Model Law Commission Report 2023

MISCARRIAGES OF JUSTICE

ANIMAL RIGHTS

LEASEHOLD

GENERATIVE AI

ICLR

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Foreword note by the BVL Chief Executive Officer

BVL is a social mobility charity, which aims to inspire young people from non-fee paying schools to pursue a career in the legal profession. To achieve this aim, we give students the opportunity to experience what a legal career involves. One such opportunity is the Model Law Commission ("MLC").

The MLC is a three-month long project that provides our students with the chance to simulate the work of the Law Commission. We split our pool of students into four groups, each tasked with the reform of one of the following areas of law: (1) Family, Trusts or Land Law; (2) Criminal Law; (3) Commercial and Common Law; or (4) Public Law. This year, the students considered the law on Leasehold, Miscarriages of Justice, AI and Generative AI and Animal Rights Law. This report is the culmination of this year's students' reform ideas.

Since the MLC's inception in 2013, BVL has expanded considerably and has now reached approaching 800 students. In 2020, because of the pandemic, BVL moved online and began for the first time to offer opportunities to students from across England and Wales. In the following four years, we have continued to offer our projects to students outside of London and now over half of the students in this year's cohort for the MLC come from outside of the capital.

At first this geographical reach meant that the MLC and all our projects were run entirely online via video calls. While this enabled our growth, we know that video calls do not offer the same experience and benefits that in person opportunities do. As a result, since late 2022 we have gradually moved to a hybrid model, with several of our projects and all our final events taking place in person. This has meant funding and assisting students – no matter where they are from in the UK – to travel to and stay overnight in London as needed. Via this hybrid model, students have attended events at the Supreme Court, residential programmes at Cumberland Lodge and work experience placements at solicitors' firms and barristers' chambers. And, of course, for the Model Law Commission, we have enabled our 2022 and 2023 cohorts of students to travel to London to present their incredible reform ideas in Portcullis House in Westminster. The importance of these kinds of opportunities should not be underestimated. They improve students' confidence and knowledge of the law, while also demystifying the legal profession. That said, providing these opportunities does not come for free. I therefore offer my sincere thanks to every one of our sponsors and donors for their generous contributions which have enabled us to support so many students in 2023 and beyond.

2023 has also seen the work of BVL and our students recognised at a number of awards ceremonies. At the Burberry British Diversity Awards this year we were shortlisted for two awards, including Social Mobility Initiative of the Year. At the LexisNexis UK Legal Awards, we were shortlisted for the award for Diversity and Inclusion Initiative. Finally, at the inaugural Women and Diversity in Law Awards, we were shortlisted for five awards, one of which we won – Not For Profit Organisation of the Year. These achievements are recognition of the enormous and endless hard work of every member of the BVL team over the last 11 years, all of whom have volunteered their time alongside their studies or full-time jobs. I am sure I speak for all our students when I say a huge thank you for everything you have all done for the charity.

Of course, the growth of BVL is nothing in comparison to the success of our students and alumni. The students from across the UK who have completed our projects since 2020, have gone on to study law at universities including Cambridge, Oxford, the London School of Economics, Durham, Exeter, Bristol and many more. Others are exploring or entering apprenticeships at law firms, as that route continues to flourish as another route the profession. And some have considered options outside of law, including one of our alumni who has secured a role as an Associate at an international financial services firm. This comes as no surprise to me. Our students are bright, driven and have incredible insights which should be listened to. We can't wait to see what this year's MLC cohort do next.

In the meantime, it is with great pride that I now present the report of the MLC students of 2023; I hope you enjoy reading it.

Victoria Anderson, CEO

Introduction

BVL

BVL is a social mobility and legal education charity, which seeks to engage young people from non-traditional backgrounds between the ages of 16 and 18 years old with law and legal policy, with the aim of assisting them in entering the legal profession should they choose to pursue a career in law. To further this aim, we take students from non-fee paying schools and provide them with opportunities to give them insight into the law, such as the Model Law Commission.

Since BVL's inception in 2011, BVL has gone from a small student run organisation, to a registered charity and continues to grow, reaching out to more students each year. We now run a variety of programmes, including: a Mooting Competition with the UK Supreme Court, an Introduction to the Legal System project, also in association with the UK Supreme Court, a Summer School and the Model Law Commission.

From 2020 onwards, as a result of the Covid-19 pandemic, BVL took its projects online and has offered the last two years' projects, including the Model Law Commission, to students across the whole of England and Wales. As result of our growth to a national charity, in 2021 we changed from 'Big Voice London', to 'BVL'.

We are delighted to be able to name 5RB Chambers, BamLegal, BCL Law, The Blair Partnership, Eversheds Sutherland LLP, ICLR, the Magdalen College Trust, Oxford, the Peter Cruddas Foundation, the PTL Foundation and Schillings International LLP as a financial donors and sponsors of the charity, in addition to ongoing support from Cumberland Lodge, Linklaters LLP, the Law Commission, Town Legal LLP, the University of Law, and Deka Chambers. We also extend our appreciation to the UK Supreme Court for its continued support of our objectives.

Model Law Commission 2023

The Model Law Commission is a three-month long project that provides A-Level students with the chance to simulate the work of the Law Commission. We split our pool of students into four groups, each tasked with the reform of one of the following areas of law: (1) Family, Trusts or Land Law; (2) Criminal Law; (3) Commercial and Common Law; or (4) Public Law. From October to December, the young people undertook a five-stage process: research, formulating recommendations, consulting with their peers, reporting on their proposals and devising their legislation.

Each year, the Model Law Commission begins with a two-day conference, which again this year was hosted entirely online via Zoom. It is over the course of these two days that our students are introduced to their respective topics by experts in the field who spoke to them from all over the country. The young people then take that information and over the following weeks discuss reform ideas with each other, their Group Leaders and their peers.

The results of these months of hard work are contained within this report. This is a reflection of what these young people believe should be the law governing these particular issues and is written entirely in their own words.

Our students

When recruiting students, our only requirement is that applicants come from non-fee paying schools, we do not set grade boundaries or have entrance exams, we only ask that students be keen to learn and commit to the project.

All the students that participate in the Model Law Commission apply to this project entirely independently. It is not a school run activity; these are students who want to learn about and have their voices heard in the law. With sessions run every week in the evenings after school, this is not a small commitment to undertake alongside studying for all-important A-Level exams. We hope that as we expand, we will be able to provide this valuable opportunity to more ambitious young people.

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Finally, we would also like to thank the BVL Management Board for their assistance in bringing the Model Law Commission to life.

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Disclaimer

The work, recommendations and opinions contained in this report are solely those of the student authors listed. The views expressed do not represent those of any other external organisation or individuals, including guest speakers listed in this report, the UK Supreme Court and the Law Commission. BVL is an entirely independent organisation, and while we value the ongoing support and guidance of many organisations all views expressed are our own.

Recommendations on the law governing Leasehold

Compiled with thanks to:

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Introduction

Land law refers to the ownership, the occupation of, and the establishment of rights in the land. 'Land' is defined in the Law of Property Act as including "land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings and other corporeal hereditaments".[1] Related to this is the type of estate that a land can be owned and/or sold under. In the UK, we have the freehold and leasehold. On one hand, freehold is when there is no end date to the ownership of the land, and in turn, the property that it stands on. On the other hand, leasehold is when you own the land (and everything on it) for a set period via what is called a 'lease.' Both estates come with their stipulations regarding the aspects of the building that one is responsible for, including costs and maintenance. There is also a third type of tenure called the commonhold which is when land is owned as a collective, i.e. there is no overall landlord. However, the UK has minimal commonholds (15–20) due to the need to cooperate efficiently so developers do not lose out on money once the building is sold.

Leasehold in particular accounts for the short-term leases that are used in the 4.4 million private rented sector households as well as the 4 million households that are in the social rented sector.[2] The owner-occupied sector is where longer leases are used, which account for 64% of the UK population as of 2021–22.[3] These statistics demonstrate the significant effect of leasehold law on the public. There are many problems concerning leaseholds that need to be rectified as this is relative to people's homes which is a necessity for all. As a group, we have identified service charges and lease extension as major issues in Leasehold law. This report tackles both issues in detail and proposes optimal reforms.

Service Charges

A service charge is a sum payable by the leaseholder to the landlord to compensate for repairs, maintenance, or improvements to the building.[4] Disputes between landlords and tenants can occur here for a variety of reasons, but one of the most common sources is the lack of transparency between the parties in relation to service charges. When such disputes arise, parties may apply to a first-tier tribunal; however, it is preferable to avoid such a costly and time-consuming process.

This report aims at tackling the issues around service charges by proposing a set of reforms that could help minimise and rectify such problems. Our reforms will go on to explore how the law could enforce a reasonable standard of communication between the landlord and the tenant. This should be on a statutory footing, as the limited current legislation regulating service charges results in a lack of certainty and clarity as to what conduct by the landlord is permissible. The introduction of legislation would create clearer guidelines. Additionally, our proposals focus on improving the tenants' knowledge of the subject by requiring the landlord to consult the leaseholder for repairs, provide receipts, and maintain an accurate record of repairs.

1 Law of Property Act 1925, section 205(1)(ix)
2 UK Government, English Housing Survey (2021) https://assets.publishing.service.gov.uk/media/62c55fab8fa8f54e8bf2fcae/EHS_20-21_PRS_Report.pdf accessed 3 December 2023
3 Ibid.
4 The Leasehold Advisory Service, 'Service Charge', https://www.lease-advice.org/lease-glossary/service-charge/ accessed 3 December 2023

Current issues and questionnaire findings

While service charges tend to be an uncontroversial concept as leaseholders are generally willing to pay in return for a service to their home, a lack of transparency from both parties can cause disputes to be brought to the tribunal. Often, after you pay a service charge, you will receive a service in return, as expected, but this may not always be the case. Whether it is difficult to find someone to do that labour or simply lack of competence, these tasks can have a very large delay or not occur at all, which inherently creates a power imbalance between the two parties. The tenant will be left in the dark as to what their payment is contributing towards, and the landlord has the advantage of continuing to exploit his position to gain profit. This allows landlords to overcharge tenants. Overcharging is a common explanation for disputes between landlords and tenants; in fact, the Social Housing Action campaign carried out a survey in 2020 that found 52% of correspondents had been overcharged.[5] As a result, the tenant may be left feeling treated unjustly as their money has not been used for what it originally was meant to, or, in the worst-case scenario, that they simply don't have the money to be paying for these high prices.

The persistence of issues regarding service charges shows that the current legislation is failing in its function, and therefore the existing frameworks are insufficient. Thus, it is clear that there is a lack of legislation and a lack of understanding of the adversities faced by millions of homeowners in the UK. A case study reported by Hannah Fearn explains the circumstances of leaseholders who express their concerns about "how little input the freeholder's management company had in the upkeep of the building."[6] The woman in the case, Karen, explains that "the state of the building was terrible and hasn't been maintained. Meanwhile, the property management company charges us extortionate fees."[7] This account substantiates the issue faced by leaseholders paying a service charge.

However, such concerns seem to go unheard by the government and Parliament. For example, the Landlord and Tenant Act 1985 states that a service charge is only recoverable by a landlord so far as the costs have been reasonably incurred; it is only recoverable if the work carried out for the charge is of a reasonable standard.[8] This fails to address the main issue of overcharging leaseholders. The most recent example of the lack of response from the government to the issue of such high service charges is the King's Speech. The King stated that "many ministers will bring forward a bill to reform the housing market by making it cheaper and easier for leaseholders to purchase their freehold and tackling the exploitation of millions of homeowners through punitive service charges."[9] However, there has not been significant reform; the government only promises new potential rules around service charge fees, and there is a lack of awareness about the struggles faced by leaseholders.

After conducting primary research, the questionnaire results revealed that 46.7% of the respondents said they did not know if they were for or against service charges, with only 29.5% in favour of it, thus revealing a strong public divide. Out of the 122 responses, 90.2% said that there was no dispute over a service charge, which exemplifies the lack of understanding around the inequality of service charges and leasehold law generally.

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5 SHAction, 'Service Charge Survey' (2020), https://shaction.org/campaigns/service-charge-survey accessed 2 December 2023

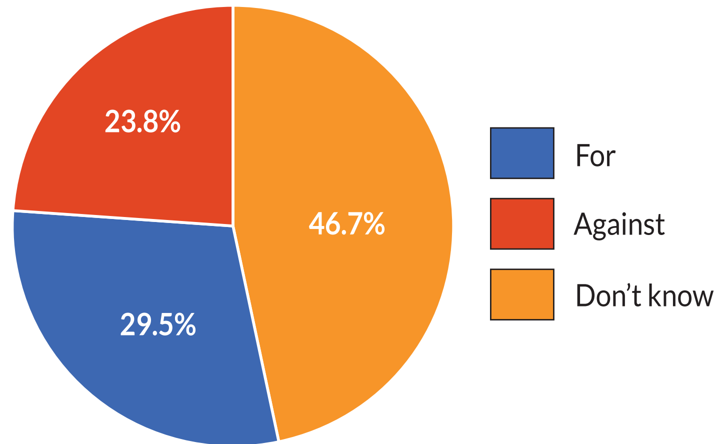
6 Hannah Fearn, 'I Lost £70000 because I bought a leasehold flat', https://inews.co.uk/inews-lifestyle/i-lost-70000-because-i-bought-a-leasehold-flat-everything-fell-apart-2399953 accessed 1 December 2023

7 Ibid.

8 Landlord and Tenant Act 1985, s 18

9 Amber Krishnan-Bird, 'Leasehold update: A new Leasehold and Freehold pending?', (*Osbornes Law*, 8 November 2023) https://osborneslaw.com/news/new-leasehold-and-freehold-bill/ accessed 2 December 2023

Are you for or against service charges?
122 responses



Another significant issue evident in relation to service charges is the ability of landlords to set unreasonable charges and the lack of surrounding awareness that leaseholders have regard to their rights to dispute such inflated charges. Tenants may deem the service charge to be too excessive and unreasonable or may feel dissatisfied if they perceive that the services covered are not being adequately provided. This may lead to disputes surrounding the charge's value for money in relation to the total required payment and the results of their contributions within the property.

This is furthered by understanding the difficulty in challenging charges. This is clear as some tenants may find it challenging to dispute service charges due to complex legal language in leases or because they lack knowledge of their rights. This lack of understanding can result in tenants feeling powerless in challenging potentially unreasonable charges as they do not understand the required process to make a successful claim surrounding these unreasonable charges or lack of service covered.

Reform proposals

One potential reform is to cap service charges: this would be a limit to the amount of service charge that the leaseholder has to pay to prevent landlords from overcharging. There will be government-imposed caps, which will differ depending on the condition of the property and consequently, the repairs it is likely to need. We recognise that such caps will be needed to be adjusted periodically to track changes in inflation. This will ensure that the landlord is not liable for many excess costs. The increase can be calculated using widely recognised indicators of inflation such as the Retail Prices Index (RPI) or the Consumer Prices Index (CPI). It could be argued that this would be impractical due to the unsteady and very high rates of inflation. However it would be more impractical to not allow for changes in the service charge cap considering economic fluctuations and how these will negatively impact the landlord. The increase must also be attainable for the leaseholder and if there are any disagreements over the service charge cap between the leaseholder and landlord, the lease often allows for the matter to go to an independent expert for determination.[10]

A way to ensure that the pricing of the service charge is fair is to create more transparency about the cost of repairs. In order to do this, receipts of all repairs carried out in the building should be documented, with the purpose of the repair clearly stated. There is responsibility on both the contractors carrying out the repairs and the landlord to be aware of all repairs and their pricing so they can report back to the leaseholder. A log book should be kept by the landlord in which they can keep and document the receipts and repairs in a clear manner. The leaseholder should be entitled to see evidence of any repairs being paid for and carried out by asking for access to the log book. This will ensure transparency between the landlord and leaseholder, which can help with negotiations about the service charge cap, as both parties will be aware of the costs necessary to cover repairs.

10 Myerson Solicitors, 'Service Charges: Does the Cap fit?', (*Myserson*, 4 November 2022) https://www.myerson.co.uk/news-insights-and-events/service-charge-caps accessed 4 December 2023

Another way to increase transparency could be to make leaseholder permission compulsory for any repairs and therefore leaseholders are consulted before repairs take place. This extends the legislation within the Landlord and Tenant Act 1985, which requires for notices to be served before a landlord can recover the cost of qualifying works of a value greater than £250 per leaseholder.[11] This reform would ensure that the leaseholder would be aware of any repair regardless of price, which allows for better communication between the two parties.

Another potential reform is calculating the average rate of the service charge. The service charge you pay is based on the gross value of the flat, usually based on the size of the property, rather than the number of bedrooms it has. However, this is relatively difficult for an average resident to calculate themselves. Putting this reform forwards would ensure that residents who, for example, have a low income, have notice before they have to pay. This could be done through an online calculator, as alluded to previously, or through the landlord or a third party. This, therefore, would allow a simpler way for residents to know how much their service charge is, or whether or not their service charge will fluctuate in the near future. To stop this feature from being exploited, it would need implementing in certain circumstances, which may be controversial for some as they may not be eligible to know their service charge price beforehand, which may lead to conflict amongst the resident and tenant.

Conclusion

Overall, the issues regarding service charges are primarily overcharging and lack of public awareness around service charges, as proven by the questionnaire results. The reforms proposed to combat this are firstly to have government imposed caps for service charge depending on the state of the property, which will help reduce the issue of overcharging. For more transparency, tenants could have a log book of receipts for all repairs and leaseholder permission could become necessary for all repairs. Also, the ability for leaseholders to calculate the average rate of the service charge through an online calculator would help leaseholders fully understand the costs that they are paying and allow for less imbalance in the relationship between tenants and leaseholders.

Lease Extension

Lease extension refers to the process of extending the term of an existing lease. As part of our inquest into this field, we conducted a questionnaire to evaluate public awareness and opinions over lease extensions. From the questionnaire results, it is clear that the majority of people who partook lack understanding and knowledge in the areas of leasehold customs, such as ground rent, marriage value and the integral ability to reason and make informed decisions; with it being evident that many people do not know how to navigate through leasehold systems. There are numerous implications associated with leasehold extension as the nature of it can be perceived as tedious and time-consuming, and in this argument, we will propose reforms, beneficial to both, the tenant and freeholder.

Current Issues and questionnaire findings

A problem associated with lease extension is marriage value – the increase in the value of the property which follows after lease extension and reflects the additional market value of the longer lease.[12] This value can increase costs as the increasing property value is combined with the freehold interest. The property value also rises based on the economic environment, leading to a higher cost altogether. With increasing interest through inflation, there is only a chance to reduce this if a leasehold extension is taken. Once the lease has fallen under 80 years, the marriage value forms part of this pricing, meaning that leaseholders must stay over 80 years with their lease length and extend their lease prior to the end.[13]

Ground rent is the amount payable outlined in the agreement. This is quite varied as it can be subject to changes based on the following factors: having fixed increases, the Retail Price Index being a significant economic indicator, and reviewing clauses based on factors and market conditions. It is generally a fixed amount. However, if it changes constantly, this can cause issues for leaseholders because they may need

11 Brady Solicitors, 'Section 20 Major Works – Brady Solicitors' guide to the notices', https://www.bradysolicitors.com/brady-blog/section-20-major-works-brady-solicitors-guide-to-the-notices/ accessed 4 December 2023

12 The Leasehold Advisory Service, 'Marriage Value', https://www.lease-advice.org/lease-glossary/marriage-value/ accessed 4 December 2023

13 HomeOwners Alliance, 'Leasehold reform 2023: What you need to know' https://hoa.org.uk/advice/guides-for-homeowners/for-owners/leasehold-reform/#:~:text=While%20no%20mention%20was%20made%20in%20the%20King%E2%80%99s,work%20when%20we%20come%20forward%20with%20the%20Bill.%E2%80%9D accessed 1 December 2023

more income to cover this rent for the period it is raised. It may mean that the amount of disposable income, for example, spending to extend the leaseholds, becomes difficult.

Negotiations are costly and time-consuming. The agreed-upon amount depends on the property's value, the number of years left on the lease and the annual ground rent charge. Government proposals can increase the value of short leases by 9.9% through reforms, which, as a result, can cause leaseholders to transfer £10.9 billion annually to freeholders.[14] Whilst this may be done as a strategy to ensure fair compensation for both leaseholders and taxpayers or to adjust the market to reflect changes in demand, it is usually done to cover maintenance and extra service fees, which are unnecessary as this revenue stream is used to improve the surrounding area of the property and not the property itself.[15]

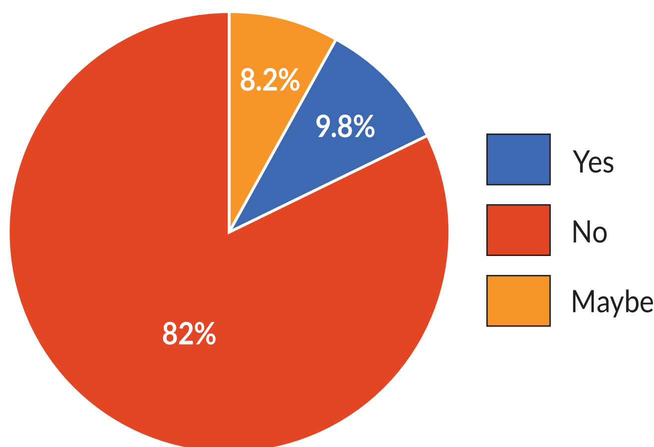
Our questionnaire findings emphasise the expensive cost of having leaseholds as 36.9% of the participants are people of lower income earners, earning less than £20,000 annually. This could be a key reason why leaseholders encourage the costs to be reduced. With 52.5% of survey respondents being single it could also explain why our finding suggests cost is a major issue for many leaseholders, as it becomes harder to cover daily costs along with the rent when living alone.

Having most properties semi-detached (32.8%) means higher costs as they are more expensive to maintain; therefore, freeholders are looking to increase maintenance fees as part of the ground rent that must be paid. Most participants were unsure if they knew about the tools available to learn about leasehold law, as 45.1% said 'maybe' compared to the 26.2% who said yes. The majority had not sought advice regarding leasehold law either (83.6%), meaning they were unaware of the services before buying a property for leasehold or in general. Of those seeking advice, 21.1% conveyed that the tool they used was a conveyancer. While this is seen as a platform to provide reliable advice, it still has not been completely successful in providing awareness revolving around leaseholds, as 67.2% have said that they aren't aware of these reforms, regulations, and policies.

51.6% of the participants said they were aware of the ground rent, but 88.5% said they were unaware of the reforms regarding this, meaning that they need to be appropriately informed or are unaware due to the constantly changing regulations and negotiations of freeholders. However, it also shows that 67.8% of them do not pay this rent for their property, meaning that they do not need to withhold this information, and therefore, the majority believed that it shouldn't be removed nor reduced (42.6%) as this does not impact them.

Do you know how to calculate the value of your property when extending your lease?

122 responses



From our questionnaire we also gathered that up to 82% of respondents do not know how to calculate the value of their property when extending the lease, with 68% indicating they are unaware of lease extension more generally. Such data reinforces the notion that lack of understanding is deeply ingrained into this complex and often incomprehensible system.

14 Home Owners Alliance, 'Leasehold reform 2024: What you need to know' (2023) https://hoa.org.uk/advice/guides-for-homeowners/for-owners/leasehold-reform/#:~:text=Short%2Dlease%20property%20prices%20could%20rise%209.9%25&text=Assuming%20leaseholders%20extend%20their%20leases,make%20housing%20even%20more%20unaffordable accessed 1 December 2023

15 Ibid. 10

Reform proposals

It is submitted that the government should introduce new laws to reduce/terminate ground rent entirely on all properties. The questionnaire indicates that a total of 57.4% wanted ground rent to be reduced or removed. This helps to exclude a large part of the cost of extending a leasehold and maintaining a lease property, which can encourage more leaseholders to buy a property through the lease; the only exception will be if a retirement property is brought.[16]

The second solution would be to use sound valuation advice. This would be the best way to advise and guide leaseholders, as they will receive feedback regarding the lease's value, the estimated ground rent charge and the number of years taken on the lease extension. This advice will be provided by an independent body which will eliminate bias in regard to the many valuations that are calculated in lease extensions for all parties involved. This will help them to make informed decisions to manage and buy assets, provided that it will come from a reliable and credible source. This reduces conflict between the two, as it limits the need for many negotiations which adds to the time-consuming issue regarding extending one's lease, allowing the lease extension process to be more seamless for all those involved.[17]

Another potential reform would be to abolish marriage value or at the very least reduce the freeholder's entitlement to 25%. Currently, only those who have a lease which has 80 years or more left are able to make a profit,[18] meaning marriage value penalises those who have less than 80 years left on their lease. This is because a leasehold property is what is called a depreciating asset, so the value of the property goes down as the time left on a lease decreases.[19] Those that are in this position are often advised to wait, hoping that reforms are introduced that act in their favour, but decisions made from the upper tribunal have only added to the high cost of this process, leaving many leaseholders uncertain of what they should do and disappointed that they have not been taken into consideration. Instead of making a profit, they will have to give 50% to their freeholders, as well as pay legal and valuation casts, which will actually lead to a significant loss.[20] Getting rid of marriage value entirely will give leaseholders the certainty they need to actually act on extending their lease, diminishing that financial barrier that many leaseholders face.

Conclusion

Overall, as highlighted, there are many problems associated with lease extension to which the Government needs to respond to, not only for those that already have leases but for the future generations as well. From our primary research (the questionnaire) and secondary research, we have identified marriage value, ground rent, and prolonged negotiations as the issues that many leaseholders are currently facing. Regarding solutions, we have suggested removing ground rent entirely to eliminate this issue, sound valuation advice to keep those negotiations at a minimum, and removal of marriage value, as this arguably has the biggest impact when it comes to costs that a leaseholder must pay to their freeholder when lease extending. We believe that these are the most efficient initiatives that should be implemented that will give leaseholders ease and confidence when they decide to extend their lease, as well as ensure that they make a profit if and when they decide to sell their property.

Overall Conclusion

The leasehold system is an area where there is a need for much improvement via reforms in the UK. Being one of only two countries in the world that uses the residential leasehold tenure for their homes – the exception being a few properties in the USA and Australia – this has meant that the UK has developed a relatively unique framework of leasehold with little comparators in developing an understanding of this type of law and its evolution. This evolvement starts from the Law of Property Act 1925 which set the precedent of lease/freehold in the UK and includes legislations such as the Rent Act

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16 Kit Sproson, 'Ground rent ban on new leases takes effect – what you need to know' (Money Saving Expert, 30 June 2022) https://www.moneysavingexpert.com/news/2022/06/ground-rent-ban-on-new-leases-takes-effect-–what-you-need-to-kn/ accessed 1 December 2023

17 Ibid. 10

18 The Leasehold Advisory Service, 'Leasehold Extension – Valuation' (2022) https://www.lease-advice.org/advice-guide/lease-extension-valuation/#:~:text=The%20act%20states%20that%20if,calculation%20will%20be%20as%20follows accessed 3 December 2023

19 The Leasehold Advisory Service, 'Marriage Value' (2022) https://www.lease-advice.org/lease-glossary/marriage-value/ accessed 1 December 2023

20 Sebastian O'Kelly 'Marriage Value: How your freeholder hitches a ride on the uplift of the value on your flat' (The Leaseholders Charity, 5 October 2023) https://www.leaseholdknowledge.com/marriage-value-how-your-freeholder-hitches-a-ride-on-the-uplift-of-value-on-your-flat/ accessed 1 December 2023

1977 which restricted landlords from abusing their power to increase rents to give more security to tenants of residential property and the Housing Act 1988 and 1996 which introduced Assured tenancy, providing ease for possession of property for the landlords – all contributing greatly to the current state of the leasehold system. In terms of the future, as per the King Speech, leaseholders will now be able to extend their lease to 990 years. Additionally, there is now a ban on leaseholds to new houses (not applicable to flats) so they will be sold on freehold. From the government's proposed reforms, we can infer that they understand many issues that the public are facing with leasehold, and these reforms proposed are in effort to phase out the leasehold system entirely, which would put a stop to what we now know to be leasehold law, changing the UK housing industry forever.[21] However, whilst the government has begun the process of transforming the leasehold system, there is still a long way to go before the problems of the current system become fully resolved.

21 Belong, 'Leasehold Reform – Owners of Leasehold Property Should Read This' https://www.wherewebelong.co.uk/blog/leasehold-reform-owners-of-leasehold-property-should-read-this.html#:~:text=Apart%20from%20a%20handful%20of,this%20feudal%20system%20style%20tenure accessed 4 December 2023

Part Two: Commercial & Common Law

Recommendations on the law governing AI and Generative AI

Compiled with thanks to:

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Introduction

Cambridge Dictionary defines AI as a computer system that has some of the qualities that the human brain has, such as the ability to produce language in a way that seems human.[22] Generative AI can be thought of as the next generation of AI because it is a form of AI that can create something new.[23] According to George Lawton, journalist, Generative AI is a type of artificial intelligence technology that can produce various types of content, including text, imagery and audio.[24] The difference between AI and Generative AI lies within their capabilities because where the Traditional AI systems primarily use to analyse data and make predictions, Generative AI takes a step further and creates new data similar to its training data.[25] Later in the report, we will explore Generative AI, addressing its capabilities alongside potential benefits, associated risks, and negative aspects.

The UK takes a pro-innovative approach towards Artificial Intelligence (AI) by recognising it as one of the five critical technologies. A pro-innovative approach means supporting innovation and working closely with business, but also stepping in to address risks when necessary.[26] This is shown as the UK Science and Technology framework, which portrays the government's strategic vision to make the UK a science and technology superpower by 2030.[27] As the UK advances to its vision, it becomes imperative to critically analyse key central aspects in the AI terrain which are education, defamation, employment and data use/mining. Each pivotal aspect significantly influences the path the UK chooses in paving the road for AI.

Current situation

The first area of society we will be looking at is education. We have analysed two key problematic areas in regards to AI in education: data protection and interference with students' education. AI dependency for students, can cripple their development of literacy skills, critical thinking, problem-solving, and writing abilities.[28] The issue this poses is that with a lack of proper education and learning, we, as a society, could end up having a workforce that is undereducated or not educated in the correct areas. This dependency can also create barriers to higher education and employment, as AI can track students' strengths, weaknesses, and studying preferences. Students' data is also a risky area as it is important to try to keep this data safe under The Data Protection Act 2018, making it dangerous to monitor and regulate AI usage.

22 Cambridge Dictionary Definition of AI https://dictionary.cambridge.org/dictionary/english/artificial-intelligence
23 https://www.forbes.com/sites/bernardmarr/2023/07/24/the-difference-between-generative-ai-and-traditional-ai-an-easy-explanation-for-anyone/?sh=36a7207e508a
24 Definition of Generative AI https://www.techtarget.com/searchenterpriseai/definition/generative-AI#:~:text=Generative%20AI%20is 20a %20type,imagery%2C%20audio%20and%20synthetic%20data
25 The difference between AI and Generative AI https://www.forbes.com/sites/bernardmarr/2023/07/24/the-difference-between-generative-ai-and-traditional-ai-an-easy-explanation-for-anyone/?sh=36a7207e508a
26 Pro Innovative Approach and what that means https://www.gov.uk/government/publications/ai-regulation-a-pro-innovation-approach/white-paper#part-3-an-innovative-and-iterative-approach
27 The UK Science and Technology Framework https://www.gov.uk/government/publications/ai-regulation-a-pro-innovation-approach
28 Meehir K, Should Students Be Using Online Tools And AI To Study?, https://elearningindustry.com/should-students-be-using-online-tools-and-ai-to-study, 6th June 2023

To date there are no national regulations on the usage of AI so many schools and colleges are reluctant to create their own institutional regulations.[29] "A recent UNESCO global survey of over 450 schools and universities showed that less than 10% of them had institutional policies and/or formal guidance concerning the use of generative AI applications, largely due to the absence of national regulations".[30] It is possible that these institutions are reluctant to create their own guidelines as they are unsure how to go about doing it. This could include not knowing what to allow and what not to allow. Institutions may also be unwilling to stray from the norm set by others, which currently seems to just sweep the issue of AI under the rug or leave it down to faculties to decide their own rules. This shows in order for schools and universities to start placing regulations on AI there has to be a national regulation which then leads to schools and universities placing their own rules and boundaries on the usage of AI.

Regulation

AI in education could be regulated to guarantee data privacy and security in a learning environment, needing strict enforcement of confidentiality laws and guidelines on data collection, storage, and sharing. By having clear governance policies, informed consents, and ethical AI designs, that would prioritise users well-being and privacy. This would create a framework that promotes responsible AI usage in education, where students feel confident how to safely use AI.

Regulations on AI in education are important to modernise institutions, reduce plagiarism, and ensure a higher quality of education. Failure to implement these regulations could leave students vulnerable and outdated. As AI produces false information or information with less details and significance. An example would be, when a lawyer used ChatGPT in court and cited fake cases.[31]

Reform

Having set out what we believe is the best way forwards for guidelines regarding AI, we would like to emphasise the benefits. Addressing issues like bias mitigation, transparency, and data privacy is crucial. Users would become more trusting of bias-free AI systems. People are more likely to believe an AI system's judgements and suggestions when they consider it to be fair and unbiased.[32] By minimising people's suspicions, and offering insights into how an AI system makes judgements, bias mitigation improves transparency.[33] In order to create a reasonable and responsible system for the use of AI in education, elected officials, teachers, technology developers, and the general public must work together to implement this reform suggestion for improvement.

Negatives of reform

These reforms however, come with drawbacks, albeit minor ones. Any legislation written is likely to become outdated quickly due to the evolving nature of AI and the exponential development it is currently experiencing.[34] This then could lead to further problems if the guidelines or legislation written becomes counterintuitive, which could happen if society's views on AI change in comparison to the Government's views. AI's implementation into education presents a considerable risk, but would still help to fix some of the problems we have outlined.

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29 Clare O'Hagan, UNESCO: Governments must quickly regulate Generative AI in schools, https://www.unesco.org/en/articles/unesco-governments-must-quickly-regulate-generative-ai-schools#:~:text=An%20age%20limit%20of%2013,data%20protection%20and%20privacy%20standards, 7th September 2023

30 ClareO'Hagan, UNESCO: Governments must quickly regulate Generative AI in schools, https://www.unesco.org/en/articles/unesco-governments-must-quickly-regulate-generative-ai-schools#:~:text=An%20age%20limit%20of%2013,data%20protection%20and%20privacy%20standards, 7th September 2023

31 Molly Bohannon https://www.forbes.com/sites/mollybohannon/2023/06/08/lawyer-used-chatgpt-in-court-and-cited-fake-cases-a-judge-is-considering-sanctions/?sh=4cbea37f7c7f

32 By Samiksha Chaudhuri and Ipsita Mohanty https://www.uxmatters.com/mt/archives/2023/07/the-importance-of-bias-mitigation-in-ai-strategies-for-fair-ethical-ai-systems.php#:~:text=Understanding%20Bias%20in%20AI&text=AI%20systems%20learn%20from%20historical,marginalize%20certain%20groups%20of%20people

33 By Samiksha Chaudhuri and Ipsita Mohanty https://www.uxmatters.com/mt/archives/2023/07/the-importance-of-bias-mitigation-in-ai-strategies-for-fair-ethical-ai-systems.php#:~:text=Understanding%20Bias%20in%20AI&text=AI%20systems%20learn%20from%20historical,marginalize%20certain%20groups%20of%20people

34 Collaboration of Pearson, Nord Anglia Education, Microsoft and McGraw Hill, The Ethical Framework for AI in Education, https://www.buckingham.ac.uk/wp-content/uploads/2021/03/The-Institute-for-Ethical-AI-in-Education-The-Ethical-Framework-for-AI-in-Education.pdf, July 2023

Positives of Reform

The benefit of guidelines, rather than legislation, is that it can be adapted to fit individual institutions and work environments, allowing for more flexibility and measured application. This will be greatly beneficial as guidelines can be adapted the way they need to be in order to be most effective. This leaves more control for institutions and limits the restrictions put on AI. It is clear that the benefits of an introduction of guidelines would outweigh any potential issues that arise as a result. Guidelines would enable safer use of AI within the education system but those guidelines would have to be written carefully and possibly updated to ensure they do not become outdated and lead to greater issues than they solved.

Employment

Current situation

The rapid development of AI has encouraged a skill shift in the job sector as artificial intelligence is able to replicate certain jobs with repetitive tasks. In this current technology era, creative skills are more sought-after than ever, however the rapid growth of AI software has allowed AI programmes to begin replacing jobs which are less easily automated.

Currently, UK legislation does not specifically account for the use of AI; it relies on various other areas of law, including Common law, Equalities law, and Privacy law, to restrict its use.[35] Arguably, this legislation is incapable of properly preserving job security, a vital driving force of the UK's economy. Furthermore, individuals working in the creative arts sector are negatively impacted by the ability of Generative AI to utilise existing works to create new pieces of art, whether this be artwork, music, or media.[36] While acknowledging that AI can be utilised to improve the workforce, it is imperative that we implement safeguarding to ensure the survival of the creative arts, which in 2021 was worth a considerable 5.6% of the UK economy.[37]

Regulation

Regulation is imperative to ensure people in the creative arts sector are credited for their work. For instance, on the 4th of April the song 'Heart on my Sleeve' was released,[38] seemingly created by artists Drake and The Weeknd. Two weeks later Drake's label, UMG, requested it be taken down.[39] By this point, the song had accrued over 625,000 plays on Spotify[40] and has been uploaded countlessly on Youtube,[41] fooling many listeners into thinking it was legitimate. Although the real creator of the song, who goes by Ghostwriter, created the entire song himself, the taking of other voices has caused debate around the ethical considerations of this. This example displays the potential of Generative AI in content creation, by manipulating voices and creating new works. With no regulation, the unlawful and immoral replication of works could continue to take place, without consequences it could greatly discourage individuals working in the creative arts sector, displaying that it is imperative to fully and properly protect human intellectual property, as it has the potential to destroy existing jobs.

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35 (*Artificial Intelligence and Employment Law – House of Commons Library*, 11 August 2023) https://commonslibrary.parliament.uk/research-briefings/cbp-9817/ accessed 23 November 2023

36 'How Generative AI Could Disrupt Creative Work' (*Harvard Business Review*, 14 April 2023) https://hbr.org/2023/04/how-generative-ai-could-disrupt-creative-work accessed 14 December 2023

37 (*Arts and creative industries: The case for a strategy*, 1 December 2022) https://lordslibrary.parliament.uk/arts-and-creative-industries-the-case-for-a-strategy/ accessed 23 November 2023

38 Pahwa N, 'How Two Music Legends Found Themselves at Some Anonymous TikTokker's Mercy' (*Slate Magazine*, 17 April 2023) https://slate.com/technology/2023/04/drake-weeknd-ai-single-ghostwriter-tiktok-heart-on-my-sleeve.html accessed 7 December 2023

39 Ruggieri M, 'The AI-Generated Song Mimicking Drake and the Weeknd's Voices Was Submitted for Grammys' (*USA Today*, 6 September 2023) https://eu.usatoday.com/story/entertainment/music/2023/09/06/ghostwriter-drake-the-weeknd-song-submitted-grammy-awards/70779575007/ accessed 7 December 2023

40 Russell L, 'Ai Drake and The Weeknd: Song Called Heart on My Sleeve – Made with Cloned Voices – Removed from Streaming Services' (*Sky News*, 18 April 2023) https://news.sky.com/story/ai-drake-and-the-weeknd-song-called-heart-on-my-sleeve-made-with-cloned-voices-removed-from-streaming-services-12859951 accessed 2 December 2023

41 Russell L, 'Ai Drake and The Weeknd: Song Called Heart on My Sleeve – Made with Cloned Voices – Removed from Streaming Services' (*Sky News*, 18 April 2023) https://news.sky.com/story/ai-drake-and-the-weeknd-song-called-heart-on-my-sleeve-made-with-cloned-voices-removed-from-streaming-services-12859951 accessed 2 December 2023

Reform

Our proposed reform calls for an addition in UK legislation to existing laws. This legislation would protect the rights and interests of those working in the creative arts sector in response to the increasing integration of artificial intelligence (AI) in this field. The changing way in which AI technologies are starting to be used within the creative arts, these proposed reforms will make sure that creative arts remain a means of free expression for humans and their work is protected from being copied.

Concerns about attribution and intellectual property are also addressed, in section four particularly, which aims to specify ownership rights and authorship attribution in situations where artificial Intelligence has a major creative influence. This reform would also aim to create a legal framework that promotes responsible interactions between human creators and AI technologies by encouraging AI impact assessments, employee retraining programs, and the establishment of ethical guidelines. The overall aim of our proposed reform is to introduce precise laws for the ethical use of AI in creative processes and to protect the livelihoods of those in the creative arts in the UK rather than having to apply other laws which are not specifically suited to consider the risks presented by Generative AI.

Our reform would have five main sections:

Section 1: Creative Arts outlined,

Section 2: AI Impact Assessment,

Section 3: Employment Protections,

Section 4: Intellectual Property and Attribution,

Section 5: Ethical Guidelines for AI in Creative Arts.

Section 1: Defining what comes under the term "creative arts". For this reform, "creative arts" will fall under various forms of artistic expression, including but not restricted to film, theatre, visual arts, literature, music, dance, and multimedia.

Section 2: AI impact assessments – We are proposing companies in the creative industry to do these assessments to predict the potential AI has to impact human creativity and employment. AI impact assessments must be carried out annually by creative arts organisations using AI technology in order to determine any possible implications on employment and creativity of humans.

Section 3: Employment protections – The employment protections that would come with this reform would be split into two parts: protection from discrimination and protection from unemployment. Employers would not be allowed to use AI to discriminate against people when making decisions about hiring, promotions, or other aspects of employment. Additionally, any decisions made by AI software must have some human judgement or oversight. In terms of protection from unemployment, any employers using AI within the industry would be required to train workers to be able to use AI and work with it, so they are able to stay in their position of employment.

Section 4: Intellectual property – In this section, we are proposing full transparency concerning AI and creation of any new material to ensure fair attribution to all parties involved. People will have to ensure that when AI is used, there are fair credits given to: any work used by the AI's database, any humans involved with the AI's creative process or any ideas contributed to the final project by humans. We propose that humans should retain all ownership rights but there must be some acknowledgment of the role of AI within the creative process to promote transparency.

Section 5: Ethics within AI – We propose the creation of ethical guidelines for the application of AI in the creative arts that will cover topics like transparency, accountability, and proper utilisation of AI technology. These guidelines will foster a responsible AI usage culture and provide a foundation for good ethical AI practices in the future. For example: not using AI to create false or misleading work or publishing fake work in another artist's name. This will avoid a culture where AI is looked upon negatively and feared within the arts industry but also restricted to protect artists.

The goal of our reform is to achieve a balance between the advantages of AI innovation and the rights and livelihoods of those who work in the creative arts. In order to ensure the future growth and vibrancy of the creative arts industry, this reform hopes to build an environment where human creators and AI technology may work together in the foreseeable future.

Positives and negatives of the reform

Regarding Section one, due to the rapid advancement of technology, new forms of artistic expression could be created which are not included in the reform. This could possibly lead to exclusion as artists working in these new areas may not be represented. Although, it provides inclusivity by ensuring the law covers a wide range of creative expressions. This ensures a supportive environment in which different forms of creativity can thrive and allows for protection of artistic expressions which may only emerge in the future.

Section two, AI Impact Assessments, may be difficult for small-scale firms to execute as the financial burden will be much higher and therefore disadvantage them when working along with the development of AI. in spite of this, it is necessary as it accommodates the development of artificial intelligence over time to ensure that the reform can be continuously applicable in the future. Moreover, it assists firms in recording and understanding the effects of AI on human creativity.

Section three requiring human judgement in all AI decisions can pose challenges by stifling the productive efficiency of the machine, so it is important to exactly define the balance between human oversight and AI autonomy. However, it fosters an environment in which AI utilisation and human employment can coexist by ensuring that employees can adapt alongside AI development, while also establishing legal protection against discrimination and unemployment related to AI use.

Section four can be limiting in that again it is necessary to recognise exactly the contributions given by humans or AI. Moreover, it may discourage businesses from executing the research and development of AI by removing any incentive for a firm to become more competitive.Section four promotes transparency and ensures an individual's intellectual property is credited. Again, this promotes a balanced approach by acknowledging AI's role.

Finally, Section five may limit the creative freedom of individuals as it ensures strict guidelines for AI application use. Section five reflects the UK's pro-innovation approach, and prevents potential misuse of AI, outlining the rules for AI application in the creative arts.

Data use and data mining situation

Data mining is the process of collecting large amounts of raw data, analysing it, and then extracting information about the various patterns and trends in the data. Large corporations use data mining to learn from the accomplishments of their business and create cost-effective tactics aimed at boosting sales. Machine learning is a key component of this process, as it enables companies to make predictions and estimates that are beneficial to businesses. Currently, the UK follows the General Data Protection Regulation (GDPR) on artificial intelligence[42] in order to protect people's private data. This is becoming an increasing concern for individuals as it expands into more prevalent designs like large language models, with this comes many negative effects.

Firstly, there are concerns over privacy infringement. There have been several cases of different websites and companies collecting data and misusing their customers' sensitive information. For instance, Google was hit with a 50 million euro GDPR fine in 2019 by French Regulators, as the company had failed to make its consumer data processing statements easily accessible to its users.[43] Whereas British Airways through data mining had access to 400,000 people's personal data which became vulnerable to hackers.[44] So, there is still a lack of transparency by organisations on how they use people's data.[45]

Secondly, there have been growing concerns surrounding the ethics of data mining, with many consumers viewing data mining as ethically wrong with suggestions from the data mining processes being used for

42 https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/
43 https://www.bbc.co.uk/news/technology-57011639
44 https://www.bbc.co.uk/news/technology-57011639
45 https://www.analyticsfordecisions.com/pros-and-cons-of-data-mining/

marketing purposes. For instance, companies have exploited medical conditions gathered by their data to market their product to certain demographics.

Finally, there have been growing concerns over outputs data mining algorithms have not yet been refined and therefore there is not enough to rely on its outputs. It is fundamentally a machine that is making decisions, hence it lacks the ability to consider the feelings of the people who the decision will impact. So, the data miners must be the ones to keep that in mind.

Need for change

Data mining is a process used to extract data using one or more software. Also with the UK publishing its 'National AI Strategy' setting out its 10 year plan on AI. This will accelerate the data mining process even more. This however can lead to cybersecurity threats, data breaches and lack of transparency. In this survey according to the European Consumer Organisation in 2020 it shows that 45% to 60% strongly agree that AI will lead to more abuse of personal data.[46] In March 2023, over 1,000 AI experts, researchers and backers like Amazon and Google 'signed an open letter calling for an immediate pause on the creation of 'giant' AIs for six months, so the capabilities and dangers of such systems can be properly studied and mitigated'.[47] This is due to the creation of AI not being 'planned for and managed with commensurate care and resources' and 'not even their own creators–can understand, predict or reliably control'.[48] With the accelerated use of data mining being processed by AI and the growth concerns and dormant risks it is crucial to investigate the need for change especially following the lines of regulative frameworks such as the GDPR (General Data Protection Regulation) with the surveillance of the ICO (Information Commissioner's Office).

Reform proposals

To address the multifaceted challenges set by the rapid growth of AI and data mining it requires a comprehensive set of reform proposals that the government can impose. One UK reform proposal is to strengthen regulation around obtaining consent for individuals' data for data mining. This way individuals are aware of their data being used.

A fundamental feature of the reform to work is a close alignment with the framework of the GDPR. This is because General Data Protection Regulation (GDPR) was agreed upon the EU to regulate how companies protect EU citizens' personal data.[49] One of GDPR's requirements is requiring consent of subjects for data processing and for this to be a requirement for each member state of the EU it can better safeguard the processing of citizen's personal data.[50]

By uniting this reform proposal and GDPR it can help build trust and improve the rights on individual's personal data in the use of data mining with the principles laid in GDPR.

Another UK reform proposal that can help address the challenges is to conduct a Data Protection Impact Assessments (DPIA) or organisations. A DPIA is a process designed to help you systematically analyse, identify and minimise the data protection risks of a project or plan.[51] The use of DPIAs increases the awareness of privacy and data protection issues within organisations. Not only that but it also ensures that all relevant staff think about privacy at the early stages and adopt a 'data protection by design' approach. This is a general obligation under UK GDPR: data protection by design and default. With the DPIA being incorporated into the regulatory framework for AI and data mining, especially during the creation of AI, organisations can systematically assess and manage the risks and have clear transparency and accountability with data protection regulation.

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46 Artificial Intelligence: What Consumer Says https://www.beuc.eu/sites/default/files/publications/beuc-x-2020-078_artificial_intelligence_what_consumers_say_report.pdf

47 Artificial Intelligence: Development, Risks and regulation 3.1 https://lordslibrary.parliament.uk/artificial-intelligence-development-risks-and-regulation/#heading-13

48 https://lordslibrary.parliament.uk/artificial-intelligence-development-risks-and-regulation/#heading-7

49 https://www.digitalguardian.com/blog/what-gdpr-general-data-protection-regulation-understanding-and-complying-gdpr-data-protection

50 https://www.digitalguardian.com/blog/what-gdpr-general-data-protection-regulation-understanding-and-complying-gdpr-data-protection

51 https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/accountability-and-governance/data-protection-impact-assessments-dpias/what-is-a-dpia/#what2

Conclusion

In education AI has its positives and negatives, as it can help students to develop and not stick to textbooks and traditional ways of studying, however it can impact the students through the motivation aspects as it is seen to make them lazy and procrastinate even more. Guidelines do however provide a good opportunity for institutions to regulate AI in a way which suits them and their ideals best, this is in comparison to legislation which would create more rigid rules, which must be followed. But, despite any possible negatives that may arise from AI in education, all-in-all, it will bring an overall positive change to the education system.

To conclude, the use of AI in employment is extremely beneficial, although it also produces challenges, from potential job displacement to concerns about ethical considerations. There is currently an absence of specific legislation which is sufficient in addressing these issues. However the reforms proposed will accurately address the evolving relationship between AI and humans in creative expression, to ensure a balance between the advantages of AI innovation and the rights of those in the creative arts.

Accountability is absolutely essential in a legal context when considering the potential pitfalls of AI as it is important to hold the right individuals accountable for when certain negative situations arise.

Part Three: Public Law

Recommendations on the law governing Animal Rights

Compiled with thanks to:

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Raffael Fasel, University of Cambridge

Introduction

After thorough discussion and research, we have come to learn of the complexities of animal rights within the UK. This has encouraged us to want to explore the necessity for the promotion of ethical slaughter within the corporate farming industry. Within this report, we will focus on three main areas of reform: the emendation of regulations on battery farming, how the ethical slaughtering standards are in corporate farming, and how a lack of government guidance surrounding this field exacerbates the inhumane treatment of animals. We look to reframe current guidelines that the UK has outlined within the latest legislation. This is all in order to preserve the lives of animals we slaughter, in hopes of allowing them to have longer and healthier lives. Our findings showcase current laws the UK uses within the farming industry and how we believe they should be amended. Despite the drawbacks, we believe our deep dive into the realities of animal slaughter for human consumption will have a purpose: redefining what our current farming methods are and how they can be improved for the better for both animals and humans.

Chapter 1

Current law

Under UK law, there are no wholly effective regulations that prevent the abuse of battery farmed animals, specifically laying hens, a specialised breed of chicken used for intensive egg laying. Following an extensive 13-year phase out plan, the EU officially banned the use of barren battery cages in 2012. Appropriately named and described as 'barren', these new regulations outlawed the use of cages that:

- force laying hens to inhabit a space of 500cm^2 shared with 4–7 other hens;
- replace them with 'enriched cages' which provided an extra 100cm^2 of space; and
- more facilities for nesting, perching, and resting.

While seemingly a large step towards animal welfare reform, these new enriched cages continue to restrict animals' natural behaviours and instincts, and result in an excess of health complications. As initially proposed in 1987 (coming into action in 1988), the Welfare of Battery Hens Regulations Act of 1987 enforced a series of rules that encouraged the bettered welfare of battery caged hens, with some implemented rules including:

- sufficient supply of food, and water;
- appropriate storage units to aid more convenient inspections; and
- a responsibility on the farmers to undertake appropriate amendments to the living environment of hens should a problem arise as a direct result of poor living standards.

Research

There are no timeframes stated in law by which a farm inspection needs to take place, and consequently only 3% of farms are being inspected annually. Government policies state that within 24 hours of a complaint being made against a farm, there should be an inspection to follow it up. This has not been happening as reports state that only 50.45% of farms are being inspected following any complaint regarding the maltreatment of animals. As a result of many animals being housed in barns or behind walls

away from public view, members of the public are unaware of what may be happening, and are not only rendered unable to maintain a connection with a farm-to-food concept, but also not given a cause to make a complaint about potential violations of law.

Normal animal behaviour is severely disrupted by the unethical conditions that animals are being subjected to, as they are unable to forage or nest, with battery caged chickens experiencing psychological strain, intense understimulation, and frustration that they exhibit by inflicting pain on each other. The implications of lacking regulations prove grave, with masses of poultry chickens dying from dehydration because of their inability to access water troughs, most commonly due to osteoporosis/broken legs, which is increasingly common as they are bred to develop muscle mass quicker than they naturally grow. However, the abuse is not limited to chickens. Other examples include pigs having their tails cut off routinely without pain relief, and cows becoming unable to walk due to being forced to stand on concrete for large periods of time.

Global reforms

At present, the UK does not observe the prospective implementation of secured welfare laws in regards to egg-laying hens in the battery farming industry. However, this is not to say it is impossible. In June 2021, the European Commission announced plans to ban caged animals, including egg-laying hens, which are anticipated to come into action by 2027 in EU member countries. Initially proposed in 2012, New Zealand successfully completed their 10-year plan to phase out the use of battery cages for laying hens, and made battery farming wholly illegal. Though not without criticism from leading animal rights organisations (see Australian Alliance for Animals), Australia has followed with similar plans, with the aim that farms will phase out the use of battery caging, and shops in turn will not sell non-free-range eggs. While not a nationwide difference, multiple states in the US have set objectives to phase out the usage of battery cages including Oregon, and Utah. Since leaving the EU, the UK is emancipated from obligated compliance with EU laws, and further intensifies the growing demands to improve animal welfare by undertaking the necessary reforms to illegalise battery cages, and consequently, to observe the end of intense battery farming.

UK reform

To properly implement more effective laws, the safety and welfare of battery chickens must be prioritised, not capitalised on. Where independent, farm-led inspections prove inadequate, the necessity of government-led inspecting bodies is further increased. Although government inspections of large farming institutions are not unheard of, research revealing the faltering numbers of thorough inspections explains why the realities of battery farming remain in the dark. Should a greater portion of government budget go towards national inspecting bodies that guarantee safe practice, money could be spent so that both corporate farms and independent farms are advised how to implement ethical protocol in their practice and ensure the welfare of their animals, and so that inspecting organisations are afforded the right and resources to implement consequences where necessary, should a farm fail to meet the satisfactory standards expected. Furthermore, if the government were to subsidise cage-free products, in accordance with the increasing demand for free-range eggs spanning from top-earning households as well as average-earning households, accessibility to free-range eggs would increase and this trend may eventually eradicate the demand for battery farmed eggs (as the cheaper option). Reducing the cost of ethically sourced products not only benefits consumers, but also actively sustains an improved quality of life for the chickens the products are coming from.

Chapter 2

When thinking about ethical slaughter, it is usually the actual killing method that is recommended to be ethical. However, current legislation requires animals to be killed in slaughterhouses, to be stunned before slaughter, rendering them unconscious when the killing happens. Therefore, it is the stunning process that we consider to be unethical, and this section will cover the current law, how stunning should look and how we impose this can be done. We will also highlight some drawbacks that may limit our suggested reform.

Current law

Currently, the law states that there are multiple ways to stun an animal before killing in a slaughterhouse, including:

1. Captive bolt (mostly used for larger animals according to the RSPCA) – Involves shooting a bolt into an animal's brain, which is then retracted.
2. Electronarcosis (mostly used for smaller animals) – Can occur in two ways:
    a. Electrodes are placed on the animal's head within close proximity to the brain and force is then applied to render the animal instantly unconscious.
    b. Water baths are mostly used to stun mass amounts of chickens: they are passed through the electricity enhanced water upside down to render them unconscious.

How communities may feel

Communities may take the changes to food regulations badly depending on what is changed. For example, making it so that it is compulsory for animals to be stunned before bleeding may contradict Jewish beliefs. The kosher diet, which says no stunning is to be done [1]..., focuses on the animals' life before death and preventing suffering, since an animal can be conscious for up to 2 minutes after the bleeding begins. However, if we were to change the regulations surrounding the animal's living quarters, for example, increasing the surface area in the environments where chickens are kept and making this a compulsory regulation that is actively enforced, small communities are more likely to support it. When looking at these sensitive areas, we need to review them from the point of view of the animal and their unnecessary pain. In this case, it can certainly be argued that they are being treated poorly. Therefore regardless of beliefs, we should protect them from pain and suffering. According to the RSPCA, "[o]ver 24 million animals were killed in 2022 without pre-stunning in the UK".

The impact of officials checking the welfare of animals more regularly may upset or anger farmers and big industries, but it is a necessary change that means society as a whole is empowered to know that the food we are eating is not killed inhumanly and that this standard is kept in check. Otherwise, how would we know if farmers are treating our animals well? The regulations on animals' areas of living must be more specific and less vague. By making these proposed changes, farmers will have clear and helpful regulations and guidance that cannot be debated due to vagueness.

Other countries' laws

Austria, a country which is often regarded as having the best animal welfare standards, has chosen to impose restrictions on the religious or ritual slaughter of animals for the purpose of producing kosher meat. However, this is not necessarily reflective of the diverse British population and may fall under criticism if implemented across the United Kingdom.

As our earlier survey results largely reflect, the United Kingdom is largely made up of regular meat and dairy consumers. Regardless of the reasons for and criticisms behind this diet, it remains a fact of modern British society. Therefore, legislation would be a plausible point of focus for improving the general ethical standards of corporate farming.

In essence, the consumption of meat is a reflection of our current culture. In countries where this diet is not as widespread, there has been a more significant degree of state intervention. For example, several states in India have previously imposed bans on the slaughter of cows, according to BBC News. A cultural shift is more difficult to initiate in the United Kingdom however and so it is reasonable to look instead at countries with more similar stances, such as those in Europe.

France and Germany, having been the first to implement the banning of the cull of male chicks via legislation, urge other EU countries to act similarly.

Germany has introduced a method of 'early intervention', whereby farmers are required to use technology to determine the sex of pre-hatched eggs, according to Dahm and Pistorius. This preventative process is an alternative to the unnecessary culling of cockerels. There has been conjecture about the moral basis of this new technology, with some scientists stating that chicks are able to feel pain as early as the seventh day of incubation, prior to hatching. However, following a new study in Germany, which has found the

embryos are unable to feel pain until day twelve, this renders the previous suggestion irrelevant in German law. Currently, Germany stands at destruction of eggs by day 13, France at day 15, according to Torella.

As of 2023, an estimated 10–20% of Europe's hens arrive from cull-free hatcheries, according to Torella.

Italy has followed in the steps of both countries, with its ban to become effective in 2026. Germany seeks to improve upon the current law by 2024, with hatcheries being required to destroy male eggs prior to day seven. However, this is limited to present technology being able to meet future standards.

The US-Israeli company, Poultry by Huminn, offer an alternative procedure, which produces only female chicks via genetic modification, hoping to ultimately reduce the number of male chicks culled annually. This law has been met with some criticism by the poultry industry in Germany, which argues that the introduction of this new law has disrupted the levels of competition in the EU. There have been calls for a wider implementation of this law, so as to restore some balance for corporate farmers. Considering the UK culls 29 million male chicks each year (according to Ambrose), it is evident that a combination of new law and technology would heavily impact the industry. Both France and Germany previously slaughtered around 45–50 million male chicks annually.

Part of the corporate farming process is dependent on meeting consumer needs. This would require a dramatic shift in the diet of many British customers, which is often more difficult to achieve than introducing incremental changes in legislation. While the UK rates highly in the Animal Protection Index as of 2023, this does not negate the need to reevaluate the current laws and how they impact ethical slaughter standards. There is a need for reformation where corporate greed can be sacrificed for maintaining the rights of animals.

PETA (People for the Ethical Treatment of Animals)

PETA has the support of over 9 million people and businesses around the world and can be described as being "the largest animal organisation in the world." They have a few aims with one of their most influential being to stop animal suffering altogether. They have the advantage of working through "public education, investigative news gathering and reporting, research, animal rescue, legislation, special events, celebrity involvement, and protest campaigns", all in an effort to reduce the long-standing suffering of animals within the many areas that we take them for granted. Throughout its mission, some policies and changes that they have helped change include:

- 1999, PETA was able to convict pig breeders in North Carolina and Oklahoma after gathering evidence of the daily abuse of pigs including pigs being skinned alive.
- 2000, after a campaign that lasted 11 months, PETA was able to persuade McDonald's to agree to make the basic animal-welfare improvements for farmed animals.
- 2001, PETA convinced Burger King to adopt numerous animal welfare improvements.

What would limit the change

The American Psychological Association creating CARE (Committee on Animal Research and Ethics.

Aims include the review of ethical treatment during research and therefore from these results recommend guidelines. In addition, working with organisations to ensure the protection for the welfare of animals within the labelled guidelines.

Committee consists of 6 members of which 2 are elected after every 3 years. This according to Kimberely Boller, 'Committee on Animal Research and Ethics'.

Better monitoring needed:

Better monitoring would require more advanced technologies and equipment with transparency with customers being of high concern. Initial costs would be high due to the need for purchasing of products on a large scale as well as installing and regular maintenance needed. Businesses therefore would have to invest a large amount of capital into ethical slaughtering.

Training/need of expertise:

High qualified staff means companies would need to pay high salaries and lay off staff who do not continue to meet the standards.

Must have a certificate of competence (CoC- must cover each type of animal you work with and each operations you use must cover each type of equipment you use must complete training and assessment for the operation on the animal) or licence to slaughter to kill animals from the Food Standard Agency (FSA-must have a welfare of Animals at the time of killing licence your licence must cover animals you kill, operations you carry out and the equipment you use).

Slower processing times / ensure careful animal handling (stunning defined as the technical method of making an animal immobile or unconscious, with or without killing them, during or at the beginning of the slaughtering process in a way that the slaughtering causes no fear or pain to the animal).

Time consuming due to precautions and safety measures that must take place, as well as time spent verifying that the stunning has immobilised the animal leaving them unconscious before the slaughtering process. (However, companies like Tesco sell non-stunned meat to cater for the Jewish community).

Reform

Our idea for a reform to stunning legislation would be to streamline the process leaving just one way of stunning an animal. This one method would be electronarcosis as it is the most humane as it requires no applied force to the animal other than electrical current, and can also be reversed alongside being able to be used on all slaughter animals as it can be done in two forms. This would be similar to the EU legislation however more narrow.

Chapter 3

Current law

The current law being discussed below is affected by the government guidance regarding ethical slaughter.

The Welfare of Animals (Slaughter or Killing) Regulations 1995

It is pivotal to mention Schedule 4 of the restraint of animals before stunning, slaughter or killing defines an animal as any soliped, ruminant, pig, rabbit or bird.

Following this, Section 19 goes on to state that the killing of any surplus chicks which are less than 72 hours old and embryos in hatchery waste shall be as rapid as possible. This is to stop the spreading of disease within the hatchery. Regarding the conditions of slaughter: the occupier of a slaughterhouse or knacker's yard shall ensure that the condition and state of health of every animal is inspected at least every morning and evening by him or by a competent person acting on his behalf.

This regulatory procedure is set in place to ensure slaughterhouses are operating in agreement with ethical and legal standards. Moreover, s.23(1) confirms that an authorised person, upon producing, if required to do so, some duly authenticated document showing his authority, may at any time enter (a) any slaughterhouse or knacker's yard; or (b) any land or premises, other than premises used wholly or mainly as a dwelling, where he reasonably suspects that any activity which is governed by these regulations is, or has been, carried on, for the purpose of ascertaining whether there is or has been any contravention of these regulations.

The current law on ethical slaughter states that all animals must be stunned so that they receive a painless death. However, the exception to this UK legislation is where the meat may be slaughtered according to religious views. Barren battery cages were banned throughout Europe from the 1st January 2012 however enriched battery cages are still legally permitted. According to statistics, sadly 35% of chickens that lay eggs in the UK are kept in cages.

Why should subsidies for ethical slaughter be introduced?

Examples of issues with the guidance mentioned above:

Subsidies may be at the heart of structural change for ensuring the welfare of animals and the promotion of ethical slaughter. As previously mentioned, current government guidance only offers subsidies for agriculturally based farming, but surely farmers would be more incentivised to promote ethical slaughter if they were receiving funds for their efforts? Published in March 2022, the government produced a guidance document for the funding of farmers, growers and land managers. Under this guidance was a section labelled 'Protect animal health and welfare'. Yet, this grant only applies to vet visits, meaning it does not encompass the true protection of the animal's welfare. Secondly, the grant only applies to cattle, sheep and pigs, and of course one of the most prominent issues within corporate farming is the unethical handling and slaughter of chickens, a species which is not protected under this Act. Under current subsidies, a potential knock-on effect is the movement of animals into larger sums of land, due to an increase in the cost of land (Winter, Fry and Carruthers, 1998). This is clearly not a secure enough system to ensure the true protection of animal welfare. Hence, it is crucial that a revised system of subsidisation is implemented into current government guidance, if we wish to truly protect the welfare of animals.

There is also an infrastructure grant for new or refurbished calf housing. Read more about the Calf Housing for Health and Welfare grant. Funding for farmers, growers and land managers – GOV.UK (www.gov.uk).

The introduction of subsidies for morally righteous slaughter would encourage the meat business to use sustainable and humane methods. Ethical slaughter practices put the welfare of the animals first, minimising their suffering during the process of production. Governments can promote a more humane and ethical approach to animal husbandry by providing subsidies to farmers and producers that use these practises. These subsidies can address the increasing demand from consumers for products sourced ethically while also helping to improve the industry's reputation overall. Furthermore, ethical slaughter procedures frequently support more sustainable use of resources and reduce adverse effects on the environment. Subsidies for ethical slaughter can also spur innovation in the sector, promoting the creation and application of state-of-the-art equipment and procedures that put efficiency and animal welfare first. As a result, the meat business may be more sustainable in the long run as customers look for goods that are more in line with their moral and environmental principles. Encouraging ethical slaughter through subsidies is a proactive step towards a more humane and sustainable meat business in the future. Slaughterhouses struggle with chronic underfunding, a serious problem with wide-ranging effects. Important elements including worker safety, animal care, and overall operational efficiency are negatively impacted by inadequate financial support. Inadequate funding results in antiquated equipment, endangering both efficiency and compassionate methods. Employees frequently lack thorough training, which raises questions about their welfare and the moral treatment of animals. The public's health is at danger because the industry finds it difficult to comply with changing regulations due to outdated facilities and technologies. In order to support a meat processing business that is ethical, compliant, and sustainable that places a high priority on environmental responsibility, animal welfare, and safety, this financial gap must be closed.

Sanctions for ethical slaughter should be available to encourage farmers to use ethical methods. The issue of CO_2 stunning and slaughter should be met with fines of up £5000 per breach of ethical slaughter guidelines.

We recommend that funding provisions for animal welfare should be extended to encompass further animal welfare provisions. Grants should be available to help farmers purchase higher standard equipment, housing materials and nutritional animal food, along with other animal welfare resources. Farms could also receive payments to reward them for exceptional standards of staff training. This will encourage farms to provide their staff with higher level training and knowledge required to carry out their work at a higher standard. These measures should contribute to a higher quality of life for animals.

Since chickens account for a large proportion of farm animals within England and Wales, we have decided that their health and welfare should be a priority. Therefore, we recommend that all welfare guidance and subsidies are extended to include chickens. This is to protect the rights of chickens and ensure they are treated equally to other animals under the law.

It is important that animals are housed adequately. To achieve this, we recommend that subsidies are introduced to encourage farmers to house their animals in larger areas of land. Stamp Duty Land Tax should be a 30% reduced rate for agricultural land. This will make it more affordable for farmers to provide their livestock with more space.

- £5000 fines should be imposed for breaches of ethical slaughter guidelines.
- Grants should be available for the purchase of farming equipment, housing materials and nutritional animal feed.
- Payments should be made to farmers and agricultural businesses to reward high level staff training.
- All animal welfare guidance and measures should be extended to include chickens.
- Stamp Duty Tax should be a 30% reduced rate for agricultural land.

Reform

- We recommend these opportunities not be stated in a blog or guidance websites but attached to the Welfare Act 2006 possibly under Financial Provisions (b) in order to properly enforce a higher standard of care.
- Government should continue to work with independent bodies and unions to ensure a more democratic approach to animal rights.
- Moreover, reforming language should be extended under the effect of Brexit on poultry and must be addressed. Whilst the AWA 2006 applies to any chicken 'under the control of a man', equivalent restrictions on importing and transporting poultry from Europe should be sustained after leaving the EU – as recommended by the RSPCA.

Conclusion

This report highlights the importance of amending current animal rights law to improve animal welfare, specifically the welfare of chickens and other farmed poultry, to give better quality of life leading up to slaughter. In this report we have discussed numerous different reforms to tighten regulations on the inspections to make sure ethical slaughter practices are being followed correctly, along with monetary incentives to have farmers shift to a system that will allow for up to standard animal welfare. The reforms we have proposed will enable animal rights to be upheld to a sufficient standard.

References

Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens

Welfare of Battery Hens Regulation 1987 s 2h

Animal and Plant Health Agency, 'Animal welfare on farms inspection' (12 January 2016) https://www.gov.uk/guidance/animal-welfare-on-farms-inspection#:~:text=You'll%20be%20inspected%20within,be%20inspected%20and%20their%20location accessed 28 November 2023

Animal Equality UK, 'The Enforcement Problem' (October 2022) https://animalequality.org.uk/app/uploads/2022/10/Report_The-Enforcement-Problem-in-the-UK.pdf accessed 28 November 2023

Compassion in world farming, 'ANIMAL CRUELTY' (Compassion in World Farming International) https://www.ciwf.org.uk/factory-farming/animal-cruelty/#:~:text=Fast%20growth%20is%20a%20necessity,-Fast%2Dgrowing%20and&text=They%20achieve%20this%20through%20selective,problems%20for%20factory%20farmed%20animals accessed 28 November 2023

European Commission, 'European Citizens' Initiative: Commission to propose phasing out of caged for farm animals' (European Commission, 30 June 2021) https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3297 accessed 27 November 2023

SPCA, 'Colony cages: the struggle continues for chickens' (SPCA, 12 January 2023) https://www.spca.nz/news-and-events/news-article/colony-cages#:~:text=In%202012%2C%20the%20government%20announced,layer%20hens%20in%20New%20Zealand accessed 23 November 2023C

Calla Wahlquist, 'Battery-farmed eggs to be phased out by 2036 as Australian animal welfare reforms are brought in' (The Guardian 19 August 2022) https://www.theguardian.com/australia-news/2023/jan/04/australia-decades-behind-in-phasing-out-battery-farmed-eggs-animal-advocates-say#:~:text=Australia%20'decades'%20behind%20in%20phasing,say%20%7C%20Animal%20welfare%20%7C%20The%20Guardian&text=Free%2Drange%20hens%20in%20NSW,for%20laying%20hens%20by%202036 accessed 23 November 2023

Jo-Anne McArthur, 'Everything you should know about battery cages' (The Humane League, 3 December 2020) https://thehumaneleague.org/article/battery-cages accessed 28 November 2023

British Lion Eggs, 'UK Egg Industry Data' (British Lion Eggs, 2022) https://www.egginfo.co.uk/egg-facts-and-figures/industry-information/data#:~:text=Free%20range%20sales%20have%20also,Worldpanel%202021%20vs%202004%20comparison accessed 28 November 2023

Humane Slaughter Association, 'Bleeding and Pithing – Bleeding' https://www.hsa.org.uk/bleeding-and-pithing/bleeding accessed November 30 2023

RSPCA, 'Religious slaughter' https://www.rspca.org.uk/adviceandwelfare/farm/slaughter/religiousslaughter accessed November 30 2023

Website PETA 'PETA's Milestones' https://www.peta.org/about-peta/milestones/ accessed 26th November 2023

'India Supreme Court Suspends Cattle Slaughter Ban' (BBC News, 11 July 2017) https://www.bbc.co.uk/news/world-asia-india-40565457 accessed 26 November 2023

Dahm J and Pistorius M, 'Germany, France Call on EU Countries to Also Ban Culling of Male Chicks' (www.euractiv.com, 21 July 2021) https://www.euractiv.com/section/agriculture-food/news/germany-france-call-on-eu-countries-to-also-ban-culling-of-male-chicks/ accessed 27 November 2023

Torrella K, 'Save the Male Chicks' (Vox, 1 May 2023) https://www.vox.com/future-perfect/2023/5/1/23700952/egg-industry-male-chick-culling-animal-welfare accessed 27 November 2023

'Sexing Solution' (Poultry by Huminn, 4 June 2023) https://www.huminnpoultry.com/sexing-solution/ accessed 27 November 2023

Ambrose T, 'UK Retailers Blocking Moves to End the Killing of Day-Old Male Chicks' (The Guardian, 2 September 2022) https://www.theguardian.com/environment/2022/sep/02/uk-retailers-blocking-moves-to-end-the-killing-of-day-old-male-chicks accessed 27 November 2023

'Animal Protection Index' (World Animal Protection | Animal Protection Index) https://api.worldanimalprotection.org/ accessed 30 November 2023

Safi M, 'Cow Slaughter to Be Punishable by Life Sentence in Gujarat' (The Guardian, 14 March 2017) https://www.theguardian.com/world/2017/mar/14/indian-state-government-life-sentence-cow-slaughter accessed 27 November 2023

Smith M, 'The "Ethical" Space of the Abattoir: On the (In)Human(e) Slaughter of Other Animals' (2002) 9 Human Ecology Review

RSPCA, 'End non-stun slaughter for farm animals' https://www.rspca.org.uk/getinvolved/campaign/slaughter date of access 2023

Mian Riaz, Fariha Irshad, Nooran Riaz, and Joe Regenstein, 'Pros and cons of different stunning methods from a Halal perspective: a review' (11 October 2021) Translational Animal Science https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8633638/#:~:text=Stunning can be defined as,et al.%2C 2013 date of access 2023

Department for Environment, Food & Rural Affairs, 'Get a certificate of competence or licence to slaughter or kill animals' (GOV.UK, 15 October 2015) https://www.gov.uk/guidance/get-a-certificate-of-competence-or-licence-to-slaughter-or-kill-animals date of access 2023

British Veterinary Association, https://www.bva.co.uk/take-action/our-policies/cctv-in-slaughterhouses/ date of access 2023

Part Four: Criminal Law

Recommendations on the law governing Miscarriages of Justice

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Introduction

Our report will be discussing Miscarriages of Justice, the possible reforms that can be made through the Court of Appeal, and the independence of the Criminal Cases Review Commission ('CCRC') in regard to the real possibility test. In our report we aim to propose a reform that could be made to the current law after looking into surveys and analysing primary data to pinpoint an issue in the law.

A miscarriage of justice can be simplified into a 'wrongful conviction' or the process by which an individual is tried, convicted and punished for a crime they did not commit. Section 175 of the Anti-social Behaviour, Crime and Policing Act 2014 supplies a statutory explanation of a miscarriages of justice stating it is 'a case where the new or newly discovered fact shows beyond reasonable doubt that the applicant did not commit the offence'.[52] In addition, current trends announced by the CCRC suggest they have seen an 18.9% rise in applications (1,98 to 1,424), alongside an increase in almost every demographic of people; significantly in under-represented groups.[53] For instance, people from an ethnic minority who have applied for an application have risen from 24.4% to 25.0%.[54]

The Court of Appeal holds a compelling role in reforming miscarriages of justice whereby it is not concerned with the guilt or innocence of the appellants; but only with the safety of their convictions. Grounds on which an appeal can be made can be put down to errors of fact and errors of law. An error of fact means that you think the judge had the wrong facts or interpreted them incorrectly. An error of law means that the judge had all of the right information, but you think the law wasn't applied correctly. Most appeals were brought on the basis of procedural irregularities. Stemming from that, the CCRC is an independent body which looks into cases in which there may have been a miscarriage of justice and decides whether or not the case should be sent back to the Court of Appeal. The requirements for the CCRC are fresh evidence which has not been previously shown in the original trial, which may have created a real possibility of the conviction being quashed, and the real possibility test, which derives from section 13 of the Criminal Appeal Act 1995.[55]

The current law

The CCRC was established in 1997, aiming to rectify wrongful convictions and ensure the integrity of the criminal justice process. The CCRC was created with the intention of being an independent body, distinct from both the police and the judiciary, that would operate with autonomy and without interference from external parties. This independence is reinforced by the statutory basis of the CCRC, which grants it the power to investigate cases and refer them to the Court of Appeal if necessary.

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52 Anti-social Behaviour, Crime and Policing Act 2014, s 175
53 Criminal Cases Review Commission, 'Almost 20% rise in miscarriage of justice claims in the last year' (18 July 2023) https://ccrc.gov.uk/news/ccrc-annual-report-2023/ accessed 1 December 2023
54 Ibid.
55 Criminal Appeal Act 1995

The appointment and composition of the CCRC are designed to safeguard its impartiality. The Commissioners are appointed by the monarch on the recommendation of the Prime Minister, in accordance with the Office for the Commissioner for Public Appointments' Code of Practice, ensuring a separation of powers and preventing any undue influence from the executive branch. The impact of the CCRC extends beyond the individual cases it reviews, as it plays a vital role in upholding the integrity of the criminal justice system as a whole. By rectifying wrongful convictions, the CCRC highlights systemic flaws and errors, prompting reforms in investigative practices, evidence presentation, and legal procedures.

The Court of Appeal is defined in the Cambridge Dictionary as 'the law court that makes decisions relating to legal cases in which people do not accept the decisions made by lower courts'.[56] It is a quintessential aspect of our justice system fundamental to both our understanding of democracy and justice. Its primary functions focus on reviewing convictions, assessing sentencing, acting as a measure to safeguard against wrongful convictions, with the hope of preventing gross miscarriages of justice.

The Criminal Appeals Act 1968, the act that grants the CCRC, and the Court of Appeal, their powers to overturn convictions, covers all aspects of appealing a case such as appealing against conviction on indictment, right to appeal, powers to retrial, to appeal against sentence, appeal in cases of insanity as well as covering many other rights of the offender during the process.[57]

The real possibility test is defined in S.13 of the Criminal Appeals Act 1968, it is defined as "[a] reference of a conviction, verdict, finding or sentence shall not be made [...] unless the Commission consider that there is a real possibility that the conviction, verdict, finding or sentence would not be upheld were the reference to be made".[58] This is the test that is used by the CCRC to decide if cases should be referred to the Court of Appeal. Lord Bingham gave a judicial interpretation of the Real Possibility test in *R v Criminal Cases Review Commission* (*ex parte Pearson*):[59]

> *"The 'real possibility' test [...] denotes a contingency which, in the Commission's judgement, is more than an outside chance or a bare possibility, but which may be less than a probability or a likelihood or a racing certainty. The Commission must judge that there is at least a reasonable prospect of a conviction, if referred, not being upheld".*

So in simpler terms the real possibility test is up to the discretion of the CCRC, to in a sense predict what the Court of Appeal's verdict would be if this case was referred; they have to be almost certain that there is a realistic prospect that they would overturn the conviction.

Issues with the current criminal law system

One of the issues with the structure of the criminal law system is how it processes cases. In identifying culprits of a crime, the law uses varied techniques, some of which have been criticised, such as identification parades, facial composites and leading questions. It subconsciously creates the illusion (cognitive dissonance) that the culprit is certainly within police custody or proximate which often isn't the case. The use of subjective evidence such as witness testimonies has also resulted in wrongful convictions such as Andrew Malkinson, convicted despite the lack of objective evidence (DNA evidence).[60] Obtaining complex genetic evidence, such as DNA, can be exorbitant and is not always possible; however, witness evidence should not be considered as substantial enough to take a case to court.[61] The uncertainty of human errors has resulted in an increase in miscarriages of justice. This was one of the many reasons why the CCRC had been established, to review decision making errors made by public institutions. However, there have also been various issues regarding the CRCC themselves.

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56 Cambridge Dictionary https://dictionary.cambridge.org/dictionary/english/court-of-appeal accessed 01/12/2023
57 Criminal Appeal Act 1995
58 House of Commons Justice Committee, *Twelfth Report Criminal Cases Review Commision* (17 March 2015)
59 *R v Criminal Cases Review Commission (ex parte Pearson)* [1999] 3 All ER 498
60 Betsy Reed, 'Andrew Makinson says wrongful rape conviction inquiry should be statutory' (18 October 2023) https://www.theguardian.com/uk-news/2023/oct/18/andrew-malkinson-says-wrongful-conviction-inquiry-should-be-statutory
61 Fabiola Creed, 'Improving witness testimony' (UK Parliament, 18 July 2019) https://post.parliament.uk/research-briefings/post-pn-0607/#:~:text=However%2C%20inaccurate%20witness%20testimony%20(such,damage%20and%20poor%20mental%20health accessed 24 November 2023

The criminal justice system's central and principle aim is to convict the guilty and equip the innocent; yet there have been instances when the CRCC has contradicted these aims. In Malkinson's case, his appeal (for his wrongful rape conviction) was denied twice by the independent body before it was successful. This issue has arguably been created as a result of the minimal and lack of systematic training for Case Review managers, which subsequently has fostered an over-cautious and inconsistent approach in referring cases for appeal.[62] An inconsistent approach results in cases not being referred to on a purely objective basis, but out of sheer chance, which is one of the main reasons miscarriages of justice occur. The CCRC should strive for a calculated and analytical perspective as these referrals will greatly influence an individual's life and opportunity to be rehabilitated back into society. Additionally, on the note of "equipping the innocent", the CRCC does not provide victims of miscarriages of justice with any help when collecting evidence, which may also result in weakened claims. Trying to find evidence as an individual with no connection to the law and justice system puts them in an increasingly vulnerable position and nearly guarantees an unsuccessful appeal.

Another issue that has constantly been raised regarding the CCRC is its lack of independence from the courts (despite its supposed independence). It is important that the CCRC remains entirely independent to ensure public confidence in the criminal justice system; showing that its decisions are being regulated and reviewed.[63] Separating it from the courts and politicians promotes accountability to judicial figures and establishments. The CCRC's loose grasp on its own independence may cause it to lose its investigatory role and cause an incline in miscarriages of justice cases not being appealed or overruled.

Lastly, in the 26-year history of the CCRC, the commission has received 30,666 applications between April 1997 and August 2023.[64] While this figure may seem substantial, upon closer examination an overwhelming 97.32% of cases were dismissed and were thus unable to proceed to the Court of Appeal. Hence, some commentators view the real possibility test as being deficient, seeing it as inhibiting the CCRC's ability to assiduously exercise independence.[65] This certainly appears counterproductive as it would suggest that real possibility test is causing the CCRC to exacerbate, rather than mitigate, institutional injustice within the criminal justice system.[66]

Yet the notion of the real possibility test inducing institutional injustice within the CCRC can be countered by examining the perception of ethnic minorities towards its role in enabling the CCRC to remain independent when deciding whether to refer a case to Court of Appeal. The Lammy Review (2017) demonstrated that roughly two-thirds (66%) of the Black/African Caribbean/Black British community and nearly three-quarters (74%) of the Asian/Asian British community felt that the Criminal Justice System is actually 'fair'.[67] Witness how the Lammy Review's line of reasoning was also reiterated in the results for the BVL Miscarriages of Justice Survey (MLC – 2023). This provides a nuanced approach of analysing whether supposed 'issues' within the criminal justice system can be viewed through an alternate lens such as the BAME community's considerably positive perception of the real possibility test safeguarding the CCRC's ability to maintain its independence.[68]

Analysis of Survey Results

In a survey we conducted, we discovered that 38.3% of respondents believe that the CCRC is not referring an appropriate amount of cases to the Court of Appeal, making up a majority of those who did not have a neutral opinion. This judgement was based on the evidence that, between April 1997 and August 2023, the CCRC received 30,666 applications, only 2.68% of which were referred to the Court of Appeal.

62 University of Oxford Social Sciences, Maximising decision making effectiveness, and accountability at the Criminal Cases Review Commission https://www.socsci.ox.ac.uk/maximising-decision-making-effectiveness-and-accountability-at-the-criminal-cases-review-commission accessed 24 November 2023

63 Hannah Quirk, Robins Jon, 'The CCRC and independence' (*The Justice Gap*, 12 January 2023) https://www.thejusticegap.com/the-ccrc-and-independence/ accessed 24 November 2023

64 Criminal Cases Review Commission https://ccrc.gov.uk/ccrc-facts-figures/ accessed 30 November 2023

65 Kevin Kerrigan,'Real Possibility or Fat Chance' in Michael Noughton, *The Criminal Cases Review Commission* (Palgrave Macmillan,2010)

66 n13

67 Peter Cuthbertson, 'Is there a racial disparity in the criminal justice system? A review of the Lammy Review' (December 2017) https://www.civitas.org.uk/content/files/istherearacialdisparityinthecriminaljusticesystem.pdf accessed 28 November 2023.

68 Ibid.

Initially, only 25.6% of respondents knew what the role of the CCRC was. The survey consisted of the presentation of the aforementioned quantitative statistics about the CCRC and a definition of its role is as follows:

> *"The CCRC looks into criminal cases where people believe they have been wrongly convicted or wrongly sentenced. These cases are for those who have already lost their appeal. If the CCRC finds something wrong with a conviction or sentence, they can send the case back to the Court of Appeal."*

Following this, it is integral to recognise that, based solely on this evidence put forward in the survey question, the majority of responses demonstrated that the CCRC has a duty to refer more cases in order to provide greater justice, even in spite of a previous lack of knowledge on the subject.

However, it is important to take note of the limitations of this survey, as it consists of a relatively small sample size of 143 participants, so the results may not be fully typical or comprehensive of a wide range of perspectives. If another nationwide survey was conducted, then there would be more accurate data to work with. In spite of this, our survey remains a useful tool in determining the public perception of the effectiveness of the CCRC in correcting miscarriages of justice and providing up-to-date data on the opinions of the general public regarding this issue.

Overall, through collecting data from the survey, we recognised that approximately three quarters of the respondents were unaware of the role of the CCRC. It can subsequently be concluded that an increase in awareness of the subject may lead to a decrease in issues regarding the quantity of cases referred to the Court of Appeal. This may be due to an increase in public understanding of the miscarriages of justice left incorrectly judged, in turn causing greater pressure on the CCRC to actively refer more cases. In conclusion, it is proposed that the Court of Appeal should publicly raise awareness of the role of the CCRC so the accused is aware of their rights. The more the role of the CCRC is made public via the Court of the Appeal or CPS, the more cases would be referred to the CCRC so that a correct decision can be made.

Moreover, aligned with the Lammy Review's findings on the BAME community's perception towards the criminal justice system, the BVL Miscarriages of Justice Survey (MLC – 2023) found that just 12.5% participants from the Black/African Caribbean/Black British community disagreed with the view that CCRC is able to maintain its independence using the real possibility test. Furthermore, almost three-fifths (57.4%) of participants from the Asian/Asian British community either agreed or strongly agreed that CCRC is able to maintain its independence using the real possibility test.[69]

The survey results suggest that the substantial support the real possibility test has garnered aligns with the Lammy Review's conclusion that 'Black and Asian people are considerably more likely…to judge the criminal justice system to be effective'.[70] This may counter numerical discrepancies of the real possibility test preventing the CCRC referring 'enough' cases to the Court of Appeal, whereby its alignment with the ethnic trends towards trust in the criminal justice system may indeed convey that the real possibility test doesn't inhibit the CCRC maintaining independence in practice.[71]

Reform proposals

The CCRC website states that "if we refer a sentence for appeal, we must be convinced there is a real possibility that the court will reduce the sentence". From April 1997 up to September 2023, 30,800 applications were received by the CCRC (including all ineligible cases). Out of those applications, 29,781 cases were completed, 854 cases were under review and 165 were awaiting consideration.[72] 801 appeals had been heard by the courts, with 564 of these being successfully overturned.[73] Considering this is the result of more than 25 years of work, the amount of appeals that have actually been heard in court are quite low as supported by 44.7% of those that have completed our survey, concluding that "the CCRC is not referring enough cases".

69 Cuthbertson P (*Is there a racial disparity in the criminal justice system?*) https://www.civitas.org.uk/content/files/istherearacialdisparityinthecriminaljusticesystem.pdf accessed 28 November 2023.
70 Ibid.
71 Review L, 'Lammy Review: Final Report' (*GOV.UK*, 8 September 2017) https://www.gov.uk/government/publications/lammy-review-final-report accessed 29 November 2023.
72 Criminal Cases Review Commission https://ccrc.gov.uk/ccrc-facts-figures/ accessed 30 November 2023
73 Ibid.

An advantage of the current test is that the CCRC ought to be confident in their referrals, indicating that only the strongest of cases are to be heard, therefore sparing the Court of Appeal's time. However, those who may be innocent and lack sufficient evidence etc., will not be granted a second chance, inevitably adding an element of unfairness to the justice system and the requirements of the real possibility test in its entirety.

Our suggestion for reform would be to re-formulate the legislation, therefore expanding the requirement of the real possibility test. As an alternative to 'real possibility', we have proposed that 'reasonable belief' would be a more suitable term for the test. This indicates that although new evidence is necessary, there is no requirement as to an extensive amount and for it to provide certainty as to the success of the appeal. The reviewer of the case that is under analysis would merely need to have sufficient credence in the appellant's case, equivalent to the belief of the reasonable man, without distrusting the process of conclusion of the entire Court of Appeal.

A limitation of this reform is that a broader test can cause confusion as to the language and the multiplicity of clauses in the law, and consequently, put the courts at a higher risk of being flooded with unmerited appeals. However, this criticism can be easily rebutted as to the fact that the real possibility test is so restricting, that there is a requirement for the test to be broadened and therefore allow a larger rate of cases to be appealed. The argument that the courts will be flooded is very benign and the chances of that happening are not significant. Flooding of the courts is a minor issue compared to the need of cases, such as Andrew Malkinson's case, where he was incarcerated for 17 years for a crime he did not commit.[74] By broadening the real possibility test, more cases are to be appealed and provided with the opportunity of vindication.

Conclusion

Overall, some of the current issues within the current justice system stem from the vague evidence which is relied upon when taking a case to court, a common example being witness testimonies that have been countlessly proven to not being sufficient enough leading to an increase to the miscarriages of justice seen within our system. This has essentially been one of the key factors that has led to the establishment of the CCRC which itself has many underlying issues. One further problem is a lack of training given to the CCRC's managers causing many cases to be rejected by taking a more cautious approach, thus not fulfilling its duty.

Additionally, the real possibility test is causing issues such as a lack of independence of the CCRC to the Court of Appeal, which has led to the dismissal of numerous cases over the years, resulting in many miscarriages of justice. Therefore, reforming the real possibility test by changing it from a 'real possibility' to a 'reasonable belief' will help to reinforce the independence of the CCRC.

In conclusion, our survey findings indicate a prevailing sentiment among respondents that the CCRC does not refer an appropriate number of cases to the Court of Appeal. The data, drawn from a limited sample size, also underscores that public awareness of the CCRC's role is lacking, potentially affecting its decision-making. Additionally, the survey suggests that raising public awareness about miscarriages of justice may influence the CCRC to refer more cases to the Court of Appeal due to increased pressure.

74 John Grace, 'Andrew Malkinson: independent inquiry announced into wrongful conviction' (24 August 2023) https://www.theguardian.com/uk-news/2023/aug/24/andrew-malkinson-independent-inquiry-announced-into-wrongful-conviction

Notes:

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