog being

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<sup>48</sup>This would include, e.g., a garden with insufficient fencing or a garden in which the gate is left open, allowing the dog to escape.

<sup>49</sup>Properly accredited education centres, issuing official certificates, would be established. This would be funded by use of the fee payable to add a dog to the IED. Consultation with appropriate experts will be necessary to determine the requirements of the classes, including duration of sessions, number of sessions which must be attended, contents of the sessions, testing, etc.

<sup>50</sup>It is submitted that two months would *prima facie* be an appropriate period.

<sup>51</sup>Including by those who already own dogs on the IED. It is submitted that, in all cases, it should be the owner's responsibility to ensure that anyone who has actual care and control of the dog is properly instructed in how to look after it, with the owner remaining legally liable for any infringement committed whilst the dog is in the care or control of another person.

<sup>52</sup>To be discussed below.

<sup>53</sup>If there is more than one owner, they should all be required to attend classes with the dog.

<sup>54</sup>In the case of multiple owners, if any owner refuses, he should have his ownership of the dog terminated, and the owner who does, or owners who do, attend classes should have a legal obligation to ensure that the dog is never in the primary care or control of the defaulting former owner.

<sup>55</sup>This would most likely be an animal charity or appropriately qualified foster carers. If no one is willing to take responsibility for the dog, the only option would be for the court to order that it be sent to a pound, where it would ultimately, and tragically, be destroyed if no appropriate person (who has the necessary expertise or who is willing to acquire it by attendance at classes) was willing to assume responsibility for it.

<sup>56</sup>If the dog is temporarily removed, the order will (i) require that the appropriate person attends classes with

the owner and the dog and (ii) specify that the dog is to be returned to the owner upon satisfactory completion of the classes.

<sup>57</sup>In cases of co-ownership of a dog, if one or more owner fails to comply with the conditions but at least one other owner successfully complies, permanent removal would constitute terminating the defaulting party or parties' ownership and obliging the remaining owner(s) to ensure that the defaulter(s) never have primary responsibility for care or control of the dog; temporary removal would constitute obliging the complying owner(s) to ensure that the defaulter(s) do not have primary responsibility for care or control of the dog in the period of temporary removal.

<sup>58</sup>See below.

returned upon satisfactory completion, or (iii) to allow the dog to remain with the owner and allow additional time to complete the classes. However, with a second failure, the court should require proof of exceptional circumstances (such as illness preventing attendance at classes) before being willing to allow the owner another chance (i.e., before exercising its discretion not permanently to remove the dog). Upon a third failure, the dog should be permanently removed.<sup>59</sup> Any time a dog is permanently removed, the court should have the power, and be obliged, to disqualify the previous owner from being responsible for any dog for such time as the court thinks appropriate.

If the owner fails to keep the dog muzzled and on a lead when in a public, or unenclosed private, place, he should be subjected to a fine, with

the court given discretionary power permanently to remove the dog.

It will be noted that, under the proposed reforms as so far discussed, there is no power for the court to order destruction of a dog. It is submitted that no dog, *of any type*,<sup>60</sup> should be subjected to the possibility of a destruction order unless it is proved that the dog is dangerous, which should be defined as *likely at any time to be out of control and to attack a person*. If this is affirmatively proved after any failure<sup>61</sup> (which are applicable to what are currently banned types of dogs), or in relation to any dog which is dangerously out of control<sup>62</sup> in any place,<sup>63</sup> the court should have the power to impose a destruction order, *but only if satisfied<sup>64</sup> that imposing any reasonably practicable conditions would not prevent the dog from being dangerous*.

If the court is not satisfied that any reasonably practicable conditions would prevent the dog from being dangerous, the dog would unfortunately have to be destroyed. However, it is submitted that this should happen only in extreme cases, as the legislation will expressly state that possible conditions include:

1. Transferring ownership and permanent responsibility for the care

**“If the owner accepts the conditions but fails to comply with them within the stipulated period, he should be subjected to a fine”**

and control of a dog to an appropriate person with expertise in dealing with dangerous dogs and who has appropriate accommodation on which the dog can live without its welfare being compromised, but also without it being likely to come into contact with anyone who does not live with the dog, or who is willing to visit it (e.g., vets, professional groomers, friends and family of the new owner).<sup>65</sup> Permanent removal of a dog should only be imposed for a first offence if the court is satisfied that the dog would otherwise be dangerous and thus have to be destroyed.

2. Transferring temporary care and control of the dog to such a person whilst the owner secures the necessary training (with the appropriate person also attending with the dog) and complies with any other appropriate requirements.<sup>66</sup>

3. Imposing special conditions on the owner's control of the dog whilst the necessary training is secured and any other appropriate requirements are satisfied. The control conditions could include keeping the dog on the

**“under the proposed reforms as so far discussed, there is no power for the court to order destruction of a dog”**

<sup>59</sup>It is accepted that permanent removal can have negative welfare consequences, first, because even a dog which has not been properly cared for will often have developed emotional attachments to its carers, and, second, because many permanently removed dogs will likely end up in pounds, with the possibility of being destroyed if no one adopts them. However, permanent removal will only be exercised when the previous owner has shown himself to be an inadequate care-giver, such that leaving the dog with him would seriously compromise the dog's welfare.

<sup>60</sup>I.e., whether one to which the requirement of attendance at training/education classes would apply (those dogs which are currently s.1 banned dogs) or not.

<sup>61</sup>I.e., the owner (i) keeping the dog muzzled and on a lead when in any public place or unenclosed private place and (ii) satisfactorily completing training classes with the dog.

<sup>62</sup>Maintaining the current s.10(3) DDA definition. As noted at n.7, above, this would include defensive behaviour. However, expert evidence showing that the dog was acting defensively would be relevant to determining whether the dog is dangerous within the new statutory definition, as it must be relevant to determining whether the dog poses a danger to public safety under the current legislation.

<sup>63</sup>It would be an offence to be the owner of a "banned" dog not properly added to the IED and an offence to be the owner or in charge of a dog dangerously out of control in any place.

<sup>64</sup>It is accepted that, in all cases in which it has been affirmatively proved that the dog is dangerous (ignoring any possible conditions which could prevent this), it should be for the party arguing against destruction to prove, on a balance of probabilities, that any conditions he suggests would prevent the dog from being dangerous.

<sup>65</sup>This would put the transfer of "keepership" case law (e.g., *R v. Ashman* (unreported, 18th October, 2007)) discussed above on a statutory footing, but allowing full legal ownership to pass. If this condition were to be attached to an order relating to a dog in respect of which mandatory attendance at training classes were required, the new owner would have to prove he had the necessary expertise to be awarded the appropriate certificate allowing the dog to be added to the IED in the new owner's name.

<sup>66</sup>E.g., erecting proper fencing around his land, castrating a male dog if appropriate.

owner's (properly enclosed) land except when on the way to, and during attendance at, classes (when the dog would have to be muzzled and appropriately restrained unless the training required otherwise). The court would have to be satisfied by expert evidence that the dog's welfare would not be unduly compromised by such conditions.

These three categories of conditions could all be applied even if the evidence suggests that the nature of the dog was a factor in any offence, because they would still ensure appropriate protection of the public in such circumstances. However, for the second and third categories, the court would have to be satisfied by expert evidence that training would work to change the dog's nature within a reasonable time.<sup>67</sup>

Similarly, the court could order castration of a male dog if satisfied by expert evidence that this would work to reduce the dog's aggression, with interim control measures also being imposed, if appropriate. Indeed, there would be no limit on the conditions which the court could impose.<sup>68</sup> However, it is contended that the suggested conditions would allow the court to deal with most of the serious cases of dangerous dogs without endangering the public or requiring destruction of the dog. Of course, the utility of such conditions will depend upon people being willing to take permanent or temporary responsibility for a

dangerous dog, but it is hoped that there are many charities, and private shelters and individuals, who have the expertise and inclination to do this in order to save dogs' lives.

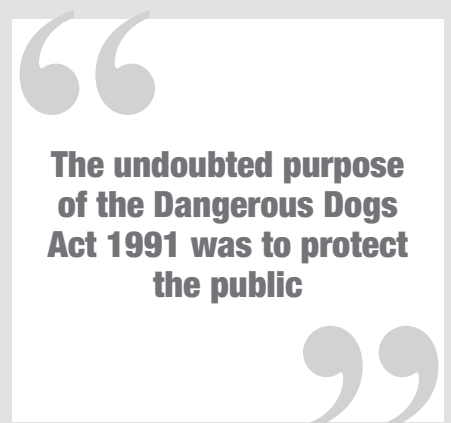
If the court is willing to spare a dog by imposing appropriate conditions on its care and control and the owner is willing to accept the conditions, the court will have no power to order destruction of the dog at this stage. If the owner is not willing to accept the conditions, then the court should have the power, and be obliged, permanently to remove the dog from his care, control and ownership,<sup>69</sup> transferring the dog to an appropriate person, who would have to be willing to accept such conditions. If there is no such person, the dog would unfortunately have to be sent to a pound, where it would tragically have to be destroyed if no appropriate person (who would have to undertake to the court full responsibility for complying with the conditions) was willing to adopt it.

If the owner accepts the conditions but fails to comply with them within the stipulated period, he should be subjected to a fine and the court should have the power (i) to remove the dog permanently, (ii) to remove the dog temporarily whilst the owner complies with the conditions, or (iii) to allow the owner another chance to comply with the conditions whilst retaining care, control and ownership of the dog. Upon any breach of the imposed conditions, the dog should

only be subjected to a destruction order if the court is satisfied that none of these options (or any fresh conditions not originally imposed) would prevent it from being dangerous.<sup>70</sup> Again, this should rarely be so even in serious cases, provided that there is an appropriate person willing to assume responsibility for the dog.

## Conclusion

The undoubted purpose of the Dangerous Dogs Act 1991 was to protect the public. However, unfortunately, it sought to achieve this protection in a fashion which gave no real consideration to the welfare of dogs. The Dangerous Dogs (Amendment) Act 1997 went some small way towards redressing the balance by providing courts with the discretion not to order the destruction of dogs in relation to which an offence had been committed. Moreover, the courts have, in cases such as *R v. Ashman*,<sup>71</sup> *R v. Flack*,<sup>72</sup> *R v. Davies*,<sup>73</sup> *R (On the Application of Housego) v. Canterbury Crown Court*<sup>74</sup> and



<sup>67</sup>The nature of the dog's accommodation would ensure that the dog was not dangerous, within the statutory definition, in the interim.

<sup>68</sup>E.g., the court could order the owner to erect and maintain proper fencing in his garden, to ensure that a dog cannot escape. This could, if appropriate, be accompanied by temporary removal of the dog whilst the fencing is erected. Of course, the court would always be required to ensure that any conditions it imposes do not unduly hinder the dog's welfare, bearing in mind that the alternative is death.

<sup>69</sup>And to impose a disqualification order.

<sup>70</sup>That is to say, mere failure to comply with the conditions of what is, under present terminology, a contingent destruction order, would not lead to destruction. No destruction order should ever be made unless the court is satisfied that no reasonably practicable conditions can prevent the dog from being dangerous. Although breach of a conditional order (in relation to any type of dog) would not automatically lead to the dog being destroyed, the owner would be subjected to a mandatory fine and the possibility of having his dog permanently or temporarily removed from him, which should be a sufficient compulsion to comply with the order, without requiring destruction

of a non-dangerous dog who would be the innocent victim of the owner's infringement.

<sup>71</sup>Unreported, 18th October, 2007.

<sup>72</sup>[2008] EWCA Crim 204.

<sup>73</sup>[2010] EWCA Crim 1923.

<sup>74</sup>[2012] EWHC 255 (Admin).

*Kelleher v. DPP*<sup>75</sup> attempted to utilise this discretion in a positive fashion. It has been explained above that the courts should combine the positive effect of this case law, refusing to order destruction of a dog if satisfied that transferring temporary care and control of it to a responsible person (whilst requiring the owner to attend education classes with the dog and temporary keeper) would prevent the dog from posing a danger to public safety. However, it was also noted that courts might be unwilling to utilise this power, because they might not be convinced that it would offer sufficient protection to the public. This is particularly likely to be so for cases in which the dog is deemed to have an "aggressive" nature.

Therefore, it is contended that the time has come for substantial legislative reform of the DDA regime, to ensure proper respect for the welfare of dogs without compromising protection of the public. The appropriate reform has been discussed above, but the key requirements are:

1. Removing the ban on certain types of dog. This should be replaced by a requirement that anyone who wishes to own such a dog must satisfactorily complete training classes with the

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dog. The dog would not have to be spayed or castrated.

2. Providing the court with power permanently to remove a dog from an owner who does not secure the requisite training, whose dog has been dangerously out of control in any place, or who fails to comply with any other condition imposed by the court upon commission of either of these offences.

3. Providing the court with the power temporarily to remove a dog whilst the owner is given another chance to complete the classes satisfactorily and/or comply with any other conditions imposed.

4. Statutorily defining 'dangerous dog' as a dog likely to be out of control and attack a person.

5. Putting on a statutory footing that no dog can be destroyed unless the court is satisfied that there are no reasonably practicable conditions which can prevent it from being dangerous.

6. Expressly stating that reasonably practicable conditions include, inter alia, (i) transfer of ownership of an otherwise dangerous dog to a person with appropriate expertise and accommodation to prevent the dog from being dangerous; (ii) transfer of temporary control of a dog to an appropriate person (with appropriate accommodation, if necessary) whilst the owner secures the necessary training and/or complies with any

other conditions to ensure that the dog is not dangerous when returned to the owner.

It is contended that these amendments to the law would greatly improve the welfare of dogs, reducing the chance of innocent victims of poor care and control being sentenced to death, without compromising public safety. Indeed, the likelihood of an improvement in the standard of care and control of dogs would surely increase public safety.

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”**

<sup>75</sup>[2012] EWHC 2978 (Admin).