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Comment on the Government Response to the Efra Committee's Third Report: Animal Welfare in England: domestic pets

The Dog Breeding Reform Group (DBRG) will limit its comment to the breeding, rearing and selling of dogs, the Animal Welfare Act in the school curriculum, the role of the RSPCA, sentencing, and an animal abusers register.

'We have the best animal welfare in the world and we are a nation of animal lovers.' This is a comment frequently used by Government. However, in the case of dog breeding, rearing and selling this is not the case. Many countries, including Sweden, Norway, Finland, Denmark, The Netherlands, Germany, Hong Kong and Switzerland at least, have better welfare regulations for dogs.

1 Secondary legislation

1.1 The Government Response to the EFRACom inquiry acknowledges that the welfare legislation of domestic animals needs updating. We would add, urgently and thoroughly. DBRG believes that what has been set out in Defra's Review of animal establishments licensing does not at the moment go far enough to adequately protect dog welfare with respect to genetic health, breeding and rearing, or licensing and sale (ref. DBRG's Response to the Review). We recognise, however, a number of positive features of the Review.

2 Progeny of dogs

2.1 DBRG feels that an undertaking only to '*explore the possibility of further protecting progeny*' may not allow anything to be done on the grounds that it is complex or legally challenging. DBRG believes firmly that it is entirely possible to develop suitable regulatory mechanisms that will enable protection of progeny, and that Government should urgently consider specific legislative options. Regulatory mechanisms could include:

- A new statutory Code of Practice for the Welfare of Dogs, which we understand is currently being considered by DEFRA, should cover dog breeding as well as dog owning. However, we believe it would be preferable for a separate statutory Code of Practice for Dog Breeding to be drafted to protect the welfare of dogs used for breeding and their offspring. The inclusion of specific expectations is needed for those breeding dogs. Relevant clauses should specify that care is taken at the point of breeding two dogs together to select suitable parents with minimum risk of passing on inherited defects, including poor conformation, which may adversely affect the health and welfare of progeny.
- Guidance to the Courts concerning the interpretation of the AWA with respect to Section 4 and the causation of 'unnecessary suffering'. Such guidance to clarify the scope for prosecution where the breeding of dogs with genetic conditions, which a breeder should reasonably have known would cause suffering in offspring, has resulted in such suffering (AWA, Sections 4,1 and 4,2). This would apply whether a breeder has carried out such breeding deliberately or through negligence.
- Redefinition of a 'responsible person' under the AWA, Section 3 to extend to those responsible for breeding decisions with respect to the health and welfare of progeny. Extension of 'responsibility' for progeny under specific circumstances would allow application of Section 9, AWA and the requirement that a responsible person 'take reasonable steps' to protect an animal for which they are responsible from 'pain, suffering, injury and disease' (AWA Section,9,2,e).
- The incorporation into new Model Licence Conditions (MLCs) for dog breeders the requirement that the breeder takes reasonable steps to ensure that breeding parents are properly selected to minimise risk of transmission of genetic disease, or creation of physical conformation which would adversely affect welfare of progeny.

2.2 Regarding the Kennel Club's Assured Breeders Scheme (ABS) '*which includes requirements for genetic screening of breeding dogs,*' we would point out that the number of health conditions 'required' or even 'recommended' to be tested for under the Scheme is very limited. Further, the number of breeders who are 'KC Assured' is a very small proportion of breeders as a whole. Currently there are only 3,200 certified ABS members who are normally inspected once every three years. This is a tiny proportion of the breeders who produce the approximately 240,000 puppies registered with the KC annually and a miniscule proportion of dog breeders as a whole.

2.3 The vast majority of dogs bred have no protection against the welfare impact of poor breeding decisions and failure to take action to prevent inherited diseases. The welfare impact is huge in terms of numbers of dogs affected and, depending on the condition, the severity of suffering involved for an individual dog which will often be significant and long-lasting. Legislative protection of all offspring of dogs is essential.

3 Awareness of the 2006 Act

3.1 In terms of education, DBRG feels that awareness of the 2006 Act still depends on the interest and expertise of individual teachers or ability of welfare charities to enter into partnership with schools. Knowledge and understanding of animal welfare should not be left to chance or limited to Key Stages 1 and 2. There is a need for a more systematic approach at Key Stages 3 and 4 to build on what may have been covered in KS1 and KS2. The care and understanding of the needs of animals has a much wider benefit than animal welfare per se. It will help to produce better and more caring and responsible citizens in a more general sense and may reduce societal costs arising from animal abuse and abandonment.

3.2 While the DEFRA response implies that the curriculum, '*contains frequent references to animals and their environment throughout, including understanding the basic needs of animals in Year 2,*' content does not reflect the requirements of the AWA. We strongly recommend that pupils are explicitly taught the five 'welfare needs' in line with the Duty of Care enshrined in the AWA.

4 Breeding of Dogs

4.1 DBRG welcomes the proposal to lower the threshold for licensing although we believe it is more appropriate that the threshold is set at two litters, since this is unlikely to be an accidental circumstance. We consider that a failure to require those breeding smaller numbers of litters (ie less than three) to be licensed, and for all dog breeders to be registered, is likely to increase the difficulty of local authorities to detect illegal breeders.

4.2 Our view is that anyone breeding a dog should be registered with the local authority, including those falling below the licensing threshold. The premise of existing legislation is that it should be self-funding, and we do not accept that there would be an undue burden to local authorities to implement registration on a similar full cost recovery basis to that of licensing. The cost to the individual breeder would be negligible if registration used modern technology. Failure to require every breeder to be visible to their local authority and to include their licence/registration number in advertisements (see below) runs the risk of making the measure unenforceable.

4.3 We are pleased that DEFRA is not now proposing that licensing decisions may be devolved to independent UKAS-accredited agencies. It is preferable, in our view, that the local authority continues to retain responsibility for the award of licences and the standards that are applied. We do support UKAS-accreditation as a relevant consideration in risk-based licensing decisions by the local authority.

4.4 However, there is a major problem of varying standards applied between authorities, and their level of commitment to effective animal welfare licensing. There is a need for a level of independent oversight and scrutiny of local authority standards of licensing (e.g. for dog breeders), and we urge DEFRA to give this appropriate consideration. New regulations may fail if there is inadequate oversight and review of local authority performance which we do not believe would be unduly costly or resource intensive. A part-time, Independent Inspectorate, funded from a national licence fee levy, which did not take direct responsibility for inspection and awarding licences, but which would review authority licensing practice and decisions is an option we recommend.

4.5 Abolishing third party selling of dogs we feel would be the most effective single measure to curb the practice of puppy farming. DBRG believes that

continuing to allow the third party selling of dogs is an opportunity lost in discouraging 'puppy farming'. Third-party selling enables and facilitates the operation of commercial operations of poor standard which are not scrutinised by the public, prevents a puppy being seen with its mother, and conceals the provenance of a puppy. A ban, coupled with mechanisms to enable traceability back to a breeder, including the microchip, should enable significant improvement in dog welfare. Dog breeders who breed commercially and with poor welfare standards would be more easily identifiable. Owners would be better equipped to take private action under consumer law if the puppy they bought is unsound either genetically, physically or psychologically.

4.6 We do not agree that a ban on third party selling would drive sales underground and increase unlicensed breeding. It could be argued that much puppy selling is already underground because the person selling is not the person who bred the puppy and the conditions of rearing are concealed. '*See the puppy with its mother and littermates*' is a simple message which should be promoted by Government and local authorities.

4.7 While DEFRA's response states that the Government is encouraging consumers to source dogs from reputable breeders and to see puppies interacting with their mother. The nature of this encouragement is not clear and it would be helpful if specific actions that are to be taken were made explicit.

4.8 We welcome the initiative to work with the National Companion Animal Focus Group (NCAFG) to develop standards of competency for inspectors; a risk-based assessment framework; guidance and documentation for local authorities; and user-friendly information for licensed dog breeders. These are all valuable initiatives.

4.9 On a general point, DBRG believes that dog breeding should not be encouraged as an easy way to make money. The argument that demand must be satisfied is one we would wish to counter. A ready supply of puppies makes it too easy for anyone to acquire a dog – often to people who do not make suitable owners. The number of dogs abandoned or surrendered each year is proof of this. We have many excellent re-homing organisations in England but they are under continued pressure to cater for the number of dogs that they must deal with. Surely we should be trying to prevent the abandonment of dogs in the first place?

5 Licensing and Registration

5.1 DBRG is pleased, in principle, with the proposal that all advertisements of pets for sale must include the vendor's local authority licence number (but see our comments in 4.2 above). However, potential issues with this proposal need to be considered. Consumers need to be able to distinguish between those who are selling as the breeder of the puppy and, if third party selling is not to be banned, those vendors who are third party sellers. Otherwise there is a clear risk that a requirement to provide a licence number will simply facilitate and provide added legitimacy to third-party selling. This would be detrimental to dog welfare and consumer interests.

5.2 DBRG recommends that a Registration Number obtainable from the local authority be required to be displayed in any advertisement for sale of puppies by a breeder falling below the licensing threshold. We recommend that the breeder Licence Number be displayed in advertisements for all licensed breeders advertising puppies for sale directly. DBRG does not support the continued licensing of third-party sellers or dealers. However, in the event such sale is not prohibited, we believe it is essential that third-party pet vendor Licence Numbers are required to be published in advertisements. Furthermore, that this Licence Number is clearly distinguished from a breeder Licence Number.

5.3 We understand that DEFRA believes that use of a Tax Reference in advertisements for dogs, in an analogous way to that now occurring in France, is not a preferred option. However, on the face of it, the use and publication of a vendor's tax number in any advertisement appears to be a potentially straightforward way of effectively simultaneously ensuring 'registration' and of enabling traceability. We recognise though that such publication could facilitate fraud. We would be grateful if DEFRA could fully detail its rationale for not considering this option to support traceability.

6 The Pet Advertising Advisory Group (PAAG) minimum standards for on-line advertisements for the sale of pets

6.1 We think that not making PAAG's minimum standards obligatory for all sales websites will undermine efforts to improve welfare. This puts the responsibility on to consumers rather than vendors, unlike any other commercial enterprise. The argument that some operators may be difficult to

regulate as they are based overseas should not preclude a requirement that all those operating from within the UK should do so.

7. Role of the RSPCA

6.1 DBRG is pleased that the Government recommends that the RSPCA should be given the opportunity to implement the recommendations of the Wooler Report, and will continue to have the power to prosecute animal welfare breaches.

8 Sentencing

8.1 We are disappointed that DEFRA does not believe it necessary to review the sentences for animal welfare offences. It is the view of DBRG that the low penalties awarded for animal abuse reflects the out-dated legal definition of animals as the 'property' of humans rather than defining companion animals as sentient beings and worthy of respect and protection.

8.2 The DEFRA Response seeks to imply that the current level of sentencing for animal welfare offences does not indicate that an extension or increase of penalty levels is warranted. This is done by reference, for example, to average custodial sentence length as in the middle of the allowable range for magistrates courts (i.e. 3.3 months in a range of up to 26 weeks), to the average level of fine (i.e. £244 in 2015) and to the high proportion of offenders receiving community orders or suspended sentences. Yet, this is a very misleading argument.

8.3 Since the offence range given at the outset for animal welfare offences is limited to a 26 week sentence, and since offences may only be tried in a Magistrates Court, it is inevitable that sentences are determined in relation to the 6 month custodial maximum and, with this limit in place, are likely to be calibrated downwards in relation to offences of maximum harm and culpability. For example, according to the recently updated sentencing guidelines for an animal welfare offence, the 'starting point' for an offence of 'greater harm' and 'high culpability' is 18 weeks custody. All lesser offences are then calibrated to receive a sentence below this. Unless and until the maximum sentences are revised to higher levels to reflect the severity of the worst offences, then all animal welfare offences have the potential to be under penalised. We note that the average level of fines referred to is generally very low and may not act as an effective deterrent.

8.4 The under-penalisation of animal welfare offences, particularly in the most severe cases, is also a reflection that sentences may only be passed in a Magistrates Court which is limited to imposing a custodial sentence of 26 weeks. We feel it is important that there should be discretion to treat certain animal welfare offences as ‘either way offences,’ that may be tried in either a Magistrates or Crown court.

8.5 DBRG notes that provision was explicitly made under the AWA for sentence levels for animal welfare offences to be increased. Section 32, 1, for example, states, ‘*A person found guilty of such offences to be liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding £20,000*’. Provision for this level of sentencing has not, however, been enacted. DBRG would recommend that these ‘Post-conviction powers’ are now brought into effect at minimum, to ensure sentences are calibrated at a more appropriate level given the seriousness of animal welfare offences, and the need for effective deterrent.

8.5 We would also like to see considerably more use of the provisions of the Proceeds of Crime Act, 2002. Too often offenders who have obtained large amounts of money through illegal activity, such as breeding and selling puppies while unlicensed, receive fines that bear no relation to the money they have accrued through illegal activity. The use of this Act should be encouraged and supported in such cases.

9 Animal Abusers Register

9.1 On balance we agree that an animal abuser register is not something which should be made public, but we welcome recommendations for an improvement in the connectivity and information sharing on police databases. What is particularly important is that those convicted of animal welfare offences, including those who have qualifying orders imposed on them restricting their access to animals, are effectively prevented from taking on roles which enable them to abuse further. For example, a dog breeder convicted of cruelty who is required not to keep dogs, must not be allowed to do so for the relevant period.

9.2 What is key is that information about the history (e.g. of abuse of animals and disqualification) is readily accessible when it needs to be by relevant people, for example to trading standards officials if concerns are raised about a

dog breeder, or to the manager of a dog rescue organisation in relation to applicants for jobs or volunteer roles. This would be analogous to provisions under the Safeguarding Vulnerable Groups Act, 2006 which enables vetting through the Disclosure and Barring Service (DBS). Ways in which this might be effected for animal welfare offences should be considered.

Final Comment

DBRG would argue that the welfare and safety of companion animals requires consideration, consistency and thoroughness. If not, we cannot claim to be a nation of animals lovers and to have the *'highest standards of animal welfare in the world.'*