

Case Reports, Other Materials & News Updates

Hashman v Orchard Park (Dorset) Ltd t/a Orchard Park

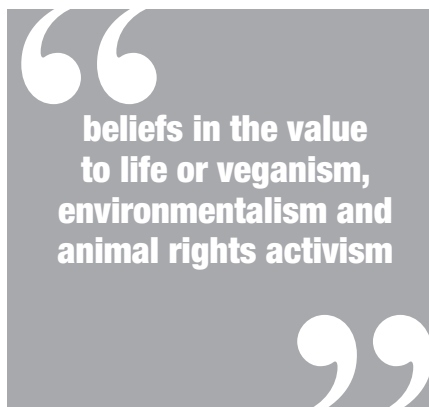
In a judgment handed down on 21 January 2011, Employment Judge Guyer sitting in the Employment Tribunal ruled that the claimant's view on the sanctity of life constituted a philosophical belief for the purposes of the Employment Equality (Religion or Belief) Regulations 2003. The Claimant Mr Hashman had brought proceedings in the Tribunal against the Respondent alleging that his contract as a sub contract gardener had been terminated and that his dismissal amounted to direct discrimination on grounds of philosophical belief in the sanctity of life, comprising his particular belief in the value of anti-hunt activism. He claimed the alleged discriminatory conduct was in breach of regulation 3 of the 2003 Regulations.

The court held that it was prepared to accept that the Claimant's beliefs about fox hunting and hare coursing fell to be considered within the parameters of his general philosophical belief in the sanctity of life. The belief was said to comprise 'beliefs in the value to life or veganism, environmentalism and animal rights activism.' The judge concluded that 'I find that his beliefs are truly part of his philosophical beliefs both within the ordinary meaning of such words and within the meaning of the 2003 regulation.' He cautioned against drawing a conclusion from his judgment that everyone opposed to fox hunting necessarily holds a philosophical

belief within the meaning of the 2003 Regulations, however the importance of the judgment lies in the recognition that such belief is at least capable of falling within the meaning of the 2003 Regulations. (See News Updates below.)

Wildlife

The Spring Traps Approval (Variation) (England) Order 2010 came into force on 24 December 2010 and vary the Spring Traps Approval Order 1995 which approves types of spring traps for use in England and Wales. The 2010 Order adds further types of spring traps to those approved for use in England.



Welfare of game birds (Scotland)

The Code of Practice for the Welfare of Game birds Reared for Sporting purposes was issued with the authority of the Scottish Parliament pursuant to section 37 of the Animal Health and Welfare (Scotland) Act 2006. The Code applies in Scotland and came into force on 28 February 2011. The purpose of the Code is to provide practical guidance in relation to the provisions of the Animal Health and Welfare (Scotland) Act 2006 affecting birds bred and reared for the purpose of release for sport

shooting. Failure to comply with the Code may be relied upon to establish liability for an offence under the Animal Health and Welfare (Scotland) Act 2006.

Europe

Welfare of animals during transportation

The European Food Safety Authority (EFSA) published on 12 January 2011 a Scientific Opinion on the welfare of animals during transportation. The EFSA make a number of recommendations for improving the welfare of animals during transportation, including in relation to journey times, vehicle temperature and sufficient space for animals being transported. However Eurogroup for Animals deems as 'disappointing' the conclusions which call for further research and highlight concerns about the lack of implementation of the current Regulations.

In the meantime the Netherlands government announced that it will ban the use of double-deck trucks loaded on both decks with cattle aged 1-year or older as the trucks arguably compromise the welfare of cattle during transportation.

Food labelling

The Environment Committee of the European Parliament has called for the labelling of meat to indicate the country or place of provenance for all meat and poultry, milk and dairy products and meat, poultry and fish when used as an ingredient in processed food. The report also calls for a label specifying whether meat is from slaughter without stunning.

Cloned food

Despite the European parliament's strong position against cloning as part of the Novel Foods Directive there was failure to agree a common text with the European Council have failed to agree on the Novel Food Directive which will now allow the sale and import of food from cloned animals. The Parliament's delegation chair Gianni Pittella and rapporteur Kartika Liotard made a joint statement that:

"The Parliament has made considerable efforts towards reaching a compromise but these were not mirrored by Council. It is simply incredible that the Council, which consists of the same political parties as the Parliament, cannot agree to the Parliament position on the prohibition of food from cloned animals and their offspring. It is equally incredible that the Council is willing to turn a blind eye to public opinion, as well as the ethical and animal welfare problems associated with cloning. Time is rapidly running out. Negotiations can only have a positive outcome if Council moves towards consumers' expectations on the issue of cloning. If the position of Council and Commission remains exclusively tied to commercial trade interests, Parliament won't accept any deal."

Animal testing

Eurogroup for Animals reports that 'A new Commission Regulation was adopted on 10 January for the replacement of a controversial animal testing method used to test for some toxins in shellfish meat. Member States have to replace the animal tests by the non-animal alternative at the latest by 31 December 2014. Presently, the mouse bioassay (MBA) and rat bioassay (RBA) are the official

methods for the detection of this group of biotoxins (commonly referred to as Diarrhetic shellfish poison (DSP)). The mouse bioassay is a very distressful animal test, whereby mice are injected with shellfish extract until some of them die. Recently, EFSA noted these bioassays have shortcomings and do not guarantee human safety. Additionally, an alternative non-animal method has recently been validated. Unfortunately, even after the 2014 deadline, the MBA method will still be permitted for periodic monitoring to detect new or unknown toxins.'

Spanish zoo ruling

The European Court of Justice found that Spain had failed to adequately protect zoo animals and neglected to apply EU rules for the inspection and licensing of its zoos. The ruling comes after animal welfare organizations called on the EU to intervene after raising concerns that Spain had not put in place measures for licensing and inspection of zoos in its Autonomous Communities. Following the initial complaint in 2006 twelve Spanish zoos were closed, but concern remained about remaining establishments.

Summary of the Memorandum to Environment, Food and Rural Affairs Committee Post-Legislative Assessment of the Animal Welfare Act 2006

Almost five years after the Animal Welfare Act 2006 came into force the government carried out an

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assessment of the effectiveness of the Act as part of the process set out in the document Post-Legislative Scrutiny – The Government's Approach (Cm 7320). The memorandum offers a preliminary assessment, which has been submitted to the Environment, Food and Rural Affairs Select Committee.

Background for the Act

The Animal Welfare Act was passed in 2006 and introduced in England and Wales in early 2007. The Act superseded and consolidated twenty-two Acts of Parliament that previously acted to protect animals. The purpose behind this piece of legislation was to meet modern day animal welfare of farmed, domestic and captive animals. The legislators set out a number of objectives they wished to achieve with this Act such as simplifying the legislation, introducing positive duty of care to owners to ensure that the needs of animals are met, allowing preventive action to protect animals from suffering, strengthen and amend current offences related to animal fighting, increase the effectiveness of law enforcement for animal welfare offences, increase the age from 12 to 16 at which a child may buy an animal and prohibit giving of pets as prizes to unaccompanied children under the age of 16, and ban mutilations of animals with certain specified exemptions.

Animals confined in research facilities are not included in the 2006 Act and

their fate is still regulated by the Animals (Scientific Procedures) Act 1986.

Prosecutions and legal issues under the Act

Statistical data collected for the assessment reveals a steady increase in prosecutions brought before Magistrate Courts. In 2009 RSPCA secured 98% prosecution success rate; 103 defendants were found guilty under the Act.

The memorandum also discloses that the new power of seizure of animals in distress provided to the police or local authority inspectors by section 18 of the Act was exercised twice. The Act was considered by the High Court on two occasions: in *R v Johnson* [2009]¹ and in *RSPCA v Ian King* [2010]². Both cases related to the extension of time-limits for bringing proceedings for summary offences in section 31 of the Act.

Assessment of the Act

DEFRA contacted a range of organizations that regularly use and enforce the Act to help them carry out the assessment. Among the groups that provided their views on the effectiveness of this legislation were Anti-docking Alliance, Blue Cross, British Veterinary Association, Farm Animal Welfare Council, Horse Trust, The Magistrates' Association, People for the Ethical Treatment of Animals and RSPCA.

The general consensus among the participants was that the Act works well in practice and that it is achieving the objective of improving the general standard of animal welfare compared to previous laws that were in place.

During the assessment the respondents expressed their views on

specific sections of the Act. For instance in Section 1 (Animals to which the Act applies) the omission of invertebrates in the Act has been raised as a concern and some respondents considered that the concept of sentience should be reviewed in the light of the recent EU review of the welfare of animals used in scientific procedures. Introduction of Section 4 (Unnecessary suffering) is believed to have simplified and updated previous legislation. Section 5 (Mutilation) is seen as an important tool particularly in the context of "status dogs." Tail docking under Section 6 raised various concerns and respondents indicated that clarification of this part of the Act is required. Section 9 (Duty of person responsible for animal to ensure welfare) is a new addition and has brought about a significant contribution to raising animal welfare standards. However, a number of respondents argued that section 9 is not sufficient enough to bring about necessary improvements for wild animals used in circuses.

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Criticisms of the Act

Respondents criticisms centred on three issues: the enforcement of the Act, delays in introduction of secondary legislation, and the lack

of raising public awareness of what is expected of pet owners under the Act, and what kind of role the legislation plays in the field of animal welfare.

Conclusion

The general view among the parties was that although there is space for improvement the Act has had a positive impact on animal welfare in England and Wales. DEFRA's assessment concluded that: "[i]t is agreed that there is still more to do in terms of achieving higher standards of animal welfare in the UK, but the Act does provide suitable framework for doing so and has already resulted in an improvement in animal welfare. The Act has ultimately achieved its objectives of harmonising farm and companion animal welfare and consolidating and simplifying animal welfare legislation."

Implementation of Battery Cages Ban in 2012

New fears arose in regards to delaying the banning of barren battery cages.

On 20th January 2011 Eurogroup for Animals reported its opposition to non-compliance or postponement of the deadline for the ban of battery cages after the Commission met to discuss how to facilitate the implementation of the legislation on time. Fears emerged after some egg producers failed to invest in new systems having 12 years to change their farming practises. Most Member States pledged to implement the ban on time, only Poland called for implementation of the legislation to be delayed. Eurogroup requested the Commission to re-evaluate penalty fines that would prevent the parties from carrying out their obligations.

¹EWHC 2702 (Admin)

²EWHC 637 (Admin)