Neutral Citation Number: [2023] EWHC 497 (Admin)

Case No: CO/1511/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN MANCHESTER

Wednesday, 8th March 2023

Before:
MR JUSTICE FORDHAM

- -

Between :

THE KING (on the application of KAYLEIGH DAWSON)	**Claimant**
- and -	
PRESTON CROWN COURT	**Defendant**
-and-	
(1) LANCASHIRE CHIEF CONSTABLE **(2) SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**	**Interested Parties**

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Cathryn McGahey KC (instructed by Cohen Cramer Solicitors) for the **Claimant**
The **Defendant** and **Interested Parties** did not appear and were not represented

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Hearing date: 15.2.23

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

MR JUSTICE FORDHAM:

Introduction

1. At the end of a one-day hearing at Preston Crown Court on 25 November 2021, HHJ Preston ("the Judge"), sitting with Justices of the Peace, dismissed an appeal by the Claimant for reasons given in an ex tempore judgment ("the Judgment"). The appeal with which they were dealing was against an immediate Destruction Order ("DO") made on 4 May 2021 by Burnley Magistrates' Court, on the application of the Lancashire Chief Constable ("the Police"). The DO had been made pursuant to section 4B of the Dangerous Dogs Act 1991 ("the 1991 Act") and ordered the destruction of the Claimant's pitbull terrier "Lightning". Lightning, because he is a pitbull terrier, is a dog of "prohibited type" under section 1 of the 1991 Act. Section 1(3) of the 1991 Act contains a "prohibition" on a person having a pitbull terrier in their possession or custody, except "in accordance with an order for destruction" made under the provisions of the Act. Section 4B provides for a Contingent Destruction Order ("CDO"), by which the dog can be "exempted from the prohibition". A CDO had been made by the Magistrates on 15 October 2019.

2. The appeal in the Crown Court against the May 2021 DO was by way of "rehearing". The Claimant was the 'appellant' and was represented by Counsel, Ms Woods. The Police were the 'respondent', also represented by Counsel, Ms Kenny. By virtue of section 4B(2)(a), the test which the Magistrates – and now the Crown Court – were required to apply was whether the Court was:

   > ***satisfied that the dog would not constitute a danger to public safety.***

   As to the considerations to take into account when applying that test, by virtue of section 4B(2A):

   > ***when deciding whether a dog would constitute a danger to public safety, the [Court] (a) must consider (i) the temperament of the dog and its past behaviour, and (ii) whether the owner of the dog, or the person for the time being in charge of it, is a fit and proper person to be in charge of the dog, and (b) may consider any other relevant circumstances.***

The Judgment

3. I am going to set out the entirety of the Judgment, breaking it down into sections. For ease of cross-referencing, I will insert paragraph numbers in square brackets. First, the Judgment gave this introduction, describing a June 2019 seizure of Lightning and his November 2019 return, making reference to the October 2019 CDO and the applicable conditions ("the Conditions": as to which, see §9 below):

   > ***[1] This is or rather started as an appeal against an order made under the Dangerous Dogs Act 1991 for the destruction of two dogs belonging to the appellant, a male known as Lightning and a female known as Storm. On 29th June 2019 Lightning was seized under the Dangerous Dogs Act suspected of being a dangerous dog as defined by section 1, namely a Pit Bull Terrier and the dog was assessed by PC Carruthers about a week later and was found to have the characteristics of such a breed. The dog was returned to the appellant on 9th November 201[9] having been made the subject of a [CDO]. The order meant that Lightning was to be registered on the index of exempted dogs with conditions that it be neutered, microchipped, always on a lead and muzzled when in public, insured and kept by the appellant. As we have been told by Mr. Barnett during the course of his***

evidence, after two months from 15th October that order then became an exemption certificate with similar conditions as well as several more.

4. Next, the Judgment gave a description of the following: that a 'breach' incident took place on 7 February 2020 ("the Incident"), after which Lightning was seized; that he was (wrongly) returned to the Claimant in May 2020 ("the Return"); that he was reseized in December 2020 ("the Reseizure"); and that there were subsequently discovered to have been what everyone (including Ms Woods and Ms Kenny) were calling two 'breaches' ("the Further 'Breaches'"):

[2] On 7th February 2020 Lightning was again seized following a breach of the [CDO] in that there was an incident where the two dogs escaped the house and Lightning attacked a dog being walked by the witness Mr. Symon, biting him by the neck, forcing him to the ground and then when Mr. Symon tried to protect the dog leaping up at him, biting at the dog's leg and actually seems whilst going for the dog, biting Mr. Symon. The attack was for him and no doubt for the dog frightening and went on for several minutes and it only ended when the police intervened with a debilitating spray. We have no doubt it would have carried on had that spray not been administered.

[3] On the same day the second dog, Storm, who escaped with Lightning was also seized. Storm played no part in the attack on the other dog, demonstrating in our view quite clearly a different set of characteristics. Storm was assessed by PC Carruthers and found to have the characteristics of a dangerous dog under the Act. However, the respondent now concedes that the application in relation to Storm was not made in time and so the order made by the Magistrates is an invalid order, it has no force and insofar as we can we set it aside pursuant to the powers under the Civil Procedure Rules. That will mean that other procedures have to be undergone in relation to the dog but hopefully it will find its way back home.

[4] Lightning was returned to the appellant once more in May 2020. That was to say the very least an unfortunate error found to be on flawed legal grounds and the dog was seized again in December 2020. In the meantime, the police discovered that the appellant had further breached the [CDO] by not notifying DEFRA of a change of address and by failing to provide insurance for the dog for six days in October of that year.

5. In the next part, the Judgment described the section 4B application made by the Chief Constable, certain aspects of common ground, and certain key aspects of the evidence:

[5] Application has been made therefore or was made therefore by Lancashire Constabulary under section 4B of the Act for a destruction order otherwise than on conviction for an offence and those orders were granted by the lower court as I have already said and the Crown have conceded that one of them was entirely wrong, but under that section where a dog cannot be released to its owner without contravention of section 1(3) of the Act as applies in this case, there must be a destruction order unless the court is satisfied to the civil standard, and the burden rests on the appellant, that the dog would not constitute a danger to public safety. In deciding whether the dog does or does not constitute a danger to public safety the court must take account of the temperament of the dog, of its past behaviour and whether the owner is a fit and proper person to be in charge of it.

[6] It is agreed by all parties that both dogs are of a Pitbull type and are therefore defined as dangerous dogs by section 1 of the Act. In this case we have heard about the history and the chronology which is broadly agreed and we have heard agreed evidence about the unfortunate incident on 7th February 2020. We have also heard from PC Carruthers about the assessment of the dogs and some of the history and we heard from the appellant and from the defence expert, Mr. Barnett.

> ***[7] Mr. Barnett told us that in his examination conducted under circumstances of distress for the dog Lightning was excitable, he bit his lead for 6½ minutes at the start of the examination and from time to time thereafter. Mr. Barnett says that that amounts to a mild canine compulsive disorder, not an act of aggression and he points out that he calmed down and was no threat to him or his assistant. It is common ground that Lightning has not shown any aggression towards any examiner or indeed anyone else save for the behaviour on 7th February 2020 and it is further common ground that the appellant has put safety measures in place at her home address.***

6. The Judgment next described points made by the parties, together with some observations by the Court:

> ***[8] The respondent raised concerns as to the appellant's fitness as an owner initially due to a number of issues, the incident in February albeit no direct blame was attributed to her for releasing the dogs but also the period where Lightning was not insured as well as the failure to notify DEFRA of the change of address. Finally, the respondent states that a reluctance to hand over the dog in December 2020 suggests an unwillingness to comply with rules, as do her previous convictions, they say.***
>
> ***[9] In response, the appellant pointed out that it was not her fault that the dogs were released in February 2020, there is no evidence that they have ever before or since been out unmuzzled or not on a lead. The failure to notify DEFRA and the short period without insurance were technical breaches, in particular she did not appreciate the need to inform DEFRA as she had told the police of the move and the insurance issue was simply a direct debit failure. Finally, she was understandably reluctant to hand the dog over given the history of this case and her convictions pre-date her turning her life around and regaining residence of the daughter.***
>
> ***[10] We accept those points broadly and the prosecution this afternoon quite properly conceded that the appellant is a fit and proper person to look after a dog given all the facts. However, it is still said these slippages in compliance may point to something of a sloppy attitude to compliance no matter that the breaches were minor and only discovered later in the proceedings by the police. We accept what Miss Woods says that the lower court found in October 2019 that the dog was not found to be dangerous but of course things have rather moved on since the incident in February.***

7. Next, the Judgment included the following in the nature of the Court's discussion and analysis:

> ***[11] We have considered the evidence in this case carefully and have taken particular care in remembering that this is an unusual case for these courts involving as it does the potential destruction of a living being as well as the consequences for those who consider dogs very much part of the family. So far as Lightning is concerned the single issue that we have to decide is whether the appellant has demonstrated on the balance of probabilities that the dog does not constitute a danger to public safety.***
>
> ***[12] Mr. Barnett says that so far as the incident in February was concerned, there could be some past event which might cause him to attack another dog, he could have been scared of seeing other dogs, he could be socially incompetent or frustrated or there could be inter-male competition. If indeed the behaviour was as a result of any of those traits or causes none of those sources of behaviour provide the court with comfort so far as future behaviour is concerned. We found the evidence of Mr. Barnett whilst in assessing Lightning was no danger rather too keen to excuse what happened on 7th February and to remind the court of the evidence of others, particularly PC Carruthers, when he had said something positive about the dog.***
>
> ***[13] Right it is though that so long as the conditions imposed under the CDO or conditions later imposed by DEFRA are rigorously complied with the dangers would be significantly mitigated but there has plainly been some slippage in compliance by the appellant over the***

> ***course of the order and whilst the escape of the dogs was not directly her fault, it cannot be ignored that circumstances existed which allowed the dogs to escape and these events did happen.***
>
> ***[14] Miss Woods says that the events on 7th February were out of her control. Well, that is really the worry. She points out also that the dog was returned and there has been no incident since and we accept that. We do not accept however that the police released the dog back because they had no concerns about it. That was an error as to the law. The behaviour on 7th February occurred when there was an exemption certificate with stringent conditions in place.***
>
> ***[15] The starting point for this court therefore is that Lightning is currently not an exempt dog, he is a dog which is banned under the legislation and he has attacked and hurt a dog and its handler. Whilst of course one cannot ever say in relation to every dog that exists that they will not ever attack any other dogs, most dogs are not banned as being dogs bred specifically for fighting.***
>
> ***[16] It is our view, in particular bearing in mind his past behaviour and what we find to be his temperament, namely his serious and continued aggression towards another dog as an immediate response to being set free, as well as the potential causes as identified by Mr. Barnett as to that aggression, reminding ourselves of the evidential burden on the appellant, we cannot conclude to the civil standard that the dog would not constitute a danger to public safety and consequently we are bound to order the destruction of the dog under section 4B of the Act. Consequently, this appeal must fail.***

8. Finally, the Judgment concluded with this end-note:

> ***[17] There is a great deal of sympathy for the appellant's position on the Bench given the removal of Storm and also given what she has been through with the repeated and incorrect return of Lightning before his further removal and we can understand why she would wish to pursue every action that she has including this appeal in order to try to secure the dogs' return and I am afraid, as I say, Miss Woods, the appeal fails.***

Prescribed Conditions of a CDO

9. Pursuant to Part 2 of the Dangerous Dogs Exemption Schemes (England and Wales) Order 2015 (SI 2015/138) ("the 2015 Order"), there are prescribed conditions and requirements applicable where a CDO has been made. These are the conditions to which the Crown Court was referring in the Judgment at paragraph [1] (see §3 above). In the first place, there are Article 4(2) conditions which must be met within two months of the CDO, absent which the dog is not exempt from the section 1(3) prohibition (see Article 4(1)(b) and Article 5(a)). These conditions are (Article 4(2)):

> ***(a) the dog is neutered in accordance with article 6; (b) the dog is microchipped in accordance with article 7; (c) third-party insurance in respect of the dog is obtained in accordance with article 8; and (d) a certificate of exemption is issued in accordance with article 9.***

Secondly, there is an ongoing prescribed requirement of insurance (Article 8(1)), that:

> ***The owner or person in charge of the dog must have in place a policy of insurance in respect of the dog that is to be exempted from the prohibition in section 1(3) of the Act throughout the dog's lifetime.***

Thirdly, there are the prescribed requirements which must be attached to any Article 9 certificate of exemption (see Article 10(1)), together with any additional requirements designed to ensure that those prescribed requirements are met (see Article 10(2)).

Non-compliance with these "at any time after the certificate is issued" has the consequence that the dog is not exempt from the section 1(3) prohibition (see Article 5(b)). The prescribed requirements (Article 10(1)) are:

> ***(a) to keep the dog at the same address as the person to whom the certificate is issued save for any 30 days in a 12-month period; (b) to notify the Agency of any proposed change of address (not to include any changes of address in the 30 days mentioned in paragraph (a)); (c) to notify the Agency of the death or export of the dog; (d) to satisfy the Agency that a policy of third-party insurance compliant with article 8 is in force; (e) to keep the dog muzzled and on a lead when in a public place; (f) to keep the dog in sufficiently secure conditions to prevent its escape; (g) to provide access to the dog for the purpose of reading a microchip on request by a person specified in section 5(1) of the Act; (h) to produce to a person specified in section 5(1) of the Act confirmation that third-party insurance compliant with article 8 is in force within five days of being requested to do so by that person; (i) to produce to a person specified in section 5(1) of the Act the certificate issued under article 9 within five days of being requested to do so by that person.***

As can be seen, the prescribed insurance requirements in Article 10(1)(d) and (h) are linked to the ongoing requirement under Article 8. Ms McGahey KC accepts that all of these conditions and requirements are by their nature obligations of 'strict liability', meaning that their 'breach' does not require some 'intention', 'fault' or 'blame' on the part of the owner or person in charge of the dog.

<u>Refusal to State a Case</u>

10. By an application dated 15 December 2021, advanced in writing by Ms McGahey KC as the Claimant's new Counsel, the Claimant asked the Crown Court to "state a case". That was so that the Judgment could be appealed to the High Court on grounds that it was "wrong in law or … in excess of jurisdiction", pursuant to section 28 of the Senior Courts Act 1981. A stated case is (see rule 35.3 of the Criminal Procedure Rules) a document specifying the decision in issue and the questions of law (or jurisdiction), summarising the nature and history of the proceedings, relevant findings of fact, relevant contentions of the parties and (if a question is whether there was sufficient evidence on which the court reasonably could reach a finding of fact) the evidence on which the court reached the finding. On an appeal by case stated the High Court can "reverse, affirm or amend the determination … or remit the matter to … the Crown Court" (section 28A). By a reasoned judgment dated 3 February 2022, the Judge refused to state a case on the grounds that the application was "frivolous". The word "frivolous" is found in the Crown Court Rules rule 26(6). It connotes a proposed appeal which is evaluated as being "futile, misconceived, hopeless or academic" (see eg. <u>Archbold Magistrates Courts Criminal Practice 2023</u> at §23-70).

<u>Accessing the High Court</u>

11. This Court is being asked to decide whether the Judgment was "wrong in law", a phrase which brings in any material public law error. Neither the Crown Court nor the Police or Secretary of State have participated, leaving it to this Court to evaluate the Claimant's arguments and decide the issues. There is no jurisdictional difficulty in the High Court considering whether a crown court has made an error of public law in dismissing an appeal from magistrates. Such a decision is amenable to the common law jurisdiction of judicial review with its statutory overlay in section 31 of the Senior Courts Act 1981. There is, however, a discretionary bar on judicial review where there is an alternative remedy. A statutory right of appeal is a paradigm alternative

remedy. But when the crown court refuses to state a case (§10 above), there can be no statutory case stated appeal. The remedy is to judicially review the refusal to state a case. If the arguments which would have been advanced on the case stated appeal are legally viable, the High Court may quash the refusal and direct that a case be stated. The case will then come back to the High Court as a case stated appeal. However, with characteristic pragmatism and flexibility, the judicial review Court may decide to cut the knot, roll up its sleeves, and deal directly with the substance of the public law issues. This course is seen in Sunworld Ltd v Hammersmith & Fulham LBC [2000] 1 WLR 2102 at 2106F-H (discussed in Archbold, Criminal Evidence and Pleading 2023 at §7-19); and, in the context of the 1991 Act, in R (Golding) v Maidstone Crown Court [2019] EWHC 2029 (Admin) [2019] 1 WLR 5939 at §3.

12. In granting permission for judicial review in the present case, HHJ Wood KC made clear that the Court at the substantive hearing would have the option of dealing directly with the substance. Ms McGahey KC focused her attention, and invited me to focus mine, on whether there is any public law error in the Judgment. That is what I will do. The Crown Court gave a reasoned judgment containing all the necessary findings and the true points of law in issue have clearly been raised. HHJ Wood KC decided that those points are properly arguable. The other parties are on notice, and nobody has raised any procedural objection. There is none. In all the circumstances, the Court can adopt the course involving the fewest additional steps and the least expense, delay and duplication of proceedings. I will proceed by allowing the Crown Court's Judgment to be "directly challenged". The Claimant should be in no worse, but no better, position than had a stated case been granted for this to be a case stated appeal. If any consequential matter turns on how precisely this 'direct challenge' should be characterised – whether reconstituting this judicial review claim as a case stated appeal, dispensing with all formalities; or treating it as a judicial review claim proceeding despite the alternative remedy of a case stated appeal – I will be able to consider that, at the end of this judgment, after any further submissions in writing.

Fit and Proper Person

13. Before proceeding to the issues, I want to identify a number of themes which feature in this judicial review claim as key reference points on behalf of the Claimant. These will then feature in the analysis of the issues. One key reference point is the recognition by the Police and the Crown Court (see Judgment paragraph [10]: §6 above) that the Claimant herself remains a "fit and proper person to be in charge of the dog" for the purposes of section 4B(2A)(a)(ii) (§2 above). This was an important finding in the Claimant's favour. I should explain one legal point about fit and proper person. Looking at the 1991 Act, this feature stands as a mandatory relevant consideration: see section 4B(2A)(a)(ii). But the effect of Article 9 of the 2015 Order is to make it a precondition. Under Article 9, the certificate of exemption from the section 1(3) prohibition requires satisfaction by the issuing agency that the court, in determining that the dog is not a danger to public safety, has decided that the person to whom the certificate is to be issued is "a fit and proper person to be in charge of the dog".

Blameless Incident

14. A second key reference point is the recognition that the Claimant was herself blameless, so far as the Incident (Judgment paragraph [2]: §4 above) is concerned.

This was recorded in the Judgment (paragraph [9]: §6 above) that "it was not her fault that the dogs were released in February 2020", a point which it was right that the Crown Court should "accept" (paragraph [10]: §6 above). That the Incident was beyond "her control" was also what was plainly meant when the Judgment said (paragraph [14]: §7 above) that "the events on 7 February were out of her control". This was referable to the evidence which the Crown Court heard, from the Claimant's sister. The sister had arrived with a friend at the Claimant's home address in the evening of 7 February 2020, because the sister was concerned about the Claimant and had received no response to calls, nor when knocking at the Claimant's door. The police were alerted and a cousin arrived. The cousin was able to climb over the rear wall by placing a bin from the alley next to the wall. He lowered himself into the garden and unbolted the rear gate for the sister and her friend to gain access. They were able to get into the Claimant's house and upstairs where the Claimant was asleep and, happily, was fine. However, as the sister's evidence explained:

> ***None of us closed the gate behind us and we headed straight through the property to the upstairs … When we began to leave through the back gate I noticed that the dogs Storm and Lightning who belong to my sister had managed to escape due to us leaving the gate open and unlocked. The police arrived a short time later and somebody told them of the dogs being loose, I cannot recall who told the police. The officers that attended stated due to what had been reported regarding Kayleigh an ambulance was en route to check her over and that I was required to stay with her until the ambulance arrived. I explained to the officers that I needed to go and shout for the dogs. However, officers stated I was required to stay at the home address until the ambulance arrived. Kayleigh was very upset and angry with us all for leaving the gate open. I can be sure that the garden was secure prior to us opening the gate and only due to our actions of opening the gate the dogs Lightning and Storm have got out. However, due to our concerns for Kayleigh we did not lock the gate as our focus was on her welfare and safety. I am now aware of an incident that the dogs were involved in on the night upon them getting out. I'm aware the dogs have been seized and I'm upset that the dogs have been taken into kennels due to our mistake. I fully support Kayleigh and don't believe it's her fault that the dogs came loose on the street.***

This evidence described a high wall and a bolted gate which could only be unbolted from inside the garden. The Police did not argue that the Claimant's garden and gate had not been appropriately secure. As I have understood it, the strict liability 'breach' that was relied on as far as the Incident was concerned was the Claimant's failure "to keep the dog muzzled and on a lead when in a public place" (Article 10(1)(e) of the 2015 Order: §9 above). It was not concerned with an alleged failure by the Claimant "to keep the dog in sufficiently secure conditions to prevent its escape" (Article 10(1)(f)). Moreover, as the Crown Court heard at the appeal hearing, subsequently the Claimant moved house to a set-up where she has a secured back gate "such that it is not simply a bolt that can be opened" but which "requires a key", with "deadbolts on the back gate with a padlock". Thus it was "common ground" that the Claimant "has put safety measures in place at her home address" (Judgment paragraph [7]: §5 above).

Before and Since

15. A third key reference point is the recognition of no other incident, before or since, in which Lightning is said to have been in a public place without being muzzled and on a lead. This point was recorded by the Court (Judgment paragraph [9]: §6 above) as another point which it was right that the Court "accept" (Judgment paragraph [10]). The Court also recorded that, between the Return and the Reseizure (May to

December 2020), there had been "no incident" (Judgment paragraph [14]: §7 above). As Ms McGahey KC points out, based on the chronology from Lightning's birth in July 2017 that means three periods in the Claimant's possession and control, without any such incident: July 2017 to June 2019 (see Judgment paragraph [1]); then November 2019 to February 2020 (Judgment paragraphs [1]-[2]); and then May to December 2020 (Judgment paragraph [4]).

Examiners

16. A fourth key reference point is that there was the "assessment" of Lightning by PC Carruthers (Judgment paragraph [6]: §5 above)) and an "examination" conducted by the Claimant's expert Mr Barnett (described in the Judgment paragraph [7]: §5 above). Evidence of PC Carruthers which the Crown Court heard included this:

> ***MISS WOODS: You have told us that on the two occasions that Lightning was seized you examined the dog on both occasions to confirm that it is a type 1 banned breed? A. Yes. Q. On the first occasion which was back on 11th February when Storm was taken as well I think you said that you had described Lightning as being friendly and engaging and at no time did you feel threatened in his presence? A. Yes. Q. On the second occasion after a 50 minute examination the dog was happy to interact, very lively, behaviour seemed to have improved since you had last examined the dog on the first examination, although the dog attempted to bite and play with the lead he was more responsive to commands, so nothing troubling in the dog's behaviour in terms of any aggression? A. No, there was no aggression towards me.***

As Ms Kenny (for the police) accepted at the appeal hearing "there is no expert report submitted on behalf the police that counters Mr Barnett's conclusions". As the Court recorded (Judgment paragraph [7]), it was accepted that Lightning:

> ***has not shown any aggression towards any examiner or indeed anyone else save for the behaviour of 7 February 2020.***

R v Singh

17. A final key reference point is the decision of the Court of Appeal Criminal Division in R v Singh [2013] EWCA Crim 2416. Mr Singh had been convicted after a crown court trial of the aggravated offence of being the owner of the dog which caused injury whilst dangerously out of control in a public place, contrary to section 3(1)(a) of the 1991 Act. He was sentenced to a community sentence. That conviction, and that community sentence, were not being challenged on the appeal. The circumstances were these. Mr Singh had chained his dog "Ace" – a German Shepherd – in an enclosed garden area at a Sikh centre where Mr Singh was regularly volunteering (Singh §§2-3). One evening Ace ran out of the garden area and attacked a 12 year old boy. As the Court of Appeal explained (§§4-7):

> ***Inderjit Gill, who was 12 years old, … and his father were walking past the garden area on their way out into the car park when Ace ran out of the garden area and attacked Inderjit, knocking him to the ground and biting him on the arm, back and leg. Mr Gill tried to chase the dog away and the appellant and two other men also intervened. Ace was brought under control and returned to his kennel. Inderjit was taken to hospital where he underwent surgery to a deep penetrating wound on his left thigh. Eight stitches were inserted and he was kept in hospital overnight. He had bruising to his arm and ribs, together with scratches. Ace was taken into the care of the police, who have housed him in privately run boarding kennels ever since the incident. When interviewed by the police, the appellant said that, before the incident, Ace had been chained up in his kennel as usual. He claimed that***

> ***Inderjit must have entered the garden area where the dog was and untied him. It is plain from their verdict that the jury rejected that explanation and must have concluded that the appellant had let Ace run free in the garden area with the gate open. There was a victim impact statement dating from seven weeks after the incident in which Inderjit described still suffering pain and difficulty in walking. He had not been able to return to playing sports and tired easily. He had an obvious scar on his leg. He was still suffering from recurrent nightmares and was not sleeping well. He had developed a fear of dogs and tried to avoid being near them (including his family's dog) as far as possible. This was plainly a very frightening incident for him and for his father who witnessed it.***

At the sentencing stage in the crown court, a defence expert who had examined Ace said Ace coped well with being handled by a stranger, could not be incited or directed to attack another person, accepted wearing a muzzle and showed no aggression towards another dog (Singh §10) and had expressed the opinion that Ace could safely be returned to Mr Singh's care subject to conditions of being on a lead and muzzled in public places (§11).

18. Two issues were raised before the Court of Appeal. The first was an appeal against the crown court order that Mr Singh be disqualified from owning a dog for four years. The relevant question, on that aspect of the case, was whether Mr Singh was "a fit and proper person to have custody of a dog" (Singh §15). On this issue, the Court of Appeal concluded that the disqualification order was "wrong in principle" (§23). The sentencing judge had not given reasons for finding Mr Singh not to be a fit and proper person (§21). He had not "weighed" all of the relevant matters in the "balance" (§22). Relevant features included these: that the incident was likely to have been "an act of momentary carelessness" involving Mr Singh having let the dog off the lead in the enclosed area and having left the gate open "accidentally" (§21); that there was no evidence that "such an incident" had occurred previously; that it was clear that Mr Singh had "taken proper steps to provide suitable facilities" for Ace "so as to prevent him in general from coming into contact with members of the public"; and that Mr Singh was "a caring and responsible dog owner… of otherwise exemplary character", with appropriate "facilities" for Ace at his home (§22).

19. The second issue was an appeal against the immediate DO made by the sentencing judge in the crown court, rather than the making of a CDO. As in the present case, pursuant to section 4(1A) the statutory question had been whether the crown court was "satisfied that the dog would not constitute a danger to public safety" (Singh §16). The legally correct approach was to "consider all the relevant circumstances which include the dog's history of aggressive behaviour and the owner's history of controlling the dog" and whether the owner was "a fit and proper person to own the dog in question" (§17). The crown court judge had ordered immediate destruction "having taken all the circumstances into account" not being "satisfied that Ace would not constitute a danger to the public" (§14). But the Court of Appeal overturned the DO as being "manifestly excessive", substituting a CDO pursuant to section 4A(4) (§26). As it explained (§25), the crown court judge had not given reasons for his decision that he was not satisfied that Ace would not constitute a danger to the public, or for his rejection of the views expressed clearly by the expert; he had not explained why he did not consider that the suggested conditions would successfully operate to prevent Ace from presenting a danger to the public in the future; and the judge had made the adverse finding that Mr Singh was not a fit and proper person which the Court of Appeal had already overturned. The Court of Appeal said that it did not minimise the seriousness of the incident, that it recognised it was "not possible to be

absolutely confident that no risk of recurrence exists", but that given the lack of any previous incidents, given Mr Singh's character, given Ace's temperament as observed by the expert, and given the nature of the conditions, it considered that the conditions of a CDO would mitigate such a risk" (§25).

Standard of Scrutiny

20. Ms McGahey KC accepts that the legally correct approach of this Court, in considering whether there is a public law error, is the conventional public law approach. Appeal or review for error of "law" involves no 'substitutionary' jurisdiction based on a 'merits disagreement' with the Crown Court's evaluative judgment applying the statutory test (whether it was satisfied that Lightning would not constitute a danger to public safety). There must be an unlawfulness, unfairness or unreasonableness. I raised with Ms McGahey KC the question of a modified standard of scrutiny. I had in mind what the Crown Court said in the Judgment at paragraph [11] (§7 above):

> ***We have considered the evidence in this case carefully and have taken particular care in remembering that this is an unusual case for these courts involving as it does the potential destruction of a living being as well as the consequences for those who consider dogs very much part of the family.***

Ms McGahey KC accepted that she was not able to advance any argument for a heightened or closer scrutiny, observing that such a development could arise in the law, in the context of animal rights, in the future. Time will tell. I am exercising a conventional standard of public law adjudication.

Encapsulation

21. I have identified key reference points for Ms McGahey KC's arguments, to which I will turn. There is no substitute for reading the Judgment, which is why I have set it out in full. But I think it is a healthy discipline to seek fairly to encapsulate what the Crown Court decided, reading the Judgment fairly and as a whole. Here is how I would encapsulate it (using paragraph numbers from the Judgment):

> ***There was a single relevant issue [11], to be addressed taking account [5] of Lightning's temperament and his past behaviour and whether the Claimant was a fit and proper person to be in charge of him, and carefully considering all the evidence [11]. The Court recognised PC Carruthers assessment [6] and that Lightning had shown no aggression to PC Carruthers or the expert Mr Barnett or any examiner or anyone else except for the Incident [7]; that the Claimant is a fit and proper person [20]; and that there had not been another incident, before or since, of Lightning being out unmuzzled or not on a lead [14]. Mr Barnett's expert assessment was that Lightning "was no danger" [12]. Mr Barnett's expert evidence about potential causes of the Incident [12] was particularly borne in mind [16] but did not provide the Court with comfort concerning future behaviour [12]. Mr Barnett was rather too keen to excuse what happened in the Incident and point to evidence of others including positive things said by PC Carruthers about Lightning [12]. Rigorous compliance with CDO conditions would significantly mitigate the dangers [13]. Although the Further 'Breaches' were technical and minor [9]-[10], there had plainly been some slippage in compliance [13]. The Incident was not the Claimant's fault [9] – not directly her fault [8] [13] – but it could not be ignored that circumstances had existed which allowed Lightning to escape and the events to happen [13]. The Incident was beyond the Claimant's control [14], but that was really the worry [14]. It could never be said in relation to any dog that they would not attack another dog, but Lightning is a banned dog who had attacked and hurt a dog and its handler [15]. Having particularly in mind Lightning's past***

behaviour and what the Court found to be Lightning's temperament, namely his serious and continued aggression towards another dog as an immediate response to being set free [16] [2], the Court could not conclude to the civil standard that he would not constitute a danger to public safety [16].

Relevant Considerations

22. I turn to the grounds and arguments advanced in this Court. I will start with this line of argument: that the Crown Court failed to take account of "relevant considerations", or alternatively unreasonably attributed to them no or insufficient weight. Ms McGahey KC identified, for my assistance, the following as key "relevant considerations" to which these arguments applied. (1) The Police evidence of PC Carruthers with his observations as to Lightning's temperament (§16 above) and the absence of any positive assertion by the Police that Lightning would constitute a danger to public safety. (2) The fact that the Incident was a one-off incident for which the Claimant had no blame or fault. That includes no "indirect" blame or fault. The word "direct" was introduced without justification (Judgment paragraphs [8] and [13]). (3) The fact that the Incident was a 'dog on dog' incident, with no evidence adduced as to any injury to the other dog and with non-serious injuries to its owner, arising incidentally from his intervention. (4) The fact of no other incidents, before or after. (5) The fact of the security arrangements at the Claimant's new property.

23. I cannot accept this line of argument. In my judgment, it is clear that the Crown Court did take into account all of these considerations and I can find no trace of unreasonableness in the evaluative attribution of weight.

    i) There was express reference to PC Carruthers having conducted an assessment of Lightning (Judgment paragraph [6]). There was express reference to the fact that Lightning had not shown any aggression towards any examiner which included PC Carruthers (Judgment paragraph [7]). There was also express reference to the fact that PC Carruthers had said positive things about Lightning (Judgment paragraph [12]). The Crown Court was well aware that the Police were not themselves putting forward a positive assertion that Lightning would constitute a danger to public safety but were raising that question with the Crown Court for the Court to decide one way or the other.

    ii) There was clear recognition that it was not the Claimant's fault that Lightning was released when the Incident took place (Judgment paragraph [9]) which was expressly accepted (Judgment paragraph [10]) and that the incident concerned events which were beyond (out of) the Claimant's control (Judgment paragraph [14]). That feature was not ignored. Whether the phrase "that is really the worry" evidences an error of approach is a distinct point to which I will return (§§32-34 below).

    iii) Ms McGahey KC is right that the Crown Court introduced the word "direct" in the phrase "no direct blame" (Judgment paragraph [8]) and the word "directly" in the phrase "was not directly at fault" (Judgment paragraph [13]). But in my judgment, read fairly and as a whole, what the Court was doing was recognising that when circumstances existed which allowed the dogs to escape so that the events did happen (Judgment paragraph [13]) that did engage the responsibility of the Claimant. That is because the relevant condition (Article 10(1)(d): §9 above) is the responsibility of the owner as a matter of strict

liability. So, it was the Claimant's strict liability. It may have been better and clearer to have said that the Incident involved "no blame" and "no fault" on the part of the Claimant but did nevertheless engage her responsibility and her strict liability. In my judgment, that was what the Court meant. And beyond doubt, the Court was very well aware that that was the position.

iv) Next, the Court was also well aware that this was a 'dog on dog' incident. It was aware of the nature of the evidenced injuries. In its ultimate conclusion it referred, in the context of behaviour and temperament, to Lightning's "serious and continued aggression towards another dog" (Judgment paragraph [16]). The Court had earlier described the Incident as one in which Lightning had bit the owner of the other dog while "going for the dog" (Judgment paragraph [2]).

v) The Crown Court also plainly took into account the fact of no other incident, before or since, a point which had strongly been emphasised. It recorded this in points made on behalf of the Claimant (Judgment paragraph [9]) which it accepted (Judgment paragraph [10]) and later repeated that "there has been no incident since" (Judgment paragraph [14]). Finally, the Court expressly recorded that the Claimant had put safety measures in place at her home address (Judgment paragraph [7]).

All of these considerations were taken into account, explicitly. And I can find no unreasonableness in the attribution of weight.

Expert View

24. A further line of argument was Ms McGahey KC's contention that the Crown Court was "wrong" to reject the assessment of the defence expert Mr Barnett who had expressed the opinion of Lightning that: "I don't believe he's a danger to public safety"; and "I do not believe, even taking into account [the Incident]… that he constitutes a danger to public safety". I cannot accept this submission. This was the statutory question which the Crown Court had to answer. The Court had to arrive at its own evaluation. The Court was able to assess and weigh that evidence. It did not accept this expert view and made that clear (Judgment paragraph [12]). It gave clear and cogent reasons why it did not agree. Part of the evidence had been the expert's explanation of what could have been the causes that led Lightning to act in that way during the Incident, a point which it emphasised (Judgment paragraph [16]). The Court listed those causes (Judgment §12: §7 above): there could have been some past event; Lightning could have been scared of seeing other dogs; he could have been socially incompetent or frustrated; or there could have been inter-male competition. Entirely understandably, the Crown Court concluded that none of those suggested sources of the behaviour provided it with any sort of comfort so far as future behaviour was concerned (Judgment paragraph [12]). I would find it impossible – even on a correctness standard of review – to disagree with that observation about that evidence. The Judgment also explained that the Crown Court found Mr Barnett rather too keen to excuse what had happened in the incident and to remind the court of the evidence of others particularly PC Carruthers when he said something positive about Lightning. In my judgment, it was plainly open to the Crown Court to reject Mr Barnett's opinion as to whether Lightning would constitute a danger to public safety, and to do so for the reasons that it gave.

Further 'Breaches'

25. Another line of argument was this. Ms McGahey KC submitted that the Crown Court's reliance on the Further 'Breaches' involved a misdirection in law, or alternatively the taking into account of a legal irrelevancy. Those alternative legal consequences were fruits from the same branch. The argument runs as follows.

   i) As everybody on the appeal rightly recognised, the correct position in law is that any "breach" of a requirement prescribed as attaching to a certificate of exemption will automatically, and by operation of law, 'void the exemption'. The consequence is that the section 1(3) prohibition applies at all stages thereafter, unless and until a further application pursuant to section 4B of the 1991 Act is made and considered and a further CDO made. This legal consequence can be seen at Article 5(b) of the 2015 Order. That point was recognised by everybody in the context of two aspects of the chronology in the present case. First it was a point which was being made about the legal consequence of the 6 days failure to ensure third party insurance and the failure to notify DEFRA of the July 2020 move of house (Judgment paragraph [4]: §4 above), the so-called Further 'Breaches'. But secondly it was also a point being made in the context of the Incident, the erroneous act of Return (May 2020) and the justification of the Reseizure (December 2020). This gave rise to the "flawed legal grounds" (Judgment paragraph [4]: §4 above), because the Incident was a first breach which had 'voided the exemption'. The exchanges with the Judge in the transcript at the appeal hearing make this clear.

   ii) Unfortunately, what everybody in the case missed was this. Because the Incident 'voided the exemption', the Further 'Breaches' could not in law be "breaches" at all. The Incident meant that Lightning was no longer exempt; there was no exemption which could be the subject of an extant certificate; there could be no applicable conditions or requirements. It is only the first breach which will in law constitute a "breach" of a "requirement" of a "certificate" of "exemption". Once there is a first breach, the prohibition in section 1(3) of the 1991 Act applies – at every moment after the first breach – until there is a further CDO. That means the section 1(3) prohibition applied every day after the Incident. But the Conditions did not. So they could not be "breached".

   iii) In any event, even if they could be "breaches", these Further 'Breaches' could – as a matter of law – go no further than informing the question of whether the Claimant is a "fit and proper person" (section 4B(2A)(a)(ii)). That point was decided favourably (Judgment paragraph [10]: §6 above). They could not constitute an "other relevant circumstance" for the purposes of section 4B(2A)(b)).

   iv) Furthermore, even if that were wrong, these Further 'Breaches' were themselves blameless, on the evidence. The Claimant had not appreciated that she needed to notify DEFRA of the change of address (Article 10(1)(b)) and had notified the Dogs Trust (the Article 8 insurer) and the Police who inspected the new property. As to the third party insurance (Article 8), this lapse was a six-day period, arising from a failed direct debit.

v) For any or all of these reasons, the Further 'Breaches' could not – as a matter of law – be relied on or taken into account. The Judgment did rely on the Further 'Breaches' (Judgment paragraph [4]: §4 above), in relation to both notification of change of address and temporary lapse in insurance cover (Judgment paragraphs [8] and [9]: §6 above), describing these as "slippages in compliance" (Judgment paragraphs [10] and [13]: §§6-7 above). That was a legal error whether viewed as an error of law or the taking into account of a legally irrelevant consideration or an unreasonableness in the attribution of weight.

26. I must start with the premise for this line of legal analysis, namely that any breach 'voids the exemption' so that the dog ceases to be an exempted dog. Ms McGahey KC identified that premise as being a point decided by the Divisional Court in Webb v Chief Constable of Avon and Somerset Constabulary [2017] EWHC 3311 (Admin) [2018] 1 WLR 5001. She took me to a passage at Webb §§61-71 where the Divisional Court was considering the applicability of the mechanism in Article 12 of the 2015 Order for transfer of keepership of a dog. The arguments were about whether it was sufficient, for Article 12 to apply, that there had been 'at some prior stage' an exemption or whether Article 12 required an 'ongoing and extent' exemption. On investigation, it was common ground in Webb (see Webb at §26a) that the dog had ceased through breach to be an exempted dog. As to breach, the Divisional Court described as material facts that the keeper of the dog had gone to Australia permanently in 2015 (§24(4)), which would breach the requirements imposed by Article 10(1)(a) (§9 above); and that in March 2016 the insurance had lapsed (§24(5)), which would breach the requirement in Article 8 and make it impossible to comply with the requirements in Article 10(1)(d) and (h). These were described as "breaches" in the plural (§24(5)) and it was said by the Court that "requirements" in the plural had been breached (§26a). As Ms McGahey KC accepted, that language by the Divisional Court would itself have been inaccurate on her premise since – strictly speaking – on the 31st day after going to Australia in 2015 the dog had ceased to be an exempted dog. Leaving that use of language to one side, I accept that the 'voiding the certificate' point was a core feature of the analysis in Webb. But in fact the Divisional Court recorded that the agreed position was one arising from Article 5 of the 2015 Order (§26a). And that is indeed, as it seems to me, its true origin. Article 5(b) provides:

> ***The dog is not exempt under this Part from the prohibition in section 1(3) of the [1991] Act… (b) if the requirements attached to the certificate of exemption in accordance with Article 10 are not complied with at any time after the certificate is issued.***

27. But where can this lead? If the 'exemption is voided' by any first "breach", that means that the legal position is that the statutory prohibition in section 1(3) of the 1991 Act, on having possession of a dog to which section 1 applies, is an applicable prohibition which bites at every moment after that first breach. This has criminal and penal consequences (see s.1(7)). It means – absent a conviction – that there would need to be a fresh application pursuant to section 4B and that the dog would be destroyed unless the court is satisfied on such an application that the tests for a further CDO are met. That, of course, is what happened in this case following the Reseizure in December 2020. In other words the position is far more serious than any question of simply having to adhere to conditions and requirements. The question is this: can

the keeper of the dog invoke that position of greater seriousness to make it legally irrelevant to ask questions about further 'breaches' of conditions and requirements?

28. I cannot accept that it becomes an "error of law" or "legally irrelevant" for a Court to consider the conformity or otherwise by the owner or keeper of the dog, with conditions and requirements known and understood to be essential preconditions for the dog owner to have the dog in their possession. The logic would be alarming. Suppose it transpires that, unknown to anyone, the third party insurance had blamelessly lapsed for a day. Now suppose there was – on later dates – a series of very serious incidents of non-conformity with known and essential requirements and conditions in the exemption certificate. In such a situation, the owner would be able to point to the fortuitous circumstance of a first and blameless lapse of third party insurance, as the only legally relevant "breach", with all later acts of serious non-conformity of conduct as being "legally irrelevant". The logic is even more alarming. Suppose this. The owner of the dog discovers the blameless lapse of insurance. They conclude that, because the exemption is now voided, they are absolved from any relevant legal responsibility so far as other conditions are concerned, because there can be no "breach". So there is no call for conformity. In my judgment, the answer – in principle – must be that it is open to a Court to treat as relevant, indeed highly relevant, the entirety of the picture and the entirety of the sequence of events, while the owner had the dog in their possession, and to be able to assess events and conduct against the substantive content of the conditions and requirements which had served as essential preconditions to the dog being in the owner's possession. None of that, in my judgment, is incompatible with the legal analysis that treats a first breach as triggering the 'voiding' of the certificate of exemption and the immediate and ongoing applicability of the section 1(3) prohibition.

29. Nor can I accept that the answer is that such evidence, relating to the sequence of non-conformity with conditions and requirements which had been imposed in a certificate of exemption, is of legal relevance only to the question of whether the owner is a "fit and proper person". Undoubtedly, such evidence and such a sequence will be likely to have a high degree of relevance to that question. But there is no basis, in my judgment, for classifying those matters as "legally irrelevant" when addressing the key statutory question of danger to public safety. That is especially so, given the latitude afforded by Parliament to the relevant court to have regard to other matters considered relevant (section 4B(2A)(b)) and the reasonableness standard governing evaluative assessments of relevance where there is such a latitude. Significantly, it is common ground in the present case – and always has been – that the breach constituted by the Incident, being a breach of a prescribed requirement, was highly relevant to the statutory question of whether Lightning would constitute a danger to public safety. It has never been said that the Incident was a "breach" relevant only to the question of fit and proper person. Had the insurance 'breach' been the first breach, the Incident would – again – have been relevant in principle to answering the statutory question whether Lightning would constitute a danger to public safety. It would be artificial to confine to the fit and proper person test a sequence of acts constituting non-conformity with the minimum standards imposed through a certificate. It should be borne in mind that the fit and proper person test is an important on/off switch, which is either satisfied or not satisfied. Conformity of conduct with minimum standards can properly inform the question of whether the dog constitutes a danger to public safety, independently of informing the assessment of whether the owner is a fit

and proper person. Especially given that non-conformity is, as Ms McGahey KC accepts it, a matter of strict liability.

30. In my judgment, there was no material error of law by the Court in regard to the question of Further 'Breaches'. The analysis that these were not "breaches" at all – not raised before the Crown Court but raised on this appeal – could not, in my judgment, have given the Claimant any assistance on the appeal to the Crown Court in the present case. At minimum, the Crown Court would, in my judgment, have been obliged to consider the question of whether there had or had not been 'conformity' with those Conditions which were understood to be in place and which had served as mandatory minimum conditions for the Claimant having Lightning in her possession. I cannot see how the Crown Court could, or would, have done other than consider that question of conformity and any consequences flowing from any non-conformity. I reach those conclusions with complete confidence, applying the inevitability standard of materiality at common law. The phrase "slippage in compliance" would have retained its equivalent relevance had it been described as a "slippage in conformity" with the perceived and understood minimum conditions.

31. I cannot accept that it was unreasonable to have regard to, and place some reliance on, these further 'breaches' and this "slippage". Conditions are – as Ms McGahey KC accepts – designed to operate as 'strict liability'. Two incidents of non-conformity had been identified. In my judgment, the Crown Court was reasonably entitled to rely on the fact that "there has plainly been some slippage in compliance by the [Claimant] over the course of the order" (Judgment paragraph [13]). The words "some slippage" were carefully chosen and apt. The Further 'Breaches' were described as "technical" and "minor" (Judgment paragraphs [9]-[10]). But the Crown Court found that, although the Claimant was a fit and proper person, and though the breaches were "minor", "the slippages in compliance may point to something of a sloppy attitude to compliance" (Judgment paragraph [10]). In the context of important conditions and requirements, and in the context where they are imposed as a matter of strict liability, the Crown Court was – in my judgment – plainly entitled to regard the circumstances as "slippage in compliance". Ms McGahey KC herself submits that this is a statutory scheme of such strictness that any first breach of whatever nature 'voids the exemption' and would require the matter to return to court with the dog being seized in the meantime. It would be very odd in the operation of such a scheme if the Court were not entitled to have regard to slippages in compliance. The Conditions are imposed protectively. The fact is that the Claimant was not aware that she needed to notify DEFRA of her change of address. That was even though this was an express condition. The problems with the direct debit meant that there was a short period where there was no third party insurance. But that was a default in conformity with a prescribed requirement understood to be applicable. And one can see why it matters by supposing some relevant event during a period where that expressly required protective element is not in place. All of this needed to be put alongside the other points that were being emphasised, including that there had been no other incidents during the return of Lightning (Judgment paragraph [14]). The point about "some slippage" was fair and justified. It was one factor, being considered alongside an observation that "rigorous" compliance with conditions could significantly mitigate dangers (Judgment paragraph [13]).

<u>Guarantee/Standard of Perfection</u>

32. The next line of argument was this. Ms McGahey KC argues that there was an error of law by the Crown Court in applying a standard of perfection – a no-risk "guarantee" – in relation to Lightning as a "banned" dog. She locates that legally erroneous approach in two places. The first is in the Judgment at paragraph [14] (§7 above) where the Court described the events of the Incident being beyond (out of) the Claimant's "control" as "really the worry". The second is the Judgment at paragraph [15] (§7 above) where the Court said: "Whilst of course one cannot ever say in relation to every dog that exists that they will not ever attack any other dogs, most dogs are not banned as being dogs bred specifically for fighting". Ms McGahey KC's argument runs as follows.

    i) The Crown Court emphasised that its "worry" was that an incident could occur even though the Claimant could not have controlled it; it emphasised that it was impossible to guarantee that there could be no further incident where Lightning is at large without being on a lead and with a muzzle. That was a statement of the obvious: there can never be a guarantee. In fact, that was the very point made by the Court of Appeal in the Singh case at §25 (§19 above) where the Court said: "it is not possible to be absolutely confident that no risk of recurrence exists".

    ii) Here, the Crown Court focused on this absence of a guarantee. It did so because Lightning was "a banned dog" rather than any dog, which was the point emphasised at the end of Judgment paragraph [15] (§7 above). What this comes to is that a dog which is "banned" for the purposes of section 1 of the 1991 Act is being required to meet a higher standard – a standard of perfection or a guarantee – than other dogs. That is an error of law. As has been seen in Singh itself (§19 above), where the dog Ace was a German Shepherd and not a "banned" species of dog, the relevant question in relation to ordering destruction is exactly the same statutory question: whether the dog would constitute a danger to public safety: see section 4(1A) of the 1991 Act. That symmetry, or equivalence, of legal test was misappreciated by the Crown Court.

    iii) The logic of applying this heightened standard of perfection or a guarantee – in answering the statutory question correctly identified elsewhere in the Judgment – is, moreover, this. It means no "banned" dog could ever meet the standard of showing that they would not constitute a danger to public safety (section 4B). Every "banned" dog would fail that standard. For there can never be a guarantee. Every dog, being a banned dog, would be destroyed. For all these reasons there is a material error of law in the Judgment, or alternatively a legal irrelevancy taken into account.

33. I cannot accept this line of argument. The starting point is that the Crown Court was very well aware of what the statutory test was. It identified the test (Judgment paragraph [5]) and described it as the single issue (Judgment paragraph [11]). It asked and answered that test (Judgment paragraph [16]). Next, the Court recognised the reality that there was no guarantee or perfection or the elimination of all risk, and it recognised explicitly that this was the case in relation to every dog (Judgment paragraph [15]). The Court did not proceed from the recognition of that reality to its conclusion in the application of the statutory test. If that had been the position the outcome would have been inevitable. The Crown Court's reasoning would have been

very different and much shorter. The Judgment emphasised that Lightning is a "banned dog". But this did not involve misappreciating or misapplying the statutory test, as I have explained. The Court's observation reflected the structure of the 1991 Act, and what has been called "the default assumption" in the case of "any pit bull" being "that it represents a danger to public safety and should accordingly be destroyed" (Golding at §32). Ms McGahey KC showed me the exchange earlier in the transcript where the Judge had referred to the legislation as if operating to require the destruction of a dog whenever risk could not be eliminated (with a guarantee), but when Counsel had gone on to make the point that there is no automatic conclusion that a dangerous fighting dog cannot meet the statutory test, the Judge had agreed. In the Judgment at paragraph [15] it was explained that Lightning was "banned under the legislation" and also that he had "attacked and hurt a dog and its handler". Nor did the Court stop at paragraph [15]. It went on in paragraph [16] to identify the key points that led to the way in which the statutory question was answered by the Court.

34. The Crown Court took into account the absence of any guarantee, and that risk could not be eliminated by the Claimant, which it then described as its "worry" (Judgment paragraphs [14] and [15]). But in my judgment there was nothing unlawful or unreasonable in having regard to that truth, viewed against the other features of the case. I asked Ms McGahey KC whether that truth – the absence of a guarantee – could ever be a relevant consideration. Her answer was that yes it could be relevant depending on the other evidence as to the dog's past behaviour and temperament. In my judgment, that answer was correct, as a matter of principle. To test the logic, suppose a case of extreme evidence as to past behaviour and temperament. The absence of a guarantee – for example, as to whether the dog might get away unmuzzled – would obviously be a highly significant feature. In the present case, Lightning's past behaviour and temperament – the two remaining statutorily-prescribed relevancies (section 4B(2A)(a)) – plainly troubled the Crown Court. The Judgment referred to serious and continued aggression towards another dog as an immediate response to being set free. It had described the circumstances in which, immediately having escaped the house, Lightning had made a sustained attack on a dog, which continued for several minutes and involved the owner being bitten and "only ended when the police intervened with a debilitating spray" (Judgment paragraph [2]). That was relevant behaviour of Lightning. It was relevant behaviour on the only occasion when Lightning had been at large and in public without a lead and unmuzzled. The Crown Court needed to put that alongside the other evidence in the case. That included the expert witness's assessment that Lightning was not a danger. But the Court gave cogent reasons why it could not accept this (§24 above). So, the Court was having regard to the fact that risk could not be eliminated, alongside other features. These included the fact that circumstances had arisen which had allowed Lightning to escape which was a fact that could not be ignored. It included the fact that there had been "some slippage in compliance".

Balancing

35. The next line of argument is Ms McGahey KC's submission that the Crown Court made an error of law in that it needed to consider all the features of the case, including all the positive matters, and then to have "weighed them in the balance" when answering the statutory question. She derived this from Singh at §22. In fact, that passage was dealing with the making of the disqualification order and the finding as

to whether Mr Singh was a fit and proper person (§18 above). In any event, this point is really a rerun of all the points about "relevant considerations" being taken into account and afforded legally inadequate weight. The Crown Court was statutorily obliged by section 4B(2A) to consider Lightning's temperament and past behaviour, together with whether the Claimant was a fit and proper person to be in charge of Lightning; and was statutorily empowered to consider any other relevant circumstances. The Judgment makes very clear that all the evidence in the case was carefully considered. All of the points identified by Ms McGahey KC can be found expressly referenced within the Judgment, as I have already explained. The Crown Court was plainly undertaking an evaluative judgment, recognising the factors which could cut one way or the other in assisting it on the question of whether Lightning would constitute a danger to public safety. It had to be satisfied that that was not the case. The Court gave clear reasons why, in its evaluative judgment, it was not satisfied. There was no error of approach, and no failure to weigh competing and cumulative points. Rather, there was an adverse evaluative outcome having done so.

Sufficiency of Evidence/Reasonableness

36. That leaves the final line of argument. Ms McGahey KC submits that there was no sufficient evidence in law to sustain the outcome: that the Crown Court could not conclude to the civil standard that Lightning would not constitute a danger to public safety (Judgment paragraph [16]). This is an argument based on the features of the case, individually and cumulatively. That includes all the key reference-points I identified. It includes: the observational evidence of temperament at the hands of PC Carruthers and Mr Barnett; the absence of any positive police case or evidence that Lightning would constitute a danger to public safety; the finding that the Claimant was a fit and proper person; the fact that this was a one-off blameless incident; the absence of any similar incident before or since; and all the other circumstances of the case. It comes to this: the evidence before the Court was a legally insufficient basis for the adverse conclusion at which the Crown Court arrived. Putting it another way the decision reached was not one reasonably open to the Court. This line of argument directly confronts – head on – the merits-assessment. It invokes a public law standard by which any substantive outcome can properly be impugned and scrutinised.

37. I asked Ms McGahey KC whether the Singh case stands as a relevant reference-point for a reasonableness review. The Court of Appeal Criminal Division in Singh was not exercising a substitutionary re-evaluation. It was asking whether the crown court's evaluative conclusion, ordering the immediate destruction of Ace the German Shepherd, was "manifestly excessive" as a response. That approach is not a public law reasonableness test. But it is a test which itself affords a principled degree of latitude. The judgment in Singh provides powerful reasons for reflection. I set out earlier (§§17-19 above) the particular features in circumstances of the Singh case. The statutory test was the same. There was a serious incident. Unlike the present case, it was evaluated as involving an act of carelessness of which the owner was directly responsible. The owner was a fit and proper person. There could be no guarantee eliminating all risk for the future, but the conditions would significantly mitigate the risk. If that destruction order was "manifestly excessive" in the assessment of the Court of Appeal, how can the destruction order in the present case be "reasonable", where there was a single incident in which the owner – a fit and proper person – was blameless, where the statutory question is the same, and where the conditions, without

eliminating all risk can effectively mitigate it (Judgment paragraph [13])? This is a searching question. But, in my judgment, there is a clear answer. Singh was a case on its own facts and evidence. The crown court sentencing judge had made an immediate DO without giving any reasons. The DO was linked to an adverse finding on fitness and propriety, which was itself overturned. Clear and positive reasons had been expressed by an expert, but no reasons had been given by the court for rejecting those views, and none was identified in the Court of Appeal. In the present case, the Judgment is a carefully and fully reasoned evaluative assessment. It comprehensively and expressly references each relevant feature of the evidence in the case. It acknowledges all of the positive points. It gives cogent reasons for not accepting expert evidence, and for the answer to the statutory question arrived at.

38. In my judgment, the outcome was one for which there was a sufficiency of evidence, and one within the bounds of reasonableness. There was no error of public law.

Conclusion

39. The Claimant's challenge must therefore fail. I record that I associate myself with the end-note at Judgment paragraph [17] (§8 above), but I know this will be no comfort to the Claimant, who could not have done more in her fight to save Lightning from the DO made by the Magistrates, then the Crown Court, now upheld by me. Having circulated this judgment as a confidential draft, I am in a position to deal with any consequential matter. None has been raised (including as to the topic I raised at §12 above) and I dismiss the claim with no order as to costs.