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With a family background in Dairy Farming Sharon joined the City of London's Quarantine Section in 1987 based at the Heathrow Animal Reception Centre, specialising in the import of both domestic and exotic species. In 2004 after qualifying in Animal Health and Legal Practices through the Trading Standards Institute she transferred to the City of London's Animal Health & Welfare Services Team contracting expertise to Local Authorities. The responsibilities are wide ranging from licence inspections of a range of premises including zoo's, pets shops and dog breeding kennels to enforcement of a vast range of Animal Health legislation both on farm, during transport and at slaughter.

### **The Animal Welfare Act 2006 – Enforcement of Farmed Animal Welfare by Local Authorities**

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Since the Animal Welfare Act 2006 became law, enforcement of animal welfare, not just on farms, but across many spheres, has become more proactive rather than reactive. I am a great believer that Animal Welfare can be improved by education. This is the education of all people concerned in the keeping, selling, transport or slaughter of livestock.

A local authority officer can target their work via a risk based approach being inelegance led to the keepers where resources are most needed. They will carry out multi-agency work with their partners such as FSA, RPA, Defra, APHA and also NGO's such as the RSPCA and private vets. Through targeted inspections the welfare of animals can be improved and so the food chain secured ensuring food safety with a farm to fork approach. Officers will work with farmers and their vets to try and encourage flock / herd plans to be produced, to ensure there is traceability, fallen stock is disposed of correctly, the animals have a good standard of welfare, not only on farm, but during transport and at slaughter. Local Authority officers will also have responsibility for checking feed hygiene of farm, control of use of veterinary medicines and disease control requirements are met, such as routine TB testing in Bovines.

All keepers of animal and livestock have a duty of care under Section 9 of the Animal welfare Act 2006 – These needs include the following and a person commits an offence if the animal is suffering or likely to suffer if its needs are not met;

1. The need for a suitable environment (place to live)
2. The need to a suitable diet
3. The need to exhibit normal behaviour patterns
4. The need to be housed with or apart from other animals
5. The need to be protected from pain, suffering, injury and disease

In the Animal Welfare Act 2006 there is also an offence of unnecessary suffering under section 4.

Where a local authority officer carries out an inspection and finds problems concerning welfare they can use the resource of issuing a notice under section 10 of the Animal Welfare Act. These notices are time bound and are a good proactive tool to work with a farmer to bring them into compliance.

Under the Welfare of Farmed Animals (England) Regulations 2007 (made under the Animal Welfare Act 2006, a keeper of farmed animals commits an offence if he attends or allows another person to attend farmed animals unless they are acquainted with the welfare code of practice for the species concerned. The welfare codes, published by Defra via the .GOV website give the basic requirements for welfare of the species.

These regulations are also split into schedules laying out general conditions in which farmed livestock should be kept and also species specific schedules with requirements specific to the type of animals kept – For example the keeping of cages laying hens, calves or pigs are covered.

Although there may be instances where the neglect and abuse of farmed animals has resulted in pain, unnecessary suffering injury and disease and the local authority will take a prosecution. With the use proactive education it is hoped that welfare can be improved before the welfare is so compromised there is no other option than to utilise the legal options of seizure and prosecution

**Suzanne Rogers**

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Suzanne is an animal welfare consultant specialising in human behaviour change for animals. She has a background originally in biotechnology journalism, has served as a trustee for a number of charities, worked in WSPA for 7 years running the working equine programmes and is also a practicing equine behaviourist.

**Peter Stevenson**

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Peter is the Chief Policy Officer at Compassion in World Farming. Peter studied economics and law at Trinity College Cambridge. He is a solicitor and has written comprehensive legal analyses of EU legislation on farm animals and of the impact of the WTO rules on animal welfare. Peter is lead author of the recent study by the FAO reviewing animal welfare legislation in the beef, pork and poultry industries.

## **Is the section 9 duty to ensure animals' needs are met being properly respected in the farming sector?**

I was pleased when in 2006 the Animal Welfare Act incorporated most of the Five Freedoms into legislation. I hoped it would enable certain farming practices that appear not to respect the Five Freedoms to be challenged.

Because some farmed species are covered by detailed provisions in the Welfare of Farmed Animals Regulations 2007 that have been made in both England and Wales, there is a tendency to ignore the overarching requirements of section 9 of the Animal Welfare Act when it comes to considering systemic deficiencies in certain farming practices.

Section 9 is headed “Duty of person responsible for animal to ensure welfare”. It provides:

“(1) A person commits an offence if he does not take such steps as are reasonable in all the circumstances to ensure that the needs of an animal for which he is responsible are met to the extent required by good practice.

(2) For the purposes of this Act, an animal’s needs shall be taken to include—

- (a) its need for a suitable environment,
- (b) its need for a suitable diet,
- (c) its need to be able to exhibit normal behaviour patterns,
- (d) any need it has to be housed with, or apart from, other animals, and
- (e) its need to be protected from pain, suffering, injury and disease.”

The 2007 Regulations do not supplant section 9. There is a danger that in focussing on the 2007 Regulations both the enforcement authorities and the farming sector have lost sight of the core requirement of section 9 i.e. that the needs of animals must be met.

I want to look at certain farming practices that arguably are inconsistent with section 9.

### **Use of farrowing crates for sows**

Around 50% of UK sows are placed in farrowing crates a few days before giving birth and remain there until the piglets are weaned at 3-4 weeks of age. These crates are behaviourally and physically restrictive for sows.<sup>i</sup> They are so narrow that the sow cannot turn round.

In natural conditions, a day or two before giving birth, a sow will build a nest of grass, twigs, leaves and branches. In a farrowing crate the sow cannot fulfill her strong instinct to build a nest.

Farmers use these crates to prevent sows crushing their piglets. However, a number of free farrowing systems that give the sow ample space are available and research shows that piglet mortalities in these farrowing systems can as low as, or lower than, in crates.<sup>ii iii</sup>

Once placed in a farrowing crate sows are usually kept there for around 24-31 days (a few days before farrowing and until the piglets are weaned). However, the Farm Animal Welfare Committee (FAWC) has pointed out that it is the first 72 hours of life that are most critical to piglet survival.<sup>iv</sup> In light of this a number of farrowing pens have been developed that enable the sow to be confined at farrowing but then released into the larger pen area around three days after giving birth.<sup>v</sup>

Interestingly, in Austria the debate on farrowing crates was based on a Master's thesis which pointed out that Austria's Animal Welfare Regulation is not in line with its Animal Welfare Act.<sup>vi</sup> The thesis concerned the Act's requirement that the basic needs of animals must be fulfilled which is not the case in crated systems.

In my view the use of farrowing crates after the first 3-4 days post farrowing is arguably inconsistent with section 9 as they are incompatible with sows' "need to be able to exhibit normal behaviour patterns" (section 9(2)(c)) and cause suffering (section 9(2)(e)) and their use cannot be justified in terms of reducing mortality as the main risk of mortality is over after the first 3-4 days.

### **Farmed ducks must have full body access to water**

It is not sufficient for ducks to be able to dip their heads in water; they must have full body access. Many ducks in UK are provided with water facilities that allow them to cover their head with water, but prevent full body access.

Ducks are waterfowl; in natural conditions they spend much time in and around water. Research into the welfare of intensively reared ducks makes clear the importance of access to bathing water.<sup>vii</sup> Pekin ducks have a behavioural need for freely accessible open water.<sup>viii</sup> Being able to enter water fully gives ducks a greater opportunity to perform a wide range of water-related behaviours such as bathing, sieving, dabbling, preening and head dipping. Failure to provide full body access to water is arguably in breach of section 9(2)(c) as the ducks are prevented from performing important normal behaviours.

### **Zero-grazing of dairy cows**

Around 20% of UK dairy cows are zero-grazed i.e. kept indoors all year round and are not let out onto pasture during the grass-growing season.

Access to pasture is important to enable cows to engage in their normal behaviours which the European Food Safety Authority (EFSA) identifies as including:

- exercise which is needed for normal bone and muscle development
- foraging which accounts for a large proportion (up to 80%) of the daily activity of cows kept in a semi-natural situation. EFSA states that "In the absence of an appropriate foraging environment, welfare can be poor".
- investigation and manipulation of their environment. Cows have a natural tendency to explore their environment and they show a fair amount of curiosity.
- appropriate social interactions.<sup>ix</sup>

Cows cannot properly carry out these behaviours when they have no or very limited access to pasture. In light of this, keeping cows with little or no proper access to pasture raises an issue under section 9(2)(c).

Research shows that zero-grazed cows have lower levels of lameness, hoof pathologies, hock lesions, swellings, mastitis, uterine disease and mortality than pasture-based cows.<sup>x xi xii</sup> In light of this, zero-grazing raises an issue under section 9(2)(e) which provides that an animal's needs shall be taken to include "its need to be protected from pain, suffering, injury and disease".

### **Painful leg disorders in broiler chickens**

Today's chickens reach their slaughter weight about twice as quickly as 40 years ago. This change has been achieved by genetic selection for fast growth. The legs fail to keep pace with the rapidly growing body and often are unable to support it properly. As a result many chickens suffer from painful leg disorders. Scientific research has established that leg problems stem to a large extent from the use of fast-growing breeds,<sup>xiii</sup> with infectious agents also being responsible for some serious leg disorders.

A large-scale UK study into leg disorders in broilers published in 2008 found that 27.6% of the chickens had gait scores of 3 or more, i.e. lameness that is likely to be painful. The study concluded that "the primary risk factors associated with impaired locomotion and poor leg health are those specifically associated with rate of growth"<sup>xiv</sup>

In 2016 the European Commission published a report on the impact of genetic selection on the welfare of chickens kept for meat production. This states: "EFSA has pointed out that around 30% of commercial intensively reared broilers presented leg abnormalities. These biomechanical limitations are a likely consequence of the morphological changes such as the rapid growth of breast muscle moving the centre of gravity forwards and the relatively short legs in relation to the birds' bodyweight. That scientific opinion evidenced how the bones of a fast-growing selected strain are more porous and less mineralised than those of a slower-growing control strain. Furthermore, studies showed that slow-growing broilers reared until 56 days had significantly better walking ability than others reared until 42 days of age.

Birds suffering from severe gait abnormalities have difficulties in moving around and are likely to modify their feeding activities, i.e. increasing their time spent lying down due to pain from moving and as a result suffer from higher levels of contact dermatitis."

Keeping flocks in which a substantial proportion of chickens have leg disorders is arguably in breach of section 9(2)(e).

### **Foot pad dermatitis in broilers**

Foot pad dermatitis is painful and the lesions make the birds susceptible to infections. It is caused by wet and dirty litter. It is exacerbated by leg disorders and the very low activity levels of today's fast growing genotypes as these factors result in birds spending prolonged periods in contact with the litter.

Food Standards Agency (FSA) data for 1 August 2016 – 31 January 2017 show many broilers arriving at slaughterhouses with foot pad dermatitis.<sup>xv</sup> In all but one case the FSA categorised the problem as a ‘critical’ non-compliance; the FSA defines these as ones “considered to pose a serious and imminent risk to animal welfare or are ones where avoidable pain distress or suffering has been caused”.

Keeping flocks in which a substantial proportion of chickens have foot pad dermatitis is arguably in breach of section 9(2)(e).

### **Enriched cages for laying hens**

Foraging (ground-pecking and -scratching) is a behavioural need for hens with peat, sand and wood shavings being preferred substrates.<sup>xvi</sup> Dust bathing too is a behavioural need.<sup>xvii</sup> In enriched cages food particles are mainly used as litter material and are provided on scratching mats by an automatic system. The mats are often made of artificial turf.

The litter provided in enriched cages is generally too sparse (e.g. the layer of litter is too thin) and the space available too limited to enable hens to properly fulfil their need to dust-bathe.<sup>xviii</sup> The duration of dust-bathing bouts in enriched cages is shorter than reported under natural conditions.<sup>xix</sup> Dust baths in cages are frequently interrupted and terminated by disturbing influences such as pecking by other hens. Sham dust-bathing in enriched cages often takes place on the wire mesh floor despite the provision of a dust-bath area which suggests that the dust-bathing facility is unsatisfactory.<sup>xx</sup> Research indicates that “dust bathing in cages will never be optimal”<sup>xxi</sup> and that normal dust-bathing behaviour is “highly restricted” in enriched cages.<sup>xxii</sup>

A review of the literature indicates that foraging behaviour is low in enriched cages compared with non-cage systems.<sup>xxiii</sup> It is clear that hens’ need to forage and dust-bathe cannot be properly fulfilled in enriched cages.

Keeping flocks in enriched cages where they cannot properly engage in foraging and dust-bathing behaviour is arguably in breach of section 9(2)(c).

### **Developing understanding as to what is entailed in animals’ ‘needs’**

Section 9 should be interpreted in line with the developing understanding of animals’ needs. FAWC has said that all farm animals should have ‘a life worth living’ and a growing number should have ‘a good life’.<sup>xxiv</sup>

A recent paper by the scientist David Mellor is entitled “Updating Animal Welfare Thinking: Moving beyond the “Five Freedoms” towards “A Life Worth Living”. He stresses that it is necessary not only to minimise negative experiences but also “to provide the animals with opportunities to have positive experiences”.<sup>xxv</sup> Such experiences can arise “when animals are kept with congenial others in spacious, stimulus-rich and safe environments which provide opportunities for them to engage in behaviours they find rewarding. These behaviours may include environment-focused exploration and food acquisition activities as well as animal-to-animal interactive activities, all of which can generate various forms of comfort, pleasure, interest, confidence and a sense of control.”

A new report on animal consciousness has been prepared for the European Food Safety Authority by French scientists.<sup>xxvi</sup> It states that studies “clearly support the hypothesis that domestic livestock species are capable of complex conscious processing”. It also states that “studies now bring ample support to the hypothesis that animals do experience a wide range of emotions, including fear, anger, rage, despair, boredom, disgust, and happiness that might be consciously experienced”.

Remarkably it stresses that “Taking animal consciousness into consideration questions many common practices involving animals in farming ...”.

### **Farming of rabbits in cages**

To the best of my knowledge there is no farming of rabbits in cages in the UK. However, there is some interest in developing this area. Recently a planning application for a caged rabbit farm was turned down though not on welfare grounds.

Farming rabbits in cages is a big industry in France, Italy and Spain. In my view, it would be unlawful in the UK under section 9 of the Act as cages cannot fulfil a number of rabbits’ core behaviours and needs. Moreover, cages lead to unnecessary suffering, pain and injury.

Rabbits need sufficient space to hop, run, crawl and jump.<sup>xxvii xxviii</sup> These behaviours are not possible in a cage. Natural positive social interactions (playing, grooming, lying together) are important for rabbits.<sup>xxix</sup> The space available in cages does not allow for such behaviours. Rabbits need varied, stimulating surroundings to keep occupied. Restricting natural behaviours leads to frustration, stress and stereotypies such as bar biting and over grooming.<sup>xxx</sup>

It is clear from the above that the ability to express most of rabbits’ species specific behaviours is prevented in cages. Accordingly, section 9(2)(c) of the 2006 Act would be breached as the animals are not able to “exhibit normal behaviour patterns”.

Insufficient exercise through a lack of space in rabbit cages leads to weak bones and skeletal abnormalities.<sup>xxxi xxxii</sup> The wire flooring commonly used in cages can lead to feet and hock injuries. Rearing rabbits in cages raises issues under section 9(2)(e) as reasonable steps are not being taken to ensure that the animals’ need to be protected from pain, suffering and injury is being met.

### **Conclusion**

Several farming practices are arguably inconsistent with section 9 in not allowing animals to exhibit normal behaviour patterns and/or in causing pain, suffering, injury or disease. Enforcement bodies and the farming section should take section 9 more seriously in considering the lawfulness and legitimacy of certain farming practices.

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<sup>1</sup> Farm Animal Welfare Committee, 2015. Opinion on Free Farrowing Systems

<sup>1</sup> Report of the Free Farrowing Workshop 2016: pp: 138-250

[https://www.freefarrowing.org/download/downloads/id/43/ffw\\_2016.pdf](https://www.freefarrowing.org/download/downloads/id/43/ffw_2016.pdf)

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**David Bowles**

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As Assistant Director of Public Affairs, David coordinates the RSPCA's political, local government and campaign work in England and Europe. The organisation was the first animal welfare organisation in the world and was set up to investigate and prosecute animal welfare offences

but has no powers nor receives money from the State. IT investigates around 85% of the animal welfare complaints in England and Wales. It receives some 1.2 million calls a year to its cruelty line, investigates 143,000 complaints of which 98% of these succeed in changing the owner's behaviour and needing no further action. David is a Board member of the Association of Cat and Dog Homes and the Canine and Feline Sector Council. David has worked for the RSPCA for 21 years during which time he has been closely involved with campaigns to change the animal welfare legislation such as the Animal Welfare Act and co-wrote *Sold a pup*, one of the few reports to look at the British puppy market.

## **Did the Animal Welfare Act turn out as we predicted?**

### **Introduction**

The RSPCA undertakes around 85% of the enforcement effort on the Animal Welfare Act<sup>1</sup>, arising from its historical establishment in 1824 by MPs to enforce the first animal welfare law in England and Wales. It does this under the right to bring a private prosecution in section 6(1) of the Prosecution of Offences Act 1985. The RSPCA, which follows the Code for Crown Prosecutors, has a 92.5% success rate for prosecutions of defendants convicted as a percentage of all defendants<sup>2</sup>. The RSPCA has no statutory powers and all its enforcement effort under the Act is reactive, arising from the 1.1 million telephone calls it receives from the public annually. From this arise the 149,604 cases it investigated in 2016 and the 84,725 non statutory welfare improvement notices issued under the Act. So the RSPCA is uniquely placed to assess the impact of the Animal Welfare Act in its first decade. The Society was also calling for the replacement of the Protection of Animals Act 1911 for a number of years, not only as it was out of date but crucially as it had no preventative measures incorporated into it - suffering had to occur before any enforcement action could be undertaken. The Animal Welfare Act changed this by adding in preventative measures in S 9 of the Act which required any owner of an animal to meet the animals' five welfare needs and allowing action to occur to prevent suffering.

### **What was the intention of the Animal Welfare Act?**

The Government's intention of updating the animal welfare legislation was to simplify the legislation by including secondary legislation on twelve areas including pet vending, tail docking and greyhound racing, and modernise it by placing prevention at the forefront of the Act. This would be achieved through the introduction of Section 9, the welfare offence and agreeing welfare codes on the most popular pet animals sold and kept. The Government has not met its timetable on the secondary legislation but this is not covered in this paper which will focus on the impact of the Act on preventing suffering.

The RSPCA forecast in 2004 that prosecutions would rise by around 100 in the first two years as the new measures under the Act bedded in, especially the new welfare offence under S9<sup>3</sup>. We also anticipated that the welfare advice and warning notices would have a considerable preventative impact as they were being issued direct to a person who was failing to provide for the needs of the animal under their control. Finally we expected that persistent and deliberate cruelty, usually prosecuted under S 4 of the Act, would be difficult to stop.

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<sup>1</sup> Ministry of Justice 2010-15 PQs 6366-6368 9.7.2015 RSPCA Prosecutions Reports 2010-16

<sup>2</sup> RSPCA 2016 Prosecutions Report

<sup>3</sup> EFRA December 2004. The draft Animal Welfare Bill Vol II HC52-II Ev 31

### What have been the trends in the past ten years?

As Table 1 shows the number of convictions in prosecutions undertaken by the RSPCA rose from 2006-8 by 55% but fell by 64% from 2012-16; over the past 10 years they have fallen by 183 (11%) from a high point in 2012. The number of defendants has fallen by 144 (16%) over the same time period. So the anticipated increase in prosecutions occurred for longer and was more severe than forecast but so was the subsequent reduction that occurred and after ten years prosecution rates are now lower than under the 1911 Act. As enforcement effort remained broadly the same over this decade, it is thought that the recession that started in 2008 may account for the longer and deeper increase in prosecutions than anticipated, and the recent dramatic increase due to the effectiveness of the welfare Codes, agreed in 2009, and the preventative results of improvement notices, which were started in 2009.

**Table 1** RSPCA Prosecution statistics 2006-16 (England and Wales)<sup>4</sup>

	2016	2015	2014	2013	2012	2011	2010	2009	2008 <sup>2</sup>	2007 <sup>2</sup>	2006 <sup>1</sup>
Convictions secured in:											
England	1357	1692	2303	3664	3920	2875	2269	2362	2574	1943	1660
Wales	120	89	116	297	248	239	172	217			
Defendants convicted in:											
England	683	755	982	1292	1461	1257	1022	1065	1222	1016	888
Wales	61	41	47	79	91	84	64	88			
People reported to RSPCA in:											
England	1835	1850	2673	3036	2893	2816	2543	2332	3252	2897	2589
Wales	205	158	245	318	288	220	234	222			

1. Protection of Animals Act 1911
2. A mixture of PAA 1911 and AWA 2006

**Table 2** Number of convictions under the AWA by the RSPCA relating to dogs, cats and horses in England and Wales<sup>4</sup>

	2016	2015	2014	2013	2012	2011	2010	2009	2008
Dogs	858	1061	1,470	2,505	2,568	2,105	1,726	1,808	1,516
Cats	187	346	363	588	635	428	386	341	296
Equines	215	180	367	585	500	230	175	212	55
TOTAL	1260	1,587	2,200	3,678	3,721	2,383	2,287	2,361	1,867
									222 <sup>5</sup>

Has this trend differed according to the species involved? In the four years since 2012, convictions have fallen dramatically for cats, dogs and horses dropping by 67% (dogs), 71% (cats) 57% (equines) (Table 2). However some species differences are apparent. Prosecutions on horse owners are the area where there has been an increase in 2016, convictions rising by 16%. As enforcement effort has remained broadly the same for all species, this could be explained by the overarching horse crisis that the RSPCA has been publicising since 2012<sup>6</sup>, and which has continued into 2016 or could be a sign that the positive education messages delivered for dogs and cats through the improvement and advice notices are not working as well when delivered to horse owners. Further work is needed to establish the cause and then adjust the educational messages.

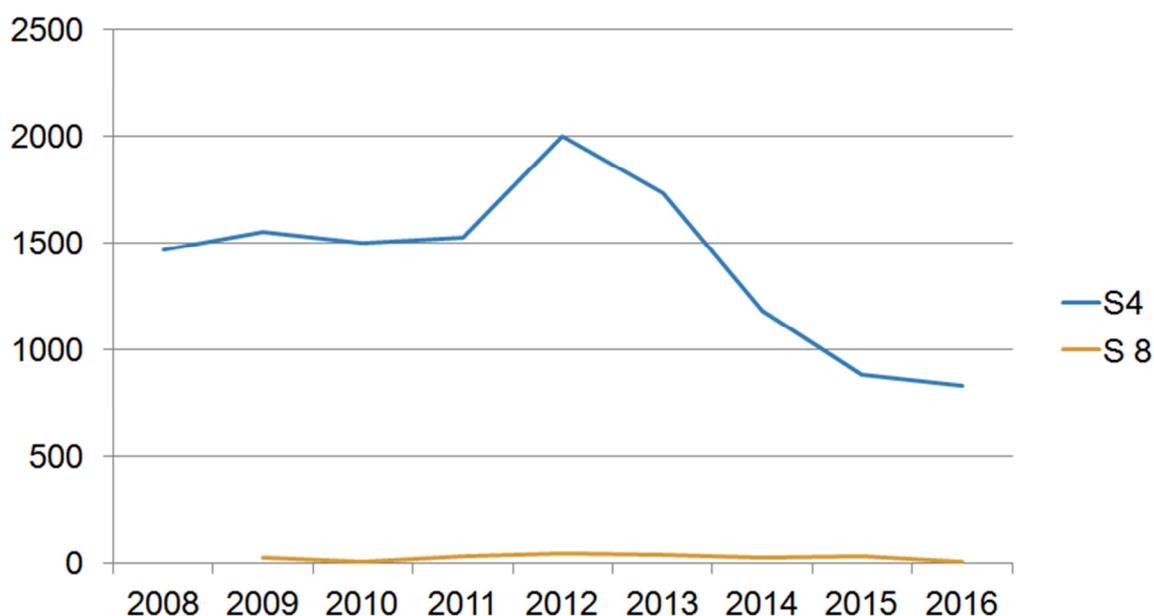
If we take S 4 (cruelty) and S 8 (which deals with fighting) as indicators of trends in deliberate cruelty, there has been a 43% drop in S 4 offences since 2008 but no real trends in S 8 offences (Figure 1).

<sup>4</sup> RSPCA Prosecution Reports 2006-16

<sup>5</sup> Convictions secured under the Protection of Animals Act 1911.

<sup>6</sup> RSPCA et al. 2014 Left on the verge - in the grip of a horse crisis in England and Wales.

Figure 1 Trends in convictions for S 4 and S 8 offences under the Animal Welfare Act 2008-16



Source: RSPCA Prosecutions Reports 2008-16

### What impact has the educational messages had?

When the Act came into force, educational messages to the general public were limited to those put out by the RSPCA and other animal welfare organisations. The RSPCA conducted a successful public information campaign in 2006 which did lift awareness of the Act during the two month campaign but since then educational messages have been essentially limited to information issued to a person not meeting the needs of the animal under their care through improvement notices and the three welfare codes (dogs, cats and horses). So it is not surprising that knowledge of the Act remains low with only 31% of owners surveyed by the PDSA in 2015 familiar with their responsibilities as a pet owner<sup>7</sup>. However does this matter if these owners are looking after their animals well and in accordance with the Act? Education is surely only needed for those that are not aware of the needs of their animals. Two important changes have occurred.

<sup>7</sup> PDSA. 2015 PDSA Animal Wellbeing Report shows that the number of pet owners familiar with the AWA and the five welfare needs surrounding it decreased from 45% in 2011 to just 31% in 2015

Firstly the Codes have had a positive educational benefit. The RSPCA uses the Codes to issue non statutory advice and warning notices. Numbers issued since 2009 when the codes were introduced have remained broadly static at around 70,000 improvement notices, 13,000 advice and 1,000 warning notices being issued annually. These have had 99% success rate at changing owner behaviour and preventing prosecution. Anecdotal evidence from some local authorities that enforce the Act also report high compliance rates with their Improvement Notices. This should not be surprising as issuing of an advice notice is direct to the owner who is not meeting their animals' needs and as this behaviour is invariably due to lack of information being provided previously to the owner when the animals' ownership was changed. Secondly the Government is currently reviewing its pet vending legislation and making it mandatory for anyone selling a pet to provide the correct education advice at time of sale should also have a beneficial educational impact.

However as the figures show for deliberate cruelty there has been a much lower reduction in S 4 prosecutions and no reduction at all in S 8 prosecutions. Again, partly this is to be expected as education will have little impact on someone, such as a dog fighter, who knows they are breaking the law and the welfare impacts of their behaviour. So how can we deal with these individuals?

Sentencing was one area where improvements did not occur under the Animal Welfare Act. Although sentences were doubled from the 1911 Protection of Animals Act, a new government initiative to reduce prison population, Custody Plus, halved the prison sentence. In the past ten years many countries in Europe and increased their sentences for animal cruelty including Northern Ireland which raised the sentence from six months to five years. Scotland is now also reviewing their sentences. Although there are little data on the deterrence impact of higher sentencing, it is clear that for some crimes such as illegal puppy selling and dog fighting which have a high financial incentive, raising prison or financial sentences is likely to be more of a deterrent than the present sentencing framework.

## **Conclusion**

The Animal Welfare Act has been a successful piece of legislation and one of those rare laws where objective measures show it has done what was intended. Although prosecutions rose for longer and more steeply than forecast, possibly due to the recession, prosecutions for animal welfare offences are now at a lower level than they were under the previous antiquated law. This is doubtless due to the educational impact of the warning and advice notices handed out to people not abiding by the law backed up by Government codes on the three animals most commonly kept. The high rate of compliance with these notices shows that it is possible to change public behaviour quickly where education is lacking. However changing behaviour of those that deliberately break the law is more difficult and probably requires increases in the sentencing that can be given under the Act and targeted enforcement work.

**Claire Calder**

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Claire previously worked as European Policy Advisor for Dogs Trust in Brussels, where she coordinated EU lobbying activities and established the EU Dog & Cat Alliance. Prior to this, Claire worked as Policy Officer for Companion Animals at Eurogroup for Animals in Brussels, where she

led lobbying activities on the review of the EU pet travel legislation in 2012. Claire also spent 4 years working as a Senior Scientific Officer at the RSPCA and has an MSc in Applied Animal Behaviour and Animal Welfare from the University of Edinburgh.

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Maisie is the Campaign Director and co-founder of Crustacean Compassion. She has previously worked at World Animal Protection, where she successfully co-coordinated the EU Supporting Better Dairy campaign in coalition with Ben & Jerry's ice-cream and Compassion in World Farming, for whom she is also a school speaker. She is currently a Sociology PhD candidate at the University of Manchester, investigating socio-cultural understandings of animal subjectivity amongst animal behaviour professionals from divergent disciplines.

## **The future of the Animal Welfare Act 2006 (England and Wales) – time for Crustacean Compassion?**

### **Background**

The concept of welfare considerations for decapod crustaceans is not new. In 1897, the Calcutta High Court, then under colonial rule, saw the case of *Tulsi Bewah vs Sweeney*<sup>8</sup>, where the defendant was charged with “having in her possession for sale certain crabs, suffering pain by reason of mutilation, on the 20<sup>th</sup> April 1897 at the New Market”. The prosecution showed evidence that she had two hundred live crabs for sale, all with their legs pulled off. The case could only be brought to court due to the existence of the British Prevention of Cruelty to Animals Act, and was successfully prosecuted.

In 2017, legislation is in place to protect decapod crustaceans in several countries including New Zealand<sup>9</sup>, Norway<sup>10</sup>, Switzerland<sup>11</sup>, and some Australian territories. In fact very recently an Australian seafood company was convicted of animal cruelty for dismembering lobsters with a band saw, without adequately stunning or killing them first<sup>12</sup>. However, crustaceans are not yet protected under the Animal Welfare Act 2006; or under its devolved UK equivalents.

The Animal Welfare Act 2006 (AWA) covers issues such as preventing harm to animals, promoting welfare, and the power of local authorities to prosecute offences. When considering welfare, the AWA stipulates that a person commits an offense if they do not take reasonable steps in all circumstances to meet the needs of an animal for which they are responsible, to the extent required by good practice. This includes its need for a suitable environment; its need for a suitable diet; its need to be able to exhibit normal behaviour patterns; any need it has to be housed with, or apart from, other animals; and its need to be protected from pain, suffering, injury and disease. So why are crustaceans not included, when it would appear that such considerations would also be relevant for them? Well at present, decapod crustaceans are not classed as ‘animals’ within the AWA.

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<sup>8</sup> <https://indiankanoon.org/doc/984694/>

<sup>9</sup> Animal Welfare Act (1999), <http://www.legislation.govt.nz/act/public/1999/0142/latest/DLM49664.html>

<sup>10</sup> Norwegian Animal Welfare Act (2011), <https://www.animallaw.info/statute/norway-cruelty-norwegian-animal-welfare-act-2010#s2>,

<sup>11</sup> Animal Welfare Ordinance (2008), <https://www.blv.admin.ch/blv/en/home.html>

<sup>12</sup> <https://www.rspcansw.org.au/images/mediarelease/2017/February/150217.pdf>

At the time when the AWA was drafted it was debated whether decapods should be included within the legislation. The government decided that the evidence that they could feel pain was not sufficient at that time, and so instead inserted a clause into the AWA which would allow for their inclusion at a later date if sufficient evidence should become available<sup>13</sup>. Even at that time, the Select Committee Chair criticised the minister for insufficiently interrogating the science when the decision was made to exclude them<sup>14</sup>.

Whilst it can never be proved with absolute certainty whether any animal feels pain, we argue that there is now sufficient evidence for decapod crustaceans to be given the benefit of the doubt.

### **Evidence**

In 2005, the European Food Safety Authority released a report on ‘... the biology and welfare of animals used for experimental and other scientific purposes’<sup>15</sup>, just after the AWA was passed. The team reviewed the evidence of the ability of decapods to feel pain; looking at complexity of behaviour, awareness, learning ability and pain systems, and decisively classed all decapod crustaceans from lobsters to prawns as Category 1 animals<sup>16</sup>, capable of feeling pain.

Between 2009 and 2016, a body of evidence was released from a team at The University of Belfast, where they were looking to distinguish between a nociceptive reflex response and an actual experience of pain in decapods<sup>17 18 19</sup>. These studies showed that crustaceans appeared to lay down memories of a painful stimulus and to weigh up the risks and benefits of avoiding it. The team concluded, “These data, and those of other recent experiments, are consistent with key criteria for pain experience and are broadly similar to those from vertebrate studies”.

In Lynne Sneddon’s 2015 paper on ‘Criteria for pain in aquatic animals’<sup>20</sup>, she shows that decapod crustaceans fulfil 12 out of 14 criteria for pain experience, with research not yet having been conducted on the 2 missing criteria.

### **The future**

Despite widespread media coverage of this research showing that decapod crustaceans are highly likely to experience pain, our recently submitted Freedom of Information Request revealed that no scientific assessment has been commissioned or conducted by DEFRA to decide whether the AWA should be updated since it was introduced. This means that at

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<sup>13</sup> Animal Welfare Act 2006 (England and Wales) section 1, <http://www.legislation.gov.uk/ukpga/2006/45/section/1>

<sup>14</sup> <https://www.publications.parliament.uk/pa/cm200506/cmselect/cmenvfru/683/5111505.htm>

<sup>15</sup> <http://www.efsa.europa.eu/en/efsajournal/pub/292>

<sup>16</sup> Category 1 - “The scientific evidence clearly indicates, either directly or by analogy with animals in the same taxonomic groups, that animals in those groups are able to experience pain and distress”.

<sup>17</sup> Elwood, R., and Magee, B., (2013) "Shock avoidance by discrimination learning in the shore crab (*Carcinus maenas*) is consistent with a key criterion for pain", *Journal of Experimental Biology*, vol 216: 353-358

<sup>18</sup> Appel, M & Elwood, R (2009), 'Motivational trade-offs and potential pain experience in hermit crabs' *Applied Animal Behaviour Science*, vol 119, no. 1-2, pp. 120-124

<sup>19</sup> Magee, B., & Elwood, R. W. (2016). Trade-offs between predator avoidance and electric shock avoidance in hermit crabs demonstrate a non-reflexive response to noxious stimuli consistent with prediction of pain. *Behavioural Processes*, 130, 31-35

<sup>20</sup> Sneddon, L (2015), ‘Pain in aquatic animals’ *The Journal of Experimental Biology* (2015) vol 218, pg 967-976

present, decapod crustaceans can still be stored, handled and slaughtered in any way, without legal recourse. We argue that this needs to change; DEFRA needs to take action, and decapod crustaceans should be protected under the Animal Welfare Act 2006.

*Learn more about Crustacean Compassion on their website - <https://www.crustaceancompassion.org.uk/>. Further information on the research studies relating to the ability of decapod crustaceans to feel pain can also be found there.*