

# Case Reports, Updates and Other Materials

## **Patterson v RSPCA [2013] EWHC 4531 (Admin)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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



## Case reports

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

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

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

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

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

## News

### Birds of prey deaths

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

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

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

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

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

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

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

### Euro-group for Animals – Campaigns

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

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

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

### Equine Welfare – the need for specific welfare legislation

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

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

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

### Castration of Pigs

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

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

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

## Reports

### The Unaccounted Dead: farming's unofficial victims

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

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

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

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

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

## Book Review

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

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

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

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

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



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

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

### 1) Understand the 'power pyramid':

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

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

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

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

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

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

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

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

