

PRESS SUMMARY

The King (on the application of The Humane League UK) (Appellant) v Secretary of State for Environment, Food and Rural Affairs (Respondent) [2024] EWCA Civ 1560

On appeal from: [2023] EWHC 1243 (Admin)

Judges: Lord Justice Underhill, Vice-President of the Court of Appeal (Civil Division); Lord Justice Males; and Lord Justice Snowden

Important note for press and public: this summary forms no part of the Court’s decision. It is provided so as to assist the press and the public to understand what the Court decided. The full judgment of the Court of Appeal is the only authoritative document. Judgments are public documents and are available at: www.judiciary.uk, <https://caselaw.nationalarchives.gov.uk>

Background to the appeal

1. As a result of genetic selection, ‘fast-growing chickens’ can be expected to reach slaughter weight more quickly than slower-growing breeds [8]. Like other farmed animals, they can only be lawfully kept for farming purposes if paragraph 29 of Schedule 1 to the Welfare of Farmed Animals (England) Regulations 2007 is satisfied. That provision will be satisfied where it can be reasonably expected, on the basis of the genotype or phenotype of the animal in question, that it can be kept without any detrimental effect on its health or welfare [1].
2. This appeal concerned the meaning and effect of paragraph 29. The issue arose in the context of a claim for judicial review brought by the Appellant, The Humane League UK, against the Secretary of State for Environment, Food and Rural Affairs, the Respondent. Through its claim, the Appellant sought a declaration that the Respondent’s policy permitting the keeping of fast-growing chickens (as set out in his Code of Practice) and his system for monitoring their welfare were both unlawful, on the basis that the Respondent had misinterpreted paragraph 29 [1]. The claim was dismissed by Sir Ross Cranston, sitting as a Judge of the High Court. The appeal was from that dismissal.
3. By the end of the hearing before the Court of Appeal, the Appellant had changed the terms of the declarations it sought. Recognising that the Court could not resolve the contested scientific issues necessary to determine whether the keeping of fast-growing chickens is unlawful, the Appellant no longer sought declarations as to the lawfulness of the Secretary of State’s policy and system of monitoring [2], [38], [68] and [70]. Instead, it sought declarations as to aspects of the meaning and effect of paragraph 29 in the abstract [2].

Judgment

4. The Court of Appeal unanimously dismissed the appeal. Whilst in some respects the Court took a different view from the Judge on the meaning of paragraph 29, this was not an appropriate case in which to make the declarations sought [70]. The reasons for the decision were given in the judgment of Lord Justice Males, with Lord Justice Underhill and Lord Justice Snowden adding short concurring judgments.

Reasons for the judgment

5. The Court of Appeal had been presented with evidence addressing concerns about the health and welfare of fast-growing chickens. However, the conclusions of that evidence were controversial and the validity of the trials on which they were based was challenged by the

Respondent. The Court made clear that it was not in a position to reach any conclusions about the evidence and had not been asked to do so [10]. In other words, the Court could not determine whether the keeping of fast-growing chickens was lawful in accordance with paragraph 29.

6. The Court explained that it was left with a dispute about the meaning and effect of paragraph 29 which was not focused on the lawfulness of any particular decision [33]. It was reluctant to give such a ruling in the abstract but considered it necessary to do so given the Judge had expressed some conclusions about the meaning of paragraph 29 and the Court had heard full argument about it [3].
7. In summary, the Court reached the following conclusions as to the meaning and effect of paragraph 29:
 - a. The provision was correctly characterised as a prohibition subject to a proviso. That is, the keeping of animals for farming purposes was prohibited unless it could reasonably be expected, on the basis of their genotype or phenotype, that they could be kept without any detrimental effect on their health or welfare [46].
 - b. The words ‘on the basis of their genotype or phenotype’ made clear that the prohibition was concerned with the adverse consequences of the way in which the animals in question had been bred. It required a comparison with animals of the same species which had not been bred in the same way, and therefore did not have the same genotype or phenotype. Paragraph 29 was not concerned with the environmental conditions in which animals were kept; it was concerned with the characteristics of the breed, and with detriment which could not be mitigated by improving the animal’s environment [49] and [54].
 - c. Accordingly, paragraph 29 was a prohibition on the keeping of farmed animals whose genotype and phenotype meant that, regardless of the conditions in which they were kept, they could not be kept without detriment to their health or welfare. However, there was a difference between characteristics which were inherent in the nature of the breed and which could not be mitigated by changing the environmental conditions in which the animal was kept and those which could be so mitigated [50].
 - d. The words ‘can reasonably be expected’ demonstrated that the test of expectation was objective, although the question of what information a person would be taken to know was a question of fact. It was reasonable to expect that a person keeping or intending to keep fast-growing chickens, who was responsible for their health and welfare, would at least be aware of the controversy about the keeping of such chickens and would take some steps to inform himself about it [53].
 - e. The words ‘any detrimental effect’ did not mean ‘any obvious or deleterious effect’. A detriment may exist even if it is not obvious. It would also be wrong to require that the effect be anything different from, or more serious than, ‘detrimental’ [56]. But an effect which was minor or only of short duration was not within the scope of paragraph 29 [57].
 - f. There was no question of balancing the advantage of higher productivity against the detrimental effect(s) on an animal’s health or welfare. If a given breed could reasonably be expected to suffer a detrimental effect on its health or welfare because

of its genetic make-up, the prohibition on keeping that breed of animal would apply regardless of any commercial advantages which it may have [58].

8. Those conclusions did not mean that the Code of Practice the Respondent had issued for the welfare of meat chickens and meat breeding chickens was unlawful [60]. The Respondent was under no duty to explain the meaning of paragraph 29 in the Code of Practice [62] and the Code did not wrongly suggest that productivity considerations could be weighed against animal welfare detriment [63]. The Appellant did not pursue its ground of appeal in relation to the unlawfulness of the Respondent's system for monitoring the welfare of fast-growing chickens, so it was unnecessary for the Court to address it any further [66].