

Dogs: man's best friend or liability minefield?

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Research by the University of Bristol Department of Clinical Veterinary Science – published in *Veterinary Record* in 2010 – estimated around 10.3 million dogs were in the UK and around 31% of households owned at least one dog.

Defra published statistics in April 2012 stating around 210,000 people per year were attacked by dogs in England alone, including 4,000 postal workers while delivering post. The Health and Social Care Information Centre (HSCIC) records all hospital admissions for England and, for the period March 2014 to February 2015, quoted 7,227 admissions were the result of dog biting or mauling incidents – an increase of 76% over the preceding 10 years.

Children younger than nine accounted for 16% of victims and 13 out of the 21 fatalities were also children. The records show a strong regional bias with Merseyside and the north-east of England having the most admissions. It appears, from the HSCIC statistics, children, younger than nine, are the most likely victims and the risk declines with age. The Office of National Statistics for England and Wales recorded 23 deaths from dog attacks between 2006 and 2012, and 29 deaths from 2007 to October 2016.

These figures equate to a worrying state of affairs for both the public and the dog owner.

Development of criminal liability

In the eyes of the law, in England and Wales, the dog is treated as the personal property of the owner and, accordingly, the owner can be held responsible for that dog's actions. This liability emanates from several historic statutes, originating in The Metropolitan Police Act 1839, which could result in a 40-shilling fine for owners in London who allowed their dog to run loose in any thoroughfare or public place and attack, or put in fear, any person, horse or other animal.

The Town Police Clauses Act 1847 extended the law to the rest of England and to every person, in any street, if his or her dog was deemed to be dangerous and "at large" (not on a lead). The 1847 act introduced a punishment of two weeks in prison.

The Dogs Act 1871 imposed a legal duty on an owner to keep his or her dogs under reasonable control and provided a power for authorities to seize and destroy any dog not kept under reasonable control. This act provides a civil remedy and also applies to attacks on other pets or

livestock, as well as humans. The 1871 act is still used by authorities today and, while it does not allow for the punishment of the owner of a dangerous dog, it does allow for the imposition of restrictions, such as muzzling, or the destruction of a dog.

The Dangerous Dogs Act 1989 provided a power to disqualify offenders from owning a dog and, two years later, the Dangerous Dogs Act 1991 was introduced in the wake of several headline-hitting attacks on children by dogs. The Dangerous Dogs Act 1991 introduced a prohibited group of “fighting-type dogs”, commonly referred to as “banned dogs”, and also created a criminal offence where any type of dog was dangerously out of control in a public place.

The rules regarding the ownership of “banned dogs” were subsequently relaxed in the Dangerous Dogs (amendment) Act 1997. This act created an index of exempted dogs, which permitted the court to issue a certificate of exemption, if the judge or magistrate was of the view such a dog was not a risk to the public. Dogs registered on the index must be neutered, tattooed, microchipped, kept on a lead and muzzled when in public, and retained in a secure place so it cannot escape. The owner must also take out specific insurance against the dog injuring people.

Risk at home

The subject of dogs causing injury and death continues to be a hugely emotive area, fuelled by several incidents of babies and children being killed within their family home.

In April 2013, Defra proposed amendments to the Dangerous Dogs Act 1991 in the Draft Dangerous Dogs (amendment) Bill to extend criminal liability to include incidents in private places and increase the sentencing powers available to courts.

We must remember dogs are animals that may be unpredictable and are capable of causing severe and fatal damage. Some critics state owners are the cause of such attacks and that the risk is not linked to any particular breed or type of dog.

The pertinent issues are:

- What should the dog owner do to protect the public and his or her family from such incidents?
- What should the owner do to protect himself or herself from either criminal or civil action in relation to such?

The question of protecting the dog itself from the risk of injury and/or destruction is also an important issue for the owner to consider.

Criminal liability under Dangerous Dogs Act 1991 (as amended)

Most people have heard of The Dangerous Dogs Act, but are dog owners aware the act also applies to any dog and not just the four listed “dangerous dogs”?

The Dangerous Dogs Act was enacted to:

- prohibit persons from having, in their possession or custody, dogs belonging to types bred for fighting
- impose restrictions in respect of such dogs, pending the prohibition coming into force
- enable restrictions to be imposed in relation to other types of dog, which present a serious danger to the public
- make further provision for securing dogs are kept under proper control and for connected purposes

The act defines “dogs bred for fighting” as the pit bull terrier, Japanese Tosa, dogo Argentino, Fila Brasileiro and any type of dog appearing to be bred for fighting, or to have the characteristics of a type bred for that purpose. It is an offence to own, breed and breed from such a dog, and the act prohibits the sale, exchange or gifting of such dogs. The question of whether a dog is of that type often falls to an expert vet to determine by reference to breed standards and typical characteristics.

The act also provides for the prosecution for any breed of dog “dangerously out of control” in any place. “Dangerously out of control” is defined as where grounds exist for reasonable apprehension the dog will injure a person – whether it actually does so. The act originally only applied to public and private places where the dog was not permitted to be. However, the amendments introduced in May 2014 by the Anti-Social Behaviour, Crime and Policing Act 2014 include public and private places, due to concerns following several attacks and deaths in the family home.

Most people would surely appreciate a dog being left to run free and attacking someone would be classed as being “dangerously out of control”. However, dog owners should consider the following scenario: your dog has never shown any signs of aggression, you are out walking it in public and someone stands on its tail, kicks it, rides his or her bike into it (or similar) and the dog reacts by biting, growling or jumping up at that person. Are you then liable for any resulting physical damage, fear, distress or psychological damage? The simple answer is yes, the dog could be considered to be “dangerously out of control” if it bites, knocks over or frightens any person, as knocking someone over or growling aggressively could be proved to cause physical or psychological damage, fear or distress.

This type of problem may not be contemplated by many dog owners – many may think being on a lead is being under control. Simply having a dog restrained by a collar and lead may not be enough to keep it under control as it may still be able to jump up or bite someone. Many may question whether a dog jumping up at someone in a boisterous or playful manner can be said to be “dangerously out of control”. Most of us have heard a dog owner claiming “the dog won’t bite, he’s just being friendly” and so on. But the answer is yes, the dog may be said to be dangerously

out of control where the victim has a reasonable apprehension it may injure him or her.

What the responsible owner, or person in charge of the dog, must do is keep his or her dog fully under control so it does not jump up, growl aggressively or bite someone. This is where the great divide appears between animal lovers and non-animal lovers, or, specifically, between dog lovers and non-dog lovers. Is it right a dog could be destroyed and the owner prosecuted for an incident where a dog runs towards a stranger and jumps up at him or her in a playful manner?

Court cases

Most prosecutions under the act are dealt with in magistrates' courts, although aggravated offences, such as those attacks causing serious injury and death, will ultimately be dealt with in Crown Court. Firstly, the court has to ascertain if the dog was in fact out of control and, secondly, that the dog was dangerously out of control. On those facts being found the offence is proved.

The sentence can be as high as 3 years' imprisonment where an assistance dog is injured, 5 years where a person is injured, and 14 years where a person is killed. On conviction, both the magistrates' court and Crown Court are able to order the destruction of a dog they consider to be a danger to public safety. In considering whether a dog is a danger to public safety, the court must consider the temperament of the dog and its past behaviour, and whether the dog's owner, or person in charge of it, is a fit and proper person to be in charge of a dog.

The expert evidence of a vet may be required to assess the dog's specific characteristics and behaviour, and characteristics of the dog's breed, with reference to whether it is a danger. Many such cases may also be corroborated by evidence from neighbours and family, and other parties with knowledge of that particular dog's temperament. The court can also order the offender be deprived of the dog in question and disqualified from keeping dogs for such period as it thinks fit.

Responsibility

All dog owners, therefore, must take significant care when out in public with his or her dog(s) and, similarly, in his or her own home – dogs must be kept under “proper control” at all times. If an owner is aware his or her dog has aggressive tendencies, it should be muzzled and always well restrained on an appropriate collar and lead. Sending young children out to walk the family pet may not be a wise course of action.

Recognition is growing of the Yellow Dog UK scheme, originating from the Yellow Dog project in Canada, which seeks to publicise and promote the use of yellow ribbons or bandanas to alert people to dogs that require space. This is an important and worthwhile campaign that can be used when a dog is perhaps deaf, ill, in season, postoperative, old or frail. The idea is dogs wear yellow to alert and advise people to give them some space, and not to pet/stroke or approach them. It is not an admission of liability that it is a dangerous or aggressive dog.

Education among dog owners of the legal consequences of not keeping a dog under control, and what constitutes a dangerous dog, can, hopefully, lead to a reduction in such incidents. When purchasing a puppy, consideration should be given to attending training and socialisation classes, and, if clients already have a “problem” dog, it may help to consult with a specialist dog behaviourist or psychologist.

Responsible dog owners should ensure their dog cannot escape from their premises and, above all, take out appropriate insurance. The vet is ideally placed to inform and educate their customers of the risks of owning dogs and the surgery is a good place to display information relating to the Dangerous Dogs Act.

The public, and especially children, should also be made aware of the unpredictable nature of dogs and how to react around them.

We all have a role to play in retaining the dog’s position in society as man’s best friend.