Neutral Citation Number: [2021] EWHC 2098 (Admin)

Case No: CO/2101/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/07/2021

Before:

LADY JUSTICE CARR
and
MR JUSTICE SAINI

- -

Between:

ROYAL MAIL GROUP LIMITED	**Appellant**
- and -	
RICHARD WATSON	**Respondent**

- -
- -

John Beggs QC and Alexander dos Santos (instructed by **Royal Mail Group Limited**) for the **Appellant**
Simon Spence QC and Matthew Edwards (instructed by **Barricella Hughes Marchant Solicitors**) for the **Respondent**

Hearing date: 20 July 2021

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Approved Judgment

Lady Justice Carr:

Introduction

1. On 8 May 2017 a Royal Mail postal worker, Mr Gavin Murrell ("Mr Murrell"), was delivering mail to the home address of the Respondent, Mr Richard Watson ("Mr Watson"), at Sycamore Drive, Ipswich. As Mr Murrell pushed the mail through the letter box, one of his fingers was bitten by the Respondent's Boxer-type dog ("the dog").

2. Mr Watson was prosecuted by the Appellant, Royal Mail Group Limited ("Royal Mail"), for being the owner of a dog which was dangerously out of control and whilst so out of control injured Mr Murrell, contrary to s. 3 of the Dangerous Dogs Act 1991 (as amended by s. 106 of the Anti-Social Behaviour, Crime and Policing Act 2014) ("s. 3") ("the 1991 Act") ("the 2014 Act"). He came before District Judge (Magistrates' Court) Julie Cooper sitting at Ipswich Magistrates' Court ("the District Judge") on 14 February 2020. She acquitted him.

3. This is an appeal by way of case stated under s. 111 of the Magistrates' Court Act 1980 against that acquittal. The District Judge has framed three questions for this court as follows:

> "1. In circumstances where a postal worker fails to use a postal stick and in consequence of this failure places his or her fingers into a property, does this amount to trespass?
>
> 2. In the circumstances set out above, was I correct to apply the "Householder" defence in accordance with sections 3(1A) and 3(1B) of the 1991 Act as amended?
>
> 3. In the event that the answers to questions 1 and 2 above are No, was I correct in finding that the postal worker must have used "due diligence" in establishing if a dog was present in the house before inserting his fingers through the letter box or is the offence one of strict liability?"

4. As set out below, the law under s. 3 is now clearly established. However, the issues raised on this appeal (and the nature of the arguments advanced below) demonstrate that there appears still to be a lack of understanding on the part of defendants as to the strict nature of the liability to which the legislation gives rise. That liability does not require findings of fault on the part of the defendant or, for example, prior knowledge of the dangerousness of a dog. These are all matters that might be relevant to mitigation upon conviction; but they do not give rise to a defence in law.

5. It is said that this decision is therefore of some importance, providing an opportunity for the correct position to be emphasised.

The findings below

6. The District Judge found the following facts:

   i) The dog barked;

ii) Mr Murrell placed his finger through the letter box of Mr Watson's home;

iii) Mr Murrell possessed but did not use a postal peg (also referred to as a posting stick);

iv) The Royal Mail requires postal workers to use a postal peg when posting mail into homes where dogs are present;

v) The dog bit Mr Murrell's finger.

7. She went on to state that "[b]y placing his fingers into the property [Mr Murrell] committed a trespass". Having gone on to record the parties' submissions, the District Judge held:

i) That Mr Murrell did not use due diligence. In failing to use a postal peg, he committed a trespass by putting his fingers into the property. His finger was inside the folded paper which was posted through the letter box;

ii) Mr Watson was afforded a defence by virtue of that trespass;

iii) Mr Murrell was aware of the dog;

iv) Had Mr Murrell used the postal peg, he would not have committed a trespass. The trespass was committed because the property owner's consent to the delivery of mail relied upon postal workers using due diligence, not placing themselves at risk which inevitably places the householder at risk of prosecution. By placing his finger in the house, the postal worker placed himself at risk and the homeowner of prosecution.

The parties' respective positions

8. For the Royal Mail it is contended in summary:

i) The householder defence does not apply. Putting fingers through a letter box does not amount to a trespass. The presence of a letter box is a clear indication of an implied permission to approach the door and place items through it, including fingers to aid the process. There is no "material, rational difference" between putting fingers and a postal peg through a letter box, or any proper basis on which to conclude that the licence to access the letter box was limited to use by a postal worker of a postal peg;

ii) There is no defence of "due diligence" either expressly or impliedly in s. 3.

9. For Mr Watson it was contended in writing in summary:

i) What is trespass for the purpose of burglary suffices for the purpose of the 1991 Act "on the basis of consistency across the criminal law". Reference is made to *R v Jones and Smith* [1976] 3 All ER 54 ("*Jones*") where it was stated (at 675D-E) that:

> "a person is a trespasser for the purpose of s. 9(1)(b) of the Theft Act 1968 if he enters the premises of another knowing that he is

> entering in excess of the permission that has been given to him to enter, providing the facts are known to the accused which enable him to realise that he is acting in excess of the permission given or that he is acting recklessly as to whether he exceeds that permission, then that is sufficient for the jury to decide that he is in fact a trespasser."

ii) No householder would give permission for anyone delivering letters or leaflets to put hands or fingers through an open window or any aperture if there was a dog present, because of the inherent risk attached. Here Mr Murrell knew that there was a dog present, had a postal peg but was disinclined to use it and posted a note with his hand. He was therefore reckless as to whether or not Mr Watson would have consented to such a delivery method and so was a trespasser;

iii) The issue of "due diligence" goes to causation as addressed in *R v Robinson-Pierre* [2013] EWCA Civ 2396 ("*Robinson-Pierre*") and *Royal Mail v Jake Goddard* (29 May 2020, unreported) ("*Goddard*"). The prohibited state of affairs did not arise until Mr Murrell put his hand through the letter box. In doing so he failed to exercise due diligence: he knew a dog was present, he declined to use the postal peg that he had been trained to use. This was an action over which Mr Watson had no control and which he had no power to prevent. This therefore was a situation of third party intervention. To deny a defence on the basis of strict liability would place an "intolerable" burden on householders and their insurers and potentially have animal welfare implications. It would be unusual, if not inconsistent, with the criminal law: strict liability offences are often summary and carry financial penalties only, in contrast to offences under s. 3 (which carry a sentence of up to 5 years' imprisonment on conviction on indictment for an aggravated offence).

10. In short, it was said for Mr Watson:

i) The presumption that a dog was dangerously out of control because it caused an injury is rebuttable;

ii) Here, the facts can rebut the presumption and thus the acquittal can be upheld on that basis (even if not argued below – see *Whitehead v Haines* [1965] 1 QB 200 ("*Whitehead*");

iii) Anyone who exercises permission to enter another's property can become a trespasser if they act recklessly in exceeding that permission;

iv) Here Mr Murrell acted recklessly and so was a trespasser;

v) Mr Murrell's failure to exercise due diligence in his duties amounted to a third party action beyond Mr Watson's control. The answer to question 3 should be "yes".

11. In his oral submissions, Mr Spence QC for Mr Watson modified these submissions substantially. First, he withdrew the submissions identified at paragraph 9i) and ii) above. He altered the submissions at 9iii) and iv), by narrowing his position simply to

the proposition that Mr Murrell exceeded the scope of the implied permission to enter Mr Watson's property.

The legislative framework and relevant authorities

12. The long title of the 1991 Act provides:

> "An Act to prohibit persons from having in their possession or custody dogs belonging to types bred for fighting; to impose restrictions in respect of such dogs pending the coming into force of the prohibition; to enable restrictions to be imposed in relation to other types of dog which present as serious danger to the public; to make further provision for securing that dogs are kept under proper controls; and for connected purposes."

13. S. 3 provides:

> "(1) If a dog is dangerously out of control in any place in England or Wales (whether or not a public place)-
>
> (a) the owner; and
>
> (b) if different, the person for the time being in charge of the dog,
>
> is guilty of an offence, or, if the dog while so out of control, injures any person…an aggravated offence, under this subsection.
>
> (1A) A person ("D") is not guilty of an offence under subsection (1) in a case which is a householder case.
>
> (1B) For the purposes of subsection (1A) "a householder case" is a case where-
>
> the dog is dangerously out of control while in or partly in a building, or part of a building that is a dwelling or is forces accommodation (or is both), and
>
> at that time-
>
> the person in relation to whom the dog is dangerously out of control ("V") is in, or is entering, the building or part as a trespasser, or
>
> D (if present at that time) believed V to be in, or entering, the building or part as a trespasser…
>
> In proceedings for an offence under subsection (1) above against a person who is the owner of a dog but was not at the material time in the charge of it, it shall be a defence for the accused to prove that the dog was at the material time in the charge of a person whom he reasonably believed to be a fit and property person to be in charge of it."

14. S. 10(3) of the 1991 Act ("s. 10(3)") provides materially:

> "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…, whether or not it actually does so…"

15. As indicated above, s. 3 as originally enacted was the subject of amendment by s. 106 of the 2014 Act. By those amendments, Parliament removed the limitation that an offence under s. 3 could only be committed in a public place and introduced ss. 3(1A) and (1B), together the "householder defence"[1]. Thus there is no longer any requirement that the incident take place in a public place and there is a householder defence if the incident occurs in a dwelling and the injury is caused to a trespasser (or someone believed by the dog owner, if present, to be a trespasser).

16. As confirmed in the authorities, liability for the simple offence under s. 3(1) is strict. It follows upon proof of i) ownership (or charge) of a dog ii) that is dangerously out of control. The liability thus arises out of a prohibited state of affairs. Liability for the aggravated offence under s. 3(1) is also strict but additionally requires proof of injury whilst the dog is dangerously out of control. The requirement that the dog is dangerously out of control is satisfied by the very fact that the dog bites a person. It is not necessary to establish that the owner knew or should have anticipated that the dog would be dangerously out of control in the circumstances arising.

17. Whilst liability under s. 3(1) is strict, it is not absolute. There must be an act or omission of the defendant (with or without fault) that to some (more than minimal) degree caused or permitted the prohibited state of affairs to come about.

18. That the liability is strict is clear from *R v Bezzina and others* [1994] 99 Cr App R 356; [1994] 1 WLR 1057 ("*Bezzina*"). There the Court of Appeal (Criminal Division) heard conjoined appeals against the convictions of three defendants who had had been convicted of the aggravated offence under s. 3 as originally enacted. Kennedy LJ, giving the judgment of the court and in the context of s. 10(3) stated (at 1059C-E):

> "On the face of it, therefore, when the words "dangerously out of control" are encountered in section 3(1) of the Act of 1991, one turns to section 10(3) to find out what they mean…Accordingly, it would seem that this Act, by section 3(1) imposes strict liability on the owners of dogs of all sorts which are in public places and are dangerously out of control within the meaning of section 10(3) which, on the face of it, imposes or sets an objective standard of reasonable apprehension, not related to the state of mind of the dog owner."

19. He then considered the "long legal history of authorities" suggesting that strict liability criminal offences are rare and identifying when they might be justified: S*herras v De Rutzen* [1895] 1 QB 918; *Sweet v Parsley* [1970] AC 132 (at 149 and 163); *Gammon (Hong Kong) Ltd v Attorney-General of Hong Kong* [1985] AC 1 (at 14); and *Wings Ltd v Ellis* [1985] QC 272 (at 295). As Lord Scarman stated in *Gammon*, strict liability

[1] The legislative draftsperson may have drawn on the approach in s. 43 of the Crime and Courts Act 2013 which amended s. 76 of the Criminal Justice and Immigration Act 2008 to address the question of reasonable force for the purpose of self-defence in a "householder case".

may be justified where the statute is concerned with an issue of social concern, such as public safety.

20. Kennedy LJ went on (at 1061A-D) to state that the effect of the 1991 Act was "clearly" such as to displace the presumption of law that mens rea is required before a person can be held guilty of a criminal offence. The 1991 Act was concerned with public safety. The imposition of strict liability would be "effective to promote the objects of the statute by encouraging greater vigilance to prevent the commission of the prohibited act."

21. Kennedy LJ held as follows (at 1059D-E and 1061D-F):

> "Accordingly, we come to the conclusion that the terms of the statute in section 3(1) do have to be read in the way that we indicated at the start of this judgment. In other words, when one encounters the words in section 3(1) - "dangerously out of control" - one applies the meaning which is set out in section 10(3) and that means, in effect, that if a dog is in a public place, <u>if the person accused is shown to be the owner of the dog, if the dog is dangerously out of control in the sense that the dog is shown to be acting in a way that gives grounds for reasonable apprehension that it would injure anyone, liability follows</u>. Of course, if injury does result then, on the face of it, there must have been, immediately before the injury resulted, grounds for reasonable apprehension that injury would occur."
>
> (emphasis added)

22. The statement above needs to be qualified in one limited respect, as identified by the court in *Rafiq v DPP* [1997] WL 1106030; [1997] 161 JP 412. There Popplewell J addressed the suggestion that there needed to be a reasonable apprehension of injury before (as opposed to immediately after) a bite. Applying the wording of s. 10(3) (which refers to a dog being regarded as dangerously out of control "on any occasion") he stated that:

> "..if there is a bite without reasonable apprehension immediately before that, the use of the word "any occasion" is sufficient to impose a liability because there are grounds thereafter for reasonable apprehension that it will injure some other person."

23. Auld LJ agreed:

> "I have some difficulty with Kennedy LJ's proposition…that if there is injury there must have been immediately before it grounds for reasonable apprehension of it. Depending on the circumstances, the time for apprehension, even by the notional reasonable bystander, may be so minimal as for practical purposes to be non-existent. The notion of reasonable apprehension of injury before it occurs in such circumstances, is artificial and the Court should strain against adding that unhappy element to an already difficult statutory formulation. It seems to me that Kennedy LJ in that passage was unnecessarily focusing on the injury as if it were the necessary culmination and demonstration of anterior reasonable apprehension of injury. In my view, there is no need for such an approach. The act of a dog

> causing an injury, a bite or otherwise, is itself capable of being conduct giving grounds for reasonable apprehension of an injury."

24. In *Bezzina* Kennedy LJ recognised the implications of the conclusion that liability was strict under s. 3 (at 1061F-G):

> "There has been urged upon us in the course of argument the problems which are likely to arise from this interpretation. We give full weight to them. It is urged that an owner may have no realisation that his dog is liable to behave in a way which will cause injury to anyone until, for example, a child pokes the dog with a stick and the dog reacts. That, indeed, may be the case. <u>But it seems to us that Parliament was entitled to do what in this piece of legislation we find that it has done, namely to put the onus on the owner to ensure, if that is likely to happen, that he takes steps which are effective to ensure that it does not, either by keeping the dog on a lead or keeping the child away from the dog or whatever may be appropriate in the circumstances.</u>"
>
> (emphasis added)

25. In *R v Gedminintaite* [2008] 172 JP 413 the Court of Appeal (Criminal Division) commented (at [9]) that the definition in s. 10(3) was not exclusive, and reverted to the "straightforward words" of s. 3. In that case it was held that there was ample evidence that the dog was dangerously out of control in a public place.

26. The court in *Bezzina* did not have to address the question of whether or not the acts or omissions of another could give rise to a defence of third party intervention (see 1061H-1062A). However, in *Robinson-Pierre*, again in the context of s. 3 as originally enacted, it did. There a dog contained in a private property was released into public only as a result of the police breaking down its door. It was contended that the prohibited state of affairs in s. 3(1) "arose entirely by reason of the deliberate act of a third party" (see [35]). The issue was whether any act or omission of the owner of the dog had caused the dog to be in a public place.

27. The court proceeded uncontroversially on the basis that there was "no doubt" that s. 3(1) creates a strict liability offence (see for example [35], [40] and [42]). As for the question of whether Parliament intended liability to be absolute in the sense that criminal liability may follow notwithstanding the absence of any act or omission of the defendant contributing to the prohibited state of affairs, Pitchford LJ stated (at [42]:

> "….On analysis of section 3, we do not consider that it was Parliament's intention to create an offence without regard to the ability of the owner (or someone to whom he had entrusted responsibility) to take and keep control of the dog. There must, in our view, be some causal connection between having charge of the dog and the prohibited state of affairs that has arisen. In our view, section 3(1) requires proof by the prosecution of an act or omission of the defendant (with or without fault) that to some (more than minimal) degree caused or permitted the prohibited state of affairs to come about."

28. On the facts of *Robinson-Pierre*, that required proof that the defendant had done (or omitted to do) something that contributed to the presence of the dog in a public place,

dangerously out of control. The jury had been misdirected in this regard, and the jury's verdicts were unsafe.

29. In *Goddard* the High Court considered the effect of the extension in s. 3(1) to cover private places and the householder defence. The factual circumstances there were similar to the present: a Royal Mail postal worker, Mr Burrows, had been provided with a posting peg. He did not use it when delivering post to a residential address. As he pushed the post through the letter box, his left middle finger was bitten by a dog within the house. William Davis J took the exceptional course of granting the Royal Mail a voluntary bill of indictment in circumstances where the Crown Court Judge had dismissed a charge against the person in charge of the dog under s. 3. He reasoned as follows (at [18]):

> "There is no doubt that the dog that bit Mr Burrows was dangerously out of control. The dog was dangerously out of control within 108 Kings Road. This was the prohibited state of affairs. This was due to the act of Jake Goddard as the dog's owner i.e. leaving the house with the dog inside. No doubt the provision in section 3(1) was extended to encompass dogs within a private place to cater for cases in which a dog caused injury to a visitor. There have been notorious instances of young children being attacked when visiting the home of a relative or friend. In such a factual situation all that the prosecution would have to prove would be that the dog was dangerously out of control and that the owner had the dog on the premises in circumstances which allowed the dog to attack the child…However, the extension of section 3(1) must apply equally to any situation in which the householder defence does not arise. Whether it is a postman or someone putting a free newspaper or someone distributing leaflets of whatever kind, there will be occasions when a person goes to a house and uses the letter box in a way that, for a short time, exposes their fingers to a dog within the building. Before the judge in the Crown Court it was conceded that such a person is not a trespasser. That concession was properly made[2]. If such a person is bitten by a dog within the house, that dog will be dangerously out of control…."
>
> (emphasis added)

Discussion and analysis

30. Whilst the District Judge has identified three questions for this court, there are in essence two issues:

[2] Mr Spence QC informed the court that in fact no such concession had been made in the Crown Court. It is clear nevertheless that William Davis J independently considered the question and concluded that it would have been correct to make the concession. I agree with him.

i) Does a postal worker who puts their fingers through the letter box of a private property in order to push letters in thereby act as a trespasser (questions 1 and 2)?

ii) Is a defence available to the dog owner because the postal worker failed to use due diligence (question 3)?

31. As set out above, a new point was raised for Mr Watson, namely the suggestion that the 1991 Act creates only a rebuttable presumption that a dog causing injury without forewarning was dangerously out of control; that presumption can be rebutted on the facts and is so rebutted here. Mr Spence sensibly did not pursue the matter orally. However, in case it may be raised again elsewhere, I comment on the substance of the argument[3]. There is no rebuttable presumption as alleged. As set out above, the offence is one of strict liability. If the dog is dangerously out of control in circumstances which the owner has caused or permitted then strict liability on the owner follows. *Rafiq* makes it clear that a bite (even without reasonable apprehension beforehand) is sufficient to impose liability.

32. Before turning to the individual questions posed, it is convenient to identify the interplay between s. 3(1) and ss. 3(1A) and (1B) so far as material for present purposes. As set out above, liability under s. 3(1) for the aggravated offence is strict. S. 10(3) refers simply to "any person". The conduct of the injured person in terms of culpability is irrelevant; thus questions such as due diligence or recklessness on their part do not arise. The issue of whether or not the injured person was a trespasser is separate and distinct and covered by specific legislative provision, namely s. 3(1B).

33. The householder defence is most obviously intended to apply to situations involving residential burglars and unwanted intruders into dwellings. For the reasons set out below, I do not consider that it properly extends to the present facts.

34. The letter box was an open invitation to visitors to post mail through it, something which could involve the insertion of fingers for a short time. There is no basis for limiting the implied permission to do so in the case of a postal worker who has been provided with a postal peg. The fact that the Royal Mail provided Mr Murrell with such a peg (and required him to use it) is irrelevant. It may have been germane to Mr Murrell's position viz-a-viz his employer but it has nothing to do with the scope of the permission granted to him as a lawful visitor to the property for the purpose of posting mail through the letter box. As Mr Beggs QC for the Royal Mail fairly accepted, the position might be different if there had been a suitably worded exclusory sign; but there was no sign here. The consequences of the District Judge's decision on trespass, if correct, would be striking: a dog owner would be criminally liable if the dog were to bite the hand of a neighbour delivering an invitation or the hand of an Amazon delivery worker delivering a package through the letter box, but not if the dog were to bite a

[3] There were a number of further procedural difficulties with this suggested line of argument: it was not an argument advanced below (as it should have been, if it had any merit). It did not arise out of the case stated. There were no material findings below which would enable this court to rebut a presumption that the dog was dangerously out of control on the facts. The situation was thus very far removed from the position in *Whitehead* where the court was prepared to entertain what was a point of pure law open on the facts found in the case stated in circumstances where it was being argued that the appellant had been convicted of an offence non-existent in law (see 209D-F).

Royal Mail worker hand-delivering post. That would be a wholly unprincipled distinction.

35. Thus in my judgment Mr Murrell did not exceed the permission granted by Mr Watson to enter his property and was not a trespasser for the purpose of s. 3(1B). It is a conclusion that is consistent with the outcome in *Goddard*.

36. None of this leads to unacceptable consequences. Specifically, it does not mean that homeowners are unable to leave their dogs unattended. Simple measures, such as the installation of a wire guard or adjustment to the height of the letter box itself, can be taken.

37. If, as I would therefore hold, the implied permission extended to Mr Murrell's actions on 8 May 2017, the question of recklessness does not arise. The degree of care taken (or not) by the injured person cannot affect the scope of the implied permission. In any event, Mr Spence did not pursue the point orally. Again, for the sake of completeness only I comment:

    i) The facts of *Jones* are very far removed indeed from the present: there the defendant son of a homeowner forced entry into the property (with another) and stole two television sets. He had general permission to be in the property but stealing exceeded it. He was a trespasser. There is no meaningful comparison between the son's actions and those of Mr Murrell; Mr Murrell's actions did not begin to transgress the permission that he had in the same manner or to the same extent;

    ii) The District Judge did not make any finding of recklessness on the part of Mr Murrell, only a finding of lack of due diligence. The two are by no means the same (see for example the formulation of recklessness (in the context of s. 1 of the Criminal Damage Act 1971) in *R v G and another* [2003] UKHL 50; [2004] 1 AC 1034 at [41]).

38. I turn then to question 3. There is no defence of lack of due diligence on the part of the victim contained in the 1991 Act. To imply one would have a significant and unwarranted impact on the scope and effect of the legislation: there are sound public policy reasons for the existence of a strict liability offence, as explored in *Bezzina* and *Robinson-Pierre*.

39. The 1991 Act was enacted, amongst other things, to deal with what was perceived to be a serious problem of unruly and savage dogs, attacking in particular children. As set out above, this was an issue of social concern, namely public safety (see *Bezzina* at 1060G – 1061B). Parliament decided that the danger posed to public safety from dangerous dogs was such that it is necessary to impose criminal liability on a dog owner simply if the dog was in a public place (and now anywhere) and dangerously out of control. Questions of fault on the part of the victim play no part in the analysis: the onus lies squarely upon dog owners (or those in charge of a dog) to ensure the dog is kept under control (see *Bezzina* at 1061G). It would be wrong to introduce a limit to the scope of the offence in the manner suggested in the face of the clear terms of the legislation. It would be effectively to re-write it.

40. Mr Spence laid weight on the fact that Parliament has not imposed a legal requirement on dog-owners to fix wire guards on letter boxes, for example. That does not assist Mr Watson: Parliament has imposed an obligation on dog-owners to ensure that they are not dangerously out of control. In the words of Kennedy LJ, it is for the dog-owner to do "whatever may be appropriate in the circumstances."

41. For Mr Watson it is further suggested that Mr Murrell's lack of due diligence gives rise to a causation argument. However, at the risk of repetition, s. 3 creates a strict liability offence. The criminal liability arises out of a prohibited state of affairs. It is no defence to prove that, but for carelessness on the part of the victim, the injury would not have occurred. The only circumstance in which the legislation recognises that there is a defence because the victim bears some responsibility is when they enter a dwelling as a trespasser. As set out above, that is not this case.

42. *Robinson-Pierre* has no application to the present facts, either by way of analogy or otherwise. It was based on the unamended version of s. 3 and considering the impact of third party intervention in the sense of a third party, and not the owner, releasing the dog into a public place. The issue was whether any act or omission of the owner had caused the dog to be in a public place. The prohibited state of affairs here, as in *Goddard*, was the presence of the dog left unfettered by Mr Watson in his home with a letter box in the door.

43. In any event, even if Mr Murrell's actions (in pushing his fingers through the letter box) were relevant, they cannot be said to have been wholly responsible for the prohibited state of affairs; at most they contributed to it. The acts or omissions of Mr Watson still "to some (more than minimal) degree caused or permitted the prohibited state of affairs to come about" (to adopt the words of Pitchford LJ in *Robinson-Pierre* at [42]). He allowed the dog to be in the house unfettered and with access to the letter box.

Conclusion

44. It may be that the District Judge was distracted by misplaced defence submissions as to the nature of the liability under s.3 and her view as to the relevance of due diligence on the part of Mr Murrell. It should be understood that liability under s. 3 is strict; Parliament has chosen to put the burden on those who own (or are in charge of) a dog to ensure that effective steps are taken to ensure that the dog does not cause injury to anyone; a postal worker in the position of Mr Murrell is not a trespasser as a result of putting their fingers through a letter box.

45. For these reasons, I would answer all three questions posed in the negative and allow the appeal.

Saini J:

46. I agree.