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of Animal Welfare Law

inside this edition:

**Cats and the Law: Evolving
Protection for Cats and Owners**

**Case Reports, Updates and
other Materials**

**Domestic Violence: The Impact
on Pets**



Contents

A note from ALAW

1-6 Cats and the Law: Evolving Protection for Cats and Owners

7-11 Case Reports, Updates and Other Materials

12-13 Domestic Violence: The Impact on Pets



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A note from ALAW

Sharp-eyed readers will have observed that this edition carries the month of publication, which will continue from now on. It makes it easier to cross-match the journal edition to year of publication.

Angus Nurse and Diana Ryland examine the Animal Welfare Act 2006, and its implications for companion animals, with reference to cats. Included in our usual section on Case reports, updates and other materials is a book review of Farmageddon: the true cost of cheap meat. Whether or not to include book reviews in the journal has long been a topic of debate within ALAW; now no longer I am happy to report, and I hope you enjoy the review by Alexander Conrad Culley.

Continuing on a farming theme, I urge readers to download Animal Aid's report – The Unaccounted Dead, which provides a harrowing account of farm animals who die before slaughter from neglect, fires on farms, road accidents on the way to slaughter and other factors (details given p.10). Farm animal welfare demands a response from each and every one of us and books such as Farmageddon and the report from Animal Aid help us to formulate what action we need to take in the light of the pitiless reality of farming.

Christina Warner considers the impact of domestic violence on its overlooked victims – pets or companion animals. Practising lawyers working with survivors of domestic abuse will find this article invaluable as it gives practical advice on helping to keep pet animals/companions safe.

ALAW wishes all its members and sympathisers every best wish for the coming year and to thank you for your continuing support.

Jill Williams
Editor

Cats and the Law: Evolving Protection for Cats and Owners

Dr Angus Nurse, Middlesex University¹
and Diane Ryland, University of Lincoln²

Conducting an analysis of the practical impact of the Animal Welfare Act 2006 on companion animal owners and their companions identifies the true significance of the Act as creating a 21st Century conception of animal welfare based on the needs of animals. In some respects, the Act challenges the historical notion of companion animals as merely being property subject to human interests and devoid

of any perception of their having rights.³ Instead it arguably provides for a form of rights by requiring consideration of the specific needs of individual companion animals. The UK Animal Welfare Acts⁴ are part of the criminal law and impose a duty to ensure welfare; thus an important part of the Acts is the requirement for a 'responsible person' to ensure that a cat's needs are met. The Acts extend beyond historical notions of ownership, animals as property and preventing cruelty whether by act or omission to provide for a *positive* obligation to ensure animal welfare. The practical implications of this were the focus of the research work commissioned by the former Feline Advisory Bureau, now International Cat Care (iCatCare) on behalf of the Cat Group⁵ on which this article is based.

While the legal status of cats is, in principle, well established under

common law as they are personal property, problems can occur because cats exist in a range of states e.g. feral, semi-feral, domesticated and stray. Some grey areas exist in relation to animal welfare legislation and in respect of the liabilities of cat owners. There has been little or no attention paid by legal researchers to addressing the legal status of cats except within the context of animal welfare offences, albeit some prior research exists into offences involving wild cats⁶ and whether animals (including cats) can be said to have legal rights.⁷ Our research considers rights theory not just in relation to enforcement of animal welfare law but also within the context of other legislative, policy and ethical considerations relating to animal ownership and welfare. In particular, we examined how both domestic and wild cats are subject to different protection under the law and the different liabilities imposed on humans when dealing with cats.

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³ Singer, P. (1975 [1995]) *Animal Liberation*, London: Pimlico

⁴ There is country-specific legislation in Scotland and Northern Ireland; the *Animal Health & Welfare (Scotland) Act 2006* and the *Welfare of Animals Act (Northern Ireland) 2011*. The three Animal Welfare Acts have similar aims of preventing harm and promoting animal welfare although there are some differences in the respective *Acts*. The main focus of this article is the Animal Welfare Act 2006 and its application in England and Wales

⁵ The Cat Group brings together a range of organisations dedicated to improving feline welfare policy and practice. Its membership consists of its founder International Cat Care, Battersea Dogs and Cats Home, Blue Cross, Royal Society for the Prevention of Cruelty to Animals (RSPCA), British Small Animal Veterinary Association (BSAVA), the Governing Council of the Cat Fancy (GCCF), Cats Protection, People's Dispensary for Sick Animals (PDSA) and Wood Green Animal Shelters.

⁶ See, for example Lowther, J. Cook, D. and Roberts, M. (2002) *Crime and Punishment in the Wildlife Trade*, Regional Research Institute, University of Wolverhampton, Nurse, A. (2003) *The Nature of*

Wildlife and Conservation Crime in the UK and its Public Response, Working Paper No 9: Faculty of Law and Social Sciences, Birmingham: UCE, and Nurse, A. (2008) *Policing Wildlife: Perspectives on Criminality and Criminal Justice Policy on Wildlife Crime in the UK*, Birmingham: Birmingham City University (unpublished doctoral thesis).

⁷ See for example Cass R. Sunstein, *The Rights of Animals*, *The University of Chicago Law Review*, Vol. 70, No. 1, Centennial Tribute Essays (Winter, 2003), pp. 387-401 and Wise, S. (2000) *Rattling the Cage: Towards Legal Rights for Animals*, London: Profile Books.



the issue of whether a person can be said to own a cat lends itself to both theoretical and legal debate



UK animal law is often complex and difficult for the layperson to understand not only because of the language used but also the need to understand how laws are interpreted in practice. iCatCare identified that cat owners may face a number of legal questions where either there does not seem to be a definitive answer or where identifying the answer is problematic and time-consuming. Our project aimed to address this by examining the most frequently asked questions about cats and their legal status. Our research examined questions concerning: the sale of cats and both buyer and seller rights; ownership of abandoned or stray cats; liability for aggressive cats; trespass and nuisance issues; what actions can lawfully be taken to prevent cats from entering somebody's garden; the criminal law⁸ inclusive of responsibility for the welfare of a cat and cruelty offences. The research has resulted in a detailed research report as well as a plain English guide which hopefully will serve as a simple reference guide.⁹ The focus of this article is the duty to ensure welfare and its application to cats.

The Legal Status of Cats

The common law position on companion animals is that they are personal property or chattels and are

the subject of absolute property or ownership.¹⁰ However, the issue of whether a person can be said to own a cat lends itself to both theoretical and legal debate and potentially causes problems for cat owners, not least because cats can move from a human dependent state to occupy several ill-defined states such as *stray*, *wild*, *feral* or *companion* all of which may defy conventional notions of ownership.¹¹ However, from the outset we identify that the legal status of cats under the UK Animal Welfare Acts is that of protected animals and that the law generally considers cats to be 'owned' or cared for by a 'responsible' person; somebody who has accepted some form of obligation to look after a cat even if that only means putting out food. UK animal welfare legislation applies not just to cats which are clearly linked to a single property and an identifiable owner, but also to those stray and feral cats for which a person may accept some responsibility to provide a certain level of care and comfort. Attempting to claim ownership of another's cat may also involve property rights. The protection provided under the law extends to both domestic and feral cats as 'being of a kind which is commonly domesticated in the British Islands'. The law thus extends beyond providing protection solely to companion animals.

Broom¹² compares the treatment of animals as property in most early legal systems to the treatment of

slaves, servants, and even wives as possessions. While some animal welfare and anti-cruelty laws are designed to protect human investment in property, Broom argues that the view of domestic and other animals as sentient beings that deserved respect is a natural social progression 'in the wake of a similar developing view that persons of other nations, creeds, or colours and women had such qualities.'¹³ Francione argues that animals' status as the property of humans dictates that laws which should require their humane treatment and prevent unnecessary suffering fail to provide any significant protection for animal interests. In reality, animals only receive protection commensurate with their value as human property or commodities. Francione argues that economic, legal and social factors prohibit recognition of animal interests unless a human interest also exists.¹⁴



cats are considered to be less domesticated than other animals and are able to revert to a semi-wild state by going feral



Whether ownership of a cat can be said to exist, depends in part upon the status of the cat and whether it

⁸ Taking a cat from its owner is likely to be theft; i.e. removal of another's property (Theft Act 1968); killing a cat, the property of another, criminal damage (Criminal Damage Act 1971).

⁹ Cats and the Law a Plain English Guide by Angus Nurse and Diane Ryland is available for free download at: www.thecatgroup.org.uk

¹⁰ See Blackstones Commentaries (Eighth ed. Vol. II. At 387) which specifies that property rights in domestic

animals are the same as property rights in inanimate objects but no such property rights can exist with wild animals. It is worth noting that kittens belong to the owner of the mother cat.

¹¹ Farnworth, M. J., Nicholson, G. and Keown, N. (2010) The Legal Status of Cats in New Zealand: A Perspective on the Welfare of Companion, Stray, and Feral Domestic Cats (*Felis catus*), *Journal of Applied Animal Welfare Science*, Volume 13 pp 180-188.

¹² In Radford, M. (2001) *Animal Welfare Law in Britain*, Oxford: Oxford University Press.

¹³ *Ibid.* See also Wise, S. M. (2000) *Rattling the Cage: Towards legal rights for animals*, London: Profile, in which Steven Wise argues strongly that legal rights for animals is a natural progression of human evolution, societal development and enlightened thinking.

¹⁴ Francione GL, (2007) *Animals, Property and the Law*, Philadelphia, Temple University Press.

lives within human control or support or is simply a visitor to a human home. Domestic cats are those companion animals that are primarily domesticated and rely on humans for food, but behaviourally cats are considered to be less domesticated than other animals and are able to revert to a semi-wild state by going feral. As shorthand; ‘owner’ can be used to describe a person who has legal ownership of a cat which can involve providing food for the cat or a place within their home or garden which the cat frequents. In the case of stray or feral cats this may include regularly making food available to the cat so that it frequently returns to the human for food and is in that person’s ‘possession’ even if only temporarily. ‘Responsible person’ describes a person who accepts responsibility for a cat and its welfare even if they are not the owner. This could include friends who house sit for a cat. These terms are important because of the way that the law imposes different obligations on owners and responsible persons. However the key issue is the duty to consider welfare which is the main focus of this article; our contention being that this is a significant shift in the law.

The Animal Welfare Acts and the Duty of Welfare

The UK Animal Welfare Acts impose a duty to ensure cat welfare, requiring owners or those responsible¹⁵ for animals to ensure their welfare and to provide for each of their animal’s basic needs, which includes: providing adequate food and water; veterinary treatment; and

an appropriate environment in which to live. The duty to ensure welfare had previously only existed for farm animals, although the Protection of Animals Act 1911 (as subsequently amended) contained the offence of causing unnecessary suffering to an animal. The standard of care required is set out in DEFRA’s *Code of Practice for the Welfare of Cats*.

It is important to note that the Animal Welfare Act 2006 is part of the criminal law. It retains the offence of causing unnecessary suffering from previous legislation but considerably refines its scope to incorporate both the active and passive nature of an offence. Unnecessary suffering can thus be caused either by taking action which causes unnecessary suffering or by failing to take appropriate steps to prevent unnecessary suffering. Inflicting pain, which may occur for example in cruelty cases, is not in itself sufficient to constitute unnecessary suffering even where extreme pain is caused, as the pain may be caused for beneficial reasons such as in surgery to alleviate the harm caused to a cat, or other medical treatment. It becomes necessary, therefore, to distinguish between *necessary* suffering caused to a cat and unnecessary suffering. In making this distinction the courts are able to take into account a number of factors such as whether the suffering could have been avoided or whether it was incidental to a legitimate purpose. Factors to be considered include whether the suffering could have been reduced, was carried out in compliance with

legislation, the conditions of a licence or a code of practice issued on a statutory basis.¹⁶ The courts might also consider the purpose of the conduct, the proportionality of the suffering, and whether the conduct that caused the suffering was that of a reasonably competent and humane person.

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The concept of unnecessary suffering is wide in scope and includes mental as well as physical suffering. Thus it is an offence unnecessarily to infuriate or terrify a protected animal in addition to, or instead of, causing physical pain. While, for example, a police horse on riot control duty might suffer mental pain this is arguably ‘necessary’ for it to fulfil its legitimate purpose of protecting people or property. However, a cat which is tortured, before being humanely euthanised, has had unnecessary suffering inflicted on it, and it is an offence for any person to cause unnecessary (physical or mental) suffering to a protected animal where the person committing the act knew or ought reasonably to have known, that the act would cause, or would be likely to cause,

¹⁵Section 3 of the *Animal Welfare Act 2006* defines ‘responsible person’ and provides:

- 1) In this Act, references to a person responsible are to a person responsible for an animal whether on a permanent or temporary basis.
- 2) In this Act, references to being responsible for an animal include being in charge of it.

3) For the purposes of this Act, a person who owns an animal shall always be regarded as being a person who is responsible for it.

4) For the purposes of this Act, a person shall be treated as responsible for any animal for which a person under the age of 16 years of whom he has actual care and control is responsible.

¹⁶The *Animal Welfare Act 2006* does not apply to anything lawfully done under the *Animals (Scientific Procedures) Act 1986*.

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suffering. In addition, where a person is responsible for an animal, he would commit an offence if unnecessary suffering was caused to the animal by his failing to take some action, where he knew or ought reasonably to have known that the omission would cause, or would be likely to cause, suffering. It is not necessary to show that the person actually knew that his act or omission would cause suffering, but only that he ought to have known.

Current law is thus arguably positive and proactive rather than negative by requiring cat owners to do more than simply provide a home for their cat and refrain from cruel practices. The law now requires owners and other persons responsible for a cat to consider both the interior and exterior environment of their home and to ensure so far as is possible, that it is suitable for the *individual* cat. Where they fail to do so, they may commit an offence under the Animal Welfare Act 2006 which contains provisions aimed at preventing harm before it occurs as well as provisions aimed at promoting welfare. In our research report we contend that this is an important change in the law of importance to cat owners who are now responsible for ensuring that their cat's needs are properly considered in a way that effectively gives cats' legal protection from being kept in unsuitable conditions. While cats technically remain 'property' as outlined earlier in this article, the law now requires their individual needs to be considered and so anybody wishing to be a cat owner and share their home with a

feline companions needs to have an awareness of their companion's individual characteristics.

The DEFRA *Code of Practice* is issued under Section 14 of the Animal Welfare Act 2006 and applies to all protected cats. The *Act* requires that all reasonable steps must be taken to ensure that the cat's following needs are provided for:

- a) its need for a suitable environment;
- b) its need for a suitable diet;
- c) its need to be able to exhibit normal behaviour patterns;
- d) any need it has to be housed with, or apart from, other animals; and
- e) its need to be protected from pain, suffering, injury or disease.

The *Code of Practice* can be taken into account by the courts when considering whether there has been a breach of the duty to provide appropriate welfare standards for a companion and so is of relevance to criminal enforcement of animal welfare standards under the 2006 Act. Because of the focus on the individual cat, it is fair to say that owners need some understanding of how their cats behave when fit, healthy and happy so that they can identify any problems. The law also arguably prohibits a 'standard' approach to cat care and instead requires one focused on the specific companion. In our *Plain English Guide* we have sought to cover the

main responsibilities that owners now have and to outline the key requirements of the *Code* some aspects of which are explored further below.

Suitable Environment

The *Code* recognises the territorial nature of cats and that although classed as companions; domestic cats will spend significant periods of time outside. As a result, while owners are required to provide their cat with a 'safe, comfortable, dry, draught-free, clean and quiet place' where it can rest undisturbed¹⁷ they are also required to take 'reasonable steps' to protect a cat from hazards indoors and outdoors. While 'reasonable steps' is not explicitly defined in the *Code* there is also specific reference to making sure that a cat has constant access to safe hiding places, where it can escape if it feels afraid. As a result, cat owners need to ensure either that they do not keep a cat in an unsafe or unsuitable environment where the needs specific to a cat's behaviour are not catered for, or that if they do so, they show that they have taken steps appropriate both to the cat and the specific accommodation that will so far as is possible minimise any possible harm to the cat from indoor and outdoor hazards.

Diet

The *Code* requires that the dietary needs of cats should be met, specifying the need to ensure that cats do not become underweight or overweight. Despite concerns that the provisions may be onerous¹⁸ this is consistent with the *Act's* general requirement to prevent unnecessary

¹⁷Section 1, DEFRA *Code of Practice for the Welfare of Cats*.

¹⁸Derbyshire, D. (2008) *Barking mad: Owners of obese dogs and fat cats could face jail under controversial new rules*, Daily Mail, Online version 05 November

2008. Available at: <http://www.dailymail.co.uk/news/article-1083010/Barking-mad-Owners-obese-dogs-fat-cats-face-jail-controversial-new-rules.html#ixzz1ZFpkoAtc>

suffering whether physical or mental and to ensure that good standards of animal welfare are maintained. However, this aspect of the *Code* effectively lays down minimum standards that owners need to comply with. Not only the requirement to provide fresh drinking water at all times and to provide a balanced diet suitable for a cat's individual needs, but also to monitor the amount that the cat eats or drinks and to seek advice concerning the cat's diet as required. The *Code* specifically refers to the special dietary requirements of certain cats (including cats that are ill) and these provisions when combined with the Act's obligation to provide adequate standards of animal welfare impose an active obligation on owners regarding their cat's dietary needs, explicitly linking dietary health and welfare.

Normal Behaviour

The *Code* reflects the fact that cat behaviour varies according to a cat's age, personality and past experiences.¹⁹ As outlined elsewhere in this article, unnecessary suffering can be caused either by taking action which causes unnecessary suffering or by failing to take appropriate steps to prevent unnecessary suffering.

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Section 3 of the *Code* thus stipulates that cats are provided with enough 'mental, social and physical stimulation' to meet the individual needs of a cat. The reference to individual needs signifies that 'standard' or minimum standards are not enough and that the owner of an extremely active cat may need to make additional provision to ensure that this requirement is met. While the *Code* requires that a cat is provided with somewhere to scratch, for example a sturdy scratching post, an active cat with a wide territory may require additional stimulation such that a single indoor post is not enough. The *Code* is explicit in specifying that owners should know how their cat behaves when fit, healthy and happy, by implication imposing an obligation on owners to be aware of and monitor their cat's behaviour and notice any changes in it. Failure to do so could be a breach of the *Code* and result in unnecessary suffering caused by a failure to take action.

Housing

Section 4 of the *Code* places an obligation on owners to make sure that their cat has appropriate company. In keeping with other provisions of the *Code*, Section 4 requires owners to consider the individual needs of a cat and its individual sociability towards people, other cats and other animals. The *Code* indicates that 'a cat may suffer if it cannot avoid other cats it does not like'²⁰ indicating that failure to provide appropriate housing free from interaction with other animals could constitute unnecessary suffering. However the *Code* also indicates that owners should provide regular contact with people even

failure to provide appropriate housing free from interaction with other animals could constitute unnecessary suffering

when they are away, for cats that like people.

Section 4 of the *Code* provides that owners must appropriately consider the socialisation needs of a particular cat to the extent where they should either avoid having a second cat or other companion animal (e.g. a dog) if doing so would negatively impact on their cat, or that should they have another animal they take appropriate steps both gradually to introduce the new animal into the home environment or to take additional steps to minimise contact between animals that do not like each other. This includes providing extra resources (toys, beds, litter trays and hiding places) to allow cats to get away from each other and also to ensure that they can access everything they need without having to pass one another too closely. This guidance means that cat owners need to carefully consider, on the basis of an individual cat's needs, any decision to have more than one cat or any other animal. Failure to do so could result in the causing of unnecessary suffering even though this is done unintentionally.

Caring for cats in hot weather and on bonfire night warrants additional

¹⁹Section 1, DEFRA *Code of Practice for the Welfare of Cats*.

²⁰Section 5, DEFRA *Code of Practice for the Welfare of Cats*.

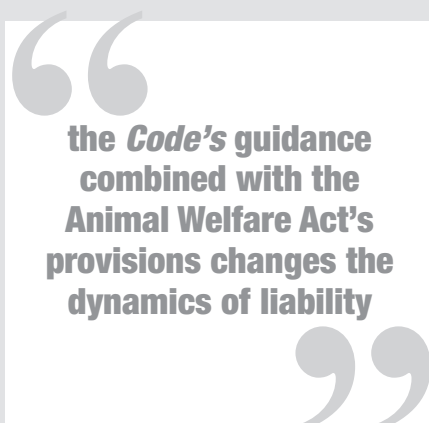
welfare guidance in light of the legal duty of responsibility under the Animal Welfare Act 2006. Those responsible for the welfare of cats must take account of the additional guidance and advice obtainable from DEFRA and which is available on its website,²¹ in order to discharge their legal responsibilities to their cats.

Protection from Pain

The *Code* also places an enhanced obligation on owners to monitor their cats for signs of injury or illness and to ensure that somebody else does this when the owner is away. While most cat owners will naturally keep an eye on their animal's health, the *Code* places an explicit, active obligation on owners to do so and to seek veterinary (or other appropriate) advice as soon as possible in the event of injury or illness.

A New Conception of Animal Welfare

The law's focus on the *individual* companion requires owners (and other responsible persons) to take a proactive role in understanding their companion's behaviour and needs, thus developing an awareness of the additional obligations this may place on the owner under UK law. While DEFRA's *Code of Practice on the Welfare of Cats* holds 'advisory' status rather than itself being enforceable, we argue that the *Code's* guidance combined with the Animal Welfare Act's provisions changes the dynamics of liability such that action might be taken under the Animal Welfare Act 2006, allowing courts to consider a failure to provide the necessary cat-friendly environment required by the *Act* (in accordance with the *Code*), as opposed to



considering, for example complaints under the specific nuisance requirements of the Environmental Protection Act 1990. Put another way, the scope of the action that might be taken against cat owners is widened so that they need to consider the environment in which their cats are kept and any potential negative consequences of that environment on their cat's health and wellbeing, including the impact of this on neighbours.

Several times in this article we refer to considering the needs of the individual cat. This is a central focus of the Animal Welfare Act 2006 which is aimed at responsible animal ownership requiring those who choose to have companion animals to take a proactive role in understanding their companion's behaviour and needs. While it may at first glance appear complex, much of what is contained within the law is likely to reflect the responsible practices that conscientious cat owners have already adopted and would wish to see in respect of protecting their companions from harm.²²

²¹www.defra.gov.uk/news/2011/06/03/pets-hot-weather/; <http://archive.defra.gov.uk/foodfarm/farmanimal/welfare/documents/fireworks.pdf>

²²The full Research Report on Cats and the Law by Dr Angus Nurse and Diane Ryland is available online at both the University of Lincoln and Middlesex

University Research Repositories and can be accessed via each author's name and respective University.

Case Reports, Updates and Other Materials

Patterson v RSPCA [2013] EWHC 4531 (Admin)

This case relates to an appeal against convictions for animal welfare offences and concerns disqualification orders and restrictions on the control of animals. Patterson was convicted of animal cruelty offences and was subject to a disqualification order under Section 34(2) of the Animal Welfare Act 2006 making it a criminal offence for him to keep or have control or influence over the way animals were kept. RSPCA Inspectors found a number of animals living with Patterson and his wife, who claimed that all of the animals were hers and she was solely responsible for their care. The RSPCA considered that the disqualification order was being breached and an agreement was made to re home the animals. But on a later search the animals were still present and it was concluded that Patterson was able to influence the way they were kept. Both Patterson and his wife were convicted of cruelty offences but appealed, in part contesting whether Patterson's ability to influence the animals' care amounted to a breach of the disqualification order.

The appeal was allowed in part. While one of the aims of disqualification orders is to prevent a person convicted of cruelty offences

from having further control over animals, Patterson's being in a position to influence the care of the animals was not by itself conduct which amounts to a breach of a disqualification order. The court concluded that for there to be a breach it was not sufficient to be able to control or influence the way in which animals were kept, the person in question had to be entitled to control or influence the way in which they were kept under an arrangement to which he was a party. While a successful prosecution could be drawn on inferences drawn from facts, it would need to be the only sensible inference from the facts not just a possible one. In this case, there were insufficient facts that would allow the magistrates to conclude that the only sensible conclusion was that Patterson had cared for the animals in the past, had been responsible for their welfare and care or was now party to an arrangement under which he was entitled to care for them. As a result magistrates were also not able to convict Patterson's wife for aiding and abetting him in breaching a disqualification order and this conviction and Patterson's convictions on all charges were quashed although his wife's appeal on four counts of animal cruelty was dismissed.

The case clarifies that the mere presence of a banned person in a

house containing animals or where he might care for them in the event of an emergency requiring him to do so is not by itself sufficient to amount to breach of a disqualification order.

R (on the application of Gray and another) v Aylesbury Crown Court [2013] EWHC 500 (Admin)

Gray is a former horse trader. The police seized 115 equines from his premises under section 18a of the Animal Welfare Act 2006 on grounds that it was necessary to do so to prevent their likely suffering.

Gray was convicted of 11 offences relating to causing unnecessary suffering and his wife JG was convicted of two offences. Gray was ordered to pay £400,000 and JG was ordered to pay £750 towards prosecution costs. The Crown Court allowed G's appeal in respect of two of convictions, but dismissed his appeal in respect of the other nine convictions. It dismissed JG's appeal against conviction. Both G and JG were ordered to pay £200,000 each towards the prosecution's costs of the appeal. Gray appealed against his convictions and the costs order against him, JG appealed against costs. Gray argued that sections 4 and 9 of the 2006 Act required either actual knowledge or a form of constructive knowledge that the animal was showing signs of unnecessary suffering, and that negligence was not sufficient.

He also argued that the evidence taken from the analysis of samples taken from the animals seized was inadmissible since there had been no written certificate by a veterinary surgeon, thus the seizures were unlawful. He also argued that his convictions under section 9 were subject to duplicity as they were based upon the same findings of fact as his convictions under section 4. Separate arguments were made about the costs orders although the animal welfare issues are the relevant issue for this case report.

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the distinction between section 4 and 9 is whether the animal had suffered unnecessarily, not the mental state of the person concerned
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The Court held that Section 4(1)(b) of the 2006 Act clearly aimed to impose criminal liability for unnecessary suffering caused to an animal either by an act or omission which the person responsible either had known or should have known was likely to cause unnecessary suffering whether by negligent act or omission. Section 9(1) also sets an objective standard of care which a person responsible for an animal is required to provide. This being the case, the distinction between section 4 and 9 is whether the animal had suffered unnecessarily, not the mental state of the person concerned.

The Court concluded that while the wording of section 18(5) of the 2006 Act intended for any certification by a veterinary surgeon to be in writing, the wording of section 18(6) could properly be read as ‘not reasonably

practicable to *wait for a veterinary surgeon to issue a certificate under subsection (5)*’. Thus the seizures were not unlawful despite the absence of written certificates as the constable who had seized the animals had been acting lawfully under s 18(6) it being the only viable way to proceed.

In respect of the duplication issue the court concluded that a conviction under section 9 should not be recorded where the neglect proved under section 9 was no wider than the conduct which had caused the unnecessary suffering for which there was guilt under section 4. The court should not record a separate conviction for the less serious offence where this conduct was entirely subsumed within the conduct subject to guilt on the more serious offence; to do so would provide a potentially misleading entry on a person’s record. However, here there was no complete duplication since some of the animals that were the subject of the charges under section 9 were not the subject of the charges under section 4. Accordingly, Gray’s claim for judicial review in respect of his convictions was dismissed.

Non-Human Rights Project Inc. vs Lavery Appellate Court Hearing 518336

This case, which at time of writing (November 2014) is being heard by the New York Supreme Court, is brought by the Nonhuman Rights Project (NhRP) demanding that the court issue a writ of *habeas corpus* to grant Tommy the chimp the right to bodily liberty. Tommy is a chimpanzee who is being kept in a cage in a room in a warehouse in Johnstown, New York. The NhRP argues that Tommy is being unlawfully imprisoned and therefore being deprived of his fundamental common law right to bodily liberty.

The case concerns legal personhood for Tommy and its presentation in New York relates to the New York Court of Appeals having previously concluded that legal personhood is not synonymous with being a human being. Legal personhood means that the entity counts in civil law. The NhRP using the same sources as the New York Court of Appeals, cites examples of legal persons that are not human beings including a river, a religious holy book, and a mosque.

The “Tommy” case is one of three cases filed by the NhRP in December 2013 as the first ever lawsuits on behalf of captive chimpanzees. The suits are based on 100 pages of affidavits filed by scientists demonstrating that chimpanzees are self-aware and autonomous, and therefore entitled to be recognized as “legal persons” with certain fundamental legal rights. The lawsuits ask the judge to grant the chimpanzees the right to bodily liberty and order that they be moved to a North American Primate Sanctuary Alliance sanctuary member. Alternatively they should go to “Save the Chimps,” the world’s largest chimpanzee sanctuary located in Fort Pierce, FL, where they can live out their days with others of their kind in an environment as close to the wild as is possible in North America.

Steven Wise acting for the NhRP commented in his 8 October 2014 closing arguments on Tommy’s case that: “The uncontroverted facts demonstrate that chimpanzees possess the autonomy and self – determination that are supreme common law values that the writ of *habeas corpus* was constructed to protect. Both common law liberty and equality entitle him to common law *habeas corpus* personhood within the meaning of Article 70.”



Exotic Pets are increasing in popularity with the EU as a top importer of tropical fish, reptiles, birds and mammals



Case reports

by Dr Angus Nurse, Senior Lecturer in Criminology, Middlesex University

Update: US court refuses to recognise caged chimpanzee Tommy as a “legal person”

The New York State Appellate Court, Third Judicial Department issued its decision on December 5th 2014 regarding the chimpanzee Tommy. It said that Tommy cannot be recognised as a legal person because he cannot bear any legal duties.

The Nonhuman Rights Project argues that chimpanzees are so similar to humans that they deserve basic rights, including freedom. It said it will appeal against the decision.

<http://www.nonhumanrightsproject.org/2014/12/04/appellate-court-decision-in-tommy-case/>

News

Birds of prey deaths

Allen Lambert, a gamekeeper on the Stody Estate in Norfolk, was found guilty of deliberately killing ten buzzards and a sparrow hawk at Norwich Magistrates Court in October 2014. He was also found guilty of possessing pesticides and other items used in the preparation of poison baits. Lambert pleaded guilty to five other charges, including the illegal use of pesticides, the BBC reports.

The RSPB described the case as the “worst bird of prey poisoning” it had seen in England and was one of the worst ever in the UK.

District Judge Peter Veits said the offences had “crossed the custody threshold”. Lambert received a 10-week jail sentence, suspended for one year. He was also ordered to pay prosecution costs.

Judge Veits said: “In other industries employers as well as the employee could be facing prosecution in such cases, and I hope therefore that this case can serve as a wake-up call to all who run estates as to their duties.”

The RSPB is calling on the government to bring in legislation which makes sporting estates more accountable in relation to the actions of staff.

The Stody Estate said it had not “authorised, trained or asked” Lambert to kill Wildlife. The Stody Estate is being investigated by the Rural Payments Agency – which could withdraw current subsidies, if the estate is found to have been negligent.

See <http://www.bbc.co.uk/news/uk-england-29931463>

Euro-group for Animals – Campaigns

Exotic Pets are increasing in popularity with the EU as a top importer of tropical fish, reptiles, birds and mammals, many of whom are unsuited to a life in captivity. The keeping of exotic pets has negative implications for biodiversity in the countries of origin, animal welfare and public health. There is minimal legislation to protect the welfare of exotic animals and to monitor non-CITES trade. The regulation of the private keeping and sale of wild animals is let to EU member states leading to great variability between one country and the next. Eurogroup plans to target the following areas for action: positive lists to restrict the keeping and sale of exotic pets; increased welfare provisions and prevention measures in EU regulations

on Invasive Alien Species, Animal Health Law, possible Animal Welfare Framework Law and within Trade Agreements; and targeted education to raise awareness of pet owners on making suitable choices.

For more information see <http://eurogroupforanimals.org/get-involved/the-need-for-national-and-eu-action-to-protect-wild-and-exotic-animals>

Equine Welfare – the need for specific welfare legislation

In 2014, Eurogroup for Animals launched an important project to ensure EU’s 6 million horses and 1.5 million donkeys are covered by species specific legislation. There is no specific EU legislation to protect equine welfare. Eurogroup argues that equine welfare falls in between laws designed to protect farm and companion animals. The equine sector continues to grow with equines being one of the most traded and transported animals in Europe. As such, are in need of urgent protection to ensure their welfare.

Eurogroup and World Horse Welfare have undertaken a research process mapping of the equine sector, the role of regulation and equine welfare and health issues. This should be published shortly with recommendations for improvements.

See <http://eurogroupforanimals.org/get-involved/act4equines-europe-must-act-on-horse-welfare/>

Castration of Pigs

The EU is the world’s largest exporter of pig meat with around 150 million pigs being farmed in the EU annually. There are many concerns relating to pig welfare. One major concern is the very large scale (around 100 million pigs each year) of surgical castration carried out in

the absence of anaesthesia or analgesia. In 2010, the European Declaration on the Alternatives to Surgical Castration of Pigs (Brussels Declaration) was signed by 24 signatories pledging to end surgical castration by 2018. However, little has happened to date. Eurogroup with key countries and on this BOARS2018 plan to launch a country-by-country campaign to end this cruelty.

See <http://eurogroupforanimals.org/get-involved/european-pig-castration-campaign/>

Reports

The Unaccounted Dead: farming's unofficial victims

Animal Aid has produced a landmark report which exposes the number of farmed animals, estimated to be around 43 million each year, who die through disease, road accidents, exposure, starvation, fire, flooding and neglect. The report documents the following incidents:

700,000 chickens drown on adjoining farms located on a flood plain. The chicken sheds are being rebuilt on the same dangerous site.

200,000 pigs are killed in a fire at a farm. Six months later more than 600 pigs die in another fire at the same farm.

A North Yorkshire farmer's extreme neglect of his animals led to the death of 350 sheep yet he continues to farm.

The report can be downloaded at <http://www.animalaid.org.uk/h/n/AA/HOME/>

Book Review

Farmageddon: the true cost of cheap meat, by Philip Lymbery with Isabel

Oakeshott. (Bloomsbury Publishing: London, 2014, paperback ISBN: 978-1 4088-4644-5, 448 pages, £12.99)

Perhaps you are about to read this review whilst tucking into a full English breakfast after a heavy night out? Or maybe you have poured yourself a refreshing glass of cold milk, reassured by the marketing hype that it is a healthy, pure product from Mother Nature, rich in nutrients and protein? Just what you need after a strenuous session down the gym? Perhaps I have caught you as you are about to sit down to a light supper of smoked Scotch salmon before relaxing in front of the TV for your Saturday evening fix of *Come Dine with Me*. Low in fat and calories, high in protein – what could be healthier?

Whatever your culinary routine, after reading Philip Lymbery's book you are unlikely to ever view your food in the same way again. Lymbery, the current Chief Executive Officer of *Compassion in World Farming* ("CWF"), tours the industrial farms of the world in an attempt to unveil their true social, environmental, health, economic and animal welfare impacts which he contests are deliberately concealed from consumers by 'interested parties' who benefit from the perpetuation of a morally bankrupt, inhumane, and frequently hazardous to human health, system of mass factory farming. The public are lulled into a false sense of security about their food by clever marketing and pretty packaging, until a scandal breaks out – such as when it was discovered that horsemeat had been used in the 'beefburgers' sold by major UK supermarket chains in 2013.

Lymbery's approach is part lobbying, part investigative journalism, as he exposes the inefficiencies and cruelty of a mechanised food system that is so



often misrepresented to the public, and impoverished farmers alike, as the only solution to feeding an ever increasing world population and meeting the rapacious demands of supermarkets and chain-restaurants.

Much has already been written about *Farmageddon's* findings and proposed solutions in the press. The current reviewer does not intend to repeat these here, but instead, highlight conclusions of the book which are of particular interest to animal welfare lawyers and lobbyists campaigning against cruel practices in industrialised farming:

1) Understand the 'power pyramid':

Lymbery states that a campaign for change will be most effective if it targets each level of what he calls the 'power pyramid'. In the UK, Lymbery states, that the Minister for Agriculture is at the top of the pyramid, propped up by legions of unelected civil servants, MPs and lastly, the consumer (also known as the electorate). Lymbery exemplifies the success this approach can have by referring to CWF's campaign against the use of chains and restraining collars on pregnant pigs in the UK back in the early '90s. Initially introduced as a Private Member's Bill, the ban was filibustered out by opponents despite an overwhelming number of MPs being in favour of it. Nonetheless, the bill, with its celebrity support, garnered widespread publicity and fuelled debate which put pressure on the Minister for Agriculture to react to the CWF's campaign and ban the barbaric practice.

- 2) **Recognise that retailers have more power than legislators and regulators:** veteran campaigners like Lymbery recognise that the cumbersome and bureaucratic nature of national and supra-national legislatures means that resources are often better deployed if they target consumers directly as opposed to politicians. The book gives the example of the painfully slow process by which the EU is seeking to ban battery cages for chickens. Although Brussels gave farmers twelve years to get rid of their cages in 1999, around half of the EU's Member States were still not ready for the ban at the beginning of 2012. By contrast, since CWF introduced its 'Good Egg Awards' in 2007, nearly 500 British companies have pledged to stop using or stocking battery eggs altogether, including big brands like Sainsbury's, Starbucks and Unilever.
- 3) **Make full use of information legislation where available:** Lymbery cites the successful use of the Freedom of Information Act 2000 by animal welfare campaigners in Scotland to prove that 80 per cent of Scottish intensive fish farmers did not have anti-predator nets, despite the Animal Health and Welfare Scotland Act 2006 ('AHWSA') mandating that fish stock be adequately protected against predators. The absence of such nets increased the likelihood that seals, tempted by their abundant fish stocks, would be shot, even though the AHWSA stressed shooting should only be used as a last resort.
- 4) **The strategic use of private prosecutions could raise public awareness of an issue and force change, even if the prosecution itself fails:** in the 1980s CWF launched a private prosecution

against some monks for rearing veal calves in a 'crating' system, charging them with nine counts of cruelty under the Protection of Animals Act 1911 and the Act of 1968. The prosecution itself failed, with CWF paying £12,000 in costs. Nevertheless, Lymbery contends that it was money well spent because the media picked up the story and the public voiced their outrage, forcing supermarkets to drop veal and the government to eventually ban veal crates altogether.

- 5) **Be prepared for possible use of legal process by opponents to frustrate change:** from filibustering Private Members' Bills in Parliament that are designed to outlaw cruel practices to launching spurious lawsuits in an attempt to drain the financial reserves and test the mental endurance of whistleblowers, *Farmageddon* is full of examples of the desperate measures the industrial farming machine will undertake in order to protect the status quo. Whilst such tactics may be familiar to us, they may not be to small farmers or residents of a rural village when they come into conflict with the power of the industrial farming machine for the first time. Accordingly, *Farmageddon* offers animal welfare lawyers and lobbyists an invaluable insight into

the impact such misuses of legal process can have on the lives of the victims of industrial farming which can be used to adequately prepare future clients/supporters of the challenges they will face in taking on the system.

These conclusions alone make *Farmageddon* essential reading for the animal welfare lawyer or lobbyist and, of course, the consumer. This is without even considering any of the numerous shocking examples cited in the book of the damage that industrial farming is wreaking upon the planet. These include: pumping livestock with so many hormones, antibiotics and vaccines that bacteria and viruses eventually become resistant to them, threatening not only animals but also humans; keeping so many cattle and pigs in enclosures that the waste they produce is not evenly distributed on farmland, but instead kept in large tanks which leak, or worse, threaten to burst, polluting nearby rivers and coastlines and destroying their ecosystems; using cloning to breed animals selected for their 'superior' genetic qualities, but which actually often result in serious birth defects and discomfort for the resultant clones. One could go on. And on.

If the book has one drawback from a lawyer's perspective, it is the fact that cases and the relevant legislation utilised are not listed in a tabular format which can be easily revisited for future reference. However, one should acknowledge that this is not a legal textbook but a call to arms issued by one of the world's most distinguished animal welfare campaigners. If we choose to ignore it, we do so at our, and our future generations, peril.

Book review by Alexander Conrad Culley Barrister (England and Wales)



Domestic Violence: The Impact on Pets

Christina Warner, ALAW Trustee

It has been a widely publicised and well-documented matter that domestic violence is an ongoing and longstanding issue. Recent proposals to make domestic abuse a free-standing criminal offence independent of any other violent offence have been greeted with a positive response.¹

In March 2013 the definition of domestic abuse was broadened to include financial and emotional abuse as well as matters of a physical and sexual nature.² Most recently, the shadow home secretary, Yvette Cooper announced a £3 million fund for domestic violence victims at the

Labour Party Conference on 24 September.³

The trauma felt by spouses, partners and children suffering or fleeing domestic abuse is recognised by many as intolerable and unacceptable. But the plight felt by domestic pets is all too often overlooked. The manner in which a pet is used and abused by the perpetrator is not often forgotten by those who have witnessed this type of exploitation. Recently the case of Amie Smith hit the headlines who pleaded guilty, earlier this year to animal neglect as a result of starving her two-year old Bull Terrier, Rocky to death. Smith claimed she had failed to return for the dog as a result of an abusive relationship.⁴ Whilst in the US Ryan Eddy Watenpaugh was arrested for alleged animal cruelty after claiming to have cooked his partner's pet Pomeranian and serving it to her as an act of revenge.⁵

A means to manipulation

The Dog's Trust welfare charity released posed pictures earlier this summer in an attempt to highlight the link between domestic abuse and the

sufferer's household pets. In one picture a Great Dane stands with its leg wrapped in blue plaster, captioned '...I fell down the stairs'. Whilst another shows a Bull Terrier with a black eye, peering from behind a kitchen cabinet door, captioned 'I hit my head on the cupboard'. This also highlights the behaviour of victims when attempting to disguise the perpetrator's brutality.⁶

The perpetrator either physically abuses the animal or threatens to do so as a manner of manipulating the victim⁷ – this tactic commonly being seen in cases involving children.

Some victims of domestic violence have reported remaining with their partners for fear of harm to their pet or as a result of harm the perpetrator has inflicted on them in the past.⁸ In one study, 70.3% of women fleeing domestic violence reported threats to or actual harm being inflicted upon their pet, with 54% of women reporting actual harm.⁹

So when fleeing domestic abuse, what are the options when it comes to a

“Some victims of domestic violence have reported remaining with their partners for fear of harm to their pet”

¹ Mason, Rowena, 'David Cameron vows to consider creating domestic violence offence', *The Guardian*, 25 July 2014

² Ghai, Mandip, 'Domestic Violence update – what a practitioner needs to know', *Family Law Week*, 11 September 2014

³ Cohen, Claire, 'Labour to announce £3m fund for domestic violence victims', *The Telegraph*, 24 September 2014

⁴ Flint, Hannah, 'Walker dog owner left her bull terrier to starve to death in an act of cruelty deemed the worst in 30 years', *www.chroniclive.co.uk*, 24 September 2014

⁵ Dearden, Lizzie, 'Man 'who killed girlfriend's dog and fed it to her' is arrested in US', *The Independent*, 13 September 2014

⁶ Winter, Stuart, 'Animal abuse is first sign of domestic abuse risk', *The Express*, 13 July 2014

⁷ Bartlett, Nicola, 'Pets manipulated by abusers in Wales warn RSPCA', *www.walesonline.co.uk*, 28 September 2014s.

⁸ As advised by Refuge at <http://www.refuge.org.uk/get-help-now/what-about-pets/>

⁹ 'Animal Cruelty/Domestic Violence: The link', as per <http://www.peteducation.com/article.cfm?c=2+2100&aid=3120>

beloved pet? Many refuges provide shelter for women and children fleeing violence but many are unable to provide the same for their pets.¹⁰

Planning ahead

Fortunately, the issue of domestic abuse affecting family pets is being acknowledged as an increasing one and some websites are offering advice to owners when assessing their options. The Animal Welfare Institute in Washington DC provides advice for considering pets when remaining with or fleeing from the perpetrators of domestic violence.¹¹ Upon advising those choosing to remain with their partners; victims are advised to ensure that they have a hidden, emergency provision of food for their pet to provide if their partner withholds money from them. Documentation to prove ownership of the animal, such as vet bills, should also be secured. Those planning on leaving with their pet are advised to change all vet's details and to take belongings familiar to the animal such as their favourite toy or bedding to ensure their transition to new surroundings will be as easy as possible. For those who have already left the perpetrator taking their pet

with them, they are advised to keep the pet indoors, especially if their new address is known to the perpetrator and not to walk their pets alone on unfamiliar routes.

PetRetreat, the Freedom Project and Paws for Kids

As a result of many victims of domestic abuse being unable to take their pets with them to refuges or shelters, the RSPCA established PetRetreat which provides a temporary fostering service for pets belonging to sufferers of domestic abuse. Since 2002 it has helped 1200 animals belonging to 800 families fleeing such violence.¹² Whilst the Dog's Trust founded the Freedom Project and the charity, Paws for Kids, based in the North West also provide similar fostering services for household pets.

A survey conducted by the Pet Owners Association has reported that 94% of victims of domestic abuse would have left the perpetrator earlier had they known of a pet fostering service, therefore saving them from further abuse.¹³

Studies have found animal abuse is directly associated to an increased risk of harm to children within the same household.¹⁴ With Clare Kivieha, Manager of the Freedom Project stating that 'animal abuse can be the first visible sign that a family is living with the threat of domestic violence.'¹⁵ Whilst, the reverse can also be said, in that those reported or convicted of domestic abuse may also have tendencies to demonstrate the same behaviour towards animals. A reported example of this being

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Matthew Hawksworth who was convicted of animal cruelty after being found to have inflicted broken bones and bruises to his Staffordshire Bull Terrier puppy in September this year. Hawksworth's previous convictions included matters involving both harassment and domestic violence.¹⁶

In a proactive and pragmatic move towards tackling the issue, vets are being recruited and trained in Scotland to spot the signs of the domestic abuse in their animal patients.¹⁷ Scottish vets are being advised on how to manage owners of animals brought in with 'unlikely stories', similarly to the manner in which pharmacists are trained to assist women suspected of being victims of rape or sexual abuse seeking contraceptives or painkillers. The Domestic Abuse Veterinary Institute developed by Scottish charity, Medics Against Violence will assist in training vets in encouraging suspected victims of domestic abuse to report matters to the police or refer them on to organisations who will be able to support them further.

Tragically, as with most issues concerning animal welfare the stories of the victims frequently go untold. Hopefully with these services in place to temporarily house pets it will enable sufferers of domestic abuse to alleviate their fears sooner rather than later.

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¹⁰Commentary by the International Fund for Animal Welfare at <http://www.ifaw.org/united-kingdom/our-work/cats-and-dogs/united-kingdom-protecting-pets-domestic-violence>

¹¹*Safety Planning for Pets of Domestic Violence Victims*, as advised by the Animal Welfare Institute at <https://awionline.org/content/safety-planning-pets-domestic-violence-victims>

¹²<http://www.rspca.org.uk/whatwedo/petretreat>

¹³'Pets caught up in domestic violence', commentary at http://www.pet-owners.co.uk/index.php/articles/detail/pet_link_appeals_for_help

¹⁴ibid 11

¹⁵ibid 6

¹⁶Mathews, Jane, 'Thug who BIT and punched puppy escapes jail', The Express, 1 September 2014

¹⁷'Vets are recruited in fight against domestic violence in Scotland', The Daily Record, 20 April 2013

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What is ALAW?

ALAW is an organisation of lawyers interested in animal protection law. We see our role as pioneering a better legal framework for animals and ensuring that the existing law is applied properly.

We believe that lawyers should, as well as interpreting laws, ask questions about the philosophy underlying them: they have always played a central role in law reform. There is also a real need to educate professionals and the public alike about the law.

Animal cruelty does not, of course, recognise national boundaries and we are building up a network of lawyers who are interested in animal protection in many different countries.

What ALAW will do?

ALAW will:

- take part in consultations and monitor developments in Parliament and in European and other relevant international organisations,
- highlight areas of animal welfare law in need of reform,
- disseminate information about animal welfare law, including through articles, conferences, training and encouraging the establishment of tertiary courses,
- through its members provide advice to NGOs and take appropriate test cases,
- provide support and information exchange for lawyers engaged in animal protection law.

Who can be a member?

Solicitors, trainee solicitors, legal executives, barristers, pupil barristers, judges and legal academics are eligible to join and will receive regular issues of the *Journal of Animal Welfare Law*. Other interested parties can become subscribers to the *Journal* and receive information about conferences and training courses.

How can you help?

Apart from animal protection law itself, expertise in many other areas is important - for example, public law, civil liberties, environmental health, planning law, freedom of information, civil litigation, media law, company law and charity law.

In addition, lawyers have well-developed general skills such as advocacy and drafting which are useful in many ways. Help with training and contributions to the *Journal* are also welcome.