

Legal



EDWARD GALLIA

Animal farm

by Richard Atkins, Associate at Knights Solicitors.

ANIMAL WELFARE IS BACK IN THE NEWS. Michael Gove wishes to see our animal welfare laws enhanced, with proposals to enshrine in legislation the “sentient” rights of animals as a guiding principle to policy. He also wants a “gold standard” regulatory regime for our farms and the environment. The promise of higher levels of sentencing: five years instead of six months imprisonment is itself a typical government reaction to criticism of laxity in the current system of enforcement. Those who see sentencing on a daily basis have a wealth of examples of sentences for cruelty to animals that far outweigh in severity sentences for equivalent harm to humans. As such, it is worth taking stock now of the current risks to those engaged in the rearing, keeping and necessary destruction of animals.

Sadly, there are a small number of people who delight in cruelty to animals, but the majority of those who fall foul of the law are people with problems who simply cannot cope with their lives and hence cope with their animals. For many, the intervention of the law at the instigation for the RSPCA and others

is not a relief but a descent into a hell because of heavy-handed investigations, seizures of animals and, in some but not all cases, prosecutions. For these reasons I personally testified against the RSPCA in the independent review conducted into their activities just over three years ago.

The Animal Welfare Act 2006 (“the Act”), which came into force in 2007, repealed the outdated Protection of Animals Act 1911. It provided a range of new offences as well as powers designed to ensure the law could be effectively enforced. For the purposes of the Act, an “animal” includes all vertebrates other than man. The 2006 Act introduced the concept of a “protected animal”, of a kind which is commonly domesticated. For these special codes were introduced.

The most significant offence under s4 of the Act, that of causing unnecessary suffering to an animal, essentially repeated the old offence of cruelty. The offence is committed by a person if his/her act or failure to act causes a protected animal to suffer; where the person knew or ought reasonably to have known that his act or omission would have or is

likely to have that effect. Underpinning this is the term “unnecessary suffering”. Knowledge of the circumstances leading to the consequence of unnecessary suffering is an essential ingredient of the offence of “permitting” such an offence.

The second offence under s9 of the Act is built on the concept of a duty of care to the animal to provide for an animal’s needs. These are enshrined in what is known as the five freedoms. Failure to provide for these needs even in the absence of proof of suffering is enough for this offence. The needs set out in the legislation are requirements to provide a suitable environment; a suitable diet; normal behaviour patterns; housing with or apart from other animals; and protection from pain, suffering, injury and disease.

In addition, there are specific offences prohibiting mutilation, docking of dogs’ tails, administering poison and animal fighting.

The Act sets out powers for the purposes of enforcement, which are

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exercisable by police or an Inspector appointed by either the Secretary of State or a local authority. Contrary to myth, this does *not* include RSPCA employees however they are dressed or styled. Powers of search have to be exercised by the police. However, the police rarely exercise actual control over any search on premises; usually leaving this to the RSPCA employees who accompany them.

There is a power for police to issue Improvement Notices in cases where welfare is an issue and the power for the court to make orders separately from any prosecution dealing with any seized animal. These are rarely used for reasons that are never explained. Where a Notice specifying the steps to be taken (within a specified time period) to address any concerns regarding an animal welfare issue is served, no prosecution can be mounted if the recipient of the Notice complies with the demand and puts right all that is required of them. In the age of austerity one would think that this would be the favoured route for those concerned with animal welfare. Unfortunately, there is no obligation to serve a Notice prior to commencing a prosecution or to utilise any power to proceedings being commenced at any time for matters that are over and above those steps specified in a Notice.

If you cannot look after animals as you would like, then you should seek help to rehouse them.

An Inspector or a police constable who reasonably believes that an animal is suffering may take such steps as appear to him to be immediately necessary to alleviate the suffering. This can include the destruction of the animal, or its seizure. This power of seizure must be supported by what is known as an s18 certificate signed by a veterinary surgeon,

Can I look after these animals?

except where delay for that purpose would be unreasonable; in which case it can be exercised immediately. This power is available before any prosecution is commenced and includes not only animals that are actually suffering, but also those that are likely to suffer if action is not taken to remove them. This power of seizure includes dependent offspring and is not restricted to animals kept for commercial purposes.

These powers apply to land and property other than a dwelling, where a warrant is always needed to enter.

If one or more RSPCA staff arrive on your doorstep without a warrant when you are with your animal, they have *no power* to search or seize it without your permission and *no right* to enter your home or premises. They will invariably treat you as a suspect and may even try to conduct an interview under caution. They

rarely have recording equipment and have to conduct the interview making a written record. They have *no power* to force you to speak, despite the caution they may give. The best response is to inform them that you require the services of a solicitor. When they are refused entry or faced with a refusal to answer questions, they invariably tell you as the suspect that they will call the police.

The subsequent appearance of one or two uniformed police officers usually results in compliance with the RSPCA requests. The police usually surrender the decision to prosecute to the RSPCA, which conducts it as a private prosecution. Where the RSPB are involved, the police will report it to the CPS who will have conduct of any prosecution.

The independent review of the RSPCA lamented that prosecutions should be vested with the police and CPS. However, the police and the CPS both declined to concur with any change in the arrangements due to financial constraints. We will have to see if the position is changed with the legislation proposed by Michael Gove.

Hard though it may be for those looking after animals, the concern must be with the welfare of the animal. Where many animals are kept, the owner or keeper should ask themselves the following questions:

1. Why do I have so many?
2. Can I look after them?
3. Am I looking after them as I would like to?

If the answer to either question 2. or 3. is “no”, then help should be sought and the animals rehoused or destroyed. Hard as it may be, humanely destroying an animal not only puts an end to any unnecessary or actual suffering, but prevents the risk of a prosecution if there is no prior official intervention.

Putting all this into the context of a gamekeeper's situation, where there is a wildlife issue on a shoot, it will probably be the keeper responsible for the land where the problem arose who first comes under suspicion, eg. where a Larsen trap is alleged to have been used improperly, or an injured call bird is found. Sometimes others might also find themselves under investigation, including not only colleagues, and head keepers, but also land agents and



landowners. A responsible person will be liable where unnecessary suffering is caused, if he “permitted” it or failed to take reasonable steps (by way of supervision or otherwise) to prevent it from happening. He could also be prosecuted if he failed to take reasonable steps to ensure the needs of any animal for which he is responsible are met to the extent required by good practice (whether unnecessary suffering is caused or not).

For a keeper’s own dogs and ferrets, responsibility is likely to rest with him. For reared gamebirds (and also live decoys, and trapped birds and mammals) the position may be less clear. There could be more than one person responsible, each or all of whom could be prosecuted if there is a problem.

For any animals for which the landowner or estate may have responsibility, roles and duties should be clearly understood and set out in writing. Arrangements should be in place to provide cover for holidays, sickness, etc. There should be clear written policies as to action to be taken for sick or injured animals and

NOTE IT!

KNIGHTS SOLICITORS
 The author, Richard Atkins, is an Associate at Knights Solicitors, a specialist litigation practice well-known for representing clients with animal and countryside interests on a national level. Tel: 01892 537311, www.knights-solicitors.co.uk. Ask for Matthew Knight, Richard Atkins or Peter Burfoot.

NGO FREE LEGAL HELPLINE
 NGO members in need of emergency legal advice relating to gamekeeping and field sports can call the helplines below. Up to 30 minutes telephone advice is available free of charge as a benefit of your NGO membership.

For those in the South: Matthew Knight, Richard Atkins and Peter Burfoot, Knights Solicitors (Tunbridge Wells), 01892 537311 (24hr line).

For those in the North, Scotland and Wales:
 Michael Kenyon, Solicitor (Macclesfield), 01625 422275 or 07798 636460.

SOPHIA GALINA



the provision of veterinary treatment (or humane despatch). To meet the standards required by “good practice”, adequate training should be provided, as well as making available copies of

relevant Codes of Practice and other information, and ensuring systems are in place for the supervision of junior staff.



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