

Legal status and malpractice

THIS series gives readers the opportunity to consider and contribute to discussion of some of the ethical dilemmas that can arise in veterinary practice. Each month, a case scenario is presented, followed by discussion of some of the issues involved.

In addition, a possible way forward is suggested; however, there is rarely a cut-and-dried answer in such cases, and readers may wish to suggest an alternative approach. This month's dilemma, 'Legal status and malpractice', was submitted and is discussed by Simon Coghlan. Readers with comments to contribute are invited to send them as soon as possible, so that they can be considered for publication in the next issue.

The series is being coordinated by Dr Steven McCulloch, acting director of the Centre for Animal Welfare, University of Winchester. It aims to provide a framework that will help practising veterinarians find solutions when facing similar dilemmas.

Legal status and malpractice

An expert in animal law asks if you will lend your veterinary expertise to a project appealing for a law change regarding pets. This change would legally recognise emotional damages arising from veterinary malpractice. Pet owners could sue for compensation, capped at £10,000, for emotional harm when veterinary negligence causes the death of an animal companion. Should you help?

Issues to consider

Suppose a veterinarian negligently fails to treat a hospitalised dog or cat, causing a painful, unnecessary death. Both patient and client are harmed. Certain 'remedies' potentially exist for such injustices. Criminal law punishes animal cruelty, and professional bodies (such as the RCVS) regulate veterinary standards and behaviour. Economic damages, usually minimal, may be obtained for the fair market value of a deceased animal.

However, it is difficult or impossible in most legal systems for plaintiffs to recover compensation for emotional damages when animal companions are lost to negligence. Some states in the USA recognise non-economic damages for loss of pets, but most do not. Animals are legal property. That widespread classification originates from earlier centuries in which animals were not valued as family members.

But social norms and laws can evolve. Some scholars argue for

proper legal recognition of the reality of contemporary animal companionship (Wise 1998, Sirois 2015). They suggest that legal systems should not only award emotional damages in certain circumstances for the loss of a human family member, but also for the loss of a non-human animal companion who is like a family member.

We may be uneasy about greater exposure to this liability. Veterinarians already have relatively high suicide rates (Bartram and Baldwin 2010). Nevertheless, is the extension of such law to veterinary malpractice, established according to the level of evidence needed in civil cases, fairer overall? Many people now treat animals somewhat like children and spend large sums on veterinary treatment (Podberscek and others 2005). Veterinarians help foster the view that animals are not 'replaceable' as even expensive property is replaceable. Tort law arguably delivers partial redress for animal-owning victims by providing

non-trivial social recognition of wrongs suffered. Mere retrieval of economic loss cannot achieve this aim. Such law may further discourage veterinary malpractice, potentially raising overall standards of care. Nonetheless, some criticisms have been advanced.

First, perhaps legally enshrining a more-than-economic value will render pets non-property. By not recognising pets as property, society may expose pets to harm by removing a mechanism that assigns legal responsibility for animal welfare to owners. Ownership also protects people from animal theft. However, tort law need not reclassify pets as, say, legal persons or wards. Pets can remain as property in the legal sense, even if we regard them as more than mere property in various ways (Green 2004, AVMA 2005).

Second, such legislation may promote defensive 'over-servicing'. Veterinary over-servicing risks unfairness to clients and harm to patients. This may be true, but there are means to reduce over-servicing, such as clearly explaining risks and benefits of options to clients and keeping good records of communication. The profession can also promote the idea that over-servicing itself is poor medical practice.

Simon Coghlan is a veterinarian and has a PhD in philosophy. He is currently a lecturer in health ethics and professionalism in the School of Medicine, Deakin University, Geelong, Australia. He writes on veterinary ethics, animal ethics and applied ethics.

Any thoughts?

Readers with views to contribute on 'Legal status and malpractice' should e-mail them to vet.inpractice@bmj.com so that they can be considered for publication in the next issue. The deadline for receipt of comments is March 23, 2018. Please limit contributions to 200 words.

Third, malpractice insurance premiums for veterinarians may rise significantly (AVMA 2005). Veterinarians might pass on costs to clients, increasing veterinary fees and potentially diminishing animal welfare. However, Green (2004) calculates that even large increases in cost of insurance would affect veterinary fees only minimally.

Possible way forward

Possible benefits of emotional damages legislation include fairness to distraught victims and deterrence of medical negligence. Do the alleged negative consequences – over-servicing and veterinary fee increases – outweigh these benefits? Part of the answer may turn on the probability of them occurring as a result. In deciding whether to fully support the animal law expert, it would seem sensible to explore such questions in the UK context.

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