

A-LAW Essay Competition Winner: Sentencing

2020: Will increasing the maximum sentence for causing unnecessary suffering, contrary to the UK's Animal Welfare Acts, enhance the effectiveness of the offence?

By Violet Smart

At first sight, the disparity between the UK's love for animals and the sentencing powers afforded to the courts for animal welfare offences under the 2006 Animal Welfare Act is stark. An estimated 44% of UK households have at least one pet¹. This figure suggests that around 12 million animals are kept domestically annually and, alongside the additional potential for feral animals under 'human control'² to be abused, demonstrates the sizeable scope for the offence to be committed. It comes as no surprise, then, that animal welfare groups have long petitioned for an increase from the current six month maximum available custodial sentence for those who commit the gravest of these offences. The Bill proposes an increase from the current six months to a maximum sentence of five years for indictable offences, while summary-only offences would retain their current maximum in line with Magistrates' powers. This would bring the UK in line with the maximum penalties available in Australia, Canada, New Zealand, Ireland and India and, it is suggested, would better enable the courts to deal with offences according to their gravity. Indeed, it has been suggested by

magistrates in a number of recent high-profile cases that, had higher sentencing powers been available, they would have been utilised. Such cases have turned the tide of public opinion, with a sizeable 70%³ washing up in favour of increased sentences for the most serious offences. But while all can agree that a six month custodial sentence and/or unlimited fine seems a paltry punishment for gravely injuring – or even killing – an animal, whether or not an increase in jail time will make the offence more effective is moot. It may well be that the proposed amendment to the act will carry far greater symbolic weight than practical implication.

Increased sentences are intended to have a dual⁴ effect wherever implemented. The first element is manifestly political; the longer a sentence, the more seriously policy makers are seen to be taking issues of public importance. Between 2016 and 2019, the government's position changed drastically. The initial response to the EFRA report on animal welfare in 2016 was that "current sentencing practice for offences of animal cruelty in the Animal Welfare Act 2006 does not suggest that the courts are finding current sentencing powers inadequate"⁵. By 2019, a string of high-profile media cases, including the disturbing case of Chunky the Chihuahua⁶ had surfaced, leading the government to announce proposals to bring forward the new legislation.

1 <https://www.rspca.org.uk/whatwedo/latest/facts>, accessed 10/02/2020.

2 During the Bill's reading stages, it was criticised for applying a double standard whereby domestic animals would be protected but feral ones would not. It has been clarified that the offence would apply to any animal who is 'under human control', which means that any animal subjected to cruelty by a person who has for that reason control over the animal will be protected.

3 <https://www.gov.uk/government/news/government-announces-support-for-animal-welfare-sentencing-bill-in-parliament>, paragraph 4, accessed 10/02/2020

4 This analysis takes for granted the fact that sentences are also for retribution and public safety reasons, which can be taken as a given with most crimes.

5 EFRA Select Committee, 4th Special Report - Animal welfare in England: domestic pets: Government response to the Committee's Third Report of Session 2016-17, 7 February 2017

6 This case concerned four boys, aged 15-16 who stole and abused a chihuahua. The case sparked outrage and led to petitions demanding harsher punishments for animal abuses. The case can be read at <https://www.bbc.co.uk/news/av/uk-england-kent-34952962/chunky-the-chihuahua-abuse-teenagers-targeted-online>

When the Bill was introduced to Parliament in June 2019, Michael Gove stated "Our new Bill sends a clear message that [animal cruelty] will not be tolerated, with the maximum five-year sentence one of the toughest punishments in Europe"⁷. Understandably, the introduction of the Bill was met with celebration by campaigners and animal lovers alike, but little regard was paid to the fact that in the decade between 2008-18, only between 6% and 11% of cases resulted in a custodial sentence⁸, and of these, even fewer incurred the maximum penalty. Indeed, the House of Commons Briefing Paper on the Bill freely acknowledges that "cases of extreme cruelty are rare"⁹ with fewer than five out of 1150 convictions being awarded the maximum sentence. The BBC Wales also reported that between 2010-2018, "only two six-month maximum sentences were issued by Welsh courts"¹⁰. These figures suggest that the amendments to the Bill are likely to have very little practical power in reducing offending and the majority of abuses against animals will continue to be prosecuted as summary-only offences, maintaining the current six-month maximum under the reform.

The second function of increased sentencing is, of course, deterrence. It has long been assumed that the harsher a punishment, the less likely an offence. This, alongside the obvious retributive element of incarceration, is for instance one of the major driving forces behind the USA's sustained commitment to long sentences. While prison undoubtedly keeps crime from the streets, its power beyond that in the UK is more limited. Over 70% of people in the UK are reconvicted in the year after release from a custodial sentence, as compared to those who are given a suspended sentence order¹¹. While this is not specific to animal cruelty offences, it is a statistic that speaks loudly. But the practical implications of sending somebody to prison are quite separate from the potential effect of it being a possibility that they are aware might result

from their behaviour. The deterrent effect of a long sentence may redeem an otherwise arguably misguided reform.

According to the deterrence theory of crime, nascent in the writings of early philosophers such as Bentham and Becker, and recently assimilated into modern criminal policy, the "certainty of punishment is generally considered to be more important than the severity of that punishment... [and] the subjective certainty is more important than the objective certainty"¹². Certainty refers not only to how likely an individual is to get caught, but also to how likely the courts are to exercise their maximum sentencing powers. The effectiveness of the amendment would therefore rest partly on how willing the courts are to use any new power attributed to them. Notoriously, the Corporate Manslaughter and Corporate Homicide Act of 2007 set out to give the Courts greater sentencing powers and secure more convictions. At its ten-year anniversary, there had been fewer than 25 successful convictions.¹³ Certainty cannot have any meaningful effect if the individual involved is unaware of the sentencing guidelines or the act (s)he is governed by. It was noted, however, in the RSPCA report of 2018 that awareness of the Act *is* low. The PDSA 2019 report confirmed that "over a quarter of owners (26%) are unaware of the Animal Welfare Acts"¹⁴. The deterrent effect of these longer sentences is, therefore, limited. In effect, this means that the quantity of offences is unlikely to decrease as a result of the amendment. Instead, the rare cases of extreme cruelty will be punishable by a more severe custodial term. The majority of offenders will continue unaffected, escaping with nominal fines (the courts have established a nexus between the defendant's economic circumstance and the fine imposed, meaning that the potential 'unlimited' nature of the fine becomes fable) and perhaps a ban on

7 <https://www.gov.uk/government/news/gove-delivers-new-bill-to-punish-animal-abusers>, accessed 10/02/2020

8 Elena Ares, (2019), House of Commons Briefing Paper, no. 8612, 24 October 2019; Animal Welfare (Sentencing) Bill

9 Ibid.

10 Caleb Spencer & Gwyndaf Hughes, (2019) 'Animal Cruelty Sentencing: Just 8% of Convicts Jailed', <https://www.bbc.co.uk/news/uk-wales-48120542>, accessed 10/02/2020

11 Prison Reform Trust, (2019) 'Prison: the Facts', Bromley Briefings Summer

12 Ben Johnson (2019), Do Criminal Laws Deter Crime? Deterrence Theory in Criminal Justice Policy: a primer, page 6.

13 James Gobert (2017) 'The Corporate Manslaughter and Corporate Homicide Act 2007 - 13 years in the making, but was it worth the wait?', page 23. Indeed, the statistics show no positive improvement in the number of cases under the CMCHA 2007 as compared to its predecessor and the full extent of its power is yet to be demonstrated. It would be easy for the Animal Welfare Act to suffer the same fate if the increased sentencing powers were delegated as a political tool rather than with a real view to securing justice for the animals involved in the offences.

14 PDSA Animal Wellbeing Report 2019, page 16



keeping animals domestically or short sentence. The RSPCA's own website states in bolded text, however, that "when someone is cruel to an animal, many people feel that they should be punished. But in order to prevent reoffending, punishment is often not enough"¹⁵.

The question then becomes: can the effectiveness of an offence be enhanced if the purported means of doing so fails to address the issues inherent in offending. Rather than five years behind bars, could offenders not be enrolled on a compulsory animal welfare and rights programme that educates and rehabilitates in line with the RSPCA and other animal welfare groups' guidelines? The provision of alternatives is unfortunately beyond the scope of this paper, but is certainly worth bearing in mind.

While the increase in jail term is unlikely to affect the majority of offenders, and therefore will arguably fail to enhance the effectiveness of the offence as far as statistics are concerned, its symbolic significance may supersede any prac-

tical failing. The change ensures that Animal Law statute does not stagnate, but evolves in line with public morality, which, vitally, has reached a point where animal rights abuses can no longer be treated flippantly. With the increase from six months to five years, the UK will have among the harshest punishments for animal welfare abuses in Europe. Such severity will send a very clear and direct message to other jurisdictions and indeed to potential offenders that the rights of animals are not subsidiary and that they must be respected. The issue faced is in raising awareness of the Act and the ramifications of breaching it. Once the public is made aware that the courts of law will regard with every seriousness an offence against an animal, and the courts affirm this by exercising their sentencing rights where appropriate against the most grave offenders, the amendment to the Act can be said to have had an effect. The change also safeguards against "facing the prospect of no prison terms for animal cruelty or for fighting with animals being available to the courts, if the Ministry of Justice's proposal to abolish sentences of six months or less is taken forward and implement-

¹⁵ <https://www.rspca.org.uk/whatwedo/education/offenders>, accessed 10/02/2020

ed"¹⁶, giving animal justice a future that will endure.

Violet completed a degree in Philosophy & Theology at the University of Oxford, where she studied animal rights through the ethics module and first became seriously interested in the moral implications of our treatment of animals. She has just finished the GDL at BPP Waterloo and will commence the BPTC in September after which she will be joining 25 Bedford Row for pupillage.

¹⁶ Angela Smith in Hansard, Commons Chamber, July 10, 2019