

The canary is dead: Avian flu and the importation of exotic birds

Dead birds have long been recognised as a warning sign of a possible risk to human health. Whether in the mines of the north of England or the World War I tunnels under northern France, canaries have been used to indicate a presence of risk – in those cases the risk posed by the presence of harmful gases. Indeed, the last 200 canaries were only retired from the service of British mines in 1987, ending the tradition that had existed since 1911 of keeping two canaries at each pit.

Yet the death of birds is now again being seen as a sign of a clear and present danger to humans, this time because of the “avian flu” outbreaks that have occurred in China, South-East Asia, the Black Sea area of Eastern Europe, and most recently in Turkey. Media speculation has been rife that “avian flu” will turn into a deadly pandemic on the scale of the Spanish flu outbreak almost a century ago, wiping out massive numbers of people, and causing a global economic and political crisis as key personnel in government and commerce refuse to report for work out of fear of infection.

As a result of this media frenzy, a great deal of fear has certainly been generated among the public, but the media has not done a good job of providing a clear picture of the sources and extent of the risk to the UK population (both avian and human) and, as a result, has failed to facilitate an informed public debate about the steps that might sensibly be taken to reduce the risk level to which this country, and the EU more generally, is exposed.

If one were to believe the UK media, the biggest risk of avian flu being brought into the UK is from migrating wild birds. For reasons that I will later explain, the risk of infection reaching the UK through migratory birds is, in fact, unproven; and the risk of avian flu being passed from a migratory bird in the environment to a member of the British public is tiny. First, however, it is appropriate to be clear as to exactly what “avian flu” is, and why it may pose a risk to humans.

Low Pathogenic Avian Influenza (LPAI) viruses, i.e. viruses which generally cause mild disease or no disease at all, occur frequently in nature. The present concern, however, relates to highly pathogenic viruses of the H5N1 subtype which have the capacity to infect and kill humans who come into close contact with infected birds. The mortality rate for humans infected with the H5N1 viruses which have been the recent cause of alarm appears to be very high – around 60%. It is those viruses to which I will refer using the “avian flu” shorthand in the remainder of this paper.

Although there have been a very small number of human fatalities from H5N1 infection (perhaps less than the number that could be counted on one hand) which may show evidence of human-to-human transmission, it is important to note that at the present time the only significant risk of transmission to humans is posed to persons having close contact with infected, or potentially infected, birds (including – indeed, especially – poultry). This brings me back to the reasons why the media’s obsession with the risk posed by migrating birds is unjustified:

- H5N1 avian influenza had never been recorded in wild birds before the recent outbreaks. It almost certainly originated in domestic poultry in SE Asia. Infections of the wild bird populations in Asia and Eastern Europe are suspected to have been caused by fish-farming systems used in those areas in which untreated poultry manure is used to fertilise fishponds.
- Almost every instance of human infection has resulted from close contact with infected domestic poultry. It is very difficult to contract avian flu from infected wild birds in their natural environment since close contact with their carcasses or with sick birds would be necessary.
- Although wild birds may have played a role in spreading infection, the evidence for this is unclear. Wild birds may have played a role in some cases, such as the outbreaks around the Black Sea, which were consistent with the timing and direction of migration from Siberia. In other cases, however, such as the transfer of the disease from China to Siberia, it is difficult to see how wild bird movements could have been the cause.
- In any event, all the evidence shows that it is domestic birds – by which I mean poultry in particular, but also imported birds destined for the pet trade – that pose a much greater risk, both in terms of transmission of avian flu to hitherto unaffected locations and in terms of bird-to-human transmission.

Thankfully, DEFRA appears to have taken these points on board, and we are assured that a cull of wild birds does not form part of DEFRA's strategy for dealing with the H5N1 outbreak that is all too likely to occur in the UK within the next few years. Indeed, the World Health Organisation has noted the potential for wild bird culls to make matters worse by dispersing infected birds. A limited cull of poultry, and the taking of steps to prevent wild birds coming into contact with the faeces of poultry, and vice versa, would be likely to be far more effective.

What I want to focus on in the remainder of this paper, however, is the risk – far greater than that posed by migrating birds – which is posed by the trade (both legal and illegal) in imported pet birds. Those who dispute the existence of that threat may be forgetting that there has only been one known case of a bird infected with avian flu entering the United Kingdom, and that was an imported wild bird (probably a number of birds, in fact) destined for the pet trade.

The incident occurred in October last year at premises in Essex that were being used as a quarantine centre. At the time it was thought that the infection had originated in a Surinam parrot, whereas later investigations indicated that the source was in fact a consignment of wild-caught birds from Taiwan. Indeed, it later emerged that 32 other birds being kept in the centre had died before the parrot and that some were infected with avian flu. *The Times* later reported that the man behind that centre, Brett Hammond, had a history of making illegal importations of wild-caught birds, and had been jailed in 1997 for VAT evasion in connection with those activities (*The Times*, October 30, 2005). It must be remembered though that the importation of the infected birds was legal. Was the

case a sign that the quarantine system was working effectively, or was it a sign that our doors were being left wide open to avian flu?

The Government commissioned a review of avian quarantine chaired by Professor Dimmock of Warwick University. The Dimmock Report was produced at breakneck speed, the review having been announced on 26 October 2005 and the report being finalised on 7 December 2005. That speed (at the expense, perhaps, of thoroughness) was travelled at despite the EU ban on bird imports into the EU that was agreed on 25 October 2005 by the Standing Committee on the Food Chain and Animal Health. Nevertheless, the Dimmock Report proved to be a great eye-opener in terms of what it revealed about the lack of coherence in the quarantine regime, and its ineffectiveness in tackling avian flu.

- Captive birds imported from outside the EU had to be accompanied by a health certificate showing that they had been held in a pre-export holding facility for 21 days and that the areas they had come from were free of avian flu. After arrival, they had to be quarantined for 30 days. However, certain EU Member States may not have been pursuing the quarantine requirements with “equal vigour” and there was no evidence that the European Commission had *ever* inspected quarantine facilities in any Member State to ensure that the Community rules were being observed.
- Commercial consignments of birds between EU Member States did not need to be placed in quarantine at all. Psittacine consignments required veterinary certification, but non-psittacines could travel on the basis of an owner/exporter’s certificate.
- Under UK rules, pet birds brought into the UK from a third country anomalously had to be quarantined for 35 days rather than 30, but that quarantine period could be served at the owner’s home. The birds were supposed to be checked by a Local Veterinary Officer at the start and finish of the periods, but there was evidence that those checks were not always carried out. This loophole was being used by rogue traders to make commercial imports of high-value birds, thus avoiding the normal quarantine regulations and the requirement for testing birds for infection.
- Birds arriving at Border Inspection Posts (at Heathrow, Gatwick and Manchester airports) were frequently not accompanied by the correct documentation (including the required health certifications), but were still sent on the quarantine centres rather than being returned to the country from which they had come.
- Detection of avian flu and other infectious diseases within quarantine facilities largely depended on sentinel birds, which were ineffective. (Indeed, the sentinel birds at the Essex facility had not become infected.)

Despite these failings, the Dimmock Report concluded that the importation of wild-caught birds should not be prohibited. The reasoning was that quarantine procedures, if tightened up, at least provided some protection against avian flu, which was preferable to potentially increasing the illegal trade by way of a complete ban. Nevertheless, importations currently remain prohibited under a Commission Decision and that ban will remain in place until at least 31 May 2006. The threat of illegal importations remains

very real, however. Indeed, in late 2004 an illegal consignment was intercepted in Brussels which contained a bird infected with avian flu; and of course there are many EU countries which are likely to be far easier than Belgium to penetrate with illegal imports.

Another area which has given cause for concern, though it was not within the remit of the Dimmock Report, was the risk posed by pet fairs at which birds are sold. These are events where many thousands of birds are displayed and offered for sale. The risk of transmission of avian flu at such an event, and the onward transmission to all parts of the UK and to humans, would appear to be obvious, particularly given the large illegal trade.

The legality of these events is the subject of ongoing judicial review proceedings in the case of *R (Haynes) v Stafford Borough Council*, which is currently in the warned list awaiting listing. In addition, it has been the subject of fierce debate in the course of the passage of the Animal Welfare Bill. These fairs are currently constrained, however, by Regulation 5 of SI 2005/3394 Avian Influenza (Preventive Measures) (No 2) Regulations 2005:

- (1) No person shall permit birds to be collected together at any fair, market, show, exhibition or other gathering except under the authority of a licence issued by the Secretary of State.
- (2) The Secretary of State shall only grant a licence if a veterinary risk assessment has been carried out and she is satisfied that the gathering and the transit of birds to and from the gathering would not significantly increase the risk of the transmission of avian influenza virus (in particular of virus of the sub-type H5N1).

It is currently unclear whether a licence, within the meaning of Regulation 5, has been granted. However, a document dated 13 December 2005 has appeared on the DEFRA website headed "Veterinary advice on methods to reduce the likelihood of the transmission of HPAI at bird fairs, markets, sales, shows and other gatherings". The writer has made efforts on the date of this paper to ascertain from DEFRA whether a general licence has been issued. Clearly, however, questions need urgently to be asked about the wisdom of such a general licence and whether it would be capable of serving as a valid licence for the purposes of Regulation 5.

This will clearly remain an area of great public concern, as well as legal controversy. Nevertheless, it is submitted that all parties to the debate, including those in the pet bird trade, share an interest in preventing avian flu from reaching the UK. It is to be hoped that all sides will be able to put vested interests to one side when considering how best to keep the UK avian flu free, or to at least control the degree of risk or damage, in order that consensus can be reached on how these issues might be wisely addressed.

Alan Bates
Barrister
Monckton Chambers
www.monckton.com