Chapter 11 Vets and the law

Overview of UK Dangerous Dogs legislation – Injustices and inadequacies – Need for universal preventative education – Behaviour assessment of 'dangerous' dogs – Neutering – Veterinary responsibility under Animal Welfare Act

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This chapter is not intended to be a comprehensive overview of all law pertaining to dogs. It will concentrate on two pieces of legislation of greatest relevance to the veterinary surgeon in general practice – namely the Dangerous Dogs Act and the Animal Welfare Act. It will highlight the responsibility placed upon veterinary surgeons if the law and its implications are taken seriously. For a summary of all dog law, 'A practical guide to dog law for dog owners and others' by lawyer Andrea Pitt provides useful information. The chapter will also address the issue of behavioural assessment of allegedly dangerous dogs and how care must be taken by all those involved to ensure that such assessments are valid, informative and welfare-orientated.

Section 1. The Dangerous Dogs Act 1991

This section comprises an overview of this specific legislation, liberally sprinkled with a personal view of its injustices and inadequacies. Although there is other much older legislation that deals with out of control dogs, namely the Dogs Act 1871 and Animals Act 1971, this civil law is far less commonly used and will not be discussed here. The vast majority of cases in which I have been involved are brought under the more recent Dangerous Dogs Act 1991, under which both civil and criminal charges may be brought.

The sections of the UK Dangerous Dogs Act of most relevance are Sections 1, 3 and 4b. Sections 1 and 3 are both **criminal offences** whereas Section 4b is **civil**. Section 3 applies to dogs of any breed, deemed dangerous because of **what they have done** whereas Sections 1 and 4b apply to dogs deemed dangerous purely **by appearance**, so-called breed-specific legislation or **BSL**. An owner whose dog is of a breed automatically labelled dangerous, and in addition, has done something deemed dangerous, will be charged under both Sections 1 and 3 of the Act. Section 4b is reserved for owners of dogs who have not behaved dangerously but are thought to be dangerous by appearance. All dogs thought to look dangerous are mandatorily seized by the police and taken into custody, apart from those dogs and their owners deemed eligible for the Interim Exemption Scheme (IES). Introduced in 2015, this allows friendly, non-aggressive dogs if owned by law-abiding citizens, to remain at home under certain conditions prior to cases coming to court. Not all police forces use this scheme to date, notably the Metropolitan Police.

There is discretion regarding the seizure of dogs which have behaved dangerously. If allowed to remain at home, an interim control order may be made to minimise risk. If the risk of recurrence is thought to be too great, a dog will be seized to 'protect the safety of the public'. Such seizure may however not occur for some time after the incident itself.

The main financial and practical significance to any dog owner falling foul of this law is that, if charged under 4b, the civil offence, **legal aid is unavailable**. Legal aid is only available for criminal offences, ie. if charged under Sections 1 and/or 3. The practical result is that, if charged under 4b, defendants have to foot the bill of any legal action themselves or find other

means of financial support. However much they believe their dog not to be of a banned breed or type, they may simply be unable to afford the cost of mounting a defence.

Sections 1 and 4b of the Act apply to four dogs – the Pitbull terrier, Japanese Tosa, Dogo Argentino and Fila Braziliero, the proscribed breeds. All considered under the law to be fundamentally 'fighting dogs', it is illegal to own, breed from, sell or give away any such animal. The only dog which does not have a UK-recognised breed standard by which to be identified, is the Pitbull terrier. Yet this is the only 'breed' of any significance in this country, only a handful of the other breeds ever being found in the UK. In 1993 when it was realised that breed identification was problematic, to say the least, case law determined that the 'type' of dog should be considered instead of 'breed'. As no breed standard for the Pitbull terrier exists in the UK, the American Dog Breeders Association standard, as created in 1974, was selected as the yardstick by which any dog suspected of being a Pitbull 'type' was to be assessed.

Initially when the law was passed, and the owner was found guilty of this crime, it was mandatory for the dog to be destroyed. But in 1997, the law was amended to allow such dogs to be entered onto an Exempt Register providing certain conditions were met. Conditional Destruction Orders were introduced, the conditions of which included that the dog must be permanently identifiable (initially by tattoo, now by microchip), kept muzzled and on lead at all times in public, neutered and insured for 3rd party liability. Any contravention of these conditions could result in destruction.

These conditions were all thought to contribute to public safety. Furthermore, the owner had to be considered a '**fit and proper**' person and the dog itself had to be shown '**not to constitute a danger**' to the general public. The fact that only human-friendly, non-aggressive dogs are allowed onto a register for dogs deemed automatically dangerous by breed type and conformation, is a supreme irony.

If the owner is thought unsuitable or not 'fit and proper', the dog can only be given into the care of a person who is already familiar with the dog. They may then apply to become the **registered keeper** of the dog although ownership does not change. If no such person is found, however good and 'non-dangerous' the temperament of the dog, it must be destroyed.

In addition to these caveats and restrictions, Sections 1 and 4b of the DDA unusually carry a **reverse burden of proof** in other words, the defendant is **guilty until proved innocent**, in contrast to almost all other legislation. The onus is therefore on the defendant to prove his dog is not of the type, rather than on the prosecution to prove it is. The standard of proof is however less than other cases. Instead of a case having to be proved **beyond reasonable doubt**, the lesser burden of proof, **on balance of probabilities,** is supposed to lessen the onus on the defendant. In practice however, and perhaps cynically I have found the opposite to be true. 'On balance of probabilities' seems to be interpreted rather along the lines of 'no smoke without fire'. If there is some doubt that the dog is of type, yet a charge of owning a Pitbull has been brought by the authorities (the 'smoke'), then it is assumed that a 'fire' must exist and the dog in question 'probably' is indeed a Pitbull type.

Determining 'type' rather than breed has resulted in almost any short-coated, well-muscled mongrel dog being at risk of being labelled a Pitbull by the over-zealous authorities, particularly if in the hands of a person who has already come to their attention for other

reasons and is deemed ‘dodgy’. As previously stated, whether the dog has behaved in a ‘dangerous’ manner is immaterial. Staffordshire Bullterriers and crosses thereof are the most likely to be caught up in the net but even purebred American Bulldogs, and crosses of Weimeraners, Neapolitan mastiffs, Dogges de Bordeaux, Rhodesian Ridgebacks (even with ridge!) and Boxers have all been identified by the police as Pitbulls. ‘Type’, like beauty, would appear to be in the somewhat prejudiced eye of the beholder.

This indiscriminate inaccuracy is compounded by the reverse burden of proof, which means that no evidence whatsoever has to be routinely provided by the prosecution to the court as to why a police Dog Legislation Officer considers a particular dog to fall into the category of ‘type known as the Pitbull terrier’. ‘If I say it is, then it is!’ is more or less the assertion by seizing officers and courts are duly guided by a single sentence in an officer’s statement to this effect in order to pronounce guilt. In addition, owners may be put under a great deal of pressure to forgo any attempt to disagree with these ‘experts’. The ‘carrot’ of having their dog returned to them in a matter of weeks, rather than months, if not years, provides irresistible emotional persuasion to give in and admit ‘guilt’ in order to get their dog home as quickly as possible, even with completely unnecessary restrictions.

The upshot is that the vast majority of dogs are entered onto the Exempt Register without any second opinion or accurate determination of the degree to which a dog conforms to the ADBA breed standard. There is also no recognition of how many characteristics of certain ‘non-dangerous’ breeds may be shared. The result has been what can be described as a form of visual ‘Chinese Whispers’, in which the myth of what comprises a Pitbull is ever enlarged. This is despite the rather nebulous and circular case law caveat stating that:

‘**There is an absence of any precise criteria by which a pit bull terrier may be identified positively as a breed and by this means distinguished from all other dogs. One must of course be careful not to extent the application of this section to dogs which are not described in it. A dog must be of the type known as a pit bull terrier if the section (of the Act) is to be applied to it’** (cited in R v Crown Court at Knightsbridge ex parte Dunne and Brock 1993).

Those owners who are sure that the police have got it wrong, may seek a second opinion but, particularly if self-funding, it is very much an uphill struggle for them as affording a defence often proves impossible. Without the means to engage legal representation, they have no way to oppose the police view and are forced to plead guilty by default.

Yet the number of these mongrel dogs entered onto the Exempt Register by these, at best, questionable means is used as evidence of the law’s success. To date, the Government has been persuaded by the powers-that-be that the law must remain unchanged as it has supposedly cleared the streets of so many ‘dangerous’ animals.

And what of the facts?

From 2007 to 2018, I personally assessed 198 dogs all alleged to be Pitbull types, bearing in mind that these cases only represented owners who had both the temerity and the necessary financial wherewithal to disagree with the opinion of the police. Of these 198 dogs, 26 of them (13%) had also done something the law defined as ‘dangerous’, namely the nebulously termed condition of being ‘dangerously out of control’. (Ironically, as stated above, the owners of these 26 dogs which had actually done something dangerous and therefore had also

been charged under Section 3 of the Act, were eligible for legal aid.) Of these 26 dogs, in all cases, people were bitten: eight while ill-advisedly intervening during dog-on-dog incidents, five cases were as a result of owner conflict with the police while resisting arrest, three cases featured groups fighting with each other in the street and two 'domestics'. The remaining few cases similarly reflected human rather than canine failing – an owner drunk in charge of his dog who ran off and nipped playing children, a dog left unattended outside a shop (the proverbial accident waiting to happen) and a 'victim' kicking an approaching off-lead dog in panic.

Of the total of 198 dogs, I assessed only four dogs as truly dangerous in that there was real risk of them biting again. Apart from the finding during the assessment that the dogs needed little discernible provocation to display aggression, given their past history, the bites inflicted were likely to be very serious, even in the most capable hands. I therefore recommended euthanasia for these four.

What of cases under Section 3 of the Act?

This applies to any dog that has done a 'dangerous' thing and, as such, the owner is charged with allowing the dog to become 'dangerously out of control'. In other words, being 'dangerously out of control' is defined as a dog that has injured or put someone in fear of injury. (Charges arising simply because a potential 'victim' was frightened by a dog are much less common as a case is harder to prove. An injury on the other hand, speaks for itself.) To put the circular definition the other way round, if a dog injures, it is assumed to have been dangerously out of control at the time, however brief the moment in time happened to be. Even a dog on lead and sitting by their owner's side just prior to biting, may be deemed 'dangerously **out** of control', a fact that few owners are aware of. Standard physical control methods alone are not enough to ensure lack of danger, either in the eyes of the law or in reality.

Of course, 'behaving dangerously', as defined by what transpired in one moment in time, is not the same as 'being dangerous' *per se*, any more than losing one's temper on occasion is evidence of psychopathology. While they may well accept that their dog has bitten, many owners quite understandably baulk at the assumption that their dog is dangerous. I have found a complete cross-section of breeds involved over the last 20 years and, although the Staffordshire Bullterrier seems over-represented, this may be simply a reflection of its present popularity and the density of the breed and crosses thereof in certain areas of the country. Out of 144 cases, over a third of offences arose from dog-on-dog incidents. Although the true target of a dog's aggressive intent had been another dog, aggression was redirected towards a person. Social frustration between dogs appears to be a major cause of inadvertent bites and other injuries to people, including the dog owner themselves. One does wonder whether measures taken in attempts to keep people safe, such as restricting the freedom of dogs, have backfired and inadvertently created more antisocial canine behaviour. Owners may also have become more cautious and overly-protective of their dogs in view of the threat implicit in the legislation.

In other cases, as under Section 1, 'bad' human behaviour in terms of violence and alcohol consumption featured strongly as well as complete lack of awareness of the stressful and alarming effect unpredictable human behaviour, particularly that of children, can have on dogs. It has become abundantly clear that dog bite incidents are largely **unforeseen events**,

by either owner or victim, and that punishing a misdemeanour after the event alone, with no education as to what led to the bite or its prevention, is doomed to failure.

But, although the number of dog bites overall seemed to be rising rather than falling as intended, in the dubious wisdom of those in charge, a law that was spectacularly ineffective in public was in 2014 also applied to private places. Consequently, all the mistakes that were being made in public, now could result in an offence being committed on private property as well. As could have been predicted, similar (at best misguided, and at worst appalling), human behaviour was evident in dog bite cases occurring at home. Drunken rows, thrown food, girlfriend accusing boyfriend of 'commanding' a dog to attack her, children attempting to pick up or otherwise disturb sleeping dogs, even, on one occasion, putting a basket over a dog's head to 'protect' it from a thunderstorm, all resulted in 'dangerous dog' allegations. **As in public, dogs pushed beyond the limits of social endurance have been forced to bite by an onslaught of ignorance.**

Consequently, prosecutions and convictions of dog owners rose and were heralded as evidence of an effective law. But, as with Section 1 of the Act, Section 3 is fatally flawed.

Firstly, the offence of allowing a dog to be 'dangerously out of control' is, like speeding, a '**strict liability**' offence and, apart from rare cases, where the identity of the canine culprit is in doubt, a guilty plea is mandatory. At least if there is a risk of driving too fast, drivers are given clues as to *how to avoid* offending by way of speedometers in their cars and roadside warning signs. There is no such equivalent knowledge made clear to prevent a dog biting and the owner is charged out of hand.

Finding someone who can be conveniently *blamed* for allowing their dog to bite, does not equate to identifying *cause*, the reason why the bite occurred. Only by identifying cause and using this information in a pre-emptive and educational manner, will there be much hope of a reduction in incidence of dog bites. I made a suggestion as to how the problem could be redressed by liking current speed awareness workshops with proposed courses giving vital information regarding dog behaviour (Shepherd 2013). They could be offered in the same way, the reward for attendance being the avoidance of further punishment. As with speeding, there are very common causes and contributory factors to dog bite incidents. Highlighting these should serve to alert dog owners to the conditions and events that led up to a so-called 'unpredicted' dog bite incident and enable avoidance of reoffence.

Secondly, **provocation is not permissible** as a defence under UK law. If thoroughly investigated and analysed from the dog's perspective, **mitigation** for the dog's actions can be brought, stressing all the while how fundamental ignorance on the part of both 'victim' and dog owner is a major contributary factor. Such mitigation may be sufficient to reduce a sentence to the minimum, but a guilty plea is mandatory all the same.

The result of the **strict liability nature** of the law has been the fact that dog bite incidents have never, in the history of the DDA, been investigated properly by the authorities, as they should be if it were any other crime. In the normal way, evidence would have to be brought to court to prove their case. As it is, if the identity of the perpetrator is undisputed and 'the dog did it' is sufficient to secure a conviction, another proverbial 'open and shut' case goes down in history. Add this to the fact that provocation is not allowed as a defence, there has never been any onus or **responsibility imposed upon people** to behave sensibly and respectfully

around dogs. The fact that certain breeds have been designated as 'dangerous' has created the unforeseen assumption among the public, dog owning or not, that other breeds are 'safe'. The law in all its aspects, has created a false sense of security.

The ramifications of all these legal imperfections are far-reaching. Common criticism levelled at the breed-specific aspects of dangerous dog legislation concludes that it is unjust, illogical, inhumane and, above all, in no way fulfils the original purpose of the law, namely that of dog bite prevention. Breed Specific Legislation has been roundly condemned by high-profile organisations and the general public alike. In particular, the RSPCA's thoroughly-researched report on Breed Specific Legislation published in 2016, aptly named 'A Dog's Dinner' (www.rspca.org), added well-argued weight to their 'End BSL' campaign.

In addition, the Environment, Food and Rural Affairs (EFRA) Committee conducted an inquiry in 2017 into the whole issue of 'dangerous dogs' and the efficacy of legislation. The inquiry was conducted under the auspices of Neil Parish MP and its report was published in September 2018. The conclusions reached included that the current legislative approach was thoroughly ineffective, that urgent changes were indicated to avoid needless dog deaths, and strongly recommended comprehensive public education regarding the nature and cause of canine aggression. Despite these conclusions, no change to the legislation has occurred at the time of writing and the Government response to this report was generally disappointing. It did however provide some light at the end of the legal tunnel. Among recommendations made were that the '**Government should commission an independent review of the effectiveness of the Dangerous Dogs Act 1991 and wider dog control legislation.'** Also there should be carried out a **'comprehensive independent evidence review into the factors behind canine aggression, the determinants of risk, and whether the banned breeds pose an inherently greater threat'**.

This is currently being undertaken by Angus Nurse, Associate Professor of Criminology and Sociology at Middlesex University.

Both the EFRA report and Government response to it can be found here in PDF form:

https://www.parliament.uk/business/committees/committees-a-z/commons-select/environment-food-and-rural-affairs-committee/inquiries/parliament-2017/dangerous-dogs-breed-specific-legislation--17-19/

Universal humane education from primary school upwards regarding the nature of dogs and the dog-human relationship is vital if dog bites are to be prevented. Dog bite incidents are invariably described as 'attacks', thus completely prejudicing the public view, including that of magistrates and judges and police, as to a dog's motives. They are '**dog bite incidents**', no more and no less. Bites do not 'come out of the blue', we create them. Human behaviour change is of the essence.

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Behaviourally assessing 'dangerous' dogs

Dogs may be seized under both sections of the Act. Dogs alleged to be Pit bull types are mandatorily taken into police custody despite lack of evidence that they have behaved, or are behaving, dangerously. Under Section 3, dogs which have been 'dangerously out of control' and caused injury are generally seized. Slightly worrying, if a dog really does present a

danger, is the fact that the seizure itself, carried out in order to 'protect' the public, may not take place until several weeks after the incident itself.

A behavioural assessment is requested to gauge, as far as possible under artificial circumstances, whether a particular dog, if released, will present a danger to the public in real life. The conclusions must include any measures that one feels necessary to ensure safety. Standard measures include keeping a dog on lead and muzzled in public places and a control order to this effect may be made. However, these physical restrictions are often the only measures relied upon by the Courts to prevent future mishap. Common sense dictates that if the primary cause of an incident is a dog escaping from the house or garden, then ensuring the gate is dog-proof and routinely kept securely closed, is vital. Dogs do not put their own muzzles on before making a bid for freedom.

A behavioural assessment of an allegedly 'dangerous' dog, in a nutshell, is a simply a means of **diagnosing cause** of any incident and creating an accurate as possible **prognosis** for the future. As with physical disease, when symptoms and their duration are essential for accurate diagnosis, this must entail gathering as much information about the incident as possible. This is obtained from witness statements, including that of the victim or complainant, hospital records giving details of any injuries, and the history of the dog from the owners, as well as from the dog's registered veterinary practice.

In an ideal world for seized dogs, records of how the dog has behaved while in custody and how they have been managed should also be routinely available. Unfortunately, one is often left with the suspicion that the worse a dog's behaviour in kennels is, the better it serves to justify seizure and to 'prove' the Prosecution's case. A dog and its behaviour are 'bagged and stored' as any other evidence. Well-meaning kennel staff may be instructed not to interact with certain dogs to ensure the detainee does not appear 'nicer' than it should. Several years ago, I had the pleasure of assessing a dog called Stella Hastie, an alleged Pitbull supposedly too 'dangerous' to handle, who had been kept without exercise and little human interaction for two years. The brave actions of kennel staff 'whistle blowers' who risked their jobs by disobeying police instructions ensured that her case hit the public eye. (https://www.bbc.co.uk/news/uk-england-devon-35635935)

As far as I am concerned, the dog's initial behaviour on seizure should be video recorded as evidence of 'danger'. Thereafter, every effort should be made to make their confinement more bearable and to ensure as far as possible that the requirements of the Animal Welfare Act are adhered to. As it is, the requirements of the Dangerous Dogs Act seem to routinely contravene those of the Animal Welfare Act. A conundrum indeed.

In human terms, it is now a legal requirement for 'Independent Custody Visiting' to be allowed for all those held in detention, whatever their crime. Access to detainees must be allowed at any time so that spot checks can be carried out as to their condition and welfare (see the Independent Custody Visiting Association website https://icva.org.uk/). Whether the conditions of detention and their mental state might affect their fitness to be interviewed is also taken into account. How dogs are cared for and their welfare would be vastly improved if such a system were mandatory for those dogs in police custody. Moves are afoot such a scheme with the support of representatives of the RSPCA along the lines of the Police Dog Welfare Scheme which has been introduced in various forces following the death of a police

dog during training (see for example https://www.cheshire-pcc.gov.uk/get-involved/volunteering/police-dog-welfare/)

In my experience, assessors carrying out behavioural assessments for the Defence are not allowed into the holding kennels unless the dogs are deemed 'too dangerous' to be transported elsewhere. Many of these dogs have been kennelled for many months and could well be aggressive towards strangers. These encounters taught me that nothing could possibly be achieved if I set out to get the dog to do only what I wanted it to do. Of vital importance is to consider what such dogs need from the assessor, not what the assessor needs from the dogs.

It would seem that some assessors think it valid to provoke the subject in various ways with increasing intensity to ascertain their level of tolerance and at what point the 'straw breaks the camel's back'. In other words, it is the assessor's needs which drive the contents of the assessment, rather than those of the dog. Although there is indeed an obligation to analyse and rationalise a previous incident, there is no need to force history to repeat itself in order to achieve this and to create a prognosis. To use the medical equivalent, it becomes obvious that we do not diagnose a disease condition by trialling what treatment makes it worse, but by what approach results in an improvement. The same is true for behaviour. Determination of the dog's character, preferences and triggers to explain the past, and how behaviour can be changed for the better in the future is of the essence.

If a dog has been left at home, one often has the advantage of being able to visit the site of the incident and replicate or verify aspects of it, such as how likely the dog is to have jumped up or chased a passer-by, or how far it ran before an alleged bite was inflicted. It is not unusual for the witness statements to conflict with each other and for a 'victim', possibly for understandable reasons, to assert that the dog ran further or bit more often than is actually the case. Indeed, if detailed medical records can be obtained, including photographs, the injury may not be identified as a dog bite at all, but instead as scratches inflicted by a dog's claws or the result of the victim tripping and falling. As the law applies to injuries 'however caused', not just by a bite, the dog cannot be exonerated and an owner must plead or be found guilty. Of course, whether the dog was motivated to bite or not and whether the episode was the result of 'victim' panic, makes a great deal of difference to one's behavioural conclusions.

One is also able to see first-hand how a dog behaves towards strangers knocking on the door, entering the home and greeting the dog in possibly ill-advised, but very common, ways. A more realistic picture of a dog's behaviour (for better or worse) may then be ascertained compared to the response of a dog confined on its own for a number of months in kennels. Other every-day experiences and responses can be tested in both contexts, such as propensity for food guarding or undergoing veterinary examination. However, one must be aware of the risk of creating false positive, as well as false negative responses. A dog may see no reason to guard food when on its own in police kennels but become mountainous in its own kitchen with the owners, their children and a companion dog in close proximity. As is common in the veterinary context, the presence or absence of the owner during examination can make all the difference to a dog's response, again for better or worse.

In summary, enough should be done within safety limits to form as accurate as possible all-round view of a dog's temperament, personality and behavioural proclivities. Great care however must be taken that the means of ensuring safety in an assessment do not falsely

indicate the very behaviour the law is intended to prevent (for example, by unnecessarily muzzling or tethering a dog) – hence the need for a thorough behavioural history from the owners prior to an assessment. Sometimes it seems that assessors are overly cautious and unnecessarily misled, as are the general public, into imagining that, on the basis of one context-specific incident alone, a dog may become savage at any time. It is also of the utmost importance to be entirely unbiased, as is one's sworn obligation, and not be tempted or persuaded either to paint a rosier or more damning picture of a dog than is the case. An identical report should be able to be written to inform the court regardless of whether one is instructed by the Prosecution or Defence.

For more detailed information on assessing dogs for the courts, see Shepherd K, 'The assessment of dogs for legal cases – a UK perspective' in 'Dog Bites – a multidisciplinary perspective' Eds. Daniel Mills and Carri Westgarth 2017.