

# Animal Welfare Law

## – a brief guide and commentary

### Introduction

Animal welfare law has an undoubtedly polarising effect on the British public. A number of cases in recent years have given rise in almost equal measure to vilification of the offenders by supporters of animal rights, and to criticism of the prosecuting authorities by those who consider that the law is inappropriately employed. It is undeniable that since 2007, when the Animal Welfare Act 2006 (the “AWA”) was passed, the law in relation to the treatment of animals has become more stringent, and sometimes applied in a manner that has aroused controversy. Even as this article is written, newspapers have featured the conviction and tagging of 71-year old Pauline Spoor who found herself in court for failing to have an elderly and unwell dog put down because she did not want to be without him.

The AWA brought about alterations in the legal requirements concerning animals that apply to the millions of people who farm or keep pets in the UK. Its application is therefore a wide one, and although the actual number of prosecutions brought under its provisions each year is fewer than 2,000, the impact of a conviction can be immense, in both personal and financial terms, even if custody is not imposed. Routine outcomes of convictions under the AWA include being banned from owning animals (potentially ruinous for those who derive their income, or vital emotional support, therefrom) and vast costs orders, sometimes running into the thousands, for guilty pleas or short summary trials.

Owing to the comparative rarity of prosecutions under the Act, the minimal guidance on the matter available in the standard courtroom textbooks, and the almost complete lack of caselaw on the subject, the average practitioner faced with a case concerning animal welfare is likely to be unfamiliar with the law and may find it difficult to find helpful information. In addition, while offences under the AWA are triable only summarily, they frequently involve expert witnesses, and complex legal questions with which lay benches may be unfamiliar.

The RSPCA states on its website that it has a conviction rate of 97.4% in cases of this nature, but a memorandum submitted to Parliament based on statistics obtained by an MP suggest that appeals to the Crown Court in Animal Welfare cases have double the success rate of normal summary appeals.<sup>1</sup> There could be a variety of reasons for this, but it is

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<sup>1</sup> <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmenvfru/52/4101318.htm>

arguably suggestive of poorly-conducted defence work by advocates who lack confidence and fear to challenge either the evidence or the principles, or to over-emotive approaches or poor case understanding by lay benches, especially concerning experts. It may also suggest that of those who plead guilty, a significant proportion may do so because they have been poorly advised and feel the case against them is overwhelming, when the reality of their position is very different. This article will provide a short summary of the salient points of the AWA, and consider some of the problems commonly encountered whilst working in this area of law.

## AWA investigations and prosecutions

Although the AWA makes provision for prosecutions to be brought by local authorities, it remains the case that the RSPCA brings the vast majority of cases as private prosecutions. A lengthy discussion of the methods and attitudes that are involved in such prosecutions is not relevant to this article, but there are a few points that are worth noting. RSPCA inspectors wear a police-style uniform but they do not, however, have police status and have no more than ordinary civilian powers of arrest (see below for discussion of powers of entry). Similarly, they are not vets, and generally do not have the ability to provide expert evidence about the animals they are dealing with. When suspects are interviewed under caution, this will usually happen in a police station with officers present and the usual PACE-compliant safeguards, but practitioners should be aware that in reality this is not always the case; for example, there was a recent instance of a suspect who was interviewed by a single RSPCA inspector, equipped only with pen and paper and no tape recorder, in a cafe in a roadside service station. In this case, the suspect apparently volunteered a detailed account, none of which was ever recorded because the inspector only noted down the answers to a few particular questions.

### *Improvement notices*

Section 10 of the AWA provides for a power to issue improvement notices, where an inspector is of the opinion that a person is not complying with section 9. The person can thereby be required to take certain action, such as seeking veterinary advice, or improving the animal's housing, within a certain period of time. No prosecution for a s9 breach can take place within the period of time specified in the notice, which can be extended by the inspector. In practice, people are still prosecuted under s9 without ever having been the subject of an improvement notice. This may be because the case is particularly extreme, but in situations where the animal is not actually suffering (see s9) or where suffering is short-term and could be easily alleviated, there may be useful arguments that can be made particularly after trial, if there is a large costs application, to say that it would have been more appropriate to warn or educate the owner rather than prosecute them.

## *Powers of entry and seizure*

Section 18 empowers an inspector or constable who believes that an animal is suffering to take steps to alleviate its distress. It also empowers either of the above to take it into his possession if a vet certifies that it is suffering, or is likely to do so if its circumstances do not change, or if it appears that the animal is suffering/likely to do so and it is not practicable to wait for a vet.

Section 19(1) confers a power of entry on a constable or inspector in order to search for an animal and exercise s18 powers, but it is clear from 19(2) that this does not authorise entry into a private dwelling. Reasonable force may only be used in entering a non-dwelling without a warrant if it appears that entry is required before a warrant can be obtained and executed (s19(3)). Sections 19(4) and (5) provide that such a warrant can be granted only if there are reasonable grounds for suspecting either that a protected animal is suffering, or is likely to do so unless its circumstances change, and s52 is satisfied. Section 52 contains four conditions, one of which must be met to justify the issuing of a warrant. In short, these stipulate that notice must generally be given to the occupier unless it would “defeat the object” and “entry is required as a matter of urgency.” However, if the premises is unoccupied or the owner absent, the condition is merely that notice of intention to apply for the warrant has been left there conspicuously.

## The AWA's remit

The AWA applies to protected animals, defined by section 2 as being “of a kind commonly domesticated in the British Isles” or one which is “under the control of man (whether on a permanent or temporary basis) or not living in a wild state.” If a wild animal is captured and thereby comes under the control of man, it would qualify for protection. The Act also only applies to vertebrates and does not apply to anything done in terms of scientific experiments or fishing. However, other legislation exists concerning some species of wild animals, such as badgers; certain birds and the capture methods of wild animals; farmed animals; performing animals and dangerous dogs.

Responsibility is discussed in section 3 and refers to those who are permanently or temporarily responsible for an animal, which includes being in charge of it. An animal owner is always to be regarded as being responsible for it; if a person under 16 is responsible for an animal, the adult who has actual care and control of that person is also deemed to be responsible. Plainly, however, if a pet owner leaves their animal in the care of a trusted friend whilst they are on holiday and the friend fails to feed it, although the owner is technically “responsible,” in these circumstances liability should attach to the friend.

## *Offences*

The AWA contains a variety of offences related to animals; animal fighting, tail docking in most circumstances, mutilation, administering poison, and the sale of animals to persons



under 16 are all prohibited. The most common offences are those of section 4 (causing unnecessary suffering) and section 9 (failing to meet the needs of an animal) and it is on these two offences that this article will focus.

## *Section 4: animal cruelty*

This offence is to be distinguished from the s9 “welfare offence” in that it actually requires an animal to have suffered, physically or mentally, for any period of time.

Under s4, a person commits an offence if—

- (a) an act of his, or a failure of his to act, causes an animal to suffer,
- (b) he knew, or ought reasonably to have known, that the act, or failure to act, would have that effect or be likely to do so,
- (c) the animal is a protected animal, and
- (d) the suffering is unnecessary.

A parallel offence also exists under s4(2) by which a person who is responsible for an animal can be liable for the actions or inactions of another person, if he failed to take steps that were reasonable in all the circumstances to prevent it.

“Suffering” can be mental or physical, and s4(3) provides a non-exhaustive list of matters that can be taken into account when deeming whether or not suffering is necessary, such as proportionality/legitimacy of the conduct causing the suffering (e.g. police horses being hit by missiles thrown in a riot), and being the conduct of a reasonably competent and humane person (a test that should not be overlooked by those defending cases of this sort). The evidence of whether or not an animal has suffered physically may be self-evident (e.g. obvious injury or emaciation) and a vet is likely to provide evidence as to its estimated duration. Mental suffering is more contentious and evidence of it is likely to arise either from a vet/behaviourist or from conjecture. The question of what is “reasonably humane” is, it is suggested, one for the tribunal, not a vet.

Few would argue with the public interest in the prosecution of those who deliberately cause injury, illness or lasting damage to animals, in particular dependent pets. However, two widely-reported cases from 2010 illustrate the controversially robust approach to prosecutions brought under this section: Mary Bale, who was charged with causing unnecessary suffering after she put a cat into a dustbin, from where it was retrieved frightened but physically unharmed some hours later, and Raymond Elliott who was charged with causing unnecessary suffering to a squirrel (estimated at three minutes’ duration) which he drowned in a water-butt. The necessity of bringing in particular the latter of these cases and the accruing of criminal convictions was questioned in various quarters.

The section 4 offence can be committed by anyone, whether or not they are specifically responsible for an animal, but, despite a literal reading of this somewhat poorly worded

section, only a person who is actually responsible for the animal should incur liability for omissions that cause suffering. The literal reading of s4(1) appears to impose liability on anyone whose failure to act causes an animal to suffer, which appears at once to remove the normal common-law rule that there is no liability for omissions unless the person is under a legal duty to act. Plainly, liability under s4 exists against anyone who commits a positive action that causes suffering (e.g. kicking your neighbour's cat, for which you are not responsible) but it is suggested, following general legal principles, that this cannot impose liability for a failure to act on someone who is under no duty to do so (so you would not be liable for failing to take your neighbour's cat to the vet if you noticed that it was injured when you knew they were on holiday).

### *S9: the "welfare offence"*

Under s9, a person commits an offence if he "does not take such steps as are reasonable in all the circumstances to ensure that the needs of an animal for which he is responsible are met to the extent required by good practice." Good practice is not specifically defined in the Act, but a number of guidelines exist setting out the standards that are now considered acceptable. This offence can only be committed by someone who has responsibility, whether permanent or temporary, for that animal.

9(2) states that an animal's needs shall be taken to include—

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

In practice, the evidence at trial of what constitutes a suitable diet/environment etc tends to be given by the vet who examined the animal, but practitioners should not shrink from challenging these contentions vigorously and reminding benches that the final assessment of the defendant's conduct lies with them. Commonsense, for example, dictates that the life of any pet animal kept in captivity will always, to a certain extent, fail to replicate the "normal" life of the species – normal behaviour for a rabbit includes living in the earth and burrowing underground, neither of which can be generally provided by the owner of a pet.

### *"Reasonable in all the circumstances"*

Practitioners should also be aware that the key criterion in section 9 cases is "reasonable in all the circumstances." The only illuminating caselaw on the subject comes from *RSPCA v C* [2006] EWHC 1069 (Admin) which concerned a cat with an injured tail. The cat was the pet of a 15-year old girl, who told her father the cat was hurt. He told her to wait a while, and

said he would take it to the vet if it got worse. They were both prosecuted under the 1911 Protection of Animals Act, which requires behaviour simply to be “reasonable”. She was acquitted, on the grounds of her age and her position of responsibility in the household hierarchy, but the RSPCA judicially reviewed this decision, suggesting that “reasonable” should be objective and not take age into account. They were not successful, and the case provided authority for the fact that those factors at least could be taken into account. It now seems that the law has moved to a more subjective situation. “All the circumstances”, it is submitted, makes it very clear that the court can, and should, take into account anything that is relevant: age; financial situation; level of responsibility; depth of knowledge of animal care; attitude to the animal in question; power to alter the circumstances of an animal’s environment and so on. It is therefore suggested that practitioners pay particular attention to the circumstances of the alleged neglect, and do not fear to examine rigorously the question of reasonableness, encouraging benches to take an unemotional approach to such matters and scrutinise the facts very carefully before convicting, particularly in the case of young or elderly defendants.

## Penalties

Under section 33, a person convicted of an offence under the Act may be deprived of the animal in question. Section 34 provides for various types of disqualification from owning/keeping/being responsible for/dealing in/transporting animals for any period the court sees fit, including a lifetime ban. Breach of a disqualification is a separate offence. Interestingly, there is no test included in the AWA for the imposition of a disqualification. Practitioners should be on their guard against applications to disqualify offenders who have no history of animal cruelty; when there has been no actual injury; or where the offence arose as a result of ignorance or circumstances such as temporary ill health or emotional dependence. If a ban would not be necessary for the future protection of other animals, the most suitable route may well be education in animal care. Similarly, a single instance of cruelty to a dog may not merit a ban on transporting sheep. It is difficult to justify banning an offender from future animal ownership for short-term neglect where there are significant mitigating circumstances, but evidence suggests that benches do not always take this approach.

## Costs and sentencing

Costs orders in animal welfare cases can be very high for a variety of reasons. Unlike the CPS, the RSPCA is not subject to public funding limitations. In 2010, the charity spent over £4.3 million on legal fees, expert witnesses and photography in prosecuting fewer than 2000



people<sup>2</sup>. Kennelling fees for animals which are confiscated pending the outcome of trial are often another large contributory factor. The average cost to the CPS of preparing a summary trial is £850 and a guilty plea £160<sup>3</sup>; RSPCA costs can run into the thousands for a simple guilty plea. Mary Bale was ordered to pay £1171 for a guilty plea; a 2011 case involving five days in the magistrates' court ended in an application for, amongst other things, legal costs of around £25,000<sup>4</sup>. The Prosecutions Report cited previously contains references to a man convicted of offences in relation to some caged birds who was ordered to pay £10,000 costs and a man who pleaded guilty to causing unnecessary suffering to a dog and was ordered to pay over £4000 costs.

Practitioners should inspect the date of any summons carefully – if it has been issued days before the deadline and the evidence was gathered much earlier on, it may be arguable that the defendant should not be responsible for paying for, in particular, extra months of kennelling. Representatives should familiarise themselves with the law regarding payment of expert's fees and prepare as necessary to combat costs applications.

Sentencing too sometimes fails to mark the difference between deliberate acts of cruelty or neglect and misguided care or unintentional neglect. Some defendants in animal cruelty cases are multiple pet owners who have become overwhelmed by the demands made on them and neglect or kill some of their animals, or elderly persons who have, due to age or misguided affection for a pet, failed to take optimal steps to ensure its welfare. Many would agree that the elderly person who cannot bear to face life without their pet should not face a punitive sentence, and advocates should be prepared to make confident and bold assertions in mitigation in cases not involving deliberate cruelty, or where there is a psychological link to the offending behaviour. An example of the curious irrationality of such sentencing is that of Mrs Spoor (see above) who received a three-month curfew order.

## Conclusion

Advocates dealing with animal welfare cases should remember that the AWA was intended to ensure reasonable, realistic standards of welfare in animals looked after by normal people in normal situations. Benches should be encouraged to take an objective view of the evidence and not allow themselves to be swayed by the emotive content of some cases. It should always be borne in mind that the crucial decision as to whether conduct was “reasonably... humane” or whether steps taken were “reasonable in all the circumstances”

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<sup>2</sup> RSPCA Prosecutions Report 2010

<sup>3</sup> [http://www.cps.gov.uk/news/articles/challenge\\_and\\_opportunity/](http://www.cps.gov.uk/news/articles/challenge_and_opportunity/)

<sup>4</sup> RSPCA v Hussain, Bromley Magistrates' Court, June 2011



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rests with the bench, rather than any witnesses (expert or not), and that the prosecution's case still has to be proved to the normal criminal standard. Despite the understandable fear that many defendants may have of high costs orders if they contest trials or appeal convictions, representatives should analyse evidence carefully, advise appropriately, and not be afraid to be contest the assertions or opinions of prosecution witnesses.

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