

PE1400/D

Petition PE1400 calling for a ban on the use of wild animals in circuses in Scotland

Public Petitions Committee 29 November 2011

Submission by OneKind

We are grateful to the Committee for seeking views on the above petition and to the Scottish SPCA, Scottish Government and North Ayrshire Council for responding. We hope that the Committee will keep our petition open until the Scottish Government announces its proposal for dealing with the acknowledged problems of wild animals in travelling circuses. This submission covers four areas discussed by the respondents:

1. Obtaining evidence of animal welfare problems in circuses
2. Secondary legislation and the need for scientific evidence
3. Primary legislation on ethical grounds
4. Council policies on land use

1. The Scottish SPCA response states that its Inspectors visit the two circuses that regularly tour Scotland using animals. Until earlier this year, one of these – Bobby Roberts' Super Circus – travelled with two wild animals, an elephant and a camel. The Scottish SPCA states that its inspections did not give rise to specific animal welfare concerns. In our view, the Inspectors' experience illustrates the practical difficulties in attempting to regulate or monitor the use of wild animals in circuses. Animal welfare issues such as prolonged chaining and tethering, or incidents of outright cruelty such as beating and harsh training methods, are inevitably concealed from the authorities and public alike.

This does not mean, however, that welfare problems do not exist. Historically, there have been longstanding concerns about the welfare of the elephant belonging to the Bobby Roberts' Super Circus but there was perceived to be a lack of evidence to support these concerns. It was not until covert surveillance by Animal Defenders International showed the elephant being chained for long periods and beaten by a circus worker, that evidence was finally available.

On the basis of that evidence, the Crown Prosecution Service for England and Wales has now charged the circus owners with:

- Causing the elephant to suffer unnecessarily, by requiring the elephant to be chained to the ground at all times, contrary to section 4(1) of the Animal Welfare Act 2006
- Failing to take reasonable steps to prevent their employee from causing unnecessary suffering to the elephant, by repeatedly beating it, contrary to section 4(2) of the same Act

- Failing to take reasonable steps to ensure that the needs of the elephant were met to the extent required by good practice, contrary to section 9 of the same Act¹.

While at the time of writing the outcome of the case is unknown, we assume that the CPS would not take on a case without believing that there was a sufficiency of evidence. However, methods such as covert filming are not normally employed by public authorities, meaning that cases remain rare.

We note that, despite the practical difficulty of obtaining evidence, the Scottish SPCA remains opposed to the use of animals in travelling circuses.

2. The Scottish Government's position is that Regulations under section 26 of the Animal Health and Welfare (Scotland) Act 2006 could not be used to introduce a ban on the use of non-domesticated animals in travelling circuses, because objective evidence of a specific welfare problem, or that a ban would be the most proportionate method of solving it, is not available.

The Scottish Government concludes that the apparent lack of scientific evidence prevents secondary legislation being made on animal welfare grounds. The Scottish Government cites the report of the DEFRA Circus Working Group as concluding that there was not scientific evidence to support a ban on wild animal circuses by secondary legislation under the Animal Welfare Act 2006. However it must be remembered that the Circus Working Group did not examine all areas of circus life, as the terms of reference set for the group by DEFRA excluded training and performance, scientific studies on animals in similar captive situations and transportation, and all empirical evidence. The Chairman of the Group actually commented in his report: "*One can only speculate whether the substance of this report would have been materially different if the Working Group had looked at the full picture*"(Para 2.2.4).

Observers of wild animal use in circuses point to: specific documented incidents of cruelty; the difference between the circus lifestyle with its regime of confinement, tethering, constant travelling and lack of appropriate companionship and the natural life of wild animals; and research into similar uses of wild animals, for example in zoos. We believe that these elements, taken together, make a robust case for banning the use of wild animals. Ethical concerns and the authoritative opinion of expert professionals such as the British Veterinary Association should be sufficient justification for reform.

We accept of course that any legislation must be legally robust and based on the best evidence available. In this context we ask the Committee to note the view of the House of Lords in *R (on the application of the Countryside Alliance and others (Appellants)) v HM Attorney General and others (Respondents)* [2007] UKHL 52 (*The Countryside Alliance Case*). The court found that the degree of animal suffering caused by fox-hunting could not be known with certainty, but that this did not prevent Parliament from adopting a ban on the activity, because of the ethical concern over the causing of any

¹ The equivalent legislation in Scotland is the Animal Health and Welfare (Scotland) Act 2006, sections 19 and 24

suffering for the purposes of sport. It was also accepted that legislators might rely on the existence of a body of reputable professional opinion which held that the activity caused suffering. In the case of circuses, as the Committee is aware, the British Veterinary Association (BVA) believes that the welfare needs of non-domesticated wild animals cannot be met within the environment of a travelling circus, especially in terms of accommodation and the ability to express normal behaviour, and that a licensing scheme for circuses would not address these issues. Members will also recall that the views of the BVA and the Royal College of Veterinary Surgeons (RCVS) were cited by Ministers in support of their decision to ban the tail-docking of dogs in Scotland.

3. We are pleased that the Scottish Government considers that a ban might possibly be made on ethical grounds, using primary legislation. We accept of course the Scottish Government's view that any legislation must be compatible with the European Convention on Human Rights (ECHR) and EU law, including the Services Directive EC/2006/123.

In relation to the compatibility of an outright ban with human rights law, we accept that a ban would be likely to constitute an interference with rights to peaceful enjoyment of property under Article 1 of Protocol 1 ECHR (A1P1). However, we are advised that such interference would be justified as being in "the general interest", striking a fair balance between the general interest of the Community and the need to protect the individual's property rights. In the event that a ban was held to constitute an interference with rights protected under Article 8 or Article 11 of ECHR, it would still be justified if it was "necessary in a democratic society" and if it pursued a legitimate aim in a suitable and proportionate manner. Case law, including the *Countryside Alliance* case mentioned above, indicates that a court would be likely to hold that a ban has a legitimate aim - eliminating the suffering caused to wild animals in travelling circuses - and would be proportionate because no other measure could achieve the aim.

We fully understand that the Scottish Government has no desire to create legislation which may give rise to legal challenges even if, as we believe, these can be withstood. The Scottish Government refers to the complaint lodged with the Austrian Constitutional Court by a German circus, Circus Krone, which we understand to allege that the Austrian ban on wild animal circuses contravenes EU laws on free movement of services under the Treaty on the Functioning of the European Union (TFEU) and the Services Directive. We have been in touch with the court and can confirm that no timetable has been set for deciding this complaint, which was lodged in June 2011. However, we believe that if even these measures were engaged – which is by no means certain – a ban on wild animals in circuses would still be likely to be upheld as necessary and proportionate in pursuit of public policy, which includes matters relating to animal welfare. We would also like to think that the Scottish Government would defend its prerogative to make domestic animal welfare legislation to reflect its own policy, and the views of citizens, rather than referring to domestic proceedings in another member state.

4. Finally, we refer to the response sent to the Committee by North Ayrshire Council, covering the decision made earlier this year in response to our request that the Council introduce a policy of not leasing Council land to circuses using wild animals. We respectfully disagree with a number of points made by the Council in this paper. The Council cites a submission made to it by the Association of Circus Proprietors of Great Britain that: "there is no scientific evidence to support the assertion of a health risk to performing animals in general and [...] the particular elephant in question [Anne] is a well-cared-for family pet." We feel the Council may have been misinformed on these aspects. Firstly, the primary concern is not animal health, but animal welfare which, as Dr Scott-Park described to the Committee in September, covers behavioural and environmental needs as well as outward physical health. Secondly, Anne's welfare does not appear to have been consistent with that of a well-cared-for family pet.

Other Councils have taken a different approach: policy bans on leasing Council land to circuses with wild animals are already in place in Aberdeen, Angus, Dundee, East Ayrshire, East Lothian, East Renfrewshire, Edinburgh, Fife, Perth & Kinross, Renfrewshire, South Ayrshire, West Lothian and the Highland Council districts of Lochaber, Skye & Lochalsh, Sutherland and Inverness. The Aberdeenshire animal welfare charter states that it will review applications on the basis of what animals are involved and their conditions. Stirling has no in-house policy but contracts out site management to a company with a policy of not letting property to circuses with animals; and no circuses ever go to Orkney, Shetland or the Western Isles. Some of these policies also cover domestic animals and East Ayrshire Council is currently consulting on extending its policy in this manner.

We feel confident that if other Councils had responded to the Committee, they would have given a more positive response on this issue. However, as stated in our original petition, council officers are not always aware of these policies and even then, circuses can still use private land. A straightforward ban on the use of wild animals in circuses in Scotland, made on ethical grounds, would introduce clarity for all and would offer optimum protection for animal welfare.

Libby Anderson
OneKind 14 November 2011