

SHERIFFDOM OF LoTHIAN AND BORDERS AT EDINBURGH
IN THE ALL-SCOTLAND SHERIFF PERSONAL INJURY COURT

[2026] SC EDIN 60

PIC-PN399923

JUDGMENT OF SHERIFF C A WALLS

in the cause

BARRY HESKIN

Pursuer

against

(FIRST) JOHN REYNOLDS AND (SECOND) SHAREE MACKERRON

Defenders

Pursuer: Hovie, advocate; Thompsons Scotland
Defenders: Buchanan, advocate; DWF LLP

EDINBURGH, 8 MAY 2026

Findings in fact

1. In September 2020 the defenders jointly purchased Mac, a male full breed working Collie. The defenders are a married couple. When they bought him, Mac was around 7 weeks old.
2. From around December 2020, the defenders experienced problems with Mac's aggressive behaviour.
3. When Mac was around 3½ months old there was an incident where the second defender observed Mac bare his teeth at her infant grandson.
4. While owned by them, Mac would bite both defenders.
5. In late 2020 the defenders engaged a dog trainer to help with basic training of Mac.

6. In March and April 2021 the defenders employed a dog behaviouralist to address problems Mac was having with guarding food and sleeping in his crate.
7. On 15 April 2021 the second defender had a telephone consultation with Ms Lindsay Galloway, a vet specialising in dog behavioural issues.
8. Ms Galloway confirmed her advice in a report dated 15 April 2021 (page 28 of the Joint Bundle ("JB")). She advised that Mac was a risk to the defenders' household and grandson and that thought should be given to euthanasia.
9. Following the advice from Ms Galloway, the defenders returned Mac to his breeder. Mac returned to the defenders on 3 July 2021.
10. When he returned to the defenders, Mac was wearing a collar which was secured with a plastic tie clip. A long heavy metal chain was attached to the collar. Mac's breeder advised the defenders to keep the collar and chain on Mac and to avoid his head area.
11. The second defender cared for her infant grandson in her home on Thursdays and Fridays. The defenders were fearful of what might happen if Mac was present around their grandson. On Thursdays and Fridays Mac was placed in a local dog kennel owned by John Ferguson.
12. By April 2021 the defenders were aware, following behaviourist and specialist veterinary advice, that Mac posed a significant risk within a domestic setting, particularly around children and that euthanasia was a realistic option.
13. Neighbours of the defenders also owned an aggressive Collie. They told the second defender that the pursuer had helped turn their dog's behaviour round. They provided the second defender with his contact details.
14. The pursuer is an experienced dog trainer and breeder of German Shepherd dogs. He has supplied and sold dogs to police forces and fire and rescue services throughout the

UK. He has competed in numerous competitive dog trials in competitions for, *inter alia*, tracking and obedience. He is a member of the Scottish Kennel Club, and his breeding facilities were regularly inspected and approved by the Kennel Club.

15. On 24 August 2021 the second defender emailed the pursuer (JB171)). She explained that Mac's nature was "Jekyll and Hyde" and that while he appeared friendly, he would suddenly become "ferocious and aggressive" and had bitten her several times. She explained that a vet had recommended putting him to sleep and that the breeder had offered to take him back. She sought the pursuer's opinion to help her and the first defender decide what to do with Mac.

16. The pursuer replied to the second defender's email on 25 August 2021 (JB171) and later that day they spoke on the phone.

17. During the call the pursuer explained that his hourly rate was £65 and that he charged travelling time in addition. He said that he could fit in a meeting with Mac the following day near Aberlady as he was already meeting a client there.

18. The purpose of the meeting on 26 August 2021 was for the pursuer to assess if Mac was capable of being trained.

19. On the evening of 25 August 2021, the first defender sent the pursuer a photograph a bite inflicted by Mac on her arm (JB173) and a video recording of Mac in her home (JB175).

20. The video (JB175) was taken at some point in the week preceding 25 August 2021. In it, the first defender is wearing gloves to protect his hands and appears visibly fearful of Mac who aggressively barks and snarls at him. The second defender can be heard shouting at Mac. Mac was wearing a collar with a long metal chain attached to it.

21. The pursuer was not shown or made aware of the behavioural report dated 15 April 2021 prior to meeting with Mac. The pursuer had not been told that a trigger for Mac's

aggressive behaviour was contact in or around the head and neck area. The pursuer was not told about previous attempts to train Mac.

22. On 26 August 2021 the defenders were the owners and keepers of Mac.

23. On 26 August 2021 the first defender drove with Mac to meet the pursuer.

24. The first defender arrived at a field in Aberlady at around midday. The pursuer was there already with Claire Smith, who had just completed a training session with her dog.

The pursuer had four of his German Shepherds in his vehicle. Two male dogs were in crates in the rear. Two bitches were in crates which could be accessed at the side.

25. The pursuer asked the first defender to get Mac out of his car. The pursuer opened the boot and Mac jumped out and began to run around the field before the first defender got hold of Mac's chain.

26. The pursuer was unable to assess Mac's ability to be trained whilst he wore a collar and chain. He asked the first defender to remove the collar and chain so that he could place Mac in a slip lead.

27. The chain was rusted onto the collar, and the collar was secured with a cable tie. The first defender went to his car to obtain something to cut off Mac's collar.

28. While the pursuer restrained Mac, the first defender cut off Mac's collar and placed the slip lead around Mac's neck. When the first defender cut off Mac's collar, Mac bit his hand.

29. The pursuer let his two bitch German Shepherds out of his van to see whether their presence might calm down Mac, a male dog. It did not and he returned them to the van.

30. The pursuer walked Mac approximately 100 yards up the field and back. Mac was controlled by use of a leather slip lead. By the end of this walk the pursuer had a degree of control over Mac. The first defender and Claire Smith remained with the three vehicles.

31. When the pursuer returned, Mac bit the first defender a second time on the hand.
32. The pursuer gave the first defender a glove to protect his hand from further bites.
33. The pursuer intended to attach a second slip lead on Mac so that he and the first defender could walk with Mac with each holding a slip lead. As the pursuer went to get a second lead from his vehicle, Mac jumped at the pursuer's face. The pursuer lifted his right hand to protect himself. Mac bit the pursuer's right hand, causing injury.
34. The pursuer punched Mac to release Mac's bite.
35. The pursuer's right hand was bleeding. Claire Smith treated the hand with TCP from the pursuer's van.
36. The first defender and the pursuer lifted Mac into the back of the first defender's car.
37. The pursuer left the field in his car at around 12.40pm and eventually attended St John's Hospital in Livingston where he was treated for his injuries.
38. As the first defender drove home, he called his wife and explained that Mac had bitten the pursuer. Before returning home he dropped Mac off at John Ferguson's kennels.
39. The second defender called the pursuer at around 1.37pm to ask after his welfare and for his opinion on Mac. There were two further calls between the pursuer and the second defender that evening.
40. On or shortly after 26 August 2021 the second defender paid the pursuer £65 for the session with Mac, £30 for the bite glove and £35 for the slip lead that was still attached to Mac.
41. As a result of being bitten by Mac the pursuer suffered injuries to the dorsum of his right hand. He required wound debridement and irrigation under local anaesthesia on the day of the accident. Subsequently, he required surgery where three wounds were noted on the dorsum of the right-hand ulnar border.

42. The pursuer was left with permanent scarring and residual finger stiffness which may be helped by physiotherapy. He was also left with improving but permanent issues with skin sensation. He required assistance with some activities following the accident.

Findings in fact and law

1. The defenders would be liable to the pursuer under section 1(1) of the Animals (Scotland) Act 1987, but for the operation of section 2(1)(b).
2. The pursuer having willingly accepted the risk of being injured by Mac, in terms of section 2(1)(b) of the Act, the defenders have no liability to the pursuer.
3. The defenders were not in breach of any duty of care owed to the pursuer.

Finding in law

1. The defenders are *assoilzied* from the craves of the initial writ.

Note

[1] In August 2021 the defenders were the owners of a full breed male Collie named Mac. They were finding Mac difficult to manage. His behavioural problems were significant enough for a vet to advise that he was euthanised. The pursuer is an experienced dog trainer. On a recommendation from neighbours, and as a last resort, the defenders contacted the pursuer to see if he could help them with Mac. Arrangements were made for the pursuer to meet Mac in a field just outside Aberlady at 12 noon on 26 August 2021.

[2] The first defender took Mac to meet the pursuer at the agreed time and place. By around 12.40pm, the pursuer was on his way to hospital, having been badly bitten by Mac.

[3] In this action, the pursuer seeks damages for his injuries from the defenders as the owners of Mac. He relies on the strict liability provisions of the Animals (Scotland) Act 1987, but also has a case based on a common law breach of duty, contending that the defenders ought to have provided him with more information about Mac's behavioural traits before the meeting.

[4] The defenders deny liability. They say that the pursuer was wholly responsible for his injuries as he provoked Mac into biting him. They offer to prove that he abused Mac in various ways including punching him, kicking him, hitting him repeatedly with a metal chain and choking him to the point of unconsciousness. They also argue, in any event, that as an experienced dog trainer, the pursuer accepted the risk that Mac might bite him. If they are liable, the defenders claim that the pursuer was contributorily negligent.

[5] I heard evidence between 3 and 5 March 2026 and received written submissions from both parties. Following a hearing on submissions on 6 March 2026, I made *avizandum*.

The pursuer

[6] The pursuer was 69 years of age at the time of the incident with Mac. He started training dogs when he was 13. He owns and has owned multiple German Shepherds and has supplied his dogs to police forces, Strathclyde Fire Service (as they were) and prominent professional footballers. He trains dogs and competes with his own dogs in obedience and tracking competitions. Photographs of his various awards and prizes were spoken to by him in evidence (JB21-26). His kennels were inspected by all relevant authorities and the Kennel Club and rated highly.

[7] He explained that his preferred training method is to use a leather slip lead as that is the best means to control a dog. It was important to adopt the right tone with a dog and not to be cruel. Punching, kicking and choking dogs were not part of his training methods.

[8] The defenders' neighbours had contacted him about their Collie which was out of control and "attacking everything on two legs or four." He met them and assessed their dog, which he said had tried to bite his face. However, over the course of 12 lessons he got the dog under control and turned its behaviour round.

[9] The second defender contacted him by email on 24 August 2021 about Mac (JB171). In her email she told him that Mac could suddenly become aggressive and had bitten her many times. She described him as "ferocious." A vet had suggested he was put to sleep. Mac had been returned to his breeder for a time, but that had not helped. She and her husband were at their wits end and were considering returning him permanently to the breeder. They wanted his advice on how to proceed.

[10] The pursuer replied by email the next day and then had a phone call with the second defender. Arrangements were made for him to meet Mac the following day to assess if Mac was trainable or not. A price for his services was agreed. Following that call, the second defender sent the pursuer a photograph of her bitten arm (JB173) and a video of Mac behaving aggressively when the second defender tried to pull him into his crate using a metal chain (JB175). From the video he formed the view that neither of the defenders had dog handling skills.

[11] The pursuer had subsequently read a vet's behavioural report on Mac which he had not seen and was not told about. He had not been told that Mac did not like things going over his head and that his lead was never to be removed. He was not told that Mac had to be put in kennels when the second defender looked after her grandchildren. He had no

interest in training dogs that could not be trusted around children and favoured them being put to sleep.

[12] He had arranged to meet the first defender at noon on 26 August 2021 in a field near Aberlady. He was already there when the first defender had arrived, as he had been training his own dogs alongside that of a friend and client, Claire Smith. They had arrived separately in their own vehicles. The first defender arrived and parked his car nearby. When the pursuer opened his car boot to get Mac out, he flew out of the car with a long chain trailing behind him. The pursuer said the chain hit Ms Smith and he shouted to the first defender to get hold of the chain. He noticed that Mac's collar was tight. He thought it was causing Mac pain. He asked the first defender about the collar and was told that Mac had been wearing it since he was 8 months old – approximately 4 months. He said it was so tight that it was overgrown with Mac's hair. Following the later events, he said he would have reported the defenders to the SSPCA had he not been told that Mac was going to be put down.

[13] The pursuer asked the first defender to remove the chain to allow him to use a slip lead and was told that it was rusted on to the collar. He was also told that the collar was secured with clip ties and could not be removed. The first defender fetched something from his car to cut off the collar. As the slip lead was placed over Mac's neck, the first defender cut the collar off. At this point, Mac went "crackers" and bit the first defender's hand.

[14] The pursuer explained that sometimes an aggressive male dog will calm down if in the company of female dogs. He let his two German Shepherd bitches out of his vehicle to see if they would calm Mac down, but this did not work and he put them back in the van.

[15] The pursuer managed to get control of Mac and walked with him up the field which he estimated to be about the length of a football pitch. He felt Mac was under his control

and he was able to relax his grip on the leash. He was talking calmly to Mac, but when they returned to where Ms Smith and the first defender were waiting, Mac became aggressive and bit the first defender again. At this point, the pursuer gave the first defender a "bite glove" to protect his hand as he wanted to attach a second slip lead so that they could both walk Mac together. However, before he would get a second lead from his van, Mac bit his owner a third time. He lost his grip on the lead and Mac jumped up towards the pursuer's face. The pursuer instinctively put his right hand out to protect himself. Mac bit the pursuer's right hand and refused to release his grip. The pursuer punched Mac to release the bite. The first defender did not come to his help and was standing "bewildered." Between them, they managed to get Mac, who was still wearing a slip lead, into the boot of the car.

[16] His hand was badly bitten. He could see what he thought were bones and there was a lot of blood. After treating it with TCP which he kept in his car he set off to seek medical help.

[17] The second defender called him at about 1.30pm that day to hear how he was and to ask his opinion on Mac. They spoke on two further occasions that night and she told him that Mac was going to be put to sleep the next morning.

[18] He denied beating Mac, whipping Mac with the metal chain and choking Mac to the point where he was unconscious. He also denied demanding payment while in the field with his injured hand.

[19] In cross-examination the pursuer agreed to several general propositions – that he felt he could handle most dogs; that he had been bitten by dogs on many occasions; that he kept TCP in his car in case he was bitten; and that he was not fazed by the possibility of being bitten. In relation specifically to Mac, he accepted he had seen a video of him being

aggressive and photographs of bites sustained by the second defender. He knew she was concerned about his behaviour and that he could suddenly become ferocious and aggressive, that he was a dominant dog who had bitten the defenders on many occasions and that a vet had suggested he be destroyed. He also accepted that he knew Mac might attempt to bite him but was willing to meet Mac and take the risk he might be bitten, such was his confidence in his abilities as a trainer.

[20] He did not accept that he had an adequate opportunity to ask questions about Mac. Had he known Mac had been seen by a behavioural trainer and assessed by a specialist vet he may have asked questions. He denied that he could have cut the lesson short at any time, because he did not want to leave the first defender on his own in the field with Mac.

[21] In relation to the behavioural reports and concerns about children, he confirmed that while he would not be interested in training such a dog, that was because of its susceptibility to being trained, not concerns for his own safety. He denied boasting to the first defender that his dogs had been trained to bite on command. He also denied insisting on payment and asking the first defender to follow him to a cash machine.

Lisa Docherty

[22] Lisa Docherty is the pursuer's fiancé. She spoke about their shared love of dogs and how she had never seen the pursuer be cruel or abusive to animals.

Claire Smith

[23] Claire Smith has known the pursuer since June 2020 when she bought a German Shepherd from him. On 26 August 2021 she had driven alone to meet the pursuer in Aberlady for a training session with her dog. This session was finishing up when the first

defender arrived for his appointment with the pursuer. The plan was for her to resume her own training session afterwards, which was why she stayed in the field.

[24] She heard the pursuer ask the first defender if his dog had been to a vet and tested. She remembered the pursuer saying to the first defender that his dogs were trained to bite on command, but could not remember them ever being let out of his vehicle. When the first defender's car was opened Mac came flying out and ran loose until the first defender grabbed hold of a long metal chain attached to his collar.

[25] The pursuer told the first defender that he was unable to assess the dog while it was in a collar and chain and offered to put his own slip lead on the dog. The first defender warned against this as his dog would bite. However, the pursuer got hold of the chain, put the dog on its side and held it down. He asked the first defender to take the chain off the collar but was told it could not come off as it was rusted on. The collar could not come off either as it secured with a cable tie. The first defender fetched something from his car to cut the collar off but was bitten by his dog when removing the collar.

[26] After the collar had been removed and the slip lead put on, the pursuer walked the dog up the field and then back – roughly the length of a football pitch. When he returned, the pursuer went to get a second slip lead from the back of his vehicle. He gave the first defender gloves to protect him from further bites. When beside the van, the dog ran up the side of the van and in mid-air lunged for the pursuer who instinctively put his hand out to protect his face. The dog bit his hand and the pursuer yelled in pain. She could not remember how the dog released its grip, how the two men got the dog back into the car or any discussion about payment. The pursuer's hand was pouring with blood, and she treated it with TCP which he kept in his vehicle.

[27] In cross-examination she accepted that in an earlier written statement (JB16) she had said that the dog was spinning on a lead and practically choking, but she said that this was when he was on the slip lead, not the collar and chain. The pursuer had not lifted Mac off the ground by his collar.

The second defender

[28] The second defender purchased Mac in September 2020 when he was just under 8 weeks old. Although she and her husband had never owned a dog before, they had seen Mac's breeder on "One Man and his Dog" and decided they wanted a Collie. He was a "bitey" puppy and she spoke of an incident when Mac was just under 4 months old and he had snarled and bared his teeth at her grandson. He had also been aggressive to her and her husband. She had engaged a dog trainer for basic recall skills in late 2020. In March and April 2021, she employed a dog behaviouralist to address problems Mac was having with guarding food and sleeping in his crate.

[29] She also spoke with her vet, Louise Miller about Mac's behaviour. She was referred to Lindsay Galloway of Longview Veterinary Services who was a specialist in dog behavioural problems. Following a 2-hour telephone conversation on 15 April 2021, Ms Galloway issued a report (JB182). She was concerned that Mac's behavioural problems might be due to a medical issue. She was concerned that Mac was a threat to the safety of the defenders' grandson and suggested consideration be given to euthanasia, although she offered to work with the defenders if they wanted to persevere with Mac. Based on her advice Mac was placed in commercial kennels on days when the defenders looked after their young grandson.

[30] In around the end of April 2021 the defenders decided that Mac would be returned to his breeder to see if a “reset” period would help. By this stage, they had considered having Mac put to sleep.

[31] Mac returned on 3 July 2021 with an instruction from his breeder not to pat him on the head. He was also on a long “yard chain” which the second defender said was useful to tie Mac to trees or fences. She maintained that the collar Mac was wearing had been changed a number of times and that the most recent change was just 2 weeks before the incident with the pursuer. The chain had also been replaced as it was rusty.

[32] Mac’s behaviour did not improve. Neighbours of the defenders who had significant issues their own poorly behaved Collie, Pip, recommended that the defenders contact the pursuer, who had turned their dog’s behaviour around. They had been very enthusiastic about the pursuer, how he had handled Pip and his use of vocal tone in training.

[33] Unprompted by any question from counsel, the second defender indicated that she had something she wished to say. She volunteered that during a walk on 30 December 2023 she had met Pip’s owner who had told her that when Pip had growled at the pursuer, the pursuer had “strung him up.” She had subsequently written down everything that she was told that day and that this was included in an appendix of material she had sent to her solicitor.

[34] Her evidence about her dealings with the pursuer was broadly consistent with his evidence although she said that she had told him about previous attempts to train Mac and about how head patting was a trigger for his aggression.

[35] She received a call from her husband at around 12.40pm on 26 August 2021. He sounded distraught and explained Mac had bitten the pursuer, but that Mac had been abused and forcefully handled. A lady had been there the whole time and he felt “set up.”

[36] She called the pursuer herself at precisely 13.37pm to ask both how he was and for his opinion on Mac. She said the contents of this call had also been transcribed and “logged” by her. The pursuer had advised that Mac be put to sleep. She had two further calls with the pursuer that day in which she had expressed her sympathies and said that they would not have arranged for him to meet Mac if he had previously bitten anyone other than her and her husband. There was some discussion about payment and she paid him £125 – comprising £65 for the lesson (his hourly rate), £30 for the bite gloves and £30 for the leather slip lead which was still attached to Mac.

[37] She also phoned her vet and relayed to her what she had been told by her husband - that Mac had bitten someone who was being forceful with him. The vet prescribed medication to help calm Mac down and a follow up was arranged for the next day for Mac to be put to sleep, although that did not eventually happen.

[38] Later that day, she asked her husband to give her a verbatim description of what happened so that she could write it down (JB165). She wanted this written account because there was an unknown lady at the training and that they had not been told in advance that she would be there. The different ink colours on her handwritten note could be explained because her pens kept running out.

[39] In cross-examination she was shown a photograph of Mac’s worn collar and rusted lead (JB35-37). She said that the tie clip had been attached in to stop the collar flapping and demonstrated this by standing up and showing the court her belt. The collar and chain were heavily worn and rusty. She was asked if she was seriously arguing that a 2-week old collar could be in such condition. Her initial answer was to say that there was no date on the photograph. When pressed, she said that it was possible for the collar to have deteriorated to that extent over 2 weeks because Mac was walked every day in woods and often played

on the beach where water was salty. Bits of sand may have got caught in the buckle of the chain which was why her husband had been unable to remove it. She said photographs and videos of Mac playing on the beach had been shared with her solicitor.

[40] She disputed that the collar and lead were never taken off Mac, but agreed that she had told John Ferguson, who looked after Mac at kennels, to leave them on at all times. She maintained she had told the pursuer about the risk of patting Mac's head and expected the pursuer to know that most dogs do not like their heads to be touched. She had not told him expressly about removing Mac's collar and chain because she had not known he would want to remove them. In any event, the pursuer ought to have checked if this was likely to be an issue.

[41] The second defender was referred to her signed statement dated 10 November 2021 (JB155) and asked if her memory of the events in August 2021 would have been better then than now. She replied that it would be if the suggestion being made to her was that statement was written only from memory. However, it was not based on memory, but on notes she had taken including of her phone calls with the pursuer. When it was pointed out that in that statement, she made no reference to advising the pursuer about Mac's head being a risk area, she said that when she gave the statement she did not have her notes available – although they had been typed up and given to her solicitor. She denied that her answers to the court were designed to address the pursuer's case against her, the details of which she did not know until the initial writ was served in around October 2023.

[42] The abuse inflicted on Mac was horrific, but she did not think it appropriate to inform the police or the SSPCA as she wanted to allow the pursuer time to recover from his injuries.

[43] She denied making up the allegations that the pursuer had abused Mac only after receiving a letter from the pursuer's solicitor intimating a claim. The reason the vet clinical notes from Alba Vet (JB179) on 26 August 2021 only referred to the pursuer being "hands on" and "forceful" was because when she called the vet she did not have all the information from her husband. The entry on 27 August 2021 only referred to the trainer being "very physical" and "bullying" because not everything she had told to the vet had been recorded in the consultation entry. The entry on 2 October 2021 referred to Mac having been punched, kicked and rendered unconscious with a "prong collar." The second defender denied that these details were made up by her because by this stage she knew the pursuer was going to be suing. The additional detail was explained by the fact that the discussion was recorded not by a vet, but by a veterinary nurse with whom she had a good relationship.

The first defender

[44] The first defender arrived at the training field at the agreed time. The pursuer was there with a woman he thought was called Theresa. He was adamant that a 12-year old child was sitting in the woman's car. The woman had dogs which were being walked and trained but shortly after he arrived, they were put in her car. The pursuer got two of his Alsatians out of his vehicle and told him that they were trained to bite on command. He put them back in his van and asked to see Mac. The first defender opened the back of his car and Mac jumped out and sniffed around. He brought Mac to the pursuer by his chain. The pursuer then walked Mac approximately 100 yards up the field and then back. Throughout the walk, he said the defender was swearing at Mac, kicking him, punching him and beating him repeatedly with the metal chain attached to the collar.

[45] When the pursuer and Mac returned, the pursuer said that he wanted to use as slip lead on Mac. He gave it to the first defender to put on Mac. When he tried to put it on, Mac was snarling and snapping at him. He said this was the first time Mac had shown any aggression since they had arrived to meet the pursuer. The pursuer gave him gloves to protect his hands – but told him they would cost £30. Mac bit the first defender through the gloves. As the first defender was trying to put the slip lead on Mac, the pursuer was holding Mac up by his chain lead and collar so that Mac was on his hind legs. Mac then went limp and did the toilet. He thought Mac was dead. However, he did as requested and put the slip lead on Mac.

[46] The pursuer then asked him remove Mac's old collar and chain but he was unable to as the chain was jammed and collar had a clip tie on it. He said that Mac gets walked on the beach and that sand might have got caught in the catch. He fetched a tool from his car and cut off Mac's collar.

[47] Mac was coming round at this point, and he could see fear in his eyes. As he came round, the pursuer kicked Mac again before placing Mac in his van with two Alsatians. He then let all three dogs out of the van and allowed them to "nip" Mac. The pursuer then told him that he was going to get a collar from his vehicle and as he moved towards it with Mac on the slip lead, Mac lunged at the pursuer and bit his right hand. He had not told the pursuer to stop his abuse of Mac at any point because he did not want to escalate things.

[48] The pursuer told him that Mac should be put down. The woman fetched TCP from the pursuer's vehicle to treat the bite which was by now bleeding. The first defender was left with Mac on the slip lead which he could not control. Mac was spinning around tightening the slip lead around his neck. He lifted Mac back into his car and closed the boot.

[49] He said that the pursuer demanded payment for the lesson and as he did not have cash on him, suggested they drive to a local cash machine. The pursuer had said to the woman that the child in the car had better not be recording what had happened and that if she had it should be deleted.

[50] After leaving the field, he took Mac back to the kennels because he was having problems with the slip lead (which Mac was still wearing) and told the owner, John Ferguson that Mac had been abused by being “kicked and hit.”

[51] In cross-examination, he maintained that Mac had been abused by the pursuer. He said the abuse was horrific. The metal chain was approximately 2 metres in length and the pursuer used this to beat Mac as he walked with Mac. While walking he was also punching and kicking Mac. In recounting the removal of the collar and chain, he also said that grains of sand would have caused the chain to become stuck and that the collar was only 2 weeks old.

[52] When asked why he had allowed himself to be a bystander to the abuse of his dog, he answered by explaining that things had happened very quickly.

[53] He called his wife at around 12.40pm when driving home and told her that Mac had been kicked and hit with the chain and had passed out. He told her everything because she wanted to hear the whole story.

[54] He had not wanted his wife to pay the pursuer and that he had been in favour of reporting the pursuer to the SSPCA.

John Ferguson

[55] John Ferguson owned commercial kennels near where the defenders lived. Mac was a “day boarder” on Thursdays and Fridays. He said Mac was alright as a dog but had his

quirks and was not perfect – he curled his lips if his head or neck were touched. He knew of the issues the defenders had been having with Mac. He had gone back to his breeder for a time and when he returned the defenders told him to always leave Mac’s collar and chain on.

[56] On 26 August 2021 the first defender had dropped Mac off at around 8.00am and then collected him at around 10.15am. He returned with Mac at approximately 1.30pm. The first defender looked white and was stumbling over his words. He explained that a dog trainer had choked Mac while Mac was on the ground. When Mac came round, he bit the trainer. Mr Ferguson said he would look after Mac and keep an eye on him in case a vet was needed. He did not observe any injuries other than some blood around Mac’s lips.

[57] Mr Ferguson kept Mac for a further couple of weeks and would see the defenders once or twice a day when they came to visit Mac. He felt sure that he was told about Mac being choked on the day of the incident, rather than subsequently.

Submissions for the pursuer

[58] It was not disputed that section 1 was engaged and that strict liability would attach to the defenders unless a statutory defence could be made out. A person shall not be liable under the Act if the injury or damage was due wholly to the fault of the person sustaining it (section 2(1)(a)) or he had willingly accepted the risk of injury (section 2(1)(b)).

[59] The pursuer submitted that if the defenders failed to establish that Mac had been abused, there was no basis for a section 2(1)(a) defence. Appropriate equipment had been used by the pursuer. By the time matters had objectively become hazardous, the pursuer had “passed the point of no return” – he was left with Mac on a slip lead and felt it was not safe to leave the first defender in the field with Mac.

[60] In relation to willing acceptance of risk, while there was limited Scottish authority on the application of section 2(1)(b), there were cases from England in relation to the equivalent defence under section 5(2) of the Animals Act 1971 - "A person is not liable...for any damage suffered by a person who has voluntarily accepted the risk thereof."

[61] In the Court of Appeal case of *Turnbull v Warrener* [2012] PIQR P16 at paragraph 30, Maurice Kay LJ repeated with approval the words of Etherton LJ in *Freeman v Higher Park Farm* [2008] EWCA Civ 1185 (at 48) –

"The words of section 5(2) are simple English and must be given their ordinary meaning and not be complicated by fine distinctions or by reference to the common law of *volenti*...what must be proved in order to show that somebody has voluntarily accepted the risk is (1) that they fully appreciated the risk, and (2) they exposed themselves to it."

[62] The pursuer submitted that the dispute in this case turned on whether he could have fully appreciated the risk posed by Mac.

[63] *Flack v Hudson* [2001] QB 698 concerned a horse called Sebastian with a propensity to be frightened by agricultural machinery. The plaintiff's wife had died when Sebastian saw a tractor and bolted. Sebastian's owner knew of this propensity, but the deceased did not. The plaintiff succeeded at trial, the judge at first instance rejecting a section 5(2) defence on the basis that the deceased was told nothing which would have alerted even an intelligent and experienced rider of the specific risk to which she was being exposed. The plaintiff's evidence was that had his late wife known of Sebastian's condition, she would not have ridden him. The Court of Appeal upheld the first instance decision.

[64] *Turnbull v Warrener* [2012] PIQR P16 is another case concerning a claimant being thrown from a horse. In this case, the keeper of the horse used a bitless bridle on her for the first time. The court found, *inter alia*, that the claimant was an experienced horseman who knew both that the bitless bridle was being used for the first time and that this increased the

risk of the horse not being responsive to the rider's instructions. In these circumstances, a section 5(2) defence was made out and the claim dismissed. The decision was upheld by the Court of Appeal, with Maurice Kay LL observing that:

"There is a further point that underwrites the s.5(2) defence in the present case. It arises from the equivalence of knowledge and experience as between the parties. If Mrs Warrender's knowledge for the purpose of s.2(2)(c) is established, it is difficult to see how knowledge of an element of voluntariness on the part of Ms Turnbull for the purpose of s.5(2) can be denied. There is, on the judge's undisputed findings, a significant symmetry in this case."

[65] Equivalence of knowledge was key. The defenders knew that contacting or coming close to Mac's head and neck area was a trigger for aggression, that Mac could not be trusted around their grandson, that his collar and chain were permanently attached and the content of the various veterinary reports on Mac. None of this had been shared with the pursuer, who had been provided with a short video of Mac being aggressive, from which the pursuer took only that the defenders were inexperienced dog handlers. Demonstrating that the pursuer knew Mac was aggressive and there was a possibility of being bitten was not enough for the defenders to rely on the section 2(1)(b) defence. The defenders required to demonstrate that the pursuer *fully* understood the risk. In this case, there was a critical lack of symmetry between the knowledge of Mac's keepers and what had been shared with the pursuer. The most important piece of information related to Mac's head and neck area.

[66] It was only when the slip lead was attached and Mac's collar removed that he became aggressive. Had the pursuer been made aware of all the relevant information, he would not have taken the risk of meeting Mac for an assessment.

[67] In terms of the common law case, the defenders admit that they owed a duty of reasonable care to the pursuer. They had a duty to provide all relevant information to the pursuer. The second defender conceded in cross-examination that all relevant information

should have been given to the pursuer. They had told Mr Ferguson to always leave Mac's collar and chain on. They knew or ought to have known that failing to advise someone such as the pursuer that touching Mac's head and neck area was a trigger for aggression and that failing to so advise would result in injury. Had the pursuer been told that he could not remove Mac's collar then he would not have agreed to meet Mac.

[68] The defence of *volenti non fit injuria* was not available to the defenders, as the pursuer had not been provided with all the relevant information which would have allowed him to assume the risk of injury. In any event, there was no basis on record for this defence.

[69] Finally, the pursuer submitted there was no basis for a finding of contributory negligence. The pursuer could not wear gloves as he had given them to the first defender. In any event, the first defender was bitten through the glove. There was no evidence to show the extent to which gloves might have prevented or reduced the extent of any injury.

Submissions for the defenders

[70] The defenders accepted that in addition to strict liability under the 1987 Act, owners or custodians of animals owed a common law duty to take reasonable care to prevent injury to third parties. This liability is unaffected by the 1987 Act (*Welsh v Brady* [2009] CSIH 60 at paragraph 7).

[71] There is no dispute that the defenders are liable under section 1 of the 1987 Act unless a statutory defence can be made out. However, the pursuer knew that Mac might bite him. He willingly accepted the risk and accordingly section 2(1)(b) provided a defence. The pursuer knew that Mac had an elevated risk of biting. It was clear from his communications with the second defender that Mac was aggressive, ferocious and unpredictable. The pursuer's own evidence was that he had accepted the risk of being bitten

and indeed was unfazed by that risk. Although he said that he would not have been prepared to meet Mac if he had been given further information about him, this was not because of an increased or different risk. It was about whether he could or would want to successfully assess Mac.

[72] Section 2(1)(b) should be given a broad construction and not be construed or applied narrowly. There were no reported Scottish decisions on the section, but I was referred to the English cases of *Cummings v Grainger* [1977] 1 QB 397; *Flack v Hudson* (*supra*); and *Goldsmith v Patchcott* [2012] PIQR 11 in respect of the similar but not identical section 5(2) of the Animals Act 1971. Irrespective of whose account of the incident the court accepted, the crucial point is that the pursuer was injured by Mac biting him and he had willingly accepted that risk. To find otherwise would require a narrow reading of section 2(1)(b) whereby the pursuer had accepted a general risk of being bitten, but not the risk of the bite actually inflicted by Mac. The words of section 2(1)(b) are clear and unambiguous and do not produce an absurd outcome. They should be given their ordinary and natural meaning (*Veale and others v Scottish Power UK plc* [2025] UKSC 45).

[73] If section 2(1)(b) was found not to apply, the defenders relied on section 2(1)(a). As an experienced dog professional, the pursuer had a responsibility to satisfy himself as to any specific risks posed by Mac. He had not discussed changing Mac's lead in advance and had no idea how Mac might respond. The incident was wholly his fault. Further if the court preferred the defenders' account of what happened, the pursuer's mistreatment of Mac had caused Mac to bite him.

[74] Moving on to the pursuer's common law case, the second defender had provided the pursuer with detailed information about Mac. She had not underplayed the potential dangers posed by Mac. She had not provided misleading information. The pursuer would

have agreed to meet with Mac regardless of the information that he had not been given. *Esto* there had been a breach duty of care, *volenti* applied. (*Raybould v T & G Gilmartin* [2018] SAC (CIV) 31 at paragraphs 15 to 16).

Analysis and decision

The evidence

[75] As will be evident from my summary of the evidence, there are differing accounts of the events leading up to Mac biting the pursuer. Ultimately, for reasons which will become apparent, I do not require to resolve definitively the full course of events of 26 August 2021. Even accepting the defenders' case at its highest, the issue of Mac's treatment by the pursuer does not materially affect the statutory issue of the voluntary assumption of risk.

[76] The pursuer gave his evidence in a self-confident and assertive manner. I found him to be generally credible and mostly reliable. He offered direct answers to questions, at times against his own interests. However, at times he was prone to volunteering comments that were unnecessary (eg how his own research had disclosed that there was no such thing as a powdered dog sedative). It was clear that he had a high and at times boastful view of his status and abilities as a dog handler. I am satisfied that he did not abuse Mac as alleged by the defenders. However, I am confident that he was more firm and forceful with Mac than indicated in his account in court.

[77] Lisa Docherty was a credible and reliable witness, but her evidence added nothing to the pursuer's case.

[78] Claire Smith and John Ferguson were both wholly credible witnesses. They were doing their best to assist the court. Their reliability may have been affected by the passage of time in relation to the specific details of events.

[79] The second defender was a highly articulate witness. At times, however, her evidence in chief appeared rehearsed. She volunteered information regarding a discussion with her neighbours which was not in response to a question asked of her and often sought to make points of her own, rather than directly answer questions. In cross-examination, her answers remained detailed and articulate. However, she often sought to deflect questions and dissemble, or to say that the answer to a question could be found in material she had given to her solicitors. She treated most questions as hostile. For example, she denied that the relationship she and her husband had with the pursuer was a professional relationship. When pressed, she accepted that the pursuer was a professional dog trainer. She accepted that she was his client, having paid for dog training. However, she insisted that this was not a professional relationship, because a relationship develops over a period of months.

[80] Her evidence that she had not told the vet on 26 August 2021 about Mac's abuse because she had only had a brief discussion with her husband while he was driving home, was contradicted by her husband's evidence that he had told her everything that had happened during that call. Her assertion that Mac's vet had not properly recorded what she had told her about Mac's abuse the following day was improbable given the serious nature of what Mac had allegedly endured.

[81] Consequently, I am wary about attaching significant weight to her evidence, although ultimately the evidence of the first defender, as a witness to the incident between Mac and the pursuer, is more important.

[82] The first defender was a more tentative witness than his wife. In examination-in-chief, he gave a relatively straightforward account of what he said had happened. However, when pressed on details in cross-examination, at points he struggled to explain the mechanics of how he said Mac had been abused and what he had seen. For

example, his assertion that he could hear the pursuer shouting throughout the walk up and down the field seems improbable given the distance involved. He was unable to offer any explanation regarding why he stood aside and watch the pursuer repeatedly abuse his dog (whom he claimed to love) over a period of almost 30 minutes other than that he had not wanted to escalate things (examination-in-chief) and that things had happened quickly (cross-examination). These explanations are inconsistent with one another. Neither explanation is plausible in the context of what on his version of events was a sustained and brutal attack on Mac. Indeed, on his version of events, well into the abuse of Mac, he himself became a participant by following instructions from the pursuer to place the slip lead over Mac's head.

[83] To some extent, John Ferguson's evidence is consistent with the first defender's account. However, Mr Ferguson was not in the field and spoke only to what he was told. Further, Mr Ferguson did not say that he had been told that Mac had been kicked, punched and whipped with the metal chain. Rather, he said that he was told the trainer had choked Mac out, while he was on the ground. This is different from the first defender's evidence in court which was to the effect that Mac had been rendered unconscious when the pursuer held him up by his collar. The first defender's evidence was that, contrary to Mr Ferguson's recollection, he told Mr Ferguson that Mac had been kicked and hit by the pursuer.

[84] His answer in relation to why Mac's chain could not be removed was essentially word for word the same as offered by his wife. Given the inconsistencies in his evidence and the sheer improbability that as Mac's owner he would stand back and allow Mac to be beaten, whipped and choked to the point of unconsciousness, I am unable to attach significant weight to his evidence.

[85] It is not necessary for me to definitively establish the full facts regarding the incident. Looking at the evidence, I conclude that the facts relevant to the matters I need to decide are as follows. The pursuer realised he could not assess Mac on his collar and chain and wanted to use a slip lead. Some force was used by him in restraining Mac while the first defender removed Mac's collar. A slip lead was then placed on Mac and as this was done, Mac bit the first defender. The pursuer then walked Mac up the field and exercised a degree of control over him. When Mac and the pursuer returned, the pursuer wanted to use a method involving a second slip lead. He gave the first defender bite gloves to protect his hands. Mac bit the first defender again. As the pursuer went to obtain a second slip lead, Mac bit the pursuer. In the aftermath of this, Mac was on a slip lead and in his frenzied state span round and round so that for a time the slip lead tightened around his neck, which would have been distressing for Mac.

The Animals (Scotland) Act 1987

[86] Section 1 of the Animals (Scotland) Act 1987 provides:

- “1(1) Subject to subsection (4) and (5) below and section 2 of this Act, a person shall be liable for any injury or damage caused by an animal if—
- (a) at the time of the injury or damage complained of, he was a keeper of the animal;
 - (b) the animal belongs to C; and
 - (c) the injury or damage complained of is directly referable to such physical attributes or habits.”

[87] Section 1(3) contains a non-exclusive definition of the types of animal covered by section 1(1)(b), which includes dogs:

- “1(3) For the purposes of subsection (1)(b) above—
- (a) dogs, and dangerous wild animals within the meaning of section 7(4) of the Dangerous Wild Animals Act 1976, shall be deemed to be likely (unless controlled or restrained) to injure severely or kill persons or animals by biting or otherwise savaging, attacking or harrying; and...”

[88] Section 1(6) provides that any injury for a which a person is liable under section 1 will be treated as being his fault, as that term is used in the Law Reform (Contributory Negligence) Act 1945.

[89] Section 2 sets out exceptions from strict liability under section 1. These include:

- “2(1) A person shall not be liable under section 1(1) of this Act if—
- (a) the injury or damage was due wholly to the fault of—
 - (i) the person sustaining it; or
 - (ii) in the case of injury sustained by an animal, a keeper of the animal;
 - (b) the person sustaining the injury or damage or a keeper of the animal sustaining the injury willingly accepted the risk of it as his...”

[90] The question to be determined is whether the defenders are exempted from strict liability on the basis that the pursuer was injured wholly due to his own fault or that he had willingly accepted the risk of injury.

[91] There is a detailed analysis of the 1987 Act by an Extra Division of the Inner House in *Welsh v Brady* [2009] CSIH 60. However, the Inner House did not require in that case to consider the operation of section 2(1) and parties were unable to identify any Scottish authorities on the interpretation of these provisions. In these circumstances, I was referred to English cases which consider the application of broadly similar provisions in section 5(2) of the Animals Act 1971. In relation to assumption of risk, the pursuer’s argument was that I should apply the two-stage test from *Turnbull v Warrener* and recognise that for the pursuer to willingly accept a risk, the nature of the risk had to be known. The defender’s position was that the words of section 2(1)(b) in the 1987 Act ought to be given their plain meaning and not construed narrowly.

[92] The pursuer has focused on the similarities between the wording of section 2(1)(b) of the 1987 Act and section 5(2) of the 1971 Act. The wording is undoubtedly similar.

However, these sections cannot be looked at in isolation. There is an important difference

between the approach each Act takes to identifying animals to which strict liability attaches. Section 1(3)(b) of the 1987 Act *deems* dogs to be "...likely (unless controlled or restrained) to injure severely or kill persons or animals by biting or otherwise savaging, attacking..." and therefore of a species falling within section 1(1)(b). The English legislation adopts a very different approach.

[93] Section 2 of the Animals Act 1971 provides:

"2 Liability for damage done by dangerous animals.

- (1) Where any damage is caused by an animal which belongs to a dangerous species, any person who is a keeper of the animal is liable for the damage, except as otherwise provided by this Act.
- (2) Where damage is caused by an animal which does not belong to a dangerous species, a keeper of the animal is liable for the damage, except as otherwise provided by this Act, if—
 - (a) the damage is of a kind which the animal, unless restrained, was likely to cause or which, if caused by the animal, was likely to be severe; and
 - (b) the likelihood of the damage or of its being severe was due to characteristics of the animal which are not normally found in animals of the same species or are not normally so found except at particular times or in particular circumstances; and
 - (c) those characteristics were known to that keeper or were at any time known to a person who at that time had charge of the animal as that keeper's servant or, where that keeper is the head of a household, were known to another keeper of the animal who is a member of that household and under the age of sixteen."

[94] Section 6(2) defines "dangerous species" as being a species which is not commonly domesticated in the British Island and when fully grown, unless restrained, is likely to cause severe injury.

[95] From this it is immediately apparent that under the English regime, keepers of dogs which cause injury are not liable for those injuries unless the conditions of section 2(2) are met, because dogs are not a "dangerous species." It is only after section 2(2) is engaged that the section 5(2) defence of having voluntarily accepted the risk comes into play. This is in

sharp contrast to the position in Scotland where liability is imposed on every keeper of a dog.

[96] The need to explore the characteristics of the animal and establish whether they were known to its keeper is a feature of all the English cases referred to by parties.

[97] In *Flack v Hudson* it was agreed that the damage caused by Sebastian was likely to be severe, and so the requirement of section 2(2)(a) was satisfied. The judge at first instance had made a finding in fact that Sebastian's propensity to become upset and bolt when in the vicinity of agricultural machinery constituted a characteristic falling within section 2(2)(b) ie that the likelihood of damage was due to Sebastian's characteristics being not normally found in horses or are not normally found except at particular times or in particular circumstances. He also found that the late Mrs Flack was unaware of Sebastian's characteristic and had not voluntarily accepted the risk of injury caused by it under section 5(2).

[98] In *Turnbull v Warrener*, the claimant was seriously injured when the horse she was riding, Gem, suddenly veered off course and bolted. Gem had previously always followed instructions and was considered well behaved. On the day in question Gem was using a bitless bridle for the first time. Expert evidence identified that the first use of such a bridle should always be in enclosed and restricted conditions. The judge at first instance found that the claim failed to satisfy the terms of section 2(2) and that in any event the section 5(1) defence applied. The Court of Appeal upheld the decision on the basis that a characteristic of an animal is something inherent. However, the agreed expert evidence was that less than 1% of horses would have reacted in the way Gem had. A one-off incident was not a characteristic in these circumstances. The Court of Appeal also rejected the appeal against the section 5(2) decision as the appellant/claimant knew of and had accepted the risk.

[99] *Cummings v Granger* [1977] QB 397 concerned a claim by a woman who had been bitten by an Alsatian. The dog was untrained and was left loose at night to deter intruders from a breaker's yard in London. The plaintiff knew the dog was there, but one night entered the yard and was badly bitten. At first instance the judge found that the defendant was liable under section 2(2) and was unable to rely on section 5(2). The Court of Appeal agreed that section 2(2) applied. If the dog were to bite someone the damage would be severe; that the likelihood of such damage was due to characteristics not normally found in Alsations except in the particular circumstances where an untrained dog was left roaming an area it regarded as its territory; and it could be assumed the defendant knew these characteristics. However, the appeal was allowed for reasons including that the plaintiff knew all about the dog and had voluntarily accepted the risk.

[100] I was also referred to *Goldsmith v Patchcott* [2012] EWCA 183, another Court of Appeal case. Jackson LJ delivered the leading judgment and reviewed various authorities in relation to the interpretation of section 2(2), whose wording he described as "oracular and opaque." On review of various authorities, including *Cummings v Granger* he agreed with Lord Nichols' summary in *Mirvahedy v Henley* [2003] UKHL 16 that (in relation to section 2(2)):

"Requirement (b) will be satisfied whenever the animal's conduct was *not* characteristic of the species in the particular circumstances. Requirement (b) will also be satisfied when the animal's behaviour *was* characteristic in those circumstances."

[101] In *Goldsmith*, the judge at first instance had held that the relevant characteristic of a horse in relation to section 2(2)(b) was rearing or bucking when alarmed. This was a normal characteristic in particular circumstances, namely when startled or alarmed. He regarded it

as immaterial that there was no evidence the horse had done this before and found the requirements of the second limb of section 2(2)(b) were met.

[102] The Court of Appeal observed that in most cases where section 2(2)(a) is satisfied, the requirements of (b) will also be met. It was not obvious what purpose section 2(2)(b) served.

[103] This is by no means an exhaustive analysis of the English legislation. However, it demonstrates that the interpretation of Clause 2(2) of the 1971 Act remains a matter of some difficulty. It also highlights that the starting point under the Scottish legislation is markedly different. The Animals (Scotland) Act 1987 is a far shorter and more elegantly drafted piece of legislation than its English counterpart. There is no reference to the characteristics of the animal *or* to knowledge by keepers of those characteristics. The position in relation to its applicability to dogs is clear – they are *deemed* to be species of animal to whom section 1(b) applies if they injure severely by biting or otherwise savaging, attacking or harrying.

[104] This difference in approach is important in considering the extent to which the pursuer is assisted by English authorities. The pursuer's purpose in referring to these authorities was to demonstrate that for him to have willingly accepted the risk, he needed to know precisely what the risk was. However, as can be seen, in relation to animals (such as dogs and horses) which are not "dangerous species," before an English court even gets to the stage of considering whether a claimant has "voluntarily accepted the risk" under section 5(2) it is necessary for the section 2(2) criteria to be met. These criteria are not concerned with a general risk of dogs biting or horses bolting, but with specific characteristics of the animal in question. Against that background, it is not surprising that the cases point towards a specific rather than a general assumption of risk.

[105] In this case, the defenders admit they are liable under the 1987 Act for Mac.

Applying the provisions of section 1(1) in order, the reasons for liability are (a) that they were Mac's keepers; (b) that dogs are deemed to be included within species to whom strict liability applies; and (c) that the pursuer's injuries were caused by Mac biting him. There is no need to inquire further regarding the characteristics of the dog or whether the dog's owners knew of there was a risk of biting.

[106] The exception from liability in section 2(1)(b) must be interpreted against the very general liability imposed by section 1. The pursuer's argument that to voluntarily assume the risk of being bitten by Mac he would need to know the precise nature of the risk is consistent with the 1971 Act and the English authorities cited by him. However, these cases proceed on the basis that the precise characteristics giving rise to a risk of injury must be identified. The pursuer has submitted he cannot have voluntarily assumed a risk of injury unless there was "symmetry" between the defenders' knowledge of Mac's trigger points and the information shared with him.

[107] However, contrary to his argument, if I were to determine that he required to know the precise nature of the risk, there would be a lack of symmetry between the nature of the liability imposed by section 1 for "injury and damage" and the exception from that liability set out in section 2(1)(b).

[108] The pursuer's argument places a gloss on section 2(1)(b) and treats it as the functional equivalent of section 5(2) of the 1971 Act. However, the wording of section 2(1)(b) is clear. It refers to the same injury and damage in respect of which liability is imposed under section 1. Accordingly, in relation to Mac, the exception relates to the willing acceptance of a risk of being injured severely by "...biting or otherwise savaging, attacking and harrying" (section 2(3)(a)). Were that not to be the case, the logic of the

pursuer's position is that there would be different categories of bite, with the need for factual inquiry into the cause – in this case whether, for example, a bite was caused by someone approaching Mac's head and neck area or some other reason. That seems a very unlikely interpretation of section 2(1)(b) given that dogs are deemed to fall within the ambit of section 1(1)(b). In the absence of Scottish authority to the contrary, I approach section 2(1)(b) by applying the ordinary meaning of the statutory language, read in context with the liability imposed by section 1. Importing a "specific risk" test would undermine the structure of the liability regime created by the 1987 Act. To require a pursuer to know the precise trigger for a dog's aggression would be inconsistent with a statutory regime that deems all dogs capable of inflicting severe biting injuries. Parliament has chosen generality at the liability stage; symmetry requires generality at the exception stage.

[109] Turning to the facts, the pursuer knew that Mac was an aggressive dog with a "Jekyll and Hyde" personality. He knew that he had bitten his owners and that a vet had suggested he be euthanised. He also knew that the defenders had approached him as a last resort, such were the problems they were having with Mac. He had seen video footage of Mac being aggressive and photographs of bite wounds inflicted by him. The pursuer accepted in his evidence that he knew that Mac might attempt to bite him. He had been bitten many times by dogs, was unfazed by being bitten and carried TCP in his vehicle to treat bite wounds. He had trained dogs, such as Pip, which he knew to be aggressive.

[110] Taken together, these facts demonstrate not just that the pursuer was aware of the risk, but that he made a conscious and informed decision to proceed notwithstanding the risk. Accordingly, by virtue of section 2(1)(b) the defenders are exempt from liability.

[111] In any event, even if I am wrong in my application of section 2(1)(b), the evidence does not support the pursuer. His own evidence, which I have broadly accepted, was that

when Mac's collar was removed, Mac bit the first defender, not him. The pursuer then took control of Mac and walked him the length of a football pitch and back. He said Mac was under control during this walk, but when they returned, Mac became aggressive and bit the first defender again, before biting him. There is no evidence to allow me to conclude that removal of Mac's collar by the first defender was the cause of Mac biting the pursuer later in the sequence of events.

[112] Further, and in any event, having witnessed Mac bite his owner, even if the pursuer had not accepted a risk of injury, by that stage he had witnessed the levels of aggression Mac was capable of. He could have stopped the assessment there and then. He did not and accepted the risk of continuing. I do not agree with the submission that by this point the pursuer had reached "the point of no return" because on his own evidence, he and the first defender were able to put Mac in the back of a car without any further injuries being sustained by anyone.

[113] In addition to not being told about Mac's head and neck area being a trigger for aggression, the pursuer also asserts that he should have been told about concerns regarding Mac being around children, previous attempts at training and been given the written reports prepared on Mac. The pursuer explained that had he known about these matters, he would have had no interest in training or assessing Mac. However, this must be looked at in the context of his evidence as a whole. The pursuer had very high confidence in his abilities as a dog trainer. He agreed to train the defenders' neighbour's dog, Pip who he said had tried to bite his face. He had no concerns about being bitten. Accordingly, there is an inconsistency in the pursuer's evidence, and my impression is that he overstated the impact that these factors would have had on his decision whether to meet Mac or not. In any event, while he may have chosen for personal or professional reasons not to train or assess a dog such as

Mac, I am satisfied that any such decision was separate from the assumption of risk. Again, even if I am wrong on this, having seen Mac bite the first defender, the pursuer could have simply brought the session to an end.

[114] The defenders' secondary position was that the pursuer's injuries were wholly his fault. It is not necessary for me to determine whether the exception under section 2(2)(a) has been made out in view of my decision on the assumption of risk. However, had it been necessary, given that I do not accept the pursuer acted in the manner alleged, I would have rejected the defenders' arguments on this point. I also do not accept that he ought to have asked more questions about Mac before seeking to remove his collar. There was no evidence to support this assertion.

[115] In terms of the pursuer's common law case, it is agreed that the defenders owed the pursuer a duty of care. The pursuer's case on record is that the defenders ought to have provided "all relevant information" pertaining to Mac. Other than the evidence from the pursuer himself, there was no evidence lead regarding what information ought to be provided to a dog trainer, prior to meeting a dog for the first time. The defenders' position was that sufficient information had been provided to ensure that the pursuer knew the risks associated with Mac.

[116] Based on the evidence which I have summarised, I agree with the defenders that enough information was given to the pursuer for him to appreciate the risk associated with Mac. The information he was not given would not have materially altered his assessment of Mac. As indicated in relation to the statutory claim, I am satisfied that the pursuer would have agreed to meet with Mac even if he had further information, such was his self-confidence in training dogs. In relation to the Mac's head area and collar removal being

specific triggers for aggression, even if there had been a duty to disclose this, it was the first defender not the pursuer who was bitten after Mac's collar was removed.

[117] The plea of *volenti non fit injuria* is only available where there has been a breach of duty and a defender would otherwise be liable, but the pursuer accepts or voluntarily assumes the risk (*Raybould v T & N Gilmartin, supra*). Given that I have not found the defenders to be in breach of any duty owed to the pursuer, the question of whether the defender can or needs to rely on the defence of *volenti non fit injuria* does not arise.

[118] The pursuer has submitted that the defender has inadequate pleadings to make out a defence of *volenti*. Had it been necessary for me to determine this point, while the precise term does not feature in the defences, there is an averment that "...the pursuer knowingly accepted the risk that he was dealing with an animal which may bite." Each party's pleadings in this action are brief and as a personal injury action there are no pleas-in-law. I would have allowed the defenders to rely on the defence of *volenti* based on this averment and the evidence lead without objection. However, the defence does not arise as I have not found the defenders to be in breach of any duty owed to the pursuer.

Contributory negligence

[119] The defenders argued that if liability was established under either the 1987 Act or common law, there should be a finding of 80% contributory negligence. This figure was based on 30% for provoking Mac and failing to keep out of harm's way; 30% for failing to make enquiries when interacting with Mac and 20% for not wearing protective gloves.

[120] In view of my decision, it is not necessary for me to deal with this matter and given my findings, it is somewhat artificial for me to determine a figure, given my findings in fact.

However, applying a broad-brush I would have found the pursuer to be contributorily negligent to the extent of 15%.

Solatium

[121] The nature of the pursuer's injuries was helpfully agreed by parties. He sustained a significant injury to the dorsum of his right hand. He required wound debridement and irrigation under local anaesthesia on the day of the accident. Subsequently, he required surgery where three wounds were noted on the dorsum of the right-hand ulnar border. The proximal extensor paratenon was noted to be breached, but there were not anticipated to be any long-term consequences. The pursuer was left with permanent scarring and residual finger stiffness which may be helped by physiotherapy. He was also left with improving but permanent issues with skin sensation. He required assistance with some activities following the accident.

[122] Had I found in favour of the pursuer, quantum was agreed at £14,000 inclusive of interest.

[123] I was not addressed on the question of expenses. A hearing can be fixed if parties are unable to reach an agreed position.