

REVIEW OF THE HUMAN RIGHTS ACT MARCH 2021.

I am Pat Wallwork, a former law graduate and lecturer. My interest in Human Rights was rekindled by the notion of private prosecution, and this very brief response will concern itself with that aspect, due to multiple violations of the HRA where the prosecutor is not the victim. The relevance to this review is that Human Rights violations are occurring from the issue of a warrant, or entry without warrant, to the investigation, through to police misconduct, and the Court itself failing to recognise and give credence to the circumstances that caused the violations.

With a private prosecution, there is no obligation on the prosecutor to use the Crown Prosecution Service codes for prosecutors. It is therefore an area of law open to abuse, that has not received judicial attention at the level that this review is focused upon.

Therefore widespread breaches of the Human Rights Act occur that go completely unnoticed, where people hitherto known to be of good character become tarred with criminal convictions, that can have a more devastating consequence upon their lives than the mere fact of lawful punishment, employment prospects are the prime example.

I do not believe any review of the efficiency and application of the Human Rights Act can be comprehensive unless it considers the lacuna in the law, that breaches of human rights are simply not being heard, or given credence, even if a defence solicitor actually brings the misfeasance to the attention of the court.

Introduction to the topic.

As a matter of Human Rights law, section 6(3)(b) applies.

“(3) In this section “public authority” includes—

(a) a court or tribunal, and

(b) any person certain of whose functions are functions of a public nature”.

Any “person” can initiate a prosecution by virtue of the Prosecution of Offences Act 1985 section 6. It is only relatively recently that the Victims Code enacted the wording of the “victim” being a “natural person”, although it has been in EU law since at least 2001. The Victims code excludes businesses and charities from the

application of the services the Code offers to victims, natural persons, without expressly excluding them from participating in legal action. This is not in dispute, where a business is the victim of a **civil** wrong, that it is lawfully allowed a means of redress. However, this submission concerns the fact of so called “private prosecutions”, where the prosecutor is not the victim.

That is, the prosecutor is performing a public function, under the HRA section 6(3)(b), with no express statutory empowerment for that function.

There are two anomalies that persist, both involving a Charity. The first is that, Mr. Justice Eady, in *North London Central Mosque Trust (A Charity) v Policy Exchange and Another*: QBD 26 Nov 2009, declared that a charity per se has no legal identity as a person, the second is that organisations are springing up following the RSPCA example, as prosecutors of Animal Welfare Act 2006 offences, when the victim is not a person. The ‘victim’ is, in law, property, if it is an animal that is domesticated and owned, as opposed to wild animals. Animal Protections Services emerged in late 2019, was registered as a charity, with its published object being the prosecution of offences. This is a worrying development, as already the police are “assisting” a brand new charity to obtain evidence of offences, to which they have no lawful access, and where the police hand over to a new organisation the follow-up evidence obtained, by to entry onto property, used by private persons with no recognised authority, through to eventual prosecution.

A civilised society has in place democratic, accountable and fair processes for investigating and prosecuting crime. This evolves to match modern expectations of fairness and accountability, the creation of the CPS is an example where independent oversight of police-gathered evidence becomes the second tier of scrutiny to prevent miscarriages of justice. The anachronism that still allows ‘any person to prosecute any offence known to statute’ is a loophole that needs to be plugged.

A ‘legal’ person, as in large business enterprises has huge resources, but as the recent post office scandal showed, by the submissions to the justice committee, businesses are unscrupulous, and use prosecution as a highly effective cost free way of obtaining a remedy, where civil action would be appropriate.

As a matter of principle, where the victim of a crime is identified as a natural person, its use would be so rare that it gives the victim a route to justice where the state fails to act, so a modification either by a small change in the law, or a high level judicial decision, could redress the balance, the simple addition of the phrase “natural person who is a victim” to replace the general word ‘ person’ , in the 1985 Act section 6, would suffice to preserve the path to justice for victims, where the CPS fail to prosecute the case.

The lack of accountability of the private prosecutor creates the first opportunity for breaches of the Human Rights Act to occur, as if prosecution by charities is considered to be lawful, it should surely be restricted to cases where it, the charity, is the victim of the alleged offence. However serious offences are still best left to the CPS, for the avoidance of the issues discussed later. That the victim, having to be a “natural person”, it surely cannot allow an organisation registered as a charity, apparently not having a legal identity as it is comprised of trustees, to perform a public function - that is also not any part of the restricted list of charitable purposes in the Charities Act 2011, section 3. Prosecution fails on so many levels by a Charity, the public benefit requirement being the converse in relation to it. It damages the individuals concerned, by an organisation using charitable donations for non charitable purposes.

The usual cases where public functions are performed by private organisations, has tended to be services contracted out by statutory bodies, for example the provision of accommodation for the elderly. The interpretation of contractual arrangements has to be examined in each individual circumstance, as to whether the private provider of services was performing a public function, for accountability under the HRA section 6(1). The law is less certain when it does not involve contractually created functional public authorities.

This is entirely different to an organisation having **no** contractual association with the government or local authorities. Organisations that act of their own volition, which in the case of the RSPCA, and now APS, choose to collect charitable donations ‘for animal welfare’, that are spend on public functions of the state.

The problems occurring by private prosecutions in relation to Human Rights starts with only public authorities being subject to accountability under the Act section 6(1). Thus it is important for the courts to take on board, that where the prosecutor is not the victim, then his function is that of a public authority under section 6(3)(b).

The modus operandi of charities investigating animal crimes, RSPCA as prime example.

Background.

The Animal Welfare Act 2006 section 51, gives inspectors appointed under it the power to apply for warrants and to enter premises, to inspect for licence compliance, farmed animals, animals in distress where no offences are suspected, and for suspected offences by virtue of section 23. The police have similar powers of entry under warrant, except for licensing sections, and for example section 28, farmed animals, which is reserved to section 51 inspectors. These Inspectors are appointed by local authorities under section 30, or national authorities, which included DEFRA.

The job title of RSPCA basic grade employees is just that, historic job title inspector, not to be confused for one with designated legal powers and accountability under the AWA.

The RSPCA is requesting lawful inspector status. This is problematic, as they cannot serve two masters, and historically will act as they have been conditioned to do. The crucial point is that they are not trained for the level of responsibility that attaches to DEFRA and Local Authority Inspectors, many of whom are fully qualified veterinary surgeons.

Publicity amounting to around £20 million annually ensures that the average member of the public making an allegation of cruelty or neglect will phone the RSPCA first. Where the RSPCA asked to be allowed to join in the Scopelight case at the Court of Appeal in 2009, Lord Levinson mentioned that they claimed to have required police assistance in 20 of their last 100 cases. The actual case point concerned access to police seized evidence. There was no counter argument presented in relation to the

RSPCA. This case tells us that, if this was representative, with an average of between 700 and 1,000 individuals prosecuted by them each year, then between **560 and 800 individuals were prosecuted by an organisation with dubious authority without even an application for a warrant, every single year that the situation is not remedied**, The RSPCA cannot request a warrant.

It is strange indeed that where the police can be held to account for misconduct in public office by virtue of the Criminal Justice and Courts Act 2015 section 26, a section carrying a maximum of 14 years prison sentence, the RSPCA can act with impunity where a householder has no knowledge of their lack of authority to enter premises. Under the Animal Welfare Act 2006, the police cannot enter a dwelling without a warrant.

The RSPCA have committed the first breach of the HRA, Article 8.

ARTICLE 8 Right to respect for private and family life

1 Everyone has the right to respect for his private and family life, his home and his correspondence.

*2 **There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law** and is **necessary** in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

RSPCA entry without being named on a warrant being executed by the police is 'not in accordance with the law'.

RSPCA entry is not 'necessary' as the police and inspectors appointed under section 51, have the power to apply for warrant of entry.

The RSPCA are acting as a public authority under the HRA section 6(3)(b).

They are not empowered to enter private homes, or any other premises, to investigate or search for offences. However, the publicity machine has created a false public perception of power and authority. Note that the Animal Welfare Act

section 52 has to be satisfied for the grant of a warrant. It requires that one of four different conditions is satisfied.

The RSPCA circumvent a protection to its citizens designed to prevent breaches of P1 A1 from occurring, as conditions are provided by law, that permits lawful access for particular purposes identified in the statutes that created them. These are invariable only available to a statutory authority.

The second breach is Protocol 1 Article 1.

Protection of property

*Every natural or legal person is entitled to the peaceful enjoyment of his possessions. **No one shall be deprived of his possessions** except in the public interest and **subject to the conditions provided for by law** and by the general principles of international law.*

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

RSPCA conduct, even with police presence, deprives a person of their possessions, prior to a trial, determination of guilt, and an Order of the Court, to deprive the owner of his animals, under the AWA section 33. The RSPCA ask the police to seize animals, where there does not appear to be a power to do so, see later Schedule 2 section 10. See also the police complaint response “on behalf of”, where this has never been lawful for any police force to use this power, except specifically allowed by statute for another statutory, not ‘functional’ public authority.

The RSPCA, even when unaccompanied by the police, invariably remove animals owned by the person they eventually prosecute, on the day that they entered private premises by guile, and without any warrant authority. That equates to deprivation not in accordance with the law. There are already highly publicised cases, where an aggrieved owner wanted justice, and recognition that what the RSPCA had done was legally and morally wrong. “Claude the Cat” owner appeared on the Victoria Derbyshire TV program aired around 2016.

The third breach is Article 6.

ARTICLE 6 Right to a fair trial

1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3 Everyone charged with a criminal offence has the following minimum rights:

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
- (b) to have adequate time and facilities for the preparation of his defence;*
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.*

RSPCA “inspectors” are issued with a manual, basically informing them only to ask for police help with gaining entry where they have not been able to “persuade” the occupier to permit entry. Towards the end of that manual, the advice is to obtain the ‘suspects’ statement as soon as possible. This is usually on site following removal of the owners animals, when the owner is in shock and has a range of emotions

swirling around. Unlike where the police investigate crime, they, the police are obliged to interview the suspect at a police station, with a recorded interview, the suspect obtaining a copy, and with the benefit of his own solicitor or a free duty solicitor present to advise him. He also has the right to give no comment answers.

A copy of that manual, which the RSPCA try to guard as a secret document, is available if the Review need verification of the methods advocated to the RSPCA inspectors to obtain evidence, while paying lip service to the police when they are required.

Subsequent events to RSPCA unlawful entry search and seizure, that has already created breaches to three of the Articles.

It can be at the end of the six month time limit for prosecution that the defendant receives the prosecution pack by post, a week before the hearing. It is the first time he sees the evidence against him, including his own confused statement. As his animals were removed and he was not given the whereabouts, he has not got an independent veterinary opinion. He does not have sufficient time to prepare for his defence. He does not know whether the RSPCA have held back evidence that would exonerate him, as although the Criminal Procedures and Investigations Act 1996 places duties on statutory public authorities engaged in this sphere, there is no safeguard to require it, when a member of the public takes on this role leading to a private prosecution.

A final nail in coffin of the fairness of the trial is that it, the trial, where the defendant can put forward his own case, does not take place.

Overwhelmed and feeling hopeless the defendant is encouraged to enter an early guilty plea, the promise of a reduction in sentence and not being photographed outside the courthouse when the local news will be publishing the story, incentivises those who are sure that they are not guilty, to plead guilty to get it over with.

The early guilty plea makes it virtually impossible to appeal later, if the defendant realises his conviction is unsafe.

The 20% of RSPCA cases relying on police attendance?

Ironically these cases cause even more abuses of process. There are memoranda of understanding between police forces and the RSPCA. (Copies are available.) This is an invasive procedure, as members of the public, the RSPCA employees, are accessing the PNC records of individuals, to the usual situation where the police, who are applying for a warrant, without fact checking the allegations. **However in all the cases I have researched, the police kept no records whatsoever of the entry search or seizure, violating their lawful code of practice** enacted under the power granted in the police and Criminal Evidence Act 1984.

By using one recent case as a fairly comprehensive example of the breaches of the Human Rights Act that occur, on virtually every occasion can be demonstrated, where the RSPCA are involved in a prosecution.

This one is particularly important, as it involved a person with well document mental health issues, who applied to the court to State a Case on the breaches that took place, and was turned down by the District Judge at the magistrates court, as the issues he considered to be “academic”!.

The defendant then applied to the High Court for Judicial Review of that Magistrates Court Decision, and was once again turned down without any hearing, as “totally without merit”.

This defendant was unable to attend court for the trial, due to the persistence and exacerbation of the mental health condition, therefore an appeal from the Magistrates court to the Crown Court was not a viable option.

The appeal would have been on points of law, based upon breaches of the Human Rights Act.

The effect of this is that two courts breached the defendants right to an appeal, as guaranteed by the EU convention, Protocol 7 Article 2.

This following extract is taken directly from a compliant made to the police regarding the handling of this particular case. The response is not comprehensive, and failed to address the fact that the police ignored a request to them in writing for the return of seven horses belonging to the defendant, prior to any trial, as the owner had secured

for them good homes, and where the charge was so minor that they should never have been removed. There is more on seizure of live animals later.

This was the response signed off by a PhD qualified Detective Chief Inspector. The defendants name has been changed to ABC to avoid further identification, and the named police inspector to his initials.

What it demonstrates is a rare documented example of the police failing to take any responsibility for assisting members of the public, employed by a charity, the RSPCA, to authorise killing of an owner's animals, and removal of the rest, with nobody being held accountable.

- It is not a requirement that someone be allowed to witness the search. (1)
- **There was no receipt given to ABC listing the documentation removed by either the police or the RSPCA**. (2)
- **This was a RSPCA led investigation and it would be the RSPCA who would make ABC aware of the actions taken and property removed**. (3)
- The Police should not have condoned a single veterinary opinion and should have sought both a second opinion and diagnostic tests before allowing ABC's horses to be euthanised. (4)
- The Police saw no reason to seek a second opinion, if a second opinion was wanted by ABC this should have been made to the RSPCA. (5)
- The police have allowed the RSPCA to kill six of the horses on site, a fact not known to ABC until she was allowed to leave confinement and saw the carcasses. (6)

- This was a joint operation and **the Police were not involved in the decision to euthanise the horses. This was a medical decision made by vets together with RSPCA officers.** (7)

- ABC states that there was no lawful basis for the seizure of her horses. **She states that the police have failed to comply with the law, that we had no intention of investigating any offences and have failed to safeguard this property.** Insp P.H refused to accept that it was the responsibility of Lancashire Constabulary. (8)

- **The Police saw a lawful basis to seize the horses on behalf of the RSPCA.** This case has already been through the courts and the Police were seen to have acted entirely properly. (9)

Notes –

- (1) **PACE Code B section 6.11**, “A friend, neighbour or other person must be allowed to witness the search if the occupier wishes....”

(2) & (3) Code B (d) Rights of owners etc

7.16 If property is retained, the person who had custody or control of it immediately before seizure must, on request, be provided with a list or description of the property within a reasonable time.

The police remain entirely responsible in law. Refer to LJ Newey, in the 2016 bankruptcy case of Lionel Tongue, where he goes through the law of bailment, concluding, as did former HM Chief Inspector of the CPS, Stephen Wooler, in 2014, that the RSPCA are mere bailees of the police as a matter of law.

(4) & (5)

(6) & (7)

RCVS Codes of professional conduct section 8, require a second veterinary opinion for euthanasia where the owner is not present or does not consent. The second vet must have had no previous dealings with the animal to give an independent opinion.

Animal Welfare Act section 18, Powers in relation to animals in distress

- (1) If an **inspector or a constable** reasonably believes that a protected animal is suffering, **he may take, or arrange for the taking of**, such steps as appear to him to be **immediately necessary** to alleviate the animal's suffering.
- (3) If a veterinary surgeon certifies that the condition of a protected animal is such that it should in its own interests be destroyed, **an inspector or a constable may—**
- (a) destroy the animal where it is or take it to another place and destroy it there, or
- (b) arrange for the doing of any of the things mentioned in paragraph (a).
- (4) An **inspector or a constable** may act under subsection (3) **without the certificate of a veterinary surgeon** if it appears to him—
- (a) that the condition of the animal is such that there is no reasonable alternative to destroying it, and
- (b) that the need for action is such that it is not reasonably practicable to wait for a veterinary surgeon.

PACE Code B section 6.9 & 6.9A

(d) Conduct of searches

6.9 Premises may be searched only to the extent necessary to achieve the purpose of the search, having regard to the size and nature of whatever is sought.

6.9A **A search may not continue under:**

- **a warrant's authority once all the things specified in that warrant have been found;**
- **any other power once the object of that search has been achieved.**

NB, the Warrants authority was to search for offences issued under the power in the Animal Welfare Act 2006 section 23.

Killing animals is only authorised under section 18, where there is no alternative and the need to alleviate suffering is immediate, and requires a warrant to be issued under the AWA section 19, unless the owner consents.

NB, the police constable or an inspector appointed under section 51 of the Animal Welfare Act 2006 are the persons who must sign off on the killing by issuing a certificate under section 18(11) to the owner. The veterinary surgeon must give full reasons. It is never a decision for the vet, and certainly never a decision for a charity worker.

RCVS rules on certification are comprehensive. The 'certificate' issued was not contemporaneous, as it was dated for two horses killed a few days later as though they had been killed on the day of the other six horses.

It did not give the individual detail required, for each animal, to justify draconian irreversible action of euthanasia.

(8) & (9)

Marcel v Commissioner of Police for the Metropolis 1992 Court of Appeal.

Scopelight Ltd and Others v Chief of Police for Northumbria, 2009

PACE Code B, section 7.11.

These two cases and **Code B** confirm that where the police have been present to seize evidence of a criminal offence, the police must secure that evidence against third party use.

*7.11 The officer in charge of the investigation is responsible for making sure property is properly secured. **Securing involves making sure the property is not examined, copied, imaged or put to any other use** except at the request, or with the consent, of the **applicant or in accordance with the directions of the appropriate judicial authority**. Any request, consent or directions must be recorded in writing and signed by both the initiator and the officer in charge of the investigation.*

(9)

The matter may have been “through the Courts,” but at no point did the defence solicitor, offer any evidence of unlawful conduct. His presence was merely to allow the case to be heard in the absence of a defendant with a substantial mental health impairment. The defendant does not have a subnormal level of intelligence, quite the reverse, if I were qualified to give that opinion, I would liken to Alan Turing, an autistic genius who could not function within the norms of the society he was born into, but showed genius in deciphering codes, that shortened the war by two years.

Note that contrary to the approved “investigation” by the police into the complaint, the answers given show total ignorance of an area of law, under the direction of an Inspector, where there were several weeks’ notice that the raid would go ahead, without any person responsible actually bothering to find out the powers and limitations.

This response from a Detective Chief Inspector is not worthy of his rank. This has been included as I have the and can produce the original, if required, as this particular case has virtually every abuse of the Human Right Act in one package, that I have seen in my research since 2015.

Protocol 1 Article 1.

Unlawful deprivation of property occurred initially by destruction of six horses where the above mentioned **lawful means were not employed**, that is, the owner’s informed consent, a second independent veterinary surgeon, a warrant under the AWA section 19 for that purpose, correct diagnostic tests prior to destruction.

Of the six, four were old retired horses. The RSPCA’s own veterinary surgeon found them to be in good bodily condition, and faecal samples analysed following their destruction showed that there would have been no treatment required for intestinal parasites. Old horses, as with old humans, can be stiffer with age, and the obvious good care in other respects would have been amenable to discussing other options with the owner. **It is highly dubious that euthanasia was ever “necessary”.**

Further unlawful deprivation occurred when the police used powers to “**seize the horses on behalf of the RSPCA**”. Not only is there no power for the police to seize any animals for any other body or person, where there is not specific statutory authority, **but the power to remove animals is not given under a warrant issued under section 23 of the Animal Welfare Act**, where section 53 referring to Schedule 2 –

“53 Powers of entry, inspection and search: supplementary

Schedule 2 (which makes supplementary provision in relation to powers of entry, inspection and search) has effect.”

Schedule 2 is very detailed on the powers granted to police officers and Inspectors, considerably extending the usual battery of tests that can be done, under PACE, but in no part gives specific authorisation for removal of a living animal.

It is logical to assume, that if removal of living animals had been intended by the legislators, it would have merited a line within section 10 of Schedule 2.

Functions in connection with inspection and search

10 (1) *This paragraph applies to—*

(a) **a power of inspection** conferred by section 26(1), 27(1), 28(1) or 29(1),
and

(b) **a power of search conferred by a warrant under section 23(1).**

(2) *A person exercising a power to which this paragraph applies may—*

(a) **inspect an animal** found on the premises;

(b) **inspect any other thing** found on the premises, including a document or record (in whatever form it is held);

(c) **carry out a measurement or test** (including a measurement or test of an animal found on the premises);

(d) **take a sample (including a sample from an animal** found on the premises or from any substance on the premises which appears to be intended for use as food for such an animal);

(e) **mark an animal found** on the premises for identification purposes;

(f) **remove a carcass found** on the premises for the purpose of carrying out a post-mortem examination on it;

(g) **take copies of a document or record** found on the premises (in whatever form it is held);

(h) **require information stored in an electronic** form and accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form;

(i) **take a photograph** of anything on the premises;

(j) seize and detain or remove anything which the person exercising the power reasonably **believes to be evidence of any non-compliance**, or of the commission of any offence, relevant to the purpose for which the inspection or search is made.

(3) A person taken onto premises under paragraph 5 may exercise any power conferred by sub-paragraph (2) **if he is in the company, and under the supervision, of a person exercising a power to which this paragraph applies.**

It should be noted that most of Schedule 2 section 10 refers to is the normal duties of an Inspector, one appointed under the AWA section 51, with police powers being more restricted, apart from animal welfare offences and dog fighting. Incidentally animal ie **dog fighting section 8, is the only section that mentions that the animals can be seized by the police under section 22.**

It is therefore reasonable to conclude that -

- (a) Animals removed under the power in section 18 are removed for their own safety from a situation immediately likely to impact severely on the animals well being, where there is no suggestion of any offence being committed.
- (b) That only inspectors under the act have police equivalent powers, where interagency cooperation would not breach any human rights, where the action taken is **reasonable**.
- (c) **That the police remain bound by all their own codes of practice** enacted under the provisions in the Police and Criminal Evidence Act 1984, where failing to abide by the codes leads to breaching the Articles.

- (d) That the additional powers to inspect, photograph, mark for identification, take samples and measurements, **are intended to leave animals on the premises, except where circumstances envisaged under section 18 also apply, and for which the appropriate warrant has been issued.**
- (e) That where animals are removed, where there is not imminent danger to life, or when a search warrant issued only for offences under section 23 has been issued, that this is an **unlawful deprivation within the meaning of the HRA Protocol 1 Article 1.**

SUMMARY

The point about including one particular case is that this was not an isolated incident. Literally every RSPCA attendance with prosecution in mind, with or without the police involves a P1 A1 violation.

The four out of five cases without police attendance with a warrant, involves an Article 8 violation.

In the majority of all cases, the trial cannot be fair, under Article 6.

NOTE, all the circumstances where the police can enter lawfully without a warrant are given in the Police and Criminal Evidence Act 1984 section 17. Entry for search and seizure for offences is only given in the Animal Welfare Act and requires warrant applications.

OTHER causes of violations – the Judiciary's role.

From the figures given in the RSPCA's own annual reports, the overwhelming 'success' rate from prosecution derives from the early guilty plea, where evidence is not tested, and the method of obtaining it absent, burying any breaches of the defendants Human Rights in the process.

Part of the problem with evidence wrongfully obtained, that caused breaches in the defendants human rights, is that the power to exclude such evidence is discretionary and only one case to my knowledge has been successful. This was the Colchester Magistrates case, where the RSPCA appealed against the District Judge's decision to exclude all RSPCA evidence. The RSPCA had asked the police to include them on a warrant under PACE section 16, but the warrant issued only granted powers of

entry to the Environmental agents who were to investigate potential nuisance from a dog breeding establishment. The RSPCA nevertheless entered the premises alongside those lawfully enabled by virtue of the warrant. This was one case from literally thousands, where the discretion under PACE section 78 was used, and approved as within the discretion, by the High Court.

Contrast this to another case, which was defended on facts, but where the court was requested to use section 78 to exclude unlawfully obtained evidence, and refused.

Outline. A sheep shearer attended to a shear a sheep as an emergency to expedite treatment for flystrike. A dispute arose and the shearer called the RSPCA. In the event, the defendants expert witness, reviewing the evidence, agreed that the sheep did not require euthanasia, as it had been treated correctly and showed no signs of toxemia.

- (i) The RSPCA employee trespassed over a locked 7 ft tall security gate to gain access having waited for the owner to leave the premises.
- (ii) He spent an hour photographing and removing maggots in a sealed up tarpaulin from the newly shorn sheep, placing them on top of the sheep who was in a shelter eating – ie no signs of distress, pain, dying, as it would have been off its food.
- (iii) He then called the police who refused to appear unless a vet was present.
- (iv) The vet examined the sheep and her clinical findings were within normal limits. By now another keyholder had been found to unlock the gates. The RSPCA had been given the owners phone number and later lied to the police that it would not connect.
- (v) The police eventually arrived four hours after the RSPCA, and two hours after the vet, where the RSPCA requested to police to authorise euthanasia, despite clear evidence from (withheld) photographs that treatment had been given.
- (vi) Following unnecessary euthanasia, the RSPCA asked to police to seize the carcass, as he was investigating an offence of animal cruelty.

- (vii) The police 'enacted' PACE section 19(1), to seize the carcass, the vet removed it, and it had a necropsy (post mortem) performed on it with the RSPCA named as the owner.
- (viii) Both the police and RSPCA failed to give any information to the owner, until after the carcass itself had been destroyed, then failed to include the report in the evidence bundle served on the defendant, together with an absence of photographs proving treatment with an anti bacterial product.

I have, as with other cases, all the relevant witness statements, and attended the trial at the Crown Court, where a BBC journalist was taking notes for possible inclusion in a Panorama TV program on RSPCA abuses.

THIS POINT RELATES DIRECTLY TO THE REVIEW QUESTIONS ON THE HUMAN RIGHTS ACT SECTIONS 3 AND 4.

The defendant was charged was section 4 of the Animal Welfare Act, which states,

"4 Unnecessary suffering

(1) A person commits an offence if—

- (a) **an act of his, or a failure of his to act, causes an animal to suffer,***
- (b) **he knew, or ought reasonably to have known, that the act, or failure to act, would have that effect or be likely to do so,***
- (c) **the animal is a protected animal, and***
- (d) **the suffering is unnecessary."***

(2) A person commits an offence if—

- (a) **he is responsible for an animal,***
- (b) **an act, or failure to act, of another person causes the animal to suffer,***
- (c) **he permitted that to happen or failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all the circumstances to prevent that happening, and***
- (d) **the suffering is unnecessary.***

The elements of the offence are – 4 (1)

An act or omission

Causes (suffer- undefined)

Knew or

Ought reasonably to have known.

4(2) –

Owner always responsible (section 3)

Another person's act or omission

Causes (suffer –undefined)

It is arguable that section 4 can be construed as an offence of strict liability, **as it omits completely any element of mens rea, intending the consequences of ones actions, or being reckless as to consequences.** Instead it substitutes what a 'reasonable man' should have done, for the foreseeability of consequences.

The owner 'could' have argued that it was **not foreseeable that temporary experienced care givers would have missed** the first or second day of fly strike, as the sheep has to be sufficiently irritated by flesh eating maggots as they develop and migrate from the sheep after five days, before it shows visible signs of discomfort. 75% of British sheep flocks suffer some fly strike, despite the very cheap and cost effective best preventative measures taken by farmers, to minimise economic loss. Instead, the defendant relied on the Code of practice for sheep, no 32, effective treatment given where there are external parasites

Contrary to the requirement in the Rules governing the RSPCA, any prosecution brought in its name, should be approved by one of the 12 trustees. This does not happen, as evidenced by the EFRA 2016 report, chaired by Neil Parish, a long serving member of that committee, and astute in relation to RSPCA practices and procedures.

The RSPCA are apt to charge all offences under section 4, even those that are clearly 'welfare' under the less serious offence under section 9. They do not have to

prove that the element of malice was present, and yet **section 4 is known as “the cruelty offence”, which by any definition requires intent.**

These cases are included to give a flavour of RSPCA practice. The practices that the creation of the CPS was designed to stamp out, undue coercion upon witnesses, and potential tampering with evidence still occurs in RSPCA practice.

In this writers opinion, the Animal Welfare Act section 4 is incompatible with the Human Rights Act, as it does not give a defendant the opportunity to defend against it, rendering a fair trial impossible.

However the processes to have this judicially considered, are simply impossible, given that the lower courts have the power to refuse applications to review cases further up the hierarchy.

There should be a much simpler pathway, where any person charged with a criminal offence, has the right to have a potentially offending section directed straight to a review panel, with the support of a legal representative who endorses the application.

In relation to the HRA section 3, the Courts invariably only look at alleged suffering, expertly exaggerated by the prosecutors, where there is in practice no separation of powers, as the untrained ‘inspectors’ who compile the most damning case files for prosecution, in the hope of being promoted to that role. They become non legally qualified decision makers on which cases brought to them to prosecute. All this information can be found in the Wooler Report 2014, and the EFRA interviews in 2016 on the first ten years of the Animal Welfare Act. The court staff who hear animal welfare offences often only hear one in their entire career, no expertise if built up, with cases rarely proceeding beyond the Crown court.

There is a willingness to support the perceived but fallacious ‘good work’ that the RSPCA do, within the Judiciary, on the rare occasions a case is heard at court. A mechanism needs to be found, where it is not necessary to try to appeal a case high enough to make the point, where those with sufficient interest can go direct to a body empowered to recommend changes, without it depending on an individual case.

CONCLUSION

Despite the existence of sections 3 and 4 in the Human Rights Act, they are so difficult to bring to Judicial and law makers notice, that they not drafted well enough to be accessible to achieve any beneficial intended purpose.

In relation to the thrust of this argument, private prosecutions where the prosecutor is not the victim, this area of law is antiquated to the point of causing direct breaches of Human Rights, in the ways described.

Put another way, the Prosecution of Offences Act 1985 section 6(1) is itself incompatible with the Human Rights Act, inso far as it allows for non victims and rich corporations to use it to their advantage, at public expense, where the action taken especially by non victims causes breaches of Human Rights, specifically Article 6, 8 and P1 A1.

Pat Wallwork

2nd March 2021.

