

BVA policy position on the recognition of animals as sentient beings

Introduction

Recognising animals as sentient beings provides the basis for our moral concern for animals. Animals are living beings with the capacity to have feelings, including pain and pleasure, so they should be legally protected. This is an important issue for the veterinary profession. The primacy of animal welfare for veterinary surgeons is conveyed in the declaration that each makes upon admission to the Royal College of Veterinary Surgeons:

“...ABOVE ALL, my constant endeavour will be to ensure the health and welfare of animals committed to my care.”

Furthermore, as a One Health minded profession, vets understand that the wellbeing of animals is interconnected with the wellbeing of human beings and the environment.

A majority of states across the world have enacted laws protecting the welfare of animals because they are deemed to be sentient. This is because the determination that certain animals hold the capacity to have feelings, including pain and pleasure means that they must be brought “directly under the purview of the law”¹ and afforded protections.

As a member of the European Union (EU) the recognition of animals as sentient beings has been recognised in UK law through Article 13 of the Treaty on the Functioning of the European Union (TFEU), which reads as follows:

“In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.”²

The UK has left the EU. Throughout this process, BVA has called for existing animal welfare standards to be maintained at the same level, or a level equivalent to current EU standards, while seizing the opportunity to improve standards in accordance with evidence. This call is underpinned and supported by the legal recognition, and full regard, of sentience in the development of all relevant government policy in the UK.

BVA led a long campaign for the principle of animal sentience to be embedded in law, which saw over 1,200 veterinary professionals signing an open letter in support.³ In December 2017, the UK Government published the draft Animal Welfare (Sentencing and Recognition of Sentience) Bill.⁴ However, the Environment, Food and Rural Affairs select committee report, recommended that Clause 1 covering animal sentience in the draft Bill be removed, and called for a new standalone “Animal Sentience Bill”.⁵ Subsequently, progress with embedding the principle in legislation has stalled with other demands on parliamentary time and the Government unable to find a legislative vehicle to introduce it.

¹ Charlotte E. Blattner, The Recognition of Animal Sentience by the Law
<https://www.jstor.org/stable/10.5406/janimaethics.9.2.0121?seq=1>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012E/TXT&from=EN>

³ British Veterinary Association, *Article 13: Over 1,000 vets, vet nurses and students come together to lobby government* 28 November 2017 <https://www.bva.co.uk/news-campaigns-and-policy/newsroom/news-releases/article-13-over-1000-vets-vet-nurses-and-students-come-together-to-lobby-government/>

⁴ <https://www.gov.uk/government/publications/draft-animal-welfare-sentencing-and-recognition-of-sentience-bill-2017>

⁵ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/environment-food-and-rural-affairs-committee/news-parliament-2017/animal-welfare-report-publication-17-19/>

The protection of animal welfare is an international concern and the enshrining of animal sentience in legislation is an international marker of the significance of animal welfare. The Animal Protection Index utilises recognition of sentience as the first indicator in its methodology to rank countries according to their animal welfare legislation and policy.⁶

Animal sentience legislation would act to underpin and extend animal welfare and the UK reputation for animal welfare as we leave the EU and forge new trading relationships. High animal welfare standards reinforce the marketability of our produce on the world stage. The UK Government should look to maximise opportunities to promote high-quality, high-welfare UK produce to export markets.

Defining sentience

There is growing scientific understanding of animal sentience, and of how to objectively assess animal interests, due to the growth of animal welfare science as a scientific discipline and to the growing number of universities, including veterinary schools, offering animal welfare courses.

Government should ensure clarity by providing a definition of sentience. This will avoid confusion with terms and concepts that are closely associated with sentience and are often used interchangeably, but which may have mixed meanings such as awareness, cognition and consciousness. We propose the definition of sentience developed by the Global Animal Law Project:

'Sentience shall be understood to mean the capacity to have feelings, including pain and pleasure, and implies a level of conscious awareness.'⁷

Duty on public authorities

BVA supports placing a duty to consider animal welfare on public authorities when formulating and implementing policies in line with the duty that exists within Article 13 of the TFEU. This duty should be inclusive of wild animals, animals used in laboratories, sport and recreation, farm animals, Equidae, companion animals, and animals kept as part of zoological collections. This duty on public authorities would complement the duties placed on individuals by the UK's Animal Welfare Acts.

The scope of this duty should not be limited to those areas listed in Article 13 i.e. agriculture, fisheries, transport, internal market, research and technological development and space policies. Animal welfare can be impacted directly and indirectly by all policy areas including international trade which is not listed.

The duty should be meaningful but proportionate, with animal welfare given due weight within the policymaking and implementation process. It is appropriate for consideration of animal welfare to be considered alongside the wider public interest and balanced accordingly. As veterinary surgeons, we understand that such dilemmas will arise. We also understand there will be welfare concerns of animals which will need to be balanced against other consideration such as the control of rat populations to protect public health.⁸

This duty should not place an overly bureaucratic process on government. In fact to ensure the widest compliance with the duty, it should be the goal to ensure that meeting the duty is as simple to follow as possible in line with the EAST (Easy, Attractive, Social and Timely) framework developed by the Behavioural Insights Team.⁹

The introduction of a standard Animal Welfare Impact Assessment to be applied consistently to proposed new policies across government would be welcome. This could allow for a proportionate assessment of animal welfare and the public interest leading to sensible outcomes. Identifying negative consequences of policy on animal welfare at an early stage will allow appropriate mitigation to be applied before harm is experienced. Therefore, we advise embedding this assessment at an early stage of the policy development process which will lead to more meaningful considerations and improved outcomes.

⁶ <https://api.worldanimalprotection.org/methodology>

⁷ Global Animal Law Project: Draft Declaration on Animal welfare at universal level UDAW Proposal <https://www.globalanimallaw.org/database/universal.html>

⁸Animal Welfare Foundation (AWF) An assessment of the relative welfare impacts of different rat control methods <https://www.animalwelfarefoundation.org.uk/grant/an-assessment-of-the-relative-welfare-impacts-of-different-rat-control-methods/>

⁹ Behavioural Insights Team, EAST: Four simple ways to apply behavioural insights. 2012.

We would ask that efforts are made across government to reflect this duty within guidance to civil servants and public authorities, including amendments to The Green Book: appraisal and evaluation in central government issued by Her Majesty's Treasury.

There will need to be adequate expertise embedded within government. We would suggest Defra take a lead by providing a central resource for all government departments. This would be similar to the way Defra supports rural proofing by working with policymakers across government to assess rural impacts and to mitigate them. Veterinary expertise will be an essential element to enabling this.

The introduction of a standard Animal Welfare Impact Assessment would support the application of the duty and ensure it was applied consistently to proposed new policies across government. Consideration should be given to existing approaches that have been developed including the Animal Welfare Assessment Grid which has a software app under development.¹⁰

Which animals should be considered to be sentient?

Over the last 50 years novel scientific methods have been employed to help determine how animals perceive the world, and to better understand their needs, preferences, pleasures and pains. This new knowledge has shown that the abilities and functioning of non-human animals are more complex than had previously been assumed. This is an active research area and knowledge of sentience of different species continues to grow. It is therefore sensible to use a definition of animal within legislation that is based on existing evidence as well as providing a mechanism to allow changes reflecting new and emerging research.

Section 1 of the Animal Welfare Act 2006¹¹ provides a useful starting point for considering which animals would be considered sentient under the law. However, that basis is insufficient as it fails to recognise and protect the sentience of cephalopods, decapods and pre-natal animal forms. Any future legislation should incorporate such recognition and protection, over and above the basis provided by the Animal Welfare Act 2006.

The Global Animal Law Project, referred to above, states that scientific research confirms that all vertebrates (fish, amphibians, reptiles, birds and mammals) are sentient animals and indicates sentience in some invertebrates. Evidence indicates that cephalopods (e.g. octopus, squid) and decapods (e.g. lobsters, crabs) are sentient, and are capable of experiencing pain and distress.^{12,13,14,15,16,17,18} Already the Animals (Scientific Procedures) Act 1986 Amendment Regulations 2012 (administered by the Home Office),¹⁹ includes "any living cephalopod" and animals in their "foetal, larval or embryonic form" within the category of protected animals.

We would recommend a named individual within government who would be tasked with regularly engaging with research and declaring when the evidence suggests sentience exists. This would provide an appropriate route for species such as bees where emerging evidence suggests a complex central

¹⁰ Wolfensohn S (2020) Too cute to kill? The need for objective measurements of quality of life. *Animals* 10 1054, doi 10.3390/ani10061054

¹¹ <https://www.legislation.gov.uk/ukpga/2006/45/section/1>

¹² European Food Safety Authority, 2005. EFSA "Opinion on the "Aspects of the biology and welfare of animals used for experimental and other scientific purposes" Available at: https://ec.europa.eu/environment/chemicals/lab_animals/pdf/efsa_opinion.pdf

¹³ Barr, S., Laming, P. R., Dick, J. T. A., & Elwood, R. W., 2008. Nociception or pain in a decapod crustacean? *Animal Behaviour*, 75(3), 745–751.

¹⁴ Elwood, R., 2012. Evidence for pain in decapod crustaceans. *Animal Welfare*, 21(1), 23–27.

¹⁵ Elwood, R. W., & Appel, M., 2009. Pain experience in hermit crabs? *Animal Behaviour*, 77(5), 1243–12

¹⁶ Magee, B., & Elwood, R. W., 2013. Shock avoidance by discrimination learning in the shore crab (*Carcinus maenas*) is consistent with a key criterion for pain. *Journal of Experimental Biology*, 216 (3), 353-358.

¹⁷ Sneddon, L. U., 2004. Evolution of nociception in vertebrates: Comparative analysis of lower vertebrates. *Brain Research Reviews*, 46 (2), 123–130

¹⁸ Sneddon, L. U., 2015. Pain in aquatic animals. *The Journal of experimental biology*, 218 (7), 967-976.

¹⁹ The Animals (Scientific Procedures) Act 1986 Amendment Regulations 2012, <https://www.legislation.gov.uk/ukdsi/2012/9780111530313>

nervous system and highly sophisticated units within bee colonies with an abundance of homeostatic mechanisms.

The introduction of animal sentience legislation offers an opportunity to better align the different definitions of 'animal' found across different animal welfare legislation and ensure protections apply to all animals recognised as sentient. For example, there is inconsistency about when legislation applies to embryonic or foetal forms. The Animal Welfare Act 2006 does not apply 'to an animal while it is in its foetal or embryonic form',²⁰ whereas, the Animals (Scientific Procedures) Act 1986 protects vertebrates when 'two-thirds of the gestation or incubation period for the relevant species has elapsed'.²¹

Future opportunities to promote and protect animal welfare

The recognition of animal sentience within UK law alongside a corresponding duty on public authorities to pay due regard to animal welfare in the formulation and implementation of policy, will provide future opportunities to progress animal welfare. It offers an opportunity to expand our conception of animal welfare.

Animal welfare relates to both the physical health and mental wellbeing of the animal. This has been encapsulated by the "Five Needs":

- the need for a suitable environment
- the need for a suitable diet
- the need to be able to exhibit normal behaviour patterns
- the need to be housed with, or apart from, other animals
- the need to be protected from pain, suffering, injury and disease

Utilising a definition of animal welfare that uses the five welfare needs would have the benefit of being consistent with the approach taken within the animal welfare acts of the UK. However, framing animal welfare as 'needs' can imply a minimum, and doesn't promote going beyond basic needs to include positive aspects of wellbeing. This duty should not be limited to mitigating negative consequences, but also place a positive duty to help shape improvements in animal welfare outcomes across all areas of government policy.

There is an opportunity to move animal welfare legislation in the UK from the "Five Needs" to the "Five Domains".^{22,23} In 1994, Professor David Mellor and Dr Cam Reid proposed a new model as a means of systematically identifying and grading the severity of different forms of welfare compromise by reformulating the Five Needs as Five Domains of nutrition, environment, health, behaviour and mental state.²⁴ This approach allowed a distinction to be made between the physical and functional factors that affect an animal's welfare and the overall mental state of the animal arising from these factors. Over the past 20 years this paradigm has been widely adopted as a tool for assessing the welfare impacts of research procedures, pest animal control methods and other interventions in animals' lives.

The Five Needs and Five Domains frameworks contain essentially the same five elements. However, one of the most important strengths of domains is the clarity it provides that merely minimising or resolving negative physical or mental states does not necessarily result in positive welfare, but may only provide, at best, a neutral state.²⁵ To have good welfare, animals need more than this. To help

²⁰ Animal Welfare Act 2006 s1 (2) <https://www.legislation.gov.uk/ukpga/2006/45/section/1>

²¹ Animals (Scientific Procedures) Act 1986 s1 (2) as amended by The Animals (Scientific Procedures) Act 1986 Amendment Regulations 2012
<https://www.legislation.gov.uk/uksi/2012/3039/regulation/3/made>

²² Mellor, D.J., 2017. Operational Details of the Five Domains Model and Its Key Applications to the Assessment and Management of Animal Welfare. *Animals*, 7, 60

²³ Mellor, D.J., Beausoleil, N.J., 2015. Extending the 'Five Domains' model for animal welfare assessment to incorporate positive welfare states. *Animal Welfare*, 24: 241-253

²⁴ Mellor, D. J., & Reid, C. S. W. (1994). Concepts of animal well-being and predicting the impact of procedures on experimental animals. *Improving the well-being of animals in the research environment*, 3-18.

²⁵ Mellor, D.J. et al., 2020. The 2020 Five Domains Model: Including Human–Animal Interactions in Assessments of Animal Welfare. *Animals*, 10(10), p.1870. Available at: <http://dx.doi.org/10.3390/ani10101870>.

ensure animals have a 'life worth living' they must have the opportunity to have positive experiences, such as anticipation, satisfaction, and satiation.

Recommendations

- 1. Legislation recognising animal sentience should be introduced in the UK immediately.**
- 2. Government should include a definition of sentience. We propose the definition of sentience developed by the Global Animal Law Project: 'Sentience shall be understood to mean the capacity to have feelings, including pain and pleasure, and implies a level of conscious awareness.'**
- 3. A duty to consider animal welfare should be placed on public authorities when formulating and implementing policies. The scope of this duty should include all policy areas.**
- 4. Efforts should be made across government to reflect this duty within guidance to civil servants and public authorities, including amendments to The Treasury Green Book.**
- 5. Defra should provide a central resource for all government departments providing support to policymakers across government to assess animal welfare impacts and to mitigate them.**
- 6. The introduction of a standard Animal Welfare Impact Assessment should be considered to support the application of the duty across government.**
- 7. A definition of animal should be based on that found in the Animal Welfare Act 2006 with the inclusion of all vertebrates with the additional inclusion of decapods and cephalopods.**
- 8. A named individual within government should be tasked with regularly engaging with research and declaring when the evidence suggests species are sentient.**
- 9. Government should utilise this opportunity to reconceptualise considerations of animal welfare. A consideration of animal welfare should not be limited to mitigating negative consequences but is also a positive duty to improve animal welfare outcomes. Therefore, animal welfare should be defined in line with the five welfare domains.**