

Article for *Solicitors' Journal*
The law and animals

Ask anyone if they are against cruelty to animals and the answer is, yes, of course they are. Ask them if, therefore, they are opposed to animal experiments, factory farming, the fur trade, the international trade in wild animals for the pet trade – all of which indisputably cause suffering, deliberately or at least knowingly inflicted, on a massive scale – and the answer may be less clear.

This ambivalence is reflected by English law. The philosophy underlying animal protection law is that people should not deliberately cause suffering to animals *unless* there is permissible benefit to be gained from doing so. This is why the law often only prohibits the infliction of *unnecessary* suffering on animals. But what does ‘unnecessary’ mean, and who judges (not the victims, clearly)? Gratuitous cruelty is usually illegal but otherwise the law strikes a balance between perceived human self-interest and the interests of the animals concerned. Animals are not in a strong bargaining position.

It is for this reason that causing pain and distress to animals in the name of cheap meat, research, entertainment and myriad other circumstances is allowed. The position is very different with laws designed to protect vulnerable people – there, no balance is permitted, whatever benefit might accrue to others from causing harm. Self-defence is one of the very few areas where causing harm to people is allowed.

Views may differ about what is the appropriate philosophy for animal protection law. However, no one could seriously argue that laws which exist should not be properly interpreted and enforced. In fact, very often, legislative rhetoric is not matched by the reality.

One example will suffice. Schedule 1 to The Welfare of Farmed Animals (England) Regulations 2000¹, says that an animal should not be farmed if, because of its genotype (the way it has been bred), it is not reasonably possible to do so without detriment to its health or welfare². Another provision³ says that animals must be fed in sufficient quantity to satisfy their nutritional requirements and so as promote a ‘positive state of well-being’. Because of the way they have been bred – to maximise growth rates – many of the chickens reared in the UK⁴ suffer severe limb and organ problems. The breeders, which need to live far longer than the normal slaughter age of 41 days, would experience catastrophic health problems if allowed to grow at the same rate as the meat birds. Their diet is therefore severely restricted for months on end – at times, they get no more than 20% of what they would eat naturally. Not surprisingly, they are chronically hungry.

In a recent case brought by Compassion in World Farming (CIWF)⁵, DEFRA conceded before the Court of Appeal both that this regime caused welfare problems and, importantly, that it was necessitated by the way the chickens are bred. On this basis, one would have thought that it

¹ SI 2000 No 1870. The regulations implement EC Directive 98/58 (the farm animals directive), which in turn gives effect to Council of Europe Convention for the Protection of Animals Kept for Farming Purposes (ETS 87) (as amended by a Protocol of Amendment dated 6 February 1992).

² paragraph 29

³ paragraph 22

⁴ around 800 million are reared in the UK a year, the vast majority with a fast-growing genotype

⁵ *R(Compassion in World Farming) v Secretary of State for the Environment, Food and Rural Affairs* [2004] EWCA (Civ) 1009 (29 July 2004) Times Law Report 9 August 2004

was obvious that the genotype must be illegal – if a slower-growing genotype were used⁶, there would be no need to choose between different welfare problems.

Unfortunately, the Court of Appeal refused to consider the breeding provision and focused solely on the feeding provision⁷. Not surprisingly, it then decided that the concept of well-being in that provision might necessitate balancing one welfare need (absence of hunger) against another (absence of limb and organ problems). But the requirements of schedule 1 are cumulative – farmers must comply with each. Balancing welfare needs cannot be permissible where the need for the balance results directly from inappropriate breeding methods voluntarily chosen, for commercial reasons. The Court of Appeal’s approach deprives the breeding provision of any meaning.

The Association of Lawyers for Animal Welfare (ALAW) has been set up to address the deficiencies in animal protection law and the way it is interpreted and enforced, not just in this country but also in the EU and beyond. The appropriate ethical approach is for society as a whole (although lawyers are in as good a position as anyone to articulate the arguments). However, lawyers clearly have a central place in shaping legislation and in ensuring that it is interpreted as intended. They have a particular role in protecting the vulnerable, and animals are every bit as vulnerable to cruel exploitation as children, the mentally ill and other groups.

⁶ as some farmers do

⁷ it said, wrongly, that reliance on the breeding provision had been abandoned in the High Court. What had been abandoned was simply a technical argument about the onus of proof.

One should not underestimate the difficulties. Most cruelty to animals takes place behind the screen of commercial confidentiality. Governments are much keener to protect commercial interests than animals. They hide behind the free trade rules of the World Trade Organisation and the EU, often inappropriately so in legal terms. Bringing legal cases to protect animals can be difficult, partly because of costs and partly because of the highly restrictive standing rules at the European Court of Justice.

However disingenuously, industry and government often dispute that animals suffer in particular circumstances, and the High Court will not adjudicate between competing experts in a judicial review. Finally, *CIWF* and other cases show that many judges are simply not attuned to animal protection principles in the way they now are to human rights arguments.

ALAW nevertheless believes that much can be achieved, with creativity and persistence. It will be scrutinising the Animal Welfare Bill promised in the Queen's Speech. There is a great deal of public support for giving animals meaningful legal protection. The challenge is to make that aspiration reality for the literally billions of animals used by humankind in various ways.

ALAW is holding a seminar on the role of the law in animal protection at 6.30 pm on 27 June at Doughty Street Chambers, 10 Doughty Street, London WC1N 2PL. Everyone is welcome. CPD points. More information about this and membership of ALAW from Anne Wignall – tel: 01691 622444 email: annewignall@alaw.org.uk.

Words: 903

**David Thomas
Solicitor and a director of ALAW**

Consultant – Bindman & Partners
10 June 2005