



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Environment, Climate Change and Land Reform Committee

**Tuesday 16 January 2018**

**Session 5**



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**ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE**  
**2<sup>nd</sup> Meeting 2018, Session 5**

**CONVENER**

\*Graeme Dey (Angus South) (SNP)

**DEPUTY CONVENER**

\*John Scott (Ayr) (Con)

**COMMITTEE MEMBERS**

- \*Claudia Beamish (South Scotland) (Lab)
- \*Donald Cameron (Highlands and Islands) (Con)
- \*Finlay Carson (Galloway and West Dumfries) (Con)
- \*Kate Forbes (Skye, Lochaber and Badenoch) (SNP)
- \*Richard Lyle (Uddingston and Bellshill) (SNP)
- \*Angus MacDonald (Falkirk East) (SNP)
- \*Alex Rowley (Mid Scotland and Fife) (Lab)
- \*Mark Ruskell (Mid Scotland and Fife) (Green)
- \*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Laura Buchan (Crown Office and Procurator Fiscal Service)  
Sergeant Andrew Mavin (Police Scotland)  
Detective Chief Superintendent Sean Scott (Police Scotland)  
Sara Shaw (Crown Office and Procurator Fiscal Service)

**CLERK TO THE COMMITTEE**

Lynn Tullis

**LOCATION**

The Robert Burns Room (CR1)



## Scottish Parliament

### Environment, Climate Change and Land Reform Committee

Tuesday 16 January 2018

[The Convener opened the meeting at 10:43]

#### Interests

**The Convener (Graeme Dey):** Good morning and welcome to the second meeting in 2018 of the Environment, Climate Change and Land Reform Committee. I remind members of the audience to switch off any electronic devices, as they might affect the sound system.

I welcome Alex Rowley to his first Environment, Climate Change and Land Reform Committee meeting and invite him to declare any interests that are relevant to the committee's work.

**Alex Rowley (Mid Scotland and Fife) (Lab):** Thank you, convener. I have no relevant interests to declare.

**The Convener:** I take this opportunity to thank David Stewart for his considerable contribution to the committee over the past 18 months. I am sure that I speak for all members of the committee in that regard. He has left us to join the Health and Sport Committee, and we all wish him well in that role.

#### Decision on Taking Business in Private

10:44

**The Convener:** The second item on the agenda is to decide whether to take agenda items 4 and 5 in private. Does the committee agree to do so?

**Members indicated agreement.**

## Wildlife Crime Annual Report 2016

10:44

**The Convener:** Agenda item 3 is evidence on the Scottish Government's "Wildlife Crime in Scotland: 2016 Annual Report". I welcome to the meeting Laura Buchan, who is head of the health and safety division of the Crown Office and Procurator Fiscal Service; Sara Shaw, who is head of the wildlife and environmental crime unit in the Crown Office and Procurator Fiscal Service; Detective Chief Superintendent Sean Scott from Police Scotland; and Sergeant Andrew Mavin, who is Scottish wildlife crime co-ordinator at Police Scotland. Good morning.

As you can imagine, members have a series of questions. We will kick off by addressing the admissibility of video evidence of alleged incidents, which has perhaps been the biggest issue related to wildlife crime in the period since witnesses previously gave evidence to the committee on the subject. First, I have a question for Sara Shaw. There has been correspondence between the committee and you on the issue. Will you lay out the Crown Office's position on it? We are talking about covertly obtained video evidence.

**Sara Shaw (Crown Office and Procurator Fiscal Service):** The Crown Office's position is set out in the letter that I sent at the end of May 2017. That is a good summary of its position. I do not know whether you have specific questions on issues over and above what is in that letter.

**The Convener:** We do indeed. I know that colleagues will want to come in on the issue. To your knowledge, have there been any cases in which covertly obtained video evidence of the kind that was noted at that time has been used in prosecutions of wildlife crime? I understand that there is a degree of flexibility for the Crown Office in that regard and that there can be exceptional circumstances.

**Sara Shaw:** There have been cases in which video evidence that has been obtained covertly has been used in evidence, and there have been convictions. It is important to highlight that the facts and circumstances of each case must be considered and that the law on admissibility of evidence must be applied to the facts and circumstances of each case and its individual considerations. There are examples of covertly obtained video evidence having been used successfully in prosecutions, but that is not to say that it would be possible for that type of evidence to be used in every case.

**The Convener:** I want to develop my understanding of the issue. Is a determining factor or the determining factor the purpose or the intent of the deployment of the covert surveillance? Is that fundamentally at the heart of the matter?

**Sara Shaw:** I do not know that it is possible to say that that is the fundamental issue. There are a number of considerations in each instance. The facts and circumstances of each case are entirely relevant, as are the facts and circumstances that surround the obtaining of the video evidence. The circumstances in which video evidence is obtained will vary in every case. Those are some of the facts and circumstances that must be taken into account, as well as the wider facts and circumstances of any case, in considering whether evidence is likely to be admissible.

**The Convener:** In layman's terms, what are the broad-brush rules, in so far as you can provide them, that are at play that relate to video evidence and its admissibility? Perhaps it would be useful to get that on the record.

**Laura Buchan (Crown Office and Procurator Fiscal Service):** I will come in at this stage. Sara Shaw set out in her letter the laws on the admission of evidence. I do not know whether it would help if I read out part of that letter for the committee. Although covert video evidence is applicable in wildlife crime—we have seen a number of cases in which it has been used—it comes into play, of course, in all of the different spheres of law. When we look to consider that type of evidence, we need to think about how it is properly applied and how the implications of how that law is applied could affect other types of crime and the way that cases could progress.

The way that we apply it is very much in line with the case law of *Lawrie v Muir*. In that case, the full bench concluded that an irregularity in the obtaining of evidence does not necessarily mean that the evidence is inadmissible. However, the prosecutor, acting in the public interest, has to look at that and perform a balancing act, considering whether that irregularity can be excused. That relates to the nature of the irregularity and the circumstances in which it was committed.

You spoke about the Crown having some flexibility, but I am not sure that that is the correct term. We look at the circumstances of each case along with the law that we are following and apply that. We then determine whether we believe that, in those circumstances, there was an irregularity, and if so, whether it is such that it means that everything that flows from it is therefore inadmissible.

Those are the various tests that we apply when we consider cases. I know that we regularly say

that cases turn on their facts and circumstances, but that is very much the case. We take the prosecution of wildlife crime seriously, and raptor persecution in particular is a priority. If we have a case where we think that there is sufficient evidence to take it to court, we will do that.

We have a duty as public prosecutors to make quite difficult and unpopular decisions, but we would like to reassure the committee and the public that there is a high degree of scrutiny and consideration when we look at these cases. The specialist prosecutors in the team know the case law and the framework that they are working within, and they have the expertise to consider that.

There will often be disagreements within the team as lawyers discuss how best to apply the law. If that happens, we do not stop there. Often, when we have cases and decisions of such magnitude, reports are prepared for our senior advocate depute within the Crown Office so that they can make the final decision as to whether cases should proceed or whether, in some instances, we should no longer proceed.

I do not know whether that is helpful or whether there is anything that I can expand on.

**The Convener:** I will allow colleagues to come in now, but this is an opportunity to address some of the wider public's concerns about the issue and to explain to the audience out there what things you have to take into account. I hope that, as each question comes along, we can tease that out.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** This may end up being a question that the police will wish to answer. Would video evidence of the type that we are talking about start as information and not necessarily as evidence? In other words, although it might be apparent at the outset that what has been presented to the police or to the Crown Office is not going to be suitable as evidence in a criminal prosecution, it can nonetheless direct the police to an area of investigation. I want to test whether that is a fair observation on my part. Perhaps that is a police question in the first instance, rather than a fiscal one.

**Detective Chief Superintendent Sean Scott (Police Scotland):** Thank you for the opportunity to comment. The point at which it gets to the Crown Office will be when we have already investigated and we have the video evidence. The Crown Office will then make a decision about its admissibility. We explore every opportunity that we can explore to get evidence on wildlife crime because, as I have mentioned at previous committee meetings, it is sometimes very difficult to evidence such crime because of where it occurs

and the nature of the crime. We will present any video evidence to the Crown Office and discuss it.

It is worth pointing out that our operational activity in the deployment of cameras and directed surveillance is clearly bound by strict legislation. Any activity that we might want to carry out in that regard—in relation to any type of crime, and not just wildlife crime—is bound by that legislation. Under the serious crime test and so on, a three-year sentence would have to be applicable, so there are a number of factors before we can even consider deploying cameras in an investigation.

On the point about evidence that comes from a third party such as a non-governmental organisation or a charity that is engaged in work, we will take it along with everything else that we have and discuss its admissibility with the Crown.

**Stewart Stevenson:** Video evidence that does not have the evidential chain from source that would enable you to use it as prosecution evidence can nonetheless trigger an investigation if it is presented to you, even if you know at the outset that it will not form part of any subsequent prosecution. In other words, there is a value in video evidence—and similar information such as still photographs—in that it alerts the police to potential criminality in relation to wildlife.

**Detective Chief Superintendent Scott:** Yes. Such evidence or material, whether it becomes evidence or not, is clearly intelligence. Although it might not meet the evidence test and we might not be able to use it in prosecution, it can give us intelligence that there might be suspicious activity in a certain area by certain people. Obviously, we would keep it in mind and, potentially, use it in future to further an investigation if that is applicable.

**The Convener:** Are you aware of any circumstances in which Police Scotland has knowingly worked with a third party to obtain such footage?

**Detective Chief Superintendent Scott:** Are you referring to the deployment of cameras to gain footage?

**The Convener:** Yes.

**Detective Chief Superintendent Scott:** We could not do that.

**The Convener:** You cannot do that.

**Detective Chief Superintendent Scott:** No. In law, we are unable to do that. If we had sufficient intelligence or suspicion to apply to deploy a camera, that would have to meet a test.

**The Convener:** Would it be Police Scotland that arranged the deployment, and not a third party?

**Detective Chief Superintendent Scott:** Yes—for one of our investigations. What third parties do with cameras, and their *raison d'être*, is a matter for them.

**John Scott (Ayr) (Con):** Good morning. My question, which is on the same subject, is about the importance of the proper authorisation, which has not been discussed, and permissions being put in place, as for any covert operation. In your answer, will you expand into the area of compliance with the European convention on human rights? That question is for any of the witnesses to pick up.

**Detective Chief Superintendent Scott:** I am sorry, but what was the question?

**John Scott:** It was about the importance of authorisations being in place.

**Detective Chief Superintendent Scott:** That is critical. Without the appropriate level of authorisation, we cannot proceed. Unless something has authorisation from the appropriate rank in our service, which is detective superintendent, we as investigators cannot proceed.

**Laura Buchan:** That goes to the heart of evidence taking and admissibility—even though we might not be thinking about the Regulation of Investigatory Powers (Scotland) Act 2000—and relates to all ways in which evidence is obtained. If a search warrant is not properly granted or the police obtain evidence without a search warrant, the evidence will fall because of those irregularities.

I refer back to Stewart Stevenson's point on video evidence. It is about the intelligence that can be used. We have had successes as a result of the close working partnerships that the police have with NGOs, in which they work together to identify crime and the most appropriate way to target it to ensure a successful conviction.

**Detective Chief Superintendent Scott:** I want to reassure the committee. We have considered the creative use of existing legislation to see whether there is something that we can do within the current statutory framework to allow the deployment of cameras. For example, I commissioned a bit of work in conjunction with the Office of Surveillance Commissioners to see whether we can do anything with the current legislation. Unfortunately, we are bound by the fact that there is a serious crime test for the deployment of cameras for any crime. If there was to be wider scope for the deployment of cameras by the police and other organisations, the legislation would need to change—there is no question about that.

**John Scott:** Indeed, and the need for authorisation and permission has been well understood for a number of years. It is not a revelation to anyone.

**Detective Chief Superintendent Scott:** It is inflexible, in a sense.

**John Scott:** Indeed.

11:00

**Mark Ruskell (Mid Scotland and Fife) (Green):** I want to ask about the wider use of photographic and video evidence to alert the public to potential cases of wildlife crime and to enable more evidence to be gathered on the back of that publicity. For example, in the past year, there have been a number of incidents in relation to which there has been photographic evidence. There was a case in Moy when two masked gunmen were photographed at the foot of a tree that was a nest site, but the photographic evidence was not released to the public for the best part of 10 months. There are other examples of alleged wildlife crime where there is photographic evidence that has not been brought forward. What is the police's thinking on how you use such evidence? Alerting the public to the potential for crimes to be committed could bring in additional evidence.

**Detective Chief Superintendent Scott:** Andy Mavin probably has details on the case that you mentioned.

**Sergeant Andrew Mavin (Police Scotland):** The evidence in that case did not become available until approximately three weeks after the incident. The picture was extremely poor; one of the people that it showed might have had a firearm. It was brought to the attention of, I think, the partners in the Highland PAW group—it came via that group. We investigated, of course, but it was a grainy picture and no one could be clearly identified. Although we can infer what the people were doing and I think that everyone knows why they were there, no wildlife crime was committed on that occasion. We could put the picture in the public domain, but we had nothing concrete that would enable us to say that a wildlife crime was being committed. What the photograph showed was two people under a tree, one of whom we thought had a firearm.

**Mark Ruskell:** It took 10 months for you to release the picture, and there is a concern about the length of time—

**Detective Chief Superintendent Scott:** There was no evidential gain to be made from releasing it at the time, which is why the decision was made.

**Mark Ruskell:** Okay. Let me ask about the length of time it takes to determine whether

evidence is admissible or can be circulated to the public. There is a concern about the length of time that evidence sits with you—whether or not it is substantial—particularly given that you could be trying to gather additional evidence on the back of it, which could lead to a prosecution. Perhaps that is a question for the Crown Office, too.

**Laura Buchan:** You raised two separate issues: the admissibility of evidence and the release of evidence. The police are probably best placed to talk about the release of evidence. On admissibility, prosecutors are under a duty to review evidence and to keep up that review throughout a case. I do not think that it is suggested that we have not looked at the evidence in such cases; what we have done is reviewed the evidence. In some circumstances, further evidence and information have come to light and been provided to the Crown, and we have been able to review everything that we have and form a better idea about the means by which evidence was obtained and its admissibility.

I do not know whether that helps to answer your point about admissibility or whether I can add something about the release of evidence. The Crown wants to be as transparent as possible in its decision making. That is one of the things that we seek to take into account when making decisions in the public interest.

**Detective Chief Superintendent Scott:** Each case is different, and gathering evidence in a wildlife crime environment can be difficult, as I said. It can take a long time to go through standard actions to gather evidence. A forensic examination is required, which takes time and does not happen immediately. There are a number of factors.

If Police Scotland has enough evidence to present to the Crown, it will present it timeously, but sometimes the evidence-gathering process takes a long time, for a number of reasons. We do not delay unnecessarily; we try to present as and when we can—if there is enough evidence. Of course, while our investigations are going on, we are in regular dialogue with the Crown Office. We will tell it that we have a case brewing and say where we are with it. We work closely with the Crown Office in the process.

**Finlay Carson (Galloway and West Dumfries) (Con):** Obviously, there is some public frustration over issues of admissibility when there is evidence available, and you have suggested that there can sometimes be creative use of existing legislation. The problem with that is that it could work both ways—it could work in favour of the perpetrator; it could also impinge on the human rights of others. When was the legislation last looked at? With advances in technology and so on, should we take a stand and say that we should have a serious

look at the technology that is available and try to change the legislation to ensure that it is fit for purpose?

**Detective Chief Superintendent Scott:** The only piece of wildlife crime legislation that is under review at the moment is the Protection of Wild Mammals (Scotland) Act 2017—that is part of the foxhunting issue.

Wildlife crime is a crime like any other crime. Reviewing legislation in relation to the better use of technology is clearly something that we will feed in as the primary investigator in Scotland where we see that there are potential gains to be made. However, to be honest, at the moment I am not aware of any pieces of legislation that are a specific target in that regard—Sara Shaw might be, though.

**Sara Shaw:** I am not.

**Detective Chief Superintendent Scott:** With regard to the use of technology and creative evidence gathering, which relates to the internet, social media, phones and so on, if there is something that has not been done before—I am trying to think of examples of the top of my head, but I cannot—we will have a discussion with the Crown, and that evidence might then be presented or tested in court.

**The Convener:** The situation here is not about a specific piece of legislation. The letter that you wrote to us shows that the particular cases that we are talking about involve the Land Reform (Scotland) Act 2016 and the outdoor access code, and it has been suggested to the committee that the Data Protection Act 1998 is also involved. Do you agree that the issue is to do with the need to meet a series of tests for admissibility?

**Laura Buchan:** There is a general test in relation to admissibility. It is quite interesting that, in relation to the law on admissibility, the case that we still follow is that of *Lawrie v Muir* from 1950. To some, that might sound archaic, but the law and investigators evolve in terms of what is facing them, so the law will develop with the development of the use of social media and technology in crime. How the law applies turns on the facts and circumstances. There will be cases in which there is a novel approach—as was the case, for example, when evidence from social media or mobile phones was used for the first time—but Crown prosecutors will push, where we can, to test those types of evidence and the admissibility of evidence that is obtained in that way. I am not concerned about the lack of legislation around that. I think that our law develops as the situation progresses.

**Finlay Carson:** Is it therefore more likely that movement in prosecutions with regard to video or photographic evidence will come about through

cases being tested through the courts rather than through changes in legislation?

**Sara Shaw:** It is difficult to say what legislative change would be meaningful in the abstract without having a specific goal in mind. It is possible to use video evidence as evidence in a prosecution; the question with regard to admissibility is what the full facts and circumstances surrounding the obtaining of that evidence are.

It is fair to say that the Crown has not identified a huge gap in the law. Obviously, it would be for the Scottish Government to consider whether further development of legislation is required to address any concerns around the use of covertly obtained video evidence in the context of wildlife crime.

In applying the law to the facts and circumstances of cases, we are able to use video evidence, but it depends on how the evidence has been obtained. There is a full story behind each case, which, as we have said already, is considered on its own facts and circumstances. It is not that we cannot use video and photographic evidence, but whether we can use it depends on how it has been obtained in each case.

**Finlay Carson:** When you look at the number of cases that hinge on video evidence, is there a frustrating number that you cannot take to full prosecution because of the limitations of the current legislation? Will that change because of decisions that have been made in the past, or would it be better to change the legislation to make it easier?

I might not be explaining myself very clearly. Are there many cases in which the evidence has not been tested yet and in which, if the legislation were clearer, fewer people would get off because of the technicalities around admissible video evidence?

**Sara Shaw:** In recent times, the proportion of cases in which the issue of the admissibility of video evidence has not permitted the prosecution to proceed is relatively small.

**The Convener:** I want to pick up that point. Sean Scott will correct me if I am wrong, but he said that third parties ought to be aware of the legislative inadmissibility constraints that are at play. Is that a fair summary?

**Detective Chief Superintendent Scott:** Yes. For example, if the RSPB or another body places a camera in a certain location, we need to ask about the purpose of that. If the purpose is because the body suspects that there may be criminal activity, there is an issue because the legislation does not permit that. If the camera is there for research and development or academic

study, that is fine. The purpose of the deployment of the camera is key, just as it is in other police investigations.

**The Convener:** Has the Crown Office or Police Scotland had any follow-up dialogue with the multiple third-party organisations that might be inclined to take that approach, to make the dos and don'ts much clearer to them if necessary?

**Detective Chief Superintendent Scott:** I chair the raptor priority group and we have held discussion group meetings over the past year. I have explained to them exactly why the law is as it is and the constraints that that brings. The law is there for a reason—we have mentioned human rights, for example. Those involved in the raptor priority group are quite clear about what the constraints are in respect of deploying cameras. I have also explained that I have been looking at the legislation to see whether we can make more creative use of it, but that there are limitations.

**The Convener:** Members have several questions to ask before we wrap up this section. Please be brief.

**John Scott:** At what point does it become an infringement of a landowner's human rights when cameras are placed covertly by people knowingly flouting the law? I am thinking of when that is done by organisations such as the RSPB.

**Detective Chief Superintendent Scott:** Andy Mavin might know more about that than I do.

**Sergeant Mavin:** That is a question not for Police Scotland but for the likes of the RSPB. You need to look at the purposes for which the Land Reform (Scotland) Act 2016 allows someone to enter land, and—

**John Scott:** The Land Reform (Scotland) Act 2016 clearly does not allow—

**Sergeant Mavin:** And that is part of the discussions that we have regularly with our partner organisations.

**Claudia Beamish (South Scotland) (Lab):** It is obviously a complex issue. DCS Scott, said that any change in legislation would be a broad one in relation to video evidence—please correct me if I am wrong. I have a specific question on that, because my other questions have been answered—I may not feel positive about the answers, but I understand them.

Would a specific change to legislation be useful for police inquiries if it enabled partner groups that have permission—I use that word advisedly—to set up a covert video camera? These crimes are often in remote areas of Scotland. For example, near Leadhills in South Scotland, members of the public were alarmed to see someone in a balaclava jump on to a quad bike and drive

away—there may well be debate about whether they had a weapon.

11:15

I will get to the point, although I think that I have made it already: is there the opportunity to look at that aspect of wildlife crime to see whether there is a need to change legislation? On the back of John Scott's question, I stress that a definition of privacy in such circumstances could be relevant. While there may be complications with regard to the ECHR, what privacy would be infringed when the filming is not through someone's window, or is not of someone's car to see whether a criminal will vandalise it again? I am interested to know whether an opportunity along those lines would help with police investigations and give wildlife better protection.

**Detective Chief Superintendent Scott:** I suppose that, in simple terms, more cameras in remote places where we think that wildlife crime may be committed might be a benefit. The complexities of the underpinning issues are the main challenge, as you rightly point out, including the definition of privacy. That is part of the debate that we have had. Does somebody who is walking in a remote area have an expectation of privacy, or does the fact that they are out in the open and exposed to being seen by anybody mean that they have no expectation of privacy? There is no doubt that the question of privacy is fundamental. More cameras might mean more evidence, but, given the complexities, it feels like a public debate about privacy is required. The subject is not for me or even a legislator to decide arbitrarily. It is very difficult.

**Sergeant Mavin:** We have to remember, in the background, the impact on wider legislation, away from wildlife crime. That point was touched on at the beginning. If we were to allow a change for wildlife crime, what would be the next step?

**Claudia Beamish:** That is why I asked whether there were grounds for looking at any specific change to legislation.

**Sergeant Mavin:** The impact on wider legislation makes it very difficult.

**Donald Cameron (Highlands and Islands) (Con):** I will sum up what I think is the position with regard to the law. We have common-law rules, article 6 of the European convention on human rights and RIPSAs, and the general position is that each case is judged on its facts. If there has been any irregularity in obtaining evidence, that would be looked at. That evidence would not necessarily be excluded, although it probably would be excluded if there was no warrant, for example, or if there was a warrant but the evidence gathering went beyond the terms of

warrant, probably using the fruit of the poisoned tree argument. I am talking about covert cameras that may not have been authorised. I ask the panel to disagree with me if that summary is wrong.

With all that in mind, the nub of the issue is whether, given the difficulties that we all appreciate in reaching successful prosecutions, there is anything in wildlife crime that justifies treating it differently from other crime. Can you see a situation in which we can make an exception and treat it differently, or is it part of a general position?

**Sara Shaw:** There are other examples of crimes that have been committed in remote areas that face the same challenges as wildlife crime in terms of detection and the gathering of sufficient evidence. The challenge is not necessarily unique to wildlife crime, so I am not sure that wildlife crime should be treated differently from other forms of crime.

**Donald Cameron:** Laura Buchan spoke about the applicability of *Lawrie v Muir*. Interestingly, in that case, I think that there were private inspectors, which is analogous to a situation involving a third-party organisation, so it is directly relevant. My question on third parties is this: if the RSPB, for example, obtains evidence that is not authorised and so is not admissible, do the police have an opportunity to obtain similar evidence that would be admissible? Can you envisage that situation?

**Laura Buchan:** We have spoken about partnership working. If the RSPB becomes aware of a crime or has evidence of a crime having been, or potentially having been, committed, it should contact Police Scotland so that they can work together to look at the best means of obtaining evidence of that crime. The issue is difficult, because a lot of the questions come down to intent and the purpose of putting cameras in place. We routinely and regularly say that, because of the nature of wildlife crime, it is difficult to identify the crime and then to identify a perpetrator. We are live to those issues when we consider whether evidence can properly be used under the law.

A further point in relation to our partner agencies is that, in a number of the cases that we have discussed this morning and after some decisions not to continue with cases, the Crown Agent and our head of wildlife and environmental crime met the RSPB to discuss those cases and to put in place better communication, dialogue and debriefing for when similar situations arise in future. It is all about education and thinking about how we can best work together to get the evidence that is needed for successful prosecutions.

**Stewart Stevenson:** In the countryside, vicarious liability already exists in relation to dumping, for example. In other words, if a third party dumps something that causes pollution, the Scottish Environment Protection Agency will come after the landowner even though the landowner is entirely innocent of the original crime. There are examples of that having happened. I believe—although I might be corrected on this—that we have legislated for a small bit of vicarious liability in relation to wildlife crime in that landowners have become liable for the actions of others in that regard. I see nodding heads, so my recollection is correct.

Is that working, and is there scope for limited extension of vicarious liability? We could go to the extreme—I am not proposing this, and I do not think that we could do it—of making landowners responsible for everything that happens on their land, whoever does it. I do not see how we could go there but, in theory, we could. Could we make an incremental change to vicarious liability, which has been part of English law for at least 100 years?

**Laura Buchan:** There are circumstances in which we can look to prosecute people in relation to vicarious liability. I understand that, last year, there was some discussion of the application of vicarious liability and how we can successfully prosecute it. As with much wildlife crime, however, it is not straightforward. It is sometimes difficult to identify who owns the land and who has the beneficial rights over the land in terms of what happens on it.

To prosecute successfully, we must look at all the evidence. The landowner may have a defence based on the due diligence that they have carried out and their knowledge of what was being carried out on the land. The police investigators and we prosecutors just have to follow that trail. We quite often start with the prosecution of, say, a gamekeeper and then follow the trail back to see whether we can mount a successful investigation and prosecution of the landowner. If there is sufficient evidence for us to mount such a prosecution, we will do that.

**Stewart Stevenson:** To be clear, I point out that I regard gamekeepers as being mostly in the front line when it comes to protecting our environment.

**Laura Buchan:** Sorry—that was just an example of how we approach that situation.

**Alex Rowley:** I return to the point that Detective Chief Superintendent Scott made about the RSPB believing that there has been criminal activity and then sticking up a camera but the evidence not being admissible. What are the working relationships like? It could be assumed that, if the RSPB thought that there were strong grounds for

believing that there was criminal activity, it would work with Police Scotland, which takes wildlife crime as seriously as it takes every other crime. The police would then be able to put a camera in place if they believed there was strong evidence of criminal activity.

What is that relationship like? Are the resources available to do that? It is like a community identifying a hotspot for antisocial behaviour. The police can stick a camera up, and that can often deter people as well as catch them.

**Detective Chief Superintendent Scott:** If anyone—whether it be the RSPB or anyone else—suspects criminal activity, we need to know about it as soon as possible. We can then assess it and decide on the investigative strategy.

I am not going to speak for the RSPB, although we work closely with the RSPB. In fact, Andy Mavin and I had a meeting with its head of investigations and others to look at the development of our working relationship, which is great. However, we still need to have enough suspicion to take on an investigation.

From our side, that would not involve the positioning of a camera, because that does not fit the legal requirements. That cannot happen and it has never happened. Wildlife crime does not meet the directed surveillance threshold. As I said, if the RSPB deploys a camera, it is for its own reasons. It cannot tell us that it suspects criminal activity somewhere so it is putting in a camera in order that we can use the footage as evidence. If the RSPB deploys a camera, for whatever reason, and it tells us later that it has footage, we can assess that footage and its importance to an investigation of whether the activity is criminal. If it is part of a criminal investigation, we will report it. However, we cannot be involved in a decision to deploy a camera on the basis of suspicion of criminal activity, because we would be breaking the law.

I repeat what I have said: if the RSPB deploys a camera, that is a decision for the RSPB. If it thinks that there has been criminal activity, it should tell us first and we can think about the best approach. If it has deployed a camera for research and that camera uncovers suspected criminal activity, the RSPB needs to tell us about it as soon as possible and, thereafter, we will have a discussion with the Crown about admissibility. We are not complicit or involved in any decision making about the deployment of cameras by anyone other than ourselves.

**Alex Rowley:** Given the advancements in technology and the methods of catching criminals who commit wildlife crime, and given the intelligence that the RSPB and others come up with, do we need a change in legislation to allow

the police to deploy cameras where they believe there is evidence of criminal activity?

**Detective Chief Superintendent Scott:** That is exactly what I said earlier. We cannot do it unless there is a change in the legislation and the threshold is reduced or the authorisation is changed. There is a complex suite of issues there.

I return to the point that Donald Cameron made. Why would such action be just for wildlife crime? It would be for crime in general.

Directed surveillance is an issue of public concern and human rights. The legislation would have to change, but it would probably have to change across the whole criminal landscape. It is entirely up to the NGOs and charities that use cameras whether they use them, but they know the law on admissibility, which Sara Shaw described.

**Sergeant Mavin:** When thinking about deploying surveillance, we have to think about the expected sentence. We have spoken with the Scottish Sentencing Council about wildlife crime and have expressed the view that the sentences that are available for wildlife crime often do not meet the threshold for the deployment of cameras. That is one step that you could take, but the impact of deploying cameras for wildlife crime must be seen in the wider context.

**Detective Chief Superintendent Scott:** I have mentioned the three-year sentence threshold. The level of expected violence also determines whether we can deploy cameras. The situation is complex.

**The Convener:** We have clarified that effectively, I hope. Let us move on and deal with the wider issue of raptor persecution.

11:30

**Mark Ruskell:** I will look specifically at the figures in the report. It appears that prosecution rates are going down, not up. Why is that? Are there issues with the accuracy of the figures on which the report is based?

**Sara Shaw:** Does your question relate to raptor persecution?

**Mark Ruskell:** Yes. There has been a 19 per cent decrease in the number of offences but a 39 per cent increase in the number of cases. The figures also do not take into consideration the tagged golden eagles that disappeared, which might push the number of cases up. There seems to be a trend of decreasing successful prosecution. What are the underlying reasons for that?

**Sara Shaw:** I am not sure that it is possible to comment specifically on raptor persecution on the basis of the statistics in the report.

**Mark Ruskell:** Is that an issue in itself?

**Sara Shaw:** Possibly. To answer your main question, slightly fewer cases were reported in 2015-16 than in 2014-15 and slightly fewer cases were prosecuted. However, the same conviction rate was maintained in respect of the overall number of cases that were prosecuted. There was a conviction in 70 per cent of the cases that were prosecuted and the figure was the same in 2014-15, so there has been no percentage drop in the number of convictions.

Obviously, a court must take into account the evidence in a case, and our job as the Crown is to present the evidence to the court. I am not sure that, on the basis of the information in the report, we can say that there has been a reduction in the number of convictions for raptor persecution.

**Mark Ruskell:** When the committee took evidence on last year's wildlife crime report, we considered a number of cases from previous years that were not in it. Are there other cases that do not form part of the picture right now? I mentioned the tagged golden eagles, which have been subject to a particular study that should result in their disappearance being investigated. How accurate is the data?

**Laura Buchan:** We can consider only the cases that are reported to us. As we mentioned, in crimes that come to us, not only a crime but the person responsible will have been identified and there will be supporting evidence. There will be quite a difference in the figures for what the police determine to be crimes and what ultimately come to us as reported cases because, by the time a case gets to us for our consideration, there will be an accused as well as charges that are supported by evidence that the police have investigated. I am sure that Sean Scott will want to comment on that.

We touched on this when we gave evidence last year. The system that we use in the Crown Office exists primarily to assist us in the prosecution of cases, not in order for figures and statistics to be pulled from it. Although Sara Shaw and her team put a huge amount of work into pulling as much accurate information as they can from our system and into improving, year on year, the clarity of the figures that come before the committee, there will be differences and we will be unable to reconcile some figures as we move from organisation to organisation. Ultimately, the courts will record crimes in a different fashion as well.

**Sergeant Mavin:** We are talking about small numbers, so citing percentages can paint a misleading picture. We should talk about the figures.

The evidence in the golden eagle satellite tag report is concerning, but we must also look at the figures. When we look at a report on a missing satellite-tagged eagle and ask whether there is sufficient evidence to record a crime, there is often not, and that is an issue. We cannot just ignore the fact that there is not sufficient evidence for us to record a crime in line with the crime recording standards that apply across all recorded crime including assaults, thefts and wildlife crime.

**Mark Ruskell:** What helps you to get successful prosecutions? Is it better-quality evidence and less-grainy pictures?

**Detective Chief Superintendent Scott:** Yes, it is the quality of the evidence. The ability of colleagues in the Crown Office and Procurator Fiscal Service to prosecute a case is based on the quality of the case that we can present to them. As we have discussed in previous committee meetings, the evidence-gathering challenges with wildlife crime are stark for all the reasons that we have rehearsed.

We will do everything that we can to get evidence but, sometimes, the evidence is not there because of the remoteness or the circumstances of the crime, or because of a host of other factors. It can be challenging.

**Laura Buchan:** We work hard, and we work well together—there is a strong and good working relationship between Police Scotland, the COPFS and a number of NGOs. We often discuss cases and potential cases. If cases are reported to us and we do not think that there is a sufficiency of evidence, we can go back to the police and discuss that with them. We can discuss what voids could be filled and what other investigations could be undertaken. We can also keep cases under review.

When we are looking to target and to ensure successful prosecutions, the means are available to us to make sure that the case does not end when it comes to us and that there is an open dialogue. If there is a means to securing a conviction, we will work towards that with the police or the other reporting agency.

**Mark Ruskell:** This year's report includes a welcome commitment to use more scientific data as part of the evidence in order to understand where wildlife crime may be happening. What action have you taken in the past year on the back of that ecological data? For example, do you target hotspots around driven grouse moor shoots, where there may be increased levels of persecution? How are you using the data to target your resources and gather evidence?

**Detective Chief Superintendent Scott:** Police activity continues. You will be well aware of the programme for government and the Government's

desire to invest in tackling wildlife crime. We have an additional support officer—a detective constable—starting at the end of this month, who will work with Sergeant Mavin to support national investigations. The dedicated rural and wildlife crime special constables cadre is starting its work in the Cairngorms national park, which is an area of concern when you consider the satellite tagging report.

Our structure in Scotland and our dedication to wildlife crime investigation are still the envy of other United Kingdom police forces. That is not just because of our dedicated full-time and part-time wildlife crime liaison officers but because the whole organisation is available to investigate the crime. I think that I have mentioned previously that I have a single point of contact in the criminal investigation department in every division. They are the go-to person to advise on the quality of the investigations that are required in the circumstances, and all my detective superintendents in the division are aware of the requirements around wildlife crimes.

We have the structure and the support. Intelligence remains the lifeblood of any investigation, whether that is wildlife crime or other crime. I hope that, through the structure that we have in place and the additions to it, we will start to generate more intelligence to allow us to—

**Mark Ruskell:** Okay, but how are you using the intelligence that you have generated around the science and the ecology data? That was my question. I appreciate the structural changes that have been made.

**Detective Chief Superintendent Scott:** The ecology data?

**Mark Ruskell:** How are you using the scientific data to target the resource that you have just described to tackle wildlife crime hotspots?

**Sergeant Mavin:** The scientific data probably confirmed what many people suspected.

**Mark Ruskell:** What was that?

**Sergeant Mavin:** It confirmed where the areas of wildlife crime are around the country. We were aware of areas where birds of prey were disappearing.

There has been constant local engagement by the police with estates and so on to get the prevention message out there and to highlight the issue of birds disappearing. For example, this year, the Highlands and Islands division is actively engaging with estates particularly where there is an indication that birds have disappeared. However, that is no indication of the guilt of an estate. There are extremely intelligent people out there who would like to point the finger at an

estate although it does not necessarily have anything to do with the crime.

We are actively engaging with estates and getting the message out there. We have full-time wildlife crime liaison officers in divisions in areas where the persecution of birds of prey has traditionally been focused.

The work on the disappearance of birds of prey has really been the only scientific development in the past 12 months. In fact, as we discussed before the meeting, no significant scientific data that we could utilise in other areas of wildlife crime has come forward. The report on birds of prey is the only report that has come out since our previous discussion of the matter.

**The Convener:** Thank you. Kate Forbes has a question about general recording.

**Kate Forbes (Skye, Lochaber and Badenoch) (SNP):** I have a brief question about the level and quality of reporting. This committee and our predecessor committee have discussed being able to identify trends and having the data to do so. This is the second year in which the annual report has presented data by financial year. In terms of recording and reporting wildlife crimes, what other possibilities are there in terms of how that is presented to be better able to identify trends over longer time periods? Does that make sense?

**Detective Chief Superintendent Scott:** In terms of trends of criminality?

**Kate Forbes:** Yes. The annual report identified a few difficulties with comparing statistics and therefore cautioned that “care should be taken” in interpreting them. For example, prosecutions might not happen in the same year as a crime is recorded, so timing is an issue. I could go through the list of other points that the report identified, but what are your thoughts on the reporting of criminal activity and its level and quality? How can that be improved so that we can identify trends?

**Detective Chief Superintendent Scott:** I am not quite sure, because the quality of the report depends on the nature of the evidence that it contains. To improve the number of successful prosecutions, we probably need to improve the quantity and quality of evidence, if we can do that. Again, it comes back to the challenges that exist for doing that. I am not sure that technically, logistically or resource-wise, or from a proportionality perspective, we can do any more than we are doing just now.

With regard to current trends, there has been increased activity in hare coursing and we have had a number of successful prosecutions. That is now going to become more of a priority for us as an investigative body. There will be a lot of proactive work and prevention messages on that

activity because we now see a trend in using dogs for criminal purposes. Maybe that does not lead to the end game in terms of the report, but focusing our activity on what is clearly an emerging trend is our priority for the coming year with regard to training, awareness raising with the public and our approach as an investigative body.

**Kate Forbes:** Which presumably is on-going and is improving all the time.

**Detective Chief Superintendent Scott:** Yes.

**Sergeant Mavin:** It is on-going. We have monthly information management that is circulated to divisions through their wildlife crime liaison officers. The types of crime that occur in the division are broken down, and that is how we pick up on the likes of hare coursing increasing. Obviously, with regard to the annual report, there is a significant time lag before the information that we are receiving today, for example, would be reported. There is nothing that the police or the Crown can do about how the annual report is published. However, we are already picking up on that information management and identifying trends as quickly as we can. Again, it is often difficult to do that because of the low number of figures, but we have certainly picked up on hare coursing as a trend.

11:45

**Donald Cameron:** I want to pick up on that point. I might have missed this, but the most interesting statistic to have would be a breakdown of the various types of crime. For example, in 2015-16 there were 23 prosecutions. How many of those were for raptor persecution and how many were for traditional poaching? Is it possible to delineate what crimes those prosecutions were for? We would all find that interesting.

**Sara Shaw:** To some extent, you can see that from the report, but that is not to say that we could not look at providing a further breakdown. For example, of the 15 cases that were reported, three involved offences against birds of prey. We need to categorise cases in different ways for the purposes of the report, because several individuals can be reported for several offences. It comes down to how the information is categorised. We might be able to provide more information.

**Donald Cameron:** In the most recent year, there were 16 convictions, and it would be interesting to know what categories of crime those were for.

**Sara Shaw:** Appendix 2A provides a further breakdown of the convictions for each type of offending. I accept that table D, which is entitled "Offences relating to birds", does not say how many of those offences related to raptors.

**The Convener:** Police Scotland has a system that allows area and divisional commanders to know on a weekly basis how many crimes have been committed across their patch and the headings that those crimes come under. Is the wildlife crime information drawn from that, either in part or in totality?

**Detective Chief Superintendent Scott:** As part of our compliance with the crime recording standard, we record every incident that is clearly a crime, and that information appears in our crime recording system. I am sorry, but I am not quite clear what you are getting at.

**The Convener:** Are the wildlife crime stats captured from that system?

**Sergeant Mavin:** They come from the same system. The analysis and performance unit produces the same standard of report on wildlife crime that it would produce on any other form of crime. The wildlife crime information is drawn from the same statistics.

**The Convener:** That is fine. I just wanted to get that on the record.

**John Scott:** I should have declared an interest as a farmer and a landowner when I asked my previous questions. I do so now and regret that I did not do so earlier.

In your view, what contributed to the 8 per cent decrease in recorded wildlife crime in 2015-16? Has there been a genuine decrease in wildlife crime in certain areas that you can tell us about?

**Detective Chief Superintendent Scott:** Any fluctuation in the figures could be a result of better public awareness, whereby people are more inclined to report crime, or it could genuinely be the case that there is less crime. It is difficult for us to put a finger on that. We can make an assessment on the basis of the intelligence that we get in relation to suspected wildlife crime, but it is very difficult to pinpoint the reasons for such fluctuations.

**John Scott:** That is fine—thank you.

Do you estimate how many crimes are committed that are not necessarily recorded or followed up by Police Scotland?

**Detective Chief Superintendent Scott:** If a member of the public phones up to say that they think that a wildlife crime might have been committed and we respond and it transpires that it was not a wildlife crime, that incident is not closed off as a crime—it is recorded as a non-crime incident. That is based on an assessment of the circumstances.

Do not forget that our control room staff have training on wildlife crime and know what to pass on to the front line. The front line have training, as

well—they have all the booklets and awareness and so on. The assessment is based on knowledge, and if an incident does not fit the bill, it is not recorded as a crime. Sometimes it is written off as a false alarm with good intent, for want of a better expression.

**Laura Buchan:** Let me come back to the question about figures. Although we can say that there are 16 cases in which someone has been convicted or 23 cases in which someone has been prosecuted, that does not give us a measure of how big or complex a case was. It is difficult to measure, and 8 per cent is quite a small proportion, in terms of our getting an idea of whether there has been a decrease in wildlife crime. We might have to look at the figures again next year.

**John Scott:** Thank you. This question might not be an entirely reasonable one to ask of you; it is perhaps a question for the judiciary. However, in the judiciary's absence, may I ask why there has been a 25 per cent drop in monetary fines, given that the conviction rate is steady? What other sanctions are being used?

**Laura Buchan:** The figures show a drop. We cannot comment on sentencing. However, I highlight that there has been a custodial sentence this year, in relation to hare coursing. We have also had a successful prosecution—the first of its kind—in relation to a mounted hunt. There are positives that we can take, in the context of education, deterrent and our ability to publicise how seriously we take such crimes. When someone receives a custodial sentence, it sends a strong message to people who want to continue to commit such crimes about how seriously the courts will take the matter.

**John Scott:** Does a lack of police or COPFS resources for wildlife crime impact on the statistics, or are other factors relevant to the decrease?

**Laura Buchan:** There are five dedicated lawyers in the wildlife and environmental crime unit. That is a high number of experienced legal staff, in terms of the number of cases that the Crown Office receives. I have no concern about the level of resource for such cases that is currently being utilised by the Crown.

**John Scott:** Do the police share that view?

**Detective Chief Superintendent Scott:** I mentioned our structure. We have a proportionate dedication on wildlife crime. Do not forget that not just dedicated wildlife crime staff but front-line troops deal with wildlife crime—the front line are the first responders, and criminal investigation department officers and others become involved in investigating such crime as and when they are required.

**Alex Rowley:** Do you have a proactive strategy and policy of crime prevention, and do you work with other organisations in that regard?

**Detective Chief Superintendent Scott:** We do. It is important to highlight that as part of the 2016-17 programme for government a wildlife crime prevention review was to be commissioned. All the partners against wildlife crime have had prevention campaigns, but I will be frank and say that at the moment there is no investment in a new campaign. However, prevention is always part of our discussions with priority groups. The prevention review that was in the programme for government has not quite got traction yet, but we are ready to work with the Government to develop it.

The police's three-year strategy mentions wildlife crime and considers the challenges and how we can secure continuous improvement in that area and others. Prevention is still well on the agenda.

**The Convener:** We have touched on the work of the partnership for action against wildlife crime; let us explore it in more detail.

**Claudia Beamish:** This question is for Mr Scott or Mr Mavin—whoever is most appropriate. I was concerned to read in the recent annual report that PAW Scotland's

"Executive group met once in 2016. The Plenary group did not meet in 2016."

You will recall, Mr Scott, that the last time you were here we had some discussion about—to put it in the most polite way—the lack of communication between some partners in PAW and difficulties in its structure. In view of the remoteness that we all highlighted earlier and the concerns about partnership working, will you say a little bit more about what has been happening with PAW and what the plans are for the next year?

**Detective Chief Superintendent Scott:** I do not chair the PAW executive; it is the cabinet secretary who does that, so it is up to the cabinet secretary to determine the frequency of meetings.

We fully engage with PAW through the priority groups. We sit on each and every one of them, as either chairs or partners. There is definite co-ordination there.

The media strategy for PAW was probably highlighted last time. One or two individual members were sending out media releases without prior circulation among other PAW members so that they could comment, and that has been addressed. It was probably being done more out of enthusiasm than anything else.

I have no reason to say that PAW is not working to any extent, but its work as a single entity—

rather than the work of the priority groups—is clearly something for the cabinet secretary and the Government to lead on.

**Sergeant Mavin:** Some of the PAW priority delivery groups at the lower level—there is a legislation group, a raptor group that Detective Chief Superintendent Scott chairs, and so on—have met regularly. It might be just that the executive group has not met. The other groups certainly have.

On a lower level again, there is more informal discussion. We meet with Scottish Badgers to discuss various issues in crime recording and so on, as well as meeting with the UK badger priority delivery group. That engagement is still taking place with key partners, whether through the priority delivery groups or informally. It might not be the case that the executive group has met, but communication still takes place between the individuals concerned.

**Claudia Beamish:** Have the sub-groups highlighted any areas that the committee should be aware of or that you would like to see taken forward over the next year?

**Sergeant Mavin:** In the letter that we submitted to you recently, we highlighted a couple of issues, such as venison dealers' licences. All the difficulties that we and Scottish Natural Heritage have with that are documented in the letter, and that issue is being taken forward. We have highlighted the issues in the letter. There is nothing else specifically that we would like to see taken forward.

We might bring forward issues related to hare coursing in terms of the difficulties that we face with the retention of dogs, which legislation does not allow us to do. That is the type of thing that we are looking to bring forward over the next 12 months through the delivery groups and possibly the PAW executive. There is nothing for this meeting.

**The Convener:** You mentioned badgers, so let us move to badgers. There were seven recorded crimes relating to badgers and only one was reported to the COPFS, which seems a rather low number. I would like to explore that. Has a prosecution been secured in that case yet?

**Sergeant Mavin:** I am not quite sure about the prosecution of that case.

The crimes are often not reported when they are in action, as it were; then, when they are, it is immediately difficult to establish who has committed the crime. There must be intent or recklessness for certain elements of badger-related persecution, which also creates difficulties when it comes to submitting a case to the Crown Office. There are a number of reasons why we

might have seven cases, only one of which has been taken forward to the Crown Office.

**The Convener:** I want to explore that a bit further, because it has been suggested to me anecdotally that there might be other things at play to do with attitude towards badger crime. For example, perhaps if a badger sett has been disturbed and damaged but the badgers are still there, the approach—although this would be contrary to the Wildlife and Natural Environment (Scotland) Act 2011—would be that a crime has not really been committed. Hold that thought for now. Also, is there an approach that says that first offenders will be dealt with at the level of an informal caution? Is any kind of slackness cut to land managers? I want to get a feel for where we are on this at the moment, because it is an important issue.

12:00

**Sergeant Mavin:** I would say that no slackness is cut to anybody by the police when it comes to the reporting of crime. I am not sure how to take that comment, to be honest.

**The Convener:** A police officer has to form a judgment based on the likelihood of the case being taken forward. I was not suggesting any impropriety—I was speaking about the approach.

**Sergeant Mavin:** That is fine—I will pass that on to my colleagues. No; at the end of the day we cannot afford to be seen to be doing that. If there is a crime to be recorded, we will record it. We look at the circumstances and take into account direction from previous cases about what is a sett; it is not necessarily the land on top, but what is involved in it. It is also about when the crime is reported to us—how long after an incident has occurred—what we see and what is present when we get there, such as whether there is any evidence that the sett is in use. Are there badgers about? Without having a direct look inside a sett, often we will never know whether it has been damaged; there is an issue there. Whether we need a legislative change to say that it is a strict liability offence, regardless, is a completely different issue.

**The Convener:** Do you get any guidance from the Crown Office on whether it is likely to proceed with a prosecution?

**Sergeant Mavin:** We often talk to the Crown Office about such cases. As I said, the stated cases from south of the border defined what a sett is at the time, but we also take account of Sheriff Drummond's statement about the indicators that a sett is in use. That is widely accepted by the police and NGOs. In circumstances in which we think that there is a possible case, we speak to the Crown Office.

I will take this opportunity to say that during my career in the police one of the closest relationships has probably been that between the Crown Office and the police. We are able to pick up the phone and get advice straight away about whether there is sufficient evidence.

**The Convener:** It is useful to get that on the record; thank you. We move on to bats with Finlay Carson.

**Finlay Carson:** I declare an interest as a bat champion. Bats are named as a priority area, but bat crimes appear not to be reported anywhere other than within the category of “Other wildlife offences”. Why is that?

**Detective Chief Superintendent Scott:** Why would bat crime not be—

**Finlay Carson:** I beg your pardon. Proceedings relating to offences against bats are recorded as “Other wildlife offences”, which means that it is difficult to see the number of those crimes and the conviction rate.

**Sergeant Mavin:** That comes down to the fact that some of the legislation we are talking about is specific to species. Bats are a European protected species and the regulations are applicable not just to bats but to otters and various other animals as well. That is why; it is not broken down into specific acts. It is not like the Protection of Badgers Act 1992, where we can pull that evidence straight out and say that it is all about badgers. Bats come under a piece of legislation that covers a wide variety of animals.

**Finlay Carson:** There are obviously not a huge number of convictions. Are there any barriers to bat crime being reported? Is there underreporting of bat crime? Last year I mentioned that the numbers were very low and that there were no convictions or recorded crimes at all. Do you see that as underreporting, or is the level of bat crime just very low?

**Sergeant Mavin:** The level of bat crime is generally low, but it is difficult to tell because we are talking about small numbers. We conducted a number of investigations last year—well into the 20s—across Scotland. Again, there is an intentional or recklessness aspect to some of the charges that could be taken forward, but not for all of them. I spoke to our crime registrar about that very recently and we are looking for clarification on it; there is not necessarily any criminal intent, but that is only in certain elements.

As for the level of bat crime, we have had reports of certain incidents related to the cutting down of trees or the disturbance of bat roosts as a result of developments. There is a variety of such incidents. We are not talking about significant levels of such crime, but according to colleagues

in the Bat Conservation Trust, the number of incidents that we investigate is apparently significant compared with those that have been investigated by other forces around the United Kingdom.

**Detective Chief Superintendent Scott:** With regard to Andy Mavin’s point about the offence, we will, under the terms of crime recording compliance, take the issue to the technical group for crime recording—the Government’s Scottish crime recording board. Although disturbing a bat colony is absolutely an offence, the issue, as Andy Mavin said, is the intent behind it. If the disturbance is unintentional, is it still a crime? We will have that discussion on compliance with the Scottish crime recording standard with the technical group and, obviously, our Crown Office colleagues. Of course, I would never make a determination on what a decision would be, but if there is no intent to commit a crime, it is unlikely that there will be a prosecution. That said, we are going to look quite closely at the issue.

**Laura Buchan:** When we get cases involving bats, one of the things that we have to take into consideration in deciding the severity of the incident is whether there is a corporate or commercial aspect, whether it is related to development or whether it has been caused by an individual who is unaware of the bats being there or the legislation in relation to bats. However, the bats are the priority and we consider such cases carefully.

**Finlay Carson:** Are you suggesting that some of these cases might not come through the police? For example, SNH might have requested compliance with a bat report as a result of someone converting an old barn, say, or an application for planning permission. The report says that there were only two such cases last year, but are you suggesting that more cases come before you but are dealt with in a different way?

**Laura Buchan:** No. We can deal only with the cases that we get; if only two cases get reported, we will deal only with them. I was just trying to give some background to the discussion about why and where we get crimes against bats.

**Sergeant Mavin:** We engage with SNH on licences. There are occasions when someone might be about to commit a crime, and we will get notified of that, speak to the person straight away, stop them undertaking the action and ensure that they go and get a licence from SNH. On other occasions, we might get told about an incident but when we investigate it, we find that a licence is in place for the action in question.

**Finlay Carson:** Is there an argument, then, for reporting unintentional or inadvertent bat crime?

After all, incidents that get reported are crimes because they are intentional, but in certain cases, the disturbance of bats is not seen as criminal because there is no intent behind it.

**Detective Chief Superintendent Scott:** That statistic can be developed once we have the discussion with the technical crime recording board about whether we should be recording such things. You might get some more information from that.

**The Convener:** Finlay, do you want to ask about hunting with dogs?

**Finlay Carson:** Very briefly, convener, because the issue has been touched on quite a few times now.

My interest lies in hare coursing, the incidence of which seems to have increased; indeed, the highest number of criminal acts involve hare coursing. Is there any reason behind that, and what have you been doing to try to cut it out? As we know, a lot of other criminality is associated with those who are involved in hunting with dogs or hare coursing.

**Sergeant Mavin:** Hare coursing is an increasing problem across the UK in general; it has even been highlighted on national television. We have noted its increase in Scotland, but such incidents can almost be of the hit-and-run variety. People can be in one place, committing a crime, and away again in five minutes, and then three hours later, they will appear somewhere else in a completely different division.

We are undertaking with the national wildlife crime unit a piece of work looking at all the incidents that have been reported and the crimes that have been recorded, and we hope to take that forward in the coming year and look at more targeted action. However, I would point out that although the incidence of such activity has increased for us, the increase has not been as significant as it has been elsewhere in the UK. I believe that Lincolnshire alone, either last year or the year before, reported 2,000 incidents; when you compare the size of that force with that of Police Scotland, that suggests that they are suffering greatly from this. We have not yet seen the levels of intimidation that have occurred down south—it has certainly not been reported to us—but we are aware that that sort of thing has happened elsewhere.

We have had successes; people have been reported in East Lothian and we would like to see that case come to court eventually. We will look to take the approach forward, but there are difficulties in retaining dogs. Significant costs can be incurred, which we are not able to claim back even if we have a successful prosecution. We have to consider such things, and there may be

the potential for legislative change. We have discussed clawing back some of the costs of taking dogs away from people, such as for kennelling fees, but that is possibly outwith the Sentencing Council.

**Detective Chief Superintendent Scott:** England now has retention notices under which there is a requirement on the accused to look after the dogs until the end of the criminal justice process. That places the burden on the accused; the dogs are removed thereafter if the outcome is confiscation, so that is one aspect that could be considered. There are definitely cost challenges, as Andy Mavin said.

**The Convener:** Do Police Scotland structures allow you guys to take a co-ordinated approach across a few divisions? Hare coursing has developed quite considerably in my neck of the woods. Are you able to co-ordinate the activity of wildlife crime officers and others to focus on the issue?

**Sergeant Mavin:** That has probably occurred more often in this area than in others. The full-time wildlife crime liaison officers across a number of divisions work together so that they all focus on hare coursing at the same time, often partnering up to respond to incidents. We will continue to consider that approach in the future.

**Detective Chief Superintendent Scott:** Hare coursing happens predominantly in the east coast area because it is flatter and there are better arterial routes for vehicles to make off more quickly. We are conscious of the situation and analytical work is going on with the national wildlife crime unit to look at the whole picture and to co-ordinate our responses better. There have been one or two notable successes, including one after a report of hare coursing when we caught those involved even though they went somewhere else to do it. Hare coursing is definitely a priority for us this year.

**Laura Buchan:** We spoke earlier about the development of the law. To that reference to notable successes, I would add that the conviction and imprisonment earlier this year was the first hare coursing case in Scotland where DNA evidence was significant. We were able to link DNA evidence for a dog to the coursing, which is progress in the steps that we can take to target that crime.

**The Convener:** Donald Cameron wants to discuss poaching.

**Donald Cameron:** I refer to my entry in the register of members' interests as a farmer and landowner—I apologise that I have not done so until now. I thank you for pointing me to appendix 2A, which contains some of the information that I asked about earlier.

Deer poaching has been an issue in the Highlands and Islands for a long time. Mr Mavin made a remark earlier about co-ordination. Deer management groups exist across Scotland and I know that police officers occasionally attend local groups in my region. Is that model useful for dealing with poaching? Do you see that kind of interaction and interface between gamekeepers, estates and land managers and the police being useful for poaching, raptor persecution and more general wildlife crime?

**Sergeant Mavin:** Engagement with all partner organisations is useful. I go to lowland deer network meetings and I am regularly in contact with the network. My colleagues meet deer management groups and others, and we engage regularly, whether that is with the Scottish Gamekeepers Association, the British Association for Shooting and Conservation or the RSPB. We need eyes and ears in rural environments, so we have to have that approach and we speak about the issues constantly. However, it is often missed that wildlife crime does not occur just in rural environments; it also occurs in urban environments.

12:15

One thing that is happening at the moment is that up in the Highlands and Islands—as you may be aware—the wildlife crime liaison officer goes to speak at gamekeeper training courses so new gamekeepers receive an input from the wildlife crime liaison officer. Part of that is about telling gamekeepers about their responsibilities, but it is also about engaging with them so that they will then be in a position to provide us with information. As we say to them, as well as to the water bailiffs on the rivers and so on, they are the people who are out at night and who can provide us with information, not just about wildlife crime but about all forms of criminality. By building up that relationship in relation to the wildlife crime element we can also receive information about all sorts of other crime that is occurring in rural environments.

**Donald Cameron:** I did not know that—I am very pleased to hear it.

**The Convener:** I will wrap up the session with a final question on an issue that was brought to my attention fairly recently and which caused me some surprise. We have talked about gamekeepers and land managers being held to account by the law, and rightly so, but there has been an issue in the glens of Angus where legally sited traps have been sprung maliciously and interfered with. I was quite surprised to learn that that is not a breach of the law in any way. It is very frustrating for the land managers and the gamekeepers. Can nothing be done about that?

**Sergeant Mavin:** There is no specific legislation about interfering with traps. I think that the issue was looked at many years ago, when the legislation about snaring and so on was being introduced. I think that it was felt at the time that the legislation covered those types of issues, but in our opinion it does not.

Certainly, there is nothing in the legislation that talks about interfering with a trap. We have raised the issue a number of times and unfortunately there is nothing specific. However, I can say that we are not really receiving significant reports about such incidents. Some organisations have suggested that the number of incidents is far higher than the level of reporting that we are getting. However, the BASC undertook a survey a couple of years ago, which suggested that the levels were not as high as were being talked about in the public domain.

**The Convener:** But you are obviously sighted on the frustration that is felt—

**Sergeant Mavin:** Absolutely, and if there is an opportunity for us to investigate and to find somebody responsible for a criminal offence, we will do that.

**John Scott:** I have a question on a related subject—the illegal release of beavers in the Tay catchment area. What progress have you made in investigating that?

**Sergeant Mavin:** It is a question that has been raised many times. It comes down to proving who was responsible for the illegal release and I do not think that we have ever been able to establish that. Despite much speculation, I do not think that there is actually any evidence of who may have released the beavers illegally.

**The Convener:** I thank you all for attending. It has been useful to explore the statistics for this year and wider issues.

At its next meeting on 23 January, the committee will hear evidence from various stakeholders on the environmental implications for Scotland of the UK leaving the European Union. The committee will also consider the Electricity Works (Environmental Impact Assessment) (Scotland) Amendment Regulations 2017—Scottish statutory instrument 2017/451.

**Detective Chief Superintendent Scott:** For the committee's information, this is my last attendance here because I have been asked to lead a couple of transformation projects for Police Scotland. The national tactical lead for wildlife crime will be Detective Chief Superintendent David McLaren, who was involved in looking at wildlife crime when he was in the Forth Valley area, so he has good experience. There are apologies from Assistant Chief Constable Johnson, who was here last

year—the strategic portfolio has now moved to ACC Gillian MacDonald. Again, because that is a very recent change, she was unable to attend. However, you will have Mr McLaren here next year. Andy Mavin was here for the first time today but I think that he is an invaluable resource to have.

**The Convener:** We look forward to working with them and I wish you good luck in your new post.

12:19

*Meeting continued in private until 12:48.*



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