

Comment piece for the *Gazette* **Animal protection and the law**

We like to think we live in a country where cruelty to animals is against the law, as with cruelty to children, the mentally ill and other vulnerable groups.

But take this scenario. Intensively-farmed chickens have been bred to grow far quicker than nature intended. As a result, many suffer severe limb and organ problems. If the breeder birds grew at the same rate, their bodies would literally collapse. The industry's solution: severe feed restriction, for months on end – at times the breeders get just 20% of what they would eat naturally. DEFRA accepts they are chronically hungry and suffer as a result.

You would think that the law would intervene. Indeed, the regulations in question say that farm animals must be fed enough 'to promote a positive state of well-being'. Another provision says that an animal should not be farmed if, based on its genotype (breeding), welfare 'detriment' is reasonably to be expected. Put the two provisions together and it seems obvious that the particular strain of chicken must be illegal.

However, in a recent case brought by Compassion in World Farming, the Court of Appeal declined to consider the breeding provision. It simply considered the feeding provision and decided that, for well-being, it was permissible to balance one welfare need against another. This misses the point that the balancing would have been unnecessary if an inappropriate genotype had not been voluntarily chosen, for commercial reasons. The result: millions of chickens continue to suffer.

In this case, the court got the law wrong. In many other areas, enforcement is woefully inadequate, as numerous undercover investigations of animal laboratories and other establishments have shown. At Cambridge University, monkeys were (legally) brain-damaged, sometimes in multiple operations. Under the relevant legislation and guidance, suffering must be kept to the minimum consistent with the experiment in question and emergency vet and other care must be available at all times.

There was no such cover at Cambridge, even for the post-operative period; not surprisingly, animals were found dead or had to be euthanased in the morning. Significantly, when challenged the Home Office saw nothing wrong with the regime. Whatever one's views of animal

experiments, this represents a fraud on the public, who are constantly told that lab animals are well cared for.

But the problem with animal protection law is more fundamental than incorrect interpretation or inadequate enforcement. Here and abroad, the law seeks to strike a balance between animal welfare and various human interests. In most cases, only the infliction of *unnecessary* suffering is prohibited, whatever that means. Animals are not in a strong bargaining position.

So, whilst gratuitous cruelty is usually illegal, it is perfectly legal to cause pain and distress in the name of cheap meat, research, the fur trade, entertainment and many other situations. Indeed, the challenges to the Hunting Act this week reflect the view of some that entertainment and tradition should trump the fundamental interests of wild animals. It will strike many as bizarre that human rights and EU free trade rules are being invoked to justify cruelty to animals.

Animal welfare is indeed often sacrificed on the altar of free trade, although a recent case at the European Court of Justice reflects an emerging acceptance that it is legitimate under World Trade Organisation and EU rules to ban the trade in cruelly-manufactured products.

Ultimately, ethical judgements are for society as a whole. However, the Association of Lawyers for Animal Welfare believes that lawyers have a central place in shaping animal protection legislation (such as the forthcoming Animal Welfare Bill) and ensuring that the reality matches legislative rhetoric, here and in the EU and beyond. After all, the first duty of the law is to protect the vulnerable, irrespective of who they are.

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