Neutral Citation Number: **[2019] EWHC 330 (Admin)**

Case No: C0/3344/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
LEEDS DISTRICT REGISTRY
ADMINISTRATIVE COURT

Leeds Combined Court Centre
1 Oxford Row
Leeds LS1 3BG

Date: 20 February 2019

Before :

HIS HONOUR JUDGE DAVIS-WHITE QC
(SITTING AS A JUDGE OF THE HIGH COURT)

- -

Between :

DAMIAN DODSWORTH	**Appellant**
- and -	
CHIEF CONSTABLE OF WEST YORKSHIRE POLICE	**Respondent**

AND

Neutral Citation Number: **[2019] EWHC 331 (Admin)**

Case No: C0/3345/2018

Between :

HAYDEN GRAHAM-BURROWS	**Appellant**
- and -	
CHIEF CONSTABLE OF WEST YORKSHIRE POLICE	**Respondent**

- -
- -

Ms Pamela Rose (instructed by **Wheldon Law**) for the Claimants/Appellants
Mr Oliver Thorne (instructed by **Legal Services, West Yorkshire Constabulary**) for the Defendant/Respondent

Hearing dates: 8 February 2019

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Approved Judgment

His Honour Judge Davis-White QC :

1. This is my judgment in two appeals by way of case stated from the Crown Court at Leeds. They concern dog destruction orders made by the Magistrates Court which, on 27 October 2017, were affirmed on appeal to the Crown Court at Leeds (His Honour Judge Mairs and lay justices). The Orders were made under s4B of the Dangerous Dogs Act 1991, as amended (the "**1991 Act**"). Although the facts of the cases are different, some, but not all, legal issues are common to both of them. In particular, both appeals raise (among other matters) similar issues as to the meaning to be given to, and the effect of finding a person not to be, "*a fit and proper person to be in charge of the dog*" under s4B(2A) of the 1991 Act and the relationship of Article 8 and the First Protocol to the European Convention of Human Rights to the making of dog destruction orders.

2. For convenience I refer to the proceedings involving Mr Dodworth and his dog "Oscar" as the "Dodsworth appeal" and the proceedings involving Mr Hayden Graham-Burrows and his two dogs, "China" and "Blue", as the "Graham-Burrows appeal". Each appeal is by way of case stated against the decision of the Leeds Crown Court. The Chief Constable of West Yorkshire (the "Chief Constable") is the respondent in each case.

3. Given the overlap of the advocates representing the parties and the overlap of many common issues, both cases were listed and heard before me together.

4. Apart from problems about the respective case stated in each appeal, I was provided only with bundle B lodged by the appellant in each case. The Administrative Court in Leeds has never been provided with bundle A in either case. No bundle A was available at the hearing before me. I therefore had to proceed on the basis of the bundle Bs that were available. Ms Rose for the Appellant in each case kept referring to documents in Bundle A in each case but was unable to produce copies of the same for me.

5. Something appears to have gone wrong with the appeal by way of case stated process. The initial procedure is governed by the Criminal Procedure Rules 2015, Part 35. I do not have the papers to see what has gone on in the case in terms of the communications between the parties and the Crown Court. It may well be that, in each case, the initial identification of the respondent as the Crown Court rather than (as it should have been) the Chief Constable hampered the usual process whereby drafts of the case stated are to be served on the respondent. This is of course to enable the respondent to play a role in shaping the case stated. Quite apart from anything else, the case stated is in each case defective because the summary of the relevant contentions of the parties are limited to the contentions of the appellant, the appellant having been responsible for the original draft case stated as submitted to the Crown Court. The original case stated provided by the Crown Court failed to cover and provide the matters as set out in CPR Part 35 which led to the case being sent back for amendment. It is unclear to me whether the Chief Constable was properly served at the relevant stages and before me various submissions were made on his behalf as to the inadequacies of the case stated in each appeal. There was force in these submissions.

6. I did not have before me the original draft case stated put forward to the Crown Court on behalf of the appellant. However, my suspicion is that the Amended Case Stated is largely based upon that draft, albeit there may be some slight differences between the two. I note for example that Ms Rose referred in her skeleton to Mr Paul Shand as being Mr Peter Shand, an error also apparent in the Amended Case Stated.

Representation

7. I heard from Ms Rose from the appellant owners, and Mr Thorne for the respondent, the Chief Constable. Both Counsel had filed written skeleton arguments. In addition, Ms Rose filed a supplemental skeleton shortly before the hearing. I am grateful to Counsel for their skeleton arguments. In the course of the hearing, I regret to say that, at times, I found the oral submissions of Ms Rose difficult to follow and that on occasion she would answer a question from me on one issue by leaping onto and remaining with another issue.

The Relevant Legislation

8. The Dangerous Dogs Act 1991, as amended, recites that it was made "*to prohibit persons from having in their possession or custody dogs belonging to types bread for fighting; to impose restrictions in respect of such dogs pending the coming into force of the prohibition; to enable restrictions to be imposed in relation to other types of dog which present a serious danger to the public; and to make further provision for securing that dogs are kept under proper control; and for connected purposes*."

9. The scheme of the 1991 Act is as follows.

10. Section 1(1) lays down the types of dog to which the basic prohibitions under the 1991 Act apply. There is power in the Secretary of State by statutory instrument to add to the list of dogs in question. For present purposes it is enough to know that the section applies to:

> "*S1(1)(a) any dog of the type known as the pit bull terrier*".

In this case the dog destruction orders relate to three dogs each of which has been identified as being of that type.

11. Section 1(2) lays down various prohibitions in relation to the dogs covered by section. These include (and the following is a summary only): breeding or breeding from, selling or exchanging, making or offering to make gifts of, allowing to be in a public place without being muzzled and kept on a lead, and abandoning or allowing to stray, such dogs.

12. Section 1(3) lays down the basic prohibition on a person having a dog to which the section applies in their possession or custody, except in pursuance of relevant powers to seize or destroy under the 1991 Act.

13. The prohibition on possession or custody under section 1(3) does not apply to the extent that a relevant statutory instrument so provides and subject to compliance with the conditions set out in such statutory instrument. It is envisaged that the provision may be by way of a scheme of exemption. The original statutory instrument that was

made was the Dangerous Dogs Compensation and Exemption Schemes Order 1991 SI 1991/1742 (the "1991 Order"). The current provision is the Dangerous Dogs Exemption Schemes (England and Wales) Order 2015, SI 2015/138 (the "2015 Order").

14. The prohibitions contained in section 1 are backed by criminal sanctions, it being an offence to breach the section. Liability on summary conviction is to imprisonment for a term not exceeding six months or a fine.

15. Section 2 of the 1991 Act empowers the Secretary of State to extend certain of the restrictions under s1(2)(d) and (e) to types of dog to which section 1 does not apply but which appear to the Secretary of State to present a serious danger to the public.

16. Section 3 of the 1991 Act creates a basic and aggravated form of offence arising from a dog being dangerously out of control. Liability attaches both to the owner and, if different, the person for the time being in charge of the dog. The aggravated form of offence arises where there is injury to a person or an assistance dog. The offence is not limited to dogs of the types identified by section 1, but applies to any dog which is dangerously out of control.

17. In the case of convictions for an offence under s1 or s3(1), section 4 confers powers, and in some cases a duty, on the court to order the destruction of any dog in respect of which the offence was committed. A power to order the offender to be disqualified from having custody of a dog is also provided for. Section 4 is complemented by section 4A, which makes provision for contingent destruction orders. In cases where there is a relevant conviction, a destruction order is not made and the offence is one under section 1 and the dog is subject to the prohibition in s1(3), then the court shall order that unless the dog is exempted from that prohibition within the requisite period it shall be destroyed. The requisite period is one of two months beginning with the date of the order.

18. I shall return to section 4B.

19. Section 5 provides the authorities with a number of powers to seize a dog which appears to be kept in breach of relevant prohibitions under the Act. It is the exercise of powers under that provision that commenced the processes leading to the destruction orders in this case.

20. So far as relevant to the cases before me, section 4B provides as follows:

"*4B Destruction orders otherwise than on a conviction*

(1) where a dog is seized under section 5(1) or (2) below…. and it appears to a justice of the peace…

(a) that no person has been or is to be prosecuted for an offence under this Act or an order under section 2 above in respect of that dog (whether because the owner cannot be found or for any other reason); or

(b) that the dog cannot be released into the custody or possession of its owner without the owner contravening the prohibition in section 1(3) above,

he may order the destruction of the dog and, subject to subsection (2) below, shall do so if it is one to which section 1 above applies.

(2) Nothing in subsection (1)(b) above shall require the justice… to order the destruction of a dog if he is satisfied-

(a) that the dog would not constitute a danger to public safety;

(b) ….

(2A) For the purposes of subsection (2)(a), when deciding whether a dog would constitute a danger to public safety, the justice….-

(c) must consider-

(i) the temperament of the dog and its past behaviour, and

(ii) whether the owner of the dog, or the person for the time being in charge of it, is a fit and proper person to be in charge of the dog, and

(b) may consider any other relevant circumstance;

(3) Where in a case falling within subsection (1)(b) above the justice… does not order the destruction of the dog, he shall order that, unless the dog is exempted from the prohibition in section 1(3) above within the requisite period, the dog shall be destroyed.

(4) Subsections (2) to (4) of section 4 above shall apply in relation to an order under subsection 1(1)(b) or (3) above as they apply in relation to an order under subsection 1(1)(a) of that section.

(5) Subsections (2) and (3) of Section 4A above shall apply in relation to an order under subsection (3) above as they apply in relation to an order under subsection (1) of that section……"

21. Section 4B was inserted by the Dangerous Dogs (Amendment) Act 1997, section 3(1) (the "1997 Act"). Subsection (2A) was inserted by the Anti-Social Behaviour, Crime and Policing Act 2014 (the "2014 Act").

22. The 2015 Order provides, by article 4, that the prohibition in section 1(3) of the 1991 Act, shall not apply to a dog provided that the court has determined (a) that the dog is not a danger to public safety and (b) has made the dog subject to a contingent destruction order under section 4A or 4B of the Act but (c) that certain conditions are met within or for a specified period. Among the conditions which have to be met are that the dog is neutered (article 6), microchipped (article 7); the subject of third-party insurance (article 8) and that a certificate of exemption is issued under article 9 and its terms complied with throughout the lifetime of the dog.

23. A certificate of exemption issued under article 9 must contain certain requirements as set out in article 10. These include, among others, keeping the dog muzzled and on a lead when in a public place, keeping the dog in sufficiently secure conditions to prevent its escape, providing access to the dog to relevant persons, notifying the

relevant agency of various matters, and keeping the dog at the same address as the person to whom the certificate is issued save for any 30 days in a 12 month period.

24. The Amended Case Stated in the Dodsworth appeal asserts that in 2014 there was a breach of the 2015 Order in relation to the dog, Oscar, owned by Mr Dodsworth. I am satisfied that that is an error. The 2015 Order only came into force in March 2015, though certificates of exemption in existence prior to the relevant date were treated as relevant certificates under the 2015 Order under the latter's saving provisions.

25. Under the original 1991 Order the exemption scheme only applied to dogs which were alive as at the date of commencement of the 1991 Act. Its detailed terms were amended twice by further statutory instruments in 1991. However, the 1997 Act gave effect to the regime of contingent destruction orders and (among other things) inserted ss4A and 4B into the 1991 Act. Section 4 of the 1997 Act extended the operation of the 1991 Order so that exemption from the requirements of section 1 of the 1991 Act was possible for dogs whenever they were born. Under the 1991 Order there was a similar requirement of a certificate of exemption but the address requirement was not as contained in the current 2015 Order. Instead the relevant requirement was one to notify the agency of the address at which the dog was to be kept prior to the certificate being granted. The terms of the certificate then required notification of any change of address at which the dog to which it relates was kept for a period of in excess of 30 days.

Discussion: the 1991 Act

26. It is helpful at this point to consider some of the points of law which arise. As I shall go on to explain Ms Rose appeared to me to have raised points that were not clearly covered by the questions in the Amended Case Stated. Further, the Amended Case Stated did not set out the evidence that it would need to have set out for at least some such questions to be answered. Her response was to say that the issues were raised by the draft statement of case that she had submitted and/or her grounds of appeal and/or that they were implicit in the case stated and/or that I should deal with them and/or that I should remit the case stated for amendment. I will return to these issues later in my judgement but have drawn attention to them at this point to explain why at times I have gone beyond the issues which I consider the Amended Case Stated truly to raise.

27. The first point to note is that, under section 4B(1) of the 1991 Act, there is a discretion to order destruction in circumstances where a prosecution has not and is not to take place. If, however, release of the dog into the custody or possession of the owner or keeper would result in contravention of the prohibition in section 1(3), the court is required to make a destruction order unless the conditions in subsection (2) are satisfied. If those conditions are satisfied the court retains a discretion to make a destruction order, but is not required to do so. It is common ground in the case of each of the destruction orders before me, that the facts are such that the orders were required to be made unless the court was satisfied that the condition under subsection (2) was met, namely that "the dog would not constitute a danger to public safety".

28. In the case of a dog falling within section 1 of the 1991 Act, if the Court decides under s4B not to make a destruction order this will be on the basis that it is satisfied that the dog would not constitute a danger to public safety (with the consequence that it was not required to make a destruction order) AND as a matter of discretion it has

decided not to make such an order. In those circumstances, it will be required to make a contingent destruction order under s4B(3). The consequence is that the fitness and propriety of the owner or keeper (one of the considerations in determining whether the dog would constitute a danger to public safety|) will be highly relevant in considering whether the exemptions applying under the 2015 Order will be complied with. In my judgment, this means that in many, if not most cases, in circumstances where the court finds that the keeper is not fit and proper, it will often be driven to the conclusion that it is not satisfied that the condition in s4B(2)(a) is met, that is that the dog would not constitute a danger to public safety.

The approach to section 4B

29. The first legal issue is the scheme of the legislation in relation to s4B and the order in which the Court should approach matters.

30. The Appellants' bundles contained the cases of *R v Flack* [2008] EWCA Crim 204 and *R v Baballa* [2010] EWCA Crim 1950. Ms Rose relied upon them in her skeleton arguments. Surprisingly, I was not referred to the case of *R(Grant) v Crown Court at Sheffield* [2017] EWHC (Admin) 1678. I say surprisingly, because the *Grant* case dealt with both *Flack* and *Baballa.* Ms Rose appeared in the *Grant* case. One of her submissions in the *Grant* case was that the approach set out in those cases regarding s4A(4) extended to the operation of s4B. The *Grant* case also has some useful comments on the concept of "fit and proper person to be in charge of a dog". Finally, the Grant case also considers one further point being raised in the cases before me: namely whether the court below had, in effect, applied the "fit and proper" test as if it was a *condition* of establishing that a dog in question "would not constitute a danger to public safety" rather than a *consideration* to be taken into account in reaching a conclusion as to whether it would constitute such a danger. Whether the Leeds Crown Court had erred in law in the last two respects comprised two of the main grounds of appeal before me.

31. In the *Grant* case, one of the issues which arose was the sequence in which the court should deal with the issues that arose. The position as held by the learned Deputy Judge is set out in paragraph 20 of his judgment:

> "[20] *Under section 4B there are two sequential steps. The first is whether or not to make a destruction order. There is the requirement, in a case such as the present, under sub-section (1) to make a destruction order and then the exception to that requirement is sub-section (2). Second, and only if at the first step no destruction order has been made, the second step is whether to make a contingent destruction order under sub-section (3). In a case like this, there is an obligation to make such an order. Therefore, under section 4B the court does not at the outset have a free choice between a contingent destruction order and a destruction order. Under section 4B, the court is not able to opt for a contingent destruction order simply because on the evidence it might form the view that such an order would provide sufficient protection for public safety. Rather, the scheme under section 4B is much more prescriptive. A contingent destruction order must be made only if the court has already decided not to make a destruction order. A court may only decide not to make a destruction order, again in a case such the present, if it has decided that the dog "would not constitute a danger to public safety*"

32. The judge rejected the submission of Ms Rose that an opposite conclusion to the one stated in his paragraph [20], set out above, was the correct position as a matter of law. In that context she had relied upon the judgement of Silber J in *R v Flack* [2008] EWCA Crim 204 and of Swift J in *R v Babballa* [2010] EWCA Crim 1950.

33. It was initially unclear to me whether Miss Rose was seeking to reopen before me the argument that she lost in the *Grant* case. Her "Supplement Skeleton" in terms asserted that "*the established position is that a court ought to make an order contingent on compliance*" and referred to paragraph 23 of the judgment in *Rv Babballa* setting out the approach which the Deputy Judge in the *Grant* case did not apply to s4B. Such references to the approach in Baballa and Flack was also set out elsewhere in her skeleton argument (eg in connection with the submissions regarding "fit and proper" on the Graham-Burrows appeal).

34. Eventually Ms Rose confirmed to me in oral submission that she was not asserting that the Judge had got it wrong in *Grant* and accepted that his approach was correct. In those circumstances I need so no more than I agree with the Judge's conclusion and reasoning on the point in the *Grant* case. In addition to the points that he makes I would also point out that under article 4(1)(a) it is a condition of the application of the exemption scheme that the court has determined that the dog is not a danger to public safety under s4(1A) or 4B of the 1991 Act. I regret that at the end of the day I was unable to understand what legal point(s) of principle in the *Flack* and *Baballa* cases Ms Rose was seeking to rely upon before me. I should also say that the Amended Case Stated does not, in any event, raise the question of whether the approach in paragraph [20] of the Grant case was correct and/or the Crown Court erred in applying it.

"Person for the time being in charge of the dog"

35. In the *Dodsworth* case before the Crown Court, a point arose regarding the identity of persons that would meet the criterion of being a "person for the time being in charge of" the dog (contrasted with the owner of the dog) in relation to whom the fit and proper test under s4B(2A)(a)(ii) might be applied by the Court. A further issue was whether in any event the court could entrust a dog to a person which had had no past or present relevant responsibility for the dog such as to qualify as a person "for the time being in charge" of the dog within the meaning of s4B(2A)(a)(ii). In the Dodsworth case the Crown Court decided that it would first consider the question of whether the persons put forward as keepers were fit and proper first. On that basis it refused an adjournment to enable Ms Rose to consider the issue of "person in charge".

36. The issue has been resolved by *Webb v Chief Constable of Avon and Somerset Constabulary* [2017] EWHC 3311 (Admin), decided after the decision of the Leeds Crown Court in the cases before me. In *Webb* the term "keeper" was used as a synonym for the "person in charge of" the dog and I do the same.

37. In *Webb* the court rejected the argument that under s4B, in considering whether a dog would constitute a danger to public safety, the court on the basis it was a "relevant circumstance" could consider whether the dog could be entrusted to a person who had previously had no connection with the dog and did not meet the test of being a person for the time being in charge of the dog.

38. However, the court accepted that the temporal limitation in the term "person for the time being in charge" covered persons with relevant contact in the past or present but not the future. The Court rejected submissions that the temporal limitation required relevant responsibility at the time of seizure of the dog. Further, the court determined that being in charge related to whether or not the person has responsibility for the dog and that "being in charge" could encompass volunteers or persons who walked dogs. The court determined that the relevant phrase comprised "ordinary words which are capable of applying in a range of situations. The judgment in any case is fact sensitive and it is one for the justice or the sheriff to make."

Fit and proper person to be in charge of a dog

39. One of the main issues in the appeals before me is whether the court erred in law in applying the test of "fit and proper person to be in charge of a dog". There are two aspects to this. The first is whether the Crown Court made any errors of law in determining that certain persons were not "fit and proper". The second is whether, assuming such finding, there was an error of law in the manner in which this finding was taken into account in considering whether each of the dogs "would not constitute a danger to public safety".

40. In my assessment, rather like "person for the time being in charge of a dog", the phrase "fit and proper to be in charge of the dog" are "*ordinary words which are capable of applying in a range of situations. The judgment in any case is fact sensitive and it is one for the justice or the sheriff to make*." The court has grappled with the concept of whether persons are fit or fit and proper in a number of contexts. As in the very different field of company directors, where the courts have had to deal with the concept of conduct making a person unfit to be concerned in the management of a company (see s6 Company Directors Disqualification Act 1986), these have been held to be "*ordinary words of the English language and they should be simple to apply in most cases. It is important to hold to those words in each case*." (see *Re Sevenoaks Stationers (Retail) Limited* [1991] Ch. 164). In my judgment, the same is true of the test of "fit and proper person to be in charge of a dog". Ms Rose submitted that this was incorrect. In effect, she submits, a company director is not a keeper of a dog. Of course, I accept that distinction but it seems to me that the underlying principle that I have identified applies in both cases.

41. In my judgment, the question of whether a person is a "fit and proper person" to be in charge of the dog is a mixed question of law and fact (see *Re Grayan Building Services Limited (In liquidation)* [1995] Ch 241 at 254G). Although not a question of discretion, the focus (unlike s6 of the Company Directors Disqualification Act 1986) is on whether at the time of the hearing the person is fit and proper (rather than solely looking back to consider whether past behaviour fell below relevant standards).

42. Leaving aside for the moment the precise basis on which an appeal court may be able to interfere with a decision as "to fit and proper" which is under appeal, in the case of the test in s4B of the 1991 Act I am satisfied that the appellate court will interfere much less readily than it would (for example) in the context of the Company Directors Disqualification Act 1986 and the test under s6 of that Act.. Under the 1991 Act the issue is much more of a "value judgment" or "assessment" for the first instance court and in terms of the willingness of an appeal court to interfere, much closer to the end of the spectrum represented by cases such as what is an "unfair" contract term or

whether a testator has made "reasonable financial provision" rather than say, the other end of the spectrum represented by decision such as whether a motorist has driven with due care and attention (see discussion of Hoffmann LJ, as he then was, in the *Grayan* decision at page 254G-255H). As was said in *George Mitchell (Chesterhall) Limited v Finney Lock Seeds Limited* [1982] 2 AC 803, in relation to the "fair and reasonable" test under the Unfair Contract Terms Act 1977, in a passage cited by Hoffman LJ in the *Grayan* case:

> "*it would not be accurate to describe such a decision as an exercise of discretion. But [such] a decision under any of the provisions referred to will have this in common with the exercise of a discretion, that, having regard to the various matters to which… Section 11 of the Act of 1977 direct[s] attention, the court must entertain a whole range of considerations, put them in the scales on one side or the other, and decide at the end of the day on which side the balance comes down. There will sometimes be room for a legitimate difference of judicial opinion as to what the answer should be, where it will be impossible to say that one view is demonstrably wrong and the other demonstrably right. It must follow, in my view, that, when asked to review such a decision on appeal, the appellate court should treat the original decision with the utmost respect and refrain from interference with it unless satisfied that it proceeded upon some erroneous principle or was plainly and obviously wrong."*

43. I should add, that even at or near the "other end of the spectrum", the appeal court is slow to intervene. As was said in *In re Hitco 2000 Limited* [1995] BCC 161 in a passage approved by Lord Hoffmann in the *Grayan* case and referring to an appeal court dealing with a s6 Company Directors Disqualification Act 1986 case:

> "*Plainly the appellate court would be very slow indeed to disturb such a conclusion as to fitness or unfitness. In many, perhaps most, cases, the conclusion will have been so very much assisted and influenced by the oral evidence and demeanour of the director and other witnesses that the appellate court would be in nowhere near as good a position to form a judgement as to fitness or unfitness than was the trial judge*".

44. In the current case, the Crown Court dealing with the appeal to it as a rehearing was in the same position as the "trial judge" in the passage just cited.

45. As a generality I should record that Ms Rose's submission, which I reject, is that the approach that I have outlined above is incorrect in the area of dangerous dogs and the 1991 Act. She submitted that the principles that I have sought to derive from *Grayan* and *Hitco* do not apply because those were cases about fiduciary duties owed by directors whereas the cases before me are about dogs, dangerous or otherwise.

46. There are some more general points that can be made about the "fit and proper" test. As has been the experience with the Company Directors Disqualification Act 1986, it is important to stick to the statutory words of the fit and proper test and not to adopt findings of particular circumstances in which the test was found to be satisfied or not satisfied as if they are judicial paraphrases for the statutory test or exhaustive

statements of what is comprised within the test. Further, from the *Grant* case some useful principles can be extracted:

(1) " *"fit and proper person to be in charge of the dog" is not just a question of the character of the person looked at in isolation. The statutory provision has to be looked at in its context. In this context, the function of the fit and proper person requirement is aimed at providing protection for public safety in the event that the dog requires control (see paragraph 36);*

(2) "*the notion of fit and proper person encompasses questions such as whether the person would be willing to control the dog to avoid danger to public safety, whether they would have the necessary sense and awareness to ensure that they would be likely to recognise control might have to be applied and their practical ability to do so. The latter enquiry includes but is not limited to consideration of that person's likely other responsibilities"* (see paragraph 37).

It no doubt also encompasses matters such as their state of health and their physical capabilities.

(3) A failure to meet the "fit and proper" criterion would not always carry with it the pejorative connotation that similar tests have in other contexts (see paragraph 38).

(4) Character and previous conduct may well be highly material considerations to the question of whether the person would be likely to control the dog if called upon to do so. They are unlikely to be relevant to different questions (if they arise), such as whether having regard to other matters for example other responsibilities the person would be in a position to act to control the dog (see paragraph 40).

Relationship of the "fit and proper" test to the test of "danger to public safety"

47. The "fit and proper" test is but one of the considerations to be taken into account in deciding whether the court is satisfied "that the dog would not constitute a danger to public safety". In addition, the court must consider "the temperament of the dog and its past behaviour" and may consider "any other relevant circumstances". That the person to whom the dog is to be entrusted, either as owner or as keeper, is "fit and proper" is obviously a key consideration. However, as a matter of law, satisfaction of that test is not a necessary condition for the court to find that the dog would not constitute a danger to public safety. In many, if not most cases, if the court is not satisfied that the person is a fit and proper person to be in charge of the dog it seems to me likely that the court will not be able to be satisfied that the dog would not constitute a danger to public safety. Of course, much may turn upon the basis upon which the person is found not to fit and proper. But, as I have said, in cases where s1 applies to the dog, even if a destruction order is not made, a contingent destruction order will have to be made. Such a contingent destruction order is directed at the dog being exempt from the prohibition under s1 by virtue of what are currently the provisions of the 2015 Order. If there are serious questions as to the proposed keeper complying with such conditions and which are such as to make them unfit, there is little point in there being a contingent destruction order and the better view must be that, in the majority if not all such cases, the dog will constitute a danger to public safety (or at least the Court will not be satisfied that it does not constitute such a danger)..

48. I was not addressed on the question of whether public safety was limited to danger from physical aggression or could encompass, for example, danger to public health arising, for example, from concerns about control of dog faeces. I need not consider that question further.

49. Provided the court charged with the task of deciding the danger to public safety issue, takes into account both the temperament of the dog and the fit and proper person issue it will be difficult for an appellant to establish that the court has erred in reaching a conclusion that was not reasonably open to it.

> "*In any case under section 4B, it is perfectly possible that evidence on the temperament of the dog criterion may weigh against the conclusion of a danger to public safety, while evidence on the fit and proper person conclusion may weigh in the other direction. In such a case, it is for the decider of fact, not the judicial review* [or I would add, the appeal] *court, to decide where the overall balance lays for the purposes of the danger to public safety standards. In such a case, the role of the judicial review* [or I would add, appeal] *court extends only to consideration of whether or not the overall conclusion reached by the court of fact on the "not a danger to public safety" issue was a conclusion that was reasonably open to it".* (See paragraph 33 of the *Grant* decision).

50. In this context too, the general approach of the appeal court and an unwillingness to interfere with decisions of the trial tribunal, would, in my judgement, be the same as those applying to the "fit and proper" person test as I have dealt with earlier in this judgement.

Procedural history

51. Unfortunately, matters that on a straight appeal or judicial review might easily be dealt with, were made more complicated by the fact that the appeals in question were appeals by way of case stated under ss28 and 28A of the Senior Courts Act 1981. There are questions as to whether all of the issues or matters that the parties respectively wished to rely upon are raised or fully stated in the Amended Case Stated. Given that the case stated has already been amended once and, given the time that it has taken for the decision of the Crown Court in October 2017 to reach this court, I was reluctant to send it back for re-amendment. This has unfortunately meant that, to some extent, I have had to go beyond the Amended Case Stated so that arguments were addressed even if they did not strictly arise on the case as stated.

The Graham-Burrows Appeal: Chronology

52. On 16 December 2016 police officers from Pudsey Police Station including PC Nevins attended the address of Mr Hayden Graham-Burrows. Mr Graham-Burrows resided with his family. The attendance was to execute a search warrant under section 5 of the 1991 Act because it was suspected that prohibited dogs were at the premises.

53. On arrival the police found the rear garden to be littered with household waste and excrement.

54. Two dogs were seized from the address, China and Blue. Following an assessment, they were both found to be dogs falling within section 1 of the 1991 Act, being dogs of the type of dog known as the pit bull terrier.

55. The police attended the premises once again in February 2017. They found improvements to the state of the garden but that there were still hazards present.

56. The police made an application for the making of a destruction order under section 4B of the 1991 Act. On 16 May 2017 the Magistrates Court made destruction orders in respect of both dogs with an order for costs in favour of the Chief Constable.

57. On 30 May 2017 the applicant lodged a notice of appeal to the Crown Court in respect of the destruction order on each dog.

58. Mr Turner, an expert in dog behaviour and the identification of types of dog under s1 of the 1991 Act, attended Mr Graham-Burrows home address and took some photographs.

59. The appeal was heard at the Crown Court on 27 October 2017. The court upheld the destruction order is made in relation to China and Blue.

60. According to the chronology before me, an application was made for a case to be stated on 15 November 2017. A draft case stated was sent on 12 February 2018. A case stated was delivered by the Crown Court on 13 August 2018. An appellant's skeleton argument was dated 20 August 2018 and an appeal notice lodged on 23 August 2018. The Crown Court, rather than the Chief Constable, was originally made the respondent but that was corrected by order of the court dated 7 November 2018. A transcript of the crown court hearing was received on 28 November 2018. An amended case stated was received on 29 November 2018. The amended case stated followed an order of Lane J made on 16 November 2018 sending back the case stated in August 2018 for amendment so that it complied with the requirements of CPR 35.3(4).

61. In the meantime, China has sadly died in police custody. A vet discovered a tumour which had spread to several of China's organs and a decision was made to put her down.

The Dodsworth Appeal: Chronology

62. Mr Dodsworth is the owner of a dog named "Oscar". Oscar has been assessed and identified as being a type of dog known as a pit bull terrier.

63. On 1 January 2013, a contingent destruction order was made by the Wakefield Magistrates Court. The destruction order did not come into effect as a result of Oscar becoming exempt from the prohibition in s1(3) of the 1991 Act. Such exemption arose under the scheme of exemption provided for by the Secretary of State pursuant to s1(5)-(6) (now also sub-section (6A), inserted by the 2014 Act). That exemption was one under the 1991 Order, as extended to cover this situation by the 1997 Act.

64. In 2013, at the time of the contingent destruction order, Mr Dodsworth was in a relationship with Ms Maxine Shand. However, the relationship later came to an end.

Ms Shand moved out. Oscar left with her and then lived with her. The Crown Court held that this took place in 2015. Despite the dates, it appears to have taken place not long after exemptions were put in place under the contingent destruction order. There was no notification of the changed address.

65. On 4 April 2014 the insurance regarding Oscar lapsed. It was not renewed nor was any new policy taken out. This was a breach of the terms of the 1991 Order which required insurance to be in place and of the certificate of exemption which, under the 1991 Order, required production of evidence of such insurance to the relevant agency.

66. PC Nevins attended Mr Dodsworth's address regarding the lapsed insurance on 12 June 2016. By this stage the ongoing breach of the exemption scheme regarding insurance was under the 2015 Order, as was the question of the address at which Oscar was being kept. Mr Dodsworth informed PC Nevins that he had left Oscar with his ex-partner, Ms Shand. He told PC Nevins that it was not his (Mr Dodsworth's) problem.

67. On 23 March 2017 the police attended the home address of Ms Shand with a warrant and seized Oscar.

68. On 18 May 2017 the magistrates court at Leeds granted an application for a destruction order in relation to Oscar under s4B Dangerous Dogs Act 1991.

69. An appeal against the making of the destruction order was lodged at Leeds Crown Court on 5 June 2017.

70. The appeal, by way of re-hearing, was heard at Leeds Crown Court on 27 October 2017 and was dismissed.

71. Originally the appeal had been launched on the basis that Ms Shand would be the keeper of Oscar. The report of Mr Taylor, the expert, recorded that he had been told by Ms Shand that she had had no relevant dealings with the police. The respondent disclosed that she had previous criminal convictions. By the time of the appeal hearing, Mr Paul Shand, Ms Shand's brother, was being put forward as the prospective keeper of Oscar.

72. A skeleton argument of the Respondent raising an issue as to whether Ms Shand and/or Mr Paul Shand were "keepers" of Oscar (that is persons falling within s4B(2A)(a)(ii) as a person "for the time being in charge" of the dog) was received by Ms Rose on the morning of the Crown Court appeal. It was accompanied by a legal article. As I understand it, the legal article, asserted that, as a matter of law, a "keeper" was a much narrower concept than as later decided by the divisional Court in the *Webb* case. In addition, Ms Rose was provided on the morning of the Crown Court hearing with details of previous criminal antecedents of Mr Paul Shand. The antecedents were, I am told, provided to the solicitors instructing Ms Rose at an earlier stage, albeit it may have been the day or a few days before the day of the appeal hearing. Certainly, provision of the antecedents so close to the appeal reflected the fact that Paul Shand was only put forward as a keeper of Oscar at a very late stage.

73. In the Crown Court the appeal case was opened at 2:30 PM. After some discussions about the further material that had been served the court adjourned until 2:55 PM. At that stage Miss Rose repeated her application to adjourn. on the basis of the three documents provided to her that morning and to which I have referred. She also asserted that there should be an adjournment because the *Webb* case was subject to an appeal. Her application was refused. After hearing evidence and submissions the court gave its ruling. Mrs Rose applied again for an adjournment. The court refused the adjournment on the basis the appeal had been refused and the proceedings were, effectively, over (save for consequential matters such as costs).

74. According to the chronology before me, an application was made for a case to be stated on 16 November 2017. A draft case stated was sent on 12 February 2018. A case stated was delivered by the Crown Court on 13 August 2018. An appellant's skeleton argument was dated 20 August 2018 and an appeal notice lodged on 23 August 2018. The Crown Court, rather than the Chief Constable, was originally made the respondent but that was corrected by order of the court dated 7 November 2018. A transcript of the crown court hearing was received on 28 November 2018. An amended case stated was received on 29 November 2018. The amended case stated followed an order of Lane J made on 16 November 2018 sending back the case stated in August 2018 for amendment so that it complied with the requirements of CPR 35.3(4).

The Graham-Burrows case: the Amended Case Stated

75. I take the questions raised by the Amended Case Stated in a slightly different order to that set out.

Question 3: Whether the Court erred in law in finding the Appellant not to be a fit and proper person to be in charge of a dog and that he would not comply with the conditions in Article 4 of the Dangerous Dogs Exemption Schemes (England and Wales) Order 2015 when given the time of the hearing he had removed rubbish from his garden, his antecedents were few and not related to the dogs and he did produce leads (paragraph 7)?

Question 2: Whether the destruction of the two dogs amounted to disproportionate and oppressive and perverse [sic] **given the totality of the circumstances of the case and thereby the court too widely interpreted the words "fit and proper person to be in charge of a dog" (paragraph 6).**

76. The relevant findings of fact set out in the Amended Case Stated are as follows:

> "*20. Of the hearing the evidence from police officers and the Appellant, the court was satisfied the requisite standards that the Appellant was not a fit and proper person.*
>
> *21. The reasons for this were:*
>
> *a. The Appellant's antecedent history offers no confidence that he would abide by orders of the court. The court had the advantage of hearing from the Appellant directly.*

b. The garden although improved by February 2017 was still in a hazardous state. The Appellant failed to appreciate how hazardous his living arrangements were.

c. The Court was satisfied that PC Nevins' account of the conversation with the Appellant about a separation from his partner was cogent and reliable with no motive for fabrication and no likelihood of mistake. The court did not believe the Appellant's account.

d. The Appellant failed to produce a lead for either dog as he was unable to find one. The reasonable inference to be drawn from that agreed evidence was that the dogs were taken from the house to nearby land to be exercised without leads. The female dog China displayed signs of aggression and could not be handled by officers.

e. The court accepted that neither dog had presented other than in the way spoken of by the expert."

74. The expert's report concluded as follows with regard to the issue of the "temperament" of China:

> "*Some parts of the examination were intrusive and involve me having to touch every part of the dog's body. The assessment is to see how a dog manages/deals with people and situations, some being confrontational. At no time did "China" show any signs of being fearful, stressed, nervous or aggressive. "China" showed good dog manners when she gently took food treats nicely from my hand."* (paragraph 6)

His recommendation was that if the court considered the owner to be a "fit and proper" person who would consistently comply with strict conditions, then he would recommend a contingent destruction order (paragraph 7).

77. As regards Blue, the expert's report regarding temperament concluded as follows:

> "*Some parts of the examination were intrusive and involve me having to touch every part of the dog's body. The assessment is to see how a dog manages/deals with people and situations, some being confrontational. At no time did "blue" show any signs of being fearful, stressed, nervous or aggressive. "Blue" is a young dog who shows good dog manners when he gently takes food treats nicely from a hand*". (Paragraph 6.01.02).

His recommendation was that

> "*if the court considers the owner to be a "fit and proper" person who would consistently comply with strict conditions I would recommend a contingent destruction order*…" (Paragraph 7.0 1.01).

78. As formulated, question 3 appeared to be raising the issue of whether the Crown Court had erred in law in reaching its assessment as to the fitness and propriety of Mr Graham-Burrows. However, after some considerable debate before me, it emerged

that Ms Rose was challenging the factual finding of the Crown Court that the garden in February 2017 was still in a hazardous state and that the Appellant failed to appreciate how hazardous his living arrangements were and its the finding regarding dog leads. As regards the first, she said she was not satisfied on the evidence that the garden was still hazardous in February 2017 and the Crown Court had not identified what the hazards were. As regards the second, she said that the Court should have accepted Mr Graham-Burrows' evidence which, she said, was to the effect that he had given as an excuse for not producing any leads for the dogs when they were seized, that he did not have any leads, but that that was because he did not want the dogs taken away. Without leads he felt it less likely they would be taken away and he panicked in giving a false reason that he did not have any leads when in fact he did.

79. The difficulty with all of this is that the Amended Case Stated did not clearly raise these issues (I reject Ms Rose's submission that these points are implicit in question 3 as formulated) nor did it set out the underlying evidence relevant to the findings made on these points. I drew Ms Rose's attention to the note in Blackstone's Criminal Practice 2018, paragraph D29.20:

> "*If a question to be asked of the High Court is whether there was sufficient evidence on which the court reasonably could reach a finding of fact, the draft case must specify the relevant finding of fact and include a summary of the evidence on which the court reached that finding. The draft case to must not include any further account of the evidence received by the court (r.35.3(5)). In Wheeldon v CPS [2018] EWHC 249 (Admin) the Divisional Court made clear that on an appeal by way of case stated, the court can only consider the facts stated in case stop the court will not go behind the stated case* "

I would add to the *Blackstone* passage that the question must also be clearly framed. It was unclear to me, despite my asking more than once, whether Ms Rose accepted these propositions or not.

80. In the end, Ms Rose appeared to accept (with some reluctance) that there was evidence before the Court entitling it to reach the conclusion that it did with regard to the garden in February 2017. Had she not done, so I would not have permitted the case to be adjourned in order for an amendment to the case stated to be sought. Quite simply, it was too late to raise this issue.

81. The actual findings contained within the court's judgement on these issues are as follows, referring to the points that they had considered on the evidence:

"*The state of the appellant's residence upon arrival of officers on 16 December of last year. We have heard from PC Nevins and read the statements of other attending offices. We have seen the photograph of the back garden and its appalling condition. Both Council has submitted that that picture speaks for itself-we agree-and it demonstrates that the appellant was content to keep dogs and conditions that were disgusting and unsafe. The finding of dog excrement in the back garden disproves the appellant's contention that the dogs did not go there. The appellant that either the inclination or the awareness to do something about the state of his own property.*

The photographs of eight February demonstrates some effort be made both to clear the inside and outside the address of the pre-notified visit by officers. But the back

garden still contained plainly visible hazards to dogs and children alike. Whether the appellant is a fit and proper person entails consideration of the environment in which the dogs would be kept.

….

The presence of two young children within the house and the dogs is a concern."

82. In her written submissions, Ms Rose raised a question about the state of the garden in December 2017:

> *"An explanation was provided by the Appellant. Due to family bereavements the rubbish bags which had been scattered by wildlife was left un-cleared in December when the police had attended. The Appellant was not asked when the excrement was left in the back garden or how much excrement for the court to conclude it was left after the rubbish bags had been split open".*

I remain unclear as to which finding of fact Ms Rose was seeking to challenge by the above passage. The Amended Case Stated does not deal with the relevant evidence in detail and in my judgement it is not open to Ms Rose to seek to challenge by raising points of evidence when the Amended Case Stated does not identify a relevant question of law for the court, nor, to the extent it is said that primary findings of fact were reached in error of law, without the underlying evidence being properly set out in the Amended Case Stated.

83. Miss Rose also submitted that:

"*Destroying two dogs on account of a dirty garden at the date of seizure or two months later when the garden was made absolutely safe by the time of the appeal hearing, was disproportionate and unreasonable".*

This wholly fails to identify which finding or assessment is being challenged and on the basis of what error of law. The fact is that the Crown Court did not order destruction of the dogs "on account of the dirty garden at the date of seizure or two months later". What it did, was to take these facts into account in determining first that Mr Graham-Burrows was not a "fit and proper person", and secondly in taking that determination into account in reaching its assessment as to whether it was satisfied that the dog did not constitute a danger to public safety. Ms Rose's submission, as her constant submissions to me that the dogs were "nice dogs", did not really grapple with the legal questions before me.

84. As regards the question of the findings regarding the leads, Ms Rose invited me to adjourn the appeal so that the Amended Case Stated could be remitted back to seek a further amendment. I decline to do so. First, it seems to me that it is far too late. As in the related areas of amendment of pleadings, admittedly drafted by the parties rather than the court, the position is one where very late amendments, resulting in adjournment of the relevant hearing, are not usually permitted (see eg. *Quah v Goldman Sachs International* [2015] EWHC 759 (Comm)). Although the court drafts the case stated, it is with assistance of the parties and the parties can apply to have the case amended or remitted to be amended. No real explanation was given as to why the matter was being raised before me rather than having been identified and dealt

with much earlier. Further, it seems to me in any event that there was evidence entitling the Crown Court to reach the conclusion it did. It did not accept the evidence of Mr Graham-Burrows, and having heard him and all the evidence in the case, in my judgment it was well within the ambit of what was reasonable for it to reach the conclusions of fact that it did.

85. The relevant finding set out in the actual judgement is as follows:

"*The appellant's failure to produce a lead when officers arrived was not due to any lack of cooperation or unwillingness to part with the dog, it is consistent, we find, with the fact that he did not have a lead at hand for either of the two dogs*"

86. The remaining question is therefore whether the decision that Mr Graham-Burrows was not a fit and proper person was one that was not reasonably open to rhe Crown Court to reach on the evidence before it. Part of the problem is that that evidence is not all spelled out (for example, the antecedents). On the basis of the findings actually set out I am satisfied that the Crown Court's assessment as to fitness and propriety was within the range of reasonable decisions that a court could properly reach.

87. I am also satisfied that, looking at the evidence more widely, my conclusion is not (or would not) be altered and hence there are no grounds for remitting the case stated for further amendment. The court had well in mind the fact that the garden had been subsequently cleared up. However, that did not cancel concerns arising from the original state of the garden in December 2017 and its still unsatisfactory and hazardous state in February 2018. In essence, Ms Rose's submission is that the court should have relied upon the state the garden by the time of the appeal hearing in October 2017 instead of only relying on the state of the garden in December 2016 or February 2017. I do not accept her submission that the court only looked at the state of the garden at the earlier times and that it ignored the state of the garden later on. It is clear from the transcript that much emphasis was placed at the Crown Court hearing both in terms of the evidence adduced and submissions upon the more recent state of the garden. However, in my view, the Crown Court was entitled to take into account the earlier state of the garden and did not err in law in so doing.

88. As regards antecedents, it is clear from an intervention by the Judge in the course of cross examination that the Court had in mind that the convictions in question were relevant to the question of whether, if the dogs were returned under stringent conditions, Mr Graham-Burrows would abide by the same. Mr Graham-Burrows was cross examined about one of the convictions for taking a car and driving without a licence and whilst uninsured. This was clearly a matter the court was entitled to take into account in its overall assessment of Mr Graham-Burrows' fitness and propriety. In her skeleton argument Ms Rose enlarges upon the convictions in question, however they are not properly raised by the case stated and I decline to descend into all the evidence, in any event I do not have all the evidence that was before the Crown Court either as regards convictions or as regards much else, such as the witness statements put before the court and adopted by witnesses before they were cross-examined.

89. I am satisfied that the assessment as to fitness and propriety of Mr Graham-Burrows was one that was within the spectrum of reasonable assessments that a court could reach and accordingly answer question 3 (amended as regards the issue of leads) in

the negative. In reaching this conclusion, I have also taken into account what I say about question 4, considered further below.

90. As regards question 2, it follows from what I have said that the Crown Court did not make an error of law in the manner in which it interpreted the words "fit and proper person to be in charge of a dog". The question of whether a destruction order was "disproportionate and oppressive and perverse given the totality of the circumstances of the case" is unclear, in the sense that the basis on which it might be said to be disproportionate, oppressive and/or perverse is not spelled-out other than by reference to the "fit and proper person" test. If the question is a reiteration in some form of question 1, then I deal with it under that heading. However, if there was no error of law in the court's assessment of (a) whether Mr Graham-Burrows was a "fit and proper person" and (b) whether they were satisfied that each of the dogs was not a danger to the public, then the question of whether the making of the destruction orders was disproportionate and oppressive is not a relevant legal issue which arises (other than possibly under the European Convention). Further, on the assumed basis I have just set out, the making of the orders would be required by the 1991 Act and so would not be "perverse".

Question 4: Whether the Court erred in law in considering if the applicant moved address it would be contrary to the [2015 Order] when in fact it was not where the registered person lived but that the dogs had to reside with the that [sic] person save for 30 days a year (paragraph 8 of the Amended Case Stated).

91. This question relates to the finding that Mr Graham-Burrows was looking to separate from his partner. The relevant finding in the judgement is as follows:

> "*There must be some concern of the permanence of the appellant's address, given what was said to PC Nevins when the risk assessment was drawn up in February of this year*".

92. There is no suggestion that I can see anywhere in the transcript that the Crown Court took this matter into account on the (incorrect) basis that if the Applicant moved address it would be contrary to the 2015 Order. This seems to have been an assumption reached by Ms Rose. She could not understand what other relevance it would have. In my judgement it is plain that the court was concerned as to the place and conditions in which the Appellant was proposing to keep the dogs and how stable his lifestyle was in terms of his residence and this was a factor relevant to the court's overall assessment as to his fitness and propriety. In my judgement this was a matter the court was entitled to take into account and no relevant error of law is identified.

93. The short answer to question 4 is that it is based upon a misconception. The court did not consider what is there set out as being the case. The Crown Court made no error of law in reaching its assessment of "fit and proper" in relation to Mr Graham-Burrows as regards the matters raised by question 4.

Question 1: Whether the court erred in law in focusing its attention on the words "fit and proper" to the exclusion of the significant and overarching question as to whether the dogs presented a danger to the public? (paragraph 5 of the Amended Case Stated).

94. The Court made clear that it was focussing on the "fit and proper" consideration "there being no concern raised about the dogs' temperament such as would affect our determination." In context, this means affect the determination in favour of a destruction order. The "fit and proper" aspect was being looked at because, as the court identified, it would affect the Court's views as to whether a contingent destruction order could be made and which depended upon whether therefore the court was satisfied that taking relevant factors into account each of the dogs was not a danger to public safety.

95. Ms Rose's written submission was that the "fit and proper person" test "must relate to whether the dogs are a danger to public safety and/or to the ability of the owner or person in charge to be in control of the dog". I agree. That is precisely the issue that the Court focussed upon. I have to bear in mind that the Crown Court has experience in dealing with these appeals and had a heavy workload with ex tempore judgments being given several times a day. It is clear to me from reading the transcript that although the Court did not in terms set out the overarching test of danger to the public, it was to that question that it was directing itself, particularly by reference to the fit and proper test because the dogs' temperaments did not cause any concerns.

96. In my judgment it is impossible to say that, having reached the finding that it did regarding fit and proper, the court erred in law and in some way balanced that finding against the temperament of each of the dogs in a manner that was not reasonably open to it.

97. The answer to question 1 is therefore that the Court did not focus its attention on the "fit and proper" test to the exclusion of considering the overall question, of which the fit and proper test was but one aspect, namely, whether it was satisfied that each of the dogs was not a danger to public safety. Further, insofar as the question is raised, I am satisfied that the Crown Court reached a conclusion that was reasonably open to it regarding the danger to public safety.

Question 6: Whether in light of the subsequent case of *Joshua Webb v Bristol Crown Court* [2017] EWHC 3311 (Admin) the Court would have been enabled to have considered an alternative keeper for China and Blue who had sufficiently been in charge of the dog (paragraph 10 of the Amended Case Stated).

98. This appears to be an entirely academic question and one which therefore does not merit an answer. For what it is worth, had there been a person falling within the relevant definition of what for shorthand I have referred to as "keeper", and had that person had been put forward to the court sufficiently promptly, then, subject to questions of the limits of an appeal from the magistrates court, it appears that the Court would have been able to consider the same. Given the absence of a factual basis for the question, I should make clear that I do not answer it and the view I have just expressed is entirely obiter.

Question 5: Whether the destruction orders were contrary to article 8 of the European Convention of Human Rights and Fundamental Freedoms and whether deprivation of the dog that was not a danger to the public was contrary to the Applicant's rights under the First Protocol (paragraph 9 of the Amended Case Stated).

99. The first problem with the question raised is that it is on the assumption that the dog was **not** a danger to the public**.** However, the decision of the Crown Court was that it was not satisfied that the dog would not constitute a danger to public safety. Accordingly, on one view the question simply does not arise.

100. I apprehend that the question, probably as drafted by Ms Rose, is directed at a situation where the temperament of the dog and its past behaviour does not give rise to concern, but that the type of dog coupled with the failure of the proposed owner/keeper to meet the "fit and proper" test results in the court not being satisfied that the dog would not constitute a relevant danger.

101. Article 8 of the Convention provides:

"(1) Everyone has the right to respect for his private and family life, his home and his correspondence.
(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

102. Article 1 of the First Protocol to the Convention provides:

"Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

103. Ms Rose's submissions on this point were short. In oral submissions she did not enlarge upon her written submission. As set out in her "supplement skeleton":

> "*to destroy two family pets for the reasons provided were disproportionate irrational and unreasonable and the destruction of these two dogs would in effect deprive the Appellant and his partner of a right to their family life contrary to Article 8 of the ECHRFF and the right to property under the First Protocol of the Convention"*

104. Although the European Convention does not seem to have been raised before the Crown Court, the Crown Court was a public body with a duty to apply the Convention.

105. As Mr Thorne sets out in his skeleton argument, the court is required to take a principled approach to the application of Article 8. Usually the questions which arise are as follows:

(1) Will the proposed order be an interference by a public authority with the exercise of the individual's right to respect for his or her private life?

(2) If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?

(3) If so, is such interference in accordance with the law?

(4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, the prevention of disorder or crime, for the protection of health or morals of the protection of the rights and freedoms of others?

(5) If so is such interference proportionate to the legitimate public end sought to be achieved.

106. A similar approach is taken to article 1 of the First Protocol.

107. The Amended Case Stated does not begin to set out the facts from which it is possible to determine the precise relationship between the dogs and Mr Graham-Burrows to see whether article 8 might apply or be engaged, within the meaning of question (2) identified above.

108. As a matter of generality, I am satisfied that the scheme of the 1991 Act in principle complies with article 8 of the Convention and article 1 of the First Protocol to the Convention.

109. So far as the Graham-Burrows case is concerned, I am unable to identify any particular features from the transcript that I have seen which might be said to take the case out of the norm such as to raise the issue of whether on particular facts the operation of the 1991 Act would breach the terms of either article 8 of the Convention or article 1 of the First Protocol thereto. Accordingly, I answer question 5, altered in the respect that I have identified, in the negative.

Academic appeal in relation to China

110. Finally, I should note that given the death of China I would not have remitted the case or taken any other steps in relation to her, even if I had found any relevant errors of law by the Crown Court. Quite simply the appeal is totally academic regarding China and no reason was given to me as to why the position was otherwise.

The Dodsworth case: the Amended Case Stated

111. Again, I take the question raised by the Amended Case Stated in a slightly different order to that set out.

Question one: Whether the court erred in law and acted unreasonably and in breach of Natural Justice in the refusal to grant the Applicant the requested adjournment in

order to prepare and re-prepare the Applicant's case given the disclosure and legal submissions presented on the day of the hearing (paragraph 6 of the Amended Case Stated)?

112. The circumstances and matters relied upon by the court in refusing the adjournment are not set out in the Amended Case Stated. As I understood it, the parties agreed that I should take the relevant details from the transcript. This is of course unsatisfactory.

113. I am unable to detect that the Crown Court erred in any respect in its manner of approach to the question of adjournment in the sense of misdirecting itself in law as to the principles applicable. I am prepared to assume that if the court wrongly exercised its discretion in the sense considered by Lord Fraser in *G.v G. (Minors: Custody Appeal)* [1985] 1 W.L.R. 647, HL, at 652 or Lord Woolf MR in *AEI Rediffusion Music Ltd v Phonographic Performance Ltd* [1999] 1 W.L.R. 1507, CA, at 1523 then this will amount to an error of law.

114. As regards these cases, Lord Fraser stated:

> "*the appellate court should only interfere when they consider that the judge of first instance has not merely preferred an imperfect solution which is different from an alternative imperfect solution which the Court of Appeal might or would have adopted, but has exceeded the generous ambit within which a reasonable disagreement is possible*."

115. Lord Woolf MR stated:

> "*Before the court can interfere it must be shown that the judge has either erred in principle in his approach or has left out of account or has taken into account some feature that he should, or should not, have considered, or that his decision was wholly wrong because the court is forced to the conclusion that he has not balanced the various factors fairly in the scale*."

116. The error of law asserted in based upon a submission that the decision to refuse the adjournment was one that no reasonable court, properly applying the applicable principles could reach.

117. So far as the article is concerned, the Court said that it was happy to leave it to one side and proceed on the basis of legal argument out forward by Mr Thorne. Accordingly, the article was no longer in play before the court and a refusal to adjourn based upon the Appellant's counsel not having time to deal with it, did not arise.

118. So far as the Skeleton argument of the Chief Constable is concerned, the concern was that it raised points of law as to the scope of "keeper" of a dog and, essentially the issues in the *Webb* case. The Court decided that it should not adjourn the case pending a decision in the *Webb* case and in my judgment that was a case management decision that it was entitled to reach. So far as the point of law was concerned the one had been in issue ever since a "keeper" Miss Shand and then her brother, being other than the owner had been put forward. The Appellant should have come prepared to deal with the point of law. There was time during the course of the day for Ms Rose to read and digest the skeleton argument in any event. The decision not to adjourn in

this respect was also well within the range of decisions that the Court was entitled to reach.

119. Finally, and as is recorded in the mended Case Stated under "relevant contentions of the parties" and in the findings of fact under paragraphs 30 and 31, the Crown Court ruled that it would consider first of all whether the proposed keepers were fit and proper persons to be in charge of the dog and only then would question of transfer of keeper should be an issue of law to consider.. In the event, as the Court in its ruling expressly said, that question and the *Webb* issues did not in the event arise because the Court decided that each of the persons put forward, even if they were "keepers" qualifying to be put forward to the court, was not fit and proper within the test in s4B of the 1991 Act. The issue of who qualified as a "keeper" under s4B (and the wider question in *Webb*) simply never arose for decision. It appears that the "Keeper"/*Webb* issues were not argued before the court and had the court decided that any of the persons put forward were fit and proper then it seems likely that the legal issue would have been dealt with at that point. This case management decision, to proceed first with the question of "fit and proper" was one that was obviously sensible and certainly one that was open to the Crown Court.

120. When I asked what prejudice her client had suffered by an adjournment not being granted, given that the *Webb* issue never arose, Mrs Rose was only able to assert that the Court might somehow have thought the issue was to be decided in line with the article and/or skeleton argument of the Chief Constable and contrary to the legal position as eventually found in *Webb*. I reject that submission.

121. According to Ms Rose "more relevant" to the appeal were the antecedents of Mr Shand. According to her, she saw these for the first time on the morning of the hearing. The case stated does not set out the relevant facts. Mr Thorne says that Mr Shand was put forward as a candidate to be the keeper 48 hours before the hearing. His criminal antecedents were disclosed to the Appellant's solicitors the day before the hearing. In any event, it was for the Appellant to satisfy himself as to the suitability of the persons that he was putting forward as possible keepers. No problem in dealing with the antecedents was identified by Ms Rose. Her point (as is clear from the transcript) is that she would have liked an adjournment to look for another possible candidate as "keeper" in case Mr Shand was found by the Court, as happened, not to be a fit and proper person. In my judgment, the refusal to adjourn on this basis was well within the Court's reasonable margin of decision making. An adjournment would have wasted time and inconvenienced other court users whose cases would have to be delayed by any adjourned appeal in the *Dodsworth* case. It was for the appellant to identify possible keepers and put them forward. The Court was well entitled to reach the view that these cases cannot be run on a basis that whenever the court finds a person put forward as keeper not to be fit and proper then it should adjourn to enable the appellant to try and find another candidate.

122. In any event, I notice no such candidate has been identified, even at the time of the hearing before me. In that context I should note that, at the start of the hearing, Ms Rose appeared to be inviting the Chief Constable to agree that the appeal could be dealt with in such a manner (though that manner was unexplained) that would leave Mr Dodsworth able to look to find another potential keeper who would be unobjectionable.

123. I do not deal with the separate issue as to whether it would have been open to the Crown Court to consider keepers other than those put forward to the Magistrates Court and whether, at the least, permission would have been needed to raise such a new point on appeal.

124. Once the court had given its ruling on the appeal, its decision not to adjourn was also well within the bounds of what was just and reasonable.

125. Accordingly, the answer to question 1 is in the negative.

Question 7: whether the judgement in the subsequent case of *Joshua Webb v Bristol Crown Court* [2017] EWHC 3311 (Admin) would have enabled the Court to have considered an alternative keeper for the dog who had sufficiently been in charge of the dog had the case been adjourned (paragraph 12 of the Amended Case Stated).

126. This appears to be an entirely academic question. For that reason, I am inclined not to answer it. In fact, the court did not adjourn the case. Further and in any event no other prospective "keeper" has ever been identified let alone put forward either to the Crown Court or to this court. The *Webb* case of course speaks for itself. I should add that there may be an issue as to what the Crown Court as an appeal court could or should properly consider in relation to a proposed keeper not put forward at the Magistrates Court.

Question 2: Whether the Court erred in law in considering all of the parties not to be fit and proper persons to be in charge of the dog went for all purposes Maxine Shand had looked after the dog properly during the time the Applicant was in breach of the order and the dog was not a danger to public safety. Did the Court placed too much emphasis on the words "fit and proper person" to be in charge of the dog when the dog had no incidents reported against him (paragraph 7 of the Amended Case Stated)?

Question 3: Whether it was unreasonable to find Maxine Shand not to be a fit and proper person to be in charge of the dog due to the breaches of the Exemption Certificate when technically she was not the person named on the certificate but provided reasons to the court as to why she had not put her mind to the conditions: the death of her child and ill-health? In evidence Maxine Shand said she was willing to comply with any conditions necessary with any contingent destruction order and presented the dog to be her support (paragraph 8 of the Amended Case Stated).

127. The relevant facts found as set out in the Amended Case Stated are as follows:

"*33….*

[a] This dog was exempted in 2013.

[b] In 2015 Maxine Shand left with the dog.

[d] Maxine Shand was aware of the restrictions and should have known about the contingent destruction order regime in place for public safety stop That the dog had to be insured reside at the address of the keeper.

[e] The insurance lapsed.

[f] The dog was not at the address on the order.

[g] Every Safeguard was unaddressed by Maxine… Shand.

[h] Maxine Shand's tragedy is one that no parent should have to bear.

[i] She is not a fit and proper person.

"34. After hearing the evidence from police officers and the Applet, the court was satisfied to the requisite standard that neither of the proposed keepers were fit and proper persons….."

128. Question 7 above in fact raises a number of separate questions. First, I have to stress that the court did not find that the dog was not a danger to public safety. In this respect the question as formulated is incorrectly formulated and on an incorrect basis. I will return to this issue later in my judgment.

129. Secondly, the main thrust of question 7, appears to be directed to the question of whether the court made an error of law in deciding that it was not satisfied that the dog "would not constitute a danger to public safety". In other words, it went wrong in balancing the temperament of the dog and its past behaviour with the question of whether the owner or proposed keeper was a "fit and proper person to be in charge of the dog". I return to that issue later in my judgment.

130. The opening sentence of question 7 raises the issue of whether the court was entitled to find (among others) Maxine Shand not to be a "fit and proper person to be in charge of the dog" on the basis that she had looked after the dog properly throughout the relevant time and (as set out in the last sentence of paragraph 7) there had been no incidents reported in relation to the dog, and bearing in mind also the temperament of the dog, which as established and was not disputed before the Crown Court, did not give rise to any concerns.

131. In my judgment, the factors considered in the immediately preceding paragraph of this judgement were taken into account by the Crown Court. Further, it cannot be said that the decision of the Crown Court regarding the unfitness of Maxine Shand, was not reasonably open to it because of those factors. Whether or not past history had shown any incidents regarding the dog, the dog had been, and if not destroyed would be, subject to the exemption scheme and the relevant terms and conditions of the 1991 Act. The court was entitled to take the view that Maxine Shand was not a fit and proper person if the court considered that there was sufficient concern that she would not abide by the relevant regime. The fact that she had not done so in the past was clearly a powerful consideration that the court was entitled to take into account.

132. Question 8 also attacks the court's decision that Maxine Shand was not a "fit and proper person to be in charge of the dog". Obviously, that is an assessment by the Crown Court that depends upon a consideration by it of all relevant circumstances including those that I have identified as being relevant to that question in connection with question 7.

133. Question 8, first raises the issue of whether Ms Shand not being the person named in the exemption certificate, but Mr Dodsworth being that person, in some way means

that her retaining possession and control of the dog while there were ongoing breaches of the exemption certificate means that she is not culpable and not "unfit". In my judgment, whether or not the certificate of exemption was in the name of Ms Shand is a technicality. She was keeping the dog in breach of the applicable exemption regime and therefore in circumstances where she herself was committing a criminal offence. As the Crown Court held: third party insurance and that the dog is kept at the registered address were important conditions of the applicable exemption. As the Court held "from the time of the separation of the relationship, the insurance has lapsed and the dog has not been kept registered address is required. Every safeguard, it seems to us, of the regime has been undermined in relation to location and insurance."

134. The Crown Court took into account the explanation given by Ms Shand as to her failure to comply with the requirements of the exemption regime. They were the tragedy of her daughter's death and the resulting periods of ill-health. However, it was for the Crown Court to decide whether those circumstances were such that Ms Shand was a "fit and proper person". The assessment and decision that she was not was, in my view, clearly open to the Court.

135. Finally, I'm satisfied that the court took into account the assertion by Ms Shand that, going ahead, she would abide by any relevant applicable exemption regime. It also took into account the evidence that she was closely connected to the dog and, can fairly be said to have been dependent upon it. Nevertheless, it was a matter for the court to assess whether these factors were such as to persuade it that she was fit and proper and the conclusion that she was not is one that was reasonably open to it.

136. Finally, I should make clear, that is was necessary for the court to consider the circumstances in the round as well as individually. I am satisfied that considering the circumstances both individually, and in the round, the conclusions that Ms Shand was not a "fit and proper person to be in charge of the dog" was one that was reasonably open to it and that in reaching that determination the court made no error of law.

137. I should add that not included in the Amended Statement of Case were the admitted factual details of the previous convictions of Ms Shand, including a conviction under the 1991 Act in respect of a different dog. I should add that the fact of convictions was accepted but not necessarily the factual circumstances of the offences themselves. Those admitted matters formed part of the closing submissions of Ms Rose before the Crown Court. It is unfortunate that the respondent did not have the opportunity, or that, if he did, he did not avail himself of it, to seek a further amendment to the case stated to deal with these matters by including them as part of the findings of the court. A similar point can be made with regards to the fact that Ms Shand had told a Mr Turner who had submitted a report to the court in support of Mr Dodsworth's appeal to the Crown Court, that she had not had any dealings with the police. This was completely belied by the evidence of her antecedents. The cases stated needed to set out the findings if fact that the court had made and not simply refer to its overall conclusion, having heard all the evidence. For the purposes of the appeal to me I leave these matters out of account but of course they only serve to strengthen the case that Ms Shand is not a fit and proper person within the meaning of section 4B of the 1991 Act. In this context, I make clear, as the Crown Court was clear, that previous convictions are but a consideration in determining fitness and propriety and that they are not a bar to a finding that a person is fit and proper within the meaning of s4B.

Question 2: (see above)

Question 4: whether it was unreasonable to find Paul Shand not to be a fit and proper person when he was not a party to the Exemption Schemes Order nor had he therefore breached the Order but was offering himself to be the keeper of the dog and comply with the conditions of the ESO.

138. The relevant additional findings of fact by the court are these:

"[g] every Safeguard was unaddressed by….. Peter Shand

[h] Paul Shand is not a fit and proper person."

139. Although not stated within the fact findings of fact, the ruling of the court set out in the transcript, contains the following passages:

"*…. Pre-2015, anyone involved with the dog's upkeep at that stage would have been well aware that it was subject to the restrictions of the Act. They would and should have known that Oscar was subject to a CDO and they would and should have known the duties that that entails. There is a specific regime in place and it in place in relation to public safety. Two of the features are insurance, third party insurance for the dog, and also that it is at a registered address. It is important that those conditions are complied with*

From the time of the separation of the relationship [between Mr Dodsworth and Ms Shand], *the insurance has lapsed and the dog has not been kept at the registered address as required. Every safeguard, it seems to us, of the regime has been undermined in relation to location and insurance. If they have both had the involvement that they say they have had with the dog, then that applies to both Maxine and Paul Shand.*

….

Paul Shand is a man who served his country well for a number of years, we accept, but in recent times he has disobeyed court orders in relation to driving whilst disqualified and that must be a factor that we consider. It is not a bar. I make that clear but it must be a factor that is considered. Concomitant with the driving whilst disqualified are offences such as no insurance. That accords with the regime for the dog and public protection. So, in our considered opinion, and we've considered this carefully, neither Maxine or Paul Shand can be said to be fit and proper people to have care of Oscar……"

140. I have dealt with question 2 earlier in this judgement insofar as it raises the issue of whether is open to the court to find that Maxine Shand was fit and proper. So far as it raises the issue of whether Paul Shand was fit and proper the same arguments apply and my conclusion is the same.

141. The submission of Ms Rose in her skeleton argument was that "*no reasonable reasons were provided why Paul Shand was not a fit and proper person to be in charge of Oscar. The decision was therefore unreasonable and irrational*." I disagree. The assessment of the Crown Court as to the fitness and propriety of Mr Paul Shand was clearly one open to it given the findings of fact that it made.

142. Notwithstanding, that Paul Shand may not have been the named party in the exemption certificate, the court found that he was keeper of the dog at various points and was aware that the exemption regime was being breached. It also took into account his criminal convictions as factors weighing against his evidence that he would in the future abide by any applicable exemption regime were a contingent destruction order to be made. (In argument it was very clear that the mere fact of convictions would not automatically prevent a person being found to be fit and proper. As put by His Honour Judge Mairs, "they're not a bar. They are a consideration".) The assessment by the court that he was not a fit and proper person was one open to the Crown Court. The answer to question 4 is in the negative.

Question 5: Whether it was reasonable to find Damien Dodsworth unfit to be in charge when the court found that Maxine Shand was the person who did not comply with the order?

143. The additional relevant findings of fact in relation to Mr Dodsworth as set out in the Amended Case Stated are:

> "33.
>
> *[c] Mr Dodsworth informed the police that it was not his problem.*
>
> *[l] the Appellant is not a fit and proper person*
>
> *34. After hearing the evidence from police officers and the applicant, the court was satisfied to the requisite standard that the appellant was not a fit and proper person have expressed no interest in keeping the dog……"..*

144. In fact paragraph 34 of the Amended Case Stated contains an error. Mr Dodsworth did not give evidence before the Crown Court.

145. In my judgment, on the basis of the findings of fact regarding the exemption certificate and the breaches of the exemption regime, Mr Dodsworth having had no contact, or at least the dog residing with Ms Shand, since 2015 and having expressed the view to the police that it wasn't his problem, it was well open to the Crown Court to decide that Mr Dodsworth was not a fit and proper person to be in charge of the dog.

146. The reasoning implicit in question 5 reflects the thinking of Ms Rose. I found it difficult to understand her submission in this area, as in other areas of the case. The Court did not determine that Ms Shand was the person named in the certificate and who breached it. It found that the terms of the exemption regime, including terms set out in the certificate were breached and that they were breached with the knowledge of them and of the breach by Miss Shand. As regards Mr Dodsworth, it is clear that he was himself in breach of the terms of exemption certificate. That was a matter that

the court was entitled to find and entitled to take into account in reaching an assessment as to his fitness and propriety.

147. I decline to answer question five with a single affirmative or negative as it contains an incorrect assumption. I confirm however that it was open to the Court to reach the assessment that Mr Dodsworth was not a fit and proper person within the meaning of section 4B of the 1991 Act.

Question 2 (see above) in relation to the issue of the court being satisfied that the dog would not constitute a danger to public safety.

148. Although, as I said, question 2 is not well drafted, its main thrust appears to be directed to the issue of whether the court correctly determined that it was not satisfied that the dog would not constitute a danger to public safety.

149. It is clear that the court had well in mind that the question of the owner or proposed keeper being a "fit and proper person" was but a factor to balance when considering whether it, the court, was satisfied that the dog would not constitute a danger to public safety.

150. The question therefore is the same as one of the questions that arose in the *Grant* case, that is whether or not in the light of the report from Mr Turner (who also put an expert report before the court in the *Grant* case) the court focused on the fit and proper person issue and did not give sufficient weight to the temperament of the dog and the fact that it had no history of aggression. It is clear from the transcript that the temperament of the dog was squarely before the court. Although the court did not hear from Mr Turner, there are several references to the court not needing to hear from him because it had read and was fully cognizant of the contents of his report. The court accepted that the dog was, in Mr Rose's words "not a danger in himself to public safety". As HH Judge Mairs replied to this submission: "No, its not a temperament case, If I can put it that way." In the context he was talking about temperament in the context of whether that was a factor pointing to the dog constituting a danger to public safety.

151. I repeat what I have said above in relation to the same issue raised on the Graham-Burrows appeal. In my judgment, the overall conclusion as to public safety was one that it was open to the Crown Court to reach on the basis of its findings of primary fact and its assessment (or decision as to mixed fact and law) as to fitness and propriety.

152. In conclusion, my answer to question 2 so far as it relates to the question of whether the dog constituted a danger to public safety, is that the Crown Court made no error of law.

Question 6: whether the destruction order was contrary to article 8 of the ECHR and whether the deprivation of a dog that was not a danger to the public was contrary to the Applicant's rights under the First Protocol.

153. I repeat everything I have said earlier judgement in connection with the same issue arising on the Graham-Burrows appeal.

154. Again, no details are given in the Amended Case Stated to enable this appeal court to begin to rule on whether article 8 is engaged. On the transcript there may be an arguable case that I is engaged in relation to Ms Shand (alone). If it is engaged then in my judgment the interference is properly justified within the terms of article 8.

155. As regards Mr Paul Shand and Mr Dodsworth, article 8 is not engaged (on the basis of the transcript) (but if it were then the interference in his private life is justified). So far as article 1 to the First Protocol is concerned, the scheme of the 1991 Act is, as I have said, a justified interference complying with the requirements of article 1 and there are no particular circumstances of this case taking the case out of the norm.

156. On the facts of the case as found, I can find no relevant breach of either article 8 of the Convention or article 1 of the First Protocol thereto.

Conclusion:

157. I have found no errors of law to have been made by the Crown Court in either appeal. I therefore affirm the determinations of the Crown Court in each case and dismiss each appeal.

158. I have handed this judgment down without the need for attendance. I invited the parties to attempt to agree an Order in the light of the draft of this judgment circulated in advance of the hand down. I have received draft orders from Mr Thorne circulated to Ms Rose but as to which he had received no reply. I will make orders in the form of affirming the decisions of the Court of Appeal and dismissing the appeals. I will adjourn all consequential matters. In the event that the parties are unable to agree and submit an agreed form of order dealing with all remaining matters by 4pm on Wednesday 27 February 2019, I direct that they thereupon apply to fix a further hearing with a time estimate of 30 minutes to be fixed before me as soon as possible. A composite agreed draft order setting out their respective drafts (where not agreed) should be provided by 12 noon one clear day before the hearing. Skeleton arguments should be submitted at the same time. The further hearing can be by telephone if the parties agree.