

Increased Maximum Sentences for Deliberate Animal Abuse: Part of the Armoury of the Criminal Justice System in Tackling Violent Crimes Towards People and Animals

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This article examines the impact of increasing maximum sentences for crimes of violence towards animals under the Animal Welfare Act 2006; as well as exploring the arsenal of measures available to the criminal justice system to prevent and deter violent crimes towards animals and humans. It asks what other steps could be taken to increase the protection afforded to vulnerable members of society, including children, women and their pets where they are exposed to domestic violence. We argue that a multi-agency approach is essential to identify and address the risk of violence posed to vulnerable groups, which might otherwise fall under the radar. We also examine the arguments for and against

introducing a register of animal abusers.

Sentencing

Sentencing for animal cruelty offences has long been considered by many to be far too low. England has long held a reputation for taking matters of animal abuse seriously, yet has lagged behind other jurisdictions. It is noted that sentences in England and Wales have been among the weakest in the whole of the international community.¹

Recent proposals by Environment Secretary, Michael Gove, will increase maximum sentencing for deliberate acts of animal cruelty to five years in early 2018,

bringing England in line with much of the international community.

Currently, the Animal Welfare Act ('the Act') makes it an offence to cause an animal unnecessary suffering, poison an animal, cause an animal to fight, or fail to ensure that an animal's needs are met.² Under the Act it is open for the court to make a disqualification order for such period as it deems fit in order to prevent further cruelty and this can include participation in the keeping of animals.³

Sentencing provisions are set out at s.32 of the Act (as amended by the 2015 statutory instrument 664)⁴ and currently, the maximum

¹ See written evidence to the EFRA Committee from Association of Lawyers for Animal Welfare (now renamed to UK Centre for Animal Law) (AWF 195): table of comparative sentencing powers.

² Animal Welfare Act 2006, s4, 7, 8 & 9, (available at: <http://www.legislation.gov.uk/ukpga/2006/45/contents>)

³ *Ibid.* at s34

⁴ Available at: http://www.legislation.gov.uk/uksi/2015/664/pdfs/uksi_20150664_en.pdf

sentence for animal cruelty is six months imprisonment and an unlimited fine.

The Magistrates' Court Sentencing Guidelines were amended in 2017 and recommend as a starting point 18 weeks custodial sentence for cases where 'greater harm' is caused to the animal and where there is a high level of culpability.⁵ The British Veterinary Association has found⁶ that the most serious offences in practice are not usually met with custodial sentences and this appears to be supported empirically by a number of high profile cases that have attracted a significant degree of public disquiet.

In 2015 there was significant public concern when three youths who were disqualified from keeping animals for five years were given a referral order for 12 months and ordered to pay costs after being convicted of causing unnecessary suffering to a dog. The dog's injuries were severe and included a broken neck and facial burns.⁷ In a 2016 case where footage showed two brothers deliberately and repeatedly throwing their pet bulldog down stairs, the offenders received a two-year

suspended sentence and a six-month tagged curfew.⁸

The public outcry at these and other apparently paltry sentences focused on the failure of magistrates to impose custodial sentences, even for the offences at the worst end of the spectrum. The direction of this anger may however have been misplaced. The difficulty faced by magistrates is that the sentencing guidelines are only a starting point. Magistrates are then required to take into account mitigating and aggravating factors, which can result either in a reduction or increase in any sentence that they are able reasonably to impose. Therefore, given the need to apply mitigating factors, including matters relevant to the offender (for example, a history of no previous convictions) as well as factors such as entering a guilty plea,⁹ magistrates are likely to have been faced with little choice in many cases other than to impose a non-custodial sentence.

Crucially therefore, increasing the maximum sentence to five years is likely to mean that jail sentences are not only potentially longer but also more likely.

Domestic Violence

There is an obvious punishment element in the sentences for cases of deliberate animal cruelty, but another important factor is the deterrent effect that harsher penalties can have. This is important for animals and potentially also for the wider society. What it signals is that society will not tolerate crimes of violence, whether directed towards animals or humans.

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Recent research shows the folly of treating violence towards animals as of a different nature or 'species' to violence directed towards humans. There have been a number of studies¹⁰

⁵ Magistrates' Court Sentencing Guidelines, p26, (available at: <https://www.sentencingcouncil.org.uk/wp-content/uploads/MCSG-April-2017-FINAL-2.pdf>)

⁶ House of Commons Environment Food Rural Affairs Committee Third Report of Session 2016-2017 Animal Welfare in England domestic pets page 30 paragraph 170

⁷ Reported at: <https://www.express.co.uk/news/nature/621868/eyes-fire-animal-cruelty-RSPCA>

⁸ Kayleigh Lewis, 'Brothers filmed throwing pet bulldog down the stairs spared jail' (*Independent*, 31 March 2016) <<http://www.independent.co.uk/news/uk/home-news/pet-bulldog-baby-animal-cruelty-video-jail-rspca->

[brothers-a6961386.html](http://www.independent.co.uk/news/uk/home-news/pet-bulldog-baby-animal-cruelty-video-jail-rspca-brothers-a6961386.html)> accessed 16 November 2017

⁹ section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline

¹⁰ For example see studies by: Frank R.Ascoine, Phil Arkrow and see resources available at: <http://nationalinkcoalition.org/resource/s/articles-research>



examining a link between abuse to animals and humans. In particular, research has shown that animal cruelty, particularly towards household pets, “is part of the landscape” of household violence.¹¹ Whilst studies in this area do not conclude that there is a “simple cause and effect,”¹² there exists much data drawing a risk connection between the abuse of both vulnerable humans and animals in the home.

Multi-agency collaboration

This data underlies the importance of taking a joined-up approach to violent criminal conduct, whether directed

towards animals or humans, particularly in the context of household abuse. Multi-agency collaboration is an important aspect of this. International research shows that finding one victim of abuse in the home can be an indicator of other victims as part of a pattern of abusive behaviour. For example, in situations where women and children are victims of domestic violence, a large number of household pets have been found to have been abused by the same perpetrator, “contributing to a climate of control, intimidation and terror.”¹³

Studies focusing on emotional abuse conclude that “both woman and animals are victimised by the abuse of the other.”¹⁴ The victims of abusive behaviour are therefore often intrinsically linked. “Understanding, responding to, and ultimately ending interconnected forms of violence requires that we understand these interconnections.”¹⁵ This requires effective collaboration between agencies that support vulnerable members of a household that may be at risk; pets, children and women.

One policy option is to mandate coordinated cross-training

¹¹ Andrew Linzey, Phil Arkow, *The Global Guide to Animal Protection* (2013), p223

¹² Andrew Linzey, *The Link Between*

Animal Abuse and Human Violence (2009), p7

¹³ Linzey, *Ibid at 118*

¹⁴ Linzey, *Ibid at 119*

¹⁵ Linzey, *Ibid at 123*

between bodies that intervene with human and animal abuse. Training need not be complex, but enough to provide agency professionals with the confidence to “recognise multiple forms of family violence,”¹⁶ along with the associated legal and practical next steps, such as who to contact if abuse is suspected. It could involve prosecutors to assist with protocol checklists that include questions for child victims concerning family pets. Whilst already in place in some countries, including the UK, a national link group can act as a centre for collaborative response amongst agencies.¹⁷ Legislation mandating coordinated training could encourage cross-reporting.

In recognising interconnected forms of abuse, the next logical step is a requirement to collect and share findings of household abuse, by setting up clear cross reporting procedures. Much research shows that “the home is at increased risk of escalated and continued violence if all forms of abuse are not addressed.”¹⁸ Mandating cross-reporting would directly recognise and act upon the link between human and animal abuse. “Animal abuse is not so much the “canary in a coalmine” as it is part of an overall

scheme of anti-social, community based violence.”¹⁹

In turn, detailed reports from both health and animal welfare workers could assist prosecutors, providing “opportunity for meaningful intervention.”²⁰ This approach provides for preventive strategies for both reoffending adults, and for children at risk of being violent by influence of a cycle of abuse in the home.

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Unfortunately, however, some professionals have been reluctant to engage in cross-reporting, referencing barriers such as “fear of litigation...absence of organisational protocols [and]confidentiality concerns.”²¹ Although provisions vary, one US state approach to encourage reporting is to provide that those that make reports to authorities in good faith are protected from

any associated civil or criminal litigation. These reporting requirements are directed towards veterinarians and child protection services.

As a leader in this area, a number of US states have “taken a variety of approaches as direct and indirect responses to the link between animal and human abuse.”²²

Register of abusers

In this context, it is worthwhile considering calls for the creation of a register of animal abusers.

As discussed above, the courts do have the power to make a disqualification order preventing people convicted of animal abuse keeping animals for such period as it deems fit. However there have been concerns about enforcement,²³ since a person who goes straight out and purchases another animal, contrary to the terms of the order, may fall under the radar of the authorities.

The county of New York introduced an animal abuse register in 2014.”²⁴ A number of counties followed, and Tennessee became the first state to

¹⁶ Linzey, Arkow *Supra* note 11

¹⁷ See:

<http://www.thelinksgroup.org.uk/> (and <http://nationallinkcoalition.org/>)

¹⁸ Allie Phillips, ‘Understanding the link between violence to animals and people’ (*National District Attorneys Association*, June 2014), p7 < <http://www.ndaa.org/pdf/The%20Link%20Monograph-2014.pdf> > accessed 16 November 2017

¹⁹ Waisman, Frasc & Wagman, *Animal Law Cases and Materials* (fifth edition, 2014), p157

²⁰ Linzey, *Supra* note 12 at 30

²¹ Linzey, Arkow *Supra* note 11 at 224

²² Frasc, Hessler, Kutil & Waisman, *Animal Law in a Nutshell* (2011), p90

²³ See Environment, Food and Rural Affairs Committee (EFRA) Report published 16 November, paragraph 177 at: 2016

<https://publications.parliament.uk/pa/cm201617/cmselect/cmenvfru/117/11709.htm>

²⁴ See: <https://www1.nyc.gov/site/doh/health/health-topics/animal-abuse-registry.page> - New York’s Animal Abuse Registration Act

implement a publicly available register in 2016.²⁵

As a helpful model, the New York legislation requires that anyone over eighteen convicted of animal abuse in the county is added to a registry for five years following sentencing or imprisonment. A further conviction of animal abuse during this period extends the register requirement for an additional ten years. Failing to register or abide by the register conditions can result in a one-year sentence or a \$1,000 fine, or both. The New York register is available to relevant bodies including law enforcement, pet shops and animal shelters. These businesses and organisations are required to check the register prior to the transfer of any animal and must refuse to carry out a sale or adoption if the individual is found to be on the register. The legislation is intended to prevent anyone who is required to be registered from owning, possessing, residing with or having any intentional physical contact with any animal.

At a federal level, in 2016, the FBI introduced a database to collect animal cruelty data. This is intended to act as a research database and to assist law enforcement in revealing potential risk factors of future violence towards humans and animals.²⁶

There is a consultation driven by the RSPCA in Wales for some form of a closed 'Animal Offender Register'.²⁷ This proposal is similar to the New York County approach where access is restricted to certain organisations or officials, rather than the state of Tennessee approach where the register is open to the public.

In the UK a register could act as an additional deterrent to potential abusers of animals as potentially decreasing the likelihood of evasion of the law. Whilst the court may disqualify an individual convicted of animal abuse from keeping animals under the Act, this is not necessarily enough to prevent further abuses, particularly whilst there is no requirement to register disqualification.

However, in considering arguments against such a register, commentators have raised concerns about data protection law and public shaming. Similar to discussion surrounding sexual offence registers, there are concerns that those registered become further isolated from society, particularly whilst not all individuals convicted of animal cruelty go on to reoffend. Another consideration is balancing limited law enforcement resources. One argument is that it is more productive to prioritise enforcement of existing laws and

focus on rehabilitation programs such as counselling.

Highlighting these concerns, including the need for an accessible register, the Environment, Food and Rural Affairs Committee (EFRA) made a recommendation for the Government to examine the practical potential for a publicly accessible register to be established²⁸

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The Government rejected this recommendation on the basis that:

'Persons convicted of animal cruelty or animal abuse are already captured on the Police National Computer. The Government agrees we need to make better use of existing databases and improve connectivity and information sharing. The Police National Computer

²⁵ See: <https://www.tn.gov/tbi/topic/tennessee-animal-abuse-registry>

²⁶ FBI, 'Tracking animal cruelty: FBI collecting data on crimes against animals' (FBI News, 1 February 2016)

<<https://www.fbi.gov/news/stories/-tracking-animal-cruelty>> accessed 16 November 2017

²⁷ See: [http://politicalanimal.org.uk/wp-content/uploads/2017/10/An-Animal-](http://politicalanimal.org.uk/wp-content/uploads/2017/10/An-Animal-Offender-Register-for-Wales-Consultation-1.pdf)

Offender-Register-for-Wales-Consultation-1.pdf

²⁸ See *ibid*, para 182 - <https://publications.parliament.uk/pa/cm201617/cmselect/cmenvfru/117/11709.htm>

provides a searchable, single source of locally held operational police information. It brings together data and local intelligence so that every force can see what is known about an individual, including any operational information related to animal cruelty or mistreatment. There is existing functionality for a user (police officer) to be able to apply a “Person Marker” both locally and nationally and for that marker to be displayed when accessed by others. When these are used is a police operational matter. The Government agrees with the police that a publicly available register of animal abusers could facilitate vigilantism. Instead, if a person has concerns about another individual they can approach the police who can check their records on the Police National Computer. The police may then take the most appropriate action. We consider that this is the best arrangement.’

This may not be a complete answer to the problem. Further consideration and discussion may well be necessary to ensure that there is an efficient register that is

available to relevant bodies only and with appropriate safeguards. A central registry accessible by law enforcement, as well as those that transfer animals, could be another step in deterring both human and animal violence in the home.

Alternative approaches

In some states, protective orders, which commonly concern victims of domestic violence, may be extended to include an animal owned by the human victim. This is upon a finding of probable cause of cruelty towards that animal. Reportedly such laws “encourage judges to include family pets (dogs, cats, rabbits and sometimes livestock) in protective orders.”²⁹ In adding pets to these protective orders US legislators directly recognise and address the human/animal violence link.

Further, California and other US states provide for psychiatric evaluation requirement orders against those convicted of certain offences against animals.³⁰

Another statutory mechanism used by some states is ‘upward departures’. These provisions raise a charge from a misdemeanour to a felony (resulting in higher sentences) in certain circumstances where an individual is convicted of animal abuse. This includes where: there is a previous conviction of

domestic violence; the animal abuse occurred in front of a child or; the abuse was carried out so as to threaten another person.³¹ Accordingly, some US courts allow evidence of animal abuse in cases of domestic violence, recognising that animals can be used to inflict emotional injury towards humans.

Providing a range of animal abuse penalties to the judiciary, in a similar way to the US, could address the risk of re-offending, thus protecting all vulnerable groups.

Therefore, whilst increased maximum sentencing for animal abuse is a much needed step in deterring abuse towards all vulnerable members of society, it should perhaps be the start of a new era in recognising and addressing potential links between the abuse of animals and humans, so that both are protected by the criminal justice system to the fullest extent possible.

²⁹ Allie Phillips, *Supra* note 19 at 12

³⁰ Frasch, Hessler, Kutil & Waisman, *Supra*

note 22 at 29

³¹ Frasch, Hessler, Kutil & Waisman, *Supra*

note 22 at 30