

Communication Workers Union

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Neil Parish MP
Chair
Environment, Food and Rural Affairs Select Committee
House of Commons
London SW1A 0AA
neil.parish.mp@parliament.uk

Dear Neil,

Re: House of Commons EFRA Select Committee - Dangerous Dogs Law Inquiry - Oral & Written Evidence:

It was a pleasure meeting you again on the day of my Oral Evidence Session to the above Inquiry on 27 June.

It's a real pity more of your Committee were not present to hear my evidence on behalf of the CWU as the number one stakeholder organisation, representing the largest number of victims, 3000 a year. I hope those absent will have Watched the recording of my evidence of your website i-player or on You Tube.

I watched the Oral Evidence given by Minister Lord Gardiner of Kimble and Mark Casale Defra Deputy Director Animal Welfare and I was struck by how badly briefed they were and the wrong information they gave in evidence.

You invited me to write to you a supplementary letter to my evidence with reference to some key issues not covered in detail during my evidence session and I am taking that opportunity to cover some important issues.

Overview of the Key Points:-

- *Enforcement is often inadequate, both in and out of court.*
- *Our principal concern is dangerously out-of-control dogs and their definition, in Section 10(3) of the Dangerous Dogs Act which should be revised. The current definition is too complex and difficult to apply resulting in the courts struggling to interpret it and in Scotland the courts are interpreting the law differently to that in England and Wales.*
- *Enforcement of the legislation is reactionary and not preventative. Action in relation to lower level incidents is non-existent.*
- *More enforceable Contingent Destruction Orders are needed.*
- *The Community Protection Notice is overly complex, elongated and not fit for purpose. 77% of the UK's Local Authorities have never issued one. A quick fix*

simpler Dog Control Notice is required to deal with low level incidents and Prevention.

- *The circa 20 pieces of Dog Control laws should be consolidated, revised and simplified making it fit for purpose and easy to interpret, understand and apply.*
- *A Central Dogs Database is needed with all incidents recorded.*
- *Despite two lots of Court Guidance from the Sentencing Council, Sentences are inconsistent and lenient treatment by the courts is commonplace.*
- *Police in many cases don't have the resources they need to tackle the problem to the full, in particular sufficient Dog Legislation Officers and the expertise they bring.*
- *Dog Ownership Bans should be automatic for those owners convicted of S3 Aggravated Offences*
- *Compulsory Third Party Liability Insurance should be introduced.*
It's the CWU's view that there should be a mandatory requirement for all dog owners to have Third Party Liability Insurance. A comprehensive insurance policy could also cover health and welfare of the dog as part of the requirement of responsible pet ownership. Postal workers suffer a disproportionate majority of violent dog attacks in the UK and have lost the support of the Criminal Injuries Compensation Scheme (CICS) as a fund of last resort due to the regulatory changes made by Central Government in Westminster. The fact is that many criminally irresponsible, reckless and negligent Dog Owners are both uninsured and are individuals who do not have the financial means to pay any compensation and cannot therefore be obligated in law to do so. This is known as the doctrine of the "Man of Straw". The UK Dog Population has reached 10 Million and continues to rise, along with the significant increase in Dog Attacks, (around 250,000 a year in the UK) it would be totally wrong of the Government to close the door in the face of Dog Attack victims.
- *Dog Licensing should be considered as a means of enhancing Dog Control and raising money to fund enforcement.*
- *Criminal Injuries Compensation Scheme Payments for Dog Attack Victims should be reinstated.*
- *The Control of Dogs Order 1992 requiring mandatory collar and ID Tag should be enforced - it carried a Max £5,000 Fine for breach but isn't enforced.*
- *A Government Public Awareness Programme should be initiated - People know more about the Smoking Ban than they do about Dog Control Laws. While an effective legal framework is needed, without a targeted and effective public awareness campaigns, education and engagement programmes little can be achieved in preventing serious incidents. Dog owners, the wider public, service providers, and enforcement bodies need good quality and up to date information on the legal duty of care and consequences of poor dog ownership.*

Dangerous Dogs Act Section 10.3

*A key problem for us is dangerously out-of-control dogs and the poor definition at section 10(3) of the Act in dealing with this problem. in particular the need for "reasonable apprehension." Described by one senior judge as a **"difficult statutory formulation,"** this has caused difficulties in English and Welsh courts and in particular in Scottish courts.*

*"To be considered dangerously out-of-control the person responsible for the dog must have had any **"reasonable apprehension"** that the dog might attack. The courts*

have progressively raised the hurdle of the "reasonable apprehension" element of 'test'.

The definition in Section 10 (3) is too complex and 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). The Scottish Courts are applying the 'One Free Bite Rule'.

Appeal Court Judgement in R -v- Robinson-Pierre

This problem has been further complicated by the Appeal Court Judgement in R -v- Robinson-Pierre.

The difficulty courts have had interpreting the law as was demonstrated in a CPS prosecution at the Liverpool Crown Court. In R -v- Mooney, the case related to a Postman Steve Kelly whose finger was bitten off by a dog (through a letterbox) as he posted a letter. Because the dog did not bark the judge considered that the owner was not alerted to the fact the dog was out of control because it happened in silence. Mooney, the defendant admitted that the dog would often attack snatch the mail from the letterbox as it was posted. He failed to take any steps to prevent this from happening. There was more than sufficient evidence to convict however the Judge - Applying Robinson-Pierre, considered that because the dog did not bark at the time of the attack, the owner was not alerted to the fact the dog was out of control at that point and there was no **"reasonable apprehension"**. He therefore ruled that there was no case to answer and dismissed the case which was wholly wrong of course. The defendant with evidence stacked against him was wrongly acquitted and walked free.

Scotland - 'One Free Bite Rule'

In Scotland, the definition of S10.3 has been understood differently, resulting in what has been characterised a "one free bite" rule or policy." It is particularly striking that if the dog is passed to a new owner, the dog is allowed another "free bite" before a prosecution occurs. In McIlwaine v Higson, Procurator Fiscal, Airdrie An escaped Bull Mastiff attacked a child before the owner captured it. It escaped again and attacked the child again. The owner was convicted of an aggravated S3 DDA Offence and appealed. The Appeal Court held that this was one incident of which the owner had no **'reasonable apprehension'** and **'no previous incidents'** so - the defendant's appeal succeeded and case dismissed (**"The One-Free Bite Rule" being applied**) - which is ludicrous. This and similar interpretations of the law has undoubtedly made enforcement in Scotland much more difficult than intended.

There is evidence that some Police Forces in England are adopting a similar approach when investigating cases. For example **Norfolk and Suffolk Police**.

Private Prosecutions

Royal Mail prosecutes privately in cases not proceeded with by Police Forces. The fact they have to do this demonstrates that enforcement of the law is often inadequate. Royal Mail Lawyers have succeeded in achieving around 20 Dangerous Dogs Act Section 3 Aggravated Offence Criminal Convictions in cases where the Police refused to prosecute or issued an inappropriate Community Resolution Order. These are all cases the Police should have prosecuted. More private prosecutions would have

been commenced, but it is often difficult for Royal Mail to obtain sufficient evidence to bring a successful prosecution with the limited powers at Royal Mail's investigators' disposal. In some cases the Police have gathered the evidence but refuse to release it. With their greater powers, the police could do much more and succeed with far more cases seeing them through to conviction.

Our Recommendation

The recommendation of the CWU and indeed Royal Mail is to Amend the definition in s10(3) of the Act "Dangerously Out of Control" so it is easier to interpret. A positive duty should be placed on the owners or persons in charge of dogs to take reasonable steps to ensure the dog does not cause injury anyone (whether or not it actually does so). The burden of proving '**reasonable apprehension**' or "reasonable steps" had been taken should be placed upon the owner/person in charge at the time. It should be clear that it does not matter that the dog has never shown a propensity to be aggressive or bite before - so eradicating the 'One-Free-Bite-Rule'. Any definition should capture the situation where Postal Workers are bitten when legitimately posting through letterboxes.

Contingent Destruction Orders ('CDOs')

Currently there is no power to seize a dog or prosecute the owner for breaching a CDO. The Authorities have to wait for the dog to be dangerously out of control again before the dog can be seized and the owner prosecuted. Only in the event of a conviction can the dog then be destroyed.

Our Recommendation

Make failing to comply with a CDO a criminal offence and give power to seize and destroy the dog if the order is breached.

Community Protection Notice ('CPNs') and Dog Control Notices ('DCNs')

RM are not aware of any CPN that have been issued with regard to dogs involved in an incident or near miss on as Postal Worker since introduced in 2014. CPN's are impracticable for many dog incidents. The Criteria is too complex and difficult to apply. It can be difficult to prove whose "conduct" caused the incident in relation to a dog. The requirement to serve a written warning before the notice is served is unnecessarily elongates the process. Because the police do not investigate owners or persons in charge of dogs that are out of control where no injury is caused and the CPN is not fit to deal with one off incidents. Local Authorities have also got to be proactive in this area. Community Protection Notices have been a failure. 77% of the 353 Local Authorities in England have never issued a CPN since they were introduced according to a 2017 FOI request. They are over complex in nature and we would like to see new simpler Dog Control Notices introduced in a more effective format to be use as a preventative measure in dealing with Dog Control and Nuisance.

A notice should be able to be served without previous written warning on any person who is the owner, person in charge of the dog or person who has the ability to control what happens at an address where the dog is kept, requiring steps to be taken (such as muzzling, tethering, outdoor letterbox, letterbox cage, removal from front garden) if there are grounds to believe that the dog may cause injury to a person in the future. The breach of the notice should be a criminal offence punishable with a fine. Consideration should also be given to power to seize the dog pending measures

being taken to comply with the notice. There should be the option to appeal the service of the notice to the Magistrates Court.

In 2014, despite the fact that every key stakeholder organisation - CWU, Charities, Vets, Medics, Dog Wardens, Police, Local Authorities, Dog Trainers, Employers, etc plus the EFRA Select Committee called for Dog Control Notices, the Government ignored the unanimous call for DCNs. In 2018 that view has proved right and the Government should now introduce DCNs. DCN's would provide a swift, flexible, proportionate and genuinely preventative approach to initially deal with irresponsible dog owners before an injury attack occurs.

Community Resolutions Misuse/Overuse

Too many cases of serious violent Dog Attack crimes were wrongly dealt with informally by Police, despite guidelines to the contrary. Some Police Forces use "community resolutions", which can include an apology or compensation to the victim, instead of prosecutions and cautions. These are not supposed to be used in serious offence cases but it appears to us that Dog Attacks have slipped down the priority list and some forces want to dispose of the cases quickly. Inadequate laws and sanctions do not encourage those whose task it is to enforce the law to do so. It is no surprise that Dog Control Law enforcement seems to be patchy. The primary requirement is to enact sensible legislation and to address enforcement in that context. Both the police and local authorities recognise the problem. The police response is reactive to incidents causing injury and not proactive to prevent dog attacks in the first instance. From conversations we have had with Police Dog Liaison Officers, it is clear that they do not have the resources to deal with a majority of dog attacks. As a result the police prioritise the most serious attacks. Therefore numerous opportunities are missed to deal with irresponsible dog ownership at an early stage.

The approach by the police is haphazard. For very similar incidents, some forces take no action at all on dog attacks, some deal with matters by way of community resolution (after convincing the victim this is appropriate (when clearly it is not), some caution, some prosecute.

A consistent nationwide approach will deliver the correct message that irresponsible dog ownership will not be tolerated.

There is also no clear or specific duty on local authorities to take action to prevent irresponsible dog ownership

Recommendation

- *Ensure that both the police and local authorities are properly resourced to enforce the law.*
- *Provide nationwide guidance as to the expected response to dog attacks (based on levels of injury and other relevant factors) which the police are expected to follow.*
- *Place a duty on local authorities to enforce legalisation to ensure steps have been taken to tackle irresponsible dog ownership, including Dog Control Notices ordering owners to take steps to prevent dogs being out of control.*

- *Dangerous Dogs and Dog Control needs to be recognised as a Police priority and a more robust approach by the Police is badly needed (Resources is an issue and the budget cuts have lead to there being 22,000 less Police Officers today than there was in 2009).*
- *The inappropriate over-use of Community Resolutions instead of Prosecutions in respect of Dangerous Dogs Act Section 3 Aggravated Offences must stop. These resolutions should only be used for low-level crime according to official guidance. not serious DDA crimes as with some Police Forces, despite guidelines to the contrary.*

Yours Sincerely

Dave Joyce
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