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.
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> "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…
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> "… 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