Royal Mail response to Post Legislative Scrutiny: Control of Dogs (Scotland) Act 2010

As the UK’s sole designated Universal Service Provider for post, Royal Mail is proud to deliver a ‘one price goes anywhere’ service on a range of letters and parcels to over 30 million addresses (including 1.3 million businesses) across the UK, six-days-a-week. This includes over 2.7 million addresses in Scotland. To achieve this we employ around 11,500 people in Scotland.

Postal workers face a risk to their safety at work caused by out of control dogs. Approximately seven postal workers are attacked by dogs every working day of the year across the UK.

In 2017/18 there were 211 dog attacks recorded on our staff in Scotland. Since 2012/13, there have been 1619 attacks in Scottish postcode areas.\(^1\)

In our experience, the Control of Dogs (Scotland) Act 2010, in conjunction with the Dangerous Dogs Act 1991 (henceforth CODS and DDA), has been largely ineffective in addressing the problem of out of control dogs and irresponsible ownership. The main reasons for this are:

- The Law in Scotland on Dangerous Dogs is applied differently than that in England and Wales, notwithstanding it is the same Act of Parliament. We have some specific concerns around interpretation of the law in Scotland which we believe is even weaker than in the rest of the UK, with a “one free bite” approach
- Police give little priority to dog attack cases.
- Local Authority enforcement is underused.

Interpretation of the DDA by the Courts in Scotland

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\(^1\) AB, DD, DG, EH, FK, G, HS, IV, KA, KW, KY, ML, PA, PH, TD, ZE; note that postcode areas are not perfectly aligned with Scotland’s border (e.g. TD area crosses into England). A more detailed breakdown is available on request.
In contrast to the authorities in England and Wales, the interpretation by the courts in Scotland have the effect of allowing at least ‘one free bite’ by the dog before reasonable apprehension is established. If the dog is passed to a new owner, the dog is allowed another ‘one free bite’.

The vast majority of attacks on our staff are by dangerously out-of-control dogs that are not one of the banned breeds, so covered by section 3, not section 1 of the DDA. Section 3 is problematic because of the definition of dangerously out-of-control dogs, at section 10(3):

“For the purposes of this Act a dog shall be regarded as dangerously out of control on any occasion on which there are grounds for reasonable apprehension that it will injure any person or assistance dog, whether or not it actually does so, but references to a dog injuring a person or assistance dog or there being grounds for reasonable apprehension that it will do so do not include references to any case in which the dog is being used for a lawful purpose by a constable or a person in the service of the Crown.”

To be considered dangerously out-of-control the person responsible for the dog must have had any “reasonable apprehension” that the dog might attack. This is a higher bar to clear than section 1 (where a dog simply has to be of one of the banned breeds) and has become much more so as courts have progressively raised the hurdle of the “reasonable apprehension” element.

The definition in Section 10 (3) of the DDA has received judicial criticism. The courts have difficulty applying the law to the facts. Importantly, it has resulted in Scottish Courts interpreting the law differently to courts in England and Wales (notwithstanding the same Act applies) resulting in what has been characterised a “one free bite” policy.

It is particularly striking that if the dog is passed to a new owner, the dog is allowed another “free bite”. In one case, the summing up was:

“That was a single incident and it was an incident at the beginning of which this dog was found not to be dangerously out of control. Since it was a single incident with no appreciable interval, there was no stage at which it could be said that there were grounds for reasonable
apprehension that the dog would injure any person before it was all over and the dog was put on the lead”.

In another case a child was mauled by a dog. At appeal, the appellant managed to seize the dog, which broke free and attacked the child again, leading to the following:

“The sheriff sees what followed as effectively a separate incident upon which conviction would be justified, even if it were not justified in relation to the previous stages of the attack. Having regard to the nature of the incident as a whole, both before and after the appellant’s brief and ineffectual hold on Winston’s collar, the Advocate Depute accepted that conviction would not be justified on the basis on the resumed attack alone.”

Even where there is a substantial gap between two attacks, Scottish courts have treated them as single attacks:

“It is of no consequence in applying the statutory test that it may have taken eight minutes or more to separate the dogs. It is equally of no consequence that the witnesses found the incident frightening. The fact is that this was one incident at the beginning of which the dog was not dangerously out of control as defined by section 10(3).”

We recommend a law that deals with dog ownership/control in the following way:

- The drafting should start with a presumption that any dog may bite and place a positive duty on owners or persons in charge of dogs to take reasonable steps to ensure the dog does not cause injury to anyone (whether or not it actually does so).

- The burden of proving “reasonable steps” should be placed upon the owner/person in charge at the time. The reasonable steps should be judged objectively according to the circumstances, including, but not limited to, the type of dog, the size and strength of the dog, the person in charge of the dog at the time of the incident and where the incident occurred. It should be clear that it does not

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2 Tierney v Valentine: 1994 SCCR 697
4 Thomson v Procurator Fiscal, Peterhead: HCJ 16 Dec 2009 ScotHC HCJAC_101
matter that the dog has never shown a propensity to bite before. Any definition should capture the situation where persons are bitten when legitimately posting through letterboxes.

Local Authority enforcement is underused.

Against this background it is unsurprising that CODS has had such little impact. Only two people have been disqualified from owning a dog under CODS for offences involving dangerous dogs. No more than nine people have been convicted of any offence under it in any year since it was brought in underline. Not a single dog has been destroyed under this legislation.  

There is no clear or specific duty on local authorities to take action to prevent irresponsible dog ownership e.g. under s1 of the CODS a local authority has discretion whether or not to serve a Dog Control Notice (DCN) if a dog been out of control. This has resulted in an underuse of the notices.

Recommendations

We recommend that

- local authorities should be resourced and directed to properly enforce the law
- there should be a duty placed on local authorities to enforce legislation to ensure steps have been taken to tackle irresponsible dog ownership, including service of a notice to take steps to prevent dogs being out of control.
- use and issue of DCNs should be increased with consistent use to enable early intervention by enforcement officers, to serve on the irresponsible owners of nuisance, aggressive dogs in order to avoid serious incidents and attacks happening.
- DCNs should impose conditions such as dog to be muzzled and kept on lead in public, provide secure premises, owner, neutering and dog to attend training.
- DCNs once served should also contain the mandatory minimum requirements of i.e. Third Party Liability Insurance, Microchip, Muzzle & Lead in Public, Owner & Dog Training.
- The law should start with a presumption that any dog may bite and place a positive duty on owners or persons in charge of dogs to take reasonable steps to ensure the dog does not cause injury to anyone (whether or not it actually does so).
- The burden of proving “reasonable steps” should be placed upon the owner/person in charge at the time.

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We would be very happy to discuss this further. Please contact Robert McIlveen