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CONNECTICUT

The story of how Desmond's Law was passed to allow victim advocates for animals in cruelty cases

LABELLING

Acland Bryant analyses the recent case, *Dairy UK v Oatly*, and argues advocates can make strategic use of its ruling

EMERGENCY KILLING

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EDITOR'S NOTE

Welcome to the late summer 2026 edition of the journal.

This will be my last edition as I am stepping down from A-LAW due to health reasons.

Looking back over nearly twenty years, A-LAW's growth has been extraordinary in terms of impact. It has established strong links with lawyers, academics and activists, not just in this country, but globally. A-LAW has held numerous seminars, training events and conferences over the years and has help shaped policy and debate more widely.

Looking forward, A-LAW is well-positioned to continue its focus on law and how it may be used to protect and improve the lives of animals. It is never more necessary, as animals face ever increasing threats to their welfare.

Yours for the animals,

Jill Williams

Editor
August 2026

Desmond's Army Animal Law Advocates, the Passage of Desmond's Law in Connecticut and Analysis of Animal Cruelty Cases and Attorney Advocate Appointments from 2016-2025

By Robin "Zilla" Cannamela, Deborah Weinrauch, Joyce Glass and Olivia Dorian

Part I: Desmond's Army Animal Law Advocates

In a system where animals are categorized as property under the law rather than sentient beings, Desmond's Army Animal Law Advocates has emerged as a tireless voice for justice. Motivated by the tragic death of an animal victim, the organization effectuated statewide change resulting in groundbreaking legislation called Desmond's Law, allowing animal victims a voice in the courtroom.[1]

This section is the story behind Desmond's Army Animal Law Advocates and their continued work. Part II provides the results of the analysis of Desmond's Army's database of all animal cruelty cases since Desmond's Law was passed in 2016. Part III provides case examples where attorney advocates were appointed in cruelty cases. Part IV sets forth a path to strengthen Desmond's Law and allow all animal victims to have a voice while being an example to other jurisdictions contemplating similar legislation.

<u>The Origins of a Movement</u>

Justice for Desmond was the original group that initiated the movement leading to Desmond's Law. Desmond, a boxer mix, was a victim of domestic violence. After his pregnant owner left her abuser, Alex Wullaert, he retaliated by starving then strangling Desmond to death.[2] Desmond's body was later found in a garbage bag near a pond, and Wullaert confessed to the murder.[3]

During court proceedings, Wullaert engaged in "judge shopping" by strategically waiting for a sympathetic judge. Ultimately, he was awarded Accelerated Rehabilitation (AR), a program that would expunge his record after two years of compliance. He served no jail time.[4] The decision shocked and outraged the community in Connecticut.

While some supporters left the group after the verdict, a core group remained, determined to enact systemic change. This group contacted then-State Representative Diana Urban. A co-founder asked whether a law allowing a type of victim advocate for animals in cruelty cases could pass. Urban stated that the idea was crazy enough that it just might work.

<u>Grassroots Movement Leads to Groundbreaking Legislation</u>

It took three years of advocating, legislative sessions, revisions, and public testimony. Supporters rallied at the capital in Hartford, joined by animal control officers, rescue groups, media allies, and citizens who believed animals deserved better.

A significant part of the advocacy for Desmond's Law was Desmond's case: ***State of Connecticut v. Alex Wullaert***.[5] Legislators and the public were made aware of the facts, including the systematic cruelty inflicted on an innocent animal and the indisputable connection to domestic violence.

1 CT Gen Statute section 54-86n.

2 The contents of Desmond's stomach showed toilet paper and a piece of a plastic bag.

3 https://www.nbcconnecticut.com/news/local/branford-man-accused-of-killing-pit-bull/1928345/.

4 https://www.nhregister.com/connecticut/article/Ex-Branford-man-avoids-jail-time-in-dog-killing-11430574.php.

5 https://www.nhregister.com/connecticut/article/Ex-Branford-man-avoids-jail-time-in-dog-killing-11430574.php; https://patch.com/connecticut/newcanaan/bp--not-just-a-dog-the-justice-for-desmond-campaign

Other cases that were highlighted included ***State of Connecticut v. Veronica Iris Reyes***[6]: (H17B-CR16-0063496-S). In January 2016, Veronica Reyes of Bristol, Connecticut, was charged with hanging two dogs from a tree in her yard. Reyes told investigators multiple stories why she hung the dogs and buried them in her yard including being stressed out from a relationship that ended and smoking marijuana.[7] This egregious act drew additional public attention and illustrated the urgent need for legal advocacy on behalf of animal victims. Reyes pled guilty and was sentenced to 5 years, execution suspended after 6 months, with 3 years' probation.[8]

October 1, 2016, Desmond's Law goes into effect[9]

Desmond's Law allows courts to appoint volunteer attorneys or supervised law students to speak on behalf of animal victims in cruelty cases. These advocates review documentation, obtain records, visit the victims, collaborate with stakeholders, present facts, and ensure that the court considers the animal's interests. It was the first law of its kind in the United States and marked a new era in animal law and the protection of victims.

As soon as Desmond's Law took effect Desmond's Army began tracking animal cruelty cases in Connecticut and continues to do so today. One of the first cases tracked after the law was ***State of Connecticut v. Joe Irizarry***[10]. Irizarry was arrested for severely beating a four-month-old puppy named Autumn. The animal was used as a tool to manipulate his girlfriend to remain in an abusive relationship. Initially charged as a misdemeanor, the offense was upgraded to a felony with the application of Desmond's Law.[11] Irizarry was ultimately sentenced to three years in prison. Autumn survived and was adopted into a loving home.

Desmond's Army Today

The organization continues its work through courtroom monitoring, legislative reform, and community outreach. It is dedicated to raising awareness on the link between animal cruelty and

6 State of Connecticut v. Veronica Iris Reyes, H17B-CR16-0063496-S.

7 Connecticut Woman Who Killed Dogs After Claiming They Told Her to Hang Them Pleads Guilty | KTLA.

8 https://www.jud.ct.gov/crim.htm.

9 Connecticut General Statute section 54-86n (2016) sets forth:

> (a) In any prosecution under section 53-247, or in any court proceeding pursuant to section 22-329a or in the criminal session of the Superior Court regarding the welfare or custody of a cat or dog, the court may order, upon its own initiative or upon request of a party or counsel for a party, that a separate advocate be appointed to represent the interests of justice. If a court orders that an advocate be appointed to represent the interests of justice, the court shall appoint such advocate from a list provided to the court by the Commissioner of Agriculture pursuant to subsection (c) of this section. A decision by the court denying a request to appoint a separate advocate to represent the interests of justice shall not be subject to appeal.
>
> (b) The advocate may: (1) monitor the case; (2) consult any individual with information that could aid the judge or fact finder and review records relating to the condition of the cat or dog and the defendant's actions, including, but not limited to, records from animal control officers, veterinarians and police officers; (3) attend hearings; and (4) present information or recommendations to the court pertinent to determinations that relate to the interests of justice, provided such information and recommendations shall be based solely upon the duties undertaken pursuant to this subsection.
>
> (c) The Department of Agriculture shall maintain a list of attorneys with knowledge of animal issues and the legal system and a list of law schools that have students, or anticipate having students, with an interest in animal issues and the legal system. Such attorneys and law students shall be eligible to serve on a voluntary basis as advocates under this section. The provisions of sections 3-14 to 3-21, inclusive, of the Connecticut Practice Book shall govern a law student's participation as an advocate under this section.

10 *State of Connecticut v. Joe Irizarry*, U04W-CR16-0441085-S.

11 https://www.jud.ct.gov/crim.htm.

interpersonal violence, advocating for stronger laws, supporting enforcement, and educating the public about animal cruelty's connection to human violence.

Desmond's Army tracks all animal cruelty cases in the state, notifies approved advocates of cases, attends court proceedings, and provides municipalities with funding for necropsies that aid in prosecution. It also contributes to medical expenses for victims of cruelty during open investigations and offers rewards for information leading to the arrest and conviction of individuals responsible for abandonment or cruelty. Its newest initiative covers the first month's boarding cost for pets of domestic violence victims entering a licensed safe house facility, removing a significant barrier for survivors trying to escape abusive situations.

Desmond's Army advocates for the expansion of Desmond's Law to include all companion animals. The organization also supports legislation that imposes stronger penalties, permits lifetime bans on animal ownership for certain convicted abusers, and increases the presence of court-appointed animal advocates. Desmond's Army recognizes that some cases can be resolved through counseling, fines, or rehabilitation while others demand a prison sentence. Nonetheless, the organization insists that no instance of cruelty should go unrecognized or unchallenged.

Since its founding, Desmond's Army has grown exponentially. The organization's court accountability program ensures a respectful and consistent presence in courtrooms.[12] A strict courtroom code of conduct is upheld, ensuring all members remain professional and composed. The presence of purple-clad volunteers serves as a quiet but powerful reminder that animal victims matter. The work of Desmond's Army has been recognized by local, national and worldwide organizations. Their awards include 2019 SEEDS Award - International Society for Animal Rights, 2020 Mark Twain Excellence of Service Award, 2024 Connecticut Bar Association Citizen For The Law Award and 2020 and 2025 STARS Friends Of Animals Award.[13]

Part II: Desmond's Army Animal Law Advocates Data Analysis 2016-2025[14]

Since Desmond's Law went into effect Desmond's Army has collected data on all animal cruelty cases in Connecticut. Recently that data was analyzed for several reasons. First, no other organization or agency has tracked these cases in their entirety. Second, to decipher the total number of cases, type of charges, and type of crimes making up those charges. Third, to analyze the effect of attorney advocates assigned to cases in Connecticut.

To date, nothing published on Desmond's Law has laid out the total number of cases where attorney advocates have been appointed, whether they are private pro bono attorneys or through UConn law school and the impact attorney advocates have on cases. This data is pertinent to the effectiveness of the law, helps ascertain areas for improvement and is vital for other jurisdictions interested in passing similar legislation.

Unless otherwise noted, this analysis covers 533 animal cruelty cases brought in the state of Connecticut from October 2016-June 2025.

The charts below contain details of the analysis. A few highlighted results are:

Crime/Case Specific Data

Charging

- 85.8% of cases were charged as misdemeanors
- 12.3% of cases were charged as felonies
- 36.5 % of all crimes were violent[15]
- 68.8% of violent crimes were charged as misdemeanors
- 60% of animal victims were dogs and cats

Prior Criminal Record/Charged with Additional Crimes/Violation of Probation[16]

- 32.1% of those charged with animal cruelty had a prior criminal record
- 52.3% of those charged with felony charges had a prior criminal record
- 24.8% of those charged with neglect had a prior criminal record

Link to Domestic violence[17]

12 https://www.desmondsarmy.org/copy-of-contact.
13 https://www.desmondsarmy.org/.
14 All data analyzed was sourced from records kept, maintained and confirmed by Desmond's Army Animal Law Advocates. That data is derived from court records, documents obtained through Freedom of Information laws and records from open court appearances. Data was analyzed from October 2016-June 2025.

15 Violent crimes include death, disfigurement, torture, loss of limb, loss of eye/sight, prolonged abuse.
16 Due to the common granting of Accelerated Rehabilitation under CT Gen Statute section 54-56e these results are believed to be lower than the actual numbers because AR files are sealed and then erased so recidivism is difficult to track.
17 Domestic violence involved intimate partners, children, elderly, and cases involving strangulation of another. The cases analyzed were October 2016-October 2025 where domestic violence is noted in conjunction with animal cruelty

• 16.3% of animal cruelty cases also involved domestic violence
• 38.9% of cases charged as a felony involved domestic violence
• 79.8% of violent crimes involved domestic violence

<u>Attorney Advocate Specific Data</u>

Advocate Appointments

• 171 advocates appointed
• 89 pro bono private attorneys
• 82 UConn law clinic

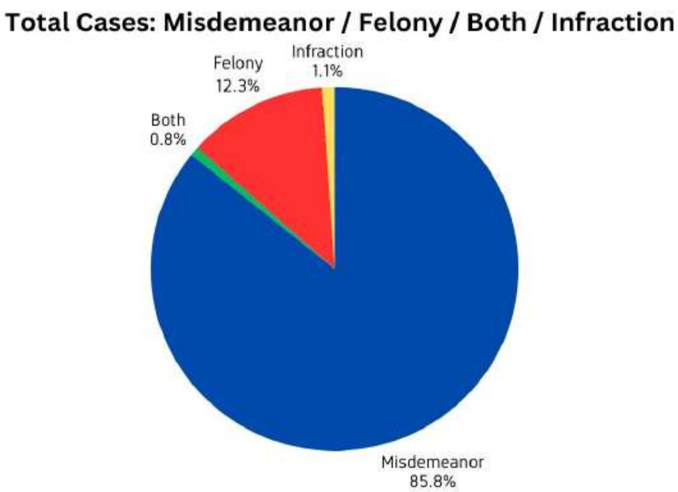
Advocates on Felony Cases

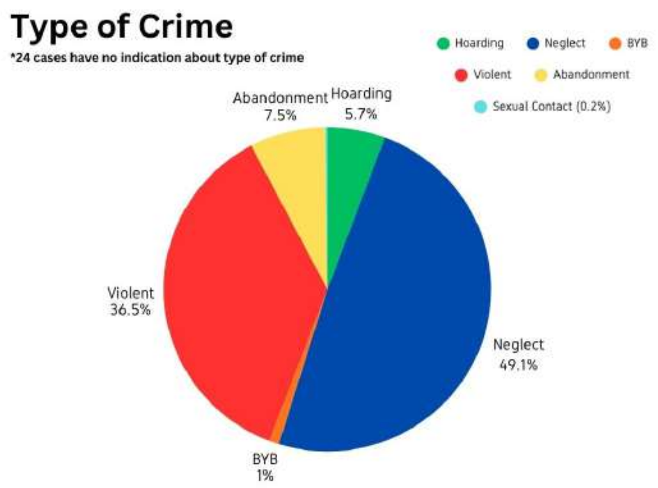
• 33 Felony cases had attorney advocates appointed
• 23 pro bono private attorneys
• 10 UConn law clinic

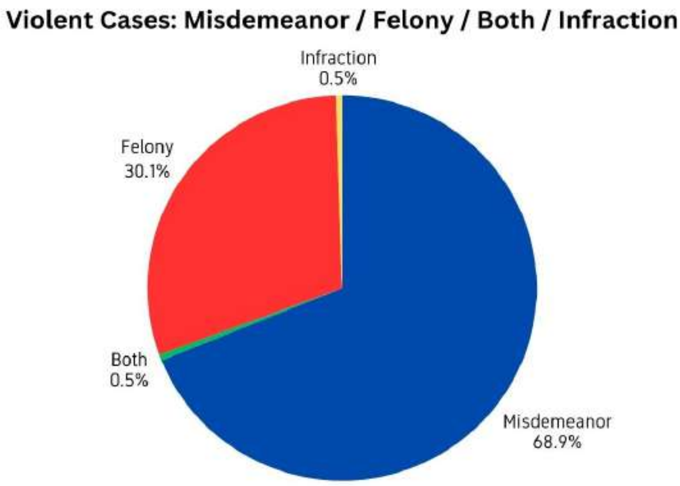
Increased Charges/Jail Sentence/Nolle

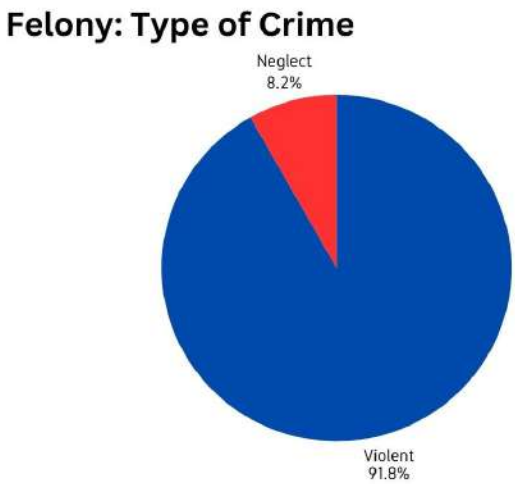
• 9 of 33 felony cases with an attorney advocate resulted from increased charges
• 1 of 23 felony cases without an attorney advocate resulted from increased charges
• 63% of felony cases with an attorney advocate assigned resulted in a jail sentence
• 25% of felony cases without an attorney advocate resulted in a jail sentence
• 2.6% of cases with an attorney advocate disposed of with a nolle
• 8.4% of cases without an attorney advocate disposed of with a nolle

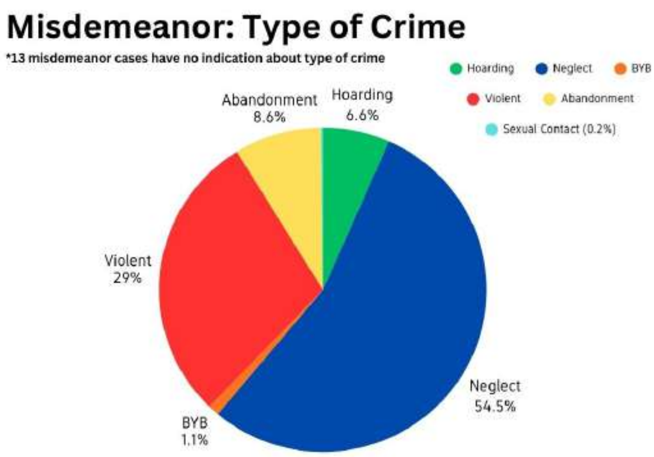
Charts for Types of Charges/Crimes











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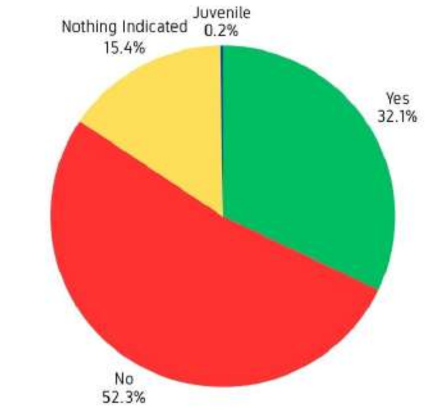
for charges for that case. The statistics do not account for prior domestic violence incidents including prior cases by CT Department of Children and Family Services.

Charts for Prior Criminal Record[18]

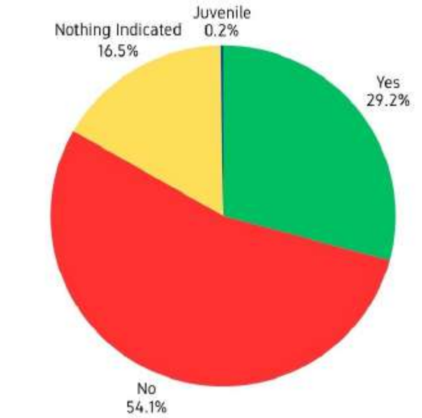
Total Cases: Prior Criminal Record

*Prior criminal record including additional crimes and violation of probation



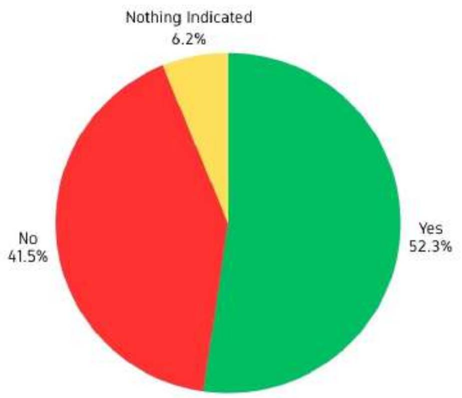
Misdemeanor Cases: Prior Criminal Record

*Prior criminal record including additional crimes and violation of probation



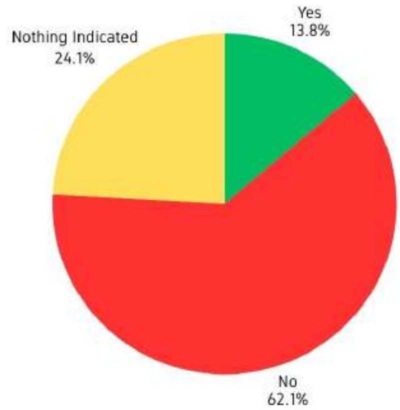
Felony Cases: Prior Criminal Record

*Prior criminal record including additional crimes and violation of probation



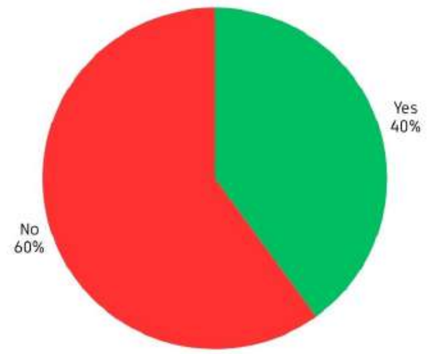
Hoarding Cases: Prior Criminal Record

*Prior criminal record including additional crimes and violation of probation



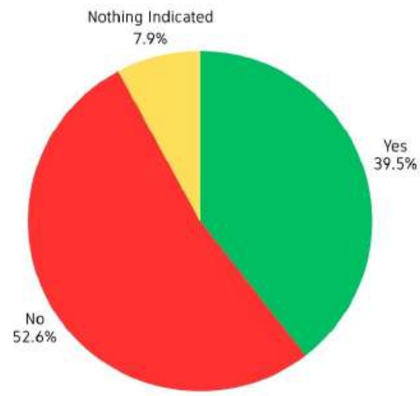
BYB Cases: Prior Criminal Record

*Prior criminal record including additional crimes and violation of probation



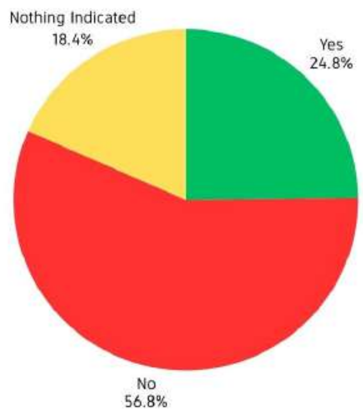
Abandonment Cases: Prior Criminal Record

*Prior criminal record including additional crimes and violation of probation

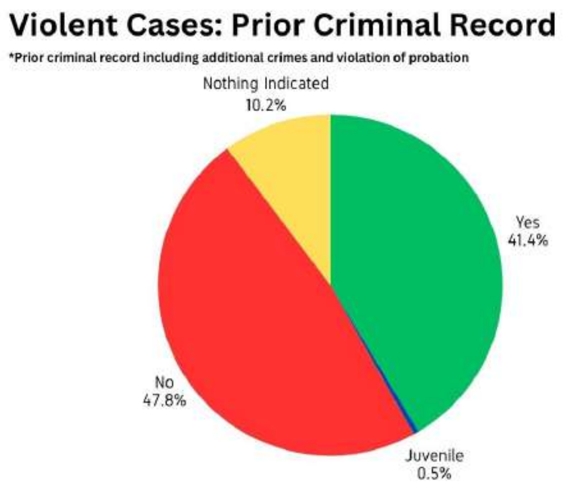


Neglect Cases: Prior Criminal Record

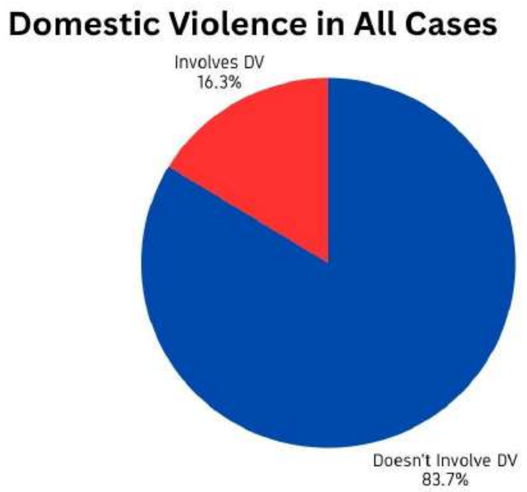
*Prior criminal record including additional crimes and violation of probation

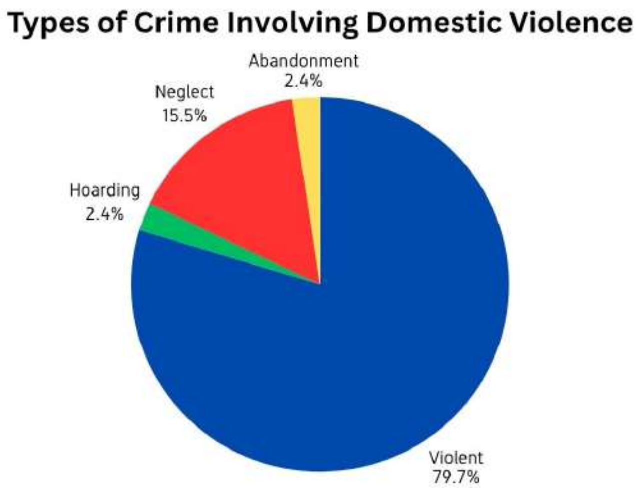


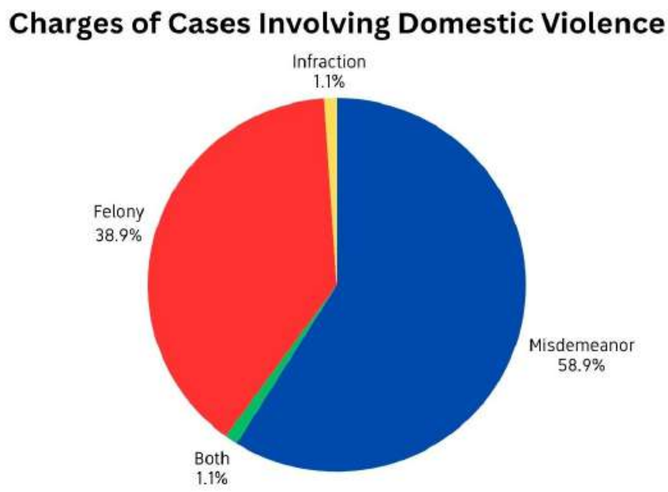
18 Due to the common granting of Accelerated Rehabilitation under CT Gen Statute section 54-56e these results are believed to be lower than the actual numbers. This is because AR files are sealed and then erased so recidivism is difficult to track.



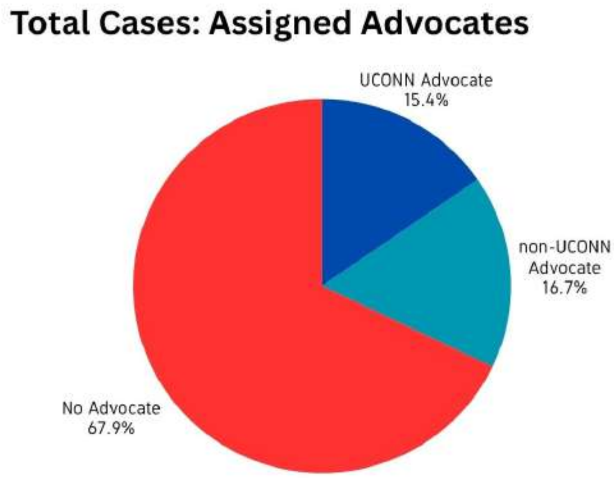
Charts for Link to Interpersonal Violence

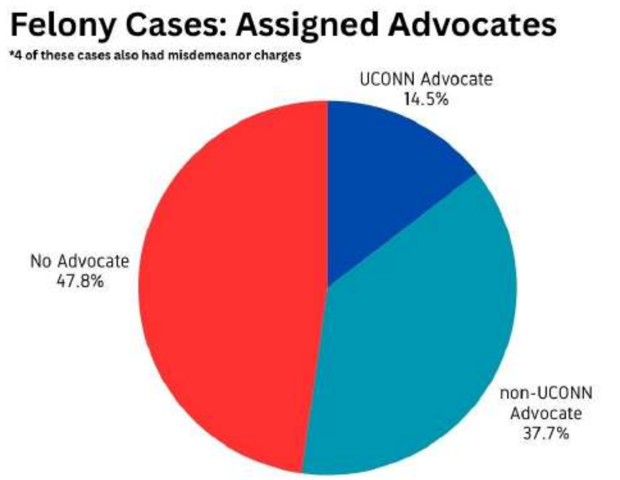




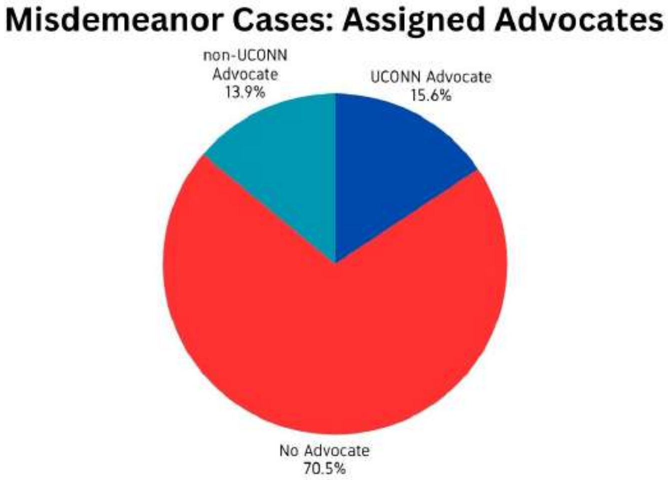


Charts for Attorney Advocate Specific Data Analysis Results[19]





19 All data analyzed was sourced from records kept, maintained and confirmed by Desmond's Army Animal Law Advocates. That data is derived from court records, documents obtained through Freedom of Information laws and records from open court appearances.



Part III: The language of Desmond's Law and its translation to the real-world work of appointed attorney advocates

The language of Desmond's Law states, in part, that attorney advocates can provide information and recommendations to the court "in the interest of justice."[20] What does that mean in the real world? The attorney advocate tells the story of what happened. Not only the story of the victim in the snapshot of time that led to the charges in the case. But also, what happened to that victim prior to the abuse and what happened to the victim after the abuse if they survived. The advocate lays out the defendant's pattern of behavior and highlights the human connection. In every animal cruelty case there is a human connection- whether a child was present, domestic violence is noted, elder abuse occurred or it affected the community at large.

To tell that story, the attorney advocate works with any number of stakeholders. It could be the animal control officer who was first on scene, removed the animal and did a report. It could be law enforcement on scene with body cameras, which footage must then be reviewed. Or the veterinarian who saw the animal victim and initiated a course of treatment, took pictures, reviewed X-rays and wrote a report. It may involve speaking with professionals in other jurisdictions regarding cases that are pending or have occurred in the past. It also may require going to other courts and pulling the files, obtaining affidavits from witnesses or visiting the scene of the alleged crime. In criminal cases involving civil forfeiture it necessitates the attorney advocate notifying the criminal court of the outcome in the civil case and vice versa, including any orders issued pertaining to the victim.

When all relevant information is gathered, it is provided to every party involved in the case. When the attorney advocate is in court to tell the story, the documented facts providing back up are in possession of the court and all interested parties. The attorney advocates are there to create a record for that case, for precedent, and for legislation, whether to amend a bill that's currently on the books or for a proposed bill.

The cases detailed below all had individual pro bono attorney advocates assigned to act "in the interest of justice" under Desmond's Law.

Desmond's Law Real World Examples[21]

Case 1: *State of Connecticut v. Franco Bellini-Zabala*[22]

Victim: Axel (Advocate educated the court on the Link, ensured video evidence and post-surgical photos were provided and viewed by all parties)

Axel, a Siberian Husky, was brought into the home, consisting of the defendant, his significant other and two children, when he was eight weeks old.

When Axel was seven months old, a concerned community member contacted animal control. The witness noticed Axel yelping and limping, where one of his legs had been impacted and it had been going on for several weeks. The animal control officer responded to the scene, which happened to be the defendant's place of business. They spoke to the defendant, who told them that Axel had gone into the woods to play two weeks prior and came out limping. The defendant had not taken Axel to

20 Connecticut Gen. Statute section 54-86n.

21 For all cases discussed the details have come from statements made in open court by interested parties, documents obtained by the public through the Freedom of Information Act, and the notes from assigned attorney advocates.

22 *State of Connecticut v. Franco Bellini-Zabala,* Docket N07M-CR22-0349940-S.

the vet for his injury.

Animal control instructed the defendant to take Axel to the vet. Animal control also contacted the animal control officer in the town where the defendant resided. Animal control went to the home to do a welfare check. No one was home but, as they were leaving, a neighbor came out and told animal control they had heard Axel being abused on several occasions and had a video shot several months prior, showing the abuse.

The neighbor provided the video a few days later. The video showed Axel sitting outside the home. The defendant walks into the picture, he duct-tapes Axel's snout and drags him into the car. You do not see, but you can clearly hear Axel yelping from being beaten. The defendant then goes into the front of the vehicle while Axel is still in the back and pulls away.

At about the same time, animal control received a call from an emergency animal clinic about a dog. The vet called because the dog had been dropped off by the owner and the story told did not match the injuries presented and the results of x-rays taken. That dog was Axel.

The x-rays showed that Axel had eight different fractures which were weeks to months old. The defendant was charged with misdemeanor animal cruelty.

The defendant tried to argue that Axel was a new member of the household, and those injuries were from whoever owned him prior. But the animal control officer had done research and was able to locate vet records showing that the defendant and his significant other had taken Axel to the vet when he was about eight weeks old; demonstrating the defendant was the owner of Axel since he was a puppy.

The facts showed that, from the time he was about eight weeks until shortly before seven months old, Axel was abused over a period, because the injuries were at various stages of healing. That was the pattern of behavior in the case.

The attorney advocate worked with the foster family, animal control and the vet for several months. The goal was to save one of Axel's legs that had been severely damaged from the repeated abuse. Amputation was a last resort. However, several months in, the vet did make the recommendation to amputate.

The included picture above is of Axel the day that his foster family went to pick him up after his leg was amputated. The advocate ensured the picture was taken and provided it to the court as well as the video of the abuse. The court had not viewed the video until the advocate stressed its importance.

The importance of the picture and video cannot be understated. It is one thing for the attorney advocate to tell the story to the court with words. But pictures and video show what the victims go through and what the consequences are to them, based upon the defendant's actions.

Axel was adopted by his foster family and is doing fine as a tripod. The defendant in this case received accelerated rehabilitation, a diversionary program, which permits the defendant's record to be erased upon completion. The attorney advocate was able to successfully request restitution, and the defendant agreed not to have animals.

Interpersonal Connection: There were two children in the home[23] who witnessed this pattern of abuse. A child's exposure to the treatment of animals — positive or negative — informs how they treat humans and animals in childhood into adulthood. They can become desensitized to cruelty if that is what they witness in their environment.[24]

23 This case was cross reported under Connecticut Public Act 14-70.
24 https://leb.fbi.gov/articles/featured-articles/the-link-between-animal-cruelty-and-human-violence

Case 2: *State of Connecticut v. Jack Yammine*[25]

Victim: Buddy (Attorney advocate educated the court on the Link, argued successfully for a ban on animals to be included in order of protection for 25 years-precedent established

The picture on the left above is Buddy the day after he was seized by animal control. He looks sad and his face is drawn. The picture on the right is Buddy several months after that first picture was taken, when he was in a foster home.

Buddy's story is a familiar one involving an abuser who exhibited power and control through abusing the family pet. Buddy's owner became agitated when his wife did not answer her phone at work. He put a shocker collar on Buddy and continuously shocked him, causing injury to Buddy and leaving a bloody scene throughout several rooms in the home. When his wife came home, she heard the tail-end of this abuse. When the defendant left the spouse called law enforcement to report the abuse. Law enforcement responded with animal control and body cameras were used at the scene.

The body cam footage showed what looked like a murder scene. Every time Buddy was shocked, he would bite his tongue, and there were bloody paw prints throughout all the rooms he was in when he was being abused. Buddy suffered puncture wounds to his neck and tongue. Notably, despite what he had gone through, when animal control approached him on the scene that night, he was very friendly, and they removed him from the scene without incident.

25 *State of Connecticut v. Yammine Jack Antoine* U04W-CR22-0502529-S.

The judge requested to hear from the defendant's spouse. The attorney advocate contacted the victim through her divorce attorney. This was a delicate situation, but the attorney advocate conveyed that if she could make a statement, it would be helpful. The victim was willing to tell her story.

The statement made by the victim in open court, detailing what she went through, what Buddy went through and the abuse by the defendant toward another dog visibly moved everyone in the courtroom.

An excerpt from the transcript that day is included below:

"I think the image of Buddy, our dog, standing there all covered with blood, is embroidered in my brain. His white fur was completely red. A terrifying image. It took me two hours to clean that garage from blood, and it still has a weird smell that reminds me that it could have been me. I will never forget the smell of rotten blood."[26]

The victim also noted that the defendant had told her, "I wish I could put this shocker collar on you."[27] The victim further told the court that the couple's child was present during previous abuse of Buddy and another dog owned by the family.[28]

The attorney advocate knew from the file that there had been another dog in the home and that the victim was able to get that dog to safety and away from the defendant. That dog had been abused in the same manner as Buddy. The defendant's pattern of behavior was consistent from victim to victim.

The attorney advocate was able to speak with a former neighbor to corroborate the victim's statement of abuse toward both the first dog and Buddy. The advocate worked with the witness to have her affidavit submitted to the court detailing the abuse she heard regarding both dogs.

In Connecticut, a lifetime ban on ownership of animals is unfortunately not permitted under the law. Given the facts in this case the advocate knew the defendant could not be permitted to have

26 Transcript of hearing held on October 3, 2023 in *State of Connecticut v. Jack Antoine Yammine*, U04W-CR22-0502529-S (Superior Court G.A. #4 Waterbury CT).

27 Transcript from hearing held on October 3, 2023 in *State of Connecticut v. Jack Antoine Yammine*, U04W-CR22-0502529-S (Superior Court G.A. #4 Waterbury CT).

28 Transcript of hearing held on October 3, 2023 in *State of Connecticut v. Jack Antoine Yammine*, U04W-CR22-0502529-S (Superior Court G.A. #4 Waterbury CT).

animals for a significant period and advocated based upon the facts of the case. The order of protection issued in the case included a provision that the defendant was not to threaten, injure or harass animals owned by either victim. In addition, the advocate successfully had a provision added that for 25 years he cannot own animals at all. This was the first result of its kind for an animal cruelty case in Connecticut.

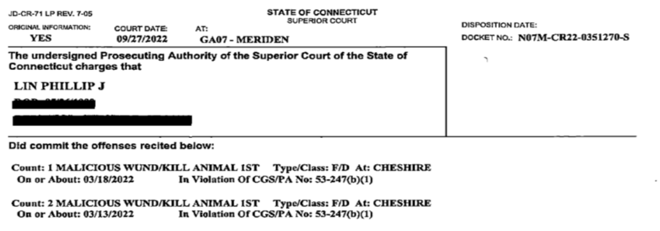
Buddy was adopted by his foster family, travels quite often, and is living a great life.

Interpersonal connection #1: The defendant's child was in the home when the abuse took place.[29]

Interpersonal connection #2: The defendant's spouse was a victim, evident from the statement she made in court.

Case 3: *State of Connecticut v. Philip Lin*[30]

Victims: Blue and Bobo (Attorney advocate contacted another jurisdiction for information on crimes against the elderly and a minor and provided information to the court; educated the court on the Link; successfully argued against Accelerated Rehabilitation and Supervised Diversionary Program)


JD-CR-71 LP REV. 7-05

STATE OF CONNECTICUT
SUPERIOR COURT

ORIGINAL INFORMATION: YES
COURT DATE: 09/27/2022
AT: GA07 - MERIDEN

DISPOSITION DATE:
DOCKET NO.: N07M-CR22-0351270-S

The undersigned Prosecuting Authority of the Superior Court of the State of Connecticut charges that

LIN PHILLIP J
[redacted]

Did commit the offenses recited below:

Count: 1 MALICIOUS WUND/KILL ANIMAL 1ST Type/Class: F/D At: CHESHIRE
On or About: 03/18/2022 In Violation Of CGS/PA No: 53-247(b)(1)

Count: 2 MALICIOUS WUND/KILL ANIMAL 1ST Type/Class: F/D At: CHESHIRE
On or About: 03/13/2022 In Violation Of CGS/PA No: 53-247(b)(1)

This case concluded in December of 2024 after nearly three years from when the first victim was killed. Philip Lin had victims in multiple states- human and animal.

This case started when a social worker visited Lin's home in March of 2022. His mother told the social worker that Lin had killed a dog by punching him in the face and leaving him to drown in a bathtub. The social worker reported that to local law enforcement. About two months later, another social worker went to the house and Lin's mother told her that he killed another dog by snapping his neck. Lin was charged with two felony animal cruelty counts after admitting to law enforcement he killed both dogs.

Lin violated his conditions of release almost immediately after being instructed not to be around dogs unsupervised. He was charged with another felony. Approximately nine months later, Lin took off his ankle monitor and fled. He was found hiding in a closet in his mother's home about six months later, charged with another felony, denied bail and remained incarcerated.

About a year into the case, the attorney advocate contacted authorities in Vermont regarding pending charges noted in the file. The Vermont prosecutor was not aware that Lin had pending felony animal cruelty charges in Connecticut. The attorney advocate was provided with the file from Vermont and provided it to the court, prosecutor and defense attorney in Connecticut.

The attorney advocate noted on the record that Lin targeted the most vulnerable of society: an elderly woman, a minor and animals. The judge noted on the record that he was very concerned about Lin's tendency to harm people and animals, as reported by a counselor who examined Lin while he was incarcerated.[31]

Lin pled guilty to both felony animal cruelty charges and was sentenced on each as follows: 5 years suspended after 18 months to serve with 3 years conditional probation.[32] A jail sentence for animal cruelty convictions is not often seen in the state of Connecticut.

Based upon his conduct in the Connecticut case, and the charges for felony animal cruelty after the Vermont charges, the judge in the Vermont case ordered Lin back to Vermont to face all charges. Upon release from prison in Connecticut Lin is expected to be extradited to Vermont.

Interpersonal connection #1 & #2: Of the 21 charges in Vermont, one was for assaulting an elderly woman, and one was for luring a 13-year-old on Snapchat. The attorney advocate noted that the report on the charges involving the 13-year-old were some of the most disturbing they had read.

29 This case was cross reported under Connecticut Public Act 14-70.

30 *State of Connecticut v. Phillip J. Lin* Case No.: N07M-CR22-0351270-S.

31 Transcript of hearing held on December 9, 2024 in *State of Connecticut v. Philip Lin* N07M-CR23-0352313-S N07M-MV22-0570669-S, N07M-CR22-0351270-S, N07M-CR22-0351503-S, N07M-CR22-0350255-S (Superior Court G.A. #7 Meriden CT).

32 Transcript of hearing held on December 9, 2024 in *State of Connecticut v. Philip Lin* N07M-CR23-0352313-S N07M-MV22-0570669-S, N07M-CR22-0351270-S, N07M-CR22-0351503-S, N07M-CR22-0350255-S (Superior Court G.A. #7 Meriden CT).

Case 4: *State of Connecticut v. Ray Neuberger*[33]

Victims: Gem and Pearl (Attorney advocate educated the court on the failure of Accelerated Rehabilitation, ensured felony charge for abuse resulting in death of a victim and subsequent crime charged as a felony per Connecticut law)

Neuberger was first charged with animal cruelty in 2018 for abusing two dogs, Charlie and Thor. He was permitted to enter a diversionary program called Accelerated Rehabilitation whereby the record is wiped clean after a certain period. In the 2018 case he severely abused two dogs belonging to his girlfriend.

Neuberger's pattern of behavior continued when he was arrested in 2022 and originally charged with a misdemeanor for killing a cat belonging to his new girlfriend. The cat, Gem, was brought to an emergency vet by the girlfriend after she returned home finding Gem semi-conscious while Neuberger was alone with her. The veterinarian reported the abuse and noted as follows: Gem was covered in bleach, had two broken teeth, a bloody mouth, abrasions to the forehead and ear, collapsed lungs, was hypodermic and had trauma to her head and chest. Gem did not survive the abuse. The necropsy report states that Gem died from bleeding into the abdomen from a ruptured liver, and indications of multiple blunt force trauma impacts. Based upon statements made to law enforcement, as contained in the warrant, a determination was made that Gem sustained the injuries from Neuberger.

During the investigation another victim of Neuberger's was identified. Pearl, also a cat, was severely burned with chemicals causing extensive injuries and trauma. Pearl's tail was amputated a result of the abuse. Neuberger was charged with another felony for Pearl's injuries. Due to the medical costs for Pearl's care, Neuberger's girlfriend was forced to surrender her.

Neuberger's charges also included threatening and harassing law enforcement, and, at one point, his bond was increased to $1 million due to his behavior.

The attorney advocate on this case successfully advocated for Gem's abuse to be raised to a felony. Under Connecticut law, a second offence for animal cruelty is a felony. However, subsequent charges are often mischarged as misdemeanors. The advocate ensured that Pearl's abuse was properly charged.[34] The advocate also ensured that a record was created detailing the failure of Accelerated Rehabilitation as a deterrent for animal cruelty and the escalation with the latest two victims. The advocate ensured that the graphic evidence of the sustained abuse of the two victims was before the court each time the case was scheduled.

In December 2023 Neuberger pled guilty and was sentenced to six years suspended after 17 months, followed by four years of probation. His probation included conditions of no pets, no unsupervised contact with animals, no weapons, and no contact with his former girlfriend or the officer.

Neuberger violated his probation in 2025 and was rearrested. His case for the violation is pending.

Interpersonal connection: Based upon texts messages and statements from Neuberger's girlfriend there were domestic disputes and an arrest warrant was issued for Neuberger based upon domestic incidences.

33 *State of Connecticut v. Raymond James Neuberger* F02B-CR22-0348646-S and State of Connecticut v. Raymond James Neuberger F02B-CR23-0350416-S.

34 Conn. Gen. Stat. § 53-247.

Case 5: *State of Connecticut v. Michael Konschak*[35]

Victims: Cimo & Leiben (Attorney advocate successfully argued for appointment under Desmond's Law, succeeded in having animal cruelty charges added where none were charged initially-precedent established), and educated the court on the serious implications of a crime of this nature.

This case was particularly gruesome and tragic. Cimo and Leiben were beloved family members. One day they escaped their yard after a bear knocked down a portion of the fence, unbeknownst to the family. Their family engaged in a search for weeks, using any means to bring their dogs home, including volunteers, a professional tracker, reward offerings, and a psychic.

Unfortunately, on the day they escaped, the defendant, a New York resident, crossed into Connecticut and was illegally hunting on a neighboring property. It is believed he shot both dogs with a crossbow. It is also believed they did not succumb to their injuries immediately.

Both dogs had been spayed/neutered and had the typical markings to identify the procedures. When the defendant was turned away by a taxidermist who noted that these were pets, he skinned and beheaded both Cimo and Leiben. It was later discovered that he discarded portions of their bodies in various locations.

An investigation began on a tip after the defendant sent pictures of the bodies of Cimo and Leiben to another individual. The defendant attempted to cover up his crime by forging documents giving him permission to hunt and lying to the state agency overseeing hunting licenses. The defendant was not initially charged with animal cruelty. He was only charged with crimes addressing the forgery of documents for hunting, interfering with officers and a violation of hunting regulations by the Department of Energy and Environmental Protection.

After a series of hearings and meetings, the attorney advocate successfully argued to be appointed in this case, even though animal cruelty charges had not been filed. The attorney was able to educate the court on the need for an advocate in this case and the implications of the crimes committed. Then the attorney was able to work with all parties to have the animal cruelty charges added.

Due to the gravity of the crime, the defendant was denied Accelerated Rehabilitation. At all times, the attorney advocate communicated with the family of the victims and visited the crime scene.

The defendant pled guilty to misdemeanor animal cruelty, receiving a suspended sentence and 3 years' probation, with a host of conditions drafted by the attorney advocate. The conditions included no hunting, no possession of firearms or other weapons, no unsupervised contact with animals except his own pet and nearly $10,000 in restitution.

Interpersonal connection #1: The family of the victims were utterly devastated by the loss of their dogs and the gruesome way they were killed and discarded. The family relived the loss during the pendency of the case.

Interpersonal connection #2: The defendant worked as respiratory therapist in a hospital, caring for vulnerable patients. As a result of his actions, the defendant was terminated from his employment.[36]

Case 6: *State of Connecticut v. Nyisha Squeglia*[37]

Victim: Unnamed female (Attorney advocate ensured that when the felony charge was entered into the court system as a misdemeanor it was corrected, made a clear record of the prolonged torture inflicted on the victim resulting in slow, painful death and argued for jail time successfully)

35 *State of Connecticut v. Michael Reinhold Konschak* D03D-CR23-0194862-S.

36 https://www.timesunion.com/hudsonvalley/news/article/ridgefield-cimo-leiben-killed-hunting-konschak-18389432.php.

37 *State of Connecticut v. Nyisha Squeglia* F02B-CR23-0353751-S.

Connecticut Veterinary Medical Diagnostic Laboratory
Department of Pathobiology and Veterinary Science • College of Agriculture and Natural Resources
61 North Eagleville Road Unit 3089 • Storrs, CT 06269-3089
phone: 860-486-3738 • fax: 860-486-3936 • web: www.CVMDL.uconn.edu

Accession No: 23-1316
FINAL REPORT

BRIDGEPORT ANIMAL CONTROL
236 EVERGREEN STREET
BRIDGEPORT CT 06606

Date Collected: 10/7/2023
Date Submitted: 10/18/2023
Date Reported: 11/17/2023

PH: 203-576-7727 FAX: 203 - 576-8119

Animal ID:	Species:	Breed:	Sex:	Age:	Wt:
Bridgeport Dog	Canine	Mixed	F	3Y	18. kg

FINAL DIAGNOSIS:
LIVER FRAGMENTATION AND RUPTURE
HEPATOCELLULAR VACUOLATION
HEMOABDOMEN

MORPHOLOGIC DIAGNOSIS:
LUNGS, SPLEEN, JEJUNUM, KIDNEYS: congestion, diffuse, moderate
LIVER: [1] fragmentation and rupture, diffuse, marked, [2] hepatocellular vacuolation, diffuse, marked
ABDOMINAL CAVITY: hemoabdomen, marked

COMMENTS:
The most significant lesions were the hemoabdomen due to rupture of the liver. These lesions could be indicative of blunt trauma and/or hepatic friability due to hepatocellular vacuolation. Hepatocellular vacuolation is indicative of lipid accumulation within the hepatocyte. Multisystemic congestion was likely from postmortem changes.

PATHOLOGIC FINDINGS

HISTORY:
This dog was found deceased at the suspect's home on 10/7/2023. The suspect was observed on camera footage beating the dog to death. [redacted]

Even to the most seasoned advocates in Connecticut this case was the worst many had seen in over 25 years. The horrifying videos of the abuse suffered by the victim in this case are indescribable and defy any sense of comprehension.

The defendant had a criminal history and was on probation when she killed her dog. The torture was captured over 15 minutes of video on a neighbor's security system. When police responded to the complaint the defendant initially lied about having a dog as she attempted to conceal the body on her property.

The report detailed what is seen on the videos and included beating, kicking, whipping, slamming, dragging, and swinging of the dog by the neck and her hind leg -all acts of prolonged torture and violence that culminated in the death of the dog. The report further details Squeglia using different objects/approaches to injure the animal "to cause a maximum amount of harm" including hot water and a pipe. The torture continued even when the dog "appeared limp and lifeless." Prior to the victim losing consciousness the videos do not show the dog trying to attack, bite or lunge at the abuser. Rather she cowered and attempted to get away from the beatings inflicted by the defendant.

The defendant initially tried to defend her actions by stating that the dog attacked her child. However, when police investigated on the day of the dog's death the child had a one-centimeter scab on their body. Additionally, videos from the day prior to the abuse showed the dog, the defendant and the child sitting on the porch together.

The defendant pled guilty to felony animal cruelty and was given a sentence of 5 years suspended after 14 months and 3 years conditional probation. Jail time is not often given in animal cruelty cases in Connecticut, but the judge noted the disturbing nature of the abuse, suffering of the victim and thanked the advocate for "speaking for the voiceless." In this case, an unnamed dog whose life was ended in an unspeakable way.

Interpersonal connection: The defendant's one year old child was present when the abuse occurred. The child was removed and placed in the father's custody.[38]

As the cases above demonstrate, animal cruelty does not occur in a vacuum. There is always a human connection that must be considered and should be addressed when consequences are imposed for abusers.

When animal crimes are prosecuted, our communities are safer. This means when animal crimes are taken seriously, when the court is provided with the full story, when these cases are properly prosecuted, we get the best resolution and there are consequences that act as a deterrent. That is how we stop a cycle, halt escalation, and disallow animal cruelty from becoming a gateway crime to human violence.

Part IV: Desmond's Law 2025: Where Do We Go from Here

As with any legislation, once in effect, the strengths and weaknesses become apparent and must be addressed. Failure to do so weakens the goal and intent of the legislation. Desmond's Law is groundbreaking, the first law in the country to give animal victims a true voice in the courtroom through attorneys. However, the language limiting appointment to cases involving dogs and cats fails to capture nearly 40% of victims in the state of Connecticut.[39] The data analysis shows that cruelty case victims include horses, goats, pigs, birds, rabbits, guinea pigs, chickens, sheep and other animals. Currently, attorneys can only be appointed for animals other than dogs and cats at the discretion of a judge. It has rarely happened in Connecticut since 2016.

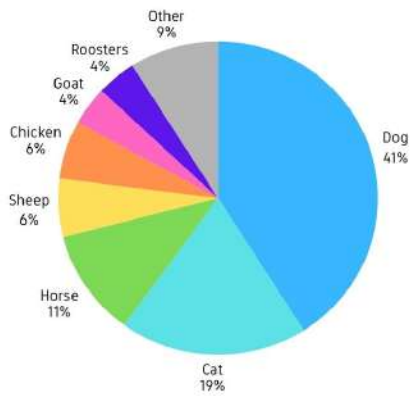
Animals abusers do not limit their victims to dogs and cats, and the law should not limit those victims who are appointed advocates. The "interest of

38 This case was cross reported under Connecticut Public Act 14-70.

39 All data analyzed was sourced from records kept, maintained and confirmed by Desmond's Army Animal Law Advocates. That data is derived from court records, documents obtained through Freedom of Information laws and records from open court appearances.

justice" should include any animal victim. Animal abusers who victimize horses, goats, sheep, rabbits, chickens etc. are just as likely to escalate in violence and expand to humans as those who abuse dogs and cats. The opportunity should exist for attorney advocates to be appointed in any animal cruelty case in Connecticut. Expansion of Desmond's Law would also be instructive for other jurisdictions proposing similar bills for attorney advocates.

Victims Under Desmond's Law From 2016-2025



Conclusion

Animal cruelty crimes warrant attention and priority. Consequences must be imposed for crimes committed against animal victims in their own right, but also for the interpersonal connections in cases. Often grassroots advocates are the changemakers and "voices" for the victims of these crimes. Desmond's Army Animal Law Advocates is one of those organizations. What began as a grassroots response to a single unspeakable injustice grew into a full-fledged movement for legal reform and public education. That expanded into a groundbreaking piece of legislation that brings this issue to the forefront of discussions, presentations and legislation.

After Desmond's Law was passed, Desmond's Army's work continued and expanded to ensure the law was being enforced and remains a focus. Funding necropsies, monitoring court proceedings, or sheltering a victim's pet, the organization stands unwavering in its mission: to be a voice for the voiceless. Their work endures as research continues to show that those who abuse animals are likely to harm people as well. Desmond's death was not in vain. His story lives on through every animal cruelty hearing presence, continued advocacy for expansion of this law and passage in other municipalities, and the lives protected by the ongoing efforts of Desmond's Army.

Desmond's Army believes that the measure of a just society lies in how it treats its most vulnerable. Through persistence, education, and unity, the organization continues to prove that voices joined in purpose can change the system and the world.

For any questions on this report contact:

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40 Robin "Zilla" Cannamela is the co-founder and of Desmond's Army Animal Law Advocates.

41 Joyce Glass is a practicing pro bono attorney focusing on companion animal cruelty and the Link to interpersonal violence and presents frequently to stakeholders on this topic; she is an attorney advocate under Desmond's Law and drafts legislation related to companion animal cruelty in New York and North Carolina. Joyce holds a JD from Hofstra Law, MBA from the Zarb School of Business, and an LLM in Animal Law from Lewis and Clark Law School.

42 Olivia Dorian is a recent graduate of Colgate University where she majored in Political Science and Studio Art with plans to attend law school in the future.

43 Deborah Weinrauch is a practising attorney specialising in Animal Law in California and Israel and a doctoral candidate at the University of Birmingham researching animal cruelty prosecution and Courtroom Animal Advocate Programs. Deborah holds an MPhil from the University of London, an LLM from the London School of Economics and Political Science, an LLB from the Hebrew University of Jerusalem, and a BSc from the University of Wisconsin-Milwaukee.

Protected Milk, Unprotected Animals: *Dairy UK v Oatly* and the Legal Architecture of Animal Agriculture

By Acland Bryant

Abstract

The decision of the UK Supreme Court in *Dairy UK Ltd v Oatly AB* appears, at first sight, to be a narrow case about trade marks, food labelling and the interpretation of assimilated EU agricultural legislation. It is not an animal welfare case per se. No animal was a party to the proceedings; no welfare statute was directly engaged; and the judgment turned on whether the phrase "POST MILK GENERATION" used the word "milk" as a protected dairy designation for oat-based food and drink. Yet that very absence is what makes the decision important for animal welfare advocates. Oatly exposes the legal architecture through which animal agriculture is protected before welfare law is ever reached. It confirms that dairy designations are not protected only to avoid consumer deception, but also to secure conditions of competition for dairy producers. That finding matters because it shows that food law does not merely describe markets. It allocates linguistic advantage, protects incumbent categories and structures the field in which plant-based alternatives compete with animal-derived products.

This article argues that animal welfare advocates should use *Oatly* not as a direct welfare precedent but as a strategic authority on regulatory purpose, market architecture, and legal categorisation. Properly understood, the case demonstrates that law can protect product categories for reasons broader than individual consumer confusion. That proposition can be turned towards animal protection. If Parliament and regulators may protect "milk" as a dairy term in the interests of fair competition, they can also protect animals through mandatory method-of-production labelling, welfare-based marketing restrictions, public procurement rules, subsidy conditions and decision-making duties that expose the animal costs of food systems. The article is pro-animal welfare in both substance and strategy. It argues that animal lawyers should move beyond cruelty-specific litigation and challenge the legal infrastructure that makes animal exploitation commercially ordinary, linguistically privileged and institutionally protected.

Keywords: animal welfare; *Dairy UK v Oatly*; food law; plant-based products; dairy designations; fair competition; public law; labelling; animal agriculture; strategic litigation.

1. Introduction: why an oat milk trade mark case matters for animal welfare

Animal welfare litigation often begins at the visible point of harm. A claimant challenges a licence, a farm approval, an animal testing authorisation, a planning permission, a slaughter practice, a transport regime or a failure to enforce welfare standards. Those challenges are necessary. They are also incomplete. By the time welfare law is engaged, the deeper legal architecture may already have done its work. Animals have been constituted as agricultural inputs, food products, breeding stock, research tools, commodities or economic assets. Product categories have been stabilised. Market language has been allocated. Subsidies have been distributed. Procurement standards have been written. Planning permissions have been granted. The animal appears late, and often only as a welfare problem to be managed within an already legitimate system.

The Supreme Court's decision in *Dairy UK Ltd v Oatly AB* is valuable because it reveals that architecture with unusual clarity.[1] The case concerned Oatly's registered trade mark "POST MILK GENERATION", used in relation to oat-based food and drink. Dairy UK, the trade association for the UK dairy industry, challenged the registration. The Supreme Court unanimously dismissed Oatly's appeal. It held that "POST MILK GENERATION" used the term "milk" as a prohibited dairy designation within the meaning of Article 78 and Annex VII, Part III, Point 5 of Regulation (EU) No 1308/2013, now assimilated law.[2] It further held that the mark was not saved by the exception for designations clearly used to describe a characteristic quality of the product.[3]

1 *Dairy UK Ltd v Oatly AB* [2026] UKSC 4, [1]-[9].
2 ibid [29]-[34]; Regulation (EU) No 1308/2013 art 78 and Annex VII, Part III, Point 5, as assimilated law by the European Union (Withdrawal) Act 2018 and the Retained EU Law (Revocation and Reform) Act 2023, s 5.
3 *Dairy UK* (n 1) [38]-[43].

That holding is not, in its own terms, about animal suffering. The judgment contains no analysis of dairy cow welfare, calf separation, lameness, mastitis, culling, greenhouse gas emissions, land use or the ethical case for plant-based diets. It is a judgment about statutory interpretation. Yet animal welfare advocates should resist the temptation to treat it as irrelevant. The absence of animals from the legal reasoning is itself instructive. A dispute about whether plant-based products may use the cultural and commercial language of dairy was resolved without any explicit consideration of the animal lives that dairy production requires. The law protected the word "milk"; it did not ask what kind of animal agriculture that protection sustains.

The article's core claim is that *Oatly* can and should be used by animal welfare advocates in three ways. First, it should be used diagnostically, to show that animal agriculture is not merely protected by welfare exemptions or weak enforcement, but by a broader framework of market law, labelling law and category protection. Secondly, it should be used doctrinally to argue that food and agricultural regulation may legitimately pursue objectives beyond preventing consumer deception. The Supreme Court's acceptance that the dairy designation regime serves fair competition as a distinct purpose can support welfare-positive regulation that reshapes markets, rather than merely informing individual consumers. Thirdly, it should be used strategically to press for statutory and public law reforms that make animal welfare visible within the legal conditions of competition: method-of-production labelling, public procurement standards, welfare-based subsidy conditions, limits on misleading welfare claims, and duties to consider the animal welfare impacts of food policy.

The argument is not that *Oatly* is a hidden animal rights case. It is not. Nor is the argument that courts will now read animal-welfare objectives into every food-labelling dispute. They will not. The more modest, but more useful, point is that *Oatly* shows how strongly courts can enforce statutory product categories once Parliament or assimilated law has defined them. For animal welfare advocates working in this area, the lesson is clear: litigation must be paired with legislative and regulatory design. If law can draw hard boundaries around dairy language, it can draw hard boundaries around welfare claims, procurement choices and public support for high-suffering systems. The task is to redirect the structural force of regulation from protecting animal-derived categories towards protecting animals themselves.

The article proceeds in the same sequence as that strategic argument. Part 2 explains what the Supreme Court decided. Part 3 identifies the key doctrinal point: fair competition, not merely consumer deception. Part 4 examines the hidden animal law issue, namely, the legal protection of animal-derived categories. Part 5 draws strategic lessons for animal welfare litigation. Part 6 asks whether *Oatly* can be used positively, notwithstanding its immediate commercial effect for plant-based producers. Part 7 develops concrete legal routes for advocates. Part 8 addresses limits and risks. The conclusion argues that animal welfare law must learn from *Oatly* that the future of animal protection lies not only in challenging cruelty, but in challenging the legal architecture that protects animal agriculture as an ordinary market reality.

2. What the Supreme Court decided

2.1 The statutory setting

The statutory route by which Dairy UK succeeded was indirect but powerful. Section 3(4) of the Trade Marks Act 1994 provides that a trade mark shall not be registered if, or to the extent that, its use is prohibited in the United Kingdom by any enactment or rule of law other than trade mark law.[4] The relevant prohibition arose from the Common Market Organisation Regulation, Regulation (EU) No 1308/2013, which became assimilated law after Brexit.[5] Article 78 and Annex VII, Part III regulate the use of certain dairy designations. In broad terms, "milk" is reserved for the normal mammary secretion obtained from one or more milkings, without either addition or extraction.[6] "Milk products" are products derived exclusively from milk, with certain limited additions that do not replace milk constituents.[7]

Point 5 of Annex VII, Part III provides that the designations referred to in Points 1, 2 and 3 "may not be used for any product other than those referred to in that point". It then contains exceptions for designations whose exact nature is clear from traditional usage, or which are clearly used to describe the characteristic quality of the product.[8] The case, therefore, turned on two questions. First, was "POST MILK GENERATION" a use of "milk" as a designation for oat-based food and drink, notwithstanding that it was not the name of the product? Secondly, if it was, was it saved because

4 Trade Marks Act 1994, s 3(4); Dairy UK (n 1) [11].

5 *Dairy UK* (n 1) [10]-[12]; Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc) (EU Exit) Regulations 2019, SI 2019/821.

6 Regulation (EU) No 1308/2013, Annex VII, Part III, Point 1; Dairy UK (n 1) [12].

7 Regulation (EU) No 1308/2013, Annex VII, Part III, Points 2-3; Dairy UK (n 1) [12]-[13].

8 Regulation (EU) No 1308/2013, Annex VII, Part III, Point 5; Dairy UK (n 1) [6], [12]-[13].

it clearly described a characteristic quality of the product, namely that the product was milk-free?[9]

The Supreme Court approached those questions using the modern domestic approach to statutory interpretation: the meaning of the words used, read in context and in light of purpose.[10] Because the Regulation was assimilated law, its EU origin remained relevant to context and purpose, but the interpretative exercise was now framed through ordinary domestic principles.[11] That matters for animal welfare advocates because many food, agriculture and animal-related regulatory schemes in the UK now sit within a similar post-Brexit landscape. They are not simply technical residues of EU law. They are domestic legal instruments whose purpose, scope and future reform are matters for UK institutions.

2.2 Litigation history

The litigation history is important because it shows the contested nature of the statutory category. Oatly registered "POST MILK GENERATION" in April 2021 for oat-based food and drink and for T-shirts.[12] Dairy UK applied for a declaration of invalidity in November 2021.[13] The IPO hearing officer accepted Dairy UK's challenge regarding oat-based food and drink, but not T-shirts, because T-shirts were not agricultural products and fell outside the Regulation.[14] Smith J in the High Court reversed that decision and held that the registration was valid.[15] The Court of Appeal then reversed the High Court, holding that the mark was prohibited in relation to oat-based food and drink.[16] The Supreme Court restored the result reached by the hearing officer and dismissed Oatly's appeal.[17]

That sequence matters because the case was not inevitable. The High Court accepted a narrower view of "designation", treating the prohibition as concerned with the use of dairy terms to identify products as being milk rather than any marketing use of the word.[18] The Court of Appeal and Supreme Court took a broader view. For animal welfare advocates, the lesson is methodological. Where product categories are defined by statute, the breadth of their interpretation can determine whether alternative products may communicate effectively with consumers. Language is not merely expressive. It is regulatory terrain.

2.3 "Designation" and the breadth of category protection

Oatly's principal submission was that "designation" meant the name of a product. On that approach, "milk" would be prohibited when used to name an oat-based drink as milk, but "POST MILK GENERATION" would not fall within the prohibition because it did not name the product.[19] The Supreme Court rejected that submission. It reasoned that "designation" had to be read alongside other terms in the Regulation, including "names" and "sale description". Because the legislation used those terms separately, "designation" could not simply mean the product's name.[20]

The Court held that "designation" referred to the use of terms such as "milk" in respect of a food or drink rather than merely to the naming of it.[21] The designations in Points 1, 2 and 3, including "milk", may not be used for products other than the products referred to in those points. Oat-based food and drink are not within those points, so the use of "milk" for such products is prohibited.[22] The prohibition applies where the designation has been used for a relevant product; it is not necessary that the term has been used as the product's name.[23]

This is the doctrinal core of *Oatly*. The Court did not confine the dairy designation regime to cases of direct naming. It treated the statutory protection as extending to a broader use of protected dairy language in relation to non-dairy products. This creates a strong, category-protective reading of food law. It means that plant-based producers may be restricted not only when they call a product "oat milk", but also when they use dairy language as part of wider branding or cultural positioning.

For animal welfare advocates, the immediate result is uncomfortable. The decision makes it harder for plant-based products to use familiar language that might help consumers shift away from animal-derived dairy products. But the structural point is useful. Courts can, when the statutory language is clear enough, enforce legal categories robustly

9 *Dairy UK* (n 1) [8]-[9].
10 ibid [10]; *R (Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department* [2022] UKSC 3, [2023] AC 255, [28]-[29]; *News Corp UK & Ireland Ltd v Revenue and Customs Commissioners* [2023] UKSC 7, [2024] AC 89, [27].
11 *Dairy UK* (n 1) [10].
12 ibid [2].
13 ibid [3].
14 ibid [4], [15]-[16].
15 ibid [4], [17]-[19]; *Oatly AB v Dairy UK* Ltd [2023] EWHC 3204 (Ch), [39]-[45].
16 *Dairy UK Ltd v Oatly AB* [2024] EWCA Civ 1453, [56], [77]; Dairy UK (n 1) [20]-[23].
17 *Dairy UK* (n 1) [29]-[34], [40]-[44].
18 *Oatly AB v Dairy UK* Ltd [2023] EWHC 3204 (Ch), [39]-[45], as summarised in Dairy UK (n 1) [17]-[19].
19 *Dairy UK* (n 1) [24]-[25].
20 ibid [30].
21 ibid [31].
22 ibid.
23 ibid.

against market actors. If animal welfare advocates want similar robustness for welfare-positive regulation, they need a similarly clear statutory design. Vague aspirations to "higher welfare" or "sustainable food systems" will not do the work that "milk" does in Annex VII.

2.4 Purpose: fair competition distinct from consumer deception

The Supreme Court's analysis of "purpose" is the part of the judgment most important to animal welfare strategy. Oatly relied in part on the fact that consumers were not deceived by "POST MILK GENERATION".[24] The Supreme Court held that the lack of deception did not establish the case. Taking recital 76 into account, it held that the wider meaning of "designation" was consistent with the purpose of Point 5, which, in relation to milk, was to set out fair conditions of competition. That purpose was "distinct from protecting consumers from being deceived".[25]

This finding is significant. A narrower consumer-protection reading would have asked whether the average consumer would mistakenly think Oatly's oat-based products were dairy milk. If the answer were no, there would be little reason to invalidate the mark. The Supreme Court instead accepted that the statutory regime protects a competitive order. It secures the conditions under which dairy terms may be used and prevents non-dairy products from drawing on those terms outside the permitted exceptions.

The phrase "fair competition" is therefore central. It is also contestable. Fairness in competition is not neutral. It depends on the baseline from which the law begins. If dairy producers receive exclusive control over ordinary words that consumers use to navigate a product category, plant-based producers operate at a linguistic disadvantage. If a statutory purpose justifies that disadvantage, then the purpose itself becomes politically and ethically important. In *Oatly*, the relevant purpose was treated as embedded in the Regulation. Animal welfare advocates should ask a wider question: why should fair competition be defined to protect animal-derived incumbency without also accounting for animal suffering, environmental externalities and public policy commitments to healthier, lower-impact diets?

2.5 The "milk-free" proviso and the limits of oblique communication

24 ibid [25].
25 ibid [32].

Oatly's alternative argument was that, even if "POST MILK GENERATION" used "milk" as a prohibited designation, it was saved by the exception for designations clearly used to describe a characteristic quality of the product. Oatly said the relevant characteristic was that the products were milk-free.[26] The Supreme Court rejected that argument. It held that the mark was not clearly descriptive of a characteristic of the products. On its face, it was focused on targeted consumers, particularly younger consumers, amid widespread concerns about milk production and consumption.[27] The Court added two points. First, even if the phrase referred to a milk-free characteristic, it did not do so clearly. It might mean no milk at all or merely low milk content.[28] Secondly, the mark was accepted as valid for T-shirts, which supported the conclusion that the phrase described a type of consumer or identity rather than a product characteristic.[29] The appeal therefore failed on both grounds.[30]

For animal welfare advocates, this part of the judgment carries a further lesson about communication. The law may distinguish sharply between clear product information and broader ethical identity. "POST MILK GENERATION" was powerful because it gestured towards a consumer culture moving beyond dairy. The Court treated that as insufficiently clear to fall within the exception. Welfare advocates should therefore be precise when designing labelling reforms. If the legal aim is to disclose animal suffering, production method or welfare status, the language must be direct, mandatory and standardised. Ambiguous ethical branding is vulnerable. Clear statutory disclosure is harder to attack.

3. The key doctrinal point: fair competition, not just consumer deception

3.1 Why the fair competition holding matters

The most useful doctrinal proposition in *Oatly* is that a food law restriction can be justified by a purpose distinct from consumer deception. The Court's finding that Point 5 serves both fair competition and consumer protection gives animal welfare advocates a conceptual lever.[31] It shows that food regulation is not limited to preventing consumers from making factual mistakes at the point of sale. It may also structure the competitive conditions under which products are marketed.

That proposition is important because many industry objections to animal welfare regulation are framed in terms of consumer choice. Mandatory method-of-production labelling is considered unnecessary because consumers can seek such information voluntarily. Restrictions on vague "natural" or "farm fresh" claims are said to be disproportionate because there is no proven deception. Public procurement standards are said to distort markets. Subsidy conditions are said to interfere with producer autonomy. Oatly helps answer those objections. The law *already* structures markets. The question is not whether food law should be market-shaping, but whose interests it shapes markets to protect.

If dairy designations can be protected because the law deems it unfair for plant-based producers to use protected dairy language, then welfare advocates can argue that it is unfair for animal-derived products to compete while concealing production systems that inflict serious animal suffering. It is not fair competition if one product's lower price depends on confinement, mutilation, high stocking density, poor enrichment, painful breeding outcomes or premature killing, while consumers are presented with pastoral imagery and minimal welfare information. Fairness must include transparency about morally relevant production conditions.

3.2 From linguistic protection to welfare transparency

The dairy designation regime protects words. Animal welfare law usually protects minimum conditions. Between those two forms of regulation lies a neglected field: welfare transparency. *Oatly* demonstrates that the law can be exacting about the use of terms. A pro-animal welfare regulatory strategy should apply that exacting approach to welfare claims. Words such as "humane", "high welfare", "responsibly sourced", "farm assured", "grass-fed", "free range", "outdoor bred", "ethical" and "sustainable" should not be left to soft marketing norms where they create impressions about animal lives.

There is already a legislative foundation for such an approach. The Consumer Protection from Unfair Trading Regulations 2008 prohibit misleading actions and omissions in commercial practices.[32] The Food Safety Act 1990 prohibits falsely describing or presenting food in a way likely to mislead as to its nature, substance or quality.[33] The Food Information Regulations implement food

26 ibid [27], [40].
27 ibid [40].
28 ibid [41].
29 ibid [42].
30 ibid [43]-[44].
31 ibid [32].

32 Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277, regs 5-6.
33 Food Safety Act 1990, s 15.

information obligations, including the enforcement of retained or assimilated food information law.[34] But these regimes are often reactive and consumer-focused. They do not amount to a comprehensive welfare disclosure scheme.

The pro-animal-welfare lesson from *Oatly* is that if the state can police the use of dairy terms without requiring proof of actual consumer deception in each case, it can also legislate standardised welfare descriptors without requiring animal advocates to prove confusion on a case-by-case basis. A statutory scheme could require method-of-production labelling across meat, dairy, eggs and fish. It could define welfare categories by reference to legally enforceable criteria. It could prohibit welfare-implying claims unless specified welfare standards are met. It could require disclosure of confinement systems, stocking densities, mutilations, slaughter methods and breeding practices. The objective would not merely be consumer information. It would be fair competition on ethically salient terms.

3.3 Fair competition as a contested normative field

Animal welfare advocates should nevertheless be wary of adopting "fair competition" uncritically. In *Oatly*, fair competition operated to protect dairy producers against a plant-based competitor. That may preserve a market order with significant animal welfare costs. Fair competition, if detached from animal welfare and environmental externalities, can become a conservative concept. It may protect incumbents precisely because they are incumbents.

The critical move is to contest the meaning of fairness. Competition between animal-derived and plant-based products is not fair if the law protects dairy terminology while allowing dairy products to externalise animal suffering. It is not fair to prevent plant-based producers from using familiar comparative language. In contrast, animal agriculture may use images of open pasture that bear little relationship to production realities. It is not fair if consumers are shielded from linguistic ambiguity about "milk" but not from welfare opacity about how animals lived and died.

This is where *Oatly* becomes useful precisely because it is troubling. It exposes asymmetry. The law can be strict when protecting the semantic property of animal agriculture, but permissive when animal agriculture markets itself through idealised images, partial truths or silence about welfare harms. Animal welfare litigation can use that asymmetry as a basis for legal and political argument. If clarity matters for dairy designations, it should matter all the more for the lives and deaths of animals.

4. The hidden animal law issue: legal protection for animal-derived categories

4.1 Animal agriculture as a legally constructed market

One reason animal welfare litigation often struggles is that animal agriculture is treated as a natural economic background. Farms exist; animals are raised; products are sold; welfare law sets minimum limits. That framing is misleading. Animal agriculture is legally constructed. It depends on property law, planning law, environmental permitting, subsidies, veterinary regulation, slaughter law, food labelling, public procurement, trade rules, tax policy, biosecurity law and advertising regulation. *Oatly* concerns one part of that construction: the legal reservation of product language.

The Court described Dairy UK as the trade association for the UK dairy industry and Oatly as a producer of oat-based alternatives to dairy products.[35] That simple factual contrast reveals the market conflict. Plant-based producers compete not merely for shelf space but for consumer concepts. Consumers understand plant drinks by analogy with dairy milk. The law then decides how far that analogy may be expressed. By protecting "milk" as a dairy designation, the law preserves the linguistic centrality of animal-derived milk. Plant-based alternatives must define themselves around a category they cannot fully name.

This is not an argument that the Supreme Court decided the case wrongly as a matter of statutory interpretation. That is an issue worthy of discussion in a separate article. The criticism here is more structural. The case illustrates how animal-derived categories enjoy legal reinforcement. A cow's milk product is not merely a food; it is the legally protected reference point around which alternatives must navigate. The animal is absent as a subject, but present as the biological source that gives the category legal privilege.

4.2 Protected words and unprotected animals

The title of this article is deliberately stark: protected milk, unprotected animals. It is not strictly accurate to say animals are wholly unprotected. The Animal Welfare Act 2006 creates offences of unnecessary

34 Food Information Regulations 2014, SI 2014/1855; Regulation (EU) No 1169/2011 on the provision of food information to consumers, as retained or assimilated where applicable.

35 *Dairy UK* (n 1) [1].

suffering and imposes a duty of welfare on people responsible for protected animals.[36] Farmed animals are subject to welfare regulations and codes.[37] The Animal Welfare (Sentience) Act 2022 recognises animals as sentient beings for certain policy accountability purposes.[38] Slaughter, transport and on-farm practices are regulated. But the contrast remains powerful. The legal protection for dairy designations is clear, categorical and readily enforceable. The legal protection for the animals whose bodies sustain dairy production is qualified, minimum-standard-based and often mediated through enforcement discretion.

This difference is not accidental. Food law frequently protects product identity more sharply than it protects animal experience. A plant-based producer may be unable to use a word because the product does not come from a mammary secretion. A dairy producer, by contrast, may market a product without disclosing many welfare-relevant features of production. The law asks whether oat products may use "milk"; it does not require the milk carton to disclose separation of cow and calf, average productive lifespan, lameness rates, indoor housing periods or slaughter destination. The product category is legally visible. The animal life behind it is largely invisible.

Animal welfare advocates can use *Oatly* to make that invisibility legally contestable. The argument should not be that all dairy is illegal because it causes welfare harm. That is a broader ethical and political claim which existing law does not accept. The stronger legal argument is that if the state intervenes so forcefully to protect dairy's linguistic identity, it cannot plausibly deny that food labelling and market regulation are appropriate sites for welfare policy. The same legal system that reserves "milk" for dairy can require dairy and other animal products to disclose how animals were treated.

4.3 The cultural value of dairy language

The dispute over "POST MILK GENERATION" was not only about a word. It was about cultural transition. The phrase suggested that some consumers see themselves as moving beyond milk. The Supreme Court recognised that the mark most obviously described a cohort of consumers, particularly younger consumers concerned about the production and consumption of milk.[39] That observation is significant. The Court did not treat the phrase as meaningless. It understood its cultural work. It simply held that this cultural work did not clearly describe a product characteristic for the purposes of the proviso.[40]

For animal welfare advocates, that is a crucial insight. Food labels and marks not only transmit information, but they also construct identities, affiliations and moral imaginaries. "Post milk" is a claim about generational change. "High welfare" is a claim about moral reassurance. "British farming" is often a claim about trust, locality and pastoral care. "Plant-based" may be a claim about climate, health or compassion. The law cannot avoid these meanings. It can only decide which meanings to permit, require, restrict or ignore.

This strengthens the case for welfare-sensitive regulation of food marketing. If courts recognise that food marks can target consumer identity, then regulators should recognise that marketing of animal-derived products often targets ethical comfort. Images of animals in fields, red tractor symbols, rustic farm names and vague welfare assurances may shape consumer perception even when they do not make precise factual claims. A pro-animal welfare reading of *Oatly*, therefore, supports a broader critique of food semiotics. The law should not be hyper-literal about plant-based language while indulgent towards animal agriculture's pastoral symbolism.

4.4 The assimilated EU law dimension

The Regulation's post-Brexit status is another strategic feature. The Supreme Court noted that the 2013 Regulation is assimilated law under the Retained EU Law (Revocation and Reform) Act 2023.[41] That means the UK has a domestic choice about whether to retain, modify or replace the scheme. Animal welfare advocates should not treat dairy designation rules as immutable. They can press for reform that aligns food law with animal welfare, climate and public health objectives.

There are different possible reform positions. One is liberalisation: allowing plant-based products to use familiar terms where consumers are not misled, provided clear qualifying descriptors accompany them. Another is symmetry: if dairy terms remain protected, animal-derived products should be subject to equally robust welfare disclosure. A third is transformation: rebuild food labelling around production methods, animal-welfare impact, and environmental impact rather than inherited animal-product categories. *Oatly* does not dictate which model Parliament should choose. It shows that the

36 Animal Welfare Act 2006, ss 4, 9.
37 Welfare of Farmed Animals (England) Regulations 2007, SI 2007/2078; Animal Welfare Act 2006, s 14.
38 Animal Welfare (Sentience) Act 2022, ss 1-3.
39 *Dairy UK* (n 1) [40], [42].
40 ibid [40]-[42].
41 ibid [10]; Retained EU Law (Revocation and Reform) Act 2023, s 5.

choice is regulatory rather than natural.

Strategic lessons for animal welfare litigation

5.1 Do not litigate only at the point of cruelty

The first lesson is that animal welfare advocates should not confine litigation to cases of direct cruelty or licensing failure. Those cases remain important, but they address symptoms of a larger legal order. *Oatly* shows that animal agriculture is protected through ordinary commercial law. The dairy industry did not need to defend welfare standards. It defended a designation. It won because the law of agricultural markets protected the category.

Animal welfare strategy should therefore target upstream structures. For example, advocates might challenge public bodies that adopt food strategies, procurement policies, or promotional schemes without considering the impacts on animal welfare. They might scrutinise whether government departments have complied with policy commitments under the Animal Welfare (Sentience) Act 2022 when developing food, farming, school meals or hospital catering policies.[42] They might challenge welfare assurance schemes where public bodies rely on them without evidence of what they actually guarantee. They might intervene in consultations about food labelling, advertising, trade and subsidies. The goal is to make animal welfare relevant before the harm is normalised.

This does not mean every market rule is justiciable on welfare grounds. Public law has limits. Courts will be slow to second-guess broad food policy unless a legal duty, irrationality, failure to consider a mandatory relevant consideration or misdirection can be identified. But *Oatly* supports a broader conception of where animal welfare issues arise. They arise not only on farms and in laboratories, but also in the legal categories that shape demand.

5.2 Use Oatly to contest claims of regulatory neutrality

Animal industries often present market regulation as neutral and animal welfare reform as interventionist. *Oatly* undermines that distinction. The dairy designation regime is itself interventionist. It restricts the words competitors may use. It protects a sector's competitive position. It allocates linguistic capital. Once that is recognised, animal welfare advocates can argue that welfare-positive regulation is not an anomalous distortion of the market. It is a different choice about how the market should be structured.

This argument is useful in consultation responses, parliamentary evidence and judicial review pleadings. Where a public authority resists mandatory welfare labelling on the basis that markets should decide, advocates can point out that markets are already legally shaped. Where ministers claim that voluntary industry schemes are sufficient, advocates can argue that voluntary schemes are inadequate when the law already imposes mandatory rules to protect dairy language. Where animal-derived industries object to plant-based comparative claims, advocates can ask whether the same concern for clarity is applied to their own welfare-related marketing.

The point is not only rhetorical. It goes to relevant considerations. A public authority designing food policy should take into account the existing regulatory advantages enjoyed by animal-derived products. If it fails to do so, it may misunderstand the baseline against which welfare reforms operate. A requirement to disclose welfare conditions is not imposed on a neutral market. It corrects a market already structured by legal protections, subsidies and informational asymmetries.

5.3 Use statutory purpose aggressively

The second strategic lesson is that statutory purpose matters. The Supreme Court's interpretation turned on text, context and purpose.[43] It accepted fair competition as a purpose distinct from deception.[44] Animal welfare advocates should use the same method when interpreting welfare statutes, food statutes and policy instruments. Too often, animal protection arguments are framed as moral appeals appended to technical regimes. They should be framed as purposive legal arguments.

For example, the Animal Welfare Act 2006 should be read as more than a cruelty statute. Section 9 imposes a welfare duty that includes the animal's need for a suitable environment, suitable diet, ability to exhibit normal behaviour patterns, housing with or apart from other animals, and protection from pain, suffering, injury and disease.[45] Those statutory needs can inform how public bodies understand welfare in adjacent contexts, even when the Act does not directly control the decision. The Animal Welfare (Sentience) Act 2022 similarly supports the proposition that animal welfare is a public governance concern, not merely a private

42 Animal Welfare (Sentience) Act 2022, ss 2-3.

43 *Dairy UK* (n 1) [10].

44 ibid [32].

45 Animal Welfare Act 2006, s 9.

responsibility of keepers.[46]

A purposive approach can also support challenges to under-inclusive regulation. If a food labelling scheme purports to promote informed choice but excludes welfare-relevant information that consumers reasonably regard as important, advocates can argue that the scheme fails to fulfil its purpose. If a subsidy scheme purports to support sustainable farming but ignores welfare externalities, advocates can argue that sustainability has been unlawfully narrowed. *Oatly* is useful because it demonstrates that courts need not reduce the purpose of food law to the avoidance of consumer deception. Broader regulatory purposes are legitimate.

5.4 Use *Oatly* to strengthen the case for mandatory method-of-production labelling

Mandatory method-of-production labelling is one of the clearest practical uses of the decision. The welfare case is straightforward. Consumers cannot make meaningful choices about animal products if labels do not disclose how animals were kept, mutilated, transported or killed. Voluntary labels are partial, inconsistent and often designed by industry. Mandatory categories would create comparable information.

Oatly helps in three ways. First, it shows that Parliament can mandate categorical rules on food language. Secondly, it shows that fair competition can justify such rules. Thirdly, it shows that legal clarity may be pursued even where individual consumers are not necessarily deceived in every case. A method-of-production scheme would likewise pursue more than deception avoidance. It would create fairer competition between high-welfare, low-welfare and plant-based products by preventing low-welfare products from competing behind a veil of silence.

A robust scheme would avoid the weaknesses of vague welfare claims. It would require disclosure of production systems: caged, barn, free-range, indoor intensive, pasture-based, organic, live transport, stunning method, stocking density bands, mutilations, and slaughter age, where relevant. It could also require warning-style disclosures for practices known to cause serious compromises to welfare. The exact design is a matter for Parliament and regulators. The legal point is that *Oatly* makes it harder to argue that food law cannot structure language in the interests of market fairness.

5.5 Use *Oatly* in public procurement challenges

Public procurement is another underused field for animal welfare advocacy. Hospitals, schools, prisons, local authorities and public bodies purchase large quantities of food. Procurement choices shape demand. They also express public values. If public bodies procure low-welfare animal products while claiming to promote sustainability or public health, advocates can challenge the coherence of those policies.

The legal basis will vary. Procurement law permits social, environmental, and quality criteria when properly linked to the subject matter and compliant with equal treatment and transparency requirements. Public authorities may also adopt policies promoting animal welfare, climate mitigation or health. *Oatly* is not a procurement case, but its value lies in revealing that legal rules already shape food markets. Public bodies cannot avoid responsibility by saying they are merely buying what the market supplies. The market is legally constructed; procurement is part of that construction.

Animal welfare advocates could use *Oatly* to support arguments that public bodies should avoid giving further institutional support to animal agriculture without a welfare justification. For example, where a local authority adopts a food strategy that privileges local dairy or meat while excluding plant-based alternatives from equal treatment, advocates may argue that it has failed to consider animal welfare, climate and equality of access for ethical consumers. Conversely, where plant-based options are challenged as ideological, advocates can respond that animal-derived defaults are also ideological and legally supported. *Oatly* helps denaturalise the animal-product baseline.

5.6 Use *Oatly* alongside planning and animal welfare cases

The relationship between *Oatly* and planning litigation is indirect but fertile. In *Animal Equality UK v North East Lincolnshire Borough Council*, the High Court accepted, because all parties agreed, that animal welfare concerns are capable of constituting a material planning consideration as a matter of law.[47] The claim failed because the Court held that the planning committee had not been materially misled in the relevant sense and because non-mandatory material considerations remain matters of planning judgment unless they are so obviously material that failure to consider them is irrational.[48]

46 Animal Welfare (Sentience) Act 2022, ss 1-3.

47 *R (Animal Equality UK) v North East Lincolnshire Borough Council and ASL New Clee Ltd* [2025] EWHC 1331 (Admin), [1]-[4], [20].

48 ibid [20]-[27], [33]-[41]. See also *Tesco Stores Ltd v*

Taken together, *Animal Equality UK* and *Oatly* point to a broader litigation strategy. Animal welfare may be incorporated into planning when it is linked to land use. Animal welfare may enter market regulation where it is linked to food categorisation and fair competition. The common theme is that animal welfare advocates should identify the legal gateway in each regime rather than relying on a general moral objection. In planning, the gateway is a material consideration and land-use impact. In food labelling, it serves a statutory purpose, provides consumer information and promotes fair competition. In procurement, it is public value and specification. In subsidies, it is the statutory objectives and conditions.

This is a mature animal welfare strategy. It does not ask courts to decide abstract ethical questions about animal agriculture. It asks courts and public bodies to apply existing legal categories in ways that do not erase animal welfare. *Oatly* is useful because it shows that courts are comfortable with legal categorisation in food markets. The task is to bring animals into the categories.

5.7 Use *Oatly* to support standing and intervention by animal welfare organisations

Although an industry trade association brought the case against *Oatly*, it demonstrates the effectiveness of organised sectoral litigation. Dairy UK acted to protect the interests of the dairy industry. Animal welfare organisations should draw a symmetrical lesson. If industry bodies can litigate to protect commercial categories, animal protection organisations should be recognised as proper participants in litigation affecting animal welfare, food systems and market regulation.

English public law already permits public interest standing where the claimant has a sufficient interest. Environmental and animal welfare organisations have often been able to bring claims where they raise issues of public importance. Animal Equality UK itself proceeded as a claim by an animal welfare NGO concerned with farmed animals.[49] The strategic point is that animal welfare organisations should not wait for individual consumers, competitors or affected landowners to bring challenges. Animals cannot litigate. Their interests require institutional representatives.[50]

Secretary of State for the Environment [1995] 1 WLR 759 (HL) 780; *R (Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire County Council* [2020] UKSC 3, [21], [30]-[31].

49 *Animal Equality UK* (n 47) [1]-[4].

50 See the Privy Council case of *John Mussington v Development Control Authority* [2024] UKPC 3, the Privy Council, applying the reasoning of LCJ Keegan in *Duff v Causeway Coast and Glens Borough Council* [2023] NICA 22, held that

There is also a case for more frequent interventions. Animal welfare organisations could intervene in cases involving food labelling, procurement, planning, agricultural subsidies, and advertising to explain the welfare context. Oatly would have looked different if animal welfare had been squarely placed before the Court, not necessarily to change the statutory interpretation, but to expose the consequences of the legal architecture. Future cases should not allow animal agriculture to appear only as an economic sector.

6. Can *Oatly* be used positively?

6.1 The immediate result is not pro-animal welfare

Animal welfare advocates should be honest about *Oatly's* immediate effect. The decision benefits the dairy industry in a dispute with a plant-based producer. It restricts a plant-based company's ability to use dairy-related language in its branding. To the extent that plant-based substitution can reduce demand for dairy and thereby reduce animal use, the decision may be counterproductive from an animal welfare perspective.

That acknowledgement matters. A pro-animal welfare article should not pretend that every case can be turned into an immediate victory. *Oatly* is a loss for plant-based linguistic flexibility. But legal strategy often works by extracting principles from unfavourable decisions. The question is not whether the result was welfare-positive. It was not. The question is what the reasoning reveals and how advocates can redeploy it.

6.2 Positive use one: defend welfare-based labelling rules

The first positive use is defensive. If future welfare-based labelling rules are challenged as disproportionate, unnecessary, or protectionist, Oatly can be cited to support the legitimacy of categorical food-language regulation serving fair competition rather than mere deception avoidance.[51] A statutory scheme requiring, for example, "intensive indoor rearing", "caged system", "stunned before slaughter" or "not stunned before slaughter" labels could be defended as creating fair competition among products with materially different welfare conditions. It would not depend solely on showing that consumers are currently deceived. It would rest on the proposition that ethically material production differences should not be hidden.

This point is particularly important because welfare labelling often faces two inconsistent criticisms. Industry may argue that consumers do not care enough to justify mandatory labelling, while also resisting labels on the grounds that they may change consumer behaviour. *Oatly* helps answer both. Food law can structure the conditions of competition by controlling language. If welfare labels change behaviour, that is not an objection. It is part of the regulatory purpose.

6.3 Positive use two: attack asymmetrical restrictions on plant-based speech

The second positive use is offensive. *Oatly* can help animal welfare advocates criticise asymmetrical restrictions on plant-based speech. If the law restricts plant-based producers from using dairy language on the basis of fair competition, advocates can ask whether animal-derived producers are subject to equivalent restrictions when using welfare-implying language. If not, the regime may be politically vulnerable and, in some contexts, legally questionable.

A legal challenge would need a specific target. For example, a public authority might issue guidance restricting plant-based comparative language while failing to address misleading welfare imagery in animal-derived products. Advocates could argue that the authority took an unbalanced approach to fair competition, failed to consider relevant welfare and consumer-information issues, or acted inconsistently with its stated animal-welfare policy. *Oatly* would not decide such a claim, but it would provide the analytical frame: food language rules allocate market advantage and must be justified by coherent purposes.

6.4 Positive use three: legislative drafting lessons

The third positive use is legislative. *Oatly* shows that clear statutory language can produce categorical outcomes. Animal welfare advocates should therefore draft reform proposals with precision. A Bill or regulation that merely asks ministers to "promote animal welfare in food labelling" may be too weak. A stronger scheme would define prohibited claims, required disclosures, enforcement bodies, penalties, evidence standards and review duties.

For example, legislation could provide that no animal-derived food may be marketed with welfare-implying terms unless it meets prescribed welfare criteria. It could define "high welfare" by reference to measurable conditions rather than industry assurance membership. It could require labels for specified practices. It could prohibit

as the case involved "speaking for animals", which applies to all aspects of flora and fauna as well as other environmental factors, the Claimant had standing to bring the claim.

51 *Dairy UK* (n 1) [31]-[32].

images of outdoor animals where the production system is predominantly indoor. It could require public authorities to procure only products that meet specified welfare tiers or are plant-based alternatives. The lesson from *Oatly* is that courts enforce legal categories when the categories are clear.

6.5 Positive use four: expose the politics of "consumer clarity"

The fourth use is discursive but important. Dairy UK and supporters of dairy designation rules often present such rules as promoting consumer clarity. Oatly reveals that the legal purpose is broader. Fair competition matters. That allows animal welfare advocates to expose instances where "consumer clarity" serves as a proxy for industry protection. This does not mean consumer clarity is false or irrelevant. It means it should be examined critically. The same scrutiny should apply to welfare claims. When animal industries resist mandatory disclosure, they may argue that consumers would be confused or overwhelmed. But consumers are already deemed capable of navigating complex distinctions in dairy designation law, trade marks, nutrition, allergens and country of origin. It is patronising to suggest that they cannot understand production-method labels. The real issue is not capacity. It is whether the law will require disclosure of information that may make animal-derived products less comfortable to buy.

7. Legal routes for animal welfare advocates after Oatly

7.1 Mandatory method-of-production labelling

The first and strongest reform route is mandatory method-of-production labelling. The legal argument should be framed around three objectives: animal welfare, fair competition and informed democratic choice. Animal welfare is a concern because production systems directly affect animals' lives. Fair competition is engaged because products produced under lower welfare conditions may compete on price without disclosing the welfare costs. Informed choice is engaged because consumers cannot act on ethical preferences without clear information.

The scheme should cover meat, dairy, eggs, fish and animal-derived ingredients. It should not be limited to premium claims. It should apply to all products, including processed foods and food service, where practicable. Labels should be standardised. Enforcement should be public, not left primarily to competitors or NGOs. A regulator should publish guidance, audit compliance and issue penalties.

The *Oatly* argument is simple. If the law protects the term "milk" because product language affects competition, the law can require production-method language because welfare conditions affect competition. Indeed, the case for welfare labelling is stronger. Consumers may not be deceived by "POST MILK GENERATION", but they may be materially uninformed about how animals were treated. The moral relevance of welfare conditions is greater than the semantic purity of dairy terminology.

7.2 Restrictions on misleading welfare imagery and claims

The second route is tighter control of welfare imagery and claims. Existing consumer law can address some misleading practices, but animal welfare marketing often works by implication rather than explicit falsehood. A package may show cows in fields without claiming that the cows spent most of their lives outdoors. A brand name may evoke a small farm while sourcing from large-scale systems. A label may say "responsibly sourced" without specifying welfare criteria. These communications shape perception while avoiding precise claims.

A welfare-specific advertising code or regulation could prohibit imagery materially inconsistent with production conditions. It could require substantiation of any welfare-implying claim. It could create reserved welfare terms analogous in structure, though not in content, to dairy designations. "High welfare" could become a protected designation usable only where defined standards are met. "Pasture raised" could require specified access and duration. "Free range" could require enforceable criteria across species. The legal architecture that protects "milk" can be adapted to protect animals from misleading reassurance.

7.3 Public procurement and institutional food policy

The third route is public procurement. Animal welfare advocates should campaign for public bodies to adopt procurement policies that prioritise plant-based foods and prohibit low-welfare animal products. Such policies should be framed not as lifestyle preferences but as the public law implementation of animal welfare, climate, health, and value-for-money objectives.

A post-*Oatly* argument would emphasise that public institutions already operate within a legally structured food market. Choosing animal-derived defaults is not neutral. Where public bodies procure dairy, meat, or eggs without welfare criteria, they support the market position of products whose animal-welfare costs may be hidden from end users. Procurement policies should therefore require welfare tiers, plant-based options, reduced reliance on animal products, and transparent reporting.

Potential litigation might arise where a public authority adopts a food policy while refusing to consider animal welfare at all. The claim would depend on the statutory context. A school food policy, an NHS catering policy, or a local authority climate strategy may each raise different legal duties. But advocates should be ready to argue that animal welfare is a relevant consideration where the policy foreseeably affects demand for animal products and where the authority has adopted welfare, sustainability or ethical procurement commitments.

7.4 Agricultural subsidies and market support

The fourth route is subsidy reform. Agricultural financial assistance can be conditioned on public goods, environmental outcomes and animal health and welfare. Animal welfare advocates should push for subsidy schemes that go beyond rewarding marginal improvements in intensive systems. They should support transition away from high-suffering production and towards plant-based, agroecological and animal-free systems where appropriate.

Oatly is useful because it shows that market support can take non-obvious legal forms. Protecting dairy designations is a form of market support. It preserves category value. Direct subsidy is only one part of the architecture. Advocates should therefore analyse agricultural support holistically: language protection, promotion campaigns, procurement, planning, trade measures and financial assistance all shape animal agriculture.

A legal challenge to subsidy design would be difficult unless a specific statutory duty or irrationality could be shown. But public law can still discipline the process. Ministers should consider animal welfare impacts, alternatives, distributional effects and consistency with stated policy. Under the Animal Welfare (Sentience) Act 2022, central government policy decisions may be scrutinised by the Animal Sentience Committee where they may have an adverse effect on animal welfare.[52] Food and farming subsidy schemes plainly have such potential. Advocates should use that mechanism more ambitiously.

52 Animal Welfare (Sentience) Act 2022, ss 2-3.

7.5 Trade and import controls

The fifth route is trade. Domestic welfare standards may be undermined if lower-welfare imports compete without equivalent disclosure or restrictions. *Oatly* shows that product categories can be protected at the linguistic border. Animal welfare advocates should argue for equivalent seriousness at the border of production standards. If the UK prohibits or restricts certain practices domestically, it should not allow products produced through those practices to compete invisibly.

The legal issues are complex, including WTO rules, trade agreements and domestic powers. The key point of this article is strategic. The legitimacy of market-shaping regulation cannot be denied in principle after *Oatly*. The state already regulates how products may be named and marketed. The welfare question is whether it will regulate how products may be produced and disclosed. Trade law may constrain the answer, but it does not eliminate the question.

7.6 Planning and land-use decisions

The sixth route is planning. Animal agriculture requires land-use permissions for farms, processing facilities, aquaculture systems, slaughterhouses, anaerobic digesters, feed infrastructure and associated development. In appropriate cases, animal welfare may be a material planning consideration.[53] *Oatly* adds a market-architecture perspective. It reminds advocates that land-use permissions are part of the same system that sustains animal agriculture. Planning decisions do not simply accommodate neutral economic activity. They authorise physical infrastructure for animal use.

Animal welfare advocates should therefore integrate market and land-use arguments. Where a proposed facility expands intensive animal production, objections should not be limited to odour, traffic or ecological impacts. They should identify welfare harms associated with the design and operation of the development, the regulatory gaps that planning conditions cannot address, and the inconsistency between expansion and wider public policy on animal welfare, climate, and the food transition. Courts may not accept all such arguments, but *Animal Equality UK* confirms the

53 *Animal Equality UK* (n 47) [20]. See also *Stringer v Minister of Housing and Local Government* [1970] 1 WLR 1281 (QBD) 1294; *R (Wright) v Resilient Energy Severndale Ltd* [2019] UKSC 53, [36]-[39], [43].

legal opening, and *Oatly* supplies the structural context.

7.7 Corporate and consumer law litigation

The seventh route is corporate and consumer law. Plant-based producers, animal welfare organisations and consumer groups may be interested in challenging misleading welfare claims or resisting restrictions on plant-based communications. *Oatly* indicates that competitors and industry associations can use trade marks and food law strategically. Animal welfare advocates should be equally sophisticated.

Possible claims include complaints to the Advertising Standards Authority, enforcement requests to trading standards, judicial review of regulatory inaction, interventions in trade mark proceedings involving welfare-implying marks, and challenges to public endorsements of assurance schemes. The aim would be to make welfare truthfulness a competitive condition. If animal-derived producers wish to rely on public trust, they should disclose the welfare basis for that trust.

8. Limits and risks

8.1 Oatly is not a welfare authority

The first limit is obvious but important. *Oatly* is not an authority for the proposition that animal welfare must be considered in food labelling decisions. It is not an authority that dairy production is harmful. It is not an authority that plant-based products deserve special treatment. It is a statutory interpretation case about a specific Regulation. Animal welfare advocates should not overstate it.

Overstatement would weaken the article's thesis. The value of *Oatly* lies not in direct doctrinal transfer, but in analogy, strategy and regulatory design. It shows that market language is legally structured and that fair competition can justify category rules. Those propositions can inform welfare advocacy, but they do not decide welfare cases on their own.

8.2 The danger of reinforcing category protection

The second risk is that relying on *Oatly* may inadvertently legitimise restrictive rules that harm plant-based alternatives. Animal welfare advocates should be careful. They should not defend dairy designation protection as currently designed unless they have a specific reason to do so. The better approach is critical appropriation: accept the Court's interpretation as law, identify the structural asymmetry it reveals, and argue for welfare-positive counter-regulation.

This distinction matters. A pro-animal welfare position may support consumer clarity but oppose incumbent protection. It may accept that words need regulation but reject rules that make plant-based substitution harder without requiring equivalent transparency from animal products. It may support clear descriptors such as "oat drink" while also enabling plant-based producers to communicate comparability, function, and ethical purpose. The objective is not semantic purity. It is animal protection.

8.3 Judicial restraint and institutional competence

The third limit is judicial restraint. Courts may be reluctant to enter the field of food policy, animal welfare science, or market design. They may treat many issues as matters for Parliament and regulators. That is a real constraint. Animal welfare advocates should respond by designing claims around legal errors, not broad merits. The strongest claims will identify a failure to consider a relevant duty, an inconsistency with the statutory purpose, inadequate reasons, an irrational reliance on voluntary schemes, procedural unfairness, or a misinterpretation of regulatory powers.

This is where *Oatly* again teaches a lesson. Dairy UK succeeded because it had a clear legal hook: section 3(4) of the 1994 Act and Point 5 of the Regulation.[54] Animal welfare advocates need similarly concrete hooks. General moral force is not enough. The future of animal welfare litigation lies in matching moral clarity with legal precision.

8.4 Consumer welfare is not animal welfare

A fourth limit is conceptual. Much food law remains consumer-centred. Animal welfare advocates should use consumer law, but not be captured by it. The welfare problem is not merely that consumers lack information. It is that animals suffer. Mandatory labelling may reduce demand for low-welfare products, but it does not guarantee protection. Some consumers may ignore labels. Some forms of suffering should be prohibited regardless of consumer preferences. Labelling is therefore a tool, not an endpoint.

This point is vital to a pro-animal welfare framing. The aim is not to make exploitation more transparent so that consumers can choose it with a cleaner conscience. The aim is to use transparency, market regulation and public law to shift the legal baseline

54 Trade Marks Act 1994, s 3(4); Regulation (EU) No 1308/2013, Annex VII, Part III, Point 5; Dairy UK (n 1) [11]-[12], [29]-[34].

away from animal suffering. In some contexts, that will mean labelling. In others, it will mean bans, procurement exclusions, subsidy withdrawal or refusal of permission.

9. Conclusion: from protected milk to protected animals

Dairy UK v Oatly is a narrow case with wide implications. The Supreme Court held that "POST MILK GENERATION" used "milk" as a protected dairy designation and that the mark was not saved by the exception for designations clearly describing a characteristic quality of the product.[55] The Court's reasoning turned on text, context and purpose. Most importantly for animal welfare advocates, it accepted that the dairy designation regime serves as a fair condition of competition, distinct from consumer deception.[56]

That proposition should not be left in the hands of dairy incumbency. It should be turned towards animal protection. If law can protect dairy terminology because market language matters, it can protect animals through welfare labelling, advertising controls, procurement standards, subsidy conditions and public law duties. If courts can enforce product categories strictly, Parliament can create welfare categories worth enforcing. If fair competition justifies restricting plant-based language, fair competition should also require transparency about animal suffering.

The article's core argument is therefore strategic. Animal welfare litigation must move beyond the point of cruelty. It must challenge the legal architecture that makes animal agriculture ordinary: the labels that reassure, the categories that privilege, the procurement rules that normalise, the subsidies that sustain, the planning permissions that build, and the market laws that protect. *Oatly* is useful not because it is an animal welfare victory, but because it reveals the terrain on which future victories must be fought.

The immediate decision protected milk. The next phase of animal welfare advocacy should ask why the law protects words more clearly than the animals behind them. A legal system capable of reserving "milk" to dairy is capable of reserving "high welfare" to genuinely high welfare, requiring disclosure of intensive production, excluding low-welfare products from public procurement, and making animal suffering visible in the market. The lesson of *Oatly* is that legal categories matter. Animal welfare advocates should now insist that animals themselves become one of the categories the law is prepared to protect.

55 *Dairy UK* (n 1) [34], [40]-[44].
56 ibid [32].

'Routine' emergency killing? The WATOK licensing regime and the on farm killing of pigs

By Charlotte Morrish

Introduction

Following official guidance from Red Tractor, the National Pig Association ("NPA") has issued a statement reminding producers in England and Wales that staff who euthanise pigs on farm should apply for a WATOK licence[1]. Whilst the law does not require a WATOK licence in the case of an emergency killing, there has, until now, existed a significant disparity between the legal definition of 'emergency' and the one seemingly adopted by the pig industry. Recent undercover investigations have led to increased scrutiny of on farm killing practices and have highlighted their apparent incompatibility with the law. The recent statement from the NPA confirming that "the routine dispatch of pigs is not classed as 'emergency killing'" illustrates the extent of the disparity that has hitherto prevailed.

Despite being expressed as a 'reminder', this development in fact appears to represent a significant shift in the industry's position on the meaning of 'emergency killing'. Red Tractor's clarification, which has now been adopted by the NPA, aligns the industry's position with the legal definition and should therefore encourage producers to adhere to the law and thus provide increased protections for animals at the time of their killing.

The meaning of 'emergency'

The Welfare of Animals at the Time of Killing (England) Regulations 2015[2] ("WATOK") provides the legislative framework and implements a licensing regime for a range of commercial killing operations. Accordingly, anyone who kills animals on farm must hold a WATOK licence (Reg 12). The licensing regime includes an assessment of competence which is intended to ensure that the applicant is "a fit and proper person to hold a licence" (Reg 15(b)); the process includes an assessment that the person is competent to conduct euthanasia "without causing an animal avoidable pain, distress or suffering" (Reg 16(c)(i)) and has sufficient knowledge of the relevant legislation and guidance (Reg 16(c)(ii)).

However, there is an exception to the requirement for a WATOK licence where the killing is an "emergency" (Reg 14(d)). This exception has long given rise to concerns about the extent to which animals are being killed on farm by unlicensed stockpersons, given the industry's hitherto apparent interpretation of "emergency" as including the routine on farm killing of weak piglets or production pigs deemed unfit for transport and slaughter.

The legal definition of emergency killing can be found in the assimilated EU Regulation on the protection of animals at the time of killing[3]: 'emergency killing' means the killing of animals which are injured or have a disease associated with severe pain or suffering and where there is no other practical possibility to alleviate this pain or suffering (Article 2(1)(d)).

Yet, until its 2026 revision, the leading industry text "The Casualty Pig" included a much broader definition; an emergency kill arises where a decision has been made that the pig "is unlikely to recover"[4]. It has long been suspected that this definition was interpreted so as to capture the routine killing of weak piglets or of older pigs with injuries or diseases which rendered them unlikely to be fit for transport or human consumption. This broad interpretation of emergency, whilst legally flawed, has not been challenged by the regulators; in the absence of any enforcement action, producers have therefore avoided the costs and effort associated with obtaining a WATOK licence or engaging licensed external euthanasia services for pigs deemed to be

1 National Pig Association (2026) Producer Guidance for WATOK Application, 6 August 2026. Available at: https://nationalpigassociation.co.uk/producer-guidance-for-watok-application/

2 The Welfare of Animals at the Time of Killing (England) Regulations 2015, No. 1782. Available at: https://www.legislation.gov.uk/uksi/2015/1782

3 Council Regulation (EC) No 1099/2009, Article 2(1)(d). Available at: https://www.legislation.gov.uk/uksi/2015/1782

4 Pig Veterinary Society (2013) The Casualty Pig. Available via Way Back Machine at: https://web.archive.org/web/20240302012453/https:/www.pigvetsoc.org.uk/files/document/192/Casualty%20Pig%20-%20April%202013-1.pdf. This version was in place until March 2026.

of little or no financial value.

The recently updated 2026 version of The Casualty Pig[5] now draws a clear distinction between the legal definition of emergency killing and situations which can reasonably be planned for and are therefore not emergencies, thus aligning the guidance with the correct legal position.

The NPA explains that, following Red Tractor's clarification (which, at the time of writing is not publicly available), "the legal interpretation of the term "emergency killing" must be adhered to, and as such the routine dispatch of pigs is not classed as 'emergency killing' on the basis that commercial farms should be able to foresee the need and, therefore, take steps to prepare in advance, including having the relevant equipment to hand and holding a license, if using relevant methods".

In a clear indication that this statement represents new information, it advises producers that staff "should apply" for a licence and goes on to explain the application process in detail. It also notes the "significant backlog of applications in the system which is expected to grow", presumably as a result of this change in position.

Comment

The law has not changed, but these recent clarifications from Red Tractor and the NPA should mean that, going forward, industry standard practice will better reflect the clear legislative intent to impose strict requirements on farms and their staff to ensure that animals are spared avoidable pain, suffering and distress during their killing and related operations[6].

Evidence in a recent case[7] suggested that approximately 6.9% of pigs on a typical pig-rearing farm either die or are killed on-farm; given that the industry appears to have hitherto adopted a very broad definition of emergency, it is estimated that many millions of pigs may have been killed on farms each year by people who do not possess a WATOK licence and have not been certified as competent.

Whilst the clarification is welcome and should lead to improved practices in on farm killing, it nonetheless illustrates the role that industry can play in interpreting legislation and developing 'industry standards' which arguably prioritise commercial interests over animal welfare. It remains to be seen to what extent this clarification will result in increased compliance with the WATOK licensing regime and, ultimately, improved welfare for animals at the time of their killing.

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5 Pig Veterinary Society (2026) The Casualty Pig. Available at: https://www.pigvetsoc.org.uk/files/document/2726/PVS%20Casualty%20Pig%2003.26.pdf

6 Ibid. no. 3, Article 3(1).

7 Norfolk County Council Trading Standards v Norfolk Free Range Ltd. Case summary available at: https://www.advocates-for-animals.com/post/norfolk-county-council-trading-standards-v-norfolk-free-range-ltd

Criminal Liability for Dog-on-Dog Attacks: Does the Dangerous Dogs Act 1991 have Enough Bite?

By Stephen Forster[1]

Introduction

Witnessing a fatal or serious dog-on-dog attack can be an upsetting experience, and dealing with the aftermath can be impactful to those involved, especially if the incident is downgraded to a non-human injury case where no blame is apportioned. The focus of this short article is on whether the statutory measures in the Dangerous Dogs Act 1991 (DDA 1991)[2] provides sufficient redress to an owner of a dog that has been attacked by another dog, or whether reform is needed to not only offer better protection to dogs but also minimize the risk of trauma and helplessness experienced by owners of attacked dogs.

Is Injury to a Person a Prerequisite to a Dog Being Criminally Dangerous?

Within section 3 of the Dangerous Dogs Act 1991, if a dog is found to be dangerously out of control in either a public or private place, then this will attract summary liability against the owner or a person in charge[3] (the basic offence). If at the same time, the dog injures a person or an assistance dog, then a more serious either-way offence is committed (aggravated offence).

Thus, if a dog injures another dog, then subject to the meaning of dangerous, the basic offence is committed and liability ought to follow. More questionable however, is the situation relating to the aggravated offence as the amended legislation in 2014 only refers to an assistance dog[4] with no specific mention of 'other dogs' and, therefore only the lesser offence would capture a dog-on-dog attack. However, alongside s.3, is the statutory test of establishing whether the dog is dangerous in s.10, which expressly provides for the presence of some objective form of apprehension of a fear of injury "to any person". The meaning of this provision has caused some difficulties for the courts in establishing whether it is wide enough to include a fear of injury to another dog.

According to George Eustice (the former Secretary of State for DEFRA), it does cover "an attack by a dog on another animal" and that the Police have been updated in applying the law[5]. In *R v Gedminintaite* [2008] EWCA Crim 814, the Court of Appeal felt that it was unnecessary to go beyond the actus reus to the offence which simply consists of a dog being dangerous and out of control. Thus, if a dog falls within the ordinary language of the primary offence, then there is no need to resort to s.10(3) to demonstrate a statutory form of dangerous. Crucially, it is the behaviour displayed by the dog that renders it dangerous, aggravated by any infliction of injury.

There is certainly nothing in the legislation that expressly excludes dog-on-dog attacks from falling within its scope, a view that is shared by Collins J in *Russell v CPS* [2015] EWHC 2065, (a High Court challenge to a destruction order), in which the offending dog had initially attacked the victim's dog resulting in protective injuries being caused. Collins J accepted that, "the danger is not only danger to humans, but includes danger to other dogs because of course it is an offence (albeit not an aggravated offence under s.3(1) of the Act if a dog is dangerously out of control and that can be shown by an attack on another dog." A legal interpretation also accepted by the CPS in their guidance on dangerous dogs confirming that dog-on-dog attacks are covered by the DDA 1991[6].

The Scottish Courts, however, despite the same legislation applying, have preferred to adhere to the wording of s.10 in construing s.3, and that a dog will only be dangerous under the Tierney principle[7],

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2 See my previous articles "The Dangerous Dogs Act 1991: A Criminal Act that is Dangerous to Dogs? [2021] (April) vol 5, UK Journal of Animal Law 1, "Is it Time to Reform the Dangerous Dogs Act 1991" [2024] (May) vol 6, UK Journal of Animal Law 11

3 See *L v CPS* [2010] EWHC 341 as the meaning of "in charge"

4 See Part 7 of the Anti-Social Behaviour, Crime & Policing Act 2014.

5 Hansard vol 699 [2021] 22 July

6 "Dangerous Dog Offences" (updated Feb 2024) www.cps.gov.uk. See also 'Dog owner fined £80 after attack which killed pet'- BBC News 1 May 2026

7 [1995] SLT 564 for a detailed examination of both

if there is sufficient corroborative evidence to substantiate a foreseeable risk of injury to any person. This effectively excludes other dogs from the ambit of the DDA 1991 and arguably permits a "first free bite policy", that would allow an owner to escape liability if the dog unknowingly and unexpectedly causes an injury[8].

Nevertheless, having recently reviewed the previous authorities[9], the Scottish Sheriff Appeal Court was willing to loosen the shackles of Tierney by ruling in *Murdoch v Procurator Fiscal, Perth* [2024] SAC (Crim) 1, that what mattered, was not the owner's "perception of the dog's character"[10], but how the Court objectively concluded from the whole evidence "that there were grounds for reasonable apprehension that the dog would injure someone" and was therefore dangerously out of control.

Neither is evidence of previous attacks necessary; each case is fact specific and depends on the circumstances, including the degree of control exercised by the owner being an obvious factor when assessing dangerousness[11]. In this case, the appellant was rightly convicted, when his dog (an American Bulldog, called Storm), was "dangerously out of control when he attacked" another dog belonging to the victim who also suffered an injury. Both attacks were "sufficiently connected" as, "but for" the dog-on-dog attack, the complainant would not have suffered any consequential injury.

These principles are neatly summarised in *MacFarlane v Procurator Fiscal, Inverness* [2025] SAC (Crim) 4 at para 12 and that whilst relying on warning signs alone "would be a precarious bases in which to seek a conviction under s.3", equally, they do not exonerate responsibility. Although, neither Court expressly affirmed the wider principles found in the English authorities on the meaning of dangerously out of control, essentially the same legal basis was applied to Scottish law and that the DDA 1991 was sufficiently wide to include dog only attacks.

the English & Scottish authorities, see Forster "Is it Time to Reform the Dangerous Dogs Act 1991" [2024] (May) vol 6, UK Journal of Animal Law 11

8 *Mcloughlin v Procurator Fiscal* [2014] HCJAC 98, see "The Criminal Law Dealing with Dangerous Dogs-Discussion Paper" (July 2021) Scottish Government-www.govt.scot

9 Thompson [2010] SLT 158 and McLaughlin [2014] SLT 961 and distinguishing Tierney, for a detailed analysis-see Forster "The Dangerous Dogs Act 1991: A Criminal Act that is Dangerous to Dogs? [2021] (April) vol 5

10 Storm was already the subject of a Dog Control Order for a previous attack on another dog, which had been breached by the appellant.

11 The appellant at the time of the attack was already subject to a Dog Control Order having previous attacked another dog.

Several recent Scottish Appeal authorities do offer some support for this line of reasoning, although it remains uncertain whether personal injury suffered during a dog-on-dog attack, is a precept to a prima facie case. In *Feldwick* [2018] SAC (Crim) 5 for instance, the owner of a Rottweiler cross dog pleaded guilty to an aggravated offence, after her dog not only attacked the complainant's dog but also injured them while trying to intervene. The fact that the offender's dog was already subject to a Dog Control Order for the same reasons was relevant and strong evidence of knowledge and inaction[12]. More convincing perhaps is *Luckhurst* [2016] SAC (Crim) 29 (an appeal against a destruction order). The offender had pleaded guilty to being the owner of Douglas (a St. Bernard dog) which had fatally wounded another dog during an unprovoked attack, The offender accepted that his dog, at the time, was dangerously out of control under s.3(1)[13].

Additionally, in *Hunter v Procurator Fiscal* [2019] HCJAC 19, the Court noted that an attack by a Bull Mastiff on a Labrador puppy and then biting a young child trying to protect it, must have "been extremely alarming, as well as painful." Ruling that the dog was "inherently aggressive to other dogs" because of the conduct of its owner, meant that it was a dangerous dog under the legislation.

On similar grounds in *Kelleher v DPP* [2012] EWHC 2978, (a case which concerned the imposition of a Destruction order), the appellant had pleaded guilty to a non-aggravated offence, when she failed to control her two dogs, (despite them being subject to control orders), from attacking another dog. Although the owner of the stricken dog did not suffer any direct injury, the incident was still highly upsetting and distressing for him to witness.

Likewise, in *R v Smith* [2023] EWCA Crim 1161, the applicant, (despite being subject to a Community Protection Notice), oversaw his Doberman dogs which had attacked the victim causing deep puncture wounds, but also caused significant injuries to a Jack Russell on a previous occasion. It was clear that his dogs posed a physical threat, not only to other dogs (being a direct "stimulus" to them), but also to humans and warranted an 8-month prison sentence suspended for 2 years.

In *Fitzgerald* [2024] EWHC 869, a combination of injuries was identified in an appeal against a destruction order. The applicant had pleaded guilty to a basic s.3 offence when his dog (a bull breed called Yosser) dangerously attacked others

12 The case concerned the validity of a Destruction Order.

13 The issue in the case was the validity of a Destruction Order

on several occasions, including another dog by grabbing its hind legs, and then grabbing it from the arms of the owner while he was trying to protect it.

On an appeal against sentence in *R v Proft* [2023] EWCA Crim 1538, the appellant who was intoxicated and asleep in public, had no oversight of his dog (a Belgian Malinois cross) which randomly attacked a Cockapoo puppy by locking its jaw on the stricken dog and violently shaking it, resulting in a hand injury to the owner of the puppy. Despite his poor criminal record, the Court of Appeal agreed that his original sentence of 17 months imprisonment, suspended for 2 years was manifestly excessive and reduced it to 10 months, (including a 15% discount for guilty plea).

Agreeing that "the aggravating features identified justified moving to the top of the bracket"[14], the sentencing Judge was nonetheless wrong to go beyond the Sentencing guidelines of 12 months, with a starting point of 6-months (cat B culpability and cat 2 harm) and that the circumstances did not warrant any significant uplift" outside the range for this type of offending[15].

Thus, depending on the circumstances, the simple offence of having a dog dangerously out of control is proven when a dog strikes another dog, regardless of the state of mind of the owner or person in charge of the offending dog. However, the non-aggravated offence remains a relatively minor crime (being a summary only offence and limited to either 6 months imprisonment, and/or a fine) and is thus ineffectual. Even if the police act, the legislation itself does not sufficiently address these inadequacies, nor can it impose sufficient punishment that not only deters, but also best reflects the more serious culpable attacks with fatal consequences[16].

Section 4 of the Animal Welfare Act 2006

Section 4 on the other hand, provides an alternative solution to the difficulties encountered with the concept of dangerous in the DDA 1991, by making it a criminal offence to cause unnecessary suffering to a "protected animal"[17], or an animal for which a person is responsible[18], punishable on indictment up to a maximum 5 years imprisonment[19]. Whilst the actus reus is widely defined and includes any action or inaction which causes or likely to cause another dog to suffer unnecessarily from being attacked by another dog, this comes with the added burden of having to prove a mens rea that they either knew (subjective), or ought reasonably to have known (objective) that such suffering would be caused as confirmed in *Hussey v RSPCA* [2007] EWHC 1083.

This is a familiar expression applied in other legislation, including the Protection of Harassment Act 1997[20]. Did the defendant subjectively know (have the requisite knowledge), or become aware of an existing fact, namely the degree of risk their dog poses to other dogs without due diligence, or ought to have known objectively? As stated in *R v Forsyth* [1997] 2 Cr App R 299, a suspicious mind is insufficient, but wilful blindness[21] in shutting one's eyes to the obvious is strong evidence of acknowledging the risk factors and not acting upon them[22].

In *Grey v Crown Court at Aylesbury* [2013] EWHC 500, the Appeal Court accepted that a defendant can rely on a mistaken belief defence to negate liability, if the "act done with realisation that it would cause the animal pain but in the honest and reasonable, albeit mistaken, belief that it was necessary for the animal's welfare"[23]. Thus, if the defendant claims that the other dog (albeit mistakenly) wrongly approached his dog to play fight, then any suffering could be argued to be part of reasonable horseplay, or simply unavoidable.

Even if, at this stage there is a prima facie case, it will still need to be established that the (mis)conduct of the defendant was such that it sufficiently caused the proscribed harm with some degree of fault

14 The sentencing Judge had identified 5 aggravating factors including previous convictions, sustained attack, intoxicated, already serving a suspended sentence and finally injuries to the puppy.

15 Aggravating features included- previous convictions, lack of safety, no control measures and foreseeable harm, sustained nature of the attack/injuries suffered and the appellant's intoxicated state, which occurred during the operational period of another suspended sentence for an unrelated matter.

16 'Joanna Wade whose dog (Pomeranian) died after being attacked by a dangerous out of control German Shepherd described the a £80 fine after the owner had pleaded guilty to the basic offence 'as a joke'- BBC News report- 1 May 2026

17 A dog is a protected animal for the purposes of s.1

18 This modifies the previous offence in the Protection of Animals Act 1911.

19 See the Animal Welfare (Sentencing) Act 2021 which amended s.32 of the 2006 Act by increasing the sentencing range and re-classifying the offence in s.4 as either-way, depending on guilty pleas and seriousness.

20 *Cobhan* [2001] EWCA CRIM 1251 & *Crawford v DPP* [2008] EWHC 148 confirmed that "ought to" is assessed objectively.

21 The adverb wilful means deliberately either intentionally or recklessly-*Sheppard* [1981] AC 394

22 See *McKenny* [2008] EWCA 173, and s.2 of the Animal Act 1971, which contains similar wording, albeit in the civil context

23 See para 24, the court left open the question whether this imposes only an evidential burden or subject to a balance of probabilities.

(excessive behavioural problems or pugnacity with other dogs, facts which would have been known in terms of risk) in the control of their dog, as opposed to mere presence[24].

Whilst each case involves a fact-specific judgment, "likely to" creates a causational threshold to liability and can be used in varying circumstances. In childcare proceedings it meant a higher threshold of "serious risk or real possibility"[25], whereas in *Mirvahedy* [2003] 2 AC 491 16[26], Lord Scott felt that "likely to" in s.2(2(a) of the Animals Act 1971 simply carries its natural meaning of "to be reasonably expected".

As Lord Burnett observed in *R v Smoke* [2021] EWCA Crim 97, "likely to endanger" in the context of s.1(2) of the Aviation & Maritime Security Act 1990 "does not entail an examination of what might have happened had the appellants behaved differently but it does entail consideration being given to what might have ensued because of what they did"[27].

The remarks of Lady Hale in *Re J (Children)* [2013] 1 AC 680, (at para 40) are also noteworthy in that "the criminal law is only concerned with punishing those who bear some responsibility, either directly or through a failure to protect from predictable harm."

Given the purpose and effect of s.4, it would be sufficient to establish some evidential connection between the characteristics of the dog known to factually exist, and the actual attack on another dog. However, any defects in knowledge and foreseeability would certainly weaken a prosecution and this can make the offence unattractive to prosecutors when dealing with dog only attacks.

How Prevalent are Dog-on-Dog Attacks?

It is simply not known how many dog-on-dog attacks go unreported to the police. If the owner of an attacked dog calls the police, this will initially generate an "incident report" for the police to coordinate an appropriate response. Whether this is a recordable offence (with an identifiable victim)

24 *Hughes* [2013] 1 WLR 2461, Taylor [2016] 1 QLR 500, Wallace [2018] EWCA Crim 690

25 *Re J (Children)* [2013] 1 AC 680

26 Para 19, see also *Ball & Others* [2022] EWHC 2452 *Seymour-Williams* [2021] EWA Civ 1848, *Hawkes* [2017] EWCA Civ 1846, **Warrener** [2012] EWCA Civ 412, *Patchcott* [2012] EWCA Civ 183,

27 See also art 240 of the Air Navigation Order 2016 SI/ 765 and the offence of doing an act "likely to" endanger an aircraft. In *R v Whitehouse (Neil)* [1999 (unreported 04553 W5), [2000] Crim LR 172, the Court of Appeal held that the expression "likely to" in the context of the regulations simply conveys a "real risk, a risk that should not be ignored." Noted in Haydon [2026] EWCA Crim 12, on the same expression found in s.2 of the Explosive Substances Act 1883.

that must be notified to the Home Offence is based on the conditions in the National Crime Recording Standard[28], and the matter relates to a "crime defined by law"[29]. This excludes any summary offence, unless listed with a crime code under the "Counting rules notifiable offences and notifiable reported incidences 2024", the basic offence is not one of the specified offences[30].

Therefore, only the aggravated offence is recordable, not the basic summary offence[31], meaning that there is no accurate data available to identify how prevalent it is, or if policy/strategic action needs to be taken to counter the problem. It is simply left to individual police forces to decide whether to record details of the incident for local force policy objectives. A lack of uniform reporting of incidents, and therefore an inability to better understand the true extent of dog attacks, was a point noted by the Middlesex University Research Study in 2021[32].

This led to Anna Firth MP[33] submitting a freedom of information request to all police forces in the hope of collating the available data to determine the true scale of the problem. Out of a possible 43 police geographical areas, 14 responded to the request revealing that in 2016 there had been 1,700 dog-on-dog recorded attacks. However, in 2021, this number had dramatically increased to 11,559, of which 2,264 occurred in London alone. Force wide, this potentially could be as high as 35,000 a year. With only a small proportion being subject to criminal proceedings, it brings into question the adequacy of the law to tackle the matter and creates a sense of injustice invariably felt by those affected.

Consequently, there is a strong argument that all dogs should be given the same legislative protection that is specifically afforded to either assistance[34] or service dogs[35] from the risk of attacks. Given that all dogs are classed as a sentient being capable of feeling pain/distress under the Animal Welfare (Sentience) Act 2022[36], this should form part of the Animal Sentience Committee policy considerations[37].

"Emilie's" Law and a Change in Direction.

The Animal Welfare (Responsibility for Dog Attacks) Bill 2025 (private member's Bill) seeks to strengthen the existing law relating to liability for dog-on-dog attacks[38]. The mechanism of the Bill is to create a form of "Emilie's Law". Emilie had sadly died, leaving Michael to care for her beloved dog called Millie (a bichon frise) only to witness it being fatally torn apart by an uncontrolled dog. Despite the loss and damage sustained, the police refused to pursue the matter without a victim.

In contrast, had the dog been stolen, not only could the offender be dealt with under the Theft Act 1968, but the dog is property belonging to the owner who is a victim to the theft. Nevertheless, whilst theft is a useful offence, it is limited to the monetary value of the stolen dog and often treated as a low-level theft, which takes no account of the devastation caused. This anomaly has recently been remedied by the Pet Abduction Act 2024 by creating a new specific offence of dog abduction[39] (unlawfully removing a dog without consent), and carries a maximum sentence of 5 years imprisonment, on conviction on indictment[40].

Similarly, Emma Gambill whose border collie was mauled to death by two Cane Corso dogs which had escaped from a nearby garden, presented an e-petition in 2021 (which had gained more than 150,000 signatures) urging Parliament to address the inadequacy of the law by "making dog-on-dog attacks a criminal offence and to ensure that irresponsible owners of dangerous dogs face more

28 Home Office "Crime Recording Rules for Front Line Officers and Staff 2023/24" and "The National Standard for Incident Recording (NSIR) 2011, National standard for incident recording counting rules - GOV.UK (www.gov.uk)

29 Includes all Indictable and either-way offences.

30 www.gov.uk/government/publications/counting-rules-for-recorded-crime, See the National Police Records (Recordable Offences) Regulations 2000 SI No 1139

31 107 Home Office Code 008/20

32 Science Search (defra.gov.uk)

33 See Hansard (23 May 2023) vol 733, Animal Welfare (Responsibility for Dog Attacks) debate.

34 See s.106 of the Anti-Social Behaviour, Crime & Policing Act 2014, and has defined in s.173 of the Equality Act 2010

35 See Animal Welfare (Service Animals) Act 2019 which introduced "Finn's Law" which disregards attacking a police dog in self- defence as a legitimate purpose in causing unnecessary suffering, see also Hansard (1 March 2019) vol 796, Animal Welfare (Service Animals) Bill, 2nd reading

36 Came into to force on the 22nd May 2023 under the Animal Welfare (Sentience) Act 2022 (Commencement) Regs 2023 SI No 563

37 DEFRA (Sept 2023), Animal Sentience Committee Terms of Reference, Animal Sentience Committee - GOV.UK (www.gov.uk)

38 Originally presented by Anna Firth in the last Parliament but then failed due to the general election on the 4 July 2024. Thankfully the Bill has now reintroduced by Dr Luke Evans MP (See Hansard (Friday 17 May 2025) Animal Welfare (Responsibility for Dog Attacks) Bill. However, the 2nd Reading is scheduled for the 29 May 2026).

39 By analogy see *Nicolaou v CPS* [2012] EWHC 1647, R v Pringle [2019] EWCA Crim 1722, *R v Norman* [2008] EWCA Crim 1810 on the construction of the meaning of abduction.

40 Came into effect on the 24 August 2024, see Anna Firth-private members bill see 2nd reading- Hansard vol 743 (Friday 19 Jan 2024) and also House of Commons Library, Research Briefing (by Elena Ares) "Pet Abduction Bill 2023-24 (10 April 2023)

robust action[41]. In response, the then Secretary of State for DEFRA, George Eustice, stated that "the Government are determined to crack down on irresponsible dog ownership and to that we are encouraging police forces across the country to use" the existing powers.

Strong words perhaps, but short of improving the law, dogs and owners alike will continue to be inadequately protected. The Bill would strengthen the law by inserting a new s.8A either-way offence into s.8 (fighting) of the Animal Welfare Act 2006 and imposing an obligation on a person in charge of a dog to prevent a fatal attack on another dog. Criminal liability would ensue if they failed to discharge this obligation by taking sufficient steps "as are reasonable in all the circumstances." What is reasonable is to be tested objectively, following the decision of the High Court in *RSPCA v Gray* [2013] EWHC 500[42], and consequently it would be no answer to have thought (wrongly) that any steps taken was sufficient.

Thus, in keeping a dog, an owner would bear legal responsibility to maintain public safety of other dogs when in charge of their dog. Whether they have taken all reasonable precautions/contingencies to sufficiently restrain the dog from causing fatal harm is a matter for the court, having regard to the relevant factors contained in s.8A(2), including use of a lead, pre-emptive behaviour of the dogs and the conduct of those involved. If adjudged to be grossly ineffectual, then on summary conviction, a possible sentence of 6 months imprisonment and/or a fine could be imposed, while on indictment, a term not exceeding 3 years imprisonment and/or a fine. Accordingly, this would have made the offence more serious and impose much tougher penalties for animal welfare offences whilst also making it a statutory requirement to record the details of all reports to the police.

However, this change in the law would only be for fatal consequences. If an offending dog attacks two other dogs, fatally injuring one, but not the other, then this would potentially mean one being charged under the new s.8A offence, whilst the other being charged under the Dangerous Dogs Act 1991, albeit both attacks arising from the same incident[43].

41 See "Dog Attacks" Hansard vol 699 (Thurs 22 July 2021)

42 The court applied an objective test to the same wording in s.9 AWA 2006 (welfare offence)

43 The basic s.3 offence is not a linked summary offence for the purposes of the joinder ruled in s.40 of the CJA 1988-see *Williams* [2011] EWCA Crim 1716, Toner [2023] EWHC 2464, *Clark* [2023] EWCA Crim 309, *Anderson* [2023] EWCA Crim 181. Both could be committed to the crown court for sentencing (ss14-23 Sentencing Act 2020)

Conclusion

Whilst dog-on-dog attacks do fall within the ambit of s.3 of the DDA 199, this is less than satisfactory, given the statutory limitations to the basic offence on culpability and punishment. Not only does the current offence fail to appreciate the risk of harm and devastation that can be caused, it can be misapplied or misconstrued to exclude dog-on-dog attacks. Both seem to be recurring themes that need to be addressed.

Thus, a new animal welfare policy and reform is needed to better protect dogs from attack by other dogs that are so often predicated by irresponsible owners. The (Firth) Bill is a missed opportunity to have not only reformed the law but strengthened it. In a recent Parliamentary debate on the King's Speech in the House of Lords Baroness Hayman announced the Government's commitment to animal welfare and to "deliver the most ambitious programme of animal welfare for a generation." Whether this will include reform to dog-on-dog attacks remains to be seen[44] .

44 Hansard (HL vol 839 -Thurs 18 July). See column 89 & 126

Animals in the Planning Balance: Why Biodiversity Net Gain Is Not Animal Welfare

By Acland Bryant

Abstract

Biodiversity net gain has altered the legal architecture of development control in England. By making most planning permissions subject to a pre-commencement biodiversity gain condition, Schedule 7A to the Town and Country Planning Act 1990 has brought biodiversity accounting into the routine grammar of planning decision-making.[1] Yet biodiversity gain is not the same as animal welfare. It counts habitat distinctiveness, condition and strategic significance; it does not ask whether individual sentient animals will suffer, be displaced, trapped, killed, confined, stressed, transported or otherwise made vulnerable by a proposed development. This article argues that English planning law contains a structural blind spot. It can recognise nature as habitat, species, constraint, metric and offset, but lacks a coherent method for considering the welfare of animals affected by land-use decisions. The recent judgment in *R (Animal Equality UK) v North East Lincolnshire Borough Council* confirms that animal welfare can, in principle, be a material planning consideration.[2] However, it leaves unresolved the practical question that matters most for local planning authorities, inspectors and campaigners: when should animal welfare be considered, what evidence is required, how should it be weighed, and how can decision-makers avoid turning planning into a general moral referendum on lawful human uses of animals?

The article proposes a modest but novel answer. Animal welfare should be recognised as a legitimate and structured consideration in planning decision-making when the welfare issue is development-specific, evidence-based, causally connected to land use, and not adequately controlled by another regulatory regime. That approach does not collapse planning law into animal protection law. Nor does it treat biodiversity net gain as irrelevant. Rather, it separates two distinct questions: whether development leaves biodiversity in a measurably better state, and whether development causes legally cognisable welfare harms to sentient animals. The article concludes by proposing an animal welfare planning framework that includes screening triggers, information requirements, model conditions, and guidance for decision-makers.

Keywords: animal welfare; planning law; biodiversity net gain; material considerations; wildlife; sentience; environmental assessment; development control.

1. Introduction: the animal that planning law does not see

Planning law is, in many cases, a law of balances. For example, it may weigh housing need against landscape harm, economic benefit against heritage loss, renewable energy against local amenity, and biodiversity gain against development pressure. It is also a law of categories. A bat may appear as a European protected species; a badger as the inhabitant of a sett protected by statute; a skylark as part of a farmland bird assemblage; a hedgerow as a habitat feature; a salmon as part of an aquaculture proposal; and a field as a baseline parcel in a biodiversity metric. In each case, the animal is visible only through the legal lens that planning law provides.

That visibility is partial. English planning law is now increasingly sophisticated in relation to biodiversity. The statutory biodiversity gain regime requires the biodiversity gain objective to be met, ordinarily by at least a 10 per cent increase in biodiversity value.[3] The National Planning Policy Framework directs planning policies and decisions to contribute to and enhance the natural and local environment.[4] The Natural Environment and Rural Communities Act 2006 imposes a biodiversity duty on public authorities.[5] The Habitats Regulations and Wildlife

1 Town and Country Planning Act 1990, Sch 7A, inserted by Environment Act 2021, Sch 14. See also Ministry of Housing, Communities and Local Government, 'Biodiversity net gain' (Planning Practice Guidance, updated 1 May 2024).

2 *R (Animal Equality UK) v North East Lincolnshire Borough Council and ASL New Clee Ltd* [2025] EWHC 1331 (Admin), at [19]-[21], and [42]-[50].

3 TCPA 1990, Sch 7A paras 2, 3 and 13. For the national policy context, see National Planning Policy Framework (December 2024) paras 180-188, especially para 187(d), requiring opportunities to improve biodiversity in and around developments to be integrated as part of their design.

4 National Planning Policy Framework (December 2024) paras 180-188.

5 Natural Environment and Rural Communities Act 2006, s 40, as amended by Environment Act 2021, s 102.

and Countryside Act 1981 provide special protection for certain species and sites.[6] Environmental impact assessment may require consideration of likely significant effects on biodiversity, including fauna.[7] These are substantial legal developments. They should not be minimised.

However, the aforementioned legal developments are distinct from those concerning animal welfare. Biodiversity law is primarily concerned with populations, habitats, sites, ecological functions and conservation status. Animal welfare law is concerned with the interests and experiences of sentient animals, including pain, suffering, injury, distress, behavioural deprivation and the capacity to live in ways appropriate to their species. The Animal Welfare Act 2006 is explicit regarding protected animals: responsible persons must take reasonable steps to ensure that needs relating to environment, diet, normal behaviour, housing with or apart from other animals, and protection from pain, suffering, injury, and disease are met.[8] The Animal Welfare (Sentience) Act 2022, while institutionally limited, recognises that animals are sentient beings and creates an accountability mechanism through the Animal Sentience Committee.[9] Those ideas are not reducible to habitat units.

The difference matters in planning decisions. A development may deliver a numerical gain in biodiversity while causing avoidable suffering to animals displaced during site clearance. A mitigation scheme may replace habitat in the medium term while leaving individual animals exposed to trapping, starvation, stress or predation in the short term. A new agricultural, aquaculture, kennel, cattery, sanctuary, equestrian, or zoological facility may have little impact on biodiversity but major consequences for the welfare of animals kept on the land. Conversely, a project may damage biodiversity without producing identifiable welfare consequences for sentient animals. The two concepts overlap, but neither exhausts the other.

This article, therefore, advances a narrow claim with broader implications. Animal welfare should be recognised as a legitimate and structured consideration in planning decision-making, distinct from biodiversity protection. The claim is narrow because it does not assert that every objection framed as animal welfare is material, still less decisive. Planning is concerned with the use and development of land, not with the general ethics of all lawful human-animal relations. The claim is broader because, once the distinction between biodiversity and welfare is accepted, it follows that the present planning framework is incomplete. It lacks a transparent method for identifying, evidencing and weighing welfare harms caused by land-use decisions.

The article proceeds in seven parts. Part 2 explains the statutory and policy framework for biodiversity and wildlife in planning. Part 3 sets out the legal basis for animal welfare as a material consideration. Part 4 examines why biodiversity net gain cannot perform the work of animal welfare. Part 5 considers planning appeals and development control contexts in which welfare concerns already arise. Part 6 addresses limits and objections. Part 7 proposes a structured welfare-sensitive planning framework.

2. The biodiversity framework: powerful, but not welfare-centred

2.1 Statutory biodiversity net gain

The modern starting point is Schedule 7A to the Town and Country Planning Act 1990. Subject to exemptions and transitional provisions, every grant of planning permission in England is deemed to be granted subject to a general biodiversity gain condition.[10] Development may not begin until the local planning authority has approved a biodiversity gain plan.[11] The biodiversity gain objective is that the biodiversity value attributable to the development exceeds the pre-development biodiversity value of the onsite habitat by at least 10 per cent.[12] Biodiversity value is calculated by a statutory biodiversity metric.[13] The regime also provides for on-site gains, registered off-site gains and statutory biodiversity credits, with habitat secured for at least 30 years.[14]

This is a major intervention into development control. It moves biodiversity from discretionary policy

6 Conservation of Habitats and Species Regulations 2017, SI 2017/1012; Wildlife and Countryside Act 1981.

7 Town and Country Planning (Environmental Impact Assessment) Regulations 2017, SI 2017/571, regs 4 and 18, Sch 4.

8 Animal Welfare Act 2006, s 9. See also s 4 on unnecessary suffering and s 1 on the definition of a protected animal.

9 Animal Welfare (Sentience) Act 2022, ss 1-3. The Act applies to vertebrates other than Homo sapiens and enables extension to invertebrates where evidence of sentience exists, s 5.

10 TCPA 1990, Sch 7A para 13. The principal exemptions are prescribed by the Biodiversity Gain Requirements (Exemptions) Regulations 2024, SI 2024/47.

11 TCPA 1990, Sch 7A para 13(2).

12 TCPA 1990, Sch 7A para 2(1)-(2).

13 TCPA 1990, Sch 7A paras 3-4; Department for Environment, Food and Rural Affairs and Natural England, 'Statutory biodiversity metric tools and guides' (updated 29 November 2023 and subsequently).

14 TCPA 1990, Sch 7A paras 6-10; Environment Act 2021, ss 100-101.

aspiration towards a quantified legal condition. It also changes professional practice. Developers must now think in terms of baseline habitat value, post-development habitat value, habitat creation, enhancement, management, monitoring and legal security. Local planning authorities must examine whether the biodiversity gain plan complies with the statutory requirements. A new category of appeal exists where a biodiversity gain plan is refused or not determined.[15]

Yet the architecture of Schedule 7A is expressly metric-based. It asks a question about the value of biodiversity. That value is constructed by reference to habitat type, distinctiveness, condition, strategic significance and other ecological multipliers. It is not a sentience metric. It does not ask whether an animal has suffered during clearance, whether mitigation requires capture and translocation, whether retained habitat is usable without exposing animals to increased mortality, or whether the proposal will create conditions inconsistent with species-specific welfare. Those omissions are not accidental defects in the metric. They arise because biodiversity net gain is not designed to be an animal welfare regime.

2.2 Wildlife, protected species and conservation duties

Separate wildlife protections perform important but different functions. The Wildlife and Countryside Act 1981 protects wild birds and certain animals and plants through offences relating to killing, injuring, taking, disturbing, and damaging places of shelter or protection.[16] The Conservation of Habitats and Species Regulations 2017 protect European sites and European protected species.[17] The Protection of Badgers Act 1992 protects badgers and their setts.[18] Natural England guidance advises local planning authorities how to consider protected species when determining planning applications.[19]

The courts have insisted that planning authorities must approach protected species law lawfully. In *Morge*, the Supreme Court considered the relationship between planning decisions and the Habitats Regulations, emphasising that local planning authorities are not themselves licensing authorities, but must have regard to the requirements of the regime when considering whether development is likely to offend protected species provisions.[20] In Champion, the

15 Planning Inspectorate, 'Appeal a Biodiversity gain plan (s78) decision' (29 July 2024).

16 Wildlife and Countryside Act 1981, ss 1, 9 and Schs 1, 5 and 8.

17 Conservation of Habitats and Species Regulations 2017, regs 63, 43 and 55.

18 Protection of Badgers Act 1992, ss 1-3.

19 Natural England, 'Protected species and development: advice for local planning authorities' (GOV.UK, updated 2024).

20 *Morge v Hampshire County Council* [2011] UKSC 2, at [29]-[30], [44]-[46], and [54]-[55].

Supreme Court addressed environmental impact assessment and habitats assessment in the context of ecological effects and mitigation.[21] In Squire, the Court of Appeal held that an environmental statement was deficient where it failed properly to assess indirect effects from additional manure spreading associated with an intensive poultry unit.[22] These cases show that ecological effects can be central to the legality of planning.

But ecological legality is not identical to welfare adequacy. Protected species regimes are selective. Many sentient animals affected by development are not protected species. Even where species are protected, the focus is often on conservation status, disturbance, breeding sites, resting places and licensing tests, rather than the full welfare experience of individual animals. A bat survey may be adequate for roost protection but silent on cumulative stress from lighting, noise and fragmentation. A badger licence may address sett interference but not the broader welfare consequences of forced changes to territory. A biodiversity management plan may create habitat value while tolerating predictable mortality during implementation.

2.3 Environmental impact assessment

The Environmental Impact Assessment Regulations provide a broader procedural framework.[23] Schedule 4 to the 2017 Regulations requires an environmental statement to include a description of likely significant effects on biodiversity, with particular attention to species and habitats protected under relevant law.[24] It can also include mitigation, monitoring and alternatives.[25] Where development is EIA development, the procedure provides a vehicle for evidence, consultation and public participation. It may therefore capture some welfare-relevant facts, especially where construction, operation or mitigation affects animals.

However, EIA remains an environmental effects regime. It is triggered only for certain categories of development that are likely to cause significant environmental effects. It is not designed to require a general welfare assessment for every development involving animals. Nor does it necessarily require assessment of suffering as suffering. It may assess species mortality, habitat fragmentation, or disturbance because these factors affect biodiversity. It may not assess the welfare of animals kept within a facility unless that welfare is framed as an environmental effect, an operational planning issue, or part of a land-use impact.

3. Animal welfare as a material planning consideration

3.1 Material considerations and planning purpose

The legal gateway for animal welfare is the doctrine of material considerations. Planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise.[26] Section 70(2) of the 1990 Act requires the decision-maker to have regard to the provisions of the development plan, so far as material, and to any other material considerations.[27] The classic authorities distinguish between whether a consideration is legally capable of being material and the weight to be given to it. In Tesco Stores, Lord Hoffmann explained that whether something is a material consideration is a question of law, but the weight to be attached to it is for the decision-maker, subject only to public law limits.[28] In Stringer, Cooke J stated that a consideration must serve a planning purpose and must fairly and reasonably relate to the permitted development.[29]

Those principles are sufficiently flexible to accommodate animal welfare. A welfare concern may plainly relate to the use of land. The construction of a salmon farm, intensive poultry unit, riding school, livery yard, greyhound kennel, dog breeding establishment, animal sanctuary, abattoir, zoo enclosure or wildlife tourism facility may create operational conditions for animals. A demolition or clearance scheme may foreseeably injure or kill animals present on the site. A lighting scheme may alter nocturnal behaviour. A major road may sever territories and increase wildlife collisions. These are not abstract moral objections. They are consequences of land-use decisions.

That said, materiality is not limitless. Planning authorities are not general regulators of morality, diet, trade or lawful animal use. An objection to eating fish, keeping horses, breeding dogs or farming poultry will not automatically become

21 *R (Champion) v North Norfolk District Council* [2015] UKSC 52, at [47], [54]-[58], and [65].
22 *R (Squire) v Shropshire Council* [2019] EWCA Civ 888, at [54]-[55], [62]-[74], and [79]-[83].
23 Town and Country Planning (Environmental Impact Assessment) Regulations 2017.
24 ibid, Sch 4 para 4.
25 ibid Sch 4 paras 2, 6 and 7.
26 Planning and Compulsory Purchase Act 2004, s 38(6); TCPA 1990, s 70(2).
27 TCPA 1990, s 70(2).
28 *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759 (HL), 780 (per Lord Hoffmann).
29 *Stringer v Minister of Housing and Local Government* [1970] 1 WLR 1281 (QBD), 1294 (per Cooke J).

material because it is rightfully and/or sincerely held. The more attenuated the connection between the planning permission and the welfare harm, the weaker the planning relevance. The stronger the connection to the physical use of land, the design and operation of the facility, the adequacy of mitigation, or the impact of development on animals in situ, the stronger the case for materiality.

3.2 *Animal Equality UK* and the present legal position

The most important recent authority is *Animal Equality UK*.[30] The case concerned a judicial review of North East Lincolnshire Borough Council's decision to grant planning permission for an onshore salmon farm at Cleethorpes. The claimant alleged that the planning committee had been materially misled because the officer's report suggested that animal welfare concerns were not a material consideration. The High Court dismissed the claim. The judgment is significant not because it made animal welfare determinative, but because all parties accepted, and the Court proceeded on the basis that animal welfare concerns are legally capable of constituting a material planning consideration.[31]

The judgment is nuanced. It did not hold that animal welfare must always be considered. It emphasised that whether a decision-maker chooses to take a lawful material consideration into account is generally a matter of planning judgment, unless the matter is so obviously material that failure to consider it would be irrational.[32] The Court also treated the alleged misdirection in context. Planning officers had addressed the relationship between planning, animal welfare regulation and the Environment Agency's permitting role, and the committee was not misled in the legally material sense.

For present purposes, the importance of *Animal Equality UK* lies in the gap it exposes. If animal welfare can be a material consideration, then planning law needs a principled way to determine when it should be taken into account. Without such a framework, welfare will depend on uneven officer advice, variable committee practice, campaigner sophistication and litigation risk. A concept can be legally admissible yet practically invisible. That is where animal welfare currently sits.

3.3 Sentience and public policy

The Animal Welfare (Sentience) Act 2022 does not directly amend the Town and Country Planning Act 1990. Nor does it impose a general duty of sentience on local planning authorities. Its primary mechanism is the Animal Sentience Committee, which may report on whether, or to what extent, government policy has had all due regard to animal welfare as sentient beings.[33] Nevertheless, the Act matters within the legal and policy context. Parliament has recognised animal sentience as a matter of public governance. It is difficult to defend a planning system that treats biodiversity effects as legally structured while treating welfare effects as merely optional, ad hoc or ethically external.

The better view is that the 2022 Act does not compel every planning authority to undertake a sentience assessment. It does not. Rather, sentience supplies a normative background against which the materiality of welfare impacts becomes easier to understand. If animals are sentient and if development decisions can foreseeably create conditions of suffering or deprivation, those consequences are obviously relevant to the animals themselves. Still, they may also be relevant to the public interest in land use. Sentience does not answer the planning balance. It explains why the question belongs in the balance at all.

4. Why biodiversity net gain is not animal welfare

4.1 Different objects of protection

The central conceptual error this article seeks to avoid is treating biodiversity as a proxy for welfare. Biodiversity net gain asks whether the biodiversity value attributable to development exceeds the pre-development value of onsite habitat by at least 10 per cent. Its object is ecological value, not subjective experience. Animal welfare asks whether animals are protected from suffering and enabled to meet species-specific needs. The object is the animal as a sentient individual.

Five examples can illustrate the difference. First, site clearance may destroy scrub of low distinctiveness but may also contain nesting birds, hedgehogs, foxes, amphibians, or small mammals. The loss of biodiversity may be modest and compensable. The welfare consequences may be immediate and severe. Secondly, translocation may preserve a population but impose stress, injury or mortality on individuals. Thirdly, off-site biodiversity units may

30 *Animal Equality UK* (n 2) [19]-[20].
31 *Animal Equality UK* (n 2) at [20], and [42]-[50]. See also Local Government Lawyer, 'High Court rejects judicial review over permission for onshore salmon farm' (9 June 2025).
32 *Animal Equality UK* (n 2) at [19]-[21], applying orthodox principles on mandatory and discretionary material considerations. See *CREEDNZ Inc v Governor-General* [1981] 1 NZLR 172, at 183, considered in English planning law, and *R (Kides) v South Cambridgeshire District Council* [2002] EWCA Civ 1370, at [121]-[122].
33 Animal Welfare (Sentience) Act 2022, ss 2-3.

improve habitat elsewhere while doing nothing for animals harmed on the development site. Fourthly, a new intensive animal facility may be biodiversity-neutral because it is built on hard-standing, while raising serious welfare questions for the animals kept inside. Fifthly, a habitat enhancement scheme may produce long-term ecological gain but create short-term welfare harms through fencing, predator exposure, water deprivation or displacement.

These examples are not arguments against biodiversity net gain. These examples are arguments against conceptual overclaiming. BNG is a habitat accounting regime. It does not purport to be a cruelty-prevention regime, a sentience regime, a licensing regime for animal establishments, or an ethical assessment of animal-related development. A planning authority that has secured a 10 per cent biodiversity gain has thereby not answered the animal welfare question.

4.2 The metric problem

The statutory biodiversity metric necessarily simplifies ecological reality. That is not a criticism in itself. Metrics are tools for decision-making. They make administrative systems possible. But the metric's categories are not welfare categories. Habitat distinctiveness does not measure suffering. Habitat condition does not measure stress. Strategic significance does not measure whether animals can perform normal behaviours. Temporal multipliers do not measure the welfare cost of interim displacement.

This creates a risk of false reassurance. A planning committee may be told that a proposal achieves a 12 per cent biodiversity gain and assumes that animal-related objections have been answered. They have not. The committee has been provided with information on ecological accounting. It has not necessarily been provided with information about welfare during demolition, construction, operation, or management. A welfare-sensitive planning system would require officers to ask whether animal welfare is separately engaged, rather than allowing a positive BNG result to close the inquiry.

4.3 The mitigation hierarchy and the welfare hierarchy

Planning policy and ecological practice often apply a mitigation hierarchy: avoid, mitigate, compensate. Biodiversity net gain similarly encourages onsite gains before offsite gains and statutory credits.[34] A welfare-sensitive planning system would adapt, but not simply copy, that logic. The welfare hierarchy would ask: avoid welfare harm where possible; reduce unavoidable harm through timing, design and method; secure species-appropriate welfare conditions where animals are kept or moved; monitor outcomes; and refuse permission where the welfare harm is serious, evidence-based and insufficiently mitigated.

This is not a radical idea. Planning already uses conditions and obligations to control operational impacts, including noise, odour, lighting, hours, traffic, drainage, contamination, landscape management, and ecological mitigation. Welfare-sensitive conditions would not be categorically different. They might require clearance timing; pre-commencement checks by qualified ecologists; wildlife-sensitive fencing; phased vegetation removal; rescue protocols; exclusion methods that avoid entrapment; lighting designed to protect nocturnal species; or compliance with a site-specific animal welfare management plan where animals are kept on the land.

5. Where welfare already enters planning practice

5.1 Facilities that keep animals

Animal welfare most obviously arises where the proposed use of land involves keeping animals. Appeals involving horse-related development, kennels, dog breeding, animal sanctuaries, poultry units and other facilities show that inspectors sometimes treat welfare as relevant, particularly where the design or location of development affects the ability to meet animal needs. In one appeal concerning horse accommodation, the inspector considered whether the horses could graze and socialise, expressly linking the issue to the Animal Welfare Act 2006 and equine welfare guidance.[35] In other cases, inspectors have given limited weight to asserted welfare needs where evidence was weak or the connection with the proposed residential or operational development was insufficiently demonstrated.[36]

These examples are important because they show both sides of the doctrinal point. Welfare can be relevant, but it must be evidenced. It is not enough for an appellant to assert that living on site would

34 See the biodiversity gain hierarchy in TCPA 1990, Sch 7A para 10 and Planning Practice Guidance on biodiversity net gain.

35 Planning Inspectorate, Appeal Decisions APP/J1915/W/22/3292976 and APP/J1915/W/22/3292977 (17 November 2022), referred to in East Hertfordshire District Council appeal decisions report.

36 Planning Inspectorate, Appeal Decision APP/E2734/A/13/2210378 and related appeals (12 September 2014), concerning asserted animal welfare considerations in the context of residential occupation.

improve animal welfare, or for an objector to assert that animals may suffer. The planning system is entitled to request evidence regarding stocking numbers, housing design, exercise provision, staffing, emergency arrangements, transport, waste management, biosecurity, veterinary protocols, noise and lighting impacts, and relationships with licensing regimes.

5.2 A cautionary appeal: Longlands Farm and the thinness of welfare reasoning

The Planning Inspectorate's decision in the Longlands Farm appeal illustrates both the promise and the present weakness of animal welfare in planning law.[37] The proposal was a retrospective change of use of part of an agricultural building to dog breeding. The Inspector expressly identified animal welfare as a main issue and accepted, citing Animal Equality UK and the Animal Welfare (Sentience) Act 2022, that animal welfare can constitute a planning consideration.[38] That is significant. A few years ago, many decision-makers might have treated welfare as belonging wholly to licensing or criminal animal welfare law. Longlands Farm shows that the planning system can no longer assume that welfare objections are legally irrelevant.

The difficulty is what happened next. The welfare analysis was strikingly thin. The Inspector moved from the proposition that a 'suitable environment' should be provided to the conclusion that pens, windows, ventilation, insulation, the appellant's on-site residence, and a noise management plan would safeguard the dogs' welfare.[39] That reasoning risks reducing animal welfare to the management of barking. Barking may, of course, be a welfare indicator, but it is not a welfare assessment. A dog-breeding facility raises welfare questions about socialisation, enrichment, reproductive burden, isolation, disease control, rest, staffing, emergency care, supervision, stress, genetic health, puppy-rearing conditions and behavioural needs. Those matters cannot be inferred simply from acoustic mitigation or from the physical dimensions of pens.

The decision is also problematic because the use was retrospective and unlicensed. The Inspector recorded that dog breeding had taken place on the site since 2022, that no animal activities licence had yet been obtained, that the specific licensing requirements were not before her, and that there was no indication from the animal licensing officer as to whether the proposal could obtain a licence.[40] Those facts should have sharpened, rather than softened, the planning inquiry. A decision-maker need not duplicate the licensing authority's task. But where animal welfare is accepted as a main issue, and the relevant licence is absent, planning permission should not be granted on the basis of an assumption that an undefined future licensing process will resolve the very matter that made welfare material in the first place.

The conditions imposed do not cure that problem. The permission limits the number of adult breeding dogs to 16 and the total number of dogs to 30, or to any lower number dictated by an animal welfare licence.[41] That formulation is unsatisfactory as a welfare safeguard. It imports an external future licensing judgment without defining the planning permission by reference to an approved welfare scheme, and without making the continuation of the use conditional on the prior grant or maintenance of a licence. It also leaves open the possibility that the planning permission authorises a dog-breeding use whose scale and layout may later prove inconsistent with licensing requirements. The article's proposed framework would avoid that uncertainty and assist inspectors who evidently find the task of considering animal welfare difficult by requiring the decision-maker to identify the welfare-critical assumptions on which acceptability depends, and then to secure them through precise, enforceable planning mechanisms, or to refuse permission until the evidence is adequate.

There is a further internal tension within this appeal decision. When addressing noise, the Inspector rejected criticism that the noise assessment failed to model 30 dogs indoors for 14 hours per day, stating that this was not the proposal before her.[42] Yet the conditions restrict outdoor areas to 08:00 to 18:00 and allow no more than 10 dogs outside at any one time, while permitting up to 30 dogs on the premises.[43] As a matter of welfare as well as amenity, that is important. If the practical effect of the permission is that many dogs may spend long overnight periods indoors, the planning assessment should ask whether the indoor environment, staffing, supervision and enrichment are adequate for that real operating scenario. The issue is not merely whether neighbours will hear barking. It is whether the development secures a humane daily routine for the animals whose confinement is inherent in the permitted land use.

The Inspector also relied on the appellant residing

37 Longlands Farm, Lodge Lane, Minting, Horncastle LN9 5NR (Appeal Ref 6002933, 19 May 2026).
38 ibid paras 1, 5 and 19.
39 ibid paras 19-21.
40 ibid paras 8 and 23-25.
41 ibid condition 7.
42 ibid para 9.
43 ibid conditions 5 and 7.

at the site so that he would be 'on hand to tend to the dogs', while noting that the temporary permission for the static caravan expires in November 2027.[44] A permanent dog-breeding permission, however, is not the same as a time-limited permission tied to on-site supervision. If on-site residence was material to welfare and noise management, the decision should have directly secured the relevant staffing or supervision requirements. Planning conditions often regulate hours, numbers, management plans and records. They can also require the implementation of site-specific operational controls where those controls make the development acceptable. What is not satisfactory is to treat a temporary residential circumstance as an answer to a permanent welfare issue.

Longlands Farm is therefore an instructive example of the distinction between recognising welfare and structuring welfare. The Inspector was right to accept that animal welfare could be a material planning consideration. But the decision treated welfare as a residual issue to be inferred from environmental design, noise management and other regulatory regimes. That is not enough. Once animal welfare is admitted into the planning balance, it requires its own disciplined reasoning: what welfare interests are engaged; what evidence demonstrates acceptability; which assumptions are critical; what other regime will address which matter; what gaps remain; and what conditions secure the outcome. Without that discipline, animal welfare risks becoming a label attached to conventional amenity conditions rather than an independent planning consideration.

The point should not be overstated. A planning inspector is not required to conduct a full veterinary licensing assessment, and *Animal Equality UK* does not make every animal welfare concern determinative. Longlands Farm is flawed for a narrower reason. It demonstrates a mismatch between the legal conclusion that welfare was a main issue and the analytical method used to dispose of it. The decision thus supports this article's central thesis. Planning law now has enough doctrinal material to recognise animal welfare, but not enough institutional method to handle it well.

5.3 Intensive animal agriculture and aquaculture

Intensive agriculture has long raised planning issues, including landscape, odour, ammonia, traffic, water, waste, manure spreading, protected sites and public health. Squire demonstrates that indirect environmental effects from manure management may be legally significant in the EIA context.[45] Animal welfare adds another layer. The planning authority may not be the primary welfare regulator. Yet where the built form and operating model of a facility create the physical conditions in which animals live, welfare is not wholly external to planning.

Animal Equality UK illustrates the point in the context of aquaculture. The Court did not require the council to refuse permission for the salmon farm. Nor did it transform planning committees into specialist animal welfare tribunals. But the case confirms that a facility's implications for animal welfare are not legally incapable of being material. That proposition is significant for future intensive farming and aquaculture proposals, especially where welfare concerns are tied to density, confinement, water quality, mortality, transport, slaughter, emergency failure, disease risk or the relationship between planning design and regulatory permissions.

5.4 Animal sanctuaries and rescue facilities

Animal sanctuaries create a distinctive planning problem. They are often welfare-positive in purpose but may raise issues of location, access, noise, traffic, landscape, residential occupation and enforceability. Appeal decisions involving animal sanctuaries show that inspectors may need to characterise the primary use of a planning unit and distinguish animal welfare operations from ancillary activities.[46] The welfare of animals may support the need for certain operational buildings, hardstanding, isolation areas or staff presence, but it does not automatically override development plan conflict.

The point is not that sanctuaries should receive special pleading. It is that welfare can be both a benefit and a constraint. A sanctuary may prevent suffering by providing care, but poor site selection, inadequate drainage, insufficient space, noise conflict or lack of enforceable management may create new welfare risks. Planning law needs a vocabulary for both.

5.5 Wildlife affected by construction and operation

The welfare of wild animals is the least developed category. It is here that biodiversity net gain faces

44 ibid paras 20 and 28.

45 *Squire* (n 22), at [62]-[74].

46 Planning Inspectorate, Appeal Decision APP/A2335/W/24/3355204 (23 December 2025), concerning buildings and hardstanding associated with a smallholding and animal shelters; Planning Inspectorate, Appeal Decision concerning an animal sanctuary use, published 5 March 2026, fileid 65259906.

the most risks of being mistaken for welfare. Development may affect wild animals through vegetation clearance, demolition, trenching, netting, lighting, collisions with glass, roads, fencing, drainage, pollution, noise, vibration, artificial refuges, and habitat management. Protected species law addresses some of those impacts, but not all. The Wild Mammals (Protection) Act 1996, for example, criminalises certain cruel acts against wild mammals, but it is not a planning assessment regime.[47]

A welfare-sensitive approach would require attention to method. For instance, a condition requiring vegetation clearance outside nesting season protects birds partly through species law and partly through welfare logic. Requiring open trenches to include escape ramps protects animals from avoidable suffering. Lighting controls for bats and other nocturnal animals may be justified in ecological terms, but they also prevent welfare-relevant disturbance. Badger mitigation may protect setts, but welfare requires attention to timing, exclusion technique and post-exclusion monitoring. None of this requires a new moral jurisdiction. It requires decision-makers to treat animal suffering as a real impact of land development.

6. Limits, objections and safeguards

6.1 The risk of overextension

The main objection is that recognising animal welfare as a planning consideration could overextend planning control. There is force in the concern. Planning law is not designed to decide whether society should eat meat, keep pets, use animals in sport, or permit animal agriculture. Those questions are primarily for Parliament and specialist regulatory regimes. If every planning objection based on animal ethics were treated as material, development control would become unmanageable and legally incoherent.

That is why the proposed framework is deliberately constrained. A welfare issue should be treated as planning-relevant only where it is connected to the development of land, evidenced with sufficient specificity, and capable of being addressed through planning judgment, conditions, obligations or refusal. General ethical opposition to a lawful activity should not be enough. The question is not 'is this use of animals morally acceptable?' The planning question is 'does this development, in this location, designed and operated in this way, produce welfare harms that are relevant to the use of land and inadequately controlled elsewhere?'

6.2 Duplication with licensing and environmental permitting

A second objection is duplication. Many animal-related uses are subject to other regimes. The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 regulate activities including selling animals as pets, providing boarding for cats or dogs, hiring out horses, dog breeding and keeping or training animals for exhibition.[48] Environmental permits may regulate emissions, waste, water and biosecurity. Zoo licensing, abattoir rules, transport rules and farm welfare codes may also apply.

Duplication is a real concern, but it is not an answer to materiality. Planning law often operates alongside specialist regimes. The question is whether the planning issue is distinct. If another regulator fully controls a welfare matter, and the planning authority has no reason to doubt that the regime will operate effectively, limited weight may be appropriate. But where the welfare issue arises from the siting, design, scale or land-use consequences of development, or where there is a gap between regulatory regimes, the planning authority may properly consider it. *Animal Equality UK* supports that differentiated approach: animal welfare was legally capable of being material, but the Court was attentive to the role of other regulatory regimes and to the actual advice before the committee.

6.3 Evidence and expertise

A third objection concerns expertise. Planning committees and inspectors are not veterinarians, ethologists or animal welfare scientists. That is true, but planning decision-makers routinely evaluate expert evidence outside their own expertise: ecology, hydrology, heritage, acoustics, viability, transport modelling and air quality. The answer is not exclusion, but disciplined evidence.

Where animal welfare is raised, the decision-maker should ask: what animals are affected; what welfare interests are engaged; what is the causal link with the development; what is the evidential basis; what mitigation is proposed; what standards, codes or guidance apply; what other regulator has jurisdiction; and what planning mechanism could secure an acceptable outcome? Unsupported assertions should be given little weight. Expert welfare reports, veterinary evidence, species-

47 Wild Mammals (Protection) Act 1996, s 1.

48 Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, SI 2018/486.

specific guidance, statutory codes and operational plans may justify greater weight.

6.4 The problem of weighting

Recognising welfare as material does not determine weight. Weight remains a matter for the decision-maker and is subject to an irrationality challenge.[49] There will be cases where animal welfare concerns are minor, speculative, adequately mitigated or outweighed by pressing public benefits. There will be cases where welfare harm is serious, evidenced and avoidable, justifying refusal or significant conditions. There will also be difficult cases where the welfare concern is real but embedded in a lawful, regulated activity. A mature planning system should be capable of making those distinctions openly.

7. A structured framework for animal welfare in planning

The practical problem is not whether animal welfare can ever be material. It can. The problem is how to avoid arbitrariness. This article proposes a structured framework with six elements: screening, information, categorisation, regulatory interaction, planning mechanisms and reasons.

7.1 Screening triggers

First, planning validation and officer assessment should include animal welfare screening triggers. These need not apply to every minor application. They should be triggered where development: involves keeping, breeding, farming, exhibiting, boarding, rescuing, slaughtering or transporting animals; affects known or likely habitats of sentient wild animals; requires capture, exclusion, translocation or destruction of places of shelter; introduces operational lighting, noise, fencing, traffic or glass risks likely to affect animals; or relies on biodiversity mitigation that may itself cause welfare harm.

A trigger does not mean refusal. It means the decision-maker asks the welfare question separately from the biodiversity question. That is the crucial institutional reform. BNG should not be allowed to obscure welfare.

7.2 Information requirements

Secondly, local planning authorities should request proportionate information when welfare is at stake. The information might include an animal welfare statement, a species-specific management plan, a construction environmental management plan with welfare protocols, a lighting assessment, a method statement for vegetation clearance, an emergency and contingency plan, stocking and housing details, veterinary input, and identification of parallel licensing requirements.

The legal basis already exists. Local planning authorities may require information necessary to determine an application, subject to statutory validation limits and proportionality.[50] For larger or more sensitive development, EIA, Habitats Regulations assessment, ecological appraisal and BNG documentation may provide part of the evidence base. The proposed reform is not a new bureaucratic empire, but an instruction not to mistake ecological information for welfare information.

7.3 Categorising welfare issues

Thirdly, welfare issues should be categorised. Four categories are useful. Category A concerns animals kept as part of the proposed use, such as farms, aquaculture, kennels, equestrian facilities and zoos. Category B concerns wild animals affected by construction or operation. Category C concerns animals affected by mitigation or compensation measures, including exclusion, translocation or habitat management. Category D concerns welfare-related public benefits, such as sanctuaries, rescue facilities and veterinary infrastructure.

This categorisation helps avoid confusion. Category A often raises operational design and regulatory overlap. Category B often raises ecological evidence and construction methods. Category C exposes the inadequacy of treating mitigation as automatically benign. Category D recognises that animal welfare can be a positive planning consideration, not only an objection.

7.4 Regulatory interaction

Fourthly, officer reports should identify relevant non-planning regimes and explain their relationship with planning. The question should not be framed as a binary: either welfare is for planning or for another regulator. The correct question is whether another regime adequately addresses the specific welfare issue at hand. If it does, the planning authority may give the issue reduced weight. If it does not, or if the welfare concern arises from land-use design,

49 *Tesco Stores* (n 28), at 780. See also *R (Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire County Council* [2020] UKSC 3, at [22]-[32], emphasising planning judgment in applying policy concepts.

50 Town and Country Planning (Development Management Procedure) (England) Order 2015, SI 2015/595, art 7 and local validation requirements. See also National Planning Policy Framework (December 2024) para 44 on avoiding unnecessary burdens but ensuring adequate information.

location or scale, planning may have a distinct role. This approach is orthodox. Planning authorities often consider whether matters are controlled by environmental permitting, building regulations, highways regimes or statutory nuisance. They do not thereby surrender planning judgment. The same should apply to animal welfare.

7.5 Conditions and obligations

Fifthly, welfare concerns should be addressed, where possible, through conditions or obligations satisfying the Newbury tests and the NPPF policy on planning conditions.[51] Conditions might require compliance with an approved animal welfare management plan, limit stocking numbers where land-use impacts depend on scale, secure enclosure design, require lighting controls, mandate wildlife rescue protocols during construction, prohibit netting or fencing methods that risk entrapment, require supervision by qualified ecologists or welfare professionals, and impose monitoring or reporting obligations.

There are limits. Conditions cannot duplicate criminal law without a planning purpose, require compliance with an entire external regime in vague terms, or control matters unrelated to the development. They must be necessary, relevant to planning and to the development, enforceable, precise and reasonable. But carefully drafted welfare conditions can meet those tests where welfare harms arise from land-use consequences.

7.6 Reasons and transparency

Sixthly, officer reports and decisions should give transparent reasons where welfare issues are raised. A lawful decision may give little weight to welfare concerns, but it should not obscure the basis for doing so. The decision-maker should explain whether welfare was treated as material, what evidence was considered, what regulatory regimes were relevant, whether mitigation was secured, and how the issue was weighed in the planning balance.

This is particularly important after *Animal Equality UK*. The litigation risk lies not merely in refusing to accept campaigners' arguments, but in mischaracterising the legal status of welfare. A committee should not be advised that animal welfare can never be material. Nor should it be told, incorrectly, that BNG resolves animal welfare. The safer and better course is candid analysis.

51 *Newbury District Council v Secretary of State for the Environment* [1981] AC 578, at 599H-600A, 607F-608C, 618F-619A, and 627A-E; National Planning Policy Framework (December 2024) para 57.

8. Applying the framework: the planning balance after BNG

How would this framework change decision-making? Consider a hypothetical residential development on scrubland with low habitat distinctiveness but known use by hedgehogs, foxes, nesting birds and amphibians. The biodiversity metric may show a net gain through new habitat planting and off-site units. The welfare framework would ask separate questions: which animals are likely to be present during clearance; what timing restrictions are needed; how trenches and fencing will avoid entrapment; whether displacement will create foreseeable suffering; what monitoring is required; and whether mitigation measures are enforceable. The outcome may still be permission. But it would be permission informed by welfare, not merely biodiversity accounting. Further, hopefully, it will be permission subject to suitable and adequate welfare conditions and planning obligations.

Consider a proposed onshore fish farm. BNG may be minimal or positive if the site is previously developed. The welfare framework would ask whether the design, stocking, water quality, emergency systems, mortality handling and regulatory interfaces are relevant to the land-use permission. Some matters may be for animal welfare or environmental regulators. Others may be tied to planning design, capacity, location, drainage, water infrastructure, odour, waste and operational failure. The planning authority would not become a fish welfare regulator, but it would explain what it has and has not considered.

Consider a sanctuary seeking permission for new buildings in the countryside. The framework would allow the welfare benefits of rescue and care to be treated as positive material considerations, while also examining whether the site can sustain the proposed number and type of animals, whether buildings are necessary, whether residential presence is justified, and whether conditions can secure an acceptable operation. Welfare would not be a trump card. It would be a structured consideration.

These examples show why the proposed approach is both novel and modest. It does not require Parliament to confer personhood on animals. It does not turn BNG into an animal welfare regime. It does not require planning authorities to decide national food policy. It asks only that, where development foreseeably affects sentient animals in ways connected to land use, welfare should be recognised, evidenced and weighed.

9. Reform options

9.1 Planning Practice Guidance

The most immediate reform would be a new Planning Practice Guidance on animal welfare in planning. Guidance could state that animal welfare may be a material consideration where it fairly and reasonably relates to the development and serves a planning purpose. It could provide examples, information requirements, model conditions and guidance on interaction with licensing regimes. This would be administratively light and legally coherent.

Guidance should be clear that biodiversity net gain is not a substitute for animal welfare assessment. It should encourage local planning authorities to consider welfare at the validation or early assessment stage, where triggers are present. It should also caution against treating general ethical objections to lawful activities as determinative, absent a development-specific welfare impact.

9.2 Local plan policy

Local plans should include policies requiring development to avoid unnecessary harm to animals and to incorporate welfare-sensitive design and construction measures where relevant. Such policies would need to be carefully drafted to remain within the planning purpose. A policy framed around land-use impacts on animals, rather than general moral opposition to animal use, would fit more neatly into the currently available planning guidance.

Local nature recovery strategies and biodiversity policies could also recognise welfare-sensitive implementation. The point is not to merge welfare into biodiversity, but to ensure that biodiversity delivery does not create avoidable suffering. Habitat creation, fencing, water features, ecological corridors and site management can be designed with welfare in mind.

9.3 National development management policy

If national development management policies are further developed under the Levelling-up and Regeneration Act 2023, animal welfare could be addressed through a concise national policy. The policy need not be expansive. It could provide that decision-makers should have regard to significant animal welfare impacts arising from the siting, design, construction or operation of development, where such impacts are evidenced and not adequately addressed by other regimes.[52]

9.4 Statutory amendment

A more ambitious reform would amend the 1990 Act or secondary legislation to require animal welfare information for specified categories of development. That may be politically and administratively difficult. It may also be unnecessary at this stage. The common law of material considerations, combined with guidance and local plan policy, can do much of the work. The immediate priority is not a new statutory duty, but a disciplined recognition that welfare is distinct from biodiversity and relevant to planning.

10. Conclusion

Biodiversity net gain is an important development in English planning law. It creates a statutory machinery for improving biodiversity outcomes and changes the practical demands placed on applicants and local planning authorities. But it is not animal welfare. It does not measure suffering, stress, behavioural deprivation, injury, mortality or the welfare conditions of animals kept, moved or affected by development. Treating BNG as a proxy for animal welfare risks making sentient animals disappear behind habitat units.

Animal Equality UK confirms the legal opening: animal welfare can be a material planning consideration. The unresolved question is how that proposition should operate in practice. This article has argued for a structured approach. Animal welfare should be considered where it is development-specific, evidence-based, causally connected to land use, and not adequately controlled elsewhere. It should be weighed with nuance, not treated as an automatic veto. It should be capable of supporting refusal, conditions, mitigation or limited weight depending on the evidence. It should also be capable of counting positively where development advances animal welfare.

The core contribution is therefore simple. Planning law should stop asking biodiversity to do work it was never designed to do. Biodiversity net gain may improve habitat. It may enhance ecological value. It may even, in some cases, indirectly benefit animals. But animal welfare is a distinct legal and ethical concern. If planning law is truly a public-interest jurisdiction concerned with the consequences of land use, it should have the courage and clarity to recognise the animal in the planning balance expressly.

52 Levelling-up and Regeneration Act 2023, ss 93-94, providing for national development management policies through amendments to PCPA 2004.

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