

Cats and the Law: Evolving Protection for Cats and Owners

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Conducting an analysis of the practical impact of the Animal Welfare Act 2006 on companion animal owners and their companions identifies the true significance of the Act as creating a 21st Century conception of animal welfare based on the needs of animals. In some respects, the Act challenges the historical notion of companion animals as merely being property subject to human interests and devoid

of any perception of their having rights.³ Instead it arguably provides for a form of rights by requiring consideration of the specific needs of individual companion animals. The UK Animal Welfare Acts⁴ are part of the criminal law and impose a duty to ensure welfare; thus an important part of the Acts is the requirement for a 'responsible person' to ensure that a cat's needs are met. The Acts extend beyond historical notions of ownership, animals as property and preventing cruelty whether by act or omission to provide for a *positive* obligation to ensure animal welfare. The practical implications of this were the focus of the research work commissioned by the former Feline Advisory Bureau, now International Cat Care (iCatCare) on behalf of the Cat Group⁵ on which this article is based.

While the legal status of cats is, in principle, well established under

common law as they are personal property, problems can occur because cats exist in a range of states e.g. feral, semi-feral, domesticated and stray. Some grey areas exist in relation to animal welfare legislation and in respect of the liabilities of cat owners. There has been little or no attention paid by legal researchers to addressing the legal status of cats except within the context of animal welfare offences, albeit some prior research exists into offences involving wild cats⁶ and whether animals (including cats) can be said to have legal rights.⁷ Our research considers rights theory not just in relation to enforcement of animal welfare law but also within the context of other legislative, policy and ethical considerations relating to animal ownership and welfare. In particular, we examined how both domestic and wild cats are subject to different protection under the law and the different liabilities imposed on humans when dealing with cats.

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³ Singer, P. (1975 [1995]) *Animal Liberation*, London: Pimlico

⁴ There is country-specific legislation in Scotland and Northern Ireland; the *Animal Health & Welfare (Scotland) Act 2006* and the *Welfare of Animals Act (Northern Ireland) 2011*. The three Animal Welfare Acts have similar aims of preventing harm and promoting animal welfare although there are some differences in the respective *Acts*. The main focus of this article is the Animal Welfare Act 2006 and its application in England and Wales

⁵ The Cat Group brings together a range of organisations dedicated to improving feline welfare policy and practice. Its membership consists of its founder International Cat Care, Battersea Dogs and Cats Home, Blue Cross, Royal Society for the Prevention of Cruelty to Animals (RSPCA), British Small Animal Veterinary Association (BSAVA), the Governing Council of the Cat Fancy (GCCF), Cats Protection, People's Dispensary for Sick Animals (PDSA) and Wood Green Animal Shelters.

⁶ See, for example Lowther, J. Cook, D. and Roberts, M. (2002) *Crime and Punishment in the Wildlife Trade*, Regional Research Institute, University of Wolverhampton, Nurse, A. (2003) *The Nature of*

Wildlife and Conservation Crime in the UK and its Public Response, Working Paper No 9: Faculty of Law and Social Sciences, Birmingham: UCE, and Nurse, A. (2008) *Policing Wildlife: Perspectives on Criminality and Criminal Justice Policy on Wildlife Crime in the UK*, Birmingham: Birmingham City University (unpublished doctoral thesis).

⁷ See for example Cass R. Sunstein, *The Rights of Animals*, *The University of Chicago Law Review*, Vol. 70, No. 1, Centennial Tribute Essays (Winter, 2003), pp. 387-401 and Wise, S. (2000) *Rattling the Cage: Towards Legal Rights for Animals*, London: Profile Books.



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UK animal law is often complex and difficult for the layperson to understand not only because of the language used but also the need to understand how laws are interpreted in practice. iCatCare identified that cat owners may face a number of legal questions where either there does not seem to be a definitive answer or where identifying the answer is problematic and time-consuming. Our project aimed to address this by examining the most frequently asked questions about cats and their legal status. Our research examined questions concerning: the sale of cats and both buyer and seller rights; ownership of abandoned or stray cats; liability for aggressive cats; trespass and nuisance issues; what actions can lawfully be taken to prevent cats from entering somebody's garden; the criminal law⁸ inclusive of responsibility for the welfare of a cat and cruelty offences. The research has resulted in a detailed research report as well as a plain English guide which hopefully will serve as a simple reference guide.⁹ The focus of this article is the duty to ensure welfare and its application to cats.

The Legal Status of Cats

The common law position on companion animals is that they are personal property or chattels and are

the subject of absolute property or ownership.¹⁰ However, the issue of whether a person can be said to own a cat lends itself to both theoretical and legal debate and potentially causes problems for cat owners, not least because cats can move from a human dependent state to occupy several ill-defined states such as *stray*, *wild*, *feral* or *companion* all of which may defy conventional notions of ownership.¹¹ However, from the outset we identify that the legal status of cats under the UK Animal Welfare Acts is that of protected animals and that the law generally considers cats to be 'owned' or cared for by a 'responsible' person; somebody who has accepted some form of obligation to look after a cat even if that only means putting out food. UK animal welfare legislation applies not just to cats which are clearly linked to a single property and an identifiable owner, but also to those stray and feral cats for which a person may accept some responsibility to provide a certain level of care and comfort. Attempting to claim ownership of another's cat may also involve property rights. The protection provided under the law extends to both domestic and feral cats as 'being of a kind which is commonly domesticated in the British Islands'. The law thus extends beyond providing protection solely to companion animals.

Broom¹² compares the treatment of animals as property in most early legal systems to the treatment of

slaves, servants, and even wives as possessions. While some animal welfare and anti-cruelty laws are designed to protect human investment in property, Broom argues that the view of domestic and other animals as sentient beings that deserved respect is a natural social progression 'in the wake of a similar developing view that persons of other nations, creeds, or colours and women had such qualities.'¹³ Francione argues that animals' status as the property of humans dictates that laws which should require their humane treatment and prevent unnecessary suffering fail to provide any significant protection for animal interests. In reality, animals only receive protection commensurate with their value as human property or commodities. Francione argues that economic, legal and social factors prohibit recognition of animal interests unless a human interest also exists.¹⁴



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Whether ownership of a cat can be said to exist, depends in part upon the status of the cat and whether it

⁸ Taking a cat from its owner is likely to be theft; i.e. removal of another's property (Theft Act 1968); killing a cat, the property of another, criminal damage (Criminal Damage Act 1971).

⁹ Cats and the Law a Plain English Guide by Angus Nurse and Diane Ryland is available for free download at: www.thecatgroup.org.uk

¹⁰ See Blackstones Commentaries (Eighth ed. Vol. II. At 387) which specifies that property rights in domestic

animals are the same as property rights in inanimate objects but no such property rights can exist with wild animals. It is worth noting that kittens belong to the owner of the mother cat.

¹¹ Farnworth, M. J., Nicholson, G. and Keown, N. (2010) The Legal Status of Cats in New Zealand: A Perspective on the Welfare of Companion, Stray, and Feral Domestic Cats (*Felis catus*), *Journal of Applied Animal Welfare Science*, Volume 13 pp 180-188.

¹² In Radford, M. (2001) *Animal Welfare Law in Britain*, Oxford: Oxford University Press.

¹³ *Ibid.* See also Wise, S. M. (2000) *Rattling the Cage: Towards legal rights for animals*, London: Profile, in which Steven Wise argues strongly that legal rights for animals is a natural progression of human evolution, societal development and enlightened thinking.

¹⁴ Francione GL, (2007) *Animals, Property and the Law*, Philadelphia, Temple University Press.

lives within human control or support or is simply a visitor to a human home. Domestic cats are those companion animals that are primarily domesticated and rely on humans for food, but behaviourally cats are considered to be less domesticated than other animals and are able to revert to a semi-wild state by going feral. As shorthand; ‘owner’ can be used to describe a person who has legal ownership of a cat which can involve providing food for the cat or a place within their home or garden which the cat frequents. In the case of stray or feral cats this may include regularly making food available to the cat so that it frequently returns to the human for food and is in that person’s ‘possession’ even if only temporarily. ‘Responsible person’ describes a person who accepts responsibility for a cat and its welfare even if they are not the owner. This could include friends who house sit for a cat. These terms are important because of the way that the law imposes different obligations on owners and responsible persons. However the key issue is the duty to consider welfare which is the main focus of this article; our contention being that this is a significant shift in the law.

The Animal Welfare Acts and the Duty of Welfare

The UK Animal Welfare Acts impose a duty to ensure cat welfare, requiring owners or those responsible¹⁵ for animals to ensure their welfare and to provide for each of their animal’s basic needs, which includes: providing adequate food and water; veterinary treatment; and

an appropriate environment in which to live. The duty to ensure welfare had previously only existed for farm animals, although the Protection of Animals Act 1911 (as subsequently amended) contained the offence of causing unnecessary suffering to an animal. The standard of care required is set out in DEFRA’s *Code of Practice for the Welfare of Cats*.

It is important to note that the Animal Welfare Act 2006 is part of the criminal law. It retains the offence of causing unnecessary suffering from previous legislation but considerably refines its scope to incorporate both the active and passive nature of an offence. Unnecessary suffering can thus be caused either by taking action which causes unnecessary suffering or by failing to take appropriate steps to prevent unnecessary suffering. Inflicting pain, which may occur for example in cruelty cases, is not in itself sufficient to constitute unnecessary suffering even where extreme pain is caused, as the pain may be caused for beneficial reasons such as in surgery to alleviate the harm caused to a cat, or other medical treatment. It becomes necessary, therefore, to distinguish between *necessary* suffering caused to a cat and unnecessary suffering. In making this distinction the courts are able to take into account a number of factors such as whether the suffering could have been avoided or whether it was incidental to a legitimate purpose. Factors to be considered include whether the suffering could have been reduced, was carried out in compliance with

legislation, the conditions of a licence or a code of practice issued on a statutory basis.¹⁶ The courts might also consider the purpose of the conduct, the proportionality of the suffering, and whether the conduct that caused the suffering was that of a reasonably competent and humane person.

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The concept of unnecessary suffering is wide in scope and includes mental as well as physical suffering. Thus it is an offence unnecessarily to infuriate or terrify a protected animal in addition to, or instead of, causing physical pain. While, for example, a police horse on riot control duty might suffer mental pain this is arguably ‘necessary’ for it to fulfil its legitimate purpose of protecting people or property. However, a cat which is tortured, before being humanely euthanised, has had unnecessary suffering inflicted on it, and it is an offence for any person to cause unnecessary (physical or mental) suffering to a protected animal where the person committing the act knew or ought reasonably to have known, that the act would cause, or would be likely to cause,

¹⁵Section 3 of the *Animal Welfare Act 2006* defines ‘responsible person’ and provides:

- 1) In this Act, references to a person responsible are to a person responsible for an animal whether on a permanent or temporary basis.
- 2) In this Act, references to being responsible for an animal include being in charge of it.

3) For the purposes of this Act, a person who owns an animal shall always be regarded as being a person who is responsible for it.

4) For the purposes of this Act, a person shall be treated as responsible for any animal for which a person under the age of 16 years of whom he has actual care and control is responsible.

¹⁶The *Animal Welfare Act 2006* does not apply to anything lawfully done under the *Animals (Scientific Procedures) Act 1986*.

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suffering. In addition, where a person is responsible for an animal, he would commit an offence if unnecessary suffering was caused to the animal by his failing to take some action, where he knew or ought reasonably to have known that the omission would cause, or would be likely to cause, suffering. It is not necessary to show that the person actually knew that his act or omission would cause suffering, but only that he ought to have known.

Current law is thus arguably positive and proactive rather than negative by requiring cat owners to do more than simply provide a home for their cat and refrain from cruel practices. The law now requires owners and other persons responsible for a cat to consider both the interior and exterior environment of their home and to ensure so far as is possible, that it is suitable for the *individual* cat. Where they fail to do so, they may commit an offence under the Animal Welfare Act 2006 which contains provisions aimed at preventing harm before it occurs as well as provisions aimed at promoting welfare. In our research report we contend that this is an important change in the law of importance to cat owners who are now responsible for ensuring that their cat's needs are properly considered in a way that effectively gives cats' legal protection from being kept in unsuitable conditions. While cats technically remain 'property' as outlined earlier in this article, the law now requires their individual needs to be considered and so anybody wishing to be a cat owner and share their home with a

feline companions needs to have an awareness of their companion's individual characteristics.

The DEFRA *Code of Practice* is issued under Section 14 of the Animal Welfare Act 2006 and applies to all protected cats. The *Act* requires that all reasonable steps must be taken to ensure that the cat's following needs are provided for:

- a) its need for a suitable environment;
- b) its need for a suitable diet;
- c) its need to be able to exhibit normal behaviour patterns;
- d) any need it has to be housed with, or apart from, other animals; and
- e) its need to be protected from pain, suffering, injury or disease.

The *Code of Practice* can be taken into account by the courts when considering whether there has been a breach of the duty to provide appropriate welfare standards for a companion and so is of relevance to criminal enforcement of animal welfare standards under the 2006 Act. Because of the focus on the individual cat, it is fair to say that owners need some understanding of how their cats behave when fit, healthy and happy so that they can identify any problems. The law also arguably prohibits a 'standard' approach to cat care and instead requires one focused on the specific companion. In our *Plain English Guide* we have sought to cover the

main responsibilities that owners now have and to outline the key requirements of the *Code* some aspects of which are explored further below.

Suitable Environment

The *Code* recognises the territorial nature of cats and that although classed as companions; domestic cats will spend significant periods of time outside. As a result, while owners are required to provide their cat with a 'safe, comfortable, dry, draught-free, clean and quiet place' where it can rest undisturbed¹⁷ they are also required to take 'reasonable steps' to protect a cat from hazards indoors and outdoors. While 'reasonable steps' is not explicitly defined in the *Code* there is also specific reference to making sure that a cat has constant access to safe hiding places, where it can escape if it feels afraid. As a result, cat owners need to ensure either that they do not keep a cat in an unsafe or unsuitable environment where the needs specific to a cat's behaviour are not catered for, or that if they do so, they show that they have taken steps appropriate both to the cat and the specific accommodation that will so far as is possible minimise any possible harm to the cat from indoor and outdoor hazards.

Diet

The *Code* requires that the dietary needs of cats should be met, specifying the need to ensure that cats do not become underweight or overweight. Despite concerns that the provisions may be onerous¹⁸ this is consistent with the *Act's* general requirement to prevent unnecessary

¹⁷Section 1, DEFRA *Code of Practice for the Welfare of Cats*.

¹⁸Derbyshire, D. (2008) *Barking mad: Owners of obese dogs and fat cats could face jail under controversial new rules*, Daily Mail, Online version 05 November

2008. Available at: <http://www.dailymail.co.uk/news/article-1083010/Barking-mad-Owners-obese-dogs-fat-cats-face-jail-controversial-new-rules.html#ixzz1ZFpkoAtc>

suffering whether physical or mental and to ensure that good standards of animal welfare are maintained. However, this aspect of the *Code* effectively lays down minimum standards that owners need to comply with. Not only the requirement to provide fresh drinking water at all times and to provide a balanced diet suitable for a cat's individual needs, but also to monitor the amount that the cat eats or drinks and to seek advice concerning the cat's diet as required. The *Code* specifically refers to the special dietary requirements of certain cats (including cats that are ill) and these provisions when combined with the Act's obligation to provide adequate standards of animal welfare impose an active obligation on owners regarding their cat's dietary needs, explicitly linking dietary health and welfare.

Normal Behaviour

The *Code* reflects the fact that cat behaviour varies according to a cat's age, personality and past experiences.¹⁹ As outlined elsewhere in this article, unnecessary suffering can be caused either by taking action which causes unnecessary suffering or by failing to take appropriate steps to prevent unnecessary suffering.

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Section 3 of the *Code* thus stipulates that cats are provided with enough 'mental, social and physical stimulation' to meet the individual needs of a cat. The reference to individual needs signifies that 'standard' or minimum standards are not enough and that the owner of an extremely active cat may need to make additional provision to ensure that this requirement is met. While the *Code* requires that a cat is provided with somewhere to scratch, for example a sturdy scratching post, an active cat with a wide territory may require additional stimulation such that a single indoor post is not enough. The *Code* is explicit in specifying that owners should know how their cat behaves when fit, healthy and happy, by implication imposing an obligation on owners to be aware of and monitor their cat's behaviour and notice any changes in it. Failure to do so could be a breach of the *Code* and result in unnecessary suffering caused by a failure to take action.

Housing

Section 4 of the *Code* places an obligation on owners to make sure that their cat has appropriate company. In keeping with other provisions of the *Code*, Section 4 requires owners to consider the individual needs of a cat and its individual sociability towards people, other cats and other animals. The *Code* indicates that 'a cat may suffer if it cannot avoid other cats it does not like'²⁰ indicating that failure to provide appropriate housing free from interaction with other animals could constitute unnecessary suffering. However the *Code* also indicates that owners should provide regular contact with people even

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when they are away, for cats that like people.

Section 4 of the *Code* provides that owners must appropriately consider the socialisation needs of a particular cat to the extent where they should either avoid having a second cat or other companion animal (e.g. a dog) if doing so would negatively impact on their cat, or that should they have another animal they take appropriate steps both gradually to introduce the new animal into the home environment or to take additional steps to minimise contact between animals that do not like each other. This includes providing extra resources (toys, beds, litter trays and hiding places) to allow cats to get away from each other and also to ensure that they can access everything they need without having to pass one another too closely. This guidance means that cat owners need to carefully consider, on the basis of an individual cat's needs, any decision to have more than one cat or any other animal. Failure to do so could result in the causing of unnecessary suffering even though this is done unintentionally.

Caring for cats in hot weather and on bonfire night warrants additional

¹⁹Section 1, DEFRA *Code of Practice for the Welfare of Cats*.

²⁰Section 5, DEFRA *Code of Practice for the Welfare of Cats*.

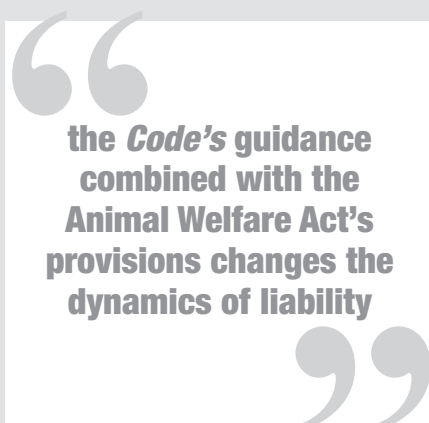
welfare guidance in light of the legal duty of responsibility under the Animal Welfare Act 2006. Those responsible for the welfare of cats must take account of the additional guidance and advice obtainable from DEFRA and which is available on its website,²¹ in order to discharge their legal responsibilities to their cats.

Protection from Pain

The *Code* also places an enhanced obligation on owners to monitor their cats for signs of injury or illness and to ensure that somebody else does this when the owner is away. While most cat owners will naturally keep an eye on their animal's health, the *Code* places an explicit, active obligation on owners to do so and to seek veterinary (or other appropriate) advice as soon as possible in the event of injury or illness.

A New Conception of Animal Welfare

The law's focus on the *individual* companion requires owners (and other responsible persons) to take a proactive role in understanding their companion's behaviour and needs, thus developing an awareness of the additional obligations this may place on the owner under UK law. While DEFRA's *Code of Practice on the Welfare of Cats* holds 'advisory' status rather than itself being enforceable, we argue that the *Code's* guidance combined with the Animal Welfare Act's provisions changes the dynamics of liability such that action might be taken under the Animal Welfare Act 2006, allowing courts to consider a failure to provide the necessary cat-friendly environment required by the *Act* (in accordance with the *Code*), as opposed to



considering, for example complaints under the specific nuisance requirements of the Environmental Protection Act 1990. Put another way, the scope of the action that might be taken against cat owners is widened so that they need to consider the environment in which their cats are kept and any potential negative consequences of that environment on their cat's health and wellbeing, including the impact of this on neighbours.

Several times in this article we refer to considering the needs of the individual cat. This is a central focus of the Animal Welfare Act 2006 which is aimed at responsible animal ownership requiring those who choose to have companion animals to take a proactive role in understanding their companion's behaviour and needs. While it may at first glance appear complex, much of what is contained within the law is likely to reflect the responsible practices that conscientious cat owners have already adopted and would wish to see in respect of protecting their companions from harm.²²

²¹www.defra.gov.uk/news/2011/06/03/pets-hot-weather/; <http://archive.defra.gov.uk/foodfarm/farmanimal/welfare/documents/fireworks.pdf>

²²The full Research Report on Cats and the Law by Dr Angus Nurse and Diane Ryland is available online at both the University of Lincoln and Middlesex

University Research Repositories and can be accessed via each author's name and respective University.