

SHERIFFDOM OF LoTHIAN AND BORDERS AT EDINBURGH

[2020] SC EDIN 23

[EDI-SE1-19]

JUDGEMENT BY SUMMARY SHERIFF ADRIAN COTTAM

In the cause

HEATHER HIRAM t/a SAFE & SOUND HOUND

Pursuer

Against

ALANA MULLEN t/a PILRIG PAWS

Defender

Claimant: Motion

Respondent: Personally present

Background

[1] This is a claim for the payment of £5000 in respect of alleged defamatory comments contained in a post and in a video clip uploaded to “Facebook” by the defender. The commentary on the video and the accompanying post were said to be defamatory and injurious to the pursuer due to her occupation as a professional dog walker.

[2] The video and post were viewed a large number of times and led to comments about the pursuer and her business. The pursuer’s case was that the post was deliberately targeted at her and her business and led to a deterioration in her business and distress to herself.

[3] The defender, who operated a similar business, lodged a defence stating the video and commentary were, put simply, true and therefore not defamatory.

The alleged defamatory statement

[4] The text of the Facebook post, accompanied by a video and commentary from witness Ms McCall was:

“PLEASE AVOID SAFE AND SOUND HOUND

So yesterday Joanna and I caught and confronted a “professional” dog walker who saw no problem with leaving multiple dogs in her van while she walked her other dogs. It was over 20 degrees at the time! I’ve had problems with this walker for months now, not being able to control her dogs (particularly reactive ones), not picking up after them, walking anywhere between 5 and 14 dogs at one time, has young teens helping her (I have witnessed myself the teen unsuccessfully walking her reactive dogs before while she was on the phone!), not picking up after them, etc. I’ve even had members of the public approach me to let me know that she had forgotten one of her dogs in the park and driven away before she realised.

Without any proof of what she does I feared nothing would be done. Yesterday was the final straw. As I looked after my dogs in the park, my friend went to check her van and recorded what she found. The window had been left rolled all the way down with roughly 6 dogs inside. After recording that we approached her as she was loading the rest of the dogs into her small and already full van. The following two videos are what happened.

I can’t let this go unseen. This woman has already had her boarding licence revoked as so many of her neighbours complained about the noise (something she denies in the video but is very easy to find on google). People are trusting this woman to look after their dogs and quite simply she doesn’t care. I fear she won’t care until something happens to one of the dogs.

Sad that it’s come to this but I’m more concerned for the dog at this point”.

The Response to the Post

[5] The pursuer lodged a print of the comments on Facebook which were appended to the post, said post being shared on multiple Facebook sites. Pursuer’s production number 1 contains the print but in short a majority were abusive towards the pursuer and her business. Some were supportive, suggesting that there are two sides to every story and that Facebook is the wrong forum. Others suggested she should lose her business and be reported to the police. The post was shared 1581 times.

The Defamatory elements

[6] The pursuer claimed:

- a. that the heading was designed to attract readers and intended to be a warning.
- b. the use of “caught and confronted” was designed to give an impression of wrong doing.
- c. the use of parenthesis was short hand for “so-called dog walker” and called into question the professionalism of the pursuer.
- d. the accusation that “leaving multiple dogs in her van while she walked other dogs...” was simply untrue as it was a short period while she toileted another more difficult dog.
- e. that it was not correct that there had been “problems....months now” as the defender had never expressed concern to her before.
- f. that the use of “the final straw” suggested a prior course of conduct when there was none. In addition the pursuer’s van was custom built to accommodate a number of dogs and there was no risk and no over crowding.
- g. that the statement “This woman has already had her boarding licence revoked as so many of her neighbours complained about the noise” was untrue as the pursuer had never had a licence although an application was refused following local objections. The statement was not only untrue but implied that the pursuer was a liar as the post continued to state that “she denied it in the video”
- h. that “People are trusting this woman to look after their dogs and quite simply she doesn’t care” is untrue and contrary to reviews and testimonials.

- i. that "I fear she won't care until something happens to one of the dogs" is a verbally injurious statement actuated by malice of a competitor.

The Pursuer's Case

[7] The pursuer's first witness was Alessandra Richetta, a customer of "Safe and Sound Hound". In short the witness described the business relationship she has had with the pursuer since 2017 and the service she provided. The witness provided a glowing recommendation of the pursuer together with her opinion on how much care she [the pursuer] takes of her dog. However in answer to a question from me she accepted she was never out with the pursuer nor did she see how she interacted with dogs on the walks. The witness was however in no doubt that the post was untrue in her view.

[8] The pursuer's second witness was Peter Stolye, another customer of the business. He confirmed that the pursuer walked two of his dogs and went further to explain how one of his dogs had behavioural problems which were resolved to great extent by her care and attention. This extended to the pursuer looking after his dogs when he went on holiday. He formed the impression that the post was untrue, commenting that he had no concerns even after reading it and stating she was professional and displayed a love of dogs.

[9] The third witness led, Sharon McCormack, gave similar evidence about her opinion of the pursuer. Again she has remained with the company since the posting and also spoke of the pursuer's skills with her dog which she described as "anxious, needy, requiring lots of exercise, reactive, challenging". She stated the dog had significantly improved behaviour in the time the pursuer looked after it. She confirmed nothing had ever given her cause for concern before or after pick ups of the dog and confirmed her view the post was a misrepresentation of how the pursuer treats the animals.

[10] The pursuer gave evidence and confirmed she had changed careers to take on her own business as a dog walker. She stated she attended weekend courses with a dog handling trainer in England and this covered canine first aid as well as behavioural work. Thereafter she set up her business, including creating a website etc. She bought a van and had it customised for dog transport by a firm in Glasgow. The firm she said was expert at this role and had done work for the SSPCA. She said she spent £4000 on the adjustments. She confirmed that most of her clients were sourced through Facebook advertising, although she also built a client base through referrals from a behaviourist.

Whilst the pursuer never said exactly how many clients she had before or after the events in question she described her client base as a "good cohort" of regular clients before the post was published. She said some clients left thereafter but she still had a "decent cohort".

Turning to the date of the incident the pursuer stated she had finished the morning walk with her dog and a number of clients' dogs. She had done everything she had to do and was in Balfour Street, next to Pilrig park. As she watered the dogs "out of nowhere" she heard screeching and was approached by the defender and another female. The defender and female began to accuse her of abusing the animals. At this time, the pursuer advised, that MH was hanging back with Nancy, (the pursuer's own Rottweiler) as she [the dog] doesn't always get on with others. The pursuer reports hearing screeching and in particular the words "you can't leave dogs in a van, you can't do that, you can't do this". She described profanities, "iphones out" and just "bizarre" shouting.

[11] The pursuer continued that she had never met the defender before and denied that she had left the dogs in the van for 30 minutes as was suggested to her by the defender at the time and heard on the video. She stated she had been away from the van for a very short period while the Rottweiler was being toileted. In any event she described the van as

having a cooling system, ice cold water, cooling mats and a far lower temperature than suggested in the video [23 degrees]. The windows were down and this did not affect the ventilation system installed.

[12] The pursuer was invited to watch the videos and confirmed the events as above. She stated in her view the behaviour was shocking and bizarre. She continued and said she had thereafter gone on holiday to Portugal and just before her plane took off she noted a large number of abusive messages on her Facebook messenger application. She was taken through a number of messages recorded in pursuer's production 6/1 and advised this was a download from the defender's Facebook page and contained a huge number of abusive and critical comments. The messages often commented on her ability (or inability) to care for animals and the possibility of death or serious impairment to the animals.

[13] The pursuer then referred back to the incident itself and the video thereof. She stated that the dogs were panting in the van but not excessively, and in her view were simply panting after a walk as is normal. She refuted a claim that she "abandoned" the dogs for 20 minutes, stating it was 6 to 8 minutes at the most. In answer to a question from her solicitor about the number of dogs she said there was a manageable number with her that day. The van, she said, was custom built with roomy cages, "big enough for three great danes".

[14] The pursuer described her efforts to obtain a boarding licence for dogs staying at her home. She said that despite a good relationship with the council, and her belief she did not need one, when she applied it was refused. No licence was ever revoked in contradiction to the comments on the Facebook post.

[15] Giving evidence on the second day of the proof, the pursuer described her feelings and reactions on reading the post and reaction. She described feeling sick and confident that it was someone trying to destroy her business. She was taken through the post and denied

the alleged defamatory sections. She stated that she had never met or discussed difficulties with the defender before and always picked up after the dogs. She stated she specialised in reactive dogs (referring back to the evidence of the early witness whose dog she stated she had helped). She denied walking 14 dogs at a time, stating 8 at the most although she did meet up on occasion with another walker and the group may look bigger then. The pursuer again confirmed the fact she never had a licence revoked and denied any suffering of the dogs due to the modifications of the van and the ventilation system. She denied not caring for dogs, citing an example of herself and her daughter saving a dog's sight by their quick action and first aid skills.

[16] The pursuer confirmed she had lost a number of clients following the posting, estimating about 4 of her 20 clients. However she said she was concerned at losing future business, noting that the post was shared 1581 times and viewed nationally over 37,000 times. She said she was unable to estimate lost revenue from potential new clients who saw the post. She stated, watching a video lodged as a production depicting a confrontation between her and two people in Inch park, that she had strangers commenting on her and her abilities as dog walker even now (autumn 2019).

[17] In answers to cross examination the pursuer confirmed her claims that the van had a ventilation system used in vans operated by the SSPCA and police. The van she said had a window open and cooling mats. She stated the van was converted to accommodate up to 12 dogs depending on the size. She denied it was the hottest part of the day.

[18] The pursuer led evidence from MH. MH confirmed she helped out with the business and had attended the training sessions with the pursuer in advance of the business being set up.

[19] She confirmed that on 26th June 2018 she had been assisting the pursuer in Pilrig Park. She stated it was warm and sunny but not sweltering and to that extent she had been wearing tracksuit bottoms and a hoodie. She reported that they had taken all the dogs out the van and walked around the park for 40-45 minutes. They had not taken their Rottweiler, Nancy, as she has behaviour issues and can get snappy especially as their Doberman, Angel, had been bothering her. As they got back to the van she realised that Nancy had not been to the toilet so as instructed by the pursuer she put Nancy on lead and took her a distance away to go to the toilet. The pursuer took the other dogs to the van, put them in and then returned to help her for a few minutes. Thereafter, the pursuer returned to the van to water the other dogs and she saw the defender and the other female walk up and confront the pursuer. She did not get involved as she stated she has PTSD. She described the allegations as a "sanctimonious show" and "bizarre shouting". She denied there were multiple dogs left in the van and said there was no risk to them. She described the dogs as panting like normal after a hot day, or even a cold day's walk. She went on to describe the pursuer's distress and ongoing concerns once the post had been published.

[20] In answer to questions in cross examination she denied the suggestion that she was not even present during the incident. She stated her Rottweiler fits comfortably in the van.

The Replies to the Post

[21] Whilst the defender is not responsible for any defamatory statements made in response to the post, it is clear there must be a correlation between the terms of the post, the reaction and the possible injury to reputation etc. The pursuer's solicitor drew the court's attention to a number of the replies during the pursuer's evidence and they are all contained in production 6/1. They range from some comments suggesting that this is not the way to go

about reporting concerns, to some abusive and personal comments regarding the pursuer herself and her abilities.

The Defender's Case

[22] The defender gave evidence and confirmed she worked in her partner's dog walking business called "Pilrig Paws". She has done so for the last 4 years. She described the date in question as being a particularly hot day, in the midst of a registered heatwave. She recalled being in Pilrig Park letting the dogs she had play. She then saw the pursuer walking a group of dogs, maybe 5 or 6. She claimed the pursuer then returned with another group of dogs, some of which were different from the first group. She claimed that she had actively avoided the pursuer in the past to keep the pursuer's dogs away from her own to avoid fights. She described the pursuer as intimidating but decided that as, in her view, the pursuer must have left dogs in her van this was the "last straw".

[23] The defender went on to state that having seen the pursuer with the second group of dogs, her friend [Jo McCall] went to check the van and took the first video. The defender stated she was in the park with her dogs watching the pursuer. When she heard from Miss McCall she decided she "couldn't let it lie" so she went to confront the pursuer. The defender stated she checked the temperature at the time on her phone and it told her it was 21 degrees Celsius.

[24] The defender stated that she went with Ms McCall and the second video clip was made. The voice on it was mainly Ms McCall but she confirmed her concerns were for the dogs "left in the van".

[25] After the incident the defender told the court that she went to drop off the dogs she was walking and later went home and discussed the events with her partner. She said she

filed a report with the SSPCA and put the post up on Facebook. She stated she did this as it was not the first time a similar incident had occurred. Following prompting by me to be more specific she claimed a similar scenario (too many dogs, out of control dogs, the pursuer on her phone, not picking up) occurred "any time I see her in Pilrig Park" but could not give any dates. She stated it was once a week from March 2018 onwards. The defender added she had seen the pursuer leave a dog behind and acting inappropriately.

[26] The defender accepted that she had, by mistake, reported that the boarding licence had been "revoked" when it must have been "refused". She also accepted she was not aware of the type of ventilation system on the van as she did her work on foot. She stated her concern about the window being open was that the van could have been stolen. She had concerns that the pursuer posted her [the defender's] address on line in case any one came to her door. She accepted that some of the responses to the post had been "disgusting" but maintained that she was not responsible for what others replied. However, again in answer to a question from me she said she should have anticipated the nature of comments given the content of the video.

[27] In answer to questions in cross examination the defender conceded she has no knowledge about how a converted dog transport van may or may not work. Her company's motto is "no vans, no cages, we'll walk your dog for ages". She accepted she had been walking dogs on the same day so the temperature per se was not an issue in that respect, and likewise she accepted any dogs she had out were on the same "hot tarmac" criticised in the post. When pushed by the solicitor for the pursuer, the defender accepted she may have been wrong when she said in evidence that she reported the matter to the SSPCA before posting the video and it may in fact have been 4 days later. She also accepted she could

have locked the comment section and that she had agreed to make the post public when requested to do so by another Facebook user.

Joanna McCall

[28] The second witness for the defender was her friend, Joanne McCall, aged 33, who had accompanied the defender on the day the video was taken. She told the court that she had first seen the pursuer loading dogs into the van at about 1145 hours. She presumed the pursuer was leaving so was surprised to see her back in the park a short time later with dogs. She claimed she had seen the pursuer do this a number of times and realised it meant dogs were left in the van. She decided to go and look at the van, noting it was in the full sun with no shade and the front windows open. The witness stated she could hear dogs faintly panting and was angry and worried about them. Having considered that she couldn't call the police she decided to record the scene for "evidence". She described putting her arm in the van trying to film what she estimated to be 5 or 6 dogs in the van. She stated there was no air circulating other than the fan in the roof going round. Having filmed the scene she returned to speak to the defender and they decided to confront the pursuer. The witness confirmed she filmed the confrontation as she thought it was completely unprofessional to leave dogs in the van especially in the hot summer sun as she had heard reports of dogs dying in cars. She confirmed her estimate the dogs were left in the van at least 5 to 10 minutes if not more.

[29] The witness was asked to describe her experience of the pursuer on other dates before the incident which led to the video. She recounted that she had, for many months, witnessed the pursuer in the park in general having no control over "packs" of dogs which were often, in her view, left in the sole control of the pursuer's children as the pursuer was

on her phone. Ms McCall reported that she had seen reactive and aggressive dogs hassling other dogs. She claimed the pursuer never picked up after dogs which were not in control, and that the pursuer had once left a dog in the park and only retrieved it when she came back later with another “pack” of dogs and it ran to the pursuer.

[30] Ms McCall contrasted the pursuer with other walkers’ practices. She conceded it was a hard job as they are out in all weathers but she stated that all others put all their care into the dogs, ensuring they don’t walk with a reactive dog near other dogs. Ms McCall’s experience was that all walkers get on well and share workloads and referrals but stated categorically that the pursuer is not competent and does not care enough about the dogs. She claimed the pursuer only walks dogs for 20 minutes and she gets paid for an hour and she is never seen with treats or toys. Her opinion was that she would be furious if she found out that someone was treating her dog in the manner the pursuer does.

[31] In cross examination Ms McCall accepted her background was social care and her qualifications are in textile science. She denied that the phrase “packs of dogs” was an exaggeration, stating that “I have seen her walking ten dogs in one go, with 5 to 7 then go to van with another 5 to 7 – and they are different, different sizes etc”. She maintained that the pursuer did not handle reactive dogs well and that dogs were in the car for upwards of 15 to 20 minutes. When it was suggested to her the dogs in the van were simply panting because of the walk she stated that the walk was some time before and the air in the van was hotter than outside. She was pressed about her statement that she did not think she could phone the police and she maintained she thought that would be a waste of time. She refuted any suggestion that the windows being open was sufficient. She stated her view that the pursuer was not competent enough and that she only took the video as she was worried about the dogs and the pursuer’s clients.

Submissions

[32] The pursuers sought decree as craved. The comments in the post were made in the context of dog walking businesses and were concerned at the competence of the pursuer. The post was deliberately shared with pages on Facebook relevant to dog walking groups. It is important to again look at the break down of the alleged defamatory statement, (as restated at paragraph 6 above). The court should accept the pursuer's account as both she and MH gave their evidence in a measured way, compared to the hyperbole of the defender and in particular Ms McCall. There was no basis for Ms McCall's claims of "packs" of dogs or other issues or earlier occasions. The final straw is the reference to the licence being "already revoked". This implies a failure and official confirmation of incompetence or of not following the rules. However, as conceded, there was no revocation and the defender used the wrong word, perhaps deliberately. Even the use of "already" is meant to imply being caught out before.

[33] The court should accept the pursuer's description of the suitability of the van and the protection it offered even in hot weather. Neither the defender nor Ms McCall had any knowledge or experience of the type of van or ventilation system. That made the comments completely unfounded and unfair and it was those comments which led to much of the angry responses.

[34] Finally the court should accept the evidence of the current clients who all speak to the care and love the pursuer has for dogs and her skills and care in connection with reactive dogs.

[35] Having been provided with some time to confer with Ms McCall and to prepare, Miss Mullen summed up simply that she wouldn't lie and does not get anything from the

post or the actions she took. She is not a competitor of the defender or “anti-van”, her only interest is in the well-being of the dogs. She was distressed at what she saw. This is nothing to do with competition as she cannot take on any new clients anyway.

Findings in Fact

[36] I found the following facts proven:

- a. The pursuer owns and runs a dog walking business called “Safe and Sound Hounds”
- b. The primary source of advertising the business is online and through social media.
- c. The defender works and has a significant role in her partner’s dog walking business called “Pilrig Paws”.
- d. Pilrig Paws is advertised online, on social media and by leaflets.
- e. Both companies walk dogs in Pilrig Park, Leith.
- f. Both companies are known to each other at least by name.
- g. The pursuer uses a specially converted van to transport and store dogs. The van has been adapted to provide ventilation, cold mats and cold water.
- h. “Pilrig paws” operate their business entirely on foot.
- i. The defender has no knowledge of the facilities the converted van has.
- j. The pursuer had previously applied for a boarding licence from Edinburgh City Council but it was refused after objections from neighbours.
- k. The pursuer retained a high degree of confidence from existing clients who trusted her with the care of their dogs.
- l. The pursuer was walking a group of dogs in Pilrig Park on 26 June 2018.

- m. The temperature was in excess of 20 degrees Celsius.
- n. For a period of at least ten minutes the pursuer left a number of dogs in the van whilst she attended to a further dog.
- o. During that time the dogs had access to water and air.
- p. Joanna McCall recorded the interaction between the pursuer, defender and herself on 26 June 2018 and provided it to the defender.
- q. Ms McCall and the defender had every opportunity to phone the police or SSPCA at the time of the video but deliberately decided not to.
- r. The defender posted the video and the written communication complained of on Facebook.
- s. The post was viewed over 37,000 times and shared over 1500 times.
- t. The comments posted were primarily derogatory and insulting of the pursuer, and her abilities as a dog walker.

Findings in Law

[37] I found the following proven in law:

- a. The post, in the context of dog walking, contained words and descriptions which would tend to make ordinary readers think the worse of the pursuer.
- b. The heading was designed to attract readers and intended to be a warning.
- c. The use of “caught and confronted” was designed to give an impression of wrong doing.
- d. The use of parenthesis was short hand for “so-called dog walker” and called into question the professionalism of the pursuer.

- e. The use of “the final straw” suggested a prior course of conduct and was designed to convey the impression of early bad behaviour.
- f. The statement, “This woman has already had her boarding licence revoked as so many of her neighbours complained about the noise” was designed to imply that the pursuer was a liar and gave the impression there was already an official sanction against her actions and abilities.
- g. The post and video were defamatory and the only possible defence is one of truth.
- h. The overall gist of the post and video was not true in fact.
- i. The post was not an exercise of fair comment or opinion.

Decision

[38] This claim, despite the obvious distress and emotion it caused all parties, comes down to a straightforward assessment (albeit not a simple assessment) of the truth of the contents of the post and the commentary ascribed to the video. There is no doubt that if, on the balance of probabilities, there is no truth in the comments then they were defamatory. Clearly the reputation of a dog walker would be lowered in the opinion of any right minded person reading it. In fact the comments posted showed the feeling of repulsion and rage against the pursuer and in effect proved even beyond doubt how the comments affected the view taken of the pursuer.

[39] The claim therefore falls to be decided, on the balance of probabilities, on an assessment of credibility and reliability. Whilst I found the pursuer had perhaps exaggerated her training and experience to an extent, I had no hesitation in accepting she has a passion for the role. The evidence of the clients clearly showed her care and devotion

at least to their dogs and some skill in relation to reactive or difficult dogs. Their evidence alone cast significant doubt on the claim in the post that “quite simply she doesn’t care. I fear she won’t care until something happens to one of the dogs”.

[40] The main issue was the risk posed to the dogs by being left in the van. Here I preferred the evidence of the pursuer with regard to the modifications made and the fact the adaptations took away the usual risk of dogs in hot cars. There was no reason to disbelieve the cost and care that went into the van and this evidence pretty much defeats the main thrust of the post that the dogs could have died. There was no contrary evidence led or suggestion that the van was not so adapted. I do not go as far as to say the defender or Ms McCall deliberately lied regarding the risk as they saw it, but any belief they had was misplaced and they had not carried out any enquiry about the type of vehicle or facilities available. Both the defender and Ms McCall as much as admitted this in evidence. To post comments implying the risk of the temperature, and comments and video relating to the harm that could be caused is clearly defamatory if in fact the dogs had not been left in a situation where such risk arose. It was the statement that her actions had caused this risk that led to the most abusive and angry comments, again showing this description (which I hold as not true) impacted on the view taken of the pursuer as a dog walker and her and her company’s reputation. I am satisfied on the balance of probabilities that the pursuer’s description of the condition of the dogs is to be preferred.

[41] The comment regarding the revocation of a boarding licence would not per se be defamatory. However in the context of the post, and, in the context that it also suggested the pursuer was lying or covering up past difficulties with a regulatory authority, it also in my view falls within the test. The defender accepted she used the wrong word, recognising that revocation had a different implication than refused. She again may have done this in

error or deliberately. It matters not. The statement was untrue and defamatory. There is no dispute in the evidence regarding this part of the post.

[42] Ms McCall's evidence did give me something to consider when I look at the claims that the pursuer often had dogs out of control etc. I accept there was no reason pled to suggest why she would lie. However I found much of her evidence prone to exaggeration and hyperbole and whilst there may have been some times that she did not agree with the way the pursuer handled dogs, her evidence did not in any way displace the burden of proof looking at the comments aimed to be read as facts in the post. She accepted she has no qualifications and no experience in the field. I could place little weight on her descriptions of the behaviour of the pursuer, her methods or, as stated, of the van. It is clear the pursuer and the defender have very different views as to what constitutes good practice. I have no doubt the defender was interested in the welfare of the dogs, as was Ms McCall. However the insistence that the best way to deal with that concern was to post the comments and the video, rather than calling in the SSPCA was questionable at best and gave me significant doubts as to the credibility overall of their evidence. Equally, had there had been a litany of weekly problems with dog littering or aggressive dog behaviour then surely that would have led to action in the proper manner.

[43] I am therefore satisfied that the pursuer has successfully pled her case and I find in her favour.

Quantum

[44] The measurement of quantum was not fully addressed in submissions or in evidence. It therefore appears open to me to view the sum sued for against the facts proven. There is no doubt the pursuer suffered some loss of business but she also maintained clients.

The clients who gave evidence remained and were non-plussed when they read the allegations. The pursuer was unable to quantify the value of any contracts or the amount lost. She estimated, in her evidence, that only 5 or 6 clients left. I don't know how much they paid or what capacity she would have had to take on extra work which then was not forthcoming. There was of course significant personal distress and hurt, especially at a time when she was, according to MH, emotional and vulnerable in any event.

[45] I am not persuaded the extent of the loss claimed by the pursuer was fully made out. I therefore determine that the appropriate amount to reflect the business lost (in so far as it is at possible to estimate) and the distress and verbal hurt should be limited to £3000.

[46] I therefore will in the final decree grant the first crave in the reduced sum of £3000.

[47] The limited award reflects my consideration of the evidence of the pursuer and lack of vouching. I was also not entirely convinced by some of the descriptions of the impact on her. However I also have to accept, from the later video (in Inch Park) played by the pursuer's agent, that there is still a risk of reputational damage ongoing, especially following press coverage. As I have found that the comments were not true, and were at best misplaced and at worst calculated, I think it is appropriate to grant the second crave.

[48] The defender will therefore be ordered in the final decree to post an apology on Facebook, on her page and any shared pages operated by dog walking companies or associations, in the terms set out in the pursuer's agent's letter dated 18 July 2018.

Expenses

[49] The usual rule is that expenses follow success. There is no obvious reason in this case to depart from such a rule. Even though motive is irrelevant in the action, I have already expressed doubts as to the reason the defender chose to deal with her concerns for

the welfare of the dogs by publicly posting such obviously incendiary comments (even if true they were bound to prompt the response they did). There was ample opportunity given to the defender to remove the post and apologise. The proposed apology was couched in suitable terms that would not in fact have required an admission of any real fault and certainly not of malice or falsehood. The action was clearly necessary. Expenses will be awarded to the pursuer.

[50] In order to allow expenses to be finalised, in terms of rule 23.3(7), the sheriff clerk is ordered to fix a date and time at Edinburgh Sheriff Court for a hearing on expenses. The pursuer is ordered to lodge his account of expenses, for assessment by the Sheriff Clerk, at least seven days prior to that date.