Neutral Citation Number: [2025] UKUT 262 (AAC)
Case No. UA-2024-000980-CIC

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

R (on the application of the CRIMINAL INJURIES COMPENSATION AUTHORITY)

Applicant

-and-

FIRST-TIER TRIBUNAL (SOCIAL ENTITLEMENT CHAMBER)

Respondent

-and-

GE

Interested Party

Before: Upper Tribunal Judge Wright

Hearing date: **28 April 2025**

Representation:
Appellant: Louis Browne KC and David Illingworth of counsel, instructed by CICA
Respondent: George Molyneaux of counsel, instructed by the Free Representation Unit

On appeal from:
Tribunal: First-tier Tribunal (Social Entitlement Chamber)
Tribunal Case No: 1698-1445-9671-4403
Decision date: 4 March 2024 (written reasons 13 June 2024)

SUMMARY OF DECISION

This decision is about the basis on which the person who has been attacked by a dog may (or may not) qualify for an award under the Criminal Injuries Compensation Scheme 2012.

To be eligible for an award under the 2012 Scheme the person has to have sustained "a criminal injury which is directly attributable to their being a direct victim of a crime of violence". A "crime of violence" is defined (for the first time) in the 2012 Scheme as being a crime which involves, inter alia, a physical attack or any other attack or

omission of a violent nature which causes physical injury to a person. However, such an act or omission will not amount to a crime of violence unless it is done either intentionally or recklessly. But even if the dog attack does qualify on this basis as a crime of violence, it will not be considered to have been a crime of violence under the 2012 Scheme if the injury resulted from an animal attack, unless the animal was used with intent to cause injury to a person.

This decision decides, first, that the FTT erred in law in deciding that a crime under section 3(1) of the Dangerous Dogs Act 1991 could constitute a crime of violence under the 2012 Scheme. This is because section 3(1) of the Dangerous Dogs Act 1991 has created an offence of strict liability and as such does not involve any act (or omission) done either intentionally or recklessly. Secondly, even if the relevant crime could have been one committed under section 47 of the Offences Against the Person Act 1861 (which the FTT did not address), the FTT further erred in law in failing to provide an adequate explanation on the evidence as to why the dog had been used with intent to cause injury to a person.

KEYWORD NAME (Keyword Number) 70 (Criminal injuries compensation); 70.3 (other)

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judges follow.

DECISION

I grant the application for judicial review of the decision of the Social Entitlement Chamber of the First-tier Tribunal of 4 March 2024 under the tribunal case reference 1698-1445-9671-4403.

The Upper Tribunal's order is:

(i) to QUASH the decision of the First-tier Tribunal (Social Entitlement Chamber) (Criminal Injuries Compensation) of 25 July 2017; and

(ii) to REMIT the appeal to be redecided afresh by an entirely freshly constituted First-tier Tribunal (Social Entitlement Chamber) (Criminal Injuries Compensation), at an oral hearing and in accordance with the law as set out below.

REASONS FOR DECISION

Introduction

1. This judicial review is about the Criminal Injuries Compensation Scheme 2012 ("the 2012 Scheme") and, in particular, the provisions in the 2012 Scheme dealing with animal attacks. More particularly, it is about whether the First-tier Tribunal ("the FTT") correctly concluded on 4 March 2024 that the interested party in these

proceedings (who was the person who made the claim for criminal injuries compensation) had been the victim of a crime of violence under the 2012 Scheme when she had been attacked and injured by a large Alsatian dog.

2. Under paragraph 4 of the 2102 Scheme a person may be eligible for an award under the Scheme "*if they sustain a criminal injury which is directly attributable to their being a direct victim of a crime of violence committed in a relevant place*". Paragraph 4 then sets out that *"[t]he meaning of "crime of violence" is explained in Annex B*".

3. Paragraph 1 of Annex B to the 2012 Scheme states that where a claims officer is satisfied that a crime has been committed, "*it is still necessary for that crime to constitute a crime in accordance with this Annex*". Paragraph 2 of Annex B to the 2012 Scheme provides that:

> "2.(1)……a "crime of violence" is a crime which involves:
> (a) a physical attack;
> (b) any other act or omission of a violent nature which causes physical injury to a person;
> (c) a threat against a person, causing fear of immediate violence in circumstances which would cause a person of reasonable firmness to be put in such fear;
> (d) a sexual assault to which a person did not in fact consent; or (e) arson or fire-raising.
> (2) An act or omission under sub-paragraph (1) will not constitute a crime of violence unless it is done either intentionally or recklessly."

4. However, paragraph 4(1) in Annex B to the 2012 Scheme then provides as follows.

> "4. (1) A crime of violence will not be considered to have been committed for the purposes of this Scheme if, in particular, an injury:
> (a) resulted from suicide or attempted suicide, unless the suicidal person acted with intent to cause injury to another person;
> (b) resulted from the use of a vehicle, unless the vehicle was used with intent to cause injury to a person;
> (c) resulted from an animal attack, unless the animal was used with intent to cause injury to a person;
> (d) was sustained in the usual course of sporting or other activity to which a person consented by taking part in the activity; or
> (e) was sustained in utero as a result of harmful substances willingly ingested by the mother during pregnancy, with intent to cause, or being reckless as to, injury to the foetus."

5. I will return to these provisions later. However, I do not think it was disputed before me that, as Upper Tribunal Judge Wikeley indicated in paragraphs [30-[35] of his decision in *R (NJ) v First-tier Tribunal and Criminal Injuries Compensation Authority* (CIC) [2015] UKUT 196 (AAC); [2015 AACR] 42, paragraph 4(1)(c) in Annex B to the 2012 Scheme represents an avowed tightening up of entitlement under the 2012 Scheme and, compared to earlier iterations of the Criminal

Injuries Compensation Scheme, in respect of those people who have been the victims of attacks by animals and dogs in particular.

6. Following on from this last point, I should emphasise that this is the first decision, as far as I am aware, made by the Upper Tribunal concerning the 2012 Scheme and animal (particularly dog) attacks. Not only has the 2012 Scheme on its face restricted eligibility for those who are injured in dog attacks, it has also (and for the first time) sought to define what is meant by "a crime of violence". As will be seen, defining what is meant by "crime of violence" has a consequence in terms of whether liability under section 3(1) of the Dangerous Dogs Act 1991 can constitute a crime of violence under the 2012 Scheme. Given all of this, earlier decisions about what was meant by a crime of violence, and in respect of dogs attacks, under earlier versions of the Criminal Injures Compensation Scheme may no longer be relevant.

Relevant factual background

7. I can take the key facts from the FTT's reasons for its decision.

8. The owner of a take-away shop in Stoke-on-Trent kept a large and powerful adult male Alsatian dog at the rear of the premises. The index incident took place on 20 December 2022 on a remote cycle path near Colclough Lane in Stoke, where the interested party was walking with her husband. The Alsatian was with a dog walker. The dog walker held the unmuzzled dog's long lead, which was at least 8 to 10 feet long, and stood facing away from the interested party and her husband, but between them and the dog, as they passed him on the path. The interested party therefore had to pass close to the dog walker, whereupon the dog lunged at her and bit her and wounded her left arm. The dog would not release its grip and the dog walker could not control it. The interested party pulled hard to release her left arm as a result of which she fell and suffered a broken right wrist.

The FTT's decision

9. The material parts of the FTT's reasons for its decision read as follows (the interested party is referred to as "the appellant", as she was the appellant before the FTT) and are worth setting out in full given CICA's criticisms of them:

> "**DECISION OF THE TRIBUNAL**
>
> 4. The unanimous DECISION of the tribunal was to allow the appeal under §4 of the Scheme and held:
>
> a. Both the dog owner and the dog walker were guilty of an offence on 20 December 2022 under section 3 Dangerous Dogs Act 1991 of having a dog which was dangerously out of control in a public place, namely a remote cycle path near Colclough Lane in Stoke on Trent when the dog lunged at the appellant and bit and wounded her left arm…; the dog would not release its grip on the appellant's left arm and the dog walker

could not control it; the appellant pulled hard to release her left arm whereupon she fell and suffered a broken right wrist. This is the "the index incident".

b. The offence was a crime of violence within the meaning of paragraph 4 of the Scheme and §4(1)(c) of Annex B thereto.

6. This was an appeal against CICA's Review decision of 24 July 2023 refusing the application under §4 of the Scheme and §4(1)(c) of Annex B thereof, on the ground that there is no police evidence that the dog was set upon the appellant.

7. The issues for the Tribunal to decide were whether a crime had been committed and, if so, whether it was a crime of violence within the meaning of the Scheme….

[*The FTT then set the relevant provision of the 2012 Scheme including paragraph 4 of the Scheme and paragraphs 1, 2 and 4 of Annex B to the Scheme*.]

Background facts

[*These include what I have already set out in paragraph seven above, but also the following:*]

11.On at least one previous occasion, several months before the index assault, i.e. in about September 2022, the dog had attacked and bitten a man in an unprovoked attack while he was held unmuzzled by the dog walker on a long retractable lead on the same path. A few days after the index assault the appellant showed this man the photograph [taken of the dog walker and the dog at the scene of the incident on 20 December 2020] whereupon he recognised both the dog walker and the dog as those involved in the previous attack on himself. He advised the appellant of the address of the Take-Away where the dog was kept.

12. The Tribunal was satisfied on the balance of probabilities and found as a fact that, following this previous dog attack, that the dog keeper knew of the propensity of the dog to attack people who came close to him on this walk…..

13. On the occasion of the index incident the dog walker held the unmuzzled dog's long lead, at least 8 to 10 feet long, and stood facing away from the appellant and her husband, but between them and the dog, as they passed him on the path. The appellant thus necessarily passed close to the dog walker, whereupon the dog lunged at her and bit her as described above. The dog walker's stance confirmed to the Tribunal that the dog walker was fully aware of the dog's propensity to attack passers by.

14. A few days after the index incident the appellant passed the information she had obtained from the man who had been attacked in September 2022 to the police. 2 police officers then attended the premises to interview the dog owner and the dog keeper. One of the police officers later confided in the appellant that she had been terrified of the dog on this visit. The dog had been locked in a conservatory and had been fiercely barking and banging at the glass panels to get at the officers while they questioned the dog owner and the dog keeper.

15. On that occasion, the dog owner denied all knowledge of the index incident and the dog walker indicated that he could speak no English. He managed however to communicate that he had not told the dog owner of the attack on the appellant. The dog owner confirmed the dog was kept in the yard at the rear of the premises as a guard dog and handed it over to the police to be destroyed.

16.The Tribunal was satisfied the dog was kept as a guard dog to protect the Take-Away, its owner and the staff employed in it, including the dog walker. The dog's behaviour trying to get at the police on the occasion of their visit spoke for itself of the dog's aggressive behaviour. The owner's behaviour in handing over the dog to be destroyed suggested to the Tribunal that the index incident was not the first occasion when the owner had been made aware of the dog's aggressive behaviour. The Tribunal was satisfied on the balance of probabilities that, despite his denial to the police, the dog owner knew the dog was powerful, fierce and aggressive with a propensity to attack persons approaching the premises or those working there, including the dog walker while being exercised on walks.

17.The Tribunal held, without hesitation, that the dog owner and the dog keeper were reckless whether or not the appellant would be injured by the dog.

18.But Ms Iqbal [for CICA] rightly submitted that the appellant had to show that the dog owner or the dog keeper intended the dog to harm the appellant in order to qualify for an award under the Scheme….

20. The Tribunal understood that §4 of Annex B to the Scheme imposes a rebuttable presumption that a crime of violence will not be considered to have been committed if an injury resulted from an animal attack. We considered that in order to rebut the presumption we needed to be satisfied that an assailant intended to hurt the Appellant.

21. We found this a borderline decision. Given the dog owner and the dog walker both knew of the dog's propensity for violence and intended that it should attack and hurt persons who either trespassed the premises or approached the persons it was trained to guard, including the dog walker on walks, we considered that if they had not so intended then they would have trained the dog not to attack passers-by, or muzzled it, or held it on a shorter lead, put a greater distance between the dog and passers-by, or otherwise have controlled it. We held in these circumstances there was sufficient evidence to satisfy us, on the balance of probabilities, that the dog owner and the dog walker intended harm to passers-by, including the appellant. The Tribunal recognized there is a thin line between actual intention and recklessness in this case, but we took the view the dog walker probably crossed it and actually intended harm.

22. Accordingly, the Tribunal held:

a. this was a large and fierce adult male Alsatian guard dog, which was used with intent to cause injury, within the meaning of paragraph 4(1)(c) of Annex B to the Scheme, to anyone trespassing the guarded premises or threatening the persons living or working there, or perceived by the dog as so doing;

b. the dog walker was such a person guarded by the dog;

> c. the dog's use with intent to injure anyone who appeared to threaten the dog walker endured during the walk along the cycle path;
> d. to the knowledge of the dog walker, the dog had a propensity to attack strangers approaching the dog walker having attacked a jogger on the same path a few months earlier;
> e. the dog was neither muzzled nor held on a short lead;
> f. in these circumstances, the offence was a crime of violence."

The grounds on which permission to seek a judicial review was granted

10. The Criminal Injuries Compensation Authority ("CICA") consider the FTT erred in law in coming to the above decision. It sought and was given permission to seek a judicial review of the FTT's decision on the following four grounds.

11. First, it is argued that the FTT erred in law in failing to identify an offence capable of constituting a crime of violence within the meaning of that term in the 2012 Scheme. CICA argue that the offence which the FTT identified as grounding a claim for compensation was the strict liability offence under section 3 of the Dangerous Dogs Act 1991 and that this discloses a clear error of law, as the offence cited does not have intent (or even recklessness) as its *mens rea*: per *R v Bezzina* [1994] 1 WLR 1057. As such, CICA argues, it does not fall within paragraph 2 of Annex B, which, per sub-paragraph (2), requires that a crime of violence must be done either intentionally or recklessly.

12. The second ground is that the FTT failed to have regard to a relevant consideration in that it failed to have regard to paragraph 2(1) of Annex B to the 2012 Scheme, which requires there to have been a physical attack, an act or omission of a *violent* nature, or an assault. The argument made by CICA here is that paragraph 2(1) of Annex B imposes the threshold requirement that a crime of violence must (insofar as relevant to this case) involve a physical attack, or an act or omission of a *violent* nature. It is said that the FTT did not engage with this requirement in its reasons, and did not explain how the inadequate supervision of a dog might constitute a violent omission. As a consequence, so CICA argue, the FTT failed to have regard to a relevant consideration, namely whether the offence in question fell within the definition of a crime of violence in paragraph 2(1), a requirement which needed to be satisfied before the question of intent even arose.

13. The third ground CICA have permission to argue is an argument that the FTT clearly misdirected itself in law as to the distinction between intent and recklessness. CICA contend that for a dog attack to fall within the 2012 Scheme, it must be a crime in which the *mens rea* is intent; recklessness is <u>not</u> sufficient. It is argued that this is clear from the wording of para 2(2) of Annex B to the Scheme, which refers to a crime of violence done recklessly or with intent, compared with paragraph 4 of Annex B, which refers to an animal used with intent and not recklessness. CICA further argue that the FTT's description of the distinction between intent and recklessness being "*a thin line*" discloses a clear error of law. CICA submit that there is a considerable gulf between intent and recklessness in this context, and the FTT erred in law by eliding the two concepts

on its way to making its decision. It is argued that direct intent (i.e., that it was the defendant's intent or purpose to bring about the injury (per *R v Mohan* [1976] QB 1) was and is not relevant on the facts of this case. Indirect intent, however, requires that it was a virtual certainty that an injury would occur as a result of the acts or omissions of the dog walker, and that they appreciated the same (per *R v Woollin* [1999] 1 AC 82). CICA argues that there was no evidence in this case to support a conclusion of indirect intent. Recklessness, by contrast, required the dog walker to have been aware of a risk that injury might occur as a result of their acts or omissions, and that in the circumstances known to them it was unreasonable to take that risk, but even if that were so, recklessness would not be sufficient for the reasons given under the first ground. It is said by CICA that by misdirecting itself as to the difference between intent and recklessness, the FTT set itself an impermissibly low bar for moving from one form of *mens rea* to the other.

14. CICA's final ground for judicial review is that in the light of the first three grounds and given the evidence before the FTT, the FTT's decision was irrational. CICA sets out paragraph 21 of the FTT's decision and proceeds from there as follows:

> "25. The FTT began with the dog owner and dog walker's state of knowledge. Both were held to have been aware of the risk that the dog might attack passers-by. The FTT identified a series of omissions, such as the failure to muzzle the dog, to hold it on a shorter lead and so on. The FTT then leapt from those omissions to a finding of intent to harm passers-by, without any further explanation. The FTT did not explain how the omissions identified amounted to foresight of a virtual certainty of passers-by coming to harm, as required by the law on intent.
>
> 26. Further, the introductory part of paragraph 21 is logically circular. It assumes (by the word 'given') that the dog walker and dog owner 'intended that [the dog] should attack' in certain circumstances. This presupposes intent in order to support a conclusion, later in the paragraph, that intent was present. The structure of the FTT's reasoning therefore begs the question.
>
> 27. For those reasons, the FTT's decision was *Wednesbury* unreasonable; it was one which no reasonable Tribunal, properly directing itself, could have reached. In the alternative, the FTT's decision was irrational in the sense set out in *R (Law Society) v Lord Chancellor* [2018] EWHC 2094 (Admin): it discloses a demonstrable flaw in the reasoning which led to the conclusion."

15. The remedy sought by CICA is an order quashing the FTT's decision and remitting the matter to a differently-constituted First-tier Tribunal for the interested party's appeal to be redecided entirely afresh.

16. It is perhaps worth stating here that I struggle to understand how the remedy of remission sought by CICA, for the appeal to be redecided entirely afresh, fits with its first argument under its fourth (and final) ground for judicial review. If the FTT's decision that the interested party had been the victim of a "crime of violence" under the 20121 Scheme was one that no reasonable FTT could have arrived at on the law and the evidence, it must follow (it seems to me) that the only

reasonable result the FTT could have arrived at was that the interested party had not been subject to a "crime of violence" for the purposes of the 2012 Scheme. However, if that is correct, and this is the only result that could and can obtain, then left without a proper understanding of what there would be to be redecided by the new FTT on remittal, save perhaps for it simply to dismiss the appeal. However, dismissal of the appeal by the FTT is not the remedy sought by CICA as it wishes the appeal to be redecided afresh.

The parties' skeleton arguments

CICA

17. Due to a mix-up, it was only at the outset of the hearing on 28 April 2025 that I was made aware that CICA had provided a skeleton argument. After a short delay, I was provided with a copy of the skeleton argument which CICA had filed with the UTAAC office. CICA's skeleton argument in essence repeated the grounds on which it had been given permission for this judicial review

Interested party

18. The interested party had the good fortune to be assisted by the Free Representation Unit, and through FRU by Mr George Molyneaux of counsel, in opposing the judicial review. Her arguments were as follows.

19. She argued that the CICA's judicial review turned, essentially, on grounds 3 and 4. That is: (i) whether the FTT misdirected itself as to the distinction between intent and recklessness (ground 3); and (ii) whether the FTT's conclusion that the dog was *"used with intent to cause injury"* was irrational (ground 4). The interested party argued that both grounds should be rejected. This was because, in summary:

    (i) in respect of ground 3, the FTT had clearly distinguished between intent and recklessness, and concluded that the dog walker *"actually intended harm"* to the interested party. Since the FTT had made that finding, it was unnecessary for it to consider the concept of 'indirect intent'; and

    (ii) under ground 4, it had been rationally open to the FTT to infer (and find as a fact) that the dog walker used the dog with intent to cause injury to passers-by, in circumstances where the dog had previously injured another passer-by, and the dog walker had not taken obvious steps to prevent it from doing so again.

20. As for CICA's ground 2 the interested party's argument was that the FTT had not failed to have regard to paragraph 2 of Annex B to the 2012 Scheme, as that paragraph 2 also provides that a *"crime of violence"* is a crime which involves *"a physical attack"*, and if there was no error in the FTT's finding that the dog which bit the interested party had been *"used with intent to cause injury"* to her, then the incident in which she was injured was plainly *"a physical attack"*.

21. The interested party's answer to CICA's ground 1 (that an offence under section 3 of the Dangerous Dogs Act 1991 cannot be a *"crime of violence"* since it is a crime of strict liability) was twofold. She argued firstly that paragraph 2 of Annex B to the 2012 Scheme requires only that an act or omission involved in the crime be intentional or reckless, it does not require that intention or recklessness is an ingredient of the offence itself. Secondly, and in the alternative, even if CICA was correct about paragraph 2 of Annex B, the facts found by the FTT – including that the dog was *"used with intent to cause injury"* – would amount to an offence under section 47 of the Offences Against the Person Act 1861 (i.e., an offence which has intention or recklessness as an element).

Relevant law

22. I have set out much of the relevant law already, but I set all of it out here for completeness.

23. Section 1 of the Criminal Injuries Compensation Act 1995 ("the Act") provides the foundation for what is now the 2012 Scheme. It provides insofar as is relevant, as follows:

> "**The Criminal Injuries Compensation Scheme.**
> 1:-(1) The Secretary of State shall make arrangements for the payment of compensation to, or in respect of, persons who have sustained one or more criminal injuries.
> (2) Any such arrangements shall include the making of a scheme providing, in particular, for—
> (a) the circumstances in which awards may be made; and
> (b) the categories of person to whom awards may be made.
> (3)The scheme shall be known as the Criminal Injuries Compensation Scheme."

24. The focus of the Act is therefore on criminal injuries, and by section 1(4) of the Act it is provided that "*criminal injury*" has "*such meaning as may be specified*".

25. That specification is provided, at least in part, in Annex A to the 2012 Scheme, which provides that *""criminal injury" means an injury which appears in Part A or B of the tariff in Annex E*". This therefore deals with the injuries which may count as a 'criminal injury' for the purposes of the 2012 Scheme.

26. However, eligibility under the Scheme also has to be established. The *vires* for this is provided for in section 1(2) of the Act, including "*the circumstances in which awards may be made*" and "*the categories of person to whom awards may be made*".

27. Paragraph 4 of the 2012 Scheme appears under the heading "*Eligibility: injuries for which an award may be made*", and provides:

> **"**4. A person may be eligible for an award under this Scheme if they sustain a criminal injury which is directly attributable to their being a direct victim of a crime of violence committed in a relevant place.

The meaning of "crime of violence" is explained in Annex B."

On the face of it, this appears to cover both a circumstance in which, and the category of person to whom, an award may be made.

28. What paragraph 4 make clear, and is not disputed, is that eligibility is dependent on the person sustaining a 'criminal injury' which is (directly) attributable to the person having been a (direct) victim of a 'crime of violence'. Moreover, what is meant by 'crime of violence' is set out in Annex B to the 2012 Scheme.

29. Given its central importance to the arguments on this judicial review, I set out Annex B to the 2012 Scheme in full.

> **"**1. This Annex applies in deciding whether a crime of violence has been committed for the purposes of this Scheme. Where a claims officer is satisfied that a crime has been committed it is still necessary for that crime to constitute a crime of violence in accordance with this Annex.
>
> 2. (1) Subject to paragraph 3, a "crime of violence" is a crime which involves:
> (a) a physical attack;
> (b) any other act or omission of a violent nature which causes physical injury to a person;
> (c) a threat against a person, causing fear of immediate violence in circumstances which would cause a person of reasonable firmness to be put in such fear;
> (d) a sexual assault to which a person did not in fact consent; or
> (e) arson or fire-raising.
> (2) An act or omission under sub-paragraph (1) will not constitute a crime of violence unless it is done either intentionally or recklessly.
>
> 3. In exceptional cases, an act may be treated as a crime of violence where the assailant:
> (a) is not capable of forming the necessary mental element due to insanity; or
> (b) is a child below the age of criminal responsibility who in fact understood the consequences of their actions.
>
> 4. (1) A crime of violence will not be considered to have been committed for the purposes of this Scheme if, in particular, an injury:
> (a) resulted from suicide or attempted suicide, unless the suicidal person acted with intent to cause injury to another person;
> (b) resulted from the use of a vehicle, unless the vehicle was used with intent to cause injury to a person;
> (c) resulted from an animal attack, unless the animal was used with intent to cause injury to a person;
> (d) was sustained in the usual course of sporting or other activity to which a person consented by taking part in the activity; or
> (e) was sustained in utero as a result of harmful substances willingly ingested by the mother during pregnancy, with intent to cause, or being reckless as to, injury to the foetus.

(2) In this paragraph, "vehicle" means any device which can be used to transport persons, animals or goods, whether by land, water or air."

Analysis and conclusion

30. I will take the judicial review grounds in the order in which CICA advanced them, for reasons which will become apparent. Before doing so, however, I make some general observations on the 2012 Scheme.

General observations

31. Given the terms of the 2012 Scheme set out above, the following are required for a person to be eligible for an award if the injury or injuries for which they are claiming was caused by (that is, "*resulted from*") an animal attack.

    (i) First, CICA (through its claims officer) or the FTT (on an appeal against CICA's review decision) must be satisfied that a crime has been committed: paragraph 1 of Annex B.

    (ii) Second, even if a crime has been committed, it is still necessary for that crime to be a "crime of violence" as that phrase is defined in (that is, in accordance with) Annex B.

    (iii) Third, subject to paragraph 3 of Annex B (which does not apply in this case), for the crime to be a "crime of violence" it must involve one of the acts (or omissions) identified in paragraph 2(1) of Annex B, and the act or omission must be done either intentionally or recklessly; and

    (iv) Fourth, even if the above three conditions are all met, no "crime of violence" will have been committed for the purposes of the 2012 Scheme if an injury resulted from an animal attack. The sole exception to this rule of exclusion in respect of animal attacks is if the animal was used <u>with intent to cause injury to a person</u>. The dog owner or dog walker acting recklessly or negligently in terms of their care or control of the dog will not be sufficient. This last point perhaps encapsulates clearly the tightening up of the eligibility rules in respect of animal attacks in the 2012 Scheme, as was commented upon in *NJ*. It is noteworthy that in *NJ* the dog owner being reckless in his conduct may have been sufficient to show that a crime of violence had been committed under the Criminal Injuries Scheme 2008: see *NJ* at paragraph [25].

32. It would seem clear[1], therefore, that even if a crime has been committed and that crime meets the definition of a "crime of violence" in paragraphs 1-3 of Annex B in the 2012 Scheme, and even if that 'crime of violence' directly caused the person a "criminal injury" as defined in the 2012 Scheme, that crime of violence

[1] Setting to one side subtleties which may have been intended by the use of the phrase '<u>an</u> injury', as opposed to 'the criminal injury', in paragraph 4(1) of Annex B.

is removed from counting as a "crime of violence" (pursuant to paragraph 4(1)(c) in Annex B) if the injury resulted from an animal attack. The only exception to this animal attack rule is where the animal was used with intent to cause injury (to a person). If the animal was not so used, no compensation is payable under the 2012 Scheme for the injury or injuries caused by the animal in the attack.

33. It was put to me by CICA in argument that rule 4(1)(c) in Annex B is separate from paragraph 2 in Annex B and creates a separate eligibility rule. I do not think that that is the correct approach, not least because it would undermine CICA's first ground for judicial review, and it may be that it was this approach which led the FTT into error in terms of the Dangerous Dogs Act 1991. Consistently with the structure of Annex B, it seems to me that the better approach for the claims officer or the FTT is to determine the following and in this order:

    (i) was a crime committed (per paragraph 1 in Annex B)?;

    (ii) if a crime was committed, did it amount to a "crime of violence" (per paragraph 2 (and, if applicable paragraph 3) in Annex B)?; and

    (iii) if the crime was a crime of violence under paragraph 1-3 in Annex B, is it (then) removed from counting as "a crime of violence" for the purposes of the 2012 Scheme (under paragraph 4 in Annex B) because the injury, in this case, resulted from an animal attack where the animal was not used with intent to cause injury to a person.

34. This approach enables the more general and always applicable question to be asked (if there was a crime) - was there a crime of violence? – before giving consideration to the particular exclusions found in paragraph 4(1) in Annex B. The approach also accords with the structure and language of Annex B, as paragraph 4(1) is about excluding (subject to the individual exceptions written into subparagraphs (a)-(c) in paragraph 4(1)) injuries resulting from that which has already been identified as a crime of violence under paragraph 4(2) (and 3, if applicable).

35. These general observation accord, in my view, with Part 2 of the Lord Chancellor and Secretary of State for Justice's Consultation Paper "*Getting it right for victims and witnesses*" (CP3/2012, January 2012). Relevant paragraphs from that Consultation Paper read as follows:

> "174. The Government's proposals for reform are set out in the coming pages. A high level summary of those proposals, which we believe are consistent with the principles set out above and our financial objectives, is as follows:
>
> **Eligibility**
>
> We propose that eligibility to claim from the Scheme should be tightly drawn so as to restrict awards to blameless victims of crime who fully co-operate with the criminal justice process, and close bereaved relatives of victims who die as a

result of their injuries. Applicants should have a connection to the UK which is more than temporary….

The Scope of the Scheme

176. Most payments under the Scheme are made to victims of "crimes of violence". This term has featured in successive Schemes and, though not having a definitive legal meaning, is generally well-understood. In most cases it is clear whether or not an applicant has been the victim of a crime of violence but there are difficult cases where the position may be less clear.

178. The main purpose of the Scheme is to provide payments to those who suffer serious physical or mental injury as the direct result of deliberate violent crime, including sexual offences, of which they are the innocent victim. This purpose underpins all of our proposals, and it reflects the current Scheme.

179. The terms of the Scheme and all the relevant circumstances must be considered in each case. Our policy in relation to the scope of the Scheme also includes these principles:
 A crime of violence will generally involve a direct, hostile, physical attack, against a person rather than property, which immediately causes mental or physical injury.
 The fact that a person's actions are technically capable of being a crime – even a crime giving rise in some way to injury – does not mean the crime will definitely be a crime of violence. All the relevant circumstances must be considered.
 The greater the chance a person's actions will lead to very serious injury, and the more obvious this should have been to the offender, the more likely it is that something technically capable of being a crime will be a crime of violence for the purpose of the Scheme. But the mere fact that there was some possibility of some harm will not of itself mean that there was necessarily a crime of violence.
 The threat of an attack is capable of being a crime of violence if it would place a reasonable person in fear of an immediate physical attack, and the victim was in fact in such fear. An offence committed from a distance (e.g. harassment by telephone or electronically) will not normally be a crime of violence, unless there are direct threats which put the recipient in fear of immediate physical harm.

A crime must normally have been committed

180. Payments under the revised Scheme may be made whether or not anyone has been convicted of the offence from which the injury arose This reflects the current Scheme under which a claims officer will assess whether the facts are established on the balance of probabilities. But it will be a very rare case indeed where a payment is made in relation to circumstances which did not amount to a criminal offence for technical legal reasons.

Express exclusions

185. There are a number of circumstances which, though technically involving the commission of a criminal offence, should in the Government's view, never be capable of being a crime of violence for the purposes of the Scheme. Under the current and former Schemes it is not always clear whether these situations

> are 'crimes of violence'. We intend to make it clear these cases are outside the scope of the revised Scheme, because as a matter of public policy we do not consider that it is consistent with the main purpose of the Scheme set out at paragraph 178 to use taxpayers' money to compensate under the CICS in these cases.
>
> 186. The kinds of circumstances we intend to exclude are:
> ….
> - Where a person has been the victim of an animal attack, unless the animal itself was used deliberately to inflict an injury on that person. This is a tightening of current policy under which claims have in some cases been considered from applicants attacked by dangerous dogs not kept under proper control."

36. The Government's Response to the views gathered under the above Consultation Paper is titled "*Getting it right for victims and witnesses: the Government response*"(Cm 8397, July 2012). Paragraph 160 of that Response reads:

> "160. We have considered all of the responses and acknowledge the complexity of defining a crime of violence. We believe that eligibility should be tightly defined and should not allow for payments to be made outside the core purpose of the Scheme, which is to make awards to those who suffer serious physical or mental injury as the direct result of deliberate violent crime. We have considered again injuries resulting from a trespass on the railway, those injured or killed in road accidents and those injured as a result of an animal attack (unless the animal was used with intent to cause injury), but we believe that these cases involve injuries sustained in incidents outside the core purpose of the Scheme and that the proper redress in these circumstances would be found elsewhere – through an insurance claim, a compensation order as a result of criminal proceedings or a civil claim."

37. The 2012 Scheme followed on, and resulted from, the above consultation exercise. In these circumstances, in my judgement it is appropriate to take account of the above Consultation Paper and the Government's Response to it as part of the context for the changes made in the 2012 Scheme and the mischief which they were seeking to remedy in relation to animal attacks: per paragraph [8] of *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13; [2003] 2 AC 687.

38. The converse outcome of the effect of Annex B to the 2012 Scheme to that set out in paragraph 32 above is that even if the animal attacked the person and was used with intent to cause injury to a person, and even if it caused a person a "criminal injury", compensation will not be payable under the 2012 Scheme either (i) if no crime was committed, or (ii) if a crime was committed, it did not amount to a "crime of violence" as defined in paragraph 2 of Annex B to the 2012 Scheme.

39. Thus two key issues arise in animal attack cases (assuming a criminal injury as defined in the 2012 Scheme has been caused) in deciding whether eligibility is made out under the 2012 Scheme. First, was a "crime of violence" committed?

This includes whether a crime was committed as a "crime of violence " is "a crime which involves..": per paragraph 2 in Annex B. Second, even if a crime of violence was committed, was the animal used with intent to cause injury to a person. I approach the four grounds for judicial review with these two points firmly in mind.

Ground 1 - Dangerous Dogs Act 1991

40. It was not disputed before me that the crime which the FTT found both the dog walker and dog owner committed was under section 3 of the Dangerous Dogs Act 1991 "of having a dog which was dangerously out of control in a public place". Section 3(1) of the Dangerous Dogs Act 1991 contains the relevant offence(s) and provides as follows:

> "**Keeping dogs under proper control**
> 3:-(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 or assistance dog, an aggravated offence, under this subsection."

41. It was also not disputed before me that the offence(s) under section 3(1) are offences of strict liability following *R v Bezzina* [1994] 1 WLR 1057. I need do no more than quote the headnote from *Bezzina* to show that this is the case:

> "….where a dog was in a public place and was shown to be acting in a way which gave grounds for reasonable apprehension that it would injure anyone, within section 10(3) of the Act of 1991, section 3(1) of the Act imposed absolute liability upon the owner or the person for the time being in charge of the dog; that it was no defence that the owner had no realisation that his dog might behave in such a way; and that the onus was on the owner to take steps which were effective to ensure that it did not do so."

42. It follows that the crime which the FTT identified had been committed when the Alsatian dog attacked the interested party did not involve showing intent or even recklessness on the part of the dog walker or the dog owner.

43. In my judgment it must also follow from the crime the FTT identified as having been committed being a strict liability offence, that that crime was not a "crime of violence" for the purposes of the 2012 Scheme. This is because for the "*crime to constitute a crime of violence in accordance with this Annex*" (per paragraph 1 in Annex B to the 2012 Scheme), it needs (per paragraph 2 in Annex) to be a crime which involves a physical attack or any other act or omission of a violent nature which is done either intentionally or recklessly. That in my judgement is the plain effect of the language found in paragraph 2 of Annex B to the 2012 Scheme. It is the crime which has to involve an act or omission that is done either intentionally or recklessly.

44. I reject the interested party's argument that paragraph 2(2) of Annex B to the Scheme does not require that intention or recklessness is an ingredient of the crime itself. The effect of the argument is to read paragraph 2 as setting up two separate criteria: with the first being, per paragraph 2(1), that the crime involves, inter alia, an act or omission of a violent nature; and the second being, per paragraph 2(2), that in order to (separately) constitute a "crime of violence" the act or omission has to be done either intentionally or recklessly, but not as part of the crime. On this reading, as I understand the argument, an offence under section 3(1) of the Dangerous Dogs Act 1991 would suffice to constitute a crime and a crime of violence under the 2012 Scheme if (a) it involved a physical attack or an act or omission of a violent nature, and (b) the physical attack, or act or omission, was done intentionally or recklessly, but not as part of the crime itself.

45. This argument should be rejected. An offence under section 3(1) may be committed simply if the dog is dangerously out of control in any place (in England and Wales). It does not require any attack on a person for the offence to be established. There may therefore be a crime committed which did not involve any physical attack or any other act or omission of a violent nature. However, paragraph 2(1) in Annex B requires that a "crime of violence" is "a crime which involves", inter alia, a physical attack or another act omission of a violent nature. On the interested party's argument the word "involves" here denotes no more than the particular factual circumstances within which the offence arose. So a crime under section 3(1) of the Dangerous Dogs Act 1991 would constitute a crime of violence if the factual matrix of the crime (but not the crime itself) involved, say, a physical attack. The words used in the sub-paragraphs in paragraph 2(1), however, are redolent of the constituent ingredients of particular criminal offences rather than simply the factual matrix within which any crime may occur. Moreover, the phrase "a crime which involves" is more obviously concerned with the ingredients of the offence itself rather than simply its factual setting.

46. This is emphasised, in my view by the words which go before the phrase "a crime which involves", and is further informed by the purpose of Annex B within which paragraph 2 sits. What Annex B is concerned with is defining "a crime of violence" for the purposes of the 2012 Scheme, as it is only if person has been a direct victim of a crime of violence that they may be eligible for an award. But the starting point is that the definition may be assumed to be about rationally identifying a crime which is a crime of violence, and that is a crime which involves the matters identified in sub-paragraphs (a) to (e) of paragraph 2(1) in Annex B. This in my judgment is not a limited enquiry concerned with identifying the factual circumstances in which a crime has occurred.

47. Further, paragraphs 2(1) and 2(2) in Annex B are plainly intended to be read together, not least because the "act or omission" in paragraph 2(2) expressly relate back to acts or omissions under paragraph 2(1). If, as I have decided, sub-paragraphs (a) to (e) in paragraph 2(1) are about the ingredients of the criminal offence, the most natural reading of paragraph 2(2) is that it is also about the ingredients of the criminal offence, and therefore a crime involving a physical

attack or another act or omission of a violent nature must have been done either intentionally or recklessly.

48. Nor can I identify any clear or good reason why paragraph 2(2) in Annex B should be read as not being about the ingredient of the criminal offence with which paragraph 2(1) in Annex is concerned. Both paragraph 2(1) and 2(2) are about what constitutes a "crime of violence" under the 2012 Scheme and, as already noted, paragraph 2(2) is about the act or omission under paragraph 2(1). Moreover, insofar as recourse may be had to the Consultation Paper, and the Government's Response to it, which led to the 2012 Scheme, the concern expressed in the Response about making compensation awards to those who suffer serious injury as the direct result of *deliberate* violent crime, would accord more with the reading I favour. Although it is true that paragraph 2(2) is not expressly about what is a crime, by necessary implication it is taking out of the definition of "crime of violence" those crimes involving an act or omission where the act or omission was not done either intentionally or recklessly.

49. I am not persuaded either that the decision of the Upper Tribunal in *CICA v (1) First-tier Tribunal (2) AS* [2017] UKUT 43 (AAC) requires me to come to a contrary conclusion. Upper Tribunal Judge Knowles QC (as she then was) proceeded on the basis (see paragraph [56] of *AS*) that paragraph 2(2) in Annex B to the 2012 Scheme had no application to the case before her because of the exception in paragraph 4(1)(b) in Annex B to the 2012 Scheme. As I have indicated above, I do not read Annex B to the 2012 Scheme as meaning that paragraph 2 in Annex does not apply if paragraph 4 in Annex B does apply. Be this as it may, Judge Knowles was not considering paragraph 2(2) in Annex B or how it may affect whether a strict liability offence could constitute a crime of violence, and it is in this context (as I read it) that she left open (in paragraph [66])) that an offence under section 28 of the Road Traffic Act 1988 might on further factual enquiry have been a crime of violence under the 2012 Scheme.

50. Given the conclusions I have reached, it follows that the FTT erred in law in deciding that the crime of which the dog walker and dog walker were guilty of under section 3(1) of the Dangerous Dogs Act 1991 was a "crime of violence" under the 2012 Scheme. Whether this was because the FTT failed to consider paragraph 2 in Annex B to the 2012 Scheme, or adopted the view of paragraph 2 which the interested party now puts forward, does not really matter; although in either case it did not set out its reasoning clearly on the point. On a correct reading of paragraph 2 in Annex B to the 2012 Scheme, a crime under section 3(1) of the Dangerous Dogs Act 1991 cannot in law constitute a crime of violence under the 2012 Scheme. And that is the case both before and without needing to reach the exclusions in paragraph 4(1)(c) in Annex B to the 2012 Scheme.

51. However, the interested party argues that even if this is the correct conclusion on the Dangerous Dogs Act 1991, it is not the end of the matter under the first judicial review ground. This is because, so it is argued, the FTT would have been entitled to conclude on its findings that the relevant crime was instead under section 47

of the Offences Against the Person Act 1861 (the "OAPA"), and such an offence would satisfy paragraph 2 in Annex B to the 2012 Scheme.

52. Section 47 of the OAPA is in the following terms

> "**Assault occasioning bodily harm. Common assault.**
> 47.- Whosoever shall be convicted upon an indictment of any assault occasioning actual bodily harm shall be liable to be kept in penal servitude."

53. As the FTT never examined the OAPA or heard argument about it, this is an argument that the FTT's error of law as set out above concerning the Dangerous Dogs Act 1991 was either not a material error of law or it was an error which made no difference to the outcome of the appeal to the FTT: per section 31(2A) of the Senior Courts Act 1991 and section 15(5A) of the Tribunals, Courts and Enforcement Act 2007.

54. I do not accept the FTT's error of law was immaterial, or made no difference, to the outcome of the appeal. The argument made by the interested party here is that on its findings of fact and reasons, the FTT's decision was consistent with and necessarily amounted to an offence having been committed under section 47 of the OAPA. Even on the interested party's own case, however, this argument is dependent on all of CICA's other judicial review grounds failing. In particular, it is dependent on my deciding that the FTT gave a rationally reasoned decision which shows why on the evidence the dog was used with intent to cause injury to the interested party. As those other grounds do not fail, I cannot be satisfied that the above error of law made no difference to the outcome of the appeal before the FTT.

Ground 2 - Failure to have regard to paragraph 2 in Annex B

55. The primary focus of this ground was that the FTT had failed to show that it had had regard to paragraph 2(1) in Annex B to the 2012 Scheme and had failed as a consequence to explain on what basis the inadequate supervision of the Alsatian dog might have constituted "a violent omission". The interested party's response was to query why the attack by the dog was not obviously, and in any event, covered by paragraph 2(1)(a), as a physical attack. On this particular argument under ground 2, it seems to me that the interested party's argument may well have had merit, particularly given the exception in paragraph 4(1)(c) in Annex B (on which CICA also rely) is predicated on the criminal injury having resulted from an animal *attack*.

56. However, as I have touched on in paragraph 50 above, the wider point, which CICA in the end argued for (whether in the alternative or otherwise) is that the FTT did not (as shown through its decision and its full reasons) show that it had had any regard to paragraph 2 in Annex B to the 2012 Scheme at all.

57. The FTT set the material provisions of Annex B out in its full reasons of 13 June 2024. But then, having tasked itself in paragraph 7 of its full reasons with

answering whether a crime had been committed and "whether it was a crime of violence within the meaning of the Scheme", the FTT failed in relation to the second issue to have any, or at least any obvious, regard to paragraph 2 in Annex B to the 2012 Scheme. The decision and reasoning focuses on paragraph 4(1)(c) in Annex B. For the reasons I have set out above under the first ground for judicial review, satisfaction of an exception found within one of the paragraph 4(1) exclusions from a crime or violence does not (and did not here) mean that "a crime of violence" had been established conclusively under the 2012 Scheme.

58. To the extent I have just identified, CICA's second ground for judicial review is also made out; though I am not sure it adds to or is really a different substantive ground to the first judicial review ground.

Ground 3 – Distinction between intent and recklessness

59. CICA's argument here is that the FTT misdirected itself as to the distinction between intent and recklessness under paragraph 4(1)(c) in Annex B, and that this was material because for dog attacks under the 2012 Scheme the dog had to have been used with intent to cause injury; recklessness was not sufficient.

60. I am not satisfied that the FTT erred in law in this respect. It is true that the FTT held in paragraph 17 of its reasons that the dog owner and dog walker were reckless as to whether the interested party would be injured by the dog. However, the FTT then correctly directed itself in paragraph 18 of the reasons that it had to be shown that the dog walker or the dog owner intended the dog to harm the interested party, and later added at the end of paragraph 20 (it seems to me again correctly) that it had to be satisfied that an assailant intended to hurt the interested party.

61. The real complaint by CICA concerns paragraph 21 of the FTT's reasons and its finding that it was "a borderline decision" and that there was "a thin line between actual intention and recklessness in this case". CICA argue, in effect, that there is no thin line and that the criminal law shows there is "a considerable gulf between intent and recklessness" in the context of paragraph 4(1)(c) in Annex B to the 2012 Scheme. In this respect, CICA took me to *R v Mohan* [1976] QB 1 for the proposition that direct intent requires that, here, it was the dog walker's or dog owner's aim or purpose to bring about the prohibited consequence, namely to use the dog to cause injury to the interested party. Intent in criminal law might, however, be indirect, with indirect intent requiring that, here, the use of the dog to cause injury to the interested party was, per *R v Woollin* [1999] 1 AC 82 "*a virtual certainty (barring some unforeseen intervention) as a result of the [dog walker's or dog owner's] actions and that the [dog owner or dog walker] appreciated that such was the case*". By contrast, recklessness in criminal law (only) requires, per *R v G* [2004] 1 AC 1034, that, again here, the dog walker or dog owner was aware of the risk that the dog could cause injury to a person, and in the circumstances known to the dog walker or dog owner it was unreasonable for either of them to take that risk.

62. The interested party makes two key submissions in response.

63. First, she argues that the FTT by its language in paragraph 17 and 21 of its reasons did not elide the concepts of intent and recklessness. Nor did it direct itself that as a matter of law there was a thin line between intent and recklessness in all case. All the FTT had said was that there was a thin line between actual intention and recklessness in this case. Thus the factual finding of actual intent may have been a borderline decision, but that was not the same as the FTT misdirecting itself as to the law. Further, whether the FTT was rationally entitled to conclude on the evidence before it, and for the reasons it gave, that the dog walker actually intended the dog to cause injury to the interested party was a matter for the fourth ground for judicial review.

64. Secondly, contrary to CICA's argument that direct intent was not relevant on the facts of this case, the FTT had found that the dog walker had actually intended the dog to injure the interested party. In other words, the FTT had found the direct intent test was satisfied. In these circumstances, recourse to indirect intent was irrelevant and unnecessary. This was because, so the interested party argued, in criminal law the category of 'indirect intent' enables intent to be established where the defendant did *not* have the aim or purpose of bringing about the prohibited result, but appreciated that that result was a virtually certain consequence of their actions: see *Woollin* at 96B-H. It is, however, only in rare cases that it is necessary to establish indirect intent because if a person actually intended a prohibited result, the *"virtual certainty"* test does not apply: see *R v MD* [2004] EWCA Crim 1391, at paragraphs [28]-[29].

65. In my judgement, the FTT did not misdirect itself on the law as to what it was required to establish as a matter of law under paragraph 4(1)(c) in Annex B to the 2012 Scheme, and I prefer the submissions of the interested party on this point.

66. It was unnecessary for paragraph 4(1)(c) purposes for the FTT to be satisfied, as it held in paragraph 17 of its reasons, that the dog owner and dog walker were reckless whether or not the appellant would be injured by the dog. However, paragraphs 18, 20 and 21 of those reasons show that the FTT, contrary to an argument CICA made, did not stop at this point or think only in terms of recklessness. The FTT went on to consider whether the dog owner or dog walker intended the dog to harm the interested party, and that was a sufficient direction as to the law on intent in paragraph 4(1)(c) in Annex B. Moreover, on a fair reading of the FTT's decision and reasons as a whole, the FTT did not direct itself that recklessness on the part of the dog owner or the dog walker would be sufficient.

67. Although I was taken to various decisions decided in the criminal courts in England and Wales, it seems to me that the correct starting point in respect of "intent" under paragraph 4(1)(c) should be Judge Knowles's decision in the *AS* decision cited above. That decision was also concerned with the 2012 Scheme. Although *AS* was concerned with paragraph 4(1)(b) in Annex B to the 2012 Scheme, what it says about "intent" is in my view of more general application in relation to paragraph 4(1) in Annex B.

68. CICA referred to *AS* mainly in relation to the fourth ground for judicial review, which I address below, but neither party before me argued *AS* was wrong in what it said in relation to intent or how that should apply to paragraph 4(1)(c) in Annex B of the 2012 Scheme. I set out the key paragraphs from *AS*:

> "70. Since Mr S's injuries resulted from the use of a vehicle, paragraph 4(1)(b) of the 2012 Scheme requires the tribunal to ask itself whether the vehicle was used "*with intent to cause injury to a person*". The starting point for the tribunal was the meaning of the word "intent" and, as stated in paragraph [57] above, I find that tribunals should begin with the plain and ordinary meaning of the word in the 2012 Scheme. The meaning of "intent" in criminal law authorities may provide assistance but only insofar as these illuminate the natural meaning of the words in the 2012 Scheme. CICA helpfully reminded me that the 2012 Scheme applies throughout the United Kingdom whereas there are clear differences between Scots and English criminal law. Intent was thus not to be defined by reference to criminal law but by reference to its meaning in the Scheme.
>
> 71. Mr Collins on behalf of CICA referred me to Volume 25 of Halsbury's Laws [section 1(2)(iii)(8) citing *R v Mohan* [1976] QB 1 at 8] where the view is expressed that "*a person intends a consequence where it is his aim or purpose to bring it about*". It was noted therein that such aim or purpose is not to be equated with desire [*R v Maloney* [1985] AC 905 at 926]. He submitted that this concept of "aim or purpose" was consistent with the natural meaning of the word "intent"….
>
> 72. I find myself persuaded by the submissions of CICA on this issue. The plain meaning of "intent" as contended for by CICA is not nebulous – indeed tribunals may be more likely to err in law by applying criminal case law as an aid to interpret the ordinary language of the 2012 Scheme….
>
> 74. When contemplating what a person's aim or purpose was, the tribunal may be helped by considering what the person would have known – both what he ought to have known and, on balance of probabilities, what he did know - at the time when the act was done. To that extent the case of *Woollin*, relied on by the tribunal in paragraphs 57-63, may provide some limited assistance. It held that the jury in a murder trial may be helped by a direction to the effect that the necessary intention may be found where (a) the outcome was a virtually certain consequence of the defendant's voluntary act and (b) the defendant appreciated that fact. I observe that *Woollin* concerned a direction to a jury in a murder trial whereas the circumstances in this case were wholly different.
>
> 75. I conclude that over-reliance on *Woollin* rather than on the words of the Scheme may have led the tribunal into error. It was required to consider whether, in cycling towards Mr S at speed, X intended to cause injury. <u>That required a focus on what was X's aim or purpose during the incident – put simply, what was in his mind</u>? Scrutiny of what X himself said about what happened as well as his actions was vital since all of those matters might shed light on his aim or purpose." (The underlining is mine and has been added for emphasis, primarily in relation to the fourth ground for judicial review.)

69. *AS* is therefore existing Upper Tribunal authority on the meaning of "intent" where that word appears in paragraph 4(1) in Annex B to the 2012 Scheme. Consistently with the concept of direct intent in *Mohan*, it focuses on the person's aim or purpose to bring about a prohibited consequence. In other words, and translating that wording to the present case, to be satisfied as to intent the FTT had to focus on what the aim or purpose of the dog walker (or dog owner) was in their use of the dog when the dog attacked the interested party.

70. This then provides a convenient stage to move CICA's fourth ground for judicial review.

FTT's decision was irrational or inadequately reasoned

71. I have already set out in paragraph 16 above the contradiction inherent in seeking remission of the appeal to a new FTT to be redecided afresh on the basis of an argument that the FTT arrived at a decision which no rational FTT could have made. Moreover, to the extent that this perversity argument of CICA was predicated on the FTT having misdirected itself as to whether recklessness was sufficient, that argument has not succeeded.

72. Where this fourth ground is made out, however, is in relation to the adequacy of the FTT's explanation for why it concluded, per *AS*, that the dog walker's (or the dog owner's, though this may be less likely on the known facts) aim or purpose at the relevant time was to use the dog to cause injury to the interested party. Despite the restraint which I should exercise in reading the FTT's decision and its reasons, I cannot identify from the FTT's fact-finding and reasoning why, having directed itself correctly on the intent test it had to apply, it concluded that the dog had been used with intent to cause injury to the interested party. This was a clear requirement of the interested party's satisfaction of rule 4(1)(c) in Annex B to the 2012 Scheme, even assuming in her favour (as she now argues) that the crime committed against her when she was attacked by the dog was under section 47 of the OAPA. There is no obvious consideration by the FTT of the motive or purpose of the dog walker (or dog owner), or (per *AS*) what was in dog walker's (or dog owner's) mind before or during the dog attack.

73. I agree with CICA that the FTT failed to make any findings on whether it was the dog walker's (or dog owner's) aim or purpose to bring about an attack by the dog on the interested party so as to cause her injury. The dog's propensity for violence and the dog owner's (or dog walker's) knowledge of that propensity and that the dog was fierce and aggressive were not itself a sufficient basis for the FTT's finding in paragraph 21 that both the dog owner and the dog walker "*intended that [the dog] should attack and hurt persons who….approached the persons who it was trained to guard, including the dog walker on walks*". And that finding as to intention was not otherwise explained by the FTT.

74. Nor was it sufficient to infer, as the FTT seemed to do, from the absence of measures to control the dog to a finding that the dog walker and dog owner used the dog with intent to cause injury to the interested party. A failure to take

adequate measures to control an aggressive dog (such as muzzling it), may amount to no more than the dog owner or dog walker acting recklessly, in the sense, per *R v G*, of them being aware of the risk that the dog could cause injury to a person and, in the circumstances known to the dog walker or dog owner, it was unreasonable for either of them to take that risk. That does not necessarily equate with "intent" because, crucially, it leaves out of account what the dog walker's (or dog owner's) motive or purpose was in using the dog before and during the incident.

75. Was the motive or purpose of the dog walker (or dog owner) to use the dog to cause injury to the interested party? It is that critical question which the FTT's reasons and fact finding failed in my judgement to answer.

Conclusion

76. I allow the judicial review on grounds 1, 2 and 4, and for the reasons set out above.

Stewart Wright
Judge of the Upper Tribunal

Authorised for issue on 4 August 2025