***Communication Workers Union***

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*27 November 2017*

*Michael Matheson MSP*

*Cabinet Secretary for Justice
The Scottish Government
St. Andrew's House
Regent Road
Edinburgh
EH1 3DG*

*Dear Michael,*

***Re: Dog Attacks on Postal Workers, Children and The Public in Scotland including Fatal Dog Attacks– Inconsistent and Incorrect Interpretation of the Control of Dogs (Scotland) Act 2010 By The Crown Office and Procurator Fiscal Service:***

*I hope this communication finds you well and may I convey seasonal greetings from the Communication Workers Union.*

*I wrote to Christine Grahame MSP last year on this matter on 25 October 2016 hoping to set up a meeting with you to discuss the concerns of both the Communication Workers Union which represents a quarter of a million workers including all the UK’s and Scotland’s rank and file Postal Workers and Royal Mail who share our concerns.*

*As an example of the problem we face, I draw your attention to the attached News Paper Report of a Case where the Crown Office and Procurator Fiscal Service failed to prosecute an irresponsible dog owner after an innocent member of the public was injured in a dog attack. Postal Workers in Scotland have found themselves in a similar situation and both Royal Mail and the CWU have been embattled in attempting  to correct this situation.*

*With the Crown Office and Procurator Fiscal Service saying wrongly, publicly that ‘under the Dangerous Dogs Act there had to be a previous indication that the dog would have acted this way’, I’m keen to continue pursuing the matter with you in order to get the Scottish government to give clear guidance to the Crown Office and Procurator Fiscal Service, resolving this inconsistency and incorrect application of the law.*

*Unlike most offences, under the Dangerous Dogs Act, no criminal intent or recklessness is required for liability to arise and a person can therefore be guilty of an offence even if their dog was on a lead and had never behaved in such a way before. The Law in other words in a “Strict Liability” law. This is the way the law was intended in Scotland and this is the way the law is applied in England, Wales and Northern Ireland and should be also in Scotland. I am seeking your assistance in rectifying the matter ASAP.*

*On 5th October last year for example, Royal Mail Lawyers with the support of the CWU had to appeal against the decision not to prosecute the owner of a dog that attacked and injured Postman Alfred Kendall on the basis that their decision to take no further action was wrong in law. Unfortunately, the Crown Office responded rejecting the submissions. This forced Royal Mail to request all of the material from the Crown Office with a view of going to a ‘Judicial Review’ of the wrong decision. Royal Mail instructed Counsel in Scotland and the Crown Office then said that they would again re-considering the case. If a positive decision to prosecute should eventually  materialise in that one case, it may be welcomed in the short term, but ultimately we need to change the Crown Office and Procurator Fiscal Service view of the law, so that we do not continually encounter similar problems in the future.*

*In February this year it was reported that Scottish Hospitals had seen an 80% increase in Dog Attack victims, demonstrating the issue people in Scotland face.*

*A second difficulty is that the courts in Scotland seemingly interpret the law inconsistently with the courts in England, Wales and Northern Ireland (even though the same Act has been considered (see for example Thomson v Procurator Fiscal: 2009 and Tierney v Valentine: 1994).*

*A third major problem we have, linked to the first and second is the inability in Scotland to be able to take Private Prosecutions for Dangerous Dogs offences when the Crown Office and Procurator Fiscal Service refuses to prosecute. In the rest of the UK where for example the CPS or Police fail to prosecute, Royal Mail has successfully taken over a dozen Private Prosecutions against Dog Owners since May 2014 and all the owners concerned have been convicted of Dangerous Dogs criminal offences. In Scotland that's virtually impossible and so the guilty are protected in some cases yet again.*

*We seek your support to ensure that the Law is properly applied so that Postal Workers and others in Scotland and coincidently other persons delivering to the addresses, e.g. children and the general public are given the protection they deserve because* ***“a Law not enforced, in no Law at all!.”***

*I look forward to hearing from you and I am happy to meet you in Edinburgh to discuss this further.*

*Yours sincerely

Dave Joyce****AMIMI AIRTE NCC C&G(T) AIOSH AIIRSM.
CWU National Health Safety and Environment Officer***