

# Case Materials and News

Jasmine Allen, Charlotte Hughes & others

R v Daniel Doherty; R v Simon O'donnell; R v Thomas Stokes; R v Edward Stokes (2018) [2018] Ewca Crim 1924

In a sentencing review on July 19, 2018, the Court of Appeal, Criminal Division increased sentences imposed upon four defendants who had been found guilty of involvement in a conspiracy to commit fraud by false representation and, in respect of two defendants, they had been convicted for summary offences relating to the welfare of animals.

The Crown Court at Isleworth imposed sentences on the men that did not meet the demands of the strict sentencing guidelines, but on review the Court of Appeal stated that these guidelines should have been followed.

The four defendants had spent years conspiring in the fraudulent sale of dogs born in puppy farms or 'mills', passing the dogs off to unsuspecting buyers as puppies borne of domestic pets living in family homes. One of the co-conspirators, Doherty, was a veterinarian who was able to provide vaccinations, proper documentation, and the semblance of propriety to aid the enterprise. They sold these puppies at an average of £500, a price none of the buyers would have considered paying for puppies that were actually farmed, not domestic. In fact, none of the buyers would have considered buying a farmed puppy in the first place. As farmed puppies are bred in poor conditions, the puppies had an extremely high rate of illness and untimely death, causing the buyers much emotional distress.

Fifty-eight individual buyers provided witness statements. Of those 58, they bought 66 puppies, and 24 of them had died. But that's a small slice of their actual business: Records show that they sold nearly 5,000 puppies, with similar casualty rates. There was

also evidence that some purchasers who had approached one of the defendants about their inexplicably sick puppies, they had been threatened.

Despite their crimes falling within Category 1A of the sentencing guidelines, which command a sentence between 5 and 8 years custody, the Crown Court granted the men suspended sentences of imprisonment, which meant that they could avoid imprisonment if they kept within the law during the period of the suspension. The judge wrote of how imprisoning the men and imposing strict sentences would harm their families. He also took into account each of their efforts to hold down proper work since being arrested, and accepted into evidence many letters commending Doherty's professionalism as a veterinarian. The judge also made a joke of sorts about how UK citizens care more about animals than children.

However, on appeal, the Crown Court's sentencing was deemed in error. In a judgment from Lord Justice Holroyde, the justice stated that the sentencing guidelines should clearly be used. When considering the harm done by a conspiracy, the entirety of the enterprise must be considered. In this case, the entirety of their criminal enterprise meant nearly £2 million from the puppy sales. As the offenders "would not have received a penny of that money if they had told the truth," the court placed the offenders within Category 1 harm. The "unduly lenient" sentences of the Crown Court were increased to correspond with the guidelines.

The most glaring problem with the Crown Court judge's ruling was his failure to fully share his reasoning for his lenient sentencing. Lord Holyroyde wrote, "*When there are compelling circumstances which cause a judge to conclude that the application of a sentencing guideline would be contrary to the interests of justice, there should be no difficulty for the judge in articulating those*

reasons.” Without that reasoning, the Court of Appeal could not begin to determine whether his reasoning was sound, and so it had no choice but to follow the strict sentencing guidelines required for Category 1 crimes. Each of the men was sentenced to between 3 years and 4 years, 8 months’ imprisonment.

At the conclusion of the case the Solicitor General commented:<sup>1</sup>

*‘This group not only subjected thousands of puppies to atrocious living conditions, but also caused immense distress to families who had to watch their new pets suffer from serious illness. I am pleased that the Court of Appeal has today agreed to increase all 4 sentences, and hope this will bring some comfort to the victims of their crimes.’*

Expert commentary by Sean Brunton QC:

*Whilst this is a case primarily concerned with the way a Court should approach conspiracy, financial offending and reliance upon and reference to the Sentencing guidelines, it also shows us that the second highest court in the country do take the harm done to animals, and the effect of that harm on their owners, seriously. Clearly the harm done to the puppies in this case, and the effect of their illnesses and deaths on their owners, was a significant factor in the Court’s mind when considering harm, culpability and aggravating factors. The Victim Impact Statements of the victims were clearly taken very seriously by the Court. In other words, rather than making ‘clever’ comments about the ‘Great British Public’, as the Judge at first instance felt entitled to do, the Court of Appeal clearly took the attitudes of the population to animal cruelty and that cruelty itself rather more seriously.*

Fitzwilliam Land Co v Cheesman [2018] EWHC 3139 (QB)

The Claimant land owners and operators of the “Fitzwilliam (Milton) Hunt” made an application for an interim injunction against the Defendants until the pending trial is heard. The Claimants applied for an interim injunction restraining the Defendants from

committing trespass to land and trespass to goods (including animals). The Defendants are 14 named persons who had allegedly taken part in protests against the hunt in addition to unknown persons. The Defendants maintained that they did not trespass on the Claimants’ land where there was no right of way and it was argued that the hunting activities of the Claimants are illegal and infringe on the Hunting Act 2004 which was denied by the Claimants. The Judge reviewed photographs and video footage in respect to the allegations against both the Defendants and Claimants.

The application was granted in part and an injunction was ordered against 7 of the Defendants in respect of trespass until the hearing of the trial. The Judge held that there was sufficient evidence of trespass for 7 of the Defendants and persons unknown and the court found that there was a risk that those persons would, unless restrained, trespass on the Claimants’ land. The Judge stated in the Judgment that the QC representing the Defendants “made out a persuasive argument that the hunting was illegal” and the judge also considered evidence of assault against two of the Defendants stating that “there is a concern that such touching or assaults as have taken place appear to be from the Claimants’ side against Defendants rather than the other way round”.

However, the judge considered the Claimants’ property rights weighed heavily even when balanced with the Defendants’ ECHR rights to freedom of speech and assembly. The court considered that the evidence of altercations between hunters and protestors raised concerns about injury to people and injury to animals (in terms of hounds and horses getting out of control). The judge found that there was sufficient evidence that could establish trespass at trial. The Judge ordered an injunction against 7 Defendants and unknown persons in respect of trespass to the Claimant’s land until the trial.

The court did not grant an injunction in respect of trespass to goods as a real and imminent risk was not

<sup>1</sup> <https://www.gov.uk/government/news/sentences-increased-for-gang-who-illegally-sold-thousands-of-farmed-puppies>

shown and that in any event the touching of animals was prevented with the injunction relation to the land.

Highbury Poultry Farm Produce Ltd v Crown Prosecution Service; R. (on the application of Highbury Poultry Farm Produce Ltd) v Telford Magistrates' Court [2018] EWHC 3122 (Admin)

The Claimant slaughterhouse had been charged under the Welfare of Animals at the Time of Killing (England) Regulations 2015 reg.30 (1)(g) (the 2015 Regulations). The Claimants brought a Judicial Review and the court was asked to determine whether these offences were of strict liability (i.e. that the presumption of proof of *mens rea* was not required).

On three separate occasions in October 2016, a chicken had been put into a scalding tank whilst still alive because its neck had not been properly cut by a slaughterhouse certified operative.

The Claimant was charged with a failure to comply with regulation 30(1)(g) contravening (1) Regulation 1099/2009 art.3(1) which requires that animals should be "*spared avoidable pain*" during their killing, as a bird subject to stunning had not been bled out; (2) Article 15(1) of the EU Regulation which requires compliance with the operational rules for slaughterhouses laid down in Annex III, including complying with the requirements for the bleeding of animals, as there had been a failure to sever the main arteries. The EU regulation is directly applicable to all EU member states and is enforced in the UK through the 2015 Regulations mechanism.

The Judge dismissed the Claimants application and found that social concern regarding animal welfare meant that it was appropriate to displace the presumption that *mens rea* was required and subsequently neither proof of knowledge or culpability on the part of the slaughterhouse was required. The Judge stated found that in this case, "*there was a strict obligation to sever the main arteries systematically, and a concomitant strict obligation to spare these birds avoidable pain.*"

Ivory Bill update

The world elephant population has decreased by nearly a third in just 10 years with over 20,000 elephants being poached every year for their tusks. In recognition of the need to protect elephants, the Ivory Bill aims to:

1. prohibit commercial activities concerning ivory in the UK; and
2. prohibit the import and re-export of ivory for commercial purposes, to and from the UK.

The Bill relates to the sale of all ivory but currently includes the following exemptions in relation to the *trading* of ivory:

1. items produced before 1947 that contain less than 10% ivory by volume;
2. musical instruments produced before 1975 that contain less than 20% ivory by volume;
3. portrait miniatures painted on ivory that are at least 100 years old;
4. ivory items assessed by recognised specialists to be of 'outstandingly high artistic, cultural or historical value' which must be over 100 years old; and
5. sales, loans and exchanges by individuals to accredited museums and between accredited museums.

The Bill sets out civil and criminal sanctions for breaking the law (including a sentence of up to 5 years in prison).

The Bill was introduced into the House of Commons on 23 May 2018. It has since gone through various stages of the parliamentary process (including consultation) and had its third reading in the Lords on 13 November 2018. The Bill was passed by the Lords and returned to the Commons with amendments.

The Bill is now in the "ping-pong" stage and has now returned to the Commons for consideration of Lords' amendments. The floor of the House of Commons will consider the amendments on 12 December 2018.

The Opposition argued for the extension of the ivory definition to include all threatened ivory-bearing species. The Government has confirmed that after the Bill is passed it will undertake a consultation on expanding the definition to include all ivory-bearing

species, whether threatened or not. The Bill has been amended to remove the restrictions on which species the ivory must come from and therefore enables the definition to be added to in the future by statutory instrument.

### Seal Products Regulations Bill

The Seal Products (Amendments) (EU Exit) Regulations Bill 2018 came about as a response to the United Kingdom's impending departure from the European Union and ensures that the ban on the importation on seal products from commercial hunts will continue to operate effectively. Regulations on the control of seal products are set out in EU Regulation (Council Regulation (EC) No 1007/2009 and Regulation 2015/1850) and domestically in the Seal Products Regulations 2010. The regulations ban the importation and trade of seal products within the EU; providing limited exceptions for traditional hunts. The original regulations came about as a result of the inhumane nature of seal hunting practices which caused concern to many different organisations and members of the public.

The policy objective is to maintain the existing EU law and is essentially a technical exercise that does not amend the primary legislation. It includes the replacement of words such as "EU" and "the Commission" with "United Kingdom" and "Secretary of State". In addition, the 2018 Bill also removes references to ensuring free movement within the EU, protecting the fact that territorial application is limited to that of the United Kingdom.

The Bill transfers functions of the European Commission including the powers to prohibit and limit seal products and issue guidance. Nevertheless, the overarching objective of the policy is to main the existing laws and not substantively change the policy.

### Live Animal Exports (Prohibition) Bill 2017 (HC Bill 177)

The Live Animal Exports (Prohibition) Bill, introduced by Theresa Villiers MP, had its first reading on October 25th 2017 and aims to prohibit the export of live farm

animals for slaughter or fattening. Public concern surrounding the live export of animals dates back to the middle of the 20th Century, and is prompted by the risk that exported animals will be exposed to weaker animal welfare legislation in some European countries than the country of origin, and that EU transport and slaughter rules will not be enforced effectively once the animal leaves the UK. The Animal Plant and Health Agency figures show that each year 40,000 sheep are exported for slaughter in Europe, enduring long journeys, overcrowding, and high temperatures. Although animal welfare is a devolved matter, the Bill has been drafted to apply to the whole of the UK under the classification of a trade issue, with the proposed enforcement date of the Act being the day the UK leaves the European Union.

The introduction of a ban is supported by numerous animal welfare organisations including Compassion in World Farming, the RSPCA, the Conservative Animal Welfare Foundation and World Horse Welfare.

The penalties proposed by the Bill for non-compliance with the ban include a custodial sentence of up to 12 months, a fine, or both.

### Animal Welfare (Service Animals) Bill 2017-19

The Animal Welfare (Service Animals) Bill, applicable to England and Wales, seeks to amend section 4 of the Animal Welfare Act 2006 (AWA) in order to increase protection for service animals. The AWA in its current form allows for a defendant accused of causing unnecessary suffering to a service animal to claim that the physical force used was necessary in the circumstances.

The Bill seeks to amend the AWA in order to require a court to disregard the consideration that suffering may have been necessary, in certain circumstances when assessing the suffering caused to a service animal. The Bill provides that in order for the relevant section of the AWA to be disregarded, the animal must be under the control of an officer who is using the animal, in a reasonable way, as part of their duties. This does not apply to officers who may need to use force against their animal in order to protect themselves or a





member of the public.

The Bill, tabled by Sir Oliver Heald MP, is the result of a campaign following the attack of a police dog while assisting a police officer. Although the attacker was convicted, the attack stimulated public concern surrounding the application of the relevant section of the AWA. The Bill is due to be scrutinised by the Public Bill Committee and the story has been well covered in the media, showing the public interest in the issue.

#### Pets (Theft) Bill 2017-19

The Pets (Theft) Bill 2017-19 seeks to amend the Animal Welfare Act 2006 and the Animal Health and Welfare (Scotland) Act 2006, in order to make an offence of the theft of pets.

The Bill was introduced on the 3rd July 2018 by Ross Thomson MP and is a result of a petition signed by over 100,000 members of the public, asking for the theft of pets to be made a criminal offence. The petition was started by Dr David Allen and the issue has been supported by the Stolen and Missing Pets Alliance and

#### Pet Theft Awareness.

The Bill seeks to change the way the law treats the theft of pets, from being treated the same as the theft of an inanimate object, to recognising that victims of pet theft have lost much more than a mere possession.

The second reading of the Bill is due to take place on the 25th January 2019.

#### Cats Bill 2017-19

The Cats Bill 2017-19 seeks to require the drivers of vehicles involved in injuring or killing a cat to stop and report the incident to the police, and to require the keepers of certain cats to ensure they are microchipped. The Bill was introduced by Rehman Chishti MP on the 23rd July 2018.

The Bill is currently being prepared for publication.