

FortyTwo Talks: Are all animals equal under the law?

Marcia Hyde: Hello everybody and welcome to *FortyTwo Talks*. I'm Marcia Hyde, I'm a family law barrister at 42BR Barristers and I'm also a member of the Animal Welfare Group.

This podcast is coming from the Animal Welfare Group today, it is called 'Are all animals equal under the law?'

I'm really happy to have two wonderful guests with me today, Edie Bowles, who I think everybody probably knows from her work as the founder of the Animal Law Foundation and also the Director of Advocates for Animals, which is the only solicitors firm specialising in animal welfare.

Welcome Edie, it's great to have you here again.

Edie Bowles: It's great to be here.

Marcia Hyde: And I'm also very happy to introduce you to Emma Slawinski with us today, she is the CEO of the League Against Cruel Sports. The League Against Cruel Sports is, I think Emma, the second biggest animal welfare charity in the UK, is that right?

Emma Slawinski: Well, we're probably the second oldest, we're about one hundred years old and we've been campaigning for that time to end things such as fox hunting, bearbaiting, which has obviously gone now which is great, bullbaiting, dog fighting, anything where animals are being cruelly used for entertainment or sport.

Marcia Hyde: Great, alright well we're going to start today trying to answer the question 'Are all animals equal under the law?' And in order to do that, we need to look at how animals are defined, and one

of the things that helps us to answer this question is they're not all defined in the same way, is that right Edie?

There is lots and lots of welfare protection legislation, covering all sorts of topics and that's one of the problems because not all of those acts and regulations define animals in the same way.

So, can we start with the one that we always think of- the Animal Welfare Act 2006?

Edie Bowle: Of course, so you're absolutely right, the way animals are defined under law and indeed the way that animals are treated under the law varies greatly.

There's kind of a, I don't want to say logical that's being too generous, but there's an explanation for some of that which is purely down to the fact that animals are used differently, and we put different values on animals in different circumstances so as a result of that legislation responds to the way an animal is treated in that circumstance.

So essentially what you find is reactive legislation almost packaging that up, but it does of course end up with very perverse outcomes, the best example I can think of right now is say a rat. So a rat will be treated very differently under the law depending on the circumstances that the rat finds themselves in, so a companion rat will be covered by the Animal Welfare Act, a rat that's deemed a pest will come under the Pests Act 1954 and indeed a rat that's being used in a laboratory will be treated differently under the Animals Scientific Procedures Act 1986 and all of those will have a different definition of an animal and a different way that the animal is treated.

You mentioned the Animal Welfare Act being the main piece of legislation people think of and in many ways it's a piece of legislation

that protects animals the most I would say in the UK at least, under that Act an animal is essentially a vertebrate other than man.

Marcia Hyde: Yes, any vertebrate other than a man, but also does not include some of the animals under the Animal Welfare Sentience Act 2022.

So, under the Animal Welfare Sentience Act any vertebrate other than homosapiens but any cephalopod mollusc and any decapod crustacean.

Now those latter two aren't within the Animal Welfare Act, are they? Those two animals?

Edie Bowles: They're not, no, and they are in the Animal Sentience Act and what's a shame about that is that the Animal Welfare Act can actually change the definition of 'animal' on the basis of scientific evidence, so there's nothing stopping those animals being included at this point when it's recognised that they're sentient.

Just coming back though to what I was saying at the start in terms of one of the explanations for this, the Animal Welfare Act 2006 is primarily concerned with animals under the control of humans, essentially not wild animals, whereas of course those animals do tend to live in a wild state. That said it is still important that they are included in the Animal Welfare Act because of course they do sometimes come under the control of humans.

Marcia Hyde: Yes, and currently we have lots of other legislation, say we have the Wildlife and Countryside Act 1981 which covers some wild birds, some wild animals like hares, dolphins and porpoises.

We've got the Wild Mammals Protection Act 1996, which is basically for wild animals or any animal that is abused in order to inflict unnecessary suffering.

That's a different type of approach to that animal, isn't it? Completely different?

Edie Bowles: Yes, absolutely.

Marcia Hyde: And then of course we've got some of the other acts, the Protection of Badgers Act 1992, but of course we know that badgers are being killed in their thousands and have been, so there are always ways round the legislation and I think I read somewhere that the government and DEFRA have agreed to stop the culling of badgers.

Do you know about that Emma?

Emma Slawinski: Yes, they have. They've agreed that there will be an end point to the licenses that are issued. So, because of that Act there has to be a license issued for badger culling and there has been a lot of debate around how effective badger culling is in relation to bovine TB, and as a result of that debate they have now said there will be an end point to those licenses, but of course hundreds of thousands of badgers in the meantime have been killed, despite being a protected species.

Marcia Hyde: Yes, and I think at the last webinar we did, there was something like fifty thousand badgers had been killed.

Emma Slawinski: I think it's more like a quarter of a million now, because it's been going on for so long, and of course the records themselves, as we know in this area of law data is very difficult, so that's a best guess number, the maximum allowed by the licenses.

The actual number killed and the methods by which they're killed are a bit shadier, I think.

Marcia Hyde: One of the other ones we wanted to talk about was the Hunting Act 2004, a deeply controversial Act.

Emma I think you've been involved in that haven't you, The League Against Cruel Sports are involved in that?

Emma Slawinski: Absolutely, I mean we were delighted when it came in, it is a landmark piece of legislation on one of the most totemic animal welfare issues, but the problem with it is that it is riddled with loopholes, with ways in which people can get around the law. It relies a lot on intention, so you have to intentionally try to hunt the animals, which of course creates the opportunity for a lot of wooliness, shall we say around that.

So, it's a really flawed piece of legislation and we want to see that amended and we're delighted that the governments consulting now on how to amend that Act. But I think what all of this shows, this kind of huge list of different pieces of legislation particularly perhaps in the wild animal's space, is that animals are treated completely differently under the law and with Edie's example of the rat is the same animal treated completely differently. We have that a little bit around hunting as well, sorry this is a bit gruesome, if someone puts their hands on a fox and throw them to some hounds, that fox has been under the control of man therefore covered by the Animal Welfare Act because they are physically being held, if that bit doesn't happen and the dogs are under the control of man, the dogs are encouraged to attack that fox then a different legislation will apply, and the important thing there is that the Animal Welfare Act has custodial sentences up to five years, the Hunting Act does not.

So, you can have hugely different punishments for the same cruelty albeit perpetrated in a slightly different way.

So, I think from my point of view we could really do with a big revamp of legislation as it applies to wild animals because it is so complex and animals can sometimes go from one protection to another in the space of minutes. You know, a pheasant in a pen who's been farmed to be released as protected by legislation as a farmed animal, the minute they step out of that pen to be shot they're no longer protected. It literally is one step. So, you couldn't shoot them when they're a farm animal and leave them to suffer if they're injured but they take one step and you can shoot them and leave them to suffer and I think what that demonstrates is the legislation isn't based on the needs of the animal, it's based on our wish to interact with them and what we want to do.

Marcia Hyde: How we are using them, as you said Edie, the purpose we are using them for.

Emma Slawinski: Absolutely, from my point of view as an animal welfare campaigner is the wrong proposition, it's the wrong starting point when they are, in law, sentient creatures.

So, we've acknowledged that they're sentient, that they can suffer and that they can have complex emotion but we're not seeing that enacted through the law and it's just so complicated which is why we need people like yourself and like Edie to help us navigate it.

Marcia Hyde: There has been, hasn't there, really a momentum of change building up over the last six months and I think started by you, Edie, and you, Emma, on your campaign about putting animals back into the Animal Welfare Act .

Do you want to talk us through what that campaigns about?

Edie Bowles: Yes, I think we can both cover this because we've got different areas that we specialise in.

So, the idea of putting animals back into the Animal Welfare Act is essentially trying to get back to the purpose of the Act and pressing the reset. It's twenty years, it's the twentieth anniversary of the Animal Welfare Act this year and it's become apparent that within those two decades the ways that animals are still treated or indeed, in many cases, the ways animals are treated in a worse way than they were twenty years ago, is indictive of the fact that the Animal Welfare Act is not living up to its full potential and Emma and I, and a coalition of lot of animal groups, want to change that, we want to make sure that the laws that exist to protect animals are there to protect animals and not to protect humans and actually its increasingly looking like it's the latter, that its protecting humans.

So part of this work is to get the intended interpretations correct, so making sure that unnecessary suffering really does limit the type of suffering that can be caused to an animal, not this current situation we have where it seems that you can do pretty much anything you want to an animal and also ensure that the welfare needs of the animal are being met.

Both of those things are requirements under the law, but they seem to not mean very much in this current moment, so we want to change that and get the interpretations of the Act back to where they should be, and Emma can talk about another aspect of the work.

Emma Slawinski: Yes, I mean one of the other problems with the Animal Welfare Act is this exclusion of lots of species of animals and one way of remedying that would be to include them in the Animal Welfare Act or at least to see an equivalent protection through

another legislative vehicle, because there is absolutely no justification for some animals having X amount of protection and other animals having Y amount.

You might want additional protections in certain situations, animals in labs for example, you might think this is a very specific situation, but the idea that there isn't a kind of baseline level of a equality of protection across all species makes absolutely no sense to me, and it creates some of the crazy situations we've talked about where you absolutely can't go and hit a pet rabbit over the head with a stick but you can go and hit a wild rabbit over the head with a stick and the law would apply completely differently in those circumstances.

So, we would really like to see all animals offered that level of protection and there to be no exclusions from the Animal Welfare Act

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I think part of the way we come to that question is this idea that there are some animals who are pests or who are vermin or who are difficult or problematic for humans, and I think this is sort of how that shows up in law.

So, for the League Against Cruel Sports a lot of our work is about understanding, why do we do these things to animals? Why do we think it's okay to go and hurt an animal for fun? And I think what the law does is give us the framework for that relationship with animals and this is one of the most important parts, what is that baseline contract between people and animals? And how does it show up in the law?

So, alongside the exclusion, the definition around unnecessary suffering I think is absolutely ready to be reinterpreted because a lot

of the suffering we talk about, whether its farmed animals or wild animals, you can't really find any way of saying that that is necessary.

Marcia Hyde: Well, also its interpreted depending on which animal and which circumstances you're dealing with.

So, the Farmed Animal Regulations, that allows for if it was a pet animal the unnecessary suffering is huge amongst farm animals, isn't it? And we'll come onto that because that's about justifications and rationalisations which I know you want to talk about, but it's about, is it really then about making sure that sentience is the concept that you start with and then you follow on from there because the suffering must flow from something that's sentient, do you see what I mean? How you define sentience and then we've defined sentience but how do we define suffering?

So, have you thought about the phraseology that you would use, what would you replace 'unnecessary suffering' with? Or would you set out this is what we mean by unnecessary suffering?

Edie Bowles: Yes, I think that's a really important question. In a way though at this stage, I mean of course there is a lot of work that needs to be done when it comes to animal protection and of course, we should always strive to improve as a society. But actually, at this moment in time we don't need to even go that far we just need to make sure that these concepts are meaningful and currently they're just not meaningful.

Unnecessary suffering, what's necessary and what's unnecessary is doing a lot of heavy lifting in the way it's being interpreted because you know, you end up with these crazy situations where currently the interpretation of law, arguably you could put a case together that this shouldn't be legal, but arguably under the current law it is deemed

necessary to grow a chicken, to selectively breed a chicken two weeks faster than another type of chicken that would have significantly less welfare issues, but just because its deemed a small bit more commercially viable it's actually deemed necessary.

That can't be what the legislation was intended to do, two-week space in time.

Marcia Hyde: A lot of these narrow interpretations are about economics, aren't they? They are about being able to breed an animal to a certain weight, the chicken, much quicker because then you sell it off and then you can do it all again in that forty-day cycle.

It is a difficult thing to get around, I think one of the reasons it's a difficult thing to get around is because people don't understand, or don't know about, or are kept away from some of the suffering that happens certainly with farmed animals.

I believe that if most people knew what we did to chickens really, and pigs, they would be very opposed to it, but that's my personal view.

Edie Bowles: The truth of the matter is you're probably right actually, and its outside of the scope of the conversation today but we've done a lot of research into misinformation in the food industry and there's a huge amount of misinformation that is distorting the reality for the general public, and I also believe that if they were made aware, they certainly wouldn't be happy with the current state, regardless of how far they might wish to go, I don't think the majority of the public would be comfortable with the current state of affairs on how animals are treated in this country.

Marcia Hyde: So, that's the essence of the 'putting animals back into the Animal Welfare Act', which I think Edie you started off in November last year, didn't you? Then following that we had the governments

Animal Welfare Strategy, which was just before Christmas of last year, which everybody in the animal welfare protection world had been waiting for an awful long time, notwithstanding the Labor Party had actually published a very detailed animal welfare policy in their manifesto.

Some of the things that animal welfare protection groups are asking for, well quite a lot of them are in that document, aren't they? Things like, docking pigs' tails, pigs in crates, trail hunting, all of those things are in there and so there's a lot of positive response to that, but what is lacking a little bit is a legislative strategy and plan of action, would you agree with that?

Emma Slawinski: I think that's really fair, there are a lot of good things in that strategy and it does represent a significant shift for animals. I think the gap within it is something like a review or a form of the Animal Welfare Act because the reason we have these very complicated legislative regimes, with conflicting and different pieces of legislation, is that we advance animal welfare protections in a piecemeal way. So, we'll be getting rid of cages for pigs, hopefully we'll be getting rid of cages for hens as well, but those two pieces of legislation aren't joined up together, it won't be 'let's get rid of all cages', it'll be one at a time.

So, were missing really that kind of bigger picture, or framework legislation, that makes sense of all of those bits of progress and I think what we would really love to see is a commitment from the government that they are going to look at the Animal Welfare Act , even if it's not until after the next election, but I think that would be great.

But you're absolutely right that the approach that's been taken in that strategy is very consultative, its very research based, we'll find out X, Y and Z before we do anything and some of the commitments in the strategy were made in the manifesto by a government with a huge majority. Trail hunting, for example has something like 70% public support and yet here we are at this distance from the election and it still hasn't happened yet and were still consulting.

So whilst there's good things in there it does feel like there's a lack of urgency or a lack of momentum and we know one of the biggest challenges to making progress for animals through legislative change is parliamentary time and 2029 is the next general election and its coming down the track so we really would hope that the government starts to get a bit of a move on with this.

Edie Bowles: I mean, one of the useful things about the work that were doing with the Animal Welfare Act is actually the Animal Welfare Act does provide a mechanism to achieve some of the stuff in the Animal Welfare Strategy, the ban on cages for example for pigs and chickens could be achieved via secondary legislation through the Animal Welfare Act which is useful in terms of the parliamentary time that Emma just spoke about, so we do see the two areas of work being very complimentary to one another.

Marcia Hyde: Yes, because making regulations and getting them through, it's a very quick way of doing it and there are lots of add-ons you could do to the Animal Welfare Act and some other things.

We'll talk in a minute about using the laws that we do have and the regulations that we do have more effectively, but following on from the government's strategy, the Animal Sentience Committee, now the Animal Sentience Committee is a committee set up to look at all new

government policies with a view to 'are sentient animals going to be affected negatively in any way' Lots of up's and down's views about the Animal Sentience Committee but their response to the government's strategy essentially question if the current legislation is fit for purpose, which goes back to your point Emma, to deliver the government strategy.

So, your point, you can have that strategy, but have we got the basic laws in the first place?

Now that's the government committee saying that, but also one of the things that I know, Edie, you have done a lot of research on through the Animal Welfare Foundation is stronger regulatory systems and we're back then aren't we to the enforcement problem, which I know you've just updated to the third review for 2024 data.

Those two things are still missing, particularly the enforcement is still missing, isn't it?

Edie Bowles: Yes, and I think, let's just say the Animal Sentience Committee they're producing so much work at the moment and obviously they recently did comment on the Animal Welfare Strategy , and it was really positive to see them responding to this work that we're doing on the Animal Welfare Act and talking about whether the legislation is fit for purpose. I'm not necessarily really sure, like I said of course we should always strive to do better and better and better but I'm not necessarily sure that that means getting rid of the Animal Welfare Act entirely and replacing it, I think it's more about just making sure it functions properly, and that means the intended interpretations, not having this perverse team with some animals included and some animals excluded and also ensuring that then it's enforced.

I think those things all work together and doing that you could actually end up with legislation that in this current day is more fit for purpose.

Marcia Hyde: Well, that's right, it's about adapting the legislation that we have to update it for the different ways we now live and the different ways we now farm and the different ways we now treat animals and think of animals.

Maybe that's what they mean, the Animal Sentience Committee.

Edie Bowles: Yes, my take on that is that would be they are seeing what's going on and they're thinking 'how can we reconcile the way animals are treated with the legislation that exists?'

Clearly somethings not working here.

But there are solutions that we can use, that are easy to use and overhauling the whole system entirely at this stage, we can improve things with what we have.

Marcia Hyde: Yes, in fact the Animal Sentience Committee published a letter on the 3 February but after I think they had published the one in response to government strategy, clearly saying one of the things that we have all been talking about today, that the definition of animal is not consistent across legislation and therefore not all sentient animals are given the same sufficient protection of welfare standards.

So, they're at the same point as your campaign aren't they really? And that's very encouraging that they are making such positive views known.

Edie Bowles: Yes, for sure.

Emma Swaliski: And I think partly it is a reflection of the fact that the Animal Welfare Act is twenty years old. What we know about animal sentience has come on hugely in that time, not least the cephalopods

and the rest of them, but also the way in which we interact with animals has changed hugely in that time, there's probably at least three or four billion more animals on the planet, farmed animals specifically than there were at that time.

There's many, many fewer wild animals unfortunately.

We have the nature crisis, we have climate change, we've got all of these factors that weren't around or that we weren't aware of twenty years ago and that means that the legislation is becoming less and less fit for purpose.

So, I think where The Sentience Committee are is seeing the problem we've got of this mismatched higgledy piggledy legislation that doesn't make sense and they see an ambitious government with an decent strategy and they're saying these two things can't go together, you've got to fix the fundamentals and I think it's really positive they're encouraging the government to take that step and my view is that it has to happen at some point. You can't keep throwing water into a leaky bucket, it's becoming more and more problematic to have these tweaks and changes to legislation that in themselves are really important, like banning snares for example, something my organisation works on, hugely important, if I'm an animal I'd be delighted that snares are banned, but doing that by itself without looking at other traps doesn't make any sense and then looking at traps in the context of this crazy higgledy piggledy legislation around wild animals doesn't make any sense.

So, if we just keep tackling individual issues without that big framework piece, it's just going to get worse and worse.

Marcia Hyde: Well, its firefighting, isn't it?

Edie Bowles: Yes, but again, so this is why that 'putting animals back into the Animal Welfare Act' is so crucial, because there's several points to kind of build on what Emma's just said, the Animal Welfare Act was always intended to be an evolving piece of legislation that responds to science, I mean these broad terms, like 'unnecessary suffering' and 'welfare needs' if actually responded to correctly would evolve with time and it's such a shame that actually its done almost the opposite of that, they seem to have actually been diluted with time.

So, this piece of legislation could be that thing that Emma's referring to, it could be that umbrella framework that especially wild animals were included within that purview.

On that point, Northern Ireland does protect wild animals from unnecessary suffering, at least they're supposed to, whether that's happening on the ground, whether there's an enforcement problem around that, that's another question, but animals, all animal's, not just protected animals, do fall under the prohibition on unnecessary suffering in Norther Ireland.

So, there is a model for this being possible. But yes, the Animal Welfare Act in theory could solve quite a few problems.

Marcia Hyde: Well, it would be very simple as you say, by doing an amendment, a regulation of amendment. You could add the cephalopods, the decapods, into the Animal Welfare Act really easily, you could set out a better definition of 'unnecessary suffering', you could up the penalties, you could do a lot of things with the Act that you've already got.

So, if we put together now the issues that your campaign and the Animal Sentience Committee and the government strategy in a way

brought together or brought into highlight, is that the answer to our question 'are all animals equal under the law?' the answer is no.

Emma Slawinski: No, not at all, absolutely not. I think what's changed, certainly in the span of my career, is that that's always been the case that animals are treated differently under the law, but now we have such a strong scientific basis to demonstrate that there is no justification for that, as Edie says, it's got nothing to do with the animals, they all need protecting, it's got to do with how we want to use them and whether you're coming from an ethical position, or moral position, that can't be justified when we have hard evidence that these animals can suffer.

So, we really need to get on with updating that and I think it's a tremendous opportunity because you're absolutely right that this is relatively easy to do compared to primary legislation.

It can be done, I've spent a long-time changing animal welfare laws and my rule of thumb is it takes ten years, it took me twenty-five.

It normally takes about ten years, we don't need to do that here, this is about amendments, this is about definitions, this is about the purview of the law, it's relatively easy to do for a huge prize in terms of restating that contract between humans and animals, recreating that framework that all of the rest of the legislation hangs off, and my little pitch would be if I were someone with the ability to make that change, what a legacy to have, what a thing to do in the world, so I really hope that the government listen to The Sentience Committee, they listen to the campaign and they think about how they can make those changes.

Edie Bowles: And just to kind of come back on Emma's point about ten years, this is why interpretations of current legislation can be really

impactful, I mean just to give you one example, at the Animal Law Foundation, we were successful in arguing that it was illegal under the current law to boil lobsters alive.

So that does go to show that actually there are these other vehicles that we can be using that don't involve parliamentary time which does put the brakes on a bit.

Marcia Hyde: I wanted to ask you about that because it seems so obvious I think to everybody and there's a lot of research and polls on this. Nobody, I think it's about 80% - 90% of people who think it's a terrible thing to boil a lobster alive, we've got those regulations, Welfare of Animals at the Time of Killing Regulations, what's your understanding or assessment, Edie, of why they weren't being used?

Because you bought that campaign alive, and what was the understanding of why it wasn't being used? Was it simply about lack of money for local authorities to enforce it, was it simply that? Or I got the impression there was a resistance from government to accept that actually they did apply, when they obviously applied.

Edie Bowles: Yes, I think that's such an interesting point. I think to be honest it's the same as the enforcement problem, I put it all down to, or at least my main theory is, that up until very recently there weren't really lawyers fully focussing on this area and just scrutinising what these laws could actually mean. Take the 'putting the animals back into the Animal Welfare Act', some of this stuff that we're saying is relatively obvious and indeed is so reasonable and yet it's taken us twenty years on to get to this point when we're saying what are you doing? Why can't that chicken live longer? You know it's taken people actually dedicated time to scrutinise the laws that exist.

So, I actually think that with the boiling of lobsters alive, yes, it did just take a lawyer to sit down, look at the legislation, look at what's going on in practise and then approach the relevant people.

The government I mean, they weren't too resistant, I think part of the problem was they just hadn't thought about it, and indeed local authorities hadn't thought about it, in fact one of the reasons we were successful was because we reached out to local authorities saying you need to enforce the law, that you're responsible for this regulation, and the local authorities were confused so they started reaching out to the government saying 'what do we do?'

And the government at that moment realised that they had to do something about it because they had a lot of confused local authorities on their hands. So, some of it I do just put down to a lack of scrutiny, which is really reassuring to think that then if we start scrutinising, we can see a lot of progress.

Marcia Hyde: Is that a good point to end on? That for lawyers, where this podcast is going to, we need more lawyers doing animal welfare work.

Emma Slawinski: We absolutely do. I mean campaigning litigation, if I'm allowed to say that on this podcast, is one of the most powerful tools for creating change, bar none, and having very talented lawyers scrutinising this work, like Edie, it has been transformational for animal welfare, even just over just the past ten years, and there are lots of examples of little bits of legislation that can just be done, they could just be done very quickly with the right attention, the right focus and people with the right skills, so the more lawyers we could get on board, the better. That would be wonderful.

Marcia Hyde: Well, that's the end of the podcast today, I hope you enjoyed it.

Thank you so much to Emma and to Edie, always a great conversation.

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Thanks for listening.