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BREXIT

A New Dawn for Animals Used in Research or a Threat?

CRUELTY SENTENCES

Part of the Armoury of the Criminal Justice System in Tackling Violent Crimes Towards People & Animals

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EDITOR'S NOTE

The Brexit theme continues in this second issue of A-law's re-launched journal where Paula Sparks and Simon Brooman discuss Brexit in relation to animals used in research and the role of A-law and animal groups to influence policy and legislative change.

A-Law has a rapidly expanding and vibrant student membership body. Each year A-Law holds an annual student essay writing completion to encourage talent and interest in animal welfare. I am delighted to include this year's (2017) winning essay, authored by Chris Sangster, in this edition.

John Cranley, writing from a veterinarian's perspective, welcomes the Minister of Agriculture's recent announcement in relation to mandatory CCTV at abattoirs.

Johnathan price reviews the Advertising Standards Authority's decision to reject complaints about an advertisement which declared humane milk is a myth.

Alice Collinson and Robert Sardo examine the impact of increasing sentences under the Animal Welfare Act 2006 and consider what further steps can be taken to protect both animal and human welfare in relation to domestic violence, a theme which continues to be developed in animal welfare.

The trustees at A-law thank its members for their continued support and contributions and wish everyone a happy New Year.

Jill Williams
Editor

Email: journaleditor@alaw.org.uk

Brexit: A New Dawn for Animals Used in Research, or a Threat to the 'Most Stringent Regulatory System in the World'?

A report on the development of a Brexit report for Animals Used in Science by Paula Sparks, UK Centre for Animal Law and Simon Brooman, Lecturer in Law at Liverpool John Moores University

Abstract

As Britain prepares to leave the European Union, much discussion is taking place as to how this will affect the law relating to animals in the United Kingdom. Does Brexit present a threat to animal welfare, or an opportunity for positive reform? This article discusses the impact of Brexit in the context of animals used in research. In particular, it examines work of the UK Centre for Animal Law (A-law), its advisors and other campaign groups, to influence the Brexit agenda and create a manifesto for animals. How does this discussion fit with the link between science, philosophy and law and where will this leave the United Kingdom as it makes its own way in the world? Is UK law, often lauded by those who use animals in experimentation as a beacon of animal welfare regulation, likely to emerge stronger or weaker? We argue that Brexit presents an opportunity to address issues around severe suffering, freedom of information and continued reform to take account of developing knowledge of suffering and sentience. The need for funding to research alternatives is identified as paramount. We suggest that, if adopted by the UK government, the report presents an opportunity for the United Kingdom to, once again, become the initiator of legislation to reform the protection of animals used in science.

Introduction

For voters in the United Kingdom, the 2016 referendum to remain in or leave the European Union (EU) may have seemed to be purely about people. Who should have sovereignty over people's lives in the UK, decide where the money goes or set its trade laws? However, following the decision to leave, animal welfare groups were quick to identify the potential advantages and disadvantages for animals. This led to the setting up of various interest groups to consider the challenges Brexit poses to animals and to seek ways in which they could influence the agenda in a United Kingdom no longer answerable to a higher authority for its legislative control of our relationship with animals.

"…the report presents an opportunity for the United Kingdom to, once again, become the initiator of legislation to reform the protection of animals used in science."

Animal welfare groups have united to consider the likely threats and opportunities to animal welfare in the various sectors where we come into contact with or use animals - wildlife, companion animals, used

in research and farmed – and to set out their demands for change. The resulting report, 'Brexit – getting the best deal for animals,' coordinated by the UK Centre for Animal Law (A-law)[1] and the Wildlife and Countryside Link[2] includes a chapter on the use of animals in research that is the subject of this article.

Animal charities and campaign groups (four of them in joint submissions coordinated by A-law) also gave written evidence to an inquiry into Life sciences and the Industrial Strategy launched by the House of Lords Science & Technology Committee in July 2017. These groups each proposed a vision for a life sciences strategy that reflects the UK's commitment to reduction, refinement and replacement of animal use in research.

The law

The United Kingdom is, with some justification, seen as the originator of worldwide control of laboratory animal use. Considerable controversy throughout the 19th century led to the Cruelty to Animals Act 1876 in response to recommendations made in a Royal Commission report that animal experiments should be subject to regulation and control.[3] Scientists in the UK were dismayed and claimed that they would be left behind their European counterparts if experiments involving animals were regulated.[4]

"The United Kingdom is, with some justification, seen as the originator of worldwide control of laboratory animal use."

The European Union also has a place in the historical development of laws regulating animal experiments. In 1985, the Council of Europe (not an EU body) adopted a Convention for the Protection of Vertebrate Animals Used for Experimental and Other Scientific Purposes. Shortly afterwards, European Union Council Directive (86/609) was adopted, requiring Member States to introduce or strengthen existing domestic provisions controlling animal experimentation. This forced some European countries to adopt legislation in this area for the first time. The part played by representatives of the United Kingdom cannot be understated and this influence will be lost post-Brexit. The progress made in 1986 shows how the European Union has sometimes acted a force for good in moving welfare standards forward. However, as will be discussed later, it would be wrong to assume that the European Union has answered the moral questions around what its legislation still allows to be done to animals.

In the UK the Animals (Scientific Procedures) Act 1986 (ASPA) was passed to regulate procedures carried out on protected animals[5] for scientific or educational purposes with the potential to cause pain, suffering, distress or lasting harm. As introduced, ASPA regulated animal use in research through a licensing system, which required separate licences to be in place for the person carrying out a procedure and for the project itself[6] and required that the project take place only at a designated establishment or as required under section 6[7].

It falls to the Home Office to decide whether to grant a project licence authorising the use of animals for a programme of works. In making that determination ASPA requires the Secretary of State to carry out, in effect, a harm : benefit analysis by weighing up *"the likely adverse effects on the animals concerned against the benefit likely to accrue as a result of the programme to be specified in the licence."*[8]

[1] A charitable organisation bringing together people concerned with animal protection law: www.alaw.org.uk

[2] A coalition of voluntary organisations concerned with the conservation and protection of wildlife and the countryside https://www.wcl.org.uk/

[3] Report of the Royal Commission on the Practice of Subjecting Live Animals to Experiments for Scientific Purposes, 1876, London: HMSO

[4] French, R, *Anti-vivisection and Medical Science in Victorian Society*, 1975, London: Princeton University Press.

[5] Animals (Scientific Procedures) Act 1986 (as amended), section 1 for the definition of 'protected animal'.

[6] Animals (Scientific Procedures) Act 1986, section 3

[7] Ibid, section 6

[8] Ibid, section 5(4)

Importantly, ASPA (as enacted) also stipulated that a project licence should not be granted unless *'…the applicant has given adequate consideration to the feasibility of achieving the purpose of the programme to be specified in the licence by means not involving the use of protected animals.'*[9] This in effect incorporated the 'Three Rs' principle (replacement, reduction and refinement) into UK law.[10]

Thus, through ASPA the UK gave statutory effect to these two important principles (the harm/benefit analysis and Three Rs), which in turn provided the foundation for later EU regulation[11] and consequential amendment to UK law by amendment to ASPA itself.[12]

Oversight of the role of the Home Office was provided through the Animal Procedures Committee (APC), established by ASPA to give advice to the Secretary of State about the use of animals in scientific procedures; since 2013 this oversight has been provided by the Animals in Science Committee, which replaces the APC. It operates similarly, but was established by the amended ASPA to comply with Directive EU 2010/63/EU.[13]

There were further important regulatory and other developments over the next decade.

In 1998 the Government set out plans for a local Ethical Review Process ('ERP'), requiring designated establishments conducting animal experiments to have in place an ethical review process for proposed projects involving animals by April 1999.[14]

[9] Ibid, section 5(5).

[10] In short, this means to replace the use of animals, reduce the number of animals used and to refine procedures so that they cause less suffering. Guidance on the Operation of the Animals (Scientific Procedures) Act 1986: Home Office (March 2014) Section 2.1 defines the 3Rs for the purposes of ASPA (as amended): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/291350/Guidance_on_the_Operation_of_ASPA.pdf

[11] Directive 2010/63/EU on the protection of animals used for scientific purposes; see further below.

[12] the Animals (Scientific Procedures) Act 1986 Amendment Regulations 2012 (SI 2012/3039), see further below

[13] https://www.gov.uk/government/organisations/animals-in-science-committee/about See further below.

[14] For further information see 'Review of the 'Ethical Review Process' in

In 2013 ERP's were replaced with Animal Welfare and Ethical Review Body (AWERB's), performing a similar function, but reflecting changes required to give effect to Directive 2010/63/EU on the protection of animals used for scientific purposes.[15]

Between the period from 1997 to 1999 the UK Government announced that it would not issue licences for testing finished cosmetic products and substances intended for use as cosmetic ingredients, the development or testing of tobacco or alcohol products, the use of great apes, the use of ascites method of monoclonal antibody production (except in exceptional cases) and the use of the acute oral Lethal Dose 50% (LD50) test, except on 'exceptional scientific grounds'.[16]

Developments around the use of animals to test household and cosmetic products continued (albeit at an arguably incredibly slow pace) at EU level. In response to public concern about the use of animals to test cosmetic products, Council Directive 93/35/EEC[17] was adopted in 1993 as the sixth Amendment of EU Directive 76/768/EEC[18] (the Cosmetics Directive)[19] which sets out the safety standards for cosmetics across EU countries. The Directive introduced a timetable to ban animal testing of finished cosmetic products, the testing of animal ingredients and import, selling and marketing of cosmetic products subject to animal testing outside the EU by 1 January 1998. Unfortunately, because of the lack of alternatives to animal testing, the EU passed a further directive in 1997 postponing the deadline for implementation to 2000.[20] In 2000, the deadline for implementation was delayed yet again for another two years.[21]

In 2002 Directive 2003/15/EC on the approximation of the laws of the EU Member States relating to cosmetics products was adopted as the 7th Amendment to the Cosmetics Directive to prohibit animal testing for cosmetic products in the EU.[22] Further amendments were subsequently made to introduce a phased-in approach, so that it eventually prohibited, from 11 March 2009, animal testing for cosmetic ingredients and the marketing of cosmetic products containing ingredients which have been tested on animals. From 11 March 2013, it prohibited the sale of cosmetic products and ingredients tested on animals after that date anywhere in the world (the 'marketing ban').[23] Thus, it took a decade for the EU to give effect to public concern about animal testing for cosmetics. This occurred against a backdrop of a voluntary ban on the testing of cosmetic finished products and ingredients on animals in the United Kingdom having been achieved much earlier.

A new milestone in EU regulation of animal experimentation occurred through Directive 2010/63/EU on the protection of animals used for scientific purposes, which was adopted on 22 September 2010, replacing Directive 86/609/EEC and setting out further measures required by EU states to regulate the use of animals for research purposes. This entered into force on 9 November 2010 and required Member States to transpose the directive into their law by 10 November 2012. By January 2015, all Member States had completed the process.

The Directive enshrined the principle of the Three Rs (replacement, reduction and refinement), already the cornerstone for ASPA in the UK. The scope was widened to include

Establishments Designated under the Animal (Scientific Procedures) Act 1986 (2001), paragraph 2.

[15] see further below.

[16] See 'Animals in Scientific Procedures Report': House of Lords Select Committee on Animals in Scientific Procedures (2002 Chapter 1.5; https://publications.parliament.uk/pa/ld200102/ldselect/ldanimal/150/15004.htm

[17] Council Directive 93/35/EEC of 14 June 1993 amending for the sixth time Directive 76/768/EEC on the approximation of the laws of the Member States relating to cosmetic products. Official Journal L 151, 23/06/1993 p.32.

[18] Council Directive 76/768/EEC of 1976 on the approximation of the laws of the Member States relating to cosmetic products

[19] Directive 76/768/EEC was replaced as of July 2013 by Regulation 1223/2009/EU on cosmetic products, but provisions for animal testing remains the same as in Directive 76/768/EED, as amended.

[20] Commission Directive 97/18/EC, OJ L 114, 01.05.1997, p. 0043-0044

[21] Commission Directive 2000/41/EC, OJ L 145, 20.06.2000, p. 0025-0026

[22] Commission Directive 2003/15/EC OJ L 66, 11.3.2003, p. 26–35

[23] European Commission press release 'Full EU ban on animal testing for cosmetics enters into force.' (11 March 2013) http://europa.eu/rapid/press-release_IP-13-210_en.htm

cephalopods and foetuses of mammals in their last trimester. Other key features included laying down minimum standards for housing and care of animals used for research purposes, introducing a system of project evaluation requiring assessment of pain, suffering and distress, regular inspections and publication of non-technical project summaries and retrospective assessments. Taken as a whole, it can be regarded as an incremental step in pan-European protection of animals used in experiments, but it falls a long way short of answering the philosophical concerns of animal advocates.

"There are both direct and indirect threats arising from Brexit for the interests of animal used in research. There are also potential opportunities for improvements in welfare and reduction in the numbers of animals used in research..."

In the UK the 2010 Directive was transposed into domestic law by amendment to ASPA by the Animals (Scientific Procedures) Act 1986 Amendment Regulations 2012 (SI 2012/3039) and ASPA (as amended) now reflects the provisions of the 2010 Directive. Therefore, even if the directive was repealed, the law would remain unchanged.

What is evident however is the symbiotic relationship between the UK and the European Community, with the UK both leading and following, on occasions, movements to reduce animal suffering in experiments. This clearly seen through the advancement of the Three Rs that appears in UK law, is accepted as the cornerstone of protection in the EU and developed further in amendments to UK law reflecting later changes pushed along by the EU.

The congruity of legislative control might lead to the conclusion that Brexit should have little, if no, effect on the use of animals for research purposes. However, it would be unsafe, in our view, to make such an assumption. There are both direct and indirect threats arising from Brexit for the interests of animal used in research. There are also potential opportunities for improvements in welfare and reduction in the numbers of animals used in research through the development of non-animal alternatives.

Brexit and animals use in experimentation: the continuing moral challenge

At this point, it is worth considering continuing philosophical concerns regarding animal use in experimentation. This has long been the most contentious and hotly contested area of invasive human interaction with animals. Advocates of animal research have long argued that the harm caused to animal is a price worth paying. Several reports in this area have concluded that the decision to use animals is a difficult but essential choice. For example, a House of Lords Select Committee on Animal Experimentation in 2002 concluded that:

> The unanimous view of the Select Committee is that it is morally acceptable for human beings to use other animals, but that it is morally wrong to cause them unnecessary or avoidable suffering.[24]

This position neatly sums up the widely held beliefs of those who advocate the continued use of animals in experimentation. It is the bedrock of UK and EU legislation and poses the primary assumption that this is something we have to do, there is no choice, and the best that can be done is to regulate the decision to cause deliberate pain and suffering and to make animals' lives as comfortable as possible.

[24] House of Lords, Select Committee on Animals in Scientific Procedures, 2002. Accessed 2nd November 2017 at https://publications.parliament.uk/pa/ld200102/ldselect/ldanimal/150/15001.htm

However, many theologians, academics and scientists alike contest this premise. For example, a report of the Oxford Centre for Animal Ethics on the ethics of using animals in research comes to a very different conclusion than the House of Lords. It argues that the thinking behind the basic position is founded on a flawed normalisation of approach that ignores the strength of moral argument against such practices:

> This normalisation is challenged by new moral thinking which centres around three positions: (i) individual animals have worth in themselves. Sentient beings (beings capable of pleasure and pain) are not just things, objects, machines, or tools; they have their own interior life that deserves respect. This view extends to sentients as individuals not just as collectivities or as part of a community. (ii) Given the conceding of sentience, there can be no rational grounds for not taking animals' sentience into account or for excluding individual animals from the same basic moral consideration that we extend to individual human beings. And (iii) it follows that causing harm to individual sentient beings (except when it is for their own good – for example, in a veterinary operation), if not absolutely wrong, minimally requires strong moral justification. Indeed, some would argue that such acts of harming innocent (i.e., morally blameless) sentients is absolutely wrong.[25]

What is clear is that the position of both UK and EU legislation holds to a particular moral standpoint that has been entrenched for many years and claims to reflect public morality. However, even here, the acceptance of using animals is not as clear-cut as is often portrayed. Recent figures indicate that the UK public accepts by 2:1 that animal use is acceptable where there is no alternative.[26] However, the same survey reveals that 61% suspect that unnecessary duplication of experiments is taking place and 47% that scientists could do more to reduce pain. It appears the UK public accepts the need to use animals but lacks confidence in the effectiveness of the regulatory framework. These findings give rise to suggestion that most UK citizens would support more being done to improve the situation for animals used in experimentation in the UK. Those within the animal welfare lobby who contributed to the Brexit report have attempted to balance the desirability of ensuring the maintenance of existing moral standards enshrined in existing law, against the potential offered by Brexit to encourage the UK towards an incremental step in enhancing its underlying ethical coherence.

Brexit: An opportunity to re-think UK law?

The animal charities and campaign groups participating in writing the Brexit report urge the Government to use Brexit as an opportunity to carry out a fundamental review of the legislation to ensure that animal interests are adequately protected. The Brexit report includes calls for the Government to:

- make a public commitment to ending the permitting of 'severe' suffering, as defined in UK legislation;
- review the re-use of animals who have undergone procedures classified as 'moderate' or 'severe', to ensure that there is a strict limit to severity depending on the animals' life experiences;

[25] Linzey, Andrew, Clair Linzey, and Kay Peggs. "Normalising the unthinkable: The ethics of using animals in research." Oxford Centre for Animal Ethics, 2015, para 11.5.

[26] Leaman, J, J Latter and M Clemence. "Attitudes to animal research in 2014", Ipsos MORI, Social Research Institute. Accessed 2nd November 2017 at http://www.abpi.org.uk/media-centre/newsreleases/2014/Documents/BIS_animalresearch_trendreport.pdf

- commit to a stringent review of defined areas in regulatory testing, including the use of a second species and multiple routes of administering substances, with the aim of identifying and eliminating avoidable tests;
- retain, or commit to, legislative or policy bans on the licensing of procedures that would have been possible by derogation procedures under Article 55 of the directive, if the UK was still part of the EU;
- commit to a ban on the export of animals for use in research, save with Home Office consent to be granted where there would otherwise be a greater welfare detriment; and,
- contribute to the development and validation of non-animal research methods and technologies.

The Brexit report also reiterates previous calls for greater transparency around the use of animals in research.

The challenges posed by a new era of trade

A key concern of animal charities and campaign groups is the risk, identified in the Brexit report (para. 6.3.5), that *'as the UK enters into bilateral trade negotiations with the EU and countries outside the EU, it may abandon provisions that seek to ensure that higher welfare standards apply to the use of animals in experiments within the UK.'*

"The Brexit report calls upon the government to ban the importation of products developed outside the EU using animals in ways which would not be permitted in the UK or EU countries."

Whilst there have been concerns about the EU cosmetics ban, notably the exemption for mixed use ingredients and the fact that cosmetics companies can still test their products or ingredients on animals outside the EU, as long as they do not rely on the results of these tests in order to sell these products in the European Union, there is no doubt that it has been a very important and symbolic step. Its importance is not only to the interests of animals within the EU, but as an impetus for international recognition that the use of animals for cosmetics testing is unacceptable.

It would be a significant blow to those efforts if the UK entered trade deals that weakened or retreated from the cosmetics ban in any way. Michelle Thew of Cruelty Free International observes[27] that: '*Consumers need...reassurance from ministers that a quick trade deal with the US – where cosmetics animal testing is still permitted – will not result in any weakening of this sales ban and that cruel cosmetics will remain a thing of the past.'*

The Brexit report calls upon the government to ban the importation of products developed outside the EU using animals in ways which would not be permitted in the UK or EU countries. A breach of this fundamental moral position would be of serious concern to those working on the report and would signal a serious breach in trusting the incumbent government to maintain the moral integrity of existing protection.

Future Investment in Science: ensuring research funding for alternatives

In written evidence to the House of Lords Science and Technology Committee Life Sciences inquiry into Life Sciences and the Industrial Strategy (September 2017), Cruelty Free International,

[27] https://www.theguardian.com/world/2017/jul/30/uk-must-keep-ban-on-cruel-testing-of-cosmetics-on-animals

Naturewatch Foundation, Humane Society International UK and Animal Aid (in written evidence coordinated by the UK Centre for Animal Law)[28] emphasise the opportunity to re-direct funding to non-animal methods (NAMs), as do other groups.

The joint written evidence, coordinated by the UK Centre for Animal Law suggests that *'...the development of new medicines and UK competitiveness in the sector should not mean an increase in the use of animals in research but rather greater preferential funding for non-animal methods.'*[29]

This could be achieved by re-directing funding to incentivize and support initiatives that support the aims of reducing, replacing and refining the use of animals in research. As they state:

> *'We agree that there is a need to continue growing the Government science budget to remain internationally competitive. To achieve the ambition of the Directive 2010/63/EU of reducing, replacing and refining animal experiments, part of this growth should involve significantly increasing funds to initiatives such as the 2005 roadmap[30] by NC3Rs, Innovate UK, et al. for advancing predictive biology via non-animal technologies, and others[31] (including contract research organisations and smaller start-up labs and units within universities) that foster replacement research and animal welfare improvements in laboratory settings to improve their capacity to contribute to the sector. Unless the country invests on a greater scale, we fear that nothing will change.'*[32]

The Royal Society for the Prevention of Cruelty to Animals (RSPCA) echoes these concerns in written evidence to the inquiry, expressing that it is *'...deeply concerned that there is not enough investment into non-animal alternative technologies for pre-clinical research.'*[33] The RSPCA points to possible reasons being the difficulty in developing and validating new model systems for non-animal alternatives, a lack of investment and intransigence within the research community to move away from the use of animals in research.[34] It also identifies the importance of initiatives (such as *'The National Centre for the Three Rs CrackIT*[35] *and the Innovate UK non-animal technologies programme.'*) that can help change this mindset and facilitate the development of non-animal technologies. It urges the government to provide additional funding to ensure that the UK does not fall behind the rest of Europe if, after leaving the EU, it no longer has access to EU funds supporting the development of non-animal alternative models.[36]

"...the development of new medicines and UK competitiveness in the sector should not mean an increase in the use of animals in research but rather greater preferential funding for non-animal methods."

The National Anti-Vivisection Society (NAVS) similarly calls for investment in non-animal technologies and points to other international initiatives in the US and China and perhaps, most hopefully, the Netherlands which has announced a timetable to phase out animal procedures and

[28] UK Centre for Animal Law – Written evidence (LSI0061)
[29] ibid, paragraph 26.
[30] A non-animal technologies roadmap for the UK: Advancing predictive biology (2015), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/474558/Roadmap_NonAnimalTech_final_09Nov2015.pdf
[31] Langley GR, Adcock IM, Busquet F, et al (2017) Towards a 21st century roadmap for biomedical research and drug discovery: consensus report and recommendations. Drug Discov Today. 22(2): 327-39.
[32] ibid, paragraph 34.
[33] Royal Society for the Prevention of Cruelty to Animals (RSPCA) – Written evidence (LSI0014)
[34] ibid, 'Science and innovation' paragraph 1.
[35] https://crackit.org.uk
[36] ibid, 'Responsibility and accountability' paragraph 16.

encourage innovation in the development of alternatives with a view to phasing out animal testing by 2025.[37]

Brexit presents an opportunity for the UK to re-focus funding and encourage the development of non-animal technologies. However, it also presents a risk that a failure to do so will see the UK lag behind other European countries that remain recipients of EU funding and investment that encourages the life sciences sector to embrace change and develop alternative technologies to replace animal models. Written evidence from groups representing animal interests reflects a perception of recalcitrance within the scientific community to embrace the potential of non-animal technologies, despite the emerging evidence of its scientific benefit. The Brexit report highlights the need to support initiatives that can incrementally introduce change.

Animal interest groups approach this area with an air of pessimism. Written evidence from the RSPCA expresses disappointment that the *Strategy for Life Sciences (2011)*[38] does not include any plans or strategies to achieve its stated aim to reduce the use of animals in scientific research.[39] In their written evidence to the inquiry, Cruelty Free International, Naturewatch Foundation, Humane Society International UK and Animal Aid also express disappointment that the Strategy *'does not include any recommendations for reducing and replacing the use of animals in scientific research…'* [40]

> "A sobering fact is that the UK is still the largest single user of animals in experimentation in the EU. More than 3 million animals die in UK laboratories each year… The UK is a chief culprit in failing to reduce the number of animals used."

People for the Ethical Treatment of Animals Foundation (PeTA) recommends in its written submission (para 7) that,

> *'The new Life Sciences and Industrial strategy must outline how the UK will increase investment in non-animal methods, and communicate the economic benefits that such investment will inevitably bring.'*

Conclusion

When the referendum result was announced on 24th June 2016, it was a shock for those inclined to see European cooperation as the surest way for the UK to advance the cause of animals. The UK instigated the Eurogroup for Animal Welfare that has been instrumental in keeping Animal Welfare on the agenda and campaigns for the continuing advance in developing EU legislation. Countries that, historically, had limited legislation to protect animals now acquiesce to regulation of animals used in science, farm animals and many other areas. It appeared at first sight that the loss of our position of influence by leaving the EU might lead to a slowing down of progress.

However, the EU has not always been able to maintain momentum because of its essential DNA. It is, primarily, a trading block where legislation to regulate animal experimentation was designed to secure a level playing field in science, rather than for the benefit of the animals concerned.

It could be suggested that the EU actually held back control to a certain extent as a trading block of many nations, with different welfare values, has to compromise when it comes to legislative control. The science of

[37] National Anti-Vivisection Society - Written evidence (LSI0044), paragraph 9

[38] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32457/11-1429-strategy-for-uk-life-sciences.pdf

[39] Royal Society for the Prevention of Cruelty to Animals (RSPCA) – Written evidence (LSI0014), 'Industrial Strategy' paragraph 5

[40] ibid, paragraph 33.

welfare has moved on apace, whereas legislative control has lagged behind. In 2007, the European Parliament issued a call for the EU to work towards phasing out the use of 10,000 primates in experimentation.[41] This was based upon science indicating suffering in transportation, housing, loss of the ability to express social behaviour and the presence of alternative methods. At the time of writing (November 2017), that the figure had fallen to around 9000 primates that indicates that only slow progress is being made for even animals at the upper end of sentience.

A sobering fact is that the UK is still the largest single user of animals in experimentation in the EU.[42] More than 3 million animals die in UK laboratories each year, a fact that is at the forefront of thinking of those involved in creating a Brexit report for research animals. The UK is a chief culprit in failing to reduce the number of animals used.

On the other hand, it should also be borne in mind that the UK secured its reputation as the initiator of animal welfare reform well before it joined the EU. Legislative control of animals used in experimentation, animals slaughtered for food and farm animals in general all began well before the UK joined in 1974. It initiated some of the very earliest protection of animals,[43] set an international standard for farm animals,[44] and passed the earliest laws to regulate the use of animals in experimentation.

The potential provided by Brexit is for the UK to be no longer confined by the compromise of agreements between many nations. It could set higher standards than those imposed in international law, and champion the betterment of welfare standards for animals kept, reared or caught for experimentation purposes. It could set an international benchmark for the treatment of such animals just as it did previously in 1876 and 1986. The UK could reset thinking in the area to encompass a constant monitoring of ethical standards and maintain the debate over the link between science, morality and law. There are immediate areas of concern in need of attention such as defining moderate or severe suffering, removing certain species from experiments altogether, preventing wild capture and freedom of information. More needs to enhance and improve the three R's that might make the UK a worldwide centre in developing alternative methods. There is a pressing need to set in motion a mechanism for constant review, renewal and modification of regulation according to our expertise and evidence of animal suffering. This is what a nation genuinely committed to a moral view of the status of animals would do. This is a vision that would allow the UK to reclaim its place as the torchbearer of reform of regulation of animal use in experimentation.

[41] European Union, *Parliamentary Written Declaration 40/2007*

[42] Cruelty Free International Investigation, 2014. Accessed at https://www.crueltyfreeinternational.org/why-we-do-it/facts-and-figures-animal-testing

[43] An Act to Prevent the Cruel and Improper Treatment of Cattle. [22 July 1822]. See S. Brooman and D Legge, *Law Relating to Animals* (London: Cavendish Publishing, 1997) pp. 40-43

[44] 'Report of the Technical Committee to enquire into the welfare of animals kept under intensive livestock husbandry systems.' Chairman: Professor F. W. Rogers Brambell. Cmnd. 2836, December 3 1965. Her Majesty's Stationery Office, London; See also 'Farm Animal Welfare: Past Present and Future' (2009) Farm Animal Welfare Council http://www.fao.org/fileadmin/user_upload/animalwelfare/ppf-report091012.pdf accessed 2nd November 2017.

"Boycotting dogs bred in puppy farms will increase these dogs' suffering further and therefore cannot be justified." Discuss

Chris Sangster, A-law Student Essay Competition Winner 2017

Whilst only around seventy pet shops in the UK sell puppies, around 16% of the current population of 9 million dogs were sold through these outlets, as well as through the internet and newspaper advertisements.[1] *More likely than not, these dogs will have been bred in so-called 'puppy farms'. The Kennel Club defines a puppy farmer as "a high volume breeder who breeds puppies with little or no regard for the health and welfare of the puppies or their parents."*[2]

Although the suffering of animals raised for food is commonly discussed, it is less common for there to be a focus on the origins of companion animals, meaning the terrible conditions of commercial breeding establishments are often overlooked. Discussion of 'puppy farms' inevitably highlights the status of companion animals as property, in particular "the risks inherent in the commercialisation of animals,"[3] which are inextricably linked to the "ethical tension between wealth maximization and animal welfare."[4] Breeders often do not feel any moral responsibility towards these puppies, viewing them as they do as commodities.[5] As the main purpose is the maximisation of profits, puppies are raised with no concern for their welfare in order to keep prices competitive. [6] Puppies are separated from their mothers before the recommended eight weeks, whilst guidelines regarding the maximum frequency of litters are disregarded. Puppy farms do not provide adequate socialisation of puppies and fail to adhere to basic health procedures, leading to physical and psychological health problems, such as normally preventable common infectious diseases, or behavioural issues.[7] Dogs bred in these conditions are

[1] Kennel Club 'Puppy Awareness Week' (PAW) survey 2014. According to the 2014 survey, 41% of purchasers did not see the puppy with its mother, whilst 53% did not see the breeding environment: <http://www.thekennelclub.org.uk/our-resources/kennel-club-campaigns/puppy-farming/>

[2] Puppy Farming: <http://www.thekennelclub.org.uk/our-resources/kennel-club-campaigns/puppy-farming/>

[3] Katherine Cooke [2011] "Defining the Puppy Farm Problem: An Examination of the Regulation of Dog Breeding, Rearing and Sale in Australia" Australian Animal Protection Law Journal 5 [10]

[4] Kailey A Burger [2013] "Solving the Problem of Puppy Mills: Why the Animal Welfare Movement's Bark Is Stronger than Its Bite" Washington University Journal of Law & Policy 43 [278]

[5] Kailey A Burger [2013] "Solving the Problem of Puppy Mills: Why the Animal Welfare Movement's Bark Is Stronger than Its Bite" Washington University Journal of Law & Policy 43 [265]

[6] Katherine C Tushaus [2009] "Don't Buy the Doggy in the Window: Ending the Cycle that Perpetuates Commercial Breeding with Regulation of the Retail Pet Industry" Drake Journal of Agricultural Law 14.3 [503]

[7] This also has an economic effect on owners, as they are left with expensive fees for treatment of these diseases. According to the 2014 Kennel Club PAW survey, parvovirus affected 20% of puppies bought from pet shops or over the internet, representing four times the average. This is an often fatal disease, and treatment can cost up to £4,000.

also likely to suffer painful congenital conditions and shorter life spans.[8]

The suffering of these dogs is by no means limited to their experiences at the puppy farms, as commercial breeders will be less likely to ensure that the lifestyle of the new owner is appropriate. This can be linked to an increased number of abandoned animals.[9] Unfortunately, those purchasing from commercial breeders are unlikely to be responsible pet owners.[10] In addition to the effects on the puppies, there are indirect consequences on communities who struggle to address overpopulation humanely, as well as the environmental impacts of more large-scale operations.[11]

It may seem a sensible solution to simply stop purchasing dogs that have been bred in puppy farms; the reality is that the situation is much more complex than this. It is necessary to consider the suffering of those animals currently living on puppy farms, and consequently to develop alternative approaches which can adequately meet the welfare needs of these animals.

"Enforcement is problematic where local authorities do not have the necessary resources and expertise, exacerbated by the lack of clarity in current guidance."

Under current legislation, local authorities licence and inspect establishments within their jurisdiction.[12] The current system is not fit for purpose for a number of reasons.[13] Enforcement is problematic where local authorities do not have the necessary resources and expertise, exacerbated by the lack of clarity in current guidance. Healthy dogs are put down simply because they cannot find a home, whilst licences continue to be issued for puppy farmers, allowing them to breed more dogs.

Whilst the Department for Food, Environment and Rural Affairs (Defra) found that there is a "strong public expectation" that local authorities are capable of enforcing current legislation, this legislation is often outdated and incompatible with changing business practices, such as internet sales. According to Defra, "the laws, and their specific requirements, are often decades old, and difficult to adapt to the changing types of animal-related businesses."[14]

The existing system is therefore "complex and burdensome for both business and local authorities,"[15] arbitrarily focussing inspections on the end of the year. Further, businesses with multiple functions are forced to have multiple separate licences, imposing complex and unnecessary burns of bureaucracy.[16]

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[8] The PAW survey found that 20% of dog owners spent more on vet's fees than they anticipated, increasing to 38% when the dog was purchased from a pet shop.

[9] Melissa Towsey [2010] "Something Stinks: The Need for Environmental Regulation of Puppy Mills" Villanova Environmental Law Journal 21.1 [163]

[10] Some have linked the puppy farming industry to other practices which treat dogs as commodities, such as dog-fighting: see Proshanti Banerjee, "The Harm Principle at Play: How the Animal Welfare Act Fails to Protect Animals Adequately" [2015] University of Maryland Law Journal of Race, Religion, Gender and Class 15.2 [368]

[11] Melissa Towsey [2010] "Something Stinks: The Need for Environmental Regulation of Puppy Mills" Villanova Environmental Law Journal 21.1 [177-180]

[12] The Breeding of Dogs Act 1973, as amended by the Breeding and Sale of Dogs (Welfare) Act 1999

[13] Imogen Proud, 'Licensing Consultation – DEFRA publishes summary of responses': <http://alaw.org.uk/2016/11/licensing-consultation-defra-publishes-summary-of-responses/>

[14] Department for Environment Food & Rural Affairs, 'The review of animal establishments licensing in England: A summary of responses' (September 2016) [1] <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/552955/animal-establishments-consult-sum-resp.pdf>

[15] Department for Environment Food & Rural Affairs, 'The review of animal establishments licensing in England: A summary of responses' (September 2016) [2] <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/552955/animal-establishments-consult-sum-resp.pdf>

[16] Department for Environment Food & Rural Affairs, 'The review of animal establishments licensing in England: A summary of responses' (September 2016) [1] <https://www.gov.uk/government/uploads/system/uploads/attachment_data/fi

A positive response to improvements suggested by Defra's consultation regarding the licencing of animal establishments[17] has led to a government commitment to crack down on puppy farms. However, some animal welfare groups argue that such reforms are insufficient.[18] Whilst new legislation will make it illegal for breeders to sell puppies under eight weeks old and require formal licences for anyone breeding and selling three or more litters per year, these rules represent less than the desired ban on third party sales.

Such regulations would not guarantee that these establishments would invest more resources in caring for their animals. There would be a significant burden on local authorities to invest more resources in enforcement of legislation. The purchaser would also have a responsibility to carry out appropriate due diligence, ensuring the animal they are purchasing is in good health and comes from a properly registered breeder.

Any reforms should consider the fact that it is highly unlikely dogs could ever be banished from our lives, as the "benefits to humans of caring for dogs are too well known and documented."[19] Beyond simply providing companionship, dogs serve to assist people with disabilities, in addition to serving in military, police and therapeutic contexts.[20] Regulation, therefore, could never abolish the breeding of

le/552955/animal-establishments-consult-sum-resp.pdf>

[17] There were 1,386 substantive responses to the consultation questions. 6% came from animal welfare organisations, whilst 49% were from members of the public with an interest in the subject. <http://alaw.org.uk/2016/11/licensing-consultation-defra-publishes-summary-of-responses/>

[18] Tom Bawden, New rules for puppy breeders 'a step in the right direction' but not enough, campaigners say: <https://inews.co.uk/essentials/news/health/new-rules-puppy-breeders-step-right-direction-not-enough-campaigners-say/>

[19] Katherine Cooke [2011] "Defining the Puppy Farm Problem: An Examination of the Regulation of Dog Breeding, Rearing and Sale in Australia" Australian Animal Protection Law Journal 5 [18]

[20] Kailey A Burger [2013] "Solving the Problem of Puppy Mills: Why the Animal Welfare Movement's Bark Is Stronger than Its Bite" Washington University Journal of Law & Policy 43 [259]

puppies; it must instead focus on safeguarding their welfare more efficiently.

Mainstream support is necessary, as if all consumers were to demand humanely bred dogs, the breeders would be forced to comply in order to avoid losing business. [21] The purpose of the Campaign to Expose and End Puppy Farming is to end battery farming and the sale of puppies through third parties, utilising undercover investigations to bring these cruel practices to the attention of the public.[22] An education campaign instructing the public on good practice in obtaining a companion animal would be invaluable.

Puppy farms represent a vicious cycle, in that as long as people continue to purchase from them, they will continue to breed puppies for sale in terrible conditions. An essential step, therefore, towards their eradication is to boycott those establishments which employ these methods of breeding. Regulation cannot hope to effectively destroy this cycle as long as the demand is present. Failure in inspection and enforcement of licence conditions allow violations of animal welfare to go unpunished, meaning that far from being unjustified, boycotting puppy farms is a necessary step in ending suffering.

About the Author

At submission of the essay (April 2017) Chris was in the final year of the MLaw Exempting degree at Northumbria University, which is a Masters-level qualification that incorporates the Legal Practice Course. Chris's dissertation concerned the status of animals as property.

[21] Kailey A Burger [2013] "Solving the Problem of Puppy Mills: Why the Animal Welfare Movement's Bark Is Stronger than Its Bite" Washington University Journal of Law & Policy 43 [280]

[22] <http://www.puppylovecampaigns.org/>

Case Materials and News

Case: Chancepixies Animal Welfare v North Kesteven District Council [2017] EWHC 1927 (Admin) 26 July 2017

Chancepixies Animal Welfare is a charity interested in responsible dog breeding and ownership.

On 18 October 2016 North Kesteven District Council granted a dog breeding licence to a company called "Little Rascals Pets Limited" ("the Company") under section 1 of the Breeding of Dogs Act 1973 (the 1973 Act). The company operates a commercial breeding establishment in Lincoln. Chancepixies challenged the decision to grant the licence. The Council accepted procedural defects with the first grant, but did not accept the challenge on its merits, and proceeded to grant another licence to the premises. Chancepixies maintained that the deficient welfare standards of the premises precluded a lawful grant of licence.

The Council instructed two veterinary surgeons to conduct the mandatory inspection of the premises. The first vet reached conclusions that the exercise being provided to the dogs was inadequate. The Council instructed a second vet to inspect, and the Council produced a nineteen-page report, based on that inspection. Based on that report, the conclusion of the Council as a licensing decision-maker was that the premises satisfied the requisite statutory standards, and that a licence could be granted with conditions. Chancepixies maintained that in order to grant a licence, the Council had to consider the compliance of the applicant with all the welfare requirements of the Animal Welfare Act 2006, (the 2006 Act), and the Code of Practice for the Welfare of Dogs, (the Code), which comprise a lengthy list. Chancepixies argued that in order to be satisfied on each requirement for welfare, the decision maker had to be acquainted with enough information to be able to make a judgment on each point. They said that there was no evidence from the second inspection, or in the report produced that many of the points had been positively considered at all, and it was not enough for the Council simply to say that the vet had not raised a specific concern. Without specific investigation into the points, the decision to grant the licence, they asserted, was unlawful.

The 1973 Act contains range of welfare considerations, including size of quarters, supply of adequate food and water and bedding; control of disease and so forth. The 2006 Act requires consideration of an animal's needs including the same issues as the 1973 Act.

The Code of Practice for the Welfare of Dogs was issued under section 14 of the 2006 Act, and applies to all dogs in England. It is directed at dog owners as opposed to local authorities, and its purpose is to provide practical guidance to assist dog owners to comply with the 2006 Act. A person's failure to comply with a provision of the Code does not of itself give rise to liability to proceedings of any kind. Chancepixies relied in particular on parts of the Code, which identify the need for dogs to be able to exhibit normal behaviour patterns, and to be provided with adequate stimulation and exercise.

Chancepixies argued that the Council's decision notice made it clear on its face that the only reasons for granting the licence were those set out in the report, but that the Council was also required, by section 1(4) of the 1973 Act, to consider the interested party's compliance with the requirements of the 2006 Act and the Code. The argument was that this required the Council to take reasonable positive steps to obtain the relevant information. This, it was said, had not been done. The

Council's report showed no evidence that the list of considerations had been taken into account and in particular, it had failed to address the particular allegation of inadequate exercise highlighted by the first inspecting vet.

The Council argued to the contrary that section 1(4) simply empowered them to consider the provisions of the 2006 Act and the Code, but did not oblige them to do so. The primary focus of the Council's report was whether the premises complied with the 1973 Act. Consideration was given to the requirements of the 2006 Act and the Code, but that Councils were under no obligation to address each listed requirement in the Code individually, or to conduct a "tick-box exercise" in respect of every requirement. The Council argued that it was entitled to rely on the contents of the lengthy inspection report and the note from the second vet, and to conclude that the requirements of the 1973 Act were met.

The Judge found that section 1(4) of the 1973 Act is central to an analysis of the duty of local authorities in determining whether to grant a licence to breed dogs. An authority is required to have regard, in particular, to the need to secure the nine listed criteria in that section. Those being particular objectives that must be considered, it is likely they will also be the primary focus of the inspection and the resulting report for which section 1(2B) provides, and that is what happened in the current case. The report covered all nine elements in some detail. No criticism was made of the inspection or the report in that regard, and there was no suggestion that the decision maker failed to have regard to a particular factor to which attention is directed by section 1(4). The Judge agreed that the Council was entitled to look further and the expression in the section: "(but without prejudice to their discretion to withhold the licence on other grounds)" makes it clear that satisfaction of the nine requirements does not guarantee the grant of a licence. Implicit in that provision is the Council's discretion to withhold a licence on other grounds. The Council argued that this provision entitled it to have regard to other matters in deciding to refuse a licence, and that would include the 2006 Act requirements and those of the Code. Chancepixies argued that the Council was not only entitled to do so, but was obliged to do so. Chancepixies relied upon the principle of public law set out by Lord Diplock in Secretary of State for Education and Science v Tameside Metropolitan Borough Council [1977] AC 1014 at 1064-65:

> "My Lords, in public law "unreasonable" as descriptive of the way in which a public authority has purported to exercise a discretion vested in it by statute has become a term of legal art. To fall within this expression it must be conduct which no sensible authority acting with due appreciation of its responsibilities would have decided to adopt.
>
> "The very concept of administrative discretion involves a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred…
>
> "… put more compendiously, the question for the court is, did the Secretary of State ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly?"

The Judge considered in the context of that test that the Court's role is limited to considering first, whether the Council directed itself properly on the law and second, whether it had taken into consideration those matters which on a proper construction of the Act it ought to have taken into account, (and excluded those which it ought not).

In his judgment, what the Council was obliged to take "particularly" into account were the nine factors

itemised in section 1(4) of the 1973 Act. It was entitled, in addition, to have regard to the 2006 Act and the Code, and it was plain from the face of the report that the Council did have such regard. The question was therefore whether, as a matter of law, the Council was obliged to consider, in respect of each animal or each breed of dog, each element of each section of the Code in determining an application under the 1973 Act.

The Judge found that the short answer to that question was that there was no such obligation. The 1973 Act defines what the Council is obliged to consider, and the existence of a discretion to withhold a licence on other grounds cannot be converted into a duty to consider detailed provisions of other statutory Codes introduced for other purposes into the performance of a statutory function under the 1973 Act.

Chancepixies argued that the Code was so "obviously material" to the question of whether a licence should be granted that it would be an error of law for the Council to fail to consider it in detail. The Judge noted, however, that the Code is directed at owners of dogs, rather than Councils, and failure to comply with it is not a criminal offence. It was not designed to be a list of pre-requisites for the grant of a licence under the 1973 Act and that is apparent on its face.

The Judge found that evidence gained on an inspection under section 1 of the 1973 Act that suggested that dogs at the premises were not having their welfare needs met would be matters that the Council would be bound to consider as matters obviously material to the propriety of granting a licence. However, the Judge also found that the detailed recommendations of the Code, set out at bullet points under each section heading, are not "obviously material" to the decision whether or not to grant a licence.

The Judge found, therefore that it was necessary to test the report by asking whether its author was alive to the general requirements of the Code and looked for evidence that the Code's broad requirements were being met. Isolated failure to consider individual bullet points amongst the fifty in the Code would not necessarily invalidate the grant of the licence.

In the judgment of the Judge, the Council as decision-maker comfortably passed that test on this occasion on the facts before him. Chancepixies specifically conceded that in addressing, in detail, the requirements of the 1973 Act, the report was thereby adequately considering sections 1 and 2 of the Code. Chancepixie's complaint related to sections 3, 4, 5 of the Code and in particular the questions relating to boredom and activity; exercise and play; socialisation; space, safety and protection. The Judge accepted that those elements of the Code were not expressly addressed in the report. However, he also found that it was apparent that, with two exceptions, the reporting officer and the veterinary surgeon did evidently have them in mind, and that evidence about those issues generally was recorded in the report. The two deficiencies, where there was no mention and no evidence, were not of sufficient significance to conclude that the licence had been improperly granted, not least, the Judge found, because if there had been serious problems on site in those two respects, it was inconceivable that the inspecting vet would not have made reference to it, and he did not accept Chancepixies' contention that silence on the subject was insufficient.

In a public law context, this judgment is perhaps not surprising. The Courts are reluctant to place public decision-makers such as Councils under obligations in the exercise of their discretion that appear onerous, rigid or bureaucratic. When a statute specifies matters in particular which are to be taken into account in a decision-making exercise, it is not surprising that the Court refused to extend that list more widely as a matter of mandatory obligation. This judgment in no way undermines, however, a Council's discretion to consider a wider range of matters in reaching conclusions about granting licences.

This case, whilst turning on its own facts, demonstrates the significant hurdles which face those attempting to overturn Local Authority decisions through the Courts on the basis of unlawfulness or irrationality except in the clearest of circumstances.

Case: R v (1) Robert Woodward (2) William Woodward (3) Kabeer Hussein (4) Kazam Hussein (5) Artur Lewandowski [2017] Ewhc 1008 (Admin)

Background

Artur Lewandowski, Kabeer Hussain and Kazam Hussein were slaughtermen at the former Bowood abattoir ("Bowood"), near Thirsk, in North Yorkshire. In March 2016 they were charged with the following offences:

- two counts of causing suffering to four sheep by lifting them by their fleeces during the slaughter process (Lewandowski);
- causing unnecessary suffering to 24 sheep by failing to give them sufficient time to lose consciousness after they had been killed (Hussain); and,
- causing suffering to 29 sheep, including not giving sheep enough time to lose consciousness, striking them during slaughter, and not cutting their throats with a single cut (Hussein).

The abattoir owners Robert Woodward and his son, William were also charged with two counts of failing to act to prevent the acts by several employees that caused animals to suffer.

The charges arose after Animal Aid had covertly obtained footage of slaughtering practices at Bowood and passed it on to the Food Standards Agency (the "FSA"). In September 2015 the matter was referred by the FSA to the CPS and subsequently allocated to Mr Reid, a CPS lawyer. Between December 2015 and February 2016, Mr Reid conducted several reviews of the case. On 3 March 2016, he decided that the respondents should prosecuted for offences contrary to Sections 4(1) (causing an animal unnecessary suffering) and 4(2) (permitting such unnecessary suffering to be caused to an animal) of the Animal Welfare Act 2006 (the "Act").

Under the Act the time limit for trying the offences referred to above was six months from the date upon which the prosecutor considered that it was in the public interest to prosecute an individual.

On 3 March 2016 Mr Reid prepared a certificate under s.31 of the Act, stating that there was sufficient evidence to warrant proceedings against the respondents. The prosecution then commenced on 8 March 2016.

Upon commencement of the criminal proceedings on 11 June 2016, solicitors for Mr Woodward and his son contended that the certificate prepared by Mr Reid was bad because:

- it did not provide the date on which sufficient evidence to base a prosecution came to the knowledge of the prosecutor; and
- there was sufficient information in the prosecutor's hands to justify prosecution by 15 July 2015, such that the time for the requisition expired on 15 January 2016. Accordingly, the six-month time limit under s.31(1) had expired and the proceedings were out of time.

The CPS accepted that the certificate was defective and invalid as it did not provide the date on which evidence sufficient to justify a prosecution had come to Mr Reid's knowledge as required under s.31. Mr Reid prepared new certificates in July 2016, stating that the date of his knowledge was 3 March 2016.

The judge held that the CPS could not rely on the July certificates. He further held that the FSA were in possession of all the papers

that the CPS later relied upon by 25 August 2015 and so sufficient evidence had come to the prosecutor's knowledge on that date. Accordingly, the six-month time limit under s.31(1) had expired and the proceedings were out of time.

Appeal in this case

The Crown appealed against the district judge's decision to dismiss the prosecution on the grounds that a certificate under s.31(2) of the Act: was not essential; and, did not have to be issued before proceedings were commenced; where a certificate was defective a prosecutor could issue a new certificate.

Decision

The appeal was allowed on the grounds that:

- Those working for the FSA were investigators; the prosecutor was the CPS (the judge had erred in concluding that the FSA investigators were "part of the prosecutor" for the purposes of s.31. The FSA had an investigatory role; it was Mr Reid who was responsible for deciding whether a prosecution should go forward (meaning the judge's exclusive focus on the date 25 August 2015, when the FSA were in possession of the papers, was in error as they were not the prosecutors for the purposes of calculating the six-month time limit);

- A certificate was not essential and did not have to be issued before proceedings were commenced;

- Where a certificate was defective a prosecutor could issue a new certificate (the judge had erred in concluding that, the March certificate being invalid, the July certificates could not cure the defects. He should have considered the July 2016 certificates on their face, and asked whether there was anything patently wrong with them or whether they were fraudulent (they were not)); and,

- Where there was no certificate to be relied upon, the court still had to

determine whether the prosecution had been brought within the time frame by considering all the available evidence (the evidence showed that it was not until 3 March 2016 that Mr Reid had considered and decided that the respondents ought to be prosecuted. Had the judge approached the question posed by s.31 correctly, he would have concluded that the date on which evidence sufficient to justify proceedings came to Mr Reid's knowledge was 3 March 2016 and thus the prosecution, commenced a few days later, had been brought in time).

Case: (1) Stephen Riley (2) Geoff Riley (3) Michael Riley (4) Kevin Riley v Crown Prosecution Service [2016] EWHC 2531 (Admin)

Background

The appellant partners (SR, GR, MR and KR) were appealing against a judgment determining preliminary issues relating to criminal proceedings brought against them under the Animal Welfare Act 2006 (the "Act").

The matter concerned a cow in a slaughterhouse operated by B Riley & Sons, of which all the appellants were partners. While being relocated from a holding pen to a separate room where it would be stunned and then killed, the cow fell in a confined space known as the "race". SR was the manager on site and directed staff to attempt to raise the cow, using a combination of pulling and the use of ropes. An Official Veterinarian ("OV") on site directed that the cow should be killed and bled in the race. The OV provided a witness statement to the investigating officer of the Food Standards Agency ("FSA").

On 19 March 2015, a certificate was signed by a Crown Prosecution Service ("CPS") officer pursuant to s.31 (2)(a) of the Act stating that, as at 27 January 2015, there was sufficient evidence to warrant the commencement of proceedings. In April and May 2015, proceedings were brought against the partners on the basis that the attempts to raise and move the cow caused unnecessary suffering. SR disputed those allegations on a factual basis. GR, MR and KR were prosecuted as partners of the partnership, on the basis that they failed to prevent this incident. They were not present on the day.

At the preliminary issue hearing the judge rejected arguments that the proceedings were time barred and held that it was possible for a prosecution to be brought against individual partners in respect of actions undertaken on behalf of the partnership.

Appeal in this case

The appellants submitted that the FSA, not the CPS, was the prosecutor within s.31 of the 2006 Act, and that the prosecution was therefore time barred on the basis that the information had been laid outside the six-month period beginning from the date on which there was deemed to be sufficient evidence to justify the proceedings.

Decision

The judge in the case:

- dismissed SR's appeal; stating that there was no impediment to the trial proceeding against him; and,

- allowed the appeals of GR, MR and KR, thus terminating the proceedings against them.

Those decisions were reached on the following grounds:

- The prosecution had been commenced in time and that the time bar ground of appeal therefore had to fail. The "prosecutor" was the CPS, not the OV or the FSA investigators. The FSA, a creation of statute, had no prosecution powers in relation to animal welfare offences and thus under the Act. There was a clear separation of roles between the non-legally qualified staff at the FSA (the OVs as "enforcement staff" and the FSA investigators) on the one

hand and the legally qualified staff of the CPS on the other.

- The nature of the CPS's case against the appellants was that there was no suggestion that the matter complained of represented a system failure on the part of the partnership or the partners themselves. There was no suggestion that any of the partners had actually been present on the day of the alleged offence. Nor was there any suggestion that the offence committed by SR under s.4(1) of the Act had been jointly committed by GR, MR or KR. Essentially the CPS case was that GR, MR and KR were criminally liable, without more, for the alleged acts of SR, a co-partner. Against that background, given that the offence in s.4(2) of the Act was not one of strict liability and required *mens rea* (as the offence involved failing to take "such steps as were reasonable in all the circumstances" to prevent suffering, knowledge of the circumstances was an essential ingredient of the charge), it followed that the CPS case on the second issue was unsustainable and the appeal on that ground had to be allowed.

Case: The Association of Independent Meat Suppliers, R (On the Application Of) v Secretary of State for Environment Food and Rural Affairs, Court of Appeal - Administrative Court, July 27, 2017, [2017] EWHC 1961 (Admin)

This case concerned the use of the "V-restrainer", a device for restraining sheep during the slaughter process, in particular during non-stun halal slaughter. Judicial review proceedings were brought by the Association of Independent Meat Suppliers ("AIMS"), a body that represents a large number of English and Welsh abattoirs and wholesale meat traders.

The key issue was whether sheep killed during traditional halal slaughter need to be individually loaded into the V-restrainer, as per DEFRA's position, or whether they can be loaded in multiples, as preferred by entities represented by AIMS. There was much debate over which method was better for animal welfare. DEFRA argued individual loading was better for animal welfare, AIMS argued that multiple loading was better for animal welfare. The potential economic benefits of increased speed and production associated with multiple loading were not touched upon.

The court refused to substitute its own evaluative judgment on the different considerations for that of DEFRA, instead focusing on whether DEFRA had acted lawfully in enacting and interpreting the relevant provisions. The court found that DEFRA had acted lawfully in balancing the relevant considerations. The fact that AIMS disagreed with DEFRA's decision did not make it unlawful. The application was dismissed.

Legal background

Council Regulation (EC) 1099/2009 of 24 September 2009 on the protection of animals at the time of killing (the "EU Regulation") sets down common minimum standards across the EU on handling and slaughter. This Regulation recognises that animal welfare is a community value and that the protection of animals at the time of slaughter is a matter of public concern. It provides that as slaughter may induce pain, distress, fear or other forms of suffering in the animals, necessary measures should be taken to avoid pain and minimise distress and suffering. These measures include, among other things, controls around restraining animals and requiring a stun to induce lack of consciousness and sensibility before, or at the same time, as slaughter.

Accordingly, Article 4(1) of the EU Regulation requires that animals are only killed after being stunned

in accordance with specific parameters. However, Article 4(4) provides an exemption from these stunning requirements in respect of animals slaughtered by methods prescribed by religious rites.

By Article 9(3) of the EU Regulation animals are not to be placed into restraining equipment until the slaughter man is ready to stun or bleed them "as quickly as possible". By Article 15(2) of the EU Regulation, tighter controls are in place for restraint during religious slaughter, namely the requirement that such animals are individually restrained.

In England, the EU Regulation is implemented into national law via the Welfare of Animals at the Time of Killing (England) Regulations 2015 ("WATOK 2015"). These regulations impose more extensive protection for animals killed by religious slaughter without a stun (as permitted by EU Regulation).

In particular, Sch 3, Para 6(1)(a) of WATOK 2015 provides that an animal which is not stunned prior to slaughter must not be placed into restraining equipment until the slaughter man is ready to make the incision "immediately after" they are placed in the equipment. Further, Sch 3, Para 6(2)(a) of WATOK 2015 imposes what is known as the "20 second rule", namely that an animal which is not stunned prior to slaughter must not be moved in any way until he/she is unconscious and in any event not until at least 20 seconds post cut.

What were the facts?

The V-restrainer consists of two inclined conveyor belts which sit in a V-shape (i.e. further apart at the top end than at the bottom end, except the belts do not actually touch at the bottom end). The sheep will be directed to the narrower bottom end where his/her feet can touch the floor. Once inside the restrainer the sheep is held on either side of the body by the belts and as the conveyor belt moves, so the sheep moves too. As the conveyor belts sit at an incline, as the sheep moves along the belts his/her feet, which hang through the gap between the two belts, will lift off the floor. Depending on the particular equipment, it is physically possible to load up to eight sheep into the V-restrainer at any one time, the sheep at the top end being dealt with whilst the others wait behind him/her (the C-restrainer is not only used for slaughter but in other situations where sheep need to be restrained, for example drenching, administering medicine etc).

AIMS members wanted to be able to load multiple sheep in the V-restrainer during traditional halal slaughter, namely where the sheep receives no stun prior to having his/her throat cut. AIMS stated purpose was better animal welfare. The potential economic benefits of increased speed and production associated with multiple loading were not raised. Correspondence ensued between DEFRA and AIMS.

DEFRA's position (stated prior to WATOK 2015 coming into force) was that for stunned slaughter (including stunned religious slaughter), multiple sheep could be loaded into the V-restrainer, albeit the total number of sheep was limited by the Article 9(3) (of the EU Regulation) requirement that the slaughter man be ready to stun "as quickly as possible" after the sheep is placed in the restrainer.

With regards non-stun slaughter (including traditional halal slaughter) DEFRA's position was that the requirement for individual restraint in Article 15(2) of the EU Regulation, augmented by the Article 9(3) "as quickly as possible" requirement, meant that only one sheep could be loaded into the V-Restrainer at any one time. Further, this position was augmented domestically by the application of the stricter "20 second rule" (there was an equivalent provision within WATOK 2015's predecessor regulation). If a second sheep were inside the V-restrainer behind the first sheep being bled, that second sheep would be restrained for at least 20 seconds or potentially longer (the 20 second rule being a minimum period). The period of restraint would increase with each additional sheep loaded inside the V-restrainer.

AIMS sought judicial review of DEFRA's interpretation of the

relevant provisions and challenged the new requirement of Sch 3, Para 6(1)(a) WATOK 2015.

The arguments

AIMS argued that while Art 26 of the EU Regulation permitted more extensive protection of animal welfare at the national level, the new Sch 3, Para 6(1)(a) WATOK 2015 (requiring the cut to be made immediate after restraint and therefore, according to DEFRA, requiring individual loading) did not achieve this aim of more extensive protection, but rather had a negative impact on animal welfare.

It argued that as sheep are flocking animals who suffer stress when manually handled and have an aversion to people, individual loading of sheep into the V-restrainer would cause isolation and handling stress. This would be more stressful for the sheep than multiple loading, i.e. permitting the sheep (with minimal or no manual handling) to follow one another in the V-restrainer and wait in the equipment pending slaughter with sheep in front and/or behind them. AIMs relied on a report from 2014, referred to as the Bates Report, which concluded that "*restraining lambs individually within a V-shaped restrainer, in accordance with welfare legislation for non-stun slaughter or lambs under religious methods, is more stressful for sheep than restraining them subsequently as a group, whilst still in compliance with the required 20-s standstill period post neck cut*." AIMS concluded that as Sch 3 Para 6 of WATOK 2015 would require individual loading, this provision would result in avoidable pain, suffering and distress to sheep who were slaughtered by non-stunned religious methods and it was ultra vires and therefore unlawful.

On the other hand DEFRA put forward contrasting evidence including: a 2003 Farm Animal Welfare Council ("FAWC") report which demonstrated that the FAWC were concerned about animals being left for period of time in restrainers; a 2004 European Food Safety Authority Scientific Panel Report which noted that pre-slaughter handling and restraint may cause serious welfare problems; and a 2010 report called the Dialrel Report which recommended that the slaughter man must be ready to perform the cut before the animal is restrainer and that the neck cut must be performed without delay.

The court's decision

Mr Justice Fraser made clear that it was not the role of the court in judicial review proceedings to substitute its own evaluative judgment on the different considerations or to make any factual findings as to the maximum restraining times for sheep in terms of their welfare. DEFRA's Animal Welfare and Science Oversight Management Team were the governmental body responsible for considering such matters, and the question for the court was therefore whether DEFRA had taken account of the relevant evidence that was before it and balanced the relevant factors.

The evidence established that DEFRA had considered the matter with some care. The Bates Report had been brought to DEFRA's attention, it was expressly considered by DEFRA and scientific comment on it was specifically obtained. DEFRA was not bound to adopt any particular conclusion of the Bates Report or slavishly follow it. Rather, DEFRA took into account other relevant evidence and balanced the different advantages and disadvantages to each approach, in particular weighing up isolation stress vs restraint stress.

While multiple loading allowed sheep within the V-restrainer to be in close proximity to other sheep (i.e. the sheep in front and/or behind) and reduced or eliminated manual handling, multiple loading increased restraint time (particularly given the 20 second rule) in circumstances where the EU Regulation states that this is likely to cause stress. Further, if sheep are individually loaded then the other sheep (i.e. the ones not yet loaded) are held collectively in the loading pen with other sheep, in a more conventional herd environment.

The fact that AIMS disagreed with DEFRA's decision did not make it unlawful.

Mr Justice Fraser held that Sch 3, Para 6(1)(a) of the WATOK 2015 was clearly aimed at ensuring better animal welfare by reducing the restraint time to the very minimum physically possible. It therefore was lawfully permitted by Article 26 of the EU Regulation. On the interpretation point, multiple loading of the V-restrainer was not compatible with Article 15(2) of the EU Regulation requiring individual mechanical restraint – having four sheep in the restrainer at any one time could not, in the court's view, be said to be restraining them individually in the same mechanical restraint.

The argument put forward by AIMS that there was no rational distinction for permitting multiple loading during stunned slaughter but preventing it for non-stunned slaughter was quickly dismissed. Firstly, for stunned slaughter the sheep are not consciously waiting behind a sheep that is being slaughtered, but one that is being stunned. Secondly, the 20 second rule does not apply for stunned slaughter (therefore restraint times are potentially longer for non-stunned slaughter).

AIMS' case was dismissed.

Opinion: A Veterinarian's View[1] - Minister of Agriculture's Announcement on Mandatory CCTV of slaughter at abattoirs

Dr. John Cranley MVB, MSc, MA, MRCVS, Dipl. ECAWBM EBVS OV

EC Council Regulation 1099/2009[2]

England has been operating EC Council Regulation 1099 /2009 since the 5th November 2015. The problems of its implementation have been highlighted in undercover videos.

There are specific legal constraints raised in the granting of Certificates of Competence (COC) after a perfunctory training. The probationary period limited to 3 months for a Temporary Certificate of Competence (TCoC), is frequently insufficient to acquire the techniques necessary to kill the animals skilfully, thereby reducing suffering. There are also deficiencies in training, examining and assessing the welfare motivation of applicants and some holders.

The intensely technical aspects of stunning, particularly with the duration of electrical stunning, raises welfare concerns as the animals may undergo a resurgence of conscious or sensibility before death and in the final stages of gas stunning using CO2, where animals struggle for air, and experience aversion to CO2.

The failure to question the efficacy of some agents for maintaining insensibility as the animal bleeds to death is a major issue. The risk of consciousness is not fully addressed, probably due to the principle that stunning in preparation for death by exsanguination, is significantly better welfare than using bleeding without stunning. Prolonged survival in bleeding without stunning, due to failure to sever one or both carotids, may be easy to miss as killing speeds increase.[3]

However, the Minister's (Mr Gove) decision to have mandatory CCTV for animal welfare protection operating in all English abattoirs, has the potential to improve welfare immeasurably.

It should allow all to see recovery of sheep after electric stunning whilst exsanguinating. The stages of death in CO2 killing in broiler abattoirs, should also become transparent, similarly with pigs immersed in CO2 atmosphere struggling for air. All failures to sever both carotids in non-stunned slaughter should be seen as prolonged survivors. Poor handling of all animals in the abattoir either at transport

[1] See John J.Cranley.(2015),Fear and anger: Protection of the welfare of non-stunned animals at slaughter afforded by Council Regulation (EC) No. 1099/2009 Journal of Animal Welfare Law, August 2015, pages 47-52

[2] Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing accessed at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R1099&from=EN
On 24.11.2017

[3] John Cranley, Death and prolonged survival in non-stunned poultry: A case study. Journal of Veterinary Behaviour Vol.18, March-April 2017 pp. 92-95.

unloading, moving to pens, moving to killing pens and restraint, use of electric goads, or sticks, throwing of lambs, or poultry would all become obvious.

Overcrowding of poultry drawers or sheep, cattle, pig and horse pens, would be exposed. Implications of increased throughput can be uncovered where, in response to financial pressure, lines are set to work at unsustainable rates to the detriment of animal welfare. The behaviour of broilers deprived of drinking water for up to 12 hours before death will also be difficult to deny in these vulnerable creatures.[4]

[4] John Cranley, Providing water for animals at slaughter. Veterinary Record, August 12th, 2017 Vol.181 No. 7 p. 180

The Implications of the Advertising Standards Authority's Decision to Reject Complaints about an Advertisement Declaring that Humane Milk is a Myth

Jonathan Price, Barrister, Doughty Street Chambers

The structure and statutory basis of advertising regulation in the UK

In the United Kingdom, advertising in non-broadcast media (including newspapers, posters, websites and social media) is entirely self-regulated through the Advertising Standards Authority (ASA), an industry funded regulator independent of Government, which oversees the UK non-broadcast media's compliance with the Advertising Codes. The Codes are maintained by the ASA's sister organisation, the Committee of Advertising Practice (CAP), members of which are drawn from the advertising industry.

The UK broadcast media is subject to general statutory regulation by the communications regulator Ofcom, and Ofcom in turn contracts with the ASA to regulate TV and radio advertising, so that whilst broadcast media is also regulated by the ASA, such regulation is not strictly self-regulation in the way that it is for non-broadcast media. Broadcast media is regulated according to its own code, written and maintained by the Broadcast Committee of Advertising Practice (BCAP) but subject to approval by Ofcom.

Aside from the statutory licencing regime for broadcast media, advertising in the UK is governed by general consumer protection legislation, including most importantly by the Consumer Protection from Unfair Trading Practices Regulations 2008 (implementing the Unfair Commercial Practices Directive[1]) the purpose of which includes the prevention of misleading or unfair trading practices. Breaches of these regulations may be prosecuted by local authority trading standards agencies, and the ASA may make referrals to trading standards in appropriate cases. Breaches of the BCAP code may, if the ASA is unable to enforce them itself, also be referred to Ofcom, which may bring prosecutions in appropriate cases. It is important to bear in mind that the applicability of the consumer protection legislation is confined to cases which engage the commercial interests of the

[1] Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market etc.

consumer; considerations of taste and decency are outside the scope of the statutory consumer regulations and, from an advertising point of view, are the preserve of the ASA.

The 'Humane milk is a myth' campaign

The campaign group, *Go Vegan World* was responsible for placing advertisements in the national press in February 2017 featuring a photograph of a cow behind barbed wire, with the headline: "Humane milk is a myth. Don't buy it." The advertisement contained the following further text in smaller type than the headline: "I went vegan the day I visited a dairy. The mothers, still bloody from birth, searched and called frantically for their babies. Their daughters, fresh from their mothers' wombs but separated from them, trembled and cried piteously, drinking milk from rubber teats on the wall instead of their mothers' nurturing bodies. All because humans take their milk. Their sons are slaughtered for their flesh and they themselves are slaughtered at 6 years. Their natural lifespan is 25 years. I could no longer participate in that. Can you?"

Complaints about the campaign

The ASA considered seven complaints – including from complainants with experience of working in the dairy industry – that the advertisement was not an accurate description of conditions for dairy cattle in the UK. The ASA considered the complaints and investigated the advertisement under CAP Code (Edition 12) rules 3.1 ("Misleading advertising") and 3.7 ("Substantiation").

The specific statements said to be misleading and unsubstantiated were the claims: "humane milk is a myth", in conjunction with, "the mothers, still bloody from birth" and, "their daughters, fresh from their mothers' wombs but separated from them". It appears to have been alleged that those statements conveyed the misleading meaning that calves were removed from their mothers instantly upon birth.

Go Vegan World's response

Go Vegan World submitted that, "still bloody from birth" was descriptive of new mammalian mothers, who in the case of cows were bloody from birth for more than two weeks post-delivery. Similarly, the phrase, "fresh from their mothers' wombs" described infant calves in the 'neonatal' period, which period was commonly defined as being from delivery until 28 days old. The term, "fresh" was apt to describe mothers or calves for up to two weeks post-birth. It followed that nothing in the advertisement should be taken to allege that calves were separated from their mothers prior to the minimum 12-24 hour period recommended by the Department for Environment, Food and Rural Affairs. The advertisement commented upon the fact of the separation of young calves from their mothers, which *Go Vegan World* considered inhumane. They offered to include a statement on future advertisements clarifying that calves were generally separated from their mothers 12-24 hours after birth.

The ASA's ruling

The ASA declined to uphold the complaints. It held that readers would understand the claims in the advertisement to mean that calves were generally separated from their mothers very soon after birth, which was the case. They would not understand the advertisement to be a comment on compliance with any specific welfare law or standards. Furthermore, given that it was clear from the advertisement that it was for a vegan pressure group, readers would understand that the language – although "emotional and hard hitting", in the ASA's words – was reflective of the campaign group's particular opinion about the practices it described. The ASA concluded that the advertisement was unlikely to materially mislead readers. The National Farmers' Union has said that it intends to appeal.

The significance of the ruling

As with all of the ASA's rulings, this one stands squarely upon the particular advertisement considered in the complaint. The claims made in this advertisement were found not to have implied any breach of any regulatory standard in the treatment of dairy cattle. The ASA has issued guidance[2] in the related area of animal testing and medical research, in which it has stated that, "Claims that state or imply that experiments are unregulated, or that animal welfare is ignored are unlikely to be acceptable." It was therefore important for *Go Vegan World* to demonstrate that the claims made in the advertisement (about the very young age at which calves are separated from their mothers) were not, whether directly or by implication, claims that members of the dairy industry were in breach of any relevant regulations.

"…inhumane" is an opinion a vegan group is entitled to express in relation to dairy farming, whereas an allegation that animal welfare is ignored in relation to animal testing is given as an example of a claim the ASA would find unacceptable."

What is interesting is that the ASA was prepared to accept in this case that *Go Vegan World's* comment upon the treatment as "inhumane" was not to be treated in the same way as an allegation that the treatment of animals in the context of animal testing, ignores animal welfare. It seems that there is some margin between the two concepts: "inhumane" is an opinion a vegan group is entitled to express in relation to dairy farming, whereas an allegation that animal welfare is ignored in relation to animal testing is given as an example of a claim the ASA would find unacceptable.

[2] https://www.asa.org.uk/advice-online/animal-testing-and-medical-research.html

Increased Maximum Sentences for Deliberate Animal Abuse: Part of the Armoury of the Criminal Justice System in Tackling Violent Crimes Towards People and Animals

Alice Collinson, Solicitor and Robert Sardo, Solicitor

This article examines the impact of increasing maximum sentences for crimes of violence towards animals under the Animal Welfare Act 2006; as well as exploring the arsenal of measures available to the criminal justice system to prevent and deter violent crimes towards animals and humans. It asks what other steps could be taken to increase the protection afforded to vulnerable members of society, including children, women and their pets where they are exposed to domestic violence. We argue that a multi-agency approach is essential to identify and address the risk of violence posed to vulnerable groups, which might otherwise fall under the radar. We also examine the arguments for and against introducing a register of animal abusers.

Sentencing

Sentencing for animal cruelty offences has long been considered by many to be far too low. England has long held a reputation for taking matters of animal abuse seriously, yet has lagged behind other jurisdictions. It is noted that sentences in England and Wales have been among the weakest in the whole of the international community.[1]

Recent proposals by Environment Secretary, Michael Gove, will increase maximum sentencing for deliberate acts of animal cruelty to five years in early 2018, bringing England in line with much of the international community.

Currently, the Animal Welfare Act ('the Act') makes it an offence to cause an animal unnecessary suffering, poison an animal, cause an animal to fight, or fail to ensure that an animal's needs are met.[2] Under the Act it is open for the court to make a disqualification order for such period as it deems fit in order to prevent further cruelty and this can include participation in the keeping of animals.[3]

Sentencing provisions are set out at s.32 of the Act (as amended by the 2015 statutory instrument 664)[4] and currently, the maximum

[1] See written evidence to the EFRA Committee from Association of Lawyers for Animal Welfare (now renamed to UK Centre for Animal Law) (AWF 195): table of comparative sentencing powers.

[2] Animal Welfare Act 2006, s4, 7, 8 & 9, (available at: http://www.legislation.gov.uk/ukpga/2006/45/contents)

[3] *Ibid. at s34*

[4] Available at: http://www.legislation.gov.uk/uksi/2015/664/pdfs/uksi_20150664_en.pdf

sentence for animal cruelty is six months imprisonment and an unlimited fine.

The Magistrates' Court Sentencing Guidelines were amended in 2017 and recommend as a starting point 18 weeks custodial sentence for cases where 'greater harm' is caused to the animal and where there is a high level of culpability.[5] The British Veterinary Association has found[6] that the most serious offences in practice are not usually met with custodial sentences and this appears to be supported empirically by a number of high profile cases that have attracted a significant degree of public disquiet.

In 2015 there was significant public concern when three youths who were disqualified from keeping animals for five years were given a referral order for 12 months and ordered to pay costs after being convicted of causing unnecessary suffering to a dog. The dog's injuries were severe and included a broken neck and facial burns.[7] In a 2016 case where footage showed two brothers deliberately and repeatedly throwing their pet bulldog down stairs, the offenders received a two-year suspended sentence and a six-month tagged curfew.[8]

The public outcry at these and other apparently paltry sentences focused on the failure of magistrates to impose custodial sentences, even for the offences at the worst end of the spectrum. The direction of this anger may however have been misplaced. The difficulty faced by magistrates is that the sentencing guidelines are only a starting point. Magistrates are then required to take into account mitigating and aggravating factors, which can result either in a reduction or increase in any sentence that they are able reasonably to impose. Therefore, given the need to apply mitigating factors, including matters relevant to the offender (for example, a history of no previous convictions) as well as factors such as entering a guilty plea,[9] magistrates are likely to have been faced with little choice in many cases other than to impose a non-custodial sentence.

Crucially therefore, increasing the maximum sentence to five years is likely to mean that jail sentences are not only potentially longer but also more likely.

Domestic Violence

There is an obvious punishment element in the sentences for cases of deliberate animal cruelty, but another important factor is the deterrent effect that harsher penalties can have. This is important for animals and potentially also for the wider society. What it signals is that society will not tolerate crimes of violence, whether directed towards animals or humans.

"There is an obvious punishment element in sentences for cases of deliberate animal cruelty, but another important factor is the deterrent effect that harsher penalties can have. This is important for animals and potentially also for the wider society."

Recent research shows the folly of treating violence towards animals as of a different nature or 'species' to violence directed towards humans. There have been a number of studies[10]

[5] Magistrates' Court Sentencing Guidelines, p26, (available at: https://www.sentencingcouncil.org.uk/wp-content/uploads/MCSG-April-2017-FINAL-2.pdf)

6 House of Commons Environment Food Rural Affairs Committee Third Report of Session 2016-2017 Animal Welfare in England domestic pets page 30 paragraph 170

[7] Reported at: https://www.express.co.uk/news/nature/621868/eyes-fire-animal-cruelty-RSPCA

[8] Kayleigh Lewis, 'Brothers filmed throwing pet bulldog down the stairs spared jail' (*Independent*, 31 March 2016) <http://www.independent.co.uk/news/uk/home-news/pet-bulldog-baby-animal-cruelty-video-jail-rspca-brothers-a69 61386.html> accessed 16 November 2017

[9] section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline

[10] For example see studies by: Frank R.Ascoine, Phil Arkrow and see resources available at: http://nationallinkcoalition.org/resources/articles-research

examining a link between abuse to animals and humans. In particular, research has shown that animal cruelty, particularly towards household pets, "is part of the landscape" of household violence.[11] Whilst studies in this area do not conclude that there is a "simple cause and effect,"[12] there exists much data drawing a risk connection between the abuse of both vulnerable humans and animals in the home.

Multi-agency collaboration

This data underlies the importance of taking a joined-up approach to violent criminal conduct, whether directed towards animals or humans, particularly in the context of household abuse. Multi-agency collaboration is an important aspect of this. International research shows that finding one victim of abuse in the home can be an indicator of other victims as part of a pattern of abusive behaviour. For example, in situations where women and children are victims of domestic violence, a large number of household pets have been found to have been abused by the same perpetrator, "contributing to a climate of control, intimidation and terror."[13]

Studies focusing on emotional abuse conclude that "both woman and animals are victimised by the abuse of the other."[14] The victims of abusive behaviour are therefore often intrinsically linked. "Understanding, responding to, and ultimately ending interconnected forms of violence requires that we understand these interconnections."[15] This requires effective collaboration between agencies that support vulnerable members of a household that may be at risk; pets, children and women.

One policy option is to mandate coordinated cross-training

[11] Andrew Linzey, Phil Arkow, The Global Guide to Animal Protection (2013), p223
[12] Andrew Linzey, The Link Between Animal Abuse and Human Violence (2009), p7
[13] Linzey, *Ibid at 118*
[14] Linzey, *Ibid at 119*
[15] Linzey, *Ibid at 123*

between bodies that intervene with human and animal abuse. Training need not be complex, but enough to provide agency professionals with the confidence to "recognise multiple forms of family violence,"[16] along with the associated legal and practical next steps, such as who to contact if abuse is suspected. It could involve prosecutors to assist with protocol checklists that include questions for child victims concerning family pets. Whilst already in place in some countries, including the UK, a national link group can act as a centre for collaborative response amongst agencies.[17] Legislation mandating coordinated training could encourage cross-reporting.

In recognising interconnected forms of abuse, the next logical step is a requirement to collect and share findings of household abuse, by setting up clear cross reporting procedures. Much research shows that "the home is at increased risk of escalated and continued violence if all forms of abuse are not addressed."[18] Mandating cross-reporting would directly recognise and act upon the link between human and animal abuse. "Animal abuse is not so much the "canary in a coalmine" as it is part of an overall scheme of anti-social, community based violence."[19]

In turn, detailed reports from both health and animal welfare workers could assist prosecutors, providing "opportunity for meaningful intervention."[20] This approach provides for preventive strategies for both reoffending adults, and for children at risk of being violent by influence of a cycle of abuse in the home.

"One policy option is to mandate coordinated cross-training between bodies that intervene with human and animal abuse."

Unfortunately, however, some professionals have been reluctant to engage in cross-reporting, referencing barriers such as "fear of litigation...absence of organisational protocols [and]confidentiality concerns."[21] Although provisions vary, one US state approach to encourage reporting is to provide that those that make reports to authorities in good faith are protected from any associated civil or criminal litigation. These reporting requirements are directed towards veterinarians and child protection services.

As a leader in this area, a number of US states have "taken a variety of approaches as direct and indirect responses to the link between animal and human abuse."[22]

Register of abusers

In this context, it is worthwhile considering calls for the creation of a register of animal abusers.

As discussed above, the courts do have the power to make a disqualification order preventing people convicted of animal abuse keeping animals for such period as it deems fit. However there have been concerns about enforcement,[23] since a person who goes straight out and purchases another animal, contrary to the terms of the order, may fall under the radar of the authorities.

The county of New York introduced an animal abuse register in 2014."[24] A number of counties followed, and Tennessee became the first state to

[16] Linzey, Arkow *Supra* note 11

[17] See: http://www.thelinksgroup.org.uk/ (and http://nationallinkcoalition.org/)

[18] Allie Phillips, 'Understanding the link between violence to animals and people' (*National District Attorneys Association,* June 2014), p7 < http://www.ndaa.org/pdf/The%20Link%20Monograph-2014.pdf > accessed 16 November 2017

[19] Waisman, Frasch & Wagman, Animal Law Cases and Materials (fifth edition, 2014), p157

[20] Linzey, *Supra* note 12 at 30

[21] Linzey, Arkow *Supra* note 11 at 224

[22] Frasch, Hessler, Kutil & Waisman, Animal Law in a Nutshell (2011), p90

[23] See Environment, Food and Rural Affairs Committee (EFRA) Report published 16 November 2016, paragraph 177 at: https://publications.parliament.uk/pa/cm201617/cmselect/cmenvfru/117/11709.htm

[24] See: https://www1.nyc.gov/site/doh/health/health-topics/animal-abuse-registry.page - New York's Animal Abuse Registration Act

implement a publicly available register in 2016.[25]

As a helpful model, the New York legislation requires that anyone over eighteen convicted of animal abuse in the county is added to a registry for five years following sentencing or imprisonment. A further conviction of animal abuse during this period extends the register requirement for an additional ten years. Failing to register or abide by the register conditions can result in a one-year sentence or a $1,000 fine, or both. The New York register is available to relevant bodies including law enforcement, pet shops and animal shelters. These businesses and organisations are required to check the register prior to the transfer of any animal and must refuse to carry out a sale or adoption if the individual is found to be on the register. The legislation is intended to prevent anyone who is required to be registered from owning, possessing, residing with or having any intentional physical contact with any animal.

At a federal level, in 2016, the FBI introduced a database to collect animal cruelty data. This is intended to act as a research database and to assist law enforcement in revealing potential risk factors of future violence towards humans and animals.[26]

There is a consultation driven by the RSPCA in Wales for some form of a closed 'Animal Offender Register.'[27] This proposal is similar to the New York County approach where access is restricted to certain organisations or officials, rather than the state of Tennessee approach where the register is open to the public.

In the UK a register could act as an additional deterrent to potential abusers of animals as potentially decreasing the likelihood of evasion of the law. Whilst the court may disqualify an individual convicted of animal abuse from keeping animals under the Act, this is not necessarily enough to prevent further abuses, particularly whilst there is no requirement to register disqualification.

However, in considering arguments against such a register, commentators have raised concerns about data protection law and public shaming. Similar to discussion surrounding sexual offence registers, there are concerns that those registered become further isolated from society, particularly whilst not all individuals convicted of animal cruelty go on to reoffend. Another consideration is balancing limited law enforcement resources. One argument is that it is more productive to prioritise enforcement of existing laws and focus on rehabilitation programs such as counselling.

Highlighting these concerns, including the need for an accessible register, the Environment, Food and Rural Affairs Committee (EFRA) made a recommendation for the Government to examine the practical potential for a publicly accessible register to be established[28]

"In the UK a register could act as an additional deterrent to potential abusers of animals as potentially decreasing the likelihood of evasion of the law."

The Government rejected this recommendation on the basis that:

> 'Persons convicted of animal cruelty or animal abuse are already captured on the Police National Computer. The Government agrees we need to make better use of existing databases and improve connectivity and information sharing. The Police National Computer

[25] See: https://www.tn.gov/tbi/topic/tennessee-animal-abuse-registry

[26] FBI, 'Tracking animal cruelty: FBI collecting data on crimes against animals' (FBI News, 1 February 2016) <https://www.fbi.gov/news/stories/-tracking-animal-cruelty> acessed 16 November 2017

[27] See: http://politicalanimal.org.uk/wp-content/uploads/2017/10/An-Animal-Offender-Register-for-Wales-Consultation-1.pdf

[28] See ibid, para 182 - https://publications.parliament.uk/pa/cm201617/cmselect/cmenvfru/117/11709.htm

> provides a searchable, single source of locally held operational police information. It brings together data and local intelligence so that every force can see what is known about an individual, including any operational information related to animal cruelty or mistreatment. There is existing functionality for a user (police officer) to be able to apply a "Person Marker" both locally and nationally and for that marker to be displayed when accessed by others. When these are used is a police operational matter. The Government agrees with the police that a publicly available register of animal abusers could facilitate vigilantism. Instead, if a person has concerns about another individual they can approach the police who can check their records on the Police National Computer. The police may then take the most appropriate action. We consider that this is the best arrangement.'

This may not be a complete answer to the problem. Further consideration and discussion may well be necessary to ensure that there is an efficient register that is available to relevant bodies only and with appropriate safeguards. A central registry accessible by law enforcement, as well as those that transfer animals, could be another step in deterring both human and animal violence in the home.

Alternative approaches

In some states, protective orders, which commonly concern victims of domestic violence, may be extended to include an animal owned by the human victim. This is upon a finding of probable cause of cruelty towards that animal. Reportedly such laws "encourage judges to include family pets (dogs, cats, rabbits and sometimes livestock) in protective orders." [29] In adding pets to these protective orders US legislators directly recognise and address the human/animal violence link.

Further, California and other US states provide for psychiatric evaluation requirement orders against those convicted of certain offences against animals.[30]

Another statutory mechanism used by some states is 'upward departures'. These provisions raise a charge from a misdemeanour to a felony (resulting in higher sentences) in certain circumstances where an individual is convicted of animal abuse. This includes where: there is a previous conviction of domestic violence; the animal abuse occurred in front of a child or; the abuse was carried out so as to threaten another person.[31] Accordingly, some US courts allow evidence of animal abuse in cases of domestic violence, recognising that animals can be used to inflict emotional injury towards humans.

Providing a range of animal abuse penalties to the judiciary, in a similar way to the US, could address the risk of re-offending, thus protecting all vulnerable groups.

Therefore, whilst increased maximum sentencing for animal abuse is a much needed step in deterring abuse towards all vulnerable members of society, it should perhaps be the start of a new era in recognising and addressing potential links between the abuse of animals and humans, so that both are protected by the criminal justice system to the fullest extent possible.

[29] Allie Phillips, *Supra* note 19 at 12
[30] Frasch, Hessler, Kutil & Waisman, *Supra* note 22 at 29
[31] Frasch, Hessler, Kutil & Waisman, *Supra* note 22 at 30

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