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Dangerous Dogs Act 1991

G1 Reason

The reason for the introduction of the Dangerous Dogs Act 1991 ('DDA') was positive and pragmatic. After a spate of vicious dogs running riot and biting members of the public who were both friends and strangers for no reason, the government had to act and act swiftly. They certainly did so. The DDA was badly drafted, ill-considered, a lousy piece of legislation that promoted confusion for judges and dog owners alike. It was completed in all its legislative stages in the House of Commons in a single day.

When it was first introduced it was Draconian in the literal and legal sense rather than merely metaphorical. For by the DDA there were two startling provisions that were contrary to the ordinary principles of law namely (a) if a dog was designated to be a particular type it was effectively deemed to be dangerous and equally doomed to die as (b) the burden of proof is on the defendant to prove it is not of that type.

How it hampered many a High Court Judge with a sense of ingrained justice can be deduced from the reaction of these distinguished judges, whose comments were unleashed as result of feeling frustrated in the face of an Act that was a jurisprudential dog's dinner:

(a) Rose LJ described it as 'Draconian' in *Bates v. DPP* [1993] 157 JP 1004.

(b) Popplewell J said in *Rafiq v. DPP* [1997] 161 JP 412 that, 'The Dangerous Dogs Act 1991 was, as is well known, introduced in great haste by Parliament to deal with a number of unpleasant incidents in which a number of fierce dogs had seriously injured small children. It is a piece of Delphic legislation which is even worse than some of the directives coming out of Europe.'

(c) McCowan J asked himself in *R. v Secretary of State for the Home Department ex parte James* [1994] COD 167, 'What then is the position in law when an owner has made every reasonable attempt to get a certificate of exemption and has been foiled by reason of the conduct of others, and in particular the police? My reaction, I confess, is to ask myself: is there really no remedy?' After being compelled to ask that question he answered himself with a word, 'No'.

(d) Rougier J perfectly captured the Act's quintessential legal prejudice: 'Whilst acknowledging the obvious need to prevent the dogs which are, or have become, savage from injuring people, yet it seems to me that the Dangerous Dogs Act 1991 bears all the hallmarks of an ill-thought-out piece of legislation, no doubt in hasty response to yet another strident pressure group. Add to that the foolish nephew, an observant and zealous policeman and the result is that a perfectly inoffensive animal has to be sent to the gas chamber, or whatever method of execution is favoured, its only crime being to

have a cough. It would take the pen of Voltaire to do justice to such a ludicrous situation' in *R. v. Ealing Magistrates' Court ex parte Fanneran* [1996] 160 JP 409.

(e) Underhill J simply said, 'It may be anomalous that one particular kind of private space – namely the common parts of a building shared by more than one dwelling – should have been specially brought within the statutory definition when others are not; but this is a notoriously ill-conceived statute, and it is not for us to seek to re-draft it' in *Bogdal v. Regina* [2008] EWCA Crim 1.

The criticism was widespread and certainly not limited to the courts. For the DDA introduced a legal free-for-all attitude where any dog that resembled a pit bull terrier was seized off the street and then deemed to be dangerous. The biased view ensured its death. Given its introduction was a typically political act, its consequent lack of logic and fairness was reflected in the Act. It was criticised as 'this ill-considered, unjust law' in 1995 by the editor of the *Veterinary Record*. While in 2008 a solicitor in the *Law Gazette* analysed the decided cases and concluded the DDA was 'A dog's breakfast'.

The immediate result of the DDA was similarly not limited to legal confusion. One 'rescued' dog, Ebony, who had been badly abused by a former owner was alone and frightened in a car and unable to leave it despite the police trying to remove it. So they got a vet who arranged for her to be anaesthetised and then Ebony was killed. It was then discovered it was not in fact, contrary to their belief acting purely on appearance, a pit bull terrier but a friendly Staffordshire bull terrier too frightened of them to move: endangereddogs.com. Similarly the site cites the case of Mark Amston who was so worried when the DDA was introduced as he did not have insurance for his pit bull terrier, Sandy, that he had her put down. The following day he hanged himself from the attic door. He left a suicide note saying, 'Me and Sandy will never be parted again.' Dewi Pritchard Jones, the Coroner, said, 'In this case it was a family pet that had to be put down, not a fierce animal. There was no evidence that this dog was fierce. I think the lesson from this death is that legislation should be based on reason and not on panic…[his death] was a consequence of legislation rushed out and not properly thought out.'

With a certain perversity and irony a well-drafted Act is even more necessary now than before as in the summer of 2012 there was another spate of dogs biting people, particularly children. Allied to that there were also many unprovoked attacks by dogs on Guide Dogs for the Blind at a rate of eight a month. So on one level it is a problem that will not disappear. On the other level we have to equally consider the irresponsible owner that allows, or sometimes even encourages, their dog to behave aggressively. Ultimately it is usually the owner that causes the problem. That is the underlying reason the DDA puts an onus on the owner. Indeed it is where it belongs because the control is in his hands.

The main purpose of the DDA is set out at length in section 1. While it has been amended over the past two decades, the strict import of its purpose remains as indicated in the Long Title: An Act to prohibit persons from having in their possession or custody dogs belonging to types bred for fighting; to impose restrictions in respect of such dogs pending the coming into force of the prohibition; to enable restrictions to be imposed in relation to other types of dog which present a serious danger to the public; to make further provision for securing that dogs are kept under control; and for connected purposes.

Dogs bred for fighting

G2 Dangerous Dogs Act 1991, s.1

(1) This section applies to –

(a) any dog of the type known as a pit bull terrier;

(b) any dog of the type known as the Japanese tosa; and

(c) any dog of the type designated for the purposes of this section by an order of the Secretary of State, being a type appearing to him to be bred for fighting or to have the characteristics of a type bred for that purpose.

(2) No person shall –

(a) breed, or breed from, a dog to which this section applies;

(b) sell or exchange such a dog or offer, advertise or expose such a dog for sale or exchange;

(c) make or offer to make a gift of such a dog or advertise or expose such a dog as a gift;

(d) allow such a dog of which he is the owner or of which he is for the time being in charge to be in a public place without being muzzled and kept on lead; or

(e) abandon such a dog of which he is the owner or, being the owner or for the time being in charge of such a dog, allow it to stray.

(3) After such day as the Secretary of State may by order appoint for the purposes of this subsection no person shall have any dog to which this section applies in his possession or custody except –

(a) in pursuance of the power of seizure conferred by the subsequent provisions of this Act; or

(b) in accordance with an order for its destruction made under the provisions; but the Secretary of State shall by order make a scheme for the payment to the owners of such dogs who arrange for them to be destroyed before that day of sums specified in or determined under the scheme in respect of those dogs and the cost of their destruction.

(4) Subsection (2)(b) and (c) above shall not make unlawful anything done with a view to the dog in question being removed from the United Kingdom before the day appointed under subsection (3) above.

(5) The Secretary of State may by order provide that the prohibition in subsection (3) above shall not apply in such cases and subject to compliance with such conditions as are specified in the order and any such provision may take the form of a scheme of exemption containing such arrangements (including provision for the payment of charges or fees) as he thinks appropriate.

(6) A scheme under subsection (3) or (5) above may provide for specified functions under the scheme to be discharged by such persons or bodies as the Secretary of State thinks appropriate.

(7) Any person who contravenes this section is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both except that a person who publishes an advertisement in contravention of subsection (2)(b) or (c) –

(a) shall not on being convicted be liable to imprisonment if he shows that he published the advertisement to the order of someone else and did not himself devise it; and

(b) shall not be convicted if, in addition, he shows that he did not know and had no reasonable cause to suspect that it related to a dog to which this section applies.

(8) An order under subsection (1)(c) above adding dog s of any type to those to which this section applies may provide that subsections (3) and (4) above shall apply in relation to those dogs with the substitution for the day appointed under subsection (3) of a later day specified in the order.

(9) The power to make orders under this section shall be exercisable by statutory instrument which, in the case of an order under subsection (1) or (5) or an order containing a scheme under subsection (3), shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Initially the Act was limited to those two known types, the pit bull terrier and the Japanese tosa. Given the wide power under section 1(1)(c) the Secretary of State introduced the Dangerous Dogs (Designated Types) Order 1991 which came into force on 12 August 1991. That was the first one and by it the DDA was amended to include:

(a) any dog of the type known as the Dogo Argentino; and

(b) any dog of the type known as the Fila Braziliero.

It appears strange at first to have the 'type' of dog specified rather than a 'breed'. However on analysis the reason becomes obvious. By specifying breed it would limit it to a known kind of dog with a background and character within a certain or particular category. So by using the term 'of the type' it is more general and includes a much wider variety of the dogs that can be subject to that term.

Using type as the standard also allows for changing conditions so dogs would come within that term that were hitherto unknown. Criminals with an inclination towards pleasure and profit often resort to cruelty as a pastime. To that end they get involved in badger-baiting and dog fighting much as others might play cricket and bar skittles. At present there is a new 'type' of dog being bred by badger-baiters which is a cross between a bull terrier and a lurcher. [*Bristol Evening Post*: 1/2/12]. Regardless of whether the intention of those involved is contrary to the Protection of Badgers Act 1992, the benefit of the DDA is it allows the Secretary of State to amend that Act by including such a type if it was not already banned.

Collins J noted the flaw in the original law in *R (Sandhu) v. Isleworth Crown Court* [2012] EWHC 1658 (Admin): 'the Act was amended because it was recognised that there was a possibility that even pit bull type dogs might not be dangerous, particularly as the definition

was not as tight as it might perhaps have been and so it might have comprehended dogs which actually were not inherently vicious and which could safely be kept.' [See **G37**]

G3 Type

Within a short time of the DDA being introduced a series of cases came before the courts that proved how oppressive the Act was in aim and effect. As a result two of those went to appeal and became the leading case of *R. v. Crown Court at Knightsbridge ex parte Dunne*; *Brock v. Director of Public Prosecutions* [1993] 4 All ER 491. *Dunne* was a judicial review application and *Brock* was an appeal by case stated. They were heard together because while the facts were not similar, the point at issue for the court in each was essentially the same, namely the interpretation of the phrase 'any dog of the type known as the pit bull terrier' in section 1(1)(a) of the DDA.

Gary Dunne was charged that on 26 November 1991 he had a pit bull terrier in a public place without it being muzzled. He was convicted at Wells Street Magistrates' Court and appealed to the Knightsbridge Crown Court. The court decided that (a) Dunne had failed to prove his dog was not of the type known as a pit bull terrier, but (b) the prosecution failed to prove that the dog was unmuzzled. Therefore the court allowed Dunne's appeal.

Dunne was advised he could not appeal against the Crown Court's conclusion that his dog was of the type known as the pit bull terrier. Therefore he applied for judicial review of that decision and was given leave. He sought: A declaration that the Crown Court erred in its interpretation of the phrase 'any dog of the type known as the pit bull terrier', and that on a proper construction of the statute the word 'type' should be defined in its technical sense – here equivalent to 'breed' – rather than given a broad, popular meaning.

Glidewell LJ outlined the findings of the Crown Court and particularly noted that Judge Mendl said: "if it were intended that it should refer to a particular breed, there would have been no difficulty in defining the breed by saying 'any American pit bull terrier', even though that breed is not accepted by the British Kennel Club. We therefore find that the meaning in the Concise Oxford English Dictionary is appropriate – a general meaning not a technical one. The words mean that a dog 'of the type known as a pit bull terrier' is an animal approximately amounting to, near to, having a substantial number of the characteristics of the pit bull terrier."

Judge Mendl summarised the evidence of Dr Mugford, an expert witness called by the defence and of witnesses called by the prosecution. 'He then said: "considering all the evidence we have heard and the burden of proof, we conclude the applicant has not discharged the burden of proving his dog was not of the type known as a pit bull terrier."

The court however then concluded that the prosecution had not satisfied the burden of proving that at the relevant time the dog was unmuzzled. Thus the appeal was allowed.'

Glidewell LJ then turned to the case of Karen *Brock* as it raised wider issues in respect of her dog, Buster, which she was convicted of having in her possession or custody which was a pit bull terrier. He said the case stated confirmed she 'admitted that (a) she had the dog in her possession on 26 December 1991 (b) the dog had not been neutered, tattooed, implanted,

insured nor registered. It was not therefore exempt on that ground from the prohibition against possession or custody of a dog to which section 1 of the Act applied.

Judge Zucker QC at Wood Green Crown Court traced the history of the dog: "Pit bull terriers were first bred in England as fighting dogs. Some time in the middle of the last century they were imported into the United States of America. When dog fighting was banned and died out in England about the middle of the last century, pit bull terriers were no longer bred here. The development of the breed however continued in the United States of America. In 1976 two female pit bull terriers were imported back into England, followed by a stud dog called 'Al Capone'. From that beginning pit bull terriers have been bred in England. (b) Dogs, generally, have breed standards which are laid down and recognised by different associations of dog breeders. The leading Association in England is the Kennel Club. Because of the long period when pit bull terriers were not bred in this country, The Kennel Club has no standard for pit bull terriers, nor has any other association in this country. (c) Because pit bull terriers have been bred over long period of time in the United States of America there are breed standards promulgated by associations of dog breeders in the United States of America. (d) One of those associations is that of the American Dog Breeders Association (ADBA). ADBA was founded in 1909, has always existed for pit bull terriers alone and has never registered any other breed. It is the most detailed standard. It deals with physical characteristics. It is widely used and accepted. The pit bull terriers originally imported into this country were registered with ADBA. (e) A second, less detailed standard is that of the United Kennel Club (UKC). ADBA does not recognise the standard of UKC and *vice versa*."

The Crown Court summarised the evidence of the defence expert, Dr Mugford. That related to pit bull terriers generally and the behavioural characteristics of Buster.

The Crown Court concluded that, "We accepted the evidence of the respondent's witnesses and did not accept the evidence of the witnesses called on behalf of the appellant. We found that the characteristics of the appellant's dog substantially conformed to the ADBA's standard and was of the type known as the pit bull terrier…The appellant therefore failed to adduce sufficient evidence to rebut the presumption that her dog was of the type known as the pit bull terrier. We therefore dismissed the appeal."

Glidewell LJ analysed that decision and said, 'Interpreting the phrase "of the type known as the pit bull terrier" in section 1(1) of the statute simply by the normal canon of construction, ie by giving the words their ordinary meaning, I entirely agree with the decision of the Crown Court in both cases that the word "type" is not synonymous with the word 'breed'. The definition of a breed is normally that of some recognised body such as the Kennel Club in the United Kingdom. I agree with the Crown Court in both cases that the word "type" in this context has a meaning different from and wider than the word "breed". I would so conclude by reading only section 1 of the 1991 Act. But that this is so is made even clearer by reference to a subsection to which I have not so far referred, namely section 2(4) of the 1991 Act. This provides: "In determining whether to make an order under this section in relation to dogs of any type the Secretary of State shall consult with such persons or bodies as appear to him to have relevant knowledge or experience, including…a body concerned with breeds of dogs."

In that subsection the two words are used in contradistinction to each other.'

The court was referred to two decisions of the High Court in Scotland. Glidewell LJ referred to one of them, *Parker v. Annan* [1993] SCCR 185, where the Lord Justice General said in dealing with the same issue:

“There is an absence of any precise criteria by which a pit bull terrier may be a identified positively as a breed and by this means distinguished from all other dogs....