

High Court Ends 23 Years of Uncertainty over Pet Markets Ban

***R (Haynes) v Stafford Borough Council* [2006] EWHC 1366 (Admin), judgment of 14 June 2006**

Animal welfare campaigner wins victory on the interpretation of pet shops licensing legislation but DEFRA succeeds in defending lawfulness of its avian flu licensing regime.

In a judgment that will be of considerable interest to local authorities and environmental groups, the High Court has clarified the interpretation of the Pet Animals Act 1951 in relation to the selling of animals as pets at markets and fairs. The context in which that judgment was given was a challenge to a licence granted under the 1951 Act for the holding of a one day 'pet fair' at an agricultural showground at which up to 13,000 birds were to be sold by several hundred independent breeders and dealers. The local authority concerned had granted that licence to the event's organiser for the purposes of section 1 of the 1951 Act, which makes it an offence to "keep a pet shop" except under the authority of a licence under that Act.

The Claimant ran an animal rescue and re-homing charity and was concerned that the fair would lead to impulse pet purchases which could translate into an increased burden on him and his charity. He also feared that the gathering of so many birds in one place and their transportation by their purchasers to homes across the UK might provide ideal circumstances for an outbreak of highly pathogenic avian flu that would be impossible to contain.

The Claimant's challenge to the 1951 Act licence was based on two discrete points of law. *First*, he argued that the holding of the event would involve the commission of criminal offences contrary to section 2 of the 1951 Act (as amended in 1983), which made it an offence for any person to "carry on a business of selling animals as pets in any part of a street or public place, or at a stall or barrow in a market". *Secondly*, he argued that, even if that were not so, each individual trader carrying on a business of selling animals as pets at the event had to be separately licensed. In that regard, he noted that section 7 of the 1951 Act provided that references to the keeping of a pet shop were to be construed "as references to the carrying on at premises of any nature ... of a business of selling animals as pets". The organiser of the event was not itself carrying on such a business, and it was not open to the Council to grant a single licence to the organiser in respect of the carrying on of such businesses by multiple traders.

After the claim for judicial review had been commenced, an outbreak of avian flu at an Essex quarantine centre led the European Commission to prohibit gatherings of birds at markets and fairs save when authorised by national authorities following a risk assessment.¹ The ban was implemented in the UK by way of regulations² which prohibited gatherings of birds except under the authority of a licence issued by the Secretary of State. Such a licence could only be granted following a risk assessment and if the Secretary of State was satisfied that the transit of birds to and from the gathering would not significantly increase the risk of transmission of avian flu. Rather than grant an individual licence in respect of each gathering of birds, however, the Secretary of State created a 'general licensing' regime which permitted all such gatherings, provided that certain conditions were complied with. The Claimant obtained permission to amend his grounds of challenge so as effectively to challenge the vires of the general licensing regime, arguing that each gathering of birds posed its own particular risks which had, in each case, to be assessed for risk before a licence under the regulations was granted for that particular event.

Thus, by the time the proceedings came before Walker J for the substantive hearing, there were effectively three grounds of challenge: two concerning the interpretation of the 1951 Act, and one concerning the avian flu general licensing regime.

In relation to the first ground, the Court granted a declaration that the word "market" in the section 2 offence referred to "a concourse of buyers and sellers", and was not confined, as the Council and the event organiser had argued, to franchise markets, street markets, open markets, or public markets. Although the Court's conclusion on that first ground meant that it was, strictly speaking, unnecessary also to resolve the second ground, the Court also granted a declaration making clear that the mere provision by an event organiser of facilities which enabled other persons to carry on businesses of selling animals as pets did not have the consequence that the organiser was himself to be treated as the keeper of a pet shop at that event.

However, the Court dismissed the Claimant's challenge to the avian flu general licensing regime, holding that, since the Secretary of State's risk assessment indicated that no gathering of birds would significantly increase the risk of avian flu transmission in the UK provided that the specified conditions were complied with, it had been lawful for her to grant a general licence, rather than licensing each gathering of birds individually.

Comments

Pet fairs have long been a focus of concern and campaigning activity by conservation and animal welfare groups, who have typically condemned such events as gigantic 'jumble sales' of animals which encourage the international trade in imported wildlife. Such groups have frequently claimed that such events were illegal by reason of section 2 of the 1951 Act. The organisers of such events have countered that pet fairs played an important role in enabling hobbyist breeders and keepers to exchange information with one another, and argued that the law was unclear. The consequence of these competing arguments was that different local authorities adopted different views as to the lawfulness of such events. As Walker J stated, it was offensive to the rule of law that people in different areas of the country were in practice governed by different views as to what the law of the country as a whole required. Walker J's judgment will therefore be welcomed by local authorities for providing clarity as to the proper application of the 1951 Act to pet fairs and similar events.

Monckton barristers Alan Bates and Paul Harris appeared, respectively, for the Claimant and the Secretary of State for Environment, Food and Rural Affairs.

For more information on Alan Bates and Paul Harris, please contact the Clerks on 020 7405 7211 or consult the 'Find a Barrister' Section on www.monckton.com.

¹ See Commission Decision 2005/745/EC of 21 October 2005, which inserted a new article 2a into Commission Decision 2005/734/EC.

² The Avian Influenza (Preventive Measures) Regulations 2005 (SI 2005/2989), and subsequently the Avian Influenza (Preventive Measures) (No 2) Regulations 2005 (SI 2005/3394).