1
Food for Dogs

A1 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 a 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* [1995] 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.

A2 Result

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 through to the present there was another spate of dogs biting people, particularly children. There were 1,160 hospital admissions for dog bites to children under nine years old in 2013. Allied to that there were also many unprovoked attacks by dogs on Guide Dogs for the Blind which has increased from a rate of eight to ten a month. There are a total of 200,000 people being bitten by various dogs every year. 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.

A3 Purpose

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 proper control; and for connected purposes.

The importance of that can be deduced from the fact the Court of Appeal relied on it to decide one of the most dogmatic cases under the DDA namely *R. v. Bezzina* [1994] 99 Cr. App. R. 356. Fortunately a different recent Court of Appeal decision distinguished that case and introduced a degree of pragmatism in their sagacious judgment in *Robinson-Pierre v. Regina* [2013] EWCA 2396. [See **D5**; **K11**]

A4 Success

The amendments to the DDA over the last two decades and more have attempted to allay the growing fears of the public about dangerous dogs and the ever-growing tribal-menace of irresponsible owners. It has culminated in the repeal of some sections of the DDA and the introduction of completely new offences by sections 106 and 107 of the Anti-social Behaviour, Crime and Policing Act 2014 [ABCPA]. Those amendments are the result of wide-ranging consultations with various organisations that represent animal welfare charities and professional bodies; the investigation included victims of attacks by dogs, vulnerable people who rely on dogs and the general public. As a consequence the new offences attract much more severe sentences. The new provisions are complex in terms and form and interpretation. Further, as the ABCPA is not retrospective and hence only takes effect from 13 May 2014, there are likely to be some cases still in progress that will be subject to the previous provisions and more lenient sentences. Consequently rather than merely attempting to weave those provisions into the existing text, which could be confusing, there is an in-depth analysis of them in Chapter 12. [See **L1-20**; **Appendix**]

In order to decide whether the main purpose of the DDA has been achieved it is essential to analyse the authorities as interpreted by the courts. For it is through those cases that we can see the result of the DDA in action. Then we can judge whether it promotes the twin limbs of controlling owners while protecting the public. It is not only a question of the number of attacks by dogs on people and other dogs that is the yardstick. For the success or failure of the DDA also has to be gauged by the number of dogs it aids and saves rather than the number that that Act serves to kill.

*A5 Past and present

As the ABCPA affects sections 1, 3, 4, 4A, 4B, 5 and 10 of the DDA for the future, that fact must be borne in mind when considering the *date* of the alleged offence, lest the pre-13 May 2014 conditions still apply. [See **L3**]

NB. The Dangerous Dogs Exemption Schemes (England and Wales) Order 2015 came into force on 3 March 2015. The Order revokes the existing Scheme and allows the police the discretion to grant 'bail' to a dog that they have seized. It also clarifies the role of a keeper and ownership of a dog. [See **Appendix 8**]