



**Cats and the Law:  
*A Report for International Cat Care (iCatCare) (formerly the  
Feline Advisory Bureau (FAB))***

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While every effort has been made to ensure the accuracy of this report, it is not intended to be a substitute for, or intended to be relied upon as, formal legal advice.

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# 1. INTRODUCTION

## 1.1. Overview

This research examines the legal status of cats, within the UK's legal system (primarily in England and Wales) but also in an international context. It considers a range of different areas of law and conflicting perspectives within the UK's animal welfare, contract, criminal and environmental law and also addresses issues of ownership and liability. In particular, the research examines how both domestic and wild cats are subject to different protection under the law and the manner in which ambiguities concerning the status of wild and domestic cats impose liability on humans for their actions in dealing with cats. The research was commissioned by the Feline Advisory Bureau (FAB) (now International Cat Care (iCatCare)) on behalf of the Cat Group<sup>1</sup> who identified that a number of legal questions could arise for cat owners for which there does not currently seem to be a definitive answer. While the legal status of cats is, in principle, well established under common law as they are personal property, problems can occur because cats exist in a range of states e.g. feral, semi-feral, domesticated and stray. Some grey areas exist in relation to animal welfare legislation and in respect of the liabilities of cat owners. There has been little or no attention paid by legal researchers to addressing the legal status of cats except within the context of animal welfare offences, some prior research into offences involving wild cats<sup>2</sup> and research into whether animals (including cats) can be said to have legal rights.<sup>3</sup> The research considers this issue in the context of not just the enforcement of animal welfare law but also within the context of

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<sup>1</sup>The Cat Group brings together a range of organisations dedicated to improving feline welfare policy and practice. Its membership consists of International Cat Care (iCatCare), Battersea Dogs and Cats Home, Blue Cross, Royal Society for the Prevention of Cruelty to Animals (RSPCA), British Small Animal Veterinary Association (BSAVA), the Governing Council of the Cat Fancy (GCCF), Cats Protection, People's Dispensary for Sick Animals (PDSA) and Wood Green Animal Shelters.

<sup>2</sup>See, for example Lowther, J. Cook, D. and Roberts, M. (2002) *Crime and Punishment in the Wildlife Trade*, Regional Research Institute, University of Wolverhampton, Nurse, A (2003) *The Nature of Wildlife and Conservation Crime in the UK and its Public Response*, Working Paper No 9: Faculty of Law and Social Sciences, Birmingham: UCE, and Nurse, A. (2008) *Policing Wildlife: Perspectives on Criminality and Criminal Justice Policy on Wildlife Crime in the UK*, Birmingham: Birmingham City University (unpublished doctoral thesis).

<sup>3</sup>See for example Cass R. Sunstein, *The Rights of Animals*, *The University of Chicago Law Review*, Vol. 70, No. 1, Centennial Tribute Essays (Winter, 2003), pp. 387-401 and Wise, S. (2000) *Rattling the Cage: Towards Legal Rights for Animals*, London: Profile Books.

other aspects of the law, which includes policy and ethical considerations relating to animal ownership and welfare.

The research deals primarily with domestic cats in England and Wales. The primary legislation imposing responsibilities on cat owners is the *Animal Welfare Act 2006*, which consolidates much earlier legislation and both promotes animal welfare and provides an enforcement mechanism through which punishment may be pursued where there is a breach of animal welfare standards. The UK Animal Welfare Acts<sup>4</sup> are part of the criminal law and impose a duty to ensure welfare (although this research is not confined to evaluating welfare considerations) and an important part of the Acts is the requirement for a ‘responsible person’ to ensure that a cat’s needs are met. However, the question of what constitutes ownership or being a responsible person and whether a cat is domestic is not always straightforward. Our research also deals with offences under wildlife legislation where these may impact on cats living in a wild state or on recognised species of wild cat. Separate from the provisions of keeping and care of a cat, the research also considers issues relating to the sale or theft of cats noting that under the common law cats are regarded as property or objects, albeit animate, in terms of being owned and possessed. Damage to a cat by a third party can be akin to (certain) property damage giving cat owners the right to take action for redress to damage to ‘their’ animal.

The issue of liability is also dealt with by this research and the courts have clarified a number of issues relating to the harm caused by cats and liability in respect of that harm, which we discuss in this research, treating aspects of the common law and the imposition of strict liability under the *Animals Act 1971*. The question of liability is not always a straightforward issue; while there are specific provisions for example in the *Environmental Protection Act 1990* concerning nuisance caused by animals, they have been strictly interpreted so that the natural behaviour of a cat is generally not considered to be a nuisance even where damage is caused. However, cases where an excessive number of cats is kept such that their noise or odour cause harm to the health of neighbours or constitute a nuisance have also been decided such that the cat’s owner is responsible and can be required to take action to abate the

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<sup>4</sup> There is country-specific legislation in Scotland and Northern Ireland; the *Animal Health & Welfare (Scotland) Act 2006* and the *Welfare of Animals Act (Northern Ireland) 2011*. The three animal welfare acts have similar aims of preventing harm and promoting animal welfare although there are some differences in the respective Acts.

nuisance.<sup>5</sup> In addition, the Department for the Environment Food and Rural Affairs (DEFRA) *Code of Practice on the Welfare of Cats* contains provisions on keeping cats in a suitable environment. While the *Code* holds ‘advisory’ status rather than itself being enforceable, we argue that the *Code’s* guidance combined with the *Animal Welfare Act’s* provisions changes the dynamics of liability such that action might be taken under the *Animal Welfare Act 2006*, allowing the court to consider a failure to provide the necessary cat-friendly environment required by the *Act* (in accordance with the *Code*), as opposed to considering the specific nuisance requirements of the *Environmental Protection Act 1990*. This widens the scope of the action that might be taken against cat owners, and is significant in the fact that the focus for the imposition of liability has shifted from the harm caused to other humans to the degradation of the health and welfare of the cat. We explicitly consider this issue in the research.

This research investigates different aspects of the law as it applies to cats and conducts an analysis of the requirements placed on cat owners under the law. It also considers how the law can be interpreted on issues of liability, responsibility, and the care of cats, as well as the ambiguities in the status of cats that give rise to confusion under the law.

This report thus attempts to provide not only an overview of the law but our analysis of some of the main areas of confusion raised by iCatCare as causing problems for cat owners and, where applicable, for re-homing institutions.<sup>6</sup> Some of these questions inevitably touch on compensation and recompense issues where complaints or claims for loss or damage arise. While dealing with the substantive issues of liability, responsibility and legal protection in answering questions, we only briefly deal with compensation issues as the specifics of cat, business, and even home, insurance relevant to such claims are outside the scope of this research.

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<sup>5</sup> See Chapter 6 of this report.

<sup>6</sup> In addressing some specific questions raised as being matters of concern to cat owners, use is made of some questions and answers provided by the RSPCA’s Legal Department. We are grateful to the RSPCA for this information being made available for consideration as part of this research project.

## 1.2. Research Outline

The research was designed to achieve the following outcomes:

- Provide an overview of the law relating to cats culminating in a plain English guide to cats and the law;
- Assess how cat law has been interpreted by the courts and, in particular, how that case law clarifies some areas of confusion over questions of ownership, liability and issues such as straying or trespass;
- Critically evaluate the *Code of Practice for Cat Welfare* in light of our analysis of the legislation and to identify how some of the *Code's* provisions should be interpreted in light of previous decisions of the courts.

This research project considers a number of issues relating to the legal status of cats. Ownership as a concept is discussed in relation to the responsibilities that cat owners have under the law but also in relation to the redress available to them where somebody steals or injures their companion.<sup>7</sup> The changes to the law brought about by the *Animal Welfare Act 2006* are also discussed and in doing so the research considers ownership, responsibility and liability as separate concepts each requiring detailed consideration under different aspects of the law.

There are inevitably limitations to what we can consider in a report of this scale and we make no pretence that the research findings offer a complete answer to every question concerning cats and the law. During the process of the research, the need for further research has been identified into how the courts, investigators and prosecutors view and interpret the *Code of Practice for Cats*. Although we briefly consider this issue this is a larger project than allowed by the scope of this research project. However, we set out our proposals for pursuing this issue and compensation and insurance claim issues through further research, in an Appendix to this report.

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<sup>7</sup> Throughout this report we generally use the term companions to refer to domestic and semi-domesticated cats rather than the term 'pet'.



## 2. EXECUTIVE SUMMARY

The remit of this research is to assess the legal status of cats, to address some of the ambiguities concerning the responsibility owed by cat owners to their companions, and to evaluate questions of liability and the duty of care put upon cat owners. To achieve this, the research has sought to identify and analyse different theoretical and legal conceptions of cats as domestic and wild animals. From the outset we identify that the legal status of cats under the UK *Animal Welfare Acts* is that of protected animals. The protection provided under the law extends to both domestic and feral cats as ‘being of a kind which is commonly domesticated in the British Islands’. The law thus extends beyond providing protection solely to companion animals. However in addition to examining the law, the research has evaluated perspectives from criminology, socio-legal studies, the social sciences and black letter-law to consider how cats are protected under the law and viewed within animal welfare law and policy. It should be noted that some of the issues raised and discussed in this report are discussed in more detail in subject specific literature, such as the specialist animal rights, green criminology or veterinary texts that explicitly study animal welfare. However this material is drawn on in places to aid our interpretation of the law and to address some of the questions that trouble cat owners.

The UK *Animal Welfare Acts* impose a duty to ensure cat welfare, which requires that owners or those responsible for an animal should provide for a suitable environment, suitable diet, the need to be able to exhibit normal behaviour patterns, any need to be housed with or apart from other animals and the need for protection from pain. The legislation departs from the simplified prohibition on unnecessary suffering contained within previous legislation, to provide for a broader definition which includes mental distress and not just the physical discomfort or pain associated with cruelty offences under previous legislation.<sup>8</sup>

This is a significant change in the law which, when combined with the *Code’s* provisions on considering the needs of the *individual* cat, arguably widens the scope of the old unnecessary suffering provisions of the *Protection of Animals Act 1911* from ‘pure’ cruelty offences, to

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<sup>8</sup> We do, however, refer to previous legislation within this report in part to show how the law has been developed and clarified by the *Animal Welfare Act 2006*, the implementation of EU law and changes in animal welfare policy in the UK.

incorporate a wider definition of suffering which involves denying an ‘indoor only’ cat the ability to exhibit its natural behaviours and the opportunity to properly express itself. This is particularly important, as being ‘indoor only’ has been found to be associated with increased risk of a range of medical and behavioural cat problems which if manifest could constitute suffering under the law.

Under the *Protection of Animals Act 1911*, prosecution was only possible after an offence of cruelty had been committed. However, the UK *Animal Welfare Acts* contain provisions aimed at the prevention of harm before it occurs as well as provisions aimed at promoting welfare including the imposition of a duty to ensure welfare. The law has, thus, changed and, we contend, significantly improved the legal protection afforded to cats, providing a contemporary context that gives cats a wider range of legal protection if not actual rights, given that the legal status of domestic cats under domestic law remains personal property or chattels.

Theories relating to animals as property argue that animal welfare benefits those who have an investment in animals as property (including farmers, livestock producers and retailers) as healthier animals maximise return on their investment. However there has been a progressive development of animal welfare legislation at an EU level and animals as property theorists also note that legislation concerning property has developed as society progresses so that whereas other human beings (e.g. children, slaves, wives) have previously been seen as property, societal development has resulted in legislation changing this position, providing protection and fundamental rights for each of these property groups and contributing to the improvement of society. Animal welfare legislation which provides welfare rights and standards for animals is now part of a proactive and protective regime aimed at providing a better standard of living for animals even where there is no specific property rights benefit.

Our analysis of the law shows that cat owners are required to do more than simply provide a home for their cat. They are required to consider both the interior and exterior environment of their home and to ensure that, so far as is possible, it is suitable for their individual cat. Where they fail to do so, they may commit an offence under the *Animal Welfare Act 2006*.

Our analysis also addresses the complexity of debates concerning liability for a cat's actions (trespass, any resultant damage, odour and noise) and argues that a cat owner should consider the known *specific* behavioural abnormal characteristics of his or her companion and its potential impact on others in order to evade statutory strict liability for harm caused by the individual cat. While we consider that no action for trespass would lie in respect of a cat, our view is that the law places a duty of care on a cat owner to his neighbours and that a common law action may lie in negligence for foreseeable damage a cat causes. Additionally, where the conditions in which cats are kept would result in damage or nuisance to neighbours, cat owners would be liable. We discuss issues of nuisance in some detail. We also consider how the law's focus on the *individual* cat requires owners (and other responsible persons) to take a proactive role in understanding their companion's behaviour and needs, thus developing an awareness of the additional obligations this may place on the owner under UK law. We argue that this is consistent not only with case law and policy on cats but also theoretical conceptions on awareness of, and protection of rights for, animals that are increasingly being recognised in legislation.<sup>9</sup>

### 3. RESEARCHING CATS AND THE LAW

This research was carried out primarily using existing documentary sources including legislation, case law, past research and theoretical material on the subject of animal ethics and rights, liability for animals' actions and animal protection and welfare. It considered how the legal status of cats is viewed within public policy and also some theoretical perspectives from criminology, socio-legal studies, the social sciences, theology and social anthropology, where concepts such as legal rights for animals and utilitarianism are extensively discussed in arguments that better treatment of animals, abolishing cruelty and higher standards of animal welfare, enrich society.

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<sup>9</sup> See, for example, Wise, S. (2000) *Rattling The Cage: Towards Legal Rights for Animals*, London: Profile Books.

### **3.1. Researching the Perspectives**

The methodology for the research included desk based investigation of different perspectives on cats from a variety of disciplines. Debates in theology, philosophy, criminology and the study of animal law address the rights of animals and the moral wrong of inflicting harm on other sentient beings, the relationship between man and non-human animals, the need for legal rights for animals, and issues of animal abuse and the need for increased standards of animal welfare.<sup>10</sup>

This research made use of much of this material and also examined current law on cats. Particular attention was paid to the *Animal Welfare Act 2006*<sup>11</sup> imposing the duty to ensure the welfare or wellbeing of cats. However, legislation on environmental protection, specifically the provisions on nuisance caused by animals and the enforcement of the law were considered, as was guidance from DEFRA (in particular its *Code of Practice*) and decisions of the courts concerning animal welfare and the interpretation of animal law. Animal welfare is usually associated with ethics and moral values (or with animal science and ethology). This research considers the implementation and interpretation of the law concerning cats by analysis of documentary information relating to the legal status of cats, theoretical material concerning how the law should apply to achieve good standards of animal welfare and cat protection and the cumulative effect of successive public policy and judicial attitudes towards cats. Through analysis of this material the research aims to assess the nature and scope of both the legal protection afforded to cats and the obligations placed on cat owners and third parties.

### **3.2. Some General Perspectives on Cats and the Law**

UK legislation on domestic and wild animals is primarily aimed at preventing cruelty and ensuring that animals that are in some way under human control are appropriately cared for

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<sup>10</sup> See, for example, Wise 2000, Scruton 2006, Sunstein and Nussbaum 2006, Ascione 2008 and Linzey 2009.

<sup>11</sup> And its equivalents in devolved legislation. From this point forward, all references to the *Animal Welfare Act 2006* should also be taken to include the *Animal Health & Welfare (Scotland) Act 2006* and the *Welfare of Animals Act (Northern Ireland) 2011* unless stated otherwise.

or, where necessary, are killed humanely. For example, those feeding or looking after colonies of feral, semi feral or stray cats are ‘persons responsible’ and have animals under their control thus imposing a duty to ensure their welfare (discussed in further detail in Chapter 5 of this report). In addition to legislation that provides for basic protection for both wild and domestic animals, there are specific measures designed to provide for the welfare of animals and ensure that they are treated humanely even when destined for or being prepared for slaughter or use in scientific experiments. Legislation also exists regulating the sale or breeding of animals and prohibiting the theft or abandonment of animals. A number of theoretical perspectives underpin current animal legislation and moves to improve animal legislation as follows.

*Utilitarianism* -Peter Singer’s (1975) *Animal Liberation* is perhaps the classic text on utilitarianism. Drawing on Jeremy Bentham’s ideas that animals deserved equal consideration Singer argued not that animals have rights, but that humans and animals have equal interest in avoiding suffering and so humans should apply equal consideration to animals, making moral choices that try to avoid animal suffering wherever possible. Crucially Singer does not argue that all animals should be treated equally and thus accepts that animals of different species have different interests. However, the principle of utilitarianism is that we should make our lives as free from cruelty as possible and avoid the infliction of pain and suffering on animals and humans alike. For utilitarianism the benefit of animal welfare is thus an ethical society which tries to minimise pain and suffering wherever and however they occur. Singer’s utilitarianism thus provides that animal welfare contributes to the improvement of society and the public good by being a core philosophy that lessens violence in society, leads to a more moral society but, crucially, does not seek to prohibit all uses of animals where society might benefit from the use (e.g. food and arguably some forms of animal research) if appropriate welfare standards are maintained.<sup>12</sup>It is however worth noting that animal welfare and human interests are not commensurate and in addition to utilitarianism being criticised for a possible failure to recognise this and debates in rights theory about the inherent value possessed by all rights holders whether human or non-

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<sup>12</sup>Singer, P. (1975) *Animal Liberation*, New York: Avon.

human,<sup>13</sup> there has been considerable debate among legal theorists concerning the extent to which utilitarianism should influence legal policy and the interpretation of law so as to give positive effect to animal welfare. The UK and US courts take a different view on this issue with UK courts adopting the view that animal welfare frequently is of benefit to humans and is of moral worth as a public good given the feelings of wellbeing it inspires in humans. The UK Courts thus recognise that animal welfare and human interests do coincide,<sup>14</sup> although the extent to which this holds true varies and is interpreted differently by the courts in line with prevailing social circumstances. The US courts on the other hand take a slightly different view and Bryant argues that US law expressly puts human interests above animal ones, even within anti-cruelty statutes.<sup>15</sup>

*Animals as Property*—the notion of animals as property frequently dictated the extent to, and manner in, which they are protected under the law and legal definitions of animal welfare. Broom<sup>16</sup> compares the treatment of animals as property in most early legal systems to the treatment of slaves, servants, and even wives as possessions. While some animal welfare and anti-cruelty laws are designed to protect human investment in property, Broom argues that the view of domestic and other animals as sentient beings that deserved respect is a natural social progression ‘in the wake of a similar developing view that persons of other nations, creeds, or colours and women had such qualities.’<sup>17</sup> Francione argues that animals’ status as the property of humans dictates that laws which should require their humane treatment and prevent unnecessary suffering fail to provide any significant protection for animal interests. In reality, animals only receive protection commensurate with their value as human property or commodities. Francione argues that economic, legal and social factors prohibit recognition of animal interests unless a human interest also exists.<sup>18</sup>

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<sup>13</sup>Francione, G.L. (1997) Animal Rights Theory and Utilitarianism: Relative Normative Guidance, 3 *Animal L.* 75 Lewis and Clark Law School.

<sup>14</sup>*Re Wedgwood Allen v Wedgwood* [1915] 1 CH113.

<sup>15</sup> Bryant, T. (2010) Denying Animals Childhood and its implications for Animal-Protective Law Reform, *Law Culture and the Humanities*, Volume 6, No 1. pp 56-74.

<sup>16</sup>In Radford, M. (2001) *Animal Welfare Law in Britain*, Oxford: Oxford University Press.

<sup>17</sup>*Ibid.* See also Wise, S. M. (2000) *Rattling the Cage: Towards legal rights for animals*, London: Profile, in which Steven Wise argues strongly that legal rights for animals is a natural progression of human evolution, societal development and enlightened thinking.

<sup>18</sup>Francione GL, (2007) *Animals, Property and the Law*, Philadelphia, Temple University Press.

*Animal Rights & Anti-Cruelty*– In *The Case for Animal Rights*(1983) Tom Regan distinguishes legal rights from moral rights but effectively argues that animals should be granted the same (or similar) rights to humans because they have value. Regan further contests the basic assumption that animals do not have rights in his 2007 argument on the case for the abolition of vivisection. Comparing the experimentation on the children of Willowbrook State Mental hospital to experimentation on animals Regan noted that poor standards of treatment and welfare are sometimes ‘justified’ on the basis that the victims are not fully aware and thus lack possession of and capability to exercise the appropriate rights. But in comparing experimentation on the seriously mentally retarded children of Willowbrook mental hospital to experiments on animals Regan suggested that ‘logically we cannot claim that harms done to the children violate their rights, but the harms done to these animals do not’.<sup>19</sup>Some adherents of animal rights theories argue that it is only through providing animals with rights that animal abuse and cruelty would be ended and currently each one of the United States of America has an animal anti-cruelty statute. Tannenbaum has argued that anti- cruelty provisions in these laws ‘create legal duties to non-human animals. They therefore afford legal rights to non-human animals.’<sup>20</sup> It should be noted however that there are problems with enforcing these rights and there are numerous limitations and exemptions. Frasch explains that the principle behind much of the legislation is concern for the human actor and the wider community because denying animals rights and the subsequent cruelty and abuse that is permitted due to the absence of rights might lead to violence towards humans.<sup>21</sup>This is discussed further below.

*Animals, Sentience and Theology* – The thesis of Andrew Linzey<sup>22</sup> contends that ‘the inability of animals to give or withhold their consent, their inability to verbalise or represent their

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<sup>19</sup>Regan, T. (2007) ‘Vivisection: the case for abolition’ in Beirne, P. and South, N. (eds.), *Issues in Green Criminology: Confronting harms against environments, humanity and other animals*, Devon: Willan Publishing

<sup>20</sup>Tannenbaum, J. (1995) *Nonhuman animals and the law: Property, cruelty, rights* in Mack, A. (Ed.). *Humans and other nonhuman animals*. Columbus: Ohio State University Press.

<sup>21</sup>Frasch, P.D. (2000) ‘Addressing Animal Abuse: The Complementary Roles of Religion, Secular Ethics, and the Law’*Society & Animals* Vol. 8, No. 3.

<sup>22</sup>Linzey, A. (2009) *Why Animal Suffering Matters. Philosophy, Theology and Practical Ethics*, Oxford University Press.

interests, their inability to comprehend, their moral innocence, and not least of all, their relative defencelessness and vulnerability – the very differences so often regarded as a basis for discriminating against them - are the very grounds for discriminating in favour of them.’ He reasons that ‘the rational case for extending moral solicitude to all sentient beings is much stronger than many suppose’; and concludes that ‘when these considerations are taken into account, it becomes as difficult to justify the infliction of suffering on animals as it is to do so in the case of human infants.’

*The Progression Thesis* - some who support good standards of animal welfare and anti-cruelty laws are not solely concerned with the actual harm to the animal, but are concerned about ‘what such treatment indicates about the abuser – namely a propensity to violence that might ultimately lead to violence against humans.’<sup>23</sup> The progression thesis effectively requires a combination of two separate causal propositions: 1) those who abuse animals are more likely to commit interpersonal violence towards humans; and 2) those who commit interpersonal violence are more likely to have previously abused animals. In that regard, one important perspective often overlooked in the debate on animal welfare is that promoting good animal welfare and respect for animals has the ‘tangible’ benefit of preventing violence towards humans and anti-social behaviour that has a negative impact on society. This perspective has become an increasingly important consideration in US public policy where the FBI and other law enforcement agencies use animal cruelty as one indicator of possible further offending in dangerousness assessments and there has been much research on the link between animal cruelty and violence towards humans.<sup>24</sup> In some US states, social services and other healthcare and social policy professionals are now involved in interventions designed to prevent juvenile offenders involved in animal cruelty offences from escalating to other forms of violence. The public policy objective pursued by such studies and policy interventions in the US is that dealing with animal welfare offenders and strictly enforcing animal cruelty laws benefits society by preventing further crimes against society. This is discussed later in this research.

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<sup>23</sup>Lubinski, J. (2004) *Introduction to Animal Rights (2nd Ed)*, Michigan: Michigan State University – Detroit College of Law.

<sup>24</sup>See for example - Henry, B.C. (2004) ‘The Relationship between Animal Cruelty, Delinquency, and Attitudes toward the Treatment of Animals’ *Society & Animals* Vol. 12, No. 3, Washington: Society & Animals Forum Inc.



### **3.3. Summary of the Research Approach**

The above perspectives are considered by this research together with current material on the legal status of cats within UK law, animal law, and animal welfare and animal protection legislation. In reaching our conclusions, account is taken of case law, issues of liability at common law and in accordance with statute, previous research and theoretical perspectives on the legal protection that should be afforded to cats, and the DEFRA guidance on the *Animal Welfare Act 2006* and, in particular, its *Code of Practice for the Welfare of Cats*. The conclusions reached in this research are our own and do not purport to be the definitive statement of the law but seek to identify a robust interpretation of the law which will be set out in a plain English guide to cats and the law which we produce as a separate document. Our proposals for further research are also included at Appendix 2 of this report.

## **4. PERSPECTIVES ON CAT OWNERSHIP**

UK law explicitly recognises *Felis catus*, the domestic cat, as having protected status and being, at least nominally, owned placing certain obligations on owners. However the law also recognises a distinct category of wild cats and in the UK Scottish wildcats are protected under the *Wildlife & Countryside Act 1981*, although there are difficulties in precisely defining what a ‘wild cat’ is such that the Joint Nature Conservancy Council recommended adding ‘wildcat hybrid’ to the list of protected species in Section 5 of the *Wildlife and Countryside Act 1981* to ensure that all species of wild cat were covered.<sup>25</sup> Certain wild cats (e.g. servals) might also be classed as dangerous and thus come within the scope of the *Dangerous Wild Animals Act 1976*. This section deals primarily with ownership of domestic cats, as wild cats are covered in the section on wildlife offences elsewhere in this report.

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<sup>25</sup>The Scottish wildcat is the last surviving native member of the cat family to be found in the wild in Britain. The wildcat is classed as a European protected species and is fully protected under the *Conservation (Natural habitats &c.) Regulations 1994* (as amended).

The common law position on companion animals is that they are personal property or chattels and are the subject of absolute property or ownership.<sup>26</sup> However, the issue of whether a person can be said to own a cat lends itself to both theoretical and legal debate and potentially causes problems for cat owners, not least because cats can move from a human dependent state to occupy several ill-defined states such as *stray*, *wild*, *feral* or *companion* all of which may defy conventional notions of ownership.<sup>27</sup> We prefer the term companion (and use this wherever possible throughout this report) to reflect the fact that while domestic cats are nominally owned, UK animal welfare legislation applies not just to cats which are clearly linked to a single property and an identifiable owner, but also to those stray and feral cats for which a person may accept some responsibility to provide a certain level of care and comfort. Scrutiny of UK legislation and policy perspectives clarifies the question of cat ownership.

#### **4.1. Ambiguities Concerning Ownership**

Whether ownership of a cat can be said to exist, depends in part upon the status of the cat and whether it lives within human control or support or is simply a visitor to a human home. Domestic cats are those companion animals that are primarily domesticated and rely on humans for food, but behaviourally cats are considered to be less domesticated than other animals and are able to revert to a semi-wild state<sup>28</sup> by going feral. Schaffner explains that feral cats occupy a legal grey area as they are between wild and domestic cats.<sup>29</sup> She explains that feral cats are usually ‘cats who have escaped from their home, live on the street, and have become unsocialized to humans, or were born on the street and were never socialized to humans.’<sup>30</sup> Stray cats on the other hand are cats found at large but which are socialised to humans, in some cases they are cats that have been abandoned by their owners. The

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<sup>26</sup> See Blackstones Commentaries (Eighth ed. Vol. II. At 387) which specifies that property rights in domestic animals are the same as property rights in inanimate objects but no such property rights can exist with wild animals. It is worth noting that kittens belong to the owner of the mother cat.

<sup>27</sup>Farnworth, M. J., Nicholson, G. and Keown, N. (2010) The Legal Status of Cats in New Zealand: A Perspective on the Welfare of Companion, Stray, and Feral Domestic Cats (*Felis catus*), *Journal of Applied Animal Welfare Science*, Volume 13 pp 180-188.

<sup>28</sup>Bradshaw J.W.S., Horsfield, G.F., Allen, J.A. and Robinson, I.H. (1999) Feral Cats: Their role in the population dynamics of *Felis catus*, *Applied Animal Behaviour Science*, Volume 65, 273-283.

<sup>29</sup>Schaffner, J.E. (2011) *An Introduction to Animals and the Law*, Basingstoke: Palgrave Macmillan.

<sup>30</sup>*Ibid.*p.129.

difficulty of distinguishing between stray and feral cats is that they can sometimes both appear to be 'wild' although the seemingly stray cat may in fact be in the possession of several owners but simply lack a single permanent home.

## 4.2. Cats as Property

The question of *ownership* was considered in the case of *Gables Farm Dogs and Cats Home and Her Majesty's Revenue and Customs*.<sup>31</sup> In essence, *Gables Farm* restates the established common law principles in respect of ownership and possession of domestic cats and strays, and by commenting on responsible ownership, in effect, adds to the principle of dereliction (or abandonment at common law).

Before an evaluation of that case is undertaken it is worth contrasting the situation applicable to dogs, as opposed to cats. The *Environmental Protection Act 1990*<sup>32</sup> provides a statutory scheme for the control of stray dogs. No such scheme exists for stray cats, which puts pressure on voluntary organisations in terms of funding / resources. Basically, after seven days, a stray dog having been seized by a warden appointed by the local authority and after steps have been taken in accordance with the statutory provisions to trace and notify the dog's owner, ownership can be vested in another person. Should the stray dog be found by an

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<sup>31</sup>London Tribunal Centre, Plymouth, 11 October 2007.

<sup>32</sup>Section 149 of the *Environmental Protection Act 1990*, as amended by s. 68(1) *Clean Neighbourhoods and Environment Act 2005* (wef 2008), applicable in the case of dogs, provides:

- 1) Every local authority shall appoint an *officer* for the purpose of discharging the functions imposed or conferred by this section for dealing with stray dogs found in the area of the authority.
- 3) Where the officer has reason to believe that any dog found in a public place or on any other land or premises is a stray dog, he shall (if practicable) seize the dog and detain it .....
- 6) Where any dog seized under this section has been detained for *seven* clear days after the seizure or, where a notice has been served under subsection (4) above, the service of the notice and the owner has not claimed the dog and paid the amounts due under subsection 5) above the officer may dispose of the dog –
  - a) by selling it or giving it to a person who will, in his opinion, care properly for the dog;
  - b) by selling it or giving it to an establishment for the reception of stray dogs; or
  - c) by destroying it in a manner to cause as little pain as possible;but no dog seized under this section shall be sold or given for the purposes of vivisection.
- 7) Where a dog is disposed of under subsection 6a) or b) above to a person acting in good faith, the ownership of the dog shall be vested in the recipient.

Section 150 of the *Environmental Protection Act 1990*, as amended by s. 68(3)(a) *Clean Neighbourhoods and Environment Act 2005*, deals with the responsibilities of a person other than a dog warden (*the finder*) who takes possession of a stray dog. Essentially the finder is required either to return the dog to its owner or take the dog to the officer of the local authority for the area in which the dog was found informing him where the dog was found. If he takes the dog to the local authority the finder is entitled to keep the dog provided he gives identification details to the officer and keeps the dog for *one month*.

ordinary person, again after acting in accordance with the statutory provisions that finder may acquire ownership after one month.

The position of stray cats is dealt with in accordance with the common law under which a finder of a stray animal acquires possession rights but has obligations to take reasonable steps to locate the owner and to exercise due care for the sake of the animal until its return to the owner.<sup>33</sup>

Gables Farm Dogs and Cats Home, founded in 1907, had as its principal objects; the rescue and shelter of lost, unwanted and homeless dogs and cats, saving them from starvation and ill-treatment, and in doing so removing a source of danger from the streets; wherever possible to restore lost dogs and cats to their owners; to find suitable houses for unclaimed and unwanted dogs and cats; if accommodation is available to receive dogs and cats on a temporary base where the owners face an emergency; such other activities as shall promote to the welfare of such animals and as appropriate to the organisation and capacity of the Charity.

Gables Farm received cats from members of the public and owners. Once in their care, Gables Farm neutered, vaccinated and microchipped the cats, which were then made available to the general public for re-homing. Prospective applicants for re-homing the cats had to demonstrate to Gables Farm the ability to care for them, which would normally involve the Farm interviewing them and visiting their homes. Gables Farm's application form for re-homing specified that the animals were that Farm's property. Gables Farm charged the applicants for the animals if they were re-homed with them. The charge took account of the commercial value of the cats but was less than the rate charged by a professional breeder. The charges collected contributed towards Gables Farm's running costs. Stray cats were generally brought to Gables Farm by members of the public, which constituted about fifty per cent of the cats received by the Farm. The remaining fifty per cent were brought in by their owners who were no longer able to care for them. Gables Farm took steps to trace the owner of stray cats but this was very difficult unless the animal carried on it a form of identification. Equally Gables Farm could not be sure whether a person claiming to be the owner of the animal was in fact the owner as there were no formal means of proving ownership of the animal.

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<sup>33</sup>*Armoury v Delamire* (1722) 1 Str. 505.

This is the very grey area which causes problems for re-homing organisations, namely the period after which ownership in cats can safely be bestowed on another person, i.e. when the cat can be re-homed without fear of the ‘previous owner’ reclaiming his cat.

The Tribunal was concerned with the question as to whether the sales of cats which had been given to Gables Farm by members of the public other than the cats’ owners constituted sales of *donated goods* with the consequential entitlement to zero rating under the *VAT Act 1994*. At the hearing the parties’ submissions focused on the meaning of *donate* and the law dealing with ownership of animals. The parties accepted that as a matter of law a domestic animal like other personal and moveable chattels is the subject of absolute property. The Tribunal ruled that at common law the finder of a stray animal acquires rights of possession under the legal principle of bailment by finding; that essentially the finder assumes the obligations of a depositary to the true owner, including the obligations to take reasonable steps to locate the owner and acquaint him with the finding and the present whereabouts of the animal, to exercise due care for the safety of the animal until its return to the owner and to return it to him on demand. Further, the finder cannot claim a lien on the animal for any expense to which he may have been put in keeping or preserving it. The possession of the finder, however, is rightful and remains so until the owner demands the return of the chattel and by taking the chattel into his custody he does no wrong to the true owner. Thus a finder who takes in a stray animal into his care and control acquires rights of possession except against the true owner.<sup>34</sup> The finder may, however, acquire ownership of the animal if the true owner intentionally abandons the animal:

“If one is possessed of a jewel, and casts it into the sea or a public highway, this is such an express dereliction, that a property will be vested in the first fortunate finder that will seize it to his own use. But... if he (*the owner*) loses or drops it by accident, it cannot be collected from thence that he designed to quit the possession, and therefore in such case the property still remains in the loser, who may claim it again of the finder”.<sup>35</sup>

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<sup>34</sup>*Ibid*

<sup>35</sup>2 B1 Com 9 (*Halsbury’s Laws of England: Bailment by Finding* Volume 3 (2005 re-issue)).

The Tribunal continued to state that members of the public were generally responsible for bringing in stray cats to the Farm, and that Gables Farm made no payment to members of the public for the stray cats. Furthermore, Gables Farm took steps to inform the owners of stray animals which had means of identification. *By the time Gables Farm made the cats available for re-homing it was satisfied that the ownership in the animals had transferred to it, as evidenced by its declaration in the re-homing application form and the steps taken to locate the cats' owners if their identity was known.*<sup>36</sup> The Tribunal considered that Gables Farm would have returned genuinely lost cats to their owners, and held the view that responsible owners would make early contact with the Farm if their animal had gone missing. The Tribunal was satisfied that the cats offered for re-homing by Gables Farm were those which had been deliberately abandoned by their owners.

Ownership was accepted on the facts and a specified time frame beyond which ownership would accrue was neither considered nor specified by the Tribunal: It was not necessary on the facts as established in this case. The Tribunal considered the words *owner* and *ownership* not to be absolute concepts in English law declaring that ownership disputes in English law are generally about who has the better right to title. The Office of Her Majesty's Revenue and Customs had, in the opinion of the Tribunal, overlooked *the range of proprietary rights in stray animals, in particular, the ownership rights vested in a finder of a stray animal which had been abandoned intentionally by its owner.*<sup>37</sup> The Tribunal accordingly found that a gift of a stray cat to the Cats Home by a person other than the original owner was, on the facts, capable of transferring ownership rights in the cat to Gables Farm. The Tribunal was satisfied that Gables Farm held ownership rights in the cats offered for sale and that the Farm acquired those ownership rights from the gifts of those cats whether by the owner, or the finder. No specified time limit would be needed it would appear, in the event that the cat's owner did not get in touch with the Home and where there was no means of identifying the owner. The Tribunal was concerned *on the facts found* with sales of cats *intentionally* abandoned by their original owners. It found that members of the public freely gave the stray cats for no payment to Gables Farm. They gave in the knowledge that Gables Farm would find suitable homes for the cats for which the Farm would charge the new owners a fee. The Tribunal held that

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<sup>36</sup> *Emphasis added.*

<sup>37</sup> *Emphasis added.*

Gables Farm acquired ownership rights to the cats arising from the gift by common law; finding that Gables Farm made the cats available for sale to the general public, and did so on terms that Gables Farm owned the cats.

The Tribunal further held that the sale of the cats met a defined social need of protecting animals, and that the sales were to persons for their personal use rather than for business use and therefore concluded that Gables Farm's sales of cats given to it by members of the public constituted sales of donated goods which met the requirements of zero rating under the *VAT Act 1994*. Moreover, the Tribunal considered its findings to be consistent with the purposes of zero-rating sales of donated goods by charities. The historical analysis of the zero-rating provisions showed that animal charities were the second group of charities to benefit from this relief. They were granted this relief for the specific purpose of protecting animals. The position of distinguishing between sales of cats directly given to Gables Farm by their owners and sales of cats intentionally abandoned by their owners produced an irrational result when set against the specific purpose of animal protection.

It should be emphasised that the decision taken in *Gables Farm*, in accordance with the common law, is very strongly stated to be based on the facts found by the taxation tribunal in that case.

*The Limitation Act 1980* applies a statutory limitation period of 6 years, before which ownership of a chattel, which a cat is, can transfer to a successive owner and extinguish the title of the original owner.<sup>38</sup> The scope, thus, exists under the law for the original owner to claim ownership of his 'lost' cat, once that cat has been re-homed with a new 'owner', within the statutory period of 6 years.

What would constitute evidence of responsible ownership albeit not unequivocal proof of ownership on the part of the original owner would be the fact that the cat had been microchipped. Microchipping undertaken voluntarily would constitute best practice in this 'grey' area of cat ownership.

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<sup>38</sup>Section 3. Which would not apply in the instance of the theft of a cat (s. 4).

*The Law of Trusts* also comes into play when, for example, cat owners wish to leave a legacy in their will in order to care for their cats after their death, or when a cat owner / person who cares for cats wishes to bequeath a donation to a cat charity / rescue and re-homing organisation. The law still reinforces the benefit to humankind as opposed to the enhancement of cat welfare in itself as can be demonstrated by the authorities of *Re Moss*, also known as *Hobrough v Harvey*,<sup>39</sup> applying *Re Grove – Grady*.<sup>40</sup> Romer J, in the former case, applied the test formulated by Russell LJ in the latter case. Russell LJ laid it down clearly that a gift in favour of animals depends for its validity on the question whether such a gift produces a benefit to mankind. The testatrix left legacies to a friend ‘for her use at her discretion for her work for the welfare of cats and kittens needing care and attention’. Accordingly the court held that the present case of *Re Moss* passed the test, whether the gift in favour of animals produced some benefit to mankind, with honour. The care of, and consideration for, animals which through old age or sickness or otherwise are unable to care for themselves, are manifestations of the finer side of human nature, and gifts in furtherance of those objects are calculated also to develop that side and are, therefore, calculated to benefit mankind; that is more especially so where the animals are domestic animals. The gift was, therefore, a valid charitable gift.

‘The advancement of animal welfare’ is one of the statutory descriptions of charitable purpose under the *Charities Act 2006*, provided that it is ‘for the benefit of the public’ in accordance with the *Act*.<sup>41</sup>

### **4.3. Sale of Goods and Legal Control of Cat Breeding**

Contract law and (in the UK) specifically the *Sale of Goods Act 1979*, as amended, applies to the sale of companion animals, reflecting the status of animals as property. The rights that any purchaser of an animal has in a contract of sale between private parties would be those

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<sup>39</sup> Chancery Division, 1 January 1949, [1949] 1 All ER. 495.

<sup>40</sup> Also known as *Plowden v Lawrence*, Court of Appeal [1929] 1 Ch. 557.

<sup>41</sup> Ss. 2(1)(b) and 3. Quint F, ‘Public Benefit & Animal Welfare’, conference paper presented at the Charity Law Associations Conference on Public Benefit, 2 May 2007.



expressed in the contract of sale. The *Sale of Goods Act 1979*, as amended, also implies certain terms into a contract in which the seller of animals acts in the course of a business. In this latter case, the buyer is entitled to rely on the statutory implied terms. For example, s 14 (2) of the *Sale of Goods Act 1979* provides that where the seller sells goods, for our purposes cats or kittens, in the course of a business, there is an implied term that the cats supplied under the contract are of satisfactory quality. For the purposes of the *Act* for goods to be of satisfactory quality they must meet the standard that a reasonable person would regard as satisfactory, taking into account any description of the goods, the price (if relevant) and all other relevant circumstances.<sup>42</sup> The quality of goods includes their state and condition and aspects of the quality of goods are, for example, their fitness for all purposes for which goods of the kind in question are commonly supplied, their appearance or finish, freedom from minor defects, safety and durability.<sup>43</sup>

Applying these principles to the sale of a cat, it should be suitable as a family companion, for example, as this is what one would normally expect when buying a domestic cat. If a cat sold by a business, for example a cat breeder, is not of satisfactory quality the buyer has some additional rights because of the additional term which the law implies into a commercial transaction. The implied term of satisfactory quality is a broad concept but could include a failure to socialise a cat to humans, especially if the cat is sold as being 'suitable as a family pet' when this is not the case. Selling an unsocialised cat would essentially be selling an unsatisfactory cat, since a domesticated cat would be required to satisfy the need for a suitable family companion.

Additionally, if the seller has misrepresented the cat's condition in this way, or, for example, claims that it has been microchipped or that it is a pedigree cat when neither of these claims is true, this would also amount to misrepresentation<sup>44</sup>.

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<sup>42</sup> S 14(2)(A) of the *Sales of Goods Act 1979*, inserted by the *Sale and Supply of Goods Act 1974*, as further amended by the *Sale and Supply of Goods to Consumers Regulations 2002*.

<sup>43</sup> *Ibid*, s 14(2)(B).

<sup>44</sup> Misrepresentation can be defined as 'an unambiguous false statement of fact which is addressed to the party misled and which induces that party to enter into a contract'. McKendrick, E (2010) *Contract Law*, 4<sup>th</sup>edn, Oxford University Press, 581.

If a dispute over a cat sale goes to court, the court would decide each case on the facts. A judge would look at all the circumstances, including the frequency of sales, what advertising was undertaken, whether accounts were kept, how much was made, how much was spent *etc.* He may then decide that the seller/breeder was acting in the course of business,<sup>45</sup> giving the buyer the protection of the *Sale of Goods Act 1979*' simplified terms. Thus, if a cat is purchased from a seller / breeder who is, knowingly or otherwise, acting in the course of business and the cat experiences health problems that are generally known to be hereditary or could be traced back to the breeder, for example, then under section 14 of the *Sales of Goods Act 1979*, the cost of the cat and/or any other losses the purchaser and the seller / breeder could have reasonably expected (i.e. vets fees, boarding fees, travel costs etc) may be recovered. This would be the position where an inherited problem is present which the breeder should have known about and for which there is a reliable test.

If the cat had been bought for showing or breeding, then other losses may come into play, but only if the seller / breeder knew or reasonably ought to have known of this purpose at the time of sale.<sup>46</sup> Thus if the buyer, expressly or by implication, makes known to the business cat breeder that he wants to buy a particular breed of cat, providing an average domestic cat would breach the implied condition of being 'reasonably fit for purpose'.

In the case of a diseased cat, where the disease is undetectable and/or cause and effect are unable to be proven, and despite the fact that the cat was sold commercially, in the absence of express conditions or warranties being given as to the health of the cat and in the absence of fraudulent statements of fact about the health of the cat on the part of the seller, the buyer of the diseased cat accepts it then and for the future.

"In a sale of a diseased animal without any warranty or condition being given by the seller the maxim "*caveat emptor*" [let the buyer beware] applies, unless the seller was

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<sup>45</sup> In *Stevenson v Rogers*(1999) QB 1028 the Court of Appeal held that, unless the sale was 'a purely private sale of goods outside the confines of the business (if any) carried on by the seller' it is within the course of the seller's business. Cited in McKendrick, E (2010) *op. cit.*, 346.

<sup>46</sup>In accordance with s 14(3) of the *Sale of Goods Act 1979*. Chris Fairfax, Legal Director of independent UK Pet Insurance providers, Animal Friends Insurance, 'Are Cats above the Law?' <http://www.animalfriends.org.uk/afi-pet-community/pet-blogs/are-cats-above-the-law/>

guilty of fraudulent misrepresentation. The fact that the buyer suffers loss arising from a breach of statutory duty does not impute liability on the seller".<sup>47</sup>

However, the issue of selling cats of a breed *at risk* of carrying disease such as feline infectious peritonitis (FIP) can cause problems for breeders and purchasers. There may be a claim under the law of negligence if a breeder sells a cat knowing that the development of FIP is reasonably foreseeable as a likelihood and not just a possibility and that cat subsequently infects others cats. It could be arguable in such a case that the breeder has a duty of care to the buyer and would be responsible for the buyer's costs if the buyer has unwittingly bought a diseased cat which the seller should or could have known about. However, expert evidence from a vet or scientist might be used by the breeder to rebut any evidence of a causal link between coronavirus and FIP.

The fact remains that in a given situation there may not be a reasonable risk of developing FIP if a cat has coronavirus. But breeders should be aware of any tendency for particular cat breeds to actually develop the disease (rather than just coming up positive for a test for coronavirus), and need to exercise all reasonable care to prevent its presence in cats they sell. (See frequently asked questions section later in this guide).

If a cat is bought from a private individual, 'the buying of an animal can be hazardous for no prudence can guard against all latent defects.'<sup>48</sup>In a sale between two private parties, a buyer may gain protection through requiring an express condition or warranty<sup>49</sup> as to the cat's quality as part of the contract of sale. In the absence of such express contractual terms, if the cat subsequently suffers from a disease or dies from a problem which can be traced back to the private breeder /seller, the maxim '*caveat emptor*' applies, i.e. 'let the buyer beware' and he must accept the cat as he finds it. However, prior to the purchase or sale of a cat as between private parties the seller/breeder cannot misrepresent the fact that a cat is fit and well if he knows, or ought to have known, otherwise.

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<sup>47</sup>*Halsbury's Laws of England*, 4th Ed., Vol. 2 (Reissue), para.219." Palmer, J. (2001) *Animal Law*, 3rd edn.Shaws, 29.

<sup>48</sup>*Jones v Bright* (1829) 5 Bing 533 at 544, per Best CJ.Cited in Palmer, J. *Ibid.*, 22.

<sup>49</sup> Breach of which would entitle the buyer to repudiate the contract, or to damages for loss, respectively.

Many more instances of sales and purchases of cats are taking place over the internet, in place of newspaper advertisements and sales. Research undertaken by Wood Green, the animals' charity, has shown that internet sales are the second most popular means, at 21%, and as compared with 2%, of a representative sample obtaining cats from shelters.<sup>50</sup> Sellers acting in the course of a business, which may include hobby breeders, should be aware of their obligations under both the *Consumer Protection (Distance) Selling Regulations 2000* and the *Sales of Goods Act 1979, as amended*. A cat buyer may, thus, have some redress, in the case of a reputable sale, in the event of infringement of the implied statutory terms. If engaging in a private sale, a cat buyer should be careful to ask questions and to obtain express guarantees from the buyer in order to be able to claim the protection of the law of contract. Otherwise the maxim of *caveat emptor* will apply in respect of private internet sales.

*The Pet Animals Act 1951*<sup>51</sup>(as amended in 1983) requires pet shops to be licensed by their local authority providing for an inspection and regulatory regime. Before granting a licence the local authority must be satisfied that animals are kept in suitable, clean accommodation; that they are supplied with appropriate food and drink; and are adequately protected from disease and fire. Breeders however may operate from premises other than pet shops and, indeed, may not always identify themselves as commercial breeders. However, even in cases where cats are purchased from individuals, contract law applies and where it becomes clear that the cat purchased was not as described, action may be taken for a breach of contract, a breach of warranty or misrepresentation.

#### **4.4. Civil Liability for Cats**

There is potential for confusion concerning the liability of owners for damage caused by cats, although cat owners have a general duty of care towards others not to cause injury or damage. While there may be complex theoretical discussions about whether one actually 'owns' a cat, a person arguably has a cat in his possession if he regularly provides food for the cat, has a place within his home or garden that the cat frequents or, in the case of stray or feral cats,

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<sup>50</sup>Wood Green, The Animal's Charity. Cats Neutering Campaign, January / February 2013.

<sup>51</sup> As amended 1983.

regularly makes food available to the cat so that it frequently returns to the human for food thereby temporarily being in that person's 'possession'. A person responsible for a cat (see Section 4.2. above and Chapter 5 of this report) must ensure that the cat's needs are met, separately and independently from a keeper's liability incurred under the common law and / or the statutory provisions of the *Animals Act 1971* for damage caused by cats. It is important to note that common law liability under the tort of negligence is not displaced by the availability of statutory liability under the *Animals Act 1971*. Each action deserves to be looked at on its merits and it may be preferable to resort to one or other cause of action in the circumstances of a particular case.

The *Animals Act 1971*<sup>52</sup> specifies that a person is a keeper of an animal if 'he owns the animal or has it in his possession'.<sup>53</sup> As at common law, this will be the person who has control of and 'keeps' the animal;<sup>54</sup> the possessor of the animal,<sup>55</sup> whether or not he is the owner of the animal. Lord Tenterden CJ said, in *McKone v Wood*: 'It is not material whether the defendant was the owner of the dog or not; if he kept it, that is sufficient; and the *harbouring* of a dog about one's premises, or allowing him to be there or resort there, is a sufficient keeping of the dog to support this form of action.'<sup>56</sup>

It follows, therefore, that a person who *harbours* a cat will be held to have it in his possession for the purposes of s 6(3) (a) of the *Animals Act 1971*. It is less likely, however,

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<sup>52</sup>Applicable in England and Wales. North, P.M., *The Modern Law of Animals*,(1972) London Butterworths; and North, Sir Peter, *Civil Liability for Animals*, (2012) Oxford, New York, Oxford University Press, which is 'in essence' a second edition of the earlier book. The authors have relied heavily upon these authoritative works when evaluating issues of civil liability in relation to harm caused by cats. [*The Animals (Scotland) Act 1987* applies in Scotland.]

<sup>53</sup> Section 6(3)(a) of the *Animals Act 1971*.

S6 (3) Subject to subsection (4) of this section, a person is a keeper of an animal if

- (a) he owns the animal or has it in his possession; or
- (b) he is the head of a household of which a member under the age of sixteen owns the animal or has it in his possession;

and if at any time an animal ceases to be owned by or to be in the possession of a person, any person who immediately before that time was a keeper thereof by virtue of this subsection continues to be a keeper of the animal until another person becomes a keeper thereof by virtue of those provisions.

(4) Where an animal is taken into and kept in possession for the purpose of preventing it from causing damage or of restoring it to its owner, a person is not a keeper of it by virtue only of that possession.

<sup>54</sup>*May v Burdett* (1846) 9 QB 101, 110.

<sup>55</sup>*Breen v Slotin* [1948] 4DLR 46.

<sup>56</sup>(1831) 5 C&P 1.

that merely *allowing* a cat to *resort* to a person's premises will lead to the conclusion that the cat is, thereby, in that person's possession.<sup>57</sup> It has been suggested, at common law, that 'if one out of charity harboured a dog and gave it food and it did mischief, then one was liable where there was evidence of *scienter*.'<sup>58</sup> If a person thus gave food to a cat in charity, it may result in the conclusion that that person had acquired possession of the cat, and if, through so doing, that person also acquired knowledge of the cat's abnormal propensity to harm, he would, therefore, potentially incur liability in accordance with s 2 of the *1971 Act*.<sup>59</sup>

In respect of the owner who has neither possession nor control of his cat; the owner of an animal is a keeper of it and is, therefore, subject to strict liability under the *Act*, so long as the three conditions of liability laid down in s 2 are satisfied.<sup>60</sup>

The 'keeper', either owner or possessor, of a cat that escapes, which cat is then classified as a stray, or, ultimately, as feral, knowing of that cat's abnormal propensities, continues to be liable under s 6(3) of the *Animals Act 1971* until the animal acquires a new 'keeper'. Therefore liability will continue even after the cat's escape,<sup>61</sup> and cannot be avoided by abandoning the animal, nor by abandoning it *after* it has caused injury.<sup>62</sup> However, liability for any future conduct ceases once the animal has acquired a new 'keeper', even though that new keeper has not yet become aware of the animal's dangerous characteristics.<sup>63</sup> In the event of the keeper having been the 'possessor' and not the original owner of the cat liability for any future conduct on the part of the possessor ceases once the animal has passed into the possession of a third party.

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<sup>57</sup>*Ibid.*

<sup>58</sup>*Bolton v Webster* (1895) 59 J P 571.

<sup>59</sup>North, P. (2012) *op. cit.*, para. 2.13.

<sup>60</sup>*Ibid.*, para. 2.17.

<sup>61</sup>Second paragraph of s 6(3) of the *Animals Act 1971*.

<sup>62</sup>*Deer Conservancy Board v McConnell* [1928] 2 KB 159, 163.

<sup>63</sup>North, P. (2012) *op. cit.*, para.2.24, citing Williams, Glanville(1939)*Liability for Animals*,325-326.

Sir Peter North identifies the problem relating to escapes, in respect of the liability of the former owner of an animal not belonging to a dangerous species, such as the domestic cat, which has escaped and become wild, and which may well be a common occurrence, according to the statistics of stray cats in this country. Section 6(3) of the *Animals Act 1971* appears unbending in that potential liability<sup>64</sup> will continue until the unlikely eventuality of the animal acquiring a new owner. While this is undoubtedly the literal reading of the *Act*, the remote ‘owner’ may well remain unidentifiable.

The *Animals Act 1971* expressly abolishes the division of animals which existed at common law into animals *ferae naturae* (wild animals) and *mansuetae naturae* (tame animals), as it does also the specific *scienter* action,<sup>65</sup> which action required proof of prior knowledge of a vicious propensity on the part of the latter class of animal in order to found liability for the harm it caused. The Law Commission<sup>66</sup> had recommended the simplification of the common law *scienter* action, as opposed to its total abolition, and its replacement with a new statutory action of strict liability based upon classification of animals as either dangerous or non-dangerous, with liability for harm caused by the latter depending upon the keeper’s knowledge of the animal’s abnormal characteristics. The *Animals Act 1971*, implementing the Law Commission’s recommendations, thus classifies animals by species as dangerous or non-dangerous, retaining in principle a number of elements of the old *scienter* action in respect of the latter<sup>67</sup> and, as a result, some of the old common law decisions are still illustrative of the law.

The *Act* does not define ‘animal’ although this will include cats. Cats are widely privileged to wander, and *in ordinary circumstances*, the owner of a cat would not be acting unreasonably in allowing it to do so, since they have little ‘potential for causing substantial’ harm.<sup>68</sup> The

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<sup>64</sup> Section 6(2) criteria having been satisfied. North, P. *Ibid.*, para. 2.25.

<sup>65</sup> S 1(1)(a) *Animals Act 1971*.

<sup>66</sup> Law Commission Report on Civil Liability for Animals, No. 13, 1967.

<sup>67</sup> S 2(2)(a)(b)(c) *Animals Act 1971*. North, P. (2012) *op. cit.* paras.2.01, 2.02.

<sup>68</sup> North, P. *Ibid.*, para.1.19, differentiating the position of cats from that of dogs. (*Emphasis added*).

domestic/stray/feral cat is not a dangerous species of animal<sup>69</sup> within the meaning of s 6(2) of the *Animals Act 1971*. To be such it has to satisfy two conditions. The first is that the animal is not commonly domesticated in this country; the second is that fully grown animals of the species normally have such characteristics that they are likely, unless restrained, to cause severe damage or that any damage they may cause is likely to be severe.

The keeper of an animal *not* belonging to a dangerous species, for example, the domestic/stray/feral cat, will be liable for the damage caused even though he has not been proved to be negligent provided that *all* three conditions laid down in s 2 (2) (a) (b) and (c) of the *Animals Act 1971*<sup>70</sup> are satisfied. 'Damage' is defined as including the death of, or injury to, any person (including any disease and any impairment of physical or mental condition).<sup>71</sup> This definition is not exhaustive and so it would appear that damage to property, inclusive of animals, would fall within the scope of s2(2).<sup>72</sup> Liability is strict; 'strict liability is the imposition of liability without fault, i.e. the keeper of the animal is liable for any

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<sup>69</sup> Although the Scottish wildcat would be classed as such. The *Act* is ambiguous in this regard since the word species, although defined in s. 11 of the *Act* as including sub-species and variety, is open to two opposing interpretations. In the first interpretation 'sub-species' could be substituted for 'species', enabling the sub-species of the wild cat to be classified as dangerous. A second interpretation would subsume the species of the wildcat within the classification of cats as non-dangerous, since cats as a species are commonly domesticated in England and Wales. Sir Peter North is explicit in deeming it to be very strange should the domesticated nature of the former be held also to include the latter. (2012) *op. cit.* paras.2.05, 2.07. It is likely to be a hypothetical question in terms of attributing strict liability, however, since the *Animals Act 1971* applies in England and Wales where the wild cat is not in existence. Section (2) (1) of the *Animals Act 1971* provides that where any damage is caused by an animal which belongs to a dangerous species, any person who is a keeper of the animal is liable for the damage, except as otherwise provided by this *Act*.

<sup>70</sup> S 2 (2) Where damage is caused by an animal which does not belong to a dangerous species, a keeper of the animal is liable for the damage, except as otherwise provided by this Act, if—

- (a) the damage is of a kind which the animal, unless restrained, was likely to cause or which, if caused by the animal, was likely to be severe; and
- (b) the likelihood of the damage or of its being severe was due to characteristics of the animal which are not normally found in animals of the same species or are not normally so found except at particular times or in particular circumstances; and
- (c) those characteristics were known to that keeper..."

<sup>71</sup> s 11 *Animals Act 1971*.

<sup>72</sup> In *Chauhan v Paul* [1998] CLY. 3990, the Court of Appeal observed (*obiter*) that there may be sufficient damage and causation if being chased by a dog led to a heart attack. Clerk & Lindsell on Torts, 20<sup>th</sup> edn, para.21.04, n. 18, <http://login.westlaw.co.uk/maf/wluk/app/delivery?docguid=IFA7BAEF2F15811DF...> accessed 14 June 2011.



damage caused regardless of any actions he may have taken to limit the risk of it occurring.<sup>73</sup>

Dealing first of all with s 2(2)(a) of the *Animals Act 1971*, which requires the damage to be of a kind which the animal, unless restrained, was likely to cause or which, if caused by the animal, was likely to be severe. “There is no requirement that the damage should in the event be ‘severe’. In both alternatives, the test is the likelihood of damage,”<sup>74</sup> In the case of *Smith v Ainger*,<sup>75</sup> LJ Neill attributed a wide meaning to the words ‘was likely’, i.e. ‘such as might happen’ or ‘such as might well happen’ or ‘where there is a material risk that it will happen’ - as well as events which are ‘more probable than not.’ He went on to say that the likelihood of damage or of it being severe must be considered in the circumstances of each particular case. Nevertheless, because previous authority had determined that damage caused by a large dog such as an Alsatian is likely to be severe, namely *Cummings v Grainger*<sup>76</sup> and *Curtis v Betts*<sup>77</sup> the Court of Appeal held that on the facts of the case in *Smith v Ainger*, the second limb of s 2(2) (a) of the *Animals Act 1971* was satisfied. Had the matter been free from authority, LJ Neill would have been disposed to have agreed with the earlier findings of the judge (although overturning the judge’s decision that damage to human beings was not likely) that it was not likely that any injury caused by the dog in question, a cross-breed Alsatian, would be severe, the previous injuries caused by the dog having been quite minor, thus potentially founding liability on the first limb of s 2(2)(a). The experience of the Cats Protection Charity and Veterinary Department in handling huge volumes of cats is that it is not likely that cats will bite or scratch, aside from the fact that should they do so the injuries are unlikely to be severe. If there is no *likelihood*, that damage would occur, *likely* meaning ‘*reasonably to be expected*’,<sup>78</sup> then the cumulative requirements of s2(2) cannot go on to be

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<sup>73</sup>Defra, *Consultation on changes to the Animals Act 1971 to clarify the application of strict liability to the keepers of animals*, March 2009, para. 31.

<sup>74</sup>Clerk & Lindsell on Torts, 20<sup>th</sup> edn, *op. cit.*

<sup>75</sup>[1990] WL 754371, CA (Civil Division).

<sup>76</sup>[1977] QB 397.

<sup>77</sup>[1990] 1 WLR 459.

<sup>78</sup> See *Mirvahedy (FC) v Henley and Another* [2003] 2AC 491 per Lord Scott at paras. 95-97; *Freeman v Higher Park Farm* [2008] EWCA Civ. 1185 per Etherton LJ at para.33; and *Turner v Warrener* Court of Appeal Civil Division, 3 April 2012 per Maurice Kay LJ at para. 12.

satisfied. The mere possibility of a cat causing the kind of damage in question would not satisfy the requirements of s2(2)(a) *Animals Act 1971*. It should also be emphasised that the requirements of s2(2)(a) relate to the particular cat in question, and not generally to cats as a species.<sup>79</sup>

The *Animals Act 1971* will *exclude* liability under s 2 (2) for any *normal* behaviour of a cat. In accordance with s 2(2)(b) of the *Animals Act 1971*, the keeper of a cat will only incur liability in respect of harm *caused* because of the *abnormal characteristics* of that cat. These abnormal characteristics can be one of two kinds, since s2(2)(b) has two limbs to it.

The first limb is concerned with abnormal characteristics *not normally found in animals of the same species*. It is said that this limb ‘embraces a case where animals of the species are normally docile but the particular animal is not’.<sup>80</sup> The second limb refers to characteristics *not normally so found except at particular times or in particular circumstances*. It is not necessary for the species of animal always to reveal its dangerous or abnormal characteristics. If a species which is normally docile reveals aggressive characteristics in certain particular circumstances, then those characteristics, though normal to the species in those circumstances, may well be classed as abnormal.

The House of Lords ruled on the ambiguous and controversial provision of the second limb of s 2(2)(b) of the *Animals Act 1971*, eventually, in *Mirvahedy (FC) v Henley and Another*.<sup>81</sup> In that case a majority of three Law Lords held that under s 2(2)(b) of the *1971 Act*, the keeper of a non-dangerous animal was strictly liable for damage or injury caused by it while it was behaving in a way that, although not normal behaviour generally for animals of that species, was nevertheless normal behaviour for the species in the particular circumstances. The

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<sup>79</sup> *Freeman v Higher Park Farm* [2008] EWCA Civ. 1185; [2009] PIQR 103, 108. Cited in North, P. (2012) *op. cit.*, para. 2.64.

<sup>80</sup> *Mirvahedy v Henley*, [2003] UKHL 16, para.18; [2003] AC 491. See North, P. (2012) *op. cit.*, para. 2.77.

<sup>81</sup> [2003] 2AC 491 H of L (3/2 majority).

majority agreed with the interpretation of s 2(2)(b) adopted in *Cummings v Granger*<sup>82</sup> and *Curtis v Betts*<sup>83</sup> and by the Court of Appeal in the instant case.

It would be extremely doubtful that the second limb of s 2(2)(b) would be satisfied, for example, in the case of a cat with kittens, and with maternal instincts, since it is unlikely that evidence would be adduced which would substantiate the fact that cats' behaviour would be aggressive giving rise to a propensity on the part of a female to attack in order to protect her young. Such behaviour would be *not normally so found in cats even at particular times or in particular circumstances*.<sup>84</sup> This, despite Lord Hobhouse of Woodborough, in *Mirvahedy*<sup>85</sup> being of the opinion that the Report of the Law Commission<sup>86</sup> supported the majority's conclusion in that case. Using the example of a bitch with puppies, the Commission said.<sup>87</sup>

*'In our view the fact that a particular animal belonging to a non-dangerous species shares [dangerous] characteristics with other animals within the species, either at a particular age, at certain times of the year or in special conditions, should not preclude liability where the keeper knows of the presence of these characteristics in the animal at the time of the injury. If the keeper of a bitch with a litter knows that it is prone to bite strangers, then even if this is a common characteristic of bitches at such a time, we think that the keeper should be strictly liable, subject to the permissible defences .....*'

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<sup>82</sup>[1977] QB 397.

<sup>83</sup>[1990] 1 WLR 459.

<sup>84</sup> The claims record and experience of Cats Protection support the fact that cats are no more or less likely to bite or scratch when they have kittens than at other times. That experience and claims history inform that biting and scratching is a characteristic of all cats but it is comparatively rare for cats to bite or scratch and it is not necessarily characteristic for cats to do so in particular circumstances or at particular times.

<sup>85</sup>[2003] 2AC 491 Hof L, para. 70.

<sup>86</sup>paras 17, 18 and 91 of the Report.

<sup>87</sup>*Ibid.* para.18(ii).

The later case of *Freeman v Higher Park Farm*,<sup>88</sup> decided after *Mirhavedy*, considered the second limb of s 2(2)(b) of the *Animals Act 1971*. It was known that the horse in question was inclined to buck when beginning to canter, which is what had happened in this case.<sup>89</sup> Although the House of Lords in *Mirhavedy* had said that ‘a normal but dangerous characteristic of a species will usually be identifiable by reference to particular times or particular circumstances,’<sup>90</sup> ‘that must, however, be a matter of *evidence* in every case. In the present case, there was no evidence whatever that horses generally buck at particular times or in particular circumstances.’<sup>91</sup> Thus, the need to adduce evidence of the characteristics of cats as a species commonly domesticated in the U.K. would apply and on the *evidence* cats in maternity are no more or less likely to bite and scratch than other cats.

An example of cat behaviour which could potentially be classified as *not normally found in the same species* is evident in the case of *Buckle v Holmes* in which the Court ruled that ‘the owner of a cat is *not* bound to keep it from straying into a neighbour’s land. For mischief done by it in following the common instincts of its kind, its owner is not liable. To make him liable he must have knowledge of some vicious propensity beyond those common instincts’.<sup>92</sup> Therefore where a cat strayed from its owner’s land into the land of a neighbour and killed fowls and pigeons kept there, the owner who had no prior knowledge of the cat’s propensity to devour his neighbour’s pigeons and poultry was not liable. This was a case decided under the old *scienter* principle, and one which potentially could be decided the same way today under s 2 (2) of the *Animals Act 1971*. The abnormal propensity of a cat to devour a neighbour’s bantams and pigeons potentially could satisfy the requirements of the first limb of s2(2)(b). It is submitted that since this would not be evidenced to be the normal behaviour of cats, if there is evidence, for example, that a breed<sup>93</sup> of the cat species has the *propensity* to

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<sup>88</sup>[2008] EWCA Civ. 1185.

<sup>89</sup>Clerk & Lindsell on Torts 20<sup>th</sup> edn, *op. cit.* para. 21.08.

<sup>90</sup>[2003] 2 AC 491 at [43], Lord Nicholls.

<sup>91</sup> Lord Justice Etherton, [2008] EWCA Civ. 1185 at para. 44.

<sup>92</sup> [1926] 2 KB 125 (C A) ‘... the owner is not responsible when his cat trespasses and does damage which merely consists in following a natural propensity of its kind.’ Per Atkin LJ, 30.

<sup>93</sup>For example, in respect of the Bengal breed of cat, should substantiating evidence exist, which would not be born out by the evidence in respect of cats generally. The court equated breed with species, considering the propensity of the breed of border collies, as opposed to the dog species generally, in *Hunt v Wallis* [1994] PIQR 128. Cited in Clerk & Lindsell on Torts, 20<sup>th</sup> edn, *op. cit.*, 21.04, n 17.

engage in such behaviour, *and* that the ensuing damage was *likely* to have been caused (s2(2)(a)) and the owner of such a breed of cat has the required *knowledge* to satisfy s2(2)(c) of the *Animals Act 1971* (discussed below) *and* this abnormal characteristic *caused* damage of the kind likely to arise from the cat's characteristics, liability could ensue. Such a tentative outcome should, however, be weighed against the fact that *Buckle v Holmes* is authority for the fact that a civil action is *not* applicable in *trespass* in respect of cats (see below) and the fact that *cats are excluded from the strict statutory liability trespass* regime introduced by the *Animals Act 1971*.<sup>94</sup>

It is worth recalling that the keeper of any cat with aggressive propensities, would no longer incur any statutory liability after he sells his cat to another person, that latter becoming the new keeper of that cat.<sup>95</sup> 'Of course, the new owner will not be liable under s 2 until he acquires knowledge of the dangerous characteristics (s 2(2)(c)), and a seller will not be inclined to stress the dangerous nature of the animal he is selling.'<sup>96</sup>

It should be emphasised that there would not appear to be any decided cases which have established strict liability in respect of damage caused by cats. If such liability were to be established, this would require all three sub-sections of s 2(2) of the *Animals Act 1971* to have been satisfied. To do so in respect of cats generally would lead to a rise in cat insurance applications and consequentially insurance premiums. This would have implications for re-homing institutions which employ staff and accept voluntary helpers and would have wider implications for prospective cat owners and the whole dynamics of re-homing increasing numbers of cats.

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<sup>94</sup> It was held, in *Curtis v Thompson* (1956) 106 L.J o. 61, that, as there was no liability for the straying or trespass, there was no liability in negligence for failing to prevent the trespass in the case of a dog straying onto another's land and fouling the garden. Conversely, and post *Animals Act 1971*, North considers that the exclusion of dogs from the statutory definition of 'livestock' and trespass there under should not operate as an exclusion, also, of liability in negligence. North, P. (2012) *op. cit.*, para. 6.21.. It should be added that cats can and should be differentiated from dogs, the latter's characteristics and potential to cause severe harm having given rise to societal problems.

<sup>95</sup> It has been suggested, by Glanville Williams, *Liability for Animals* (1939) at 326, that the old owner should continue to be liable until the new owner becomes aware of the abnormalities thereby giving an incentive for the transferor to inform the transferee of the dangerous characteristics'. North, P. (2012) *op. cit.*, para 2.17.

<sup>96</sup>North, P. *Ibid.*

To conclude in respect of s2(2)(b) and the necessary *causal* link with s 2(2)(a) of the *Animals Act 1971*, in the ordinary course of events, it is unlikely that strict liability will ensue rendering the owner of a cat liable for damage caused by his cat. The law would appear to recognise that the ‘average’ cat is not likely to cause damage going about its everyday business and conducting itself in a manner which, according to the evidence, is normal for cats.

The three subsections of s 2(2) of the *Animals Act 1971* are cumulative requirements. In the event of the establishment of evidence of abnormal propensities on the part of a cat or particular breed of cat, ultimate liability would be dependent on the keeper of the cat having *actual* knowledge of his cat’s abnormal propensities, in accordance with s 2(2)(c) of the *Animals Act 1971* and its likelihood as a result to cause the harm suffered. The keeper of a cat will be liable if the abnormal characteristics of the cat are known to him or through his ‘*vicarious* knowledge’ through either an employee with knowledge who is in charge of the cat or member of his household under the age of 16 who is in charge of the cat. In such a case, the keeper of a cat which causes damage to another may be required to pay compensation for damage or injury caused by his cat in accordance with the statutory regime of the *Animals Act 1971*. If the keeper knows that other cats of the same breed normally display characteristics such as those displayed by his cat, the requirement of knowledge in accordance with s2(2)(c) will be satisfied, even if he had no prior knowledge of his cat displaying such characteristics. ‘It makes no sense to require a keeper, if aware of the general characteristic, to have some additional and more particular knowledge.’<sup>97</sup>

There would be no need to be an ‘escape’ by such a cat displaying abnormal characteristics, which caused damage of a likely kind on the territory of its ‘keeper’ in order for liability to ensue under s 2 of the *Animals Act 1971*.<sup>98</sup> The test of remoteness of damage is that of direct

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<sup>97</sup>*Welsh v Stokes*[2008] 1 WLR 1224 (CA Civ.) per Dyson LJ. An action for negligence would be more appropriate where the keeper did not have such knowledge or imputed knowledge of the animal’s characteristics, but ought to have known of such characteristics.

<sup>98</sup>*Cummings v Granger* [1977] QB 397. Law Commission Report, *op. cit.*, para. 19. Cited in North, P. (2012) *op. cit.*, paras. 2.123, 2.127. Additionally, s 2 of the *Occupiers’ Liability Act 1957* requires an occupier to take reasonable care to make his premises reasonably safe for the purpose for which the lawful visitor visits them. An injured party may choose to bring his action under the *Occupiers’ Liability Act 1957* and not under the strict liability regime of s 2 of the *Animals Act 1971*, in the instance of harm caused by an animal of a non-dangerous species where the ‘occupier has no actual knowledge of the animal’s dangerous nature, but ought to have used

consequences.<sup>99</sup> In the instance of damage being caused by an animal of a non-dangerous species, it has been suggested that determination of causation is a question of fact.<sup>100</sup>

Liability is strict, and not absolute, in that defences are available under the *Animals Act 1971*. A defence particular to s 2 is that of voluntary acceptance of the risk, knowing of the abnormal characteristics of the animal<sup>101</sup> i.e. the defence of consent. Thus, voluntary acceptance of the risk may negate strict liability in respect of any harm caused to volunteers working with cats.<sup>102</sup> The *Animals Act 1971* expressly provides, however, that a servant of a keeper of an animal who incurs a risk incidental to his employment is not to be treated as accepting that risk voluntarily.<sup>103</sup> It is submitted that this provision should be considered in its historical context, namely to reverse the effect of earlier case law,<sup>104</sup> so that an employee will not always be *presumed* to have accepted risks incidental to his employment. This would appear to be a logical interpretation in respect of those working with *non-dangerous* animals<sup>105</sup> or, in particular, non-dangerous animals where there is no evidence that such animals are likely to cause severe harm. Cats are predators with finely tuned senses, which are reflected in their play as well as in their hunting behaviour. They respond to sounds, vibrations, movements and smells, which are often undetected by people. Cats respond in different ways to particular circumstances and at different times in a variety of ways for

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reasonable care for the safety of his lawful visitors'. North, P. (2012) *op.cit.*, para. 6.28, citing *Clinton v J Lyons & Co Ltd* [1912] KB 198 in relation to the common law obligations of an occupier to invitees.

<sup>99</sup> North, P. *Ibid.*, paras. 2.75, 6.15.

<sup>100</sup> *Chauhan v Paul* (1998) CA, per Wall J. Cited in North, P. *Ibid.*, para. 2.72.

<sup>101</sup> S 5(2). '...what must be proved in order to show that somebody has voluntarily accepted the risk is that (1) they fully appreciated the risk, and (2) they exposed themselves to it.' Etherton LJ in *Freeman* [2008] at para. 48.

<sup>102</sup> If a volunteer claims in negligence, as opposed to s 2 of the *Animals Act 1971*, for any injuries sustained from an animal, the defence of assumption of risk would equally be applicable. *Breen v Slotin* [1948] 4 D.L.R. 46. North, P. (2012) *op. cit.*, para. 2.133.

<sup>103</sup> *Animals Act 1971*, s 6(5). Should there be evidence of negligence on the part of the employee in the provision of safe working conditions, tortious liability may be pursued. North, P. (2012) *op. cit.*, para. 2.136.

<sup>104</sup> *Rands v McNeil* [1955] 1 QB 253.

<sup>105</sup> "The Law Commission..., at s. 20 regarded the rationale for strict liability for a *peculiarly dangerous activity* to be 'that the person carrying it on is in the best position to take precautions against or to mitigate the damage which may flow from the activity', and recommended that the burden should be on the employer to provide insurance cover." Clerk & Lindsell on Torts, 20<sup>th</sup> edn, *op. cit.*, 21.15, n 55.

diverse reasons, often incomprehensible to their owners / keepers, all of which may differ in respect of each cat.<sup>106</sup> Those working with cats should be made aware of these particular characteristics of cats generally. Cats are not dangerous animals to humans but they do behave as cats and knowing of this employees working with cats cannot be said to need, nor to be privy to, this additional protection, which, it is submitted is hostage to history and the circumstances as to why it was inserted in the *Animals Act 1971*.<sup>107</sup> It remains to be said that any owners of cats known to the owners to have abnormal characteristics likely to cause damage would be placed under an obligation to inform / warn / protect their employees accordingly; as should employees who gain knowledge of abnormal propensities inform their employers who would not otherwise have such knowledge for the purposes of the *Animals Act 1971*.

The *Animals Act 1971* also provides that a person is not liable under s 2 for any damage which is due wholly to the fault of the person suffering it.<sup>108</sup>

It still remains to consider potential liability at common law under the law of torts in an action for negligence. General liability in tort is concurrent with liability under the *Animals Act 1971*. There still remains a body of law peculiar to animals, despite the fact that animals are, like other chattels, merely agents and instruments of damage, *albeit* animate and automotive.<sup>109</sup> 'The law of torts has grown up historically in separate compartments and ... beasts have travelled in a compartment of their own.'<sup>110</sup>

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<sup>106</sup>Cats Protection. See Law Commission Report 1967, 'It would seem that the act of the animal must be in the nature of an attack and does not therefore include behaviour which, although it may cause damage, is merely frolicsome.' para. 6. Cited by Maurice Kay LJ in *Turnbull* [2012] at para. 45.

<sup>107</sup> Nevertheless, on a literal interpretation of s 6(5) of the *Animals Act 1971*, 'the defence of assumption of risk is not open to an employer whose employee claims under s 2 of the *Animals Act 1971*, provided that the risk in question was one incidental to his employment,' North, P. (2012) *op. cit.*, para. 2.137, who adds (n. 450) '[b]ecause the employer should insure against such liability: Law Commission Report, para. 20.'

<sup>108</sup>S 5(1). Also a person is not liable under s 2 for any damage caused by an animal kept on any premises or structure to a person trespassing there, if it is proved that the animal was not kept there for the protection of persons or property. s 5 (3). A duty of care is owed to trespassers in accordance with s 1(1), (4) of the *Occupiers' Liability Act 1984*, as amended by s 13(2) of the *Countryside and Rights of Way Act 2000*. North, P. (2012) *op. cit.*, paras. 6.31-6.33.

<sup>109</sup>Clerk & Lindsell on Torts 20<sup>th</sup>edn., *op. cit.*, Chapter 21 Animals.

<sup>110</sup>Lord Simmonds in *Read v Lyons* [1947] AC 156 at 182.



Liability in negligence may still apply alongside the statutory provisions and where any of the limbs of s 2(2) of the *Animals Act 1971* are not satisfied an action may be founded in negligence as long as its conditions are fulfilled. The statutory liabilities do not displace wider liabilities at common law. Although a claimant may prefer to claim under strict liability established by s 2 of the *Animals Act 1971*, he may resort to an action based on negligence: ‘...there is the ordinary duty of a person to take care either that his animal or his chattel is not put to such a use as is likely to injure his neighbour – the ordinary duty to take care in the cases put upon negligence.’<sup>111</sup> If knowledge of his cat’s abnormal propensities cannot be proven on the part of the keeper, it may be possible to show that damage was reasonably foreseeable,<sup>112</sup> and if the general requirements of actionable negligence<sup>113</sup> are established a case may succeed in negligence. In *Whippey v Jones*<sup>114</sup> the Court of Appeal emphasised in respect of liability in negligence that the duty of care will generally be breached only if a reasonable person in the defendant’s position would ‘contemplate that injury is likely to follow’ from his acts or omissions. Liability in negligence thus requires *foreseeability of injury as a likelihood*, so that the ‘possibility’ of injury as established on the facts was *not* enough. The test laid down by the Court is that there must be sufficient probability of injury to lead a reasonable person in the position of the defendant, to anticipate it.

The keeper of a cat would not be liable in negligence for personal harm caused to a dog-owner attacked by a worried mother cat with kittens, that personal harm being deemed to be too remote a consequence.<sup>115</sup> It was held, that the defendants were not bound to contemplate the injuries to the plaintiff as the consequence of keeping the cat. The fact that a cat with

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<sup>111</sup>*Fardon v Harcourt-Rivington* (1932) 48 TLR. 215 at 217 per Lord Atkin. Clerk & Lindsell on Torts 20<sup>th</sup> edn, *op. cit.*, 21-25. North, P. (2012), *op. cit.*, para. 6.12.

<sup>112</sup> It would not be sufficient to prove a failure to guard against the possibilities that a tame animal of mild disposition will do some dangerous act contrary to its ordinary nature. *Galea v Gillingham* [1987] Qd R 365. Cited in North, P. (2012) *op. cit.*, para. 6.14.

<sup>113</sup> There must be a duty of care; which is decided in relation to the facts of a particular case. It has been held that, in addition to the foreseeability of damage, in any situation giving rise to a duty of care it is also necessary that there should be sufficient ‘proximity’ between the parties and that the situation should be one in which the court considers it fair, just and reasonable that the law should impose a duty of a given scope upon one party for the benefit of the other. *Capraro Industries plc v Dickman* [1990] 2 AC 605. There must be a breach of that duty; there must be actual damage caused as a result of the breach of the duty to take care; and the damage must not be too remote a consequence of that breach.

<sup>114</sup>[2009] EWCA Civ 452, para. 16. *Ibid.*

<sup>115</sup>*Clinton v J Lyons & Company Limited* 1912] 3 KB 198.

kittens is likely to attack a dog is not sufficient to make its owner liable if it attacks a human being: *Osborne v. Chocqueel*<sup>116</sup>

Bray J ‘The truth is the risk is so remote as to be negligible, and a person who omits to guard against it is not guilty of negligence. It remains to consider whether there was any evidence to support the claim for damages for injuries to her dog. Now it is certainly the common experience of mankind that cat and dog will fight whether the cat has kittens or not, but it would be ridiculous to hold that for that reason every person who keeps a dog or a cat does so at his peril and is responsible for any damage his cat will do to his neighbour's dog or his dog will do to his neighbour's cat.’<sup>117</sup>

Thus, neither, it would appear, would an action lie in negligence for harm caused by a cat to a dog. It is significant to note that a cat owner<sup>118</sup> owes not only a duty of care to his neighbour<sup>119</sup> but now also a duty to ensure the welfare of each of his cats as a result of the expansion of welfare requirements under the law. [See 5 below]

When a collision occurs on a public road between a cat and a vehicle, the requirement to stop and give details/or report the accident to the police, failure to do so constituting a criminal offence<sup>120</sup> does not apply in respect of injury to a cat.<sup>121</sup> Liability depends on general negligence principles in the case of animals straying onto the highway and causing injury to others.<sup>122</sup> There would appear to be no restriction on the generality of the application of

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<sup>116</sup>[1896] 2 QB 109.

<sup>117</sup>1912 3 KB 198, para. 211.

<sup>118</sup>Although liability in negligence would not be confined to the cat's ‘keeper’. ‘Anyone who is negligent in the keeping or care of an animal may be liable for the harm that it does.’ North, P. (2012) *op. cit.* para. 6.16.

<sup>119</sup> There may also, potentially, be liability in negligence for allowing a diseased animal to venture onto neighbouring land and there infect neighbouring animals or the land owner himself, if the ‘keeper’ knew or ought to have known of the disease. North, P. (2012) *op. cit.*, para. 6.26.

<sup>120</sup>*Road Traffic Act 1988*, s. 170(4).

<sup>121</sup> ‘Animal’ means any horse, cattle, ass, mule, sheep, pig, goat or dog (*Road Traffic Act 1988*, s. 170, as amended by the *Road Traffic Act 1991*, Sch. 4.) Palmer, J. (2001), *op. cit.*, 16, 17.

<sup>122</sup>S 8(1) of the *Animals Act 1971*. S 8(2) of the *Animals Act 1971* indicates that there is no *presumption* of negligence when animals stray from unfenced land where such fencing is not customary and the defendant had a right to put animals there. North, P. (2012) *op. cit.*, para. 5.08.

negligence principles based upon the type of animals which strayed or on the type of highway, e.g. footpath, bridle path, main road or motor-way, onto which they strayed.<sup>123</sup> The case law [and historic origins] is mainly concerned with cattle and horses. No definition of animals is provided by the *Animals Act 1971*. In accordance with common law it would appear that there may now be liability in negligence where not only cows, horses and sheep stray onto a highway, but also where dogs, cats and even poultry do so.<sup>124</sup>

Cats, historically, are privileged to roam. Thus the authors consider it unlikely, on the basis of current law, that cat owners generally would be considered liable in the event of their cat causing a road accident (see question at Appendix 1). To succeed in a case of negligence it must be proved to the satisfaction of the court that the cat owner/keeper owed a duty to the road user to take care, that he failed in that duty and that the reasonably foreseeable injury or damage resulted from that failure.<sup>125</sup> The courts would weigh a number of factors in the balance in order to establish whether negligence was proven in any particular case. The nature of cats and the inability to fence in would not, it is submitted, constitute evidence of failure to take reasonable care. Foreseeability of the likelihood of the harm caused must be proven and not just the ‘possibility’ of injury.<sup>126</sup> Each case would depend on its own facts, but factors weighing against grounding such liability in negligence would be the absence of any case law or of statistics on the numbers of cats causing accidents, and the acceptance by the law that cats are not likely to cause severe harm in the same category as dogs.

Civil liability will not arise for cat trespass. The civil law tort of trespass, as a general rule, is committed by the owner where his animals stray onto the land of another from the owner’s land by intention or negligence on his part. A cat (i.e. the domestic cat) holds a unique

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<sup>123</sup> Law Commission Report on Civil Liability for Animals 1967, paras. 45-54. North, P.(2012) *op. cit.*, para. 5.09.

<sup>124</sup> One factor in determining whether there was liability for allowing poultry to escape was considered to be ‘the extreme difficulty of preventing poultry escaping on to the road’: Twelfth Report of the Law Reform Committee for Scotland (1963), Cmnd 2185, para. 12. ‘The same might be said of cats’: see Law Commission Report on Civil Liability for Animals, No. 13, 1967, para. 54. Cited in North, P.(2012) *op. cit.*, para. 5.17, n. 71.

<sup>125</sup> *Haley v London Electricity Board* [1964] 3 All ER 185 and *Nettleship v Weston* [1971] 3 All ER 581 provide some guidance on what constitutes a duty of care, when it applies and the issue of foreseeability. *See also Capraro Industries plc v Dickman* [1990] 2 AC 605.

<sup>126</sup> In accordance with *Whippey v Jones* (2009), *op. cit.*

position in that its owner is not responsible for the consequences of its trespasses.<sup>127</sup> A cat would not be the subject of a trespass action at common law.

The situation is aptly explained by Bankes LJ in *Buckle v Holmes*:<sup>128</sup>

‘Generally speaking the owner of an animal is responsible if it trespasses; but the common law in its common sense admits of exceptions to this general rule, and among the exceptions is the dog. Trespass by a dog is very different; a dog following its natural propensity to stray is not likely to do substantial damage in ordinary circumstances, although it might do so by rushing about in a carefully tended garden; but those who administered the law in the course of its development had regard not to exceptional instances but to the ordinary experience of a dog's habits, and they also took into account that the dog, a useful domestic animal, must be used if at all according to its nature; that it cannot ordinarily be kept shut up, and that the general interest of the country demands that dogs should be kept and that a reasonable amount of liberty should be allowed them. Therefore dogs are placed by the common law in a class of animals which do not by their trespasses render their owners liable. I can see no possible distinction between a dog and a cat.

Upon the question whether the owner of a cat is responsible for its trespass, the natural propensity of cats to pursue and devour birds has, in my opinion, no bearing.’

Such would be the position today, in that no action for trespass would lie in respect of a non-dangerous animal, the domestic / stray / feral cat.<sup>129</sup>

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<sup>127</sup>Palmer, J. (2001), 9, n 68.

<sup>128</sup>[1926] 2 KB 125 (C A), paras.127, 128.

<sup>129</sup>In terms of *strict liability* under the *Animals Act 1971*, *cats and dogs are not included within livestock trespass*, i.e. livestock straying on to land ‘in the ownership or occupation of another.’ ss. 4 (1) and 11.

#### **4.5. Provisional Conclusions on Cat Ownership, Responsibility and Liability**

Our analysis shows ownership to be a complex issue requiring detailed consideration before responsibility or liability can be clearly established. At its most basic level, a person who regularly provides food for a cat or has a place within his home or garden that a cat regularly frequents is an owner. The emphasis provided for in legislation is that of a person who has a cat in his possession or who allows a cat to be in his possession. Given the nature of cats as companions who socialise with humans and who can be either dependent or semi-dependent on humans for food, this notion of ownership incorporates not just the formal domestic cat/owner relationship but also the feral and semi-wild relationship where a person accepts responsibility for the feeding of a cat. We discuss later in this report the extent to which such a relationship may impose other responsibilities, particularly in light of the provisions of the *Animal Welfare Act 2006*. However we note here that the *keeper* of a cat (arguably) potentially faces strict civil liability for damage caused as a result of the known abnormal characteristics of his cat and owes a duty of care to his neighbours in accordance with the tort of negligence.

### **5. ANIMAL WELFARE LAW AND CATS**

While it is not the focus of this research to assess the state of animal welfare legislation in the UK, current animal welfare law contains a number of important provisions relating to the care of domestic or feral cats and is applicable to wild cats in certain circumstances.

#### **5.1. Animal Welfare Law in the UK**

The *Animal Welfare Act 2006* received Royal Assent on 8 November 2006, making owners and keepers of animals responsible for ensuring that the welfare needs of their animals are met. Anyone who is cruel to an animal, or does not provide for its welfare needs, may be banned from owning animals, fined up to £20,000 and/or sent to prison. DEFRA has subsequently (December 2009) introduced *Codes of Practice* for the welfare of cats, dogs and horses (including other *equidae*) and a code of practice for the welfare of privately kept non-

human primates (January 2010). Current UK legislation therefore explicitly provides for a strong principle of animal welfare with prison sentences for ‘general’ animal welfare offences. In addition, other legislation such as the *Hunting Act 2004*, *Protection of Badgers Act 1992* and *Wildlife and Countryside Act 1981* (as amended) make specific provisions for animal welfare by prohibiting certain activities that cause harm or suffering to animals.<sup>130</sup>

The *Animal Welfare Act 2006* consolidates much previous legislation. The Act applies to ‘a vertebrate other than man’ which includes domestic and feral cats and is aimed at both promoting good standards of animal welfare and punishing cruelty offences. However it is worth noting that certain cruelty offences are also contained in wildlife legislation including the *Wild Mammals Protection Act 1996* (and its Scottish equivalent), the *Wildlife and Countryside Act 1981* and the *Countryside and Rights of Way Act 2000* (which amends the *Wildlife and Countryside Act 1981*).

The *Animal Welfare Act 2006* explicitly places a duty on those responsible<sup>131</sup> for animals to ensure their welfare and to provide for each of their animal’s basic needs, which includes providing adequate food and water, veterinary treatment and an appropriate environment in which to live. The duty to ensure welfare had previously only existed for farm animals, although the *Protection of Animals Act 1911* (as subsequently amended) contained the offence of causing unnecessary suffering to an animal. The standard of care required is set out in DEFRA’s *Code of Practice for the Welfare of Cats* (discussed below).

It is also worth noting that the *Animal Welfare Act 2006* has extended time limits for prosecutions. Section 31 provides that notwithstanding anything that is in s.127(1) of the *Magistrates’ Courts Act 1980*, a magistrates court may try a case if information is laid:

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<sup>130</sup> It is worth noting that wildlife legislation is currently the subject of a Law Commission project that will see proposals for a new Wildlife Management Bill published in 2014. The Commission’s Consultation documents are available online at: <http://lawcommission.justice.gov.uk/consultations/wildlife.htm> [Accessed 3 September 2012].

<sup>131</sup> Section 3 of the *Animal Welfare Act 2006* defines ‘responsibility for animals’ and provides:

- (1) In this Act, references to a person responsible are to a person responsible for an animal whether on a permanent or temporary basis.
- (2) In this Act, references to being responsible for an animal include being in charge of it.
- (3) For the purposes of this Act, a person who owns an animal shall always be regarded as being a person who is responsible for it.
- (4) For the purposes of this Act, a person shall be treated as responsible for any animal for which a person under the age of 16 years of whom he has actual care and control is responsible.

- before the end of the period of 3 years beginning with the date of the offence; and
- before the end of the period of 6 months beginning with the date on which the evidence which the prosecutor thinks is sufficient to justify the proceedings comes to his knowledge

## **5.2. Animal Welfare as Criminal Law: Animal Welfare Offences**

It is important to note that the *Animal Welfare Act 2006* is part of the criminal law. It retains the offence of causing unnecessary suffering from previous legislation but considerably refines its scope to incorporate both the active and passive nature of an offence. Unnecessary suffering can thus be caused either by taking action which causes unnecessary suffering or by failing to take appropriate steps to prevent unnecessary suffering. Inflicting pain, which may occur for example in cruelty cases, is not in itself sufficient to constitute unnecessary suffering even where extreme pain is caused, as the pain may be caused for beneficial reasons such as in surgery to alleviate the harm caused to a cat, or other medical treatment. It becomes necessary, therefore, to distinguish between necessary suffering caused to a cat and unnecessary suffering. In making this distinction the courts are able to take into account a number of factors such as whether the suffering could have been avoided or whether it was incidental to a legitimate purpose. Factors to be considered include whether the suffering could have been reduced, was carried out in compliance with legislation, the conditions of a licence or a code of practice issued on a statutory basis.<sup>132</sup> The courts might also consider the purpose of the conduct, the proportionality of the suffering, and whether the conduct that caused the suffering was that of a reasonably competent and humane person.

The concept of unnecessary suffering is wide in scope and includes mental as well as physical suffering. Thus it is an offence unnecessarily to infuriate or terrify a protected animal in addition to, or instead of, causing physical pain. While, for example, a police horse on riot control duty might suffer mental pain this is arguably ‘necessary’ for it to fulfil its legitimate

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<sup>132</sup>The *Animal Welfare Act 2006* does not apply to anything lawfully done under the *Animals (Scientific Procedures) Act 1986*.

purpose of protecting people or property. However, a cat which is tortured, before being humanely euthanised, has had unnecessary suffering inflicted on it, and it is an offence for any person to cause unnecessary (physical or mental) suffering to a protected animal where the person committing the act knew or ought reasonably to have known, that the act would cause, or would be likely to cause, suffering. In addition, where a person is responsible for an animal (discussed above), he would commit an offence if unnecessary suffering was caused to the animal by his failing to take some action, where he knew or ought reasonably to have known that the omission would cause, or would be likely to cause, suffering. It is not necessary to show that the person actually knew that his act or omission would cause suffering, but only that he ought to have known.

Anyone who abandons a protected animal potentially commits a criminal offence under the UK *Animal Welfare Acts*. The position varies in each of the UK jurisdictions. In Scotland it is an offence for a person responsible for an animal to abandon it without reasonable excuse and in circumstances likely to cause it unnecessary suffering. In Northern Ireland an offence would be committed should a person responsible for an animal abandon it without reasonable excuse. There is no specific offence of abandonment under the *Animal Welfare Act 2006*; in England and Wales abandonment is subsumed within the duty to ensure welfare and the offence of causing unnecessary suffering.

Wildlife legislation generally makes it an offence to kill, injure or take wild animals (with the exception of pest or game species) and contains specific prohibited methods of taking wild animals even where action might legitimately be taken for pest control purposes or to protect game interests. The *Wild Mammals Protection Act 1996*, in particular, specifies that if any person ‘mutilates, kicks, beats, nails or otherwise impales, stabs, burns, stones, crushes, drowns, drags or asphyxiates any wild mammal with intent to inflict unnecessary suffering he shall be guilty of an offence’.<sup>133</sup> This Act applies to any mammal that is not a domesticated or captive animal<sup>134</sup> according to the *Animal Welfare Act 2006*.<sup>135</sup> As a result, arguably it

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<sup>133</sup>Section 1.

<sup>134</sup>Section 3, as amended by Schedule 3(13) of the *Animal Welfare Act 2006*.



applies not just to recognised wild species of cat such as the Scottish wildcat but also to cats living wild or existing in a wild state. The *Protection of Animals Act(s)* definitions include animals which are ‘tame’ or considered to be ‘sufficiently tamed to serve some purpose for the use of man’<sup>136</sup>, and animals which are either in captivity, or which are subject to conditions which hinder or prevent their escape from captivity or confinement.<sup>137</sup>

### **5.3. DEFRA’s *Code of Practice for the Welfare of Cats***

The DEFRA *Code of Practice* is issued under Section 14 of the *Animal Welfare Act 2006* and applies to all protected cats. The *Act* requires that all reasonable steps must be taken to ensure that the cat’s following needs are provided for:

- 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 *Code* provides practical guidance to cat owners on how to comply with the conditions of Section 9 of the *Act*. While a breach of the *Code* is not an offence, in any action taken for animal welfare offences involving cats, the Court will look at whether or not a cat owner has complied with the provisions of the *Code* the main detail of which is covered below.

#### **5.3.1. Suitable Environment**

The *Code* recognises the territorial nature of cats and that although classed as companions; domestic cats will spend significant periods of time outside. As a result, while owners are

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<sup>135</sup>Which makes a minor amendment to the definition of domestic animal originally provided for in the *Protection of Animals Act 1911* and *Protection of Animals (Scotland) 1912*.

<sup>136</sup>Section 15, *Protection of Animals Act 1911*.

<sup>137</sup>*Ibid.* 15( c)Section 2 of the *Animal Welfare Act 2006* broadly replicates this definition albeit in slightly different words. While the *Animal Welfare Act 2006* repeals several aspects of earlier law, section 15(b) of the *Protection of Animals Act 1911* has not been repealed. Thus the law appears to preserve the distinction between domesticated and ‘tame’ animals and ‘wild’ animals.

required to provide their cat with a ‘safe, comfortable, dry, draught-free, clean and quiet place’ where it can rest undisturbed<sup>138</sup> they are also required to take ‘reasonable steps’ to protect a cat from hazards indoors and outdoors. While ‘reasonable steps’ is not explicitly defined in the *Code* there is also specific reference to making sure that a cat has constant access to safe hiding places, where it can escape if it feels afraid. As a result, cat owners need to ensure either that they do not keep a cat in an unsafe or unsuitable environment where the needs specific to a cat’s behaviour are not catered for, or that if they do so, they show that they have taken steps appropriate both to the cat and the specific accommodation that will so far as is possible minimise any possible harm to the cat from indoor and outdoor hazards.

### **5.3.2. Diet**

The *Code* requires that the dietary needs of cats should be met, specifying the need to ensure that cats do not become underweight or overweight. Despite concerns that the provisions may be onerous<sup>139</sup> this is consistent with the *Act’s* general requirement to prevent unnecessary suffering whether physical or mental and to ensure that good standards of animal welfare are maintained. However, this aspect of the *Code* effectively lays down minimum standards that owners need to comply with. Not only the requirement to provide fresh drinking water at all times and to provide a balanced diet suitable for a cat’s individual needs, but also to monitor the amount that the cat eats or drinks and to seek advice concerning the cat’s diet as required. The *Code* specifically refers to the special dietary requirements of certain cats (including cats that are ill) and these provisions when combined with the *Act’s* obligation to provide adequate standards of animal welfare impose an active obligation on owners regarding their cat’s dietary needs, explicitly linking dietary health and welfare.

### **5.3.3. Normal Behaviour**

The *Code* reflects the fact that cat behaviour varies according to a cat’s age, personality and past experiences.<sup>140</sup> As outlined elsewhere in this report, unnecessary suffering can be caused

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<sup>138</sup>Section 1, DEFRA *Code of Practice for the Welfare of Cats*.

<sup>139</sup> Derbyshire, D. (2008) *Barking mad: Owners of obese dogs and fat cats could face jail under controversial new rules*, Daily Mail, Online version 05 November 2008. Available at: <http://www.dailymail.co.uk/news/article-1083010/Barking-mad-Owners-obese-dogs-fat-cats-face-jail-controversial-new-rules.html#ixzz1ZFpkoAtc>

<sup>140</sup>Section 1, DEFRA *Code of Practice for the Welfare of Cats*.

either by taking action which causes unnecessary suffering or by failing to take appropriate steps to prevent unnecessary suffering. Section 3 of the *Code* thus stipulates that cats are provided with enough ‘mental, social and physical stimulation’ to meet the individual needs of a cat. The reference to individual needs signifies that ‘standard’ or minimum standards are not enough and that the owner of an extremely active cat may need to make additional provision to ensure that this requirement is met. While the *Code* requires that a cat is provided with somewhere to scratch, for example a sturdy scratching post, an active cat with a wide territory may require additional stimulation such that a single indoor post is not enough. The *Code* is explicit in specifying that owners should know how their cat behaves when fit, healthy and happy, by implication imposing an obligation on owners to be aware of and monitor their cat’s behaviour and notice any changes in it. Failure to do so could be a breach of the *Code* and result in unnecessary suffering caused by a failure to take action.

#### **5.3.4. Housing**

Section 4 of the *Code* places an obligation on owners to make sure that their cat has appropriate company. In keeping with other provisions of the *Code*, Section 4 requires owners to consider the individual needs of a cat and its individual sociability towards people, other cats and other animals. The *Code* indicates that ‘a cat may suffer if it cannot avoid other cats it does not like’<sup>141</sup> indicating that failure to provide appropriate housing free from interaction with other animals could constitute unnecessary suffering. However the *Code* also indicates that owners should provide regular contact with people even when they are away, for cats that like people.

Section 4 of the *Code* provides that owners must appropriately consider the socialisation needs of a particular cat to the extent where they should either avoid having a second cat or other companion animal (e.g. a dog) if doing so would negatively impact on their cat, or that should they have another animal they take appropriate steps both gradually to introduce the new animal into the home environment or to take additional steps to minimise contact between animals that do not like each other. This includes providing extra resources (toys, beds, litter trays and hiding places) to allow cats to get away from each other and also to ensure that they can access everything they need without having to pass one another too

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<sup>141</sup>Section 5, DEFRA *Code of Practice for the Welfare of Cats*.

closely. This guidance means that cat owners need to carefully consider, on the basis of an individual cat's needs, any decision to have more than one cat or any other animal. Failure to do so could result in the causing of unnecessary suffering even though this is done unintentionally.

Caring for cats in hot weather and on bonfire night warrants additional welfare guidance in light of the legal duty of responsibility under the *Animal Welfare Act 2006*. Those responsible for the welfare of cats must take account of the additional guidance and advice obtainable from DEFRA and which is available on its website,<sup>142</sup> in order to discharge their legal responsibilities to their cats.

### **5.3.5. Protection from Pain**

The *Code* also places an enhanced obligation on owners to monitor their cats for signs of injury or illness and to ensure that somebody else does this when the owner is away. While most cat owners will naturally keep an eye on their animal's health, the *Code* places an explicit, active obligation on owners to do so and to seek veterinary (or other appropriate) advice as soon as possible in the event of injury or illness.

It is worth noting that the *Animal Welfare Act 2006* duty to promote welfare applies to those responsible for cats whether in a private household or the rescue home. Questions arise concerning the responsibility for neutering cats and the decisions taken to euthanise cats: questions as to whose responsibility it is to pay for neutering; the rescue home or the private cat owner, or the government. It would appear to make sense to advocate neutering in order to reduce potential cases of euthanasia. It is understood that the consensus of cat homing organisations was in favour of not making it mandatory on the part of cat owners to neuter their cats for fear of increasing the cases of abandonment and /or deterring future re-homing of cats brought into rescue homes, but that this issue would be reconsidered in the light of any

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<sup>142</sup> [www.defra.gov.uk/news/2011/06/03/pets-hot-weather/](http://www.defra.gov.uk/news/2011/06/03/pets-hot-weather/) ;  
<http://archive.defra.gov.uk/foodfarm/farmanimal/welfare/documents/fireworks.pdf>

potential<sup>143</sup> mandatory scheme of neutering introduced for dogs.<sup>144</sup> It is suggested that this is a contemporary issue which should receive further consideration pursuant to the recent recommendations of the Companion Animal Welfare Council (CAWC):

*‘There is a need for an appraisal of policies involving euthanasia. The Report recognises that euthanasia can be a response to circumstances where health and/or welfare are irreversibly and severely compromised and when it is not possible to meet animals’ needs. However, the Report also recognises that the moral objective of rehoming organisations is to provide a good quality of life for as many animals as possible, and that the moral basis of ‘no kill’ policies is derived from the ideal that a healthy companion animal, enjoying a good standard of welfare and quality of life, should be entitled to live out its natural life.’<sup>145</sup>*

Ethical principles are necessary to govern the decision to euthanise. The moral interests of cats are at stake here, even their right to life. Moreover the duty to ensure welfare owed to cats under the *Animal Welfare Act 2006* applies to stray and feral cats, therefore considerations of neutering *versus* euthanasia need to be balanced in the interest of the compassionate welfare of stray/feral cats. For example, those feeding or looking after colonies of feral, semi feral or stray cats are ‘persons responsible’ who have a duty to ensure their welfare. This may require getting cats vaccinated or neutered where employees, tenants or householders have taken on responsibility for feeding and looking after feral, semi feral or stray cats. It is submitted that this is a grey area with the need more guidance on welfare considerations here.

The *Code* also indicates explicitly that owners are required to ensure that cats are provided with safe toys and receive enough mental, social and physical stimulation to satisfy individual behavioural needs. Given the *Code’s* obligation to provide for an appropriate environment,

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<sup>143</sup> England and Wales do *not* have such a mandatory scheme, although DEFRA has recently engaged in a Consultation on introducing mandatory *microchipping* for dogs as one proposal to tackle irresponsible ownership of dogs, <http://www.defra.gov.uk/consult/files/dangerous-dogs-annexa-condoc-120423.pdf>

<sup>144</sup>The Companion Animal Welfare Council, *Report on the Identification and Registration of Companion Animals*, 12 June 2002, <http://www.cawc.org.uk> .

<sup>145</sup>*Rescue and Rehoming of Companion Animals*, Companion Animal Welfare Council, June 2011, <http://www.cawc.org.uk> .

housing and materials to allow a cat to exhibit normal behaviours, this raises a question concerning the training of cats to fit within a pre-existing home environment. The *Animal Welfare Act 2006* suggests that instead, homes would need to be modified to suit the needs of the individual cat which has implications for cat training methods. It is also important to point out that owners of cats in Wales are prohibited from *using* electronic training aids by the *Animal Welfare (Electronic Collars (Wales)) Regulations 2010*<sup>146</sup> (the *2010 Regulations*). The *2010 Regulations* are made under section 12 of the *Animal Welfare Act 2006*. Section 12 (1) empowers ‘the appropriate authority’, in Wales the Welsh Ministers, to make regulations “for the purpose of promoting the welfare of animals for which a person is responsible, or the progeny of such animals”. Under the *2010 Regulations*, using such a collar is an offence punishable with up to 51 weeks imprisonment.<sup>147</sup>

There is, however, a complexity to the e-collar issue. The Welsh legislation<sup>148</sup> fails to distinguish between handheld devices which have a potential for human error and abuse, and electronic containment devices used to keep animals in a property and prevent them from straying and causing damage. Such devices contain a warning which only if ignored provide an electric shock. In response to our draft report Professor Mills<sup>149</sup> has commented that cats learn this very fast and thus such devices have the potential to reduce deaths on the roads where they are used to keep cats within a property boundary and to interrupt behaviour without causing significant suffering. In England, DEFRA has commissioned research (by the Universities of Bristol and Lincoln) in order to assess the effect of ‘pet’ training aids on the

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<sup>146</sup>SI 2010/934.

<sup>147</sup> It has been reported, in the case of *The Queen on the application of Petsafe Ltd and the Electronic Collar Manufacturers Association and the Welsh Ministers* [2010] EWHC 2908, that the use of collars has been banned by the Welsh police since 2000 and it is a fact that the Welsh armed forces do not use them, para. 52. Furthermore, their use is banned in three other European Union Member States, namely Finland, Denmark and Germany. See Ryland, D and Nurse, A ‘Mainstreaming after Lisbon: Advancing Animal Welfare in the EU Internal Market’ (2013) 22(3) *EEELR*, 101, 106ff.

<sup>148</sup> Three broad categories of devices which deliver a shock to the animal wearing the collar fall to be regulated under the *2010 Regulations*, namely: remote training collars operated manually by the trainer via a remote-controlled transmitter; devices that operate automatically in response to a dog barking; devices activated at a boundary line marked by a buried wire which interacts with the collar to keep the animal within a defined area. *Ibid.*, para. 25.

<sup>149</sup> Professor Mills has undertaken research on the use of electronic training aids on dogs for the Companion Animal Welfare Council. See the Report of the Companion Animal Welfare Council, *The Use of Electronic Pulse Training Aids (EPTAs) in Companion Animals*, June 2012, <http://www.cawc.org.uk>

welfare of domestic dogs. The outcome of the Report is awaited. In the interim period it is not an offence to use electronic training aids on cats in England, despite some bodies arguing that there are strong welfare and ethical reasons not to do so.<sup>150</sup>

#### **5.4. Re-homing**

It is reported that there are around 11.9 million companion cats in the UK with many homes owning more than one cat.<sup>151</sup> Estimates suggest that there are six million households with a cat. The average life span of a cat is 12-16 years, but it is not unusual for some cats to reach 20 years or more. There are thousands of cats, all over Britain, waiting to be re-homed. There are many reasons why cats are abandoned or surrendered to re-homing organisations, which include economic hardship and the widely reported rising costs of cat food and veterinary care. Its owners may have moved house into a new residence in which pets are not allowed. Changes in family circumstances, such as pregnancy, illness, divorce or death; allergic reactions by family members; or moving into residential care are all contributory causes. There may have been problems with neighbours; or the cat has become pregnant, exhibited behavioural problems, or been brought to a centre as an abandoned stray. The most common source of the problem is thought to be the tendency of many people to obtain cats as companions when they lack the time, resources, or basic knowledge of the cat's needs. A Cats Protection survey of their 29 adoption centres, in May 2008, revealed a 77% increase in unwanted cats during the first four months of 2008 compared with the same period the previous year. Figures from the Royal Society for the Prevention of Cruelty to Animals (RSPCA) describe 2011 as the worst year for calls relating to abandoned animals with many areas anecdotally reporting an increase in cat and kitten populations. RSPCA figures also show a 23.5% overall increase in the number of people convicted for cruelty and neglect and an increase in the number of convictions relating to cats from 341 in 2009 to 428 in 2011.<sup>152</sup> Cat abandonments are considered particularly disturbing because cats have traditionally been

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<sup>150</sup>Lamb D 'Electronic Pulse Training Aids (EPTAS) and Ethics, [www.k9sportworld.com/site/articles/articles-by-users/65-electronic-pulse-training-aids-eptas-and-ethics?showall=1](http://www.k9sportworld.com/site/articles/articles-by-users/65-electronic-pulse-training-aids-eptas-and-ethics?showall=1) , accessed 23 July 2011 and British Small Animal Veterinary Association (2012) Use of Electronic Collars in Companion Animals, Policy Statement, Quedgeley, BSAVA.

<sup>151</sup>The People's Dispensary for Sick Animals (PDSA) Animal Wellbeing Report 2011, [www.pdsa.org.uk/files/PDSA\\_Animal\\_Wellbeing\\_Report\\_2011.pdf](http://www.pdsa.org.uk/files/PDSA_Animal_Wellbeing_Report_2011.pdf)

<sup>152</sup>RSPCA Prosecution Department Annual Report 2011, Horsham: RSPCA.

thought of as being relatively easy to care for, primarily because they can be let out into a garden without supervision. A further problem is the number of cats that are returned to the re-homing organisations. Behavioural problems are a factor, which might involve escaping from the premises, house soiling, destructive behaviour and problems with family members or with other companion animals.<sup>153</sup>

The Companion Animal Welfare Council (CAWC) makes many commendable recommendations in their 2011 Report. It is worth referring to some of these for informative reasons so as to avoid legal liability, as follows:

- Where the *re-homing organisation* retains ownership of the cat throughout its life, this is usually explained in the contract accepted by the prospective owners. In such cases the term ‘*custodian*’ will be employed. *Re-homing organisations* which do retain ownership then have *responsibilities and potential liabilities* under the *Animal Welfare Act 2006* [Section 5] and also may incur liability under the *Animals Act 1971* [Section 4.4]. The former *Act* is described as ‘relat[ing] to animal ownership regarding the behaviour of the human’, and the latter *Act* as relating to ‘the behaviour of the animal’.<sup>154</sup>

‘The responsibility for the animal’s welfare and behaviour lies with the keeper and the owner, who may not be the same person. Where the owner of an animal is the re-homing organisation, in that they can choose to take back the animal, there are likely to be legal obligations on that organisation to ensure that the keeper – the adopter – is given sufficient advice of the highest standard on the care and management of the animal. This would include advice on training and behaviour and sources of help. The consequences of not doing so, or not doing so in written format, may be court action which can be damaging to the people involved and to the future of such organisations; and thus to the welfare of current or future animals that pass through that organisation.

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<sup>153</sup>*Rescue and Rehoming of Companion Animals*, Companion Animal Welfare Council, June 2011, <http://www.cawc.org.uk>.

<sup>154</sup>*Ibid.* point 8.



It thus behoves organisations to ensure their staff are adequately and appropriately trained.<sup>155</sup>

- As discussed at 5.3. above, the welfare of each individual cat is paramount now under the *Animal Welfare Act 2006* and the CAWC recommend that *new owners* are, ‘at a minimal level forewarned of potential problems following re-homing and that it is not uncommon for re-homed cats to exhibit lethargy and anorexia for a day or two, which may be followed by more boisterous behaviour within a couple of weeks when they feel confident in their new environment’. New owners must be given vital information regarding the cat’s history, temperament and health, otherwise ‘*it may lead to the re-homing organisation putting the new owners in jeopardy of a criminal record if lack of information means that they do not meet the individual animal’s needs, or are not made aware of behaviours which may lead to legal contraventions.*’<sup>156</sup> This is in addition to mandatory information concerning expense, insurance, neutering, microchipping and the fact that cats are completely dependent on their owners for protection, an adequate environment, food and stimulation.
- The CAWC stress that the abandonment of any companion animal is both cruel and illegal. It would thus behove the re-homing organisation to emphasise expressly in any information given to a prospective cat owner, which may well be the standard practice, that any person prospectively thinking of relinquishing a cat should obtain advice from the homing organisation in the first instance, which may then help to remove the problem that may have prompted the owners to consider relinquishing it.

### **5.5. The Special Status of Cats in Scientific Procedures**

The *Protection of Animals Act 1911* created the offence of performing an operation without ‘due care and humanity’ this includes, for example, the castration of a male kitten without anaesthetic. To a certain extent such offences have been superseded by Section 5 of the *Animal Welfare Act 2006* which covers mutilations and the *Animal Welfare Act’s* repeal of

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<sup>155</sup>*Ibid.* point 8, pages 16 and 17.

<sup>156</sup>*Ibid.* point 9 Concluding Recommendations.

Section 1 of the *Protection of Animals Act 1911*.<sup>157</sup> Cats enjoy a special status in legitimate animal experimentation under the *Animals (Scientific Procedures) Act 1986 (ASPA)* which regulates scientific procedures and specifies that they can only be permitted when the benefits that the work is likely to bring outweigh any pain or stress that the animals may experience. The *ASPA* regulates scientific procedures which may cause pain, suffering, distress or lasting harm to 'protected animals'; it refers to these as "regulated procedures". The definition of a regulated procedure in the *ASPA* does not include procedures involved in standard veterinary, agricultural or animal husbandry practices, but does include the a) breeding of animals with genetic defects; b) use of animals to produce blood products (e.g. antisera); c) use of animals to maintain or produce tumours or parasites; and d) administration of drugs to dull perception (e.g. anaesthetics, analgesics, tranquilisers).

Two licences are required for any scientific work controlled by the *Act*. A project licence specifies the programme of work in which regulated procedures are to be carried out and each personal licence allows an individual to carry out identified procedures on specified types of animals. The place where the work is done is also licensed by means of a certificate of designation unless the nature of the work itself requires that it be carried out in other places such as farms or fields. Most of the smaller species of animals used in scientific procedures, such as rodents, rabbits, cats and dogs, are bred in establishments which are designated by a certificate and subject to regular inspection.

Section 5(6) of the *ASPA* grants special status to cats (along with non-human primates, dogs and *equidae*), so that a project licence for use of these species will not be granted unless 'no other species is suitable...or it is not practicable to obtain animals of any other species that are suitable for those purposes'. As a result, there is a presumption that cats will not be used in animal experiments except in exceptional circumstances.

In deciding whether, and on what terms, to authorise the project, the likely adverse effects on the cats must be weighed against the potential benefits to humans, other animals, or the

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<sup>157</sup>The *Animal Welfare Act's* provisions on mutilations would make the declawing of cats unlawful in England and Wales.

environment) which are expected to accrue from the scientific procedure. Adequate consideration must also have been given to the feasibility of using alternative replacement methods which do not involve the use of animals.<sup>158</sup>

A reduction of 32 per cent in the number of scientific procedures involving cats was observed in 2010 although a total number of 152 cats were used in 187 procedures (evidence of the fact that some cats were involved more than once); with 13 used in procedures for fundamental biological research and 139 in applied studies of veterinary medicine.<sup>159</sup> Cats acquired from within its own designated establishment were used in 22 procedures; cats acquired from another designated breeding *or supplying* establishment in the UK in 24 procedures; cats acquired from non-designated sources in the UK accounted for 50 procedures; 85 procedures used cats acquired from sources within the EU but outside the UK; and 6 procedures used cats acquired from other sources. Since 1990 establishments that breed certain types of animals, which include cats, for use in scientific procedures, and establishments which obtain cats from elsewhere and *supply* them to laboratories are required to hold a certificate of designation, issued by the Secretary of State. There were 68 registered supplying establishments (inclusive of non-profit making organisations) as at 31 December 2010. Ninety six procedures were carried out without anaesthesia. General anaesthesia was administered, with recovery evident in 68 procedures; a further 16 resorted to local anaesthesia. The remaining 7 procedures recorded administered general anaesthesia throughout but without the cats' recovery.<sup>160</sup>

At time of writing the draft version of this report the Home Office was consulting on options for the transposition of a revised European Union Directive<sup>161</sup> on the protection of animals

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<sup>158</sup> ASPA 1986, Appendix A.

<sup>159</sup> Home Office, *Statistics of Scientific Procedures on Living Animals*, Great Britain 2010, HC 1263, London, 13 July 2011.

<sup>160</sup> There are three main severity bandings: mild, moderate and substantial. A fourth band, which is unclassified, applies to those procedures where animals are used under terminal anaesthesia, where the animal is anaesthetised before the start of the procedure, is kept anaesthetised throughout and is killed without recovering consciousness.

<sup>161</sup> Directive 2010/63/EU, [2010] OJ L276/33  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:276:0033:0079:EN:PDF>

used for scientific purposes,<sup>162</sup> in order to transpose the Directive's provisions into national law and, accordingly, to amend or replace the current *Animals (Scientific Procedures) Act (ASPA )1986*. The 2010 Directive places a strong emphasis on minimising the use of animals and the promotion of the 3Rs (the *refinement* of scientific procedures; *reduction* in numbers of animals used; and their *replacement* where possible). It also requires the authorisation of establishments and projects; risk-based inspections; each breeder, supplier and user to establish an animal welfare body to advise on the welfare of animals and the 3Rs; the classification of procedures according to their severity; restrictions on the re-use of animals; and the publication of non-technical summaries of licensed projects for transparency. The revised Directive requires Member States to apply mandatory minimum standards of welfare and accommodation. Some of the Directive's provisions are *less* stringent than the current UK requirements. For example the *ASPA1986* provides special protection for cats, whereas the 2010 Directive does not. This Directive does allow Member States to retain current, more stringent national provisions in force on 9 November 2010 provided they are not used to inhibit the free market.<sup>163</sup> The situation exists where *legally*, cats enjoy different levels of protection or standards of treatment depending on whether their human use is one of companion or use in scientific procedures. Analysis of the law reveals an inconsistency in the animal welfare requirements applicable to cats according to their category of human use, despite the EU initiative introducing Member State wide application of minimal standards of care and accommodation for cats used in scientific procedures.

The Consultation posed questions as to whether the loss of special protection status is likely to lead to an increased use of cats and whether the UK should decide to keep its current protection for cats within the UK.<sup>164</sup> Transposition of the new Directive includes an option to retain the UK's higher standards and requirements that were in force on 9 November 2010, including retention of 'special protection' for cats and the current UK prohibition on the use of stray and feral cats.<sup>165</sup> In addition, provided they comply with the requirements of the

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<sup>162</sup> June 2011 – 5 September 2011, <http://www.homeoffice.gov.uk/about-us/consultations/>

<sup>163</sup> *Ibid.* paras. 22-25.

<sup>164</sup> *Ibid.* para. 43.

<sup>165</sup> The position of Cats Protection, the British Veterinary Association (BVA) and the Laboratory Animals Veterinary Association (LAVA), and of the Animals Procedure Committee (APC) which advises the Home Office on ASPA matters, is that the UK should retain its higher levels of protection.

Directive, the ability to supply laboratory animals to the UK will be open to breeders and suppliers across Europe. Accordingly, the Consultation is asking what impact this will have on UK breeders, suppliers and users. More importantly, what animal welfare impact will this have?<sup>166</sup> Also of importance is the fact that the Directive only *purports* to prohibit the use of stray and feral animals of domestic species. Their use is prohibited under the Directive *except in essential studies relating to the health and welfare of the animals, or serious threats to the environment or to human or animal health.*<sup>167</sup> There must also be a scientific justification that the purpose of the procedure can be achieved only by the use of a stray or a feral animal. The Home Office Consultation highlights the fact that this is a relaxation of the provisions of the previous 1986 Directive under which the use of stray and/or feral cats was prohibited. The *ASPA1986* implements this latter provision through its requirement that certain animals, including cats, must come from a designated sources, although the possibility for a special exemption to be granted does exist.<sup>168</sup> The potential impact that the Directive may yield- in allowing, even in exceptional circumstances, stray or feral cats to be used in scientific procedures, coupled with a relaxation on the designation of suppliers<sup>169</sup>, - on increased thefts of domestic cats in this country and in other EU Member States should be contemplated. Concern is also expressed regarding the future requirements for re-using animals in scientific procedures and also in respect of welfare and release conditions at the end of the procedure.

In its response to the consultation results the Government confirmed that it will retain special protection for cats.<sup>170</sup> Draft new regulations, which will update the *Animals (Scientific Procedures) Act 1986*, appear to place a ban on the use of stray cats in scientific procedures,

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<sup>166</sup> June 2011 – 5 September 2011, <http://www.homeoffice.gov.uk/about-us/consultations/> para. 59.

<sup>167</sup> Feral cats have been the subject of such experimentation relating to the use of contraceptives to keep feral colony populations under control, under the *ASPA 1986*, according to Judy MacArthur Clark (Home Office), Conference on ‘Animal use in Research and the New EU Directive: *Challenges and Opportunities for Animal Welfare, Science, Ethics and Society*’, Northumbria University, 15 June 2012.

<sup>168</sup> June 2011 – 5 September 2011, <http://www.homeoffice.gov.uk/about-us/consultations/> para. 64.

<sup>169</sup> A supplier would include a natural or legal person, other than a breeder. *Ibid.* para. 97.

<sup>170</sup> Home Office (2012) *Consultation on options for transposition of European Directive 2010/63/EU on the protection of animals used for scientific purposes*: Summary report and Government response, London: Home Office.

but this is qualified in accordance with the Directive. The Government proposes to transpose the Directive's requirements unchanged in this regard, their being '*broadly*' consistent with current UK legislation, policy and practice. It is to be hoped that the Directive's stipulation that Member States may not impede the supply of animals from other EU Member States applying the Directive's standards, and the fact that the ability to supply laboratory animals to the UK will be open to authorised breeders and suppliers across the EU, and no longer UK designated suppliers, will not lessen the protection currently provided to stray and feral cats under UK law.

## 6. CATS AND THE CRIMINAL LAW

While the UK *Animal Welfare Acts* are part of the criminal law, the notion of cats as property may give cat owners some recourse under other aspects of the criminal law where somebody steals, hurts or kills their cat. In game rearing areas, for example, cats are sometimes the victims of illegal poisoning aimed at birds of prey, foxes or other predators.<sup>171</sup> *Walkingshaw v McClymont*<sup>172</sup> illustrates this problem. The accused had placed part of a chicken carcass containing strychnine, buried to a shallow depth beneath a bush. The bait was eaten by a dog which later died. The accused relied upon the statutory defence that the poison was placed for the purpose of destroying vermin, which he contended included foxes, and that he had taken all reasonable precautions to prevent access thereto by dogs, cats, fowls, or other domestic animals. It was held that the accused was entitled to regard the fox as vermin; but that he had failed to take any precautions to prevent access to the poisonous matter by domestic animals. In the judge's opinion, it was doubtful whether seemingly taking such precautions could ever satisfy the test in law where the purpose of the exercise was to lay poison in open countryside where a fox could get access to it to eat it. Accordingly, before a person can place poison he must therefore take 'all reasonable precautions' to prevent access to it. Not just 'reasonable precautions' or 'some' reasonable precautions, but 'all'. And it must be a precaution which not only prevents access to the poison by dogs, over which man has an element of control, but also cats which can stray anywhere. *Walkinshaw* predates the UK *Animal Welfare Acts* and

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<sup>171</sup> Nurse A. (2008) *Policing Wildlife: Perspectives on Criminality in Wildlife Crime*, Birmingham: Birmingham City University.

<sup>172</sup> 1996 S.L.T. (Sh Ct) 107.

the specific offence of administering poisons and requirement to take reasonable steps to prevent the administering of poisons is now contained in Section 7 of the *Animal Welfare Act 2006* (with similar provisions in its Scottish and Irish equivalents).

Cats are also sometimes stolen for their fur as part of the illegal trade in wildlife (see below).<sup>173</sup> Neighbour disputes may also sometimes escalate into harm caused to an animal. There is potential for the harm caused to cats to be caught by a range of different legislation where it involves criminal activity and thus there may be confusion on the part of cat owners (and others) as to their precise responsibilities and how to comply with these to avoid increasing criminal liabilities and the various legal sanctions that can be imposed.

### **6.1. Theft and Damage**

Where somebody steals a cat this would constitute an offence under the *Theft Act 1968*. The interpretation of ‘property’ under the *Theft Act* is sufficiently broad to include cats.<sup>174</sup> Additionally, it specifically includes ‘wild creatures tamed or untamed’ as long as they are reduced into possession.<sup>175</sup> It is also possible to prosecute for offences of handling, obtaining property by deception or blackmail relating to stolen cats. The transient nature of cats could however make it difficult to prove an offence i.e. that somebody had dishonestly appropriated ‘property belonging to another with the intention of permanently depriving the other of it.’ A cat, may, for example, seek food from several homes or simply find comfort in another home without the new ‘owner’ having taken any action that could constitute theft or being aware of who the ‘rightful’ owner was.

Harm caused to a cat by a third party is also covered by the criminal law, specifically the *Criminal Damage Act 1971* which makes it an offence to kill or injure domestic animals

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<sup>173</sup>Lowther, J, Cook, D and Roberts, M. (2002), *Crime and Punishment in the Wildlife Trade*, Wolverhampton: WWF/TRAFFIC/Regional Research Institute (University of Wolverhampton).

<sup>174</sup> Section 4(1) *Theft Act 1968* “Property” includes money and all other property, real or personal, including things in action and other intangible property.

<sup>175</sup> Section 4(4) *Theft Act 1968* provides: Wild creatures, tamed or untamed, shall be regarded as property; but a person cannot steal a wild creature not tamed nor ordinarily kept in captivity, or the carcass of any such creature, unless either it has been reduced into possession by or on behalf of another person and possession of it has not since been lost or abandoned, or another person is in course of reducing it into possession.

which are property capable of being ‘damaged or destroyed’. While the *Animal Welfare Act 2006* now provides for the offence of causing unnecessary suffering to a protected animal, the provisions of the *Criminal Damage Act 1971* could still apply if, for example, a person harmed a cat belonging to another (or killed a cat without causing unnecessary suffering). In *Nye v Niblett and Others*<sup>176</sup> three boys who had found two cats in the neighbourhood of some farm buildings had ‘killed them in circumstances of great cruelty’. The case was decided under section 41 of the *Malicious Damage Act 1861* (now repealed by the *Criminal Damage Act 1971* which creates the above offence of killing or injuring domestic animals). The court held that it was not necessary for the prosecution to prove that the particular class of animal killed was in fact kept for a domestic purpose it belonged to a class of animals which are ordinarily so kept. It was also not necessary to prove ownership of the animal. Thus, in the event of the death or injury of a cat caused by a third party (even where ownership of the animal cannot be established) the Crown Prosecution Service (CPS) *may* consider a charge of criminal damage. It should, however, be noted that there are sometimes evidentiary difficulties with such cases.

## **6.2. Anti-Social Behaviour, Criminal Damage and Statutory Nuisance**

Cat owners risk being the subject of action for statutory nuisance for damage caused by their cats. Statutory nuisance includes problems such as air pollution, dust and fumes (from industrial premises), and unacceptably loud noise. The *Environmental Protection Act 1990* (*EPA*) defines statutory nuisance as activities which are, or are likely to be a) a nuisance, or b) prejudicial to health.

A nuisance is defined in the *Act* as ‘the unacceptable interference with the personal comfort or amenity of neighbours or the nearby community’.<sup>177</sup> Local authorities have a duty to investigate and detect any statutory nuisances occurring in their area and there is also case law defining nuisance in particular contexts and specific reference to ‘any animal kept in such a place or manner as to be prejudicial to health or a nuisance’.<sup>178</sup> At common law, for the

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<sup>176</sup>[1918] 1 KB 23.

<sup>177</sup>Section 79.

<sup>178</sup> Section 79 (1)(f).



keeping of animals to become actionable as a nuisance some ‘extraordinary, non-natural or unreasonable action’ is required.<sup>179</sup> In *Birmingham City Council v Oakley*<sup>180</sup> the House of Lords held that showing that something is ‘prejudicial to health’ requires that it must be ‘something over and above what may be seen as a “nuisance”’. However, whether something is prejudicial to health must be judged objectively and in *Cunningham v Birmingham City Council*<sup>181</sup> claims that a property was hazardous to an autistic child failed because the property would not have constituted a statutory nuisance for an ‘ordinary’ child. However nuisances involving animals are not uncommon and the keeping of cats in particular can give rise to nuisance complaints concerning odour, noise or complaints relating to the way the animal is kept and whether this raises any health concerns. The courts have, however, adopted a fairly restrictive interpretation of Section 79(1)(f) of the *EPA 1990* so that noise from animals kept on premises is generally not regarded as being a statutory nuisance under the animals provision.<sup>182</sup>

However a local authority might use Section 79(1)(f) of the *EPA 1990* to serve a specific notice requiring works to be carried out to improve the conditions under which animals are kept. In particular, where the living conditions of domesticated animals are producing problems such as excessive smell,<sup>183</sup> noise or flies, although overcrowding by itself is not covered by this provision. However where overcrowding causes the nuisance (e.g. somebody keeps too many cats and the number combined with the conditions causes a nuisance) then a local authority could impose restrictions on the number of animals kept. In *R v Walden-Jones, ex p Coton*,<sup>184</sup> a case brought under section 92(1)(b) of the *Public Health Act 1936*,<sup>185</sup> the premises were defective enabling the cats to stray. The Divisional Court held that this amounted to a nuisance under the *Public Health Act 1936* and ordered the owner of the cats to bury all excreta, keep the cats within the boundary of the premises, and prevent the

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<sup>179</sup>*Peech v Best* [1931] 1 KB 1, 14.

<sup>180</sup>[2001] 1 All ER 385.

<sup>181</sup>[1998] Env LR 1.

<sup>182</sup>*Galer v Morrissey* [1955] 1 All ER 380.

<sup>183</sup> Odour can be a statutory nuisance.

<sup>184</sup>[1963] Crim LR 839.

<sup>185</sup> This precedes the animals provision contained in section 79(1)(f) of the *EPA 1990*.

escape of all offensive smells. In this case, the defendant kept a large number of cats, but it was the nature of the premises and the lack of effective control of the cats which caused the nuisance which the judge described as lacking a ‘wire fence or whatever was necessary to keep the animals in’. Where a nuisance is caused, the *EPA* allows a local authority to require such action to be taken as is ‘reasonably practicable’ to abate the nuisance. It should be noted, however that the Local Authority’s powers do not extend to forcing owners to relocate a business. In *Manley v New Forest DC*,<sup>186</sup> where noise nuisance was caused by a dog-breeding business, the court held that taking ‘best practicable means’ to reduce a nuisance did not extend to relocating the business to other premises.

Arguably *Ex p Coton* is inconsistent with civil law cases that accept the natural propensity of companion animals, such as cats and dogs, to wander about and to defecate where they please without consideration of the property rights of neighbours. As discussed in Section 4.4. above, at common law, except in extraordinary circumstances, the owner of a cat will not be liable in trespass. In *Buckle v Holmes* Atkin LJ held:

‘Now a dog is an animal for whose trespasses its owner is not liable, even though while trespassing it does damage in obedience to the ordinary instincts of its kind. I agree with Bankes L.J. that a cat must be placed in the same category as a dog, when the liability of its owner for its trespass is in question. It follows that the owner is not responsible when his cat trespasses and does damage which merely consists in following a natural propensity of its kind.’<sup>187</sup>

The reference to damage consistent with a ‘natural propensity’ suggests that owners would not be liable for cat fouling (a natural propensity) or minor damage caused by scratching. However, this may not be the case where an *excessive* number of cats are kept in which case the statutory nuisance provisions in the animal section 79(1)(f) and/or the noise provision section 79(1)(g) *EPA 1990* should be used instead.

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<sup>186</sup>[2000] EHLR 113. In a subsequent appeal against a fresh abatement notice, the Manleys’ argument that the local authority was required to show that their suggestions in the notice were practicable was rejected, since the onus was on the appellants to show that they had taken best practicable means at the time of service (*Manley v New Forest DC* [2007] EWHC 3188 (Admin)).

<sup>187</sup>[1926] 2 KB 125, 130.

In the case of *Sewell v Harlow DC*<sup>188</sup> a statutory possession order was made because of a tenant's possession of a large number of cats fouling neighbouring properties. S was the tenant of H and kept approximately 40 cats in her house. Complaints were made concerning the large number of cats which were fouling neighbouring properties. H was granted possession of the house under the *Housing Act 1985* Sch.2 Gr.2A on the ground that S was guilty of conduct causing or likely to cause a nuisance or annoyance to persons residing, visiting or otherwise engaging in a lawful activity in the locality. S sought permission to appeal claiming that there was no reported authority for the liability in nuisance of a cat owner. S further maintained that it could not be right to impose a liability on tenants by virtue of Ground 2 of the *Act* when there was no such liability at common law.

Refusing the application, the court held that the judge was entitled to make the findings of fact which he did. There could not be a defence based on common law to possession proceedings brought under Ground 2 of the *Act*, such a defence would conflict with the policy objectives of the *Act*. Ground 2 was clearly intended to allow a landlord to protect the residents on an estate from the conduct of other tenants. Although the decision was harsh in its effect on S, there were no arguable grounds on which to reverse the judge's decision.

Thus, a cat's behaviour can render a tenant in breach of statutory tenancy provisions even where there would be no potential liability under the common law.

### **6.3. Wildlife Offences**

While this report predominantly deals with cats as companion animals, and the UK *Animal Welfare Acts* define a protected animal as other than animals living in a 'wild state' provisions relating to wildlife are relevant in some circumstances. *The Wildlife & Countryside Act 1981* (as amended by the *Countryside and Rights of Way Act 2000*) is the main piece of legislation protecting wild birds, plants and animals in the UK. The *Act* came into force in September 1982. Part 1 of the *Act* makes it an offence to kill, injure or take any wild bird or any animal listed on Schedule 5 of the *Act* which includes the Scottish wildcat *Felis silvestris*.

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<sup>188</sup>[2000] EHLR 122 C of A (Civ).

These provisions give general protection to wildlife and prevent the killing or injuring of protected wildlife or its removal from the wild.

The *Act* makes it an offence to intentionally kill, injure or take protected wildlife and also prohibits certain methods, such as self-locking snares, gas and poisonous substances, and the use of certain types of traps, being used to kill, injure or take wild birds or animals. The *Countryside and Rights of Way Act 2000 (CRoW)* which became law on 30 January 2001 amends the *Wildlife and Countryside Act 1981* creating a range of additional offences in respect of wildlife. *CRoW* creates a new offence of ‘reckless disturbance’ of specified wildlife, amending and replacing the old offence of ‘intentional’ disturbance that was contained within the *Wildlife & Countryside Act 1981*. It is worth noting, however, that the *Wildlife & Countryside Act 1981* is currently the subject of government consultation. At the time of writing this Report, the Law Commission has published its consultation proposals for new wildlife legislation.<sup>189</sup> The current policy aim is for the majority of wildlife legislation to be repealed and for there to be a single new wildlife bill.<sup>190</sup> For the most part, wildlife crime does not fall within the precise definition of the criminal law but instead is dealt with by a range of environmental-based legislation as ‘environmental’ crime as it is concerned less with the protection of society and more with the maintenance and protection of the natural environment.<sup>191</sup>

As a result of the legislation it is an offence to deliberately or recklessly:

- Capture, injure, kill or harass a wildcat;
- Disturb a wildcat in a den or any other structure or place it uses for shelter or protection;
- Disturb a wildcat while it is rearing or otherwise caring for its young;
- Obstruct access to a wildcat den or any other place or structure a wildcat uses for shelter or protection;

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<sup>189</sup>Law Commission Consultation Paper 206.

<sup>190</sup> The timetable envisages a draft Bill by mid 2014 and final legislation in 2015, subject to this being achievable within the Parliamentary timetable. It is worth noting that examination of the *Hunting Act 2004* will be specifically excluded from the Commission’s consideration. See further details at: <http://lawcommission.justice.gov.uk/areas/wildlife.htm>

<sup>191</sup>Situ, Y. and Emmons, D. (2000), *Environmental Crime: The Criminal Justice System’s Role in Protecting the Environment*, Thousand Oaks: Sage.

- Disturb a wildcat in a manner that is, or is likely, to significantly alter the local distribution or population of the species;
- Disturb a wildcat in a manner that is, or in circumstances which are likely to impact its ability to survive, breed or care for its young.

In addition it is an offence to damage or destroy any breeding or resting place of a wildcat (this need not be done deliberately or recklessly to constitute an offence). It is also an offence to keep, transport, sell or exchange or offer for sale or exchange any wildcat or any part of derivative of one (if obtained after 10 June 1994).

Although most cat owners are unlikely to be affected by wildlife legislation some of its provisions apply to any wild animal, which could conceivably apply to ‘escaped’ or feral cats living and established as wild animals, while others specifically apply to specified species of wild cat e.g. *Felis silvestris*. Breeders should be aware, therefore, that the sale of wild cats is prohibited under wildlife legislation. Owners may also be able to pursue complaints under the criminal provisions of wildlife legislation where their companions are the incidental or unintended victims of prohibited methods of taking wildlife. Cats are, for example, occasionally killed as a result of the indiscriminate nature of illegal poisoning or snaring aimed at predators in game rearing areas and such incidents will be investigated by Police Wildlife Crime Officers (PWCOs) as wildlife crime separate from any complaint an owner may wish to pursue under animal welfare legislation. It is perhaps also worth noting here that gamekeepers and others who shoot or kill cats to protect other animals may have a defence under section 4(3) of the *Animal Welfare Act 2006*. This provides a ‘legitimate purpose’ defence in respect of suffering caused for the purpose of protecting ‘a purpose, property or other animal’ where any suffering caused was ‘proportionate’ to the purpose and was carried out humanely. Thus a suitably qualified and ‘reasonably competent’<sup>192</sup> gamekeeper shooting a cat with a single shot for the purpose of protecting pheasant poults might argue the legitimate purpose defence, notwithstanding that charities and owners might contest the necessity of the shooting. Additionally, the criminal law may allow the killing of a cat where the cat was chasing game, in circumstances where the owner can prove ownership of the game acting in accordance with section 5(1)-(4) of the *Criminal Damage Act 1971*. Section

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<sup>192</sup> Section 4(3)(e) of the *Animal Welfare Act 2006*.

5(4) provides a defence of ‘lawful excuse’ from criminal damage, in circumstances where a defendant kills a cat in order to protect his right or interest in property.<sup>193</sup> The potential for a civil action on the part of the cat’s owner may still lie against the owner of the game, applying the common law rules in *Cresswell v Sirl*,<sup>194</sup> should the measures *not* have been taken against the cat *during* an attack or when there was a likelihood of an imminent *renewal* of an attack.<sup>195</sup>

While rare, the trade in cat fur might also be caught by wildlife legislation and the rules on trading in wildlife parts or derivatives which are enforced by NGOs and the police within the remit of wildlife crime and owners should be aware that where this is suspected action might be pursued under wildlife legislation.

#### **6.4. Summarising Criminal Law Issues**

The harm caused to cats and by cats can be caught by a range of legislation which imposes criminal liability. Theft and harm caused to a cat by a third party (including certain types of cruelty) are covered by the criminal law and cat owners also risk being the subject of action for statutory nuisance or damage caused by their cats. The law in this area can be complex and as we outline above, it is not always straightforward to determine what constitutes a nuisance. However, we consider that the criminal law imposes a statutory duty on cat owners to ensure that their keeping of cats does not cause ‘unacceptable interference with the personal comfort or amenity of neighbours or the nearby community’ which includes not keeping so many cats or keeping cats in such a condition (i.e. the premises) as to cause noise or odour nuisance to neighbours. While we consider that no civil action for trespass or nuisance would lie in respect of a cat, our view is that this statutory duty of care requires cat owners to also consider any specific abnormal characteristics of the individual cat which if resulting in damage or nuisance to neighbours, would make the cat owner liable to receive an abatement notice, failure to comply with which would constitute a criminal offence.

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<sup>193</sup> Palmer, J. (2001), *op. cit.*, 130, n 117.

<sup>194</sup> [1948] 1 KB 241 at 249, per Scott L.J. *Cf* North, P. (2012) *op. cit.* para. 7.24.

<sup>195</sup> (*Emphasis added*). For example, if shooting or injuring a cat prior to a first attack or after an attack when it was attempting to escape.

## 7. INTERNATIONAL PERSPECTIVES

While the primary focus of this research has been national legislation in England and Wales, some international perspectives are of relevance in placing this law in context and addressing policy and legislative issues that could impact on the UK. For example, the Council of Europe *European Convention on the Protection of Pet Animals* is aimed at ensuring the welfare of animals, and in particular, of pet animals ‘kept for private enjoyment and companionship’ and ensuring minimum standards of care for animals.<sup>196</sup> (While the UK has not signed nor ratified this *Convention* its principles are reflected in the UK *Animal Welfare Acts*.) The text of the *European Convention for the Protection of Animals during International Transport* notes that ‘every person has a moral obligation to respect all animals and to have due consideration for their capacity for suffering.’<sup>197</sup>

### 7.1. European Union Law

Research carried out on behalf of the European Commission concluded that there is considerable interest in animal welfare standards among European citizens.<sup>198</sup> European Union (EU) legislation sets minimum standards for animal welfare in farming, transport, slaughter and scientific experimentation. The EU action plan on animal welfare for 2006-2010<sup>199</sup> contains measures with the aim of achieving the following objectives:

- upgrading minimum standards of animal welfare;
- promoting research and substitute methods for animal testing;
- introducing welfare indicators;
- ensuring that professionals and the general public are better informed;

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<sup>196</sup>*European Convention for the Protection of Pet Animals, ETS No. 125, Strasbourg, 13.XI.1987.*

<sup>197</sup>*European Convention for the Protection of Animals during International Transport, ETS No. 65, Paris, 13.XII.1968.*

<sup>198</sup> European Commission (2007) Special Eurobarometer No. 270: Attitudes of EU citizens towards Animal Welfare, Brussels, European Commission Directorate-General Health and Consumer Protection.

<sup>199</sup>Communication from the Commission to the European Parliament and the Council on a Community Action Plan on the Protection and Welfare of Animals 2006-2010 {SEC(2006) 65} COM(2006) 13, 23 January 2006.

- supporting international initiatives for animal protection.

As a matter of policy, the EU ‘recognises animals as sentient beings that deserve protection.’ The context for UK cat law, is thus one in which the EU considers animal welfare to be an issue of Union wide concern.

Article 13 of the Treaty on the Functioning of the European Union the provisions of which apply to England, Northern Ireland, Scotland and Wales is significant for the general enhancement of animal welfare. Twenty seven EU Member States are in agreement that animals are *sentient beings*; accordingly the EU *shall*, or in other words must, *pay full regard* to the welfare requirements of animals in formulating and implementing certain of its policies.<sup>200</sup> The fact that the promotion of animal welfare is mentioned in the ‘constitutional’ provisions of the EU Treaties signifies the elevation of animal welfare as a priority issue in Europe, alongside other key objectives, such as, for example environmental protection and promoting sustainable development. There is not, to date, a specific legal basis on which to adopt animal welfare legislation and much progress in this field depends on the ability of the EU law / policy making institutions to utilise the powers conferred upon them by the Member States. As a consequence, certain areas of animal welfare remain the responsibility of the Member States, for example, the use of animals in competitions, shows, cultural or sporting events and the management of stray dogs and cats.<sup>201</sup>

EU recognition of animal sentience has helped the evolution of animal welfare within EU Law as animals are no longer perceived solely as goods, the free movement of which is ensured in an internal market of twenty seven Member States. The EU aims to ensure that animals do not endure avoidable pain or suffering. The European Commission has published the second EU strategy for the protection and welfare of animals, in which promotion of the welfare of companion animals, i.e. dogs and cats, features predominantly.<sup>202</sup> The response of the EU Member States is summed up in the Presidency Council Conclusions on the welfare of

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<sup>200</sup>on agriculture, fisheries, transport, internal market, research and technological development and space, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.

<sup>201</sup>[http://ec.europa.eu/food/animal/welfare/policy/index\\_en.htm](http://ec.europa.eu/food/animal/welfare/policy/index_en.htm)

<sup>202</sup> Communication from the Commission on the European Union Strategy for the Protection and Welfare of Animals 2012-2015, COM (2012) 6, 19 January 2012.



cats and dogs delivered in Brussels in 2010.<sup>203</sup> Taking into account the fact that large differences exist between the different national and regional rules on the welfare of dogs and cats within the EU, the Council of the European Union called upon the Commission, in the framework of the second EU strategy for the protection and welfare of animals:

- To study the differences between the measures taken by the Member States regarding the breeding of and EU trade in dogs and cats and, if appropriate, to prepare policy options for the harmonisation of the internal market;
- To study and propose, if justified, options for facilitating compatible systems of identification and registration of dogs and cats in order to ensure better guarantees to the citizen through more efficient traceability of the animals. The options may take account of the need for facts and precise investigation in the case of illegal trade, zoonosis, abandoned or lost animals;
- To study and present, if justified, a specific proposal to restrict, in the European Union, the exhibition at public events of dogs and cats having undergone a non-curative surgical intervention (not aimed at preventing reproduction) and the trade in these animals as well as to develop information campaigns on the negative impact of such interventions on the welfare of dogs and cats;
- To develop where necessary appropriate actions (including possible technical and financial instruments) to allow compatible identification and registration systems amongst Member States, as well as to promote and support education concerning responsible dog and cat ownership.

In a nutshell, Member States have acknowledged the need for approximated measures at EU level for the breeding of companion animals; a compatible EU system for the registration and identification of dogs and cats; and more extensive education on responsible cat and dog ownership, for which it would appear there will be some available EU funding for targeted companion animal welfare education programmes undertaken in the Member States. Companion animal owners need to keep an eye on future developments in EU Law and consequential coordinated practices to be orchestrated as a result of EU initiatives.

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<sup>203</sup> Council of the European Union, Brussels, 15620/10, 10 November 2010. <http://www.europa.eu>

Currently, there is no legal requirement to identify cats;<sup>204</sup> this has public health connotations in that cats which have died or been killed as a result of a road accident are considered to be waste, the responsibility for removal of which lies with the local council. When considered with the following factors of the stress of the cats' owners in not knowing the fate of their cats, and the increased potential for thieves who steal cats and take them out of the localities of their rightful owners, the prospective EU measures are to be welcomed. The measures would also apply equally across England, Ireland, Scotland and Wales.

## **7.2. Travelling with Cats: Vaccination and Quarantine Procedures**

Changes to the UK's 'Pet Travel Scheme' apply from 1 January 2012, in order to implement EU requirements. There are three main differences between the pre-January 2012 UK cat movement controls and the new rules from 1 January 2012.

- Under the new rules companion cats from other EU Member States and *listed* Third countries will *not* need a blood test and can enter the UK 21 days after their rabies vaccination (rather than having to wait until 6 months after their blood test).
- Under the new rules cats from *unlisted* third countries will be allowed to enter the UK through *approved routes without quarantine as long as they meet the EU entry requirements (microchip, rabies vaccination, blood sample at least 30 days after vaccination), and then wait a further 3 months after the blood sample was taken for the test* before being able to enter the UK.
- Under the new rules there is *no* requirement for cats to be treated for *ticks* before their arrival in the UK.

Cats must be three months old and have reached the minimum age for vaccination. DEFRA emphasises that it is the cat owner's responsibility to ensure their cat meets all of the rules for entering the UK, i.e. that the required procedures have been carried out in the correct order and that the cat's documentation is correctly completed. Failure to do so may result in the cat

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<sup>204</sup>See The Companion Animal Welfare Council, *Report on the Identification and Registration of Companion Animals*, 12 June 2002, <http://www.cawc.org.uk>.

being licensed into quarantine on arrival which will cause delay and extra cost for the cat owner. The Animal Health and Veterinary Laboratories Agency offer detailed information on the UK Pet Travel Scheme on DEFRA's internet site.<sup>205</sup>

### **7.2.1 Criminal Liability**

*The Cat and Dog Fur (Control of Import, Export and Placing on the Market) Regulations 2008*<sup>206</sup> introduce a criminal sanction for breach of the EU Regulation<sup>207</sup> banning the commercial import, export and sale of cat and dog fur. This commercial trade ban came into force across the EU on 31 December 2008. This instrument applies to the entire United Kingdom. Prior to negotiation of the EU Directive, this issue had a high level of public interest. The Government Departments for Business, Enterprise and Regulatory Reform (BERR)<sup>208</sup>, Environment, Food and Rural Affairs (DEFRA) and the Foreign and Commonwealth Office (FCO) all continually received high volumes of correspondence on this issue requesting a ban on the trade in cat and dog fur because of concerns about the way in which the skins were taken from the animal in certain third countries. This is an issue related to public morality/animal welfare for which no Government department is primarily responsible. BERR, DEFRA and FCO agreed to accept joint policy responsibility for this issue as each have an interest in the issue and conducted a policy review. Despite the Government's belief that there is virtually no commercial trade in cat and dog fur in the UK, the Government concluded that only EU-wide legislation would effectively solve the problem and the UK fully supported the European Commission proposal for an EU-wide ban on the commercial import, export and sale of cat and dog fur. The UK had national legislation in place to deal with deliberate breaches of import and export bans, but no such provisions existed for breaches of a sales ban or for unintentional breaches of the import and export bans. These regulations introduce a criminal sanction with a maximum penalty of a £75,000 fine for such trading. They also grant powers of investigation, seizure and forfeiture of the

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<sup>205</sup><http://animalhealth.defra.gov.uk/about/official-vets/guidance/q&a-pet-travel-scheme.h>

<sup>206</sup>2008 No. 2795.

<sup>207</sup>Regulation EC No.1523/2007.

<sup>208</sup>Now the Department for Business Innovation and Skills (BIS).

goods to Trading Standards bodies (but not to HMRC officers as they already possess the necessary powers).<sup>209</sup>

### 7.3. The US Perspective

The majority of criminological and animal rights research and policy development, particularly that linking animal harm to wider criminality and human violence, originates in the US. American law on cats is similar to UK law in a number of respects although animal law is expressly criminal law in the US whereas this is only sometimes the case in the UK. However individual US states have different cat cruelty laws which determine whether cruelty to a cat is a felony or a misdemeanour. The definition of what actions constitute cruelty to a cat also varies from state to state. In some states, the family cat may even require licensing and should be microchipped, tattooed or it may be compulsory for a cat to wear a collar.

Within the US there is also a growing policy debate on promoting good standards of animal welfare on the grounds that violence towards animals harms human beings by making us more violent and prone to a more violent type of society. In his controversial book *Eternal Treblinka*, Patterson theorises that ‘since violence begets violence, the enslavement of animals injected a higher level of domination and coercion into human history by creating oppressive hierarchical societies and unleashing large-scale warfare never seen before.’<sup>210</sup> The book argues that better treatment of animals which is frequently achieved through robust, effective animal welfare laws, is necessary to minimise societal breakdown and continue the development of enlightened society. Wise makes a similar point in relation to the case for legal rights for animals arguing that ‘as our domestication of wild animals served as an unprincipled model for our enslavement of human beings, so the destruction of human slavery and all its badges can model the principled destruction of chimpanzee and bonobo slavery.’<sup>211</sup> Like Regan, Wise argues that legal recognition of the harm caused by animal

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<sup>209</sup> Explanatory Memorandum to *The Cat and Dog Fur (Control of Import, Export and Placing on the Market) Regulations 2008*, 2008 No. 2795.

<sup>210</sup> Patterson, C. (2002) *Eternal Treblinka: Our Treatment of Animals and the Holocaust*, Lantern Books.

<sup>211</sup> Wise, S. M. (2000), *Rattling the Cage: Towards legal rights for animals*, London: Profile.

abuse and the development of statutory rights for animals contributes to the development of society, a view supported by Connelly and Smith in a broader sense in their philosophical arguments that protecting the environment (and animals) is for the common good and should be a core part of public policy.<sup>212</sup> Beirne<sup>213</sup> argues that animal cruelty should be drawn into the realm of criminological inquiry as it has importance on multiple levels:

1. Animal cruelty may signify other actual or potential interpersonal violence;
2. Animal cruelty is, in many forms, prohibited by criminal law;
3. Violence against animals is part of the utilitarian calculus on the minimisation of pain and suffering (the public good);
4. Animal cruelty is a violation of rights; and
5. Violence against animals is one among several forms of oppression that contribute, as a whole, to a violent society.

Beirne's arguments reflect the emergence over the last 30 years or so of the view by many law enforcement and social welfare professionals in the US that there is a link between animal abuse and violence to humans or anti-social behaviour.<sup>214</sup> Cats are frequently victims of the early torture experiments of those who go on to become violent offenders and an FBI study into the childhood of serial killers identified a history of juvenile animal abuse in most cases suggesting that serial killers such as Ted Bundy and Jeffrey Dahmer started by killing animals and then graduated to people.<sup>215</sup> As a result a history of cruelty to animals is a trait looked for by the FBI and law enforcement professionals when investigating serial killers and has become a diagnostic trait used in the treatment of psychiatric and emotional conduct disorders.<sup>216</sup> Many states now have legal provisions that allow for public intervention in the

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<sup>212</sup>Connelly, J. and Smith, G. (1999) *Politics and the Environment: From Theory to Practice*.

<sup>213</sup>Beirne, P. (1999), 'For a Nonspeciesist Criminology: Animal Abuse as an Object of Study', *Criminology*, Vol. 37, No. 1, 1-32.

<sup>214</sup> See, for example, Ressler and Schachtman 1993, Arluke and Levin 1996, Ascione and Arkow 1999, and Arluke 2006.

<sup>215</sup> Lockwood, Randall (1997) *Deadly Serious: An FBI Perspective on Animal Cruelty*, The Humane Society of the United States.

<sup>216</sup>Daniel Goleman, D. (1991) 'Experts See Parallels Between Dahmer, Previous Serial Killers,' *New York Times News Service*, 11 Aug. 1991.

neglect, harm or torture of cats and other small animals as a public policy tool to prevent further violence.

## 8. CONCLUSIONS

The evidence analysed during this research project indicates that UK legislation has developed to provide significantly greater protection for cats, requiring owners/keepers, breeders and re-homing organisations to have a greater understanding of their responsibilities under current law in order to avoid increasing civil and criminal liabilities. We consider that the law has also shifted its intent towards animal protection providing a contemporary context that gives cats a wider range of legal protection if not actual rights.

Our main conclusions based on analysis of the relevant legislation, case law and policy guidance are:

1. The *Animal Welfare Act 2006* has imposed a legal duty on cat owners to ensure the welfare of their companions. The Act provides that owners or those responsible for an animal must provide for a suitable environment, suitable diet, the need to be able to exhibit normal behaviour patterns, any need to be housed with or apart from other animals and the need for protection from pain. However the legislation's focus on the needs of the *individual* cat requires owners to consider both the interior and exterior of a home and its suitability for the specific cat. In addition, owners are required to actively monitor the health and wellbeing of their cat in a way not previously required by legislation and to actively develop an understanding of their companion's individualistic needs in order to comply with legislation. Cat owners thus now require a greater level of knowledge of their specific companion rather than generic cat knowledge.
2. The *Animal Welfare Act 2006* (and the associated DEFRA *Code of Practice for Cats*) extends the definition of unnecessary suffering from the historical prohibition on cruelty and torture to incorporate a broader more complex definition of mental distress. When combined with the Code's provisions on considering the needs of the *individual* cat, the definition of unnecessary suffering now includes acts or omissions which include denying a cat the ability to exhibit its natural behaviours and the opportunity to express itself. An unsuitable home environment which might otherwise provide for a cat's physical needs (food, water, shelter), also abandoning an

unwanted cat, could thus fall within the remit of suffering and result in action being taken under the criminal law. We contend that the law thus provides for a more expansive definition of cruelty by act or omission consistent with theoretical conceptions of species justice.

3. That while no action for trespass would lie in respect of a cat for damage caused by a cat exhibiting normal behaviour, our view is that the law places a duty of care on a cat owner to his neighbours under the tort of negligence. In addition, if the specific abnormal characteristics of the individual cat are such that would result in damage or nuisance to neighbours, cat owners with prior knowledge of such characteristics *potentially* would be liable, in the absence of any fault. Again the focus on the individual cat's needs and behaviour is significant in assessing responsibility and resultant liability.
4. We consider that the law provides for a number of ways in which keeping too many cats or keeping cats in poor conditions could constitute a nuisance subject to enforcement action by a local authority and/or the alternative avenue of resort to the magistrates court. Noise and odour can constitute a statutory nuisance, and keeping too many cats to the extent that noise or odour problems are caused to neighbours would constitute enforceable environmental health problems.
5. While cats are generally viewed as property by the law, ownership of cats is a relative concept to be decided on the facts at common law. The *Gables Farm* case indicates how a range of activities (see Section 4.2.) when taken together were sufficient to satisfy the Tribunal that the organisation was re-homing cats freely (without charge) donated to them which, on the facts, they then owned. Organisations practising the procedures followed in the *Gables Farm* case could be argued to own the cats they are re-homing. *The Limitation Act 1980* applies a statutory limitation period of 6 years, before which ownership of a chattel, which a cat is, can transfer to a successive owner and extinguish the title of the original owner.



6. Cats which have died or been killed as a result of a road accident are considered to be waste, the responsibility for removal of which lies with the local council.
7. Theft of, and damage to, cats are caught by the criminal law and are matters that should be enforced by criminal justice agencies e.g. the Police. The interpretation of 'property' under the *Theft Act 1968* is sufficiently broad to include cats and, additionally, it specifically includes 'wild creatures tamed or untamed' as long as they are reduced into possession. Thus owners may report the theft of a cat and legitimately expect the Police to investigate as they would any other theft. It is also possible to prosecute for offences of handling, obtaining property by deception or blackmail relating to stolen cats. Injury caused to a cat by a third party could constitute criminal damage and thus, separate from the provisions of animal welfare legislation, the deliberate harming of a cat might be pursued as a criminal offence.
8. Currently, there is no legal requirement to identify cats, except in the case of cats re-entering the UK from an EU Member state in which case microchip identification is required (see Section 7.1.). However in light of the possibility of pursuing a criminal complaint for theft of, or damage to, a cat microchipping would perhaps aid in the recovery of a stolen or lost cat. Microchipping a cat could also constitute evidence of responsible ownership, potential proof of ownership, and an example of best practice in cat ownership disputes.
9. The commercial import, export and sale of cat fur are banned under EU legislation, compliance with which has resulted in the introduction in the UK of a criminal sanction with a maximum penalty of a £75,000 fine for such trading. The implementing UK Regulations also grant powers of investigation, seizure and forfeiture of the goods to Trading Standards bodies.
10. We conclude that companion animal owners need to keep an eye on future developments in EU Law and consequential coordinated practices to be orchestrated as a result of EU initiatives.

Our analysis has examined the complexity of the law, case law and policy; we contend that there is a need for owners and re-homing organisations to be educated in the current requirements and implications of legislation so that they are aware of their responsibilities and can take appropriate action to reduce their liabilities in certain circumstances. The plain English guide to the law that we are developing separately from (but informed by) this research report will hopefully aid in this process and answers to common questions are included at Appendix 1 of this report. But we note that the law and policy in this area is complex, fast-moving and developing according to both political and social concerns not always consistent with appropriate animal welfare concerns.

## Appendix 1: Questions and Answers

The following list of questions consists of those questions currently identified as causing problems for cat owners and breeders, either because there does not seem to be a definitive answer to the question or because the question raises an issue falling outside the experience of the breeder or owner. Questions also relate to areas where, previously, guidance has not been available for owners and breeders.

Where several queries have been received concerning the same topic we have amalgamated questions to deal with the substantive issue behind the question. We are grateful to the Cat Group for sharing these queries with us, and reproduce the queries and answers in simplified form for the lay reader in our separate plain English guide.

**Question 1 – I am a cat breeder who sold a kitten which later developed feline infectious peritonitis (FIP). Other cats in the buyer’s home are now suspected of having FIP and the buyers are attempting to claim their vet fees from me even though while the kitten may have been coronavirus seropositive it didn’t appear to be ill at the point of sale. Am I liable for their costs?**

It’s unlikely that the seller would be liable for the costs. Even though the kitten was sold in the course of a business and generally there are implied conditions and warranties under the *Sales of Goods Act 1979*, as amended in 1994, in the absence of express conditions or warranties being given as to the health of the kitten and in the absence of fraudulent statements of fact about the health of the kitten on the part of the seller, the buyer of the diseased kitten accepts it ‘as it is’ then and for the future. This is covered in *Halsbury’s Laws of England* as follows:

"In a sale of diseased animals without any warranty or condition being given by the seller the maxim "*caveat emptor*" [let the buyer beware] applies, unless the seller was guilty of fraudulent misrepresentation. The fact that the buyer suffers loss arising from a breach of statutory duty does not impute liability on the seller. *Halsbury's Laws of England*, 4th Ed., Vol. 2 (Reissue), para. 219." Palmer J, *Animal Law*, 3rd edn. Shaws, 2001, p. 29.

Thus, if the seller knew about or deliberately concealed a condition of illness or contagion by claiming that the kitten was 'free from disease' then, as *Halsbury's* states, this would likely be misrepresentation. If there was a reasonable risk that the kitten could be carrying the disease and the seller ignored this possibility this would also be a factor. Otherwise the seller has no liability although dependent on the precise nature of the buyer-seller relationship they may wish to consider whether in the circumstances offering the buyer some recompense in the name of good customer services would be appropriate. It should be noted that FIP may result from a mutation of an existing coronavirus infection, and that causation is also difficult to establish. Much will depend on the individual cat(s) concerned. But if a breeder is aware that a particular line of cats is actually developing the disease (rather than just coming up positive for a test for coronavirus), then they should exercise all reasonable care as the development of the disease may also be affected by the husbandry and cleanliness of the premises and this is something that breeders would be expected to do something about. It is advisable to consult the Cat Group information sheet on FIP (<http://www.thecatgroup.org.uk/>) which explains the difficulties with this disease.

**Question 2 – I am a cat breeder and have had buyers attempt to return cats as 'not of satisfactory quality or as unfit for purpose' when a problem was discovered with the cat that the buyer had not been told about. Where do I stand with this?**

This differs slightly from the first question as it relates to selling a cat specified, expressly or impliedly, as being suitable for certain circumstances when this is not the case. There are two separate issues here, namely the cat being of satisfactory quality, and of it being fit for a purpose which the buyer made known to the seller or which the seller ought reasonably to have known was the purpose of the sale.

Typical issues are the breeder failing to disclose a relevant and detectable inherited problem, which is well known within the breed (the breeder should have knowledge of this) and where there is a test readily available; or a breeder selling a cat which is very fearful because it has not been socialised properly or exposed to everyday sounds and experience in its early weeks of life. This is really a sale of goods issue about selling a product that is not of satisfactory quality or with a defect of condition which had the buyer known about could have altered his purchasing decision. So, if a cat is sold as suitable as a family companion but is either very

nervous, fearfully aggressive or has a detectable health issue that makes it unsuitable as a companion, then a buyer would be entitled to return the cat and demand a refund in the same way as they would for other sales.

Additionally, breeders need to be careful that where a potential owner identifies specific requirements these are considered as part of the sale. For example, selling a young cat which is unsuitable to live in an indoor-only environment as suitable for an elderly relative who lives on the top floor of a block of flats, invites the return of the cat as 'not fit for purpose'. Hobby breeders should also be alert to this issue. This would also be pertinent in relation to the *Animal Welfare Act 2006* and the duty of responsible ownership to ensure the welfare of each individual cat.

**Question 3 – I am a hobby breeder of cats but have had some problems with the local authority who say I am running a business. Where do I stand?**

Whether a cat breeder is operating a business, depends on the facts of each case and how decisions of the courts apply to the facts. Cat breeders are not regulated the same in law as breeders of dogs, and the scale of the operation may be an issue in determining whether a breeder is a hobby enthusiast or a commercial breeder. In assessing this, applying previous decisions of the courts to the specific circumstances may be necessary in the absence of statutory licensing requirements. There is also a risk that inadvertently presenting a business as a hobby misleads consumers and avoids pet shop licensing restrictions that subsequently come to the attention of Trading Standards.

First; money from the sale of cats constitutes income which should be declared to the Inland Revenue for tax purposes. Breeders earning an income of more than £5,075 per year from the sale of cats would be classed as self-employed and eligible to pay class 2 national insurance contributions on their 'hobby' income<sup>217</sup>. Thus the activities of many breeders would fall within the definition of 'operating in the course of a business', and breeders with turnover above this nominal threshold should realise this and take the appropriate tax and business advice in order to avoid Inland Revenue investigations in the short term and calls for

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<sup>217</sup> £5,075 is the Inland Revenue's published threshold on its website at time of completing this research in 2012. Breeders are advised to keep an eye on the self-employed tax regime for changes to income thresholds.

regulation of cat breeders in the long term. Breeders operating at this level should also keep sale records.

In addition, consumers should understand the relationship that they are entering into and the nature of any contractual arrangements whether explicit or implied before making their purchase. Non-governmental organisations (NGOs) have been critical of commercial breeders misrepresenting themselves as hobby breeders in other contexts. For example, as part of their (2002) campaign against the reptile trade, UK-based NGO Animal Aid wrote to the Inland Revenue noting that ‘many of those who trade animals at ‘one-day events’ and may make significant sums of money, do not operate formal businesses but front their trading activities as an elaborate hobby’. Concern was expressed that traders may use this mechanism either to sell ‘surplus’ items and shift high volume, low value stock, or as a means of selling animals outside of the scrutiny of animal welfare, pet licensing or wildlife trade regulations. In the case of complaints, trading standards and enforcers take the view that traders are more than likely aware of the illegality of their actions and that such methods of sale represent a deliberate trading tactic where illegally taken wild specimens can be passed off as captive-bred or any tax or duty applied to the sale can be avoided. While the ‘wild specimen’ problem generally does not apply to cat sales, breeders who are effectively running a business should be careful not to misrepresent the nature of their operation as trading standards enforcement in this area can be quite rigorous.

**Question 4 - I run a cattery and have had a cat in care for several years which was taken out of the cattery for a few weeks but then returned while the owners were moving house. The owners have paid part of their bill but still owe several thousand pounds. We have given them every opportunity to pay, even initially discounting the bill, but we are unable to get the owners to pay despite several efforts to obtain payment. We have several people who use the cattery who would be willing to re-home the cat and we’re now querying whether we are able to re-home it?**

This seemingly common question concerns whether animals left in a cattery by owners, who appear not to want the animal returned, can be re-homed and what mechanisms are open to pursue recalcitrant owners for unpaid bills. There is an issue of ownership of the animal where an owner appears to have relinquished ownership.

First, the cattery has to take all reasonable steps to locate the cat's owners in the first instance and pursue the outstanding fees. If the owners can be located, fees under £5000 can generally be pursued through the small claims court which does not require lawyers, just the court document fee and a submission of evidence for the court to consider. Part of the process involves notifying the third party of the claim against them and this could potentially include notifying the owner that as part of the settlement of the claim they may wish formally to relinquish their ownership so that the cat can be re-homed if they no longer wish to be owners and are unable or unwilling to meet the cattery's fees. The notification could suggest a time limit in which the owner must provide some sort of undertaking in respect of future fees otherwise court action will be pursued. Should the matter go to court, even as a small claim, the court could be requested to look at the evidence as to whether the owners have acted responsibly concerning the issue of ownership and whether ownership could, legally, be transferred.

If the owners cannot be located and, as a result, the contractual matter of fees cannot be resolved the matter is uncertain. It could be taken that the principles of abandonment at common law as declared by the Tribunal in the *Gables Farm* case could apply where the evidence substantiates a lack of responsible ownership by the owners of the cat. In addition, the *Animal Welfare Act 2006* and the *Code of Practice for Cats* make mention of the person responsible for the cat. Where the owners have defaulted on their financial obligations, and effectively abandoned the cat, the cattery in assuming care becomes the responsible person. However in the absence of abandonment notably in the absence of unnecessary suffering having in fact taken place, formal ownership arguably would still rest with the first owners for 6 years (*Limitation Act 1980*), before ownership of the cat could vest in another person and extinguish the former owner's title.

**Question 5– Who is the owner of a stray cat taken to a re-homing institution by a member of the public concerned to find it wandering the streets for days and nights on end? After having had ‘Millie’ microchipped, neutered and vaccinated, the re-homing institution secured a loving home for ‘Millie’ within 14 days. ‘Millie’s’ original owner re-appeared after 21 days on holiday, having gone on holiday ostensibly for 7 days and having left some food for their cat for this shorter period but no additional human contact.**

Cats are property and so a person finding a stray cat and feeding and taking care of it essentially becomes responsible for it and is also obliged to take reasonable steps to find the owner and make them aware of the cat's location. In law a domestic animal, like other personal and moveable chattels, is the subject of absolute property. At common law, the finder of a stray cat acquires rights of possession under the legal principle of bailment by finding. Essentially the finder assumes the obligations of a depository to the true owner including the obligations to take reasonable steps to locate the owner and acquaint him with the finding and the present whereabouts of the cat until its return to the owner and to return it to him on demand. Thus a finder who takes in a stray cat into his care and control acquires rights of possession except against the true owner. (*Armoury v Delamire* (1722)).

In this example, if the re-homing institution had taken reasonable steps to trace Millie's owner, which would have been difficult given the fact that Millie was not microchipped and had no collar, and if it asserted its ownership of Millie by statements on its re-homing application form, clarifying that it made cats available for sale to the general public on the terms that it remained the cat's owner,<sup>218</sup> - it is possible that ownership may be deemed to have vested in the re-homing institution, in accordance with the common law. Ownership is not recognised as being an absolute concept in English law but generally a matter of who has the better right to title. One additional factor to consider would be the fact that responsible owners would make early contact to trace a companion animal that had gone missing.

However, *the Limitation Act 1980* applies a statutory limitation period of 6 years, before which ownership of a chattel, which a cat is, can transfer to a successive owner and extinguish the title of the original owner.<sup>219</sup> The scope would, thus, exist under statutory law for the original owner of Millie to claim ownership of his 'lost' cat, once Millie has been rehomed with a new 'owner', - within the statutory period of 6 years.

The finder of a stray cat may acquire ownership of that cat if the true owner intentionally abandons the cat, i.e. by express dereliction. But if the true owner loses it by accident he can

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<sup>218</sup> See *Gables Farm Dogs and Cats Home and Her Majesty's Revenue and Customs* (2007). But note that the decision taken in *Gables Farm*, in accordance with the common law, is very strongly stated to be based on the facts found by the taxation tribunal in that case.

<sup>219</sup>Section 3. Which would not apply in the instance of the theft of a cat (s. 4).



reclaim possession (2 Bl Com 9 (*Halsbury's Laws of England: Bailment by Finding* Vol. 3 (2005 re-issue)) The Tribunal in *Gables Farm* were of the view that responsible owners would make early contact with the Farm if their animal had gone missing and was, thus, satisfied that the cats offered for re-homing by *Gables Farm* were those which had been deliberately abandoned by their owners. Lack of responsible ownership could also be a factor taken into account by the authorities; and the original owner of Millie may be deemed to have abandoned his cat in the circumstances for the purposes of causing unnecessary suffering under the *Animal Welfare Act 2006*.

**Question 6 – When a person lives next door to an aggressive cat: Who is liable for aggressive cat attacks and what options does a person have when they are suffering from cat attacks and aggressive behaviour that either cause stress and harm to neighbouring cats or, in extreme cases, where the aggressive cat scratches humans or causes property damage?**

This question has been raised in relation to what seems to be the systematic behaviour of *some* Bengal cats that attack other cats, sometimes even entering into the neighbour's home to do so. But it also applies to other territorial cats that are unusually aggressive towards other cats in the area. The issue of 'trespass' and protecting property from unwanted cats is the subject of the next question but we deal with the issue of aggression and harm caused by cats here.

Extreme cat behaviour can be dealt with as nuisance behaviour under the criminal statutory nuisance regime. At common law, for the keeping of animals to become actionable as a nuisance some 'extraordinary, non-natural or unreasonable action' is required. The *Environmental Protection Act 1990* defines nuisance and applies where action is deemed to be an 'unacceptable interference with the personal comfort or amenity of neighbours or the nearby community'. While the option for a civil trespass action for cats entering into property and causing damage is unlikely to succeed, abnormally aggressive cat behaviour that results in property damage (including damage to the resident cat) or harm to children would make the cat owner eligible for an abatement notice under the EPA requiring them to take steps to prevent the nuisance being caused by their cat. Failure to comply with such a notice would constitute a criminal offence.

There would also be the potential to pursue a civil action in negligence against the owner of the cat, who owes a duty of care to his neighbour not to cause harm which is foreseeable, i.e. which the owner knew or ought to have known his cat, as a likelihood, would cause. Additionally, in such cases of extreme or abnormal cat behaviour, the potential would exist for strict liability to be incurred in accordance with the three cumulative limbs of section 2(2) of the *Animals Act 1971* if the owner knew of his cat's propensity to cause damage. This latter course of action would not apply in respect of cats' normal behaviour generally.

(Separate from the legal issues and subject to appropriate cover being in place, there may also be potential to pursue a claim against a cat owner via their cat insurance. The parties involved would need to seek advice on this possibility.)

**Question 7 – We have a problem with other cats ‘trespassing’ into our garden. The problem is particularly acute with Bengal cats which have tried to break through the magnetic cat flaps and in some cases have been found in houses causing stress to other cats. Is the owner of the cat liable for this?**

Under common law, generally civil action cannot be taken for trespass in respect of cats (*Buckle v Holmes* [1926] 2 KB 125 CA). In addition, cats are excluded from the strict statutory liability trespass regime introduced by the *Animals Act 1971* so that its owner is not responsible for the consequences of its trespasses. As a result, no civil action for trespass would be possible and an action would instead need to be pursued against the cat's owner in negligence or, where the specific issue of abnormal characteristics applies together with the other cumulative criteria, strict liability may exist under the *Animals Act 1971*. (See also question above.)

**Question 8 – We are fed up with cats coming into our garden and want to discourage them. We have tried shouting at them and now want to try some form of proper cat repellent. Are these legal?**

Generally, legally marketed cat repellents which do not harm the cat such as sonic repellents or those based on an odour unpleasant to cats can be used. However, the use of barbed wire, bait laced foods or other poisonous chemicals that will induce vomiting or otherwise harm a

cat must not be used. Using any of these products which harm or cause sickness in a cat would potentially result in unnecessary suffering being caused to cats which would be an animal welfare criminal offence. There is also the specific criminal offence of administering poison (*Animal Welfare Act 2006*).

**Question 9 – Who is liable for road traffic accidents caused by cats? For example, if a driver is forced to swerve his car to avoid a cat does the cat owner have any liability for the accident and any damage caused?**

This is a potentially complex question which rests on a) whether an owner is responsible for the actions of his cat to the extent that he is liable for damage arising from the cat's actions that cause the accident; and b) whether the cat owner has a duty of care to road users and whether there was a breach of that duty. Causation is the issue on this second point i.e. whether the breach of duty was a direct consequence of the damage or loss which occurred and whether the damage caused was either too remote or not foreseeable as a likelihood. Although in principle one could argue, for example, that a cat owner who is aware that his cat may run over or cross the road, thus presenting a danger to motorists, is liable for the accident if he fails to act to prevent such action, in practice we consider it unlikely that such a duty of care would be imposed on cat owners. The cases *Nicholas H* [1995] 3 All ER 307, *Perrett v Collins* [1998] 2 Lloyd's Rep 255 and *Kent v Griffiths* [2000] 2 All ER 474 discuss acts and omissions in detail suggesting that a person is more likely to be held liable for a case involving personal injury and would be more likely to owe a duty of care when it is *necessary* to take steps to protect others, so this could raise a higher threshold on busy roads e.g. a street with a school at the end or main thoroughfare. But a person is only required to take such steps as are reasonable in all the circumstances and cats are exempt from trespass rules. Cats are 'privileged to wander' and while a cat owner who knows his cat routinely runs across the road and does nothing to prevent it *potentially* has a duty where there is a likelihood of an accident being caused (e.g. busy street, road near a school which has unusually high traffic), this does not impose an obligation or liability on *all* cat owners. It should be added that the *Animal Welfare Act 2006* provides an increased obligation to understand the needs and behaviours of the individual cat and to consider the interior and exterior environment. A greater number of cat owners living in busy urban streets should now heed the requirements

under the Code to consider the behaviour of the individual cat, which would also require considering the implications of keeping a cat indoors all the time.

In essence we conclude that the cat owner would not incur strict liability under statutory civil law nor civil liability in negligence, which would seem to be remotely difficult to apply given the above. While a damage or loss claim tentatively might be pursued, in the absence of a general duty of care on the part of cat owners to road users there would be no negligence thus no fault. So in most cases, a cat owner would not be responsible for damages in road traffic accidents caused by his cat.

The driver would, however, potentially face civil liability for any injuries caused to the cat (technically property damage). Criminal law imposes no sanction in respect of damage to cats in the event of a road accident. Cats are exempt from the obligation to report under the *Road Traffic Act 1988*.

**Question 10 – Can feral or stray cats be used in scientific procedures and can stray/feral cats be sterilised?**

Draft new regulations, which will update the *Animals (Scientific Procedures) Act 1986*, appear to place a ban on the use of stray cats in scientific procedures. The draft regulations state that project licences must include “*a condition to the effect that a stray animal of a domestic species must not be subjected to a regulated procedure as part of the specified programme of work*”.

While this is still subject to the regulations passing through the Parliamentary scrutiny process without any reduction in this condition it appears that the law will shortly ban the use of stray, feral and wild cats in scientific procedures. The recent response of the Government to the public consultation on transposing the provisions of the revised EU Directive on the protection of animals used for scientific purposes, however, is to propose to implement the wording of the Directive unchanged, as follows: 1. Stray and feral animals of domestic species shall not be used in procedures. 2. The competent authorities may only grant exemptions from paragraph 1 subject to the following conditions: (a) there is an essential need for studies concerning the health and welfare of the animals or serious threats to the environment or to human or animal health; and (b) there is scientific justification to the effect

that the purpose of the procedure can be achieved only by the use of a stray or feral animal. The new regulations will come into force on 1 January 2013.

Sterilisation of *feral* animal colonies is sometimes carried out by local authorities for animal population control purposes as a public health issue and can be legal.

## **Appendix 2: Further Research**

Responses to the draft version of this report, our analysis of the different perspectives of Cat Group members and analysis of the queries considered in completing this research, have identified a need for further research. The scope of this project is necessarily limited by time and funding considerations which influenced the original brief and research proposal, thus it is directly focused on the main legal questions raised by members of the public and the Cat Group through iCatCare. However, in completing this research a number of wider issues requiring more detailed empirical research have been identified; and part of this project's value is in identifying an agenda for future research, suggested by the queries and comments on the provisional report. We therefore consider that the following areas should be the subject of further research:

1. Implementation and interpretation of DEFRA's *Code of Practice* within cat prosecutions
2. Compensation and Insurance Issues
3. Re-homing Institutions and Contractual Issues
4. International Perspectives and Comparative Analysis of Cat Law in other Jurisdictions

Completion of each of these projects would add to the body of knowledge on cat law and legislative policy and would further address any areas of confusion. Our proposals for completing such work are outlined below.

### **Implementation of the *Code of Practice* within Cat Prosecutions**

Responses to the provisional version of this report identified a need for an analysis of how the courts are implementing DEFRA's *Code of Practice* and, in particular, the weight attached to the *Code* in judicial decisions. An analysis of all *Animal Welfare Act 2006* cases where the *Code* is an issue falls slightly outside the scope of both our original brief and the planned timescales for the research, although we consider this worth pursuing and propose to conduct such an analysis for publication in an academic journal as part our dissemination of this research's results. The success of this case law analysis would be subject to obtaining access to sufficient case law for meaningful evaluation. We are grateful to the RSPCA for providing some initial information from their recent prosecutions annual report and reference to the

Sentencing Guidelines; information on any relevant cases known to other Cat Group members would also be welcomed and would aid our proposed analysis. However we consider a proper evaluation of the *Code's* 'value' or status in judicial decisions and prosecutions requires wider empirical research.

An effective study needs to include not just case law and decisions from cases heard at court but also analysis of those cases that do not progress through to court hearing. In particular, failed cases and those where consideration of the *Code* by prosecutors is integral to any decision to dismiss a case or abandon proceedings once commenced will reveal much that successful cases do not. For detailed analysis of the *Code's* perceived status it would also be necessary to consider the attitudes of prosecutors and defendants towards the *Code*. The issue for this further research is, therefore, not solely how the *Code* is considered during court proceedings but also how its existence influences decisions on charging, whether or not to prosecute and the subsequent weight attached to the *Code* in proceedings and the manner in which it is interpreted in judicial proceedings. Assessing the attitudes of those using the *Code* may necessitate conducting interviews and, where possible, analysis of case files.

This is a wider research issue than purely considering the *Code's* use within case law and following completion of this research a more detailed formal research proposal to conduct such research will be developed.

### **Compensation and Insurance Issues**

A number of the queries raised concerning liability, identify concerns about whether compensation would need to be paid for loss or damage claimed by a third party arising from a cat's actions. While such claims may be relatively rare, the fear of such claims appears tangible in the queries examined for this research. This research analysis briefly touches on compensation issues, but arguably there is need for empirical research on the extent to which such claims are being pursued against owners, breeders and re-homing institutions and into the nature of such claims.

Cat insurance has been specifically mentioned in some queries as being the mechanism through which compensation and damages claims are addressed. The RSPCA's cat insurance for example provides third party liability insurance of up to £2 million to assist with legal

liability for any loss, damages or injury caused by a cat. The queries indicate that such liability insurance is relied upon by both cat owners and breeders when claims are pursued against them, but is also relied upon by others against whom claims are made. However, what is not clear is how widespread the use of such pet insurance is, whether such claims are being successfully defended, or how speedily claims are processed to the satisfaction of the parties involved. Previous empirical research into compensation and insurance claims has identified problems experienced by claimants. For example, personal injury compensation claims research conducted at the University of Lincoln by Dr Nurse and Professor John Peysner identified significant delay in dealing with such claims and a perceived low level of satisfaction among consumers. Current research into road traffic claims investigating the costs involved, compensation awards and efficacy of the claims process is currently being conducted, supervised by Dr Nurse, testing the hypothesis that the claims process for low value claims (i.e. under £10,000) often fails to deliver satisfactory compensation for claimants. Similar research into cat compensation claims would hopefully identify any flaws or delay in the claims process and clarify how liability issues are being addressed through insurance or other compensation claims.<sup>220</sup>

We therefore propose further research into ‘cat’ compensation claims assessing the annual number of claims, value and the nature of claims, whether claims are made or pursued using ‘pet’ or other insurance or through the civil justice system, and an assessment of the issues arising in claims (e.g. types of damage or loss claimed). Such research would allow conclusions to be drawn on current compensation activity facing cat owners, breeders and rehoming institutions. Completing such research would require access to insurance and court claims data and conducting interviews with insurers, claims handlers and lawyers dealing with cat compensation claims.

### **Re-homing Institutions and Contractual Issues**

A number of queries have been raised concerning contractual issues relating to re-homing institutions and to catteries and the cat ownership disputes which can arise. During the course of this research we have not had sight of any contracts and thus have not considered

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<sup>220</sup>Petplan’s 2011 Pet Insurance survey indicates that (on the basis of its claims data) four out of five claims on pet insurance are for illness rather than injury. However beyond industry statistics, empirical research can assess the behavioural characteristics of the claims process and conduct comparative analysis between insurance and other claims.



extensively the detail of contractual arrangements. Our analysis is, thus based on the available information and general consideration of the law rather than consideration of the law as it applies in respect of *specific* contractual provisions.

However, comments raised in respect of our draft report indicate that charities and other rehoming institutions have different policies and contractual provisions which could give rise to specific queries or areas of confusion that do not affect the general public. Further research which considers the specifics of contractual arrangements is recommended.

### **International Perspectives and Comparative Analysis of Cat Law in other Jurisdictions**

Finally, during our research we have been made aware of international interest in this research and cat law by students and NGOs in Spain, Italy and Belgium. While our research touches on the position in the US to highlight the different perspectives on cat law in different legal jurisdictions, a formal comparative study of different perspectives has merit in order to assess the protection of cats and their legal status either globally or regionally.

While it is unlikely that such a study could be carried out effectively without funding, such comparative studies are attractive both as policy and campaigning tools for NGOs seeking to improve animal legislation within their jurisdiction, and to academic publishers who have shown increased interest in publishing such comparative analyses. (Prior to his departure from the University of Lincoln Dr Nurse was engaged in such a project into competition law in the EU and is currently developing a project into EU wildlife law at Middlesex University.) Comparative legal studies are of interest to animal law scholars and policy analysts/campaigners who use the experiences of different jurisdictions to draft and campaign for model laws and to appraise critically government policy.

We therefore propose comparative analysis of cat law and policy across the EU as an area of further research. However, noting that such result would most likely represent a major research project, a formal research proposal for consideration by the research funding bodies and interested parties will need to be developed.

***We welcome comments on these further research ideas and will circulate our formal draft proposals when completed.***

International Cat Care. 619 Followers. 37 Following. www.icatcare.org. UK. International Cat Care is a charity dedicated to the health and welfare of cats. Formerly known as the Feline Advisory Bureau. International Cat Care's best boards. OUR PETS (group board). Dr Jo Righetti (Pet Problems Solved). ISFM - World Feline Veterinary Congress 2013 in Barcelona. International Cat Care 173 Pins. iCatCare Easy to Give Award 2013. International Cat Care 75 Pins. 2014 ISFM European Congress in riga. International Cat Care 32 Pins. Purrfect pictures. International Cat Care 31 Pins. &