



## **Centre for Animals and Social Justice Submission to House of Commons EFRA Committee Animal Welfare Inquiry**

Given the 1500 word limit, we have concentrated mainly on sentencing and how it exemplifies wider structural problems with animal welfare public policy.

The sentencing powers for offences under the Animal Welfare Act 2006 (AWA) within England are some of the lowest within the international community and compared with Northern Ireland where recent changes mean the maximum is now up to five years in prison (see evidence submitted by ALAW)<sup>1</sup>. They also conflict with recent recommendations by the Law Commission in its 'Wildlife Law' report. The fact that the maximum custodial sentence of 6 months is the same as in Russia, where harm caused to animals by cruelty is not seen as wrong in-and-of-itself, but rather is punished for its impact on human interests, is symptomatic of fundamental flaws that undermine the current sentencing approach.

There is abundant evidence of deep public anger at lenient sentencing for animal cruelty offences. Mark Spencer MP has told the Commons '*RSPCA research shows that the general public find such sentences insulting and think it is time we took stronger action against the people who commit these horrendous crimes.*'<sup>2</sup> The mammoth support for the 'Justice for Chunky' petition<sup>3</sup> is another indicator of public dissatisfaction with the current regime.

There appears to be a gaping chasm between the public's high moral regard for animals and the approach found in the AWA and sentencing. Lenient sentencing sends the wrong message to such criminals and society as a whole insofar as it implies such offences are trivial, and erodes public confidence in the system. Current punishments fail to express public revulsion from these offences and amounts to inadequate condemnation of such acts.

Scientifically-speaking, the level of harm experienced by nonhuman animal victims of violent crime should be assumed to be similar to that suffered by human victims. This broad approach has provided the starting point for the Home Office's severity assessments of proposed animal experimentation projects. We note that in 2013, the New Zealand Courts in *Ministry for Primary Industries v Erasmus* [2013] NZHC 281:

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<sup>1</sup> Also, in Taiwan, abusing a dog can apparently land you with a seven-year prison sentence. (<http://www.newschinamag.com/magazine/many-chinese-scientists-are-more-opposed-to-animal-protection-than-the-gene>).

<sup>2</sup> <http://www.theyworkforyou.com/whall/?id=2015-07-16a.373.0>

<sup>3</sup> <https://www.change.org/p/david-cameron-mp-justice-for-chunky>. Petition focuses on a register/disqualification due to the age of offenders, but reasonable to assume reflects desire for heavier custodial sentences.

*'... acknowledge[d] that cases involving animal cruelty can warrant the imposition of penalties commensurate with comparable crimes against humans... What is striking about the decision is the appellate Court's recognition of the sentience of animals; that is, having the ability to feel, perceive, be conscious, or to experience subjectivity. The decision is also notable for its acknowledgment that the resulting pain, distress and suffering experienced by animals is a relevant factor to be taken into account at sentencing.'*<sup>4</sup>

Yet the feeble sentencing approach in England and Wales implies that such crimes are somehow 'victimless' and fails to acknowledge the harm caused. Animals should be recognised as crime victims and the recipients of criminal behaviour that is an offence against the state. Therefore, sentencing powers for animal crimes should be closer to those for similar offences against human victims. The known correlation between violence to animals and violence towards humans reinforces the gravity of these offences, though we strongly believe they are intrinsically serious. The Prime Minister has stated: 'serious and dangerous offenders must go to jail and stay there for a long time'.

As alluded to above, current sentencing implies that animal harm, as in Russia, is not considered a wrong to the animal itself. It embodies an institutionalised view of animals as inanimate objects who are the property of humans, rather than sentient individuals. These contradictions can be found in the AWA, despite many of its duties being based on an acceptance of animal sentience and human obligations to respect their wellbeing. Yet, according to Dr Angus Nurse, a criminologist at Middlesex University, the AWA: 'limit[s] protection of the animal to its value as property'.<sup>5</sup>

The government's responses to concerns about weak sentencing appear to reflect this Cartesian view of animals. It has stated: *'The sentences currently imposed for such offences are not regularly set towards the upper end of the range. This suggests that courts are not finding their current sentencing powers inadequate'*. But clearly this is a non-sequitur. The Magistrates' Courts Sentencing Guidelines require them to take into account mitigating factors, which usually drive down a sentence from the maximum. Given these factors, magistrates are left with reduced scope to impose maximum penalties in most cases. As the maximum is in effect only 6 months, the final sentences are inevitably going to be very lenient. The government's attempt to brush aside these issues raises concerns that they do not really take animal cruelty and appropriate sentencing seriously.

Two of those 'mitigating factors' are 'ignorance of appropriate care' and 'offender with limited capacity'. This highlights other weakness in the current animal welfare legislation – the lack of safeguards to ensure guardians are capable and willing to look after animals properly. In other walks of life, competency tests are required in order to permit certain activities which have wider social and welfare implications – e.g. driving and becoming a UK citizen. Ignorance and complacency are major causes of animal suffering. If we, as a society, take animal welfare seriously, should we not establish a similar testing and licensing system?

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<sup>4</sup> Killeen, A. (2013) 'Animal welfare sentencing', *New Zealand Law Journal* No 3 (April)

<sup>5</sup> Nurse, A. (2013) *Animal Harm*, Ashgate: Farnham, p.6 .

We suggest that the Committee's inquiry would be aided by examining the work done by the South Australian Government on the issue of 'dog and cat management'.<sup>6</sup> They organised a deliberative democracy exercise – involving citizens' juries – to explore public opinion regarding policy in this area. For example, one accepted recommendation is to promote an online test for prospective pet guardians.

This participatory approach to policy formulation has helped policy to align with public opinion, thereby increasing public confidence in the field of regulation. It facilitates a much more open and rational policy process, escaping Whitehall's groupthink and deep favouritism toward business interests that hampers intelligent and responsive policy-making. As the Secretary of the Dog and Cat Management Board told us in respect of one of the recommendations to emerge, mandatory desexing:

*'... the Jury was a safe way for the government to air my Board's proposal for mandatory desexing of dogs and cats in South Australia, without initially committing to it. It greatly assisted in raising the matter in community debate in a rational, considered manner. After the CJ recommendation, the Government accordingly agreed to add that proposal to the legislative package we have been working on. We would never have had such a potentially controversial proposal in the Bill, without the CJ. So, it's been money well spent.'*

In respect of prosecutions here in the UK, it appears that only a tiny proportion of complaints lead to prosecutions and convictions. Consistent with the aforementioned indicators of institutionalised disregard for animal welfare, there is something deeply unsatisfactory about the fact that enforcement of animal protection legislation is largely left to the voluntary sector rather than the state. Enforcement of the AWA should be a statutory duty for local authorities etc. and it must be a legal requirement for the government to provide sufficient resources. Clearly charities such as the RSPCA possess some unique expertise and commitment and we suggest a mechanism should be found to explore ways of retaining those resources while putting enforcement on a much sounder footing. Effective enforcement and appropriate sentencing are necessary components of meaningful deterrence.

In a similar vein, the lack of recording of animal welfare offences (and any register for offenders) is a further sign of it being treated, wrongly, as a trivial matter, and should be rectified. The Liaison Group of UK Animal Welfare Advisory Bodies to Defra has pointed out that 'an important purpose' of 'welfare surveillance' – in this case collecting statistics for crimes against animals and the degree of harm inflicted is:

*'... to identify welfare problems and their magnitude, to track changes in these problems over time and prioritise actions. Public surveillance of animal welfare is part of the guardianship duties of the Government, acting on behalf of society. Its purposes are to inform Government policy and to ensure compliance with regulations, particularly minimum standards of welfare.'*<sup>7</sup>

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<sup>6</sup> <http://yoursay.sa.gov.au/decisions/citizens-jury-dog-and-cat-management/outcome>

<sup>7</sup> The Liaison Group of UK Animal Welfare Advisory Bodies (2010) *Animal welfare surveillance*, p.3. <http://webarchive.nationalarchives.gov.uk/20121007104210/http://www.fawc.org.uk/pdf/animal-welfare-surveillance.pdf>

These observations amount to a powerful indictment of governments' ongoing disregard for animal welfare.

A major cause of this entrenched disregard is the lack of any government body with a dedicated remit to represent, measure and promote animal welfare. This means that animal welfare and related public opinion lack any institutionalised representation within government. In these circumstances, the sacrifice of animal welfare and related public concern for narrow commercial interests becomes almost inevitable. The ethical and democratic deficits caused by this biased system provide a stark case study of growing general public disillusion with the political process.

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