

Banning third party sales of dogs – is the Government barking?

The Government's proposal to extend licensing of dog sales to third parties as well as pet shops is illogical, fails to address animal welfare problems and will create complexity and confusion, argue **Sarah Clover** with **Paula Sparks** and **Sally Shera-Jones**

In February 2016, the House of Commons Environment, Food and Rural Affairs (EFRA) sub-committee launched an inquiry into the welfare of domestic pets in England.¹ This inquiry examined the effectiveness of legislation relating to dogs, cats and horses in the light of modern practices. In a report published on 16 November 2016, the sub-committee made a number of recommendations, including a total ban on all third party sales of puppies, which has not been accepted by the Government. Powerful representations have been made to the sub-committee that there was no way to permit sales of puppies through agents and pet shops, and ensure animal welfare. The Government believes the licensing regime can achieve just that. This article examines the issues.

Currently, dog breeders may sell puppies directly to the public, or pass them to third parties to do so. While it is not suggested that a chain of supply is an automatic problem, a key concern is the traffic from puppy farms which fail to meet minimum standards and seriously compromise the welfare of animals. The resulting problems are obvious, to the dogs and the people they encounter once sold. The issues and costs affect society as a whole.

The Animal Welfare Act 2006 is the primary legislation concerning animal welfare in England and Wales. Its key provisions set out principles to prevent unnecessary suffering and to ensure that the needs of an animal are met. There is no statutory duty upon local authorities to enforce the provisions of the act. This is a particular problem with the licensing of animal establishments. Dog breeding and sales in England and Scotland are further regulated by the Breeding of Dogs Act 1973 (as amended by the Breeding of Dogs Act 1991 and the Breeding and Sale of Dogs (Welfare) Act 1999). Wales has recently introduced new regulations for dog breeders,² which impose a tougher licensing framework than in other areas of the UK. Separate regimes exist for Scotland and Northern Ireland.

The legislation sets out a regime for local authorities to licence and inspect dog breeding and pet shop establishments, the specifics of which are locally determined. The animal licensing regime is particularly complex, and one issue identified by the committee was lack of consistency among the regulating authorities.

The intentions behind the sales provisions of the legislation were to ensure the transfer of puppies between regulated persons or to a pet owner. The Pet Animals Act 1951 requires pet shops to be licensed, and the Breeding and Sale of Dogs (Welfare) Act 1999 (s 8) requires breeders to sell puppies only from their own breeding premises or from a licensed pet shop. The sale to the public may only be made of a puppy over eight weeks but the transfer to a pet shop may be made at a younger age.

The definition of terms in these rather elderly statutes poses risks to animal welfare. Pet shops can be private dwellings, which may qualify for a licence but this presents obstacles to effective enforcement, including curtailed powers of entry. The complications are exacerbated by exemptions from authorisations in the legislation in favour of those selling pedigrees, the offspring of pet animals and animals unsuitable for showing or breeding, with the net result that the commercial sale of animals from private dwellings is largely unregulated.

The sub-committee recognised that the current legislation and licensing conditions are outdated and do not align with the overarching standards and principles established by the Animal Welfare Act, or more modern and advanced understanding of dogs' behavioural needs. The sub-committee devoted a considerable amount of time to the problem of irresponsible breeding and sales practices, which have been matters of great concern to animal welfare groups and the public in recent times. It is a lucrative market, readily exploited, and it is estimated that puppy sales could range in number from 700,000 to 1.9 million, and in worth between £100 million and £300 million per annum. This market has grown exponentially through the use of the internet, which

1 House of Commons Environment, Food and Rural Affairs Committee *Animal welfare in England: domestic pets* Third Report of Session 2016–17 Report, [2 November 2016].

2 Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014.

Banning third party sales of dogs

presents yet more issues for enforcement.

In relation to problems associated with the sale of puppies, the sub-committee acknowledged that: "Witnesses had differing opinions on how to deal with current problems around the sale of animals - some called for increased regulation while others called for a ban on third party sales."

Having heard all the evidence, the sub-committee recommended a total ban on third party sales, so that "dogs should only be available from licensed, regulated breeders or approved re-homing organisations", stating in explanation that:

Responsible breeders would never sell through a pet shop licence holder. The process of selling through a third party seller has an unavoidable negative impact upon the welfare of puppies. It also distances the purchaser from the environment in which their puppy was bred. Banning third party sales so that the public bought directly from breeders would bring public scrutiny to bear on breeders, thereby improving the welfare conditions of puppies. It would also bring a positive financial impact to breeders, allowing them to retain money that is currently lost in the supply chain. We acknowledge that difficulties of public access, due to a rural location, security issues and diseases, may be challenging for some breeders. On balance, however, we consider it is more important that animal welfare standards are ensured across all breeders.

Government response

The Government introduced its formal response to the EFRA report³ with the proud boast that: "We have the best animal welfare in the world and we are a nation of animal lovers".

Concerning the specific recommendation to ban third party sales, the response stated as follows:

We have considered the matter very carefully including in light of the views of many welfare charities. The Government agrees that it is sound advice for prospective buyers to try to see the puppy interact with its mother. A ban on third party sales would in effect be a statutory requirement for puppies to be sold only by breeders.

It is unclear how well such a ban would be enforced and local authorities are already under pressure to regulate the existing regime as effectively as possible.

Given the demand for dogs there is a risk that a ban on third party sales would drive some sales underground, and welfare charities are already concerned about the number

of good breeders.

We note that a number of established welfare charities with experience and knowledge of the sector have advised against a ban on third party sales.

We consider that such a ban has the potential to increase unlicensed breeding in addition to a rise in the sale and irresponsible distribution of puppies, and may be detrimental to our welfare objectives.

The Government still wishes to address issues relating to the sale of dogs other than by the breeder, and we have considered other approaches. We support the robust licensing of all pet sellers including third party sellers.

Through the Government's revision to the licensing regime anyone in the business of selling pet animals will require a licence. Local authorities will be able to ensure that animal welfare requirements are met through the regime, including the application of many of the requirements from the Model 6 Animal welfare in England: domestic pets: Government Response Conditions for Pet Vending Licensing 2013 published by the Chartered Institute of Environmental Management which will be incorporated into the regulations.

In addition we are encouraging consumers to source dogs from reputable breeders and to see puppies interact with their mothers.

This is, with respect, an extraordinary response, which fails to address logically the problem in issue, and betrays a fundamental lack of understanding about the operation of a licensing system.

The Government acknowledges the importance to a purchaser of seeing a puppy interact with its mother before purchase. Third party sales entirely preclude this opportunity, which might have been thought to have been definitive in the debate.

Having identified correctly that a ban on third party sales would amount to a statutory requirement for puppies to be sold only by breeders, the Government response demurs that: "It is unclear how well such a ban would be enforced and local authorities are already under pressure to regulate the existing regime as effectively as possible".

This is followed, within a few lines, with the suggestion that:

We support the robust licensing of all pet sellers including third party sellers. Through the Government's revision to the licensing regime, anyone in the business of selling pet animals will require a licence. Local authorities will be able to ensure that animal welfare requirements are met through the regime....

³ House of Commons Environment, Food and Rural Affairs Committee *Animal welfare in England: domestic pets: Government Response to the Committee's Third Report Fourth Special Report of Session 2016-17 Ordered by the House of Commons to be printed 1 February 2017: Appendix: Government Response.*

A suggestion that a licensing system of pet sellers, of any shape or description, would be easier and less burdensome to a local authority to enforce than an outright ban could only have been made by those who have no hands-on experience of either. Licensing regimes work by identifying licensable activities, and categories of persons entitled to undertake them. The fewer the categories, and the fewer the exemptions and exceptions to those categories, the easier the system is to enforce. An outright ban results in a single remaining category of person, a breeder, being entitled to an authorisation to sell. Breeders are relatively easy to identify, given their relationship with the breeding dogs and puppies, and the establishments and infrastructure likely to attend that activity. Sellers, by contrast, can be anyone, in any location, with few clues to identify their legitimacy. Layers of interpretation of law necessarily involve investigation by officers and exercises of judgement, to check whether criteria have been met, which are costly to undertake, and even more costly if they transpire to be wrong, and result in appeals. It is far simpler to identify an entire class of person that is not entitled to undertake the licensable activity at all, which requires no investigation and no interpretation.

Licensing regimes are typically very dependent upon individuals from outside the regulatory authority "whistle blowing", to alert officers to transgressions. No licensing authority has the resources to conduct regular proactive investigations into potential breaches of their licensing regimes, and the majority will work on the basis that the most serious examples of breaches of the system will cause unacceptable impacts to one party or another, who might be expected to report it to the authorities for investigation and action. The more complicated the system is for the lay party to understand, therefore, the less likely it is that the desirable whistle blowing will occur, and that the licensing authority will be given maximum opportunities to act. The result is that offences go undetected, and, in the case of puppies, welfare continues to be compromised.

The notion of a licensing system for pet sellers, even on a cursory consideration, groans under the weight of expectation. Most types of licensing in other regimes concern activities which take place in public, in plain sight: for example, sales of alcohol, public entertainment, late night refreshment, gambling premises and machines, scrap metal collection and so forth. Persons likely to complain about unauthorised activity in these licensed regimes are likely to be those who have been directly impacted by it, by seeing something untoward, or experiencing the negative after-effects, of noise, disorder, smells and the like. The selling of pets, by its very nature, tends to be conducted privately, usually between small numbers of people, all concerned directly with the activity. There is little opportunity for

impartial observation or extended effects on others.

An outright ban on third party sellers opens up ample opportunity for one potential party to the sale to become a whistle blower, if they are so inclined. An offer to sell a puppy made by anyone who did not appear to be, or could not demonstrate that they were a breeder, could result in a fairly uncontroversial report to the authorities. No further detail is required. If that same third party is capable of being authorised, then the issue becomes clouded. A potential purchaser, even if they wanted to conduct checks on the authority of their third party to sell, has to undertake a judgement call about the validity of the authorisation, which they will be ill-equipped to exercise. Their seller is very likely to tell them that they are authorised, whether it is true or not. It cannot be difficult to produce something that looks like a licence to the untrained eye. The further checks that would be required to verify the legitimacy of the deal are far too complicated and onerous to expect the average member of the public to undertake - whether that be attempting to check the licence against a public database (which would require the establishment of a public database, which the Government also declined to support in its response), or by making personal enquiries with the licensing authority.

The arguments made by the Government in favour of such a licensing system and against an outright ban simply do not make sense. The Government states "a ban has the potential to increase unlicensed breeding in addition to a rise in the sale and irresponsible distribution of puppies."

There is no logic in this. The lack of opportunity to pass puppies to a third party seller does not by any means make it more or less likely that a breeder would obtain their own requisite licence. A responsible breeder will do so: a responsible breeder almost certainly would not be interested in passing puppies to a third party in the first place. It might be argued that a ban on third party sales would not be effective in reducing illegitimate sales, which seems pessimistic and counter-intuitive, but quite why a ban on third parties would result in an increase in irresponsible sales and distribution is unexplained. There has been a suggestion that the nature of the concern is that if fewer puppies are available, on the basis that a ban is effective at eliminating third party sales, and supply is thereby restricted, there will be more incentive for unscrupulous and unlicensed breeders to meet the demand. This is unconvincing, and also reflects little faith in the Government's proposals to enhance the licence requirements for breeders, and bring more into the fold.

The further Government statement that "given the demand for dogs there is a risk that a ban on third party sales would drive some sales underground, and welfare charities are

Banning third party sales of dogs

already concerned about the number of good breeders” also comprises an epic failure of logic.

If “underground” means sales that are virtually undetectable, then that is effectively the status quo. Introducing a licensing system does not make the sales themselves more easily detectable, but only increases the expectation and burden upon the licensing authority. Irresponsible sellers will not bother to get licences, because the only real incentives to do so are moral compunction, and those who sell puppies in this way at the expense of the animals’ welfare are likely inherently to lack it, or fear of detection, which, as established, is low. This leaves a situation whereby a minority of so-called responsible sellers obtain licences to sell puppies from so-called responsible breeders, and the rest do not – which is the very definition of operating underground – but the transgressors are almost impossible to identify and bring to justice. By contrast, a ban on third party sales might see the same transgressors selling underground, but provide a far greater opportunity to detect them when they do so, and enforce against them. The disincentive to run the risk of underground sales in the teeth of an outright ban, a far higher chance of detection, and suitable penalties if caught is much superior to any incentive to obtain a licence, and far more likely to weigh with the type of mind that is motivated to sell puppies in this way in the first place.

The Government comment about an outright ban on third party sellers reducing the numbers of “good breeders” is baffling. If this is intended to imply that a “good breeder” might need to make their sales through a third party so desperately that they would continue to do so, even though it became illegal, and that they would go under the radar themselves to achieve it, then this is a deeply unattractive argument, and one more likely to persuade the authorities that it would be more appropriate to remove the licence from such a breeder than to give one to their third party seller.

A more logical but no more attractive argument might be that breeders who are remote from their market could suffer detrimental consequences to their business if they lost ways of getting their puppies to that market. But this is the case for all businesses that choose to divorce themselves from their potential customer base, and the appropriate solution for that might be thought to be an alternative, more commercially minded business model, rather than

the introduction of an ineffective, expensive and onerous licensing regime, at public expense, which poses serious risk to the welfare of the dogs that they are breeding.

The Government’s explanation that the refusal to uphold the sub-committee’s recommendation for a third party ban emanates from “a number of established welfare charities with experience and knowledge of the sector [who] have advised against a ban on third party sales” is perhaps the most baffling part of the equation of all. Either the advice from those welfare charities (who are not named) chimes with the explanations given in the Government response, or they were additional to them. The given explanations, as set out above, are largely unacceptable, and fail to persuade. If there are further, potentially persuasive explanations given by these charities to avoid a third party ban, then those are yet to be made public, and it might have been thought that the formal Government response would have been a good place to do it.

Licensing officers and licensing authorities generally will, no doubt, have their own strong views on whether they would prefer a system requiring them to monitor and enforce a clear-cut ban, or whether they would welcome instead a new, bespoke licensing regime for sellers of puppies, with unique criteria and exemptions, necessitating further investigation and expenditure of resources. There does not seem to have been a great deal of feedback in the EFRA consultation or consideration of recommendations from those on the ground who will be expected to implement the final outcome of this exercise, and the system that results. In these times of austerity, with no suggestion that further funding would be made available to implement such a system, this might be considered to be regrettable. The designers of the future system and the ultimate intended enforcers of it would do well to talk together first, and it seems that the time should be now.

Sarah Clover, MLO

Barrister, Kings Chambers

Paula Sparks

Barrister, Doughty Street Chambers

Sally Shera-Jones

Trainee solicitor