

In the Consistory Court of Bristol

In re Redcliffe, St Mary the Virgin

### JUDGMENT

1. This is a petition for the introduction of material to deter pigeons from resting or perching in the North porch of this Grade I listed church.
2. The problem that the Church has encountered is not uncommon. Pigeons have discovered that this lovely church is an ideal place to escape inclement weather and to provide a safe space to nest. The petitioners put it this way:

The north porch has suffered from pigeon problems for a number of years. The porch itself provides a number of readily accessible perching points as well as dry and warm nesting sites. When pigeons select nesting locations, reproduce and subsequently raise young the newly born young birds are highly likely, once sexually mature, to return to the same location to raise their own family. With no external intervention the pigeon problem becomes ever more significant.

Problems with pigeons include fouling which is unsightly, which can also cause a slip hazard and in larger amounts can cause diseases. Instances of birds fouling directly on users of the church could occur.

3. The petitioners have tried a number of options to deter the pigeons:

Having endeavoured to control the localised population by undertaking; trapping and provision of spikes and gel, all failing to stop pigeons roosting and nesting.

Shooting was employed, work by the existing pest control contractor has been successful; however this has been a reactive service reliant upon church staff checking the porch on a regular basis for new roosting spots and nesting areas. Shooting birds externally is not recommended due to the proximity of the highway and more importantly the potential adverse reaction from members of the public.

Netting across the roof void of the porch was considered but felt would be unsightly detract from the beauty and history of this part of the church.

There are many fine and detailed architectural features found within the north porch many of which, unfortunately, provide ideal nesting and perching sites for pigeons.

In almost all pest pigeon scenarios where proofing building structures is required an element of combinations of systems and population management are required. There will also be an element of compromise needed.

The perfect solution is to deny access to the roosting and nesting sites – simply put in this case would be to keep the north porch doors closed at all times. Clearly this is not an acceptable solution. Therefore a combination of exclusion and deterrent systems is felt be required and appropriate.

4. As noted above, none of the previous schemes have been wholly successful. The shooting of pigeons appears to have had some marked success, I note however that this is a 'reactive service' reliant on the pigeons being spotted. There are also concerns that shooting pigeons outside the church would have the potential to create an 'adverse reaction from members of the public'. The implication of that is that the shooting of pigeons inside the church has not caused an 'adverse reaction'. I have to admit in passing that I am impressed by the sang froid of a congregation that apparently does not react adversely to guns being discharged inside its church. It gives a startlingly fresh insight into the phrase 'the Church militant here in earth'. I should warn the petitioners however that under the terms of the Wildlife and Countryside Act 1981 killing pigeons even with a 'General Licence' other than "*...for the preservation of public health and public safety*" would be illegal. They should also be alive to the fact that General Licences to kill pigeons are not being issued until further notice.
5. The proposal is that a pigeon deterrent system be installed. The system would involve the renewing of bird spikes and gel, but couple these with a rather more high tech solution. This is a device which has the tradename 'Avishock'. The system is an 'Ultra-low profile rubberised track with conductor strips/rails on the upper surface. This track is fitted to an energiser which feeds a 5000v electrical 9ma current.' I am assured that it: 'Works in a similar way to an electric fence for cattle.' When pigeons (or other birds) land on the conductor strip they are given a very small but disconcerting electric shock. This shock is sufficient to make the pigeons leave the areas that they have landed on and, importantly, persuades them not to return.
6. The DAC were cautious of approving the system saying:

The DAC was concerned about the legality of the avishock system. Particularly as, if the system caused harm to wildlife the property owner would be legally responsible and could be prosecuted for the animal cruelty under the Wildlife and Countryside Act 1981 & the Animal Welfare Act 2006.

However, the DAC recognises that this product is very common and is used on a variety of buildings.

As this is the case, the DAC would like to defer to the Chancellor's judgement of the legality of the avishock system.

7. The concern about the welfare of the pigeons was raised by Bristol Council when the petitioners telephoned them for advice. There were clearly two telephone calls, one on the 3<sup>rd</sup> April 2019 and one on the 4<sup>th</sup> April 2019 and the notes read as follows:

**Note following phone call to the Pest Control (Bristol Council)**

**03/04/2019**

**Note following phone call to the Bristol Council, Pest Control Department**

It was confirmed by the Bristol Council's Pest Control department that any measure can be used to deter pigeons including the electronic pest deterrent. There is no reason to believe this way of deterring the pigeons is illegal or would harm the birds. Therefore if the product is registered/complies with British Standards it can be installed.

Anna Taylor

**Note following phone call to the Bristol Council, Pest Control Department**

**(Customer Service)**

**04/04/2019**

**1pm**

Customer Service Operator confirmed with the Pest Control Assistant Manager (Mr George Canecky) that the electronic pest deterrent is not illegal and can be installed as long as the pest control contractor is a registered company and the product they offer is registered/complies with British Standards. There is no reason to believe this way of deterring the pigeons would harm the birds but consideration should be taken to make sure used voltage is at the right level. However, it was pointed out that if a complaint is made by a public member stating that the measure used is harmful to birds (pigeons or any other birds) property owner has legal responsibility and can be prosecuted for the animal cruelty (the Wildlife and Countryside Act 1981 & the Animal Welfare Act 2006).

8. With the greatest respect to the Council those pieces of advice appear to be contradictory and have clearly caused the DAC and the petitioners a deal of concern. As both notes indicate that there is no reason to believe that this way of deterring the pigeons is illegal or would harm the birds, I am a little surprised to see that the second note indicates that if a member of the public simply states that 'the measure used is harmful to birds' the petitioners could be prosecuted for animal cruelty.
9. In those circumstances I have to satisfy myself that the proposed non-lethal control proposed (the installation of the Avishock system) does not fall foul (if my pun can be excused) of the law.
10. S 1 of the Wildlife and Countryside Act 1981 reads:

*Protection of wild birds, their nests and eggs.*

*(1) Subject to the provisions of this Part, if any person intentionally –*

*(a) kills, injures or takes any wild bird;*

*he shall be guilty of an offence.*

11. In practice, where the control of feral pigeons is concerned the Wildlife and Countryside Act 1981 only provides specific advice for the use of lethal controls or for the removal and destruction of nests and/or chicks. In all matters relating to the protection of buildings with deterrents it is the Animal Welfare Act 2006 (formerly the 1911 Protection of Animals Act) that is currently considered to be the more appropriate legislation. The Animal Welfare Act 2006 deals with issues relating to cruelty or unnecessary suffering and although cruelty and unnecessary suffering may be associated with culling operations, it is more commonly associated with the installation of deterrents. Of relevance in this case is the example of birds becoming trapped behind nylon bird netting installed on a building and dying of starvation as a result. The petitioners should bear this in mind were they mindful to reconsider installing any netting as they have done in the past.

12. In my opinion any prosecution would most commonly be brought under the Animal Welfare Act 2006 and be brought on the grounds of causing 'unnecessary suffering'. Section 4, paragraph 18 of the Explanatory Notes of the Animal Welfare Act 2006 states:

The 1911 Act makes it an offence to cause unnecessary suffering to any domestic or captive animal, with limited exceptions including suffering caused under the Animals (Scientific Procedures) Act 1986. The 1911 Act has formed the basis for most prosecutions concerning animal cruelty and has been amended by several subsequent Acts. The provisions of the 1911 Act no longer reflect modern practice. Excepting the restriction to vertebrates, this section is intended to replicate the protection provided by the 1911 Act, but to simplify and update the legislation.

13. If a case was brought, a court would have to determine whether 'unnecessary suffering' had occurred or was occurring by applying section 4, (3) of the Animal Welfare Act 2006:

The considerations to which it is relevant to have regard when determining for the purposes of this section whether suffering is unnecessary include—

(a) whether the suffering could reasonably have been avoided or reduced;

(b) whether the conduct which caused the suffering was in compliance with any relevant enactment or any relevant provisions of a licence or code of practice issued under an enactment;

(c) whether the conduct which caused the suffering was for a legitimate purpose, such as—

(i) the purpose of benefiting the animal, or

(ii) the purpose of protecting a person, property or another animal;

(d) whether the suffering was proportionate to the purpose of the conduct concerned;

(e) whether the conduct concerned was in all the circumstances that of a reasonably competent and humane person.

The explanatory notes read as follows:

Subsection (3) sets out considerations to which the courts should have regard in determining whether the suffering is unnecessary. Considerations focus on the necessity, proportionality, humanity and competence of the conduct. The court should take all relevant considerations into account, weighing them against each other as appropriate. Where, for example, a horse suffers while being used for the purpose of riot control, this may well be considered necessary for the purposes of protecting persons or property (one of the considerations specified in the section). Or, where legitimate pest control activities entail an animal suffering, a court may consider whether this was in compliance with a relevant enactment, for a legitimate purpose, and proportionate to that purpose. The court would also consider the extent to which the suffering could reasonably have been avoided or reduced (another of the considerations specified in the section). Where suffering inevitably occurs in the course of complying with any regulations, licence or code of practice an offence would not normally be committed.

14. The petitioners have provided certain documents to assist me in deciding whether the Avishock system may cause a pigeon or other bird 'unnecessary suffering', and if so, whether that suffering is necessary for the protection of persons or property or whether the suffering could have been avoided or reduced. I have been provided with a short summary of research carried out by the Central Science Laboratory in 2008. The Central Science Laboratory was an executive agency of the UK government branch, the Department for Environment, Food and Rural Affairs (DEFRA). It is now part of the Food and Environment Research Agency, which is in turn part of DEFRA. It specialises in sciences which form the basis of agriculture for sustainable crop production, environmental management and conservation and in food safety and quality.

The paper is entitled '*The risk of bodily injury to birds landing on an electrified bird deterrent*' and is dated 2008. The summary reads in full:

'The risk of bodily injury to birds landing on an electrified bird deterrent'

1. The Wildlife and Countryside Act prohibits the use of devices that cause bodily injury to a bird. An electrified bird deterrent in the form of an electrifiable track was tested here on adult pigeons and sparrows with the aim to establish whether it posed a risk to bodily injury to birds coming into contact with it.
2. Pigeons and sparrows were chosen as test species as they are potential target species and represent two different size classes of potential non-target species. The tests were carried out in aviaries, using a perch which was covered by the electrifiable track. This consisted of two electrifiable metal wires attached to a PVC track. Before the trial the track was wetted to simulate a rainy day.
3. The energiser used in this testing protocol was the Avishock SHK120 energiser.
4. All animals were examined by a veterinarian pre- and post-trial.
5. The pigeons received one to five shocks each, totaling 17 shocks. Of the thirteen sparrows six animals received one to five shocks each, totaling 14 shock events.
6. Pigeons landed on the track with either both feet spanning both wires, or with one foot on each wire. Sparrows only ever breached both wires with both feet. When each foot spanned both wires, the shock would have been localized to the feet only. Where each foot touched a different wire, the current will have flowed through the body from one foot to the other.
7. Pigeons visited the test-perch less often in the 70-72 hours after the trial, despite being able to gain access to preferred food from the perch. However, this is only a limited assessment of effectiveness of an electrified track and does not offer a robust evaluation of likely effectiveness under field conditions.
8. There was no evidence of bodily injury as confirmed by the post-trial examination. Based on these results it is unlikely that an electrified track with similar electrical properties will cause bodily injury to other birds with similar characteristics.

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CENTRAL SCIENCE  
LABORATORY

15. This is of some assistance, but it is limited. If there was a prosecution under the Wildlife and Countryside Act, this would assist a Court in deciding if injury had been caused to the pigeons. In my judgment however, the test for 'bodily injury' is a different one to the test in the Animal Welfare Act for 'unnecessary suffering', but the paper does assist in dealing with the physical effect of the device on the birds. I am therefore satisfied that the system produces no 'bodily injury'.

16. The petitioner's agents sought the advice of Rezarf limited who describe themselves, with professional modesty as 'the best pest solution'. The advice is as follows:

Shock tracking acts as an electronic bird deterrent. It delivers a harmless but disconcerting electric shock bird deterrent and works in just the same way as electric fencing for livestock. This electronic wire bird control solution comprises low lying PVC strips containing stainless steel braids which are set apart and carry a small, regular electrostatic pulse by means of the 240V charger. It does not take long for the birds to learn what happens when they step on the tracks, and they stay well away.

The pulse delivered is enough to put the birds off but not harm them. If shock tracking was cruel then it would have been banned by the bird lobby. The use of electronic bird control systems was restricted in the UK until the introduction of shock tracking systems, for fear of contravening the Wildlife and Countryside Act and the Animal Welfare Act.

"Avishock" has been tested and trialled by The Food and Research Agency (FERA) and found to be harmless to birds. Additionally, organisations such as Natural England, the Scottish Government, Welsh Assembly, Northern Ireland Office, RSPB, RSPCA and SSPCA view the product positively. The manufacturers set about proving to DEFRA through a series of independent trials at the Government's own Central Science Laboratory that the system caused no injury or unnecessary suffering to wild birds, and that is exactly what they achieved. It has long been felt that any such systems contravened the Wildlife & Countryside Act 1981, but via tests at CSL, the manufacturers and distributors of "Avishock" have demonstrated that no injury was caused to either pigeons or sparrows coming into contact with this system, so anyone installing "Avishock" could not be guilty of 'intending to harm' the birds, which is the critical wording in the relevant part of the Act.

This view on the Law has been accepted by all the relevant Government bodies, plus the RSPCA and the RSPB. This is relevant solely to "Avishock", not to similar systems until they have been tested in the same way. As a result, shock tracking is now accepted as being very effective and humane and is also approved by various public bodies.

*"A new non-physical bird management system which combines effectiveness with the assurance of no bodily injury. I can see lots of applications for it. Paul Butt" Natural England*

17. This enthusiastic encomium is rather undermined by an email from the RSPCA to the petitioners which states:

'This is about a system called Avishock. We are aware of it, but we do not endorse it and we, along with the RSPB, have worked to have any

references stating we endorse it removed from various websites that said we did! So no we do not support it'

18. The difficulty I have with that very brief email is that the RSPCA do not state in it why they do not support Avishock, in particular it does not state that they do not support it as it causes unnecessary suffering to pigeons.
19. I have to decide on the rather limited evidence I have whether the electric shock produced may cause a pigeon or other bird 'unnecessary suffering', and if so, whether that suffering is necessary for the protection of persons or property or whether the suffering could have been avoided or reduced. The literature refers to the effect of the system as being to 'disconcert' the pigeons. It is a little hard for me to fathom the existential angst of a feral pigeon and to know whether being 'disconcerted' could be considered suffering, let alone 'unnecessary suffering'. In that regard I note that pigeon repellent gel is lawful, reasonably effective and apparently unobjectionable. I asked the petitioners what the gel actually did. Their answer is:

The gel is placed in a plastic dish at approximately 450mm centres. The [gel] gives off a UV light which is invisible to us but to the pigeons, it looks like the building is on fire! The gel also contains oils that the pigeons don't like.

20. Of the many judgments I thought I would have to make as Chancellor I never thought one would involve trying to fathom whether a pigeon would be caused more suffering from the unshakeable (but wholly wrong) belief that his roost was both on fire and exuding unpleasant odours or from the unshakeable (but wholly true) belief that if he returned to his roost he would receive a disconcerting and mild electric shock to his feet. Such, however, is the glory of the Faculty jurisdiction.
21. The first decision I have to make is whether Avishock would cause 'suffering' to a pigeon. If suffering were to be caused I have to go on to decide, in all the circumstances of the statutory definition, whether that suffering was 'necessary'. I have been assisted in my research by a paper entitled **Unnecessary Suffering: Definition and Evidence**<sup>1</sup>The authors conclude:

We can conclude, with reasonable certainty, that animals are suffering, by making observations of changes in physiological and behavioural factors that are similar to the changes that tell us other humans are in pain.

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<sup>1</sup> Humane Society Institute for Science and Policy Animal Studies Repository, 1982 authors Frank Hurnik and Hugh Lehman of the University of Guelph.

22. In those circumstances I would have initially to analyse whether the application of the mild electric shock causes observable changes in behavioural factors similar to the changes that tell us other humans are in pain.
23. The evidence is that Avishock would cause the pigeons to move away from their roost as a result of the electric stimuli to their feet. In my Judgment this is a different appreciation of why a pigeon might move away than as a result of, for instance, a loud noise or a sudden movement towards it of an object or person.
24. In my judgment, 'suffering', in the widest sense, would be caused to a pigeon. That must be the case or the system would not work. The evidence is that the electrical stimulus causes them to move away from an area and not return.
25. The authors go on to identify a definition as to whether any suffering was 'unnecessary' in this way:

A determination of whether any particular instance of suffering is necessary or unnecessary must be based on an analysis of both the seriousness of the purpose of the act that involves pain in animals, and its relative avoidability, as well as more concrete concerns like costs and availability of resources for a given community.

I take the view that this definition of 'unnecessary' is broadly in line with the statutory definition set out in paragraph 13 above.

26. I have identified that suffering would be caused to pigeons, in my judgment however any suffering caused would be very mild, it would indeed be no more (and indeed arguably very much less) than the 'suffering' caused to livestock touching an electric fence. The phrase 'disconcerting' has been used of the shock, which persuades me that the suffering caused is not physically painful and, as I have already concluded, no physical injury would be caused by the device. The 'suffering' would be one of brief physical discomfort.
27. In my judgment the suffering is not 'unnecessary'. The conduct cannot reasonably be avoided in the particular circumstances of this case. There is damage being caused to a grade I listed church and there is the chance of distress being caused to those people who have to cope directly or indirectly with the fouling of the birds. Other methods of pest control have been tried and found wanting. I am satisfied that any suffering caused would be for a legitimate purpose as identified by the Statute, that is the protection of property. In my judgment the suffering is proportionate to preserve the building and to avoid distress to staff, visitors to the church and members of the congregation. In my judgment, having seen the application and assessed all the evidence presented to me, the conduct would be that of a reasonably competent and humane person.

28. This petition will pass the seal. I agree with the proposed conditions made by the DAC and adopt them:

1. The PCC should ensure that warning signs are displayed so that contractors who might carry out works to the porch are aware that avishock is in use; and
2. The design, size, means of fixing and location of the warning signs should be referred to the DAC prior to installation

12<sup>th</sup> March 2020

Justin Gau  
Chancellor