

## **A life in the day of Kendal Shepherd**

*Kendal Shepherd is a veterinary surgeon and certified clinical animal behaviourist, accredited by ASAB. These days, her work largely entails the conformational and behavioural assessment of dogs whose owners have been charged under the Dangerous Dogs Act and giving evidence regarding her findings to the Courts.*

### **The behavioural assessment of dogs for legal cases**

Section 1 of the Dangerous Dogs Act applies to those dogs deemed to be *prima facie* dangerous by their appearance and conformation. The only breed or type to which this realistically applies in the UK is the Pitbull terrier. Section 3 applies to those dogs deemed to have been 'dangerously out of control', which is defined as having given a person 'reasonable apprehension' that an injury might occur. An aggravated offence under Section 3 is committed if an alleged injury (of any kind) does actually occur. This offence carries a strict liability, so that an owner is obliged to plead guilty if they accept that, even by scratching or knocking a person over, their dog caused injury. Contrary to most owners' beliefs, being on lead, or even having obeyed a command to sit just prior to the incident, is not evidence of a dog being sufficiently under control. The legal view is that, if a dog caused injury or fear of injury, then however well-behaved immediately before or immediately afterwards, then an offence has been committed. In my experience, it is relatively uncommon for a dog falling under Section 1 to also have been considered to have been dangerously out of control, in other words, the majority of dogs thought to be 'dangerous' by their conformation have never shown aggression towards people.

A court is obliged to consider a destruction order as a starting point for dogs whose owners are found guilty under either section of the Act and indeed are frequently urged to do so by the Prosecution, based in some cases more on the nature of the owner of a dog rather than that of the dog itself. However, if the Court is persuaded that a dog does not present a danger to the general public, then a dog deemed to be of the Pitbull type may be entered under stringent conditions onto the Exempt Register (currently administered by DEFRA). Similarly a dog who has frightened or injured a person can be subject to a Contingent Destruction Order (or 'stay of execution') again under usually stringent conditions. On relatively rare, but significant, occasions, a Court may find the owner not guilty or, if guilty, that no control conditions are required, accepting that the incident was purely the result of human, rather than canine, failing.

My brief is to help a Court make an informed decision as regards to a dog's future. In order to do this, I treat the exercise very much as I would any clinical veterinary case, where, by taking into account history, present examination, investigation and tests, a realistic prognosis is created as to the future of the dog, in terms of behavioural, rather than purely physical, health. Although in an ideal world, in my view, a dog should always be assessed in the presence of its owner, as the behaviour and demeanour of human companions fundamentally affects that of dogs (for better and worse), this is not possible in dogs which have been seized by the police. Allowances have therefore to be made for the many months a dog will frequently have spent kennelled in social isolation since seizure, with the quality of care provided being at best an unknown quantity.

The purpose of any assessment is ultimately to try to get to the truth – is the dog ‘dangerous’ and what does 'being dangerous' entail? It may be in a multi-dog incident, that the culprit is in dispute, in which case, it may be possible, given an amalgam of the information given by statements and medical evidence, as well as the behavioural assessments, to help confirm or refute identity of the offending dog. If there is no dispute, then a rationale is provided for the dog's behaviour during an alleged incident for use in mitigation, with which the likelihood of recurrence can be gauged. It is this 'likelihood of recurrence' that in my opinion, determine 'dangerousness'. If so high as to make even thoroughly informed human action to obviate risk unlikely to succeed, then in very rare instances, I recommend euthanasia. Control measures may however well be necessary to ensure public safety (ranging from simple common sense precautions such as repairing a garden fence, to muzzle and lead control in public places). It is unfortunate that, in cases in the past, the welfare implications for the dog of such control measures have not been taken in account, nor has the essential need for counselling and behavioural advice to be given to the owner of such dogs. If muzzles and leads are placed on dogs with impunity simply to prevent biting, without any attention to the frustration and social deprivation that will inevitably ensue, then the result may well be the opposite of that the law intends - a dog that has no idea of how to behave in human or canine company and is therefore indeed 'dangerous'.

### **The importance of a behavioural history**

In a legal context, history, as defined in medical terminology, is at risk of being relegated to the realms of hearsay (in that it relates to events not actually observed oneself) and therefore deemed inadmissible. However, once a history is put in the medical context, it becomes obvious that information regarding past events is intrinsic and essential to a thorough diagnostic process. In other words, it is just as important to know how often a dog looks frightened or growls, as how often it may scratch, limp or have diarrhoea, when determining what one needs to investigate and ultimately what the prognosis might be. In addition, past and present health problems, particularly painful ones, will have a bearing upon how a dog views its environment and its behavioural responses.

Whenever possible, therefore, I obtain a full behavioural and medical history from the owner for any dog I am asked to examine, whether or not it is alleged to have bitten or injured a person. Under the Dangerous Dogs Act, which is concerned only with whether a dog is likely to or has injured a person, a dog's ongoing apprehension of or antipathy towards other dogs is often overlooked. Yet intervention in a dog fight is a frequent cause of inadvertent human injury. The dog must be assessed and treated as a whole if all future eventualities are to be addressed.

Particularly in dogs perceived by their owners as likely to misbehave in public, it is highly likely that, unless enlightened behavioural advice has been sought, the dog has experienced reprimand and punishment for its real or threatened behaviour. Coercive 'dominance' and threat-based training techniques may exacerbate behaviour problems rather than cure them, so the eliciting of non-judgmental information regarding previous training attempts is essential to analyse a dog's alleged or current emotions and actions.

## **Real-life events that may trigger fear and aggression**

In dogs which have been seized as 'dangerous' purely because of their conformation, or in addition to reconstructions of alleged events as detailed below, in order to ascertain whether or not potential 'danger' exists, then I enact day-to-day events commonly known to elicit defensive aggression in many dogs in order to test their tolerance.

If a dog is in police custody, apart from the very rare exceptions when I am allowed into the kennels in which the dog is being held, the dog is delivered to a police-designated venue in order for me to carry out my assessment. This therefore involves van transport in a small cage to be greeted at the end of the journey by a complete stranger. In some, fortunately less common, cases, the dog may, owing to perceptions of 'danger' in the eyes of kennel staff and police officers, have been forced into the van on a dog catcher. Dogs are generally presented without a collar so that the first tests of their tolerance of interaction with a person are, of necessity, my approach to the transport van to open the cage door of a possibly already very stressed dog, and to reach in and place a slip lead over the head in order to let the dog safely exit the cage (pic 1)

I then proceed to behave as far as possible as a pet owner, as opposed to a behaviourist, might do. I handle and pet the dog in what might be considered to be ill-advised ways, including while eating, when food is also removed in order to test for any guarding propensities. I groom the dog, and expose it to simulated human argument and fighting as well as verbal and physical reprimand. If necessary, I physically restrain and coerce the dog to 'obey'. I carry out a veterinary examination with restraint if required (pic 2), assess walking on lead with and without a baby buggy, and as far as is safely possible, expose the dog to other dogs to observe the response. At all times, it is essential for the assessment itself not to cause any behavioural deterioration. The various tests are therefore interspersed with relaxed interaction, including the giving of toy or food rewards for compliance (pic 3).

The irony from the point of view of any dog deemed to be of the Pitbull type is that the more tolerant they are of human attention in all its forms and the less likely they are therefore to bite, the more they conform to the behavioural and attitude aspects required of the Pitbull breed standard. What is often not understood (for very good reason) is why a dog has to be shown to be very unlikely to ever want to bite a person in order to be allowed onto the Exempt Register for designated dangerous dogs, with all the stringent controls that such entry entails.

## **Behaviour of dog which may result in accidental injury**

It is in the repertoire of every dog to jump up in greeting and a behaviour which commonly results in inadvertent reward in the form of petting and pleasant attention (pic 4) . Pawing and mouthing of clothes and hands may also be involved. Although intended by the dog and understood by an owner as a friendly overture, such behaviour may be sufficient to cause alarm among those unfamiliar with normal dog behaviour. Behaviour which is entirely playful in intent may also have damaging consequences if dogs have never learned to be gentle or have ill-advisedly been encouraged to be very vigorous and rough in play. Lack of bite inhibition may result in playful mouthing or nipping causing actual damage as may rough contact with fingers instead of the held toy. 'Tug of war' type play with pigtales or scarves around a child's neck can have very traumatic consequences. Is the dog

gentle in taking a food reward from the hand or does it snatch with no self-control? Although not evidence of aggression by any definition, all such actions may deem a dog dangerously out of control under the present law.

The assessment must therefore include the provocation and teasing of the dog in play to determine its tenacity and the ability for vigorous play to be successfully interrupted with commands to sit. More awareness is needed of the deleterious and behaviourally damaging effect of never being able to play again on walks in dogs with a high play drive and accustomed to playing, which are likely to be subject to permanent muzzling in public places.

### **Reconstruction of alleged episode**

If a dog has been left with the owners rather than seized following an incident, I am able to visit and assess the dog in its home environment as well as, in many cases, the site of the incident itself. Much information can be gained from a site visit in determining the veracity of statements as well as allowing (if safe) an *in situ* reconstruction of alleged events. In a seized dog, then as far as possible in the facilities provided, aspects of the alleged incident are recreated, if deemed necessary with the dog in question muzzled.

Common scenarios include: human intervention in a dog-on-dog-incident, for example by lifting a small dog up or by pushing or pulling a dog away; chasing and jumping up at running and/or screaming children; being petted or hugged; jumping up at a passer-by; chasing passing cyclists; intervention in human argument or dispute; obeying an 'attack' command; owner or victim being drunk or drugged; owner or others being arrested.

### **Trainability / responsiveness**

Regardless of what a dog has done in the past, it is essential to determine the ability of a dog to change for the better either within an existing relationship or, if the owner is deemed by the Court unsuitable, in the care of a more informed and responsible person. Throughout all features of the assessment, therefore, I am also determining the dog's responsiveness to human guidance and its learning capabilities. Has it remained as unresponsive to a sit command, for example, at the end of the assessment as it was at the beginning? If an owner is present, have they shown a willingness to understand that simply shouting at the dog is not the answer? Or, is the dog already very well-trained, but paradoxically therefore all the more 'at sea' when momentarily left without essential information normally given by the owner and upon which it relies? (Incidentally, many police dogs who bite at the wrong time fall into this category.) In the vast majority of dogs, great learning capacity is shown, regardless of age, and an extreme willingness to comply with human requirements once they are clearly shown, possibly for the first time, what those requirements are.

### **Tolerance of muzzle/headcollar**

The prognosis for owner compliance and the risk of re-offence (either by biting or by contravening the requirements of the Exempt Register) are largely dependent on an individual dog's tolerance of the physical restrictions placed upon it. Owner instruction as to how to humanely accustom their dog to wearing a muzzle has generally been sadly lacking in control orders as has information as to how to replace the reward of play with food and owner attention. In dogs for whom the Court has

discretion as to whether a muzzle or other forms of head control are more appropriate, in my experience Courts are slowly becoming persuaded by the humane and educational features of head collars, such as the Halti™ (pic 5), which allows toy-directed play but also has a muzzling action should the need arise.

### **Behavioural and management advice**

In all cases however, of the essence must be to ensure that a dog does not feel like biting in the first place. This ought to involve the mandatory inclusion of behaviour modification and training in all control orders, not only to alter the behaviour of dogs that have injured for the better, as well as that of their owners, but also to avoid the measures imposed upon dogs deemed to be dangerous by their conformation, creating the very danger they are supposed to prevent. Such measures must by inference involve a full understanding of why dog bites and dog misbehaviour in general occurs in the first place.

A major frustration for me therefore is that the investigation of such cases only takes place within the framework of the UK adversarial system, with all its implications for 'winning' one's case, apportioning blame and subsequent punitive retribution, rather than properly investigating cause as an end in itself. Finding a cause is not the same as identifying someone to blame. Yet until dog bite, or 'dog dangerousness', investigation is taken outside the legal arena and into that of informed enquiry, then it is my view that we will be no further forward in terms of dog bite prevention and public safety.

©Kendal Shepherd November 2012

All photographs © Kendal Shepherd



1. Dog in transport cage waiting for assessment



2. Veterinary examination is a common trigger for defensive aggression



3. A behavioural assessment must include opportunities for relaxation and compliance as well as provocation



4. Jumping up is a normal behaviour, potentially deemed 'dangerous'



5. A head collar is a humane and educational alternative to a muzzle