Neutral Citation Number: [2018] EWHC 880 (Admin)

Case No. CO/4826/2017

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

(Sitting at Leeds)

Leeds Combined Court Centre,
The Courthouse, 1 Oxford Row
Leeds, W. Yorkshire LS1 3BG

23rd January 2018

Before:

MR JUSTICE KERR

B E T W E E N:

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DELLA BARKER AND KEITH WILLIAMSON	Appellants
- and -	
ROYAL SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS	Respondent

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MS SARAH-LISE HOWE (instructed by Ogarras) appeared on behalf of the Appellants.

MR PAUL TAYLOR (instructed by Freeman Brown) appeared on behalf of the Respondent.

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J U D G M E N T

MR JUSTICE KERR:

1. This case is about the treatment of animals. I am told it is the first case to the reach the High Court on the issue of sentencing for an offence under section 9 of the Animal Welfare Act 2006 (the 2006 Act) of failing to take such steps as are reasonable in all the circumstances to ensure that the needs of an animal, for which a person is responsible, are met to the extent required by good practice.

2. It is an appeal by case stated from the Crown Court at Hull, from a decision made by His Honour Judge Graham Robinson and Mr Adrian Horsley JP on 27 October 2016. The decision was, subject at one point, to dismiss the appellants' appeal against a sentence passed by Magistrates in Beverley in June 2016.

3. The sentence imposed by the magistrates' court was as follows; no penalty such as a fine, community order or imprisonment was imposed, nor a conditional discharge. The only measures imposed were disqualification from owning or keeping any animal for a period of seven years, subject to one exception. An order depriving the appellants of ownership of five dogs of relevance to the case had been made in the magistrates' court.

4. The Crown Court dismissed the appeals, save that the disqualification order was varied to create an exception permitting the appellant to own and to own and keep terrapins. The offences charged were under section 9 of the 2006 Act, which so far as material provides:

> '**Duty of person responsible for animal to ensure welfare**
>
> (1) A person commits an offence if he does not take such steps as are reasonable in all the circumstances to ensure that the needs of an animal for which he is responsible are met to the extent required by good practice.
>
> (2) For the purposes of this Act, an animal's needs shall be taken to include–
> (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.
>
> (3) The circumstances to which it is relevant to have regard when applying subsection (1) include, in particular–
> (a) any lawful purpose for which the animal is kept, and
> (b) any lawful activity undertaken in relation to the animal

…'

5. Section 9 creates one of six offences introduced by sections 4-9 inclusive of the 2006 Act. These offences apply both to farmed animals and domestic pets, although other legislative provisions, which I do not set out in detail here, apply specifically to farmed animals.

6. Other relevant statutory provisions are as follows. By section 33(1) of the 2006 Act:

> 'If the person convicted of an offence under any of sections … 9 is the owner of an animal in relation to which the offence was committed, the court by or before which he is convicted, instead of or in addition to dealing with him in any other way, make an order depriving him of ownership of the animal and for its disposal'.

7. Indeed, as I have said, in this case the magistrates made orders depriving the appellants of ownership of five dogs. By section 34(1) of the 2006 Act:

> 'If a person is convicted of an offence to which this section applies, the court by or before which he is convicted may, instead of or in addition to dealing with him in any other way, make an order disqualifying him under any one or more of subsections (2) to (4) for such period as it thinks fit'.

8. Subsections (2) to (4) make provision for a disqualification order to include disqualifying the person from owning or keeping animals or participating in their keeping or being party to any arrangement enabling the person to control or influence the way in which they are kept. A disqualification order also prohibits dealing in the animals in question or transporting them or arranging their transport. By section 34(5) disqualification under subsection (2), (3) or (4) "may be imposed in relation to animals generally, or in relation to animals of one or more kinds'.

9. section 34(6) empowers the court to specify a period during which the disqualified person may not make an application to terminate the disqualification order. Such an application can be made under section 43(1), but not before the end of the period of one year beginning with the date on which the order is made: see section 43(2)(a). Finally, by section 34(8), where a court decides not to make a disqualification order in relation to an offender it must give its reasons in open court for that decision.

10. There is a sentencing guideline included in the Magistrates' Court Sentencing Guidelines relating to the offence under section 9 of the 2006 Act, which is often referred to in

shortened form as the 'welfare' offence. At the time of the sentence in this case, both before the magistrates' court and the Crown Court, the guideline created three categories of offence of varying gravity.

11. Since the Crown Court heard the appellants' appeal in this case a new Sentencing Guideline, within the same Magistrates' Court guidelines, has replaced the old one. That new guideline was effective from 24 April 2017. It applies to section 9 offences among others. The offence is triable only summarily. The maximum sentence is an unlimited fine and/or six months' imprisonment. The guideline range is, at the bottom end of the scale, a Band A fine, and at the top end of the scale, 26 weeks' custody.

12. The old Sentencing Guideline followed the then pattern. The court was required to form a preliminary view of the appropriate sentence, consider the offender's mitigation, consider any reduction for guilty plea, consider any ancillary orders (in relation to which the guidance later summarises the statutory provisions) consider disqualification from ownership of an animal and give reasons for the court's decision.

13. The new Sentencing Guideline, which has since supervened, is more sophisticated and follows the now usual pattern requiring sentence to be approached in eight separate steps, among them assessing the level of culpability and harm. Although, both the old and new guidelines require consideration of ancillary orders, including disqualification from owning and keeping animals, neither guideline includes any guidance on how the court should approach any such question of disqualification.

14. This appeal is by case stated. As stated in *The White Book* Volume 1 Practice Direction 52 EPD, paragraph 1.1: '[a]n appeal by case stated is an appeal to a superior court on the basis of a set of facts specified by the inferior court for the superior court to make a decision on the application of the law to those facts.' This is, therefore, not an appeal against sentence in the usual sense. There has already been an appeal against sentence to the Crown Court. That court considered afresh the question of sentence. It is common ground that the test I have to apply to the Crown Court's decision is akin to a test of *Wednesbury* unreasonableness. So said Donaldson LJ, as he then was, in *R. v. St Albans Crown Court ex p. Cinnamond* [1981] 1 QB 480 at 484F-G.

15. In *Tucker v Director of Public Prosecutions* [1992] 4 All ER 901, there was a sentencing appeal by case stated against an 18 month disqualification from driving imposed by magistrates. The appellant had pleaded guilty to failing without reasonable cause to provide a specimen of blood. The appeal failed. Pill J, as he then was, gave the judgment with which Woolf LJ, as he then was, concurred. At page 903c-h, Pill J said this:

> 'The circumstances in which this court will intervene in a matter of sentence, such as this, are those laid by the court in … *Cinnamond* … at 484 Donaldson LJ said:
>
> > 'It is necessary to decide… that [the sentence] is so far outside the normal discretionary limits as to enable this court to say that its imposition must involve an error of law of some description, even if it may not be apparent at once what is the precise nature of that error'.
>
> In *Ex p. Miller* 85 Cr App R 152 at 155, Watkins LJ said:
>
> > 'The only circumstances, therefore, in which this court can interfere with a sentence passed, either by justices or by the Crown Court is when the sentencing in court has acted in excess of jurisdiction or otherwise wrongly in law, which includes an error of law such as … *Cinnamond* propounded. This is another opportunity for saying what I have said previously, namely that in my view the case of *Cinnamond* has to be regarded with circumspection. The reasoning for the decision there can only apply to a very unusual and, therefore, rare circumstance. The sentencing court whose decision was appealed had power to pass the sentence which it did, but it was contended successfully that the sentence although in itself lawful was so very much outside the range of sentences normally passed as to be in excess of the court's jurisdiction and, therefore, wrong in law. I would utter a warning to anyone who comes here seeking to have a sentence of justices or the Crown Court reviewed upon the basis that the sentence is too severe because it is out of scale, so to speak, that for … *Cinnamond* to be applied the sentence will in all the circumstances need to appear to be, by any acceptable standard, truly astonishing. Otherwise this court really will be acting as though it is the Court of Appeal, Criminal Division.'

16. Later, in *R. v. Truro Crown Court ex p. RD* [1997] EWHC Admin 135, Lord Bingham LCJ, sitting with Moses J as he then was, had to consider a judicial review of a decision of Truro Crown Court to impose a hefty fine on an undischarged bankrupt who manifestly lacked the means to pay it, because any assets of significance he had had, would have vested in his trustee-in-bankruptcy. Worse, the Crown Court had imposed a period of imprisonment in default. The Divisional Court quashed both orders and substituted a fine of £150 payable at the rate of £3 a week.

17. Lord Bingham LCJ (Moses J agreeing), preferred an objective test to what he regarded as the subjective standard of whether the decision appealed against was 'truly astonishing'. He said at paragraph 13 that he would:

> 'question whether that is an ideal test since some people are more readily astonished than others and it would appear to be a somewhat subjective approach. It would perhaps seem more helpful to ask the question whether the sentence, or order in question, falls clearly outside the broad area of the lower courts sentencing discretion'.

18. The factors found in the present case can be stated quite briefly and I take them first from the written case stated (at paragraphs 8-11) on 21 August 2015. The respondent (the RSPCA) visited the appellants' home, finding it extremely cluttered. The appellant, Ms Barker, showed signs of ill health with mobility and disability issues. Her bed was in the living room where dogs were also kept, housed in dog crates. All were Cavalier King Charles Spaniels. One named Lilly, was about 10 years old. The other five were her offspring and were about seven years old.

19. The appellants explained that the dogs were let out of their crates for two to three hours a day and slept in them at night. It was manifest that they had heavy flea infestation. They were advised to treat the dogs for fleas, declutter the house and get them neutered and spayed. No warning notice was issued. There was also a pet terrapin about which there were no concerns. It was agreed that the dogs would be picked up by the RSPCA to be spayed and neutered on 11 September 2015. The appellants took steps to buy over-the-counter flea treatment. They sprayed and began to declutter the house. Purchases of these items were documented by receipts.

20. On 11 September 2015 at 20.15 the dogs were collected to be neutered and spayed. The vet to whom they were delivered expressed concern about their condition and requested the RSPCA inspector to attend. As a result of the vet's concern the dogs were not spayed or neutered. The RSPCA inspector refused to return the dogs due to the presence of fleas, the treatment for which had evidently not been effective. The vet was authorised by the RSPCA to put down Lilly, the mother of five other dogs, without the appellants' consent. Those other five dogs were taken to RSPCA boarding kennels. The inspector noted that the decluttering process had begun but was not complete.

21. Interviewed under caution the same day the appellant, Ms Barker, confirmed the purchase of treatment for fleas and worms immediately after the previous visit in August 2015. She produced the receipts and products to support that point, accepting that the treatment did not

appear to have worked. She stated that she was intending to buy further flea treatment when next she received a benefits payment. She said that Lilly, though elderly, was able to walk although with some difficulty because of arthritis associated with her age. She agreed that with hindsight she should have taken Lilly to a vet sooner. Mr Williamson, the other appellant, gave a similar account. Both expressed remorse and took full responsibility.

22. In the judgment of the Crown Court given orally, a transcript of which is before me, the judge said this:

> 'It has been frankly conceded, on behalf of the appellants, that by August 2015, they had let things slip, and a photograph taken on 23rd August 2015 by RSPCA inspector Mitchell … shows a room which can be described as utterly squalid and utterly chaotic. And just visible in the photograph is a partial view of what has been variously described as a cage or a crate, inside which can be seen one of the dogs. It appears that at the time, the six dogs, comprising three males and three females, were separated to avoid inadvertent [sic] mating, since none of the dogs had been neutered or spayed, as the case may be'.

23. The transcript also shows that the Crown Court considered the then applicable guideline and referred to the submission of counsel for the respondent that the case fell within the middle of the three categories due to 'several incidents of deliberate ill-treatment, frightening animals or medium-term neglect…'. A little later in the transcript the judge said this:

> 'The veterinary evidence proffered on behalf of the appellant before the magistrates' court, came from the treating vet who was on the view that Lily's condition was such that, for her own benefit, she had to be put down. That was, in fact, disputed by the vet instructed on behalf of the appellants and a proposition put forward that it was Cushing's disease that was causing the difficulty, which could be treated with tablets. Well, of course, in order for treatment to be given, Lily would have had to be taken to a vet. She plainly was not and, as the appellants indicated in interviews, there had been no vet involvement with any of the animals for some years, it being said on behalf of the five offspring, that no vet treatment was required'.

24. On 22 December 2015, the appellants were summonsed to attend the Beverley Magistrates' Court to answer an information alleging, it appears, five offences, three under section 4 of the 2006 Act (causing unnecessary suffering to a protected animal) and two under section 9 (failing to take such steps as was reasonable to ensure that the needs of certain dogs were met). By the time the matter was dealt with by the magistrates' court on 27 June 2016, the charges had been amended and the alleged offences under section 4 were not pursued.

25. The two remaining charges were, first, that between 11 August 2015 and 11 September 2015 at the appellants' home they did not take such steps as were reasonable in all the

circumstances to ensure that the needs of an animal for which they were responsible, namely Lillly, were met to the extent required by good practice, in that they failed to seek appropriate veterinary care to explore and address the cause of her deteriorating physical condition. The second charge specified the same offence in the case of Billy, Jack, Dolly, Danny and Brian, by reason of failure adequately to address a chronic flea infestation.

26. The appellants pleaded guilty to those two amended charges. An oral basis of plea was put forward to the magistrates in terms that can be taken from paragraph 13 of the case stated as follows:

> 'The basis of plea was that on considering all the veterinary evidence, Lilly was likely to have had cushing's disease which could have been treated by tablets. The recently qualified prosecution vet had been wrong to assess Lilly as too thin, and had been wrong to put her down. The post mortem carried out by the RSPCA pathologist confirmed that she was of an adequate body condition with adequate fat stores. It was the Appellants' case that the dog could walk, but was sometimes wobbly on its back end. This was age related. This was supported by the post mortem. In relation to the second charge, the basis of plea was that due to illness and disability of [the appellant, Ms Barker], the house had become cluttered and unmanageable. This had allowed a proliferation of fleas in the environment. Until the house was completely cleared and sanitised it would be impossible to rid the house of the flea infection. It was accepted that all dogs were in sub-optimal condition, but none were suffering'.

27. The decision of the magistrates was that each of the appellants was sentenced to a stand-alone order disqualifying them from keeping all animals for a period of seven years under section 34(1) and 34(2) of the 2006 Act and a further ancillary order under section 33 depriving them of the seized dogs. Additionally, each was ordered to pay a contribution towards costs of £250.

28. When the matter came before the Crown Court on appeal on 27 October 2016, Ms Howe for the appellants (who appeared then and now before me today) made submissions in mitigation similar to those made before the magistrates' court, to the following effect. The period of offending behaviour had been short, the appellants had cooperated, had shown remorse and willingness to follow advice by their actions after the initial intervention by the RSPCA.

29. It was not relevant that the dogs had not been to a vet for five years as there was no evidence that they needed to be taken to a vet during that time, nor any suggestion that offences had been committed in that time. After the initial RSPCA intervention, they had,

with the help of adult daughters no longer living at home, completely cleared and sanitised their home. There was photographic evidence before the Crown Court to support this. Furthermore, Ms Barker's health had improved to the extent that she could once again use stairs and return to sleep in her bedroom.

30. The appellants were both of good character (or rather in the case of Mr Williamson, effective good character) and had kept dogs for over 35 years without any offences or issues. Their daughter, Ms Dawn Williamson, was willing and able to assist to ensure the house did not become cluttered again. Photographs of Dawn Williamson's home were shown to demonstrate its well kept condition. She was willing to take the dogs if any ill health issues might limit her parents' ability to look after them.

31. In all the circumstances including the rehabilitative effect of the prosecution itself, there should not be a disqualification. The offending was a low level not involving cruelty. Finally, disqualification for a first time offender in a case arising under section 9 rather than any more serious offence, was inappropriate particularly where the neglect was not deliberate. There was no basis for supposing that all animals and dogs in particular would be at risk from the appellants in the future. A deprivation order was also inappropriate.

32. The Crown Court decided to dismiss the appeal except that it varied the disqualification order so as to allow the appellants to keep terrapins, as already noted. The appellants had been found to have a pet terrapin about which there were no particular concerns. In dealing with the appeal against sentence the Crown Court judge said this:

> 'We have to balance the truly appalling state of affairs shown in the photograph … with the fact that all six dogs were in need of treatment, against the fact that the charges themselves covered a period of a month and that photographs more recently have been taken which show that, with the assistance of Miss Barker's children, the room showed in photograph 54 now appears to be in immaculate condition.
>
> Nevertheless, we do take the view that this was rightly categorised by the respondent as medium-term neglect, with certainly the several animals affected aggravating feature being present, and we think the justices were absolutely right to exercise their powers under both s.33 and s.34. We also think the disqualification period of seven years was absolutely right, but we are persuaded that, having been told that a terrapin has also been kept at the premises, we should say all animals, except terrapins. To that extent, minimal though it is, the appeal is allowed by way of variation of the s.34 order
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> …
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> Things should never have got to the state they were as shown in the photograph. We are wholly unsatisfied that they home of the appellant is fit for animals, such as dogs, and that

> could include cats, birds, all manner of animals. But given that 'terrapin' was specifically mentioned, we considered that they are probably hardy animals, in respect of which it is unlikely harm will result to that animal.
>
> We could not possibly go through a list of hundreds and hundreds and hundreds of animals, and we bear in mind also that there is provision within the Act for application being made to terminate the disqualification order… .'

33. Before the Crown Court, Ms Howe for the appellants submitted on the back of the 'terrapin exception' that, in the words of the Crown Court judge again, summarising Ms Howe's then submission, 'in order to justify an "all animals" disqualification order, we must be satisfied that such a disqualification is necessary to cover all animals…' The court rejected that submission, commenting that it may have been wrong to introduce the 'terrapin exception' but that it would be wrong for the court to change its mind and that its order would stand.

34. The application was then made for case stated. On 21 March 2017, the court agreed to state a case. The process took a very long time. The parties contributed – mainly the appellants, but the respondents also had an opportunity to contribute to the draft case.

35. It is then necessary to mention, briefly, the procedural history because unfortunately the current appeal is out of time by a few days. On 5 October 2017, the appellants' solicitors had still not received a final case stated. Their solicitor, Mr Cairns, contacted the court prior to going on holiday asking for an update and stating that he would be on holiday until 18 October 2017. He asked for the response to be sent by post, as his secure emails could not be reached in his absence.

36. The court sent the draft case stated on 7 October 2017 and a postal copy arrived at the solicitor's office on 10 October 2017. The deadline for an appeal to this court is 10 days from the date that the case is 10 days of the date of the case dated by the court; see Practice Direction 52E, paragraph 2.2. When Mr Cairns returned to the office on 19 October 2017, the 10 day period had already expired. Unfortunately, the postal copy that had arrived on 10 October 2017 had not been filed with this court in his absence. Application is therefore made to extend time to enable this appeal to proceed.

37. In December 2017, I directed that the appeal should come on for hearing both in relation to the application to extend time and in relation to the substantive grounds of appeal. Before

me, Ms Howe for the appellants submitted that the disqualification order and the deprivation order with it were harsh, oppressive, and disproportionate to the point where they amounted to an unlawful interference with the appellants' right under article 8 of the European Convention on Human Rights (ECHR) to respect for their private and family life.

38. The interference with that right, she submitted, was substantial and unjustified. She argued that disqualification was not appropriate for a first time offender under section 9 where the offending was, as in this case, at a low level. She said that section 9 created the least serious of the six offences in sections 4-9 of the 2006 Act and contended that there was no basis for the court's finding that it lacked confidence in the fitness of the appellants to keep animals, with the exception of terrapins.

39. She further submitted that the rehabilitation period in respect of the disqualification order would be seven years; see the Rehabilitation of Offenders Act 1974 section 5(2)(a) and the table following it, read together with section 5(8)(g). She submitted that that is far longer than the maximum rehabilitation period of two and half years where the maximum custodial sentence of six months is imposed in a case without any disqualification order.

40. She also pointed out that the other legislation I have already mentioned relating to farmed animals did not include powers of disqualification, although she accepted that the power of disqualification where a section 9 offence is committed applies to farmed animals, reared commercially, as it does to domestic pets. It supported those arguments.

41. She largely repeated the mitigation she had advanced in the Crown Court and argued that in the light of it, the sentence was indeed truly astonishing and *Wednesbury* unreasonable. She said it was not relevant that the appellants could apply to the magistrates' court to lift the ban from one year after it was imposed; either the sentence was excessive or it was not.

42. For the respondents, Mr Taylor made four points in defence of the Crown Court's decision. He submitted first that the challenge to the sentencing decision does not surmount the high threshold necessary to upset it. He pointed out that a disqualification order is not a punitive measure but a protective one. Its purpose is to protect the animals covered by it, in the public interest. Section 43(2) of the 2006 Act gives the magistrates' court power to lift the ban, in this case one year after it was imposed. He submitted that the existence of that remedy, which the Crown Court had taken into account, is relevant to the reasonableness of

the length of the ban.

43. Secondly, he contended that it was wrong to say these had been successful dog carers. Their dog, Lilly, had contracted Cushing's disease. It was accepted that she had needed a vet, that treatment by a vet had not been obtained and that, but for the RSPCA's intervention, it would not have been obtained. It was common ground that the disease could be treated by tablets. The appellants had failed to secure that treatment. At least a month of suffering from that treatable and avoidable disease was demonstrated, said Mr Taylor.

44. Thirdly, he submitted that the Rehabilitation of Offenders Act 1974 is not relevant; and that the legislation related to farmed animals did not assist because of the express statutory power in section 34 of the 2006 Act to disqualify. A farmer could be disqualified under that provision as much as a carer for a domestic pet.

45. Fourth, he submitted that this was not short term or low level offending. A person can go to prison for up to six months for committing this offence. The lower court, he suggested, was in the best position to evaluate the seriousness of the offending in this case.

46. I come to my reasoning and conclusions. As for the application to extend time, I grant it with some reluctance. I do not think there was any excuse for failing to deal with the post during the absence on holiday of the solicitor with conduct of the matter. No explanation for that failure is forthcoming. I will grant the extension in time because I do not want the appellants to be prejudiced by that default; because the prejudice to the respondents is nil and because the extension needed is a matter of only a few days. This should not be taken as a licence to ignore the time limits in cases such as this, which are there to be complied with.

47. Turning to the substance of the appeal; since I understand this is the first case on sentencing for section 9 offences to reach the High Court, and since the sentencing guideline is silent on the appropriate approach to ancillary orders including disqualification orders, it is worth making a few general observations about the effect of the statutory provisions. In most, if not all cases, one of three types of order under section 34, if any order is made, will be appropriate.

48. First there can be an 'all animals' order, that is to say a prohibition against owning, keeping

etc any animals at all. An example in an extreme case would be a case where there was no insight whatever into the need to protect the welfare of the animals in question and a culture of uncaring indifference towards them. Contrary to any suggestion from Ms Howe, I do not accept that an 'all animals' prohibition is wrong in principle. A person's treatment of a dog may, in principle, shed light on his or her likely treatment of a cat or a parrot.

49. Secondly, there can be an order covering some kind of animals but not others. An example would be a prohibition against owning, keeping etc, particular kinds of animals by reference to their inclusion within terms of the order. A simple example would be a prohibition against owning or keeping rabbits because of a repeated failure to protect outdoor rabbit hutches against foxes forcing entry and eating the rabbits. Another example is that proffered in the course of argument by Mr Taylor: a prohibition against keeping etc horses where a person without any malice or cruelty keeps horses in unacceptable conditions because he or she lacks the resources to maintain proper stables.

50. Thirdly, there can be what I could call an exclusory order, that is to say an order prohibiting the ownership etc of all animals except those of certain kinds. An example would be where there is a particular reason for finding that defendants are unfit to keep animals generally, but subject to an exception because on the evidence harm to a particular kind of animal in their keeping is considered unlikely.

51. I note that under section 34(5) it is not permissible to prohibit the ownership etc of individual animals; thus, you cannot make an order prohibiting defendants from owning animals except for one particular terrapin. The prohibition must be framed by reference either to all animals or to kinds of animals, by reference to their genus of species. Here the order made was in the third category. It covered all animals except terrapins. Therefore, it does not preclude the appellant from owning as many terrapins as they wish. They could lawfully keep an army, or perhaps I should say a navy of terrapins.

52. So much for the scope of the provisions. On the facts here, was the disqualification order oppressively harsh? Or, in Lord Bingham's phrase in the *RD* case at paragraph 13, did the disqualification order fall clearly outside the broad area of the Crown Court's sentencing discretion? I have come to the conclusion that it did not for the following brief reasons.

53. The first is that there was no fine, community penalty or sentence of custody, nor indeed

any conditional discharge. The appellants were perhaps fortunate not to receive any other penalty (costs apart) in view of what was said in the then applicable guidelines. No doubt their remorse and previous good character (effective good character in the case of Mr Williamson) accepted as genuine, may have helped to persuade both courts to accept that outcome.

54. The Crown Court Judge and the magistrates' court alike chose to impose no separate penalty besides disqualification and a deprivation order, despite a finding that would have justified a sentence in a range that according to the guideline could extend as high as 12 weeks custody.

55. I mention that point because it is quite striking, but it would not of itself justify a long disqualification period if that were not capable of being necessary to protect the animals to which it applied and in the public interest. Here, however, the features which put the case into the 'medium' category within the then applicable guideline were also relevant to the need for the protective measure of disqualification, as the Crown Court Judge made clear in his judgment.

56. Second, there was clear evidence of lack of insight into animal welfare. The dogs found by the RSPCA inspector were kept in crates, or cages, except when being walked. They were kept in conditions of extreme squalor until the RSPCA's intervention. The lack of insight is not necessarily eliminated by evidence of the remedial steps taken after the RSPCA's intervention.

57. It was open to the court to lack confidence in the future treatment of animals by these appellants, on the basis of the evidence of their past treatment of dogs. When the RSPCA inspector attended on or about 21 August 2015, he found the accommodation of the dogs in an appalling condition and the dogs heavily infested with fleas. The condition of the dogs was such that flea treatment, which I accept the appellants did attempt after the first visit, was ineffective.

58. Third, the condition of Lilly was such that she needed treatment with tablets. Even on the defence case, she did not get it. It was said by Ms Howe that no veterinary treatment had been necessary during the previous years. The error of that proposition is demonstrated by the condition of the dogs when found by the RSPCA inspector.

59. Fourth, the balancing exercise carried out by the Crown Court in the passages I have already quoted, was measured and fair, not harsh and oppressive. Mr Taylor is right that the purpose of the disqualification was protection, not punishment. It is clear from the judgment of the Crown Court that it had that purpose in mind when deciding that the protection in the form of a disqualification order was necessary.

60. Fifth, I accept the reasoning of the Crown Court judge that the evidence justified a prohibition framed by reference to 'all manner of animals'. The court was entitled to be satisfied that despite the recent improvements that had come about as a result of the RSPCAs visit, the home of the appellants was unfit for dogs, cats, birds and all animals except terrapins.

61. I do not accept that the Rehabilitation of Offenders Act 1974 provisions are of assistance. If a seven year disqualification period is reasonable, the rehabilitation period is seven years because Parliament has so ordained, but what the offender must then disclose is only a prohibition on against owning etc animals and not anything worse such as a sentence of custody. I do not see how the chosen length of the rehabilitation period can logically impact on the reasonableness of the disqualification order or its length.

62. I do not accept the proposition that the period of seven years was arbitrary or excessively long or such as to breach the appellants' rights under article 8 or any other article of the ECHR. It was for the sentencing courts to select what they considered the appropriate period of disqualification up to, and including, disqualification for life. That is a nuanced and fact sensitive exercise, with which I should only interfere at the very high threshold which I do not consider reached in this case.

63. I also reject the submission that the legislation relating to farmed animals assists the appellants' argument. Farmed animals are as much subject to the protection of section 9 as are domestic pets. A disqualification of from owning or keeping farmed animals tends to, also, impact on a defendant's ability to earn a living, unlike in this case here. The interference with the appellants' liberty is not at the top of the scale.

64. They are, it is true, prevented from keeping dogs over the seven year period, but not from anything more draconian. The interference is much less than in, for example, the case of

gang related injunctions where defendants can without infringements of their rights under the ECHR be excluded from living in entire areas without being criminally liable at all. I do not accept that there is any merit in the suggestion that the disqualification order infringes any rights under the ECHR.

65. I agree with Mr Taylor that the court may have been generous to the appellants in permitting them to keep terrapins, but the appellants understandably do not complain about that and no concern about the safety of the particular terrapin being a water-dweller less likely to be affected by the poor condition of the house was entertained. The court could properly have entertained some concern for the safety the terrapin, hardy though it is, but it did not do so.

66. Finally, I come to the two questions asked by the Crown Court. The first question is this: in all the circumstances was the court wrong to impose a seven-year disqualification on the appellants from owning all animals, with the exception of their pet terrapin? As I have said, the court's order was not in quite those terms; the exception related to terrapins generally, quite rightly, and not to this particular terrapin. Subject to that adjustment, my answer to the question is no.

67. The second question is this: if yes, what if any is the appropriate disqualification order? In view of what I have said, the second question does not arise. Furthermore, it is not for this court to select the appropriate disqualification order absent Wednesbury unreasonableness or a sentence outside the broad range of sentencing options open to the court below this court will not interfere.

68. I conclude by expressing my gratitude to the advocates on both sides. For those reasons, the appeal is dismissed.