

Taking responsibility

How the government can improve enforcement
of farmed animal welfare laws

Aveek Bhattacharya
John Asthana Gibson

SMF

Social Market
Foundation

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Kindly supported by

animaleQUALITY
UNITED KINGDOM

FIRST PUBLISHED BY

The Social Market Foundation, October 2024
Third Floor, 5-6 St Matthew Street, London, SW1P 2JT
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ACKNOWLEDGEMENTS

The Social Market Foundation is grateful to Animal Equality UK for sponsoring this report. The SMF retains full editorial independence with respect to its research.

We are also grateful to all the experts who gave up their time and shared their insights with us to inform our research.

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FOREWORD FROM THE SPONSOR

From the polluted rivers we once swam in to the microplastics choking distant ecosystems, invisible harms now permeate every corner of the planet. Yet the companies responsible for these damages often escape accountability, leaving the rest of us to suffer the consequences.

This failure is particularly stark in the animal agriculture industry. Behind the closed doors of the meat, dairy and egg farms, laws are far too often flouted, compounding the suffering of animals in a culture of under-enforcement.

Take pigs, for example. Despite laws intended to prevent extreme cruelty, around three-quarters of piglets in the UK still have their tails cut off without any pain relief. Or cows, with around one-third of herds unable to walk or stand due to the unnaturally heavy milk yields.

Over the past decade, Animal Equality's exposés have revealed horrific abuse: pigs being hammered to death on an accredited Scottish farm, cows kicked in the stomach and beaten with shovels on a Welsh dairy farm, chickens deliberately left to dehydrate on an English farm, and fish suffocating in their final moments. These farms were selected for investigation at random. It begs the question: what else could be happening while nobody is watching?

Not all farms will be committing deliberate and illegal abuse of this kind but, evidently, there is an enforcement problem. Fewer than 3% of the UK's 290,000 farms are inspected by official regulators each year. Only half of complaints lead to an inspection, and a mere 0.33% of farm complaints result in a prosecution.

That's why we are pleased to sponsor this report from the Social Market Foundation, exploring what has gone wrong with farmed animal welfare enforcement, and how we can get back on track. The report describes in detail how limited resources, a lack of coordination and transparency, and the outsourcing of inspections have created a system of inadequate supervision. As a result, illegal practices are going undetected and undeterred.

The scale of industry expansion and associated breaches has outpaced law enforcement's ability to respond. The status quo is not good enough, failing animals, but also failing to enforce the will of the people.

The problem is serious, but there are solutions. Whether it's introducing a licensing and labelling regime, creating a Commissioner for Animal Welfare, or bringing enforcement capabilities exclusively in-house, it's time for the Government to step in and step up. We urge those in Parliament with their hands on the levers of power to tighten their grip and crack down on illegal cruelty.

By Abigail Penny, Executive Director, Animal Equality UK

FOREWORD

The UK regulatory system has an enforcement problem. In some cases, such as river pollution, the issues are now at the centre of the national media and political debate. In others, the problems are hiding in plain sight. Farming is, unfortunately, in the latter category. One in three farming inspections identifies that animal welfare standards are not being adhered to. Yet only a tiny proportion (2.3%) of these cases are prosecuted. Once an industry which prided itself on setting global standards (especially when it came to animal welfare), today the farming industry lags behind its counterparts.

The good news, as set out in this report, is that there is nothing inevitable about this situation. The enforcement problem is a product of poor policies, ones which based decisions less on a concern for what is best for farmers, consumers, animals and the environment, but on ideology. These have been used to justify driving governance of a critical industry outside of the control of public bodies and enabled deep and damaging public funding cuts to key regulators.

The situation in the farming industry is not unique. It is consistent with a persistent pattern across issues ranging from worker protections to fly tipping, as uncovered by Unchecked UK's investigations. Again and again, steep declines in the resources and capacity of regulators (both at local and national level) have resulted in a deterioration of key agencies' ability to take action. Across the piece, the regulatory system simply lacks the capacity to clamp down on malpractice.

The case for a correction is urgent. There is nothing 'anti-farmer' about addressing the enforcement gap in animal welfare. On the contrary, the best British farmers know that they stand to benefit from a well-regulated and trusted system, one where those who cut corners face consequences and the playing field for those who do play by the rules is levelled. Farmers also know that they stand to suffer the most from a loss of public trust in their industry (past experiences, such as the horse meat scandal, still weigh on the reputation of the industry).

But the case for a well-governed farming industry extends beyond economic considerations. This is an issue which would put at stake something we all believe in, something that we feel pride in, something that makes us who we are. More than any other country, the belief that respect for animal matters is core to our identity. Indeed, most of us take for granted the fact that UK farmers respect rules and strive for high standards. The fact that this is increasingly untrue would be a further blow to public trust, something we can scarcely afford. The implications of this report therefore extend well beyond the farming industry.

Deregulatory experiments should play no part in an industry like farming. This report sets out a plan for how we put the enforcement system right again. At the heart of this is a recommendation to 'insource' assurance schemes, a measure which would both increase the scope for enforcement and create the kinds of incentives that increase transparency and enable a race to the top on standards.

By Phoebe Clay, Director, Unchecked UK

EXECUTIVE SUMMARY

There is an enforcement problem with farmed animal welfare regulations

- Organisations like Animal Equality (who sponsored this report) argue farmed animal welfare laws are under-enforced, an assessment shared by insiders.
- Yet many within or close to the farming sector insist that British farms have high welfare standards and non-compliance is only an issue in a handful of extreme cases.
- There is a lack of transparency and reliable information to easily adjudicate such claims, but the fact that around a third of official farm inspections for animal welfare reasons uncover non-compliance, and only 2.3% of non-compliance is prosecuted, suggests to us that there is an issue.

This leads to toleration of harmful practices and outcomes such as tail docking and lameness

- Part of the reason for the disagreement is that three types of animal welfare issues are conflated:
 - *Deliberate cruelty or abuse* is recognised by all as a form of non-compliance, but is assumed to be relatively small scale – there is a risk that these sorts of breaches hijack the enforcement discussion, with a focus on ‘hard to reach farmers’.
 - *Inhumane but apparently legal* practices like breeding overweight ‘franken chickens’, are often cited by advocates but may undermine their case, as there is no clear enforcement action to be taken against them.
 - *Areas of interpretative ambiguity* are the most significant:
 - Cutting of tails is legal but not intended to be routine – though 72% of pigs are affected, it is challenging to demonstrate that any specific case is not a ‘last resort’.
 - Lameness remains endemic – around a third of cows in the dairy industry are estimated to suffer – even though sick and injured animals are required to be treated appropriately without delay.
- Given the scale of animal farming in the UK – over a billion factory farmed chickens are slaughtered every year – even a low rate of non-compliance with animal welfare legislation translates into an enormous amount of preventable suffering.

Inspection of farmed animal welfare is largely outsourced to privately run assurance schemes, an unsatisfactory state of affairs

- Only around 3% of farms undergo welfare inspection each year by the state via the Animal & Plant Health Agency and local authorities, mostly on a ‘risk based’ system:

- The agencies use informal intelligence and formal risk models (accounting for previous outcomes, time since last inspection etc) to prioritise visits
- Issues may also be flagged when unfit animals are transported or presented for slaughter
- Agencies should also account for complaints raised by vets, members of the public, whistleblowers, independent charities or other officials.
- However, the majority of farms are inspected every 12-18 months by private assurance schemes, most prominently the industry-run Red Tractor.
- The state has deliberately stepped back: to reduce regulatory burden, the coalition government created 'earned recognition' for farms in assurance schemes, deprioritising them for inspection.
- This system has benefits – compliance is higher for farms covered by assurance schemes, but participation in a scheme is far from a guarantee of compliance:
 - Analysis of inspections from 2003-08 found non-compliance in 31% of non-certified farms, but also 19% of farms in assurance schemes.
- Part of the problem is a lack of resources. But most importantly, the voluntary nature of assurance schemes creates misaligned incentives, which discourage their inspectors from responding severely to breaches.

When issues are identified, fragmentation and a lack of resources means they are too rarely investigated and non-compliance tends to be addressed informally

- The enforcement problem is not just an issue of identifying non-compliance, but a failure to act on breaches when they occur:
 - Somewhere between a half and a third of complaints do not lead to inspection.
 - The 'trigger threshold' – the rates of death and disease at slaughter for chickens that are flagged to the farm and inspectors – has been kept artificially high.
- Local authorities and APHA are under-resourced, institutionally fragmented, and welfare enforcement risks falling in the gap between them.
- Enforcement agencies have a range of tools to deal with non-compliance, but gravitate towards more informal resolutions:
 - Improvement notices, which formally set out welfare issues to address and set a deadline for compliance without being subject to prosecution, are under-used: only 88 were issued in 2020.
 - It remains to be seen whether authorities will use their new power to issue penalty notices, but the financial incentive is weak.
 - Though thousands of farms are found non-compliant each year, only around an estimated 50 are prosecuted.

There are a number of measures the government can take to reform enforcement within the existing paradigm

RECOMMENDATION 1: Responsibility for welfare enforcement should sit exclusively with APHA, rather than being shared with local authorities.

- Shared responsibility impedes coordination and transparency, and risks the issue falling between the gaps. The specialist expertise of APHA means it is better placed to take on the role of welfare enforcement.

RECOMMENDATION 2: APHA and Department for Environment, Food and Rural Affairs (DEFRA) should be more transparent about the nature and effectiveness of enforcement action

- Inspection numbers, outcomes and resolutions, as well as the assumptions and inputs to the risk models that determine who is inspected should be published – as per the Official Controls Regulations – to enable informed debate and scrutiny.

RECOMMENDATION 3: To incentivise full application of the law, APHA should be able to retain the revenue from penalty notice fines for animal welfare offences, but also to mandate education.

- At present, local authorities are only allowed to recover costs incurred, which makes enforcement action risky. Allowing whoever enforces the law to keep revenue would reduce some of the financial constraint on enforcement.
- As with speeding tickets, where appropriate, penalty notices could involve mandating a course on animal welfare and compliance rather than a fine.

RECOMMENDATION 4: The ‘trigger system’ for inspections should be more transparent, used more widely, make greater use of technology, and the thresholds currently used for chickens should be reduced.

- Farms receiving trigger notices for poor chicken health at slaughter see modest improvements in performance. DEFRA should reverse its decision to raise the thresholds, and the process should be extended to other animals.

RECOMMENDATION 5: CCTV should be mandatory in large industrial farming operations

- CCTV is currently mandatory in abattoirs. This should be extended to large farms, and footage should be available for random request by APHA.

A more ambitious – and disruptive – approach would be to license farms, though the cost and bureaucracy involved would be more defensible if integrated into broader reform of assurance and labelling

- Organisations like Animal Equality have called for a licensing regime, under which farms are inspected regularly by the state to ensure they comply with welfare regulations. As a measure to enforce legal minimum standards, universal licensing looks disproportionate and poorly targeted, given the cost and bureaucracy:

- As far as we can tell (and better monitoring, including some random checks would be welcome), most farms are compliant, at least as judged by inspectors
- Licensing would likely shift enforcement effort towards the long tail of small, 'hard to reach' farms, rather than larger intensive farms, which are more significant to the overall burden of animal welfare
- There is also the risk of creating perverse incentives for farms to quit assurance schemes and lower the standard of their practices, given the additional licensing costs imposed. However, licensing – and regular state inspection of farms – could be justified and funded if it was part of a long-term reform to the assurance and labelling system.
- We believe that there is a case for the government to 'insource' privately operating assurance schemes, which for some sectors already operate de facto as a licensing regime. Under this proposal, licensing would obviate the need for Red Tractor membership, with fees set at a rate equivalent to existing assurance spend:
 - The case will be strengthened if the new government progresses with plans to introduce a five-tier labelling scheme, distinguishing products that fall below, meet and exceed baseline UK welfare regulations.
 - Existing government plans would entrench further reliance on private assurance schemes to reach these judgements – regular state inspections would be more reliable and trustworthy.
 - Licensing fees could be increased for low welfare farms to subsidise the higher welfare assurance schemes to lower their license fees, creating an incentive to shift towards higher welfare methods.

CHAPTER ONE – IS THERE AN ENFORCEMENT PROBLEM?

It is debatable how well Britain’s legal framework cares for farmed animals, but not that those laws should be enforced

Britain likes to think of itself as a nation that cares for animals, and that self-image extends to our farming industry, which is regularly extolled as having some of the ‘highest welfare standards in the world’. Whether that perception is fully justified is another question. The Animal Protection Index, a joint initiative of a group of leading animal welfare charities, gives the UK a grade B for its legal standards when it comes to animals in general, but a grade D when it comes to *farmed* animals.¹ The UK ranks 9th in Europe in terms of the percentage of farmed animals living cage free, trailing the likes of Germany, the Netherlands and Belgium.²

There is, then, a robust debate to be had about whether the legal requirements on farmed animal conditions are good enough, and it is one to which the Social Market Foundation has already contributed. For example, last year we highlighted the dramatic growth of the intensively farmed animal population, set to grow by 28 million over the next decade.³ We have also surveyed public attitudes to the issue, with 91% of people in favour of stricter standards and 61% claiming to want an outright ban on ‘factory farming’.⁴

Animal Equality, who sponsored this report, go further, and want an end to animal farming altogether. We do not here take a position on the morality of farming animals for meat, which is well beyond the scope of our current political debate. Rather our interest in this research is a more modest question – how well the laws on the books are enforced.

We believe almost everybody – certainly everybody we spoke to for this project – should be able to agree that existing farmed animal welfare laws should be enforced, whether or not you think they are strong enough. Yet many argue that this minimal consensus goal is not being achieved at present – that welfare breaches are commonplace and not addressed. That claim is not uncontentious, and we spend most of this first chapter addressing whether there is in fact an enforcement problem.

Yet this is a topic of considerable public concern. Most Britons eat meat, but consumers increasingly care about where it comes from.⁵ Previous SMF work found that 61% of Brits have some discomfort with the way animals are treated on farms.⁶ And over 195,000 people have signed Animal Equality’s petition demanding that the government effectively enforces its laws regulating farmed animal welfare.⁷

That is why in this report we set out to understand how farmed animal welfare standards are enforced, and how that enforcement can best be improved. We have done so drawing on evidence compiled through an extensive review of relevant literature, over a dozen interviews with farming and animal welfare experts – covering animal welfare charities, industry representatives, officials and academics – and a roundtable discussion between individuals with specialist policy expertise in this area. While animal welfare laws apply across the supply chain, covering

transportation and slaughter, our focus in this report is restricted specifically to *on farm* welfare standards.

The Animal Welfare Act forbids causing ‘unnecessary suffering’ to animals, with accompanying farmed animal guidance and regulations

The main relevant piece of legislation in England and Wales is the Animal Welfare Act 2006, and specifically sections 4 and 9 (Scotland and Northern Ireland possess equivalent devolved legislation).^{8 9 10} Section 4 sets out the offence of unnecessary suffering, making it illegal to act or fail to act in a way that causes an animal for which one is responsible to suffer unnecessarily. It is not necessary to prove that a defendant actually knew his act or failure to act would cause suffering.¹¹ Suffering is more likely to be deemed “unnecessary” if it could have i) “reasonably been avoided or reduced”; ii) is not justified by a “legitimate purpose” such as benefiting the animal or protecting humans or other animals; iii) reflects conduct of a “reasonably competent and humane person”. All of these standards require some degree of conventional interpretation by those who seek to enforce them, although explanatory notes accompanying the legislation do provide guidance on the relevant considerations. Critically, sub-section 3(b) stipulates that suffering is more likely to be deemed unnecessary if it fails to comply with relevant provisions under an existing licence or code or practice.

Section 9 of the Animal Welfare Act makes it illegal to fail to take reasonable steps to ensure the needs of an animal for which a person is responsible are met. The Act explicitly states this means providing a suitable environment and diet, allowing the animal to exhibit normal behaviours, housing the animal with or apart from other animals as appropriate, and protecting them from pain, suffering, injury and disease.

Anyone who breaks this law can be banned from owning animals, face an unlimited fine or be imprisoned for up to five years.¹²

The Welfare of Farmed Animals (England) Regulations 2007 are made under the Animal Welfare Act, and set out minimum welfare conditions for all farmed animals (Scotland and Wales have their own regulations).¹³ They set out general requirements for all farmed animals – among other things requiring daily inspections, sufficient freedom of movement to avoid unnecessary suffering or injury, adequate air quality, feed and water. They also contain more specific provisions – for example, for chickens bred for meat they stipulate maximum stocking density (up to 39kg of birds per m²) and minimum lighting standards (20 lux, covering at least 80% of the building). Section 6 creates a duty for anybody responsible for a farmed animal to be acquainted with the government’s codes of practice and to ensure their employees have been taught about the code. Additionally, the Mutilations (Permitted Procedures) (England) Regulations 2007 (and devolved equivalents) then sets out the conditions and circumstances under which different types of farmed animals may be mutilated.¹⁴

The government issues a number of species-specific codes of practice, with detailed information on how animals are to be kept to reflect: i) caring and responsible planning and management; ii) skilled, knowledgeable and conscientious

stockmanship, iii) appropriate environmental design; iv) considerate handling and transport; and v) humane culling. These requirements are more descriptive than the enforceable regulations. For example, the code of practice for chickens bred for meat says that catching of birds should take place in low or blue light to frighten them less, that all birds should be with four metres of feed, and that birds should not be exposed to hot, humid conditions long enough to be panting with heat stress.

The Animal Welfare Act makes explicit in Section 14 that failure to comply with any particular provision of a code of practice does not automatically render a person liable to legal proceedings. However, failure to comply with the code can be used to support a case against someone, and compliance with the code can be used to challenge accusations of an offence.

Responsibility for enforcing these laws is shared between several different state bodies

Ultimately, DEFRA has policy responsibility for farmed animal welfare enforcement. However, day to day inspection and enforcement is the purview of other bodies. ‘On the ground’ regulatory oversight activities are split between the Animal and Plant Health Agency (APHA), an executive agency of DEFRA, and a patchwork of local authorities. Some local authorities do not carry out these functions due to a lack of relevant premises (i.e. those in urban areas), or because they, in turn, have delegated these duties to neighbouring ones.

Local authorities are responsible for sanctioning those who breach the legislation in Great Britain (in Northern Ireland the Department of Agriculture, Environment and Rural Affairs possesses this responsibility). Enforcement actions available include improvement notices (which instruct a farmer who is breaching the legislation to do things to rectify the problem), the recently introduced Fixed Penalty Notices (which can impose fines of up to £5,000 on those who break the law), and, for the most serious breaches, prosecutions can be carried out against offenders.¹⁵ So whilst DEFRA is responsible for farmed animal welfare policy, local authorities, which aren’t under its control, are solely responsible for enforcement in this area.

Animal charities claim there is an ‘enforcement problem’ in the sector

However, there has for some time been concern that this system of law and enforcement is not working in practice. In the words of Edie Bowles, Executive Director of the Animal Law Foundation, “I have been exposed for a long time to what I now call ‘The Enforcement Problem’. This is when a law exists on paper, but is grossly underenforced in practice, rendering its value questionable at best and redundant at worst. The Enforcement Problem is stark in animal law”. Those comments come from the foreword of a report entitled *The Enforcement Problem*, published by the Animal Law Foundation, alongside Animal Equality, the sponsors of this report.¹⁶

The Enforcement Problem is our starting point for this research, but several organisations have argued that breaches of these laws are widespread and systematic. Undercover investigations into conditions in animal farms have

catalogued a range of issues. Animal Equality and the Animal Law Foundation have catalogued findings from 65 undercover investigations on farms (54) and slaughterhouses (11) over the course of five years, uncovering some form of apparent illegality in each investigated location.¹⁷ For example, the groups found evidence suggesting non-compliance with animal welfare legislation in 18 industrial chicken farms, with examples of animal cruelty including chickens deprived of water, chickens displaying raw skin burns from urine-soaked floors, and individual cases of workers killing chicks in a way that is likely to cause extreme, prolonged and unnecessary suffering. Despite these investigations detailing non-compliance (breaches that have been authenticated by veterinary and legal experts), little enforcement action was initiated by the relevant authorities.

The Enforcement Problem argues that these issues result from structural failings. Using freedom of information requests, it uncovered that between 2018 and 2021:

- An average of just 3% of farms were inspected by official bodies each year for animal health and welfare reasons.
- Even in cases when official complaints were made to APHA or local authorities, only 50% were followed up with inspections (though it was closer to two-thirds pre-pandemic).
- Approximately one-third (31.38%) of those inspections identified non-compliance
- Yet only 0.3% of initial complaints, and 2.3% of farms identified as non-compliant, led to prosecution

In 2020, they found that local authorities received 6,466 complaints related to farmed animal welfare. These resulted in only 88 improvement notices and 30 care notices (their Scottish equivalent) being issued – so relatively few farms received any enforcement response. Just 41 prosecutions were made, down from 56 the year before.

Nevertheless, many insist that there is no issue with compliance

Yet many of the people we spoke to – particularly those within or close to the farming industry – claimed not to recognise the picture of welfare enforcement presented by the charities. They insist that the vast majority of British farmers comply with the country's standards, and that non-compliance is only an issue in a handful of extreme cases.¹⁸ They argue that undercover investigations are unrepresentative, highlighting a problematic minority. Moreover, they argue that many of the seemingly brutal practices documented by animal rights groups are actually permissible under UK law.

The claim that the government is failing to adequately inspect farms for animal welfare is also disputed. The fact that only 3% of farms receive a state inspection offers only a partial picture, since the government has largely entrusted the industry to regulate itself through private farm assurance schemes. The majority of farms are inspected every 12-18 months by these private assurance schemes, most prominently the industry-run Red Tractor, which certifies around 80% of UK farm production.¹⁹

Defenders of the status quo insist that assurance schemes maintain good standards and can report non-compliance to the relevant authorities (although there is no publicly accessible data available to verify such claims). Moreover, they say, farms are inspected for myriad reasons by officials, offering ample opportunity to identify and address poor welfare practice.

The relatively small number of convictions can also be explained away. The government's position is that advice and guidance should be used as the primary enforcement tool for early redirection to protect animals from harm, and a common view within the industry is that when issues are identified to inspectors, informal conversations are used to encourage farmers to make changes, with formal enforcement actions only used in the most serious or recurring cases of non-compliance.²⁰

This project has been confounding to research because people we have spoken to have offered such different, contradictory impressions as to the state of farmed animal welfare enforcement. Some have seen it as obvious and self-evident that enforcement does not work well. Others have sworn blind that there is no problem at all. To a large extent, that has broken down predictably in line with ideological and economic interests, with animal charities more likely to say the system is not working, and farmers and industry representatives defending the status quo. Yet people on both sides have accepted that this issue is not clear-cut, and academics and officials have been somewhat split too.

The fact that a third of official inspections uncover non-compliance, which is seldom prosecuted, suggests to us that there is a problem

Unfortunately, there is a distinct lack of transparency and reliable information needed to properly adjudicate these claims and counter-claims. Yet what hard evidence we have suggests that non-compliance occurs on a significant minority of farms and does not appear to be adequately addressed. We have already discussed the data gathered by Animal Equality and Animal Law Foundation from freedom of information requests. To reiterate, they find that around one in three inspections (32% in 2018, 33% in 2019, 30% during the pandemic) find some form of non-compliance. That means that in 2018 and 2019 over 2,500 farm inspections turned up some form of non-compliance. That represents around 1% of all farms – and remember that figure is a lower bound since the majority of farms are not inspected. All the same, the fact that the absolute number of farms identified as non-compliant is in the thousands indicates the scale of the problem. Moreover, between 2018 and 2021, an average of 2.3% of non-compliant farms were prosecuted.

Those findings are corroborated by a DEFRA-funded analysis of inspection reports by Animal Health (a precursor to APHA) by researchers at University of Warwick.²¹ Though a little dated – the inspections come from the period 2003-08 – they give us some sense of how widespread the issue is. The analysis finds that 37% of farms inspected were fully compliant, while 36% were compliant with regulations but not a DEFRA code. The remaining 27% – so in line with the one in three figure above – were found to be non-compliant. Most of those non-compliance incidents were judged not to result in “unnecessary” pain or distress (raising questions about the

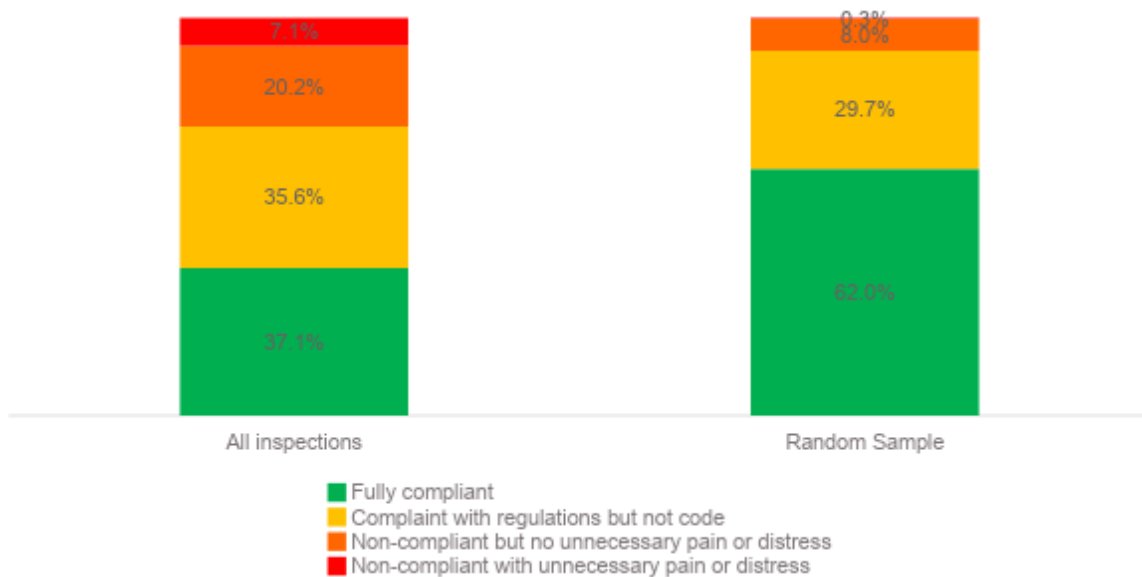
appropriateness of the threshold of ‘necessity’). But a full 7% of inspections did turn up evidence of “unnecessary” pain or distress.

If the inspection system is genuinely intelligence-led and well-targeted, as some people assured us it is, these figures could vindicate the view that only a small minority of farms are involved in breaches of animal welfare law. It would still raise questions about why so few non-compliance incidents lead to any form of sanction. There are two obvious responses to that question. First, we might suspect that most forms of non-compliance are relatively minor deviations from best practice that do not result in significant harm to welfare – for example, not having paperwork in order or missing the ideal equipment – which the Warwick study suggests might be the case. Second, that the best way to respond to such breaches is informally, with advice rather than ‘by the book’ or with a punitive approach.

On the other hand, we might worry that the current, relatively modest, inspection regime only uncovers the tip of the iceberg. Perhaps if we were to conduct more inspections and cast the net wider, we would find thousands more farms breaching animal welfare regulations. The fact that a third of inspections currently turn up breaches suggests to us that we are quite far from significantly diminishing returns.

Before Brexit, the EU required a random sample of farms to be inspected for compliance with animal welfare regulations as a condition of access to subsidies. The Warwick study shows that a sizeable minority – 8% – were non-compliant. Yet relatively few, 0.3%, were non-compliant in ways that demonstrated “unnecessary” pain or distress.²² By way of benchmark, that is somewhat better than French cattle farms: an analysis of random government inspections found that 61% were fully compliant, 17% “slightly” non-compliant, 15% “moderately” non-compliant, and 8% “severely” non-compliant.²³

Figure 1: Breakdown of inspection outcomes, 2003-08



Source: Kilbride et al (2011), *Associations between membership of farm assurance and organic certification schemes and compliance with animal welfare legislation*

The best synthesis of this evidence, in our view, is that there is a substantial non-compliance in a meaningful minority of farms, which a risk-based inspection process does a reasonably good job of identifying. However, the current regime is probably unable to spread the net wide enough to detect the full scale of the problem. Most of that non-compliance is of a form that does not demonstrate “unnecessary” suffering, though a lot depends on where we draw that line of acceptability.

This leads to toleration of harmful practices such as debeaking and failure to treat lameness

With these figures in mind, how can we reconcile the two very different pictures of farmed animal welfare enforcement we have been presented with – with some suggesting rampant normalised breaches, and others insisting legal welfare issues are rare? Our best explanation is that the law itself is ambiguous, and the disagreement relates to the substantial grey area that exists within it, where practices are open to interpretation. This legal ambiguity is then compounded by the lack of inspections, which means that there is insufficient data available to know the extent of non-compliance.

In our reading and discussions, we have found it helpful to distinguish three types of practice that are conflated. First, there is *deliberate cruelty, abuse and neglect*. This features prominently in *The Enforcement Problem* when it lists the most common forms of welfare breaches believed to have been uncovered by animal charity investigations, particularly for cows and pigs. A 2022 BBC *Panorama* documentary aired footage from an Animal Equality investigation of a dairy farm, showing cows being beaten with shovels, calves being hit and thrown to the floor, punching and kicking and slamming of gates in cows’ faces.²⁴

Nobody we spoke to denies that these sorts of things are illegal, and the response to the *Panorama* revelations led to condemnation and revulsion from farmers as well as the general public – though there was a tendency in their response to downplay how common such actions are.²⁵ There is also some disagreement over how we should respond, with those close to the farming industry keener to take a sympathetic rehabilitative approach – assuming that any person who acts this way must have personal problems – than to be punitive.

Second, there are *inhumane but legal* practices. In a number of cases, *The Enforcement Problem* cites purported breaches without explaining which law or regulation is flouted. Most significantly, the report says that “most illegal conduct and/or prolonged suffering” in broilers “was as a result of their fast growth”.²⁶ In fairness, at the time of writing there was some uncertainty over the legal status of so-called ‘franken chickens’ bred to grow at accelerated rates and prone to higher mortality, lameness and muscle disease. It has been argued that these breeds breach the Welfare of Farmed Animals Regulations which forbid keeping animals that could reasonably be expected to suffer detrimental health and welfare consequences because of their genes. Yet last May, the high court reached the judgement that while these breeds do carry a higher risk of welfare issues, these can be adequately mitigated through environmental conditions.²⁷ Though the ruling is being appealed, for the time being the practice is legal.²⁸

Third, and most significant, there are *areas of interpretative ambiguity* – the grey areas. Consider ‘tail docking’, the practice of cutting off pigs’ tails to prevent them being bitten by other pigs. Legally, tail docking is not forbidden, but can only be used where other steps – adjusting the conditions to address pigs’ overcrowding, stress and boredom – have been taken to prevent tail biting.²⁹ The code of practice tells us that tail docking should not be “routine”.³⁰ Yet it clearly is, as most pigs continue to have their tails removed. The most recent available estimate, from 2018–20, is that 72% of pigs had their tails docked, and though the pig industry claims to be taking action to reduce the need for tail docking, that figure was slightly up from 70% in 2013–16.³¹ The difficulty, of course, is identifying that any specific site has taken adequate steps to avoid tail docking, and doing so to a level that justifies intervention.

Responding to lameness causes similar challenges for enforcement agents. The Welfare of Farmed Animals Regulations require sick and injured animals to be treated appropriately and without delay, and a vet called if they do not respond to treatment. Yet lameness remains endemic – it is estimated that around a third of all dairy cows may be experiencing some degree of lameness.³² Indeed, studies have shown that farmers have difficulty even recognising lameness – identifying less than a quarter of cases in their herds.³³ Again, the statistics suggest there is an issue, but it may be challenging to identify individual breaches and to thereby take an enforcement response.

We suspect that these middle cases may explain the discrepancy in accounts. Those who believe compliance is high see these sorts of practices and outcomes as normal, business as usual, rather than legal breaches. By contrast, those who believe compliance is low may underestimate the difficulty in prosecuting these cases.

Alternative interpretations of the nature of the enforcement problem – that it is about identifying ‘bad apples’ – could shift focus unhelpfully

As we have seen, there exists quite different understandings of the nature of the farmed animal welfare enforcement challenge, with quite different assumptions about the scale and nature of non-compliance. Depending on which of these understandings the government and its agencies takes, any additional enforcement effort could look quite different.

Animal welfare organisations, recognising that the greatest amount and severity of farmed animal suffering occurs in large, intensive farms would presumably want enforcement effort to prioritise targeting them and raising standards in ‘factory farms’. That makes sense if you believe that non-compliance is widespread and primarily an economic decision – pushing legal boundaries to improve efficiency and cut costs, at the expense of animal welfare.

Yet the alternative view is that non-compliance occurs at the fringes of the system, in the ‘long tail’ of small farmers. The archetype (or stereotype) here is the older farmer, more likely to be in economic and personal distress, and as such less professional and less capable of sustaining high standards.

“The problem is that these individuals are often in those crisis moments, where there may be an individual old farmer that something has certainly gone wrong in their life”

“A local authority will have to weigh up the costs in the public interest in terms of prosecuting someone who's probably an elderly gentleman that just wants to give up farming. What you want to be saying to that guy is ‘look, you shouldn't be keeping livestock anymore if you can't cope’.”

“Why just pile more pressure on a proud old man in his 70s or 80s? Taking him to court just feels wrong.”

“Things can go downhill very quickly. Father puts a pitchfork through his foot, mother got cancer, the two of them were taken out and the son had to try and manage the farm. There were just too many animals, and he suddenly found himself in over his head”

Within DEFRA, there is, we have heard, a persistent discourse around engaging such ‘hard to reach’ farmers and bringing them closer under the influence and scrutiny of the government.

“If you're a farm, down a very, very long lane in the middle of nowhere, and you keep a few cows, and you don't keep them very well. And they tend to, let's say, die without much intervention. Who's going to discover you, so unless there's a footpath that goes through your farm or someone drives down your farm lane and see something that they shouldn't? You are sort of hidden away...That's the scenario that I worry about, because we don't have this lifetime farm assurance. We don't have anyone going on there routinely to look and inspect at the farm at a proper level.”

If this latter framing prevails, enforcement effort will be focused on the periphery of the system, likely on smaller extensive farms. It would risk shifting attention away from the larger, more intensive farms, which might be presumed to be more professionalised and certainly more frequently inspected (for example, because they are covered by private assurance schemes).

Insofar as we have evidence on the point, such a shift would not be justified. The Warwick analysis found that larger farms were in fact more likely to be non-compliant. Moreover, there is no clear relationship between enterprise type and compliance: 33% of caged laying hens, 30% of growing cattle, 30% of pig farms, 27% of dairy farms, and 19% of chicken farms were found to be non-compliant.³⁴

The rest of this report explores first the inspection system, then sanctions before setting out recommendations for change

In this chapter, we have shown some evidence that the UK's farmed animal welfare laws are not adequately being enforced, though there is some debate over the scale and nature of the problem. For all the disagreements, we take it for granted that everybody should agree that the government should enforce the laws on its books. And given the scale of animal farming in the UK – over a billion factory farmed chickens are slaughtered every year³⁵ – even a low rate of non-compliance with

animal welfare legislation translates into an enormous amount of preventable suffering.

To better understand the nature of the problem, we split enforcement into two parts. First, we look at the inspection regime – examining who is checked for compliance with the law, and by whom. Then, we look at sanctions – what steps are taken against those who are found to be non-compliant, and why.

We then turn to proposals for change. Again, we have split these into two parts. First, we set out adjustments to the existing structure of inspection and sanction that we think could make a positive and immediate difference without fundamentally changing the system. Then, we consider a more radical proposal: licensing of farms, and the extent to which the case for such a change depends on integrating enforcement into more ambitious reform of farm assurance and labelling. We make this distinction because we recognise that the more ambitious plan will take more time and political capital, and as such, is less likely to happen – though we still believe it worthwhile to explain what, in principle, a better alternative would look like. However, we do not wish those more idealistic ambitions to undermine the immediately feasible proposals of the previous chapter.

The report proceeds as follows:

- **Chapter Two** analyses farmed animal welfare inspection
- **Chapter Three** discusses sanctions for non-compliance
- **Chapter Four** sets out more modest and immediately feasible tweaks to the existing system
- **Chapter Five** explores when and whether licensing of farms might be justified.

CHAPTER TWO – INSPECTION

Statutory responsibility for farmed animal welfare inspection is split between local authorities and APHA, who inspect a small minority of farms annually on a risk based system

Ultimate responsibility and operational control for farmed animal welfare sits with DEFRA, or the devolved administrations in Scotland, Wales and Northern Ireland. The Animal Welfare Act sets out a discretionary power for national and local authorities to appoint inspectors. In practice, government monitoring and surveillance is conducted by the Animal Plant & Health Agency, working alongside local authorities.

Local authorities employ around 600 inspectors combined, while in 2023 APHA employed 364 full-time equivalent inspectors, plus another 303 full-time equivalent vets.³⁶ That represents a substantial increase from before the pandemic, when inspectorate staff was closer to 160.³⁷ However, many of these agents will be part time or will split their farmed animal welfare enforcement with other activities. At present, local authorities conduct the majority of inspections. According to freedom of information requests from Animal Ask, in 2019 there were just over 10,000 farmed animal health and welfare inspections across the UK. Of these, just over 2,000 were conducted by APHA, and just over 7,500 by local authorities (the remainder by the Northern Irish government).³⁸

Activity is quite inconsistent across local authorities. When the Animal Welfare Act was passed, it was assumed that local authorities would appoint inspectors, but around half have failed to do so, and a further 21% have just one specialist dedicated officer.³⁹ Of course, many of these local authorities will not be rural, and while it is believed that enforcement is stronger in farming communities, the picture remains patchy.

As noted in the previous chapter, only a relatively small minority of all farms receive government inspection. On average, around 3% a year are receiving health and welfare inspections from APHA or local authorities. These inspections are meant to be risk-based, targeting farms that are more likely to be non-compliant with laws and regulations. There are a few different ways in which a farm can be selected for inspection⁴⁰:

- The farm shows up as high risk according to APHA or the local authority's intelligence or risk model
- unfit animals are transported from a farm or presented for slaughter, raising concerns over their welfare
- a complaint is raised by a vet, member of the public, whistleblower, independent investigation by a charity, or by another official bodies

The risk models used to determine investigation are somewhat opaque, but might include variables like time since last inspection, outcome of last inspection, mortality rates, and participation in an assurance scheme.⁴¹ Informal intelligence may also be used. For example, assurance schemes are supposed to flag serious issues to APHA or local authorities.

The most formalised and prominent example of issues being identified at slaughter is the ‘trigger system’ for chickens bred for meat. Embedded in the chicken code of practice, this uses routine data collected by the Food Standards Agency at slaughterhouses to identify whether particular farms have particularly high rates of mortality, birds dead on arrival, and conditions such as ascites and oedema (fluid and swelling) and dermatitis (skin irritation). ‘Trigger reports’ are generated if either i) the prevalence of any particular condition is exceptionally high, or ii) the mortality rate is unusually high *and* three conditions are above average. Trigger reports are sent directly to those responsible for the farms, and additionally are used by APHA to identify farms at risk of non-compliance. In other words, they make inspection more likely, but do not automatically result in inspection.

According to Animal Law Foundation and Animal Equality’s freedom of information requests, complaints led to inspections of farms in around 50% of cases. That figure appears to have been somewhat depressed by the pandemic: pre-pandemic, it was closer to two-thirds.⁴² Nevertheless, in interviews people both from welfare charities and the sector expressed frustration about how long it takes to follow up complaints, and the significant number of complaints that received no response at all.

“What has shocked farmers sometimes when they have reluctantly taken the step of reporting a neighbour who is way below par...is they have been amazed how long it takes for the wheels of justice to turn”

There are concerns over the number and quality of government inspections

Whilst there are a broad set of official agencies charged with overseeing farmed animal welfare regulations, these bodies are under-resourced and disjointed, which limits their ability to inspect farm premises. Local authorities have seen their funding cut significantly following budget cuts made by the coalition government in 2010, with English councils seeing core funding per person fall by 26% in real terms over the following decade.⁴³ This led local authorities to make cuts of their own in order to balance the books, and many slimmed down farm inspection activity as a result. This not only limits the number of inspections that can be carried out each year, but also how comprehensive each can be. One expert who contributed to the roundtable explained that “the lack of budget for local authorities limits their ability to effectively train inspectors to do a good job”. The majority of inspections are done through the environmental health or trading standards departments of local authorities. In many cases, individuals within these departments will not possess the relevant expertise to identify animal welfare issues on farms. One expert we interviewed argued that the lack of personnel dedicated to animal welfare inspection was a key issue:

“A lot of the time inspectors will be in trading standards and they have been moved into it [farmed animal welfare inspection]... and although there is a really good network across the different local authorities to put training on or if somebody doesn't have the expertise, they can go to somebody else, it's very much been left to them to do that.”

APHA faces similar challenges, having to dedicate resources to a range of competing priorities: its remit covers disease surveillance, plant health and monitoring imports

and exports, as well as monitoring animal welfare. And whilst farms may be inspected for myriad reasons by officials, expertise matters. An inspector who specialises in animal health and disease related matters may not be able to identify non-compliance with animal welfare rules.

In practice, farm inspection has largely been delegated to private assurance schemes

While only 3% of farms receive a state health and welfare inspection in any given year, that number does not reflect the full picture. In fact, farms covering most of the market receive some form of inspection almost every year, by virtue of being part of a private assurance scheme.

The largest of these schemes is the industry-led Red Tractor scheme, created in 2000 to rebuild consumer confidence in British food, following outbreaks of including BSE ('mad cow disease'), salmonella and foot and mouth disease.⁴⁴ Farmers pay to be licensed by these schemes, and whilst they are voluntary, for certain sectors membership has become an effective requirement of selling in supermarkets, translating into almost universal coverage of assurance schemes among farms in these sectors. 98% of British dairy, 95% of chicken and 95% pork in Britain is Red Tractor assured. Though penetration is lower in beef (82%) and lamb (65%), the majority of products are still covered.⁴⁵ However, the total number of farms (46,000) covered by the scheme implies that there are thousands of smaller farms outside the scheme (there are over 200,000 farms in the country overall).⁴⁶

Red Tractor employs 350 inspectors, and carries out 60,000 inspections a year (six times as many as state agencies).⁴⁷ The license fees paid by farmers are used to finance the inspection of farm premises by these schemes, which take place every 12-18 months, in order to ensure that farms are adhering to both the relevant scheme's standards and the legal baseline itself.

Red Tractor's standards are near, or marginally above, the legal minimum.⁴⁸ Other schemes seek to recognise higher welfare standards – among them RSPCA Assured (which covers around 12% of all animals) and the Soil Association's Organic certification (which covers around 2%). Both are run by independent charities.

Farming out responsibility to assurance schemes has been part of a deliberate effort to reduce regulation and cost

This situation, where farmed animal welfare conditions are inspected primarily by private agents, is not an accident, but deliberate government policy. The 2005 Hampton Review was commissioned by then Chancellor Gordon Brown to identify ways to reduce the administrative burdens associated with inspection and enforcement across the economy, and called for a more risk-based approach.⁴⁹ That helped to inspire the new coalition government's 2010 Farming Regulation Task Force, with the objective of identifying ways to reduce regulatory burdens specifically for farmers and food processors. One of the central themes of their report was the concept of "earned recognition" – the idea that operators with a strong record of reliability and adherence to standards should be rewarded with less

oversight and bureaucratic requirements. In terms of inspections, the intention *was not* to reduce scrutiny, but to better target it. The way that has been achieved is to integrate earned recognition into agencies' risk models for inspection, by reducing the chances of inspection if a farm is a member of a UK Accreditation Service recognised accreditation scheme, such as Red Tractor.⁵⁰ This is part of a broader trend: according to one analysis, "The current shift moves the governance of animal welfare away from the government and towards the private market and the consumers".⁵¹

Like many coalition government initiatives, the outcomes of this shift have been influenced by the fact that it has taken place alongside austerity. At the same time as the state was devolving more responsibility to private assurance schemes, it was also cutting funding to local authorities. That has almost inevitably meant stepping back. One expert we interviewed explained that "if your resources are constrained, then it is right to focus your efforts... it's an intuitive approach."

As the quote above signals, this approach has an obvious rationale: given government agencies' constrained resources, it makes sense to target those that have not been inspected by assurance schemes. Advocates of the system would argue that there is little point in the government inspecting farms that have already been inspected on criteria higher than the legal baseline. Doing so would not only be a waste of public money, but also add burdens to farmers. And some have argued that even if the government wanted to, there isn't the state capacity to perform the role assurance schemes carry out. In the words of one roundtable participant, "assurance is the only coverage we have at this moment in time without significant sums going to DEFRA."

It is also important to put animal welfare enforcement in the broader context of farm oversight and regulation. A 2012 report by the National Audit Office estimated that there were 114,000 farm visits made by government bodies in 2011/12 – around half of these for disease surveillance. The total direct cost of complying with regulations was estimated to be £5,500 a year, or 10% of net profit for the average farm, and so it is unsurprising that 84% of farmers said that oversight bodies should be better coordinated.⁵²

The system of farm assurance has also been praised for the way it encourages farmers to operate above the legal minimum welfare standards. One expert interviewed for this research said how the UK has "some of the world's best legal standards, but they are still very basic... the industry, through the farm assurance route, has gone way above the legal minimum." A separate expert independently explained how "the broad coverage of assurance schemes gives the industry the ability to raise standards over time", adding that "assurance moves more quickly and can be more responsive."

Supporters of earned recognition through farm assurance also argue that assurance schemes are likely to be more effective than state legal enforcement agencies can be in incentivising farms to abide by the standards. Whilst participation in these schemes is in theory voluntary, in practice it is required in order to access markets and is therefore crucial to the viability of many farm businesses. One expert explained

that “the threat of being withdrawn from an assurance scheme, that ultimately takes you out of the supply chain, is therefore a much more pressing incentive [to stick to the rules] than anything else a local authority inspection can do.”

Yet private assurance schemes are not an adequate alternative to state inspection

Back in 2011, even as it cautiously welcomed the shift towards earned recognition, the House of Commons Environment, Food and Rural Affairs Committee warned: “It must be stressed that earned recognition cannot replace the control and audit roles of Government”.⁵³ That warning has proved prescient. Although we have found a degree of support for the role assurance schemes play in inspecting farms to identify non-compliance for the reasons outlined above, the majority of experts we spoke to as part of this research held the view that delegating inspection responsibility to assurance schemes fails to effectively identify legal breaches when they occur.

Part of the problem is that assurance schemes, similar to the state bodies officially charged with regulating this area, face resource constraints on their ability to inspect farm premises. One representative from a well-known assurance scheme told us that a big part of the challenge they face in uncovering non-compliance is that they “cannot be on every farm every day”. Separately, experts suggested another problem is that assurance schemes don’t always cover the entire production process (for example, they may only cover the final ‘fattening up’ stage of animals’ lives).

Farm assurance schemes also face more fundamental misaligned incentives when it comes to protecting animal welfare because of their industry-led and voluntary nature. Being dependent on license fees from farmers encourages schemes to ‘turn a blind eye’ when breaches are identified for fear of losing revenue. One expert interviewed for this research explained that “assurance bodies are motivated to protect the retailer, and so they will do everything not to get that farmer in further trouble because they want to maintain continuity of supply... if they [assurance scheme inspectors] are a component of your eyes and ears on the ground, then they are perhaps not fully motivated to escalate things when they need to be escalated.” Charity-led schemes like RSPCA Assured face a slightly different pressure: if farmers pull out of their scheme, they fear they may lose their leverage to raise standards.

Beyond these structural incentives, we also heard how inspectors can face social pressures to ignore breaches of the legislation, or to take informal steps (e.g. quiet words with farmers instructing them to rectify the welfare problems) rather than withdrawing their certification or referring the matter to official bodies. One expert we interviewed described inspectors will “know these people, they will be colleagues and there will be relationships there. I think that just makes things much, much harder”. Given the potential impact for farms of losing assurance certification, these social pressures cannot be discounted.

The evidence that we have – using the 2003-08 data from the Warwick study described in the previous chapter – suggests that participation in assurance schemes is associated with higher compliance. That offers partial vindication for the principle behind earned recognition, but participation in an assurance scheme is far

from a guarantee of compliance. Non-compliance was found in 31% of non-certified farms, but also 19% of farms in assurance schemes and even 14% of organic farms. Of course, these were not all randomly selected farms, but ones that had been flagged for inspection for one reason or another. Even so, it demonstrates the need for independent inspection to supplement private assurance schemes.⁵⁴

Perhaps the clearest demonstration that assurance schemes are not an adequate alternative to state inspection can be seen in the plethora of undercover investigations of assured farms carried out by animal rights groups – most of which are selected at random and not in response to whistleblower concerns. For example, footage from one recent exposé of over 40 RSPCA Assured UK farms shows scenes including baby chickens dying on intensive farms and pigs left dead for days in filthy sheds, in what are clear breaches of the legislation.⁵⁵ This investigation (and many more like it)⁵⁶ offer clear evidence that assurance schemes are unable to ensure farms operate to legal minimum animal welfare standards.

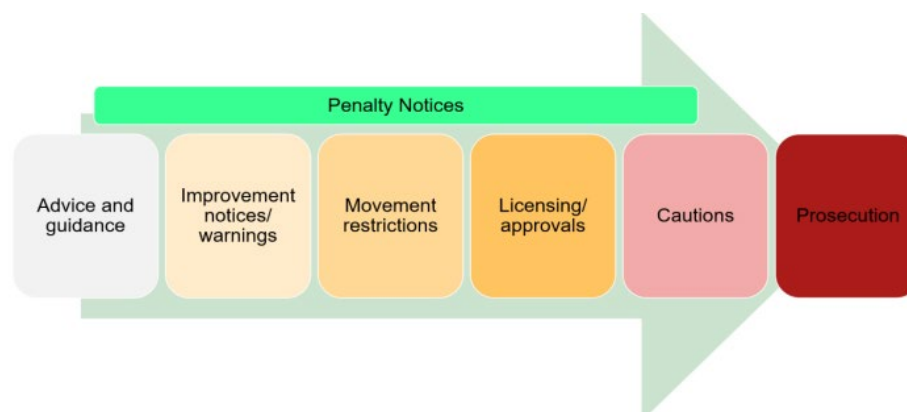
CHAPTER THREE – SANCTIONS

Non-compliance too rarely leads to sanctions

A lot of the discussion around farmed animal welfare enforcement focuses on inspection, and how frequently and adequately farms are scrutinised. Equally important is what happens when those inspections detect non-compliance. *The Enforcement Problem* found that only 50% of official complaints made to APHA or local authorities resulted in a subsequent inspection by these agencies (although it was closer to two-thirds pre-pandemic). More concerningly, only a fraction of welfare breaches resulted in formal enforcement action being carried out.

It is not completely clear why enforcement action is not employed more routinely against those who breach the regulations, with this lack of clarity partly stemming from a failure of the relevant bodies to collect, analyse and publish data on enforcement activity. But there is certainly no shortage of enforcement mechanisms available. Local authorities, who are ultimately responsible for initiating enforcement action against offenders, have a raft of tools available to them that can be used to sanction breaches of the legislation or code.

Figure 2: Available enforcement tools



Source: UK Govt Fixed Penalty Notice consultation

As the diagram above shows, animal welfare enforcement agencies are encouraged to work through a range of escalating tools, starting with informal advice and guidance, moving up to full prosecution.

Improvement notices are supposed to be a key element of the enforcer's toolkit. Section 10 of the Animal Welfare Act empowers inspectors under the Act to issue improvement notices (or their Scottish equivalent, care notices) to those responsible for animals if they are of the opinion that the welfare requirements stipulated by the Act are not being met. The notices set out the steps needed to comply and set a deadline by which necessary action must be taken.⁵⁷ Receiving an improvement notice shields the farmer from prosecution if they comply with its terms – they may not be prosecuted for the period covered by the notice, nor subsequently if they have met its requirements. In cases where a notice is not complied with, those responsible

may be prosecuted for the offence of failing to comply with a statutory notice in addition to the original welfare breach.

Further enforcement tools available include movement restrictions, which can be used to prevent the spread of disease, and withdrawal of license where appropriate. As we discuss in the final chapter, licences are required for zoos and pet shops, or to slaughter animals, but not to rear them on farms – so that mechanism is not (yet) relevant for farms.

Since 2024, local authorities have been permitted to impose Fixed Penalty Notices (FPNs) for a range of animal health and welfare offences, allowing them to levy fines of up to £5,000.⁵⁸ This enforcement tool replaces the system of ‘cross-compliance’, which linked certain farm support payments to regulatory compliance and has been used as the major vehicle for enforcement of animal health and welfare standards on farms. Fixed Penalty Notices provide enforcers with a financial penalty which could be used to highlight the importance of complying with rules and rectifying the issue if advice and guidance is ignored, and provides a stronger incentive for change. They do not require an admission of guilt, and in cases where the offender has admitted the offence a simple caution may be issued. FPNs are intended to be a proportionate and ‘middle ground’ enforcement tool where individuals could be fined for not acting in accordance with the law as an alternative to court proceedings and criminal conviction.⁵⁹ Local authorities can deduct the costs incurred during the investigation of the offence that led to the issuing of a Fixed Penalty Notice, but any residual sums must be paid to central government.⁶⁰ In other words, they are unable to gain financially from the fines they impose.

In the most serious cases of non-compliance, prosecutions can be brought against those who commit offences. The Animal Welfare (Sentencing) Act 2021 increased the maximum sentence for a range of offences under the Animal Welfare Act to a maximum penalty of five years’ imprisonment and/or an unlimited fine, alongside the option to disqualify the offender from owning animals in future.⁶¹ Prosecutions are the most powerful enforcement tool available to inspectors, and will only be used in cases of a more serious nature (i.e. extreme animal cruelty) or in cases where an improvement notice has not been complied with.

DEFRA has ultimate responsibility for conducting prosecutions, but this function is served by the Crown Prosecution Service (CPS) due to a scandal in 2012 when DEFRA failed to prosecute a serious case of animal abuse.⁶² In practice, local authorities will make the decision whether to conduct their own prosecutions. The RSPCA also carries out prosecutions for animal welfare offences, though these cases are mostly related to companion animals. In 2021, the RSPCA announced that it had “successfully handed over the investigation and prosecution of all farmed animal welfare cases to the Animal and Plant Health Agency”, which would mean that farmed animal welfare cases will now be prosecuted by the CPS or the local authority.⁶³ For its part, the APHA’s position is that “Animal Health and Welfare legislation is enforced by the local authorities”, and its role is restricted to providing “statements” when requested by local authorities to support their prosecution efforts.⁶⁴

Though prosecution is unlikely to be appropriate in the majority of cases of non-compliance, it is used unreasonably rarely

A number of experts we spoke with argued that the infrequent use of enforcement action may give a misleading impression. They pointed to the fact that not all non-compliance is equally problematic, and ranges in nature from relatively trivial issues, which would not warrant formal action, to terrible cases of extreme animal suffering. One roundtable participant pointed out that “non-compliance could be that someone has not kept their medical records for the past few years”, adding that “in these cases, advice and guidance is the best approach.”

A common view we heard – particularly in relation to smaller scale beef and sheep farmers – was that instigating enforcement action against offenders would often be inappropriate due to the underlying challenges causing welfare breaches. The financial constraints preventing farmers from investing in welfare-enhancing solutions, such as investing in larger premises to house animals or in effective enrichment measures, was frequently raised as an issue. One expert argued that “a key factor driving many animal welfare breaches is a lack of money to make investments [that improve animal welfare].” As such, “just adding extra costs to farms isn’t going to solve the problem”. Similarly, several of those we engaged with believed that the main driver of non-compliance was ‘human-welfare’ issues, with the stress and isolation involved in a lot of agricultural work leading farm workers to cut corners at the expense of their animals’ welfare. One person we interviewed said that “breaches are very often linked to problems such as mental health issues, family issues, businesses going bankrupt, and it’s important to acknowledge that there are people behind these issues.” CPS guidance does state that the mental health of a suspect may be relevant to the decision as to whether there is enough evidence to prosecute an offence, and to whether it is in the public interest to do so.⁶⁵ Viewed through this lens, the low rate of formal enforcement action against those responsible for non-compliance is explained by the belief that in many cases sanctioning breaches would be futile or perverse.

Whilst we accept that formal enforcement will not *usually* be the best approach, the discrepancy between the prevalence of animal welfare violation and action being taken strongly suggests that there is an issue. The University of Warwick paper referenced earlier in this report found that 26% of identified non-compliance cases involved ‘unnecessary pain or unnecessary distress’, indicating that these breaches were of a nature serious enough to warrant formal enforcement action against those responsible.⁶⁶

If we apply that rate to the 2,500 cases of non-compliance detected in 2019, that would imply that over 600 breaches involving unnecessary suffering were found. Yet of these, only 56 of these cases were prosecuted.⁶⁷

The failure to use improvement notices is a particular puzzle, and raises doubts over whether Fixed Penalty Notices will be used either

In theory, improvement notices should be a valuable part of animal welfare enforcement. We understand that prosecution is a blunt and heavy instrument, which

will often be inappropriate. But we would have thought that the opportunity to formally register non-compliance and require remedy, while explicitly ruling out prosecution if the issue is addressed, would be an attractive way to address issues. This ought to demonstrate that the issue is being taken seriously without being too heavy handed or punitive. Indeed, improvement notices seem like a proportionate response to non-compliance that does not involve severe suffering or distress, as well as those more serious infractions.

Evidence from France offers some grounds for optimism about the potential value of improvement notices. Using data from random inspections of cattle farms, analysis has shown that around one in four previously non-compliant farms improved their compliance upon re-inspection.⁶⁸

In practice, improvement notices are used surprisingly sparingly. Given that prosecution would seem to be a significant escalation from an improvement notice, we might expect there to be many more improvement notices than prosecutions. Yet in 2020, just 88 improvement notices were issued: 1.6 for every prosecution, not even double.⁶⁹ That is in line with a separate study based on freedom of information requests, which found that a total of 437 improvement notices had been issued between 2015 and 2020, around 80-90 a year (though not all for farmed animals).⁷⁰

This reluctance to use improvement notices is not universal. An expert we spoke to described how local authorities “either love them or hate them”. In total, only 63 local authorities made use of 437 improvement notices between 2015 and 2020, and a single local authority accounted for 76 of these.⁷¹ Some local authorities dislike the prosecution bar, preferring to retain some room for manoeuvre. Others are reluctant to leave in place the implicit threat of prosecution, worrying that if the improvement notice is not complied with, they will have to follow through with prosecution.

These fears seem overstated. Based on available data, 89% of improvement notices result in a positive change and/or no further action taken. Only 8% end up in prosecution.⁷² There may be a case for education and guidance of enforcement officers. While local authority animal welfare officers have set up strong peer-to-peer support networks, they may not always be informed and on top of the effectiveness of such measures.

With Fixed Penalty Notices only having been introduced this year, the extent to which enforcement agencies are making use of this new power remains unclear. However, the experience of improvement notices raises some grounds for scepticism that they will be widely adopted. Anecdotally, we have been told that local authorities are not particularly enthusiastic about FPNs. In particular, there is frustration about the absence of clear government guidance on their use, although some authorities are trialling them and plan to share their findings and advice with others. However, as with improvement notices, there is fear of being overzealous in the use of penalty notices, as well as an incentive problem since the revenue generated goes back to central government:

“That money could have been put back into animal health and welfare within that local authority, rather than going back to the Treasury, and then the

government is still not funding them. So they are a bit annoyed about that, and it results in 'well, what's the point?'"

Enforcement action is obstructed by a lack of resources, organisational fragmentation and a tendency to deal with issues informally

There are several explanations for why so little enforcement action is carried out against those who break UK animal welfare law, but one of the most pertinent is that the agencies charged with doing so, primarily local authorities, are under-resourced. Budget cuts during the 2010s crimped local authorities' financial firepower, and given growing demands on the wide range of services they provide, it is understandable why they devote scant resources to enforcing animal welfare laws on farms. Until 2010, local authorities used to receive a ring-fenced grant from DEFRA to support animal health and welfare checks, but once this ring-fence was removed animal health and welfare visits declined by more than half.⁷³ With resources increasingly scarce, local authorities have limited capacity to enforce the law. One academic we interviewed explained that "local authorities have that statutory duty, but they're not funded for it." It should be no surprise, then, that 84% of local authorities in a recent survey said that cost is the most significant barrier to enforcing animal health and welfare.⁷⁴

This problem is compounded by the fact that the regulatory agencies responsible for enforcing animal welfare law are fragmented, with a lack of continuity and accountability. First, there is the split responsibility between local authorities and the APHA. Moreover, there is the fact that there are hundreds of local authorities, with different approaches and resources. Not only is it a problem of "different organisations and different departments having different ways of dealing with things", as one expert explained, but that the lack of clarity over responsibility makes it easier for farmed animal welfare to be neglected, or relegated to a secondary priority. The institutional set up creates a risk that local authorities and the APHA will each look to the other, and that enforcement will fall between them. Moreover, the fact that both types of organisation have such a wide range of competing tasks and objectives – delivering the full range of local services for councils, disease surveillance and control for APHA – that it is easy for animal welfare to be neglected.

The stretched nature of local authorities and the CPS is a particularly relevant explanation in why so few prosecutions are brought against those who commit animal welfare offences. Prosecuting someone for breaches of animal welfare legislation is an incredibly costly and time-consuming process for local authorities, and so they are likely to only do so in the most shocking or extreme cases of non-compliance. One expert we interviewed for this research explained that "prosecution comes with time, money, and the whole court process, which can sometimes take years to get through." In many cases, local authorities will come to the conclusion that it is not worth devoting resources to animal welfare prosecutions given the range of other spending priorities they have.

As we have discussed, those considerations do not apply to improvement notices. We have already mentioned the issue of expertise, but a broader issue is the preference to address non-compliance informally. One expert we spoke to explained

that “inspectors will tend to use non-legal ways to improve, through improvement plans and conversations or just kind of soft warnings.”

The typically long-term and familiar nature of relationships between inspectors and farmers was also raised as a factor explaining why improvement notices are so rarely used.

“I think it must be difficult for some inspectors, because they've worked with these farmers for years, so they've developed a relationship with them. And they want to keep a good relationship, because the better their relationship is with them, the more the farmer is likely to cooperate with them... Once they've built that rapport and got that relationship, maybe it is harder to be as strict with the enforcement.”

“Just as a matter of the social experience and context, it seems that they [inspectors] are able to be cajoled into ticking the box, even when the standard is not really being met.”

Moreover, many of those responsible for farming enforcement have some farming background, understandably given the need for expertise in this area. Yet there is a risk that this may make them unduly sympathetic to the farmers they are meant to be regulating. Indeed, it may manifest as a bias towards inaction, towards waving through accepted practices as a matter of common sense, rather than taking a critical approach.

Those close to the industry naturally favour this ‘softly, softly’ approach. One argued that “DEFRA and APHA are undergoing an attitudinal shift in how they conduct inspections, moving from a confrontational approach to an advisory approach, which has been welcomed across the industry... inspectors are going out on farm and explaining what is wrong, why it is wrong and how people can fix it... this has been working really well”.

Being informal, such approaches are by their nature hard to evaluate. However, analysis of US animal facilities that received written warnings for breaching their Animal Welfare Act found that 87% went on to violate the Act again.⁷⁵ That study does not cover farms (which are excluded from the US Animal Welfare Act), focusing instead on organisations like pet breeders and zoos. However, it offers some grounds for scepticism about the effectiveness of informal enforcement, especially if warnings are not credibly followed up with harsher penalties.

Alongside the resource constraints on inspectors and the tendency to use informal means to address welfare issues, there is also an incentive problem where agencies are poorly motivated to sanction non-compliance. Enforcement action involves time and resources for organisations that are stretched. This incentive problem is particularly apparent in relation to FPNs, since local authorities can only recover costs.

The failure to impose sanctions on offenders is problematic

As we have seen, there is clear evidence of a systematic failing by state agencies to effectively enforce the animal welfare laws that they are responsible for enforcing.

This is highly problematic because it allows an enormous amount of animal suffering to take place on farms around the UK. The failure to sanction offenders of animal welfare legislation signals to those who look after animals that they can break animal welfare law and their actions will go unpunished, which in turn encourages criminality to take place. This finding is consistent with a wide range of empirical evidence that suggests increasing the risk of apprehension and conviction is highly likely to reduce the rate of a certain crime that takes place.⁷⁶ Simply, the more confident a potential law breaker is that they will be caught and punished for breaking the law, the less likely they will be to break the law in the first place.

Given that the consequences of breaking animal welfare legislation typically involve considerable harm to a large number of sentient beings, the case for ensuring that those who break the law are effectively sanctioned is evidently compelling. But even beyond these very practical and real impacts of this problem, there is also a simple moral case that the laws a democratically elected government has drawn up ought to be properly enforced.

CHAPTER FOUR – MODEST REFORMS TO THE CURRENT SYSTEM

Over the past three chapters we have made the case that there *is* a farmed animal welfare enforcement problem, albeit that it is difficult to quantify the full extent of the problem. Our argument has been that it is right to target state inspections, but that the government has gone too far in delegating responsibility for oversight to private assurance schemes that face conflicts of interest. Moreover, the diffusion of responsibility between local authorities and central government undermines effective coordination. Most fundamentally, effective enforcement action needs greater resourcing, and a shift in culture away from addressing non-compliance informally to making greater use of sanctions where appropriate.

In the following chapter, we explore one of the more ambitious proposals to address these issues: a farm licensing scheme. But before that, in this chapter we look at what can be done within the existing regulatory framework, and how it can be reformed to better address these challenges of resourcing, incentives and fragmentation.

Responsibility for welfare enforcement should sit exclusively with APHA, rather than being shared with local authorities

Having responsibility for on-farm animal welfare split between the local authorities and the Animal & Plant Health Agency is an obvious source of incoordination. At the very least, it causes challenges in terms of information sharing and understanding of spheres of responsibility. At its worst, it obscures accountability which enables official bodies to forfeit their statutory duties, and creates gaps for the issue of farmed animal welfare to fall into.

In some respects, it is remarkable that local authorities do as much as they do on welfare. As we saw in Chapter Two, at present, they conduct the bulk of farm inspections, as well as being responsible for bringing prosecutions. That is despite the fact that local authority budgets are increasingly stretched, and that farmed animal welfare is not a core competence of many local authorities. For that reason, a number of people we spoke to questioned the suitability of local authorities for effectively managing farmed animal welfare, certainly compared to an organisation like APHA that has specialised knowledge and expertise. Some local authorities do seem to have dedicated and effective trading standards officers that have taken on this responsibility with gusto, and there exists strong systems of mutual support – 93% of county councils participate in some form of knowledge and resource sharing forum on animal welfare.⁷⁷ Nevertheless, enforcement remains a bit of a postcode lottery, much stronger or weaker depending on the local authority and personnel in question.

Our perception is that many local authorities would see it as a relief to have farmed animal welfare taken off the long list of tasks that they have too few resources to address as it is. Giving sole responsibility to APHA would also have a number of positive benefits. First, it would take advantage of the specialist knowledge and expertise that is concentrated within APHA. Second, it would create a more accountable system, with responsibility for enforcement outcomes sitting clearly

with APHA, and APHA answerable to DEFRA. With enforcement activity significantly shaped by legal grey areas, norms and interpretations, change can be hard to achieve. But bringing that enforcement under a single body makes it more conceivable. Suppose, for example, that a minister wanted to bear down on tail docking of pigs without outlawing it entirely. Putting enforcement within APHA, and as such within the direction of DEFRA, would make it more likely that their efforts would change practices in the field. Conversely, that concentration of power creates a single point of failure. The status quo gives some local authorities the freedom to pursue animal welfare issues more aggressively if they wish to, even if others do not. Empowering APHA turns welfare enforcement into an all or nothing game, and given the risk of regulatory capture, this is something we should have some concerns about. However, we believe that the potential upside of more coordinated and effective action is worth the risk.

Whilst it is worth noting that APHA has seen an increase in budget and headcount post-pandemic, reallocating responsibility for welfare enforcement from local authorities to APHA alone will require DEFRA to provide the agency with more funding. It is tricky to be precise about the level of additional resources required. As an upper bound order of magnitude, we expect it would cost as much as £25-30 million a year for the APHA to employ 600 inspectors to replace those currently employed in local government.¹ In practice, we expect (and insiders have suggested to us) that the figure would be considerably lower. Many of those local authority inspectors will not spend all their time on farmed animal welfare, and as there are also likely to be efficiency gains from consolidating the inspectorate into one body, limiting duplication. To put this figure in perspective, it is in line with APHA's staff cost increase between 2021/22 and 2022/23, and pales in comparison to DEFRA's overall £7.55 billion budget.⁷⁸ It is also worth emphasising that some of this cost would be offset by savings made by local authorities.

APHA and DEFRA should be more transparent about the nature and effectiveness of enforcement action by regularly publishing relevant statistics

Making a single agency responsible for enforcement should also improve transparency. Back in 2012, the National Audit Office warned that:

“The Department has not collected the data it needs to understand the scale, nature and effectiveness of farm oversight activity. It does not routinely collect or analyse robust data on the overall number and pattern of farm visits, nor levels of compliance across its regulatory regimes. We had to go to each separate oversight body to access this information and within some bodies the information was not held in one place. Bodies measure activity and categorise visits inconsistently. Without robust consistent information the Department will find it difficult to understand the scale and

¹ Average employment cost per APHA full time equivalent employee, per the agency's annual report was £47,500 in 2022/23. Multiplying this by 600 gives us £28.5 million.

proportionality of activity, identify opportunities to streamline it, or track trends".⁷⁹

Over a decade on, there has been little improvement. It is notable that our best evidence on the scale and nature of animal welfare enforcement today comes from over a hundred freedom of information requests submitted by the Animal Law Foundation and Animal Equality. Bringing that activity under a single roof should make it easier to collate that sort of data. However, it is incumbent upon DEFRA to routinely publish it, and on the rest of us to put pressure on the department to do so.

The Official Controls Regulation (OCR) – Regulation (EU) 2017/625 – which was retained following Brexit, would already seem to require some of this information to be published.⁸⁰ The OCR stipulates the requirements on the government in terms of ensuring compliance with a range of agri-food regulations, including animal welfare. Article 11 of the regulation requires that “competent authorities shall perform official controls with a high level of transparency”, and in particular requires the government to provide “regular and timely publication of information” (at least annually) on:

- the type, number and outcome of inspections
- the type and number of cases of non-compliance
- the type and number of cases where measures were taken
- the type and number of cases where penalties were imposed

It also allows – without requiring – the government to publish ratings of individual operators in terms of their compliance. In the EU, compliance with these requirements is a condition of accessing agricultural subsidies.

Better data transparency matters for at least three reasons. First, so that those with a concern for animal welfare can be confident that the law is being applied, and ideally so that it can be demonstrated to them that compliance is improving. Second, so that those subject to the regulations and enforcement can understand how the system works, helping to allay concerns of measures being unfair or arbitrary. And third, transparency pressures farms to comply with regulations to avoid being exposed as non-compliant and the financial and reputational risks that come with such exposure.

For both reasons, the APHA should regularly publish statistics of the sort collated by Animal Law Foundation and Animal Equality, on the number of inspections, their outcomes and resolutions. They should also make public the key assumptions and inputs to their risk models, to allow for external debate and scrutiny.

The establishment of an animal welfare commissioner has been suggested as one way to help ensure scrutiny and better data transparency.⁸¹ This office could provide independent, expert advice and scrutiny of animal welfare issues. Its function would be comparable to the Children’s Commissioner, which has a statutory remit to understand young people’s needs and experiences and encourage policymakers to take them into account. The commissioner could publish reports analysing the sort of data we have discussed above – on the level and effectiveness of enforcement activity, and monitoring levels of compliance. In doing so, it could serve to hold the government’s progress on animal welfare issues to account, and improve the APHA’s focus and effectiveness.

To incentivise full application of the law, APHA should be able to retain the revenue from penalty notice fines, but also to mandate education

A significant obstacle currently preventing those charged with sanctioning animal welfare breaches is that they are under-resourced and are not adequately incentivised to initiate enforcement action. Allowing the APHA to keep the revenue from Fixed Penalty Notice fines that they impose would address these two constraints simultaneously.

Currently, local authorities are only allowed to recover the costs incurred during the investigation of the offence that led to the issuing of a Fixed Penalty Notice, with any remaining sums being sent to the Treasury. If the APHA were able to keep the full amount of revenue from the fines they impose, this could be reinvested back into their inspection and enforcement activity on farms, and would serve to make funding less of a constraint on enforcement activity. This should not be considered a panacea to the funding constraints faced by the APHA, and there is a strong case for DEFRA to increase the funding allocated to the APHA given the enhanced responsibilities it would take from local authorities as recommended above.

Allowing the APHA to keep the revenue from penalty notices would also align the incentives it faces with its responsibility to ensure that breaches of animal welfare law are effectively sanctioned. Currently, the system relies on goodwill and professionalism, but these must compete with social and cultural pressures to avoid rocking the boat, and time and resource costs. One expert we interviewed argued that to fix the enforcement problem, the incentives to act must outweigh the incentives to avoid “unpleasant social situations”. Adding financial benefit to the agency could help lean against the ingrained culture of informality and prioritisation of guidance as the default approach. This is consistent with experimental evidence suggesting that allowing enforcers to keep the proceeds of fines as rewards increases the deterrence effect of those fines.⁸²

However, it is important to emphasise that this is a delicate balancing act. Our sense at the moment, given the data we have presented, is that enforcement is under-utilised. Yet excessively strong incentives could very well lead to overzealous regulatory activity, that undermines farmers’ legitimate business and could tip into unfairness or even harassment. A robust complaints procedure is therefore necessary to ensure that regulators do not overstep the mark.

One way to soften the impact of FPNs, and to demonstrate that they are not being used purely punitively would be to tie them to educational requirements. When drivers are caught speeding, the police can decide that it would be more appropriate to give them the option of attending a speed awareness course instead of paying a fine.⁸³ The option is used if it is deemed appropriate to the offence, and the driver in question has not been on a speed awareness course in the past three years. Analogously, enforcement agencies could be given the option of mandating a course on animal welfare and compliance for farmers where a fine is not deemed the best course of action.

Another relevant precedent is the charity Blue Cross' Responsible Dog Ownership Course, which it has rolled out with a number of police forces in recent years. The course is offered to people that have committed a low-level dog related offence, for example against the Dangerous Dogs Act. As of 2023, Blue Cross reported zero recorded reoffending from participants of the course.⁸⁴

The 'trigger system' for inspections should be more transparent, used more widely, make greater use of technology, and the thresholds currently used for chickens should be reduced

As described in Chapter Two, chicken slaughterhouses currently operate a 'trigger system', under which farms that send chickens with a high rate of mortality or specific conditions raise a flag. The farms themselves are alerted to encourage them to take action to address the issue, and the APHA is informed that the farm represents a higher risk of animal welfare issues.

This system is far from perfect, with the state of chickens arriving for slaughter a blunt indicator of welfare on farms (for example, the bodies will be checked for broken bones or hock burns, suggesting on-farm welfare issues). We also understand that the efficacy of the trigger system may be challenged as part of the judicial review of fast growing chickens.

However, the principle of using this sort of data to prioritise the limited resources of inspectors is sensible. Moreover, analysis of data from the Food Standards Agency and the APHA between 2010 and 2018 tracked the chicken disease and mortality outcomes that comprise the trigger system. It found that when a trigger is raised for a farm, its welfare outcomes improve by more than the average farm over the following ten weeks.⁸⁵ It is important not to overstate the impact – these farms continue to have relatively poor outcomes, but do see some improvement. Moreover, the authors of the study admit they cannot strip out the effect of reversion to the mean – in this case, the possibility that farms that raise a trigger might have done so following an unusually bad period, before returning to normal service. Nevertheless, the study does provide indicative evidence that the trigger system prompts some positive change.

It is a shame, then, that DEFRA has weakened standards on trigger thresholds, allowing more chickens to show poor welfare indicators before a report is generated. According to a freedom of information request made by Animal Equality, DEFRA said that "the original thresholds...were revised in August 2010 as the number of trigger reports generated was higher than had been predicted".⁸⁶ This decision should be reversed, given the evidence that trigger reports seem to produce positive outcomes.

Given its benefits for chicken welfare, it is worth raising the question as to why we do not have a formal trigger system for other farmed animals. Intelligence from slaughterhouses may be used informally to support APHA and local authorities to target their enforcement activities, but there is not a public algorithm in the same way. Having such a system, and opening it to debate and evaluation for pigs, cows bred for beef and sheep would be a positive step.

Whilst this suggests that the trigger system can work reasonably well, or at least has the potential to, a common theme we heard when engaging with experts is that a greater use of technology could help make the system more effective at flagging non-compliance when it occurs. For example, one expert argued that technologies such as remote monitoring could be helpful in monitoring fixed conditions, such as stocking densities or temperatures in units housing animals (although they cautioned that “for other things that involve more of a judgement call it may be more difficult”). Another argued that using tech to assist enforcement agencies in prioritising inspection should be considered by policymakers to be “low hanging fruit”. DEFRA and the APHA should consider how such technologies could help improve their ability to enforce animal welfare laws on farms.

Greater transparency would also serve to improve the trigger system used for chickens bred for meat. At present, every slaughtered flock of chickens is monitored, with information reported privately to the FSA, who then alert the APHA when a batch of broiler chickens has exceeded a trigger threshold, which might lead to a visit to the production site. It has been argued that a lack of transparency in this process, with a failure to disclose performance against the trigger metrics, limits its effectiveness to improve welfare.⁸⁷ If trigger system reports were made public, this would impose reputational risk on retailers who source meat products from farms which have been picked up by the trigger system for frequent and/or severe exceeding of trigger thresholds. This reputational risk would drive retailers to do more to ensure their client farms operate according to the legal welfare standards. DEFRA, the APHA and the FSA should work to ensure these reports are published. GDPR regulations may prevent the details of the origin farm being revealed, as this could reveal personal information, but the retail destination of meat products must be cited in order to provide potent reputational incentives for supermarkets.

CCTV should be mandatory in large industrial farming operations

An important constraint on inspectors’ ability to identify non-compliance on farms is the fact that they, in the words of one expert we interviewed, “cannot be on a farm every day”. With the constrained resources enforcement agencies have available, there is great value in measures that can help improve the ability of inspectors to find non-compliance when it occurs.

As such, the APHA should mandate the use of CCTV in certain farming operations as a way to improve its ability to find breaches of animal welfare legislation when it occurs on farms. To avoid an inordinate amount of bureaucracy burdening small and medium sized farms, this requirement should only be used in farming operations of a certain size, with a focus on ‘industrial-scale’ farming operations where the outcome of non-compliance in terms of animal suffering can be incredibly large. DEFRA and the APHA should engage with experts and relevant stakeholders to determine what the species-specific thresholds for this requirement should be.

There is existing precedent, both internationally and in the UK, of using CCTV to help identify non-compliance with animal welfare laws. In 2018, the government introduced legislation requiring slaughterhouses in England to install and operate a CCTV system, keep images for 90 days, and make the images available to

inspectors.⁸⁸ There is considerable support for this measure, and the government's Farmed Animal Welfare Committee concluded in 2015 that it can be effective in detecting animal welfare abuses, although they insisted CCTV should complement rather than replace on-site inspections.⁸⁹ "The approach taken in abattoirs [on CCTV] is the right one", according to one academic we spoke to.

However, it is important that the requirements on CCTV in industrial farming facilities go further than the current ones for slaughterhouses. Rather than being required to keep the footage for 90 days, at which point it is deleted, CCTV images recorded on farms should automatically be sent to the APHA in order for inspectors to review footage at random intervals (as is required for abattoirs in Israel, for example).⁹⁰ Animal advocacy organisations, including Animal Equality, the sponsor of this report, have claimed that the 90 day rule means that many of the legal breaches that occur in slaughterhouses remain undetected by officials.⁹¹

Requiring CCTV in certain industrial farming premises will help APHA inspectors identify non-compliance without using resources needed for in-person farm visits, and will help inform the system of risk-based regulation inspectors operate under. However, it is important that inspecting farms virtually with CCTV footage should never replace unannounced in-person inspections, as the system can be exploited. Farm workers in the Netherlands have been found to commit deliberate acts of cruelty against animals in cameras' blind spots, highlighting how this measure is insufficient on its own.⁹²

Mandating the use of CCTV in certain farming operations also serves an additional purpose of deterring farm workers from committing acts of non-compliance in the first place. Although there have been no academic studies that specifically determine whether CCTV deters workers from breaking animal welfare law in farms or related environments, there is a wealth of evidence that suggests the use of CCTV leads to a significant reductions in crime, alongside more general evidence that increasing the chance of being caught for a crime reduces the likelihood of people committing it.⁹³ One expert we spoke to argued that "it's the same principle with general crime: if you have CCTV cameras up, people are less likely to commit an offense in front of those CCTV cameras". Overall, it seems clear that mandating CCTV to be used on farm premises will create a stronger sense of surveillance for farm workers, and strengthen their incentive to abide by the rules as a result.

CHAPTER FIVE – LICENSING?

Having explored more modest reforms to the existing farmed animal welfare system in the previous chapter, in this chapter we turn to a more fundamental reform proposed in some quarters: farm licensing. While we do not have any principled objection to farmed licensing as a mechanism for improving compliance, we fear there is a risk of it being mis-targeted and disproportionate. However, we do believe there is a stronger justification for a licensing scheme as part of a reformed farm assurance system, if the government were to take back responsibility from the private sector. The case for such a move may be particularly strong if the government adopts proposed plans for a five tier welfare labelling scheme, which would put greater trust and pressure on existing private schemes that have demonstrably failed to authenticate and uphold standards.

Farm licensing has been proposed as the solution to the enforcement problem

Having identified what they label the ‘enforcement problem’, in *The Enforcement Solution* Animal Equality set out what they think should be done about it.⁹⁴ Observing that farms are among the few animal industries that do not require any registration or licensing – unlike pet shops, zoos and animal research – they call for a licensing regime to be introduced.

Under their proposal, all farms rearing animals would be required to pay for a licence if they want to operate, with the fees being used to pay for increased inspection. All licensed farms would be inspected every 1-3 years, and checked against a clear set of species-specific welfare criteria. For those farms that fail to comply with their licence conditions, a range of penalties could be imposed: ranging from fines, through suspension of licence to prosecution.

Licensing would have two major benefits, according to Animal Equality. First, it would ensure that all farms are regularly inspected by the state – not least because through licensing fees it creates a way to fund those inspections. Second, it offers another enforcement tool to deal with farms that fail to comply with regulations – removing their licence – to offer an alternative to doing nothing or prosecuting.

We understand that it is an idea that has been given consideration by DEFRA and by some past ministers in the department. Slaughterhouses are already licensed, which appears to have somewhat improved welfare outcomes. Intensive farms of over 40,000 poultry, 2,000 pigs or 750 sows are required to get environmental permits.⁹⁵ And the blueprint for licensing already exists in other related sectors: to sell pets as a business, or to run a zoo, a license is required.⁹⁶

Some people we spoke to raised objections to the very principle of requiring a licence to farm, seeing it as antithetical to individuals’ natural or traditional rights and freedoms. These objections were expressed rather vaguely, so it is difficult to pin down the argument beyond a sense that this would be seen in some quarters as a culturally alien restriction of freedom. However, we have no sympathy for this argument. Licensing is a common requirement of a range of significant economic

activities, from practicing medicine or law to selling alcohol. As proponents of farm licences argue, it is widespread across other activities involving animals. In fact, a license to farm is effectively already required in order to operate in some animal farming sectors, albeit unofficially through farm assurance schemes. Given the moral stakes of taking responsibility for other living creatures, we do not think there is anything fundamentally unreasonable or illegitimate about requiring farms rearing animals to be officially licensed. The question is whether it is practically effective or worthwhile.

Used solely as a compliance mechanism, licensing risks being poorly targeted and disproportionate

On that score, we have serious concerns about licensing. Take the two arguments for licensing in turn. First, that it will ensure all farms are regularly inspected. That argument assumes that the current risk-based approach to inspection is not working, that many farms that are effectively exempted from inspection are likely non-compliant and that they need to be regularly audited in order to keep them honest. While we agree that greater inspection would be desirable, we are not convinced that the priority should be universal coverage. The evidence that we have, particularly the Warwick study first cited in Chapter One, suggests that non-compliance is concentrated in a minority of farms – a significant minority, sure, but still a minority. Recall from Chapter One, that random cross-compliance checks turned up non-compliance in just 8% of cases, and non-compliance involving “unnecessary” pain or distress in only 0.3%. That estimate may be on the low side – by comparison, analysis of random government inspections of French cattle farms between 2010 and 2013 found that 8% were “severely” non-compliant.⁹⁷ But given the standards used by farm inspectors in the UK, we would expect the majority of farms to be deemed compliant if inspected. Our view is that the net needs to be spread a bit wider in terms of inspection, but if we try to cover everything we will relatively quickly hit diminishing returns. We should have more inspections, but more targeted inspections.

In fact, given the widespread rhetoric around ‘hard to reach’ farmers we presented in the first chapters, there is a significant risk that a licensing regime would lead to enforcement activity being targeted at smaller farmers on the fringes of the system. Anecdotally, much of the enthusiasm that exists for licensing comes from officials that are keen to improve surveillance and influence over the ‘long tail’ of farms. That is understandable – licensing makes sense if you believe that farmed animal welfare enforcement is a problem of the long tail. Yet the evidence is far from clear that smaller and more peripheral farms have worse compliance, and we are certainly sceptical that welfare outcomes are worse than on large intensive farms. Licensing could very well have perverse consequences.

The second argument for licensing is that we need another enforcement tool. As we set out in Chapter Three, there already exist a range of enforcement tools between informal advice and guidance and full prosecution. Yet improvement notices are used very infrequently, almost as rarely as prosecution. Whether penalty notices are utilised remains to be seen. The bigger issue seems to be a culture of informality, and

a natural sympathy for farmers. If enforcement agencies are unwilling to use the tools they already have, is there really any reason to think they would threaten revocation of a licence, with the potential consequences for farmers' livelihoods and identities? We are sceptical.

It is true that licensing fees could generate income to fund inspections. Yet a charge of this sort – an effective tax on farms – would likely be resented, if it appears untargeted and disproportionate to the problem of non-compliance. From the evidence that we have, it would seem likely that the vast majority of farms would be ticked off as compliant, and it is unclear why the enforcement agency would remove licences when they currently seem so reluctant to use the measures already at their disposal.

Mandatory licences could be justified as part of an 'insourcing' of farm assurance, especially if mooted changes to labelling are introduced

A universal licensing system aimed only at enforcement of standards would mean that most inspection activity would be redundant, merely confirming that farms expected to be compliant with standards are in fact doing so. As such, it would be wasteful, in a context where state resources and capacity are particularly scarce. Moreover, that waste is likely to seem particularly egregious to the farmers expected to fund the system through their licence fees. We also heard concerns that mandatory minimum standard licenses could encourage farmers to drop out of assurance schemes to avoid paying two license fees (one mandatory, one voluntary). That, perversely, could have a negative effect on welfare.

These objections could be addressed if the licensing regime were integrated into a broader reform of assurance and labelling. As we have already outlined, the state has largely delegated much of the activity of enforcing farmed animal welfare standards to private assurance schemes, under the principle of earned recognition – most notably, Red Tractor (the scheme with the lowest minimum standards and widest reach). We have also suggested that this is not a satisfactory state of affairs, given the conflicts of interest that private assurance schemes face, and their failure to consistently address non-compliance with welfare laws and regulations.

A universal licensing scheme would be more justified, in our view, if it addressed this issue, by 'insourcing' some welfare assurance activities from the private sector. In other words, farmers would be mandated to obtain either a state-run 'minimum welfare' licence that would replace lower standard welfare schemes, such as Red Tractor (which operate fairly close to the legal minimum in any case), or to participate in a higher welfare private assurance scheme, such as that of the Soil Association or RSPCA Assured.

The creation of a mandatory minimal welfare license in the place of Red Tractor would serve to avoid the duplication of cost and activity. Instead of spending several hundred pounds a year on assurance scheme membership – Red Tractor's annual licensing fee is 0.05% of sales from farmed animal products, which amounts to £300-500 for typical farms – that money could be used for licence fees that fund state inspection. The bulk of the 350 inspectors and 60,000 inspections conducted

by Red Tractor would be carried out instead by the state, with the APHA being an obvious candidate to operate this licence scheme.

Throughout our interviews, we heard how the Red Tractor scheme operates as a de facto licence in certain sectors (for example, dairy and pork), since farmers will be unable to sell to retailers without the certification.

“Dairy pigs and poultry are operating on that basis anyway, dairy in particular, because of the perishability of the product. If you withdraw their Red Tractor certification that the milk buyer requires them to have to go sell it, there’s not another buyer...So there is effectively a license to farm already to operate it the normal way”

In that case, it seems natural to ask why the industry – with its conflicts of interest – should operate the licensing regime and set the standards rather than the state. Why not insource? One expert considered the insourcing of assurance schemes to be fairly straightforward:

“Most British farms are Red Tractor certified, so you can easily just replace that with a licensing scheme...it would be the same but just with official oversight attached onto it”.

The question of Red Tractor’s role is particularly salient just now given the apparent decline in trust in the organisation amongst farmers in response to the introduction of an environmental standards module. That has prompted the National Farmers Union and the Agricultural and Horticulture Development Board, which sit on the “ownership board” of Red Tractor⁹⁸, to carry out a review of assurance schemes and their fitness for purpose in the modern context.⁹⁹ It would be very surprising if that review suggests greater state involvement in assurance, but the recent tumult suggests that the status quo is not satisfactory to anybody. Indeed, some of our interviewees close to the sector suggested that there is a non-trivial body of opinion that may well be open to a return to state enforcement of standards:

“I’m not sure as many farmers as you might think would be opposed to a more formal inspection from a government official, because at least the state is funding rather than it coming out of their own pockets. Farmers of a certain era, age, vintage, there was the man from the government was coming down the farm a lot more often, so it would probably feel like a return to something rather than it being a whole new thing.”

This proposal comes with a potential trade-off. While Red Tractor’s standards are often described as closely aligned baseline legal conditions, they are somewhat above the minimum.¹⁰⁰ The gamble of insourcing its assurance activity is that more robust enforcement from more independent state inspectors of what are on paper marginally lower standards lead to a net gain for animal welfare.

Now, there is certainly no guarantee that agents of state will adequately enforce regulations. As we have seen, there remains a culture of informality around breaches. Licensing of slaughterhouses has likely improved things, but has certainly not eradicated welfare issues: *The Enforcement Problem* describes “deliberate cruelty and abuse – including in the presence of a vet and an FSA inspector” post-licensing.

But the expectation is that greater government enforcement of standards – while far from perfect – would be an improvement on the status quo. Crucially, government inspectors would not face the same perverse incentives that limit ability of industry-run schemes to identify and act against non-compliance.

Another reason why it could be a particularly timely moment to reconsider the system of inspections and assurance is that the government is currently consulting on reforms to food labelling. The proposed changes would involve mandatory labels on pork, chicken and egg products reflecting the animal welfare standards of their production (with extension to the scheme to dairy, beef and sheep products kept under review). Under the government's favoured approach, there would be a five tier system – for example, number or letter grades, or stars: unclassified, standard (meeting baseline regulations), improved, high and highest welfare.¹⁰¹ There would be three different tiers of products above minimum standards, with higher grades for farms with better stocking density, enrichment, outdoor access, assessment and management procedures and less use of procedures like tail docking or beak trimming.

Labelling is one of the key levers policymakers have to raise welfare standards on farms. The DEFRA consultation highlighted how the 2004 requirement for eggs to be marked as either caged hens, barn, free-range or organic saw a substantial increase in the market share of free-range eggs, rising from less than 30% in 2004 to over 60% in 2023.¹⁰² And the current assurance system is failing to facilitate the growth of higher welfare production through clear consumer labelling. In the consultation, the government acknowledges that the voluntary nature of the assurance labelling approach is confusing for consumers, and that there is currently no clear and consistent way to differentiate between products based on their animal welfare considerations. This is true even for the most prominent schemes. Research has shown that almost two-thirds (64%) of UK consumers are unsure of what the Red Tractor assurance scheme is.¹⁰³ The consultation goes on to describe how increased transparency for consumers can enable UK farmers who are already meeting, and often exceeding baseline welfare standards to be recognised and rewarded for the way they operate. In other words, outsourcing the authentication of farming standards to private and voluntary schemes fails to financially reward farmers who farm according to higher welfare practices. The consultation document observes that “a robust system for monitoring and enforcement is critical to ensure consumers can have confidence in the label”.¹⁰⁴ It proposes that the government would designate an enforcement agency with the powers to monitor and investigate compliance with labelling standards, and to prosecute or impose civil sanctions (presumably fines) where producers fail to meet the claimed standard. The natural agency to take on this responsibility, given its existing role within animal welfare enforcement, is the APHA.

However, the consultation document suggests that the monitoring and enforcement of labelling standards is expected to follow a similar model to enforcement of legal and regulatory standards more generally. That is, the bulk of enforcement activity is expected to be delegated to private assurance schemes, with the state as a backstop. The document notes that respondents to the call for evidence worried about the additional burden of increased audits and urged the government to make

use of existing accreditation schemes where possible. As a result, the government proposes to set up a register of farm assurance schemes, and align them to welfare tiers, using the existing inspection regime to evidence labelling claims.

In previous chapters, we have described the way that the existing system of farm assurance has come under strain as it has been pressed into service to replace the functions of the state. It should be clear that private assurance schemes, with their mixed incentives and conflicts of interest, cannot be substitutes for state enforcement of the law, even if they can legitimately help the state to target its resources.

The ambition of the proposed labelling changes will merely load more pressure upon private assurance schemes, and it is far from clear that they are capable of bearing it. Citing academic analysis and several investigations where assurance schemes have been exposed for failing to uphold legal standards on farms, we have seen that assurance scheme membership cannot guarantee legal compliance, let alone higher welfare standards, even if it generally correlates with better welfare. The scepticism and mistrust engendered towards private assurance schemes is liable to get worse if we expect them to make finer grained judgements, like the welfare tiers on labels.

That raises the question of why the state should continue to outsource such evaluations. In many of our discussions, the relationship between enforcement and improvement has been raised. An effective system should not just root out bad practice, but should contain mechanisms and incentives to support farms to do better. The proposed labelling changes offer a step in that direction, offering recognition of producers that go above and beyond the minimum standard. But consumers must have both faith in the authentication of standards and clarity over what standards labels describe.

As such, it begins to resemble a body like Ofsted, which exists not merely to identify underperforming schools and put them in special measures or close them down, but also to evaluate their performance with a tiered grading system. While self-regulation can have its place, it would seem peculiar to say the least for Ofsted inspections and reports to be produced by a body run by schools themselves. In that domain, we believe that independence is critical for such evaluations to genuinely drive improvement and to inform users or consumers. So why is farming different?

Under this system, licensing fees could also be used to financially incentivise higher welfare practices. Fees could be varied according to welfare tier – those farms that have obtained the mandatory minimum standard licence could, through slightly higher license fees, subsidise the license costs of farms seeking to operate to the higher standard private schemes. For example, the minimum standard welfare farms might have their fees increased by 50%, while those participating in highest welfare assurance schemes could have their licence fees halved. Given the sums of money involved, we expect this incentive would be relatively weak, but it would present both a signal, and a gentle nudge in the direction of higher standards.

Farmers would remain free to participate in private assurance schemes that require they operate to higher welfare standards (as many currently do with Soil

Association's organic certification or RSPCA Assured). These are not without their problems, which are well documented. In particular, their private and voluntary nature creates conflicts of interest. However, in general we believe that such schemes do have a role to play in encouraging farms to go beyond the minimum standard, and indeed to offer a counterbalance to state inspection and enforcement, in some ways 'keeping them honest'. Crucially, the government must publish which assurance schemes should be accredited for farmers to choose as higher welfare alternatives to the mandatory minimum license scheme.

Finally, to ensure that farmers are able to follow the husbandry practices that most effectively enhance farmed animal welfare, obtaining a basic educational certification relevant to animal welfare matters could be a criteria for farmers to meet in order to receive a license. A common explanation for non-compliance with animal welfare rules is that the offenders in question 'did not know any better'. Having to complete a training course, provided through a local agricultural institution or further education college, in order to obtain a license (whether mandatory or higher welfare), would serve to address issues arising due to a lack of appropriate training.

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