

# Is it time to reform the Dangerous Dogs Act 1991?

By Stephen Forster<sup>1</sup>

## Introduction

The menace of dangerous dogs is nothing new and has been a concern for Parliament dating back to Victorian times, with s.54 of the Metropolitan Police Act 1839, that outlawed unmuzzled and ferocious dogs being at large in London by making it a criminal offence and in the civil context, controlling dogs in the Dogs Act 1871. In Scotland negligent liability surrounding ferocious dogs can be traced back to *Turnbull v Brownfield* [1735] 2 Elchies 406 and other older cases cited in *Fleeming v Orr* [1855] 2 Macq.14 & *Milligan v Henderson* [1915] SLR vol LII 813. These provide an illuminating insight into the past of a problem which is still present today, especially with the concerns on cross-breeding of powerful dog types and the motive behind those that do so.

The law as it stands is currently found in the Dangerous Dogs Act 1991, which was hastily rushed through its parliamentary stages in response to several incidents of fatal dog attacks by vicious and menacing dogs<sup>2</sup>. Four specific breeds were singled out as being inherently dangerous and thus the legislative purpose of the Act was to remove these types of dogs on grounds of public safety and protection.

However, from its inception, the Act itself has been mired in controversy and deemed practicably unworkable, a view shared by the High Court in *Rafiq v DPP* [1992] JP 412, describing the Act as “a piece of Delphic legislation which is even worse than some of the Directives coming out of Europe”. Whilst at the same time, the High Court in *R v Bogdal* [2008] Crim

1 described it as “a notoriously ill-conceived statute.” As a result, it was amended in 1997 and 2014 in an attempt to bring some clarity and consistency to its approach to dogs that injure others, which I discussed in some detail in my previous article (*The Dangerous Dogs Act 1991: A Criminal Act that is Dangerous to Dogs?* [2021] vol 5 UK Journal of Animal Law 1-14). The purpose of this article is to evaluate several recent developments and consider whether the 1991 Act is workable in its current form, or if wholesale reform and policy change is needed.

## Dog Bites and Attacks

According to the latest figures from the Hospital Episode Statistics produced by NHS England Digital, the number of patient presentations at hospital having been bitten or struck by a dog in 2022-23 was 6244, a decrease of 2575 admissions from the previous year and lowest annual figure since 2010-21. The highest recorded figure was 2019-20 with 8933 during the pandemic. Equally, the number of patients requiring further post treatment was 2345, a decrease of 927 from the previous year and the lowest since 2008-09. The highest recorded figure again was in 2019-20 with 3270 requiring further medical treatment. The most vulnerable age group is 0-9 years and the least being the 80 plus age group, with others most likely administering self-treatment rather than attending hospital<sup>3</sup>.

Whilst these figures are encouraging, in contrast a recent freedom of information request by the BBC revealed that there had been a dramatic raise in police recorded incidences of dangerous dogs from 16,394 in 2018 to 21,918 in 2022. More worryingly, 10 people were fatally wounded from a dog attack in

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<sup>2</sup> The Act came into effect on the 12 August 1991, except s.1(3) which came into effect on the 30 November 1991

<sup>3</sup> Digital.nhs.uk-admissions to hospital for dog bite injuries

2022, compared to only 2 in 2019. In February 2023 alone there were 2 fatalities, including Natasha Johnson who was a professional dog walker attacked by a pack of dogs she was caring for.

Correspondingly, a comprehensive study by the University of Liverpool found<sup>4</sup>, that dog related hospital admissions between 1998 to 2018 had more than doubled from 6.34 to 14.99 per 100,000 of the population, with an average of over 207,000 recorded per year. The main driver was an increase in adult admissions and not children which remained consistent at a cost of £174 million, with the most deprived areas seeing the most reported bites, as well as rural areas. A more recent report by the same authors analysed fatality rates which stood at 69 deaths between 2001-2021 with an average of 3.3 per year. Accordingly, the statistical evidence confirms that there have been no increased deaths from dog attacks, which remain a rare event<sup>5</sup>.

These overall figures coincide with a continued increase in dog ownership which, according to The People's Dispensary for Sick Animals (PDSA) in its annual well-being report 2022, is estimated to be 10.2 million, 2.5 million being purchased in between March 2020 to March 2022, and owned by 27% of the population<sup>6</sup>. A recent Freedom of Information request by the Guardian newspaper on 4 June 2023 revealed that the Metropolitan police are now having to deal with at least one dangerous dog incident a day and last year seized 479 dogs deemed to be dangerously out of control, with 154 being seized in the first four months of 2023. Notably, 44 dogs identified as American pit bull terriers were seized compared to none in either 2018 or 2019.

### Section 3: Dangerously Out of Control Offences and Strict Liability:

Section 3 creates the offence of having a dangerously out of control dog and can be

committed in one of two ways by either the owner, or alternatively a person who must be proved to be "in charge" of the dog at the material time. First, the less serious (non-aggravated) summary only offence which simply arises when a dog is dangerously out of control. Secondly, the more serious (aggravated) either-way offence which arises when the dog is dangerously out of control and causes a fatal or non-fatal injury to someone, or to an assistance dog.

It is now well-established in case authority<sup>7</sup> that the s.3 offence is one of strict liability based on "sound public policy reasons" and thus as a matter of law<sup>8</sup> only proof is needed of the dog becoming (prohibited state of affairs) dangerously out of control in either a public<sup>9</sup> or private place (subject to a household defence), as a consequence of the offender's act or omission, without any relevant mental element. It does not however extend to absolute liability in which criminal liability would be imposed simply for being in charge of a dog that becomes dangerously out of control regardless of how that came about and through no act or omission of their own, but solely due to the actions of another as confirmed in *Robinson-Pierre* [2014] 1 WLR 2638. Crucially, therefore under s.10(3) a dog is to be regarded as only being dangerous if on "any occasion" there exists objective grounds for a reasonable apprehension of fear of injury (to another person or assistance dog), unless the dog is being used for a lawful purpose under the Act<sup>10</sup>.

It is clear that any element of knowledge as proof of liability is irrelevant, it does not feature in the legislation and Parliament has by necessary implication intended to eliminate the need for mens rea. However, there must be some measure of control exerted over the dog whether in public or private and it is open to the defendant to avoid liability with affirmative evidence of preventing the dog from being dangerous and causing harm, or an inter-

4 Tulloch et al, "English hospital episode date analysis (1998-2018) reveal that the rise in dog bite hospital admissions is driven by adult cases" [2021] Scientific Reports 22:1767, [www.nature.com/scientificreports](http://www.nature.com/scientificreports)

5 Tulloch et al "Dog-related deaths registered in England & Wales from 2001 to 2021" (2023) Public Health 91-93

6 [www.pdsa.org.uk](http://www.pdsa.org.uk)

7 *R v Bezzina* [1994] 1 WLR 1057, *Royal Mail v Watson* [2021] EWHC 2098

8 See para 47 in *Andrews v CC of Thames Valley Police* [2022] EWHC 887

9 See *R v Bogdal* [2008] 1 EWCA Crim 1 for a detailed analysis on the meaning of a public place

10 See para 29 in *Andrews v CC of Thames Valley Police* [2022] EWHC 887

vening act of another upon which they had no influence or control that caused the dog to be dangerous.

Whether or not a person is in charge of a dog under s.3 is a crucial element to the offence and must be proved by the prosecution. On a point of evidence in *R v Virdee* [2023] EWCA Crim 786, the Court of Appeal ruled that a previous similar incident involving the defendant who had denied being in charge of his son's dog when it escaped from the shared family home causing injury to another, was rightly admitted as relevant "contextual or background matters" evidence from which the jury could infer that he was only person involved on both occasions and therefore was voluntarily in charge of a dog he had failed to properly secure. Whilst no bad character prejudicial effect type warning was needed, the Court did note that the better course is to pursue the owner (if known) who is "prima facie guilty of the strict liability offence" rather than the person alleged to be in charge. These are sound principles of law to ensure fairness to the defendant when faced with a strict liability offence.

### **Dangerous Dogs and Postal Workers: Who Caused it?**

To what extent liability falls away due to the contributing actions of another was considered further in *Royal Mail v Watson* [2021] EWHC 2098, in which the District Judge had erroneously acquitted the defendant on a s.3 charge having found that the aggrieved postal worker bore responsibility for being bitten by their own inaction to sufficiently guard against it when inserting their fingers in the letterbox.

In allowing the appeal by Royal Mail, Carr LJ was abundantly clear that the s.3 offence is founded on strict liability principles, and thus "if the dog is dangerously out of control in circumstances which the owner has caused or permitted" then the offence is proven. There is no reasonable excuse defence, statutory or otherwise, nor can the defendant claim that had it not been (but for) the victim's own mis-judgment, the dog would not have bitten them<sup>11</sup>. To have extended the limited legal ba-

sis upon which Robinson-Pierre was decided and impose a wider duty of care on postal workers would have had far reaching consequences, not only would it have arbitrarily shifted blame to the victim, but it would have also seriously undermined the criminal objective of the legislation by "effectively re-writing it" as to render it ineffectual.

In *R v Wallace* [2018] EWCA Crim 690, Sharp LJ, on a general point noted that causation is not about establishing fault, but whether the conduct of the offender "was an imputable (sufficiently proximate) cause of the proscribed harm." It would have been contrary to established principles of law on strict liability and causation to have allowed the defendant to apportion responsibility to the victim in order to exculpate their own.

Equally, the householder defence exists in the legislation to specifically protect owners from unlawful intruders who are injured by the dog, and certainly not postal workers who are temporarily on the premises by implied consent. It would be fundamentally unsound to hold postal workers without any clear instruction to the contrary, as trespassers in the criminal sense of the exceeding permission principles found in the offence of burglary, when exposing their fingers through the letterbox. To have agreed with the defendant on these points would have posed a radical departure from the gravaman of the offence.

As in *Royal Mail Group v Goddard* [2020] (unreported) it was the voluntary actions of the defendant in keeping the dog unrestrained near the letterbox which created the "prohibited state of affairs", not the actions of the appellant in providing a postal service to the defendant, which are irrelevant and therefore offer no valid defence to the s.3 offence. As stated by Carr LJ "there still appears to be a lack of understanding on the part of defendants as to the strict nature of the liability" under s.3 and what this entails.

### **Section 10: The meaning of "Dangerously Out of Control"?**

The Courts have had to grapple with the stick

<sup>11</sup> In the case the postal worker had not used a postal

meaning of dangerously out of control on several occasions due to the observations of Kennedy LJ in *R v Bezzina* [1994] 1 WLR 1057, that a dog is only dangerously out of control by virtue of s.10, if objectively on the facts "it is shown to be acting in a way" that gives grounds for reasonable apprehension that it would injure someone". This risked excluding dog bites from the ambit of public protection for incidents that occur without pre-emptive warning, or where there is a sudden exposure to being bitten and therefore no possible means of apprehending it, despite the responsibility of the owner to the victim being no less significant and the gravity of the injury being no less serious or damaging, than had there been apprehension.

To avoid such an unattractive outcome, the High Court in *Raftiq v DPP* [1997] JP 161, widened the terms of dangerously to include the "act of the dog causing injury or otherwise, which gives rise to a reasonable apprehension of injury" and "on any occasion" sufficiently covered those witnessing an attack, as equally fearing injury. Also, according to Auld LJ to have imposed a timeframe in which apprehension must occur, would artificially add an "unhappy element to an already difficult statutory formation", that is best avoided. It matters not that the appellant's dog was hitherto nonchalant to causing an injury, the dog, as a matter of law is dangerously out of control and liability will follow.

Adopting a broader approach, the Court of Appeal in *R v Gedminintaite* [2008] EWCA Crim 814, ruled that s.10 is not "exclusive" to the actus reus of the offence, rather it is the "straightforward words of s.3", that must be applied in the context of the surrounding evidence. This includes the dog's behaviour and/or failure of the owner to sufficiently control the dog or, as ruled in *R v Virdee* [2023] EWCA Crim 786, evidence from any previous similar occasion in which the dog was acting dangerously is capable of affording grounds for such apprehension for the later occasion which is subject of the charge<sup>12</sup>.

As stated in *R v Singh* [2011] EWCA Crim 1756,

<sup>12</sup> In this case evidence was adduced from a previous similar occasion involving the appellant that had occurred in 2015.

"the whole point of the Act is to penalise those who allow dogs to get dangerously out of control." Confirming these principles, the High Court in *Andrews v CC of Thames Valley Police* [2022] EWHC 887<sup>13</sup> commented that there is no ambiguity in s.10, having a dog on a lead does not automatically excuse the owner, a lead simply operates as a control mechanism under the Dogs Act 1871, not immunity from prosecution under the 1991 Act and that a dog can still be dangerously out of control on a lead or otherwise and regardless of the owners (in)ability to control the dog with a lead<sup>14</sup>.

In a strong Judgment on the purpose and effect of the s.3 offence, the High Court in *Royal Mail v Watson* [2021] EWHC 2098, having considered the previous authorities, took the opportunity to clearly express its legal opinion in the following terms "It should be understood that liability under s. 3 is strict; Parliament has chosen to put the burden on those who own (or are in charge of) a dog to ensure that effective steps are taken to ensure that the dog does not cause injury to anyone".

Although Kennedy LJ observations in *Bezzina* were obiter and not binding in law, it led to an inconsistent approach of non-injury and dog-on-dog cases being erroneously treated as a civil matter. It is at least clear now that if a dog bites or causes injury, then it is per se dangerous and any apprehension of fear encompasses the neurophysiological changes caused by the attack and or injury suffered, is objectively reasonable on the facts.

Whilst the decisions in *Andrews & Watson* have finally clarified the law in regards to the position of postal workers and offers some comfort to this highly exposed group in the acknowledgement that the dog owner is at fault and not them for simply providing a public service, attacks on postal workers still remain high. According to the Royal Mail group there were 1673 reported dog attacks (the bulk happening at the front door, followed by

<sup>13</sup> See also *R v Andrews* [2021] EWCA Crim 659

<sup>14</sup> The appellant had sought to rely on *Ross v Evan* [1959] 2 QB 79 in which the court had ruled that the defendant's greyhound being on a lead when it bite a passer-by, could not, for the purposes of the mischief in s.52 Met Act 1839 be at large, was rightly rejected, the court was dealing with a totally different piece of legislation and provided no support in the situation.





the garden/driveway) last year on its employees, equating to an average of 32 attacks a week which is clearly unacceptable<sup>15</sup>.

In written evidence before a DEFRA committee investigation into dangerous dogs in 2018, the Royal Mail highlighted the difficulty with the meaning applied to “dangerously” in which despite a postal worker losing a finger, a Crown Court Judge had ruled wrongly that there was no case to answer asserting that, because the dog had not barked at the time to alert the owner, it was not possible to have caused the dog to be dangerously out of control by any act or omission of the owner. The Royal Mail has therefore urged a review of s.10(3) to make it not only a presumption in law that any dog can cause injury, but to oblige owners to take reasonable steps to prevent it and called upon the Government to not only clarify the law, but to give postal workers sufficient statutory protection from the risk posed

by every day experiences<sup>16</sup>.

Furthermore, inaction by the police has led to the Royal Mail commencing its own private prosecutions for incidents where there is a prima facie case, including two case stated appeals in the High Court, that have not only helped to settle the law on strict liability, fault and causation, but also shortcomings in the decision making of both the police and CPS on whether to initiate proceedings or to use out of court disposals in the alternative<sup>17</sup>. It also highlights the evidential difficulties in having to prove the dog was dangerous under the current statutory test, especially if there has been an absence of any aggressive behaviour in the temperament of the dog beforehand.

If a dog uncharacteristically causes harm, can the owner plead ignorance to a first incident, unless it is proven that the owner is aware of the dangers the dog presents when in close

<sup>15</sup> See Dog awareness week campaign which Royal Mail each year to better promote owner responsibility and safety for its employees, [www.royalmail.com/personal/dog-awareness](http://www.royalmail.com/personal/dog-awareness). The most reported incidents happened in Sheffield.

<sup>16</sup> See also response by the CWU together with other Unions “National Joint Dog Awareness Working Group” letter to Branches 6 May 2021 No 181/2021

<sup>17</sup> On the law relating to private prosecutions, see my article

proximity to other people or animals and failed to act upon them, before the criminal law intervenes? In evidential terms, should they have picked up any warning signs and if so to what extent and in what circumstances such as wilful blindness, or ignores any risk before there is a *prima facie* case? It is this legal quandary that has tested the Courts ability to clarify the ambit of dangerously out of control and has led to a difference of opinion, especially in the Scottish Courts.

### Meaning of “Dangerously” Out of Control in Scottish Law

By way of contrast the Scottish Courts have taken a more restrictive approach to the meaning of “dangerous” under s.10(3), despite the same legislation equally applying north of the border. In *Tierney v Valentine* [1995] SLT 564, the High Court of Judiciary (Lord Justice General Hope, Lords Cowie & Wylie) had ruled that whilst the defendant’s dog had bitten two children several times in a play area, this was nonetheless “a single incident with no appreciative interval” meaning that any grounds of a reasonable apprehension that it would cause injury “before it was all over and the dog was put on a lead” were not present in this case to uphold his conviction.

This statutory test was subsequently endorsed in *Little John v Procurator Fiscal* [1999] 266/99 (unreported), the appellant was charged and convicted with a s.3 offence, when her dog (a Chesapeake Bay Retriever) broke free and bit the complainant (who was about 10 feet away) several times on the body. In quashing the conviction, the High Court (Lords McCluskey, Sutherland & Cowie) ruled that that the necessity to prove there are grounds of a reasonable apprehension that the dog might injure somebody was not only an essential element to the offence, it also needed factually corroborating as required under Scottish law<sup>18</sup>, if a conviction is to follow.

18 The corroboration Rule in Scotland is currently under review by Scottish Government, see the consultation paper “The Not Proven Verdict & Related Reforms” Dec 2021; Analysis of Responses to Consultation July 2022 [www.gov.scot](http://www.gov.scot), see also the responses from the Senators of the College of Justice, Supreme Courts of Scotland [www.scot-courts.gov.uk](http://www.scot-courts.gov.uk) in which a majority recommend abolition of the rule on the basis that it denies access to justice.

In this case the only evidence was the victim confirming that the dog had bitten him and the attending police officer, neither of which could independently support a finding based on *Tierney* that there was “a significant interval” between the first bite and subsequent bites sufficient to form the necessary reasonable apprehension that the dog poses a risk of injury. What amounts to a significant gap is a question of degree on the facts. It focuses not on the actual bite, but rather events leading up to it and what was known at the time. This is well illustrated in *Ronald Church v Procurator Fiscal, Forar* [2012] HCJ, in which Lady Paton stated that unless “the appellant knew” at the time his dog had bitten a child whilst he was exercising it off a lead or any previous similar aggressive instances and therefore without objective facts to the contrary, any grounds for reasonable apprehension that the dog would cause further injury did not exist at the time of a very brief incident being indistinguishable from those in *Tierney*.

The only person to give evidence was the appellant’s father who did not say whether the appellant was privy to the dog having previously bitten a child at their address, or the reasons for raising the fence line, or indeed for muzzling the dog in public. As such, the court was unable to infer from these facts that he knew of the previous biting incident to the criminal standard of proof and thus the element of dangerousness. It could not be excluded that the appellant had an innocent explanation for his actions. These decisions have led to a chorus of criticism as effectively endorsing a “one free bite policy”, and exposes the public to the risk of being bitten by an unruly dog without necessarily being protected by the criminal law.

Crucially in *Thomson v Hutchison* [2010] SLT 158, Lady Paton, who gave the leading speech for the majority, took a more considered approach, when noting that, “simply because the dog had never previously bitten a human being or because the event could be viewed as a single incident”, this does not exonerate the owner from liability. Such grounds relating to reasonable apprehension can be corroborated by circumstances as they arise during an incident, in which it can be inferred that

the dog would cause an injury. The length of the incident is a relevant factor, as in this case lasting 8 minutes. In rejecting the appellant's appeal against conviction, the High Court of Judiciary concluded that there was, "ample evidence for any observer", to appreciate that the appellant had no control of her own dog (a Moby Staffordshire bull terrier), also that the owner of the Scottie dog it had attacked, would try to protect her Scottie dog from further harm and suffer bite wounds to herself as a consequence.

Thus, the Sheriff was right to distinguish Tierney on the facts and convict the appellant for having a dog dangerously out of control. In a dissenting Judgment Judge Bowen averred that unless the dog is deemed dangerously aggressive or is known to be at the outset of a singular incident, then, "it is of no consequence", that it took 8 minutes to quell it or that it was frightening to witness and thus the statutory test as founded in Tierney is unproven.

Contrastingly in *Reid v Procurator Fiscal* [2015] HCJAC 60 the High Court (Lady Paton, Lord Bracadale & Sheriff Principal) ruled, "that there was sufficient evidence pointing to knowledge on the part of the appellant beforehand as to the potential behaviour of the dog", and therefore the Judge was right to convict the appellant on the evidence. Relevant to finding grounds for a reasonable apprehension in this case was the complainant's own evidence (having previously warned him that she was terrified of its dangerous presence and menacing behaviour by snarling), circumstantial evidence on the "size, strength and breed of the dog", and the significance of the appellant's, "unusual degree of concern about the dog's movements," just before the attack on the complainant, as observed by his mother.

A similar argument was posed in *McLaughlin v Procurator Fiscal (Paisley)* [2014] HCJAC 98, in that, whilst the appellant's boxer cross had escaped and attacked the complainant by knocking her to the floor and biting her, there was no evidence of any previous misdeeds by the dog and therefore the dog could not be proved dangerous. The High Court disagreed citing several neighbours who gave accounts

of the appellant being unable or unwilling to control the dog, before, during and after the victim had been bitten. In an important ruling, Lady Paton adopted a more open textured approach to the meaning of "dangerously" in s.10(3), which when, "properly construed", is not, "restricted to the owner's apprehension; rather it is a question whether the court is entitled, in the whole circumstances, to (objectively) conclude that were grounds for a reasonable apprehension that the dog would injure someone"<sup>19</sup>.

In deciding whether or not there is a case to answer, the court is entitled to take into account all the surrounding evidence, including the physical characteristics of the dog, its propensities and behaviour, inability to obey commands, the nature and length of the attack and any, "apprehension engendered by the dog", at the time. In some cases, this will be fairly straight forward, whereas in others the necessity for corroborative evidence is likely to prove decisive to its withdrawal, no matter how credible and reliable the complainant is as a sole witness<sup>20</sup>.

A point recognized by the Scottish Government, in its own analysis on "The Criminal Law Dealing with Dangerous Dogs-discussion paper analysis" in July 2021<sup>21</sup>, is that the law is now in need of "urgent attention and amendment." Not only is proving "dangerously out of control" under s.10(3) in itself a "legal conundrum for prosecutors", combined with the need for corroborative evidence<sup>22</sup> "makes it double difficult to convict irresponsible dog owners", effectively inserting a first free bite exemption into the legislation and contrary to public policy.

### **Do Dog-on-Dog Attacks fall within the Criterion of Dangerous?**

When a dog attacks another dog, the consequences can be devastating to the parties in-

<sup>19</sup> Considered at para 29 in *Andrews v CC of Thams Valley Police v CPS* [2022] EWHC 887

<sup>20</sup> In England a case can be brought on the uncorroborated evidence of a single witness, the corroboration warning being abolished

<sup>21</sup> Page 12 of the report-see Public Audit & Post-Legislative Scrutiny Committee

<sup>22</sup> See fn 16 for reports on possible reform of the corroboration rule





volved, the owner of the attacking dog may show indifference, but the injuries can be distressing to the owner of an attacked dog. Who is at fault and who is responsible are a recurring theme? Such incidents, which can often go unreported, are becoming a growing public concern and now need to be addressed legislatively. If reported, then the police tend to adopt a non-criminal matter approach<sup>23</sup> considering that injury to people is a prerequisite to criminal liability.

The difficulty is whether the dangerous element to s.3 and s.10, which only refers to assistance dogs, specifically excludes attacks on all other dogs. The issue was not specifically addressed in *R v Bezzina* [1994] 1 WLR 1057 or *Rafiq v DPP* [1997] JP 161, which concerned the meaning of dangerous in the context of dog attacks on humans. Based on the preferred approach taken in *R v Gedminintaite* [2008] EWCA Crim 814, the straightforward wording of s.3, unconstrained by s.10, are capable of applying with equal force to attacks on other

animals, as well as humans. Especially if the dog has an unpredictable temperament that poses a risk of harm not just to people but to other animals if not properly controlled, it is clearly a dangerous dog for the purposes of a control order under the Dogs Act 1871 (*Briscoe v Shattock* [1999] 1 WLR 432)<sup>24</sup>. However, the authorities are not clear on this point meaning there is some uncertainty in this regard.

The distressing footage of an American bully dog recently attacking a police horse in Victoria Park London, in which the owner claimed the dog was acting in self-defence, vividly highlights the need to deal robustly with such situations in a criminal context<sup>25</sup>. An e-petition by Emma Gambrell<sup>26</sup>, calling for a change in the law after her dog was mauled to death by two Cane Corso dogs that had escaped from a garden was considered in Parliament in 2021. In response, George Eustice, the then Secretary of State for DEFRA, simply reiterated that s.3 of the DDA 1991 does not exclude

<sup>23</sup> Under the Dogs Act 1871& 1906 a civil control order can be applied for, but this would need either LA dog warden or the police to assist the owner.

<sup>24</sup> See *Henderson v M'Kenzie* [1876] SLR 13 (393)  
<sup>25</sup> [www.horse&hound.co.uk](http://www.horse&hound.co.uk) 26 April 2023, "Big-hearted police horse recovering at charity after London attack"  
<sup>26</sup> Hansard Vol 699, Thursday 22 July 2021



from its ambit a dog attacking another animal and that police forces have been advised to this effect to avoid any misconceptions of the law. However, given there is no quantitative data to establish any clear or consistent approach taken by the Police and CPS in such cases, it is simply not known whether this sufficiently addresses the problem, or whether a more effective remedy would be to amend s.3 to include a specific offence to deal with dog-on-dog attacks<sup>27</sup>.

## **Dangerous Breeds per se and Outlawing the XL Bully Dog**

Much controversy surrounds the operation of s.1 of the DDA 1991, and whether or not it is justified in law to characterize the previously four specific dog "fighting" type breeds<sup>28</sup> and now five breeds after the addition of the XL Bully, as being inherently dangerous to the public and therefore not only unlawful to own, but the dog must be destroyed unless an exemption applies<sup>29</sup>. According to a FOI request by Sky news in December 2021, the police (29 forces) seized over 5300 s.1 dogs 2019-2021 and destroyed 1525. In 2022 the Metropolitan Police alone have seized 574 dangerous dogs, with 22 being suspected s.1 dogs, of which 100 dogs were destroyed. The total cost was just £952,000<sup>30</sup>.

The RSPCA, supported by other dog charities and the British Veterinary Association continue to campaign for the repeal of s.1 emphasizing that it fails to achieve its primary objective of protecting the public from aggressive dogs. Conclusively identifying breed status, such as the pit bull is evidentially problematic, especially distinguishing it from the bull terrier, given the hallmark similarities. Also, any cross-breeding with other types of dogs in order to produce a new ultra- powerful dog for ulterior reasons, potentially posing a greater threat to the public<sup>31</sup>, would mean yet further

legislative changes.

Equally, this can have serious consequences in the misidentification of a bull terrier as having prohibited status when the burden lies on the owner at their expense, to show otherwise. It therefore risks perfectly healthy and safe dogs wrongly being destroyed, after a lengthy and expensive process, despite there being no evidence to suggest that these dogs are any more inherently aggressive to humans than any other type of dog. A point very much highlighted by Shona Sibary in relation to her dog, called Clover (a cocker spaniel/whippet cross) who had killed a Chihuahua was evidence that any dog can be aggressive. She also underlined her anguish in deciding to euthanise Clover<sup>32</sup>. For this particular breed a recent study by the Royal Veterinary College identified the prevalence of aggression, in particular in male dogs of this breed, such as "growling and skin-penetrating bites as the main behavioural problems"<sup>33</sup>.

On the other hand, there has been growing concern in the increased numbers of XL bull terriers which can weigh up to 58kg, and the uncertainty whether these fall outside the prohibited breed. This has not been a legitimately recognized breed and it was, therefore argued that it would be difficult to specify the breed sufficiently for the purposes of the legislation. Despite increasing calls for the XL bully to be specifically listed<sup>34</sup>, DEFRA had initially stated (16 March 2023) there are no plans to do so<sup>35</sup>.

However, several recent serious incidents involving this cross-breed dog, including fatalities, have led the Government to take legislative action to include the XL bully as a listed breed under s.1 of the DDA 1991. This took effect from the 31 December 2023 under the

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standard 1977 in which expert evidence is required, the accuracy and reliability of identification is of primary importance. See article by Olson et al "Inconsistent identification of pit bull-type dogs by shelter staff (2015) Vol 206, issue 2 The Veterinary Journal 197-202, see also page 7 of the policy statement issued by the BVC in April 2021

32 Daily Mail article published on 14 June 2023

33 Endahl et al "Demography & disorders of English Cocker Spaniels under primary veterinary care in the UK" [2023] 10.4 Canine Medicine & Genetics Journal

34 Several petitions including against banning XL bully type dogs have been submitted to Parliament but without success.

35 This was in response to a question tabled by Fleur Anderson on 9 March 2023

27 Anna Firth has introduced a PMB "Animal Welfare (Responsibility for Dog Attacks) Bill 2023 called "Emilie's Law" that would impose a statutory duty on a dog owner to take reasonable steps to prevent a fatal attack on another dog-see also Hansard vol 733 (Tues 23 May 2023) .

28 Four specific breeds-pit bull terrier, Japanese Tosa, Dogo Argentino and the Fila Brasileiro.

29 See- [deednotbreed.org.uk](http://deednotbreed.org.uk)

30 [www.met.police.uk](http://www.met.police.uk) FOI request No:

01.FOI.23.027952

31 Based on the American Breeders Association

Dangerous Dogs (Designated Types) (E&W) Order 2023 SI No: 116<sup>36</sup>. The XL bully breed has become a "designated type" for the purposes of s.1 and therefore it will now offence to sell, breed, abandon, or give away such a dog, and, if in public the dog must be a led and muzzled under s.1(2) of the Dangerous Dogs Act 1991.

For the purposes of unlawful possession<sup>37</sup> of such breed under s.1(3) of the 1991 Act, this took effect on the 1st February 2024<sup>38</sup>. in order to allow owners the time to adjust, and if necessary, apply for a statutory exemption certificate<sup>39</sup>. To assist those with enforcement responsibility to identify an XL bully dog, DEFRA has produced a "confirmation standard guidance" which lists the common characteristics associated with such a breed.<sup>40</sup> Whether or not the change is breed status will be an effective remedy is subject to scrutiny by the EFRA Committee as part of the inquiry on "Pet Welfare & Abuse"<sup>41</sup> and a strong parliamentary (e-petition) debate<sup>42</sup>.

One incident, in the West Midlands involved an out-of-control XL bully attacking an 11 girl (Ana Paun) causing serious injuries and also injuring several bystanders. Also, Ian Price tragically lost his life when he was attacked by two similar XL bully dogs in Staffordshire. Stan Rawlinson a dog behavioural expert called for an immediate ban on imports of the dog and for those currently residing in the UK to be registered on a national database, with the onus on owner to show they are a fit and proper person to possess such a dog and if not for

the dog to be seized<sup>43</sup>.

There was exactly the same problem with pit bull terriers in the late 1980's and was a direct cause of the DDA 1991 being rushed in to law in the first place. It will only intensify the debate on the purpose and effect of banning certain breeds. As with trying to ban prohibited terrorist groups, where there is a tendency for the same or similar organization simply to keep reinventing themselves, then so too there is a risk of breeding mixed breed dogs that are not currently prohibited breeds.

In the meantime, risks to the public remain high from unscrupulous breeders and owners alike, such as 10- year- old Jack Lis from Wales who was killed by a XL bully type dog in 2021. The reality of this is powerfully illustrated in a recent newspaper article by Kathryn Knight in which she highlights that concerned and scared dog owners are now resorting to purchasing "doggy armour" in order to protect their pets from unwarranted attacks. This is the brain child of Bradley Davies (a Lincolnshire entrepreneur) as a consequence of his own dog being fatally attacked<sup>44</sup>.

Other criticisms highlighted in a Parliamentary debate in 2021 include the low number of cases involving a s.1 dog, despite the increase in dog incident hospital admissions, the narrow focus of s.1 on the breed and not on irresponsible and unaccountable owners and the lack of a coherent guidance framework on enforcement procedure resulting in inconsistent approaches across the regions<sup>45</sup>.

According to the thrust of the Parliamentary debate the whole premise of s.1 is clearly at odds with the various empirical studies and contrary to views of professional organisations that care for dogs that reform is necessary and essential. Further evidence against breed specific legislation can be drawn from the 2021 empirical research study by Middlesex University which found that dog attacks occurred in multiple circumstances and have varied causes" and as such "any argu-

36 In Scotland it is 23 Feb 2024, see The Dangerous Dogs (Designated Types) (Scotland) Order 2024 SI No 31

37 Patrick McKeown from Sussex in April 2024, became the first person to admit being in possession (without exemption) of an XL bully. Magistrates imposed a 12- month Community Order, £85 costs and a £114 victim surcharge.

38 For Scotland, it is 31 July 2024, see fn 35

39 See The Dangerous Dogs (Exemption Schemes) (E&W) Order [2023] SI No 1407, must be insured, micro-chipped and neutered, if the dog is less than a year old, it must be neutered by 31 January 2024, and if older then by the 30 June 2024. To allow for rehoming see The Dangerous Dogs (Exemption Schemes) Order [2024] SI No 33

40 DEFRA, 31 October 2023 "Guidance: Applying the XL Bully breed type conformation standard." [www.gov.uk/guidance/prepare-for-the-ban-on-xl-bully-dogs](http://www.gov.uk/guidance/prepare-for-the-ban-on-xl-bully-dogs)

41 Whilst supporting the ban the committee nonetheless raised concerns about its potential implications and effectiveness- Committee writes to Defra on upcoming XL bully dog ban - Committees - UK Parliament

42 Hansard "Legislation on Dangerous Dogs" vol 741 (Mon 27 Nov 2023-4.30pm)

43 Article in the Daily Mail, page 14 published on Tuesday 12 September 2023

44 See Daily Mail Tuesday 8 August 2023 page 24-25

45 "Breed Specific Legislation" Hansard vol 698 Monday 5 July 2021

ments that dog attacks are linked to particular breeds, becomes difficult to sustain". Equally, any "assumption that a dog is dangerous based solely on breed is inherently flawed", and thus the current law is an ineffective public safety strategy<sup>46</sup>.

Likewise, a study in Finland by the University of Helsinki<sup>47</sup> which surveyed 9000 pet dogs indicated that aggressive behaviour in dogs is influenced not by breed, but more as a result of the environmental living conditions (such as rural or in a city or single or multiple dog household, or less experienced owners) suffered by the dog. In particular older dogs, male dogs, fearful dogs, and smaller dogs tended to be more aggressive than their counterparts. Rough collie and miniature poodles were most likely to display aggressive behaviour, whilst Labrador/Golden retriever the least likely to do so.

In another survey, study by researchers at Creedons College in the Republic of Ireland found<sup>48</sup> that not only does breed specific legislation reinforce a stereotypical misconception that such dogs pose a far greater risk to the public than other non-specific breeds, is unsupported in severity of dog bite hospital admissions. As such the authors conclude, "that the targeting of dog breeds as a dog bite mitigation strategy may pose significant negative consequences relating to perceptions of risk and reporting behaviour", and thus a whole new approach needs to be introduced to reduce injury caused by dog bites.

This is a view shared by the British Veterinary Association in a Policy Statement released in April [2021] which unequivocally supports the repeal of s.1 and its replacement with a more focused approach towards dog management and control methods. As a preventative measure s.1 has not negated aggressive behaviour in dogs, instead it has designated five breeds of dog as the aggressors. There is

no evidence to suggest s.1 has reduced the number of dog attacks on humans, on the contrary there has been a notable increase in hospital data. This is unsurprising since all dog types, like all humans, are a species that, according to the BVC are clearly capable of showing aggression towards others. Addressing these individual shortcomings, should be the focus, rather than a misguided policy of pre-emptively labelling a dog breed type. A similar position was taken by Lord Gardiner when giving evidence before the Rural Affairs Committee inquiry into controlling dangerous dogs, despite the weight of opinion received by the Committee against breed specific legislation<sup>49</sup>.

As a result, a second e-petition short debate took place in Parliament on the 6 June 2022<sup>50</sup> in which Christina Rees MP, in light of the findings in the Middlesex University study, supported the call for a wholesale review of the DDA 1991. The petition was submitted on behalf of Anita Mehdi, whose own experience highlighted the perversity of the legislation. Anita was the owner of a pit bull terrier type, named Lola, who was seized by the police for no other reason other than purportedly being a prohibited breed. There was no evidence of any aggressive temperament but Anita still had to challenge the destruction order and found the difficulties in gaining exempt status she encountered as a lay person during that process, were wholly unnecessary and unedifying.

Breed type is not indicative of aggressiveness and neither is it a reliable legal presumption. All the persuasive evidence indicates pervasive, "human behaviour, including poor management and the inability to provide for a dog's needs", are more likely to be the precursor to an aggressively behaved dog. Indeed, there is a push back in other jurisdictions against the inadequacy of breed specific legislation<sup>51</sup>. Ac-

46 Science Search (defra.gov.uk)

47 Millola et al "Aggressive behaviour is affected by demographic, environmental and behavioural factors in purebred dogs" (2021) *Scientific Reports* 11:9433

48 Creedon et al "Dog bite injuries to humans and the use of breed-specific legislation: a comparison of bites from legislated and non-legislated dog breeds" (2017) *Irish Veterinary Journal* 70:23. Countries such as the Netherlands and Italy have acted and removed their specific breed laws

49 DEFRA Committee 9th Report 2017-19 Controlling dangerous dogs Report.

50 Hansard vol 715, Monday 6 June 2022

51 The Netherlands introduced breed-specific laws in 1992 and later abolished them in 2008, nevertheless the dog must be microchipped and registered by a vet and have a European pet passport and subject to strict welfare law, including restrictions on breeding, such as pug type dogs. Italy also abolished breed-specific laws, but some breeds are prohibited in Venice



cepting the, "strength of feeling about breed specific legislation", Joe Churchill for DEFRA nonetheless felt a cautious approach was needed in order to find the right solution to the problem, in particular the Government needed to carefully consider the recommendations from the Middlesex University study before acting upon them.

However, until other strategic changes are in place to protect the public, the Government, at this stage, "are not willing to repeal the breed specific provisions", maintaining that XL bully dogs in particular are being used and bred solely for their fighting capabilities by unscrupulous owners which therefore poses a serious risk to the public that simply cannot be ignored. The Government also disputes the unintended consequence of s.1 to glorify the banned breed as status dogs. For genuine owners, there exists an exemption scheme, but to relax the rehoming restrictions risks acceptability of the breed in wider society. Section 1, has a specific purpose and was never intended to, "address the issue of dog attacks more widely", which is specifically covered by the s.3 offence<sup>52</sup>.

Some justification for the Government's position can be found in two recent fatalities potentially by prohibited breeds. The first is Jonathan Hogg, who in was fatally attacked in Wigan and the police shot the dog and seized 15 other dogs from the premises<sup>53</sup>. Secondly, a woman in her 70's was fatally attacked in Bedworth in Warwickshire and the police made two arrests for a s.1 & 3 offence<sup>54</sup>.

### **Behaviour & Training Issues: Middlesex University Research Study 2021<sup>55</sup>**

According to data from People's Dispensary for Sick Animals (PDSA), in its annual report (2020-22)<sup>56</sup>, 23% of dogs that did not socialize as a pup are now, "growling, biting, snapping or showing signs of fear", 13% of which are doing so to other unfamiliar dogs. Interestingly, neutered dogs (10%) are more likely to do so

than unneutered ones (8%). This may be, according Dr Sarah Heath, due to a rise in dogs being rehomed from rescue centres (approx. 65,000 dogs in total and rising)<sup>57</sup> and the consequences of the puppy boom during the pandemic<sup>58</sup>. Significantly, 76% of owners who had registered their dog with a vet tended to use treats and rewards as a training aid, compared to only 14% not registered, although 86% did acknowledge using some form of training device<sup>59</sup>. These figures provide an illuminating insight into the standards of dog ownership responsibility and the potential impact on wider society more generally.

In order to be able to better develop a strategic policy on controlling dogs, DEFRA decided to commission Middlesex University, (at a cost of £72,621) to conduct an in-depth study into the reasons/causes why dogs attack and bite other people and how to effectively reduce these with responsive dog control. The report itself is 97 pages long and covers a mixture of empirical and quantitative research-based projects in four critical areas, namely behaviour, prosecution, enforcement and recommendations. The report confirms that dog attacks are multi-faceted and based on varied circumstances, in particular the environmental factors that could have a profound impact on a dog's behavioural characteristics. Noticeably one of the influential, "risk factors", is, "inappropriate human behaviour around dogs". The report suggests that the human behaviour needs, "to be addressed through policy and enforcement approaches" rather than focusing just on the dog's behavioural difficulties.

In terms of enforcement, the report revealed inconsistencies in procedure adopted by local authorities and police forces across the country, with each having their own ad hoc methods. In particular, some preferred the use of anti-social behaviour orders, whilst other found them cumbersome and ineffective.

52 See fn 9 & 15 for Hansard reference

53 May 2023 see press reports

54 4 June 2023

55 Science Search (defra.gov.uk)

56 <https://www.pdsa.org.uk/what-we-do/pdsa-animal-wellbeing-report/paw-report-2022>

57 RSPCA, and also see the summary of animal shelter statistics & facts at <https://petkeen.com> by Nicole Cosgrove on 11 July 2023

58 Pandemic puppies & dogs with behavioural problems filling the UK's dog rescues [21 Sept 2021] Veterinary Practice which summarises the research findings by Agria pet insurance on the behavioural issues which are taking more resources to resolve before rehoming.

59 [www.pdsa.org.uk](http://www.pdsa.org.uk)

tual. Other points in the report include a lack of any local strategic planning or information sharing as part of any pro-active monitoring. A particular concern was a misunderstanding of the legislative framework or limited specialist knowledge existing in some areas, including some local authorities rarely prosecuting for any breaches of dog control orders, partly because limited refunds were a disincentive. Currently, there is no uniform recording of incidents or data, instead it is left to local forces and authorities to self-manage. This makes it difficult to rely on the accuracy of such data, in order to establish consistent patterns more effectively.

As it stands, subject to the 5 banned breeds owning a dog is an unfettered right and therefore, whilst there is some regulation of the industry itself, there is no assessment of the owner's appropriateness in relation to dog ownership. Ultimately, from its findings, the report makes seven key recommendations both on policy change and a new regulatory framework. In summary, these include the mandatory recording of all incidents including specific data on the nature and circumstances of the incident, such as dog type, and also imposing a statutory dog enforcement duty on all local authorities, with best practice guidance to be issued to ensure greater consistency. Also proposed was the wider use of preventative initiatives such as LEAD and collaborative "model information sharing agreements", as well as introducing an accreditation scheme for dog training services which is currently unregulated to improve quality and standards.

On legal enforcement, the authors recommended new prosecutorial guidance being introduced, (which already exists for many other offences) in order to improve consistency in approach to dealing with dog control measures, plus the use of existing powers more effectively in order to reduce dog bite incidents. What seems a sound new measure recommended by the authors of the report is the reintroduction of a dog ownership registration/licensing scheme, which would involve pre-character checks on dog owners (similar measures exist for firearms) and testing of their dog knowledge skills (again a sim-

ilar measure exists for learner drivers), to ensure and improve responsible ownership.

This would then allow other interested parties, such as commercial sellers and charities to undergo pre-owner background search checks against the register to ensure any potential buyer or new owner meets the statutory minimum standards. This would allow sellers or re-homers to be better informed before handing over the dog. As with any number of recommendations or statutory changes, these would need to be subject to a thorough cost/benefit analyses, and based on whether any increased financial cost is sustainable and proportionate to the overall public interest through a regulatory system of dog control.

As part of a wider response to the report, the Government has created the responsible dog ownership scheme which includes a steering group involving better collaboration with the police, local authorities and other interested parties to allow better data sharing and enforcement methods in terms of dog control and report their findings to DEFRA for further consideration of any policy change recommendations<sup>60</sup>.

## Statutory Control of Dogs

Alongside the DDA 1991, under s1(4) and s.2 of the Dogs Act 1906 & 1871 respectively, a complaint can be made at the magistrates' court for a civil order that imposes a duty on an owner of a dog deemed dangerous to keep it under proper control, and failure to do so risks the dog being destroyed<sup>61</sup>. In addition, Part 4 of the Anti-Social Behaviour, Crime & Policing Act 2014 provides for several civil remedies in the form of either Community Protection Orders or Public Spaces Protection Orders.

These are injunctive in nature and offer an effective measure in controlling the conduct of individual dog owners whose behaviour is unreasonable, persistent or continuing to have a detrimental effect on the quality of life

<sup>60</sup> See short Parliamentary debate on Dangerous Dogs Hansard Vol 717 Thursday 7 July 2022

<sup>61</sup> For a more detailed analysis of control orders under the Dogs Act, see my other article to be published in the Journal entitled "Criminal Liability for Dogs Attacking Livestock under the Dogs (Protection of Livestock) Act 1953: A Worrying Time for Farmers?"

of others. These can include specific conditions such as muzzling the dog and having it on a lead. However, as highlighted in the Middlesex Research paper, the measures are inconsistently applied across the country with some local authorities utilising the legislation, whilst others are reluctant to do so, finding them legally cumbersome or costly. Equally it was shown there was a lack of knowledge and confidence with dog enforcement officers in the procedural steps to take to obtain such an order, together with constraints on financial budgets being another factor.

A similar scheme exists in Scotland in the Control of Dogs (Scotland) Act 2010 which allows a local authority to serve a written dog control notice (DCN) on the owner with the duty to keep their dog under proper control and comply with any specific conditions. If it is found that, on at least one occasion, the dog was not under proper control, the dog must be deemed to be out of control, which means that a lack of effective and consistent control of the dog and its behaviour causes alarm or apprehensiveness of any individual as to their personal safety or that of another person, or another animal, provided this is reasonable in the circumstances.

A failure to respond to a DCN constitutes a summary offence, punishable by a fine and possible disqualification. There are separate provisions dealing with dangerous or unresponsive dogs in which a DCN would be inappropriate and means an application to be made to the Sheriff and the potential the dog's destruction. The Scottish Government recently undertook a review into the overall effectiveness of the legislation and has provided update guidance on the 2010 Act (December 2020)<sup>62</sup>. Both the Royal Mail and the Communications Union have criticized the legislation stating that the police do not prioritize dog attacks and that the 2010 Act is under used by local authorities. They propose that, it should be made mandatory for dog owners to have 3rd party liability insurance (similarly to owning a car), that the Act should be made abso-

lute liability as opposed to just strict liability with the onus being at all times on the owner, and that the law ought to be consolidated into a single framework piece of legislation<sup>63</sup>.

## Sentencing Policy

Sentencing policy is often a contentious and emotive issue for the public generally, and one which is clearly exemplified in the harm caused by dangerous dogs and the sentences imposed<sup>64</sup>. Section 3(4) of the DDA 1991 sets out the relevant sentencing framework for s.3 offences. For a non-aggravated summary only s.3 offence, in which there is no injury, the sentencing maximum is limited to that of the Magistrates Court of either 6-months imprisonment and/or a £5,000 fine. For an either-way, aggravated offence, in which an injury is sustained, then on summary conviction, the punishment remains the same, whilst if convicted on indictment in the Crown Court, under s.3(4)(A) there are three possible sentences dependent on the circumstances<sup>65</sup>.

If the offence involves injury to an assistance dog, then the maximum sentence is 3 years, for a non-fatal injury to another person, it is 5 years, and if fatal then one of 14 years applies. Even if the dog attack has fatal consequences and is therefore a form of homicide, the offence, is still classified as an either-way offence and therefore falls outside of the power of the Attorney General to refer any unduly lenient sentence to the Court of Appeal, under s.35 and s 36 of the Criminal Justice Act 1988, which only apply to indictable only offences or those that are specified by Statutory Instrument<sup>66</sup>. Currently, s.3 is not listed, which has led to the mother of Jack Lis who was killed by an XL bully (where the owners, having pleaded guilty, received 4.5 year and 3 years respectively), is now campaigning for the DDA 1991<sup>67</sup> to be a listed offence in the CJA 1988 or alternatively classified as an indictable only

62 See also consultation paper "Improving the Operational Effectiveness of the Control of Dogs (Scotland) Act 2010" (September 2019) and also "Steps to improve the Operational Effectiveness of the Control of Dogs (Scotland) Act 2010-consultation analysis."

63 See CWU letter to branches No181/2021 6 May 2021. Royal Mail evidence to Post-legislative scrutiny committee Re No. PAPLS/S5/18/COD/39

64 [www.cwu.org/news/serious](http://www.cwu.org/news/serious) "Serious dog attacks-CWU criticises lenient court sentences" Dec 2017

65 Inserted by s.106 of the Anti-Social Behaviour & Policing Act 2014 on the 13 May 2014

66 Criminal Justice Act 1988 (Review of Sentencing) Order 2006 SI No.1116

67 See short Parliamentary debate on Dangerous Dogs Hansard Vol 717 Thursday 7 July 2022



offence, so that any sentence that is considered too low can be challenged<sup>68</sup>.

As with “one punch” manslaughter and death by dangerous driving cases, imposing an appropriate sentence is difficult and challenging. First no sentence can truly reflect the grief suffered. This is clearly reflected in the observation of Tracy LJ in AG Reference No 16 of 2014 [2014] EWCA Crim 956, that “the sentencing process cannot be driven only by the harm done, appalling as it is. The other side of the equation is the level of culpability”, and that whilst the offender may be reckless or careless in owning a dog, they lack a deliberate intent for the dog to kill and therefore, “a balance has to be struck between these two major sentencing factors”.

Equally, the sentencing court must not only follow the general principles of sentencing contained in Sentencing (Code) Act 2020, but also follow the sentencing guidelines for s.3 offences issued by the Sentencing Council<sup>69</sup> under s.59 of the Code, unless it would be contrary to the interests of justice to do so<sup>70</sup>. The court although constrained by the range of sentences within a set of guidelines, they are nonetheless guidelines, not a straitjacket. In KC [2021] Crim App R (s) 41, Green LJ observed that guidelines should not be construed rigidly as if a statute, instead a court has a certain degree of flexibility when applying the guidance to individual cases. Under the definitive guidelines for dangerous dogs issued in 2016, in a high culpability case the starting point is 8 years within a range of 6 to 14 years, whilst a medium culpability has a starting point of 4 years within a range of 2 to 7 years, subject to a non-exhaustive list of both aggravating and mitigating factors, a 25% discount for a guilty plea and if multiple offences, then the totality principle applies.

As with causing death by dangerous driving<sup>71</sup>,

<sup>68</sup> See Attorney General's Reference (No4) of 1989 [1990] 1WLR & AG Reference [2023] EWCA Crim 1015, R v DP [2022] EWCA Crim 57, for the guidance on unduly lenient sentence framework, see also “Review of Unduly Lenient Sentences” 8 Nov [2022] by Jacqueline Beard Research Briefing House of Commons Library.

<sup>69</sup> Governed by chapter 1 of the Coroners & Justice Act 2009

<sup>70</sup> See specifically ss59-62 of the Sentencing (Code) Act 2000

<sup>71</sup> See s.88(2) of the Police, Crime, Sentencing &

one option for reform is to increase the sentence for a fatal dog attack from 14 years to life imprisonment in order, not only to better reflect sentencing policy for cases of the “up-most gravity”, but to also act as a greater deterrent. However, this would be a matter for Parliament to decide, not the courts.

## Concluding Remarks

There is little doubt that the DDA 1991 is an unpopular piece of legislation and that there are flaws within its provisions. It is the primary responsibility of any government to protect and safeguard its citizens, but with dog attacks increasing, and causing fatalities, there is now an urgent need to reform the law on dangerous dogs. The current Government has brought in new initiatives that focus more on improving dog ownership responsibility, in an attempt to reduce dog attacks, but for now, s.1 breed specific prohibition is here stay. However, Labour have promised, should they win the next general election, to repeal the whole of the DDA 1991 and replace it. However, what the replacement would be remains to be seen.

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Courts Act 2022 & the recent decision in R v Soto & Waite [2023] EWCA Crim 55 which considers the impact of the sentence increase.