

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION (ADMINISTRATIVE COURT)
GRIFFITHS J [2021] EWHC 2199 (Admin)

B E T W E E N:

THE QUEEN
on the application of THOMAS LANGTON

Appellant

and

SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

Respondent

THIRD WITNESS STATEMENT OF ELEANOR BROWN

1. I, Dr Eleanor Brown MSc MA VetMB MRCVS, a Senior Civil Servant at the Department for Environment, Food and Rural Affairs (“Defra”) based at Seacole Building, 2 Marsham Street, London SW1P 4DF will say as follows.
2. This is the third witness statement that I have given in these proceedings. My first witness statement (which was before the High Court) is dated 25 June 2021, and my second witness statement is dated 16 July 2021. I set out my personal details and the details of my involvement in the subject matter of these proceedings in my first witness statement (see paragraph 2) and do not repeat them.
3. I make this third witness statement in order to update the Court of Appeal on a significant matter that has occurred since the High Court’s judgment in August 2021 – namely, the Secretary of State’s express consideration of the purpose of conserving biodiversity with reference to the statements made regarding the badger control policy in “Next steps for the strategy for achieving bovine tuberculosis free status for England – The government’s response to the strategy review, 2018” (“Next Steps”).
4. I refer in this witness statement to a bundle of exhibits marked EB3 in the form [EB3/page].

5. Following the High Court’s judgment in these proceedings, officials within Defra, including me, prepared a submission to the Secretary of State dated 22 October 2021 on the effects of the badger control policy on conserving biodiversity (“**the Submission**”). I exhibit the Submission, together with its relevant annexes and appendices, at [EB3/1-53].
6. The Submission invited the Secretary of State, in relevant part, “*to consider the attached evidence on the impacts of our badger control policy on conservation of biodiversity and confirm whether or not you remain content to continue with (i) the badger control policy ambitions set out in the government response to Sir Charles Godfray’s review of the government’s 25-year bovine TB strategy (‘Next Steps’)....*” [EB3/1]
7. The Submission described in its background the Appellant’s challenge to Next Steps. It stated that, although the High Court had dismissed that challenge, “*we nevertheless consider it appropriate to draw to your attention information relevant to the ecological effects of continuing badger culling and to check, for the avoidance of doubt, that your policy ambitions remain as expressed in Next Steps...*” [EB3/1].
8. The Submission further referred to the other options which the Appellant has suggested were available to the Secretary of State at the time of adopting Next Steps, such as (i) moving more rapidly towards non-lethal intervention; (ii) extending the scope of existing conditions on individual badger culling licences beyond Sites of Special Scientific Interest (“**SSSIs**”) to cover habitats and species designated as a priority pursuant to section 41 of the Natural Environment and Rural Communities Act 2006 (“**NERCA**”) across the parts of England involved; and (iii) commissioning further research on the ecological effects of culling and/or making support for continued culling conditional on the results of such research.
9. The Submission stated with respect to these options, “*You will need to decide whether you are satisfied that there is sufficient evidence available and/or research underway to continue licensed culling during the planned transition towards badger vaccination, whether any aspect of the culling policy should be suspended to gather more evidence, or whether more evidence should be gathered as culling continues.*” [EB3/1-2]. The Submission also referred to the possibility of amending the guidance given to Natural England pursuant to section 15 of NERCA.

10. Annex A to the Submission [EB3/4-32] included a summary of the existing and ongoing research on the effect of badger culling on other species, as well as explaining the duty imposed on the Secretary of State under section 40 of NERCA and the role of Natural England in considering biodiversity when it granted cull licences.
11. With respect to the latter, Annex A appended the witness statement given by Dr Matthew Heydon of Natural England in these proceedings and noted that “*when granting any licence, NE states that it will consider whether the licenced action will have an adverse effect on the conservation status of any species or habitat*” (§11) [EB3/6]. Annex A further referred to Natural England’s internal guidance for assessing ecological effects of culling on Special Protection Areas (“SPAs”), Special Areas of Conservation (“SACs”) and SSSIs, but also drew the Secretary of State’s attention to criticisms of Natural England’s consideration of biodiversity which have been raised by the Appellant in these proceedings (§13) [EB3/6]. Annex A also referred to and appended recent analysis Appendix 2a undertaken by Natural England entitled “Assessment of the Effects of Badger Culling on Biodiversity – August 2021” [EB3/23-31] and noted its conclusion that the available evidence “*indicates that there is no general adverse effect on biodiversity from badger culling and the risk of an adverse effect on species, including on species of conservation importance, is low and limited to a small number of species*” (§14) [EB3/6].
12. As to the evidence of the impact of badger culling on biodiversity, Annex A referred to: (i) evidence from the Randomised Badger Culling Trial (“RBCT”); (ii) the 2011 Food and Environment Agency Report; (iii) evidence from the current culling policy, including the research undertaken by the British Trust for Ornithology (Kettel et al. (2021)); (iv) the Godfray Review; and (v) further relevant research which was underway.
13. Annex A explored the possibility of further research, including a “*large- scale empirical study on the effects of badger culling on other species, including all of the species and habitats contained on the biodiversity list under Section 41 of NERCA*” (§33). However, it highlighted that such a study would be very costly and take many years to complete. This would either entail a delay to the move from culling to vaccination or mean that the research was of limited use as it would be “*assessing a policy which has been discontinued*” (§33) [EB3/11].

14. Following receipt of the Submission, the Secretary of State requested a meeting to discuss the evidence provided in Annex A and further his understanding.
15. This meeting took place on 8 December 2021: the Secretary of State considered the Submission and the evidence on biodiversity impacts summarised at Annex A and confirmed that he was content to proceed with the current policy, as set out in Next Steps. I exhibit hereto:
 - 15.1. An email from the Private Secretary to the Secretary of State, dated 20 December 2021, to Defra bTB programme in response to the Submission, at [EB3/54-56], confirming that Officials *“ran through the evidence outlined in the submission with him, and having considered that evidence and having enquired about the origin of the legal challenges, SoS was content to proceed with the policy.”*
 - 15.2. A further email from the Private Secretary dated 20 December 2021 at [EB3/58-61], containing the readout of the meeting of 8 December 2021, and confirming, *“The Secretary of State agreed to the following: [...] To proceed with the culling policy having considered the biodiversity impacts.”*
16. Finally I would like to clarify that the redactions made to the documents in EB3 were made for the purposes of removing material that is not relevant to these proceedings or maintaining legal privilege.

Statement of Truth

I believe the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:

A handwritten signature in black ink, consisting of stylized initials and a horizontal line extending to the right.

Dated: 28 April 2022