

**Neutral Citation No. [2011] NICty 3**

Ref:

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

Delivered: **30/9/2011**

**IN THE COUNTY COURT FOR OF DIVISION OF BELFAST**

**CAROLYN BARNES**

**(Appellant)**

**AND**

**BELFAST CITY COUNCIL**

**(Respondent)**

**His Honour Judge Rodgers**

**Introduction**

1. This case came before the County Court on an Appeal by the Appellant , Carolyn Barnes, against a decision of the learned District Judge (Magistrates' Courts) sitting at Belfast on 15 April 2011. On that date the Appellant was convicted of being the keeper of a type of dog known as the Pit Bull Terrier contrary to under the Article 25 (a) and Article 25 A (70) Dogs (NI) Order 1983 as amended by the Dangerous Dogs (NI) Order 1991. As a consequence of that conviction it was ordered that the Appellant's dog hereafter referred to as "the dog" be destroyed.

## Law

2. The law relating to this offence is contained in three legislative provisions. The first is the Dogs (NI) Order 1983 which was amended by the Dangerous Dogs (NI) Order 1991. The relevant part of the Order as amended states:

### *Dogs bred for fighting*

**25A.** – (1) *This Article applies to –*

*(a) any dog of the type known as the Pit Bull Terrier;*

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

*(c) any dog of any type designated for the purposes of this Article by an order of the Department, being a type appearing to the Department 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 Article 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) cause or permit such a dog of which he is the keeper or of which he is for the time being in charge to be in a public place unless the dog is muzzled and kept on a lead; or*

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

(3) *After 30th November 1991 no person shall have any dog to which this Article applies in his possession or custody except –*

*(a) in pursuance of a power of seizure conferred by this Order; or*

*(b)in accordance with an order for its destruction made under this Order;*

3. It will be noted that two types of dogs, collectively known as “Fighting Dogs” were proscribed. These were the dogs of the type known as the Pit Bull Terrier and dogs of the type known as the Japanese Tosa. The legislation in Northern Ireland was essentially identical to legislation which came into force in England and Wales in the same year. The only difference is that, in England and Wales, four types of dogs were proscribed rather than two. In both jurisdictions, however, the Pit Bull Terrier type of dog was proscribed.

4. The background to the legislation passed in 1991 was public concern arising from a number of widely reported cases of serious and, in some cases, fatal attacks by dogs on members of the public. The concern was particularly acute when, as often happened, the victim was a young child whether a member of the dog owner’s family, a visitor or a stranger. The legislation introduced in 1991 was different from any previous legislation on dogs as it introduced a complete ban on certain types of dogs rather than dealing with the actions of individual dogs,

5. The 1991 legislation is in clear and uncompromising terms so far as the destruction of a dog of the type specified in the legislation is concerned.

Article 5 provides:

***Destruction of dangerous dogs***

*5. – (1) Article 33 of the Dogs Order (power of court to order destruction of dogs) shall have effect subject to the following provisions of this Article.*

*(2) After paragraph (1) there shall be inserted the following paragraphs –*

*“(1A) Where a person is convicted of an offence under Article 25A, the court shall make an order directing the dog in respect of which the offence was committed to be destroyed.*

6. Therefore, a court making a finding that a dog was of a Pit Bull Terrier type had no discretion as to the fate of the dog; it had to be destroyed. The word “type” is used because there is no breed of dog known as Pit Bull Terrier. A dog is designated as a Pit Bull if it conforms to set criteria relating to the dog’s physical characteristics. The lack of discretion was controversial and in England and Wales the position was changed by the Dangerous Dogs (Amendment) Act 1997. This gave courts discretion not to order the destruction of a dog on the prohibited list if the court came to the conclusion that the dog did not pose a danger to the public.

7. The 1997 Act did not extend to Northern Ireland and the position remained that the courts were bound to order the destruction of any “Dangerous dogs”. This position changed this year with the passing of the Dogs (Amendment) Act (NI) Order 2011. This Order yet again amends Article 25 of the 1983 Order in the following terms at Article 5:

***Contingent destruction orders where no prosecution***

*5. – (1) Article 25C of the Dogs Order (seizure of dangerous dogs) is amended as follows.*

*(2) In paragraph (3) for sub-paragraphs (a) and (b) substitute “the district judge (magistrates’ court) may order the destruction of the dog and shall do so unless satisfied that the dog will not be a danger to the public.”.*

*(3) After paragraph (3) insert –*

*“(4) If –*

*(a) the dog is one to which Article 25A applies,*

*(b) the district judge (magistrates' court) does not order the destruction of the dog under paragraph (3), and*

*(c) the dog is subject to the prohibition in Article 25A(3),*

*the district judge (magistrates' court) shall order that, unless the dog is exempted from the prohibition in Article 25A(3) within the period of two months beginning with the date of the order, the dog shall be destroyed."*

8. Although the Article appears to be in permissive terms in that it provides that the court "may order the destruction" of a dog of the sort that is subject to the statutory prohibition, the discretion is limited by the further provision in the same sentence, "and shall do so unless satisfied that the dog will not be a danger to the public". This appears to be based on the position in England and Wales where local authorities can issue Exemption Certificates to the owners of dogs that would otherwise be Dangerous dogs under the legislation. A court in England and Wales when making a decision on the making of a destruction order can take into account that an Exemption Order is in existence. This is not the case in Northern Ireland where local authorities have no facility to issue Exemption Certificates. The conditions in the Exemption Certificate include compulsory neutering, micro-chipping, muzzling in public and the owner having third party insurance for the dog. There were similar conditions set out in the Dangerous Dogs Compensation and Exemption Schemes Order (Northern Ireland) 1991 but these were purely transitional provisions and only applied to dogs born before the Order came into effect. I will return to relevance of the conditions in England to Northern Ireland cases later.

## **Issues**

9. On 11 May 2010 Dog Wardens from the Respondent went to the Appellant's home and seized the dog. Subsequently the Appellant was charged as set out in paragraph 1 above. The Appellant contested the charge but she was convicted by the learned District Judge. Through her counsel the Appellant accepted that the dog was a dog of the type known as a Pit Bull Terrier and she was guilty of the offence of being the keeper of a dog that came within Article 25 of the 1983 Order as amended. The learned District Judge made a destruction order in respect of the dog. The dog has been in the custody of the Respondents since May 2010 awaiting the final outcome of legal proceedings. The sole issue for this court is whether the dog should be destroyed as a result of this conviction.

## **Facts**

10. I will deal with the witnesses of fact before dealing with the expert witnesses.

Ms Whitefoot was the main witness for the Respondents. She was, at the time of this incident, and still is, a Dog Warden and has been so for almost ten years. In that time she had been involved in a wide range of work involving dogs. She said that on 11 May 2010 a colleague phoned to say that there seemed to be a Pit Bull Terrier at the Appellant's home. Ms Lightwood went to the Appellant's home and enquired about the dog. When she did so the door of the house was slammed in her face by the Appellant's partner and she was therefore refused admission to the Appellant's home. Ms Whitefoot returned to the Appellant's home accompanied by police officer and other colleagues. On this occasion the Appellant allowed Ms Whitefoot to see the dog and she told Ms Whitefoot that the dog had a problem with stress.

11. These discussions took place in the Appellant's kitchen. There were five people in the kitchen which Ms Whitefoot said was neither small nor crowded. In the kitchen the Appellant put a muzzle on dog. The Appellant seemed to be tiring from holding the dog which kept lunging at Ms Whitefoot. Eventually the dog struck Ms Whitefoot on the head with its muzzle. She was knocked back but she suffered no injury. Mrs Whitefoot said that, so far as she knew there was no report of the dog having bitten anyone. The Appellant told her that said dog was bad with strangers. Initially the Appellant denied that dog was Pit Bull Terrier. She finally agreed that the Dog Wardens could take the dog and she walked it out of the house to their vehicle.

12. The dog has been in the possession of the Respondents for the past seventeen months so, as it is now aged six, it has spent about the last quarter of its life in kennels. Ms Whitefoot is the main carer and it is evident from the experts' reports that the dog relates more to her than anyone else. Despite this, Ms Whitefoot's conclusion was that this dog was one of the most aggressive and unpredictable dogs that she had ever met. She also said that it took her six months after the dog was taken in the custody of the respondent to get to know it and she has good relationship with the dog now. She also said that the dog was on medication for depression and that had "mellowed" it. Her conclusion, however, was clear; it would not be possible to correct the dog's faults and it remains a danger to the public and anyone around it.

13. Two other Dog Wardens, Sian Wilson and John Templeton, also gave evidence at the hearing. Their evidence was in the same terms as Ms Whitefoot as to the aggression of the dog and the fact that it knocked Ms Whitefoot down. Mr Templeton said that he thought that the Appellant said that the dog "bit" strangers rather than was "bad with" strangers. This, however, was not the evidence of Ms Whitefoot.

14. The Appellant gave evidence on her own behalf. She said that although she now worked in a bank, her first job was as a veterinary nurse and that she engaged in a lot of voluntary work with and for animals. The Appellant said that she didn't know that the dog was a Pit Bull Terrier until told by Dog Wardens. She also stated that this dog behaved no differently from her other dogs. However the Appellant rather undermined that by saying that the dog had changed since an incident where she and her child were threatened by a group of youths. The Appellant has one child, a daughter aged thirteen and the Appellant said that the dog had been in the house since the girl was seven and there had been no difficulties.

15. The Appellant stated that she didn't believe that the dog had lunged at Ms Whitefoot despite evidence of the two witnesses who supported Ms Whitefoot's allegation. The Appellant said that she didn't muzzle her other dogs but there would be no problem about muzzling the dog the subject of these proceeding. The Appellant maintained that the dog was very good but agreed that it didn't deal well with strangers who forced themselves upon him. She also said that although she would let her nephew play with the dog, she wouldn't let the dog near strange children or adults. She said that the dog had been neutered and micro chipped and was covered by Third Party insurance. She was also willing to comply with whatever muzzling restrictions may be imposed. She said that at present the dog was muzzled to warn people.

### **Expert witnesses**

16. I heard from two expert witnesses, one from each side. I also heard, as part of the Appellant's present expert witness evidence the views of an expert who had previously acted for the Appellant.



17. I heard first from Peter Tallack who gave evidence for the Respondent. He had been in the Metropolitan Police for thirty years including service twenty-six years as a Dog Handler. He said that he then became directly involved in Dangerous Dogs Act cases and has been an instructor on courses dealing with Dangerous Dogs.

18. Mr Tallack came to Belfast on two occasions to examine the dog. The first of these visits was three weeks after the dog was taken into the custody of the Respondent. He attended on that occasion to take measurements of the dog to ascertain whether the dog was a type known as a Pit Bull Terrier. No evidence had to be called on that matter at the hearing of this case as the Appellant now accepts that the dog is a Pit Bull Terrier type. Mr Tallack returned to Belfast on 4 November 2010 to carry out a further assessment of the dog. He said that it was a myth that all Pit Bull Terriers are aggressive; in fact most are docile with humans as their training has always been centred on fighting against other dogs, not humans. Mr Tallack said that this dog was different; all his body language was aggressive. In the light of this, Mr Tallack used a rigid pole to keep the dog at bay. At the end of the session he took the dog back to its kennel. He turned to leave the kennel and momentarily he lost eye contact with it, at which point it suddenly attacked him. The dog leapt from a lying position to head height in one movement without any warning. Fortunately Mr Tallack had closed the kennel door a moment before the attack and he was unhurt.

19. Mr Tallack stated that physically the dog was a typical example of a Pit Bull Terrier and was very strong. He said that this dog was a dangerous example of this type of dog and he believed that the dog has a severe personality defect. Mr Tallack further stated that the dog has a problem with strangers and it is not possible to determine when the dog will be under

stress. He agreed that a temperament test only shows the position on the day that it is undertaken. Mr Tallack's main concern was the way that the dog went so quickly from a lying position to the height of the head of a standing man.

20. Mr Tallack watched in court the DVD recording of the visit of the Appellant's expert witness, Ms Fisher, to observe the dog. He commented rather unfavourably on her method of assessment as he thought that she did not put the dog under any stress. Mr Tallack said that Ms Fisher didn't seem to establish any rapport with the dog despite the cheese she had given to it throughout her assessment. He was also critical of her failure to stop the dog biting its lead which, he said, was a strong warning sign. Mr Tallack concluded by stating his opinion that the dog is an accident waiting to happen and that this is a mature dog fixed in its attitudes.

21. I also heard the evidence of the Appellant's expert, Ms Fisher. Ms Fisher is a dog trainer and counsellor of dogs. She lectures extensively, broadcasts and the author of a number of books on the subject of dog behaviour. Unfortunately she had very little experience of Pit Bull Terrier type dogs simply because they are generally illegal in the United Kingdom. She had, however dealt with some dogs of this type in the United States where they are not illegal and she also had experience with Staffordshire Bull Terriers.

22. Ms Fisher was asked to examine the dog and she did so in August 2011. Her session with the dog was recorded and the court had the benefit of viewing that recording as well as hearing Ms Fisher's evidence. Ms Fisher said that the dog was brought in a van to the inspection. She opened one rear door of the van to observe the dog and saw that it was clearly distressed. On the recording it could be calculated that Ms Fisher spent almost eighteen minutes interacting with the dog before it alighted from the van. Ms Fisher

said, however, that the dog was not aggressive even when she established eye contact. She believed that the dog wanted to stay with Ms Whitefoot, with whom the dog clearly had a very good relationship, but she went with Ms Fisher when she took him on the lead.

23. Ms Fisher entirely rejected Mr Tallack's criticism of her methodology. She said that she had tested the dog and had not simply walked around giving it food. Among the strategies she uses were using a "clicker" to see if the clicking sound would upset dog. She had other stratagems to test the dog and these included stopping the dog going where it wanted to go and withholding food. She also took issue with Mr Tallack's view that lead biting was a bad sign and that she should prevent the dog from doing this. Ms Fisher said that the dog kept looking for reassurance from Ms Whitefoot but the dog did what she asked of it. She also said that she let the lead slip on two occasions and yet the dog just walked up to the two people with her and went around their legs. A man happened to walk through the yard and was not attacked by the dog.

24. Ms Fisher also raised a point about the health of the dog. She noted that its ears were not level and she commented that this could be sign of tension or ear problems and that the dog should be sent to a veterinary surgeon for investigation. She said that if the dog is in pain it can make him more difficult to handle. The dog has received medication for stress and depression and Ms Fisher felt that it had been helped by the medication it now receiving.

25. Part of Ms Fisher's evidence related to an examination carried out by an expert, David Ryan, who had previously acted for the Appellant. She had watched a recording of his examination of the dog and commented on it. To make that part of the examination more understandable a copy of Mr Ryan's report was handed in to the court. To paraphrase it greatly, Mr Ryan carried

out an assessment on 15 March 2011. Part of his assessment, like Mr Tallack's, dealt with the question of as to whether the dog was a Pit Bull Terrier which is no longer an issue. He also carried out tests to see how the dog would react to different situations. All went well until he reached over the dog to attach a lead to its collar whereupon "in one movement he lunged towards me, growled, barked and snapped. Fortunately the dog did not bite Mr Ramsey although he acknowledged that it could have done so if it had wanted to.

26. Despite this incident Mr Ryan said that the dog should be returned to its family of origin so long as it was kept muzzled, kept on a lead in a public place and kept confined in an enclosure from which he could not escape. He also said that the dog lacked confidence, probably inherently, which makes it difficult for him to cope with novel experiences and new people. For that reason the move to kennels would be more traumatic for this than for most dogs.

27. Ms Fisher commented on the video of David Ryan with the dog and said that the dog was exhibiting a bit of anxiety with Mr Ryan with whom it obviously did not relate. She said that in the event the dog did not bite Mr Ryan although it had an opportunity to do so. Her final assessment was that this was a well behaved dog, not hyperactive and a real pleasure to deal with.

### **Consideration**

28. That is the evidence that I heard and there is little agreement between the parties. I mentioned above the Exemption Certificates, the contents of which can be taken into account by a court in reaching a decision under the equivalent legislation in England and Wales. Although we have no similar resource I will take into account that the Appellant would comply with similar conditions as are in the Exemption Certificates despite her refusal to

allow the Dog Warden into her house until the Warden returned with police officers.

29. The test I have to apply is whether the court “is satisfied that the dog will not be a danger to the public.” If such a finding is not made a court can do nothing other than order the destruction of the dog. The onus of proof is on the Appellant once it has been established that the dog comes within one of the type of types proscribed by the legislation.

30. I have set out above the evidence that I heard, and consider relevant, in two days of hearing. I will consider the Respondent’s evidence first, even though essentially their case was proved by the concession that the dog was a Pit Bull Terrier type.

31. I was impressed by the evidence of Ms Whitefoot, the Dog Warden. Her evidence was of both fact and opinion. Her main factual evidence was of the dog lunging, whilst muzzled, at her and knocking her over. This evidence was supported by her two colleagues. In response the Appellant said that she didn’t “believe” that it happened. This is disingenuous; she was there and either it happened or it didn’t. I believe that it did happen. Her opinion evidence was that this dog was one of the most aggressive and unpredictable she had encountered in her ten years as a Dog Warden. Given that the one matter the experts agreed on was their admiration for the rapport that Ms Whitefoot had built up with the dog, I do not believe that this statement was made lightly. The other two wardens simply confirmed Ms Whitefoot’s account.

32. The Appellant’s most powerful point was that the dog had not bitten or attacked anyone in the five years that she had it in her home. She did say, however, that the dog had changed after an incident in which she and her

child were threatened by youths. The Appellant also said that the dog “doesn’t deal well with strangers” and that she doesn’t let it near children that it doesn’t know. She also said that she kept the dog muzzled as a “warning”. I presume the warning is to those who come in contact with it rather than to the dog itself.

33. The Respondent’s expert, Mr Tallack also gave both factual and opinion evidence. His factual evidence was that the dog attempted to attack his head and did so without warning and with great speed and agility. No one has suggested to him that this claim is untrue. His opinion was that this was a very dangerous dog.

34. I have quoted at length the evidence of the appellant’s expert Ms Fisher. What troubles me about her evidence was that she nothing at all to concern her in the dog’s behaviour apart from it possibly having a neck problem. The lunge at Mr Ryan was explained by saying that Mr Ryan had approached the dog. She acknowledged that the dog had a difficulty with strangers but “after three barks it was friendly” with her. She further said that he was “a wonderful family dog” and that he was “polite, friendly and appropriate with excellent social skills “ This picture that she portrays of the dog flies in the face of every other witness, even the Appellant who kept the dog muzzled and acknowledged a difficulty with strangers and children not well known to him According I feel that Ms Fisher has minimised the difficulties that this dog undoubtedly has perhaps because of her lack of experience of these powerful dogs.

35. Finally there was the documentary evidence of Mr Ryan. He was supportive of the return of the dog to its owners but in his narrative he describes how the dog lunged without warning. It did not bite him and like Ms Whitefoot and Mr Tallack he suffered no injury.

## **Conclusion**

36. Before coming to the decision in this case, it is important to remember the purpose of the Dangerous Dog legislation. That purpose is to allow the public and particularly vulnerable members of the public such as children to walk the streets, play in parks, visit friends and even be in their own homes without fear of attack by a dog, particularly a large strong dog of a type bred for fighting. The issue is public safety and it is the duty of the courts to put public safety above anything else. Whatever concerns anyone may have of the detail of the legislation I would hope that this principle is agreed by all.

37. In this case, as I have said, I have to make a finding, on the facts that I find proven and on the balance of probabilities whether I am "Satisfied that the dog will not be a danger to the public". In the light of the attacks on Ms Whitefoot, Mr Tallack and Mr Ryan, I would find this very difficult to do. I also believe that it would not be practical or possible to put restraints on the ownership of this dog that would bring it within the statutory test.

38. Accordingly I cannot be satisfied that this dog is not a danger to the public and I dismiss the appeal.