

**IN THE CROWN COURT AT AYLESBURY  
[Sitting at Bicester Magistrates' Court]**

**A20090060/61/62/63/64**

**BEFORE: His Honour Judge Tyrer DL  
[The Honorary Recorder of Aylesbury]  
L R Dray JP  
N W Few JP**

**BETWEEN:**

- 1. James John GRAY [Senior]**
- 2. Julie Cordelia GRAY**
- 3. Jodie June KEET [nee GRAY]**
- 4. Cordelia GRAY**
- 5. James John GRAY [Junior]**

**Appellants**

**AND**

**The Royal Society for the Prevention of Cruelty to Animals  
Respondents**

**REPRESENTATION:**

**For the First Appellant: Mr Michael Fullerton of Counsel;  
For the Second Appellant: Mr Richard Cherrill of Counsel;  
For the Third Appellant: Mr Nigel Weller, Solicitor Advocate;  
For the Fourth Appellant: Mr Richard Cherrill of Counsel;  
For the Fifth Appellant: Miss Sarah-lise Howe of Counsel;  
All instructed by Nigel Weller and Co;**

**For the Respondents: Mr Robert Seabrook QC and Mr Iain O'Donnell,  
instructed by Messrs Blake Laphorn**

**JUDGEMENT**

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## INTRODUCTION

This is the judgement of the Court to which all three members have contributed significantly.

This is an Appeal by five members of the Gray family, husband and wife, two daughters and a son, against their convictions before District Judge Vickers on the 8<sup>th</sup> May 2009 of a number of offences against provisions of the Animal Welfare Act 2006 [hereinafter referred to as "AWA"]. The First and Fifth Appellants were convicted of eleven charges, the Second, Third and Fourth Appellants of two charges. At the conclusion of the Respondent's case we dismissed two of the charges, numbers 6 and 10, both allegations against the First and Fifth Appellants only.

We have heard a considerable body of evidence over 34 days. It has included RSPCA Inspectors, witnesses engaged in animal welfare who became involved in the case, 16 veterinary surgeons who either attended the scene of this horse business or who became involved as a result of the seizure and removal of over 100 animals from the farm, lay witnesses and those with educational backgrounds. In addition, four of the five Appellants gave oral evidence. Three of the veterinary surgeons [who we came to label "super vets"] have given overviews: Peter Green for the Respondents and John Parker and Madeleine Forsyth for the Appellants. We are extremely grateful to all those who came to give evidence, often at considerable personal inconvenience.

This case has been about a horse business based at Spindle Farm, Chalk Lane, Hyde Heath, Amersham in Buckinghamshire and covers a time span from the Spring of 2007 to events in January 2008 when the RSPCA visited the establishment and, over a few days, were professionally advised to remove the equines there. The issues are wide ranging: factual and scientific.

## **THE LAW**

In our Ruling at the conclusion of the Respondent's case, we dealt with a number of issues of Law which the advocates had set out in various written submissions and supplemented by some oral argument. We do not intend to repeat ourselves and we have heard nothing to cause us to alter the decisions that we then made. If further reference is needed, the judgement was recorded and a transcript can be obtained.

It is necessary however to repeat the central issues of Law and for us to set out what it is that the Respondents have to prove.

There are two sets of charges here: those alleging offences under Section 4 of the AWA 2006 and those alleging offences under Section 9 of the AWA 2006. We shall look at each in turn.

### **1. Section 4.**

What is it that the Respondents have to prove?

Section 4 [1] reads:

#### **Unnecessary suffering**

A person commits an offence if –

[a] an act of his, or a failure to act, causes an animal to suffer,

[b] he knew, or ought reasonably to have known, that the act, or the failure to act, would have that effect or be likely to do so,

[c] the animal is a protected animal, and

[d] the suffering is unnecessary.

Section 4 [3] reads in part:

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.

Section 4 [4] reads:

Nothing in this section applies to the destruction of an animal in an appropriate and humane manner.

The only comment necessary is in relation to Section 4 [1] [b] and as to what is the necessary state of mind in an individual. Before the passing of this new Act, there was a great deal of case law on the meaning of the previous provisions of Section 1 [1][a] of the Protection of Animals Act 1911. In our judgement the old jurisprudence is no longer relevant. The section is clear and it is in the alternative.

What has to be established is either subjective knowledge namely personal knowledge, or objective knowledge namely that the individual ought reasonably to have known that his or her act or failure to act would cause an animal to suffer unnecessarily.

To prove an offence under Section 4 the Respondents must prove to the criminal standard of proof:

1. that the animal[s] in question is/are protected animals under the Act: there is no dispute about this ingredient. Section 2 defines what a protected animal is and an equine is clearly covered;
2. that the particular Appellant's act or failure to act caused the animal[s] to suffer unnecessarily;
3. that the particular Appellant either knew or ought to have known that his/her act or failure to act would cause that suffering or be likely to do so; and
4. that the suffering was unnecessary.

## **2. Section 9.**

What is it that the Respondents have to prove?

Section 9 reads:

### **Duty of a person responsible for animal to ensure welfare**

[1] A person commits an offence if he does not take such steps as are reasonable in all the circumstances to ensure that the needs of an animal for which he is responsible are met to the extent required by good practice.

[2] For the purposes of this Act, an animal's needs shall be taken to include –

[a] its needs for a suitable environment,

[b] its needs for a suitable diet,

[c] its needs to be able to exhibit normal behaviour patterns,

[d] any need it has to be housed with, or apart from, other animals, and

[e] its needs to be protected from pain, suffering, injury and disease.

[3] The circumstances to which it is relevant to have regard when applying subsection [1] include in particular –

[a] any lawful purpose for which the animal is kept, and

[b] any lawful activity undertaken in relation to the animal.

[4] Nothing in this section applies to the destruction of an animal in an appropriate and humane manner.

The key here is "responsibility." When is an animal the "responsibility" of an individual? The answer is to be found where "responsibility" is defined which is in Section 3 of the Act.

Section 3 reads:

### **Responsibility for animals**

[1] In this Act, references to a person responsible for an animal are to a person responsible for an animal whether on a permanent or temporary basis.

[2] In this Act, references to being responsible for an animal include being in charge of it.

[3] For the purposes of this Act, a person who owns an animal shall always be regarded as being a person who is responsible for it.

[4] For the purposes of this Act, a person shall be treated as responsible for any animal for which a person under the age of 16 years of whom he has the actual care and control is responsible.

In our judgement the meaning is clear from the words used. A person can be responsible on a temporary or permanent basis; it includes being in charge of an animal; it specifically includes that ownership of an animal carries responsibility for that animal with it.

A person takes all reasonable steps in circumstances where he/she does all that is reasonable for him/her to do to ensure that the needs of the animal for which he/she is responsible are met to the extent required by good practice. When he/she knew or did not know may be one of the circumstances to be considered when determining what steps a reasonably competent and humane person would do in his/her position. What is reasonable is an objective question.

There has been an issue about the meaning of Section 3 [4] of the Act. The Fifth Appellant was 14 rising 15 at the time of the matters complained about. His Counsel submitted that he cannot be “responsible” in Law. She accepted that he could be responsible for a positive act but not for a failure to act. She submitted that if Parliament intended that the First Appellant and the Second Appellant were to be responsible for animals for which the Fifth Appellant was responsible, then it would have said so.

In our judgment Section 3[4] does mean that: it means that the First Appellant and the Second Appellant can be responsible for any animal for which the Fifth Appellant was himself responsible, if the Fifth Appellant was under the actual care and control of the First Appellant and/or the Second Appellant at the time.

It does not mean that the Fifth Appellant cannot be responsible in Law. What other purpose can Section 3 [4] have? If the Fifth Appellant cannot be responsible in Law for an animal because of his age why did Parliament deal with the position of those who have actual care and control of him?

There is no ambiguity: the purpose of Section 3 [4] is to extend responsibility for any animal looked after by an under 16 years old to both the under 16 years old and to those who have care and control of him.

In short, an appellant must have had some responsibility for any animal during the period covered by the charge in question: some temporary or permanent custody or control, some ownership, some element of being in charge of the animal[s] in question.

To prove an offence under section 9 of the Act, the Respondents must prove to the criminal standard:

1. that the Appellant had a responsibility for the animal;
2. the steps that would have been taken by a reasonably competent and humane person in all the circumstances to meet that animal’s needs to the extent required by good practice; and
3. that the Appellant failed to undertake some or all of the steps above.

Mr Cherrill submitted and other Counsel supported him that the wording of charges 2 and 10 were confined to the particulars in Section 9 2 e in the summons and could not include those matters set out in Section 9 2 a-d inclusive. The Respondents submitted that the wording of the Section is inclusive and not exclusive and that the Appellants have known the details of the case that they have faced all along. We agree; the summons includes all the matters under Section 9 2.

One submission that was made by Counsel for the Fifth Appellant needs to be mentioned. Section 9 statements were read to us without protest. Counsel for the Fifth Appellant subsequently submitted that, just because that had happened, it did not mean that the evidence was agreed evidence and that it was open to us to disregard it. We regarded such evidence as having been agreed since no one wished the witnesses to be called nor to ask any questions.

For the avoidance of doubt, we set out formally that we are to be satisfied so that we feel sure that the Respondents have proved guilt. Where we say, in this judgement, that we are “satisfied” about a particular fact or matter or make a finding or draw an inference, we confirm that we have applied the criminal burden and standard of proof.

## FACTS

The first involvement of the authorities that we have heard about relative to this prosecution, occurred in November 2007. On the 20<sup>th</sup> November 2007, Neil Harris of the National Trust ["NT"] at Hughenden Manor noticed that some horses were on NT land without permission. He put up a Notice. On the 21<sup>st</sup> November 2007, Nicholas Phillips, also of the NT, received a telephone call from the apparent owner, the First Appellant. The First Appellant purported not to know how his horses had got onto NT land and suggested escape. He was informed that a lorry had been seen delivering them. He then said that they had been stolen. Nicholas Phillips said that the Police would have to be contacted, whereupon the First Appellant demurred saying that there was no need. The First Appellant cut the conversation short when Nicholas Phillips said that if the horses had been stolen then the Police ought to be involved.

A similar call was received by Neil Harris about a week later. The First Appellant admitted that the horses were his and was asked to remove them. The First Appellant said that he needed time to find suitable transport and would call when such was available. No such call came and so, on the 4<sup>th</sup> December 2007, a second notice was put up at the gate of the field. That notice prompted a call from the First Appellant. He needed the gate to be unlocked for access to collect his horses. That was done but still the horses remained and the gate was locked again.

On the same day as the second notice went up on the 4<sup>th</sup> December 2007, Inspector Ryder, the local area Inspector for the RSPCA, went to Wachuset Lane, Great Kingshill, having received a telephone call expressing concern about the condition of one of the First Appellant's horses. She arrived and found an animal lying down and appearing to be very thin. It was in "quite a bad condition", needing monitoring and the attention of a veterinary surgeon. It got up but it was coughing. A veterinary surgeon came out and diagnosed a 'flu type virus. She said that one or two of the horses that she saw were in poor condition: the rest were in fair condition. She contacted the First Appellant to bring the animals inside.

On the 18<sup>th</sup> December 2007, she went to Spindle Farm. This was a pre arranged visit to see the Wachuset Lane horses. She went into the yard having met the Fifth Appellant, who informed her that his father had gone to the shops. The First Appellant came 10 to 15 minutes later. Inspector Ryder and the First Appellant spoke of the horses from Wachuset Lane. The First Appellant said that he owned about 200 horses. She saw horses in Pen 1 and 6 and the Wachuset Lane horses in Pen 7. She saw that they were improving and putting on weight. There was bedding and water. They had needed individual monitoring and feeding and to be inside. There were no horses in Pens 2, 3 or 5 and one in each of Pens 8, 9 and 10.

Later that same day, at about 16:30, Inspector Ryder received a call from Helen Evans, who worked for a horse organisation, British Horse Welfare. The information imparted, she passed on by telephone to the First Appellant, namely that a horse was "down" and sick at Hughenden Manor and he should go to it. In a second call, an hour later, after Inspector Ryder had received a second call from Ms Evans, she asked him to call a veterinary surgeon. He replied that he was 20 minutes away and would go and see it first. The First Appellant was requested by Inspector Ryder to contact her with the result of his visit. He did not do so either that day, the 19<sup>th</sup>, 20<sup>th</sup> or 21<sup>st</sup> of December 2007.



The other events of the 18<sup>th</sup> December 2007 were attested to by Helen Evans, the Regional Officer for the British Horse Society, Neil Harris and Nicholas Phillips, the third witness by an agreed written statement.

Helen Evans described how she had received a telephone call from a member of the public about a horse “down” on a field at Hughenden Manor. She went to see at 10:00. She found about 10 horses there of which two were lying down. One got up of its own accord as she approached; the second she assisted. That second struggled and she noticed that it was very thin. It walked off slowly and laboriously. She looked at the others; most had ringworm and some of the hair on their coats had rubbed off.

Later at 15:00 she received another call. She returned to the field and saw another horse further down the slope. It was a black and white piebald and it was in a very bad condition. She had missed it earlier in the morning, as it had been further down the incline in the field and out of her sight. She found that this animal was very thin, bedraggled, muddy, cold and wet. Its breathing was very laboured and there was a dull look to its eyes. Its gums were pale [evidence of a poor blood supply], its skin was cold and pinched when held, showing signs of dehydration. It had a weak pulse. It was “not very well at all.” She considered that it needed veterinary surgeon’s attention urgently. She photographed it with her mobile phone camera and contacted both the NT and Inspector Ryder.

Neil Harris went to the field at 17:30. Nicholas Phillips joined him later. Neil Harris described how the First Appellant and the Fifth Appellant arrived at about 18:00 in a 4x4 with an Ifor Williams trailer attached. There was female also in the vehicle, young with long blond hair, but she remained in the vehicle at all times. We now know that, in fact, this was the Second Appellant. After the vehicle had become stuck and the trailer unhitched Neil Harris and Nicholas Phillips witnessed the recovery of this horse.

The trailer was moved to about 25m away from the recumbent animal. The First Appellant put a head collar on it. The First Appellant and the Fifth Appellant attempted to get the animal up, one at each end, pulling at it. The Fifth Appellant pulled the tail. They failed.

Neil Harris and Nicholas Phillips, who had now arrived, witnessed what happened next. Nicholas Phillips illuminated the scene with his headlights whilst Neil Harris had a torch. A thin rope was now tied to the tail, by either the First Appellant or the Fifth Appellant. According to Nicholas Phillip’s agreed statement, when they both pulled the horse’s head was caused to be twisted back. The animal was dragged, in a see saw, zig zag, fashion down the field towards the trailer. When they reached about 4m from it, after about 2 to 3 minutes, they stopped. At this moment the horse raised its head. The Fifth Appellant kicked it with his foot on its right flank near the spine. The trailer was then moved nearer to the horse and they attempted to get it in to the back. It was difficult for only the two of them. The Fifth Appellant threaded the rope attached to the tail to the trailer for a pulling point and it was pulled onto the back of the trailer by its tail.

Nicholas Phillips asked the First Appellant if he did not think that a veterinary surgeon was needed. The First Appellant replied that “it needs some B12.” B12, we were informed, is a vitamin. They then shut the tailgate, which observed Neil Harris, had no bedding visible. The First Appellant, the Fifth Appellant and the horse then left. The First Appellant told Nicholas Phillips that he would return for the other horses the next day. Neil Harris said that he had been involved with sheep and cattle for many years but he had never seen an animal treated in that way before.

It is common ground that this horse was C20 as marked when subsequently found dead at the Yard.

John Parker was asked about this when he gave evidence. He said that, from what he heard of what they had done – dragging the animal by rope to the head and tail – was not acceptable.

On the 21<sup>st</sup> December 2007 at 11:55, Inspector Ryder went to Spindle Farm. Eventually she met the Second Appellant and the Fifth Appellant outside the yard. She asked where the First Appellant was and was informed that he was away for a couple of days. She asked what had happened to the horse brought back from Hughenden Manor. The Fifth Appellant said that it had been shot in the yard by a knacker from Aylesbury. That was not merely a deliberate lie but it was designed to mislead since otherwise she would have asked to see the animal. It was, of course, C20 which by this time was dead and still in the trailer, where it was found on the 4<sup>th</sup> January 2008. When that animal was subjected to post mortem, Veterinary Surgeon Hayes found no evidence of humane killing either. The Second Appellant was present when this conversation took place and she made no effort to correct the falsehoods. Inspector Ryder asked if a veterinary surgeon had been called to it and the Fifth Appellant said that one had not. She then asked about the other horses at Hughenden Manor and whether they had been removed. Either the Second Appellant or the Fifth Appellant – they were together – replied that they would be removed in the next few days.

In fact, a veterinary surgeon from the Practice the business used had been to Spindle Farm in December 2007. Veterinary Surgeon Katherine Robinson had visited on the 12<sup>th</sup> December 2007, shortly before Inspector Ryder had been to check up on the Wacht Lane horses. Veterinary Surgeon Robinson was there to check on animals that were to be exported to Holland and Belgium and to sign fitness to travel papers from DEFRA.

Veterinary Surgeon Robinson saw animals in Pen 3. There was haylage in a bale. She found no horses unfit for certification nor did she see carcasses in the Yard. Specifically she did not see what were to become C1 and C2. She had no concerns about the bedding and she saw haylage in front of the pens. She did not speak to the First Appellant at all.

At about 14:40 on the 4<sup>th</sup> January 2008, Chief Inspector Skinner, Inspector Hampton and two Police Officers, Reynolds and Metcalfe, all in uniform, went to Spindle Farm, Chalk Lane, Hyde Heath, Amersham, Buckinghamshire. Later, at about 15:30, they were joined inside by Inspector Davidson and Katherine Robinson, a veterinary surgeon. At about 15:40, another veterinary surgeon, Ben Wakeling arrived having been called by Inspector Hampton. Veterinary Surgeon Robinson said that she subsequently contacted Veterinary Surgeon Baskerville, asked him to attend at the First Appellant's request and he did so at 18:30. Before he came, at about 16:00, Nicholas White, a Field Officer for International League for the Protection of Horses now World Horse Welfare, attended.

The original party parked at the side of the entrance at the same time as the First Appellant was leaving the premises by driving out in a 4x4 motor vehicle. Inspector Hampton waved him down. She explained why the RSPCA had come. There had been a call about horses in poor condition. The First Appellant said that he was going out, there was nothing wrong with the horses and he gave her permission to look at them. She denied the suggestion that the First Appellant informed her that he was going for a piece of machinery and that he did not just say "OK" and nothing else. Chief Inspector Skinner said that he did not hear the whole of the conversation as he was getting out of his vehicle, but said that the First Appellant did agree for them to enter his land.

In the event, the First Appellant returned into the yard, followed by the four uniformed officers. They went past Pens 1, 2 and 3. The First Appellant told Inspector Hampton that he owned the ten horses in Pen 1; his son the Fifth Appellant those in Pens 2 and 3. He added that his wife the Second Appellant owned a horse somewhere in the yard.

The Inspectors began with Pen 3. There were 9 live horses and 2 dead found to be inside. The dead were C1, about which Veterinary Surgeon Robinson said that it appeared to have been dead for some time, and C2. Inspector Hampton asked why they had died, to which the First Appellant replied "you are always going to have some die when you have this many." Inspector Hampton asked how they had died. The First Appellant replied that they had worms.

Chief Inspector Skinner then saw a hoof protruding from underneath a tarpaulin in the yard. He had no recollection of the First Appellant pointing it out. C3 was found under the tarpaulin and C4 to its right hand side. Peter Green said that C3 could have been the animal that Helen Evans saw on the 18<sup>th</sup> December 2007 and which she had tried to help. He said that it was skeletal and had a rope attached to its leg where it must have been dragged out of one of the pens. In his opinion it could have died after the 18<sup>th</sup> December 2007. C4 he described as an old mule. It too had been dragged to its position. He said that he had never known anyone put a rug on a mule before as they are hardy creatures. Since it was not in poor condition it must have been rugged because it was ill.

Inspector Hampton cautioned the First Appellant and informed him that a veterinary surgeon was coming. She denied an assertion that it was the First Appellant who suggested that a Veterinary Surgeon be called. While Chief Inspector Skinner went to collect a video camera, the First Appellant released the live horses from Pen 3 despite being asked not to do so. They were eventually caught and tethered in Pen 4. The First Appellant then went to Pen 7, in which there were about 17 equines and tried to repeat the process of release. He was spoken to by Police Officers about not moving any further equines.

Chief Inspector Skinner then began a commentated video recording and Inspector Hampton took photographs on her camera.

Inspector Hampton began with Pen 7. A lot of the approx 17 horses were in poor condition. There was no dry area in the pen, the ground was filthy, wet and boggy, with faeces and wet straw. It could not be described as “deep litter bedding”, a process whereby the top soiled material is removed leaving the damp underneath for warmth and providing a fresh dry top layer. Veterinary Surgeon Robinson, in her evidence, agreed. Inspector Hampton said that there was no available food, although the dominant animals could reach through some bars to some straw. An automatic, mains fed, water trough existed in which there was water, but it was contaminated by faeces and was dirty. Nicholas White, who also saw that pen, said that a lot of the animals in there were wet, dirty and thin.

On the DVD, a horse breaks the silence and clatters around, having become caught between a gate and straw bales. No other equine is “spooked” because, said Peter Green, of their condition. Both its nostrils were discharging and it is to be seen coughing mucous into the pen. The DVD demonstrates complete silence in the Yard except for a cockerel crowing and a dog barking. The horses make no sounds.

In Pen 7 was the equine KH1. It was lying down next to the trough but could not drink from it. It was collapsed. Its condition was extremely thin and weak. Inspector Hampton could see the shape of the ribs and spine. Peter Green said that it must have been down for more than a day as it was so depressed and immobile. In his opinion it was at the point of death. It was static, immobile and emaciated. The other equines nearby took no notice of it. When offered water it drank continuously for almost two minutes. Later Chief Inspector Skinner took Veterinary Surgeon Baskerville to see it. In efforts to get it up, it was rolled, revealing a raw patch on its flank, the cause was which was opined to be that it had rubbed itself against the trough. Veterinary Surgeon Baskerville said it was dying and it was euthanased.

Also in Pen 7 was KH3. It was suffering from a grossly swollen penis, which was ulcerated with blood dripping down its leg. Chief Inspector Skinner later also showed this animal to Veterinary Surgeon Baskerville. The horse was euthanased too.

KH2 and KH4 – two colts were also considered. Inspector Hampton described them as underweight and dull. According to Chief Inspector Skinner, Veterinary Surgeon Baskerville, when he saw them, described them as suffering and likely to die if left. Separately, Nicholas White also inspected this pen. He described a wet and dirty floor surface with inadequate bedding. On the floor he saw lengths of string, pieces of plastic and broken head collars. He saw no food but he did see a gateway through which a few animals at a time – the strongest – could reach out for some adjacent straw.

Inspector Hampton next went to Pen 6. She found that eleven horses were tied up so that none could actually lie down in their places. One had access to water; the rest had no access to water. They stood in wet faeces, there was no hay or feed and they were kicking at one another. C5 was found there among the living, and had cleared a space on the floor where it had struggled. Independently, Nicholas White also visited Pen 6 and confirmed that the horses were tied to the wall. He felt that they were very close to each other and would have been unlikely to have laid down, even if they could have done so. He saw that the bedding was dirty and wet and was tucked underneath the animals. There was no water. He, too, saw C5. In the adjacent small pen, he saw that a horse was burrowing in the ground, eating what it could find. Peter Green commented that some horses had a manger in the stall, others not. Some had no water either in a trough or in a bucket. He queried why a dead animal had been left in a stall which is valuable accommodation. He pointed to the quiet and unresponsive horses on the DVD footage.

In Pen 5 were the donkeys, about 12 in number and including 2 foals. There was dry bedding and clean water available but the conditions were very overcrowded. The approximate weight of one caused concern. In cross examination it was suggested that the pen was “makeshift”. Whether or not it was, it was overcrowded and the donkeys did not have enough room. Inspector Hampton accepted that she was told at one point that they were inside because of the weather. Nicholas White confirmed the presence of fresh straw, bedding and water. He thought that some of the donkeys looked thin and weak and two of the foals he considered to be in a weak condition.

In Pen 11 there was a dog, KH14. The relevance of the evidence concerning it lies in the fact both that it was a different species of animal but that its living conditions were also a cause for concern. Both Inspector Hampton and Chief Inspector Skinner describe the floor was being covered in faeces, three empty bowls were upended and it had no access to water. Dried food was mixed with faeces. Nicholas White saw that its living conditions were unclean and that the animal’s eyes were sore and that it was stressed. Much later, the First Appellant was spoken to about the dog by Chief Inspector Skinner. The First Appellant stated that it belonged to the Second Appellant, his wife. She was said to be on her way there. Chief Inspector Skinner told the First Appellant that its living conditions were appalling and either he cleaned it out or the RSPCA would consider removing it. A poor effort was made at cleaning the pen out, leaving faeces on the floor but a horse blanket was provided as a clean and dry area. The dog drank for a good minute when provided with water.

Pens 8, 9 and 10 were also described by Inspector Hampton. There was a single, untethered horse per pen. The conditions were good, except for dirty straw and the absence of a dry area to lie down in. She agreed in cross examination that conditions were better than in Pens 1, 2, 3 and 7 but said that they were dirty.

Finally, KH5 which was loose; Inspector Hampton described it as dull, underweight and depressed.

Nicholas White gave his overall impression of the state of the Yard. “It was very overcrowded. I was appalled and dismayed to see so many dead and dying horses amongst the living. Many were sick, injured or diseased. The conditions were overcrowded and dirty. I couldn’t see any hygienic precautions in place. The sick were not being cared for anymore than the others. The sick and dying horses were likely to remain casualties. I wondered how long they would have remained in that state if we had not intervened. There was total silence over the Yard. None of the noise that I associate with a well run stable yard – horses calling out, eating or drinking or moving about in clean beds. There were none of the noises on approach. It was silent except for our activities. Horses are gregarious and friendly; they call out and move when approached. There was an air of stillness and silence, which is most unusual with so much activity. They were not expecting anything. I saw no evidence of any supplementary feed.”

When John Parker was asked about this he suggested that silence often reflected contentment. Then he softened this astonishing statement by saying that equally a yard could be noisy. The reason for our astonishment was because we knew that John Parker had seen the DVD footage.

In the meantime whilst Inspector Hampton and others had been noting the content and state of the Pens mentioned, Chief Inspector Skinner had collected a video camera and commenced a commentated record of the site, in and out of the Yard itself. The footage is not always good because of the declining light.

Both Chief Inspector Skinner and Peter Green took us through the recording. Peter Green pointed to the two horses eating from the floor. He also referred to the obvious silence that pervaded the yard and the sound on the recording proceeded. At one stage a dog can be heard barking; there was no horse noise.

In Pen 1 Peter Green pointed to two horses with ringworm lesions. One had a mark over its right eye and was compared with [1354]. Another had severe ringworm. He suggested that they had come from the field at Hughenden Manor and were two as described by Mrs Evans. In Pen 2, he pointed to the silence of the animals, that they were depressed and subdued and how they were not interacting. KH6 can be seen in the background.

Chief Inspector Skinner's video footage in the Yard showed Pen 3, in which C1 and C2 were found. Peter Green said that C1 could not have died after 18<sup>th</sup> December 2007, because its lower jaw had already become detached from the main carcass. There was little if any available hay, but string and a bag indicated past feeding. Peter Green pointed to straw rotten with faeces and urine: some straw was around C2 because the other horses were avoiding it. If there was haylage at the bottom of the feeder, it was a scattering. Peter Green pointed out that this feeder was not a horse but a cattle feeder. He said that horses do not like to eat next to each other like cattle and that good practice suggested that there should be two horse lengths for every horse in a group; one station per horse plus one. The remnant that remained could not be reached by the horses. A bale for that feeder had to be loaded mechanically since it weighed about 500kg. John Parker said that such feeders were commonplace in the kinds of systems that the First Appellant operated, but he did agree that there should have been more spaces available than there were for animals to compete over. The water in the trough was unclean. Peter Green pointed out that the water trough was not mains fed so it and others like it had to be refilled with a hose and bucket. He also pointed out the absence of a dry area in that or any of the pens for the animals to lie down in. He described the conditions as "dreadful." At the end of the day, 3 detached hooves were found in that pen at the fence with Pen 2. They did not come from either C1 or C2. Chief Inspector Skinner then video'd C3 and C4 in the Yard. As we have already noted, Peter Green suggested that C3 was the now dead animal that Helen Evans had tried to help up in Hughenden. He said that it was skeletal and had been in a very poor or emaciated condition when it had died. He referred to its bony landmarks of the dorsal spine and pelvis and the wasted away musculature. He suggested that the rope tied to the leg indicated that it had been dragged out of a pen. He pointed out that C4 still wore a halter; that it had been rugged and that since mules are extremely hardy it was reasonable to infer that someone had realised it was unwell. It was not in poor condition. Chief Inspector Skinner also filmed Pen 4 into which the First Appellant had taken and tethered the equines from Pen 3.

Pen 5 contained 10 donkeys, including 2 foals. It was overcrowded and they were being fed when too close together. Peter Green said that they could not have been getting to the food. Some haylage can be seen with an empty bag outside and some dry straw bedding. Peter Green thought that they had been gorging on the straw. Among them was KH2, the donkey foal found dead two days later. Also there was KH10, which Peter Green pointed out. It had a large gut yet it was emaciated on admission to Home of Rest for Horses at Speen. Paul Jepson and John Parker both scored it at 1.

Pen 6 contained the dead horse C5, which Peter Green could not understand: why was a valuable pen being occupied by a dead horse? He agreed with Veterinary Surgeon Wakeling that this horse had not died suddenly; he pointed to the floor where it had "paddled" as it had died. He also remarked that some individual pens did not have a manger, yet there was a spare one at one end not erected.

Pen 7 contained the collapsed and subsequently euthanased KH1. Peter Green pointed out that it was filthy, not moving and sitting in the wettest part of the pen. Veterinary Surgeon Baskerville saw horses trampling over it. Peter Green did not accept that it had been standing that morning; he believed that it had been down for more than a day. He said that he knew of no condition that kills a horse in a matter of hours. He pointed out that it was static and profoundly depressed. "It is on the point of death." He said that it was emaciated and pointed to its winter coat despite which the landmarks of ribs, pelvis, femur, stifle and patella could be seen.

Pens 8 and 10 contained a single horse in each, with dry straw in the latter pen. Peter Green said that they were, in fact, cattle pens. Pen 11 held the dog KH14.

Both Chief Inspector Skinner and Inspector Hampton went out into Field 1. Inspector Hampton saw a large mound of earth with bones protruding. Later horse skulls were recovered and photographed. There were 40 equines, mainly Shetlands in that field with insufficient grazing for their needs. Peter Green noted that the grass was sparse and the ground poached. The feeder was empty but the water trough operated automatically. Peter Green pointed out that there were no horses waiting to be fed: he said that they were creatures of habit and that if it were normal for them to be fed in that field and at a particular time they would have been waiting. In fact they were scattered and feeding where they could. From the DVD we are satisfied that no wheel marks or haylage can be seen to have been provided. We are satisfied that prior to the 5<sup>th</sup> January 2008, no haylage or supplementary feed was provided to the animals in the fields.

Chief Inspector Skinner filmed in Field 1. The mound subsequently revealed 7 skulls. His film shows that, in fact, there was no feeder in that field that day: one was seen on Saturday 5<sup>th</sup> January 2008. Chief Inspector Skinner said that there may have been some fresh haylage on the ground on the Saturday, but not on the 4<sup>th</sup>. In cross examination he said that he had walked there on Friday the 4<sup>th</sup> January and would have noticed if it had been present. Chief Inspector Skinner also filmed bones on the ground. There were bales of haylage visible behind a damaged fence.

In Field 1 there was a particularly thin pony and KH16. KH16 was lame and leaning forward or back on its limbs. The grazing was poor and, apart from the trough near the entrance there was only an empty bucket between Fields 1 and 2 from which to drink.

Chief Inspector Skinner continued into Field 2. In the bottom corner was a ramshackle shed about 6ft sq. There, as the sequence showed, C6 and C7 were found, almost touching each other. The three super vets agreed that they may have died since 18<sup>th</sup> December 2007 but were not sure. Chief Inspector Skinner also saw and filmed where tree bark appeared to have been eaten away from some trees. However Peter Green said that this was not to be taken as evidence of malnourishment. He did point to the ground and said that there was not much grazing and "it was pretty poached." Chief Inspector Skinner filmed a bonfire site. Two partially burned carcasses, C8 and C9 were found. The C10 and C11 were seen adjacent to each other near some outbuilding. Peter Green took issue with the suggestion that it was a foal: from its teeth it was aged. Behind a shed and a vehicle was found C12 and a little further away, C13. C13, as Peter Green pointed out, had obviously been lactating and both C11 and C15 were foals.

At the back of a shed a skull and some rib bones were seen: C14; and a little further away a foal carcass C15. The three experts agreed that C15 might have died since 18<sup>th</sup> December 2007. C16 was found in another bonfire site, a skull C17 on some rough ground and C18 and C19 in the same field but near the farmhouse which served the enterprise. Peter Green said that the skull C17 must have belonged to a horse that had been dead for at least six months to get to that condition. He explained that the skull is the most difficult part of a carcass to get the skin away from and takes a long time. Inspector Hampton said that C18 was by the dividing fence between the field and the curtilage of the farmhouse. In the garden were seen children's playing equipment and the carcasses were visible from the house windows. Inspector Davidson, who also took a number of still photographs of carcasses in the field, showed pictures of this carcass and its proximity to the garden. A Wendy house and a child's plastic chute are visible a matter of yards away. Initially that carcass was covered with a blanket.

C20 was a dead horse found by Nicholas White on a trailer near the entrance gate. It had a rope attached to its tail which was seen by Chief Inspector Skinner. Inspector Hampton and Veterinary Surgeon Robinson said that its head, which was lying on a feed bag, also had a rope attached there. This, of course, was the animal seen in the field at Hughenden Manor on the 18<sup>th</sup> December 2007 and removed by the First Appellant and the Fifth Appellant.

Inspector Hampton photographed the 20 carcasses. PC James formally seized them under S19 PACE and passed them on to the RSPCA. At 18:15, Mr Wills, a knackerman arrived on site.

Mr Wills gave evidence about his various involvements over this whole period. Some aspects of his evidence were important. He was asked about his business. He said that it was situated at Paulerspury in Northamptonshire and he covered Berkshire, Buckinghamshire, Hertfordshire, Oxfordshire and Wiltshire and up to Solihull, in addition to his base County. He operated a 24/7, 365 days per annum service, including Christmas Day. He identified other firms and Hunts whose knackermen offered his service and said that they mostly offered the same total time availability. He agreed that he had been to Spindle Farm occasionally to pick up single carcasses, about three to four times prior to January 2008.



Veterinary Surgeon Baskerville said that he arrived at about 18:30. It was dark, raining and cold. He said that he had been telephoned by Veterinary Surgeon Robinson in considerable distress. She told him that the First Appellant hoped that he would attend. He had never been to the farm before: Veterinary Surgeon Robinson and his partner Veterinary Surgeon Fennelley had attended in the past to check animals for export. Veterinary Surgeon Fennelley was not available.

He described the scene as he recalled it.

“I saw a confusion of people. It was dark and raining. There were a number of pens and tie up stalls which contained a large number of horses and donkeys. Veterinary Surgeon Robinson explained the situation. “

“I looked into Pens 1, 2 and 3. They were overcrowded, dirty and many of the equines were in poor condition. The flooring in the pens was such that, when I walked in, I nearly lost my Wellington boots. There was little in the way of dry areas for the equines to lie on.” He remembered climbing into Pen 1. It was very difficult to walk in. “I remember the top right hand corner of Pen 3. I saw a really ill horse. She had a small dry area. The floor varied from the front, where it was impossible to walk in to the back where there were no dry areas for the horses to lie upon. The substance of the flooring was a mixture of rotten straw, faeces, urine and rainwater which had blown in. The horses needed a dry area to lie upon and there was no suitable area for the number of horses in there. On a scale of 0 to 10 [where 10 is the worst] it was 8 or 9.”

“The pen containing the donkeys was well strawed up and comfortable. Much of the bedding in Pen 7 was inappropriate; maybe there were some drier areas at the back but no dry areas. There was rotten straw, urine, faeces, rainwater and hay mixed in. There was water.” It was this pen that worried him most. Generally, Pens 1, 2, 3 and 7 had partially firm bedding, but it was all wet and not comfortable for the animals to lie down in. “Pen 6 was not a pen. It was series of tie up stalls in a row. The back half of the flooring was mainly faeces; I do not know about the front in the dark and the rain.”

“My prime concern was to look at the horses that were considered to be requiring euthanasia. I looked at a large number of animals superficially: they had been neglected; they were thin, some emaciated, some ill: all were extremely dirty with very little space in which to lie. I have never seen so many horses in such poor condition on that scale.”

Attention now focussed upon particular equines. Chief Inspector Skinner and Inspector Hampton looked at KH8 in Pen 1. It exhibited nasal discharging. Inspector Hampton said, in cross examination that she believed that it was suffering from “Strangles”. She said, further, that she was told that it had been removed for treatment but in fact it had not been isolated. The First Appellant appeared and said that he had administered unicillin to it that morning. He told Inspector Hampton that the animal was “full of antibiotics” and that it had come from Chalfont St Giles the previous day. She was aware that the First Appellant had fields there too. Inspector Hampton said, in cross examination that the unicillin shown to her by the First Appellant was not opened. Chief Inspector Skinner said that it looked full but he did not check to see if it had been opened. Veterinary Surgeon Baskerville confirmed that he saw the bottle and that he had said that the animal should be removed. Inspector Hampton said that the First Appellant reacted, saying “you’re on their side as well.” Veterinary Surgeon Baskerville agreed that the First Appellant said “you’re on their side then” and he replied that he felt that he was on the side of the animals. He also said that he did not regard himself as having been called out to act on the First Appellant’s behalf, but to support Veterinary Surgeon Robinson because she was distressed. Inspector Hampton said that the First Appellant threatened to let the dog KH14 out of its cage. Police Officers arrived and the First Appellant was prevented from carrying out his threat.

Quite apart from the threats, the remark made by the First Appellant displays a fundamental misunderstanding. There is no question of ‘taking sides’: everyone is or should be on the same side, that of animal welfare as, indeed, Veterinary Surgeon Baskerville stated. To be fair to the First Appellant, his expert John Parker made the disgraceful assertion that Veterinary Surgeon Baskerville was a turncoat [1527]. We reject that assertion too.

Inspector Hampton went to look at KH1 and attempted to get it to its feet. She described it as being in a pitiable state and it was unable to raise itself with or without help. When it rolled over, it revealed that it had an open sore on its side. Veterinary Surgeon Baskerville said in evidence that it was “clearly in extremis” and that it was going to die. He said that he considered that it had been terminally ill for several days, which he later firmed to 3 days. He thought that it had been injured for 3 days but that it was “just possible” that it had been standing that morning. His advice was to the effect that it should be euthanased. He told us that he wondered how long it had been in that condition. He answered his own question by saying that it had taken a period of time to get like that. Some of its abrasions were several days old caused by having been trampled on by other horses; he saw a lot of aggression amongst that group. John Parker disputed this description of a raw patch by saying that it was not a full thickness and had not penetrated through the skin and mucosa and further suggested that the injury could have happened in a matter of hours rather than days. We prefer the eye witness account of Veterinary Surgeon Baskerville. When the decision was explained to the First Appellant he asserted that the animal belonged to the Fifth Appellant. Euthanasia was authorised by PC James under S 18 [3] AWA and the animal destroyed.

KH3 met a similar fate. Veterinary Surgeon Baskerville explained that when the penis gets so swollen, damaged and wounded, the circulation is destroyed and, left to itself, it would rot away. He was in no doubt that the horse would die. He thought that it had been in that condition for at least three days, perhaps longer. The First Appellant again asserted that it belonged to the Fifth Appellant. Euthanasia was authorised and it, too, was destroyed. He was asked if paraphimosis was common in cases of cyathostomiasis. He said that it was not. Severe diarrhoea was more associated with cyathostomiasis. He was certain that this was a case of trauma and not as a result of cyathostomiasis. Any horse which is in a weak and poor condition will let its penis hang out in a flaccid state. It will retract it when it recovers. With this animal he did consider the surgical option and dismissed it. Veterinary Surgeon Robinson was asked similar questions. She said that she did not consider that this animal's condition was caused either by parasitism or cyathostomiasis. She could not answer the question as to whether the condition was symptomatic of cyathostomiasis since she had no experience of it previously; but she said that it was not a common effect of cyathostomiasis.

At some stage of the proceedings, Nicholas White saw the First Appellant turning the horses in Pen 6 and allowing them to drink, two at a time, out of an untied trough near to Pen 14. He also saw the First Appellant with some forage on a barrow with a ¼ bale capacity.

Inspector Davidson stated that the First Appellant said on more than one occasion that most of the equines did not belong to him but to his son. He qualified that reply in cross examination: "not all the horses are mine: some are Jamie's". The First Appellant was asked for his consent to the euthanasia of KH1 and KH3 and offered the opportunity to be present at the euthanasia of the two destroyed animals KH1 and KH3. He declined, shouting that they were not his.

8 Equines were removed from the site. KH4, KH9 and KH10 were taken, said Inspector Hampton, because Veterinary Surgeon Baskerville stated that they would die unless they were removed. They were all suffering or likely to suffer if their individual circumstances did not change. S 18 [5] AWA. The others were KH2, KH5, KH6 [described by Inspector Hampton as thin, lethargic and quiet], KH7 [described by Inspector Hampton as very thin] and KH8, which had a nasal discharge. Inspector Hampton said that the condition of five of the equines was extreme; 3 less so. Veterinary Surgeon Baskerville said that he examined the animals and passed his opinion on them, one by one, to Inspector Hampton.

Veterinary Surgeon Baskerville said that, in his view, they required removal. He said that without specific care and attention, they were unlikely to recover and because the circumstances that existed at that time were not adequate for their treatment. One of the biggest problems, if the animals were under pressure for space and were overcrowded, was that some were aggressive and some timid. In every pen, some were going to be aggressive to the weaker and that, probably, was one of the causes for the conditions of KH1 and KH3. Emaciation, dejection, the appearance of having given up the struggle and their general weakness qualified them for removal.

The question why were they removed and not placed into an isolation unit, was posed in cross examination. Inspector Hampton said that there was no isolation unit and the sick needed treatment. Further the First Appellant was being aggressive and obstructive. The findings of dead and dying animals, the veterinary advice and the general state of the yard and provision indicated a long term major problem existed. She relied upon the veterinary advice.

At about 19:55, the Second Appellant appeared in the Yard. She spoke to Inspector Hampton at 20:00. She asked "Why are you here? You have always had it in for my husband." Inspector Hampton cautioned her. She replied "Fuck off; you're not cautioning me." The First Appellant also shouted and stormed off. It is alleged that the slashing of Inspector Hampton's car tyre was done by the First Appellant in his anger.

Chief Inspector Skinner asked the Second Appellant to accompany him to Pen 11, where the dog KH14 was situated. The Second Appellant stated that the animal was hers. Chief Inspector Skinner said that the conditions for the dog were not suitable and that she would be issued with a Warning Notice. Inspector Hampton filled it out. The Second Appellant calmed down. She stated that she did not understand what was wrong and what changes needed to be made. She agreed to improve the dog's conditions within 24 hours and to get a Veterinary Surgeon to see it within 7 days.

The First Appellant then reappeared and heard from his wife that the Warning Notice had been issued. There followed a potentially serious incident since the First Appellant threatened to release the dog, holding a child over the cage and seizing hold of a Police Officer when the First Appellant was asked to accompany him away. He refused to leave, stated that the property was his and "they" should "fuck off". He was then arrested and removed and the situation calmed down.

Inspector Hampton and the Veterinary Surgeons now inspected the conditions in Pens 2 and 3. Inspector Hampton described the floors as having wet, boggy faeces, no dry straw or dry area available. There was no food, hay or haylage and the water in the trough was contaminated with faeces. PC James gave a similar description. She described the flooring in one pen as being 2 ft deep with wet dirty bedding. Some of the horses were trying to eat the bedding.

Nicholas White also described Pens 1 and 2, which he looked into. The bedding surface in each was wet and boggy, the water was dirty and he saw neither hay nor any other feed inside.

The 8 seized animals – KH2 and KH4 to KH10 inclusive - were then removed from the site. The needs of the remainder were then addressed by Chief Inspector Skinner and Inspector Hampton, with the Second Appellant. The immediate concerns were about food and water. Inspector Hampton said that there was no time to ask for bedding. The Second Appellant agreed that she would do the necessary herself, according to Inspector Hampton; Chief Inspector Skinner said that he understood that she would get it done. Either way, a late telephone call was subsequently received, asserting that it had been done.

The seized horses were removed to The Home of Rest for Horses at Speen. The unloading and the stabling processes were filmed. The animals are to be seen in their allotted stalls, most, if not all, eating and /or drinking.

So the position at the end of Day 1, Friday the 4<sup>th</sup> January 2008, was that the RSPCA had found 20 carcasses of dead equines, three equines in respect of which a Veterinary Surgeon adjudged were in such a state that they had to be euthanased and 8 horses which a Veterinary Surgeon had adjudged under S 18 AWA had to be seized and removed. The state of the grazing had been considered to be inadequate, except that, when giving her evidence, Veterinary Surgeon Robinson said that when she went out into the fields when it was getting dark, she saw equines grazing and thought that there was “plenty” of grass, whilst the provision for those equines inside was, in too many cases, pitiable in terms of bedding, food and watering. The RSPCA had arrived in the afternoon; darkness fell within about a couple of hours and clearly much more investigative work remained to be carried out.

The veterinary evidence came from Veterinary Surgeons Robinson, Wakeling and Baskerville.

Veterinary Surgeon Robinson arrived at the farm at 15:30 and met Inspector Hampton. Together they went to Pen 3, where two dead animals were, together with three unrelated hooves. Veterinary Surgeon Robinson described it as disgusting. The smell was “horrible, of rotting flesh”. The bedding was brown and dirty like manure. There was no dry area and the signs of food consisted of string and plastic in the feeder. There was no haylage.

She was shown some of the other pens and described their condition, passing C3 and C4 in the yard which she thought had been dragged to their positions. In Pen 7, KH1 was lying next to the trough unable to get up. It was quiet and did not react. It had rubbed itself against the trough side. It could not get up. The equines inside included one with a massively enlarged penis: KH3. The others were standing all around, including near KH1. Down one side was a place where heads could go through railings to reach some straw the other side. She said that the floor was very dirty and later she sank to her ankles in the wet manure. There was no dry food inside and no dry bedding. There was water in the trough.

She described Pen 6 as consisting of stalls with ponies tied up facing the wall. One was turned round, lying on the ground and dead. It exhibited nasal discharge. The live tied horses could not get food; there was insufficient room in the small stalls to lie down and there was neither a dry area, if they could have got down, nor water. As they were tied, they could not lie down.

In Pen 2 she said that the bedding was wet and dirty; there was no hay but some water. The Pen contained about 10 horses. It was at this stage that Veterinary Surgeon Wakeling arrived. After the Yard they went out into the fields. There they observed the discoveries of the carcasses already detailed.

Veterinary Surgeon Wakeling confirmed that he and Veterinary Surgeon Robinson, together with an RSPCA Inspector, went round the yard. He said that he started with Pens 1, 2 and 3. He said that there were a considerable number of ponies, bedded on filthy, wet bedding. He saw no evidence of food in the pens. In Pen 3 he saw the feeder and the water trough. The bedding also he described as again being filthy and wet. There were no obvious amounts of food in the feeder, but he did see plastic and baler twine in the bottom. There was water, but he did not recall the quality. He saw two carcasses and separate hooves which were not thought to be long to either carcass. He gave similar evidence to others about equines in Pens 4,5,8,9 and 10.

He saw Pen 6 and noted the animals tethered and with fresh bedding but no free access to water. He also saw Pen 7, which contained equines including KH1 to KH4 and KH9. He said that he saw no evident food; there was a long trough along one side but it did not contain food. There was water but he did not recall the quality of it. He said that the bedding was wet and sodden. There was some adjacent straw and some of the equines could potentially have reached through the bars to eat it. He saw neither hay nor haylage. He saw the live stock trailer and C20 within it. He went into the fields and found carcasses. We shall deal with his specific findings in relation to those carcasses later.

Veterinary Surgeon Wakeling gave detailed evidence about KH1 to KH8 inclusive. We will deal with this evidence later.

In cross examination, Veterinary Surgeon Wakeling said that he had not been to Spindle Farm before, nor had he spoken to the First Appellant before. He became aware that Veterinary Surgeon Robinson had been previously and he thought that she had mentioned certifying horses for export. He inferred that the First Appellant was a horse trader. He did not obtain any animal's history, nor how long it had been at the Yard, nor whether a particular animal had been wormed.

Veterinary Surgeon Robinson gave her account of how she and Veterinary Surgeon Wakeling considered the position. First they considered KH1 [1803] and advised euthanasia. Then they considered animals for removal at Inspector Hampton's request. Veterinary Surgeon Robinson said that Inspector Hampton asked the Veterinary Surgeons if there were any animals that the Veterinary Surgeons thought should be removed. A number were identified.

Veterinary Surgeon Robinson has 9 years experience as a Veterinary Surgeon and assesses the conditions of horses daily. She said that she had given her honest unbiased opinion at the time of the inspection and, in evidence, stood by her views. "Generally, the horses that I saw were emaciated, depressed, quiet and in need of attention. They were struggling and in need of help. I have never seen anything like this before. It is the worst sight that I have ever seen. Those that needed removal needed extra care and it had not been provided for where they were." She described her feelings when the knackerman removed C1 and its head separated: "the smell was disgusting. I was quite upset by the whole thing." The lower jawbone of C2 disintegrated.

She and Veterinary Surgeon Wakeling worked together and she completed the forms. As Veterinary Surgeon Wakeling put it; he wore the gloves and she wrote the notes. Some were filled at the scene [KH1 and KH2 at 1815]; the remainder the following day: KH3 [1842], KH4 [1854], KH5 [1879], KH6 [1917], KH7 [1948] and KH8 [2003].

After Veterinary Surgeon Wakeling left and Veterinary Surgeon Baskerville arrived, he selected further equines for removal: KH9 [2036] and KH10 [2064].

Veterinary Surgeon Robinson said that the horses determined for removal needed medical attention, feeding and care. Had they not been removed they would have died.

The "scoring" was challenged with John Parker's values, given on his inspection on the 21<sup>st</sup> April 2008: KH2 [1488], KH3 [destroyed so not seen: 1487], KH4 [1488], KH5 [1490], KH6 [1489], KH7 [1487], KH8 [1490], KH9 [1462] and KH10 [1462]. She accepted that there was a material discrepancy with the "values" for KH8. She adhered to her "scores".

Additionally, she accepted these points in cross examination. She agreed that a horse or pony, whilst it would put on weight in 2 weeks, would not put on weight “massively”. It would take at least a month for an increase in body score. She also said that equines lose condition in winter and fatten up in the summer. She accepted that her “scoring” was subjective. She denied that hers was an inexperienced evaluation. Only Counsel for the Fifth Appellant challenged her integrity, for reasons that wholly escape us. We reject that challenge.

One of the difficulties in this instance was that each Veterinary Surgeon used a different scoring method and different terms. “Emaciation” was defined by Veterinary Surgeon Robinson as “skeletal, no body fat or muscle visible, a prominent feel to the spine, withers and pelvis and backbone on palpitation.”

Veterinary Surgeon Robinson used the form provided by the RSPCA which she had not used before. The body scoring system provided on it was not one with which she was familiar; nor was she given any guidance. However she did understand the individual categories on the form. She had received body scoring training at University in sheep but not in horses.

We shall consider a similar comparison of “scores” between John Parker and Veterinary Surgeons De Brauwere and Kirton later but an altogether different system of “scoring” – if it can be called such – was undertaken with Veterinary Surgeon Baskerville. He was handed the Defence file of photographs and taken through the relevant ones. He was prepared to offer a scoring opinion on the basis of looking at photocopies of photographs. Considering the length and detail of the examinations carried out by those vets that offered their opinions, we found this exercise did not assist us. When Veterinary Surgeon Williamson gave evidence, some days later, he said that looking at a photograph of an equine, without palpating it, would not necessarily reveal its true condition in the middle ranges of “scoring”. At the extreme ends it is more obvious but extreme conditions are visible with the horse in front of the assessor. In nearly every case, seeing is better than looking at a photograph.

Was Veterinary Surgeon Robinson objective and independent? She showed, albeit in a modest way, distance from the RSPCA by offering a favourable opinion on the available grazing. On reviewing all of the evidence including the DVD we are satisfied that she is mistaken. When Veterinary Surgeon Baskerville was asked a similar question about the grazing being “reasonable”, He replied that it was not: it was inadequate in winter. On one of the days that he was there, he had walked the fields. But the equines could have thrived on the quality of the haylage that he saw.

Overnight from the 4<sup>th</sup> to the 5<sup>th</sup> January 2008, Police were instructed at their shift changeover to make regular drive-passes of Spindle Farm. They were instructed to drive up to the yard, wait for moment and then drive on. On one such drive past, at about 06:00, PC Connor noticed that, unlike previous passes, this time the Yard gate padlock was off, the gate was ajar and she could see shadowy movement within the yard. She and colleagues went inside to investigate. She heard what she described as brushing sounds, followed by the sound of brooms being dropped. She then saw three people: the Second Appellant, one of the daughters and a male in his twenties. We now know from the evidence that the other two were the Third Appellant and the Fourth Appellant's husband Luke Smith. The Second Appellant said that they were tidying up and feeding and watering the horses. PC Connor saw at least two brooms on the ground and several small piles of manure and straw which had been brushed away from the stalls. She could see some haylage in Pen 1 where the ponies were jostling to get to it.

If this evidence was elicited as a criticism of the Second Appellant and the Third Appellant, it is not justified in light of the evidence from Chief Inspector Skinner and Inspector Hampton of their conversation with the Second Appellant. There were at that stage still animals on site. It is relevant as evidence of involvement and that those involved did not want to be seen to be involved.

Later on that Saturday the 5<sup>th</sup> January 2008, at about 08:30, Chief Inspector Skinner, Inspectors Hampton, Ryder and Cook and Nicholas White from ILPH, PC Scott and others returned to Spindle Farm. The Second Appellant, the Third Appellant and her partner were there. The Second Appellant was informed that the RSPCA needed to go back and look at the horses. The group was permitted entry.

Inspector Ryder said that the conditions that confronted her were "completely different" from those pertaining on the occasion of her previous visit on 21<sup>st</sup> December 2007. "The conditions were filthy, disgusting, outrageous. There were a lot more horses in the yard and they were in an awful, disgusting condition. They were depressed, their heads were down, they didn't want to know. They were in a filthy condition with very poor bodily condition." The impression that she got from what she saw was that, having previously improved, the Wachuset Lane animals now "had dropped a lot of weight."

Nicholas White who, unlike Inspector Ryder, had been present the previous day said that the situation had changed. He said that many horses now had forage provided.

Inspectors Hampton and Ryder and Nicholas White measured the Pens. Inspector Ryder said that the bedding and floor areas were soggy with faeces and mud. She assisted with providing water as she could not see any available. The animals' coats were matted, dull and dirty with mud and faeces. Nicholas White said that Pens 8, 9 and 10 were all dirty.

Inspector Ryder described three pens. Pen 5 contained the donkeys which were in better conditions. In Pen 6 were tethered horses which could not lie down. In Pen 11 was the dog. Now its condition was "appalling", different from the previous occasion when she had seen it in clean surroundings. Now it had no bedding and the cage contained urine and faeces. Then she assisted out in the fields, seeing carcasses, trying to catch a horse despite interruptions from one of the female members of the Gray family and with removal of seized animals.



Chief Inspector Skinner and Inspector Cook went to Field 1. Equines were gathered round a bale of haylage, but with an exception: KH15. It was seen to have an infected right eye and considerable areas of diarrhoea across its tail and hind legs. It was subsequently found to be 8 months in foal: it was emaciated. The haylage which had been provided was still considered inadequate: a single bale for all the equines in the field and at a single location only. There should have been two or three locations for the unwell animals.

KH15 was put in Pen 3. Later at 10:50, Veterinary Surgeon Baskerville, who had attended, decided that it should be destroyed. He said that it was emaciated, its breathing was shallow and rapid, it had a rapid pulse and severe diarrhoea. Its prospects for recovery were "nil." Peter Green, when reviewing the DVD footage, pointed out that an observer would not have realised that she was pregnant because of the emptiness of the gut. She was suffering from terminal salmonellosis. In cross examination it was suggested that it was case of a horse suddenly being introduced to good food. Peter Green dismissed that suggestion as "nonsense". It was in a dreadfully poor condition with prominent pelvis and dorsal spine features. It did not die of cyathostomiasis because no larvae were seen in its faeces post mortem. In fact that suggestion was made in evidence by John Parker who claimed that, whilst this animal was undoubtedly ill, it was not showing normal faeces. In his opinion it had recently fed because it showed green faeces. He would have attempted to save it by using a stomach pump, antibiotics and fluids. We accept the eye witness accounts and the evidence of Peter Green. PC Scott seized it under S19 of PACE, its destruction authorised under S18 AWA and it was euthanased. Chief Inspector Skinner video'd it both before and after it was destroyed.

In the meantime, more carcasses were discovered. C21 was found with a rope attached to its hind leg and, in Peter Green's opinion, had been dead for a long time. C22 was more decomposed and its skull had separated from its torso. In Field 2, C23 and, under a trailer, C24 were located. The trailer was too low for the animal to have crawled underneath. The only explanation was that the trailer had been put over the body to cover it. The jawbone and some other bones were visible. Peter Green said that in his opinion C21 to C23 had been dead in the field for months. They could not have died since 18<sup>th</sup> December 2007.

In the Yard some Pens were reviewed: Pen 5 was in the same inadequate state as the previous day: Pen 6 still contained no dry bedding and Pen 7 was as it has been the previous day, with no fresh straw, wet faeces and urine and rotten straw. Chief Inspector Skinner made a further video film of the state of those Pens.

He also made a further video film of the fields, including the poor state of some of the fencing and general rubbish lying around, both of which were potentially hazardous. It was at this stage that the 7 skulls on the mound in Field 1 were recovered. They were lying on top of the mound, not in any way buried or covered. Inspector Hampton said that she and Chief Inspector Skinner just picked them up.

Peter Green pointed to the animals in Field 1 now to be seen round a bale of haylage which had been mechanically delivered. The dominant horses can be seen feeding. They had their ears back. If others had attempted to get to the food the dominant ones would have defended it. One of the animals to be seen is KH15 before it was euthanased, standing back and looking, said Peter Green, profoundly depressed.

The Veterinary Surgeons examined more horses and advised removal of a further six equines: KH16 [thin], KH17 [thin, or in Inspector Hampton's words, extremely underweight and suffering from Rainscald], KH18 [underweight], KH18A [because it was the foal of KH18 and underweight] KH19 [extremely underweight, with breathing problems] and KH20 [bright but underweight] according to Inspector Hampton.

Veterinary Surgeon Baskerville confirmed that, with the assistance of Inspector Hampton to whom he called his comments so that she could note them, he identified six equines for removal. He gave the same reasons as for the previous day's removals.

Veterinary Surgeon Robinson noted that KH16 was emaciated due to malnutrition; KH17 to be in the same condition; KH18 to be very thin and emaciated due to malnutrition; KH18A to be poor in condition and at risk when her mother was removed; KH19 to be very thin and KH20 to be very thin and emaciated due to malnutrition.

So the position at the end of Day 2 was that a further 4 carcasses [C21 -24] had been discovered, 7 skulls had been gathered and 6 more equines were to be removed on veterinary advice. Some attention had been paid to feeding in Field 1.

Earlier, at 09:50, the Fourth Appellant arrived on site. Inspector Hampton spoke to her. The Fourth Appellant said that she lived in Hampshire, and had come when she had heard of the RSPCA attending. She had to be stopped from chasing an equine away [KH19] but then became more reasonable.

In the meantime, the First Appellant was under arrest at Aylesbury Police Station. An interview was to be conducted with him. It is necessary to consider the surrounding circumstances of this and other interviews in some detail in order to reach a conclusion of the Respondent's application for an Adverse Inference to be drawn from silence by the individual Appellants at their respective interviews.

At the Police Station, Chief Inspector Skinner met with the First Appellant's solicitor, Mr Widdess. Because the Custody Suite was temporary and there were no forms available to record information upon, Chief Inspector Skinner had to give oral disclosure but sensibly made a written note of what he said.

"I told him that we wanted to interview the First Appellant with regard to offences of causing unnecessary suffering to horses and failing to meet the needs of the horses, AWA S4 and 9 and about up to 31 carcasses for failing to dispose of them properly. The place of the alleged offences was Spindle Farm. We also wanted to speak to him with regard to an incident about a horse at Hughenden Manor on 18<sup>th</sup> December 2007 and removing a horse possibly not fit to be transported. I told the solicitor that the First Appellant had said that he owned the horses in Pen 1 and that the Second Appellant owned those in Pens 2 and 3; that he had said 'you always get a few dying when you have so many.' I told him that we had discovered 31 carcasses on the land and removed 14 horses as Veterinary Surgeons had stated that they were suffering or were likely to suffer if left. 3 horses had to be destroyed immediately to prevent further suffering. I told him that horses were found with no food or water in filthy conditions and that the main reason was emaciation. I told him that we had also dealt with a collapsed pony KH1, a horse with a hugely swollen penis and sheath KH3 and a horse with an infected eye KH15. I told him that we believed that the First Appellant was the owner or was responsible for the horses on the land and therefore we needed to interview him."

In the interview that followed, conducted by Chief Inspector Skinner and Inspector Hampton, the First Appellant answered no comment to all questions. He would not even look at a document presented to him.

After the interview, Chief Inspector Skinner attempted to speak to the First Appellant about signing the animals over but he refused. Chief Inspector Skinner spoke to the solicitor. He told him that he needed to interview the Second Appellant. Further he told him that if either wanted further information on the Post Mortems of the seized animals or any further veterinary opinion on any horse taken into possession, they should contact Chief Inspector Skinner as soon as possible. As the RSPCA could not store the carcasses after examination, they would have to be incinerated. The solicitor said that he would make sure that the First Appellant and the Second Appellant “were clear” about this.

That evening, Veterinary Surgeon Robinson went to the Home of Rest for Horses at Speen to view the six horses that had been removed that day. She inspected them and completed forms: KH16 [2094], KH17 [2121], KH18 [2145] and KH18A [2175]. She was then unable to see two further horses which had been put into a field and could not be caught. These two she saw on Monday the 7<sup>th</sup> January: KH19 [2204] and KH20 [2231]. In cross examination she was similarly challenged with John Parker’s “scores” KH16 [1487], KH17 [1487], KH18 [1488], KH19 [1488] and KH20 [1488].

On Sunday the 6<sup>th</sup> January 2008, Inspector Hampton, Inspector Ryder, Inspector Davidson, Trading Standards Officer Higgins, Mr White from ILPH, Police Officers, Mr Wills, the knackerman and two colleagues went back to Spindle Farm and were allowed entry by the Third Appellant. They went to the Yard where the Third Appellant and the Fourth Appellant were present. The Police explained the Respondents’ intentions under the AWA. KH15 was removed by Mr Wills; a donkey KH22 was found to be dead in Pen 5. It was seized and removed by Mr Wills. John Parker said that he would have thought that it would have shown “something of concern” the day before. If so it is clear and we are satisfied that it was missed both by the professionals and by the Appellants.

Nicholas White said that, again, the situation had changed. Once again the equines had no forage and no food. There was water in some pens: but it was contaminated with horse droppings. This was confirmed in the agreed statement of Geoff Higgins [623] who wrote that he saw horses eating their bedding and that the water troughs appeared to be contaminated with faeces.

Inspector Hampton spoke to the Third Appellant and the Fourth Appellant about the conditions in Pen 6. Nicholas White said that the horses were still tied to the wall. They had no water, bedding or forage. In general he said that he did not see any evidence of a morning feed having taken place; the water in the troughs was still dirty. Inspector Hampton said to the Third Appellant that it was not appropriate for the animals to be tied up. They needed hay, water and the ability to lie down. The other horses also needed a dry area in which to lie down, hay and water. Action was soon taken: the equines in Pen 6 were released into the field and haylage was put down in the pen.

A number of carcasses were removed: C6-19, and C21-25. C8 fell apart; C17 was decomposed; C25 was in two parts.

Inspector Hampton then spoke to the Third Appellant and the Fourth Appellant. They said that they would clean the pens and hire machinery, within a week, with which to do it. Voluntary interviews were discussed with them both and arrangements made for later that day. Later Inspector Hampton gave them a property receipt [706-7]. The Third Appellant signed as "owner"; the Fourth Appellant witnessed. Inspector Hampton said that the Third Appellant accepted ownership. We are satisfied that she did so.

There was a later discussion about ownership at the farmhouse. TSO Higgins wanted to deliver a note to the First Appellant about the collection of dead animals and bones by a knackerman by 11<sup>th</sup> January 2008. The Third Appellant, the Fourth Appellant and the Fifth Appellant confronted the group and accused them of harassment. They were asked to leave the property. The Third Appellant and the Fourth Appellant said that the First Appellant was "ill with his nerves" and that their father was not speaking to them. He was 43 years of age and was retiring. The horses were now theirs. Each said that their father did have problems with his nerves and that some of the horses were theirs anyway. TSO Higgins was finally allowed to put his note through the door. He advised the Fourth Appellant that he would be returning on 11<sup>th</sup> January 2008.

At some stage, Inspector Hampton agreed in cross examination, she was told that the donkeys and the Shetlands were pets. Specifically, the Fourth Appellant claimed ownership of RS5, RS27, RS47, RS48 and RS52. She also claimed to own two additional piebalds, and an appaloosa, which were not identified; 8 animals in total.

The Third Appellant's involvement was also the subject of questions. Inspector Hampton said that she considered that Spindle Farm was a family business. The Third Appellant did not say that she was "only there to help her mother." She and all the other Appellants knew their way around, where the horses were and none of them, including the Third Appellant appeared scared of horses. Nor did the Third Appellant say, at any time, that she was scared of the animals. Indeed, the Third Appellant, the Fourth Appellant and the Fifth Appellant all pointed out horses they said they owned, in total about 10 in number. We are satisfied that this evidence about claims and indications of ownership is true.

On Monday the 7<sup>th</sup> January 2008, there was a meeting at the Respondents' Headquarters. It was attended by Chief Inspector Skinner, Inspector Hampton and representatives of the equine agencies. Its purpose was to de brief and to make arrangements in preparation for any further visits to Spindle Farm. No Veterinary Surgeons attended. Chief Inspector Skinner accepted that it was "fairly clear" that there would be a further visit. It was not a formal meeting and it was neither chaired nor minuted. It was known that Veterinary Surgeon Robinson would not be available for further involvement as she was going on holiday. Provisional arrangements were made for vehicles to be available if any further animals had to be removed, which was standard procedure. Veterinary Surgeon Baskerville was invited to attend, as a Veterinary Surgeon used by the First Appellant.

The First Appellant was given no prior warning about a possible visit because it was felt that his previous conduct, threats, abuse and aggression, the fact that Inspector Hampton's tyre had been slashed and the risk that evidence might be concealed made this impractical. The option had been raised on the 5<sup>th</sup> January 2008; efforts were made to contact both the First Appellant and his solicitor about access.

Helen Evans said that she attended. She said that she had been invited but could not recall now by whom. She confirmed that it was not a formal meeting and that it was neither chaired nor minuted. She said that she made her own notes but has since lost them.

The meeting was not about prosecution. It was for the agencies to get together to see how to prevent a repetition of what had happened. It was a “brainstorming”, flagging up how to improve matters in future by better communication.

She denied that the meeting was about plans for the 9<sup>th</sup> January 2008. She had no recollection of talk of seizures or of the attendance of a Veterinary Surgeon for that Wednesday.

It is clear, in our judgement, that the Respondents decided to return on the 9<sup>th</sup> January 2008 to review the situation and to determine whether any further action was required. As we shall see when we come to the events of the 9<sup>th</sup> January 2008, Inspector Hampton gave Veterinary Surgeon De Brauwere a briefing and made preliminary arrangements.

We are satisfied that this meeting was a strategy meeting to consider the options for future action. We reject the assertions that this resulted in closed minds or that any decision was made at that time to remove further animals. That would presuppose that Veterinary Surgeon De Brauwere gave some indication of what he would do when he attended and inspected the scene at Spindle Farm. We are satisfied that he gave no such indication and that he had not nor could he have had any preconceptions before he saw with his own eyes what the situation on the ground actually was.

On Wednesday the 9<sup>th</sup> January 2008, RSPCA officers, the Police and representatives of equine agencies went to Spindle Farm. Inspector Hampton informed the Third Appellant and the Fourth Appellant that the purpose of the visit was for a Veterinary Surgeon to look at the remaining horses and to give an opinion on the horses and on the Yard. She denied that she told those at the gate that they had come to take the rest of the horses; removal depended upon a Veterinary Surgeon’s view. Entry was permitted but a female [not one of the Appellants] said that no horses could be removed unless their solicitor and their Veterinary Surgeon were present. She was advised that Veterinary Surgeon Baskerville had been asked to attend. The Second Appellant and the Fifth Appellant arrived. The Second Appellant, the Third Appellant, the Fourth Appellant and the Fifth Appellant were cautioned. The adults said they understood; the Fifth Appellant was puerile and abusive.

There was a measure of obstruction offered: shutting gates, moving horses, removing a manhole cover, claiming that lights were not functioning, taking Inspector Hampton’s photograph and making threats. Inspector Ryder told of how the Fifth Appellant had advised her to watch her back. She and her colleagues should never be alone; he would get them back. It seemed that the Fifth Appellant said all this when a Shetland pet of his was removed; he was upset. At one time – the actual date is unclear and was between the 4<sup>th</sup> January and the 6<sup>th</sup> January 2008, Nicholas White reported the Fifth Appellant warning about rats and, separately advising Nicholas White that he was “too old for the job.”

Inspector Hampton noted that some changes had taken place: The donkeys were now in two pens and horses were no longer tied up in Pen 6: they were now in the field. Some things were unchanged: the conditions in the pens were still filthy, with the floors still covered with wet, boggy, dirty faeces, with no dry areas and the water troughs were still contaminated with faeces.

Chief Inspector Skinner made a further video recording. He said that Pen 1 still had a filthy floor with no dry area, although the trough was quite clean. There was some haylage which had been provided. Pen 2 still had a soggy, filthy floor and a contaminated trough. Peter Green pointed out from the DVD that food had been provided but only along the front of the pen. There was insufficient space for all the animals to feed and horses were reacting to one another in the close proximity. Pen 7 had a soggy floor but did have water. Peter Green pointed to the condition of the floor as shown on the DVD. RS11 was lying in faeces because there was no dry area available. After all the horses had been removed from that pen, he pointed out that the floor was wet enough to take the impressions of the horses' hooves. Pen 8 now contained dry bedding, haylage and water as did Pen 10.

Veterinary Surgeon De Brauwere attended and examined the horses and their conditions. He told us of his experience in matters equine. He qualified in 1991 and has been a Veterinary Surgeon at Redwings Horse Sanctuary, the largest horse charity, since then. The sanctuary currently employs 6 Veterinary Surgeons and caters for 1100 to 1200 horses with another 500 looked after elsewhere. He is the gateway Veterinary Surgeon for the admission of equines, along with a colleague. The charity offers advice and support to owners and also will advise and, if necessary, support removal by the RSPCA or Local Authorities. The charity is horse driven. He has personally examined hundreds of equines and was involved with the Committee engaged with the preparation for the AWA.

He explained that Inspector Hampton had provided him with the explanatory background of the case on Monday the 7<sup>th</sup> January 2008. He was asked to look at, observe and examine the animals. He was also asked whether his organisation could provide facilities, should removal of animals be necessary. He was told that a group of horses had been removed under veterinary advice, that animals had died and carcasses had been found, there had been cause for concern and that samples had been taken. He was informed that there had been the subsequent death of a donkey and that there were concerns that further animals might be at risk. A professional opinion was required.

He had seen Field 1 and possibly 2 from the road as he approached the Yard; now he examined the barns, pens and stables and went out into the fields. He examined the animals, making a general scan first and then went back and made a more detailed examination with notes taken by RSPCA staff. He did not conduct a full clinical examination: such an examination would have taken 45 minutes for an individual equine. Once he had seen all the animals in the Yard and those closer to the yard in the field, he gave his opinion.

He set out several levels of concern. "Fundamentally, I believed that a lot of the problems were with aspects of care and welfare of the animals. I felt that the animals were likely to suffer if their circumstances did not change immediately and very significantly. I identified a few signs and symptoms in a few horses that they were suffering at that very moment. My concerns were grave for their immediate welfare. They were suffering potentially unnecessarily."

A number of factors led him to that overall conclusion. Firstly and in all aspects of welfare, there were more equines present than there was food and care available. Secondly, the grazing available: it was “well into winter, the grass was not growing and it was very sparse. It was short and small and there were poached areas without any grass. It was sufficient for a couple of horses only: no more. Thirdly, there was only one feeding station in the field [884]. There was a bale with a handful of animals stood around eating whilst some horses stood away.

On the subject of available feed, Veterinary Surgeon De Brauwere had significant concerns. Simply: whatever was on the premises in store, there was not enough actually available to the horses: “the quantity of feed was disproportionate to the number of feeders” and “there was a distinct lack of food available to the horses.” Secondly, the distribution on the field prejudiced the majority. “Space is required for a horse to eat. It will tolerate some sharing but not with all others. The dominant horses will keep the others away. With a shortage of available food, the problem is amplified: aggression will escalate dramatically.” He considered that one feeding station should be provided for no more than 5 or 6 animals, but ideally 3 or 4. “Every horse should have access to feed at every moment.”

He voiced particular concern for the younger animals. He said that some of the animals on the field were very young and, on examination, too young to be able to sustain themselves on the forage in the field. Some were under 6 months old and without their mothers so could not suckle. They were not able to cope with only grass and hay: grass is of negligible nutritional value. They had effectively been weaned when too young. “Some of these were in the most extreme states of suffering that I saw on that day or after.”

He then gave evidence about what he had found in the Yard. Firstly there was overcrowding both in terms of space and nutrition, most noticeably in Pens 1, 2, 3 and 7. These were independent problems. Either was a cause for concern. Some of the horses were in reasonable bodily condition; some in relatively poor condition. He was of the opinion that, over a long period, animals had been fighting for the food and space available and the dominant ones had succeeded and so had better bodily condition. He saw no food when he arrived except for that which had been trampled into the soiled material on the floors.

In Pens 1, 2 and 3 he found what he termed “fairly foul smelling faecal material and it was damp underfoot.” The gates could not be opened because they were wedged by the material. In Pen 3 there was a “powerful smell” coming from a horse blanket with hair and skin on it. Pens 1, 2 and 3 were “soggy” throughout. There was no or insufficient straw or hay to provide any benefit. Some of the water troughs were fouled by faecal or bedding material and unfit for consumption. Some of the animals had diarrhoea, which “added to the soiled environment.”

He described the state of the animals that he saw as dull and listless. A few itched and rubbed themselves. “It was a depressed outlook with animals suffering from ill thrift to various degrees.” He defined “ill thrift” as “sub optimal bodily condition, dull and stained hair coat, gummy eyes, tacky discharge around the eyes, a depressed demeanour and lower levels of activity.” It was, he said, “a sorry sight.”

He found active lice infestation, consistent with the animals rubbing themselves with consequential hair loss. A few equines had traumatised themselves through rubbing resulting in open sores and scabs. More significantly, but in only a few cases, there were signs of respiratory infection and distress, with coughing and nasal discharging, some more “pussey” than others. In a few cases abscesses had formed from the lymph nodes under the head. A “lot of” hooves were generally overgrown because they had not received recent farriery attention or the particular animal had not been free to roam over normal ground for growth to wear away naturally. Some had crooked legs or feet, accentuated by overgrown hooves.

A significant number of the equines were below optimal weight and some quite extremely so. If an animal had inadequate fat and muscle masses, it made it more difficult to cope with a negative environment, for instance cold weather.

He gave his opinion to those present. He gave it verbally. He did not give individual certificates. He said that he would have written it down if requested and that he gave his opinion in respect of every individual animal. He recommended removal from the premises to another facility elsewhere. He said that he believed that the animals were likely to suffer if their circumstances did not change very significantly and immediately. Something drastic had to be done then and there. “I did not believe that the animals’ needs were being met at various levels across the site. Not all the animals had the same needs which were being compromised.” He said that required removal on the animals’ physical state and their environment; he made no judgement on causation. He justified his grounds under S9 [a], [b], [c] and [e]. Inspector Hampton described the situation as an “horrendous case of cruelty.”

Veterinary Surgeon Baskerville was also on site, having been invited he believed. He walked the fields and made his own assessment of the overall situation. He became aware of the discussion about the question of removal of some or all the animals. Professionally, he “very much” approved of the decision to remove the equines.

In cross examination he seemed to qualify that statement. He said that he arrived at 10:00. Removal had already been authorised by Veterinary Surgeon De Brauwere. So Veterinary Surgeon Baskerville was neither present when Veterinary Surgeon De Brauwere was working nor when he voiced his opinion. Veterinary Surgeon Baskerville said that he felt that the donkeys and Shetlands were in reasonable condition and would survive the situation at the farm. With careful monitoring they could have been managed in situ but “the Grays needed help and monitoring.” “I would not have positively advanced a case for the removal of the donkeys and Shetlands.” We understand the theory: the reality – looking at the total picture – was beyond this.

Veterinary Surgeon Baskerville was also asked about Veterinary Surgeon De Brauwere’s examination. He supported Veterinary Surgeon De Brauwere’s approach. In 90% of cases he said that it is possible to make a diagnosis by seeing horses in their environment. He himself would expect to be correct 90% of the time. “My clinical assessment was that the thin and emaciated horses were in that state because they had been inappropriately fed.” He said that he would expect that there would be a high level of parasites in the yard because of the animals’ exposure to faeces. The presence of parasites [which would occur with exposure to faeces] would make the problems worse.

PC Flint formally seized 61 equines RS1 – 61 and passed them to the RSPCA.



Veterinary Surgeon De Brauwere was asked in cross examination if he had considered the option of giving advice to the owners. He said that he considered the situation to be beyond the giving of assistance on site as a solution: “the physical scale of effort required for basic care was well beyond the people and the facilities there. A small army of people were required over the next few weeks to look after their wider needs.” He said that he would have been prepared to take the transport back to Redwings empty if that had been his professional conclusion: it was not. He denied that there was a conflict of interests: Redwings do not charge the RSPCA for boarding.

All Appellants were made aware of his recommendation. When the First Appellant emerged he asked Inspector Hampton “What are you going to do with 60 horses in the next few days?”

During all this activity, the Fourth Appellant claimed ownership of six horses: RS5, RS6, RS27, RS47, RS48 and RS52. The Third Appellant claimed to own about three animals which were not identified. The Fifth Appellant claimed to own RS82.

97 animals were seized. Their departure was recorded on film, except for the last ones which could not be filmed as it was said that the lights were not working. 21 of those animals, 13 horses and 8 donkeys were then transported to Redwings. 36 were entrusted to the RSPCA. Of these RS51 to RS61 went to the ILPH headquarters in Norfolk where they have remained. Nicholas White was subsequently present when every animal was photographed, looked at by a Veterinary Surgeon and by a farrier.

Suzanne Hodgkins, the ILPH [now WHW] Centre Manager had gone to Spindle Farm and subsequently accompanied the RS51 –RS61 horses to Snetterton in Norfolk. She witnessed their unloading into their isolation unit. Unusually on arrival into strange surroundings, these animals drank. She opined that they were extremely thirsty. Staff had difficulty in keeping the troughs topped up. They drank until the middle of the following afternoon. This was unusual even allowing for their keenness to use the mineral and salt licks. She said that it is unusual for a horse to drink immediately at a strange location, unless extremely thirsty. They were excessively thirsty even after six hours of travel. They were put on a diet of good quality hay and some vitamins and mineral supplement. All were keen to eat, even those who had difficulty because of the condition of their teeth.

The care provided at first, for each horse, was more than the normal care. They were put on a diet of good quality hay with a vitamin and mineral supplement. Generally, the majority were quiet and subdued when they were unloaded. After travel, equines are usually quite lively, with heightened senses. They are inquisitive and aware of their new surroundings. Half of these horses were coughing; all had runny eyes and noses. They were in varying body conditions from lean to very thin. Their coats were dirty and matted. All needed to be seen and treated by a Veterinary Surgeon and all received treatment from a farrier. A qualified veterinary dentist was called in and he carried out work on all the animals, as some had difficulty in actually eating because of the condition of their teeth. They received a specialist diet.

Over time all have made progress. They are brighter, happier and their body weight has improved. “What we provided the horses with was what should be provided by a responsible owner. We provided what the horses should have had on a daily basis. We gave basic care.”

Of those seized which went to Redwings, the 21, those equines which were most concerning were placed near a veterinary facility. Over the next few days they were prioritised according to needs.

On the 14<sup>th</sup> January 2008, Veterinary Surgeon De Brauwere personally carried out a clinical examination on the equines which had been taken to Redwings. Each examination took about 40 minutes. He gave detailed evidence about every one of them, from the results entered by him on the Redwings forms. Some were examined more than once as the documents show. They are RS62 [2679], RS64 [2715], RS66 [2754], RS82 [2850 and 2851], RS83 [2871 and 2872], RS84 [2901 and 2902], RS85 [2914], RS86 [2928], RS87 [2943], RS88 [2957], RS89 [2983 and 2984], RS91 [3025], RS93 [3047], RS95 [3074], RS96 [3106] and RS97 [3121].

Veterinary Surgeon De Brauwere said that he was struck by the dramatic change in the equines demeanour and general health that followed over the ensuing three weeks. The animals improved at differing rates. They became more settled, the frantic grooming ceased, the energy levels increased dramatically and, in particular the youngsters behaved as youngsters, interacting with one another and racing around each other. They became different animals.

Very few needed more than food. Worms and lice were removed. What they had needed was food, water and getting rid of lice and worms.

This was the theme of his answers during cross examination, when Counsel for the First Appellant took him through the records of the equines that he had authorised for removal.

The records are detailed. They contain the initial clinical welfare examination. The raw handwritten notes were put onto a chronological diary that was produced for every individual animal. These records included the results of laboratory tests from samples removed from the particular animal in question.

Once again the question of “scoring” bodily conditions arose, Veterinary Surgeon De Brauwere and the Appellants expert, Mr Parker using different “scoring” scales. In fact, when looked at and compared, they fairly consistently equated with each other, give or take a point or half a point. Indeed, on one animal, RS62, Mr Parker gave a significantly lower score than Veterinary Surgeon De Brauwere. In another example, RS84, the difference between them was 1 ½ against 5, the latter being Mr Parker’s “score.” Veterinary Surgeon De Brauwere queried whether Mr Parker had actually “got his hands on this pony.”

Veterinary Surgeon De Brauwere confirmed evidence given by Veterinary Surgeon Robinson, [though perhaps not in identical language] that it takes longer for an equine to gain weight than it does for it to lose it. It is necessary to remove the impediment of disease and to offer good nutrition in order to achieve growth but the pace cannot be forced too quickly.

Counsel for the First Appellant asserted, in every case concerning the animals that Veterinary Surgeon De Brauwere’s authorisation for removal, that [a] the particular removal was not necessary because what was required by way of treatment could have been provided at Spindle Farm by the First Appellant and [b] that the statutory criteria for removal was not made out. In essence, the argument went, that the parasitic problems did not require removal.

In all the cases, Veterinary Surgeon De Brauwere made it plain that some animals, for instance RS82 and RS83, were emaciated and/or very thin and that they were suffering from an inadequate and inappropriate intake of diet and an excessive loss of nutrition by lice, worm and anything else that contributed. He included three examples: lack of proper pasture, the fact that haylage alone was not an adequate supplement for an animal which was under age and he repeated the point about competition between animals. The animals subsequently responded to basic but labour intensive care, by the selection of the correct diet, appropriate feeding and delicing.

Veterinary Surgeon De Brauwere was asked whether he operated a “higher” Redways standard by which he judged the First Appellant. He replied: “we provide basic standards of care for animals. The luxury is having vets on site. I am not imposing an unreasonable standard. We educate people to what are easily attainable standards of horse care. If you bring an animal into ownership or responsibility and if it is debilitated, you get a vet to find out what is the problem both for the sake of that animal and for the sake of the collection.”

At Redwings, it took at least three to four weeks for six to seven people to treat 13 horses. With 90 animals, it was beyond the capabilities of a single owner. It took 20 people just to round up the Shetlands from the fields. The First Appellant would not have been able to worm them without rounding them all up.

Individual reasons of justification for removals included debilitation, demeanour, malnutrition, emaciation and parasitic burdens [reading] at chronically significant levels – in effect poor care and husbandry. Emaciation he described as when the animal had used all its body fat and was using up - “consuming” - its muscle. It would be suffering and not far from death. It needed a Veterinary Surgeon and basic care but it was sometimes impossible to save the animal. In these cases, the evidence of starvation could be seen in the fact that the animals responded to care and recovered. They were not having their dietary needs met otherwise they would not have been in the condition in which he found them. Those with disease also recovered by basic worming and were still gaining weight whilst doing so.

The removal of some horses – those in better physical shape and scoring at higher levels were justified by the fact that horse are herd animals and would suffer if removed from their companions. One animal [RS91] an animal with a poor bodily condition was suckling a foal. She did not enough milk for herself, let alone milk for the foal. Specifically dealing with RS62, he said that an owner should recognise that an animal was in poor bodily condition. It is justifiable to get a Veterinary Surgeon out just because the animal was thin.

Other points that arose during cross examination included RS64, which, Veterinary Surgeon De Brauwere said, was visibly thin to look at and whose needs were not being met by a Veterinary Surgeon being called to examine it. It was “dull, depressed and sickly.” Veterinary Surgeon De Brauwere concluded that either no wormer had been applied or it had been inappropriately or ineffectively administered.

The average equine, we were told by Veterinary Surgeon De Brauwere, consumes 1.8% of its body weight in 24 hours; [the other Veterinary Surgeon from Redwings, Roxanne Kirton offered a range of 1.5 to 2%]. Hay and dry cube could be simply weighed; haylage needed to be greater in volume because its water content needed to be compensated for by 20 – 30%. So a 200kg animal will need about 6kg of provision: 4kg plus dry material. Horses will visit a feeding station several times a day. Veterinary Surgeon De Brauwere did not consider that care could have been provided with all the needs identified in these animals: too many needs, too many animals needing care and attention. Those with a poor body “score” were not having their needs met and required the specific care of a Veterinary Surgeon.

He was asked about the practical consequences of putting right what he saw was wrong, both in terms of practicality and time consumption. First he said that the pens were overcrowded, but adequate in terms of providing shelter. Then the fields were insufficient in terms of acreage for the numbers required for them and so the animals’ needs were not met on the fields. He guess estimated that it would take a week to clear out Pens 1, 2 and 3 with a JCB and then 2 to 3 days to properly wash, dry out and supply fresh bedding to them.

He said that the horses that he saw were amongst the thinnest that he had ever seen. It was necessary to remove the animals for proper care and to separate them from the source of whatever was ailing them. Something potentially serious had been going on there and the animals were potentially a part of that process. They were at risk and it was appropriate to remove them. Enough of them were in a critically bad way for removal. The decision was based upon the needs of the animals. Each animal had its own set of circumstances: in some the needs were not being met at more than one level. Between 5 and 10 of them were in a suffering state. Each animal needed to be considered on its own merits and he used his own clinical judgement.

Veterinary Surgeon De Brauwere was asked about the manner of his opinion being given. It was not written down. He said that he would have written it down had he been asked to do so. He was not; he gave it orally and formally to a Police Officer. There was no individual certificate made out. He said that he had inspected the site facilities, the environment and the equines themselves. He concluded that the animals’ welfare was not being met and that they would suffer if their circumstances did not change dramatically and immediately.

We considered Veterinary Surgeon De Brauwere to have been an outstanding witness. His recollection was clear, his answers concise and to the point. But the most compelling and impressive part of his evidence lies in the fact that he clearly remembered every single one of the 97 animals and the individual state of them and subsequent treatment that they received at Redwings. He was only caught out in his recollection of the existence of a pile of straw. It was not pointed out to him and his concentration was on the animals. Only Counsel for the Fifth Appellant, and then only when directly challenged as to what her case was, challenged Veterinary Surgeon De Brauwere’s integrity. We reject that challenge.

Covering much of the same ground was another Veterinary Surgeon, Roxanne Kirton. She assisted Veterinary Surgeon De Brauwere with his examinations and concurred with his clinical evaluations. Like Veterinary Surgeon De Brauwere she had a clear recollection of all these equines, their condition upon arrival, their nature and their subsequent progress. What was written by Veterinary Surgeon De Brauwere accorded both with her recollection and with her opinions. It was suggested, politely, that she might not have challenged her superior. "I did not disagree with him, but I could have done if I had disagreed with him" and "if I thought that he was wrong, I would have discussed his opinion with him." We were satisfied of her independence and that the views that she expressed were, indeed, her own judgements.

Some of the themes of cross examination deserve mention. Firstly she, too, was asked about the comparisons between Veterinary Surgeon De Brauwere's "scores" [with which she agreed] and Mr Parker's. She expressed herself by saying that she did not agree with Mr Parker's evaluations. In her opinion, on the scale of 0 to 5, experienced Veterinary Surgeons should not differ by more than ½ a point.

She gave her definition: "emaciated" means that there is no covering fat or muscle and the prominences are angular; "very thin" means that there is a little fat maybe on the pelvis and neck.

For example, she said that Mr Parker's "scores" for RS83 was "not reasonable"; RS89 "it was thinner than Mr Parker's "score" of 3/10; RS91 was "closer than the others"; RS66 and RS91 were "not underscored by Veterinary Surgeon De Brauwere;" RS93 was a "significant discrepancy" but she asserted that Veterinary Surgeon De Brauwere had not underscored it. She agreed with Mr Parker on his "score" for RS85 and RS87.

She was taken through a number of the Haematology and Biochemistry reports commissioned by Redwings. Essentially these matters were pursued: firstly, examples of a low albumin count, for instance RS82 where the score was 18. Albumin is protein in the blood: if there is a lack of nutrition, or a poor body condition or a worm infestation, the albumin level falls. The appropriate range of finding in an equine seems to be between 20 and 34, with an average of 28 [see, for instance, 3002]. However, the albumin count does not simply rise again on the resumption of nutrition or wellbeing, it takes time to re establish itself.

Ms Kirton accepted that a low albumin count could contribute to the thinness of an animal. In RS83, the albumen count dropped after arrival at Redwings [2887 and 2868]. Again Mr Kirton accepted that this was a contributory factor to thinness or, in relation to RS91 [a donkey with a foal], "low albumin is an indication of its poor bodily condition."

Secondly, a number of these reports contained expressions to the effect of "these results suggest a significant ongoing infestation /inflammatory process with tissue damage and protein losing enteropathy related to endoparasitism. [RS83 at 2887; RS84 at 2896 and RS89 at 2994]. Ms Kirton was asked about protein losing enteropathy. She said that it did not indicate encystment, but it may indicate some larval stage. It could have been a contributing factor to the state of the animals, which she could not exclude, but "many horses live quite happily with a significant parasitic burden and maintain body weight. You cannot tell the degree of encystment in the gut from a laboratory report."

Other points we noted related to ascarid and tapeworm counts. It was possible that anthelmintics [wormers] had been given as shown by the lack of both of these; and “strangles” [a bacterial infection of the upper respiratory tract caused by *Streptococcus equi*] could affect the weight of an animal if it interfered with its ability to eat: [for example RS66].

Veterinary Surgeon Kirton gave evidence of weight gains:

RS62: 217kg on arrival: 215.8kg by 22 08 and 316kg by 11 08 [described as a nervous animal].

RS64: 195kg on arrival; 204.8 by 22 01.

RS82: 46.4kg on arrival: 73kg by 30 04.

RS83: 55.4kg on arrival; 82.4kg by 30 04.

RS84: 64.4kg on arrival: 88.4kg by 30 04.

RS88: 132.4kg on arrival in foal; 156kg by 30 04.

RS89: 48kg on arrival: 74.6 by 30 04.

RS91: 119kg on arrival: 113.6 by 30 04. This donkey was lactating and had a foal.

RS96: 91.6kg on arrival: 91.6kg by 30 04.

RS90 was a heavily pregnant donkey. Ms Kirton said that she saw it the day after seizure and just following the arrival of its foal. She discussed it with Veterinary Surgeon De Brauwere but did not recall the actual discussion. Veterinary Surgeon De Brauwere himself said that he would not have put the animal through the journey if he had been concerned about its welfare. It was given a body condition of 1½ against John Parker’s score of 3. The blood sample showed low levels of WBC [White Blood Cells Count] and albumin which was consistent with PLE Protein Losing Enteropathy]. She said that it subsequently progressed very well and gained in condition.

On the 9<sup>th</sup> January 2008, The Grange in Norfolk received 65 equines from Spindle Farm. They were RS1-50 and RS67-81.

The proprietor, Mrs Ringer had been contacted by the RSPCA with a request that, should the need arise, could she accommodate up to about 80 equines. She was able to do so, but, on reflection, used an arrangement with a neighbouring farm, the Moat, to physically house them. She actually knew that they were coming in a message from Inspector Hampton after they had set off for Norfolk. So much for the “conspiracy” theory of a pre planned seizure.

65 equines arrived. They were looked at by a Veterinary Surgeon one at a time as they came off the lorry. They required care – some more than others. They were grouped by need and sex and kept under cover. Their quarters had been disinfected and they were given dry bedding. They were given “ad lib” food and water.

Subsequently they were wormed, had their feet trimmed and their teeth checked. They were groomed and led about as some were not used to humans. By the end of 2008, she said that all were in good bodily condition and health.

She now homes 73 equines: one died of colic; two came in from the Home of Rest for Horse and several mares have foaled.

Veterinary Surgeon Mrs Verhulst assessed and examined these animals at Moat Farm. The first 47 she saw on the 9<sup>th</sup> January 2008 and the remainder of the 11<sup>th</sup> January 2008.

Her general overall impression was that they were unhandled, untidy and thin. She was not taken through the individual papers that have been collected for every horse in these two groups but she did say that two caused her concern and she was asked about a third, which later died.

The first source of concern was RS28. This young chestnut colt looked quieter than the others. It had a dull “stary” coat, which she translated as sticking out rather than flat and shiny. In particular it had a swelling under its jaw. That burst and “strangles” was isolated. The papers show that it did indeed suffer from “strangles”. She added in cross examination that the swelling can develop quite quickly. It also had both salmonella and a worm burden. The haematology and biochemistry report results suggested a severe infectious/inflammatory process with tissue damage and protein losing enteropathy, related to significant endoparasitism.

She wrote on the form that the animal had been suffering as a result of neglect for a minimum of a week. It was sick and underweight. It was treated and survived. It recovered to full weight.

The second animal was RS72. This bay young colt was slightly bigger than RS28. It, too, had a dull coat and lesions that might have been ringworm. It looked dull and weak and its abdomen was slightly distended. It looked like a “third world horse.” It had a worm burden but not salmonella. The haematology and biochemistry report suggested an infection. “Figures such as these may be seen in cases with colitis related to significant endoparasitism.” She described it as suffering due to neglect for a minimum of two weeks and the results did not change that opinion. She considered it thin and described it as “very thin” on the RSPCA Form. She did not agree with Mr Parker’s score of 3 made after ten days. She agreed that “scoring” is subjective, so that there is a difference between Veterinary Surgeons. It may have improved slightly after ten days. She considered that its thinness contributed to its endoparasitism. This equine also recovered to full weight.

Indeed all the equines that she saw at Moat Farm recovered to full weight.

The exception was RS37. It had recovered to full weight and was fine without any cause for concern as to its condition. It suffered from a very sudden onset of severe gastric impaction and secondary colitis and died on the way to treatment.

Mr Green dealt with this matter both orally and in writing. This equine died in July 2008 about 6 months after seizure. It died from a form of colic, the stomach having become impacted with food (64kg). Gastric impaction is rare but it is a recognised form of equine colic. He himself has seen about 15 – 20 cases and operated on about half of them.

His report at p376 reads;

*“RS37 succumbed to a form of colic in July 2008. The stomach became impacted with food and a severe haemorrhagic colitis developed. Primary gastric impaction is an uncommon but regularly reported condition. It may be associated with gastric ulceration and there was evidence that this gelding had recent and chronic gastric ulcers. Without emergency surgery the prognosis is hopeless as diaphragmatic rupture soon occurs. I have personally operated on several such cases.*”

*The post mortem findings in this case are significant, since the colitis of the colon (large bowel) and caecum affected precisely the regions of the bowel that would be affected by cyathostome disease. Despite full post mortem and extensive histology (the microscopic examination of tissues), no evidence of cyathostomiasis was found. There is no report of nodules within the bowel wall, no evidence of hibernating encysted larvae, no report of scar tissue from earlier infestation and no larval parasites were found on the bowel wall nor adult parasites in the lumen of the gut. There was no evidence of large strongyle damage to the arteries or the mesenteric system. These findings suggest that this gelding had only ever suffered mild, if any, endoparasitism."*

He disputed Ms Forsyth's assertion that this was concerned with worming and cyathostomiasis. He said that this animal was given a wormer the day before its crisis came but by then its stomach would have been impacted already. We accept Peter Green's evidence about this animal and the results that he sets out.

On Monday the 14<sup>th</sup> January 2008, Chief Inspector Skinner and Inspector Hampton attended at Amersham Police Station in the afternoon. The purpose was to interview the remaining Appellants.

Chief Inspector Skinner spoke to their solicitor, Mr Widdess, who was acting for all the Appellants in attendance. He went over the pre interview disclosure. It was orally done because Amersham Police Station did not have a Custody Suite and there were no forms available. Mr Widdess was happy with oral disclosure and the content of it.

Chief Inspector Skinner went over the previous disclosure given and updated the solicitor on the developments since. This included the Appellants' claims of ownership of particular animals. The solicitor then went to consult with the Appellants.

He returned to say that the Fifth Appellant did not want to give an interview. Chief Inspector Skinner and Inspector Hampton took advice and offered the option of a written statement. That offer was refused. The solicitor was informed that if the Fifth Appellant was unwilling to give an interview, he would possibly be arrested and taken to Aylesbury Police Station. The Fifth Appellant agreed to be present in interview, with a responsible adult and had the chance to answer the questions put to him. He did not comment in answer to the questions.

A similar process was carried out with the Second Appellant, the Third Appellant and the Fourth Appellant. The solicitor confirmed that he was happy with the disclosure given and all three Appellants did not comment in answer to questions put.



## IN SITU EXAMINATION AND POST MORTEM

This is the evidence of Veterinary Surgeon Wakeling and Veterinary Surgeon Hayes. What this evidence set out to achieve was the findings by Veterinary Surgeon Wakeling on the carcasses in and around Spindles Farm and the subsequent post mortems carried out by Veterinary Surgeon Hayes. In fact they gave their evidence in reverse order and we listened to Veterinary Surgeon Hayes without the benefit of Veterinary Surgeon Wakeling's evidence. It made our understanding and assimilation of Veterinary Surgeon Hayes' evidence more difficult.

A post mortem, with humankind, is intended to establish the cause of death. In doing so, the examination reveals relevant information about the deceased wellbeing, underlying illness, disease and condition. Similarly with animals: properly analysed, a post mortem can reveal relevant information of a similar nature.

In this case, Veterinary Surgeon Hayes conducted a series of post mortem examinations on most of the carcasses: C1-5, 8, 10-12, 15, 18-21 and 24-25. Additionally he conducted post mortem examinations upon the euthanased horses: KH1, KH3, KH15 and KH22.

Neither Veterinary Surgeon Wakeling nor Veterinary Surgeon Hayes is a veterinary pathologists. Neither hold such additional qualifications. It seems clear that neither was given much background information such as the nature of the business or the regime said to have pertained at Spindle Farm. Peter Green questioned whether it had been fair on Veterinary Surgeon Hayes for him to have been asked to undertake this work. It should have been carried out by a Veterinary Surgeon pathologist.

In fact what Veterinary Surgeon Hayes did was to examine the remains of the carcasses and the euthanased equines. Regrettably, as Peter Green pointed out, he did not take blood samples. His report is of his findings: body scoring, age estimations, body condition with particular reference to the fat conditioning and bacterial and parasitic findings, of which he took some samples. Some carcasses were so decomposed that he took no such samples. His opinion on body "scoring" – and he accepted that body "scoring" is usually undertaken on live rather than dead equines – was done only visibly. He gave evidence about scoring based upon comparative "scores" with a live animal and evidence about fat findings internally. He agreed that any proffered opinion should be considered in the light of the fact that where death occurs and where significant autolysis [deterioration of the carcass by decomposition and putrefaction] has taken place or where the animal has been recently euthanased, the scoring for muscles is much reduced.

Our doubtless basic understanding of the process of starvation of a live animal leads us to understand that where an animal is starved the body will use up its sugar stock quickly. It then starts to break down protein to provide itself with energy. It will use fat first and so fat findings can be enlightening.

Veterinary Surgeon Hayes said that there was a sequence of losing fat on starvation: the subcutaneous fat loss is followed by the mesenteric fat [the tissue that sustains the intestines], then the fat around the organs, the kidneys and finally the fat in the epicardial groove.

He said that he was not asked to look for cyathostomiasis. He did open up the colon and intestinal tracts in those cases where it was practicable for evidence of causation or contributory causation of death. He saw no “gross evidence” through the naked eye. He took faecal samples. He looked for the small strongyle larvae [bright red worms which are often about 1 cm long but can get up to 2½cms long and are visible to the naked eye]. He did not see any. Where he did not submit a sample he said that he always opened up the bowel. Whilst he did not carry out transmural illumination, he saw no evidence of these encysted larvae. We accept the validity of his evidence on this point.

He confirmed that he found no evidence, in any carcass, of euthanasia by shooting. Neither did Veterinary Surgeon Wakeling. That, of course, is particularly relevant with C20.

C1 Veterinary Surgeon Wakeling described as a piebald pony carcass lying partially covered by faecal material and sodden bedding in pen 3. It showed evidence of decomposition by deep discolouration of the membranes and tissue in the gums. Its stomach was distended. Its lower jaw had detached from the carcass. It had been dead for several days. It had a carcass body condition score of 1 taking into account post mortem changes. When alive it had not received adequate nutrition to maintain a healthy body weight. There was no evidence that it had been euthanased with a firearm and there was no evidence to suspect that it had been euthanased by a Veterinary Surgeon by chemical means. His conclusion in the absence of any evidence to the contrary was that it was malnourished and had died without intervention. It had been allowed to suffer unnecessarily by its carer failing to provide veterinary attention either to treat its ailments or to euthanase it.

Subsequently, it transpired that there was some confusion in which carcass he was describing between C1, C2 and C3. The Respondents no longer rely on this evidence from him in relation to this carcass.

Veterinary Surgeon Hayes described this carcass as an emaciated carcass in an advanced state of autolysis. He said that it was emaciated before it died.

C2 was described by Veterinary Surgeon Wakeling as a piebald pony carcass lying on its side partially covered by faecal material and sodden bedding. It showed similar signs to C1 with deep discolouration of the tissues. It was decomposed and his opinion was that this animal was malnourished and had been dead for several days. He gave it a body condition score of 1. This had also had received insufficient food whilst alive to maintain a healthy body weight. Also he could see no signs of euthanasia by a firearm and he was not provided with any information that it had been euthanased by a Veterinary Surgeon. His opinion was that it had been allowed to suffer unnecessarily by the carer failing to provide veterinary attention either to treat its ailments or to carry out humane euthanasia.

Again, it is now unclear to which carcass this description applies and the Respondents no longer rely on it for this carcass.

Veterinary Surgeon Hayes described this carcass as emaciated; again he said that it was emaciated before it died. He said that it had been dead “for some time.” He saw a loss of muscle, skin and subcutaneous tissue. He could not give it a “meaningful” body score.

C3 was described by Veterinary Surgeon Wakeling as a skewbald pony lying outside pen 3 with a body condition score of 1. It was covered with silage plastic; it had its head bent round underneath its shoulder. Due to the state of its post mortem changes it had been dead for more than a couple of days. His opinion was that whilst alive its needs had not been met by the carer providing sufficient food to maintain a healthy body weight. It showed no evidence of having been euthanased by a firearm nor was evidence provided that it had been euthanased by a Veterinary Surgeon. In his opinion it was allowed to suffer unnecessarily by its carer failing to provide veterinary attention either to treat its ailments or to carry out humane euthanasia.

This was the final carcass which could not be clearly related to the exhibit number and the Respondent's no longer rely upon this evidence for this carcass.

Veterinary Surgeon Hayes also gave it a body "score" of 1. He did not consider that it had much muscle mass. There was an absence of abdominal and mesenteric fat, fat around the kidneys or in the epicardial groove. There was a reduced amount of subcutaneous fat and reduced gut contents. He saw diarrhoeic faeces in the small colon. He saw no sign of the small strongyle larvae.

C4 was described by Veterinary Surgeon Wakeling as a bay pony wearing a purple rug and a red webbing head collar and was also outside pen 3. It had a distended abdomen and showed evidence of decomposition of its membranes and skin. The head was bent round and there was a dark bloody discharge from its nostrils. He did not body score it but it had an adequate body condition. In his opinion it had been allowed to suffer unnecessarily by the carer failing to provide veterinary attention either to treat its ailments or to carry out humane euthanasia.

Veterinary Surgeon Hayes described it as having some evidence of fat and "scored" it at 2½. This was put to Veterinary Surgeon Wakeling in cross examination and he did not disagree with it. Mr Hayes saw no strongyle larvae.

C5 was described by Veterinary Surgeon Wakeling as a grey pony wearing a blue rug with a red border and a faded red collar. It had a body condition score of 1. In another document he had given it a "score" of 1½. He could not now recall which "score" represented his view, since his opinion is that the difference was "minimal". It was more likely that he went up rather than down as he palpated. He was very careful before "scoring" below 1. The carcass was lying on its left side with its abdomen distended through post mortem changes. It had a thick nasal discharge from both nostrils, the left containing blood. In his opinion the pony had been lying on its side for some time prior to its death due to the evidence of worn away bedding in small areas around its hooves and lower limbs. It did not just drop dead. It died probably in the previous 24 – 36 hours although in the cold weather it could possibly have died earlier. In his opinion it was allowed to suffer unnecessarily whilst alive by the carer failing to provide adequate food, water and medical attention to prevent prolonged suffering and ultimately death whilst in their care. Also his opinion was that this pony died relatively slowly and in distress which could have been prevented had the horse been humanely destroyed.

Veterinary Surgeon Hayes described this as an emaciated carcass with a mild to moderate state of autolysis and he gave it a body score of 1. There was evidence of muscle reduction and no evidence of either mesenteric fat or fat around the kidneys or heart. He found reduced gut contents. He saw diarrhoeic faeces in the small colon and rectum but no visible sign of small strongyle larvae. He took samples and was shown the results. Such results occur “reasonably commonly” in equines.

C6 was described by Veterinary Surgeon Wakeling as a grey miniature Shetland pony lying in a shed in field 3. His opinion was that the pony had been moved there after death. It was young and thin with a body condition “score” of 1½. Again, in another document he had given a “score” of 2 and could not now explain the difference. His opinion was that without evidence of it being euthanased by a firearm or by a Veterinary Surgeon this pony had died without the intervention of a Veterinary Surgeon and therefore been allowed to suffer unnecessarily by the carer failing to provide veterinary attention to either treat its ailments or carry out humane euthanasia.

Veterinary Surgeon Hayes did not comment on this carcass.

C7 was described by Veterinary Surgeon Wakeling as a skewbald miniature Shetland, malnourished and found in the same shed as C6. In cross examination he withdrew the word “malnourished” and from another document he seemed to have said that its body “score” was 2. That he now accepted as correct. The carcass was significantly distended with post mortem changes. In his opinion it had been dead for several days. His opinion was that without evidence of it being euthanased by a firearm or by a Veterinary Surgeon this animal had been allowed to suffer unnecessarily by the carer failing to provide veterinary attention to either treat its ailments or carry out humane euthanasia.

Veterinary Surgeon Hayes did not comment on this carcass either.

C8 was described by Veterinary Surgeon Wakeling as a partially cremated carcass, the remains of a pony found at the bottom of field 3 by the railway line. Little information could be gained from an initial examination of the state of the carcass because of the partial cremation. Its hind limbs appeared to be poorly muscled showing that it was under weight when it was alive. He said that it was reasonable to give an opinion on what was available. His opinion taking into account its condition whilst alive was that its needs had not been met by its carer by providing sufficient food to maintain a healthy body weight.

Veterinary Surgeon Hayes added nothing to this report.

C9 was described by Veterinary Surgeon Wakeling as a partially cremated carcass of an emaciated pony with a body condition score of 1. In another document he seemed to have “scored” it as 0. He maintained 1 and withdrew the word “emaciated,” because of his reticence of “scoring” below 1. In another document he had given a score of 1.5. The carcass was found in a bonfire with C8 and C16. In his opinion its needs had not been met when alive by its carer providing sufficient food to maintain a healthy weight.

Veterinary Surgeon Hayes did not comment upon this carcass.

C10 was described by Veterinary Surgeon Wakeling as an aged chestnut gelding lying outside the shed at the bottom of field 3. It had an adequate body condition. Its decomposition suggested that it had been dead for more than a few days. In his opinion it had not been euthanased and therefore was allowed to suffer unnecessarily by the carer failing to provide veterinary attention to either treat its ailments or euthanase it.

Veterinary Surgeon Hayes described it as an emaciated carcass in a moderate state of autolysis and gave it a body "score" of 1. He did not conduct a post mortem. Veterinary Surgeon Wakeling, in another document had given it a "score" of 2½. He had not mentioned it in his statement because he accepted that it was not underweight.

C11 was described by Veterinary Surgeon Wakeling as a brown/black young pony found with C10. It was very thin and had a body condition score of 1.5. From its state of decomposition the pony had been dead for more than a few days. His opinion was that its needs had not been met by the care providing sufficient food to maintain a healthy body weight. It had not been euthanased. It was malnourished and allowed to die without intervention therefore it was allowed to suffer unnecessarily by the carer failing to provide veterinary attention either to treat its ailments or to carry out humane euthanasia.

Veterinary Surgeon Hayes described it as an emaciated carcass in a moderate state of autolysis and gave it a body "score" of 1. He did not conduct a post mortem.

C12 was described by Veterinary Surgeon Wakeling as a donkey carcass found behind an old van inside a shed at the bottom of field 3. It was very thin with a body condition score of 1. Blood was present in its mouth and nostrils. It was congealed blood and present at the time of death. Its state of decomposition suggested that it had been dead for more than a few days. In his opinion whilst alive its needs had not been met by the carer providing sufficient food to maintain a healthy body weight. Also the animal had not been euthanased. It was malnourished and allowed to die without intervention. It was allowed to suffer unnecessarily by its carer failing to provide veterinary attention to either treat its ailments or carry out euthanasia.

Veterinary Surgeon Hayes also gave it a body "score" of 1. Veterinary Surgeon Wakeling did not disagree. Veterinary Surgeon Hayes did not conduct a post mortem but did say that it was in a moderate state of autolysis.

C13 was described by Veterinary Surgeon Wakeling as a dark brown or black pony carcass found outside the shed in field 3. It had an adequate body condition score of 2.5. Its state of decomposition suggested that it had been dead for more than a few days. In his opinion this animal had not been euthanased and therefore died without veterinary intervention and therefore was allowed to suffer unnecessarily by its carer failing to provide veterinary attention either to treat its ailments or to carry out humane euthanasia.

Veterinary Surgeon Hayes offered no comment.

C14 and C16 consisted of remains and no opinion was offered by either Veterinary Surgeon Wakeling or Veterinary Surgeon Hayes.

C15 was described by Veterinary Surgeon Wakeling as a piebald foal found in field 3 and aged between 3 and 6 months. It was thin with a body condition score of 1.5. In another document he had given it a “score” of 2.5. He could not explain the difference of a whole point on the scale. In his opinion it was malnourished and had not been euthanased so died without veterinary intervention. It was allowed to suffer unnecessarily by the carer failing to provide veterinary attention either to treat its ailments or to carry out humane euthanasia.

Veterinary Surgeon Hayes gave it a body “score” of 1. He did not conduct a post mortem.

C18 was described by Veterinary Surgeon Wakeling as a skewbald Shetland pony found dead in field 3 and covered originally in a blanket. It was juvenile, thin and appeared to have collapsed and died where it lay. There was no food or water nearby. On the other side of the fence was the farmhouse garden from where the carcass was easily visible. In his opinion from the amount of decomposition it had been dead for more than 2 days. The area of its nose and around its anus had been scavenged possibly by a dog. Its needs had not been met whilst it was alive by its carer providing sufficient food and water to maintain a healthy body weight. It had not been euthanased and it was malnourished. It had been allowed to die without veterinary intervention and therefore allowed to suffer unnecessarily by its carer failing to provide veterinary attention either to treat its ailments or to carry out humane euthanasia.

Veterinary Surgeon Hayes gave this carcass a body “score” of 1. Veterinary Surgeon Wakeling described it as having an adequate body condition. Veterinary Surgeon Hayes did not conduct a post mortem but did describe it as being in a mild state of autolysis.

C19 was described by Veterinary Surgeon Wakeling as a chestnut Shetland filly found dead lying on its chest by the water trough in field 3. It had been dead for more than a day. It was not scored but was described as being malnourished by being slightly but not significantly under weight. It had been allowed to die without veterinary intervention and therefore had suffered unnecessarily by the carer failing to provide veterinary attention to either treat its ailments or to carry out humane euthanasia.

Veterinary Surgeon Hayes gave it a body “score” of 1, with a moderate state of autolysis. He found a reduced amount of subcutaneous, abdominal and mesenteric fat and fat around the kidneys and heart. He also found severe muscle atrophy, reduced subcutaneous fat, reduced gut contents and diarrhoeic faeces in the rectum, colon and small colon. He saw no signs of larvae. Veterinary Surgeon Wakeling had not made a “score” and inferred that that was because he had determined that it was in an adequate body condition.

C20 was described by Veterinary Surgeon Wakeling as a piebald pony found in the rear of an animal transport trailer in the yard. He gave it a body condition score of 1. Its head was wedged against the trailer partitions and was attached to the side of the trailer by a head collar and a lead rope. Its tail was also tied to the same side of the trailer. His opinion was that this tail rope had been used in an attempt to stabilise the pony when it was alive and standing. If it was down there would be no need to attach its tail. It had been in that position for some time due to the amount of faecal build up underneath the tail and round the rear end of the horse whilst still alive. In his opinion the ropes would have been used to stabilise the animal whilst alive. Whilst it was alive it had collapsed onto the floor. Of course, Veterinary Surgeon Wakeling was ignorant of the history of this horse from the field at Hughenden Manor: we are satisfied that the ropes were attached to drag it into the trailer, where it was just left to die and that it never stood afterwards. There was no evidence of euthanasia but there was evidence of movement marks and that the animal had been in that position for some time. The needs of C20 had not been met by the carer providing sufficient food to maintain a healthy bodyweight. It had not been euthanased. It was malnourished and had been allowed to die without veterinary intervention whilst tied in the trailer. It had suffered unnecessarily due to the carer failing to provide veterinary attention either to treat its ailments or to euthanase it.

Veterinary Surgeon Hayes gave some evidence about this carcass. He gave it a body "score" of 1, with a moderate state of autolysis and found an absence of abdominal fat, mesenteric fat, fat around the kidneys and in the epicardial groove and reduced subcutaneous fat. He found reduced gut contents and diarrhoeic faeces in the rectum and small colon. The liver was atrophied. He saw no larvae. He accepted the results from his samples.

C5 and C20 were examples of carcasses with a subsequent finding of salmonella. With C5, he accepted in cross examination that it was "distinctly possible" that it died of salmonellosis with a worm burden. With C20, salmonellosis "was involved." The question remained: which was the causative condition? Was it starvation and/or salmonellosis and/or a worm burden?

In his original report, it transpired that he had written that "starvation, a heavy parasitic burden, combined with salmonella infection *would* [emphasis added] cause clinical dullness, weight loss, anorexia and diarrhoea. If left untreated, death would be the [in C20 "a"] likely result." They were related.

So the cause of death could be one or a combination of problems: the horse might have been starved; it might have been fed but the body did not utilise the nutrition properly, so leading to secondary starvation. If the internal disease or parasitic burden were causing protein losing enteropathy, what was the causation of death? Mr Hayes said that parasitism and salmonella "play a significant part."

Similar comments were to be found in his reports on KH1, KH3, KH15 and KH22. We have already dealt with KH1 and KH3.

KH15 was described as emaciated and was given a body "score" of 1 by Veterinary Surgeon Hayes. He found a mild state of autolysis, reduced abdominal, mesenteric, round the kidneys and epicardial fat. There was reduced subcutaneous fat and moderate to severe muscle atrophy. He found reduced gut contents and diarrhoeic faeces in the rectum and small colon. He saw no strongyle larvae. He agreed that its pregnant state could be a contributory factor for its thin condition but it was not an excuse for it.

KH22 was described as emaciated and in a mild state of autolysis. He gave it a comparative score of 0. It was extremely thin. There was an absence of subcutaneous, abdominal, mesenteric fat and fat round the kidneys and epicardial groove. This was a donkey foal and he agreed that young animals have less fat anyway. He also found reduced gut contents, severe liver atrophy. There were diarrhoeic faeces in the colon. Even in an animal so young, he said in cross examination that he would have expected to see some epicardial fat, which is the "last fat to go."

It may well be that because Mr Hayes preceded Mr Wakeling, we found his evidence not easy to follow. At one point he seemed to be saying that the causation of death was starvation, with the possible exception of KH3. At other times he seemed to be indicating that starvation combined with a heavy parasitic burden and salmonella, if untreated, would be *the* cause or a cause of death.

Taken in isolation, this evidence was not particularly helpful. Parasites occur naturally in horses and are or should be treated with anthelmintics. Veterinary Surgeon Wakeling advanced a clearer argument: if a horse is showing signs of ill health, for instance thinness, this condition could be due to lack of food, or lack of food and a parasitic burden or lack of food, a parasitic burden and salmonella. Whatever the cause, there comes a time when the opinion of a Veterinary Surgeon is required for the welfare of that animal. That opinion is necessary so that the correct treatment can be prescribed and administered.

He said that there were enough equines that he had examined that were undernourished. He accepted that disease could be an indication of what was going on with an animal and was important to overall health. An unwell but well fed animal would present differently and have a better chance of survival. There are a number of reasons for thinness; but a thin animal is suffering because it is hungry. It is burning up its body mass. A well fed but diseased horse will survive. An underfed and diseased horse will die. The horses here that he saw were very thin.

The causes of death may not relate simply to food or the lack of it. Processes are interlinked. The failure to provide adequate food was part of the problem. He insisted that he had reported on what he had seen. All the possibilities were in the front of his mind. The onus was on the owner to find out why the particular animal was thin. If he did not know the answer, he was obliged to find it out from a Veterinary Surgeon. "If you carry on feeding an animal food that is not being utilised effectively, you have to change to what the animal will assimilate or consult the vet." If the owner was worming the animal and it was still losing weight, it would be reasonable to expect the owner to appreciate that and consult the Veterinary Surgeon.

A stock farmer will then have to make a decision: to pay for the cost of the treatment or to pay for the particular animal to be euthanased. What should not be done is for the animal to be abandoned to die.

This evidence was not in isolation: it has to be looked at alongside the considerable body of other evidence, eye witness and scientific that we have heard.



If the animals were being fed and watered properly within a supportive environment, they should not have been in the physical and environmental condition that they were found to be in on 4<sup>th</sup> January 2008 and on the ensuing days. The prudent owner would have observed from the condition of the sick animals that there was a need for a veterinary input. No Veterinary Surgeon seems to have visited these premises or these animals save for the purpose of signing DEFRA forms certifying that the particular animals were fit to travel for export purposes. It was not suggested to Ms Robinson that either she or her senior Mr Fennelly ever attended to view the condition of the animals. Whatever was going on, it is clear that these animals were not given the attention by feeding, watering, housing and having a veterinary input that they required. They were dying and left as and where they fell or were removed or hidden from sight; they were found in squalid conditions, without food, potable water, or housing conditions suitable for their needs.

Except for two horses, RS17 and RS37, the causes of death being properly defined and explained, all the others were given the treatment that the prudent owner should give and survived. Not merely did they survive but they grew in health, wellbeing and weight as the figures provided by Inspector Hampton and Veterinary Surgeon Kirton showed.

It is plain that the Veterinary Surgeons engaged did not collaborate in the preparation of their individual findings or for giving evidence. They operated independently and gave their opinions and assessments independently. They had differing tasks to perform but their conclusions, which we accept, are very much in line. What is more their conclusions accord with the lay evidence of the state of the yard, the actual availability [in the sense of provision] of food and potable water and the physical condition and responses of the animals. We accept their conclusions.

## KH HORSES

KH1 [1803] was a young bay gelding which was found collapsed and lying on its chest next to the water trough in pen 7. It had a body condition score of 0.5 and was dull. Its heart rate was 80 beats to the minute (normal 40-45) and a heart murmur. Its capillary refill time was 3 seconds (normal under 2 seconds) so it was prolonged. It had a slight nasal discharge from the left nostril and faecal material around its tail and defecated mild diarrhoea whilst being examined. It had a large sore on the left hand side of its chest which was induced by rubbing against the concrete blocks supporting the water trough. John Parker, by looking only at the photographs, considered that it was merely an abrasion and could have occurred on the day that it was found. Despite being beside the water trough it was unable to lift its head to drink and drank immediately it was offered water from a bucket. It could not rise subsequently it was euthanased. Mr. Wakeling's opinion, having physically seen the animal and decided upon euthanasia, was that it had been unable to rise for more than a day. Emaciation had led to its inability to rise and the amount of rubbing present on its left hand side had not occurred acutely but over a period of time as it moved. If the RSPCA had not attended on the 4<sup>th</sup> January 2008 it would have died within a short period of time due to the level of malnourishment, its inability to reach food or water and taking into consideration the effects that were evident from the horse's clinical parameters (heart rate and increased capillary refill time). In his opinion, this pony was caused to suffer unnecessarily by the carer failing to provide adequate nutrition and veterinary medical attention whilst under their care. We are satisfied that Veterinary Surgeon Wakeling is correct.

Veterinary Surgeon Hayes subsequently carried out a post mortem on this animal. We shall consider aspects of his evidence later but we record his evidence on this animal here alongside the evidence of Veterinary Surgeon Wakeling.

He described KH1 as emaciated. He gave it a body "score" in comparison to a live animal of 1. He found that there was a general absence of abdominal and mesenteric fat, fat around the kidneys and in the epicardial groove. There was no observed subcutaneous fat. Samples tested positive for salmonella and for the presence of strongyle eggs, although My Hayes saw no larvae. He found that the liver was atrophied which was, he said, an indication of starvation "and maybe disease."

KH2 [1815] was a piebald juvenile pony with a body condition score of 1. John Parker scored it at 2, and disputed the description of emaciation. It was relatively bright and able to walk unaided around pen 7. In Veterinary Surgeon Wakeling's opinion it was caused to suffer unnecessarily by the carer failing to provide it with adequate food. Veterinary Surgeon Robinson, in her form at [1815], described it as emaciated probably due to malnutrition. We accept that it was emaciated.

KH3 was piebald pony with a largely swollen and infected penis. It was bright and alert but thin. Mr Wakeling said that it was caused to suffer unnecessarily by the carer failing to provide adequate veterinary attention to prevent the infection of the penis from developing to such an extent that the pony needed to be euthanased.

Veterinary Surgeon Hayes conducted a post mortem on this animal. He gave it a body "score" of 2. Mr Wakeling said that he would not disagree with that. He said that he had not palpated to score himself. Mr Hayes said that there were reduced amounts of abdominal, mesenteric, round the kidneys and epicardial fat. Salmonella was present but is "often secondary."

KH4 was a juvenile piebald pony with a body condition score of 1. "Score" 1 equates with "poor", but he had written on an earlier occasion that it was in "very poor condition." He accepted "poor". It was also very thin but bright and able to move around pen 7. John Parker scored it at 2 and said that it was "pretty thin." Veterinary Surgeon Wakeling said that it was caused to suffer unnecessarily by the carer failing to provide adequate food. Veterinary Surgeon Robinson [1854] described it as malnourished, underfed and emaciated. We agree.

KH5 was a chestnut pony with a body condition score of 1. He had written the same for this as for KH4 and made the same concession. He said that this was also caused to suffer unnecessarily by the carer failing to provide adequate food. Veterinary Surgeon Robinson [1879] described it as emaciated. John Parker gave it a body score of 2 and thought it very poor to so score it. He thought that the albumin count indicated internal damage.

KH6 was a dun cob type horse with a body condition score of 1. The same applied to this as to KH4 and KH5. He said that it was in pen 2 and was caused to suffer unnecessarily by its carer failing to provide adequate food. Veterinary Surgeon Robinson wrote [1917] that it was emaciated and malnourished.

KH7 was a black colt cob type with a body condition score of 1.5 and was also in pen 2. John Parker said that his score of 2 was about the same. Mr Wakeling said that it was caused to suffer unnecessarily by the carer failing to provide adequate food. Veterinary Surgeon Robinson wrote [1948] that it was very thin and she diagnosed emaciation and malnutrition. John Parker said that the albumin counts taken indicated that it was losing protein.

KH8 was a black cob type colt with a body condition score of 1.5 and a nasal discharge from its nostrils. John Parker gave it a body score of 6 [1490], which is clearly discrepant. Veterinary Surgeon Wakeling said that it had been caused to suffer unnecessarily by its carer failing to provide adequate food and veterinary medical attention to treat an upper respiratory infection. Veterinary Surgeon Robinson wrote [2003] that it was very thin and it was swabbed for Strangles. John Parker is clearly out of line and we are satisfied that he was wrong.

With both KH7 and KH8, it was suggested in cross examination to Veterinary Surgeon Wakeling that his "score" again meant "poor." He said that both were underweight but he was not unduly concerned about their lack of body condition. He did not accept that either could be classed as "moderate."

When Veterinary Surgeon Wakeling was further cross examined, a number of points arose. The most important was his remit. He was requested to assess the animals as they were. He was asked to express his own opinion rather than speak to other Veterinary Surgeons. He suggested that the thrust of cross examination was to compartmentalise the condition of an animal: he looked at the animal as a whole. He denied that he had insufficient information to make a diagnosis of malnutrition. Emaciation can be assessed by looking at an animal.

The onus on the owner was to find out why an animal was ill. If he could not establish the answer it was for him to get a Veterinary Surgeon to provide the answer. If the answer is such that it is financially not worth it, it is reasonable to euthanase the animal at that point.

## **THE HOME OF REST FOR HORSES**

The Home of Rest for Horses at Speen received 8 equines on the 4<sup>th</sup> and a further 6 on the 5<sup>th</sup> January 2008. The Welfare Officer there, Lianne Crowther said that they were in very poor physical condition and mentally depressed. At first they were kept in isolation and stabled in pairs. Samples were taken. At first they showed little interest in their food or their surroundings. After a few days they showed more interest in one another. They were fed small quantities of hay regularly to avoid colic. It was understood that they had not been fed. After a few days, with a gutful of hay she saw a difference in them.

On the 12<sup>th</sup> January 2008, they were moved to a barn, still in isolation and introduced to a gradual diet of solid food for extra weight. Gradually they have put on weight. By mid March 2008 they were moved out to paddocks. By April 2008 one donkey had gained 75% of its weight. All the others put on significant weight. Subsequently, KH7 and KH19 went to Redwings because they were difficult to handle and one horse KH17 died. The remainder are still at The Home of Rest for Horse and are in good bodily condition. All that was needed was the good, normal care of the prudent horse owner.

## **PAUL JEPSON**

The Veterinary Surgeon at HORH is Paul Jepson and he gave evidence about the horses taken to his establishment. 14 equines were delivered. He saw them on arrival and, over the following 24 hours, examined all of them. He said that he was shocked and appalled at what met his eyes. The animals were appallingly thin but his overwhelming first impression was their state of apathy. They were standing with heads down looking dejected and apathetic. They took “absolutely no interest” in those who came to look at them or came into their boxes. They were inert. They did not move or move away. “It was very unusual.”

His opinion was that these animals had been deprived of proper nutrition. They were able to eat and when they did so the transition was almost immediate. At first there was some caution exercised so that they would not overfeed. All had good appetites: all were interested in feeding and soon were “very keen.” There was no question of “force feeding.” To feed intensively might cause damage by upsetting their digestive systems. It was not difficult and within a few days they were eating “ad lib.” He said that he was not given any information as to whether or not they had been wormed and made the assumption that they had not been wormed; in any event his staff would have wormed them anyway.

Mr Jepson gave evidence about the animals individually. He also produced a document [755] showing the weight gains of all these animals in a tabulated form. He said that they were making significant gains before being turned out onto spring grass.

KH2 was a piebald cob stallion, aged about 18 months. Mr Jepson gave it a body score of 1 on arrival. There was no evidence of Strangles but it gave two positive tests for salmonella before resulting negatively. Its blood results showed low albumin. John Parker gave it a score of 2 and said that it was “pretty thin.” He disputed any diagnosis of emaciation due to malnutrition because of the albumin and white blood cell counts which, he said, showed PLE. He asserted that differentials should have been considered such as parasitism.

KH4 was also a piebald cob stallion aged about 18 months. Mr Jepson gave it a body score of 1 on arrival. It had no obvious sign of Strangles but tested once positively for salmonella. Then the results were negative. Mr Jepson explained that if an animal is stressed salmonella bacteria are shed in the faeces. It can circulate in the blood and cause both diarrhoea and high fever. In this instance, when de stressed, the positive showing ceased. In cross examination he was taken to the albumin counts for January, February and May 2008. He accepted that these indicated parasitic damage but pointed out that it still managed to gain weight. John Parker described this horse as “pretty thin.” He said that the albumin levels indicated PLE.

KH5 was a chestnut gelding and not a youngster. It had a very poor bodily condition and Mr Jepson scored it 1 on the Carroll and Huntingdon 5 point scale. It weighed 270kg which he described as a very low weight. It showed no signs of Strangles nor infection either. It did show from results a high level of eosinophils [interpreted as being associated with an internal parasitic problem]. It did not need hospital but it was cared for by rest, recuperation, care and attention: nothing “high tech.” Its responsive to basic care was dramatic. All the equines, including this one, demonstrated a very rapid improvement in demeanour and started to put on weight. It did not develop cyasostomiasis; in so far as it had a “programme”, it received more intensive worming.

KH6 was an “aged” dun mare, meaning that it was an older adult. Mr Jepson gave it a body score of 2; John Parker a score of 2. There were no obvious signs of Strangles and the blood results again showed low albumin. She was blind and, therefore, required considerate handling. She was distressed and frightened in unfamiliar surroundings. In her condition she would have found it difficult to compete for food. It would be less likely to “bounce” back quickly. Peter Green pointed to its prominent bony features and said that it was very thin. Mr Jepson acknowledged that he wrote some notes on the haematology and clinical chemistry report. This equine possibly suffered from cyathostomiasis from the low albumin result: either it was not producing it from its liver or it was losing it from PLE. John Parker thought that the poor albumin count indicated poor liver functioning.

She – as with other animals - had a lice infestation. There had been no apparent effort to treat it, even though it is debilitating.

KH7 was a black gelding cob, aged about 2 years. Mr Jepson gave it a body score of 1. There were no signs of Strangles but it was anaemic with low albumin protein levels. He agreed that the haematology results indicated PLE, indicating damage and cyathostomiasis. It tested positive for salmonella. Mr Jepson pointed out that this condition can be harboured in an animal for life. If stressed it is detectable in the faeces. In this animal the condition was not treated: there were no overt symptoms. It was given “normal good care.” The anaemia was treated by an oral iron supplement. Its demeanour improved but not its weight initially.

KH8 was a black colt aged about 3 years which was underweight. He gave it a score of 2 out of 5, still below what it should have been. It showed the clinical symptoms of Strangles and tests subsequently confirmed it. It was also suffering from a profuse white pussey nasal discharge. It was isolated to avoid infecting other animals. The blood analysis showed that it was anaemic and had low albumin levels also. No special treatment was given to this equine: it was treated with antibiotics.

All the animals that showed signs of anaemia were treated with a liquid oral iron supplement given in the feed. This did not require a prescription.

KH9 was a blue/white cob gelding. Mr Jepson gave it a body score of 1. The form suggested that it was “bright” on arrival. Mr Jepson said that he could only report on what he saw and that was that it was not responsive initially. He added that such a finding could and did change in 24 hours. There was no overt evidence of Strangles but appeared to have some previous, non significant exposure to it. It tested twice positively for salmonella but the third sample was clear. Mr Jepson opined that the horse had become de stressed. Low albumin was seen from the blood analysis. He accepted that this could have been caused by cyathostomiasis but pointed out that the animal had still gained weight. This animal made “impressive” weight gains. John Parker’s score of 2 meant, he said, that it was “pretty thin” and added that the albumin results indicated PLE.

KH10 was a donkey mare and Mr Jepson gave it a body score of 1. It was unable to rise unaided; simply it could not lift itself up. Once lifted it could both stand and walk. It took a full 10 days before it could get up and down without assistance. Over that time it became increasingly stronger. There was no obvious evidence of Strangles but some of recent exposure to it. It was anaemic, with low albumin in the blood. “Apart from weakness and poor condition, there was nothing wrong with it. It wanted to eat but could not do so as it was so weak. Its condition indicated gross neglect.” It had no underlying problem; it gained weight; it needed feeding. Peter Green pointed to its prominent pelvis, ribs and shoulders. John Parker scored it as 1 and said that his score equated with Mr Jepson’s. He said that the albumin results indicated PLE.

KH16 was a piebald cob stallion. Mr Jepson gave it a body score of 1. Although the entry form described it as “bright” he said that it was not bright when he saw it. It tested positive for salmonella. The blood samples showed anaemia as evidence of tissue damage and low albumin. In cross examination he accepted that all the animals that he received had some parasitic damage. John Parker scored it at 3, which put it in a better condition than Mr Jepson had considered it. He looked at the albumin counts and said that it was quite seriously compromised by PLE.

KH17 was the subject of some interest because it died subsequently to seizure. It was a piebald colt stallion which arrived in very poor condition, apparently alert but quiet. Mr Jepson gave it a body score of 1. Peter Green pointed to its bony prominences. It was underweight. There were no obvious signs of Strangles but it did provide one positive result for salmonella. That was followed by negative results. The blood picture was as with others: low albumin. It made a “quite rapid” response to care and attention and gained weight. John Parker accepted that “some people” would describe this animal as emaciated but he stood by his score. He disputed the suggestion that malnutrition was the cause since it was precipitate to do so without looking at the results.

It subsequently died about a year after it had arrived at the Home of Rest for Horses. Mr Jepson wrote a letter dated the 7<sup>th</sup> January 2009, setting out what had happened. The letter indicated that upon arrival this horse had arrived with internal and external parasitism and salmonellosis. It was nursed back to health and during the spring and summer of 2008 was in “blooming health.” It began to show symptoms about 48 hours before it was euthanased. Until then it had been thriving, was in good condition and then there was a sudden onset. The post mortem report indicated that it had an attack of acute larval cyathostomiasis and a return of salmonellosis.

Mr Green considered the papers relating to the post mortem. He confirmed that this horse died of typical acute larval cyathostomiasis, with the sudden emergence of L4 larvae. The whole of the large bowel contained a watery fluid with thin red larvae. It had been harbouring large numbers of encysted L4 cyathostomes since seizure.

The findings indicated other parasitic conditions: “bots” are insects that lay eggs on the horse’s hair which hatch into maggots when the horse eats them. They burrow into the tongue and end up in the stomach. Ascarids infect foals and young horses. In such animals an absence would indicate that, at some stage, they had received worming treatment. Most older horses develop an immunity. The other parasites mentioned were tapeworms. “Bots” and ascarids are susceptible to Moxidectin; tapeworms are susceptible to Pramox.

Mr Green said that the lifecycle of these three parasites is short enough for them to have developed since the records show treatment on 23<sup>rd</sup> October 2008. However he did not believe that, in fact, this animal was actually wormed after that date. The entry for 25<sup>th</sup> November 2008 he did not believe was accurate; he doubted that the animal had actually received the treatment. The asymptomatic cyathostomes took over.

This horse death is instructive, according to Mr Green. In the post mortem photographs accompanying Mr Hayes’ work which picture the colon and caecum there is no reddened “cobble stone appearances,” nor are there to be seen numerous thin red larvae nor a thin watery fluid. Those animals did not die of cyathostomiasis: this horse did. In his opinion the other horses [except KH15] did not die of cyathostomiasis either.

Mr Green, in his report at Page 376, wrote;

*“KH17 suffered typical acute larval cyathostomiasis, associated with the outbreak through the wall of the colon of huge numbers of stage L4 small red worm (cyathostome) larvae. The post mortem findings illustrate clearly what one would find in a case of severe acute cyathostomiasis, notably grossly abnormal large bowel with a ‘cobble stone’ appearance, diarrhoea and numerous red larvae visible to the naked eye. The cyathostome disease was associated with terminal salmonellosis. These findings are significant for several reasons;*

- *It is clear that this horse retained significant encysted larval cyathostomes after seizure.*
- *These larval cyathostomes were refractory to anthelmintic therapy.*
- *The horse gained weight and appeared very healthy after seizure.*
- *The death was not sudden.*
- *Veterinary treatment was administered but was not able to save the horse.*
- *Characteristic post mortem changes were grossly obvious.*
- *The post mortem findings of the dead horses at Spindles Farm in early January did not show these changes.”*

Having reviewed all the material, we are satisfied that Peter Green’s analysis is correct.

KH18 was a donkey mare with the foal KH18A. Mr Jepson gave it a body score of 2. It was anaemic with a low concentration of albumin. It did not have Strangles but did indicate a recent previous exposure to the condition. Mr Jepson confirmed that it could have been suffering from cyathostomiasis. John Parker’s score of 4 was above Mr Jepson’s. He pointed to PLE and said that it was a feature of possible cyathostomiasis.

KH19 was a male palomino to which Mr Jepson gave a body score of 2 and said that it was still underweight. It showed exposure to Strangles and returned positive results for salmonella. There was a low result for albumin. This animal made an “impressive” weight gain without any particular effort but through normal care primarily, getting access to hay and some supplementary feeding. Its low albumin count dropped further after arrival but it still put on weight and was relatively normal despite PLE. John Parker scored it at 4, which was “better than very thin”. He pointed out that the results indicated PLE.

Finally KH20, which was a skewbald colt; Mr Jepson gave it a body score of 2, describing it as underweight and “on the scrawny side.” There was evidence of Strangles and it gave positive then negative results for salmonella. It also had low albumin, which fell further after seizure. It recovered and made very satisfactory weight gains. “It was just looked after.” John Parker contrasted that score with his of 4. He criticised Veterinary Surgeon Robinson’s opinion of emaciation due to malnutrition saying that she had not considered differentials and said that the results indicated an ongoing small strongyle problem. We disagree.

In answer to a question from Counsel on behalf of the Fifth Appellant, Mr Jepson said that these animals could not have got down to these weights in a short period of time. From the optimum of 3 to get down to 1 could not be achieved in about 14 days of drastically reduced starvation.

Mr Jepson said that these animals remain at the Home of rest for Horses under his supervision and being treated by the staff according to their collective and individual needs. That treatment was based upon the examination of the animals, their body weight and condition scores and tests to determine their haematological, biochemical disease and parasite status. “These parameters are all logged separately but in summary all the animals exhibited evidence of malnutrition varying in extent from severe to extreme. The evidence was of weakness and emaciation consistent with body scores at the bottom of the scale; very low body weights relative to size and type; in some cases severe anaemia; uncontrolled internal and external parasitism; impaired liver function and internal organ damage.”

He went on “I would describe the demeanour of these animals after arrival as pathetic, exhibiting minimal interest in their surroundings and with little apparent will to live or even to eat. It is my opinion that this batch of 14 animals had been caused to suffer unnecessarily by the person responsible failing to provide adequate food for their basic needs.”

He said that this was a straightforward case of starvation and poor condition of the animals. There was not a disease complication. It was a case where the nutritional aspect had not been met. Both salmonella and cyathostomiasis were complications but they were not the primary cause of their conditions. Cyathostomiasis was a reflection of the conditions that they had previously endured: squalid conditions, a lack of proper care and deprivation. Disease compounded the situation.



He agreed that they all suffered from PLE, anaemia with internal damage and resulting in leaking and non absorption of nutrients. When they received adequate nutrition, they improved. In his opinion, another 48 hours and a significant number of them would have been dead. They had not been cared for as they deserved to be cared for. They came to a place of rest – not a hospital. They were not bright and alert when he saw them at first; that increased exponentially from the first day with them getting food, space and rest and demeanour changed dramatically.

He said that he was not surprised that his scores and those of Mr Parker's differed. He said that in the 17 days that passed between their arrival, his inspection and that of Mr Parker the equines had changed. They had been different in condition, responsiveness and brightness. They would have been more alert and would have put on both weight and condition. That evidence coincides with that of Lianne Crowther who also said that she saw a difference after a few days.

Mr Jepson said that he became aware that Mr Parker was offering scores and assessments that suggested that the animals were not in such a bad condition as he had suggested. He did not think that Mr Parker was comparing like with like.

He was taken to a number of Ms Barralet's parasitology, haematology and biochemical reports. He agreed that the findings relating to PLE indicated a parasitic problem, that it contributed to thinness and that PLE was indicative of damage and cyathostomiasis. In all the results he accepted that the animals concerned had parasitic damage. He also said that all that the faecal samples would reveal would be the fact that there were adult worms laying eggs: nothing more. However, despite the parasitic damage these animals gained weight. His clinical assessment was that they had been deprived of proper nutrition. Their body condition was not due to "quirky growth or parasitism." They were able and willing to feed and when they did so the transition was almost immediate.

We accept his evidence.

## NICHOLAS DE BRAUWERE

RS62 [2679] was a roan pony with quite profound diarrhoea whilst in transit and on arrival. It was one of the sicker horses. He gave it a score of 1 to 1½ and said that it was thin enough to cause him severe concern. It was noted that Mr Parker gave it a score of 2 that meant that he thought it in a poorer state, but John Parker said in evidence that he thought that the scores were the same. It had a prominent curvature of the jaw and the muscles of the jaw were wasted because it had been ill for some time, or it might have been due to its make up. Its trunk was very wasted, with some cover on the top line but all the ribs were palpable. It had a tucked up abdomen. There was some cover on the pelvis but it had a very sunken tail root and anus. This equine needed treatment for some time after its arrival. Veterinary Surgeon De Brauwere said that this horse's very poor bodily condition was such as to justify a Veterinary Surgeon being called because it was thin. Its needs were not being met.

RS64 [2715] was a piebald colt which was dull, depressed, sickly, nervous and lying down a lot. It was visibly ill. He gave it a body score of ½ to 1, which equated with John Parker's score of 2. He aged it at 6 months old. He found severe muscle wastage on the head and neck and on the top line of the trunk. The ribs were very palpable. There was some muscle over the pelvis. John Parker said that it had never grown muscle rather than it had wasted away. This was a proposition that he advanced with several young horses and Veterinary Surgeon De Brauwere described the suggestion as the most preposterous statement that he had heard. We agree. Its coat had ringworm and lice. It had significant cracking and splitting to the hooves. It exhibited a profuse nasal discharge to both nostrils. It was in poor condition but it improved. It had been dull, depressed and sickly and was isolated. It was seriously ill and a Veterinary Surgeon should have been called to it. Its needs had not been properly met.

RS66 [2754] was very nervous and dull on arrival. He gave it a score of 2 to 2½. He maintained his score when given Mr Parker's of 6. Its coat was itchy with lice. It had a healing wound above the left corner of its mouth. It had no muscle along its top line and the ribs were very prominent. Its abdomen was tucked up. It had reasonable muscle to the hind quarters and prominent hips. It was suffering from "strangles", which required the intervention of a Veterinary Surgeon. It was dull, unwell and was suffering from a discharge from its eyes. It needed a Veterinary Surgeon and its needs had not been met because no Veterinary Surgeon had been called to it and its condition had not been properly treated.

RS82 [2581], he described as a mini Shetland skewbald aged between 1 and 6 months old. It was not ready to be weaned. It was intermittently dull, more alert when offered titbits. He gave it a body score of between 0 and ½, which meant "as thin as you can get" and "almost as thin as I have ever seen." John Parker's score of 3 was not "dramatically different" although John Parker differed saying that in his assessment a better condition was indicated. Veterinary Surgeon De Brauwere said that it had very wasted neck musculature, so wasted that he could make out its skeletal features underneath. It had a very prominent spine and ribs with almost no muscle. Its abdomen was tucked up. Its pelvis and hindquarters had very wasted muscles and very prominent bones. Its coat was dull, stary [meaning that the hairs were standing up] and had lost functionality as a coat, allowing water inside. It was also soiled, very itchy and scabby. Its feet were dragging. Its abdomen was "quiet" in contrast to a healthy abdomen which is noisy. A well fed animal will not have a quiet abdomen. It was in poor health and had been weaned too soon.

He considered the results from samples: its albumin count was at the lower end of normal. He said that he had grave clinical concerns for this animal. It needed worming. Both the low albumen count and the 7 strongyle eggs had their part to play in its weakness. He said that this animal's needs were not being met by freedom from disease and that it got worse before it got better. Encystment of the small redworm did not give rise to its condition by itself. He identified this animal as having been inadequately fed and malnourished. It was beyond the ability of a single owner to meet its needs: it took over 20 people to get all the Shetlands off the fields. This animal could not have been wormed without being brought off the fields.

RS83 [2871] was another mini Shetland aged between 1 and 6 months. He gave it a body score of + or - ½. John Parker scored it at 3 and said that it was in better condition. Veterinary Surgeon De Brauwere said that it was dull when undisturbed. He saw very wasted musculature around the head and neck, severe muscle wastage on the top line of the trunk, with prominent ribs but some muscling over the shoulder. There was very wasted musculature over the pelvis and hind quarters; the hips were very prominent. From the samples 96 strongyle eggs were seen; there was no salmonella. This case was similar to the previous one: both were suffering because of an inadequate and inappropriate intake of diet for their weight size and age and because of an excessive loss of nutrients caused by lice, worms and anything else that contributed to its condition. This animal needs were not being met because of malnutrition and a parasitic worm burden. It was emaciated.

Both RS82 and RS83 responded to basic but labour intensive care by the selection of a proper diet, appropriate feeding and delicing.

RS84 [2901 and 2902] was another mini Shetland pony which he aged at up to 6 months. He gave it a body score of 1½. When he was informed that Mr Parker had given it a score of 5, he said that this was a significant discrepancy and wondered whether Mr Parker had "got his hands on this pony." John Parker said that his score was better than thin and again suggested that this was an animal that had failed to grow muscle. Veterinary Surgeon De Brauwere said that 1½ was not a reasonable body condition score, it was indicative of an animal whose needs were not being met. It could have been treated at Spindle Farm only if under the specific care of a vet. At Redwings it did receive the ongoing attention of veterinary staff.

RS85 [2914] was a dappled gray Shetland which he scored at 4. That score correlated with Mr Parker's 8. Apart from the finding that its teeth needed attention, there were no concerns about this animal. Because of its age and the fact that it might have been dependent upon one of the mares and determining offspring could not be done, leaving it behind could not be justified.

RS86 [2928] was a mini Shetland which he aged at between 4 and 5 years. He scored it at 3½; John Parker at 7. It was suffering from diarrhoea. It had overgrown hooves, with its hinds flared to the midline. It might have been dependent upon one of two mares. Its teeth had sharp edges. It gained 15kg between arrival in January and April 2008.

RS87 [2943] was a skewbald Shetland aged in its mid teens. It was in foal. Its skin was lice infested and its coat was dirty with faeces in the tail and on the legs. Its teeth had sharp edges. 3 strongyle eggs were seen and a form of streptococcus. On body scoring, Veterinary Surgeon De Brauwere equated his score of 3 with Mr Parker's score of 7 on the different scales they respectively used.

RS88 [2957] was a mini Shetland and he described it as a good example of ill thrift, although not a cause for serious concern at the time of examination. He gave it a body score of 3, pointing to muscle wastage along the top line and relatively prominent ribs. He thought that his score more or less equated with John Parker's 7. It had a reasonable muscle mass and was in foal. Its hooves were slightly overgrown and its teeth edges sharp. Veterinary Surgeon De Brauwere agreed that this horse had a good bodily condition, but she could not have been left behind as she was in foal. It would not have been appropriate to do so.

RS89 [2983 and 2984] was another mini Shetland, aged between 1 and 6 months. Veterinary Surgeon De Brauwere gave it a body score of 0 – ½ and preferred his to John Parker's score of 3, although the two scores were not that different. John Parker however said that his score did reflect a better condition. Veterinary Surgeon De Brauwere said that he found very wasted neck and trunk muscles and an extremely prominent dorsal spine and ribs. Its abdomen was tucked up. The pelvis and hind quarters were prominent with severe muscle wastage. Again John Parker suggested that this animal had failed to put muscle on. Its dirty coat had lice within. 83 strongyle eggs were seen and 102 ascarid eggs, suggesting a patent adult worm burden. It gained weight from 48kg on arrival in January to 71kg in April 2008. It was also suffering, on arrival from a form of streptococcus. It was kept inside to make sure that it was not suffering from a contagious disease, because it was very cold and because this Shetland was very thin.

RS91 [3025] was a donkey aged about 7 years. Veterinary Surgeon De Brauwere gave it a body score of 1, much the same as John Parker's 3. It had lice and a lice infestation spreads quickly. An animal should not have it. It had a deformity in the hoof capsule and was walking on its heels as was RS97. It was an animal in poor bodily condition suckling a foal in poor bodily condition. It had severe muscle wastage in the abdomen and hind quarters. It was suffering unnecessarily. John Parker said that, because she was feeding a foal, she was entitled to be in that condition. We absolutely reject that contention.

RS92 did not have a separate sheet of initial inspection comments but [3038] Veterinary Surgeon De Brauwere described it as having a "poor bodily condition." This is repeated with a weight on [3039] and the internal documents show how this animal progressed. John Parker offered a score of 3 on his scale which he said might agree with that of Veterinary Surgeon De Brauwere since a 3 "is way down the scale for me."

RS93 [3047] was another donkey, aged about 6 years. Veterinary Surgeon De Brauwere gave it a body score of 1½ as against Mr Parker's 5. Veterinary Surgeon De Brauwere said that he was "comfortable" with his score. John Parker said that his score did indicate a better condition than Veterinary Surgeon De Brauwere's and that the animal's condition looked "reasonable" from the photographs. Veterinary Surgeon De Brauwere said that there were significant concerns about this animal but it was not at the bottom end of the scale. It was suffering from a lice infestation. Its hooves were very long with extremely flared and breaking away edges. There was a discharge from both its eyes and its teeth were sharp edged. It was suffering unnecessarily. It gained weight from 138.6kg in January to 150.5kg in April 2008.

RS94 also did not have a separate sheet but the Veterinary Surgeon De Brauwere scored it at 1 [3059] describing it as having a very poor body condition, with some covering on the scapulas and noted that the neck was not completely wasted. John Parker scored it at 3 which he did not consider to be much different on the two score methods.

RS95 [3074] was another donkey, which he aged at 11 years or more. Veterinary Surgeon De Brauwere gave it a body score of 2, finding an extensive loss of muscle over the dorsal spine and pelvis. His score was “slightly lower” than John Parker’s 5. John Parker said that he felt that the photographs showed “quite a reasonable animal” and that the photographs did not show an extensive loss of muscle. There was a discharge from both eyes and sharp edges to the teeth with sores. 260 strongyle eggs were seen and 13 liver fluke eggs. Veterinary Surgeon De Brauwere’s concern for this animal was that there would be a risk to its welfare if it had been left alone. There were concerns for the others and so removal was justified. On arrival it weighed 161 kg and a month later 184 kg. By March 2008 it weighed 194kg.

RS96 [3106] was another donkey aged about 2 years. He gave it a body score of less than 1, with severe muscle wastage. He said that John Parker at 2 was “pretty close” which John Parker queried. He said that his score meant that this animal was marginally better in condition than Veterinary Surgeon De Brauwere’s score. Veterinary Surgeon De Brauwere said that the animal walked with an arched back. Its coat was lice infested and it showed severe muscle wastage. John Parker said that the muscle had never been put on because a young animal’s musculature was not developed. He did agree that it was a poor animal with not a great deal of musculature or fat and that it looked dejected. Veterinary Surgeon De Brauwere said that it had 129 strongyle eggs. Its needs were not being met: it was thin, debilitated, emaciated and dull. It gained weight from 91.6 kg on arrival to 99kg by the end of February 2008.

RS97 [3121] was a 7 year old donkey to which Veterinary Surgeon De Brauwere gave a body score of 2½; John Parker scored at 6, saying that there would have been no muscle loss or wastage found for his score. He felt that it was in reasonable shape for a donkey. Veterinary Surgeon De Brauwere said that there was severe muscle wastage. It was not a serious concern and in far better condition than others. Its skin was lice infested and all its hooves were long, some of them with the fronts broken back. Because of the state of its hooves it had collapsed back on its heels. It could not walk normally; it was walking on the back of its heels. This was the particular concern for this animal. 168 strongyle eggs were found. It weighed 186.4 kg on arrival and 204kg about a month later.

We have already given our overall opinion of Veterinary Surgeon De Brauwere’s evidence and we accept it.

## ANDREW WILLIAMSON

Veterinary Surgeon Williamson undertook examinations on all the equines that went to ILPH. They were conducted on the 10<sup>th</sup> January 2008 and involved RS51 to RS61. Alongside him worked John Blake, a farrier, who was called to inspect the hooves of the animals and to treat them as and where necessary. Mostly Mr Blake cleaned, tidied and trimmed. If the hooves were sore, he gave supportive padding materials and followed up subsequent progress.

RS51 [2537] was a palomino mare which Veterinary Surgeon Williamson aged in her teens but could not confirm or dispute 8 or 9 years. It was in fair bodily condition, with a dirty and matted coat with evidence of lice infestation. He did not agree with Mr Parker's assessment 10 or so days later of 6 on the scale Mr Parker used. He said that it was difficult to comment on different scores on a different scale and on a different date. Even in the time between his examination and Mr Parker's a condition can change. It was very slightly foot sore on trot. From samples taken there were 13 eggs found, which was a low figure, but no salmonella. Subsequently it gained weight from 435kg on arrival.

There exists a table [for instance 2599] with comparisons between arrival weight and the end of March 2008. Individual records chart the results at intervals.

RS52 [2548] was a skewbald mare, which was thin and had lice in its matted coat. John Parker scored it at 4 and said that he felt that it was better than thin. Williamson said that it had a slight muscular weakness on the trot. There was discharge from both eyes and superficial skin loss on the hip. From the samples taken one strongyle egg was found and salmonella identified. He found it difficult to comment on Mr Parker's subsequent score of 4. He graded it as thin. He could not infer worming from the egg count but did acknowledge that it needed an adult worm to be present to produce it. It also made weight gains from its 422 kg on arrival.

RS53 [2562] was an aged palomino mare, thin and with a lice infested coat. It had poor occlusion and abnormal wear with "hooks" on its teeth. It suffered from a nasal discharge but he agreed that it was not necessarily wrong to have one in winter. Of more significance were the sunken anal and genital area and the tucked abdomen. This indicated either a lack of food passing through or a lack of fat deposits or both. Samples proved the existence of a single strongyle egg but no salmonella. He agreed that Mr Parker score of 5 seemed to be "in the same ballpark."

This animal weighed 345kg on arrival and by the end of the month 403kg. It continued to gain in weight as the record shows.

RS54 [2579] was a lean bay mare, with a dirty matted and lice infested coat. John Parker scored it at 6 and said that it was better than lean. Mr Williamson said that it had very poor teeth, with significant abnormalities of its incisors and on occlusion. It was standing and needed much encouragement to move. Its feet were very abnormal. They were long and cracked and a farrier was called to attend to it at once. John Blake described the condition: all four feet were badly broken and split. The wall splits were to full height and through to the laminae [the connective tissues]. This horse had the worst feet that he had ever treated. He trimmed in excess of 1½ inches off the outside edges all round. The feet were split and ragged and he trimmed the growth back. This animal was given a padded stable for comfort. It was suffering in Mr Blake's opinion because it was lame due to a lack of care.

Subsequently it had a proprioceptive deficit [an inability to feel its feet and walk normally]. It was lame on all four feet and this was longstanding. Mr Williamson said that anyone could see it was in this condition and that something was wrong. He denied that its condition was due to its breeding as a trotter. It took a considerable time for this abnormal condition to resolve.

Further it had a significant encrusted and active nasal discharge from both nostrils. 18 strongyle eggs were found from the samples and no salmonella.

This animal put on weight from 343 kg on arrival to 458kg by the end of the month. By November 2008, it weighed 505kg.

RS55 [2592] was a bay gelding in fair bodily condition, with a dirty coat with lice. John Parker said that he scored it at 7 and asserted that the "fair" score was an underestimate. Williamson said that it had a discharge from its right eye and a slightly tucked abdomen. It also showed a loose faecal condition. From the samples it had 21 strongyle eggs but no salmonella. He did not agree with Mr Parker's assessment of 7. It weighed 379kg on arrival and 387kg by the end of that month. It continued to gain weight as the records show.

RS56 [2602] was a bay pony mare, lean, with a dirty coat and superficial ribs. It had a slight ocular discharge in its left eye. It had a loss of muscle and was lame. John Parker said that it was at least average and criticised the use of the term "loss" of muscle and said that it could have been a lack of muscle. Mr Williamson said that from the samples 18 strongyle eggs were found but no salmonella. In this instance the weight records showed a loss of weight between 344kg on arrival to 339kg by the end of the month and another loss between March and May 2008. Mr Williamson said that this was not significant. The records shows a gain to November 2008 overall to 394kg. John Blake said that the hind hooves were very short. The central part of the foot, known as the frog, was worn away to the sensitive tissue underneath. It was very sore and this animal was given a soft padding and, later, a poultice.

RS57 [2612] was a chestnut gelding. It was in fair bodily condition but with a dirty matted and lice infested coat. John Parker said that "fair" was not good enough as a score and gave it a score of 7. He did not see any evidence of loss of muscle. Mr Williamson said that it was lame on its left hind leg and showed a loss of muscle on its neck and back. He was willing to accept that Mr Parker's score of 7 was "not a million miles apart" from his own score. Its shoes had been on for too long because the horse's feet continue to grow. The farrier attended. The problem was that the angle of the lower limbs had been changed by its shoes putting pressure on the wrong places.

Mr Williamson said that the normal interval between trimming, inspecting and shoeing was between 6 to 8 weeks. The shoes on this equine should have been looked at and replaced sooner. Even if the shoes were off, there remained a need for checking and trimming because the hooves would continue to grow.

From the samples taken 2 strongyle eggs were found but no salmonella. He did not agree that the egg finding indicated recent worming. He said that it was not possible to base a question of worming on an egg count. Horses will vary with their natural state of population of worms and egg counts.

He added some other information at this point. The regime that he advocates and adopts is a 6 to 8 week worming regime. He also has a pasture control regime [since eggs are excreted and have to be consumed with the grass]. He advocated a pasture sweep regularly to pick up faeces. It is the responsibility of the owner to have some pasture control. Indeed, the "average" horse owner would be aware of worms and have a horse pasture control and a worming regime and would pick up horse faeces twice a week. All horses would have egg counts if there was no pasture control and a large number of horses on the pasture.

He advocated the removal of faeces from pens but agreed that the addition of more straw on top would not make this necessary. Obviously, if this was not being done or being done inadequately, the problem would remain.

RS58 [2623] was a dark brown emaciated gelding. John Parker scored it at 1: he agreed that it was in very poor condition and had suffered from a loss of tissue. "It was in particularly poor condition." He said that it was at risk and had a thin rump and pelvis. Mr Williamson said that it had a dirty matted coat with lice infestation and rubbing loss of skin. It was dull and unresponsive. Its mucous membrane was pale and slow to refill. There was a discharge from its right eye. It was reluctant or unable to trot, because, said John Blake, it had no shoes and its hooves were very short. The soles were worn away and the horse carried weight which the soles could not bear, so it was suffering.

Veterinary Surgeon Williamson pointed out from the photographs that were taken on removal at Spindle Farm [999 to 1006] a significant loss of tissue from the neck and back and elsewhere. He defined "emaciation" as an absence of palpable fat deposits and bony prominences with little or no flesh covering them on palpation. He also pointed to the ribs and pelvic bones and the sunken genital area as other signs. He said that emaciation started when there was an absence of subcutaneous fat deposits and bony prominences became readily palpable and sharp beneath the skin. It ranged down to near death. His scoring came from his clinical experience and expertise: seeing, feeling and allocating to a category. He could not comment on Mr Parker's score of 1. He could not directly equate the two descriptions on the forms to do so. From samples taken there were found 12 strongyle eggs but no salmonella. The records showed that this equine weighed 440kg on arrival and gained steadily afterwards.



He was asked in cross examination about cyathostomiasis. He said that in his clinical experience, RS58 did not have symptoms of cyathostomiasis, and this would have been unlikely from the results of the protein electrophoresis results [2630]. Cyathostomes do not migrate: they erupt. Acute cyathostomiasis occurs when large masses erupt in the gut at one time. They do not migrate through the body. Beta 1 globulin and a low albumin reading can be symptomatic but it is not an exact science. Results cannot show whether a particular condition is present. We shall revert to this again later.

The finding of 12 strongyle eggs in a faecal count will only indicate eggs and therefore the presence of adult worms.

He added that this animal did not have protein losing enteropathy. It lost weight and became emaciated over a period of time. If this animal had been acquired two weeks before and in this state, then the owner should have sent for a Veterinary Surgeon.

What he was saying as we understand it was that one cannot take the results from haematology and biochemistry tests in isolation. They have to be considered in the light of all the available information about the equine. The results do not point to a specific illness; they only indicate a likelihood.

RS59 [2639] was an emaciated bay mare, 8 to 10 years old. Its coat was dirty, matted and had lice. John Parker agreed that it had a significant loss of tissue but disputed that it was emaciated: he scored it at 2, but agreed that it was at risk. Mr Williamson said that there was a discharge from both eyes. Its teeth were poor and very sharp at the edges. There was a significant loss of tissue on its neck and back and a loss of tissue and a tucked abdomen. It weighed 333kg on arrival. It had no shoes and its feet were slightly spread. The hinds had worn away and the fronts were out of shape because of excessive growth. Mr Williamson said that not every emaciated animal would be close to death but it was using its bodily reserves. He disagreed with Mr Parker's score of 2. He stood by his examination and findings. The records showed that this animal increased its arrival weight to 346kg by the end of that month. It then made steady weight gains until October 2008 when it weighed 462 kg. Samples taken revealed 42 strongyle eggs but no salmonella.

RS60 [2651] was a dark brown mare about 3 to 4 years old. Mr Williamson described it as lean [Mr Parker 5]. John Parker said that he thought that it was in reasonable condition and did not think that it had lost a great deal of tissue. Mr Williamson said that it had a dirty matted coat with lice. It had no shoes and its feet were long. There was a loss of tissue on the neck and back and no muscle tone. The samples that were taken showed 6 strongyle eggs but no salmonella. Again Mr Williamson would not draw any inference of the use of wormers. Mr Blake trimmed back excessive growth on its hooves back to their normal shape.

Finally RS61 [2662], a dark brown filly about 2 ½ to 3 years of age: Mr Williamson described this equine as emaciated, very dirty with a matted coat and lice. He disagreed with Mr Parker's score of 3. John Parker said that his score did not equate with emaciation. There was a possible loss of tissue but it may have been the case that it was never put on in the first place. Mr Williamson said that it had no shoes and long feet, with bad frogs and rotten necrotic tissue. There was a loss of tissue to the neck and back and a sunken genital and anal area. Normally there would be fat in the pelvic canal keeping the vulva and anus in their proper places. The tail was sunken indicating a loss of fat in the pelvic canal. There was a loss of muscle tone. From samples taken 1 strongyle egg was seen and there was a positive result for salmonella. Peter Green pointed to this horse on the DVD footage for 4<sup>th</sup> January 2008. It was in Field 1, under a thick coat. All its body prominences could be seen. Her stance was caused by muscle wastage: its hind leg had locked and the animal was unable to unlock it.

This horse weighed 327kg on arrival and gained weight steadily thereafter to 440 kg by July 2008 and then steadied between 406kg and 415kg.

We found Veterinary Surgeon Williamson to be another exceptionally clear and focussed witness and we accept his evidence.

## **ANNALISA BARRALET**

This witness works in the Beaufort Cottage Laboratory ["BCL"] as a clinical pathologist, interpreting results on samples submitted. In this case, she produced a number of haematology and biochemistry reports after receiving samples taken from the equines [in this case].

They all contained the same expression: "there is a marked leucocytosis. There is moderate hypoalbuminaemia. Total protein, total globulin, alpha2 and beta1 globulin fractions are markedly raised. CK [Creatinine kinase: page 24 of the BCL booklet] is slightly raised but all other figures are within normal limits. These results suggest the response to an infectious/inflammatory process with tissue damage and protein losing enteropathy related to significant endoparasitism. There is no evidence to suggest that an underlying metabolic abnormality is involved."

What did it mean when she wrote that there was "no metabolic abnormality"? She said that the expression is used when trying to diagnose why a horse is thin or in poor condition. Important causes are liver disease and renal disease: the liver and kidneys, if diseased, will cause a horse to be very thin.

Liver and kidney diseases are metabolic diseases. Where she has said that there is no metabolic condition, she is saying that the poor condition is not caused by liver or kidney disease: nothing more than that. By ruling out liver and kidney disease, it follows that there is another cause or there are other causes. As she wrote in her statement "I use the phrase 'no evidence of an underlying metabolic abnormality' when the blood results show no evidence of renal or liver disease."

It is not possible to diagnose starvation from blood results alone because a horse will adapt to both lean and plentiful times. If the constituents in the blood changed wildly due to changes in nutrition, the cells would not function normally. An equine can adapt to store up in times of plenty and survive in times of less.

This balance is called homeostasis. All the constituents of the blood are controlled closely by chemical receptors in the brain that will adjust minutely to keep everything normal. She gave a definition of homeostasis which was summarised as the maintenance of equilibrium of the internal systems in the body.

An example was considered of a diet. When the body undertakes a diet, it adjusts. It takes out the fat stores it needs to live on and keeps homeostasis rigid. So with a horse: when a horse is underfed, it gets thinner. It will mobilise the stored supplies. First it will use its fat, almost exclusively. Once the fat has gone it will start to mobilise muscle. When muscle wastage occurs, the shape of the body really changes. When there is no disease, it still maintains homeostasis.

If the horse is being fed within normal parameters and has food, homeostasis is simply maintained. If it is deprived of food, it will use fat and muscle to maintain homeostasis. If there is no disease, it will function normally, maintaining homeostasis. It will not feel ill. If, however, there is concurrent disease, weight loss will occur at a faster speed.

The brain will only use glucose as an energy source. Glucose needs to be maintained within very narrow limits in the blood. If it alters dramatically, the brain cannot function and the individual will feel faint or unwell: horses are the same.

The basic functions of the body – kidneys and liver and brain – must function or the horse will die. It will mobilise stored tissue to keep them going: fat, then muscle. Just because these basic bodily functions are operating, therefore, it does not mean that the animal is getting enough food. It does mean that it is getting thinner day by day. It does not mean, therefore, that if there is no metabolic abnormality, it follows that the horse is being fed.

Ms Forsyth has written that “in the absence of biochemical change ‘no metabolic abnormality’ must mean that if the organs and systems were normal the animal must have been in a steady metabolic state and therefore it must have been receiving sufficient energy to carry out at least basal metabolism at the time of sampling or shortly before.”

Ms Barralet contradicted her. She said that such a proposition was incorrect. A diagnosis of starvation cannot be made on the basis of blood sampling. She agreed with the shorthand proposition that “the fact that there is no metabolic abnormality does not mean that the animal is being fed.” We accept that she is correct.

Mr Green enlarged upon this in his evidence, referring to an article that has been referred to:

“Diagnosis of the cause of poor condition in equine welfare cases.”

“Interpretation of laboratory results.”

“It is impossible to make a diagnosis of the cause of emaciation or poor condition in horses by clinical examination alone, since there is a wide range of medical conditions that will cause emaciation and these must be ruled out before a diagnosis of starvation can be made... Although there is some disagreement in the literature about the value of laboratory investigation of emaciation, it is clear that certain parameters are more valuable than others and that changes in the parameters in other species must not be extrapolated to the horse.... Kronfeld emphasises the need to assess the whole horse and not simply to interpret the laboratory report or the clinical picture in isolation. He states that the clinical signs of starvation include muscle wastage, weakness, reduced metabolic rate and dehydration, since reduced food intake reduces water consumption in the horse. In the absence of concurrent disease, the heart rate, respiratory rate and temperature are indicative of metabolic rate but, unfortunately, starvation in the horse leads directly to immuno suppression and increase susceptibility to bacterial infection which may confuse clinical parameters. Ketosis is not a feature of starvation in horses and should not be relied upon. Of the globulin fractions, alpha1 globulin is likely to increase in cases of starvation, while alpha2 globulins, beta globulins and gamma globulins remain unaffected.”

In short, what Ms Barralet is saying and Mr Green agrees with her is that low albumin is not consistently found in malnourished horses and should not be looked upon as proof of malnutrition. Put another way, in some malnourished horses the reduced intake of protein does contribute to reduced albumin especially if other factors are involved. “You cannot rely upon a sample in a horse to prove or disprove nutritional status.”

Then she was taken to another section of her report which reads: “cases of starvation/neglect often have multi-factorial problems relating to malnutrition, over crowding, poor dentition, endo- and ecto- parasitism, lack of shelter, stress etc. Therefore interpretation of white blood cells is not straightforward as other factors such as infection [usually causing an increased white cell count] are involved.” Did chronic starvation lead to reliable changes in the electrolyte levels in an animal? She replied that it did not. “Electrolytes are one of the most important things that have to be kept in balance for cells to operate properly. Cells function by electrical activity and if the solute [the amount of salts in the solution that they are bathed in] changes, it changes their electrical activity and it cannot be tolerated to have wide fluctuations in that.”

Having made the point that a diagnosis of starvation cannot be made from blood sampling, she was next asked to consider whether blood sampling could rule out other possible causes. She said that a blood sample could show conditions that exist and do not exist “but in the vast majority of welfare cases there are a lot of other factors that need to be taken into consideration and these will be more obvious to the person working with the horse. Those factors covered the clinical demeanour of the horse, whether it is bright and bright eyed and in good body condition or whether it has almost collapsed and is very dull looking. That includes a history of management.”

As she wrote in her report: “the diagnosis of starvation cannot be made on the basis of blood sampling. Blood samples can rule out some important causes of emaciation or low body score, but I would emphasise the importance of any veterinary surgeon considering the full clinical picture. The visual appearance and demeanour of the horse speaks leagues. Consideration of access to adequate food and water, provision of adequate shelter, appropriate stocking density, effective worm control and medical care are all part of proper horse care. Blood sample results cannot provide evidence of whether a horse is starved or well fed or reliably assess where the horse is on the wide spectrum between the two.”

Next she was asked about the hydration status of a horse. What happens when that is compromised because of severe dehydration? She said that dehydration would cause fluid to be drawn from the blood. A test could show up in the blood a case of very severe dehydration but with mild recent dehydration an equine could re hydrate just by drinking a bucket of water.

Prior to the hearing of this Appeal, the sides’ respective experts – Mr Green for the Respondents and Ms Forsyth and Mr Parker for the Appellants – met together to draw up an agreed document. Ms Barralet was taken to Question 22 which reads “Is a combination of low albumin, high white cell count and abnormal electrophoresis exclusively diagnostic of cyathostomiasis?” She agreed with the negative response and expressed herself most clearly in a letter to the Respondents’ solicitors.

“Often we do not see abnormalities on the globulin electrophoresis trace in a small strongyle infestation. My experience would suggest that these changes are most likely to be associated with a MIXED [emphasis added] large and small strongyle infestation, particularly if complicated by an infectious process. Salmonellosis or other cause of infectious colitis, or Strangles infection would also be important differential diagnoses. In many welfare cases, several factors are at play, debility due to poor nutrition, overcrowding, poor hygiene and poor worm control compromise the immune system and consequently cause increased susceptibility to infection with endoparasites and other pathogens such as Salmonella species and Streptococcus equi.”

What was her view on Mr Parker's caveat? He has written that in a group of young horses it is pathognomonic [distinctively and characteristically diagnostic] of the disease [of cyathostomiasis] and that other causes of this pattern of blood change would be very unlikely to occur in a batch of horses.

In her answer she referred to the process of electrophoresis, where protein in the blood [globulin] is split into component parts. She was referred to [2674] and produced a booklet by BCL.

The text reads "*Low serum albumin and/or rising globulin levels are a 'red flag' warning, most commonly seen with cyathostomiasis [hypoalbuminaemia], large strongyles [raised beta1 globulin], mixed helminthiasis [hypoalbuminaemia and raised beta1 globulin], hepatopathy [hypoalbuminaemia and raised beta2 globulin], antibody response to infection [raised gamma globulin] or abscess formation [raised alpha2 and gamma globulins]. Globulins can be differentiated by electrophoresis.*"

In figure 2 on page 19 of the booklet there is shown a "normal" result. Albumin, one protein, is in white whilst globulin, in blue is split into its component parts: alpha1 [which is irrelevant for our purposes] alpha2, beta1, beta2 and gamma globulin. Electrophoresis assists the process of interpreting globulin by differentiating the elements. Figures 3 to 8 show abnormal results.

By looking at a trace the clinician can see which fractions of globulin are raised and make some assessment as to the causation of it.

Ms Barralet referred to RS62 and [2674]. That result showed "quite a significant increase in the alpha2 and beta1 fractions", a result that she equated with a *large* strongyle infection. The issue is, of course, cyathostomiasis which concerns the *small* strongyle. She said that a mixed result of low albumin and electrophoresis changes tended to show a *mixed* strongyle infection and not just a small strongyle or cyathostome infection.

By looking at the trace for RS62, the results were associated with a large strongyle infection. "It is often not just a small strongyle infection, it is probably a mixed one."

She suggested that Figure 8 was an example of a small strongyle infection since it shows a reduced albumin fraction. But it also shows a "spike" for beta2 globulin. Not only does albumin drop in cyathostomiasis but it also drops in other conditions. "It just means that protein is being lost through the bowel for some reason."

So she is saying that one cannot interpret the results of electrophoresis to exclusively indicate cyathostomiasis.

Mr Green in his evidence agreed with her. He added that, in his experience, horses with acute larval cyathostomiasis do not have a raised beta1 globulin. Sometimes they have no changes in their electrophoresis results at all.

In cross examination, she was asked about protein losing enteropathy [meaning that protein is being lost through the bowel at the enteric level of it and there is something wrong with the bowel and it is losing albumin, protein]. There are several ways in which protein is lost: through the kidneys – but the biochemistry would show protein coming out in urine; the liver [which makes protein] becoming diseased which, again would show on the biochemistry and through the bowel if the bowel was damaged.

There are several causes of why protein is lost through the bowel but tests would not show why this was occurring.

Then she was asked if she accepted that alpha2 globulin is frequently raised in cases of acute inflammation and parasitism, especially cyathostomiasis. She replied that alpha2 globulin is an inflammatory indicator and that it can be raised in viral infection, bacterial infection and parasitic infection, but it was not a specific indicator for cyathostomiasis, although it does occur in cyathostomiasis. She added that it is almost invariably elevated in large strongyle infection as well.

In his evidence, Mr Green observed that with the First Appellant's animals, there are very few blood samples to consider. Those that do exist show a typical response to mixed large and small strongyle infestation with other worms probably there as well. The results do not show typical fatal cyathostome disease.

So, results are an indicator to aid clinical diagnosis and treatment. They cannot point to any specific condition. So the whole picture has to be considered and the Veterinary Surgeon will use the results to help him in his diagnosis and treatment.

When one goes to the doctor, the doctor will ask questions to get a clinical assessment. From that assessment he will request a specific test. For instance in prostate cancer the doctor will ask for a prostate specific antigen test. That will give an indication of likelihood. Depending upon that indication further tests or treatment will be decided upon by the clinician. He is not relying upon the tests for the diagnosis but upon the full picture.

We accept the evidence and where it contradicts the other experts.

## PETER GREEN

Peter Green was the Respondents' principal expert. He gave an overview of the other professional witnesses' evidence, commented upon the Appellants two principal expert witnesses and pointed out factual matters from the evidence presented by the Respondents.

He is the author of his own main statement dated October 2008 [330 onwards] and a second statement dated January 2009 [365 onwards]. He and the two Veterinary Surgeons instructed on behalf of the Appellants, prepared a joint report which commences at [550]. He produced and commented upon the relevant edition of a compendium for horses, ponies and donkeys [Second Edition] setting out the welfare guidelines for the equine industry. Much of that compendium is relevant to our conclusions and we shall look at parts of it.

We have already referred at their appropriate places to certain aspects of Peter Green's evidence: his comments upon what was to be seen and deduced from the DVD footage taken at Spindle Farm and he materially assisted us in our understanding of the technical and scientific evidence. Any deficiencies demonstrated in this judgement are, of course, our responsibility. He dealt at length with what are the acceptable conditions for equine care by reference to the compendium. He spoke of the varying levels of care in the whole industry – from sports animals and pampered pets to the semi feral and wild animals. Acceptable conditions varied accordingly. At the centre of all these differing methods of horse husbandry there exists a threshold of care and husbandry below which no horse should fall. The compendium applies to the whole industry.

Some parameters are not realistically attainable. Examples can be found at paragraphs 122, 130 and 133, which are unrealistic in many circumstances, such as semi feral moorland equines. Others include paragraphs 46 and 90. But he said that the guide was realistic in all areas of the industry on welfare issues.

In terms of provision, paragraphs 1 – 25 are important. They range from those with responsibility for animals being able to detect early signs of illness [paragraph 12] to access to water [a horse's daily requirements may range from 20 to 30 litres per day per horse], to food and how food should be provided. Paragraph 18 deserves quoting.

"Horses are 'trickle feeders' and should have access to forage feed during most of their non active hours. This may be fresh grass, hay, haylage or straw as appropriate or preferred."

Horses eat small amounts frequently and almost continuously with intervals in between. They have small stomachs with limited capacity to take in large amounts. They are "trickle eaters," meaning that they eat and stop. They should have forage in front of them for many hours of the day. Supplies should be topped up twice a day and food should be available all the time. In practice that meant providing food two or three times a day. John Parker in his evidence seemed to disagree with this. He said that he had never agreed with the compendium description of "trickle feeders." He viewed it as adequate if horse had access to food twice a day in their non active hours; but he did agree that they should have access to food for at least 8-9 hours per day. In reality it now seems that they are not different: John Parker did not like the words used and no more.



Next Peter Green referred to paragraphs 19 – 25, on the subject of horse inspection. In stables a horse should be checked at least twice daily for signs of injury or ill health. Those in paddocks should be made to move around and, especially where there are many animals on a few acres, feeding stations and watering places should be monitored. Rubbish should be removed.

Paragraphs 24 and 25 set out when a Veterinary Surgeon should be consulted. Paragraph 24 lists conditions when a Veterinary Surgeon should be consulted urgently and these include “inability to rise or stand” [KH1 and C20] and severe diarrhoea [KH15]. Paragraph 25 lists conditions that should result in a Veterinary Surgeon being consulted within 48 hours, including Strangles, nasal discharge, coughs and persistent weight loss. The list ends with “other *sub acute* [emphasis added] illness or injury.” The three main experts, Peter Green, John Parker and Madeleine Forsyth were all agreed that C20 [the horse from Hughenden] and KH15 required the attention of a Veterinary Surgeon. We are satisfied that KH1 falls into the same category.

The next section to comment upon begins at paragraph 38 with parasites. Many of the conditions with which we have become familiar are mentioned. Paragraphs 58 and 59 deal with humane destruction.

Paragraph 38 mentions grazing management. Peter Green stated that it was standard practice with limited grazing to regularly collect faecal samples to prevent contamination. Land should be rotated, leaving some pasture fallow. An alternative is to mix graze with cattle and sheep, which will eat and kill the worms. If they are not removed, then the land will become what John Parker referred to as “horse sick.”

On the subject of humane destruction and paragraph 58 onwards, Peter Green took issue with John Parker over a particular view that John Parker advanced: that, for financial reasons, animals should be left to take their chance and that some will die. Peter Green said that leaving an animal to die for economic reasons was not appropriate. We agree and it appears that the three experts were agreed in the end: paragraph 30 of the joint report at [559].

Another argument that John Parker advanced was that horses themselves are sold in unacceptable physical conditions. Peter Green, in his response, separated horses purchased in licensed and unlicensed markets or fairs. In a licensed market, there is a system of inspection and, in his opinion the presence of a market sticker on a horse [John Parker said that he saw several] that was evidence that the animal was not suffering when purchased. With unlicensed markets or fairs, it is simply a question of bartering. If an animal had been imported from abroad, that too was an indication that the animal was not suffering when imported, since it would have been inspected also. There is an EU wide scheme that a Veterinary Surgeon has to certify that a horse was fit to travel in the next 48 hours, although this can be flexible in bad weather.

Paragraph 61 deals with the disposal of dead equines. Peter Green advised that, in his experience, knackermen and huntsmen were busy and operated a 24 hour year round service, including on Christmass Day, to remove fallen stock. Boxing Day was especially busy. The cost of disposal can vary between £40 - £150, depending on what uses the carcass can be put to. There is also a subsidised scheme – the National Fallen Stock Scheme.

The compendium deals with horse passports. We have seen a selection of them, which raised as many questions as they purported to offer answers. Peter Green advised that the passport scheme in this country has never worked properly. Before 2004, there was no scheme at all. Now an equine should have its own passport. It is issued by the owner. It is not to be regarded as proof of age for the horse in question since only stud breeders' records or a Veterinary Surgeon's certificate of a foal can legitimately do that. In the event, issues relating to passports did not feature in the case.

Finally the compendium deals with housing and space for horses at paragraph 136 onwards. All the three experts are agreed on paragraph 137: whatever the bedding provision is, there should be clean, dry and warm areas in which horses can lie down. In Peter Green's opinion and from what he saw on the DVDs, Pens 1, 2 and 3 were grossly overcrowded. Pen 7 was overcrowded. This would have had consequences for the feeding and housing aspects. It is his opinion that the horses were kept in conditions that fell well below the standards of the reasonable competent horse keeper and these conditions severely compromised the welfare of the animals at Spindle Farm. He summarised that opinion at [337] and [338] of his report and said that his opinion had not changed. From what we have seen and heard, we entirely agree with all this. The conditions at Spindle Farm were appalling.

Next – and at paragraph 4.2 of his report – Peter Green dealt with stock losses. Of course animals, whether farmed or otherwise, will die. But the point here is that the carcasses found were not young animals by any means. C11, C15 and KH22 were, but C1, C2, C4, C5 and C10 were adults. The experts were agreed that 10% of the animals at Spindle Farm died between December 2007 and January 2008. This was serious loss for any farmer and a Veterinary Surgeon should have been sent for. As Peter Green put it; “something dreadful was going on and it was ignored. The First Appellant believed that it was normal for him.” John Parker in his evidence agreed. He said that a 10% loss of stock since 18<sup>th</sup> December 2007 was illustrative of some catastrophe in such a short period of time and “the owners should have got a vet in.”

There was evidence of the manner in which some horses died. KH1 [the collapsed horse in Pen 1], KH3 [the horse with the swollen penis] and C20 [the horse from Hughenden] were all dying slowly. The only sudden death was KH22. That donkey had been weaned and its death could not have been as a result of separation from its mother.

Age in a young equine can be determined from its teeth. The first pair erupt in the first week of life; the second at between 4-6 weeks of age; and the third at between 6-9 months. In KH22, the third pair had just erupted. It had a body score of 0 and it could not have reached that state quickly.

Accordingly, Peter Green confirmed his opinion at paragraph 4.3 of the duties of an owner when horses die. If a number of animals die within a short time, the cause needs to be ascertained for the sake of the other animals in the herd. Nothing was done here either to find out what was going on or to provide care for those that were sick. On [551], the three experts deal with their areas of agreement on the carcass allegations.

One of the central issues in this case – if not *the* central issue is what caused these animals to die. Peter Green dealt with the realistic possibilities.

## 1. Salmonellosis.

Peter Green deals with this at paragraph 4.6.1 of his main report. He rejects it as a cause for all these deaths.

He points out that horses do carry the salmonella virus, of which there are two types. It is important to understand that it is not a matter of concern if a horse tests positive for salmonella. 10 – 15% of samples would show positively but horses live without it becoming an issue or causing them a problem. They carry the virus and shed it. It is normal to find salmonella in faeces.

It will become significant if the animal becomes either stressed or debilitated. The virus then will cause a significant disease – salmonellosis. In weaned horses salmonellosis causes diarrhoea.

However a weaned horse will not suddenly die of salmonellosis. It will have been manifestly sick for up to 10 days. Any competent and caring owner will see that it is seriously ill. The symptoms are diarrhoea, profound depression, loss of appetite, a high temperature and dehydration. Only if it is untreated will death follow, although even in treated animals death may still ensue.

Salmonellosis may develop in a horse affected by other conditions, parasitism, severe malnutrition, environmental factors such as stress caused by being cold or wet. If the dead animals had died of salmonellosis, then it would have been obvious to the owner that something was amiss. With KH22, it was emaciated and salmonellosis took over. As it was a foal it could have died without extreme diarrhoea.

There is a typical laboratory test finding for salmonellosis: a profoundly low white blood cell count. This was not the case with the KH horses and Peter Green ruled it out.

This seemed to be agreed: [555] in the joint report and that only in KH15 and KH22 was it “a likely feature.” Peter Green’s understanding was that all three experts were agreed that salmonellosis was not being advanced as a cause of death in this case.

## 2. Parasitism.

It is necessary to consider the relevant parasites and their life cycles. The particular parasites that are relevant to this case are the large and small strongyle worms.

Horses are afflicted by four common internal parasites. Because the horse will graze pasture, they naturally eat the parasites and can carry significant worm burdens in consequence. Their less attractive behaviours can be controlled by anthelmintic treatment [wormers] but a horse can suffer serious medical problems from parasitic infection causing a loss of nutrients and blood.

The object is to provide a regime of care and treatment that keeps the horse in optimal health.

### **1. THE LARGE STRONGYLE**

[1] From faeces to pasture as microscopic eggs.

[2] Whilst on the ground they evolve through two stages to L3 stage. Some hatch into worms; some stay in the egg capsule, depending upon the species.

[3] At L3 stage the larvae get eaten. They are stomach acid resistant and go through the stomach to the large intestine and penetrate the wall of the large bowel.

[4] They then set off on migration around the abdomen, migrating to the liver, the blood vessels of the peritoneum or to the abdominal blood vessels depending upon the species. It is at this stage that beta1 globulin rises. ONLY with the large strongyle are these larval stages away from the bowel.

[5] They then mature from L3 to L5 in the liver, peritoneum or blood vessels.

[6] At this stage L5 they return to the large intestine where they form nodules which are tissue reactions.

[7] The final stage is for the L5 larvae to produce worms. They finally moult and emerge in to the large intestine and into the food. There they graze on the surface of the bowel eating tissue and sucking blood. This can give rise the protein losing enteropathy because the bowel's ability to retain protein is compromised. When removed the gut heals.

[8] The adult worms breed and lay eggs in the large intestine. The eggs pass out in the faeces and the cycle starts again.

All of these stages of the process can occur together. In the winter the female lays fewer eggs because they are less likely to survive on the pasture. But if the ground is not cleared they get eaten again.

## **2. THE SMALL STRONGYLE.**

There are over 40 species.

Stages [1] to [3] are the same in all the species.

Then the process differs depending upon the species.

**A.** Rather like the large strongyle: occurring in tropical countries in this form only.

- They stay within the mucosa or sub mucosa of the bowel wall and burrow around. They do NOT go anywhere.

- In one to three months they develop from L3 to L4

- At L4 they come out into the bowel gradually trickling out

- They develop from L4 to L5 grazing on the internal surface of the intestine eating tissue or mucosa with protein in it. Some go deeper into the gut causing superficial irritation

- Adult worms breed and produce eggs which are excreted.

The whole process takes 2-6 months depending upon the particular species. Most take 2–3 months.

Protein losing enteropathy occurs when the bowel wall is irritated and also at the L3 stage when burrowing around.

It is NOT life threatening but is significant if a high burden but still not fatal.

**B.** The form only to be found in temperate climates such as northern European climates as adult worms have developed an understanding not to shed eggs in winter.

- L3 stage occurs when they penetrate the bowel wall: they stop, curl up, stop burrowing and hibernate. The body of the host horse produces a capsule around the larva and encystment occurs. They may hibernate for up to 3 years. Protein losing enteropathy may occur before encapsulation. With ponies, blood albumin may drop a little and mild protein losing enteropathy may occur, associated with the bowel penetration. When encysted, the bowel recovers and albumin returns to normal.
- Encystment. No protein losing enteropathy occurs because the encysted larvae do not compromise albumin.
- Encysted larvae may remain in the bowel wall for between 4 - 40 months.
- L4 larvae emerge either in trickles or in masses. In young horses sometimes there is a mass exodus. This occurs in late winter and can cause severe disease. Some breed, some are shed in large numbers in the faeces.
- Emergence can disrupt the bowel so much that the horse suffers colitis [acute inflammation of the colon] and lots of larvae will appear in the faeces. They are visible to the naked eye and are red threads about 1 cm long. If the colitis is acute the horse will become seriously ill. Protein losing enteropathy will occur. If the horse survives, some larvae proceed through the rest of their lives as a mixture of larvae and eggs in the faeces. L4 larvae are not infectious because they are not adult worms.

There are obvious differences between the large and small strongyle. The small do not migrate through the tissues; they may be come encysted and, in this condition they do not respond to worming treatment.

One of the expected features of a worm infestation – large and small – is PLE. The bowel is irritated and protein is lost. PLE is not a cause of death or emaciation, outside an acute mass emergence because, if protein is lost, food will compensate. The prudent owner will worm routinely and, with proper food, the animal will gain weight.

In this case, after seizure, animals continued to suffer from PLE and results showed falls in the albumin levels. It takes time to turn a debilitated horse round. The liver processes albumin for food and until the food levels are restored the horse will show low blood albumin. When proper feeding, worming and care are in place the horse will regain health.

## ACUTE CYATHOSTOMIASIS

This occurs when there is a serious and substantial mass eruption or breaking out of the L4 larvae from the intestinal wall.

It is very serious and is more common in neglected horses because food and worming have been neglected. Mr Green said that he has never seen a case of acute cyathostomiasis in a horse over 5 or 6 years old and there are no available clinical reports. Papers have suggested it.

The symptoms of a mass out break are:

- profound depression
- rapid weight loss
- high fever
- swollen limbs or penis
- diarrhoea

In most cases you would see most of these signs. Occasionally weight loss, swollen limbs and depression and fever appear before diarrhoea starts. In his experience the time between onset and death is 5 – 6 days minimum; literature suggests 2-3 weeks is normal. If the owner knew the horses this could not be missed.

In outbreaks of acute cyathostome disease affecting several horses I have invariably found evidence of L4 larvae in the faeces in at least some of the horses. The post mortem findings are characteristic, with greatly inflamed colon wall, spotted with bright red foci of haemorrhage and inflammation. These were the features of the post mortem examination of KH17. Horses that are carriers of Salmonella and suffer acute larval cyathostomiasis frequently show terminal Salmonellosis in conjunction with the parasitic disease, as the intestinal inflammation and damage allows the bacteria to multiply and invade the tissues.

I am firmly of the opinion that acute larval cyathostomiasis cannot account for the death of all or many of the equines at Spindle Farm in 2007 and early 2008 for the following reasons:

- Only one of the animals was suffering severe diarrhoea [KH15]
- No L4 strongyle larvae were recovered from any of the faecal samples or seen by Mr Hayes
- There is no evidence of swollen limbs
- Only one animal [KH3] had swelling of the ventral abdomen and that was associated with pathology of the penis
- None of the animals for which we have clinical records had very high temperatures
- Several of the recently dead horses were in good bodily condition
- None of the seized animals developed signs of the acute disease soon after seizure
- All the seized animals gained weight without specialist veterinary treatment
- The haematological changes seen in the equines for which we have results are [as he altered in oral evidence] moderate, not severe or fatal
- The post mortem photographs do not show bowel with signs typical of the disease

It is certain that some of the horses at Spindle Farm were carrying significant burdens of the encysted larvae in their bowel wall. These encysted worms may have contributed to ill thrift. The laboratory results of many of the KH and RS horses are consistent with this condition. In my experience, more than 90% of the equine welfare cases in poor bodily condition I have examined and sampled over the last twenty years have shown similar inflammatory profiles. Poor, young, neglected horses are likely to be carrying encysted small redworms. The presence of these encysted worms does not however kill the animals and does not lead to sudden death. There may be a compromise of growth or bodily condition, but this is usually responsive to good feeding and in many cases it is possible to deal with the encysted worms with routine wormers. It is not the case that all encysted cyathostomes are resistant to normal or regular wormers.

The Court will appreciate from my earlier comments that the changes in the blood samples of the RS horses discussed with Ms Kirton are mild and in several cases fall within normal ranges. The changes seen in the blood samples reported in the KH series by Mr Jepson are also significant, but they are not severe.

If there is an acute concurrent emergence of large numbers of these encysted, hibernating worms, the affected horses become very ill, develop severe diarrhoea and die. This could not be missed by a caring competent owner and would warrant immediate intensive veterinary treatment, which may or may not save the horse. This would be acute larval cyathostomiasis. It is the risk of this disease that leads all equine veterinary surgeons and health advisers to recommend that all horses receive anthelmintics designed to deal with encysted larvae.

The bodily condition of the seized animals improved whilst in the care of the charities simply with the provision of food and of larvicidal wormers and even KH17, which we know for certain was carrying very large numbers of encysted larvae, came to be in 'blooming health' after receiving basic simple care. The condition of these horses in the care of the Gray family cannot be explained or excused by encysted larval bowel worms,

We accept that this discussion accurately reflects the position in this case.

## **ASCARIDS**

Ascarids – or roundworms – are usually found in young horses only: foals and yearlings. This is because older horses develop immunity. The absence of ascarids indicates that, at some stage, the animal received adequate worming treatment.

So it is acute cyathostomiasis that is severe and potentially fatal. Peter Green dealt with this in his first report and in greater detail in his second report at [369]. We have quoted the parts that we have found to be important at [370-371]. Peter Green rejects acute cyathostomiasis as a cause of death in the equines at Spindle Farm. We agree.

### **3. Strangles.**

"Strangles" is the popular name for a bacterium that can cause severe respiratory disease in horses, says Peter Green at paragraph 4.6.3 of his main report [344]. In this case it is not being advanced as a cause of multiple deaths. Four horses were seen to be suffering from it: RS28, RS35, RS66 and RS67. It is relatively common in young horses; common but not trivial: it needs to be taken seriously and for an infected horse to be isolated and nursed.

So what was the cause of this state of affairs at Spindle Farm? Peter Green has no doubt: the fundamental problem was malnutrition. We agree.

#### 4. Malnutrition.

The three experts deal with this at [551-2 and 558]. Peter Green deals with it in his reports at paragraph 4.6.7 on [348] and at paragraph 10 on [366].

If a horse is fed only forage, it will need to eat 2½ to 3% of its body weight in dry matter. Haylage is 40% water; more nutritious is concentrated feed. Peter Green comments upon the weight gains recorded on the horses that were taken into care. In his final report he concentrates on these taken to the Home of Rest for Horses at Speen.

By his calculation, the 13 horses weighed at Speen required 170kg of haylage daily or 111kg of hay. Taking these figures he guesstimates that the whole herd of equines at Spindle Farm would have required more than one tonne of haylage per day. We know that the First Appellant's machinery was out of action and that he had used a large wheelbarrow. We are satisfied that the Appellants could not measure up to the requirements of feeding such numbers without machinery even when the First Appellant was physically present.

Peter Green points out that the vast majority of the seized horses recovered with nothing more than ordinary care: feeding, watering, worming and the attention that any prudent owner should give. It is his opinion that this is a case where these horses did not have sufficient provision by way of food. Had they been given enough they would not have been in the condition in which they were found and neither would those that did, die. If they had been fed enough then they would have been well enough.

Peter Green is clear in his conclusions. The problem here was that these horses were being kept in unacceptable conditions: unsuitable and overcrowded accommodation, filthy conditions, lack of nourishment and care. Such conditions fell below the threshold of acceptability. The failure to engage the services of a Veterinary Surgeon meant that equines suffered and died without proper attention and unrelieved by humane euthanasia. Those that had died or were dying were left with the living. Malnutrition, parasitism, overcrowding and stress combined. Many animals were emaciated and left to suffer without recourse to any positive input of any kind – such as food, management, treatment, alleviation of overcrowding or prudent care from a competent and caring owner.

Peter Green was another outstanding witness. His grasp was total; his expertise was as abundant as it was obvious. We have no hesitation in accepting what he said to us. He destroyed the contrary arguments.



## **JAMES GRAY SENIOR**

Mr Gray said that he had been involved with horses all his life, having left school at aged 15 years. Members of his parental family were and are still involved with horses. Before purchasing Spindle Farm in 2001, he had kept horses at Bedfont in Middlesex and at Chertsey in Surrey. Spindle Farm had been a cattle business before he bought it. He said that he installed Pens 1, 2 and 3 and the stalls in Pen 6.

He said that he ran the business alone. He purchased and sold the horses, arranged for passports if they did not have one and organised haylage, straw and supplementary feed, medical supplies, wormers and equipment himself.

He attended auctions, markets and fairs to buy and sell animals. He imported from Belgium and Holland and on occasions instructed agents to act for him and buy horses. He said that his turnover was between 2400 and 2500 horses per year.

In October 2007 his accountant, whom he only knew as "Chas" of Accord Accountants in Hampton Hill in Middlesex, advised him to set up a limited company. "Chas" was sent all the invoices and also calculated the VAT for him. According to the First Appellant, this person has all his documents and he has not gone to collect them.

Mr Gray said that he was a sole trader. He was responsible for the daily provision for his animals. There was no partnership, formal or informal, involving anyone else. He said that his wife the Second Appellant had no part to play in his business. . When presented with a company document [753] he denied any knowledge that the Second Appellant was the company secretary. He said that the accountants arranged the incorporation of his company in October 2007. He said that he never informed the Second Appellant that she was the Company secretary because he himself was unaware of it. He denied that the Second Appellant had any part in the incorporation of the company. At the end of his evidence we asked him about the incorporation of the company and the documents were produced by his Counsel. We asked Mr Gray about signing documents and he accepted that he had signed documents and so had his wife the Second Appellant: he to become the director and shareholder and his wife to become the company secretary. That was a clear case of the First Appellant being caught out in what we find was a deliberate lie.

He said that the Second Appellant had never owned horses and, indeed, was frightened of them. The Third Appellant, his daughter Jodie, is now 27 years of age. The First Appellant said that she had married before he came to Spindle Farm. Her husband Rocky Keet and Jodie herself had come to Spindle Farm to live in a trailer for a month when their first child was born but have not lived at Spindle Farm since December 2001. He said that they lived in Claygate before buying a house in Ashford, Middlesex in 2007. That assertion was untrue: in fact the property in Ashford was purchased in May 2008 [at or about the time of the Magistrates' Court hearing], as the Land Registry records show. He said that she too is frightened of horses and that she had never been involved in the business.

His second daughter, Cordelia, the Fourth Appellant, lived in Chertsey and she had never lived at Spindle Farm. She had played no part in his business either. If she had claimed to own RS5, RS6, RS27, RS47, RS48 and RS52, she had not paid for any of them. The First Appellant said that they all belonged to him. The Fourth Appellant did not contribute to their purchase and he had never given any of them to her. In cross examination paragraph 20 of his statement dated the 1<sup>st</sup> April 2008, the First Appellant has written and signed that RS47 and RS48 are owned by the Fourth Appellant. It would be an extraordinary coincidence that Inspector Hampton chanced upon those two horses when she spoke of her conversation with the Fourth Appellant on the subject of ownership of equines. Of course it is true; the First Appellant denied it and that was another deliberate lie.

The Fifth Appellant, his son James Gray Junior lives at Spindle Farm. The First Appellant asserted that the Fifth Appellant had no say in either the management or the running of the business and that all the purchasing was the First Appellant's responsibility. The First Appellant accepted that the Fifth Appellant accompanied him to fairs, markets and abroad and had done so from the age of 5 years. Occasionally he mucked out. If his son had claimed to own RS82 [the First Appellant believed that his son actually claimed RS80] the Fifth Appellant had never paid for it and it was not his. He agreed that the Fifth Appellant had accompanied him to Belgium and Holland and was with him when he was not with his home tutor.

The First Appellant agreed that the Shetlands and the donkeys were pets and not stock. Some had been born at Spindle Farm. He said that he owned them all even if the children had claimed that they were theirs. He said that some of the horses belonged to his sons in law. RS67 belonged to Mr Keet and KH1, KH3 and KH15 belonged to Luke Smith, the Fourth Appellant's husband. They were all kept at Spindle Farm.

A number of documents were put to the First Appellant. A statement signed by him and dated the 8<sup>th</sup> February 2008 and a second signed by him and dated 1<sup>st</sup> April 2008; an extract from the report of Mr Parker on [1492]. The First Appellant said that the two signed statements were made by his former solicitor, Ms Fulton. He denied that he had said that he cared for the horses with his wife, his 15 year old son and his two daughters aged 19 and 25 [effectively by that description the Second Appellant, the Third Appellant, the Fourth Appellant and the Fifth Appellant]. He challenged saying in the statement dated 8<sup>th</sup> February 2008 [paragraphs 8 and 14] that the Shetlands and donkeys belonged to his daughters the Third Appellant and the Fourth Appellant. None of it was true, although he accepted that the information that went into those paragraphs could only have come from himself and that he signed the document. In the statement dated 1<sup>st</sup> April 2008, [746], the same claim of caring for the horses with the other Appellants appears. The First Appellant denied that it was true. He denied paragraph 15 was accurate: that the Third Appellant and the Fourth Appellant owned the Shetlands and donkeys; similarly paragraph 18. He denied paragraph 20 which again asserted that the Fourth Appellant owned RS47 and RS48. He further denied paragraph 21 [that the Fourth Appellant and her husband lived at Spindle Farm or that Luke Smith kept his horses there]. He denied paragraph 35 that C7 was owned by the Third Appellant and the Fourth Appellant and paragraph 38 which made the same assertion for C12 and paragraphs 41 and 42 in respect of C18. We are satisfied that these denials were obvious lies.

On the subject of ownership, there was evidence from the Respondents' witnesses that on 4<sup>th</sup> January 2008 the First Appellant said that KH1 and KH3 [two euthanased horses] belonged to the Fifth Appellant and that the Fifth Appellant owned the horses in Pens 2 and 3. The First Appellant denied that he had said that KH1 or KH3 had belonged to his son: he had said that they belonged to his son in law. Paragraph 4 of his DCS was put to him where it was stated [and signed by him] that he had said this. He claims that he had done so untruthfully in order to avoid them being seized: sadly another obvious untruthful denial.

Finally on the subject of attributions, in paragraph 13 of his DCS, he specifically relied upon his expert's report: namely that of Mr Parker. At [1492], Mr Parker has written:

*"Mr Gray showed me round the Farm buildings. He explained his management and how he conducted his business. He does all the work himself with the help of his family of wife, son and two daughters. If they are all away together on holiday, a competent horseman moves in to manage the yard."*

The First Appellant confirmed that he did explain to Mr Parker how he conducted his business but he denied saying that the other Appellants were involved. If Mr Parker was saying that he had obtained that information from him, then Mr Parker was wrong. He accepted that he had not taken this error up with Mr Parker and that other parts of that report [from paragraph 20 onwards] were accurate.

By late 2007, the First Appellant said that the business owned three lorries. He employed a man called Lee Lawrence to drive for him and another man called Jim arranged some grazing for him in Kent. When he had to go abroad, he arranged for a Veterinary Surgeon from Baskervilles to certify fitness for the horses to travel. Usually Mr Fennelley or Ms Robinson came. He also claimed that he used the practice for veterinary treatment. If he was away he made arrangements for someone to contact the veterinary surgery. When he was absent Lee Lawrence came over. Mr Lawrence drove for him.

Trips in England and Wales could be managed in the day. The longest trip was to Evans Bros in Llanybydder. He organised his day routine by getting up at 05:00 and doing the Yard work by 06:00. He would be able to get to Wales by 10:00 to 11:00 and stay until 14:00 to 15:00. He would be back at the Yard by 20:00 to 21:00 and complete the Yard work again. He said that he put big bales into feeders. He agreed that the Fifth Appellant went with him and would "do things sometimes." When he went to Belgium and Holland, the Fifth Appellant accompanied him. On those occasions he fed the animals at lunchtime on Sundays and returned by Monday afternoon. Lee Lawrence who was a dustman from Wexham near Slough came and fed the horses and filled the water troughs whilst he was away. He paid Mr Lawrence £75 - £80 per day. A square bale "lasted a day or two".

The First Appellant produced a number of documents. He claimed that they related to particular and identifiable horses that he had purchased and the Respondents had seized. They are random documents and number 7 in all.

One of the documents, from Vincent Horses [D12], had handwriting on it. The handwriting suggested that the Fourth Appellant owned five identified horses. The First Appellant said that he did not know who put that on the document. Another two documents from Holland purported to refer to wormers. Those and one from Salisbury did not have the First Appellant's name on it. The First Appellant said that he received invoices when he purchased but not when he purchased at fairs. He claimed to have a record of what he had paid but could not recall what records he possessed. He claimed to have passed them to his accountants.

What these documents do purport to show is that the First Appellant was absent from Spindle Farm in November and December 2007. On the 6<sup>th</sup> November he was on the Continent at Vincent Horses; on the 16<sup>th</sup> he was in Ely, Cambridgeshire at Auctioneers; sometime in December he was on the Continent again buying wormers; on the 8<sup>th</sup> December in Cumbria; on the 14<sup>th</sup> December on the Continent again at Vincent horses; on 24<sup>th</sup> December he said that he had purchased horses and on the 27<sup>th</sup> and again on the 29<sup>th</sup> December at Llanybydder in Wales.

The First Appellant was asked questions about the carcasses. He said that C1 and C2 had died one on the 21<sup>st</sup> or 22<sup>nd</sup> December and the other on 23<sup>rd</sup> December. They had been eating normally and died suddenly. He had noticed them the following morning. He denied that there was no food in Pen 3. He agreed that he did not remove them before 4<sup>th</sup> January 2008 because the machinery for lifting them had broken down. It was pointed out to him that he had previously said [750] that they had died on the same day. It was also pointed out to him that the Veterinary Surgeons were agreed [551] that they both had been dead for more than two weeks. He agreed that he was "behind" in his removal of carcasses but asserted that he had spoken to a Chris Pugh on 1<sup>st</sup> January 2008 to arrange for their removal. Paragraph 48 on [758] was put to him, which stated that he had claimed that horse removal were closed. He then said that he had waited for 1<sup>st</sup> January because he had believed that the horse removers would be closed.

C3 was an animal that he said he had found dead on his lorry after bringing it back from a field in Chalfont on 2<sup>nd</sup> February 2008. He had covered it with haylage wrappers from Pen 3. In the earlier statement [750] he had said that it had died in the rented field: that was incorrect, he stated. C4 was a mule he said that had died on 3<sup>rd</sup> January 2008. It was in a stall in Pen 6 to where he had moved it from Pen 3 where it had died. It had not caused him any concern. He said that a Veterinary Surgeon, Peter Fennelley, had seen this equine at the end of November 2007 when it had a lump and he claimed that the Veterinary Surgeon had advised him to leave it. The animal had been bright, eating and drinking. He said that he knew that it had died on 3<sup>rd</sup> January 2008. Previously, it was put to him, [750] he had said that it had died on 1<sup>st</sup> January 2008 and to District Judge Vickers that it had died on 31<sup>st</sup> December 2007.

C5 he said died on 3<sup>rd</sup> January 2008 and that he had discovered it on the 4<sup>th</sup> January 2008 – the day the RSPCA first attended. He claimed that it had been eating and drinking the day before and had caused him no concern. He had left it tethered and facing outwards. He denied that it had been left to die. C6 had died either on the 30<sup>th</sup> or 31<sup>st</sup> December 2007. He had put it in the shelter and contacted Chris Pugh to remove it with the others. He said that it had not concerned him before and had had a fair body condition. C7 had also died at that time and he had also put it in the shelter. It had been alert with a good body condition and he had had no concerns about it. He said that, in respect of both C6 and C7, that he was confident about his dates. However in paragraph 35 on [750] he had asserted that they both died between Christmass day and New Year's Day. He had told District Judge Vickers that C6 died on the 27<sup>th</sup> or 28<sup>th</sup> December 2007 and C7 on the 26<sup>th</sup> December 2007. He said to us that he now stood by the dates that he had given to us. He further disputed his statement by saying that he had never said to his solicitor that his daughters bred and owned either of them.

C8 he said died between Christmass and New Year 2007. He said that he had seen it alive the day before when it had been on good grass at Shires Farm and had been in good condition. It had died in Pen 6 in the stalls at the end of December 2007. He had put it on a trailer and had taken it to the bonfire. C10 died in Pen 2 between Christmass and New Year. He said that it had been in good body condition and had been given access to food daily. It had been bright and in really good bodily condition. It had died suddenly and he had put it on a trailer and removed it. C11 had died in Pen 1 on 26<sup>th</sup> December 2007. It had walked towards him, started to shake, wobbled and died in front of him. He had removed it to where it was found. He denied that it could be seen from the farmhouse. He said that he was amazed and did consider calling a Veterinary Surgeon but did not. When asked why not he said that he could not offer any explanation; nor could he for the discrepancy between his date for the death and the statement which stated that it had died on 1<sup>st</sup> January 2008.

C12 was another sudden death which he said that he had discovered where the carcass was found on 3<sup>rd</sup> January 2008. It had not been a cause for concern when he had seen it the previous day. In his statement at paragraph 38 he had given the date as 28<sup>th</sup> December 2007 and before District Judge Vickers as on about 20<sup>th</sup> December 2007.

C13 and C15 were connected: C13 was C15's mother. The First Appellant said that the foal C15 died first and the mother C13 the next day. They had been in Pen 1 and the death had occurred on 26<sup>th</sup> December 2007. He had no previous concerns and they had good body conditions. They had been fed twice daily as had all his animals. In the previous statement at paragraphs 39 and 40 he had said that the foal had died 4 days before its mother. He denied that his differing recollections were because he did not have a clue and was indifferent.

C14 was a skull. The First Appellant agreed that a number of bones were discovered. He claimed that a man from Channers had come and piled them up. C17 consisted of some other old bones.

C16 was one of three carcasses that the First Appellant had attempted to burn in a bonfire. C8 and C9 were the other two. He said that he had burned them after New Year in early January 2008 by pouring diesel on some wood and igniting it and them.

C18 he said had died on 31<sup>st</sup> December 2007. He said that he had noticed nothing about it before; it had been bright and alert. It died just by the fence to the farmhouse garden and he had covered it over. He did not manage to remove it because of the weather.

C19 was one of two Shetlands that he said he had discovered dead on 31<sup>st</sup> December 2007. It had a decent body condition and he had had no concerns about it. In his previous statement [751] he had written that the two had died between Christmas and New Year. Further he claimed that his former solicitor had added that they had belonged to his daughters without his knowledge or agreement.

The First Appellant was next asked about C20 and the events of 18<sup>th</sup> December 2007. He agreed that he had received a telephone call from Inspector Ryder but he disputed her evidence that she had asked him to get a Veterinary Surgeon to see what became of C20. She had said that he may need to get a Veterinary Surgeon, not that he ought to do so. We believe Inspector Ryder. He went on to say that he, the Second Appellant and the Fifth Appellant had gone to the field in question.

C20 was one of those equines that had been found at Hughenden Manor. The First Appellant denied that he had put them there without permission from the National Trust. He claimed to have no idea how they got there: they had been in a field in Wacht Lane in Great Kingshill, some 2 – 3 miles away. He had been driving towards High Wycombe and had seen the National Trust notice attached to the gate and had recognised his horses. He then contacted the number on the notice. He claimed that he had removed some of the horses and that 5 had remained because he had been unable to catch them. He claimed further that he had previously seen C20 on 17<sup>th</sup> December 2007. He denied that he had put them there and his statement [751] that he had rented a field and had put them out was incorrect.

He described how he and the Fifth Appellant had got C20 onto the trailer. He said that it was wet and the animal could not get up because the ground was slippery. He agreed that he and his son had pulled the horse in a zig zag fashion to the trailer. He denied that it had a rope attached to its tail; he believed that he had been at that end. He insisted that C20 had got itself up once in the trailer and that he had given it antibiotics and B12. It ate haylage and drank water from a bucket. It also was given some horse nuts. He did not get a Veterinary Surgeon to it because he did not consider it necessary: it was eating and drinking and it was improving. He denied that he left it to die in the trailer. He said that it did die on 24<sup>th</sup> December 2007; in the Magistrates' Court he had asserted that it had died on 21<sup>st</sup> December 2007.

He agreed eventually that that it would be cruel to pull a horse by a rope attached to its tail. He claimed that C20 tried to get up at the field and seemed to challenge the agreed statement of Nicholas Phillips. Once back at the yard he claimed that he had succeeded in getting C20 to rise by putting its front feet in front of it and by holding its tail. It had got up by itself and had taken both food and water. The tied rope was to stabilise it. He gave it B12 and believed that it would improve. He had left it on the trailer because it was dry and warm. Although the rope was still attached to its tail he denied that it was tied up to the trailer. In cross examination he accepted that he had pulled the horse's tail up by the rope to get C20 to stand in the trailer but he did not consider that to be cruel or painful to the animal. He said that he had also used a hammock to help it stand. When the horse died he had removed the hammock. We reject this account. It died in the trailer and was left there until it was found on 4<sup>th</sup> January 2008.

Finally he said that he did not recall C21, C22, C23 or C24. He said that he had been unaware of a carcass under the trailer [C23] and said that he had never seen it. That, too, was an obvious lie. The horse could not physically have crawled under the trailer – not least because the trailer itself was so low off the ground – and we are satisfied that the First Appellant found it dead and covered it with the trailer. He was asked in cross examination if he had been horrified at the number of his losses over the Christmas and New Year period as he had described them. He agreed that he had never come across this before. He had seen no signs: some equines he had seen over 3-4 days and they had dropped dead. Why had he not sent for a Veterinary Surgeon? “I cannot give a reason. I found that one moment a horse was fit and then dead.”

He also gave evidence about the KH horses. He claimed that eleven out of the seventeen had been acquired by him between November and December 2007. Mr Gray produced no accounts and few documents, no VAT returns and few documents that included VAT charges. It is not the absence of documents in itself that matters, it is the failure to produce documents that he ought to have retained to back up his assertions. Such documents are a given in any business and our efforts to assist by contacting the accountants to get any that might assist his case came to nothing.

KH1 was his responsibility, he accepted, although he asserted that it belonged to his son in law, Luke Smith. He said that this horse was up and eating on the 4<sup>th</sup> January 2008. He agreed that it was not in “real good” condition. He described it as a “plain” horse, meaning not fat and not unusually thin. He said that he had not been concerned about it and had seen it at 12:30 on the 4<sup>th</sup> January 2008, when it was standing up in Pen 6. He denied that it was in an appalling condition and said that Veterinary Surgeons’ Wakeling and Baskerville’s views were not his. He denied that he did not care about it.

KH2 he said had been purchased in December 2007 and had wormed it. It was in the same condition on 4<sup>th</sup> January 2008 as it had been when he purchased it. He disagreed that it was emaciated.

KH3 also belonged to Luke Smith. The First Appellant said he knew nothing about paraphimosis. He had believed that it had been kicked. He became aware of its condition about 2 or 3 days before the RSPCA came. He did not call a Veterinary Surgeon because he believed that, having given it antibiotics, the swelling would subside. Indeed he claimed that the swelling had gone down after he had treated it. He said that he had not realised that it was ulcerated and oozing blood, which he had seen only in the case photographs. He maintained that he had injected 15mls of antibiotics three times, the antibiotics having come from Ireland. He said that in his experience the condition clears up after a few days. He seemed oblivious to the contradictions. He did not consider that the horse needed a Veterinary Surgeon.

KH4, he also said that he had purchased in November/December 2007, although he had told District Judge Vickers that he had owned it for three months. He disputed that it was emaciated. He said that it was one of the horses seen by Inspector Ryder at Wacht Lane and he denied that it had regressed since she saw it on 18<sup>th</sup> December 2007. He claimed that this horse and the others were improving. He asserted that he had seen it on 4<sup>th</sup> January 2008 when he had fed it and insisted that it was in reasonable condition and neither malnourished nor underfed.

KH5 he disputed was underfed. He said that it was like the ones to be seen at auctions. He disagreed with the Veterinary Surgeon's opinions and denied that it was a "sticky" horse on which he did not spend time because it would not sell easily.

KH6 was blind. He said that he had purchased it from Holland over the telephone and it had not been as described. Indeed he said that there was "nothing wrong with it." He denied that it was emaciated even when reminded that Mr Parker had scored it at 2/10.

KH7 has been described by Ms Robinson as "very thin". The First Appellant disagreed with any suggestion that it was emaciated or malnourished.

KH8 was the horse seen on the DVD caught between a pen and some bales of straw and had coughed mucous into the pen of other horses. He said that it was in good condition and disputed the description of "very thin." He said that it was "not bad" in condition and claimed to have noticed the nasal discharge and to have given the animal antibiotics.

KH9 he said was in the same condition at seizure as it had been when he had purchased it in December 2007. He denied that it was emaciated or malnourished and insisted that he had not given it minimal food.

KH10 was a family pet donkey. The First Appellant said that it was a crib biter and that it had been in Pen 5. He denied that it was emaciated as the Veterinary Surgeon described or malnourished. He asserted that it had been in good condition and maintained that he had looked after the donkey pets.

KH15 belonged to Luke Smith the First Appellant said. The First Appellant denied that he had put a rug on the animal so far as he could now recall. He did agree that it had "lost a bit of condition" but he had not notified anyone of its condition because "it looked healthy enough" and "was eating something." He said that he had purchased it in the summer of 2007, contradicting his statement [749] that he had acquired it in January 2007. He accepted that it was in his care. He maintained in cross examination that he did not know that it had a rug on it – he said that he had seen that for the first time in the pictures – but he accepted that he must have seen it on 4<sup>th</sup> January 2008. He agreed that he must have seen the green faeces and that he had not had time either to speak to Luke Smith or to do anything about it. He said that it was not in such a bad condition as [890] shows. "I was going to do something about it; I was going to bring it in and put it in a shed. I would have given it a wormer. I am not familiar with salmonellosis but I do know not to leave a horse with diarrhoea unattended. I was going to do it on the afternoon of 4<sup>th</sup> January 2008 and I did not leave it to suffer."

KH16 he said was in the same condition as it had been when he had purchased it from Kenilworth in November/December 2007. He denied that it was emaciated neither was it thin or pathetic.

KH17 was also in the same condition as when he had bought it in December 2007. He disputed that it was emaciated; he said it was "plain."

KH18 was a horse that he had owned for 5-6 years. The First Appellant denied that it was "very thin", saying that it was in good condition. It was the horse with the foal KH18A. He disputed the Veterinary Surgeon's description of emaciation.



KH19, again, found the First Appellant disputing the Veterinary Surgeon's description of emaciation. He said that it was a "plain" horse. He asserted that there was nothing wrong with its body condition and that it was as he had purchased it in November/December 2007. The same went for KH20: that too was in the same condition as when he had purchased it. "It was not too bad." He denied that it was either emaciated or thin. It had been eating well.

Finally KH22; the First Appellant said that this was another foal from KH18. He disputed Veterinary Surgeon Hayes score of 0 for its body condition. He asserted that it was "OK". This was the donkey foal that had been missed in the pens and had been found dead. The First Appellant stated that Ms Robinson, Mr Baskerville and Mr Wakeling had all seen it in the pen and none of them had any concerns. We are satisfied it was missed in all the circumstances, unfortunately.

The First Appellant was then taken through all the RS horses numbered 1-97. He detailed where he had purchased them from and from whom. 45 of them he claimed he had acquired in November/December 2007. He described their body condition from "fair" to "very good" and said that those that he had recently acquired were in the same condition as when he had taken them into his possession. Some he described as having a "good" or "very good" condition for the time of year. Some he claimed had improved in body condition in the time that he had owned them.

He was cross examined about some of them. He disputed the body score of 1½ on RS26 and denied that it was in poor condition. He said that he had purchased it in Holland in November 2007 and said that it was in the same condition at seizure as when he had acquired it. RS28 he said was one of those purchased from Evans Bros on 27<sup>th</sup> December 2007 and that its body condition had remained unchanged since that purchase. When it was suggested that it had been suffering for a minimum of a week, that it was very thin, that it had a matted coat and a swelling below the jaw, he insisted that he had owned it for only a short time and it was as he had purchased it.

RS37 he claimed was one listed in the H and H invoice [Harrison and Hetherington]. When it was pointed out to him that the description did not match the photograph [952], he insisted that it was the same animal. In our judgement, it clearly was nothing of the kind.

RS47 and RS48, according to paragraph 20 of the First Appellant's statement belonged to the Fourth Appellant. The First Appellant denied that either horse in fact did belong to her. He denied that RS51 was footsore and had lice: he said that its coat was not matted but did have some mud upon it. He disputed the findings on RS52 [2548] and suggested that it was in that condition when he had purchased it from Vincents in Holland on 14<sup>th</sup> December 2007. Similarly he disputed the descriptions give for RS53 and RS55.

He was asked about RS54 and about the need for a farrier to attend to the hooves of that horse. He asserted that he had given it bute and said that "it was not as bad as they said". RS56 did not need a farrier either. He himself said that he had done nothing and he denied that it had lost muscle in the neck and back and was lame. He took issue with the conditions as described on RS57, RS58 and RS59, saying in respect of all three that they were not in the conditions as described.

Two groups of the RS equines should be mentioned: the Shetlands and the donkeys. The First Appellant said they these were not treated as stock animals. They were the children's pets. Some had been born at Spindle Farm.

RS82, RS83, RS84, RS86 and RS87 were the Shetlands and the First Appellant was taken through the various descriptions given by the Veterinary Surgeons, individually. He disputed all the adverse reports by the Veterinary Surgeons. For instance, with RS84, he agreed that the picture portrayed by the Veterinary Surgeon was “pretty grim” but said “I totally disagree with the description as given.”

RS91, RS93, RS95, RS96 and RS97 were the donkeys. Again the First Appellant disputed the descriptions given by the Veterinary Surgeons. RS97 [3121] which described muscle wastage, loss of muscle to the head and neck, trunk, abdomen, pelvis and hind quarters, a lice infestation and long hooves, the First Appellant asserted that “this is one of the best conditions of any of them.”

The First Appellant dealt with a number of other issues during the course of his evidence. He said that he had spent £15000 on haylage with Channers of Little Missenden and he had been purchasing from there since 2001. He used a skid loader to get the haylage from where he stored it to the horses. It broke down over the Christmas period, with an oil pressure leak, which caused hydraulic oil to spray out. He produced an invoice for oil. He said that his attempted repair had been unsuccessful. On 4<sup>th</sup> January 2008 he had been going out to get a valve from Slough for the front arm of the machine when the RSPCA arrived.

His system of feeding varied. There was a feeder in Pen 2 but he did not use it. He dropped a bale into Pen 3. With the skid loader out of action, he went round feeding the horses with haylage on a muck barrow, which had the capacity for ¼ of a bale of haylage. He claimed that it took about 1½ hours to feed all the horses. He said that he used a 4x4 jeep to drag bales out into the field, towing from the rear and into Field 1. He also claimed that he had done this at the request of the RSPCA to feed the animals after 4<sup>th</sup> January 2008. No obvious signs of a 4x4 having towed anything out were seen and we do not accept this.

He said that he distributed haylage along the front and right hand side of Pen 1, along the side of Pen 2 and a bale or two round the feeder in Pen 3 and that it was being done by hand. Pens 5 and 6 were given haylage along the front; Pen 7 by the outside trough at the rear and Pens 8, 9 and 10 individually per equine. He said that they all received sufficient food and there was no competition or bullying.

Outside in the fields he said that he usually put between 3 and 5 bales out. He did not divide or spread them around since that would cause wastage as the horses trampled on it. He said that he fed in the Yard regularly mornings and evenings; in the fields he found that 4-5 bales lasted 2 days or so, so he fed daily or every other day. In any event there were few horses in the fields.

He confirmed in cross examination that the skid loader was out of action from the 15<sup>th</sup> or 18<sup>th</sup> December 2007 and that his other vehicle, a tractor, had suffered a puncture in December 2007 and he had not got round to repairing it.

He agreed that a horse with food in front of it would eat all day; he did not know that a horse would eat continuously during its active periods of time. He denied cutting corners with either feeding or calling a Veterinary Surgeon. He denied that his was a regime of the survival of the fittest and that he avoided expense to make money.

On the subject of worming he said that prior to January 2008 his knowledge of worms was not great. All he did know was about redworms. He did not take faecal samples and, having wormed all equines on arrival he wormed again at intervals of 3-4 months. He said that he did so because there was no information at the auctions and because some were sold on within a week of him buying them. He never kept any records of worming, not even for the pets which he said that he wormed every three months.

We are satisfied that there was no proper, effective system of worming and that such worming as he did was at best haphazard.

He agreed that he said to Chief Inspector Skinner "it's the worm" and also that he had said that he always had "a few die when there are so many" but he denied that he was callous and he asserted that he had not informed the RSPCA about his losses over the previous period because they had not wanted to talk to him.

It was on the subject of worming that his previous conviction came up. On 20<sup>th</sup> September 2006 he had been convicted of a single charge of causing unnecessary suffering to a horse. This was a piebald colt and one of about 30 in a field of poor grazing. Its outward showing was of diarrhoea down both its rear legs. It was skinny, dehydrated, depressed, with a high heart rate and had gastro-intestinal parasites. A Veterinary Surgeon had declared that it had suffered unnecessarily as it had not been provided with an appropriate environment and care. This should have alerted the First Appellant. He insisted that he wormed his animals.

On the matter of bedding, the First Appellant said that he mucked out the pens every 8 - 10 weeks in winter and more often in the summer. He used the methods found by the RSPCA all the time. He laid fresh bedding every 2 - 3 days in winter if it got really bad; 3 - 4 if not. He accepted that he knew that a horse needed a dry place to lie down in and he maintained that he did put dry straw on top of the existing bedding by putting in a large square bale and shaking it out. He used his skid loader to get the bale to the pens. When it broke down he used the barrow. He denied that there was a foul smell at the Yard on 4<sup>th</sup> January 2008 and he denied that his account was nonsense. He denied that he had left the equines to make do and he denied that they were being kept in wet urine and faeces.

We are satisfied that, at best, the First Appellant headed a business at the lower end of horse trading where, for him, profit was the guiding motive. The provision for equines in his care was never better than meagre in terms of pasture [since he rented fields elsewhere or, as at Hughenden Manor, helped himself] and environment and that he provided basic food, housing and neither veterinary care nor the services of a farrier or a knacker.

In November/December the business collapsed. The Second Appellant separated from him, the Third Appellant and the Fourth Appellant went on a skiing holiday and the Fifth Appellant went to relatives. He could not possibly cope alone yet the documents he produced suggest that he continued to buy in horses and Ms Robinson certified for export. We reject his contention that others beyond the other Appellants assisted. He left the animals in his care to take their chance and that is why the appalling conditions that confronted the RSPCA on 4<sup>th</sup> January 2008 came to pass. The First Appellant described the evidence from the Respondents as lies. Sadly, it was all too true. His business had finally and completely collapsed. The picture that confronted the RSPCA on 4<sup>th</sup> January 2008 was horrific and beyond the condemnation of mere words.

There is no doubt, nor was it suggested otherwise, but that the First Appellant ran a horse trading business at Spindle Farm. He said as much to his expert John Parker. He is the person named in the documents and it is his name that the company bears. His is the prime responsibility here. He also shoulders responsibility by virtue of section 3 [4] AWA for the criminality of his son, the Fifth Appellant.

We are satisfied that, at the time that the Respondents visited Spindles Farm in January 2008, these animals were not being fed or watered adequately or at all. The “excellent” haylage was not being provided to them because the mechanical means of skid loader and/or tractor were out of action other family members were elsewhere and he could not cope. He sought neither assistance nor veterinary attention to his animals and was still acquiring even more animals from outside despite being unable to look after them or those that he had already brought to his premises.

## **JULIE CORDELIA GRAY**

Mrs Gray is the Second Appellant and the wife of the First Appellant. She met the First Appellant when she was 13 years of age and now has six children, three of whom are also Appellants in this case. She lived with him until about 3½ months prior to January 2008 when they separated; although they resumed married life in December 2007 for about three months. At the time the RSPCA came, he was living in the farmhouse.

She confirmed that the First Appellant purchased Spindle Farm in July 2001. The title in his sole name and, although she is aware that it was purchased without a mortgage, she says that she does not know what her husband paid for it. She said that her husband came from a very wealthy family and their previous homes were paid for by him. He gave her money but he did not disclose his finances to her. They had a joint bank account into which she paid his cash and cheques. She herself did not pay money into it. She also held her own account for her money, which comprised Child Benefit and Tax Credits. She insisted that the First Appellant never discussed business, finances or horse trading with her. He did tell her if he was going abroad but not if he was going to markets or fairs. He would often be late home.

All the life that she has shared with him has been centred for him on his horses. She said that the First Appellant spent more time with them than with her. She said that she had never known her husband neglect them. She always believed that they were being fed and watered. She said that she had no reason to think that he did not arrange veterinary attention but she did not actually know whether or not he did so. They last went away together on holiday in about 2005.

She maintained that the First Appellant did all the feeding and watering of the stock at the Yard. He did all the looking after of them. She did own a dog – the rotweiler – which the First Appellant had purchased for her and which she regarded as hers. It was fed every day. The First Appellant fed it if he was “up in the Yard before me” as she had other dogs at the house. She said that she went to the Yard on “most days” to feed her dog driving to and from there because she would have children with her. She drove into the Yard, down between the pens and parked. She accepted that she told the RSPCA that the dog was hers. She agreed that she released it in the Yard but denied that she walked him.

“I took no interest in the horses, not really”, she said. “I never noticed anything amiss. I have never ridden a horse in my life. I am frightened of them. I would not get on the back of one. I would look at a horse, but I would not groom it or ride it.” She denied that she had ever mucked out or cleared out in the Yard: her husband never asked her to do so.

In cross examination a horse passport was presented to her: in it she is named as “owner.” She said that she was unaware of that fact. There is no signature against the attribution.

On 4<sup>th</sup> January 2008 when the RSPCA came she acknowledged that there were dead horses. She said that she had been in London and returned home at about 18:30 -19:00. She had not been in the Yard that day until the evening and had not seen the horses. She acknowledged that she had seen two Shetlands down by the house. They went down more or less at the same time: over Christmass. The she said that it had happened about 3 to 4 days before the RSPCA arrived, so on New Year's Eve or New Year's Day. She could see one from the patio doors on the ground floor and the other from the upstairs windows. Both she knew were dead. The First Appellant said that he would remove them but his skid loader was broken down. She had told him about them but she thought that he knew anyway. When the subject of removal came up again, the First Appellant said that he was awaiting a spare part. She denied being aware of any other dead animals except for those two.

She said that the Shetlands and the donkeys were treated as pets. Some Shetlands she did say were bought and sold on.

She asserted that she never went out into the fields and she never saw any bones or carcasses. Her day was spent looking after her children, taking them to school, cleaning the house every day from top to bottom, doing the laundry, cooking and shopping. "My whole day was taken up with my household duties."

She spoke of the other Appellants. The Third Appellant had left home about 8 years ago but visited once or twice a week. The Second Appellant visited her. She had only lived at Spindle Farm for a period of about 6 weeks after her first child was born. The Fourth Appellant last lived at Spindle Farm between 1 and 2 years before the RSPCA came. She lived on her husband's parents' land and, since she was unable to drive only came over once per week. The Second Appellant visited her too. When the Fourth Appellant came she did not stay overnight.

The Fifth Appellant did live at home. He did not go to school and had home tuition. She took him to and collected him from the home tutor. After Primary School, where he was teased, she had kept him at home. She agreed that he loved being with the First Appellant but denied that he was responsible for any equines. He did go with his father, but she was aware that he did not like going as far as Wales with him because it was a long drive. He did go abroad with his father. She said that her son did not buy or sell horses and did not own any part of the company.

She acknowledged that the First Appellant and the Fifth Appellant went to both markets and fairs but denied that she looked after the Yard in their absence. When they went to Belgium and Holland Lee Lawrence came but did not stay over. On the trips to Wales she told us that the First Appellant left at between 05:00 and 05:30, having fed the animals and came back at between midnight and 01:00 again having fed the equines. She confirmed that sometimes the Fifth Appellant went too and that he loved horses and he loved going to markets.

She confirmed in cross examination that it was indeed herself who had been with the First Appellant and the Fifth Appellant in the field at Hughenden Manor on the afternoon of 18<sup>th</sup> December 2007. She had gone for the ride. She did not believe that the land belonged to the First Appellant. He told her that he was going to pick up a horse. The journey took about 15 to 20 minutes and that her husband's vehicle had become stuck in the mud. She had seen how the First Appellant and the Fifth Appellant zig zagged the animal to the van but said that she did not know how they did it. She claimed not to have seen a rope round the animal's tail but did recall a halter. She accepted that, if this had been a dog, she would have called a Veterinary Surgeon. Subsequently she had not asked any questions about this animal at any time and she did not hear any shot.

Again in cross examination she spoke of the events of 21<sup>st</sup> December 2007. She confirmed that she and the Fifth Appellant had been in the Yard when Inspector Ryder came. She had been feeding her dog. She told us that she did not recall her husband having been away for a couple of days [there is no invoice for this particular date] and she said that no one told Inspector Ryder that the First Appellant was away. She denied that she was looking after the Yard and she professed to have no recollection of any conversation about the horse from Hughenden, about any Veterinary Surgeon being called to it or the Fifth Appellant saying that it had been shot. Finally she said that she could not recall herself or the Fifth Appellant [Inspector Ryder was not sure whom] being asked by Inspector Ryder when the other horses would be removed from Hughenden. We are satisfied that this account from the Second Appellant was completely untrue.

Just before the RSPCA came, the Second Appellant said that the Fifth Appellant had been away at her sister's home. She collected him on 6<sup>th</sup> January 2008.

the Second Appellant said that during the period between 18<sup>th</sup> December 2007 and 4<sup>th</sup> January 2008, she had continued to feed her dog daily and had noticed nothing unusual in and about the Yard. There was no smell and everything looked as normal. No one mentioned any equines dropping dead and she only saw C18 and C19. The First Appellant told her that both his vehicles had broken down: one needed a spare part.

On 4<sup>th</sup> January 2008, she had been in London and she reached home at between 18:00 and 18:30. Whilst she had been on the train the First Appellant had contacted her and told of the RSPCA's presence and that they were taking some of his horses. She went to the Yard. Inspector Hampton cautioned her as she entered. She accepted that she may have said to Inspector Hampton: "Fuck off; you're not cautioning me." She had walked over to the First Appellant who was in the area of Pen 4. She agreed that there was a "commotion" between the Police and the First Appellant. She also agreed that she spoke with Inspector Hampton about her dog; they wanted its pen cleaned out. She denied being obstructive and aggressive and denied that she knew her way around the Yard. She asserted, however, that conditions were not disgusting and that those who claimed that they were, were wrong.

After the RSPCA had left, she remained in the Yard. She denied seeing any carcasses and said that she was unaware that any had been found. It was Rocky Keet who saw to the horses; the Third Appellant looked after the younger children and she went to the Police Station as her husband was under arrest. Inspector Hampton and Chief Inspector Skinner came after her. The Third Appellant had arrived at about 22:00 from France. The Second Appellant said that the Police were still on the Yard when she arrived. The Fourth Appellant came later after midnight.

The Second Appellant said that she received instructions from Inspector Hampton. Inspector Hampton spoke to her to make sure that the horses were fed and watered overnight. The Second Appellant had replied that her daughters were on their way and that they would see to it. She refuted the suggestion that she agreed to do it or see that it was done. When the Third Appellant arrived Inspector Hampton repeated it to her. The Third Appellant replied that she would shut the gates and that it would be done. Horses were still tied in Pen 4 and Inspector Hampton told both the Third Appellant and the Fourth Appellant to untie them.

When she had returned to the Yard from the Police Station, at about midnight, she was asked what she thought of the state of the Yard. "It was not in a state; it was full of water. I noticed nothing out of the ordinary. I never looked in the pens." She said that she spent 3 - 4 hours there of which ½ an hour was with her dog. In cross examination she said that the Third Appellant watered and she and the Third Appellant swept up.

Previously, whilst answering her own Counsel she had stated that the Third Appellant swept that night. She, herself, had not. Luke Smith did the feeding by putting bales onto a wheelbarrow and putting haylage into pens. He also tied bales to the towbar at the back of her jeep and pulled them out into the field. We have already dealt with the evidence. She could not say from whence he had obtained the rope and she did not know how many bales he had utilised. Nor did she see how he did it. She did not know whether Luke Smith had used a whole bale in the pens either.

When the Police came at 06:00 on 5<sup>th</sup> January 2008, she had been cleaning her dog's pen out. She had not been up in the Yard all night and it took her about ½ an hour to do it. The Third Appellant put the hosepipe into the troughs. She could not say if Luke Smith had finished what she said he was doing by that time or not.

On 9<sup>th</sup> January 2008, the Second Appellant said that she was at home. The First Appellant had suffered a breakdown and was suicidal. She was unable to discuss anything with him. He was back in the house and in bed. The Third Appellant and the Second Appellant's sister informed her that the RSPCA were removing horses.

She said that she did not see any Veterinary Surgeons that day. She did not know any of them. She had only spoken to Veterinary Surgeon Baskerville on 5<sup>th</sup> January 2008. She denied that she said that she owned horses. She now knew that her name was on the company documents as company secretary but only discovered it for the first time at the Magistrates' Court hearing. She said that she did not recall signing any documents to say that she was the company secretary and she never acted as such.

She agreed that she and the First Appellant had gone to see his solicitors and that she had sometimes gone into the office to see Ms Fulton with her husband. She claimed that she had never heard the First Appellant say that he looked after the horses with her, the Third Appellant, the Fourth Appellant and the Fifth Appellant. She would have disputed it if she had heard him say so. At that time the First Appellant was under medication from his GP and mental health professionals from High Wycombe had come to the farmhouse. She denied that she had any responsibility either for the carcasses or for the horses.

She was asked about the two statements made by the First Appellant on 8<sup>th</sup> February 2008 and 1<sup>st</sup> April 2008. She said that she first heard about their contents in the Magistrates' Court. She had not realised that Mr Weller was acting for her in the High Court relating to an appeal over the return of the horses.



This has been an issue that has concerned us. The First Appellant's original solicitors were Blyth Liggins in Northampton. That firm prepared the two statements dated 8<sup>th</sup> February 2008 and 1<sup>st</sup> April 2008. On 11<sup>th</sup> February 2008, those solicitors made an application for the return of the horses and the first statement was put forward to the Court. On the 29<sup>th</sup> February 2008, the RSPCA issued a cross application for S20 AWA relief and for the animals to be left in the possession of the RSPCA. On 4<sup>th</sup> April 2008 an Order was made for the Shetlands and donkeys to be returned to the Gray family and the rest to be sold. The two statements, 8<sup>th</sup> February 2008 and 1<sup>st</sup> April 2008, must have been before the Court.

Twice the First Appellant attempted to collect the Shetlands and donkeys and twice possession was refused to him. On 11<sup>th</sup> April 2008 an Application was made to the High Court before Wyn Williams J for an injunction. He decided that he did not have jurisdiction and sent the matter back to the Magistrates' Court. On 14<sup>th</sup> April 2008, that matter was stayed, pending a Case Stated to the High Court. An application for a Case Stated was made on 22<sup>nd</sup> April 2008.

In the meantime, at a date that Mr Weller could not give us, his firm became instructed by the First Appellant. In this case, there was a Pre Trial Review before District Judge Vickers on 13<sup>th</sup> May 2008. Blyth Liggins represented the Second Appellant to the Fifth Appellant; Mr Weller the First Appellant. The next day a draft Case Stated was issued naming all the Appellants in the other case. The RSPCA responded on 22<sup>nd</sup> June 2008. Mr Weller said that he passed all the papers to Mr Fullerton on 9<sup>th</sup> June 2008. On the 13<sup>th</sup> June 2008, Mr Fullerton responded on behalf of all Appellants.

A Case Stated, of course, is solely a request to the High Court to decide legality: in this case the legality of the orders made by the Magistrates' Court in the S20 proceedings. It seems to follow that the evidence submitted on behalf of all the Appellants was the same as that before the Magistrates' Court; namely the two statements dated 8<sup>th</sup> February 2008 and 1<sup>st</sup> April 2008.

The issue, which we have been unable to resolve on the occasions that we have raised it, is plain: Have all the Appellants acknowledged the content of the two statements? Despite our inquiries, we have been given no satisfactory answers. Mr Weller said that he passed all his papers to Mr Fullerton: Mr Fullerton said that he drafted the response. On one matter we have been clear both publicly and in our deliberations: whatever has gone on we have to make sure that no Appellant is prejudiced in his or her right to a fair trial.

The Second Appellant said that she had first heard that the request to the Magistrates' Court was for the return of the horses to "the Gray family" at the Magistrates' Court. Similarly she first heard that it was being advanced that she helped the First Appellant there. In fact they were separated. She did not discuss what she had heard with the First Appellant, nor with the Third Appellant or the Fourth Appellant. She did not think of changing her solicitors either.

On the 14<sup>th</sup> January 2008, the Second Appellant attended Amersham Police Station for the purposes of being interviewed. She had a solicitor to advise her. He advised her not to comment in answer to the questions that were to be put and she took his advice. Originally she said that she had been told by Inspector Hampton that she would be interviewed at home and she would not have had a solicitor present and would have been prepared to answer questions. She accepted that it would have been sensible to say that she was not involved. She denied that she had discussed the matter with any of the other Appellants and she denied that she was biding her time.

We have to decide whether to draw an adverse inference. We assume that she is a woman of good character and we have reminded ourselves of the impact of that on this and, indeed, all her evidence. We are satisfied that she knew from the caution that if she remained silent, adverse and critical comments would be made. There is clearly case for her to answer. She could reasonably have been expected to give her account in some form at the time of interview. We do draw an adverse inference. The solicitor's advice was convenient and was an excuse: the family had decided they were going to wait and see.

She confirmed that she had contacted Mr Parker on the 15<sup>th</sup> February 2008. She had not met him before. She confirmed that the First Appellant was in Holland and had been since the previous day. The Fifth Appellant let him in and she had been in the Yard. She was asked who was in charge. She said that no one was. In his evidence John Parker contradicted her, saying that she was in charge. We agree: it is an inevitable conclusion. According to Mr Parker's statement, he was told in general discussion either by the Second Appellant, the Fifth Appellant or one of the daughters' that the First Appellant had purchased horses at Langley Fair on the 13<sup>th</sup> February 2008 and left for Holland on the 14<sup>th</sup> February 2008. It appears from Mr Parker's report that the horse that the RSPCA were concerned about was one of these. The Second Appellant or the Fifth Appellant told him that the particular horse that the RSPCA wanted to remove had been wormed. She had agreed that the horse should be removed. John Parker said that the Second Appellant accepted his advice that it should be removed and, that if she had denied any knowledge of what was going on he would have remembered it. The Second Appellant also said that paragraph 34 of the report, where Mr Parker stated that she had told him that clean straw would be put down that night, she "might have said." John Parker confirmed that she had indeed said that.

A witness was called on the Second Appellant's behalf. Mrs Margaret Tennant was employed by Buckinghamshire County Council to monitor home tuition. Between 2004 and 2008 she visited Spindle Farm on about 4 or 5 occasions for about 90 minutes a time, to monitor the home tuition of the Fifth Appellant. She is experienced in dealing with families who are or have been travellers. She said that in such families there is a clear delineation of responsibility: mother will have sole responsibility for the welfare and education of children; fathers earned the money for the family needs. Mrs Tennant said that she was completely unaware of any involvement by the Second Appellant in the business.

Some documents were shown to her. They were the Fifth Appellant's statement of Special Educational Needs and the notes of two meetings dated 2<sup>nd</sup> May 2003 and 5<sup>th</sup> June 2003. In our judgement their purport is plain.

We are satisfied that she had responsibility for these equines and that she played an active part in the business headed by her husband. She is also responsible, by virtue of section 3 [4] AWA, for the criminality of her son, the Fifth Appellant.

The evidence now shows that it was she who was in the vehicle at Hughenden Manor on 18<sup>th</sup> December 2007. She and the Fifth Appellant were together in the Yard three days later on 21<sup>st</sup> December 2007 when Inspector Ryder called. She told Inspector Ryder that the First Appellant was away and that the remaining horses still at Hughenden would be moved in the next few days. It is inconceivable that the Fifth Appellant was in charge alone. She owned a dog which was kept in the Yard and she gave evidence about why it was kept at the Yard and not down at the house. That responsibility would have taken her into the centre of the Yard daily, to feed, water and exercise it.

She undertook on 4<sup>th</sup> January 2008 to make sure that the animals were fed and watered after the First Appellant had been arrested by the Police. Such was the hostility shown to the RSPCA that, had she not been involved, she would have told them that the equines were their responsibility and not hers. On 5<sup>th</sup> January 2008 she and others were seen by PC Connor at or about 06:00 working in the Yard, feeding watering and tidying up and later at about 08:40 when the RSPCA themselves returned. She let them in when Chief Inspector Skinner said that they needed to enter the Yard.

There is also evidence which we have not separately noted from February 2007. Then Inspector Hampton found her in charge of the Yard when the First Appellant was away at a horse fair. Inspector Hampton attended about a horse with a broken leg. Also in 2007, in October, she became Company Secretary of the corporate entity. It is inconceivable that she was wholly ignorant of it.

The reality is that this business could not have been run by one person alone. We have heard no credible evidence of the involvement of anyone else. She faces two charges under section 9 of the Act. We have no doubt but that she was responsible for these animals.

## **JODIE JUNE KEET nee GRAY**

She is the eldest child of the First Appellant and the Second Appellant, having been born in September 1982. She is married to Rocky Keet and they have 4 children. They live in Ashford in Middlesex in a house conveyed to them in May 2008. She said that she had only lived at Spindle Farm in October 2001 following the birth of her first child and for a period of between two weeks and two months. After that she had only visited to see her parents. She lived in Claygate before the family home was purchased.

Her visits were once or twice a week to see the Second Appellant. She said that she did not go up to the Yard or into the fields. She claimed to be terrified of horses. She said that she had never owned nor had she been responsible for any horse, including those the subject matter of this case. There had been family pets when she was a child but the animals belonged to her father.

She denied having any part in the business; indeed she did not regularly see her father since he was busy with the horses. She did not discuss business with him since that would be disrespectful. She had no input to the horses' business. She said that she has never been to a horse sale or auction and she had no role in the company: she did not even know of its existence before the Magistrates' Court hearing. She is not a shareholder.

She was asked to look at the First Appellant's various statements which purported to show that she was involved and did own equines. Of the statement dated 8<sup>th</sup> February 2008, she denied that paragraphs 2, 8 and 14 were accurate. She denied that she lived at Spindle Farm. On the second statement [746] she made similar denials concerning the detail in paragraphs 3, 11, 18, 19, 35, 38, 41, 42 and 49. In respect to paragraph 19, she agreed that her husband did own a single horse and that he used to come with her to her parents home where his horse was kept. It had been purchased for their children. She said that she had not been present at the solicitors' office when this statement came into being and was unaware of it before the Magistrates' Court hearing.

Before the events of 4<sup>th</sup> January 2008, she and her family had been abroad, skiing and visiting Disneyland, Paris. Accompanying her had been her sister Cordelia and her husband Luke Smith. On that day she and her group had returned to the country. On arrival at Dover, just off the boat and on the motorway, she had received a telephone call from her younger sister to the effect that their father had been arrested and that horses were being removed. She asserted that the call came at about 22:00 to 22:30 at Dover. She was driven straight to the Yard arriving she said at about 22:30, although in cross examination she said that the journey had taken just over an hour. We are satisfied that this account cannot be true. She could not have accomplished the journey in such a short time and we are satisfied that she went to Spindle Farm because at that time it was her home. She denied that she arrived after midnight.

She said that she spoke to Inspector Hampton and to Chief Inspector Skinner. Their evidence, of course, is that they made arrangements with the Second Appellant only. We accept that their account is right. What was to happen was done by the Third Appellant of her own volition.

Her account was that she contacted her husband at the house and asked him to come up and assist. He put horses away in pens. Then she and her mother went back to the farmhouse. Later she, the Second Appellant and Luke Smith returned to the Yard. She said that he made sure that the animals had food and water. He did the haylage whilst she filled up the water troughs with a hose. She denied mucking out or sweeping up. She agreed that it was her, Luke Smith and the Second Appellant who were spoken to by the Police, in particular PC Connor at about 06:00 on 5<sup>th</sup> January 2008. It is clear from the evidence that some haylage had been provided at some point before the RSPCA returned; not so clean water.

She was asked in cross examination exactly what the three of them had been doing and how. As for the haylage, she said that Luke Smith had used the Second Appellant's 4x4 and had brought haylage bales – 400 -500kg in weight – by himself having attached one with rope to the 4x4. Then he had distributed it to the pens. She claimed that he took one bale out into the fields, again by himself. She swept up and put a hose through the bars to fill the troughs. There was no mention of dead horses; no mention of horses being euthanased; no mention by Luke Smith that two of his horses had been euthanased; no mention of carcasses and no mention of the Second Appellant being told to clean out the dog pen. What was said by the Second Appellant was that horses had been removed because a Veterinary Surgeon had said so.

During the day of 5<sup>th</sup> January 2008, she said that she carried on with the feeding and watering, sweeping up and keeping the place clean. In an answer to Counsel for the First Appellant she said that although she was asked to provide clean bedding and a dry area in Pens 1, 2 and 3 on that day, they were already provided. She was asked in cross examination if the Yard had been in a "disgusting state" when she had first arrived. She agreed that it had been "a little bit; it was messy." She said that it was muddy and wet all round the Yard. She claimed to have been unaware of any smell.

She agreed that she had admitted the RSPCA that morning with the Second Appellant at about 08:40. She insisted, untruthfully as we find, that she told Inspector Hampton that she did not live at Spindle Farm. She did not because at that time we are satisfied that she did live there. Nor did she say to her or Inspector Ryder that she was frightened of horses. She exhibited no fear of them during the time that she was around the Yard. Nor did she say to either Inspector Hampton or Chief Inspector Skinner that she had nothing to do with the horses.

On 6<sup>th</sup> January 2008, the Third Appellant accepts that she had conversation with Inspector Hampton. Inspector Hampton told her what to do and what was being done. She asserted that Inspector Hampton, Chief Inspector Skinner and Nicholas White told her that she was doing "alright."

It was on this day that she had gone out with others into the fields. She says that for the first time she saw carcasses. It was then that she realised that something was wrong. Yet she did not ask the First Appellant [because he had suffered a breakdown], the Second Appellant, the Fourth Appellant or the Fifth Appellant [whom she knew always spent a great deal of time with the First Appellant] about them.

The Third Appellant was asked about conversations that she had with Inspector Hampton on this day. She denied that there had been mention of Pen 6 but she agreed that she would do what Inspector Hampton had asked but not that she would see that what she asked would be done. In an answer to Counsel for the First Appellant, however, she said that Chief Inspector Skinner and Inspector Hampton both asked her to get all the pens cleaned out and she had obtained a number from her father's book for Channers and had called him. He had attended on 9<sup>th</sup> January with a machine.

Later she had been called to the house by the Second Appellant and had returned to find the RSPCA, Trading Standards and Police Officers were at the house. They said that they wanted to serve the First Appellant with papers. The First Appellant had seen them according to Inspector Hampton and was not answering the door. She said that she and the Fourth Appellant tried to tell them that he was not well and would give the papers to him themselves. The Third Appellant said that this was agreed. Inspector Hampton then said that there was a piece of paper that had to be signed for the horses. She claimed that she and the Fourth Appellant had said that they could not sign the papers since they did not own the horses. The Third Appellant asserted that she said that she would sign as the First Appellant's daughter to confirm that she had been given the papers. When this was agreed she signed and they left. The Third Appellant denied that she ever claimed to own horses. We are satisfied that she did sign as owner, that she did own horses and that she told Inspector Hampton that she owned horses.

On 9<sup>th</sup> January 2008, she and her aunt had gone to the Yard. She claimed that she was told by Inspector Hampton that there had been a meeting and that "someone higher than her" had said that all the horses were to be removed. That we are satisfied was a lie: no such thing was said because we are satisfied that no such decision was taken. She acknowledged that her aunt had attempted to contact the lawyer. She described how vehicles arrived and people attended and that when horses were being removed she took notes of the removed horses in a book and took photographs for her father.

She said that she had no recollection of being cautioned and she denied being aggressive or difficult. Although unchallenged, she took issue with her brother's puerile remark and denied that it had been uttered. She denied that anyone was obstructive, although she did accept that the Fourth Appellant was once.

She denied that either she or the Fourth Appellant had pointed out horses that were theirs. She did not produce the book in which she had noted down the equines' details as she did not know where it was now. We are satisfied that they both did say that they owned horses because they did indeed own horses in the Yard.

On 14<sup>th</sup> January 2008, the Third Appellant attended for an interview at Amersham Police Station. She explained that she had met a solicitor at the Police Station and that he had advised her not to comment in answer to questions. She took notice of what he said because she had never been in trouble with the Police before. She claimed that she did not understand that Inspector Hampton or Chief Inspector Skinner were suggesting that she was responsible for the horses. Indeed she had been willing to answer the questions.

She had gone to the Police Station with the Second Appellant and the Third Appellant with the knowledge that she was going to be interviewed. She appreciated that she could have explained that she was only at the Yard to help out, that the business was nothing to do with her and that she was even scared of horses. She denied that she had bided her time to wait and see what the RSPCA would produce.

She said that she had first found out what her father was saying from reading his statements. She and he and the other Appellants all had the same solicitor and she had not asked for separate representation. She denied any knowledge that a Magistrates' Court was being asked to return the Shetlands and donkeys to her. She confirmed that she had attended the Magistrates' Court hearing when that Court was asked for the return of the animals.

The question of an adverse inference arises. We have already dealt with this question when considering the issues at the close of the Respondent's cases and we do not intend to repeat what we said then. Now that all the evidence is before us we must consider the matter again.

Clearly the Third Appellant understood the caution and appreciated its significance: no other suggestion has or can be advanced. She realised that if she did not advance what her case was then adverse comment would be made of her silence at trial. There was and clearly is a case for her to answer. She could reasonably have been expected to give that account in some form at the time she was interviewed.

Should we draw an adverse inference because of her silence? She said that, as a person of good character [and we have reminded ourselves of the full significance of having a "good character" as lawyers are apt to refer to it, in considering this and all her evidence], she followed the advice of her solicitor. We are satisfied that this is no more than a convenient excuse behind which to hide for her failure to give an account of herself at interview. She knew that, if she remained silent, adverse and critical comment would be made if she subsequently advanced a positive case. It was clearly a family decision to keep silence and she followed the family line. We draw an adverse inference.

There is no doubt in our minds but that she was responsible for these equines at Spindle Farm. She was present on 5<sup>th</sup> January 2008 when PC Connor found her and others working and later that day when she tried to exclude Inspector Hampton from the Yard. On the 6<sup>th</sup> January 2008 she tried to repeat that exclusion but then agreed that she would make sure that some of the horses would be fed and watered and enabled to lie down. She released horses from Pen 6 and she further undertook to clear out the stables and pens and to get machinery with which to do that work. She also claimed ownership of some of the horses and we are satisfied that she did own horses. She also signed the receipt [707]. On the 9<sup>th</sup> January 2008 she claimed ownership of three horses.

## **CORDELIA GRAY**

The Fourth Appellant is now 24 years of age. She was in a relationship with Luke Smith, which began in March 2006 when she was 17 years old and they have a child born in November 2008. She and he have now separated; the Fourth Appellant says that she has not seen Mr Smith for some time and is no longer in contact with him. She last saw him in February 2009.

She lived at Spindle Farm until March 2006. Then she lived in Chertsey in a caravan on his parents' land. She visited her mother weekly for a couple of hours, being driven over by Mrs Smith as she herself could not drive. She returned to Spindle Farm after the birth of her child in November 2008 for a month and then after she and Mr Smith separated.

She said that she herself has never owned any horses. Her father owned them and her mother owned the dogs. She denied that she played any part in the horse business nor did she assist her father with it. When she visited, she went to the house and not the Yard. Luke Smith did own horses but she professed not to know how many. It was not her business and she had not asked.

It was the First Appellant who purchased the animals. He did buy pets and the children named them but they did not own them. She never regarded herself as owning any of them and she denied that she had any responsibility for any of them. She did not ride them and, although she was not frightened of horses, they were neither a hobby nor an interest to her.

In December 2007, she and other family members went skiing. Her sister, brother in law, Luke Smith and his brother and sister in law went to France. They went by car. They returned on 4<sup>th</sup> January 2008 through the Channel Tunnel and she reached Chertsey by 22:30 to 23:00. She and those in her vehicle – Mr Smith and his relatives – stopped in France to shop. The Third Appellant went ahead.

At about 01:00 she said that she received a telephone call from the Third Appellant to say that the RSPCA were at the Yard and that the First Appellant had been arrested. Luke Smith asked the Third Appellant to come over and collect her and himself. She did so and arrived at 01:45, in the Second Appellant's 4x4. The Third Appellant then drove the Fourth Appellant and Luke Smith to Spindle Farm, a journey of 40 – 45 minutes. On the journey, the Third Appellant did not say much: there was no talk of dead horses. The Fourth Appellant said that she did not go to the Yard; she went to the house. She did not see any members of the RSPCA that night.

Two of Luke Smith's horses had already been euthanased: KH1 and KH3. The Fourth Appellant said that she was unaware of that fact and Luke Smith did not say anything about it. Neither did he say anything when KH15 was euthanased. He has never said anything to her about the loss of these horses, right up until they separated. They never discussed it.

She had first heard of dead horses when walking in the fields on 5<sup>th</sup> January 2008. She said that she was shocked and had no prior knowledge. However she had not asked the Second Appellant if the First Appellant had said anything nor had she discussed it with Luke Smith. She did not ask the Third Appellant either. She said that she did wonder about it but had spoken to no one.



She acknowledged that she was in the Yard and did see Inspector Hampton on the morning of 5<sup>th</sup> January 2008. She admitted that she told Inspector Hampton that she lived in Hants., and admitted that she had lied in so saying. She gave as her reason that she was “in a bit of a fluster” at everything that was going on. Why Hants., she was asked. “It came to my head” was the reply. We are satisfied that she lied because she did not want to admit that the true position was that she and Luke Smith lived at Spindle Farm and were active in and about the business.

She also said that when the Second Appellant had told her that the RSPCA were taking more animals she had asked “have they got a vet?” How did she know that a Veterinary Surgeon was needed to authorise removal? She replied that it was necessary for a Veterinary Surgeon to take horses, since they had to have a reason for removal.

She agreed that she was present with Inspector Hampton in the fields when certain horses were pointed out. Her account was that she did not claim ownership of RS5, RS6, RS47 and RS48. Inspector Hampton wrote them down as she had pointed them out. Inspector Hampton wrote that she owned them; she never said that they were hers. She did not know why Inspector Hampton had done this. The horses were in the fields and she had just pointed them out whilst she stood beside Inspector Hampton. The Third Appellant had been there as well. She denied that she had pointed out either RS27 or RS52 to Inspector Hampton, nor had she referred to two other piebalds either. She said that she has no recollection of talking to Inspector Hampton about them, but she might have been talking to her sister. We accept that she pointed them out because she owned them. There was no other reason or explanation for her doing so.

She agreed that she did chase a black horse. Inspector Hampton had been taking details of it and had been trying to catch it. A man was offering it a bucket of food. She came up behind it to try and assist. She had no intention of being obstructive. She denied chasing it away. She said that she had no recollection of a Police Officer telling her to stop it and she refuted the suggestion that she was being aggressive and obstructive.

She was asked about Inspector Hampton speaking about bedding on 6<sup>th</sup> January 2008. She agreed that Inspector Hampton had said that the bedding be changed. What she had said was that she would obtain the number of the person whom her father used who came and cleaned out the barns. As it happened, the First Appellant gave the number to the Third Appellant. She had done nothing herself as she did not regard herself as being responsible but she had put some bedding into Pens 8, 9 and 10 after Luke Smith had removed the horses from those pens. Inspector Hampton had also said that that had to be done. She said that she also filled up the troughs with water. Whilst doing so she did not see any horses that were in poor condition. Before then she had never seen that any of the horses were in poor condition. She denied that there was a foul smell in the Yard and she had not seen any depressed horses.

She accepted that she “probably” did agree to improving the conditions in the Yard, in terms of food, water, dry bedding and space. She said that the reason why she had never said that the horses were nothing to do with her was because no one had asked her. She accepted that she had agreed with the Third Appellant to clear out the pens and to get the machinery to do so in a week’s time because she had already contacted Paul Channer, having obtained the number from her father. She also agreed that she had signed the receipt for the horses but she said that she had no recollection of saying that the horses were hers.

On 9<sup>th</sup> January 2008, she did spend time in the Yard whilst horses were being loaded. She disputed pointing out eight but did recall four. She agreed that she pointed at RS5. She said that she was having a conversation with the Third Appellant and pointed at it. She denied saying that it belonged to her. She said that she had pointed at four horses, because she was pointing at horses. She denied that she pointed at more. The horses that she pointed at were RS5, RS6, RS47 and RS48. She denied that she pointed at RS27 or RS52. She now remembered which horses that she had pointed at from the photographs twelve months after the events.

It was a complete coincidence that RS47 and RS48 happened to be mentioned in paragraph 20 of her father's statement dated 1<sup>st</sup> April 2008. Neither she insisted were in fact hers. We are satisfied that they were hers: such coincidences do not happen. Further we are satisfied that the Fourth Appellant did claim ownership of the horses mentioned to Inspector Hampton.

Another complete mystery was that someone has written down on an invoice [D12] from Vincents her name and "RS52, 2 Dutch + 3 gelderlanders", a total of six horses, the number that was recorded as her claim for that day, 9<sup>th</sup> January 2008.

She agreed that she had attended for an Interview and that she had answered "no comment" to all the questions put to her. She said that she had done so on the advice of her solicitor. She accepted that "I can understand that there are very strong reasons why I should answer the questions." We have considered whether we should draw an adverse inference from her failure to do so and, for the same reasons as with other Appellants, we do draw an adverse inference from her failure to account for herself. Again, we have reminded ourselves of the fact of and the relevance of her good character.

She, too was asked about references to her in the First Appellant's statements. She said that she was "quite shocked" when she heard about the contents and that they were not true. Mr Weller had shown them to her before anything was said in Court. She said that she had never asked her father why he had said these things, nor had she spoken to the Second Appellant, the Third Appellant, the Fifth Appellant or Luke Smith about the matter. "I never mentioned it to any of them. I knew that it was serious but I have never challenged it and I have not discussed it with anyone."

She said that she had been present at Court when the Deputy District Judge had made an Order for the return of the Shetlands and donkeys and that she knew that they were to be returned to her and her sister the Third Appellant. She had found it "odd" when she heard the Deputy District Judge being told the content of paragraph 14 of the 1<sup>st</sup> April 2008 statement. She said that the Deputy District Judge was not told the content of paragraph 8.

She said that she was unaware of any claims as set out in the statements that she owned any of the carcasses, including C7, C12, C18 or C19.

Finally she, too, was asked about representation. She said that she was unaware that there was a case in the High Court concerning the horses; nor was she aware that either Mr Weller or Mr Fullerton had been acting for her in such a case.

Again we have no doubt but that she was responsible for the equines. We are satisfied that she lived at the premises; she lied when she said that she lived in Hants and gave no proper, let alone convincing, explanation for the lie.

She agreed with her sister to clear out the pens and stalls and to get machinery to do it with. She agreed to make sure that the horses in Pen 6 had access to food and water and were able to lie down. She claimed to own a number of horses, 8 in all, being RS5, RS27, RS47, RS48 and RS52. She also claimed to own 3 others namely an appaloosa and two piebalds. Inspector Hampton noted that she claimed RS6. We are satisfied that she did own these horses. She also signed the receipt [707].

## **JAMES JOHN GRAY [JUNIOR]**

The Fifth Appellant did not give evidence. This fact was trailed by his Counsel early on in the Appellants cases. It has caused us some concern because Ms Howe [alone amongst the advocates] challenged the integrity of two professional witnesses called by the Respondents during her cross examination of them during their evidence. They were the two vets, Veterinary Surgeons' De Brauwere and Ms Robinson. Assuming that she did so, on her client's instructions, we would have expected some reasoning behind such assertions against professional people to have surfaced at some stage. It did not. She called no evidence nor offered any reason on that subject at all. In any event, we have decided to record the facts and, of course, we have not allowed it to interfere with a fair evaluation of the Fifth Appellant's case. She also accused the Judge of bias. We record that fact, not because it troubled us, but because the Magistrates' felt that their impartiality was being impugned since the implication was that they were [as the Judge quoted them] just "patsys" doing the Judge's bidding. Again we record the facts; it has not hindered us in our objective evaluation of this Appellant's case. No other party supported that submission either.

Two witnesses gave evidence concerning the Fifth Appellant. The first, Mrs Margaret Tennant was called as part of the Second Appellant's case but some of her evidence is relevant in the Fifth Appellant's case too. When she went first to Spindle Farm [and we shall not repeat her evidence] the Fifth Appellant was 11 years of age; by 2008 he would have been 14. The Second Appellant had employed a tutor to work with the Fifth Appellant one day a week. Mrs Tennant felt that the Second Appellant did her best to see that the Fifth Appellant did the work set and saw the results. She knew that the Fifth Appellant had a statement of Special Educational Needs. She also knew that he was particularly fond of horses. His ambition, she understood, was to become a farrier. Her visits continued until 2008.

In the documents, [the statement and the notes of the two meetings] it is plain that the Fifth Appellant was not going to attend secondary schooling. On Thursdays and Fridays he attended horse fairs and sales with the First Appellant. The Second Appellant had lost the battle to prevent it.

The second witness was John McKeown, a Chartered Psychologist. He produced a report dated December 2009 on the Fifth Appellant. Counsel did not take him through his report as an examination in chief; she announced that she was handing it to us. When the objections to this course were pointed out to her, she said that she would get Mr McKeown to read it aloud. We decided upon a pragmatic approach and allowed ourselves all to take copies.

In the document it is plain that the Fifth Appellant has been working for his father from a young age in the horse business.

Traditional tests were performed with the Fifth Appellant with mixed results. Mr McKeown did not consider that they demonstrated a significant degree of suggestibility but a compliance with his father's wishes. The Fifth Appellant himself told Mr McKeown:

*“6.9. In discussion with James, he told me that he enjoyed working with his dad and helped him for about two hours a day up to the age of 12. Working included going with him for trips connected with his father’s work he told me that he was often bored at home.”*

and

*“6.10. He said that in working with his father he always did what his father said and never thought that there were too many horses or donkeys. James indicated that it was only him that helped his father.”*

The conclusions are set out.

*“7.5 He would appropriately be described as having moderate learning difficulties and mild and variable intellectual impairment. His most pronounced difficulties are in the areas of verbal reasoning, comprehension and memory recall of events.”*

*“7.8 Horse fairs take place mainly in the summer months and it was around this time that James would have been more likely to go off with his father rather than attend school – something that is not unusual within the traveller sub culture... James’s mother as already mentioned was reported as saying that his father made attempts to encourage James towards school without much success and then acquiesced in James’s wishes to go off to horse fairs.”*

*“7.9 With regard to going against his father’s wishes in relation to keeping horses it is more likely than not that James would have been compliant rather than oppositional if he indeed, as Mrs Tennant reported to me, liked working with animals and his father played a significant role in organising opportunities for James to work with them. Also James’s age and intellectual capacity within the family would not have been at a level where one can realistically imagine him appropriately appraising the situation and going against father’s wishes – regardless of the numbers and situation in which the animals were kept.”*

In our judgement this amounts to mitigation, not exculpation. Since the First Appellant did not give evidence this can only amount to opinion evidence not fact.

In her concluding submissions, Miss Howe made two points. At paragraph 16 she argued, inter alia, that “a young person under 16 cannot be expected to provide veterinary treatment for these animals.” There was no evidence from the Fifth Appellant as to what he did, or said, or suggested in relation to these animals since he himself did not give evidence. He was, as we find, responsible for these animals. There is no evidence from him as to how, if at all, he discharged or attempted to discharge his responsibility.

In paragraph 17, Miss Howe argued, inter alia, that the Fifth Appellant “could [not] reasonably [be] expected [to] understand the concept of PLE and the effect that may have on any suggestion of failing to provide a nutritionally balanced diet.” The Fifth Appellant has had years of practical, hands on, experience of equines and we are satisfied that he knows the difference between a sick and a well horse.

John Parker was asked about taking instructions from a young person. He said that he would not do so except in an emergency, not least because of the potential difficulty of obtaining payment for services rendered. There is no evidence of what the Fifth Appellant said to anyone since he did not give evidence. If he had asked his father or mother to get a Veterinary Surgeon to any of his animals or for those for which he was responsible he did not say so since he did not give evidence. We take the point but there is no evidence to avail him.

However, John Parker did give some evidence about the Fifth Appellant. In paragraph 20 of his report of 6<sup>th</sup> February 2008 [1494] he accepted that, having been “insecure” about whether the First Appellant had told him that the Fifth Appellant was learning the trade from him, he would not just have taken it from a solicitor and put it into a Court report and that the First Appellant must have given him that information.

In the report dated 18<sup>th</sup> February 2008 [1501] he confirmed direct details of the Fifth Appellant’s involvement in the yard. He said that information given and recorded in paragraph 6, the Fifth Appellant had allowed him entry to the yard and was with the Second Appellant, and either the Third Appellant or the Fourth Appellant [he did not recall which]. The information in paragraph 15 may have come from him, from the Second Appellant or either the Third Appellant or the Fourth Appellant. The information recorded at paragraph 17 could have come from either the Second Appellant or the Fifth Appellant: he thought that it came from the Fifth Appellant.

The Respondents did not seek an adverse inference to be drawn against the Fifth Appellant. However, different considerations apply to silence at trial. In fact, when his turn came he was not present, so it was to his Counsel that the Judge read the standard question. She assured us that her client had been fully advised.

It is, of course, for the Respondents to prove guilt: this Appellant does not have to prove anything. Silence of itself proves nothing. We are satisfied from all the evidence that there was a case for him to answer. His silence means that there is no evidence from himself that in any way undermines, contradicts or explains the evidence in the case against him – including from his own witness.

It is obvious that the Fifth Appellant has been part of the business and responsible for these equines under the direction of his father for many years. The evidence from Mrs Tennant and from Mr McKeown sets out the reality. He has been to markets and fairs at home and abroad; he knows how to deal with horses, from the distasteful incident at Hughenden Manor on 18<sup>th</sup> December 2007 when we are satisfied that he showed his immaturity and impatience by cruelly kicking what was obviously a dying horse, his involvement on 21<sup>st</sup> December 2007 with his mother when Inspector Ryder came to the Yard, to his physical help in loading the horses for removal. He also claimed ownership of horses, including RS82.

By virtue of the provisions of section 3 [4] of the AWA both his parents also shoulder responsibility for his criminality.

## JOHN PARKER

John Parker is a Veterinary Surgeon and was instructed by former solicitors acting for the First Appellant in January 2008, shortly after the RSPCA had visited Spindle Farm and had removed the animals from there. He is a clinician and diagnostician with a mixed practice but mainly with equines.

He received his instructions on 13<sup>th</sup> January 2008. He was asked to go to Norfolk to look at horses and subsequently to go to the Home of Rest for Horses at Speen for the same purpose. He visited four premises in Norfolk on 20<sup>th</sup> January 2008 and the Home of Rest for Horses on the 21<sup>st</sup> January 2008.

Early on in his cross examination, John Parker was asked the inevitable questions about the source of his instructions and those which ended up as paragraphs 3 and 20 of his report of 11<sup>th</sup> February 2008 [1492]. On the question as to for whom he acted when he wrote that report he said that it had not been explained to him very well. He said that he believed that he acted on the First Appellant's behalf to begin with. He was then asked on whose behalf he was giving evidence in this Appeal. He replied the First Appellant and/or the family: "I think that I am acting on behalf of all the Appellants."

On the paragraphs themselves, in cross examination to Counsel for the Second Appellant and the Fourth Appellant, he said "I recall this well. I spent  $\frac{3}{4}$  of an hour with the First Appellant. I met him at a pile of haylage. I asked him questions. He took me round the farm buildings. I asked him how he conducted his business and how he managed it at home. I wrote this down. That is what he said."

Then previous evidence that he had given to District Judge Vickers was read to him: that evidence indicated that he had expressed some doubt about what had been said to him by the First Appellant. "Maybe I misunderstood it" he said, "it was a long time ago." He then accepted that the important sentence in paragraph 3 might have come into his mind from another source.

The content of paragraphs 3 and 20 are of importance. Mr Seabrook QC asked him where had this information come from? He accepted that he had asked the First Appellant how he structured his business. In paragraph 3 he agreed that the First Appellant had showed him round the farm buildings; he agreed that the First Appellant had explained his management and how he conducted his business; he agreed that the First Appellant had said that if they were all away together on holiday, a competent horseman moved in to manage the yard. What he was "insecure" about that third sentence: "he does all the work with the help of his family of wife, son and two daughters." He could not recall whether the First Appellant had told him this or the solicitors. In the end he seemed to have come full circle: He told Mr Seabrook QC "I must have got this from him [the First Appellant]. I believe it is what I wrote down but I cannot now recall how I came by the detail."

John Parker was a Magistrate and was Chairman of his Bench as his curriculum vitae sets out. He knew that his report, that he signed, was destined for a Court because he signed the appropriate declaration at the end of it. At different points in his evidence he said that he must have got the information about the First Appellant and his family running the business from the First Appellant and then that the solicitors might have provided it. He had destroyed his original notes when he completed the report.

This evidence has troubled us. It is a serious matter to make an adverse judgement about a professional man. Independently all three of us have concluded that John Parker knows very well that the First Appellant gave him that information. He would not look at anyone when he was being pressed about this by Mr Seabrook QC. This evasion compromised his credibility.

The Respondents submit that this evidence is admissible against all the Appellants and not just against the First Appellant. We are satisfied that John Parker's evidence on this subject was inconsistent and that he made an inconsistent statement in his evidence in chief to Mr Fullerton and contradicted himself both to Mr Cherrill and Mr Seabrook QC. In our judgement the evidence falls into Section 119 1(a) and 1(b) of the Criminal Justice Act 2003. It is admissible as evidence of the matters stated.

What weight do we give to it? It was a statement made to a Magistrates' Court with the Appellants being present; they had a common solicitor, Mr Weller. Furthermore, the evidence is still before the High Court for recovery of the animals on behalf of all the Appellants. We are satisfied that this evidence is evidence that we accept as having been said and is evidence against all the Appellants. It is also supported by the statement made by the First Appellant to his former solicitor, Miss Fulton.

Paragraph 4 of his first statement [1458] sets out Mr Parker's remit: "as far as possible [I] subjected the horses there to a general health examination to provide a short report on the current state of each animal." Paragraph 7 states that "the issue to be identified was whether the horses I examined were considered to be at risk or had been caused unnecessary suffering..." Although he had given evidence to a Parliamentary Committee which considered the provisions of what became to AWA 2006, he said that he was unfamiliar with Section 9 of the Act and he was not told whether the risk that he was looking at was either at Spindle Farm or whether the equines were to be considered at risk in themselves. He gathered information "along the way." We are satisfied that, when he examined the horses, he had no clear idea of what his remit was, so he could not form an objective judgement against known criteria.

His report details the manner of his examination of these animals. Where possible the animal was subjected to "a short general health check." He told us that this took about ½ a minute for every individual animal and consisted of touching the back, looking at the animal from behind and at the neck. That was "the way to score animals." Considering that, for example, Veterinary Surgeon De Brauwere who took between 40 and 45 minutes for every animal he inspected and made detailed notes and this description and John Parker's notes made in comparison and to the notes of other Veterinary Surgeons who inspected these animals and made notes, this was simply not good enough. We cannot place any reliance on, nor have any confidence in, a cursory examination such as John Parker conducted when compared with the thoroughness and care with which the others approached their task.

John Parker used another method of scoring. His 0-10 scale was an "extrapolation of the Equine Industry Welfare Guidelines method." [1450]. He said that a numerical score was more precise than a verbal description. 0 is "nigh unto death:" meaning moribund with an expectation of death within a couple of hours; a collapsed animal. 10 would be grossly fat. 3 is borderline: with varying levels of concern depending on the age of the animal: younger less concerning than older.



We were taken through his written assessments. It is clear that John Parker did not particularly recollect the individual horses. He looked at the records and was invited to consider the photographs. When he did so, he was prepared to amend his score. We were not impressed by this method of scoring and consequently there were significant differences between his scores and those from other Veterinary Surgeons. Sadly the plain truth is that theirs were much more thorough and careful than his and we are entirely satisfied that we should prefer theirs.

We do appreciate the difficulties in evaluating body scores. Individuals have used different scales – either the one which that person was familiar with or the one with which they were asked to work. In order to test the quality it is the thoroughness of the examination that matters. Veterinary Surgeon De Brauwere took 40 to 45 minutes per animal assisted by Ms Kirton; John Parker ½ a minute. John Parker's notes are cursory as were, we find, the examinations themselves. The scores that he offers simply do not measure up in qualitative terms to those of the others. Understandably he did not recall individual animals at all.

He did make a valid criticism: these scoring methods are not designed for dead animals. But that information does offer us assistance in deciding upon the information proffered on the dead animals as to the state of them as described by Veterinary Surgeon Hayes. His was not a proper post mortem as we have seen, but John Parker still acknowledged Veterinary Surgeon Hayes' professionalism as do we. Veterinary Surgeon Hayes offered us guidance and we are entirely satisfied that we should accept it.

John Parker started with the horses at Moat Farm. Some were not specifically identified; others RS8, RS10, RS12-17, RS26-29, RS31, RS33-50, RS67, RS69 and RS71-72 were noted and identified. 3 of these – RS27, RS47 and RS48 had been claimed by the Fourth Appellant. Most of these were spoken of generally rather than specifically by Mrs Ringer and Mrs Verhulst.

Mrs Verhulst gave evidence in detail about only RS28, RS72 and the horse that subsequently died: RS37. Peter Green dealt with this equine in more detail. There was no cross examination about the others.

Then he went to ILPH and inspected RS53-61. These are animals inspected by Mr Williamson and we have considered John Parker's comments alongside his. John Parker acknowledged that he did not recall these animals "well enough." He said that RS58 and RS59 were at risk but he did not recall now any welfare concerns with the others.

Finally on that day he went to Redwings and met Veterinary Surgeon De Brauwere. He looked at RS51-52, RS62-66, RS82-89 and RS90-91. We have already commented upon John Parker's evidence alongside that of Veterinary Surgeons' De Brauwere and Williamson.

It was after the review of his scores and opinions on the condition of these animals that we detected a fundamental flaw in John Parker's approach. He was clearly looking at this case not from an objective standard of welfare but from the standpoint of the Appellants and, in particular the First Appellant. "He operates at the basic level of dealing." John Parker views the First Appellant and the business of farming as farming stock and he appeared to be unable to acknowledge that there is a basic level of welfare below which no equine can be permitted to fall. Even if animals do come from what he called "disadvantaged" backgrounds, they are still entitled to be treated properly and not as economic units from which to derive the maximum profit or fall by the wayside if they are not economically viable.

He disputed the vast body of lay and professional evidence that these equines were at risk. He went on to write and speak about "semi-feral" animals being kept on low levels of management where they are not wormed. "They are rounded up at the end of the year and sent to market rather like potatoes."

This is a fallacy: they are *not* potatoes. They are creatures for whom Parliament has determined that they have basic rights. John Parker talked about an "economic balance": how "food costs money": and about feeding horses at "maintenance rations". This betrays his lack of objectivity. John Parker is clearly sympathetic to the Appellants and this has clouded his judgement. We cannot accept this evidence. The sad conclusion is that John Parker has taken the First Appellant's account and has attempted to justify it.

We turn now to consider John Parker's evidence on bedding and food. We have set out the evidence that we have heard about the state of the pens on 4<sup>th</sup> January 2008 and on subsequent days. We accept that this evidence is true. It was overwhelming. The state of the bedding in the pens was deplorable and beyond justification. Nonetheless, it seemed that John Parker did try and justify it.

It does not matter what the proper description of the bedding system is: the issue is whether it was working in January 2008. We are entirely satisfied that it was not. It had completely failed. As we understand it, John Parker is saying that the Appellants operated a manure bed system because it is less labour intensive. That is obvious from the state in which it was found. A deep litter system is where faeces are removed and fresh bedding is put down; a manure bed system is where straw is deposited on top of whatever is there at the time of delivery. This seems to be popular in farming. John Parker himself clears his barns once a year when his cattle are put out to grass. With a high density of animals he opined that it may be necessary to do this once every six months. As we find from the evidence, whatever the system was, it failed to provide properly for these animals [except the donkeys] in the terms that we have already considered with the compendium.

The compendium speaks [137] of horses being provided with a clean dry area for lying down. The experts agreed [558, paragraph 28] on "at least a dry warm area in which to lie down." It became clear that it was John Parker who did not support the compendium.

John Parker next commented upon the feeding arrangements. His point is about wastage. If food is not cleared up by the animals it will be wasted. There should be no residue left. "It is good policy financially to put fresh feed down each time and to gauge it so that it is eaten by the next day." He says [1516] "there are many uses of horses which involve prolonged 'active hours.' These horses survive and flourish perfectly well on twice a day feeding which is what their non active hours allow. Twice a day is particularly common in 'store' horses..... According to the economics of the system, young horses can be yarded and merely maintained over the winter. They are then allowed access to spring grass to do their next period of growth, when that method of feeding is cheap and effective. This is no different to cattle farming."

John Parker seems to be saying that the farm's feeding practice was "clear up," allowing a hunger stimulus twice or three times per day. It was not; it was deprivation. These animals were kept in overcrowded pens or tied up and the only food that they were going to get would have to be delivered to them. If or when it was, the strongest kept the weakest away. It was being delivered by a barrow; the system had collapsed. That included those tied up in Pen 6. If they had been fed twice or three times per day on a "clear up" basis, we are satisfied that they would not have been in the state that they were found to be in. The plain fact is that they were not being fed properly or at all.

John Parker accuses the Respondents of applying exemplary standards to the Appellants, whereas they were operating a "maintenance and storage exercise with these horses." In our judgement the Respondents are doing nothing of the kind: they are seeking to apply the ordinary standards of the reasonable and humane keeper. On any view the conditions across the board had failed when they intervened.

We turn to John Parker's evidence on parasitism. He has concluded that cyathostomiasis was the main cause of death and of the state of the living animals at Spindle Farm. He first came to that conclusion in March 2008.

He asserted that a lot had not been said about cyathostomiasis. He claimed that animals with a reasonable body score can die from it. Further he said that animals with Type 1 cyathostomiasis can be killed by it. That is what he meant by paragraph 16 [557] of the joint report.

Type I can reach a stage where the damage can get so bad that eating cannot overcome it and the animal cannot cope with it. Type I kills in certain cases. There is such a difference in the numbers encysted in the bowel wall that the chronic form can get so severe that the larvae affect the bowel wall on entering and leaving the bowel. Although the horse is not showing a great deal of illness, if this infestation becomes severe enough the animal starts not being able to cope by replacing the albumin which is being lost. The infestation becomes heavy enough to tip the balance. It can happen in any age of horse.

Why are the animals in different conditions dying? The answer is in the different forms of the disease. There could have been four different levels of it. The first is the lifting of the inhibition. If the animal is wormed the adults are removed from the lumen. Then there is a mass emergence of larvae. Horses are known to die after worming. For this reason horses should be treated and there is a treatment for this.

The second level concerns horses that have been recently acquired. They would have been put on horse sick fields and they could have got a very heavy natural infestation within one or two months and this would have killed them. The third level is where animals suffer from the severe form of Type I cyathostomiasis manifestation and the fourth level is where really acute Type II cyathostomiasis occurs. This last he says, quoting Professor Love, occurs both when larvae penetrate and when they emerge.

When precisely had he come to this conclusion? John Parker said in March 2008. He agreed that he had not mentioned it in any of his first six reports to the Court because "it was not my remit." His remit was not to investigate the cause of what he reported upon, nor to comment upon it. He accepted what we had thought the joint experts had agreed at paragraph 4 on [555]: that the principal general cause of the condition and death of the horses was either malnutrition or cyathostomiasis.

He acknowledged that this had first been said in his report of 6<sup>th</sup> February 2009, mid way through the first hearing before District Judge Vickers. He was asked by Mr Seabrook QC what had led to this "revelation" as Counsel called it. In fact he gave two answers.

Firstly he said that he had first considered cyathostomiasis was the main cause when he was told of the deaths in the middle of March 2008. He was given a bundle of photographs and reports and from the material he felt that there had to be more than the Respondents were asserting. He considered it before the April 2008 hearing for the return of the horses at which he gave evidence. However it was not "my remit at that stage."

Why had he given evidence supporting the return of horses to horse sick land? That was a highly relevant consideration for the question of returning horses to Spindle Farm. He said that he had not appreciated what section 9 of the AWA said. When he was pressed about the risk of the return that he was giving evidence to the Magistrates' Court to support and the consequence of infecting the land still further he said that he did not consider the "other end of the risk. I confined myself to what I had seen."

This we found rather startling. He said "I would nearly say that the horses should not have been there. The pastures should have been ploughed up and re seeded. It would have been a risk to put animals back there." That, of course, is the reverse of what he had said in the Magistrates' Court in April 2008.

Secondly he said that when he had gone to see Mr Fullerton in Conference in November 2008 he was handed Peter Green's tutorial article and it supported his hypothesis. It brought his thoughts together. He said that there had to be a differential and the only other cause was cyathostomiasis. He had given the matter no thought between March and November 2008. "I took the article away and studied it and started to see how a diagnosis could be made in this case."

Even then he agreed that he did not correct his previous reports. He only raised the issue in response to a report prepared by Peter Green in January 2009 [365] during the trial before the District Judge.

John Parker concluded that parasitism was the underlying cause of death and disease here. The choice was between parasitism and a form of malnutrition and he has concluded that the underlying cause was cyathostomiasis.

His view is that the diagnosis or opinion of malnutrition is mistaken in the sense that “chronic parasitism” leads to and gives the appearance of malnutrition. He divided malnutrition in to “primary” and “secondary.” “Primary” malnutrition is where food is not given or is given in such a poor state that it cannot be eaten; “secondary” malnutrition is where food is given and eaten but it is not utilised because of disease – as in a cancer ward.

He looked at the BCL results on nine horses as his produced chart shows. There were animals where electrophoresis had been carried out. He calculated where [i] albumin counts went down, [ii] where alpha2 globulins were raised, [iii] where beta1 globulins were raised and [iv] where alpha2 globulins were raised. He calculated the averages. He also referred to eosinophils which, he said, were “a very potent marker for cyathostomiasis.” He referred to a passage at [12] of the BCL booklet which has not been considered before with any of the Respondents’ Veterinary Surgeons, including in particular Miss Barralet and Peter Green.

He referred to the passage in Peter Green’s article at [53] and to [19] of the BCL booklet both of which have been quoted before. He said “if I am asked to take this table in isolation, I would say that it indicates cyathostomiasis.” He would make a diagnosis on the six factors which he sets out at [1539 – 1540]. It is his view that the causes of death and poor condition of some of the horses at Spindle Farm was due to cyathostomiasis and not to starvation [primary malnutrition].

He considered that the KH horses, where the results showed low albumin and elevated white blood cell counts, were also indicative of cyathostomiasis.

He criticised Veterinary Surgeon Hayes’ post mortems. Firstly he said that he had never known of a body score being applied to a carcass and asserted that it was an unreliable guide to an actual state when alive. That is because the body decomposes after death and loses fluid between death and inspection. We have noted that Veterinary Surgeon Hayes specifically dealt with autolysis when describing his findings.

He dealt with the manner in which a post mortem should be conducted. The abdomen had not been opened as a pathologist would have done; the photographs were poor and out of focus; no study of the anterior mesenteric artery had been carried out; the bowel had not been opened up along its length; no faecal or bowel samples had been taken nor had a torch been shone through the bowel.

All this is fair comment and, as we have seen, Veterinary Surgeon Hayes is not a pathologist and carried out the requests put to him to the best of his ability. John Parker acknowledges his competence. But we accept the evidence of Veterinary Surgeon Hayes, Miss Barralet, Veterinary Surgeon Wakeling, Veterinary Surgeon Williamson and Peter Green. We know that all horses carried an adult worm burden and that there would have been encysted L3 larvae in many, if not all of them. But we also know and accept that when encysted, they do not cause PLE since this occurs only during the initial encystment and again when they emerge. In the normal course of events, this is a gradual process and the horse does not suffer ill effects. Albumin levels stay fairly constant unless the animal is not obtaining protein in its diet. Large scale PLE can occur during a mass breakout but this is accompanied by other symptoms as Peter Green has set out and which include: diarrhoea, visible bright red larvae in the faeces which are visible to the naked eye and in post mortem the bowel has a bright red cobblestone appearance. Veterinary Surgeon Hayes looked for them as we have described but they were not to be seen. He specifically said that in those cases where he submitted samples he opened both the colon and the intestinal tract. Where he did not submit samples, he always opened the bowel. We believe him. We also know that none of the other horses, except KH17, died from cyathostomiasis nor exhibited the symptoms described by Peter Green.

This is an attempt to explain away the plain evidence of what John Parker would call primary starvation. We reject it.

In cross examination John Parker was pressed about the reasons for the conditions at Spindle Farm and for the deaths. Firstly, was he advancing a case that because of the level of the business and the economics of it the weak would be left to succumb? He replied that what he was saying was that it was probably the First Appellant's attitude. "That is how he runs his business. I am not condoning it." He said that he had been surprised that the First Appellant's "very basic" manner of business was still going on. He accepted that some elements of it were not acceptable.

Secondly, what did he mean [1518] by a "maintenance and storage diet?" He replied that he meant that there was a wide spectrum of keeping horses and that the First Appellant could not provide to the level of resources available to the charities. Since we have heard evidence that the charities did no more than basic care and that these horses survived what did he suggest that they did that the First Appellant did not do? The answer was blood tests, hard feed and forage feed, regular worming [although he backed off that assertion by saying that "perhaps the First Appellant did not worm or did not keep the horses long enough to worm"] and a "warmer situation."

However, having said to District Judge Vickers that "if you showed the compendium to a Welsh farmer he would light his fire with it" he did agree that he was not suggesting variable levels of care based upon economics. "There are no excuses for neglect, ill treatment or suffering whatever the economics. If the premises were as they have been described then they were unacceptable."

The cross examination went on. Sadly John Parker became confused, confusing and contradictory as it continued. As he admitted himself, he was prone to “waffle.” The trouble was that he was being asked specific questions and was not answering them. We shall consider some of the topics raised with him but we have to say that the more he spoke the less he impressed. We are entirely satisfied that he has abandoned his impartiality and taken the Appellants’ side. We cannot and do not accept his evidence. There is a vast body of evidence from eye witnesses and indeed from Peter Green that was direct, cogent and clearly based upon verifiable facts. The blunt truth is that John Parker’s evidence became embarrassing because he so clearly was prepared to espouse the Appellants’ cause against his professional colleagues’ clear evidence.

When he was pressed in detail in cross examination on his diagnosis of cyathostomiasis he seemed to agree with two parameters: [i] that acute Type II cyathostomiasis cannot occur in a foal up to six months old because they are not old enough to ingest worms from grazing for adults to lay eggs and because he had never heard of it and [ii] that acute Type II cyathostomiasis has never been recorded in an equine over six years old and because he had not heard of any over five years of age. He did not agree that the reason was because of acquired immunity. He did not recall if, when giving evidence before District Judge Vickers, he had focussed entirely in Type II as being causative. He was presented with a document which set out four questions which had been put to him in the Magistrates’ Court and he was asked them again.

Question 1 read “whether acute, larval cyathostomiasis could have been the cause or the predominant cause of all of the dead equines [carcasses?]. In the end he virtually said “yes”, but initially he said that he did not attribute acute larval cyathostomiasis to all or most of the deaths. He expressed himself by saying that he may not have had all the papers even though he had attended every day before the District Judge.

He was asked about the carcasses C1, C4, C5, C10 and C12. These were all aged animals. He agreed that acute larval cyathostomiasis was unlikely to have killed them. He also agreed that none of the characteristic signs of cyathostomiasis had been found in any of the carcasses at all. He agreed that it was not probable that acute larval cyathostomiasis was the cause of death in the carcasses but still expressed his belief that some “could have” died from it.

So why, he was asked, did the dying stop on seizure? “Because those which were going to die had died” was the reply. The living animals had been wormed by the First Appellant and they were seized, wormed and went to better conditions of husbandry. He agreed that the First Appellant could have done this “if he had applied himself to it.”

Question 2 read “whether you can have sudden death from acute larval cyathostomiasis without preceding “tell tale” disability, ie clinical symptoms that should have been apparent to a keeper?” Apparently this had arisen in the Magistrates’ Court because both he and Madeleine Forsyth had asserted it. Now John Parker said that sudden death does not occur without preceding disability. He maintained that it takes at least 48 hours for acute cyathostomiasis to kill.

Did he actually have experience of acute cyathostomiasis? He said that he had seen it in about 6 horses but he had experience of chronic cyathostomiasis throughout his career. He also claimed to have experience of one horse that had died suddenly in front of him. It transpired however that the facts were that he had been called to a horse in Hemel Hempstead which he had never seen before: it had died. It was not necessarily a case of sudden death at all since that was the first and only time that he had seen it. He had no idea how long it had been subject to a debilitating condition. He has never seen any horse with acute Type II larval cyathostomiasis that had died suddenly.

He denied that he was making excuses, but it seems clear that he has never said previously that Type I cyathostomiasis causes death. In this trial the Judge directed that a paper be prepared because the cross examination seemed to be advocating a new theory. John Parker denied that he produced this new theory because Type II had ceased to be a justifiable answer. Sadly, we are satisfied that he did exactly that.

Question 3 read “absent acute larval cyathostomiasis, what evidence is there that the surviving equines’ condition could be attributable to cyathostomiasis rather than starvation?”

A transcript of John Parker’s evidence before District Judge Vickers was produced. In it, in our judgement, John Parker made it plain that his evidence to the District Judge was that cyathostomiasis short of acute Type II cyathostomiasis does not kill animals. Now he was saying that the non acute form can kill horses but now he added the word “eventually.” He did not think that he had shifted his position: “maybe I did not answer the question last time particularly well.”

We are satisfied that John Parker has shifted his ground. He realised that the evidence does not support Type II cyathostomiasis as the cause of death.

He was asked about the pathology evidence from Ms Barralet. Did he accept it? This had become a rumbling issue in this case which finally came to the surface with Madeleine Forsyth’s evidence.

He accepted [1] that a clinical examination is essential for a diagnosis; [2] pathology assists; [3] he would not “pitch myself” against someone who saw the particular horse; [4] he would not challenge or disagree with the veterinary pathologist on the meaning and significance of her findings.

Ms Barralet had said “BCL results neither prove nor disprove starvation. Horses have a remarkable ability to retain metabolic stability [homeostasis]. If they are not fed they will get thinner because they will have to use up their stores of fat and muscle to keep basic functions going. The phrase in the reports ‘no metabolic abnormality’ cannot be interpreted as meaning that the animal is getting sufficient food. It merely means that there is no liver or renal damage,” {transcript page 10}. Did John Parker agree? “I agree with that.”

Next {transcript page 14} she had refuted any suggestion that low albumin, low white blood cell count are exclusively diagnostic of cyathostomiasis. Did he accept that? “I accept that.”

Next {transcript page 18} Ms Barralet had said that albumin will go down with cyathostomiasis but it will go down with a lot of other conditions. It means that protein is being lost through the bowel wall for some reason. “I agree with that.”



Finally {transcript page 19-20} Ms Barralet had said that severe signs of the emergence of larvae can give rise to an albumin drop when a horse has disease. John Parker said he understood that was the case.

So where did he disagree with her evidence? It was her rejection of his caveat to the answer to question 22 in the joint experts' report [558]. Where had this opinion come from? He said that it came from Madeleine Forsyth and from telephone call with Professor Ricketts. "I believe that low albumin and signs of inflammation in a group of young horses is a differential that I would look at for a diagnosis. I don't think that I have seen this written up and I have not made a study of it."

When the detail of his caveat was considered, he accepted that KH2, KH4-10 and KH16-18 were not pyrexia young horses [a reference to a passage in Peter Green's article [55] "veterinarians examining pyrexia thin horses should have cyathostomiasis high on the list of differential diagnoses, especially in young horses"] and the nine horses on the chart [1751] had other infections about which he was unaware. He relied upon the eosinophils' results which he said were significant but which had never been put to Ms Barralet or Peter Green. Otherwise he was not challenging what Ms Barralet had said. Indeed [1524] he has written that the PLE issue "is best left to the pathologists to promote." We reject his caveat.

If he was not challenging Ms Barralet why [1525] has he written that Peter Green saying that there are no specific tests for starvation was "strange?" What were these tests? "It is wrong and it is badly worded" was the reply.

He cast a number of aspersions against his professional colleagues: at [1533, 1536 paragraphs 9 and 15], a particularly serious one at [1538 paragraph 23], [1515], which he withdrew if we accepted [as we do] that they had accounted for what they had seen. He initially seemed to stand by an individually directed one at Veterinary Surgeon Baskerville at [1527]. Finally he withdrew it, saying that he had phrased it badly but it did not alter his thinking.

We complete the four questions. Question 4 read "in any event, is there any reason why their condition could not have been prevented/rectified by good practice ie the provision of normal worming, sufficient food and water, appropriate bedding and veterinary attention where called for?" In effect the answer was "no". He still disputed that the subsequent history was indicative, asserting superior conditions with the charities. He accepted that there had been no potentially serious or fatal Type I or Type II cyathostomiasis because "they moved from one end of the spectrum to the other." We prefer the evidence. The only concession that he made was that, with the "catastrophic" losses that had occurred any responsible keeper would have realised that something was "terribly" wrong and would have called in a Veterinary Surgeon. With those equines that he scored at between 1 and 3, he did agree that "they should have been looked after better."

John Parker was a thoroughly blinkered and biased witness. He shifted his ground and his evidence both in manner of delivery and content was wholly unconvincing. By the end of his cross examination he was discredited. We are entirely satisfied that we must reject it.

## MADELEINE FORSYTH

Madeleine Forsyth was the second of the two experts who gave evidence on behalf of the Appellants. Unexpectedly, from our point of view, she was taken through her statements with Mr Fullerton reading out passages and inviting comment.

She has enjoyed a wide range of experience as a Veterinary Surgeon. From our point of view it is her experience with equines that is relevant and she has set this out in her first report [1600]. Curiously, this gave rise to some interest. She had written that “the care of horses has always been a significant proportion of my professional duties.” It transpired that a similar expression had been used in other reports covering different species: avian species and domestic pets. She used during her evidence “elastic” terminology which enabled her to give an illusion of consistency.

In truth she is a generalist, as she herself came to acknowledge, with a mixed practice. Certainly she is not a veterinary pathologist and she accepted that Ms Barralet, with 21 years of clinical pathological experience is more expert in that field than she is. In our judgement she has considerably less experience and expertise with equines than the other Veterinary Surgeons that gave evidence.

Furthermore, she gave a strong impression of bias and some antagonism against the RSPCA. She said that they instructed her “when it suits them.” She was last instructed in April 2008 and before that in 2004. Before those two individual occasions she said that she was instructed in the 1980s and 1990s from time to time.

She has also taken John Parker’s summary of the facts at face value, even when John Parker’s factual account was clearly in conflict with that of the RSPCA.

She disputed that the horses seen in the DVDs were filthy and covered in faeces. She believed that their condition came as a result of them rolling in the fields or lying down in the pens. She also believed that there was evidence that the First Appellant had wormed his stock: she pointed to the virtual absence in a mixed stock of ascarid eggs, apart from the Shetlands and donkeys. Further the low counts of strongyle eggs was further evidence.

But that did not affect her central thesis since wormers do not counteract encysted larvae. In her report [1605] she has written that “as they erupt from the gut wall and mature into the adult form they have two effects. Firstly they damage the wall of the intestine so that protein may be lost and in severe cases the horse will become very ill in a short time period. This can be so extreme as to cause death in a few hours, particularly if the horse is weak.”

In the joint report [557] at paragraph 20, she had stated that “a poor horse may succumb and die within no less than two days.” She did not consider that her evidence modified that statement. If it was a modification then it was not intentional and she had not explained it fully. She was distinguishing between a weak and a healthy horse. An already weak horse would die within hours, a poor horse in no less than two days and a healthy horse in five days at least.

That, of course, presupposes an absence of treatment. Moreover, it is another illustration of her elasticity of expression in giving evidence. Her evidence quoted was a clear modification of her agreement above quoted.

Paragraph 5 [1605] was to read as an expansion of the point rather than a different one, explaining why a horse was weak. KH22 was a “classic example.” That was a case of sudden death overnight, she said, but that is based upon supposition: it was found dead and it remains the position that there is no evidence that it was ever looked at by the attending Veterinary Surgeons at all.

In relation to the charges, she disputed the body scoring of carcasses saying that no professional credibility could be attached to it. In any event she said that it was impossible to state that a particular carcass had died of starvation without considering a differential diagnosis. In our judgement Veterinary Surgeon Hayes did make a differential diagnosis since he not only body “scored” but he also examined the internal organs to support his findings.

In the case of KH3 [Charge 5], she confirmed what she had said in the joint report [551 and 553] and agreed that this animal should have received veterinary attention. In the case of KH15 [Charge 7], she agreed with Peter Green [553] and that this animal should have received veterinary attention. KH22 may have been missed because it had a “fluffy” coat; it was surprising that it died. Whether it had been actually handled was a matter of conjecture since there was no mention of it having been handled in any of the statements.

Whilst Madeleine Forsyth did not consider the removal of the KH horses on the 4<sup>th</sup> and 5<sup>th</sup> January 2008 to have been wrong in principle, she did dispute that removal of the RS horses on 9<sup>th</sup> January 2008. She considers that they were in reasonable condition, no risk had been identified and no proper diagnosis had been made. The conditions in which they were at Spindle Farm were sufficient and did not warrant their removal. She considered that good quality bedding had been provided or was available, as was haylage and if the RSPCA had monitored the position daily or some acceptable monitoring had been put in place those horses could and should have remained at Spindle Farm. Veterinary Surgeon De Brauwere’s decision could not be justified since he had not gathered enough information in  $\frac{3}{4}$  of an hour to make a proper decision. Whilst she accepted that there was a problem, it was essential that a provisional diagnosis should have been made before removal: no history, no samples and no laboratory results had first been obtained. Furthermore, she considered that the First Appellant was at a disadvantage in not having a Veterinary Surgeon present for himself. Had that occurred then it is likely that a diagnostic process would have taken place.

Various factual issues were put to her in cross examination: horse sick pasture [“not investigated at the time”], multiple deaths of carcasses [“unexplained”] the state of the pens and the surrounding premises [“something was profoundly wrong”], the RS horses should have been segregated, food and water were available: she said that the horses that should have been removed either had been or had been euthanased. She seemed not to be able to equate the evidence with the requirements of section 9 AWA. We have already found that Veterinary Surgeon De Brauwere’s view was entirely justified and for the reasons that he has given.

She confirmed her summary and [1610]. The First Appellant's business was at "the bottom end of the equine market, but he does purchase some rather nice animals from Holland and Belgium." She confirmed her agreement to question 31 of the joint experts' report [559]: "losses of up to 10% are acceptable in livestock farming and would be acceptable at low level horse dealing/farming. Losses of 10% or more within a six week period are not acceptable and, if they occur, veterinary attention should be sought." She preferred that opinion to that stated at paragraph 3 on [1610]. She supported the view [paragraph 4 at 1610] that Veterinary Surgeons are "at a distance."

She was asked if she, like John Parker, was supporting what the Appellants did because of the economics [1628]. At first it seemed that she was saying just that but then she said "it does not mean that you can allow animals to suffer. It is a question of economics: you buy, keep and sell a horse to make a profit. If there are costs relating to welfare, welfare is paramount."

Also during cross examination it seemed that she was trying to disapply the compendium from the Appellants' business. There was a difference between keeping horses in agriculture and in the leisure industry. However, she confirmed that the compendium applied across the whole industry and, when pressed, she said that there was no aspect of the compendium that was unattainable in the Appellants' enterprise. What she had written [1628-1629] was just to compare the way in which horses are differently considered in the UK and abroad. She said that there was no excuse in the Appellants for failing to comply with it. She agreed that dead carcasses should be removed as soon as possible, "but it is very expensive."

During her evidence she offered two definitions: primary starvation occurs where food is not available; secondary starvation is where food is available but for some reason it cannot be utilised. She disputed starvation as a cause of poor condition in this case: she claims that parasitism and gut infection are two likely explanations for thinness.

Having purported to disagree with the important questions in the joint report [553] relating to the clinical evidence of disease in the First Appellant's animals ["it was a mistake"], she confirmed that her opinion is that parasitism, terminal salmonellosis and malnutrition were the causes of emaciation and death here. Salmonellosis could have been present as a further factor as well. She did not consider that this qualified her agreement to paragraph 4 on [555] of the joint experts' report.

Salmonellosis came forward in her first report: [1607-1611]. She proffered a difference between salmonella and salmonellosis: salmonella is the bacterium that is naturally in the gut in horses and has no significance in this case apart from with KH15 and KH22. Salmonellosis is the disease caused by a salmonella out break. Although salmonella is different in degree from salmonellosis, she said that the two terms are interchangeable and that salmonellosis can be chronic or acute. Then she said that clinical salmonellosis was the acute form that will overrun a dying horse. Animals had gut damage and, therefore, were susceptible to salmonella/salmonellosis. Terminal salmonellosis [another term] was quite likely in this case.

When [555], paragraph 4, was put to her she denied that what she was now saying was different to what she had agreed. She purported to say that because of KH15 and KH22 salmonellosis could not be discounted in its terminal form. We are satisfied that there is a material difference from the joint experts' report. She has changed her position. She also went on to say that salmonella was identified in other horses "and we don't know how it affected them nor to what degree." She denied further that her comment at [561] evaded the clear written agreement. We are satisfied that it does.

Having read Peter Green's first report, she set out her generally supportive views of it in the addendum commencing at [1613].

A further addendum followed in February 2009, during the hearing before District Judge Vickers [1624]. She made a number of general comments on the passages read out. These include matters concerning haylage, stock density, exportation with DEFRA certification and the compendium. On the subject of stock density, she said that the 40 acres at Spindle Farm could take 70 equines. The donkeys and Shetlands take less space but she considered that, in general, one horse per acre [so 40 horses] was sufficient for this level of farming with supplementary feeding. She confirmed that the compendium applied to the Appellants' operation but with the seeming caveat that it described "Best Practice" and said that "things should be done to the best possible level." However the cost of disposing of equine carcasses was "considerable" and was not considered in the compendium. However, as Peter Green pointed out [342] it is an offence to leave dead carcasses to rot in the open. She also said that she did not disagree with Peter Green's evidence about veterinary supervision at markets and that unfit animals would be detained and not sold.

She then considered the clinical signs of cyathostomiasis [1634] and confirmed that she was writing about Type II acute larval cyathostomiasis. The passage reads:

*"Usually a horse affected by cyathostomiasis is, or is becoming thin, and will often have ventral oedema and altered faecal texture ranging from "cowpat" diarrhoea to profuse watery material. Intermittent fever, occasional colic, and a normal to ravenous appetite are sometimes seen. Late in the disease, however, the animal may become anorectic. Coat condition and quality is often poor. However it is possible and certainly within my experience that horses collapse from cyathostomiasis without showing any sign of diarrhoea, very poor body condition or any particularly obvious clinical harbinger. If there is encysted worm burden the rupture of millions of larvae is sufficient to cause an acute shock syndrome and sudden death and these bright red larvae can be seen in the faeces."* This, of course, exactly mirrors what Veterinary Surgeon Hayes said was absent in all the post-mortem examinations that he was able to carry out.

Type I cyathostomiasis is chronic, has been going on for a long time with heavy parasitism, resulting in gut damage causing long standing mal-absorption.

When issues arose during cross examination as to what the Appellants' experts were saying, the Judge asked for a further document setting out the position. Madeleine Forsyth again discussed the difference between Type I and Type II cyathostomiasis. She wrote:

*“Cyathostomiasis is a dynamic condition where penetration of the gut, encystment and eruption can occur at the same time to varying degrees. In the acute form [Type II] the eruption leads to an overwhelming colitis with profound and rapid weight loss [and sometimes death] but where the intestine is compromised to varying degrees depending on the level of parasitism there will be a chronic – that is longstanding – compromise of the intestine leading to ill thrift and poor condition [Type I]. Type I can exist in mild or severe forms depending on the amount of intestine damaged. Type I horses can survive with a diet sufficient to make good the effect of PLE but it is impossible for an owner to know how if the horse had a worm infected gut, how bad it was and therefore how much extra feed to give. A farmer would feed to effect, but this could only be assessed over an appropriate time period.”*

At [1605], paragraph 4, Madeleine Forsyth has written of “Trichostrongylus equi.” She said that she recollected this from her training in 1975. However she agreed that she has never seen it referred to in any literature. Did it exist, she was asked. She thought so. Whether it does or does not, we are unable to see how it affects this case.

Then she produced a table which purported to correlate – as she did in evidence – two methods of egg counting: “epg” [eggs per gram] and “eggs seen” [Mc Masters]. She purported to justify the table. However before District Judge Vickers, she had accepted that it was misleading and had apologised. To us she said that it was a slight error and stood by her evidence. We reject it.

After the short adjournment, issues arose about the cross examination that had been put to Peter Green and Ms Barralet and the evidence that Madeleine Forsyth was giving. The Judge stopped cross examination where it went beyond that scope of what had previously been put. Initially an attempt was made by Madeleine Forsyth and, to an extent by Ms Howe, to assert that matters being adduced had been put to both of them. A short study of the transcript of Ms Barralet’s evidence revealed the contrary. The Judge said that, if the matters which were being pursued were to continue he would have to consider whether either or both Peter Green or Ms Barralet would have to be recalled if that was the Respondents’ application. When examination in chief was completed, time was given to Mr Fullerton to decide what he wished to do. In the event he decided not to pursue his application to adduce challenged evidence and the preliminary arrangements for the Court to convene to hear submissions were abandoned.

The remainder of Ms Forsyth’s evidence was confined largely to her confirmation of the remaining parts of her report, from [1652] onwards.

She confirmed that her opinion was that the death and condition of the horses was “a consequence of various factors” [554] and that she supported parasitism over malnutrition. It was not safe to make a diagnosis of emaciation since the suggested protocol outlined by Peter Green in his article had not been carried out and, indeed, some equines still showed PLE after 10 days from seizure.

She confirmed that both parasitism and enteric gut infection [salmonellosis] are treatable conditions depending upon the extent of them. Salmonellosis was a likely cause of death. So what about cyathostomiasis? She replied that it was involved but she did not know what killed the horses.

She adhered to her remarks in paragraph 1-4 of the addendum report at [1623] and to her summary.

Essentially her thesis is that the causes of death and disease were multi factorial and she was unable to say which predominated. She did not know and could not be sure if the carcasses had died by acute larval cyathostomiasis but she would have expected some signs before death. She conceded that she had agreed [557 question 20] that a poor horse would not have died in less than two days. She appeared to us to qualify it by saying that she had not carefully considered it. Then she accepted that a responsible carer would have noticed signs in two days.

In her final report [561] she advanced Type I cyathostomiasis. She conceded that it does not cause death generally. Then she qualified that by saying that, depending upon the state of the condition and the length of time that it had existed, an animal could be so damaged that it was vulnerable to a secondary condition. But with Type I cyathostomiasis the symptoms would be noticeable to a caring owner; that caring owner would worm the animal, feed it properly and, if necessary, call a Veterinary Surgeon. If the horse was in poor condition there was no excuse: the owner should focus on feed and environment and call a Veterinary Surgeon if the issues were not resolved. There was no excuse for the Shetlands and the donkeys being in poor condition. In the case of the carcasses she accepted that there were no tell tale signs of Type II cyathostomiasis: no red larvae, no cobblestone or poppy seed effect of the gut.

So her theses have been: salmonellosis, Type II cyathostomiasis and Type I cyathostomiasis. She claimed that her views had remained unchanged and we looked at clarified passages in her reports. In our judgement she has shifted her ground.

Both she and John Parker have remained loyal to the Appellants to the end. Their evidence cannot begin to compete with the vast array of other better argued and better researched evidence that we have heard. To us they have both attempted to open new avenues of exculpation as old ones ceased to be tenable. They lost their objectivity and impartiality in the process. We are entirely satisfied that we must reject their efforts and we do so.

## **CHARGES**

We have considered the written submissions. We consider that we have dealt with most of them in our findings and consideration of the evidence.

### **Charge 1: AGAINST the First Appellant AND the Fifth Appellant**

This charge alleges causing unnecessary suffering to the carcasses by failing to exercise reasonable care and supervision in respect of protection.

This is dealt with in the joint report at [551]. None of these animals were humanely destroyed. The experts are agreed that it is extremely unlikely that they all died without many of them showing signs of illness or collapse prior to death. Such a large number of deaths in such a space of time suggests a common causative factor that should have been investigated. Having eliminated other possible causes it is plain that they were left to die. No Veterinary Surgeon was called. C20 clearly needed a Veterinary Surgeon but equally clearly did not get the attention of one. It too was left to die in the trailer into which it had been unceremoniously hauled in Hughenden. Allowing horses to die without care, veterinary attention or euthanasia, breaks all acceptable standards. They were left where they fell or removed to a place where they could be left to rot.

We are satisfied that these horses were neglected and starved. It follows that the Appellants failed to exercise reasonable care and supervision in respect of protection and that they knew or ought to reasonably to have known that this would have that effect.

### **Charge 2: AGAINST ALL APPELLANTS**

This Charge alleges that the needs of the carcasses were not met to the extent required by good practice in that their needs to be protected from pain, injury, suffering and disease were not met.

This is dealt with in the joint report alongside Charge 1. Much the same as was said above applies here too. Allowing horses to die does not meet their needs to be protected from pain, injury, suffering and disease. We are satisfied that this is what happened.

We have found that all the Appellants were responsible for all these animals and that they knew what was happening on the premises and took no action to alleviate the problems.

### **Charge 3: AGAINST the First Appellant AND the Fifth Appellant**

KH1 and the allegation that the Appellants caused unnecessary suffering in that they failed to provide this animal with a nutritionally balanced diet, including water. Its last act was to drink copiously water from a bucket. It was then euthanased.

The experts [551] are agreed that this horse was collapsed and emaciated. It was suffering and humane disposal was inevitable. It was terminally ill from a number of factors.



At the time of discovery, the First Appellant had been leaving the Yard to collect a part for his non functioning skid loader. The animal was unable to stand. It had chronically injured itself by rubbing flesh from its side whilst trying to alleviate its condition. It had been down for a significant period –“several hours” as the Veterinary Surgeon agree. We accept that this horse was suffering from malnutrition, parasitism and terminal salmonellosis.

We are satisfied that this animal suffered unnecessarily by being neglected and starved. It could not get to food or water and no attempt was made to provide it with either.

Both the First and the Fifth Appellants either knew or ought to have known of the condition of this animal and took no action.

#### **Charge 4: AGAINST the First Appellant AND the Fifth Appellant**

The KH horses.

KH2, KH4, KH5, KH6, KH7, KH8, KH9, KH10, KH16, KH17, KH18, KH19 and KH20.

The allegation here is that the unnecessary suffering was caused by failing to provide them with a suitable diet.

The experts disagree on this charge except that they do concur that KH16 and KH17 were unacceptably thin.

The evidence from Veterinary Surgeon Robinson was to the effect that they were emaciated or very thin. We accept that evidence. Veterinary Surgeon Jepson also described them in his evidence as “appallingly thin.” We are satisfied that they had been neglected and left to starve. It follows that we are satisfied that the First and Fifth Appellant ought to have known that by failing to provide these animals with a suitable diet unnecessary suffering was caused.

#### **Charge 5: AGAINST the First Appellant AND the Fifth Appellant**

KH3.

The allegation here is that this colt horse, which was suffering from paraphimosis, suffered unnecessarily by a failure to provide veterinary treatment for its condition.

In the joint report at [553], the experts are agreed that this animal was suffering and should have received veterinary treatment. The ulceration and bleeding were painful conditions which should have received attention. Antibiotics alone, if administered, were insufficient.

Peter Green asserted that low blood protein caused this condition and was the result of malnutrition, parasitism, neglect, cold, lice and filth. It did have symptoms of cyathostomiasis but not in its acute form. Cyathostomiasis did not kill this animal, nor did salmonellosis since, although salmonella was found in its faeces, it was not showing outward signs of the disease.

If it had been treated earlier, it might have been saved. By the time the RSPCA attended it was too late.

We are satisfied that this allegation is proved against the First Appellant. Veterinary Surgeon Baskerville in his evidence said that the animal had been in the condition that he saw it in for at least three days, perhaps longer. The Fifth Appellant was absent from the Yard from the 21<sup>st</sup> December 2007. We are not satisfied that the offence was proved against him.

### **Charge 7: AGAINST the First Appellant AND the Fifth Appellant**

KH15

The allegation here is that of causing unnecessary suffering by failing to provide veterinary care for chronic diarrhoea and a severe orbital infection to the right eye.

This was the horse in the rug, seen by Veterinary Surgeon Baskerville and euthanased on 5<sup>th</sup> January 2008. It was emaciated, suffered from an infected eye and exhibited chronic diarrhoea.

In the joint report, [553], the experts are agreed that this horse was seriously ill. Two of the experts, Peter Green and Madeleine Forsyth agree that it was depressed, emaciated, and that the diarrhoea was caused by disease and not by nutrition. All three agree that the animal should have received veterinary attention. John Parker said that he would have tried to save it.

In the post mortem report, Veterinary Surgeon Hayes set out the findings that indicated that this horse had been starved.

Peter Green said that the concerns were apparent for several days, possibly two but long enough to call a Veterinary Surgeon, judging by its condition and the fact that it had been given a rug indicated that its state had been noticed.

The eye condition was secondary. For whatever reason, it was abnormal. The discharge should have been removed and if it continued, a Veterinary Surgeon should have been called.

We are satisfied that this allegation is proved against the First Appellant. The Fifth Appellant was absent from the Yard from the 21<sup>st</sup> December 2007. We are not satisfied that the offence was proved against him.

### **Charge 8: AGAINST the First Appellant AND the Fifth Appellant**

KH22.

The allegation is of causing unnecessary suffering by failing to exercise reasonable care and supervision in respect of protection.

In the joint experts' report at [554], they are agreed that this animal was emaciated and did not die suddenly. They agree that the likely cause of death was systemic salmonellosis. They note the findings post mortem, where Veterinary Surgeon Hayes body scored it at 0 and noted the fat condition on the body. Peter Green pointed out that the photographs are not consistent with fatal parasitism.

What should have happened was that this donkey filly should have been protected in the sense that it should have been enabled to get food. It was in a pen with too many other competitors. It starved to death and was finally overcome by salmonellosis. The absence of epicardial fat [the last fat to go] was significant.

Peter Green said that in an outbreak of salmonellosis foals may die of salmonellosis septicaemia. Since there was no outbreak of salmonellosis, the cause of death had to be found elsewhere. Something else had debilitated it to the point where salmonellosis was able to kill it. Peter Green said that, in his opinion, its debility and emaciation was as a result of malnutrition and parasitism. 33 eggs were found but it was not killed by parasitism. The post mortem showed emaciation and that the bowel was not grossly inflamed. It starved to death and it should have been protected so that it had food.

Madeleine Forsyth said that Peter Green was unreasonable in assuming that it may not have exhibited signs of illness and died overnight, although she accepted that it was possible that it showed signs and was missed. We accept Peter Green.

This allegation is proved against both Appellants.

### **Charge 9: AGAINST ALL APPELLANTS**

The RS horses: RS1 to RS97.

The allegation here is of a failure to ensure that the needs of the animals were not met to the extent required by good practice by protecting them from pain, injury, suffering and disease.

The essence of this allegation is that, because of the conditions at Spindle Farm in January 2008 there was a likelihood of further suffering if these animals were not removed. The evidence is that of Veterinary Surgeons' De Brauwere and Baskerville. It was not possible to leave the animals where they were at Spindle Farm.

On this [554] the experts are not agreed.

Peter Green justified the removal at [357], paragraph 6 and at [375] at paragraph 21. In summary for, he said that these animals had not been protected from the risk of disease and that the owners/carers had not protected them. There were a significant proportion of horses that had died, others were dying and others were emaciated. "There was no evidence that anything had been done to relieve this dreadful situation." In cross examination he stated that there were decayed, dead and dying horses round the premises and those that were living and remained were not being protected from pain, injury suffering or disease.

Horses were euthanased; a great many were thin or emaciated; accommodation was overcrowded and unacceptable in condition for the horses, including bedding, food and water provision. Dead and dying horses were being kept with the living. A number were supposed to be family pets.

As we have seen, Madeleine Forsyth challenged the justification of removal on Veterinary Surgeon De Brauwere's evidence. We accept that removal was justified and we are satisfied that removal was entirely justified in these circumstances.

We are satisfied that all the Appellants were responsible for these equines and we are satisfied that the Appellants failed to take the steps that would have been taken by a reasonably competent and humane person in all the circumstances to meet the needs of the animals for which they had responsibility to the extent required by good practice.

### **Charge 11: AGAINST the First Appellant AND the Fifth Appellant**

RS58, RS82, RS83, RS89, RS91 and RS96.

The allegation here is that of causing unnecessary suffering to these animals by failing to provide them with a nutritionally balanced diet.

The evidence is that of Veterinary Surgeons' Kirton and Williamson. Put shortly all of them were emaciated; many were near death at seizure and were suffering. The weight gains post seizure were, in some cases, dramatic.

The joint experts' report at [552] points out that three of these animals – RS82, RS83 and RS89 – were Shetland foals and, as pets, were born at Spindle Farm. They agree that RS58 was unacceptably thin. Two donkeys, RS91 and RS96 did not appear to have been wormed recently.

Peter Green commented upon these equines at [354] of his main report and in evidence. He said that the parasitism found in these animals was not severe enough to account for the weight losses seen. "The failure to provide sufficient food and to administer appropriate anthelmintics caused them unnecessary suffering."

We agree.

The result of this appeal is that we find the charges proved save that we dismiss charges 5 and 7 against the Fifth Appellant.

## COSTS

On the final day of evidence, Wednesday 17<sup>th</sup> March 2010, we gave directions for the finding of written submissions. The purpose was twofold: (1) we were about to break for a significant period, until the 19<sup>th</sup> April 2010, because the case had over run and the Judge was going abroad and (2) to enable the three members of the Court to have access to documents in precisely the same terms; there would be no misunderstanding. Limited submissions were added on the 19<sup>th</sup> April 2010, orally.

We directed (1) that the Appellants were to deliver their written submissions to Court by 16:00 on the 8<sup>th</sup> April 2010 and (2) to copy them to the solicitors for the Respondents. In the event neither Order was complied with and when the Judge found out about it on the 12<sup>th</sup> April 2010 he ordered all parties to attend on the 13<sup>th</sup> April 2010 unless the written submissions were with the Court by 16:00 on the 12<sup>th</sup> April 2010. There was a Hearing on the 13<sup>th</sup> April 2010 under CPR 3.8.2.e.

The question of consequences for the breaches of the Order of the 17<sup>th</sup> March 2010 fall to be considered under CPR 3.5.(6). We have considered disallowing the costs of the written submissions filed late.

### 1. Mr Fullerton

He e-mailed the Court on the 9<sup>th</sup> April 2010 admitting that he was late. He sent his written submissions by fax at 14:02 on the 12<sup>th</sup> April 2010. He was excused attendance on the 13<sup>th</sup> April 2010. He wrote an apology to the Judge on the 13<sup>th</sup> April 2010.

He has carried the main burden of this Appeal. The input of the other advocates has been marginal in comparison. We have already ordered the Respondents' advocates (except for Mr Cherrill) to pay for the Hearing of the 13<sup>th</sup> April 2010 in respect of the Respondents' costs of attending and by disallowing their own costs of attending. We consider that this is a proportionate response in Mr Fullerton's case we shall not disallow the costs of preparing his written submissions.

### 2. Mr Cherrill

Initially, we criticised him and have apologised both openly in Court and by e-mail. His submissions are dated the 1<sup>st</sup> April 2010, well in time. It was his instructing solicitors who were at fault. Messrs Wellers sent the submissions on late and omitted the page which bore the date of 1<sup>st</sup> April 2010 which made the submissions look like a repetition of the submissions Mr Cherrill made at the close of the Respondents' case and his submissions to District Judge Vickers.

Further, Messrs Wellers sent the submissions by second class post and they only arrived in completed form on the 13<sup>th</sup> April 2010. Mr Cherrill is in no way to blame and is not to be penalised either for the Hearing on the 13<sup>th</sup> April 2010 or by failing to present his submissions in time.

### 3. Miss Howe

Miss Howe was not present at Court on the 17<sup>th</sup> March 2010. Mr Weller was supposed to inform her what the Court had Ordered. It seems that he did not do so: (1) she believed that her submissions had to be in the Court by Friday 9<sup>th</sup> April 2010 and she did not know that she also had to serve them on the Respondents' solicitors. Her e-mail of 12<sup>th</sup> April 2010 makes the first point clear.

In the circumstances, we consider that the fault was not hers even though she submitted her arguments by e-mail at 23:26 on the 12<sup>th</sup> April 2010. It is sufficient that she bears a proportion of the costs of the 13<sup>th</sup> April 2010.

### 4. Mr Weller

He was the instructing solicitor and therefore with overall responsibility to see that the Court Order was complied with. Not only did he not do so but he failed to get his own submissions in on time. He submitted them at 14:29 on the 9<sup>th</sup> April 2010 by fax and a hard copy by second class post which arrived on the 12<sup>th</sup> April 2010.

His costs of preparing his submissions are disallowed. There are no excuses for his failures.

**NAMES OF WITNESSES**

Barralet, Veterinary Surgeon Mrs Annalisa

Baskerville, Veterinary Surgeon Robert

Blake, John

Connor, PC Rhianne

Cooke, RSPCA Inspector

Crowther, Lianne

Davidson, RSPCA Inspector Douglas

De Brauwere, Veterinary Surgeon Nicholas

Evans, Mrs Helen

Fennelley, Veterinary Surgeon Peter

Flint, PC Kevin

Forsyth, Veterinary Surgeon, Madeleine

Gray, Cordelia

Gray, James John [Senior and Junior]

Gray, Julie Cordelia

Green, Veterinary Surgeon Peter

Hampton, Inspector Kirsty

Hayes, Veterinary Surgeon Andrew

Higgins, Geoff

Hodgkins, Suzanne

Harris, Neil

James, PC Claire

Jepson, Veterinary Surgeon Paul

Kirton, Veterinary Surgeon Roxanne

Keet, Jodie June [nee Gray]  
McKeown, John [Chartered Psychologist]  
Parker, Veterinary Surgeon John  
Phillips, Nicholas  
Reynolds, PC  
Ringer, Mrs Vicky  
Robinson, Veterinary Surgeon Katherine  
Ryder, Inspector Claire  
Scott, PC  
Skinner, Chief Inspector Robert  
Tennant, Mrs Margaret  
Verhulst, Veterinary Surgeon Mrs Diana  
Wakeling, Veterinary Surgeon Ben  
White, Nicholas  
Williamson, Veterinary Surgeon Andrew  
Wills, Mick



**DICTIONARY**

Albumin

Anthelmintics

Appaloosa

Ascarid

Atrophy

Autolysis

Basal

Biochemistry

Colitis

Cyathostome

Cyathostomiasis

Diarrhoea

Diarrhoeic

Ectoparasitism

Electrolytes

Electrophoresis

Endoparasitism

Encystment

Eosinophils

Euthanased

Euthanasia

Globulin

Haematology

Helminthiasis

Homeostasis

Hypoalbuminaemia

Immunosuppression

Larvae

Leucocytosis

Mesenteric

Metabolism

Paraphimosis

Pathognomonic

Protein losing enteropathy

Salmonella

Salmonellosis

Strangles

Streptococcus equi

Strongyle

Trichostrongylus Equi

Unicillin