



Summer 2016

# Journal

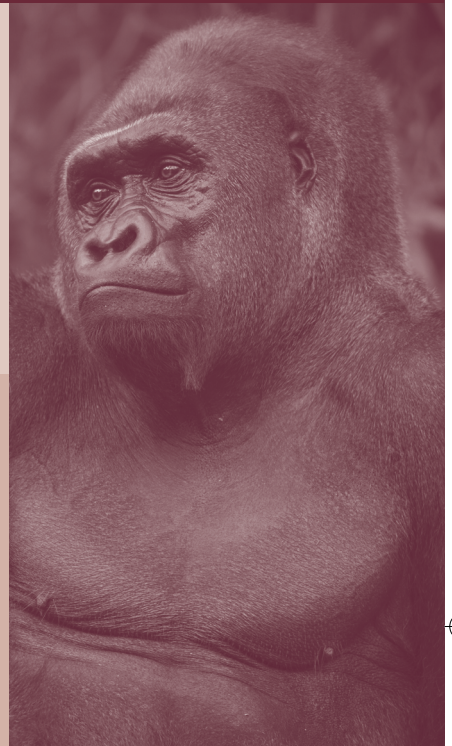
## of Animal Welfare Law

inside this supplementary edition:

**Animal Abuse and Domestic Violence: Exploring the Link**

**EU's live exports – ignoring the Treaty, the ECJ, EU law and international standards**

**Opinion: Gorilla in the Midst of a Zoo Fog**



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in Scotland



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## Editor's note

Welcome to the summer edition of the Journal of  
Animal Welfare Law.

The journal starts with a focus on the relationship  
between animal abuse and violence between  
humans. Angus Nurse considers the links between  
animal abuse and domestic violence (DV), which  
while complex, may be seen as an important  
indicator in relation to violence between humans  
that deserves better recognition. This subject matter  
is taken up by Alison Howey in her review of  
Prosecuting Attorneys 5th Animal Cruelty  
Conference held in Pittsburgh at the end of last year.

Threatening to harm companion animals is often  
used by DV perpetrators as a means of controlling  
their human victims. For readers working with  
victims (or perpetrators) of DV please see the  
following for information about pet fostering  
services [www.thelinksgroup.org.uk](http://www.thelinksgroup.org.uk) and  
[www.refuge.org/get-help-now/what-about-pets](http://www.refuge.org/get-help-now/what-about-pets)

On 29 August 1996 67,488 sheep died on a ship  
which caught fire in the middle of Indian Ocean.  
This date has since become a day of action against  
the live export trade. This year there were nearly 100  
actions across 34 countries against the live trade.  
Peter Stevenson reviews the live export trade with  
reference to the trade from Europe.

Chris Draper considers the killing of Harambe, the  
young male gorilla at Cincinnati Zoo and how we  
may need to reframe our thinking about conservation  
to include compassion for the individual animal.  
Patricia Suluja explores reasons why England  
prosecutes more animal cases than Scotland. Case  
material is provided by George Pennington.

ALAW is making changes to the Journal which will  
be rolled out over the coming year. The next edition,  
due at the end of the year, will hopefully include  
material considering the impact of Brexit.

Jill Williams  
Editor

**Clarification:** Please note that sub sections 3,4, 5 and 6 of  
Section 8 of the Animal Welfare Act 2006 mentioned in  
Nurse, A. Contemporary Dog Fighting in the UK pp 1-10  
Journal of Animal Welfare Law, February 2016 have not  
been enacted. Please see the Animal Welfare Act 2006  
(Commencement No. 1) (England) Order 2007.

# Animal Abuse and Domestic Violence: Exploring the Link

**Dr Angus Nurse, Middlesex University School of Law**

## Exploring the Links between Animal Abuse and Human Violence

The link between animal cruelty and violent antisocial behaviour is now largely accepted by the scientific and law enforcement communities and is actively researched within disciplines such as criminology and psychology.<sup>1</sup> At its most basic level, law enforcement agencies have identified that most serial killers have a history of animal abuse and consider that animal abuse can be an indicator of future violent offending. The Progression Thesis essentially argues that offenders start by abusing small animals, progress onto abusing larger animals and eventually escalate to human violence.<sup>2</sup> However, the strength and certainty of the link between animal abuse and human violence requires cautious consideration. While the link is widely acknowledged, and supported by the evidence of some research studies, it must also be accepted that animal abuse does not *automatically* escalate into violent behaviour towards humans. Animal abuse is only one possible determining factor

among several which indicate a propensity toward human violence, albeit an important one that demonstrates certain violent offender traits. MacDonald<sup>3</sup> identified three specific behavioural characteristics associated with sociopathic behaviour: animal cruelty, obsession with fire starting and bedwetting (past age five). The MacDonald triad was instrumental in linking these characteristics to violent behaviours, particularly homicide, and in identifying cruelty to animals as a *possible* indicator of future violent behaviour. Essentially, MacDonald linked poor impulse control, thrill-seeking and an inclination towards violence and inflicting harm on others as traits shared by sociopathic offenders. Subsequent studies have confirmed that cruelty to animals is a common behaviour in children and adolescents who grow up to become violent criminals.<sup>4</sup>

This article looks specifically at the link between animal abuse and domestic violence as one aspect of the link between animal abuse and

interpersonal violence; noting that research consistently identifies that where one occurs the other is also likely.<sup>5</sup> In particular, it discusses the link between animal abuse and masculinities arguing that much domestic animal abuse involving companion animals is caused by and is a product of masculinities and power dynamics within domestic relationships. Accordingly, animal abuse and domestic abuse, particularly spousal abuse, are arguably linked as part of a continuum of abuse directed by male figures towards more vulnerable members of their households.

**“most serial killers have a history of animal abuse and consider that animal abuse can be an indicator of future violent offending”**

<sup>1</sup> See Robert Agnew, 'The Causes of Animal Abuse: A Social Psychological Analysis' *Theoretical Criminology* (1998) 2; Arnold Arluke, *Just a Dog: Understanding Animal Cruelty and Ourselves* (Temple University Press 2006); Jack Levin and Arnold Arluke, 'Reducing the Link's False Positive Problem' in Andrew Linzey (ed.), *The Link Between Animal Abuse and Human Violence*, Eastbourne: (Sussex Academic Press, 2009).

<sup>2</sup> See, for example Suzanne Conboy-Hill, *Animal Abuse and Interpersonal Violence* (The Companion Animal Behaviour Therapy Study Group 2000). However, it

should be noted that a complexity exists in respect of the progression thesis such that it is considerably less straightforward than it at first appears and arguably consists of several different propositions concerning the likelihood of animal abuse and human violence co-existing.

<sup>3</sup> John M MacDonald, 'The Threat to Kill' (1963) *American Journal of Psychiatry* 120.

<sup>4</sup> See, for example - James Hutton, J.S. (1998) 'Animal Abuse as a Diagnostic Approach in Social Work: A Pilot Study' in Randall Lockwood and Frank Ascione (eds), *Cruelty to Animals and Interpersonal Violence: Readings in Research and Application* (Purdue University Press 1998); Allan Felthous and Stephen Kellert, 'Childhood Cruelty to Animals and Later Aggression Against People: A Review' (1987) *American Journal of Psychiatry* 144.

<sup>5</sup> Andrew Linzey, (ed.), *The Link Between Animal Abuse and Human Violence* (Sussex Academic Press 2009); Randall Lockwood and Frank Ascione, (1998). *Cruelty to Animals and Interpersonal Violence: Readings in Research and Application* (Purdue University Press 1998)

<sup>5</sup> Andrew Linzey, (ed.), *The Link Between Animal Abuse and Human Violence* (Sussex Academic Press 2009); Randall Lockwood and Frank Ascione, (1998). *Cruelty to Animals and Interpersonal Violence: Readings in Research and Application* (Purdue University Press 1998)

## Perspectives on Animal Abuse and Domestic Violence

The mistreatment of domestic animals can occur for many reasons and can be either active or passive. *Active* mistreatment has historically been a core concern of anti-cruelty statutes and academic and policy discussions of animal abuse. These primarily focus on *intentional* mistreatment or deliberate neglect where intent to cause animal harm is a significant factor and an indicator of either anti-social personality disorder, mental illness or some form of abuse within the family. *Passive* mistreatment can include neglect caused by 'failure to act' such that companion animals are not properly cared for and harm is caused either as a result of misunderstanding an animal's needs or through deliberate neglect. Arguably beliefs play an important part in the treatment of animals<sup>6</sup> and anthropocentric notions of animals as being 'things'; arguably reflected in their legal status as property<sup>7</sup> influences the extent to and manner in which animal abuse is contextualized. Distinguishing between *accidental* and *deliberate* neglect is important, particularly when considering the extent to which accidental neglect is an indicator of domestic problems. Some neglect may occur as a consequence of simple misunderstanding of appropriate care needs or through the process of companion animals being bought for children who are either unable to care for them adequately or who simply grow out of the relationship. However neglect of animals can also indicate wider issues of neglect and failings of care within a family, such as those childcare failures and neglect of children which constitutes abuse.<sup>8</sup>

The UK's Animal Welfare Act 2006 imposes a duty to provide animal welfare in respect of companion animals. In one sense companion animals, recognised as sentient beings by the European Union<sup>9</sup> and afforded protection for their individual behavioural needs by the Animal Welfare Act 2006, should be treated as individuals within a family unit. The law, clarified by *R (on the application of Gray and another) v Aylesbury Crown Court* [2013] EWHC 500 (Admin), identifies that an objective standard of care is required and that criminal liability exists for unnecessary suffering caused to an animal either by act or omission. This is the case where the person responsible for a companion animal's welfare either knew or should have known that their actions were likely to cause unnecessary suffering whether by negligent act or omission. The issue is whether avoidable suffering has been caused to a non-human animal and not the state of mind of the person concerned. However, the focus of this article is largely the state of mind and intentions of those committing animal abuse where a link to human violence is concerned. Animal abuse is arguably often an outlet for male aggression perpetrated by adult male offenders or child victims within a domestic setting such that animals bear the brunt of, or are at risk of, suffering from violence from a number of sources within a family. Some animal abuse is a means to

control other family members and is indicative of a wider violent or abusive family dynamic, one in which dysfunctional patriarchal power is enforced through inflicting harm on weaker or more vulnerable members of a family who may be unable to defend themselves (including non-human animals). The threat of violence to animals is also a powerful control tool and children, spouses or partners can also be manipulated into remaining with an abuser by means of the control exercised over non-human companions.<sup>10</sup> Animal abuse may thus be less about the direct animal victim and, in some circumstances, animal abuse is used to intimidate, control or coerce women and children within an abusive relationship either to accede to a perpetrator's demands or desires or to keep silent about their abuse and suffering within the family and domestic environment.

Anti-cruelty laws generally make it an offence to inflict pain or suffering on companion animals, frequently phrasing such abuse in the context of causing 'unnecessary suffering' reflecting the fact that some harm caused to animals is considered unavoidable.<sup>11</sup> Indeed some forms of accidental harm or harm that constitutes a 'necessary' part of human-companion animal relationships (such as neutering, spaying or castrating) may constitute lawful suffering; subject to being carried out in accordance with regulatory or licensing requirements (i.e. by registered veterinary professionals at licensed premises). In effect, some laws argue that by reducing animals into captivity and through the process of domesticating certain species over a period of time we have an obligation to ensure that

Andrew Linzey, (ed) *The Link Between Animal Abuse and Human Violence*, Eastbourne: (Sussex Academic Press 2009).

<sup>6</sup> Pamela Frasch, 'Addressing Animal Abuse: The Complementary Roles of Religion, Secular Ethics, and the Law' (2000) *Society & Animals* 8(3)

<sup>7</sup> Mike Radford, *Animal Welfare Law in Britain* (Oxford University Press 2000)

<sup>8</sup> Dawn Hawksworth and Rachel Balen, 'Animal Cruelty and Child Welfare: The Health Visitor's Perspective' in

<sup>9</sup> Article 13 of the Treaty on the Functioning of the European Union

<sup>10</sup> Angela Browne, 'Violence against Women by Male Partners: Prevalence, Outcomes, and Policy

Implications' (1993) *American Psychologist* 48

<sup>11</sup> Joan Schaffner, *An Introduction to Animals and the Law* (Palgrave Macmillan 2011)

they do not suffer harm while they are dependent on humans for food and shelter and unable to live independent lives, or at least that any suffering should be tightly controlled.

Companion animals are often part of the family and may be attuned to family tension and the impact of violence within domestic settings. Evidence shows that some animals experience, or at least respond to, the distress of their owners.<sup>12</sup> In addition to physical abuse and neglect, animals may also suffer from psychological abuse and be subject to the emotional stress of living in fear from domestic abuse or other forms of violence. The Animal Welfare Act 2006 arguably reflects this by extending the definition of unnecessary suffering to include psychological distress caused to animals and by requiring that owners and responsible persons consider the impact of the home environment on companion animals. In domestic settings, animal abuse is often indicative of the expressions of masculinity and male responses to challenging social situations that are indicative of hegemonic masculinity. Animal abuse and related animal harm is sometimes associated with power, especially patriarchal power, and in situations where a perceived loss of power or challenge to male authority arises violence towards animals may occur. Weber<sup>13</sup> identified the hierarchical nature of power within the family and its association with distinct family roles, primarily based around the father as the central power conduit with power circulating down to lesser family members.<sup>14</sup>

Weber's theory was primarily based around historical notions of the nuclear family rather than contemporary post-feminist forms of the family (e.g. single-parent families). Yet masculinities remain significant factors in domestic violence and animal abuse and, according to feminist perspectives, reflect the legacy of patriarchal power as a means through which dominant males use violence as an expression of power to control less powerful individuals within their immediate sphere of influence.<sup>15</sup> Companion animals have the least power within a family dynamic, partly through being unable to speak and exercise their 'rights' but also by virtue of their legal status as 'property'.<sup>16</sup> Arguably domestic animal abuse is part of the wider dominance and exploitation of less powerful individuals by males through which a dominant male is able to control his immediate environment and increase both acceptance of his will and reliance on his authority.<sup>17</sup>

'Domestic violence' is somewhat of an umbrella term used to describe the main forms of domestic abuse dealt with by criminal justice agencies; primarily spouse or partner abuse perpetrated by male offenders against women.<sup>18</sup> However, domestic violence is not confined solely to male-female partner abuse and includes child abuse, elder abuse and animal abuse; particularly that animal abuse which is linked to partner or other forms of domestic abuse and interpersonal violence. Criminologists and psychologists also argue that definitions of domestic abuse need to

extent to include a range of abusive behaviours occurring either within the home or within the wider domestic environment and family (including extended family) relationships.<sup>19</sup> Domestic abuse can thus incorporate physical, psychological or sexual abuse, and while policy and law enforcement attention is often concentrated on physical or sexual abuse directed either at female partners or children, psychological abuse is equally important<sup>20</sup> and particularly relevant where animal abuse is concerned. Threats made against a companion animal can cause extreme emotional distress in both children and adult partners and can be an effective tool for an offender to both control other family members and those dependent on them or to influence control over a family dynamic. This control is particularly damaging for those vulnerable family members who have intense emotional attachments to companion animals. Several studies have identified a causal link between animal abuse and domestic abuse concluding that in homes where domestic abuse takes place animal abuse is often present and that the

**“Threats made against a companion animal can cause extreme emotional distress in both children and adult partners”**

<sup>12</sup>Sherry Schleuter, 'Animal Abuse and Law Enforcement' in Frank Ascione and Phil Arkow (eds), *Child Abuse, Domestic Violence, and Animal Abuse: Linking the Circles of Compassion for Prevention and Intervention* (Purdue University Press 1999); Peter Weigand, V. Schmidt and M. Kleiber, 'German Shepherd Dog is Suspected of Sexually Abusing a Child' (1999) *International Journal of Legal Medicine* 112

<sup>13</sup>Max Weber, *The Theory of Social and Economic Organization*, (Edited by Talcott Parsons) (The Free Press 1964)

<sup>14</sup>Angus Nurse, *Animal Harm: Perspectives on Why People Harm and Kill Animals* (Ashgate 2013)

<sup>15</sup>Josephine Donovan, 'Feminism and the Treatment of Animals: From Care to Dialogue' (2006) *Signs: Journal of Women in Culture and Society* 31(2)

<sup>16</sup>Gary Francione, 'Reflections on Animals, Property and Rain without Thunder' (2007) *Law and Contemporary Problems* 70(1); Schaffner (n 11)

<sup>17</sup>Carol J Adams, 'Bringing Peace Home: A Feminist Philosophical Perspective on the Abuse of Women, Children and Pet Animals' (1994) *Hypatia* 9

<sup>18</sup>Rebecca Morley and Audrey Mullender, A. *Preventing Domestic Violence to Women, Police Research Group Crime Prevention Unit Series: Paper 48* (Home Office 1994)

<sup>19</sup>Frank Ascione, 'What Veterinarians Need to Know about the Link between Animal Abuse and Interpersonal Violence' (Proceedings of the 137th Annual Meeting of the American Veterinary Medical Association, Salt Lake City, 25 July 2000); Mary Louise Petersen and David P. Farrington, 'Types of Cruelty: Animals and Childhood Cruelty, Domestic Violence, Child and Elder Abuse' in Andrew Linzey (ed.) *The Link Between Animal Abuse and Human Violence* (Sussex Academic Press 2009)

<sup>20</sup>K Daniel O'Leary, 'Psychological Abuse: A Variable Deserving Critical Attention in Domestic Violence' (1999) *Violence and Victims* 14(1)

two types of abuse are inextricably linked.<sup>21</sup> For example, Moffit and Caspi<sup>22</sup> identified that young children and partner violence are concentrated in the same segment of the population, thus many children witness partner violence within the home and where partner abuse is present children may also be exposed to animal abuse. Baldry's survey of 1,356 9–17-year-olds examining interpersonal violence in Rome found exposure to animal abuse by peers reported by 63.7 percent of respondents and an exposure rate of 60.9 percent to non-parental animal abuse.<sup>23</sup> Pagani *et al.*'s study of 800 Roman children identified that 65 percent of respondents had witnessed some form of animal abuse,<sup>24</sup> while Thompson and Gullone's Australian study of a sample of 281 adolescents (aged between 12 and 18) found that 77.5 percent of the sample had witnessed animal abuse at least once.<sup>25</sup> However, the relationship between animal abuse and domestic violence is complex. It lacks the certainty that an individual engaged in spousal or child abuse *must* also be abusing animals in the home but provides that where an individual in a

position of power within the family (most often the dominant male) is abusing animals, other forms of abuse such as spousal or child abuse are also *likely* to be occurring. Active or passive animal harm in the form of animal cruelty can thus be part of a cycle of abuse within the family, or even a consequence of domestic abuse.

Morley and Mullender identified that 'domestic violence is almost always a multiple victimisation crime'<sup>26</sup> as attacks (whether verbal or physical) by the same perpetrator are almost always repeated, although the frequency with which this occurs is dependent on the motivation of the offender.<sup>27</sup> Animal abuse of companion animals can be indicative of other abuse within the home and is significant in terms of influencing subsequent animal harm caused by children and adolescents, and the escalation of animal harm either as control or punishment carried out during a deteriorating (or escalating) cycle of partner abuse.

#### Animal Abuse and Spousal Abuse

The evidence base for a link between animal abuse and spousal abuse or partner battering has been steadily growing over the last decade or so. Studies such as that carried out by Ascione *et al.* who sampled around 50 battered women's shelters, one from each US state (excluding Utah) and the District of Columbia which met their selection criteria of providing overnight (residential) accommodation, found that 84 percent of the shelters confirmed that women who came to the shelters

talked about incidents of pet abuse, 63 percent confirmed that children who came to the shelters talked about pet abuse and 83 percent of the shelters confirmed the co-existence of domestic abuse and pet abuse.<sup>28</sup> Subsequently Flynn has concluded that 'among battered women with pets, between approximately one-half and three-fourths report that their companion animals have been threatened or actually harmed by their intimate partners'.<sup>29</sup>

Women's close relationships with companion animals are a significant factor in domestic abuse for a variety of reasons. The close relationship makes companion animals the target of abuse for abusers seeking to inflict maximum suffering, and concern for a companion can significantly influence women's response to the abuse they receive, including their willingness to remain in the home or interact with the authorities. Companion animals are often important sources of emotional support for women who are involved in abusive relationships, who are frequently isolated and arguably suffer from low self-esteem and have limited support networks.<sup>30</sup> For some women in such relationships, a companion animal can represent the only source of unconditional love within the domestic setting, especially where children may be seen to side with or respond to the abuser. (Children's animal abuse can become a normalised response to domestic violence as emulating the violence seen within the home can be a means through which children make sense of the violence they are witnessing and

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Active or passive animal harm in the form of animal cruelty can thus be part of a cycle of abuse within the family  
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<sup>21</sup>See, for example: Frank Ascione, Claudia Weber and David Wood, 'The Abuse of Animals and Domestic Violence: A National Survey of Shelters for Women Who Are Battered' (1997) *Society and Animals*, 5(3); Shari Lewchanin and Ellen Zimmerman, *Clinical Assessment of Juvenile Animal Cruelty* (Biddle Publishing Company and Audenreed Press 2000)

<sup>22</sup>Terrie Moffit and Avshalom Caspi, 'Preventing the inter-generational continuity of antisocial behaviour: Implications from partner violence research' in David Farrington and Jeremy Coid (eds.), *Primary Prevention of antisocial behaviour* (Cambridge University Press 2003)

<sup>23</sup>Anna Baldry, 'Animal Abuse and Exposure to

Interparental Violence in Italian Youth' (2003) *Journal of Interpersonal Violence* 18(3)

<sup>24</sup>Camilla Pagani, Francesco Robustelli and Frank Ascione, 'Italian Youths' Attitudes Toward and Concern for Animals' (2007) *Anthrozoos* 20(3)

<sup>25</sup>Kelly Thompson and Eleonora Gullone, 'An Investigation into the Association between the Witnessing of Animal Abuse and Adolescents' Behaviour towards Animals' (2006) *Society and Animals* 14

<sup>26</sup>Morley and Mullender (n18) 5

<sup>27</sup>Graham Farrell, Ken Clark, Dan Ellingworth and Ken Pease, 'Of Targets and Supertargets: A Routine

Activity Theory of High Crime Rates' (2005) *Internet Journal of Criminology*

<sup>28</sup>Ascione *et al.* (n 21). It should be noted that the survey methodology was purposely selective and many shelter programmes would not fall within its sampling methodology.

<sup>29</sup>Clifton P. Flynn, 'Women Battering, Pet Abuse, and Human-Animal Relationships' in Andrew Linzey (ed.) *The Link between Animal Abuse and Human Violence* (Sussex Academic Press 2009)

<sup>30</sup>J.J. Gayford, 'Wife Battering: A Preliminary Survey of 100 Cases' (1975) *British Medical Journal*; Erin Pizzey and Jeff Shapiro, *Prono to Violence* (Hamlyn 1982)

seek to gain the attention of the dominant male.) For women without children, a companion animal can be the primary source of love, emotional support and can even be a confidante within a domestic setting where an abuser restricts access to other sources of support. This close relationship means that male abusers may deliberately target companion animals, calculating that the threat of abuse against the one remaining 'ally' that a vulnerable woman has in the family can be an especially powerful motivator for 'compliance'. In addition, evidence suggests that some victims of domestic abuse eventually come to accept the 'norm' of the abuse that they experience but remain distressed at witnessing the abuse of others within the family, especially a loved companion.<sup>31</sup> Abusers armed with the knowledge that targeting their abuse at a companion animal is an effective means of control and punishment, utilise this technique to secure control and compliance; sometimes going so far as to force the battered spouse's involvement in the animal abuse or to encourage their offspring to commit abuse.

Evidence shows that women who are in abusive relationships have usually endured the abuse for a considerable period of time before they finally leave the abuser,<sup>32</sup> thus repeat victimization is a factor in both the spousal abuse and the associated animal harm. Victims of domestic abuse may be fearful not just for their own welfare but for those of dependents such as children and companion animals. Thus in order for victims of violence to escape an abusive home and relationship, they need to find shelter not just for themselves and children but also for any companions. Ascione et al.'s work<sup>33</sup> found that many battered

women's shelters are unable to house 'pets', a policy that appears to be widely replicated and which leaves the abuse survivor with the choice of staying within the abusive relationship or leaving their companions behind. This can be a significant factor in the cycle of abuse, allowing abusive partners not only to make threats against the companion animal which force a battered partner to remain in the home, but also to inflict harm on an animal as a way of controlling their partner. Concern over a companion animal left behind, whether in the care of a friend (who may then become the target of attention from the abuser) or which remains in the home, can be a considerable source of anxiety where the abuse which took place may even be sufficient to force a return to the family home out of concern for the non-human family member. Vulnerable women, even those fearful for their own safety, may be unable to further endure the idea that their absence from the home will allow the abuse of others to continue.

#### **Animal Abuse and Future Violent Offending**

Domestic abuse involving companion animals is multidimensional, as is the link between animal abuse and human violence incorporating spousal abuse, child abuse, elder abuse and escalation into wider (i.e. non-domestic) forms of offending including serial killing. Bell identified that an increasing number of studies show that where adults are abusing animals they are also likely to be abusing their children.<sup>34</sup> But, in addition, children who are abusing animals are more likely also to be victims of abuse themselves and where children show aggression or exhibit sexualized behaviour towards animals this may also be an indicator

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Companion animals are often important sources of emotional support for women who are involved in abusive relationships  
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of later abuse of other children or an escalation into violence against humans.<sup>35</sup>

Animal abuse within families, particularly abuse that involves inflicting physical harm on animals, can thus be viewed as an indicator not only of domestic abuse perpetrated on partners and children typically by the adult male in the family, but also of psychological disorders that may show a propensity towards other forms of violence and antisocial behaviour. Animal harm thus needs to be recognized not just as a factor in domestic abuse but as a form of abuse in its own right and as an indicator of antisocial behaviour or violent tendencies in both adults and children that may be associated with other forms of offending.<sup>36</sup> If recognized early in children, assessing the precise nature of childhood animal abuse may be an important factor in diverting children away from future offending<sup>37</sup> or determining the correct approach to deal with abusive relationships within the family. If recognized in adults and considered within justice systems and social policy as more than just an animal welfare or animal law issue, i.e. as a criminal act perpetrated on a vulnerable sentient being and as part of a continuum of offending, animal abuse can be an important indicator of serious anti-social or violent criminal tendencies. It is time for the link between animal abuse and interpersonal violence to be recognized and acted upon.

<sup>31</sup>Browne (n 10); Ascione et al. (n 21)

<sup>32</sup>Morley and Mullender (n.18)

<sup>33</sup>Ascione et al. (n 21)

<sup>34</sup>Lorna Bell, 'Abusing children - abusing animals' (2001) *Journal of Social Work* 1(2)

<sup>35</sup>Elizabeth DeViney, Jeffery Dickert and Randall Lockwood, 'The Care of Pets within Child Abusing Families' (1983) *International Journal for the Study of Animal Problems* 4; Gary Duffield, Angela Hassiotis and Eileen Vizard, (1998) 'Zoophilia in Young Sexual Abusers' (1998) *Journal of Forensic Psychiatry* 9(2); Linzey (n 5)

<sup>36</sup>Nurse (n 14)

<sup>37</sup>J.S. Hutton, 'Animal Abuse as a Diagnostic Approach in Social Work: A Pilot Study' in Randall Lockwood and Frank Ascione (eds). *Cruelty to Animals and Interpersonal Violence: Readings in Research and Application* (Purdue University Press 1998)

# The Link between animal abuse, domestic violence and juvenile crime: an Anglo-American perspective

**Alison Howey<sup>1</sup>, Barrister-in Law and Senior Lecturer in the School of Law Northumbria University**

I received funding from the Northumbria University to attend the Association of Prosecuting Attorney's (APA) 5th Annual Animal Cruelty Conference in Pittsburgh<sup>2</sup>, Pennsylvania, USA in 2015.

This article provides a review of the APA Conference and aims to identify some of the key initiatives in animal cruelty legislation in the USA, and compare them to the current position in England and Wales. In particular, there will be reference to the growing recognition of the "Link" between animal cruelty, domestic violence, and juvenile crime, and what the USA is doing to educate the public, law enforcement, prosecutors and other associated organisations in this area. By highlighting some of the concepts and programmes as seen in the USA, England and Wales may be assisted in recognising and understanding the established link between animal cruelty and other forms of violence.

Historically, England was at the forefront of animal welfare legislation, with the formation of the RSPCA in 1824, the 1822 Act to Prevent the Cruel and Improper Treatment of Cattle, the Protection of Animals Act 1911 and the more

recent Animal Welfare Act 2006. The multi-agency structure regarding the prosecution of animal cruelty matters, presented at the APA Conference, demonstrates that the USA is now clearly ahead of England and Wales in this field.

## The Association of Prosecuting Attorneys<sup>3</sup>

The APA have a specific animal cruelty programme and provide a national technical assistance network, produce a quarterly newsletter<sup>4</sup> and link up with other animal welfare and law enforcement organisations to hold this annual Animal Cruelty Prosecution Conference.

The APA recognises animal abuse as a pre cursor to family and interpersonal crimes, and issue a Statement of Principles<sup>5</sup> as follows:

- Animals are sentient beings with the undeniable capacity to suffer pain.
- Every state's criminal code recognises animals' capacity to suffer, with 50 states identifying certain acts of animal cruelty as felonies.
- There is a direct link between the criminal acts of animal abuse and

**“Animal cruelty, both active and passive, is a crime of violence, and as such requires a prosecutor's full attention”**

interpersonal violence, including murder, child abuse, domestic violence and elder abuse.

- Under-enforcement of animal cruelty laws is directly correlated to a host of corrosive societal ills, such as animal fighting in gangs and the harming or killing of companion animals in domestic violence situations.
- Animal cruelty, both active and passive, is a crime of violence, and as such requires a prosecutor's full attention, with the accompanying allocation of resources to hold the offenders accountable and achieve just results.
- Prosecutors, in exercising their professional discretion, should give animal cruelty cases priority and make certain they are handled in

<sup>1</sup> She is a regular prosecutor of animal welfare cases for both the CPS and the RSPCA and has a keen interest in this area of law.

<sup>2</sup> Held at the Pennsylvania Bar Institute, Heinz 57 Center, 339 6th Avenue, Pittsburgh, PA <http://www.pbi.org>

<sup>3</sup> <http://www.apainc.org>

<sup>4</sup> Lex Canis <http://www.apainc.org/animal-cruelty>

<sup>5</sup> <http://www.apainc.org>



the same professional manner as other crimes of violence.

The Conference was sponsored by the Animal Legal Defense Fund<sup>6</sup> (ALDF) a national non-profit organisation of legal professionals and law students, funded almost entirely by individual donations, who provide pro-bono legal services to advance the interests of animals. Their services include the filing of law suits, legal research, sourcing of expert witnesses, the provision of sample pleadings and model animal protection laws as well as providing public education through seminars, workshops and training programmes.

The Conference Agenda was extensive, beginning at 07.30 on Wednesday 4th November, including over 40 speakers, several break-out sessions and concluding on the Friday lunchtime with 4 moot court sessions.

#### Links to Domestic Violence

A Family Violence break out group was presented by Sherry Ramsey<sup>7</sup>, Director of Animal Cruelty Prosecutions, Humane Society of the US, New York; Mary Lou Randour, Senior Advisor of the Animal Cruelty Programmes and Training, Animal Welfare Institute, Washington, DC; and Lorraine Bittner, Legal and Associate Executive Director of the Women's Centre and Shelter of Greater Pittsburgh, PA.

This presentation specifically concentrated upon the links between animal abuse and domestic violence, and the measures available to assist those fleeing such situations. There

has been a wealth of research into the "link" between violence to animals and family violence. Studies by Carlisle-Frank, Frank & Nielsen (2004) and Faver & Strand (2003) revealed that up to 48% of domestic violence victims have delayed fleeing domestic violence situations due to fears for the safety of the family pet(s). There are also concerns that victims of domestic violence may be coerced into returning to the family home in order to protect their pet. Circumstances such as these have led to several states allowing the inclusion of pets in restraining orders and the creation of "safe havens for pets" programmes to alleviate the victims concerns<sup>8</sup>.

#### Links to Juvenile Crime

Mary Lou Randour, Ph.D, is a psychologist who has authored many books and articles on the subject of the link between animal abuse within the home, and juvenile crime<sup>9</sup> as well as how to assess and treat such juveniles<sup>10</sup>. In her article entitled *Juvenile Crime and Animal Cruelty: Understanding the Link as a Tool to Early, More Effective Interventions*<sup>11</sup> Mary Lou reminds us of the famous quote by anthropologist Margaret Meade: "One of the most dangerous things that can happen to a child is to kill or torture an animal and get away with it". Animal cruelty is not just a crime in itself but, can be an indicator of other abuse within a household and a warning sign of the cycle of violence. Studies have shown that recurrent acts of animal abuse during childhood are predictive of recurring violent acts against humans later in life<sup>12</sup>. Recognising and responding to the warning signs of

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abuse during childhood  
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animal abuse is one way we might prevent future violence, not only against animals, who are worthy of protection in their own right, but to our society as well<sup>13</sup>. Randour informs us that animal cruelty can start at a very early age, and quotes a mean age of 6.75 years<sup>14</sup>. She further refers to studies that find "as early as pre-school age, it is critical to identify such behaviour, and intervene to prevent or correct a child's developmental pathway"<sup>15</sup>.

#### Classification of animal cruelty offences

Animal cruelty is classed as a felony in 49 States of the USA, which is a higher ranking than provided by the summary only classification in England and Wales, under the Animal Welfare Act 2006.

The FBI, starting in January 2016, will reclassify animal abuse as a Group A felony in its National Incident-Based Reporting System (NIBRS), making it comparable to serious crimes like kidnapping and homicide<sup>16</sup>. Four types of animal abuse will be recorded: neglect, intentional abuse and torture, organised dog and cock fighting, and sexual abuse. The data collected will be used to track trends, plan policies and allocate resources for intervention efforts for both animal cruelty offences and crimes linked to such offences.

<sup>6</sup> <http://www.aldf.org>

<sup>7</sup> Author of : Ramsey,S. Cause for Concern: Juveniles and Crimes of Animal Cruelty, Juvenile & family Justice Today, pp12-13, Spring 2012.

<sup>8</sup> Animal Welfare Institute and the Humane Society of the United States initiated the Safe Havens Mapping Project to offer victims of domestic violence easy access to such programmes.

<sup>9</sup> Randour, M.L. & Davidson,H. (2008). A Common Bond: Maltreated children and animals in the home: Guideline for Practice and Policy.

<sup>10</sup>Randour, M.L., Krinsk,S.,& Wolf,J. (2001). AniCare Child: An assessment and treatment approach for childhood animal abuse.

<sup>11</sup>Deputy and Court Officer, 2014 Special Issue

<sup>12</sup>Hensley,C. Tallichet,S. & Dutkiewicz,E. (2008). Recurrent animal cruelty: Is there a relationship to adult recurrent interpersonal violence ? Criminal Justice Review, 34, 248-257

<sup>13</sup>Ramsey,S., Cause for Concern:Juveniles and Crimes of Animal Cruelty, op cit.

<sup>14</sup>Randour, M.L., Juvenile Crime and Animal Cruelty : Understanding the Link as a Tool to early, More Effective Interventions, Deputy and Court Officer, pp.7-9, 2014 Special Issue

<sup>15</sup>Frick, et al, 2005; Loeber, et al, 2006; Patterson, et al, 1998; Tremblay, et al, 2003; Thornberry & Krohn, 2003.

<sup>16</sup><https://www.fbi.gov/news/podcasts/thisweek/animal-cruelty>

### Charity campaigns

The Conference included a lunchtime presentation of the “Show Your Soft Side” video. Following a string of high profile incidents of horrific acts of violence against animals in Baltimore, 4 people began a poster campaign, initially in schools, to target youths, and show them that it was not “manly” or “tough” to abuse animals. The aim was to change the mind-set of young people and to demonstrate that there were many facets to being a man and showed “tough” sports stars in loving poses with their pets<sup>17</sup>. Launched in 2011, with the assistance of several high profile sports stars, the campaign captured the media attention and is now a non-profit organisation utilising their famous “Only a punk would hurt a cat or dog” slogan across the world. A simple and highly effective idea.

### Comparison to England and Wales

The RSPCA investigate more than 150,000 complaints of cruelty and neglect each year, yet they face financial restrictions and political review<sup>18</sup> in relation to their role as prosecutor of animal welfare offences. The Wooler Review concluded that the RSPCA should adopt a revised approach to its role, placing more reliance on the Police and the CPS<sup>19</sup>.

Upon conviction in England and Wales, the most cruel and heinous act of cruelty or neglect carries a mere 6 months maximum custodial sentence.<sup>20</sup>

The APA website<sup>21</sup> includes a section outlining State Cruelty Law Summaries that clearly illustrates the variance of legislation and sentences throughout the different States of the

USA. From perusal of the relevant laws for Pennsylvania, even the misdemeanour offences carry a maximum custodial sentence of 2 years, and there is case law of an abuser being sentenced to 99 years custody in Alabama, for aggravated animal cruelty. Our maximum sentence of 6 months custody pales into insignificance in comparison.

American delegates at the APA Conference were in awe of the English legal system in relation to animal welfare however, most were not aware of our lenient sentencing provision nor the fact that the RSPCA, as a Charity receiving no government funding, carries out most of our animal abuse prosecutions.

It appears that, by comparison with the USA, England and Wales are no longer at the forefront of animal welfare legislation, and definitely do not offer the wide range of facilities and programmes that are clearly assisting victims of domestic violence in the USA.

If research has established the link between animal abuse, domestic violence and juvenile crime, then we should be placing more emphasis upon animal abuse, and allocating more resources and training to the

matter. Similarly so, if studies show that victims of domestic violence are loath to flee the family home due to concerns over their pet’s safety, then we should be providing resources and facilities to take care of those pets, as is offered in several States of America. There is also a need to educate the public to change expectations and sensibilities regarding animal abuse. Animal abusers are five times more likely to commit crimes against people, four times more likely to commit property crimes, and three times more likely to have a record for drug or disorderly conduct offences<sup>22</sup>. Therefore, even if animal abuse in itself is not abhorrent to us, then the risk of progression to other violent crimes and the opportunity to prevent such, must surely be worthy of investment.

### Specialist Prosecution

There were several references at the Conference to States establishing the role of a special prosecutor for animal cruelty cases. Queens County, New York, has recently joined the growing list of jurisdictions that have appointed a special prosecutor<sup>23</sup> to respond to the significant and complex animal cruelty cases. Nicoletta Cafferri refers to several reasons why it is important to enforce animal cruelty laws:

- A civil society and basic human decency demand humane treatment of living, feeling beings.
- Prosecutors are charged with the task of enforcing all laws.
- Animal abuse signals sociopathic traits, so early intervention could potentially prevent or limit future violent crimes against people.
- Animal abuse cases are useful in uncovering domestic abuse and can prevent and can prevent or limit future domestic violence.

“  
**The RSPCA investigate more than 150,000 complaints of cruelty and neglect each year**  
 ”

<sup>17</sup><http://showyoursoftside.org>

<sup>18</sup>The independent review of the prosecution activity of the Royal Society for the Prevention of Cruelty to Animals, 24 September 2014, Independent Reviewer: Stephen Wooler CB.

<sup>19</sup>Ibid. p.11.

<sup>20</sup>Section 32 Animal Welfare Act 2006.

<sup>21</sup>Op cit

<sup>22</sup>Arluke, A., Levin, J., and Ascione, F. “The Relationship of Animal Violence and Other Forms of Anti-Social Behaviour”, *Journal of Interpersonal Violence* 14:963-975 (1999).

<sup>23</sup>Nicoletta Cafferri, NYPD Animal Cruelty Investigation Squad.

“

**Our 6 months custody maximum penalty is simply no longer sufficient to either punish or prevent animal abuse**

”

- Such cases also uncover other crimes, such as gambling, money-laundering, narcotics, weapons offences and gang activity.

Cafferri states “Protecting animals from unnecessary or gratuitous pain and suffering is a component of a civilised society<sup>24</sup>”.

### Multi-agency approach

The National Link Coalition<sup>25</sup> is a multi-disciplinary, collaborative initiative formed to increase awareness and address public policy, programmes and research to stop the cycle of violence affecting multiple family members, including the family pet(s). They publish a monthly newsletter on the link between animal abuse and human violence, this is free to subscribe to and a brilliant source of information upon the subject, including reports upon research, articles, conferences, cases and legislation across the world.

What is apparent from the comparisons above is that England and Wales need a multi-agency approach to animal welfare prosecutions, utilising the wealth of experience held by the RSPCA, as well as placing more reliance upon the Police and the CPS for the investigation and prosecution. The Police would benefit from having a specialised animal cruelty department with appropriately trained officers, similarly to the Dog Legislation Officers that deal with Dangerous Dogs offences. A similar department within the CPS, as seen

in Queens County, NY, would complete the legal side of the process.

A practical system of working alongside charities, shelters and local authorities, to provide assistance in the seizure and detention of animals subject to abuse, would help the Police and CPS in their legal role. Similarly, a system of animal shelters for victims of domestic violence would be beneficial to those at risk of such violence.

### Sentencing

In relation to the sentencing of offenders, in particular youths, then the Youth Offending Service and Probation staff need to be trained to understand the link between animal abuse and future criminal behaviour in order to tailor the sentencing packages to the offender.

### Recent Initiatives in Scotland

Perhaps we can follow the example of the Government of Scotland who plan to invest £1,071,000 into a campaign to enlist 100,000 professionals to recognise and respond to suspected partner violence<sup>26</sup>.

Many States in America have a system of mandatory reporting by professionals regarding suspicions and evidence of animal abuse. A programme of education and training to recognise the signs of early animal abuse would be well placed to identify and prevent the progression of such violence to other family members.

### Conclusion

The Link between animal abuse and other violent crimes shows us that, for the sake of the animals, and the obvious risk to persons, resources must be made available to more

adequately tackle animal cruelty. A collaborative approach is required, involving Local Authorities, Police, the CPS, charities and other relevant organisations, and resources will be required for education and training the persons involved in the process. Understanding “the Link” and implementing a comprehensive programme of prevention, education, assistance and prosecution, will help to put England and Wales back at the forefront of the world in relation to animal welfare.

Our 6 months custody maximum penalty is simply no longer sufficient to either punish or prevent animal abuse, and our current system of prosecution is in need of a radical overhaul. It is unrealistic to leave the prosecution of something so fundamental to our society, to a Charity that is dependent upon donations, with no government assistance and subject to continued criticism.

In the words of Immanuel Kant<sup>27</sup> “We can judge the heart of a man by his treatment of animals”. Let us not look the other way, let us all try to do something to help end the unnecessary suffering of animals all over the world.

<sup>24</sup>National Link Coalition, Link-Letter, Vol.8, No. 11, November 2015, p.6.

<sup>25</sup><http://www.NationalLinkCoalition.org>

<sup>26</sup>National Link Coalition, Link-Letter Vol.8, No.10, October 2015, p.4.

<sup>27</sup>1724-1804, Kant, I. (1963), Lectures on ethics (L.Infield, Trans.) New York: Harper & Row.

# EU's live exports – ignoring the Treaty, the ECJ, EU law and international standards

**Peter Stevenson Chief Policy Advisor  
Compassion in World Farming**

**T**he EU exports over two million cattle and sheep a year to the Middle East, North Africa and Turkey.

The long journeys from Europe by road and sea take a terrible toll on the animals. All too often the trucks carrying them to Turkey or ports in southern Europe are overcrowded, poorly ventilated and filthy. The animals become increasingly exhausted, hungry and distressed as the long journeys wear on. Some collapse, others get injured. In the worst cases many die. For those that survive, the worst is still in store. Slaughter practices in this region are deeply troubling.

Often a chain is attached to a rear leg of conscious cattle; the animal is then hoisted up, dangling upside-down from one leg, ready for slaughter. This is a distressing and painful position for the animals. Our films show EU cattle being roughly slaughtered on the pavement outside butchers' shops in the West Bank. In Egypt cattle often have their leg tendons severed with a knife in order to control them.

Some EU cattle are placed in boxes that turn them onto their backs for

slaughter; immediately after throat cutting they are ejected from the box while still conscious and fall onto the bodies of other dying animals.

Many slaughtermen are too frightened to get close enough to cattle to perform one deep throat cut. Instead the slaughterman stays at arm's length and simply stabs the knife into the neck. The animal bellows in pain and distress and struggles powerfully against the rope which restrains it. Even after several such stabs, the animal remains standing on all four legs while it slowly bleeds from the neck. Eventually it collapses to the ground but even then a protracted period may elapse before it loses consciousness.

## **Ignoring international standards on welfare at slaughter**

These and other terrible slaughter practices are in breach of the international standards on welfare at slaughter of the OIE (the World Organisation for Animal Health).<sup>1</sup> We have regularly informed the European Commission, the exporting Member States and the exporters about the cruel slaughter practices awaiting EU animals sent to this region. We have argued that it is

unacceptable to send animals to be slaughtered in ways that breach agreed international standards but they refuse to halt the trade or to take any steps to ensure that exported EU animals are slaughtered in accordance with the OIE standards.

Australia has for many years been notorious as having the world's worst live export trade, much of it to the Middle East. After many scandals Australia introduced the 'Exporter Supply Chain Assurance System'.<sup>2</sup> This requires livestock exporters to ensure that when Australian animals reach the importing country they are handled and slaughtered in conformity with the OIE standards on animal welfare. The EU trade

**“ a chain is attached to a rear leg of conscious cattle; the animal is then hoisted up, dangling upside-down from one leg ”**

<sup>1</sup> [http://www.oie.int/index.php?id=169&L=0&htmfile=chapitre\\_aw\\_slaughter.htm](http://www.oie.int/index.php?id=169&L=0&htmfile=chapitre_aw_slaughter.htm)

<sup>2</sup> <http://www.agriculture.gov.au/export/controlled-goods/live-animals/livestock/information-exporters-industry/escas>

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water and 24 hours rest  
”

should be ended but in the meantime the EU should adopt Australia's practice and take steps to ensure that EU animals are treated in accordance with the OIE standards on welfare during transport and slaughter once they reach third countries. We have urged the Commission to propose a scheme similar to Australia's but they refuse to do so.

While the Australian scheme is far from perfect and is regularly breached, it at least establishes the principle that exporters continue to be responsible for the welfare of the animals even when they leave Australia. The EU declines to accept this responsibility.

#### Regular breaches of EU Regulation on welfare during transport

Investigations carried out by animal welfare NGOs show regular breaches during the long export journeys of Council Regulation 1/2005 on the protection of animals during transport.<sup>3</sup> Space allowances and available headroom are often less than those required by the Regulation. The Regulation requires that after 29 hours travel, animals must be unloaded at a control post and given food, water and 24 hours rest. This requirement is often ignored. The Regulation's provisions on ventilation, bedding and the

availability of water and food on board the truck are often breached. The Commission and most exporting Member States make no serious attempt to enforce the Regulation.

#### Court of Justice judgment

In April 2015 the Court of Justice of the EU delivered a potentially game-changing judgment in the *Zuchtvieh* case (C-424/13).<sup>4</sup> It ruled that in the case of exports to countries outside the EU, EU law on the protection of animals during transport (Regulation 1/2005) continues to apply even after the animals leave the EU – it applies right through to the final destination in Turkey or the Middle East. Many Member States and exporters simply ignore the Court's ruling.

#### Treaty on the Functioning of the EU

Article 13 requires the EU and the Member States, in formulating and implementing EU policies on agriculture and transport, to “pay full regard to the welfare requirements of animals”.

The Commission's failure to take effective action in this matter is in breach of both limbs of Article 13. Its failure, following receipt of evidence of extreme animal suffering, to re-consider the EU policy of permitting, and indeed in some cases encouraging,<sup>5</sup> the export of live animals to the Middle East and Turkey clearly does not pay full regard to animal welfare in the *formulation* of agriculture and transport policy.

The Commission's failure to take steps to reduce the suffering

experienced during the long journeys (by ensuring proper enforcement of Regulation 1/2005) and at slaughter (by striving to ensure that EU animals are slaughtered in accordance with the OIE standards) fails to pay full regard to animal welfare in the *implementation* of agriculture and transport policy.

The Commission argues that this trade is part of the EU's common commercial policy and as such not covered by Article 13. We have pointed out that while this trade may be part of the commercial policy it is also very much part of agriculture policy which is covered by Article 13. The fact that the trade has recently been referred to in a report by the Presidency to the Agriculture Council<sup>6</sup> and is referred to in documents published by DG Agriculture of the Commission<sup>7</sup> lends weight to the argument that this trade is part of EU agriculture policy and should therefore be conducted in compliance with Article 13. It is regrettable that the Commission, rather than respecting the Treaty provision on animal welfare, should try to side step it.

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Regulation's provisions on  
ventilation, bedding and  
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and food on board the  
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”

<sup>3</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005R0001&qid=1464952627119&from=EN>

<sup>4</sup> <http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d0f130d51c70db7da94a43a4a62cbb21efbf8fda.e34KaxiLc3eQe40LaxqMbN4OchyNe0?text=&&docid=163872&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=950153>

<sup>5</sup> Regarding the Commission's encouragement of the trade, see the next 3 endnotes

<sup>6</sup> Note from Presidency to Agriculture Council, 10 February 2016. International agricultural trade issues <http://data.consilium.europa.eu/doc/document/ST-5888-2016-INIT/en/pdf>

<sup>7</sup> European Commission. Short-Term Outlook for EU arable crops, dairy and meat markets in 2016 and 2017

[http://ec.europa.eu/agriculture/markets-and-prices/short-term-outlook/pdf/2016-3\\_en.pdf](http://ec.europa.eu/agriculture/markets-and-prices/short-term-outlook/pdf/2016-3_en.pdf)

<sup>8</sup> European Commission. Short-Term Outlook for EU arable crops, dairy and meat markets in 2015 and 2016 [http://ec.europa.eu/agriculture/markets-and-prices/short-term-outlook/pdf/2015-03\\_en.pdf](http://ec.europa.eu/agriculture/markets-and-prices/short-term-outlook/pdf/2015-03_en.pdf)

This is unbecoming behaviour for a body that is the Guardian of the Treaties.

The Commission also states that the EU does not have the power to ban live exports. The Commission could arguably propose a suspension or ban of this trade under Article 207 TFEU. By way of analogy, Regulation 1523/2007 banned the export of cat and dog fur under Article 133 of the Treaty establishing the European Community; this has been replaced by Article 207 TFEU.

The Commission also suggests that the WTO rules prevent it from restricting or ending live exports. However, recent decisions by the WTO Appellate Body have been supportive of genuine animal welfare objectives e.g. the decisions in *US – Tuna II (Mexico)*<sup>9</sup> and *EC – Seal Products*.<sup>10</sup> These cases would suggest that the EU may well be able to justify export restrictions under the WTO public morality exception bearing in mind that slaughter conditions in the importing countries are not only inhumane but also in breach of the OIE international standards on welfare at slaughter.<sup>11</sup>

### Conclusion

EU live exports inflict immense suffering on animals. The trade is carried on in ways that breach the EU Treaty, EU law on the protection of animals during transport and internationally agreed standards on welfare at slaughter and that ignore a European Court judgment. The Commission's 2015 strategy document on trade is entitled *Trade for all: towards a more responsible trade and investment policy*.<sup>12</sup> The

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**The live exports trade is neither responsible nor consistent with European values**  
 ”

strategy highlights the need for trade to be consistent with European values. The live exports trade is neither responsible nor consistent with European values.

<sup>9</sup> Appellate Body Report, *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, WT/DS381/AB/R, adopted 13 June 2012

<sup>10</sup> Appellate Body Report, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/AB/R and WT/DS401/AB/R, adopted 22 May 2014.

<sup>11</sup>For a full account of this see Stevenson P, 2015. The impact of the World Trade Organisation rules on animal welfare <http://www.ciwf.org.uk/research/animal-welfare/>

<sup>12</sup>[http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc\\_153846.pdf](http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf)

# Animal Welfare Law and Policy news roundup

## Case Summaries

(1) HEYTHROP ZOOLOGICAL GARDENS LIMITED (t/a AMAZING ANIMALS) & (2) JAMES SPENCER CLUBB v CAPTIVE ANIMALS PROTECTION SOCIETY [2016] EWHC 1370 (Ch)

### Parties

Heythrop Zoological Gardens Limited (trading as “Amazing Animals”) provides animals to the film and television industry including lions, sloths, monkeys, tigers and other creatures.

The Captive Animals Protection Society (“CAPS”) is a campaigning charity which aims to stop the exploitation of animals, particularly in circuses, zoos and in the exotic pets trade.

### Facts

Heythrop’s Zoo is closed to the public, but it has open days. Investigators for CAPS visited the zoo in September 2015. They took photographs and videos along with numerous other members of the public.

The photographs (along with some taken by a member of the public in 2013 and some from a person described as a “whistleblower” who was an ex-employee of Heythrop)

were used by CAPS in articles which were posted on the internet in February 2016. The images showed animals being used for entertainment. CAPS described what is shown as animals being made to perform tricks in public. CAPS also said that the images showed the inhumane conditions in which some of the animals were kept and also showed some of them exhibiting stereotypical behaviours, such as waving their heads from side to side, which were consistent with being kept in inhumane conditions.

CAPS’ articles led to comment in the wider press. There was an article in the Daily Mail and an article in The Times newspaper which referred to the photographs.

### Claim

Heythrop sued and sought an interim injunction based on three causes of action:

#### *First cause of action – breach of contract*

On the basis that part of the ticket contract stated (via a Code of Conduct – allegedly displayed prominently at the entrance gate (this was strongly disputed by CAPS)) that photographs may only be used for personal use, may not be uploaded to the internet and not used for any commercial or financial gain without Heythrop’s permission.

#### *Second cause of action - breach of confidence*

On the basis that the photographs were to be regarded, in all the circumstances, as embodying confidential information.

#### *Third cause of action - breach of “non-property” performance rights*

Heythrop argued that the animal show was a “performance” under s.180 of the Copyright, Designs and Patents Act 1988 in which performer’s rights subsisted. It submitted that that right was breached under s.182 of that Act because the performance was filmed without Mr. Clubb’s (the animal’s handler during the performance) consent.

### Decision

Mr Justice Burss found that there was not a sufficient likelihood that Heythrop would obtain a final injunction at trial based on any of

“**Heythrop Zoological Gardens Limited (trading as “Amazing Animals”) provides animals to the film and television industry**”

these causes of action to justify the interference with journalistic freedom of speech which an interim injunction would involve.

In reaching that decision he stated that:

- the likelihood that the court would finally restrain publication of the images was severely undermined because, save for the whistleblower images, all the images were matters which the public could see on the open days and were all images of a similar nature to those which already appeared on the internet and referenced Heythrop;
- even if a claim based on contract or confidence was successful the remedy would be likely to be damages;
- with regards to the whistleblower images, the only cause of action was breach of confidence but those particular images had the strongest public interest defence in any event since they related to alleged inhumane treatment of a polar bear and the conditions in which it was kept; and
- as regards the claim based on performer's rights, given the journalistic nature of the publication, CAPS clearly had an arguable fair dealing defence.

### MARZAN -v- RSPCA [2016] EWHC 993

#### Background

The appellants, Mr and Mrs Mazan, were convicted at Bradford Magistrates' Court on 12th March 2015 of seven offences under the Animal Welfare Act 2006 relating to their failure to provide proper treatment for 13 Red Setter dogs. They received concurrent sentences of 6 months' imprisonment for each offence (one of these convictions was overturned on appeal and the remaining sentences reduced to 4 months' for each offence).

The prosecution case depended on evidence obtained from a search of Mr and Mrs Mazan's home carried out by a police officer (PS Green) in January 2014. The Mazans were not at home at the time and PS Green forced entry to the premises relying on the power under section 17(1)(e) of the Police and Criminal Evidence Act 1984 to enter and search any premises for the purpose of "saving life or limb or preventing serious damage to property".

On appealing their convictions Mr and Mrs Mazan applied to exclude the evidence obtained from the search, arguing that the entry was unlawful. The Crown Court rejected that argument after hearing evidence from PS Green; ruling that PS Green genuinely believed that dogs kept on the premises were at imminent risk of death and hence there was a danger of serious damage to property. The court further concluded that that belief was based on reasonable grounds and that, in those circumstances, the entry and search of the premises were lawful.

#### Appeal in this case

Following on from the above the High Court was asked, in this appeal by case, to decide whether PS Green unlawfully entered the appellants' home on 15th January 2014.

In order to answer this over-arching question the High Court was asked for its response to three 'sub-questions' by the Crown Court, namely:

- 1) Did PS Green, on the facts of the case, make an unlawful entry under section 17(1)(e) of the Police and Criminal Evidence Act 1984 such that any evidence obtained therefrom was inadmissible?
- 2) Did PS Green genuinely believe that it was necessary for her to enter the premises to prevent serious damage to property (in this case dogs)?
- 3) If PS Green did hold such a

genuine belief, was that belief based on reasonable grounds?

#### Decision

Mr Justice Leggatt explains early on in his judgment that the appellants' case faced a "major difficulty" in that the grounds on which a decision of the Crown Court may be questioned on an appeal to the High Court by case stated are limited to arguments that the decision was (i) wrong in law; or (ii) in excess of jurisdiction and that, in this case, the Crown Court undoubtedly had jurisdiction to decide whether the entry to the premises was lawful and had also considered the correct questions in law.

As a result of this and despite admitting to having "very grave doubts" as to the accuracy of PS Green's evidence and in particular, whether she had exaggerated it in order to suggest that she feared that the dogs within the property were at imminent risk of death (and therefore "serious damage" for the purposes of question (2) above), Mr Justice Leggatt concluded that:

- it was impossible to say that there was no evidence before the Crown Court which was capable of supporting the conclusion that PS Green genuinely and reasonably believed that it was necessary to enter in order to prevent serious damage to property; and
- he could not say that the findings made by the Crown Court were

**“dogs kept on the premises were at imminent risk of death and hence there was a danger of serious damage to property”**



findings which no reasonable fact-finding tribunal, which heard the evidence given in the Crown Court, could have reached.

Following on from these findings he duly dismissed the appeal.

*George Pennington Solicitor*

**ROYAL SOCIETY FOR THE PREVENTION OF CRUELTY OF ANIMALS v (1) CRAIGE McCORMICK (2) NATHAN BAKER (3) BENJAMIN LUSCOMBE (4) CRAIG FORD (5) ALEX SALT [2016] EWHC 928**

### Background

This was an appeal by way of case (following the initial ruling of District Judge Kevin Gray) as to the meaning of “*animal fighting*” within s.8 of the Animal Welfare Act 2006 (“**the Act**”) in the context of a prosecution by the RSPCA against various individuals said to be members of a group known as the “Devon Destroyers”.

The RSPCA said the group used dogs (mainly lurchers) to sniff out and pursue deer, badgers and rabbits before they were 'torn to pieces' and that the dogs were sometimes injured during "fights" with wild animals.

There was no direct evidence that any of this alleged activity had taken place, rather the prosecution case rested on Facebook posts and text messages, together with photographs and items discovered upon the execution of search warrants.

The District Judge cleared all five of the defendants after ruling that, even if what the RSPCA claimed was true, it could not be viewed as animal fighting as section 8 of the Act was "aimed at organised and controlled animal fights, such as dog fights", which involve restraint or control of animals by humans.

“  
**The RSPCA said the group used dogs (mainly lurchers) to sniff out and pursue deer, badgers and rabbits**  
 ”

### Appeal

The RSPCA, through its appeal, sought clarity of interpretation on the range of factual scenarios in which an animal fighting prosecution might be brought under section 8 of the Act.

In doing so, it argued that:

- the distinction between traditional hunting and animal fighting for the purpose of section 8 of the Act was important as a matter of principle; and
- that the nuisance at the centre of the prosecution of the so called ‘Devon Destroyers’ must have been contemplated by Parliament when it introduced into the Act the definition of animal fighting that it did.

Notwithstanding these arguments it also emphasised that its intention was not to attempt to enlarge the ambit of the Act to encompass offences committed in the context of traditional (now illegal) hunting, but rather to ensure that it was able to prosecute in a range of factual circumstances where the purpose of the individuals involved (as alleged in this case) was to procure a fight involving animals.

In the light of this appeal the questions for the Court were:

- 1) Was the District Judge correct in deciding that in order for an offence of animal fighting to be committed contrary to section 8 of the Act as defined by section 8(7) thereof, that the other animal, with which a protected animal (i.e. a domesticated animal) is placed, has to be the subject of some control or restraint by some

person or persons connected with that activity or some other artificial constraint so that its ability to escape is prevented?

- 2) Was the District Judge correct in considering that Section 8 of the Act is aimed at organised and controlled animal fights, such as dog fights, which invariably involve money?

### Decision

Mrs Justice Carr’s responses to these questions were as follows:

- 1) The District Judge was correct in deciding (by reference to and on the basis of the assumed facts) that in order for an offence of animal fighting to be committed contrary to section 8 of the Act as defined by section 8(7) thereof, that the other animal, with which a protected animal is placed, had to be the subject of some control or restraint by some person or persons connected with that activity or some other artificial constraint so that its ability to escape is prevented;
- 2) The District Judge was correct in considering that the tenet of section 8 of the Act was aimed at organised and controlled animal fights, such as dog fights (although in so far as he held that money had invariably to be involved for there to be an offence under section 8 of the Act, she found that he was incorrect).

# Opinion: Gorilla in the Midst of a Zoo Fog

**Chris Draper, Born Free Foundation, Horsham and University of Bristol**

**O**n 28th May 2016, a young boy fell or climbed into the Western lowland gorilla (*Gorilla gorilla gorilla*) enclosure at Cincinnati Zoo, Ohio, USA. Shortly thereafter, a decision was taken by zoo management to shoot dead 17-year-old male gorilla *Harambe*, after he was seen handling and manipulating the boy.

The controversy sparked by the shooting of *Harambe* was truly global, generating extraordinary media attention and volumes of opinions, drawing in aspects as diverse as the ethics of zoos, animal welfare, human values, public safety, parenting and racism.

While there is little value in rehashing these points here, I would like to offer a few thoughts on the events from the perspective of an animal welfare researcher and campaigner, with a particular interest in animals in captivity and the conservation claims of zoos.

Much of the global outcry generated by *Harambe's* killing may have been fostered by the public perception of gorillas as peaceable vegetarians (who doesn't recall David Attenborough

sitting quietly among wild mountain gorillas?). Indeed, this (mis)perception<sup>1</sup> may have been further perpetuated by two previous instances of children falling into gorilla enclosures at zoos in Chicago in 1996 and Jersey in 1986; both of which ended happily in the rescue of the children without harm to the gorillas.

Or perhaps it is tempting to conclude that the public reaction was so strong because the similarities between the great apes (including humans) are clear, and that efforts to raise awareness of the rights of nonhuman great apes<sup>2</sup> have hit their mark. However, would the outrage have been so vehement if an agitated male chimpanzee had his hands on the

child and was shot and killed, instead of a gorilla, I wonder?

In today's media age, footage of *Harambe's* actual interactions with the child was quickly available for all to see online. The video I have seen includes *Harambe* very briefly but forcibly dragging the child through a shallow water moat, yet the remaining sequences show a curious ape gently holding the child's limbs and investigating his clothing without obvious intent to harm. Primatologist Frans de Waal believes that "*He showed a combination of protection and confusion... There was no moment of acute aggression*".<sup>3</sup> If this footage constitutes the sum of his behaviour around the child, my personal opinion is that the gorilla posed a limited risk, and the shooting may have been an over-reaction.

Whatever the justifications or otherwise for *Harambe's* death, it was a distressing event that brought Cincinnati Zoo and, by extension, captive animal facilities worldwide into the media and public spotlight, and stimulated debate which extended well beyond considerations of public safety.

**“The controversy sparked by the shooting of *Harambe* was truly global, generating extraordinary media attention”**

<sup>1</sup> Yamagiwa J, Kahekwa J & Basabose AK (2009). Infanticide and social flexibility in the genus *Gorilla*. *Primates* 50: 293-303

<sup>2</sup> <http://www.nonhumanrightsproject.org/>

<sup>3</sup> De Waal, F (2016). <http://www.alternet.org/environment/rip-Harambe>

While his death should give us concern, I would maintain that so should his life, or at least the circumstances of his life. *Harambe*'s grandparents were caught in the wild and imported to the US. He was born at a zoo in Texas, and was transferred to Cincinnati Zoo's "Gorilla World" exhibit in 2014. This enclosure was constructed in 1978, and set to be expanded by 2017 to include a new 400m<sup>2</sup> indoor exhibit<sup>4</sup> (which is about one-fifteenth the size of a football pitch, in a city where the average low outdoor temperature exceeds 10°C for only five months of the year<sup>5</sup>). *Harambe* was hand-raised by humans: an all-too-common event for captive primates resulting in some cases from maternal inexperience or incapacity, but sometimes from an automatic institutional policy to intervene.<sup>6</sup> The long-term effects of hand-rearing are not well known.

Few commentaries mentioned the likely negative impact of *Harambe*'s death on the remaining two female gorillas at the zoo, nor on the keepers who worked with and around him daily. Mammals rarely exist in isolation in nature, without dependent and/or connected, bonded

**“While his death should give us concern, I would maintain that so should his life, or at least the circumstances of his life”**

or familiar conspecifics. *Harambe* was clearly not “in nature” yet he should not be considered in isolation. He was a 17 year old ape, with needs and desires (many of which I suspect could not be met in a zoo environment), living with two female conspecifics who no doubt interacted with him, liked or disliked him, and thought about him on a repeated and frequent basis. I have no doubt that his keepers did the same and are also affected by the fact and manner of his death.

Many articles have made reference to the fact that *Harambe* was a representative of a Critically Endangered species,<sup>7</sup> as if his death were more outrageous as a result. But while *Harambe* the individual should not be considered in isolation, the captive population of gorillas is, in any real sense, entirely isolated from the wild population upon which the Critically Endangered status is based. In my opinion, maintaining Western lowland gorillas in zoos seems to contribute little or nothing to the conservation of the species. To *Harambe*, the plight of his conspecifics in remaining populations in the wild was of no tangible consequence. He was, in so many respects, just another captive animal destined to live out his life in a zoo.

But the argument that *Harambe*'s death was a double tragedy due to the threats to gorillas in the wild is pervasive and hints at the competing priorities of animals as individuals and the conservation claims of zoos.

Much has been made of the role of or potential for zoos in conservation<sup>8</sup>.

**“across the industry, zoos generally keep species that are not currently threatened with extinction in the wild”**

Wildlife and ecosystems certainly face enormous threats and an uncertain certain future. But I am convinced that zoos are claiming a wildly overstated stake in offering a solution to these threats. A small number of species – a relative handful including the familiar case studies of Arabian oryx, black-footed ferrets and California condors – can indeed trace their continued survival to some level of involvement by one or a few zoos. Does this justify claims that zoos in general, or even those specific zoos, are uniquely positioned to combat conservation threats?<sup>9</sup> Absolutely not. Reintroduction from zoos is very much the exception rather than the norm, and will continue to be so. Captive breeding programmes to maintain populations in perpetuity are hit and miss, limited in number, and produce animals that may be entirely inappropriate and ill-equipped for release to the wild. Bizarrely, across the industry, zoos generally keep species that are not currently threatened with extinction in the wild.<sup>10</sup>

Nonetheless, zoos in EU member states have a legal requirement to implement conservation measures, primarily through public education on biodiversity conservation and participation in one or more optional activities such as research, training, captive breeding, reintroduction and

<sup>4</sup> <http://cincinnati-zoo.org/gorilla-world/>

<sup>5</sup> <http://www.usclimatedata.com/climate/cincinnati/ohio/united-states/usoh0188>

<sup>6</sup> Porton I & Niebruegge K (2006). The changing role of hand rearing in zoo-based primate breeding programs. Pp. 22-31 in Sackett G, Ruppenthal G & Elias K (eds): Nursery Rearing of Nonhuman Primates in the 21st Century. Springer

<sup>7</sup> <http://www.iucnredlist.org/details/9406/0>

<sup>8</sup> Gusset M & Dick G (2011). The global reach of zoos and aquariums in visitor numbers and conservation expenditures. *Zoo Biology* 30: 566-569

<sup>9</sup> American Humane Association (2016). *Arks of Hope: Ambassadors for Animals*. <http://humaneconservation.org/about/white-paper/>

<sup>10</sup> Martin TE, Lurbiecki H, Joy JB & Mooers AO (2014). Mammal and bird species held in zoos are less endemic and less threatened than their close relatives not held in zoos. *Animal Conservation* 17: 89-96

the vague “exchange of information”.<sup>11</sup> No such legal requirement exists for zoos in the USA or in many other countries.

Globally, contrary to claims that zoos are catalysts for conservation<sup>12</sup>, a more honest assessment is that zoos (still) exist to display animals to the public; conservation is neither their heritage nor their true mandate.

Whatever the conservation potential or dividend of zoos, it should be weighed carefully against the almost inevitable compromise to animals’ welfare that comes from life in a relatively restricted environment. There are myriad challenges to achieving good welfare in captivity: for example, range sizes and social groupings may be inadequate, climates and diets inappropriate, while the endless gaze of zoo visitors may be stressful. While systems for licensing and inspection of zoos are in place in the USA<sup>13</sup>, across the EU<sup>14</sup> including the UK<sup>15</sup> and elsewhere, application and enforcement is problematic.<sup>16 17</sup>

I have been working for some time to promote an agenda of compassionate conservation, an emerging cross-disciplinary field that reimagines our relationship with, and responsibility towards, wild animals and nature by unifying animal welfare science with the theory and practice of conservation.<sup>18</sup> Compassionate conservation posits that individuals matter for ethical and practical reasons.<sup>19</sup> Thus, the well-being of individual animals needs to be factored in when making conservation decisions. When viewed through the lens of compassionate conservation,

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**the well-being of individual animals needs to be factored in when making conservation decisions**  
 ”

zoos generally present a paradigm of high welfare risk, low conservation gain.

We all need to decide how we wish to mourn *Harambe*’s death: as a regrettable but rare accident on the road to conservation salvation, or a consequence of an exploitative obsession with exhibition.

<sup>11</sup>European Council Directive 1999/22/EC, Article 3

<sup>12</sup>Zimmerman A, Hatchwell M, Dickie L & West C (2007). *Zoos in the 21st Century: Catalysts for Conservation?* Cambridge University Press

<sup>13</sup>Zoos, marine mammal shows, carnivals, circuses and promotional exhibits with wild animals are licensed similarly as Class C Animal Exhibitors under the United States Animal Welfare Act

<sup>14</sup>European Council Directive 1999/22/EC

<sup>15</sup>Zoo Licensing Act 1981 as amended; Zoos Licensing Regulations (Northern Ireland) 2003

<sup>16</sup>Draper C (2011). The Zoo Licensing Act 1981 and the welfare of animals in UK zoos. *Journal of Animal Welfare Law*, March 2011: 20-21

<sup>17</sup>Draper C, Browne W & Harris S (2013). Do formal inspections ensure that British zoos meet and improve

on minimum animal welfare standards? *Animals* 3(4), 1058-1072

<sup>18</sup>See [www.compassionateconservation.org](http://www.compassionateconservation.org)

<sup>19</sup>Draper C, Baker L & Ramp D (2015). Why compassionate conservation can improve the welfare of wild animals. UFAW International Animal Welfare Science Symposium, Zagreb, Croatia 14-15 July 2015

# Legal Concerns Regarding Animal Protection in Scotland

**Dr Patricia Gail Saluja, School of Law, University of Aberdeen**

**A**nimal welfare is a devolved matter in Scotland with only a few exceptions as prescribed by the Scotland Act 1998.<sup>1</sup> Accordingly, responsibility for legislation governing animal welfare rests with the Scottish Parliament and the Scottish Government. There are a number of organisations involved in the enforcement of animal welfare law, including local authorities, the police and the Scottish Society for the Prevention of Cruelty to Animals (SSPCA).

In both Scotland and England there are very few prosecutions of animal cases in comparison with the whole plethora of criminal law (murder, rape, assault, theft, fraud, etc). Nevertheless, though, prosecutions regarding animals are relatively more frequent in England than in Scotland.<sup>2</sup> This prompts the following question: What is as the reason for this difference? The present article identifies and discusses three areas in the Scottish legal system which, it is contended here, are liable to impede the enforcement of animal welfare law and which therefore give rise to

concerns regarding animal protection. These areas of concern are the following:

(1) Severe limitations on private prosecution; (2) Absence of judicial review of prosecutorial decisions; and (3) Restricted scope of the police role in animal protection. These three factors are now considered in turn as follows.

## Severe restrictions on private prosecution

In Scotland virtually all prosecutions are brought by the public prosecution service, namely, the Crown Office and Procurator Fiscal Service (COPFS). The COPFS is a department of the Scottish Government and is headed by the Lord Advocate.<sup>3</sup> It is the only public prosecution authority in Scotland. Prosecutions are undertaken by the Lord Advocate (based in Edinburgh) or by local procurators fiscal and their deputies acting on behalf of the Lord Advocate. The COPFS receives reports of alleged crime from the police and a range of reporting agencies such as HM Revenue and Customs, the Health and Safety Executive, the Scottish Environment

Protection Agency, etc.<sup>4</sup> In the light of these reports the prosecutor decides whether to prosecute, what charges should be brought and in which court any prosecution should take place (in statutory crimes, the legislation may dictate the relevant court).

Prosecutions brought by COPFS are known as public prosecutions. In contrast to these, private prosecutions are prosecutions brought by an individual or a company or other non-governmental organisation. In Scotland the right to private prosecution is subject to such severe restrictions that, as a result, private prosecutions are virtually absent.<sup>5</sup> In fact, permission to bring a

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In both Scotland and England there are very few prosecutions of animal cases  
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<sup>1</sup> The Scotland Act 1998 provides that the following issues are reserved to Westminster: scientific procedures on live animals; prohibition and regulation of the import and export of endangered species; regulation of the veterinary profession;

xenotransplantation; medicines, medical supplies and poisons [s 30(1) and Sched 5 ( B7, C5, G2, J2, J4)]

<sup>2</sup> This information was provided by Mike Radford, Reader, School of Law, University of Aberdeen

<sup>3</sup> For details of the COPFS see [www.crownoffice.gov.uk](http://www.crownoffice.gov.uk)

<sup>4</sup> [www.copfs.gov.uk](http://www.copfs.gov.uk)

<sup>5</sup> T H Jones and M G A Christie, *Criminal Law* (Edinburgh: W. Green & Son Ltd 5th ed. 2012) 41

private prosecution has been granted only twice in the last 116 years.<sup>6</sup> Neither of those cases concerned animal welfare. This situation stands in marked contrast to that in England and Wales where private prosecutions are not only commonplace but are specifically permitted under section 6 of the Prosecution of Offences Act 1985.<sup>7</sup> Here it is relevant that the Royal Society for the Prevention of Cruelty to Animals (RSPCA), a registered charity in England and Wales, undertakes considerable prosecution work. This is published in Annual Reports by their Prosecutions Department.<sup>8</sup> Resumes of cases are also reported under the heading 'Court Reports' in the RSPCA's quarterly publication entitled 'Animal Life'. In 2014 Sir Stephen Wooler CB, former Chief Inspector of HM Crown Prosecution Service Inspectorate, published an independent review of the prosecution activity of the RSPCA<sup>9</sup> (the 'Wooler Review'). Whilst advocating certain changes in the

**“The reality is that society depends on the RSPCA to enforce a difficult aspect of the law”**

way the Society carries out its prosecutorial function (e.g. clearer separation of its investigative and prosecutorial roles, enhancement of transparency),<sup>10</sup> the review concludes with a positive assessment of the Society's prosecutorial function. It states that the RSPCA has carried on prosecutions “to great effect for over 190 years”<sup>11</sup> and that “The reality is that society depends on the RSPCA to enforce a difficult aspect of the law”.<sup>12</sup> Furthermore, private prosecutions by other animal welfare organisations such as the League Against Cruel Sports (LACS) and the International Fund for Animal Welfare (IFAW) have proved particularly useful where the CPS has been reluctant to prosecute.<sup>13</sup>

In sharp contrast to the above, the Scottish charity equivalent to the RSPCA, the Scottish Society for the Prevention of Cruelty to Animals (SSPCA), as a private organisation, has no prosecutorial role whatsoever.

The constraints on private prosecution in Scotland are outlined as follows. First, a person seeking to bring a private prosecution faces the arduous task of seeking permission to do so from the High Court of Justiciary (the 'High Court'). This is done by submitting what has been described as a 'rather archaic and long-winded'<sup>14</sup> form of document called a 'bill for criminal letters' setting out the reasons for the application. The applicant must also apply to the Lord Advocate for his

**“the Scottish Society for the Prevention of Cruelty to Animals (SSPCA), as a private organisation, has no prosecutorial role”**

concurrency with the private prosecution. Without the Lord Advocate's agreement it is most unlikely that the High Court would grant criminal letters authorising a private prosecution. That agreement is rarely granted.<sup>15</sup> As commented by one Scottish solicitor, this is not surprising, given that applications for permission for private prosecution are generally made following a COPFS decision not to proceed with a public prosecution.<sup>16</sup> However, as held in the case of *J & P Coats Ltd v Brown*,<sup>17</sup> it is possible in exceptional circumstances for permission to be granted without his support (this case is discussed below).

Furthermore, the private prosecutor must show that he has suffered a personal injury or wrong as a result of the alleged crime. The alleged crime must not be a public wrong. This principle carries negative implications for enforcement of animal welfare law. The problem arises from the Court's interpretation of personal injury/wrong. This can

<sup>6</sup> These were the cases of *J & P Coats Ltd v Brown* [1909] Justiciary Cases (JC) 29 and *X v Sweeney* [1982] JC 70

<sup>7</sup> Section 6 of the Act establishes the right of 'any person' to institute or to conduct any criminal proceedings, subject to certain circumstances where the Director of Public Prosecutions is either under a duty to conduct the proceedings or has exercised his right to take over the proceedings

<sup>8</sup> RSPCA Prosecutions Annual Reports are available at < <http://www.rspca.org.uk/whatwedo/prosecution> > accessed 17 June 2016

<sup>9</sup> Stephen Wooler (Independent Reviewer), 'The Independent Review of the Prosecution Activity of the

Royal Society for the Prevention of Cruelty to Animals' 24 September 2014 <[www.rspca.org/web/Content/staticImages/Downloads/WoolerReviewFinalSept2014.pdf](http://www.rspca.org/web/Content/staticImages/Downloads/WoolerReviewFinalSept2014.pdf)> accessed 21 June 2016>

<sup>10</sup> Wooler Review, pp 51, 69, 71, 75, 127

<sup>11</sup> *Ibid* p 127

<sup>12</sup> *Ibid* p 127

<sup>13</sup> Natalie Kyneswood (Winner of ALAW's Student Essay Competition) 'The Hunting Act 2004 has been a useless piece of legislation and therefore should be repealed' Discuss [February 2016] *Journal of Animal Welfare Law* 17, 18-19

<sup>14</sup> Cited from TH Jones and MGA Christie, *Criminal*

*Law* (W Green & Son Ltd, 5th edn 2012) 41

<sup>15</sup> Fiona Leverick, 'Plea and Confession Bargaining in Scotland' (July 2006) Report to the XVIIth International Congress of Comparative Law, *Electronic Journal of Comparative Law* [www.ejcl.org/103/art103-8.pdf](http://www.ejcl.org/103/art103-8.pdf) accessed 19 June 2016

<sup>16</sup> Cameron Fyfe, 'Litigation: Private Prosecution' (21 August 2015) <[www.drummondsmiller.co.uk/news/2015/08/litigation-private-prosecution](http://www.drummondsmiller.co.uk/news/2015/08/litigation-private-prosecution)> accessed 20 June 2016>

<sup>17</sup> *J & P Coats Ltd v Brown* (1909) SC(J) 29

<sup>18</sup> *McBain v Crichton* (1961) JC 25

<sup>19</sup> *Meehan v Inglis* (1975) JC 9

be found in the cases of *McBain v Crichton*<sup>18</sup> and *Meehan v Inglis*.<sup>19</sup> In *McBain*, the applicant's bill for criminal letters was refused when he sought to prosecute the bookseller, Mr Crichton for selling a book which he alleged to be obscene and to be designed to corrupt the morals of the public, particularly the morals of young people. The Lord Advocate had declined to prosecute and had refused to concur in the private prosecution. The Court ordered a hearing upon the matter. The Court refused to grant the bill because the action complained of, even if it were a wrong, was of a quite general and public nature, committed against a wider population. Accordingly, it was held to be devoid of that personal and peculiar interest without which a private prosecution cannot be sustained. Whilst the complainer may feel indignation and concern for the morals of the lieges, especially of young people, there is no special harm inflicted on him as an individual. Consequently, the Court held that this is a matter of public interest and as such cannot ever entitle a private individual to undertake a private prosecution. Thus no matter how strong the private 'interest' in the matter, prosecution is not possible without 'title' which involves special, personal impact of the measure in question. The stringency of the Court's interpretation of this matter is epitomised by the case of *Meehan v Inglis*. There the Court specified that, in order to qualify for undertaking prosecution, the complainer must show that he had "suffered injury of a substantial, particular, special and peculiarly personal nature beyond all others" as a result of the actions alleged. In this case, the complainer, who was serving a life sentence for murder, alleged that three police officers had committed perjury as Crown witnesses at his trial and

thereby conspired to pervert the course of justice. The Lord Advocate had refused to prosecute the officers for the offences alleged and thereafter refused to concur in a private prosecution. The Court refused to grant a bill of criminal letters. The Court held that the Lord Advocate had investigated the matter thoroughly and it concurred with his decision not to proceed with a public prosecution. In his judgment, Lord Justice-Clerk Wheatley set out the principles governing the nature of crimes which can qualify for private prosecution. He held that perjury and conspiracy to pervert the course of justice are crimes which "strike at the very heart of the proper administration of justice". They are pre-eminently crimes which the Lord Advocate as public prosecutor should investigate and prosecute. The investigation should be "impartial and not *ex parte*." The Lord Advocate needs to have evidence extending beyond the evidence from just one source before arriving at a decision whether to prosecute. "While therefore an individual can say that he has suffered substantial personal injury as a result of perjury and/or conspiracy to pervert the course of justice if there crimes are established, that is not in itself sufficient to justify the granting of criminal letters since other factors have to be taken into account." The Lord Justice-Clerk held that it would require to be a very special case indeed to justify departure of this general rule and that "this broad consideration of public interest and public policy must normally outweigh the private interest an individual may seek to qualify." In the case of *J & P Coats Ltd v Brown*<sup>20</sup> the High Court of Justiciary drew some boundaries to the concept of public wrong. Here the company of J & P Coats had sought bring a private prosecution against a coal

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merchant for seeking to obtain payment for coal fraudulently by presenting a false colliery certificate which wrongfully described the provenance of the coal supplied. The Lord Advocate had refused to concur with a private prosecution on grounds that fraud is a public wrong and therefore not susceptible to private prosecution. However, the High Court held that the Lord Advocate had been wrong in his reasoning as this was a very special case where the interest was much more private than public and a *prima facie* case for a prosecution was available from undisputed documents and was not dependent upon statements from witnesses furnished *ex parte*.

It is contended here that the foregoing principles are likely to block private prosecution of many animal welfare issues. One could envisage certain exceptions, for example the fraudulent sale of sick animals or criminal injury inflicted on one's livestock or domestic animals by another party. However, the current law would exclude the majority cases of abuse, mistreatment or neglect as such cases primarily elicit general views and feelings of distress or concern. Here society must rely solely on the COPFS to investigate and prosecute accordingly.

Furthermore, in Scotland private prosecutions can be brought only under solemn procedure. This is because the possibility of private prosecution under summary

<sup>20</sup>1909 SC(J) 29

procedure was abolished by statute in 1995.<sup>21</sup> This rule has negative implications for the enforcement of animal welfare law in Scotland. For example, it would block the possibility of any private prosecutions under the Animal Health and Welfare (Scotland) Act 2006 asp11.<sup>22</sup> The reason is that this legislation, which specifies a wide range of offences, also provides that all of those offences are to be prosecuted under summary procedure (ss 20-25; 29-31). The offences concerned are by no means trivial. For example, they include mutilation, cruel operations, administration of poisons, failure to ensure welfare, abandonment, the sale of animals to children, offering animals as prizes. It is ironic that this legislation, which criminalises such a range of cruel or detrimental actions against animals, then stipulates that all these actions must be prosecuted under summary procedure – the very procedure which is specifically excluded from private prosecution. Thus as matters stand at present, we have a strong piece of legislation which has been

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 are very expensive and  
 Legal Aid is almost  
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 for this purpose**  
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<sup>21</sup>Criminal Procedure (Scotland) Act 1995, s 133(5). Solemn procedure is used for the prosecution on indictment, before a judge and jury, of the most serious criminal offences, eg rape, murder. In contrast, summary procedure involves prosecution before a sheriff or justice(s) of the peace sitting without a jury (TH Jones & MGA. Christie, *Criminal Law* (W Green & Son Ltd 5th edn 2012) 27

<sup>22</sup>The acronym ‘asp’ denotes ‘Act of the Scottish Parliament’

<sup>23</sup>I am grateful to Professor Peter R Duff, School of Law,

rendered powerless against any enforcement through private prosecution.

English law does not create the foregoing anomaly. In English law the division of crimes is the same although the terminology is different. Thus there are (a) serious “indictable” crimes which can only be prosecuted in the Crown Court which involves jury trial (if there is not a guilty plea); (b) ‘minor’ cases which must be prosecuted by summary procedure in the Magistrates Court; and (c) “either way” cases which can be prosecuted by either procedure - it is the defendant who decides which court he wants the case to be heard in.<sup>23</sup> What is of crucial significance here is that a private prosecution can take place under any of these procedures. The Animal Welfare Act 2006 is the English equivalent of the Animal Health and Welfare (Scotland) Act 2006. Both statutes stipulate similar crimes and both statutes specify that these crimes are to be tried under summary procedure. Ironically, as explained above, this stipulation blocks any possibility of private prosecution under the Scottish Act. This blockage of private prosecution does not occur under the English Act given the availability of private prosecution under summary procedure.

Finally, it should be noted that private prosecutions are very expensive and Legal Aid is almost impossible to obtain for this purpose. One can apply for a special grant from the Scottish Government

University of Aberdeen, for this explanation of the English law regarding prosecutions

<sup>24</sup>Cameron Fyfe, ‘Litigation: Private Prosecution’ (21 August 2015) <[www.drummondmillerc.co.uk/news/2015/08/litigation-private-prosecution](http://www.drummondmillerc.co.uk/news/2015/08/litigation-private-prosecution)> accessed 20 June 2016

<sup>25</sup>*Law Hospital Trust v Lord Advocate*, 1996 SC 301

<sup>26</sup>*Sharma v Brown-Antoine and others* [2006] UKPC 57; *R(B) v Director of Public Prosecutions (Equality and Human Rights Commission intervening)* [2009]

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 review of prosecutorial  
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 implications for animal  
 protection in Scotland**  
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but this is equally difficult to obtain.<sup>24</sup>

We now examine the second factor which raises concerns regarding animal protection in Scotland. This is the absence of judicial review of prosecutorial decisions.

#### Absence of judicial review of prosecutorial decisions

In Scotland the public prosecution service, the Crown Office and Procurator Fiscal Service (COPFS) is immune from judicial review of its decisions on whether or not to prosecute. This is regarded as having been determined by the case of *Law Hospital NHS Trust v Lord Advocate*.<sup>25</sup> This position stands in contrast to the situation in England where the Public Prosecution Service (CPS) is susceptible to judicial review of its decisions to prosecute or not to prosecute.<sup>26</sup> Although the threshold for this remedy is high, the exercise of the court’s power of judicial review is less rare in the case of a decision not to prosecute than a decision to prosecute.<sup>27</sup>

There is clear evidence that the absence of judicial review of prosecutorial decisions has had adverse implications for animal protection in Scotland. This has been examined in detail in an earlier

EWHC 106 (Admin).

<sup>27</sup>See judgment of Toulson LJ in *R(B) v Director of Public Prosecutions (Equality and Human Rights Commission intervening)*, n 26 above

<sup>28</sup>Patricia Gail Saluja, ‘Judicial review of prosecutorial decisions: implications for animal welfare in Scotland’ [Spring 2014] *Journal of Animal Welfare Law* 1



publication<sup>28</sup> and is summarised as follows. The central issue involved a comparative examination of two shocking cases of animal cruelty, one in England and the other in Scotland. The English case concerned two slaughterhouse workers, one caught on CCTV stubbing out cigarettes on pigs' snouts and the other caught kicking and beating pigs. The Scottish case involved a gamekeeper viciously beating crows with a stick inside what was a legal cage trap. In each case the public prosecution service had initially declined to prosecute despite the blatant cruelty of the acts concerned. However, in the English case the CPS did undertake a prosecution. The two slaughterhouse workers pleaded guilty to animal cruelty and were sentenced to imprisonment for six and four weeks, respectively. The Scottish case, on the other hand, ground to a halt owing to the insurmountable barrier posed by the fact that prosecutorial decisions are immune from judicial review.<sup>29</sup>

### Restricted Role of the Police in Animal Protection

In Scotland there is just one single police force. This is designated as 'Police Scotland' and is headed by a Chief Constable. Police Scotland was formed in 2013 by the Police and Fire Reform (Scotland) Act 2012. It came into being on 1 April 2013, merging the 9 separate forces existing at that time. Within Police Scotland there are 13 local Divisions, each headed by a Local Police Commander. In contrast to the unified single force in Scotland, the

system in England comprises 39 separate police forces, each of which is headed by its own Chief Constable.

There are general similarities between England and Scotland with regard to the police role in animal protection. In both jurisdictions the animal protection role of the police is focussed on wildlife crime.<sup>30</sup> The work involves wildlife crime officers (WCOs) who investigate incidents and submit reports to the public prosecution service, ie the Crown Office and Procurator Fiscal Service (COPFS) in Scotland and the Crown Prosecution Service (CPS) in England. This situation prompts the following question: Why should the animal protection role of the police be preferentially concentrated on wild animals? All animals are sentient, capable of pain, suffering, distress, fear. Therefore, why are non-wildlife animals, i.e. pets or domestic animals/farm animals excluded from designated police protection? One is lead to speculate whether, despite the above-described arrangements, there might be circumstances where the WCOs would actually take on a non-wildlife case and investigate it and report it themselves rather than referring it over to another organisation. In order to gain some insight into this question, enquiries were made to Police Scotland and to a small sample of individual English forces. This comprised twelve English police forces. Obviously, this was not intended to be a statistical survey, but rather a preliminary attempt to discover whether there

might be any signs of a different approach between the two countries. The replies did indicate a difference, as follows.

With regard to Scotland, the response confirmed a uniform strategy across all the Divisions of the force. Thus Police Scotland explained that they would refer non-wildlife matters to specialist government agencies or Local Authorities or NGOs such as the SSPCA as appropriate. It was also confirmed that this approach applies uniformly across all of Police Scotland.<sup>31</sup>

We turn now to the responses from the sample of twelve English forces. Of these, five forces replied explaining that their role is directed solely to wildlife crime and that non-wildlife incidents would be referred to other agencies. These were the police forces of Derbyshire,<sup>32</sup> Devon & Cornwall,<sup>33</sup> Norfolk,<sup>34</sup> Northumbria<sup>35</sup> and Nottinghamshire.<sup>36</sup> Additionally, in the case of Northumbria, incidents might be referred to other appropriate and available non-WCO officers within the force. However, in

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<sup>29</sup>For further details of these two cases see the following:- for the English case: Alan Bates, 'Undercover evidence: The use of covertly filmed footage as evidence in animal welfare prosecutions' [autumn/winter 2011] *Journal of Animal Welfare Law* 1; also Association of Lawyers for Animal Welfare (ALAW), 'Slaughterhouse workers jailed after ALAW intervention' <<http://www.alaw.org.uk>> posted 25 April 2012 accessed 01/07/2013; for the Scottish case: OneKind, 'No court proceedings for beating crows to death', <[http://www.onekind.org/onekindblog/no\\_court\\_proceedings\\_for\\_beating\\_crows\\_to\\_death](http://www.onekind.org/onekindblog/no_court_proceedings_for_beating_crows_to_death)> accessed 7 April 2016

<sup>30</sup>Wildlife crime is any action which contravenes current legislation governing the protection of the UK's wild animals and plants. With regard to animals, wildlife crime includes for example, hare coursing, deer poaching, badger and raptor persecution. Further information is available from the National Wildlife Crime Unit at <[www.nwcu.police.uk](http://www.nwcu.police.uk)> accessed 21 June 2016

<sup>31</sup>Information provided by emails of 04/06/2015 and 15/06/2015 from Scottish Wildlife Crime Coordinator, Police Scotland

<sup>32</sup>Email to author (2 April 2015)

<sup>33</sup>Email to author (7 April 2015)

<sup>34</sup>Email to author (12 April 2015)

<sup>35</sup>Email to author (15 April 2015)

<sup>36</sup>Letter to author (24 April 2015)

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contrast to the foregoing, six forces reported different approaches by their WCOs. Thus in addition to wildlife, Avon & Somerset would deal with livestock issues;<sup>37</sup> Cheshire also would deal with livestock;<sup>38</sup> Essex covers agriculture animals and also zoo animals, performing circus animals;<sup>39</sup> Gloucestershire WCOs may attend to mistreatment of a pet or farm animal although it is more likely that the case would be referred to the RSPCA or other relevant agency;<sup>40</sup> Hampshire Constabulary also deal with incidents involving farm animals/pets, working closely with the RSPCA in relation to domestic animals;<sup>41</sup> and the Metropolitan Police WCOs also deal with dogs, ie dogs being mistreated by their owners, dog breeds prohibited under the Dangerous Dogs Act 1991 and dogs being trained to fight other dogs.<sup>42</sup> Finally, and on a different note, the Durham Constabulary reported that they do not actually have any dedicated police officers for wildlife crime/animal protection, although all incidents concerning wildlife and other animals are dealt with through assistance from other relevant agencies.<sup>43</sup>

Obviously, the foregoing is just a small sample of the total existing number of 39 English police forces. The responses concerned do, however, indicate that the police approach to animal protection has a flexibility which is not found in Scotland.

#### Final Reflections

This article identifies three features in the Scottish legal system which, it is contended here, are capable of impeding the enforcement of animal welfare law. These are: (1) extreme restrictions on private prosecution leading to a virtual absence of this form of legal action; (2) the complete absence of the right to judicial review of prosecutorial decisions; and (3) the restriction of dedicated police protection to wildlife thereby excluding domestic animals and farm animals. The article concludes with some proposals for addressing these matters.

*With regard to the virtual absence of private prosecution:* The current restrictive conditions for private prosecution makes this action virtually inaccessible in Scotland. This situation presents a significant barrier to the enforcement of animal welfare law. However, it is to be hoped that change may be in the offing. This is because the issue of private prosecution has come under the spotlight recently as the result of a tragic event in Glasgow on 22 December 2014. This event, and its aftermath, have been widely reported in the media and commented upon by lawyers.<sup>44</sup> On the date in question, a Council bin lorry ran into a group of pedestrians killing six people and

injuring 15 others. The crash occurred because the driver of the vehicle, Mr Harry Clarke, had passed out at the wheel. The Crown Office decided not to prosecute on the grounds that there was insufficient evidence that he had broken the law and that this was an unforeseeable accident. However, a subsequent fatal accident inquiry (FAI) in summer 2015 established that the crash was more than simply an unforeseeable accident. It emerged that Mr Clarke had a history of health issues including a blackout in 2010 at the wheel of a stationary bus at a time when he had been a Council bus driver. It also emerged that he had repeatedly lied to conceal his medical background to his employers and the DVLA. The Crown Office declined to charge him.

In the light of the FAI findings, one family which lost three members in the crash sought a private prosecution against Mr. Clarke. However, the Lord Advocate declined to grant concurrence to their Bill for Criminal Letters. Now the family can proceed only if they obtain permission from High Court judges. A three-judge hearing on this matter was held in Edinburgh on 22 March 2016. The details of this hearing cannot be reported for legal reasons. However, it was announced that there will be a further hearing, although a date for this was not stated.<sup>45</sup> Subsequently, however, it was announced that a judge has informed lawyers for the bereaved family that their submission will be decided at a hearing in October or November 2016.<sup>46</sup> In the meantime, though, it has been reported that the

<sup>37</sup>Email to author (17 April 2015)

<sup>38</sup>Email to author (1 April 2015)

<sup>39</sup>Email to author (10 April 2015)

<sup>40</sup>Letter to author (21 April 2015)

<sup>41</sup>Letter to author (27 April 2015)

<sup>42</sup>Two emails to author (both 11 April 2015)

<sup>43</sup>Email to author (10 April 2015)

<sup>44</sup>See for example: <[www.dailyrecord.co.uk/news/scottish-news](http://www.dailyrecord.co.uk/news/scottish-news)> (22 Jan 2016), “Top lawyer says there is enough evidence to put him on trial” (accessed 2 March 2016); Julie Matheson, Regulatory and Professional Discipline Blog: ‘Scottish private prosecutions back in the spotlight’, 19 August 2015: [www.kingsleynapley.co.uk/news-and-events/blogs/regulatory-and-professional](http://www.kingsleynapley.co.uk/news-and-events/blogs/regulatory-and-professional) (accessed 23 Oct 2015)

<sup>45</sup>BT News 22 March 2016, ‘First hearing held in bin lorry crash private prosecution bids’ <<http://home.bt.com/news/uk-news/first-hearing-held-in-bin-lorry-crash-private-prosecution-bids>> accessed 22 March 2016

<sup>46</sup>BBC News 9 June 2016, ‘Autumn ruling on private prosecution bid over Glasgow bin lorry crash’ <<http://www.bbc.co.uk/news/uk-scotland-glasgow>> accessed 11 June 2016

Scottish ministers have agreed to grant Legal Aid to the bereaved families if the judges rule that the case can proceed. Also, in that event, Legal Aid will be made available to Mr Clarke.<sup>47</sup> Hopefully, whatever the outcome of the judicial hearing, these events will prompt the introduction of changes in the law governing private prosecution in Scotland. As one solicitor has proposed: “Perhaps it is time for the Scottish Parliament to change the law to make a private prosecution less difficult. It would be more equitable if there was no need to obtain the consent of the Crown. It might also be better if the application was to a single judge (called a ‘sifting judge’) rather than to the High Court.”<sup>48</sup> It is suggested here that, in the quest for such a change, it would be worthwhile to submit a strong petition to the Scottish Parliament highlighting the reasons for legislative action on the matter. From the perspective of animal welfare, it would be important for such legislation to establish the right for private prosecution under summary as well as solemn procedure, given that the Animal Health and Welfare (Scotland) Act 2006, a major piece of legislation in this area, prescribes summary procedure for prosecutions of breaches of its stipulated offences.

***With regard to the absence of judicial review of prosecutorial decisions:*** This is a lacuna in Scots law which jeopardises animal welfare in particular and the rule of law in general. Accordingly, it is contended that, as in the issue of private prosecution, the matter should be rectified by legislation from the Scottish Parliament.

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With regard to judicial review of prosecutorial decisions, there have been no signs of change in this particular area and no issues in the media bringing it under the spotlight as discussed above in the case of private prosecutions. However, it might be worth noting that since 1 July 2015 victims of crime have a right to request a review of a decision made on or after 1 July 2015 not to prosecute a case. The review must include an account of the rules governing the decision not to prosecute. This right was established by s 4 of the Victims and Witnesses (Scotland) Act 2014 asp1.<sup>49</sup> This is not a judicial review as it is carried out by the Lord Advocate. However, it does introduce a new element of prosecutorial accountability. It remains to be seen whether this development may lead the way to the establishment of independent judicial review of prosecutorial decisions. This would be best achieved by legislation by the Scottish Parliament to explicitly authorise the action of judicial review of prosecutorial decisions which fall foul of the principles of public law. As in the case of private prosecution, a well-constructed petition to the Scottish Parliament should be considered.

***With regard to the restricted role of the police in animal protection:*** In both England and Scotland there appears to be an anomaly with regard to the formal role of the police whereby dedicated police

protection is strictly confined to wildlife, under the aegis of WCOs. This leaves a perplexing deficit with regard to other animals such as pets, pet vending, farm animals. The plight of these forms of animal life is referred to local authorities and other bodies. Nevertheless, a brief survey of a dozen English forces revealed an interesting degree of flexibility, not found in Police Scotland, whereby discretionary choices to intervene are made by WCOs in some forces when confronted by non-wildlife incidents. This does not occur in any of the divisions of Police Scotland. This situation raises the question of whether the current restricted situation is detrimental to animal protection in Scotland. The resolution of this question requires empirical research into matters such as the existing pressures of work on WCOs, the frequency with which non-wildlife issues are encountered by WCOs and, very importantly, the time intervals between their notification of such issues to the relevant agencies and action taken in response. Accordingly, it is submitted here that this area does require detailed investigation in order to determine whether, or not, the present approach by Police Scotland should be modified.

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<sup>47</sup>Herald Scotland News, 9 March 2016, ‘Bin lorry crash families to get legal aid for private prosecution against Harry Clarke’ <[www.heraldsotland.com/news/14331701](http://www.heraldsotland.com/news/14331701)> accessed 22 March 2016

<sup>48</sup>Cameron Fyfe (Solicitor in Drummond Miller LLP), <<http://www.drummondmiller.co.uk/news/2015/08/litigation-private-prosecution>> accessed 25 September 2015

<sup>49</sup>Victims and Witnesses (Scotland) Act 2014 asp1

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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.