

## Holding irresponsible dog breeders to account?

### A-Law blogpost by the Legal Advisory Group on Extreme Conformation in Dogs (LAGECD)

We were recently asked this very important question: *Where are the legal cases in which breeders have been prosecuted for breeding dogs with extreme conformation'? Are very few people taken to task by the law about their breeding methods because this is a relatively new problem, or are the current laws or enforcement of them insufficient to secure a prosecution?*

#### The problems of extreme conformation

Dogs with extreme conformation – exaggerated physical features like long backs, short legs, flattened faces or screw tails – and often suffer a range of disabling health and welfare issues. The brachycephalic (short-muzzled) breeds, like the English Bulldog, the French Bulldog and the Pug, are a particular cause for concern.<sup>i</sup> (link to:) Although the health issues are well-known, the popularity of many extreme breeds in the UK continues to rise at a staggering rate.<sup>ii</sup>

The suffering caused by our common human desire to own dogs with extreme conformation is not a new problem. For centuries, humans have been breeding dogs with physical features that appeal to us but reduce their ability to live and enjoy full and healthy lives.

#### The legislation

There are two key pieces of legislation in England potentially relevant to this issue of extreme conformation in dogs.

The first is Sch. 6, 6(5) of the Animal Welfare (Licensing of Activities Involving Animals) Regulations (LAIAR) 2018. This states that *'No dog may be kept for breeding if it can reasonably be expected, on the basis of its genotype, phenotype or state of health, that breeding from it could have a detrimental effect on its health or welfare or the health or welfare of its offspring.'*

By including 'phenotype', this provision clearly prohibits breeding dogs with extreme conformation likely to cause harm to the parent or offspring. However, LAIAR only applies to *licensed breeders* in England, and therefore the majority of puppies are bred outside of these rules.

The second is the Animal Welfare Act (AWA) 2006. The AWA applies to *everyone who keeps a dog*, so it captures anyone who breeds or produces a puppy. s.4 makes it an offence to cause 'unnecessary suffering' to an animal and s.9 makes it an offence not to take reasonable steps to meet the needs of an animal for which a person is responsible. This includes protection from 'pain, suffering, injury or disease.' It could therefore be argued that it is an offence to knowingly breed dogs with extreme conformations that cause suffering.

However, the AWA expressly excludes animals in their foetal or embryonic form from protection under the Act. Accordingly, this may be seen to break the chain of causation between the breeding decision and the offspring being born with the defect, making a successful prosecution difficult to mount. It also makes it difficult to know what constitutes

the criminal act is and when it takes place. Can it be the moment of conception, if the offspring are excluded from the Act at that moment? What about the act of mating? That would mean making the breeder liable for harm to a victim (the puppy) that does not yet exist.<sup>iii</sup>

### Where are the legal cases?

In spite of the significant number of animals suffering as a result of extreme breeding, we are not aware of any prosecutions in England under either Sch. 6 6(5) LAIAR or the AWA 2006. This suggests that either enforcement of the law in this area is poor or that the law itself is inadequate to protect against this.

In our view, the guidance notes on what is required in order to comply with Sch. 6 6(5) LAIAR 2018 need to be clearer and more robust in terms of outlining what the duties are that are placed on breeders and what they need to do to ensure that they have taken all necessary steps to avoid breeding dogs who result in extremes of conformation. There is a large body of scientific evidence on the features of a healthy dog such as information on innate dog health generated by the Brachycephalic Working Group<sup>iv</sup> that shows the current accepted views of the major dog welfare bodies in the UK and the steps breeders should take to ensure that outcome. The standard of care expected of breeders should reflect that evidence and prospective owners should not purchase a dog that does not possess such features. Improved guidance should make enforcement easier, although local authorities also need better support and training in this area.

A prosecution in relation to extreme conformation of dogs under the AWA 2006 is particularly important to clarify the scope of the Act. A judgment would help determine whether ss. 4 or 9 is capable of protecting offspring, as well as what constitutes the offence. If the AWA does cover breeding, a statutory Code of Practice could be developed to guide breeders and assist future enforcement. If it does not, then a new provision aimed at protecting dogs from irresponsible breeding practices could be introduced under s.12 of the AWA 2006.

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<sup>i</sup> Health and Welfare of Brachycephalic (Flat-faced) Companion Animals: A Complete Guide for Veterinary and Animal Professionals (no date) Routledge & CRC Press. Available at: [https://www.routledge.com/Health-and-Welfare-of-Brachycephalic-Flat-faced-Companion-Animals-A-Complete/Packer-ONEill/p/book/9780367207243?fbclid=IwAR2Z2AhWFHjtM-is1nxFoZQhKkBCbRTHgxv7\\_Rv3b5OUeXHlv\\_ZMUmCwIE](https://www.routledge.com/Health-and-Welfare-of-Brachycephalic-Flat-faced-Companion-Animals-A-Complete/Packer-ONEill/p/book/9780367207243?fbclid=IwAR2Z2AhWFHjtM-is1nxFoZQhKkBCbRTHgxv7_Rv3b5OUeXHlv_ZMUmCwIE) (Accessed: 3 July 2023).

<sup>ii</sup> Kennel Club registrations for the English Bulldog have risen from 4,782 in 2012 to 15,403 in 2021. See COMPARATIVE TABLES OF REGISTRATIONS FOR THE YEARS 2011 - 2020 INCLUSIVE (no date). Available at: <https://www.thekennelclub.org.uk/media/2400/10yrstatsutility.pdf>.

<sup>iii</sup> Radford, M. (2017) 'Can irresponsible breeders be made criminally liable?', Veterinary Record, 181(18), pp. 484.2-485. Available at: <https://doi.org/10.1136/vr.i4974> and Policy Position Paper on the Animal Welfare Act 2006 and the protection of offspring with greater knowledge we can improve dog breeding in the UK (no date). Available at: [https://www.dbrg.uk/uploads/5/5/5/6/55561953/position\\_paper\\_on\\_awa\\_and\\_the\\_protection\\_of\\_offspring\\_rev11\\_2\\_1.pdf](https://www.dbrg.uk/uploads/5/5/5/6/55561953/position_paper_on_awa_and_the_protection_of_offspring_rev11_2_1.pdf) (Accessed: 3 July 2023).

<sup>iv</sup> <http://www.ukbwg.org.uk/wp-content/uploads/2022/05/220512-BWG-Innate-Health.pdf>