

# **The independent review of the prosecution activity of the Royal Society for the Prevention of Cruelty to Animals**

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Independent Reviewer:  
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## ***Acknowledgements***

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**Abbreviations and acronyms**

<i>ACPO</i>	<i>Association of Chief Police Officers</i>
<i>AHVLA</i>	<i>Animal Health and Veterinary Laboratories Agency</i>
<i>AWA 2006</i>	<i>Animal Welfare Act 2006</i>
<i>CILEX</i>	<i>Chartered Institute of Legal Executives</i>
<i>CLO</i>	<i>Chief Legal Officer</i>
<i>CMHs</i>	<i>Case Management Hearings</i>
<i>CPIA 1996</i>	<i>Criminal Prosecution &amp; Investigation Act 1996</i>
<i>CPS</i>	<i>Crown Prosecution Service</i>
<i>DEFRA</i>	<i>Department for the Environment, Food and Rural Affairs</i>
<i>EFRA</i>	<i>Environment, Food and Rural Affairs</i>
<i>LACORS</i>	<i>Local Authorities Co-ordinators of Regulatory Services</i>
<i>LACS</i>	<i>League Against Cruel Sports</i>
<i>NGO</i>	<i>Non-Governmental Organisations</i>
<i>PCMs</i>	<i>Prosecution Case Managers</i>
<i>POWA</i>	<i>Protect Our Wild Animals</i>
<i>PNC</i>	<i>Police National Computer</i>
<i>RCVS</i>	<i>Royal College of Veterinary Surgeons</i>
<i>RSPB</i>	<i>Royal Society for the Protection of Birds</i>
<i>RSPCA</i>	<i>Royal Society for the Prevention of Cruelty to Animals</i>
<i>RSPCA Council</i>	<i>RSPCA Council of Trustees (a body of currently 21 persons elected democratically from the membership)</i>
<i>SVS</i>	<i>State Veterinary Service</i>
<i>YOTs</i>	<i>Youth Offending Teams</i>

*Note: During recent years the position of the Senior Lawyer within the RSPCA has been known variously as Director of Legal Services, Chief Legal Adviser and Chief Legal Officer (current). To avoid confusion the latter term has been used throughout this report.*

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## Foreword

Since being founded in 1824, the RSPCA has established itself as the leading organisation in animal welfare in England and Wales and its influence has spread world-wide. The many facets of its activities include direct involvement in animal welfare, research, education and campaigning. But from its earliest days enforcement of the law has, as my terms of reference set out, been an integral component of its strategy for fulfilling its charitable purposes of promoting kindness and preventing and suppressing cruelty to animals. The Council's invitation to undertake a review of the Society's prosecution activity was therefore a great privilege.

Although the focus for the review was the Society's role as a prosecutor and the concerns that had been expressed about this function, there were many strands to those issues – some going to matters of principle and others relating to the quality of decision-making and the management of cases. It quickly became clear that they had to be examined in the wider context of the overall arrangements for the enforcement of animal welfare legislation in England and Wales. It was also essential to distinguish between those criticisms, mainly of longer standing, that went to the overall quality of RSPCA enforcement activity and those of more recent origin that were more specifically directed at its prosecutions relating to hunting activity.

The current role of the RSPCA has evolved largely outside the mainstream criminal justice system and owes more to history than any strategy. The unstructured and haphazard environment within which the RSPCA operates now means that the RSPCA role is poorly defined and its relationships with the public bodies with whom its work overlaps are unclear. Despite this and extensive criticism in the media and elsewhere, there can be no doubt that the RSPCA makes a major contribution and brings expertise that is too valuable to be lost. It also continues to enjoy substantial public support. Nonetheless, there are significant weaknesses. In particular, its prosecution role has failed to develop to accord with contemporary expectations of transparency and accountability – issues recognised by my terms of reference. It therefore needs to adapt.

My report therefore presents challenges not only to the RSPCA but also to government and the public authorities who share the responsibility for animal welfare. There is at present an undue readiness on their part to opt out of tackling animal welfare issues on the basis that the RSPCA will then pick up the task – and the cost. Its main recommendations propose that the Society seeks to re-position itself so as to achieve a close and more structured relationship with government and the other relevant public authorities on the basis that its role is formalised within a framework that provides the necessary accountability and transparency – with the Society being afforded the status and authority it needs to discharge an enforcement role in a manner that conforms with 21<sup>st</sup> century expectations. Such partnership would be consistent with arrangements found in other sectors and would not compromise the Society's status as an independent charity.

Although this re-positioning is the most vital there are other steps the RSPCA can and should take to strengthen its handling of investigation and prosecution work; and these are within its own gift. Its history of achievement over 190 years shows it has the capacity to change and adapt. My report is intended to signpost the way. Without such change, the Society will be vulnerable to those with a very narrow agenda that is not founded on legitimate concern.

**Stephen Wooler**

# 1 EXECUTIVE SUMMARY

1. The Council of the Royal Society for the Prevention of Cruelty to Animals (RSPCA) decided on 12 December 2013 to commission a review of the manner in which the RSPCA discharges its prosecution role. It provided the following terms of reference:

“Acknowledging that the RSPCA regards the prosecution of animal welfare offences in appropriate cases to be an integral component of its strategy for fulfilling its charitable purposes of promoting kindness and preventing and suppressing cruelty to animals, to review the RSPCA’s arrangements for deciding whether to instigate private prosecutions on behalf of the RSPCA with particular regard to:

- (a) decisions taken whether or not to prosecute; and
- (b) the subsequent conduct of any criminal proceedings in relation to alleged offending;

and to report on how far these accord with the standards of a reasonable, competent and objective prosecutor; to consider and report on concerns expressed about the RSPCA’s prosecution function; and to identify any areas for improvement and make recommendations as to any changes the RSPCA should make or seek to bring about to achieve that improvement.

In doing so, the Reviewer shall take into account the expectations and implications arising from the RSPCA’s charitable status, including the relationships between its charitable purposes, the charitable benefits flowing from prosecutions and the prosecutorial assessment of wider public interest.

The context for assessment is the Society’s position as a private prosecutor conducting the majority of animal welfare cases in England and Wales. The report should strengthen public accountability and transparency for this work. Although the review does not extend to the RSPCA’s investigative function, it should examine any such matters that have a bearing on the conduct of any subsequent prosecution instigated by the RSPCA.”

2. It quickly became apparent that many of the rubbing points stem from a lack of structure and cohesiveness in the overall arrangements for the enforcement of animal welfare legislation. This made it impossible properly to address issues relating to the RSPCA’s prosecution activity without looking at its wider operating environment. The report sets out the extent to which the RSPCA needs to re-position itself and revise its approach to reflect a changed environment and meet contemporary expectations, including transparency and readiness to account. Some of what is proposed can be achieved by the RSPCA itself; but important elements will be dependent on support and collaboration by government and public sector bodies.



## **Background to and the approach of the review**

3. The RSPCA is a charity with a long prestigious history. It was founded in 1824 and received royal patronage in 1840. In addition to a wide range of other activities, it has a long history of prosecuting animal welfare offences. Despite lacking any official status (its inspectors have no statutory or common law powers) the RSPCA is very pro-active as a law enforcement agency and in practice operates as a specialist (private) police force with an associated prosecution role. It also operates in an unusual environment in that there is no public body within central or local government that has overall responsibility for the enforcement of animal welfare law.
4. The RSPCA's investigation and prosecution work combined with its campaigning and commercial activities along with other factors to attract significant criticism over some years including in the course of the Parliamentary proceedings leading to enactment of the Animal Welfare Act 2006. Public voicing of such criticism reached a crescendo after the RSPCA's prosecution of the Heythrop Hunt. In January 2013 Mr Simon Hart MP initiated a debate in the House of Commons about prosecutions brought by the RSPCA. The Charity Commission also received complaints about the campaigning and prosecuting activities of the RSPCA although these did not lead to any regulatory action.
5. HM Attorney General responded to the Parliamentary debate and subsequently suggested there could be advantage in an independent review although he stressed that it was a matter for the RSPCA Council.
6. Although the role of the RSPCA's Prosecutions Department was the main focus for the review, it also addressed wider strengths and weaknesses including its structure (compatibility with the Philips Principle), the development and application of policies and the management of its case work – including the publicly voiced criticisms. Addressing these matters inevitably required the review to consider the implications of the RSPCA's operating environment, in particular the combination of the reliance placed on it for law enforcement and the absence of any official status or authority. This in turn raised important issues about the relationship between the RSPCA and the police service and the form that assistance should take when the RSPCA wishes to gain access to premises, seize animals or question individuals. The report therefore inevitably extends beyond matters that relate solely to the Prosecutions Department and the RSPCA itself.

## **Overarching findings**

7. Since the RSPCA was founded in 1824, its combination of direct welfare action, campaigning for law reform and enforcement of those laws has advanced animal welfare beyond anything its founders could have hoped for or dreamed of. During the course of the review RSPCA inspectors were involved in several high profile responses to welfare emergencies. Unsurprisingly, the responses to public consultation demonstrate a continuing high level of public support for the RSPCA despite recent criticisms. Good organisations continuously review their own performance and adapt to change, listening to and learning from feedback including criticism and complaints. It is in that spirit the RSPCA Council set up this review.
8. There are several aspects of the RSPCA's enforcement work where change is necessary in order to bring the Society in line with 21<sup>st</sup> century public expectations and to maintain confidence, particularly by providing accountability and improving transparency. It also needs to be more responsive to the increasing incidences of

complaints about some actions taken by the Inspectorate and concerns that some of its prosecutions have been inappropriately focussed where little would be achieved; and sometimes on some of the most vulnerable elements of society. The combination of criticism and a relentless media campaign has had an adverse, and in many respects disproportionate, impact on the Society's standing. Some changes of structure and ethos are needed within the organisation, although many of the problems identified by this review stem from the unsatisfactory infrastructure for enforcement of animal welfare law generally and this needs to be addressed in collaboration with others – government in particular.

9. Contemporary expectations, as reflected in judicial dicta, are that the power to prosecute should be exercised:
- in an impartial and objective manner in accordance with policies that are clear and transparent;
  - free from the interference of executive government or other extraneous influence; and
  - by bodies that are accountable.

The RSPCA is not a public body but the scale of its enforcement role and its relationship with the police and other bodies mean that it is *de facto* a prosecuting authority and should therefore meet the same standards.

10. Two problems arise: first, the Society's role in relation to enforcement of animal welfare law is insufficiently defined for it to develop an effective enforcement strategy. An area of particular sensitivity is its involvement with animal sanctuaries and rescues, some run by other charities that are not regulated. Secondly, any enforcement strategy must take account of the Society's campaigning, commercial and *de facto* regulatory roles that do not always sit comfortably with the role of prosecutor. There is an inevitable tension between the RSPCA's status and its very specific objectives as an animal welfare charity and the broader public policy considerations relevant to law enforcement. This is compounded by the 2006 extension of the ambit of the criminal law and the absence of any powers of official status on the part of the RSPCA relating to enforcement.
11. The RSPCA prosecutes approximately 80% of cases relating to animal welfare law. There is no other body which could take on the RSPCA's current role and its contribution is too valuable to be lost. The Society should seek to re-position itself through dialogue with government aimed at putting its work on a more structured and more publicly accountable basis through the conferring of proper authority and powers on the RSPCA as regards both investigation and prosecution. This should be within a framework of checks and balances including possibly a form of external scrutiny.
12. The RSPCA has historically been concerned to avoid any step that might compromise its independent charitable status. The review believes that the RSPCA should in future work more closely with government and public sector counterparts; this would not constitute a risk and would accord with the growing recognition of the value of partnerships as between the public, private and third sectors.
13. This re-positioning and other considerations may also require some self-imposed circumscription of the Society's prosecuting role if it is to avoid conflict with its commercial and campaigning activities. Specifically these would relate to cases involving animal sanctuaries and rehoming centres; cases relating to organisations

that have a commercial relationship with the RSPCA (e.g. Freedom Food accredited farms) and some hunting cases.

14. Such change would need to be reflected in more structured arrangements for governance and internal accountability that balance respect for independence in relation to prosecution policies and decision-making with the responsibilities of the trustees and in particular for ensuring that there is a charitable benefit flowing from all the Society's activities including the Prosecutions Department. Governance arrangements should also ensure more effective handling of complaints about the RSPCA's conduct. An independent element should be introduced for those complaints that cannot otherwise be satisfactorily resolved.
15. At the operational level, the Prosecutions Department performs well in terms of its case outcomes with 88.6% of persons charged in 2013 being convicted and 74.1% of offences charged resulting in conviction. The RSPCA enjoys good standing before the courts for the effective manner in which its cases are presented. Its staff are well motivated, conscientious and highly committed.
16. Nonetheless, there should be a strengthening of the Prosecutions Department whose key role at present is decision-making and the instruction of external solicitors for the care and conduct of cases. It should be reconstituted as a fully-fledged prosecuting office through the creation of an in-house capacity for end-to-end management of casework with more qualified lawyers, so as to strengthen the independent element. Prosecution decisions would become the responsibility of qualified solicitors and barristers. A more flexible business model could be more flexible and cost-effective whilst also creating new opportunities for Prosecution Case Managers to have a more hands on approach to some cases, including attendance at court to support counsel.
17. Matters relating to the RSPCA prosecution in 2012 of the Heythrop Hunt and other prosecutions under the Hunting Act 2004 were subsidiary to the wider concerns.
18. The starting point as regards such cases is that the law is the law until Parliament decides otherwise and should be upheld. The RSPCA found itself reacting to a thoroughly unsatisfactory situation where the evidence strongly indicated that it was "business as usual" for many hunts because enforcement of the 2004 legislation had become so difficult. The Society had not previously prosecuted any such cases but there was widespread scepticism as to the commitment of the police and CPS to do so. The prosecution was envisaged as a test case to see whether the legislation could be made to work effectively. The decision to bring proceedings on that basis cannot be criticised although there was a strong element of overkill so the costs were higher than they needed to be. The review proposes that the RSPCA should adopt a revised approach to its role placing more reliance on the police and the CPS (who have primary responsibility for enforcement of the Hunting Act 2004) whilst also pressing for changes to the law that would make enforcement possible without disproportionate cost.

## Specific findings

### Strengths and weaknesses of the current enforcement arrangements

19. The current role of the RSPCA has evolved largely outside the mainstream criminal justice system and owes more to history than any clear strategy. Its prosecution role is poorly defined and has failed to develop to accord with contemporary expectations of transparency and accountability. As the system of public prosecution developed in the 19<sup>th</sup> and 20<sup>th</sup> centuries, the RSPCA stood outside that change. It now stands alone as a non-public body with a substantial prosecution function.
20. The structure of the Prosecutions Department as a self-contained unit reporting to the RSPCA's Chief Legal Officer is intended to support the underlying principle that policies and individual decisions should be free from external influence. It is quite separate from the Inspectorate organisationally. For governance purposes it comes within the purview of the RSPCA Council but that has a more reactive role and does not extend to prosecution policy or individual decisions. Consequently, there is no external accountability for the Prosecutions Department and only limited internal accountability. Many of those who have contributed to the review expressed frustration that there was no effective avenue for addressing concerns or calling RSPCA prosecutors to account.
21. From an RSPCA perspective, the strength of the present arrangement is its strong influence over the manner in which laws are implemented including those where the substance has been strongly influenced by the Society. The strength from the public (and governmental perspective) is that it is getting a free service. It is also convenient for government departments who are able to distance themselves from some of the sensitive issues involved.
22. The main weakness is the lack of accountability. It featured in the 2004 considerations of the Environmental, Food and Rural Affairs Select Committee in its pre-legislative scrutiny of what became the 2006 Act. The Committee's reasoning is unclear as to why it should be acceptable to rely on the prosecuting role of the RSPCA when it deemed inappropriate to authorise that role. The effect on the public is no less and arguably more serious in that they are subjected to unaccountable authority.
23. The present position is not in the interests in either the RSPCA or the public. But the RSPCA should not abandon its prosecution activities – although some modification may be appropriate. Instead it should approach relevant government departments with a view to agreeing a basis whereby its prosecutions role is formalised and accredited as happens, for example, in Australia. It would undoubtedly require voluntary assumption by the RSPCA of duties that attach to public prosecuting authorities in terms of accountability. The main requirements would be the development of over arching policies and offence specific guidance to be published after full external consultation; greater transparency, internal guidance and practice and procedure manuals being made publicly available; and arrangements for the effective investigation of complaints with an appropriate escalation process.
24. The RSPCA should become more a part of the wider criminal justice community. Although it is responsible for approximately 83% of animal welfare prosecutions, it is by no means the only player. The review received clear evidence that the approach to enforcement varies significantly across the various agencies which include the

CPS, local authorities and AHVLA. There is a need for consistency of overall approach even though there are different factors in play in the various sectors. It is wrong that the likelihood of an individual being prosecuted, and the approach to the conduct of proceedings should depend on the attitude (or resources) of the particular prosecuting body.

25. Arrangements for the investigation of alleged animal welfare offences are also fragmented to the point of haphazard. Animal welfare issues arise in several sectors – the main ones being farm animals; companion animals; wild animals; markets and slaughter-houses; and animals in transport. Legislation provides for enforcement mainly by local authorities and those authorised by DEFRA (for England) and the Welsh Assembly (for Wales). The police also has wide ranging powers but limited involvement – mainly confined to dangerous dogs and those offences likely to be linked to wider criminal activities.
26. What happens in practice has changed little since the Animal Welfare Act 2006 which had the effect of substantially broadening the scope of the criminal law and creating substantial uncertainty. The whole structure of the act focuses extensively on local authorities for enforcement but both investigation and prosecution powers are discretionary. Central government proceeded on the assumption that, because local authorities had general regulatory responsibility for particular types of animals in specific situations, they were the appropriate bodies to take on a greatly expanded role. In fact, research demonstrates that in significant areas the 2006 Act would be largely ineffective except for the contribution of charitable NGOs such as the RSPCA.
27. The extent of the departure from what Parliament appears to have envisaged (as judged by the empowerment of local authorities to appoint inspectors and prosecute) is stark. In England just over 60% of local authorities had appointed inspectors for the purpose of the 2006 Act. Where appointments had been made, there was relatively little focus of resources on companion animal welfare. Indeed, over 50% of county councils in England and nearly 40% of other English local authorities said that they would **always** refer such matters to the RSPCA. A further 20% of local authorities would **nearly always** refer such matters to the RSPCA.
28. The lead department is DEFRA which sponsored the Animal Welfare Act 2006 but assert that they do not “own it”. That is undoubtedly correct in so far as DEFRA cannot be expected to undertake all aspects of implementation. Nonetheless it is reasonable to expect that clear and appropriate arrangements for enforcement would be in place. There was an attempt shortly after enactment of the 2006 Act to develop a protocol setting out the respective responsibilities of the various agencies concerned with animal welfare having regard to the broadening of the criminal law. It quickly ran into the sand, largely because only the RSPCA would accept any additional burden. Enforcement remained a criticism at the time of DEFRA’s 2010 post-legislation assessment. The present position is that the Society is utilising its charitable funds to discharge what is effectively a government function but with only limited recognition or reimbursement.
29. The review recommends that the RSPCA opens discussions with the government (DEFRA) with a view to restarting the early exercise to apportion responsibility. The RSPCA should seek a concordat identifying those aspects where it is to be the primary enforcement agency and seek appointment of suitably experienced RSPCA inspectors as inspectors for the purposes of the 2006 Act. For such discussion to have any prospect of success, the RSPCA would need to consider the appropriateness of its own position as regards some activities which might be inconsistent with a formal role in investigation and prosecution.

## **The role of the Inspectorate**

30. The Inspectorate is the investigation arm of the RSPCA: what it undertakes and how it does it largely determines the scope and nature of the work undertaken by the Prosecutions Department. It is also the Inspectorate that has the greatest impact on the public. The investigative role of the Inspectorate is poorly defined and its work is not underpinned by any clear strategy. In practice, it is determined by a combination of the need to fill “the gaping hole” together with other priorities as from time to time determined by the Council. The role of the Inspectorate is therefore linked more closely than the Prosecutions Department to the wider objectives of the Society and its campaigns. This makes it difficult but even more important for the Prosecutions Department to convince observers that its decisions really are immune from the sort of extraneous factors mentioned in the Code for Crown Prosecutors.
31. It is wholly anomalous that the state appears to place such extensive reliance on a charity to enforce criminal legislation that directly impacts on the day to day lives of ordinary citizens. It is even more remarkable that powers of investigation and prosecution are conferred on public authorities who choose not to exercise them; but are not conferred on the RSPCA.
32. Such a scenario is ripe for disputes, confrontation and recriminations if an RSPCA inspector appears to have adopted a course beyond what is strictly lawful even with the assistance of police or an inspector authorised for the purposes of the Animal Welfare Act 2006. It may create an acrimonious background to any proceedings and the proceedings themselves may also be affected by impacting on the admissibility of evidence. Disputes may also extend to the continued retention of animals seized during the course of an investigation.
33. All stages of the investigation are affected by the absence of powers. RSPCA inspectors are dependent on the police for gaining access to premises and/or animals through the powers of entry vested in constables or by police application to the courts for warrants. They are similarly dependent on the police for seizure of and taking animals into possession; as well as for seizure of evidence. A particularly contentious issue may arise when an inspector wishes to interview a person about whom complaint has been made and that individual either declines to be interviewed or hands over a prepared statement making it clear that further questions will not be answered. Some inspectors may then request the police to effect an arrest under section 24(5)(e) of the Police and Criminal Evidence Act (to facilitate the prompt and effective investigation of an offence) so that RSPCA inspectors may attend the police station in order to conduct an interview in the custody suite.
34. There is a memorandum of understanding between the Association of Chief Police Officers (ACPO) and the RSPCA setting out in broadest terms the arrangements for collaboration and the principles which should be applied. There is no additional guidance from ACPO or elsewhere save that the RSPCA may have some understanding at local level although these tend to be of limited value. This appears to be a contributory factor in the increasing difficulties encountered by the operational RSPCA inspectors in obtaining assistance to check on the welfare of animals – whether by gaining access to premises, effecting seizures or obtaining search warrants. The RSPCA Prosecutions Department has responded by producing a booklet carried by inspectors entitled ‘How can I gain lawful access to help the animals?’.

The foreword to the booklet comments:

“...whether we like it or not, we must now face the fact that with the ever increasing burden on police resources, when you need to gain entry to premises to help an animal that is suffering or in distress, the police officers that you turn to will look to you for guidance on the available options more than ever before.”

35. That situation is not one of the RSPCA’s making but it does create significant risk and highlights the extent of police acquiescence. It is imperative that the RSPCA works together with ACPO to develop further operational guidance to assist constables and inspectors where the latter seek assistance in relation to possible welfare offences.
36. Issues that the guidance will need to address include:
- Police officers responding to requests by the RSPCA for assistance generally have no knowledge of the circumstances and in most cases, no knowledge of the relevant legislation. In most instances they are reliant on direction from the RSPCA as to the steps to be taken.
  - There is an artificiality in a situation where legislation vests specific powers on the police to the exclusion of RSPCA inspectors but police officers who have no intention of carrying out an investigation exercise powers of search and seizure only to hand material to a third party with no official status (the RSPCA) and with no intention of themselves acting on it. There is a particular risk if it turns out that material seized included that which should not be – collateral intrusion occurs.
  - The safeguards, built in into legislation are rendered of no value because the police subsequently accept no responsibility for the seizures and simply refer queries and challenges to the RSPCA: whose actual role is no more than baillee on behalf of the police.
37. Despite the plaudits received from many quarters, the Inspectorate does attract criticism from a range of sources. The majority of concerns expressed by respondents about the RSPCA were directed towards the investigation. Whilst some are likely to be exaggerated, similar assertions emanated from such varied sources that they cannot simply be dismissed as unfounded. Moreover, the pejorative and judgemental tone of many preface reports submitted by inspectors is consistent with what many describe.
38. There is no direct evidence but it is reasonable to infer a link between many such complaints and the absence of any official status or power on the part of RSPCA inspectors. They are dependent on a combination of charm and assertiveness to gain access to premises. They also appear in uniform and with police style titles and it would be surprising if some at least did not trade on this – leaving individuals who have co-operated possibly feeling “had over” especially if the outcome has been the calling of the police to regularise a seizure. Additionally, knowledge of the ease in which they can get the police to do their bidding may encourage inspectors to imply more authority than they have. This review was concerned mainly with prosecution activity and more in-depth consideration of these issues is a matter for the Chief Inspectorate Officer and his senior staff.

39. Although it may seem curious in the face of such criticism to propose the conferring of statutory powers on RSPCA inspectors, the best way forward is a re-positioning whereby the RSPCA inspectors are given the tools to do the job but on the basis that current gaps in transparency and accountability are closed. A key aspect of this process would be improvement of the RSPCA's own complaints procedure. Seeking such official status would bring the RSPCA more in line with counterparts in many other countries such as Scotland, Australia and New Zealand.

## **Animal sanctuaries and rescue homes**

40. The handling of animal sanctuary cases is intrinsically difficult and sensitive. Despite the "reasonable and competent person" test in the 2006 Act, there remains a significant subjective element in the context of sanctuaries and rescues when those concerned may be struggling to achieve the best they can with limited resources, skills and expertise. The resultant criticisms of RSPCA actions may be more damaging because they originate within the animal welfare community although in reality the quality of animal husbandry offered by such organisations varies from the excellent to the downright cruel.
41. There is a need for oversight of such institutions on a preventive basis but that task at present falls to the RSPCA using the blunt instrument of the criminal law – making the position doubly anomalous because the RSPCA itself operates such establishments and patronises many others. In January 2004, the Companion Animal Welfare Council (CAWC) published its 'Report on Companion Animal Welfare Establishments: sanctuaries, shelters and rehoming centres'. It concluded that such establishments should be publicly accountable for the standard of care provided and recommended regulation by a proportionate system of licensing and registration. The necessary provision was made in the Animal Welfare Act 2006 but has not been implemented.
42. An effective regime operating the sort of standards proposed by CAWC could substantially reduce the need for interventions through the criminal law. Where such intervention is necessary, the primary responsibility for enforcement should rest with the licensing/registration authority albeit with assistance from the RSPCA. This would avoid the situation whereby one charity might be appearing to regulate others and protect the RSPCA from suggestions of improper motivation.

## **Handling of complaints**

43. The Society lacks a structured and effective mechanism for considering and responding to complaints. The national complaints procedure current in March 2014 for the Inspectorate seems rudimentary and simply provides for Chief Inspectors to reply to complainants either directly themselves or through a complaints co-ordinator writing on their behalf. The question and answer document also refers to the possibility of a more senior member of staff if the individual remains dissatisfied. There is, however, no guidance to ensure that investigation is thorough and impartial. There is no provision at any stage for an external element. Nor are there any arrangements for analysing the outcomes (with a view to learning) and no information was available as to the outcomes themselves. There is an urgent need for a more effective complaints procedure with an independent element.



## How the RSPCA discharges its prosecution functions

44. The Prosecutions Department at present comprises an Acting Head of Society Prosecutions and a flexible complement of Prosecution Case Managers who are paralegals together with support staff and a Data and Costs Recovery Team. The Acting Head is not a solicitor or barrister although his predecessor was and the Society's intention is that the permanent appointee should be so qualified. The structure is intended to separate the investigation process from prosecution decision-making.
45. Critics assert that the role of the Prosecutions Department is inappropriate because the RSPCA is:
- an organisation that both investigates and prosecutes; and
  - has other roles that are incompatible with its position as a *de facto* prosecuting authority.

The current arrangements do achieve separation of functions insofar as prosecution decisions are not taken by those who investigate – but not in the same way as by the police and Crown Prosecution Service in different organisations. That of itself is not an insuperable impediment since many organisations combine investigation and prosecution. The key requirement is the separation of the two functions.

46. The more important considerations relate to the second head of criticism and the need for decisions to be taken objectively and impartially and free from any extraneous and improper influence; and for that to be seen to be so. These are more problematic because few other prosecutors have the level of campaigning and lobbying activity that the RSPCA does. Further potential for calling into question the objectivity and impartiality of RSPCA prosecutions arises from its open stance that some public authorities (including the courts who are frequently encouraged to tougher sentencing) are insufficiently robust in their enforcement of animal welfare laws.
47. This gives rise to a situation where, on any objective basis the RSPCA is best placed to undertake most of the prosecution work in terms of resources and technical expertise, but is compromised to some extent by its other roles. The difficulties can be overcome by some strengthening of the professional element within the Prosecutions Department and by moving incrementally to a position where all prosecution decisions are taken by or under the supervision of qualified solicitors and barristers. Some categories of case should be referred elsewhere. Such a change would also address some of the cultural issues identified within the Prosecutions Department. The oversight of experienced prosecutors who have forensic experience at the coal face would also assist in managing some of the difficult relationships with the more challenging defence practitioners who specialise in defending animal welfare cases.
48. On the operational level the Prosecutions Department performs well in terms of its case outcomes with 88.6% of persons charged in 2013 being convicted and 74.1% of offences charged resulting in conviction. The Prosecutions Department enjoys good standing before the courts for the effective manner in which its cases are presented. Its staff are well motivated, conscientious and highly committed.
49. A striking feature of the review has been the level of mistrust between PCMs and those who defend which can at times seem disproportionate. At the time of this

review the Chief Legal Officer was engaging with defence practitioners with a view to improving relationships.

50. The RSPCA has publicly espoused the Code for Crown Prosecutors. However, the document setting out the 'RSPCA approach to Crown Prosecution' is very basic. It is not accompanied by any supplementary guidance indicating how RSPCA prosecutors will weigh the factors most likely to arise in animal welfare cases; and it is not supported by any offence specific policy statements.
51. The assessment of the evidence was satisfactory in 90% of the cases where it was relevant. There were rather more cases where the review had concerns about the application of the public interest test. In nine cases within the RSPCA sample, individual prosecutions either did not seem necessary in the public interest or were commenced without full consideration.
52. It does not follow automatically that, because the public interest requires a prosecution, there will be a charitable benefit flowing from the RSPCA undertaking it. Whilst that is likely in the vast majority of the cases it deals with, Prosecution Case Managers need to be alert to those where the likely cost, novelty or other special factor requires more specific consideration of whether it is in the best interest of the charity to take the case forward. This is a topic that would benefit from guidance from the Prosecution Oversight Group.
53. During the House of Commons debate in January 2013, the Attorney General drew attention to the right of the Director of Public Prosecutions (as Head of the CPS) to intervene in any criminal proceedings on the basis that it offered a safeguard to defendants who could request the CPS to intervene in RSPCA cases if they felt that proceedings were unjustified.
54. There has been no case where the CPS has intervened to discontinue all charges but on two occasions the CPS has intervened and discontinued the main charges. There is a lack of clarity around the processes associated with such applications. It is not the practice of the CPS to provide to the RSPCA a copy of the request or details of the grounds of the application. It is therefore unsighted when responding to the CPS as to why the prosecution is alleged to be objectionable. It is important to develop a procedure whereby the CPS, if it believes intervention may be appropriate, affords the RSPCA the opportunity to address any concerns before any decision is taken and implemented. The Chief Legal Officer should make an urgent approach to the CPS with a view to agreeing a protocol.
55. A significant proportion of cases viewed involved numbers of charges which seemed disproportionate to the complexity and included defendants who did not have primary responsibility for the animals or the misconduct although they may have assumed some – possibly by assisting the owner. There is always a balance to be struck. The Prosecutions Department does not have any formal charging guidance to assist PCMs in presenting the case in the most precise and straightforward manner. This aspect of its work would benefit from further and more detailed consideration in order to identify an approach to charging which would be more straightforward while continuing to reflect the gravamen of the offending and not falling foul of the rules relating to duplicity.
56. The time case files take to reach the Prosecutions Department is too long and in most cases significantly in excess of the 21 day time limit from the time the case is commenced. Reports from inspectors usually contain all relevant evidence although

more information to assist the public interest aspect of decision-making is desirable. The structure of reports could be more user-friendly. Against this, the overall management of cases through the system is more effective and thorough than that found in most prosecuting authorities including the CPS. Case ownership by the PCMs is strong but recording of decisions and actions taken is poor. Oversight by the Head of Prosecutions is very light touch and the overall ethos does not provide effective internal accountability. The strong individual case ownership of PCMs persists even after cases have been assigned to an external solicitor for prosecution. They work on a strict solicitor/client relationship according to instructions given by the PCMs and are expected to report each stage of the process and take instructions on all significant decisions.

57. Prosecutors (including the RSPCA) of offences under the Animal Welfare Act 2006 benefit from a special regime instead of the usual six-month time limit imposed by section 127 of the Magistrates' Courts Act 1980. Section 31(1)(b) of the 2006 Act stipulates that proceedings must be brought within three years of the offence and within six months of the date when "the evidence which the prosecutor thinks is sufficient to justify the proceedings comes to his knowledge". Section 31(2)(a) makes a certificate by the prosecutor conclusive evidence of the date when that arose. In the interests of consistency, the review recommends that such certificates should be signed by the Chief Legal Officer or the Head of Prosecutions.
58. The RSPCA approach to retention of case animals seems both rigid and expensive and gives rise to numerous complaints. The Prosecutions Department seems routinely to take decisions which seem in law to be for the police. PCMs assert that the police will not take them.
59. Prosecution disclosure has proved one of the most intractable problems in the criminal justice system for the past three decades. In the magistrates' courts there has been a constant struggle to strike the right balance between, on the one hand a system of full and effective disclosure and, on the other hand, proportionality in the construction of prosecution case files and the obligations placed on the prosecution. The most recent development has been publication in May 2014 by the Judicial Office of a report of a review commissioned by the Senior Presiding Judge.
60. RSPCA procedures for prosecution disclosure differ from those operated by the police and the CPS but the review is satisfied that, subject to one modification, they would meet the current requirements. However, implementation of the recommendations of a report commissioned by the Senior Presiding Judge published in May 2014 by the Judicial Office will require additional change. The review recommends three changes should ensure compliance with both current and future requirements. They are:
  1. The investigating inspector should prepare a list of unused material which excludes that which it is expected that the prosecution will rely upon; and keep that list updated throughout the proceedings to reflect additional material and other changes in circumstances.
  2. Certification as to the existence of disclosable material should be carried out on the basis of a review which occurs at the point where a not guilty plea is indicated.
  3. The prosecuting solicitor should be provided with a copy of the sensitive material or a description sufficient to enable him or her to discharge the duty of continuing review.

61. Although the practice of certification being undertaken by the PCM differs from that pertaining elsewhere, it does have advantages in that the PCMs have more experience of the handling of such issues than individual inspectors whom each conduct a relatively small number of cases per year.
62. The review did receive adverse comments about prosecution disclosure but the experience of the Reviewer is that the incidence was no more than those routinely levelled at other prosecutors. As to the effectiveness of the RSPCA approach, the Reviewer would not have been able without disproportionate effort and resources to drill down into individual criticisms. Responsibility for compliance with both the initial duty of disclosure and the continuing duty rests firmly with the external solicitors responsible for the conduct of prosecutions. The RSPCA responsibility is to ensure that all potentially disclosable material is available to them. In most cases details as to the handling of disclosure issues would only be found on the working papers of the external solicitors and counsel which are not ordinarily returned to the RSPCA.
63. There is scope for beneficial change to the Prosecutions Department's business model and the manner in which it uses external lawyers. There are sound reasons of principle outlined earlier for the RSPCA to move incrementally to a position whereby all prosecution decisions are the responsibility of solicitors or barristers. Although that would entail additional expenditure on the staffing budget the review also believes that it would be cost-effective for the Prosecutions Department to build an in-house capacity for end-to-end conduct of cases and management oversight of the overall caseload. Consideration should be given to a more flexible business model enabling cases to be handled in the manner likely to be most cost effective for the particular case. The options include:
- continued use of a local solicitor for "whole case conduct" as at present but on the basis of a more uniform structure for remuneration;
  - in-house preparation by an RSPCA prosecutor or PCMs with reliance on in-house prosecutors to conduct proceedings in the magistrates' courts where the nature of the case and geographical (cost) considerations make this suitable;
  - in-house preparation by PCMs with counsel instructed to cover initial and adjourned hearings including case management hearings. The PCM would attend trials.

More detailed analysis of workflows and costings are required in order to develop a full business case. At the very least the arrangements would need to be self-financing but the current level of costs suggests significant scope for savings. Other advantages could include increased development opportunities for PCMs; closer oversight by senior managers in relation to high profile and sensitive cases; as well as providing paralegal staff with greater feel for cases through direct involvement with their ongoing management and attendance at court.

64. Consideration should also be given to arrangements for oversight of the Prosecutions Department based on a group which might be known as the Prosecution Oversight Group which could be chaired by the Chief Legal Officer and comprise the Head of Prosecutions Department, two members of the RSPCA Council, two external members with relevant professional experience (possibly one lawyer and one veterinary surgeon) together with the Chief Inspectorate Officer. An outline of how such a group might work is contained in the report.

## **Veterinary evidence**

65. An aspect of case management that would benefit from attention both within the Inspectorate and the Prosecution Department is the gathering and deployment of veterinary evidence. There is scope for a greater role on the part of the Society's Chief Veterinary Officer in guiding three strands of work:
- the establishment of a panel of accredited veterinary practitioners (with known specialisms where practicable) to provide a service to inspectors on the basis of an agreed service level and associated fee structure;
  - an approach to the Royal College of Veterinary Surgeons with a view to developing a common standard or guidance on the approach to assessment of suffering;
  - the development of a policy as to the extent of the Society's reliance on case vets as expert witnesses and as to the circumstances in which further expert evidence should be sought.
66. Suffering is a key issue in most cases. The absence of any binding legal definition or one adopted by the veterinary profession is compounded by the absence of any common approach to assessments of suffering. Some vets were clearly more cautious than others. Some would give a bare opinion whilst others would outline the symptoms and other factors leading to the assessment. Unlike some other issues (e.g. emaciation where body score techniques may be invoked) there was no commonality to the approach nor apparently a commonly recognised professional standard. The outcome tended to be for individual vets to adopt their own approach as to what constitutes suffering and expert evidence often reflected no more than personal opinion. So long as this situation prevails, cases where unnecessary suffering is in issue are likely to prove lucrative for lawyers and forensic veterinary witnesses and a source of ongoing contention and mutual criticisms.

## **Costs**

67. The costs associated with RSPCA prosecutions are substantially higher than those in cases handled by the statutory prosecutors for two reasons: first, the inclusion of investigative costs within the prosecution costs; second, the reliance on external lawyers.
68. The review is satisfied that there is scope for savings although they cannot readily be quantified. The absence of any standard rates for external lawyers means that the Society is in many instances paying a much higher sum for the same service compared with another provider. Fees paid to counsel often seem in many instances to be above the market rate. The RSPCA cannot therefore be sure that it is obtaining value for money. Even so, its costs will inevitably remain higher. They have attracted comment from the senior judiciary as well as legal practitioners who described the resultant pressure on defendants to plead guilty. These considerations emphasise the importance of bearing down on costs at all stages. The potential pressure on defendants (who may genuinely believe they are not guilty) by being at risk of costs should not be lightly dismissed. A wider consideration is the extent to which individuals should face such different levels of claim depending on which agency has prosecuted.

69. The RSPCA Council must therefore have regard to the reputational as well as the financial implications of the level of costs involved in RSPCA prosecutions. As regards the latter, the point on which they need to be satisfied (in terms of charitable benefit) is that the costs to the charity is justified because it can deliver more effective enforcement than the public authorities can (or are prepared) to do. In the final analysis, that is more likely to come down to the question of proportionality as opposed to a 'yes' or 'no' answer.

## **Management and governance**

70. Sound governance for prosecution functions within the public sector requires a careful balance between individual decision-making together with prosecution policy making and proper accountability. That accountability must resist the pressures of interest groups and the fickleness of public opinion/media whilst remaining sensitive and responsive to public underlying concerns. For the RSPCA the position is complicated by its charitable status and the additional considerations which flow from it.

71. The RSPCA Council, as Trustees of the Society has legal responsibilities for the overall activities of the Society and the manner in which it deploys its resources. For present purposes they are:

- ensuring that there is charitable benefit flowing from all the Society's activities including prosecutions;
- that its activities are affordable;
- that its activities work to enhance and not diminish the reputation of the Society;
- that its activities support its wider external relationships, including with Government.

Trustee membership of the Prosecution Oversight Group (mentioned earlier) would enable a more effective discharge by the trustees of their responsibilities.

72. The report contains recommendations elsewhere for strengthening of oversight and accountability within the Prosecutions Department. The proposals require the RSPCA to review the management information collected in relation to prosecutions. At present it focuses on prosecutions outcomes and whilst that is fundamentally right, it should be supplemented by management information relating to reasons for withdrawal/discontinuance of cases; timeliness of the different stages of cases and the costs of cases. The value of the management information suggested is to enable trends to be monitored and changes investigated.

## **Complaints generally**

73. The need for an effective complaints procedure is discussed earlier in this report in relation to the Inspectorate where it is of greatest relevance. It is not however confined to the Inspectorate and work to develop an effective regime for investigating and responding to complaint should aim to produce a system that can be adopted universally across the Society.

## **Communication**

74. The RSPCA Council of Trustees would be right to infer from this report that there are many issues on which the RSPCA has a need to listen more closely to feedback about its approach and performance.
75. Publicity is very important for the RSPCA as a whole. The organisation is reliant on donations to carry out all its functions and cannot hide this. The work of the Prosecutions Department is valuable to the Society in this respect because it maintains its profile and some of the prosecutions are useful in reinforcing important messages to the public.
76. But publicity is an area where great care is needed on the part of prosecutors. Whether seeking to deliver particular messages or responding to enquiries, it is important that the tone remains consistent with the professional impartiality and objectivity expected of prosecutors.
77. It is unfortunate that some press statements have reflected some of the RSPCA's campaigning interest. From time to time press releases relating to prosecutions have been issued carrying what are routine logos/flyers soliciting donations. This would not have the approval of the Prosecutions Department. Even though unintended, the wrong impression can be created.

## **Conclusions**

78. It would be easy to allow the unsatisfactory aspects of these findings about the RSPCA's investigation and prosecution activity to block the positive – which is also present in good measure. The RSPCA has carried on prosecutions to great effect for over 190 years. Despite the stinging criticisms of a protracted media campaign, it retains extensive public support. The reality is that society depends on the RSPCA to enforce a difficult aspect of the law. Even so, the current structures are outmoded. The RSPCA can no longer expect to operate as a specialist police force with an associated prosecution function without appropriate arrangements for accountability and transparency.
79. The RSPCA role in enforcement of animal welfare law needs to become part of a more coherent framework working rather more in partnership with the public authorities. It needs its role to be recognised and to be given the appropriate powers. Part of the accountability will be a more consultative approach with the public so that its policies and procedures are more attuned to the public on whose support it depends. It will also need to tailor its prosecution role to avoid any perception that the Society's other roles introduce inappropriate and extraneous factors into its decision-making and the conduct of cases. It must be more responsive to the feedback it receives and resist any inclination to dismiss criticism out of hand as unfounded.
80. The review cannot stress too strongly the crucial role that Government has in this. The RSPCA needs its support in discharging what is to all intents and purposes a public function. The fact that enforcement of animal welfare law is split between so many agencies is itself a reason for more structured and better co-ordinated arrangements so that all have a broadly similar approach and standards – allowing also for the undoubted differences that do also exist.

81. All this represents a substantial challenge but one that is well within the ability of an organisation that has achieved so much since its inception. The body of this report and its recommendations are intended to signpost the way forward.

## **Summary of recommendations**

### ***Overview of the RSPCA role: strengths, weaknesses and the need for change***

1. *The RSPCA should open a dialogue with HM Government (DEFRA, the Ministry of Justice and the Attorney General's Office) seeking the development of a concordat placing the RSPCA's investigation and prosecutions activities on a formal basis. It should be based on the creation of arrangements for accountability and greater transparency and include the appointment of suitably experienced RSPCA inspectors as inspectors for the purposes of the Animal Welfare Act 2006.*

### ***The RSPCA's enforcement role (investigation)***

2. *The RSPCA should work with ACPO to develop further operational guidance to assist constables and inspectors in circumstances where the latter seek assistance, particularly through the exercise of police powers, in relation to possible animal welfare offences.*
3. *In relation to animal sanctuaries, the RSPCA should press HM Government (DEFRA) for implementation of a scheme of licensing and regulation along the lines proposed by the Companion Animal Welfare Council.*
4. *In relation to animal sanctuaries, if such a regime is implemented, where intervention through the criminal law is necessary, the primary role should rest with the licensing or registration authority with RSPCA assistance as necessary. In the meantime the RSPCA might invite the CPS to consider such cases.*
5. *The RSPCA should review the complaints procedure applicable to the Inspectorate with a view to ensuring that complaints are thoroughly investigated at the earliest opportunity with substantive feedback and legitimate concerns being addressed. Where the complainant remains dissatisfied there should be escalation to a higher level including an external element.*

### ***How the RSPCA discharges its prosecution function***

6. *In order to provide the degree of separation necessary to achieve confidence in the objectivity of decision-making and handling at all stages of cases, the Prosecutions Department should be established as a self-contained unit with its own discrete governance mechanism<sup>1</sup>.*

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<sup>1</sup> This might take the form of an oversight committee with external professional representation. Its membership and terms of reference would be constructed so as to accommodate the overarching responsibilities of the trustees but avoid intrusion into prosecution policy and specific casework.



7. *The appointment of the Head of Prosecutions should be undertaken by a panel comprising the Chief Legal Officer, an experienced criminal practitioner from independent practice, and an individual with senior management experience.*
8. *The RSPCA should adopt a policy statement outlining the manner in which the Code for Crown Prosecutors will be applied to animal welfare offences; and also develop a set of offence specific standards.*
9. *Prosecution decisions should be the responsibility of qualified barristers or solicitors.*
10. *A protocol should be developed as to matters which should be referred to the Head of Prosecutions for decision and advice.*
11. *Reasons for decision should be recorded on the file so as to indicate how the evidential and public interest tests of the Code for Crown Prosecutors have been applied in the particular case.*
12. *More information should be available to decision-makers to inform decisions relating to public interest.*
13. *Urgent steps are needed to reduce the time elapsing between the commission of offences and the receipt of a case file in the Prosecutions Department.*
14. *A system of early process based on abbreviated files should be developed and tested.*
15. *Certificates under section 31(2)(a) of the Animal Welfare Act 2006 should be signed by the Head of Prosecutions.*
16. *When considering public interest (in particular the need for a banning order) the risk of re-offending should be more thoroughly assessed and weighed against any human factors militating against prosecution.*
17. *The RSPCA should develop more consistent arrangements for liaison in appropriate cases between Social Services and Youth Offending Teams. There should be a presumption in favour of seeking advice from the relevant Youth Offending Team before taking a decision to prosecute a youth offender.*
18. *An exercise (as described at section 6.5) should be undertaken to create charging guidelines.*
19. *The Reviewer recommends the following changes in relation to prosecution disclosure which should ensure compliance with both existing requirements and the changes arising from the recent Judicial Office report:*
  - a) *The investigating inspector should prepare a list of unused material which excludes that which it is expected that the prosecution will rely upon; and keep that list updated throughout the proceedings to reflect additional material and other changes in circumstances.*

- b) *Certification as to the existence of disclosable material should be carried out on the basis of a review which occurs at the point where a not guilty plea is indicated.*
  - c) *The prosecuting solicitor should be provided with a copy of the sensitive material or a description sufficient to enable him or her to discharge the duty of continuing review.*
20. *There should be a review of the business model to assess the case for greater use of in-house lawyers and develop a more structured approach to external fees.*
21. *Prosecution Case Managers should be vigilant to ensure a balance between constructive and supportive working with the Inspectorate and a degree of empathy that compromises objective consideration of the merits of challenge or adverse criticism.*

### **The gathering and presentation of veterinary evidence**

22. *Inspectors should be formally instructed not to seek certification by a veterinary surgeon under section 18 of the Animal Welfare Act 2006 unless the vet has examined the animal(s) in question.*
23. *The RSPCA should take the lead in inviting the Royal College of Veterinary Surgeons and other practitioners to develop a common standard or guidance on the approach to assessment of suffering.*
24. *The RSPCA should establish a panel of accredited veterinary practitioners (with known specialisms where practicable) to be drawn upon by inspectors requiring examination of case animals. Vets on the panel should be expected to work within a fee structure and to a service level agreed with the RSPCA.*
25. *The RSPCA should develop a policy as to the extent of its reliance on case vets as expert witnesses; and as to the circumstances in which further expert evidence should be sought. Where further such evidence is to be sought, instructions to veterinary surgeons should be case specific and developed by or in collaboration with the Prosecutions Department.*
26. *The Society's Chief Veterinary Officer should take the lead in providing advice and guidance to the Inspectorate and the Prosecutions Department in relation to the issues identified in this chapter.*

### **Costs**

27. *The review of the RSPCA Prosecutions Department business model recommended in Chapter 6 should include consideration of the use of in-house lawyers and direct instruction of counsel.*
28. *The level of fees paid to external lawyers should be reviewed in the light of changes in the market and to achieve a more consistent approach.*

### **The RSPCA involvement in hunting prosecutions**

29. *RSPCA Council of Trustees needs to develop a policy on how far it will accept referrals relating to alleged hunting offences rather than direct individuals to the relevant police force.*

**Management and governance**

30. *Consideration should be given to the establishment of a Prosecution Oversight Group along the lines set out in the body of chapter 10.*
31. *The Society needs to place more emphasis on external communications. Its communications strategy should be reviewed to increase its emphasis on capturing and responding to feedback.*
32. *The Society should reflect a more measured approach on press releases relating to prosecution*
33. *The Society should ensure that the review of complaints handling relating to the Inspectorate develops proposals which can be applied across the organisation.*

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# The independent review of the prosecution activity of the Royal Society for the Prevention of Cruelty to Animals

## 2 Introduction

The Council of the Royal Society for the Prevention of Cruelty to Animals (RSPCA) decided on 12 December 2013 to commission a review of the manner in which the RSPCA discharges its prosecution role. It provided the following terms of reference:

“Acknowledging that the RSPCA regards the prosecution of animal welfare offences in appropriate cases to be an integral component of its strategy for fulfilling its charitable purposes of promoting kindness and preventing and suppressing cruelty to animals, to review the RSPCA’s arrangements for deciding whether to instigate private prosecutions on behalf of the RSPCA with particular regard to:

- (c) decisions taken whether or not to prosecute; and
- (d) the subsequent conduct of any criminal proceedings in relation to alleged offending;

and to report on how far these accord with the standards of a reasonable, competent and objective prosecutor; to consider and report on concerns expressed about the RSPCA’s prosecution function; and to identify any areas for improvement and make recommendations as to any changes the RSPCA should make or seek to bring about to achieve that improvement.

In doing so, the Reviewer shall take into account the expectations and implications arising from the RSPCA’s charitable status, including the relationships between its charitable purposes, the charitable benefits flowing from prosecutions and the prosecutorial assessment of wider public interest.

The context for assessment is the Society’s position as a private prosecutor conducting the majority of animal welfare cases in England and Wales. The report should strengthen public accountability and transparency for this work. Although the review does not extend to the RSPCA’s investigative function, it should examine any such matters that have a bearing on the conduct of any subsequent prosecution instigated by the RSPCA.”

This aspect of the RSPCA work is both substantial and important; the public depend heavily on the organisation for enforcement of animal welfare law. The invitation to conduct the review was therefore a privilege. When embarking on the task the review recognised that many issues relating to animal welfare can be emotive. Even so, the review was still struck by the degree of polarisation and set positions around many issues – not to mention difficult relationships even amongst those who should be united by the cause of animal welfare.

As the work progressed, it became apparent that many of the rubbing points stem from a lack of structure and cohesiveness in the overall arrangements for effective implementation and enforcement of animal welfare legislation. They have simply not kept up with the increasing scope of legislation and other social change, in particular public expectations as regards accountability and transparency. In many

respects they are fragmented and anomalous and rely to a large extent on the RSPCA discharging public responsibilities whilst remaining an independent charity with many other functions. This made it impossible properly to address issues relating to the RSPCA's prosecution activity without looking at its wider operating environment.

The public consultation linked with this report brought 270 responses. Some used the pro-forma provided online whilst others comprised short e-mails dealing with very specific points or cases. All were analysed and taken into account when reaching conclusions. However, the review had to focus on the overall position and to identify any changes needed. Although some cases have been used in anonymised form to illustrate particular points, the purpose of the review was not to comment on individual cases. Nonetheless, the contributions were of great assistance in building up the bigger picture.

The report sets out the extent to which the RSPCA needs to re-position itself and revise its approach to enforcement of animal welfare law to reflect a changed environment and meet contemporary expectations, including greater transparency and readiness to account. Some of what is proposed can be achieved by the RSPCA itself; but important elements will be dependent on support and collaboration by government and public sector bodies. Without that, many of the problems identified in this report are likely to persist.

## **2.1 Background**

The RSPCA is a charity whose objects are to promote kindness and to prevent or suppress cruelty to animals. It was founded in 1824 and received royal patronage in 1840. It is presently constituted under the Royal Society for the Prevention of Cruelty to Animals Acts of 1932, 1940 and 1958. Its activities include employing trained inspectors to investigate complaints of animal cruelty, suffering and poor welfare. The RSPCA prosecuted 1548 defendants in 2013 arising out of over 150,000 investigations conducted by its Inspectorate.

The RSPCA has a long history of prosecuting animal welfare offences, which can be traced back to the purposes for which it was founded by in 1824. They included enforcement of the Treatment of Cattle Act 1822 which Richard Martin MP (one of those who helped establish the Society) had sponsored and campaigned for. There was no police service and certainly no public prosecutor. Martin originally brought prosecutions himself (he was a barrister); he then employed his own inspector at Smithfield market, and then another – and it was these who were taken on the by Society for the Prevention of Cruelty to Animals (as it then was) and became their first inspectors. Thus the first RSPCA enforcement activities pre-dated the first modern police force.

The RSPCA receive the majority of complaints regarding breaches of animal related legislation. By far and away the greatest number arise under the Animal Welfare Act 2006. Where sufficient information and resources are available, the RSPCA investigates complaints using its own resources. Although the police also receive some such complaints, it is their practice to refer them to the RSPCA unless they involve wildlife crime or serious animal cruelty such as organised fighting or sexual offences; but they may choose to seek the assistance and expertise of the RSPCA in the course of investigation. Practice varies between individual police forces.

Public bodies with responsibilities for enforcement of animal related legislation include local authority Trading Standards Departments and the Animal Health and

Veterinary Laboratory Agency (AHVLA) (part of DEFRA). The total number of individuals prosecuted by those authorities in 2013 was 150<sup>2</sup>.

Following an investigation by the RSPCA Inspectorate, a case file may be submitted to the RSPCA Prosecutions Department. Prosecution Case Managers (PCMs) consider each case against the twin evidential and public interest criteria contained in the Code for Crown Prosecutors. When the evidence is considered sufficient to provide a realistic prospect of conviction and it appears to be in the public interest to do so, criminal proceedings may be issued by the RSPCA laying an information leading to the issue of a summons.

The Prosecutions Department was established in 1993 following a review by Mr Richard Crabb, formerly Chief Crown Prosecutor for Kent. The RSPCA established a structure which sought to replicate the relationship between the police service and the Crown Prosecution Service whereby prosecution decision-making is separated from the investigation function in accordance with the 'Philips Principle' based on the findings of the Royal Commission on Criminal Procedure. It comprises a Head of Prosecutions and Prosecution Case Managers working under the supervision of the Society's Chief Legal Officer. Actual prosecutions are conducted by solicitors or barristers instructed on behalf of the RSPCA.

The environment within which the RSPCA operates is unusual in that there is no public body within central or local government that has overall responsibility for the enforcement of animal welfare law. Consequently, local authority Trading Standards Departments, AHVLA and the police each focus on matters linked to their specific interests or priorities. The position was considered by the House of Common Select Committee for the Environment, Food and Rural Affairs during its 2004 examination of the draft Animal Welfare Bill. It received evidence from the Association of Chief Police Officers:

"At the moment almost all of the welfare work is done by the RSPCA with police support where required... Were the RSPCA, as a charity, to decide next week not to do this work any more none of the rest of us in the public service could pick it up. Animal welfare would not be furthered; it would be significantly disadvantaged."

The evidence submitted by the Local Authorities Co-ordinators of Regulatory Services (LACORS) was that:

"...we work exceptionally closely with the RSPCA and we have a memorandum of understanding with them which has recently been drawn up. There are communication channels and everything else, but we do traditionally pass all the small animal welfare complaints to the RSPCA."

The Committee's report concluded at paragraph 258:

"There appears to be no body other than the RSPCA with the requisite experience to undertake animal welfare prosecutions."

Despite such extensive reliance on the RSPCA for the enforcement of animal welfare law, it has no authority for investigation or prosecution other than those

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<sup>2</sup> Local authorities are required by section 80 of the Animal Health Act 1981 to make annual returns of their enforcement activity to DEFRA. Although the statutory requirement relates specifically to proceedings under the 1981 Act, the guidance issued by DEFRA stipulates that all animal welfare proceedings should be included. Data provided by the Crown Prosecution Service (albeit compiled in a very different way) suggests a broadly similar incidence of proceedings instituted and reaching first hearings. By contrast, RSPCA concluded proceedings against 1,548 defendants in 2013. On this basis, the RSPCA was responsible for approximately 83% of animal related prosecutions in England and Wales in 2013.

enjoyed by every citizen. It is wholly dependent on the co-operation of the public and those against whom complaints are made save in circumstances where police or local authorities respond to requests for assistance by exercising powers vested in them such as powers of entry and search or obtaining and executing warrants for that purpose. Contrary to popular belief, the RSPCA has no power to take custody of any animal save with the consent of the owner. The police do have such powers (mainly under the Police and Criminal Evidence Act 1984 and the Animal Welfare Act 2006) and frequently exercise them when invited to do so by the RSPCA. In practice they then immediately place the animals into the care of the RSPCA. The RSPCA may also invite the police to exercise powers of search (with or without warrant) and arrest. The ramifications of this fall to be considered at some length in the report.

The RSPCA relies on what are described as 'private' prosecutions which is a potentially misleading term. Historically, all criminal proceedings in England and Wales commenced by the laying (in one form or another) of an information. Most are laid by individuals acting in an official capacity but successive statutes have made it clear that there is no impediment to any other person doing so. The position of those acting on behalf of the RSPCA is *sui generis*. Although it has no official status the RSPCA must by virtue of the volume of its case load and the manner in which it operates be regarded as a *de facto* prosecuting authority. There are however important distinctions. For example, the RSPCA does not enjoy access to the wide range of alternative disposals now available to most prosecutors. In many instances the purpose of proceedings instituted by the RSPCA is preventive as well as punitive in that securing a conviction is a prerequisite of obtaining an order that disqualifies an individual from owning or otherwise dealing with animals either permanently or for a specified period.

Notwithstanding its lack of official status, the RSPCA is very active as a law enforcement agency. It operates in practice as a specialist police force with an associated prosecution role. As such, it attracts certain obligations under the Police and Criminal Evidence Act 1984 and the associated codes. It also has a public commitment to take decisions about the institution of criminal proceedings by reference to the Code for Crown Prosecutors. The RSPCA also operates a non-statutory system of warnings and unofficial cautions as alternatives to prosecution. These aspects of its operational work have combined with its campaigning and commercial activities and other factors to attract significant criticism of the RSPCA across a wide range of bodies. Some point to the extent to which the RSPCA adopts the practices of public authorities (e.g. the use of uniforms; the similarity of titles within its Inspectorate to those of the police and the use of warnings and cautions) as inappropriate and misleading and they assert a need for greater transparency and accountability. Other concerns relate to alleged heavy handedness by the Inspectorate, the nature of the relationship with the police and veterinary professions leading to over zealous prosecution. The RSPCA role in relation to animal sanctuaries and rescue organisations is also a significant source of friction. One feature of the review was the extent to which concerns expressed about individual cases focused, when analysed, on matters relating to the investigation rather than the prosecution stage.

These challenges to the enforcement role of the RSPCA are not a recent phenomenon. The 'Self Help Group for Farmers, Pet Owners and Others

Experiencing Difficulties with the RSPCA<sup>3</sup> was formed as long ago as 1989. Together with a number of other bodies it gave evidence to the House of Commons EFRA Select Committee criticising the RSPCA and opposing the grant of any specific powers – something the RSPCA has not hitherto sought. Nonetheless, the public voicing of such criticism has intensified – possibly coinciding with the RSPCA's successful campaign for a ban on fox hunting and reached a crescendo after its prosecution of the Heythrop Hunt. In January 2013, Mr Simon Hart MP initiated a debate in the House of Commons about prosecutions brought by the RSPCA. The Charity Commission also received complaints about the campaigning and prosecution activities of the RSPCA.

HM Attorney General responded to the Parliamentary debate in January 2013. He does not have any responsibility or superintendence role in relation to the RSPCA. Nonetheless, he does have an overall accountability to Parliament for prosecution arrangements in England and Wales. During subsequent engagements between the Attorney General's Office and the RSPCA, the Attorney General also suggested that there could be advantage in an independent review although he stressed that it was a matter for the Society's Council. Following consideration, the RSPCA initiated a scoping exercise which led to the decision in December 2013 to establish this review.

## **2.2 Purpose and approach of the review**

The main focus of the review has been the Prosecutions Department and the extent to which its decision-making and conduct of criminal proceedings accorded with the expectations of a reasonable, competent and objective prosecutor. In addition, the review addressed wider strengths and weaknesses including the structure of the department (compatibility with the Philips Principle), the development and application of policies and the management of its casework.

Addressing these wider issues necessarily involved an assessment of matters touching on the criticisms and complaints outlined in the background section so as to provide reassurance where appropriate and identify changes necessary to address any shortcomings. It quickly became apparent that assessment of the prosecution function could not be properly undertaken without also considering the implications of the RSPCA's operating environment, in particular the combination of the reliance placed on it for law enforcement and the absence of any official status or authority. This in turn has raised important issues surrounding the relationship between the RSPCA and the police service and the form that assistance should take when the RSPCA wishes to gain access to premises, seize animals or question individuals.

Prosecution decision-making and the conduct of proceedings may also be affected by steps taken at the investigative stage in the gathering of evidence – and in particular veterinary evidence where the selection of vets and their approach to evidence has a major bearing. Nobody coming to this issue from outside the specialist animal welfare network could fail to note with some consternation the propensity for animal welfare prosecutions to be slow in commencement. A proportion become protracted and some contested cases take up disproportionate

<sup>3</sup> Self Help Group (SHG) was originally set up to provide support and legal advice to people being investigated or prosecuted by the RSPCA. It runs a helpline which provides general and legal advice for people who have run into difficulties in the field of animal welfare law. Usually this involves the RSPCA. It crosses the boundaries between criminal and civil law. It puts people in touch with solicitors who are experts in animal welfare law.



amounts of court time at substantial expense to the RSPCA and the taxpayer – not to mention the impact on court business generally. This report therefore inevitably extends beyond matters that relate solely to the Prosecutions Department.

## **2.3 Methodology**

The main stages of the review comprised:

- Initial research.
- Gathering of background evidence.
- Taking evidence from external stakeholders.
- Examination of sample case files and management information as regards case load, volume and trends together with outcomes.
- A consultation exercise with a webpage and e-mail address established to enable interested parties to offer comments either generally or using individual cases as examples.
- Meetings to take evidence from RSPCA staff based on issues identified during the earlier stages.
- Development and discussion of emerging findings.
- Preparation of report.

A fuller description of the methodology is at annex 1. Throughout the consultation exercise, it was made clear to respondents that the review would welcome any concerns expressed being illustrated by reference to particular cases with a view to at least some of these cases being incorporated into the case sample referred to above. However, it was not appropriate or practical for the Reviewer to embark on dialogue with individual respondents about particular cases and issues or to act as intermediary with the RSPCA when grievances remained outstanding.

A list of those who have contributed is at annex 2.

## **2.4 Structure of the report**

Chapter 3 contains the overarching findings.

Chapter 4 considers the strengths and weaknesses of the present position of the RSPCA in the overall enforcement arrangements and its historical context. It identifies the need for change and contains proposals for the RSPCA re-positioning itself.

Chapter 5 examines the role of the RSPCA Inspectorate and its influence on subsequent proceedings.

Chapter 6 looks more specifically at how the RSPCA discharges its prosecution role. This includes the separation of prosecution from investigation and other functions; the structure of the Prosecutions Department; its relationship with the Inspectorate; the application of the Code for Crown Prosecutors (including prosecution policy and decision-making); the RSPCA approach to charging; its case management and its use of external lawyers. It contains options for an alternative business model.

Chapter 7 deals with the gathering and presentation of veterinary evidence.

Chapter 8 examines issues relating to costs.

Chapter 9 looks at RSPCA involvement in cases under the Hunting Act 2004.

Chapter 10 reviews matters relating to management and governance including communications and the RSPCA approach to transparency and accountability.

Chapter 11 summarises the conclusions and recommendations.

### 3 Overarching findings

The RSPCA is a charity with a long and prestigious history. Since it was founded in 1824, animal welfare has advanced probably beyond anything its founders could have hoped for or dreamed of. That is a tribute to the Society's combination of direct welfare action, campaigning for law reform and enforcement of those laws. One indicator of that progress may be the contrast between the level of prosecutions at the end of the 19<sup>th</sup> century when the average was around 7,000 per year and the current rate of around 1,500–1,600 per year.

During the course of this review RSPCA inspectors were involved in several high profile responses to welfare emergencies: first in relation to the many seal pups stranded by the surge tides and storms affecting the East Coast of England at the turn of the year; secondly by mounting major rescue exercises for animals endangered by the flooding in the West Country, Thames Valley and elsewhere. Unsurprisingly, the responses to public consultation demonstrated a continuing high level of public support for the RSPCA despite recent media criticisms. Out of 290 responses, 181 expressed overall support for the RSPCA with 66 respondents linking that support specifically to its stance in relation to enforcement of the Hunting Act 2004. There were numerous neutral responses commenting on the perceived strengths and weaknesses. Some 63 respondents expressed concerns about the current role of the RSPCA with 27 linking them to specific cases. Interestingly, even its most ardent critics had to acknowledge its achievements.

Good organisations continuously review their own performance and adapt to change, listening to and learning from feedback including criticisms and complaints. It is in that spirit that the RSPCA Council set up this review. There are several aspects of its enforcement work where change is necessary to bring the Society in line with 21<sup>st</sup> century public expectations and to maintain confidence, particularly by providing accountability and improving transparency. It also needs to be more responsive to the increasing incidences of complaints about some actions taken by the Inspectorate and concerns that some of its prosecutions have been inappropriately focused where little would be achieved and sometimes on some of the most vulnerable elements of society. These, taken in conjunction with a relentless media campaign about its prosecution of offences committed by established hunts and persons connected with hunting have had an adverse and, in many respects disproportionate, impact on the Society's standing and the morale of some staff. Some changes of structure and ethos are needed within the RSPCA. That said, many of the problems identified by this review stem from the unsatisfactory infrastructure for enforcement of animal welfare law generally and need to be addressed in collaboration with others – government in particular.

Despite lacking any official status the RSPCA is very pro-active as a law enforcement agency and in practice operates as a specialist (private) police force with an associated prosecution role. It describes the latter as "private prosecutions" although the term has no real significance and is simply used now to denote proceedings brought by an individual in a private capacity or by a non-public organisation. It is a throwback to the days before police forces and public prosecutors when all investigations and prosecutions were handled in that way. Prosecution is the most intrusive power of the state and contemporary expectations are that it will be exercised:

- in an objective and impartial manner in accordance with policies that are clear and transparent;
- free from the influence of executive government or other extraneous influence; and
- by bodies that are publicly accountable.

The RSPCA is not a public body but the scale of its enforcement role and its relationship with bodies such as the police mean that it is *de facto* a prosecuting authority and should therefore meet those same standards.

Two problems arise: first, the Society's role in relation to enforcement of animal welfare law is insufficiently defined for it to develop an effective enforcement strategy; the legislation it seeks to enforce is common to the companion animal sector (which accounts for the majority of RSPCA activity) as well as farms, markets and boarding establishments etc where other agencies operate. The RSPCA also becomes involved with animal sanctuaries and rescues, some run by other charities that are not regulated.

Despite the commonality of welfare legislation<sup>4</sup>, there are differences of approach between the relevant agencies that exceed what one would expect even allowing for some differences in expectation as between domestic and other animals depending on type, the purposes for which they are kept and how the animals have been conditioned. The RSPCA acknowledges that its approach to enforcement is often more robust than other agencies. However, that must be viewed in the wider context of the differences of circumstance and resources.

All agencies (Trading Standards, those covered by the DEFRA enforcement policy and the RSPCA) drew attention to the use of advisory and/or warning regimes to secure compliance before resorting to prosecution; and across the board this approach was regarded as successful. The RSPCA in particular drew attention to the fact that its 153,000+ investigations resulted in only 2,174 case files being submitted to the Prosecutions Department in 2013 and only 1,548 persons being charged. All those providing evidence to the review acknowledged that different agencies drew the line at which they would prosecute at different points. The Local Government Association acknowledged that resource constraints were a significant inhibiting factor for local authorities – particularly if boarding costs for animals might be involved. It could mean that prosecutions are not being brought in some cases where they are merited.

Second, any such strategy must take account of the Society's campaigning, commercial and *de facto* regulatory roles which do not sit comfortably with the role of prosecutor. Also there is an inevitable tension between the RSPCA's status and very specific objectives as an animal welfare charity and the broader public policy consideration relevant to law enforcement. Practices seem to have been based on the premise that "this is how we have always done it" with piecemeal evolution to reflect external change. This is compounded by the 2006 extension of the ambit of the criminal law and the absence of any powers or official status relating to enforcement.

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<sup>4</sup> There are in excess of 300 pieces of legislation relating to animals as a whole.

This review could not assess the Society's prosecution activity in isolation from these issues. It concludes that in several respects the Society should seek to re-position itself through dialogue with government aimed at putting its work on a more structured and publicly accountable basis. There is no other body which could take on the RSPCA's current role and its contribution in terms of expertise and resources is huge; it is simply too valuable to be lost. In doing so, it is both furthering the rule of law and fulfilling Parliament's intent that animal protection legislation should be effectively implemented. It is also relevant that animal welfare is an issue of significant public concern – MPs consistently report its prominence amongst issues about which they receive representations. Arguably then, the Society is not only making a huge contribution to animal welfare, it is also fulfilling a very significant constitutional role.

The essence of any such arrangements would be the conferring of proper authority and powers on the RSPCA – as regards both investigation and prosecution within a framework that provides appropriate checks and balances. This accountability might provide for some form of periodic external scrutiny. Ideally, the RSPCA would in future work more closely with its public sector counterparts with appropriate associate links to organisations such as the Whitehall Prosecutors' Group. The RSPCA has historically been concerned to avoid any step that might compromise its independent charitable status. That is an important point but needs to be viewed in the context of the changing relationships between government and NGOs with growing recognition of the value of partnerships as between the public, private and third sectors. In addition, the public interest would be well served by the creation of overarching arrangements to improve the consistency of enforcement of animal welfare law across the various sectors. The broad experience of the RSPCA means that it has much to offer.

This approach accords with the outcome of the seminar hosted by the RSPCA in June 2014 which polled the view of the public, politicians and animal welfare experts. Forty per cent of those present thought the government should bear most responsibility for animal welfare with 30% focusing on the general public and 21% on those with a professional interest in animals such as farmers, retailers and breeders.

The re-positioning may also require some self-imposed circumscription of the Society's prosecuting role if it is to avoid conflict with its commercial and campaigning activities. Specifically these would relate to cases relating to animal sanctuaries and rehoming centres; cases relating to organisations that had a commercial relationship with the RSPCA (e.g. Freedom Food accredited farms) and (for different reasons) some hunting cases. If there were statutory regulation of sanctuaries and rehoming centres, the focus would move more to local authorities (assuming they were the regulator) to oversee the sector.

There should be a strengthening of the Prosecutions Department. Its key roles at present are decision-making and the instruction of external solicitors for the care and conduct of cases – albeit retaining a strong oversight. It should be reconstituted as a fully fledged prosecuting office by the creation of an in-house capacity for end to end management of casework with more qualified lawyers so as to strengthen the independent element. Prosecution decisions would become the responsibility of qualified solicitors and barristers. A more flexible business model could create new opportunities for prosecution managers to have a more hands-on approach to some cases including at court. It would retain existing arrangements for those cases where geographical considerations make the in-house approach non cost-effective.

Given the thrust of this review that the RSPCA prosecution activity should be measured by the standards applicable to public prosecuting authorities including as to accountability; and that the Society should seek to formalise the basis on which it discharges its function, more structured arrangements for governance and internal accountability will be necessary. They will need to balance respect for independence in relation to prosecution policies and decision-making with the legal responsibilities of the trustees and in particular for ensuring that there is a charitable benefit flowing from all the Society's activities viz the Inspectorate, Prosecutions Department, fundraising and campaigns.

Consideration should be given to arrangements for oversight of the Prosecutions Department based on a group which might be known as the Prosecutions Oversight Group which could be chaired by the Chief Legal Officer and comprise the Head of Prosecutions Department, two members of the RSPCA Council, two external members with relevant professional experience (possibly one lawyer and one veterinary surgeon) together with the Chief Inspectorate Officer. An outline of how such a group might work is at Chapter 5. The full terms of reference would require detailed consideration.

Governance arrangements should also ensure more effective arrangements for the handling of complaints about the RSPCA's own conduct. Recommendations later in this report include the introduction of an independent element for those complaints that cannot otherwise be satisfactorily resolved.

At the operational level, the Prosecutions Department performs well in terms of its case outcomes with 88.6% of persons charged in 2013 being convicted and 74.1% of offences charged resulting in conviction. The Prosecutions Department enjoys good standing before the courts for the effective manner in which its cases are presented. Its staff are well motivated, conscientious and highly committed.

It has proved difficult to identify any data that can be used as the basis for a like for like comparison between the RSPCA and other prosecutors as to the threshold at which the balance will step in favour of prosecution. The fact that the RSPCA is responsible for 83% of prosecutions relating to animals does not support any inference given the variable factors identified earlier – in particular the lack of resources available to local authorities. Indeed there is some evidence that cases that could be dealt with by other agencies are in fact referred to the RSPCA. Attempts to compare with other jurisdictions similarly fail because of differences in the way that data is recorded. The criticisms of prosecutions that have occurred in recent years have related mainly (but not exclusively) to the application of the public interest element of the Code for Crown Prosecutors. This review identified a need for better information in many cases as the basis for public interest decisions and also found that in too many cases the proceedings were either not in the public interest or the issue did not appear to have been adequately addressed. In some instances prosecution seemed disproportionate as regards some of those charged. Other possible factors included insufficient assessment of the risk of further offending before concluding that the public interest required a prosecution in order to achieve an order prohibiting the keeping of animals. In the final analysis, a key question is whether, in the case of each individual prospective defendant, prosecution would be a proportionate response having regard to his or her particular role and circumstances.

It does not follow automatically that, because the public interest requires a prosecution, there will be a charitable benefit flowing from the RSPCA undertaking it. Whilst that is likely in the vast majority of the cases it deals with, Prosecution

Case Managers need to be alert to those where the likely cost, novelty or other special factor requires more specific consideration of whether it is in the best interest of the charity to take the case forward. This is a topic that would benefit from guidance from the Prosecution Oversight Group.

The review found that matters relating to the Society's prosecution in 2012 of the Heythrop Hunt under section 1 of the Hunting Act 2004 and other foxhunts were subsidiary to these wider concerns. They are dealt with in chapter 9 of the report. The starting point as regards such cases is that the law is the law until Parliament decides otherwise and should be upheld. CPS guidance in relation to the 2004 Act states that, providing the evidential test is met, the public interest will require a prosecution other than in exceptional circumstances.

The RSPCA found itself reacting to a thoroughly unsatisfactory situation where the evidence strongly indicated that it was "business as usual" for many hunts because enforcement of the 2004 legislation had become so difficult. It had not previously prosecuted any such cases but there was widespread scepticism as to the commitment of the police and CPS to investigating and prosecuting them. The proceedings were envisaged as a test case to establish whether the legislation could be made to work effectively against the key players in an organisation that appeared to be routinely flouting the law. The decision to bring proceedings on that basis cannot be criticised in principle although there was a strong element of overkill so that the costs were higher than they needed to be even in the context of a test case.

Although the RSPCA was right in principle to prosecute the Heythrop case, the experience from that case and others requires caution as to the way forward since any substantial case (i.e. one involving a course of conduct as opposed to a one-off event) is likely to be resource intensive even if costs were halved. A reasonable overall conclusion might be the 2004 Act is workable but only at a cost (in terms of gathering and evaluating evidence and case preparation) that may be disproportionate to what convictions achieve in terms of punishment and/or changing behaviours. Hunting continues to be prevalent. Fines for individual offences under section 1 of the Hunting Act 2004 have remained, over an eight year period, within the range of £200 to £850 with the exception being the Heythrop Hunt case where the hunt itself was fined £1,000 in respect of each of the four offences. The direct impact of prosecutions is therefore limited.

Against this background the review proposes a revised approach with the RSPCA bringing pressure to bear on the police and CPS (who together have primary responsibility for enforcement of the Hunting Act 2004) whilst also pressing for changes to the law that would make enforcement possible without disproportionate cost; that would necessarily be a long term objective. For the immediate future, the role of the RSPCA should be to assist in the building up of cases for presentation to the police and CPS. The Council should keep open the option for the RSPCA to resume prosecution in the event of a manifest failure by the public authorities to act.

The proposal that the RSPCA modify its own approach to hunting cases in favour of one that seeks to place more reliance for enforcement where it belongs – with the police and the CPS – is a pragmatic one not intended to offer comfort for those who have campaigned on behalf of hunting. The review does, however, recognise how effective and damaging that campaign has been to the RSPCA. It urges the RSPCA Council to act decisively in relation to the wider concerns identified in the report. At present the biggest risk to the RSPCA is that the two strands have become merged

and the wider and legitimate concerns described are harnessed to strengthen criticism of the RSPCA in relation to hunting in a manner that is unwarranted.



## 4 Overview of strengths and weaknesses in the overall enforcement arrangements; and the need for change

### 4.1 *Background*

The current role of the RSPCA in relation to enforcement of animal welfare law has evolved largely outside the mainstream criminal justice system and owes more to history than any clear strategy. The only strategy – such as it is – seems to be an ongoing assumption by the state that it can opt out of responsibility for the implementation and enforcement of animal protection legislation in important respects – particularly in relation to companion animals – because both the obligation and the cost will be picked up by the RSPCA. This is a chicken and egg situation: right from its origins the Society has undertaken this role because the state has not been adequately engaged; and the state has been content for the situation to continue because it would otherwise be required to fill the vacuum which would otherwise be created. In particular its prosecution role has failed to develop to accord with contemporary expectations of transparency and accountability and needs to adapt. In addition, its role is poorly defined. That is not intended as a criticism of the Society. A brief look at its history shows why.

The first prosecutions brought by the Society were in the 1820s and pre-dated the establishment of the United Kingdom's first police force, the Metropolitan Police. There simply was no system of public prosecution at that time. Prosecution was down to the injured party or other interested party. What the RSPCA did at that time was the norm. That remained the case until 1879 when the position of Director of Public Prosecutions was established but with a very limited remit confined to a handful of cases of great importance and difficulty. It was a somewhat tardy response to criticisms of the prosecution "system" as it then stood in the eighth report of the Criminal Law Commissioners (1845) who described the position thus:

"The existing law...is by no means as effectual as it ought to be; the duty of prosecution is usually irksome, inconvenient and burdensome; the injured party would often rather forego the prosecution than incur expense of time, labour and money. When, therefore, the party injured is compelled by the magistrate to act as prosecutor, the duty is frequently performed unwillingly and carelessly...it happens but too often that prosecutions are conducted in a loose and an unsatisfactory manner from want of means and labour essential to a just and satisfactory enquiry. The intrusting the conduct (*sic*) of the prosecution to a private individual opens a wide door to bribery, collusion and illegal compromises."

Their recommendation was that "the direct and obvious course for remedying such defects would be the appointment of public prosecutors." That did not come about for 140 years!

The office of the Director of Public Prosecutions developed and expanded over the coming decades but always remained a small specialist office handling the most significant one or two percent of prosecutions. Police forces became responsible for investigating criminal offences and individual forces made ad hoc arrangements which ranged from employment of in-house lawyers through reliance on local authority prosecutors to police officers continuing to conduct their own individual cases with some forces utilising external solicitors to deal with more difficult cases.

The RSPCA stood outside such change. Mr Mike Radford<sup>5</sup> describes the formation of local branches of the RSPCA coupled with an expansion in its Inspectorate being reflected in the number of prosecutions brought by the Society, which practically doubled each decade from 1830 to 1900. The number of prosecutions rose from 1,357 in the decade 1830–1839 to 71,657 in the decade 1890–1899. He adds: “the decision to pursue prosecutions was always taken by the centre and they constituted an integral part of the RSPCA’s campaigning strategy. It used the courts to establish precedents, to highlight the law’s weaknesses as well as its strengths, to identify and publicise conduct towards animals that was no longer lawful, and to enhance its image and status, thereby encouraging further public support and contributions.” Radford adds that by the end of the 19<sup>th</sup> century, the RSPCA could be regarded as a “quasi-governmental institution”.

Much of Radford’s description continues to chime with the RSPCA’s contemporary approach, save that it would put more emphasis on its independent charitable status. Its campaigning zeal is unabated and has been influential in securing the enactment of two major pieces of legislation in the last decade. Publicity campaigns and fundraising activity routinely highlight cases it has handled. The Society does not shirk from criticism of government or other public bodies if it feels that their approach to animal welfare issues is insufficiently robust. There have been other important changes which effect the environment in which the RSPCA operates. The use of animals in transport, industry and commerce is now very rare. The importance of those sectors is reflected in a complaint in the RSPCA’s annual report for 1895:

“The doctrine of the sacredness of alleged rights of the citizen, the domicile and of private property is a British fetish, and is responsible for the closure of private places against Officers of the Society. A sealed door bars mines, slaughter houses and laboratories.”

The latter two scenarios are now the subject of much regulation (including through the EU) with bodies such as local authority Trading Standards Departments and the AHVLA or the Home Office having the primary responsibility. Both domestic law and EU law have become more pervasive. The RSPCA is now more likely to be concerned with companion and domestic animals (including some more exotic varieties) kept at private residences and smallholdings – along with some animal sanctuaries and rescue centres. Even so, it still uses its freedom as an independent charity to act directly, campaign, and seek to “ginger up” enforcement in those fields.

## **4.2 Current position: prosecution**

The establishment of the Crown Prosecution Service in 1986 marked a step change in the approach to prosecution. The Office of the Director of Public Prosecutions and local prosecution offices (where they existed) were all subsumed into one national body responsible for the conduct of all proceedings initiated by the police save for a handful of specified proceedings which could be dealt with by written guilty plea. Prosecutions were required to be conducted in accordance with the Code for Crown Prosecutors and with directions issued by the Director of Public Prosecutions.

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<sup>5</sup> Animal Welfare Law in Britain – Regulation and Responsibility (published 2001).

The 1985 Prosecution of Offences Act did not preclude other organisations (whether public or private) or individuals from initiating criminal proceedings. However, other charitable bodies (such as the Royal Society for the Protection of Birds and the National Society for the Prevention of Cruelty to Children) which prosecuted some cases opted not to do so at all with the result that the RSPCA now stands alone as a non-public body with a substantial prosecution function. It is also right to record some important distinctions between these two organisations and the RSPCA. The police are much more engaged with wildlife – many police forces have specialist wildlife officers, and would therefore be more willing to pursue cases. Similarly with the NSPCC, relevant cases are much more likely to be taken up by the police and/or social services.

Enforcement of the criminal law is viewed as essentially a public function, not least because the power to prosecute is one of the most intrusive powers of the state (in whose name proceedings are brought). This puts a premium on accountability, at least for general principles and policies if not individual decisions. Indeed, there is now a legitimate expectation that individual decisions will be taken on the basis of properly established and consistent policies. The senior judiciary has recently let it be known that they would wish to see greater consistency in the application of the principles of the Code for Crown Prosecutors (which is binding on the CPS only although most others adopt it) on the part of other non-CPS prosecutors.

The whole issue of prosecutorial discretion was considered by the Administrative Court in *Moss & Son Ltd v CPS* [2012] EWHC3658. Having considered the circumstances of the particular case, the court went on to consider whether different considerations would apply to policies and decisions taken by the statutory prosecuting authorities (the DPP, Serious Fraud Office and Revenue & Customs Prosecuting Office etc) and those by a (public) body that was not wholly independent of executive government. They concluded:

“for that and other constitutional reasons there should be clear arrangements which ensure that decisions on prosecution policy and the decision to prosecute are made by persons who can exercise their judgment entirely independently of the executive government or executive agency.”

Whilst that dictum is helpful to the RSPCA as a body wholly outside government, the underlying principle (that prosecution policies and decisions should be free of extraneous influence) also raises issues of accountability and is likely to have implications for the relationship between prosecutions and the RSPCA’s other activities. These are difficult to balance.

The structure of the Prosecutions Department as a self-contained unit reporting to the RSPCA’s Chief Legal Officer is intended to support the underlying principle that policies and individual decisions should be free from external influence. It is quite separate from the Inspectorate organisationally. As an integral part of the RSPCA, the Prosecutions Department must for governance purposes come within the purview of the RSPCA Council but that does not extend to determination of prosecution policy or individual decisions. It is a more reactive role. The Reviewer sets aside for present purposes the extent to which the organisational culture may in practice be an extraneous factor. In actuality there is an absence of external accountability and only limited internal accountability. Many of those who contributed to the review expressed frustration that there was no effective avenue for addressing concerns or calling RSPCA prosecutors to account.

From an RSPCA perspective, the strength of the present arrangement is its strong influence over the manner in which laws are implemented including those where the substance has been strongly influenced by the Society e.g. the Animal Welfare Act 2006. The strength from the public (and governmental perspective) is that it is getting a free service. It is also convenient for the government departments who that are able to distance themselves from some of the sensitive issues involved.

The main weakness is the lack of accountability. The Administrative Court stressed independence from executive government but did not suggest that prosecutors should be publicly unaccountable. For those public bodies that prosecute, accountability may arise in three ways:

- Through the democratic process. That is likely to be through Parliament as regards the activities of national bodies or in the case of local authorities through their elected membership;
- Amenability to judicial review; or
- Media scrutiny supported by access to relevant information through the Freedom of Information legislation.

The RSPCA is largely outside any such accountability. Yet they would provide the Society greater legitimacy and enhanced public confidence in that the law was being applied consistently with known principles. The RSPCA is at present outside the Freedom of Information regime and that is beneficial since compliance can be resource intensive. Its readiness or otherwise to accept a measure of voluntary commitment<sup>6</sup> in this respect would be a good indicator of its appetite for greater accountability.

Prosecutorial accountability featured in the 2004 considerations of the EFRA Select Committee. Having noted the state's dependence on a charity for the funding and discharge of one of its fundamental responsibilities, it stated at paragraph 258:

"We have considered the many submissions opposing the power of the RSPCA and other charities to institute private animal welfare prosecutions. The difficulty with removing this power is that there appears to be no body other than the RSPCA with the requisite expertise to undertake animal welfare prosecutions, particularly under the proposed clause 3<sup>7</sup>. Although we consider that a lack of accountability makes it inappropriate that the RSPCA should be appointed as an *authorised* prosecutor under the draft bill, **we consider that the RSPCA should be able to continue to institute private prosecutions on its own behalf.**"

The extent of the inconsistency is highlighted by the final sentence of paragraph 61 of the report's conclusions:

"We consider it wholly inappropriate that prosecution powers under the draft bill should be able to be exercised by any organisation other than the Police, the State Veterinary Service and Local Authorities";

yet the conclusion at 62 states:

"We consider that the RSPCA should be able to continue to initiate private prosecutions on its own behalf."

<sup>6</sup> Experience shows that full compliance with Freedom of Information legislation can be costly and resource intensive. It would be inappropriate if the increased transparency came at disproportionate cost to charitable funds. There is a balance to be struck.

<sup>7</sup> Clause 3 is now section 9 of the 2006 Act.

The Committee's reasoning is unclear as to why it should be acceptable to rely on the prosecuting role of the RSPCA when it deemed it inappropriate to authorise that role. The effect on the public is no less and arguably more serious in that they are subjected to unaccountable authority.

The present position is not in the interests of either the RSPCA or the public. That does not mean the RSPCA should abandon its prosecution activities – although the review does recommend some modification later in this report. Instead, the RSPCA should approach the relevant government departments (mainly DEFRA, the Department of Justice and the Attorney General's Office) with a view to agreeing a basis whereby its prosecution role is formalised and accredited<sup>8</sup>. In practice, this would need to be undertaken in the context of the proposal made later in this report for a concordat with government to define more clearly the overall enforcement role of the RSPCA and ensure that it has the necessary tools to do the job. It would undoubtedly require voluntary assumption by the RSPCA of the duties that attach to public prosecuting authorities in terms of accountability and seek to associate itself more strongly with the wider criminal justice community. The steps required would most likely include:

- Ensuring that its work was governed by overarching policies and offence specific guidance developed and published after full external consultation. It is important that the enforcement of the criminal law is carried out by reference to standards and criteria that take proper account of public concerns and attitudes and are fully accessible;
- Transparency: it needs to be less defensive about its role and ensure that material such as performance information, internal guidance and practice and procedure manuals are made available to the same extent as would be required of a public authority; and
- Effective arrangements for the investigation of complaints with an appropriate escalation process – including an external element.

Within government there is a body known as the Whitehall Prosecutors' Group comprising representatives of the CPS and other non-CPS prosecutors that examines matters of general interest and provides a co-ordinating function. Mention was made earlier of the concern by the senior judiciary that there should be a more consistent approach to the application of the Code for Crown Prosecutors to non-CPS work. That is likely to be taken forward through that group. In the review's view, the scale of the RSPCA's prosecution activity and the public reliance on it make it appropriate for it to seek some form of associate membership of that group.

There are other reasons why the RSPCA should become more a part of the wider criminal justice community. Although it is responsible for approximately 83% of animal welfare prosecutions, it is by no means the only player. The CPS, local authorities and the AHVLA may all prosecute under the 2006 Act as well as specialist legislation. The DEFRA prosecuting role has now been subsumed into the CPS. The review received clear evidence that the approach to enforcement varies significantly across these agencies. There is a need for consistency of overall approach even though there are different factors in play in the various sectors. It is wrong that the likelihood of an individual being prosecuted, and the approach to the conduct of proceedings should depend on the attitude (or resources) of the

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<sup>8</sup> The RSPCA in Australia is an example of prosecutions being carried on by a charity but on a properly regulated basis.

particular prosecuting body. That seems to be precisely the sort of concern underlying the wish of the senior judiciary to see more consistent application of the Code for Crown Prosecutors. It also means that any work by the RSPCA to develop offence specific guidance (e.g. in relation to the Animal Welfare Act 2006) could be out of kilter with other prosecutors unless suitably co-ordinated. That would not be in the public interest. Better alignment of approach could also have implications for the relevant public bodies (as well as the Society) since some would certainly need to raise their game and engage more. So far the willingness to tackle this need has not been universal. Indeed public authorities seem keen to distance themselves from these issues. But the problem should not be insoluble if the will is there.

### **4.3 *Current position: investigation***

Animal welfare issues rise in several sectors. The main ones are farm animals; companion animals; wild animals; markets and slaughterhouses and animals in transport. The RSPCA's charitable purposes relate to animal welfare rather than regulation of disease and hygiene. But, as expressed by the Local Government Association representatives, where there is a disease or hygiene issue, there is usually a welfare issue also, giving rise to extensive overlap. The legislation provides for enforcement by local authorities and those authorised by DEFRA (for England) and the Welsh Assembly (for Wales). The police also has wide ranging powers but limited involvement – mainly confined to dangerous dogs and those offences likely to be linked to wider criminal activity. They have a National Police Wildlife Unit which is proactive in relation to endangered species and unlawful trades. They work closely with the RSPB as well as the RSPCA.

In practice, it is extremely rare for police to deal with any animal cruelty or welfare issue even where the evidence is dropped into their lap and speedy investigation would be in the interest of justice. One case in the file sample related to two youths observed by members of the public setting a dog onto a captive rabbit so that it was killed and then thrown over a fence. Police attended and took possession of the carcass but rather than initiate an investigation, reported the matter to the RSPCA National Control Centre. In another case police investigating other criminality entered the premises of a suspect to search for evidence. They found the carcass of a dog which by its condition had most clearly been starved to death. The public interest would have been best served by a swift and focused investigation leading to early charge and disposal by the court. Instead, the individual was summonsed several months later by the RSPCA.

Local authorities (county council or unitary authority, trading standards departments) are likely to be proactive around farms, markets and slaughterhouses. District council (or unitary authority where appropriate) responsibilities are mainly confined to licensing of certain businesses such as boarding and riding establishments.

For the most part, these relatively narrow activities are based on legislative requirements that predate the Animal Welfare Act 2006. That legislation had the effect of substantially broadening the scope of the criminal law and creating substantial uncertainty. The whole structure of the Act focuses extensively on local authorities for enforcement but both investigation and prosecution powers are discretionary; that is of particular significance at a time when budget constraints mean that many local authorities are confining their activities to statutory obligations and declining to take on any discretionary responsibilities. Research by Dr Fiona

Cooke<sup>9</sup> found that the imposition of such significant powers and duties radically changed the role of local authorities in relation to companion animal work but with little thought given to the ability of local authorities to carry it out. Rather, central government proceeded on the assumption that, because local authorities had some general regulatory responsibility for particular types of animals in specific situations, they were the appropriate bodies to take on a greatly expanded role; and were adequately equipped to carry it out. There was an assumption that the 2006 reforms were merely extensions to the existing arrangements. For example, when the Animal Welfare Bill was published in draft, the Government simply stated that “as with existing animal welfare legislation, the new Act would be enforced by local authorities, SVS and the police”<sup>10</sup>, without giving further consideration as to how this was to be carried out. The difficulty referred to earlier in developing coherent arrangements for enforcement was therefore wholly foreseeable. The main reason for government not couching the legislation in terms of a duty to enforce appears to have been the inevitability of demands from local government for additional resources which central government was not prepared to provide.

Dr Cooke’s research went on to demonstrate that the enforcement of animal welfare legislation was a role that many local authorities were ill-equipped to take at the time the legislation was introduced. In significant areas, it would be largely ineffective except for the contribution of charitable NGOs such as the RSPCA.

The extent of the departure from what Parliament appears to have envisaged (as judged by its empowerment of local authorities to appoint inspectors and to prosecute) is stark. The research<sup>11</sup> shows that, across Great Britain, just over 60% of local authorities had appointed inspectors for the purposes of the Animal Welfare Act 2006. Take up varied between 100% of Scottish local authorities and English county councils with a much lower take up by other authorities. The breakdown is given below.

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<sup>9</sup> University of Aberdeen: Animal Welfare Legislation and Local Authorities: unpublished.

<sup>10</sup> “Local Authority inspectors (the front line enforcers of licensing provisions) and the State Veterinary Service were consulted and have been involved in the development of the proposals contained within the Bill and its regulations and codes.” DEFRA, launch of the draft Animal Welfare Bill (Crown Copyright July 2004) S50, P81.

<sup>11</sup> By a postgraduate student of the University of Aberdeen – Dr Fiona Cooke.

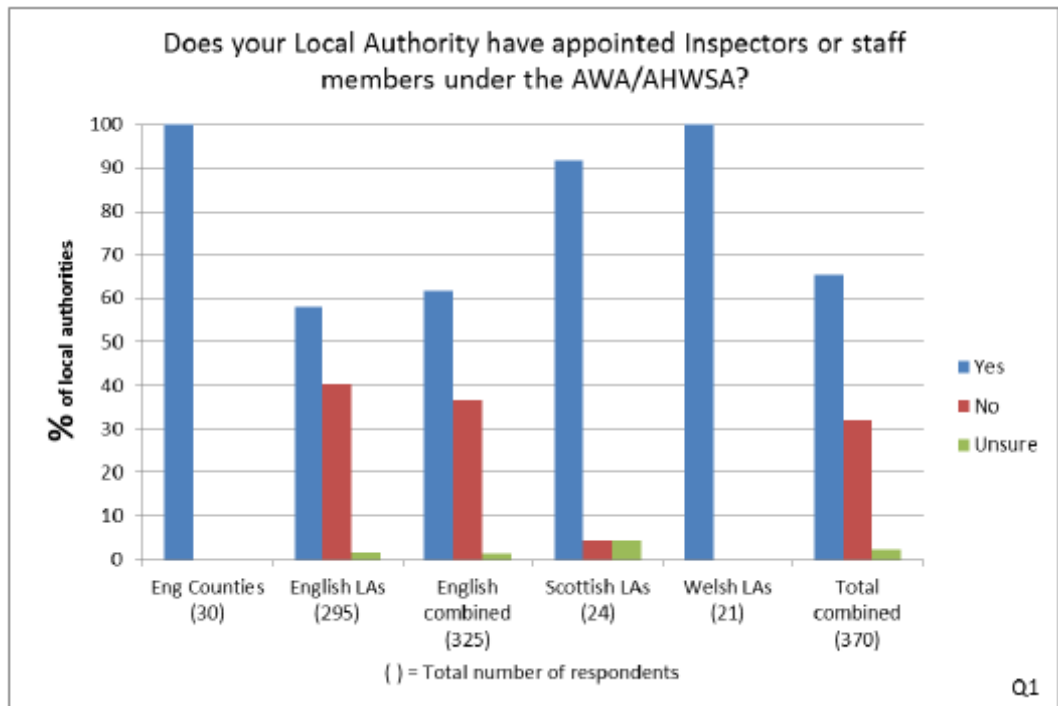


Table 1

There were extensive variations as between local authorities in relation to the deployment of inspectors appointed under the 2006 Act. The most predominant usage overall was in relation to licensed establishments although the English county councils all deployed inspectors for dealing with cases of cruelty to livestock; animal health and welfare on farms; and transport of animals.

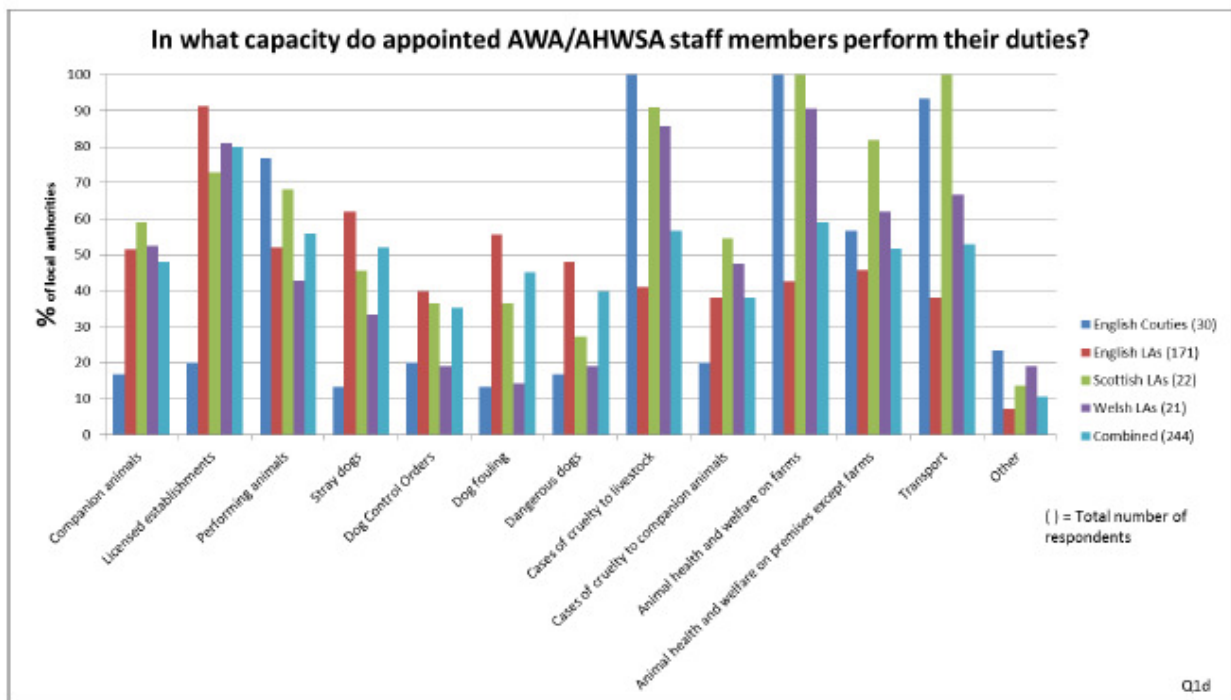


Table 2

By contrast the use of animal welfare inspectors in relation to companion animals is low even when there are appointed animal welfare inspectors. It is in English local



authorities (excluding county councils) where appointed inspectors deal most with companion animal welfare across Great Britain. Seventeen percent of appointed staff in English local authorities deal with companion animal welfare on a daily basis. The comparable figure across Great Britain is 11%. The relatively low figures may be due to lack of need in some areas; however, the researcher suggested that in view of the input of charities such as the RSPCA this is not the only reason.

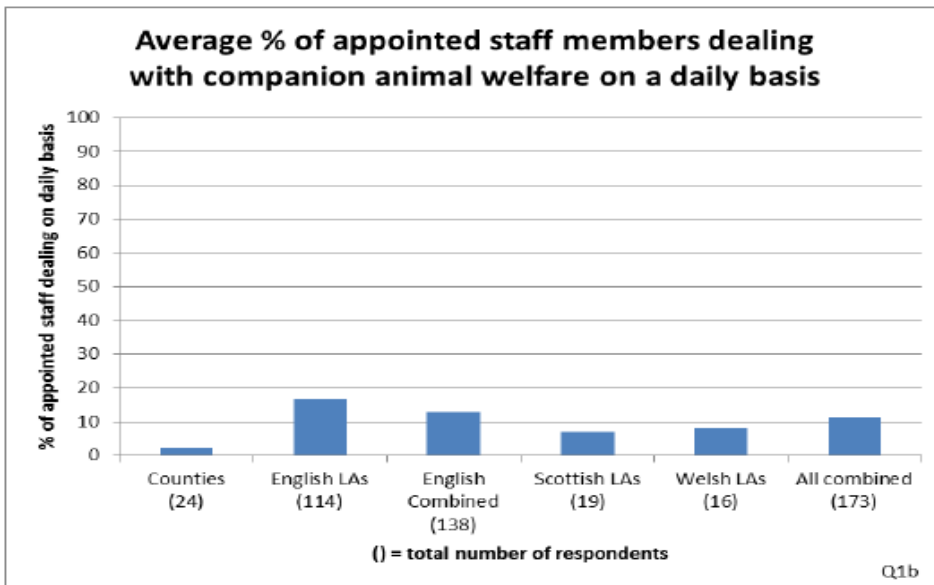


Table 3

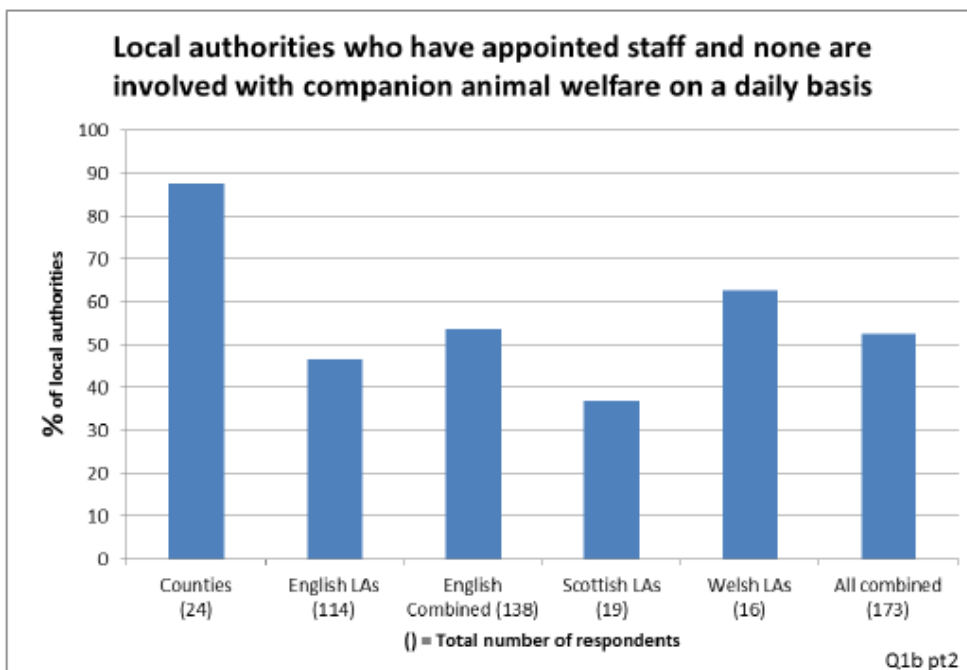


Table 4

The majority (73%) of local authorities responding to the research confirmed that the appointment of inspectors under the 2006 Act did allow statutory duties to be more effectively carried out. Where appointments were not made, the main reasons

were decisions by local authorities to prioritise only statutory duties (as opposed to a discretionary power under the 2006 Act) and resource issues generally.

A particularly interesting aspect of the research is the responses received from local authorities specifying the action taken on receiving reports of companion animal welfare issues. Nearly 40% of all local authorities in Great Britain (over 50% of county councils in England and nearly 40% of other English local authorities) said that they would **always** refer such matters to the RSPCA. A further 20% of local authorities would **nearly always** refer such matters to the RSPCA.

The reality is that without RSPCA action, there would be little enforcement. Dr Cooke concludes:

“Some Local Authorities have chosen to disregard the 2006 legislation entirely while others have merely gone through the motion of adopting it without demonstrating any real commitment. In contrast there is a third group which has applied the legislation imaginatively and determinedly so as to improve vastly their services and also to develop new initiatives.”

The AHVLA operates to safeguard animal health and welfare as well as public health, protect the economy and enhance food security through research, surveillance and inspection. It plans work to prevent and control animal disease across Great Britain through activities on farms and at markets and other livestock related premises.

The police and other public services mentioned may therefore all enjoy the extensive powers afforded to constables and inspectors (not to be confused with RSPCA inspectors) under the 2006 Act. Local authorities are specifically empowered but not required under the legislation to prosecute. As noted in the ‘Background’ approximately 17% of animal related prosecutions are conducted by public authorities with the remaining 83% being taken forward as “private prosecutions” by the RSPCA. The costs are borne by the RSPCA except to the extent that they succeed in recovering an element of the legal costs from convicted defendants and receive payments out of central funds (at the discretion of the courts) for the fees of expert witnesses.

Although witnesses from the RSPCA who gave evidence to the Select Committee indicated that they would be comfortable in continuing their enforcement activities without either the investigative or the prosecution powers contained in the Bill, the review recommends strongly that the RSPCA Council reconsider this position.

#### **4.4 *The need to change the operating environment***

The enforcement of animal welfare legislation in England and Wales could be described as ill structured and haphazard. The lead department is DEFRA – they sponsored the Animal Welfare Act 2006 but assert that they do not “own it”. That is undoubtedly correct in so far as DEFRA cannot be expected to undertake all aspects of implementation. Nonetheless, one would expect the department to accept responsibility for ensuring that clear and appropriate arrangements for enforcement of its legislation were in place. That does not appear to be so. There was an attempt shortly after enactment of the 2006 Act to develop a protocol setting out the respective responsibilities of the various agencies concerned with animal welfare having regard to the broadening of the criminal law. It quickly ran into the

sand – largely because all concerned were determined to accept no additional burden. The RSPCA was the exception.

The present position is that the RSPCA is utilising its charitable funds to discharge what is effectively a government function but with only limited recognition or reimbursement. Its prosecution role has attracted significant criticisms – some based on principle and others based on the manner in which the RSPCA is perceived as doing it. Some of the principled objections to its current role are difficult to counter, in particular its lack of accountability. Others relating to lack of transparency and the absence of clear and published prosecution policies are capable of being met by changes within the RSPCA itself. Similarly, the Reviewer is confident that where the review has found valid criticisms relating to the conduct of prosecutions, they can be satisfactorily addressed. It is important that weaknesses are addressed because the criticisms and associated media campaign have been damaging to the reputation of the RSPCA.

The review recommends that the RSPCA should open discussions with HM Government (DEFRA) with a view to restarting the exercise commenced shortly after implementation of the Animal Welfare Act 2006 to apportion responsibility for enforcement of the various aspects of the legislation to the relevant agencies. The RSPCA should seek a concordat with DEFRA identifying those aspects with animal welfare law where the RSPCA is to be the primary enforcement agency. For the reasons given in the following chapter, the RSPCA should ask DEFRA to appoint suitably experienced RSPCA inspectors as inspectors under the Animal Welfare Act 2006.

The review is aware that there have in the past been reservations on the part of the RSPCA that formalising its role might somehow compromise its independence or charitable status. It does not believe that would be the case. There are many precedents in contemporary public administration for partnerships between the public, private and third sectors. In any event, the RSPCA needs to operate in a collaborative manner with other enforcement agencies to ensure consistency of approach. The extended scope of the work and the situation described above make the current muddled arrangements unacceptable. The DEFRA post-legislative assessment submitted in December 2010 to the EFRA Committee (CM7982) concluded that the 2006 Act had met the objectives of harmonising farm and companion animal welfare and consolidating and simplifying animal welfare legislation. But it also acknowledged that one of the main criticisms remained enforcement. Respondents then had identified different standards of enforcement as problematic and suggested a need for greater clarity over which authorities are responsible for enforcing different parts of the Act.

For such discussion to have any prospect of success, the RSPCA would need to consider its own position as regards those activities (e.g. transport of live animals to slaughter) where the RSPCA believes that enforcement by public authorities has been insufficiently robust and therefore reserved its position to intervene. It is intrinsically undesirable that one enforcement body should be perceived as calling into question the adequacy of others. This can cause uncertainty and confusion to those affected. Although the RSPCA may see such a stance as part of its “campaigning role” it is inconsistent with the principle that enforcement generally and prosecution in particular should ordinarily be instituted and conducted according to established policies consistently applied by the public authorities.

The concordat should provide that the RSPCA will not seek to second guess the relevant prosecuting authority in relation to prosecution decisions although it would

not wish to be inhibited from instituting proceedings in rare circumstances where there has been a manifestly inappropriate failure by the relevant public authority to act. That eventuality remains the accepted rationale for retention of private prosecutions in the law of England and Wales.

#### **4.5 Recommendation**

- 1 The RSPCA should open a dialogue with HM Government (DEFRA, the Ministry of Justice and the Attorney General's Office) seeking the development of a concordat placing the RSPCA's investigation and prosecutions activities on a formal basis. It should be based on the creation of arrangements for accountability and greater transparency and include the appointment of suitably experienced RSPCA inspectors as inspectors for the purposes of the Animal Welfare Act 2006.*

## **5 Role of the RSPCA Inspectorate**

### **5.1 Introduction**

The Inspectorate is the investigation arm of the RSPCA: what it undertakes and how it does it largely determines the scope and nature of the work undertaken by the Prosecutions Department. If inspectors decide to investigate, then a case file will result; when the Inspectorate decides a matter should not be pursued, that is the end of the matter. As with the police, what the Inspectorate does at the investigative stage has a major bearing on what cases are likely to be prosecuted and the issues that may arise.

It is the Inspectorate that also has the greatest impact on the public: the RSPCA is more proactive than the public authorities; it maintains a 24-hour call centre and encourages the public to report suspected cruelty or neglect. Its inspectors respond to calls from members of the public (or even the police) expressing concerns about the welfare of animals. Information may be sparse and little known about the background or the motivation for the report. Depending on the circumstances, the inspector may have greater or lesser difficulty in securing access and making an assessment. It is at this stage that interpersonal skills are crucial since the initial contact may well set the tone for any ongoing relationship that results. RSPCA inspectors have no statutory powers or authority to assist in their work.

There are some 331 inspectors together with 86 animal collection officers and 58 animal welfare officers who operate mainly as individuals but may come together in teams for particular exercises such as the execution of search warrants. They are allocated their own geographical area operating within a regional structure under the line management of a Chief Inspector and Regional Superintendent. There is a group office in each of the group areas providing an administrative base and inspectors start and finish their shifts at home. They also spend time after certain shifts on call overnight to provide the 24-hour animal welfare service.

The cadre of inspectors includes a Special Operations Unit (SOU) that exists to deal with conduct that is more serious and more organised than would be appropriate to be handled by individual inspectors. Matters such as organised dog fighting, badger baiting and dealing with unlawful trades in birds and exotic species will typically come within its remit. It has also been responsible for the investigation of suspected illegal hunting activity. Where appropriate, the SOU liaises with the police (including Wildlife Crime Officers) and the Royal Society for the Protection of Birds.

The SOU is supported by an intelligence capacity which monitors a number of specialist sources in order to identify patterns of offending and enable the SOU resources to be targeted most effectively. There is extensive liaison with other animal welfare organisations. The intelligence unit also monitors the internet where details of questionable activity might be found or even video clips depicting the apparent commission of offences. The review was assured by the police that data protection considerations do not permit the passing of information from the Police National Computer (PNC) to the RSPCA save in circumstances covered by a specific agreement that enables previous convictions of individuals being prosecuted to be before the court.

RSPCA inspectors do not have any statutory or other powers. They are subject to initial training in a course that lasts some seven months leading to an NVQ – Level 3 diploma for RSPCA inspectors which has been developed by City & Guilds specifically for the RSPCA to train their animal welfare officers and inspectors. Its scope is impressive covering relevant legislation, animal welfare and husbandry, UK wildlife, farm animals and interviewing victims and witnesses. In practical terms it covers matters as diverse as understanding of “bad character” applications in criminal proceedings through to illegal traps used in relation to wildlife and the safe handling of firearms for the purpose of humane euthanasia.

Competition for appointment to the Inspectorate is keen although the profile of candidates has changed in recent years: many are now graduates with urban backgrounds where previously inspectors tended to come from rural backgrounds with practical experience. This places a premium on the quality of the training.

Cases emanate mainly from the RSPCA’s National Control Centre but may be generated by its own intelligence led policing as described above. In 2013 inspectors investigated 153,770 complaints of alleged cruelty resulting in the issue of 76,810 non-statutory welfare improvement notices. There is no limit to the range of scenarios that may give rise to investigation provided that they fall within the overall objective of the RSPCA:

“To promote kindness and to prevent or suppress cruelty to animals and do all such lawful acts as the Society may consider to be conducive or incidental to the attainment of those objects.”<sup>12</sup>

The Chief Inspectorate Officer acknowledged that the investigative role of the RSPCA was ill defined; and there is little strategy. Maintaining consistency can be problematic within an organisation based on areas overseen by 35 Chief Inspectors (32 in England and three in Wales). This was echoed in interviews with PCMs, some of whom felt that overall case management would benefit from a clearer overview at line management level accompanied by a greater degree of local quality assurance and monitoring of case progression.

The statistics cited above demonstrate the extent of the work done by the Inspectorate. In practice, its range is largely determined by the very large gaps (some would say a gaping hole) left by the public authorities as regards enforcement of animal welfare legislation. In addition, the RSPCA attaches great importance to its freedom to become involved in all aspects of animal welfare such as farm animals, animals in transport or used for entertainment – especially if it feels the relevant public body does not take a sufficiently robust line (e.g. the transport of live animals). The extent of this involvement is likely to vary depending on the composition and views of the Council at any particular time. The difficulty arises in that the RSPCA may appear to be enforcing a higher standard than the relevant authority (which may have its own line of accountability) whilst both are committed to their own position and may base it on the principles of the Code for Crown Prosecutors. It does not always follow that public authorities get it right (especially when resources are scarce) and the important issue is that all agencies should be enforcing the legislation to an appropriate and proportionate standard.

It follows that the role of the Inspectorate is, in practice, determined by a combination of the need to fill “the gaping hole” together with other priorities as from

<sup>12</sup> Royal Society for the Prevention of Cruelty to Animals Act 1932.

time to time are determined by the Council. The role of the Inspectorate is therefore linked more closely than the Prosecutions Department to the wider objectives of the Society and its campaigns. This makes it difficult but even more important for the Prosecutions Department to convince observers that its decisions really are immune from the sort of extraneous factors mentioned in the Code for Crown Prosecutors.

This chapter now considers more detail as to the Inspectorate's arrangements for the enforcement of animal welfare legislation, the processes that are engaged; the criticisms that the Inspectorate encounters and an evaluation with particular reference to the inspectorate's relationship with the police service in the context of the exercise of statutory powers vested in constables. Special considerations also arise around the role of the RSPCA in relation to animal sanctuaries and rescues.

## **5.2 *The investigation process***

It is wholly anomalous that the state places such extensive reliance on a charity to enforce criminal legislation that directly impacts on the day today lives of ordinary citizens. It is even more remarkable that powers of investigation and prosecution are conferred on public authorities who choose not to exercise them; but are not conferred on the RSPCA.

Such a scenario is ripe for disputes, confrontation and recriminations. This is particularly so if an inspector appears to have adopted a course beyond what is strictly lawful even with the assistance of police or inspector authorised for the purposes of the Animal Welfare Act 2006. It may create an acrimonious background to any proceedings and the proceedings themselves may also be affected. The admissibility of any evidence obtained as a result of an unlawful act such as an entry to or search of premises where there was no power to do so may be subject to an application to have it ruled inadmissible under section 78 of the Police and Criminal Evidence Act 1984. Disputes may also extend to the continued retention of animals seized during the course of an investigation.

It is sufficient at this stage to flag up three issues:

- Police officers responding to requests by the RSPCA for assistance generally have no knowledge of the circumstances and in most cases little or no knowledge of the relevant legislation. In most instances they are reliant on direction from the RSPCA as to the steps to be taken.
- There is an artificiality in a situation where legislation vests specific powers on the police to the exclusion of RSPCA inspectors but police officers who have no intention of carrying out an investigation exercise powers of search and seizure only to hand material to a third party with no official status (the RSPCA) and with no intention of themselves acting on it. There is a particular risk if it turns out that material seized included that which should not be – collateral intrusion occurs.
- The safeguards, built in into legislation are rendered largely nugatory because the police subsequently accept no responsibility for the seizures and simply refer queries and challenges to the RSPCA: whose actual role is no more than baillie on behalf of the police.

All stages of the investigation are affected by the absence of powers and what follows is intended to give a flavour of the challenges faced:

### **5.2.1 Gaining access to premises and/or animals**

The circumstances faced by inspectors are many and varied. The basic objective will usually be the same: to view any animals and assess whether the conditions in which they are maintained are suitable or there are health issues that may require immediate veterinary intervention. Quite often the co-operation of the owner of the property/animals or some other person present will be forthcoming and will be sufficient. Even that may be problematic if the owner subsequently believes that they were misled or deceived by the inspector either as to their status/powers or their intentions. The authority of a third party present at the premises to authorise admission may also subsequently be disputed. Where nobody is present an inspector may be able to view and assess animals that are in the open although this may lead to challenge on the basis of trespass.

In certain circumstances where the occupier has refused, an inspector may be able to secure access with the assistance of a third party such as a landlord who may consent. Otherwise, it is likely that he or she will need to call for the assistance of police. This may be exercised by a constable relying on powers under section 19 of the Animal Welfare Act 2006 or an application by the police to a magistrates' court for a warrant.

Section 19 of the 2006 Act enables a constable to enter premises other than a private dwelling to search for a protected animal if he reasonably believes that there is such an animal on the premises; and that the animal is suffering or, if the circumstance of the animal do not change, it is likely to suffer. The finding of an animal in such circumstances will trigger the power of seizure provided by section 18 of the Act.

Section 19 does not apply if any part of the premises appears to be a private dwelling. In such circumstances, the inspector may request that the police assist by applying for a search warrant. Certain conditions have to be fulfilled before a warrant will be issued. In summary, there is a prerequisite that the occupier has been informed of the decision to seek entry and apply for a warrant and has failed to allow entry; or the premises are unoccupied; or that it is inappropriate to inform the occupier of the decision to apply for a warrant because it would defeat the object of entering the premises, or entry is required as a matter of urgency. The last set of circumstances is the one most usually relied on.

It falls to the police to make the application with the supporting documentation being completed on the basis of information provided by the inspector. Thereafter, the execution is also a matter for the police although the warrant should stipulate those who are authorised to accompany them and assist the search.

### **5.3 Seizure and taking animals into possession**

Once again the inspector will be dependent on assistance from a constable who has various powers available that can be used to help animals once the officer is lawfully on the premises. These can be summarised as:

Section 18 of the Animal Welfare Act 2006 sets out the powers in connection with measures to alleviate animal suffering, take possession of animals (without limit on time) and the conditions for their destruction. In particular:



- Section 18(1) empowers a constable who reasonably believes that a protected animal is suffering to take or arrange for the taking of such steps as appear immediately necessary to alleviate the animal's suffering.
- Section 18(5) empowers a constable to take a protected animal into possession if a veterinary surgeon certifies that – a) it is suffering or b) it is likely to suffer if its circumstances do not change.
- Section 18(8) provides that where an animal is taken into possession under sub-section (5), a constable may – a) remove it, or arrange for it to be removed to a place of safety; b) care for it or arrange for it to be cared for.

The usual practice is for a constable on seizing an animal at the request of the RSPCA immediately to place it into the Society's care. However, the animal as a matter of law remains the responsibility of the police until dealt with in accordance with legal procedures.

### 5.3.1 Seizure of evidence

Section 19 of the Police and Criminal Evidence Act 1984 creates a general power to seize property under certain circumstances and is exercisable by a constable who is lawfully on any premises. The most relevant aspect of this provision for present purposes is section 19(3) which empowers a constable to "seize anything if he has reasonable grounds for believing that it is... evidence in relation to an offence he is investigating or any other offence; and that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed".

The judgment of the Court of Appeal in *Scopelight Ltd v Chief Constable of Police for Northumbria and the Federation Against Copyright Theft Ltd* [2009] EWACiv 1156 make clear the extent of this power. It is said at paragraph 21:

"On the face of it, "any other offence" covers a range of conduct of enormous width, identified only by the fact that by common law or by statute, it is considered of sufficient significance to justify the imposition of a criminal sanction, whoever might be interested in prosecuting breach of the law to obtain such sanction through the court. Thus, if, while executing a search warrant for stolen goods, the police come across an assembly line of odometers being turned back or "clocked", or evidence of ill-treatment of animals, the warrant entitles them to seize that evidence even though prosecution of the former may fall to Trading Standards and of the latter the RSPCA. Many other examples could be given of where the police are not primarily interested (even if in the first example, the application of a false trade description might also be evidence of conspiracy to defraud) but which other organisations have the expertise and assume the responsibility for prosecuting if the evidence is made available to them. That, of course, assumes that it can be."

As regards the latter point, the Court of Appeal noted that section 22(1) of the 1984 Act enables a constable, subject to certain restrictions, to retain material seized as evidence "so long as is necessary in all circumstances". Subsequent sub-sections provide, without prejudice to the generality, for retention for use as evidence at a trial; or for forensic examination or other investigation in connection with an offence.

However there is a specific limitation (section 22(4)) that nothing may be retained for use as evidence at a trial or forensic examination etc if a photograph or copy would be sufficient for that purpose. That provision assumes significance in the context of the use of the Section 19 power to seize animals – dealt with later in this report.

The Court of Appeal then set out its approach to the phrase “anything which has been seized by a constable... may be retained so long as it is necessary in all the circumstances”. The Court stated that this “required the police to consider each case on its own individual facts, at each stage of the process of investigation and prosecution”. If the CPS is prosecuting in the case, whatever is required for forensic examination or the prosecution will obviously be retained but, even then, consideration will have to be given to ensuring that no more than is necessary for the case (either to pursue it or to rebut a potential defence) is kept. If a prosecution is not to be pursued by the CPS but some other public or private body wishes to pursue a private prosecution, the relevant circumstances include (but are not limited to): the identity and motive of the potential prosecutor; the gravity of the allegation along with the reasoning behind the negative decision of the CPS and thus the extent to which, in this case, the public have a legitimate interest in the criminal prosecution of this conduct; the police view of the significance of what has been retained; and any material fact concerning the proposed defendant. All this falls to be considered so that a balanced decision can be reached on whether retention is necessary “in all the circumstances”. Such a decision would be capable of challenge on traditional public law grounds.”

The RSPCA Prosecutions Department attaches considerable importance to this judgment as authority supporting certain working practices as between the police service and the RSPCA. However, the judgment was delivered in the context of material held by the police following execution of a search warrant for the purposes of a substantial investigation being undertaken by the police<sup>13</sup>. Officers seizing the material were lawfully present on the premises for the purposes of executing the warrant and that triggered section 19 of the 1984 Act. That is arguably a different situation from one where a police officer attends premises at the request of the RSPCA (but without any intention of himself carrying out a criminal investigation) and merely responds to a request from that organisation because its staff have no authority. It is not impossible that the Court of Appeal judgment in *Scopelight*<sup>14</sup> might be distinguished.

### **5.3.2 The substantive investigation**

The majority of RSPCA investigations follow a fairly standard pattern. Having gained access (with or without police assistance), the RSPCA inspector will seek to examine any animals on the premises and the conditions in which they are maintained. If the inspector has cause for concern that one or more of the animals may be suffering or is likely to suffer if circumstances do not change, a veterinary surgeon will be asked to attend for a professional assessment with a view to certification under section 18(5) of the Animal Welfare Act 2006. Alternatively, the inspector may seek the consent of the animal’s owner to take the animal for veterinary examination; or the inspector may, on occasion telephone a vet and seek certification over the telephone on the basis of information provided. If the veterinary surgeon issues a section 18 certificate, the inspector will usually seek police assistance in the form of a constable who will be invited to effect the seizure before immediately handling any seized animal into the care of the RSPCA and Section 18(8) of the 2006 Act. It will then be implicit that an offence has been committed and the inspector will seek to interview under caution all individuals who appear to have some responsibility for the animals in question. There may be

<sup>13</sup> The file was submitted by the police to the CPS who decided not to prosecute.

<sup>14</sup> *Scopelight Ltd and Others -v- Chief Of Police for Northumbria and Others*, QBD, Appeal from, (*Bailii*, [2009] EWHC 958 (QB)).

circumstances where no animal is assessed as suffering or likely to suffer but nonetheless conditions are deemed such as to contravene section 9 of the Animal Welfare Act 2006 (the duty of care). The inspector may then proceed by way of written advice/warning but in some circumstances may decide that an investigation is called for. In that situation also, the inspector will seek to interview under caution all those deemed to be responsible for the animals.

The RSPCA requirement that individuals submit to interview under caution gives rise to a grey area which may also prove highly contentious. This is another aspect of the RSPCA role where inspectors enjoy no powers whatsoever. But both good practice and the interests of justice require that an individual who is suspected of having committed a criminal offence (and may therefore be prosecuted) should be afforded the opportunity to put forward their case or explanation at an early stage. The Codes of Practice relating to the questioning of suspects apply not only to police officers but to all charged with the duty of investigation (e.g. store detectives, trading standards' officers and RSPCA inspectors) and the individual must therefore be cautioned at the outset to the effect that they are not obliged to answer any questions although (in summary) it may operate to their detriment if they choose not to do so. It must also be borne in mind that individuals cannot be required to incriminate themselves and there is therefore no right on the part of the RSPCA (or any other investigator) to require that answers be given in order to establish or strengthen their case.

Problems may arise when individuals (sometimes those more peripherally concerned with the animals in question) either decline to be interviewed or offer the inspector a pre-prepared statement indicating that they are not prepared to engage further. In such circumstances, it seems wholly appropriate that those concerned should be warned of the possible detriment. However, some PCMs and inspectors take the view that they should go further and invite the police to effect an arrest under section 24(5)(e) of the Police and Criminal Evidence Act 1984 (to facilitate the prompt and effective investigation of an offence) in order that RSPCA inspectors may attend the police station in order to conduct an interview in the custody suite.

The further actions by the inspector usually include the taking of statements from relevant witnesses (generally the police officers, the other RSPCA inspectors who may have been involved and any civilian witness) together with the commissioning of the necessary veterinary evidence. The report is then prepared for the Prosecutions Department at RSPCA Headquarters.

### **5.3.3 Submission of report**

Once all the evidence has been gathered a report is prepared in standard form for submission to the Prosecutions Department. The overall quality of the reports is high in that they usually contain all the material necessary for the PCM to take a decision as to the sufficiency of the evidence to justify the institution of proceedings. On some occasions it is necessary for the PCM to call for further evidence to verify points or cover additional issues. It has to be said that the quality does exceed what a typical Crown Prosecutor might expect to receive from the police service and the review later considers the possibility of short-form report for some more straightforward cases where the RSPCA can be reasonably confident that a guilty plea will be entered at an early stage. There is scope for the format to be more user friendly with the material which is to form the basis of the prosecution case segregated from that material which is unlikely to form part of the prosecution case and other background information and documentation. Although PCMs had no criticisms of the format, that may reflect their limited role (i.e. taking the decision

whether to prosecute rather than the conduct of proceedings) and their familiarity with the format. Several external prosecuting solicitors commented that their first action on receipt of a file would be to separate out and re-organise the documentation.

Submissions to the Prosecutions Department are covered by a 'preface report' which sets out basic details of the persons complained of and the allegations together with additional background material the inspector feels may assist and his or her own comments. The factual content is however limited and most prosecuting authorities would, in my experience, expect a fuller summary of the facts to assist the prosecutor in assimilating the evidence. By contrast many reports contained 'from the heart' comments by the inspectors not only about the circumstances of the case but about the persons complained of. These frequently tended to be both personal and judgmental to an extent that could call into question the impartiality and professionalism of the inspector. That is something that line management should be alert to and discourage. By contrast, the review identified a need for more background factual information to be available to PCMs to assist with the public interest aspect of the decision whether to prosecute. A significant proportion of cases investigated by the RSPCA relate to individuals who may be elderly, vulnerable and from the lower socio-economic groups often with financial difficulties and somewhat chaotic lives. Such factors can only be properly taken into account if they are fully known to PCMs at the outset.

#### **5.3.4 Perceptions of RSPCA enforcement**

Champions of the RSPCA's enforcement role point to its expertise, experience and access to resources in a specialist area which is low (or no) priority for the police and CPS. Its supporters also emphasise its high rate of successful outcomes and readiness to pursue cases which might be regarded as too difficult by others. In addition, there is strong evidence that the police and the CPS lack the skills and expertise to take on such cases effectively or at all; and will continue to do so in the foreseeable future. Most commentators referred to the 97% figure used by the RSPCA for annual report purposes which focuses on cases that have been subject to specific judicial determination. The review analysis (section 6.2) adopted a basis more akin to that of the CPS which suggests that the percentage of defendants convicted over the four year period 2010 to 2013 was 91.8%.

Out of 290 responses to the public consultation 181 expressed overall support for the RSPCA with 66 respondents linking that support specifically to its stance in relation to enforcement of the Hunting Act 2004. There was also a group who very properly declared interest through employment or other association with the RSPCA. Some 63 respondents expressed concerns about the current role of the RSPCA with 27 linking them to specific cases. There were numerous neutral responses commenting on perceived strengths and weaknesses. Lack of accountability was a common theme. One individual with an academic background who had written a thesis on the need for the RSPCA to have increased powers of investigation and prosecution commented:

"The problem with animal protection is that it is too political. Even within animal protection there are accusations if you claim to be animal welfare or animal rights. That is why the RSPCA receives so much criticism. There needs to be an independent body overseeing the work of the RSPCA. I suppose what I am suggesting is that the Society be regulated by a team of professionals in each specialist area to maintain a sense of authority, while perhaps initiating the creation of a separate investigatory body and modifying the department to include a team of in-house lawyers."

Another commentator and author of books on animal welfare proposed the creation of an Animal Ombudsman in conjunction with one independent body having overall control of enforcement of all animal welfare legislation. Whilst such proposals go further than the scope of this review its proposals are aimed at addressing the key issues relating to accountability and ensuring that extraneous considerations do not enter the process.

When analysed a large majority of the concerns were directed towards the investigation process. The most common complaint was that inspectors were looking to find fault, over zealous, hostile and/or arrogant in their dealings with persons complained of. Recurring themes included trespass on premises, lack of openness when seeking co-operation, improper use of seizure together with unnecessary retention of and lack of information about or access to seized animals including where euthanasia was involved. Whilst some are likely to be exaggerated, similar assertions emanated from so many different situations and individuals with such differing backgrounds that they cannot simply be dismissed as unfounded. Also, the pejorative and judgmental tone of quite a number of preface reports submitted by inspectors is consistent with what many describe. Suggestions by some witnesses that over zealousness on the part of inspectors might be fostered by inappropriate incentives in the RSPCA systems of appraisal and award were not borne out. There was however some evidence from within the RSPCA to the effect that some line managers might have put more emphasis on that than they should. It is inevitable that line managers will be concerned to ensure that inspectors have used their time effectively. The review is satisfied that if there has been over emphasis in some instances, it is not a general occurrence.

A high proportion of investigations are carried out in a fully satisfactory manner. The following two examples from cases coming to attention during the review reflect well on the Society.

An elderly lady owned a number of dogs, cats and birds. She lived in premises characterised by approximately two feet of rubbish on all surfaces so that the whole place was unhygienic. Even so, all except one of the animals were healthy. They had received veterinary treatment although details were refused.

The fundamental problem was that the house was not a suitable environment. Other interventions were able to address that. The RSPCA collaborated and a phased approach to the return of the animals to the improved conditions was agreed. Once this was achieved, an adult written caution was given in the light of assurances that the improved environment would be maintained.

Such an outcome fully met the animal welfare objective of the RSPCA and was sensitive to the individual's needs.

In another case an elderly person owned a dog which was consistently overweight to the point of being a risk to its welfare. The dog was removed and supervised treatment and dietary regime controlled its weight. On return to the owner, the problem recurred – in the view of the RSPCA because the individual was unable to resist feeding it. No criminal proceedings were instituted but an application made to the court under section 20 of the Animal Welfare Act 2006 for directions. In the event, agreement was reached for the animal to be returned on the basis of a monitoring agreement. This was not without difficulty but at the time of the review the desired objective seems to have been achieved.

Conversely the following three examples represent situations handled by the RSPCA in a manner which may well have reflected the letter of the law but brought down on the individuals concerned consequences that would be regarded as disproportionate to the point of harsh by many reasonable individuals.

A mature lady described as “of low intelligence” was prosecuted for causing unnecessary suffering. An inspector had attended her house and found five dogs – four of which were in reasonable condition. The fifth was elderly and in poor condition being wrapped in a blanket in a dog basket, unable to stand. When spoken to, the owner accepted the RSPCA suggestion that it should be put to sleep and signed the necessary consent. The inspector immediately took the dog to a vet for that purpose but refused the owner any assistance to get there.

The decision about euthanasia was one which should have been made with veterinary advice rather than by the inspector. Moreover, the report of the subsequent proceedings described how in giving evidence the inspector “at times” came across as uncaring and hostile regarding the defendant in that the District Judge asked if she made any attempts to hold the euthanasia until [the defendant] could be there, or even ring her before putting the dog down or return in her van to transport her to the vets. She simply kept repeating that she had signed the consent form and was told that she could make her own way there if she had wanted to. This did come across as a bit lacking of understanding or compassion and the District Judge appeared unimpressed. The defendant was acquitted in the following terms:

“No doubt [the dog] was reaching the end of his life and his state must have been distressing. The RSPCA acted in the best interests of the dog. The vet relied upon the consent form of which I make no criticism. I am persuaded that [the dog] was well cared for, he was fed and kept relatively clean, he had no bed sores and was kept within his human family and pack. The treatment could fall foul of section 9, but I cannot be sure there was suffering never mind unnecessary suffering.”

The acquittal did not prompt any critical appraisal of the decision to prosecute. Rather, internal correspondence reflected an outright rejection of the judgment.

A successful business man living in a rural village built up (as a hobby) a herd of specialist cattle that he maintained to a high standard in a field near his house in the village. Following the failure of his business in the wake of the banking crisis he was obliged to move but continued to maintain the herd with arrangements through others in the village to make checks.

One cow calved but a glitch in the arrangements meant that it was unobserved for two days. It collapsed and was subject to fly strike and infestation.

When the distressed cow was seen, the RSPCA was called and it was destroyed with the agreement of the owner. The owner was distraught. Yet a full criminal investigation was undertaken including interview under caution, adding to the owner’s distress. It was submitted to RSPCA Headquarters on the basis that offences under the Animal Welfare Act 2006 were disclosed albeit an adult written caution was recommended. In the event the PCM correctly recognised that the evidence would not support a prosecution.

This was the situation where a realistic early assessment would have recognised the episode as straightforward misfortune thereby saving the RSPCA considerable effort and the individual distress.

A couple who had owned and perfectly maintained a horse for many years were subject to a criminal investigation because of events at the very end of its life. The animal was clearly ailing but was being regularly checked and treated as necessary by the owners following instructions from the vet. They had concluded that the time had come for the animal to be put to sleep and had contacted their own vet to make the necessary arrangements. The case hinged on a gap between checking the animal at around 9am one morning and the animal falling before the attendance of the vet. That prompted a notification to the RSPCA who attended at lunchtime.

The couple co-operated fully and provided an account as to the handling by their vet. But there was a very pressurised interview which appeared designed to elicit a confession that the animal should have been put to sleep sooner.

The position was exacerbated by the time taken (six months) by the RSPCA to reach a decision not to prosecute. That was the only realistic decision but it is questionable whether matters should have gone that far.

The individuals were concerned by the conduct of the Inspectorate as regards the removal of their animal after it had been put to sleep and the refusal of access to it. Their complaints to the RSPCA appeared to fall on deaf ears.

This points to a need for the Inspectorate to reassess the effectiveness of its quality control taking account of the reputational damage that may be occasioned by even a modest proportion of poorly handled cases. The issue of formal complaints is dealt with later at chapter 5.4.

### **5.3.5 RSPCA reliance on police powers**

The above describes the convoluted steps which have to be gone through if an RSPCA inspector wishes to gain access to premises to take possession of an animal. They are intended to provide safeguards in what is a sensitive area as the courts have said:

“Search and seizure under statutory instruments constitute fundamental infringements of the individual’s immunity from interference by the state with his property and privacy – fundamental human rights. Where there is a public interest which requires some impairment of those rights, Parliament legislates to permit such impairment”.<sup>15</sup>

There is a memorandum of understanding between the Association of Chief Police Officers (ACPO) and the RSPCA setting out in broadest terms the arrangements for collaboration and the principles which should be applied. ACPO confirmed that any arrangements for day to day operational collaboration tend to be determined at local level. There is no additional guidance from ACPO or elsewhere<sup>16</sup>. This appears to be a contributory factor in the increasing difficulties encountered by the operational RSPCA inspectors in obtaining assistance to check on the welfare of animals – whether by gaining access to premises, effecting seizures or obtaining search warrants. The RSPCA Prosecutions Department has responded by producing a booklet carried by inspectors entitled ‘How can I gain lawful access to help the animals?’. The foreword to the booklet comments:

<sup>15</sup> Sir Nicolas Brown-Wilkinson in *Marcel and others v Commissioner of Metropolitan Police* [1992] CH225.

<sup>16</sup> The RSPCA may have understandings at local level with some forces but they were only of limited effect and value.

“whether we like it or not, we must now face the fact that with the ever increasing burden on police resources, when you need to gain entry to premises to help an animal that is suffering or in distress, the police officers that you turn to will look to you for guidance on the available options more than ever before.”.

That situation is not one of the RSPCA’s making but it does create significant risk. This risk is especially so in circumstances where aspects of the procedure may have been by-passed: the file sample contained examples of animals taken into possession by an inspector and then presented at a police station for the action to be ratified. On another occasion an animal was removed with consent for the purpose of taking it to a vet but in fact it was taken to the police station and seizure requested.

There is a distinction between circumstances where the police have carried out an investigation or positively assisted another organisation as opposed to simply allowing their powers to be used. There is a need for work to clarify some of the uncertain areas and provide better guidance on the use of powers and subsequent decision-making. Particular difficulty can arise when animals are seized (as is sometimes the case) under provisions other than the Animal Welfare Act 2006. For example, in a recent high profile case, section 17(1)(e) of the Police and Criminal Evidence Act 1984 was invoked to break into a property in order to seize a cat considered to be at risk because of unsuitable conditions. The provision enables a constable to enter and search any premises for the purposes of “saving life or limb or preventing serious damage to property” but RSPCA and the police service guidance indicate that animals can be property and link the issue to criminal damage. The rationale seems to be that the owner would damage their own cat in the absence of seizure!

Section 19 of the Police and Criminal Evidence Act (which relates to the seizure of material which may be evidence to an offence) has on occasion been used to seize animals. However, that triggers a different regime (section 22 of the 1984 Act) and any decisions about retention fall to be made by the police rather than the RSPCA on a fully considered case by case basis as set out in the Scopelight judgement referred to earlier. Animals are not usually produced as evidence and photography is usually sufficient for that purpose. Section 22 does not relate to the welfare of the animal and difficulties can then arise if there is a wish to retain on welfare grounds, especially if the animal is not assessed as suffering.

It was common ground amongst those contributing to the review that animals and property seized by constables under statutory powers remain the responsibility of the police even when physically passed to the RSPCA – the latter held them to the order of the police. It also seemed common practice for decisions about retention or return to be taken without reference to the police. Case files examined contained numerous examples of letters from defence solicitors raising these issues and often receiving a firm refusal without any consultation with the police.

Seizure of material for evidential reasons also represent a risk for the police service if it includes material (possibly of a personal nature) which is not material to any RSPCA matter but is passed to them. Such collateral intrusion can only be avoided by careful scrutiny of material before it is handed over. This does not seem to occur.

ACPO themselves cited an example of fighting dogs seized by the police after darting by the RSPCA. No proceedings were brought because the suspect could not be traced. The RSPCA caused the dogs to be put down on the basis of its own



procedure. Although this would probably have been the outcome in any event, this had left the police vulnerable in the event that somebody had come along and sought to claim the dogs.

These examples further illustrate the extent of the misconceptions that surround the RSPCA. It is common for members of the police service and local authorities to believe that the RSPCA is an official law enforcement body with its own powers.

The extent of the misunderstanding is eloquently demonstrated by a letter sent in early 2014 by a police force to a member of the public who complained that animals owned by her had been unlawfully removed as part of an exercise targeted at another individual. It read:

“With regards to the second part of your complaint, the work by XXXXX Police was carried out at the request of the RSPCA via warrant and at Section 27 of the Animal Welfare Act (sic). If you have a complaint with regards to this matter you should forward this in writing to the RSPCA.”

The conclusion that flows from the above is that police involvement with the RSPCA in many cases is purely nominal and in many instances amounts to rubber stamping RSPCA actions without the safeguards which should be applicable. The Animal Welfare Act 2006 was presented to Parliament on the basis that powers would be exercised either by constables or inspectors appointed under the Act by DEFRA or local authorities (which RSPCA inspectors are not). Both the police and the local authorities have proper complaints procedures which culminate in independent external bodies, the IPCC and the Local Government Ombudsman, providing a safeguard for those investigated. “Piggy backing” on police powers by-passes those safeguards, especially when there is in reality no police involvement or interest in the case.

All of these matters have implications for the trial process although the review was assured by the Prosecutions Department that it was not aware of any instances where this has been so. This suggests a reluctance to grasp the issue. For example, one of the cases in the random file sample related to the acquittal of three individuals following a decision by the District Judge to exclude under section 78 of the Police and Criminal Evidence Act 1986 all the evidence derived from a search. The judgment recorded the fact that the police had obtained a warrant and were authorised to be accompanied by RSPCA officers. It went on:

“Yes, the police apply and supervise any seizures and are there to ensure good order. But it is quite clear from the evidence that I have heard this operation and the execution of the warrant was being led by xxxxxxx of the RSPCA.

It is my view, having heard evidence over the last three days, the evidence was obtained as a result of an illegal search. I therefore have discretion whether to exclude evidence obtained following that illegal search under Section 78 PACE. I have to assess the effect of admitting the evidence on the fairness of the proceedings”.

The judgment noted that there “were flagrant disregards of the codes of practice” and concluded:

“I have decided to refuse the admission of the evidence and deploy Section 78 in this particular case. The RSPCA made no enquiries as to the parameters and simply exceeded them without any regards to the safeguards set out in codes B & C of the codes of practice.”

## **5.4 RSPCA arrangements for considering and responding to complaints**

A frequently recurring theme in the submissions received in response to public consultation and in discussion with defence solicitors was the unresponsiveness of the RSPCA to complaints lodged.

At the suggestion of the Chief Legal Officer, I met two individuals and a retired lawyer who looked after their interests in order to discuss the background to the obtaining and execution of a search warrant at a small animal sanctuary which they had and continue to run. In the event, no prosecution ensued. The resentment of the couple running the sanctuary arose because they had enjoyed sound relationships over a period of time with the local RSPCA inspector who had invariably been afforded proper access to the premises; and who had provided advice which had been largely complied with. They had made an appointment for him to visit the premises the day after the warrant was executed. Personal circumstances necessitated a short deferment. Although the execution of a search warrant invariably involves a substantial presence because of the need for the police and RSPCA inspectors executing it to be accompanied by veterinary surgeons, animal welfare officers and transport (together possibly with experts), the particular case was exacerbated by the unnecessary attendance of staff from the local branch and the local media had also been invited. The legality of the warrant was questioned because a prerequisite is satisfying the court that access is otherwise likely to be refused; the giving of notice would defeat the purpose of the warrant; or there is urgency. It is unlikely that the court, if properly apprised of the facts, would have found the test satisfied. However, there is no conclusive evidence on that point.

Following further enquiries from within the Prosecutions Department, there was a meeting at which the RSPCA had to acknowledge that its handling had not been appropriate. The Prosecutions Department reported the issues to the Regional Manager and Regional Superintendent in circumstances that led the owners of the sanctuary reasonably to believe that a disciplinary investigation would follow. They were disappointed some time later to learn that had not happened.

The RSPCA itself at present seems to lack any structured and effective mechanism for considering and responding to complaints. However, things are said to have been better in the past. The former Chief Executive of the RSPCA, Jackie Ballard, wrote in a recent publication<sup>17</sup>: “Complaints are an early warning system”:

“When I worked at the RSPCA we received many complaints and had staff dedicated to responding to them; in fact we took part in a Charity Commission study in complaint handling (Cause for Complaint, 2006) and were used as an example of a charity with a defined national complaints procedure.”

<sup>17</sup> Third Sector, 30<sup>th</sup> April 2014.

She went on to make three points:

“It’s easy to become defensive when someone complains about your organisation, and to dismiss complainants as “the green ink brigade” or people who expect too much. The better and more difficult thing to do is to see the complaints procedure as a learning tool and an early warning system providing useful management information. Rather than looking for a member of staff to blame when complaints are received, the managers should look at what lessons can be learned and which processes needed to be changed.

An organisation that responds well to complaints can enhance its reputation with donors, service users or customers. It can also save time if a named person takes ownership of the complaint when received and sees it through to conclusion, rather than passes the complainant around the organisation ensuring that the person who made the complaint gets more and more disgruntled.

One of the wisest pieces of advice I had been given in the past was to remember that “*every contact leaves a trace*”. Whether someone is complaining or praising our organisation, they will remember (and probably tell others) how we responded.”

In short, there is no organisation where things never go wrong. The good organisation is the one that is prepared to recognise when things go wrong; put it right; and ensure that lessons are learned.

The national complaints procedure current in March 2014 seems rudimentary and simply provides for Chief Inspectors to reply to complainants either directly themselves or through a complaints co-ordinator writing on their behalf. The question and answer document also refers to the possibility of a more senior member of staff if the individual remains dissatisfied. There is however, no guidance to ensure that investigation is thorough and impartial. There is no provision at any stage for an external element.

The RSPCA as an organisation received 1,735 complaints in 2013 which reflected a drop over each of the two previous years. However, the number attributable to inspectorate operations rose between 2011 and 2013 to 624 (36% of complaints received). The target for reply is 80% within 33 days and the regional achievements within the Inspectorate ranged between 61.4% and 77.5%.

There are no arrangements for analysing the outcomes (with a view to learning) and no information was available as to the outcomes themselves. The HR Department reported that there had been no case where an external complaint had resulted in any disciplinary action against an inspector.

An area of concern that arose frequently during the review was the apparent unresponsiveness of the RSPCA towards those whose animals had been seized and, although it was apparent from case files that some inspectors did endeavour to facilitate some access after seizure, this did not appear to be the norm. The national procedure in relation to those complaining about lack of contact from an inspector whilst a case file is being compiled was a brief response as follows:

“Due to the ongoing nature of our investigation we cannot comment or address your concerns at this time. You will hear from the investigating officer in due course when our enquiries have been completed.

Yours sincerely  
Inspectorate Department.”

Cases vary greatly in their nature and that approach may well be justified in a proportion. But many involve individuals with long standing and loving attachment to their animals where any short-coming is likely to be one of omission and may well have been relatively short term. In 2013 1,198 of the 3,237 suspects reported to the Prosecutions Department were not subject to proceedings. Given the length of time that typically elapses between seizure of animals and the decision whether to prosecute, such a blanket refusal to communicate inevitably risks friction or acrimony.

## **5.5 *The handling of animal sanctuary cases***

There were four such cases considered by the review. Three were in the random file sample and the fourth was drawn to the review's attention. In addition, the self-help group stressed the degree of concern and apprehension felt by individuals running small sanctuaries in relation to RSPCA activity. They believed that they were targeted. Similar concerns were expressed by a number of those responding to the public consultation. There was no direct evidence to substantiate that assertion but the review is mindful of the case described at 5.4 where there was significant evidence to suggest that some animus between the sanctuary and a local RSPCA Branch (not the Inspectorate) had influenced the handling.

Such cases are intrinsically difficult because, although the 2006 legislation is couched in terms of a "reasonable and competent person" there remains a significant subjective element especially in the context of sanctuaries and rescues when those concerned may be struggling to achieve the best they can with limited resources, skills and expertise. The review excludes for present purposes situations commonly referred to as "hoarding" where the motivations of those concerned are likely to be very different.

In one particular case (which attracted adverse comment for the RSPCA from both sides), the reporting inspector commented:

"If ever there were a case for regulation this is it".

The essential point seemed to be the need for ongoing oversight of such institutions on a preventative basis. There are no arrangements for regulation of rescues, rehoming centres and animal sanctuaries (referred to generically as companion animal welfare centres). This is unsatisfactory and dealing with them can be a source of friction between the RSPCA and the organisations concerned.

The resultant criticisms may be more damaging because they originate within the animal welfare community although in reality the quality of animal husbandry offered by such organisations varies from the excellent to the downright cruel.

There is no standard companion welfare establishment. At one end of the spectrum are those which are essentially a one person operation, funded from that person's own resources. At the other, there are establishments operated by well known national animal welfare charities (including the RSPCA itself). Most establishments rely to a greater or lesser extent on the public for their funding (and many are registered charities). Some establishments focus on certain types of animals while others seek to cater for a wide range of species.

Good motivation is not a justification for the poor welfare standards sometimes encountered. However, the treatment of animals within companion animal welfare centres is subject only to the criminal provisions of the Animal Welfare Act 2006 that apply generally to domestic and captive wild animals. This is anomalous given the statutory regimes that regulate, for example, dog breeders, riding establishments, pet shops and boarding establishments for cats and dogs. In reality, oversight of such establishment falls to the RSPCA having no authority beyond the blunt instrument of the criminal law – making the position doubly anomalous because the RSPCA operates such establishments and patronises many others.

In January 2004, the Companion Animal Welfare Council (CAWC) published a report its 'Report on Companion Animal Welfare Establishments: sanctuaries, shelters and rehoming centres'<sup>18</sup>. It concluded that such establishments should be publicly accountable for the standard of care provided and recommended regulation by a proportionate system of licensing and registration. The necessary provision was made in the Animal Welfare Act 2006 but has not been implemented.

An effective regime operating the sort of standards proposed by CAWC should substantially reduce the need for interventions through the criminal law. Where such intervention is necessary, the primary responsibility for enforcement should rest with the licensing/registration authority albeit with assistance from the RSPCA. This would avoid the situation whereby one charity might be appearing to regulate others and protect the RSPCA from suggestions of improper motivation.

## **5.6 The way forward**

There is wide acceptance that the RSPCA is a very effective organisation with extensive achievements in improving animal welfare through a range of activities including the investigation and prosecution of animal welfare offences. However, the role of the RSPCA is no longer sufficiently defined. Practices seem to be based on "this is how we have always done it" with piecemeal evolution to reflect external change. This has been compounded by the 2006 extension of the ambit of the criminal law and the absence of any powers or official status relating to enforcement. Despite the plaudits received from many quarters – and there was extensive support for the role of the RSPCA in the responses to my public consultation – it has continued to attract extensive criticism from a range of sources and these are damaging to the reputation of the Society as well as to the morale of the staff. There is no direct evidence but it is reasonable to infer a link between many such complaints and the absence of any official status or power on the part of RSPCA inspectors. They are dependent on a combination of charm and assertiveness to gain access to premises. They appear in uniform and with police style titles and it would be surprising if some at least did not trade on this – leaving individuals who have co-operated possibly feeling "had over" especially if the outcome has been the calling of the police to regularise a seizure. Also, knowledge of the ease in which they can get the police to do their bidding may encourage inspectors to imply more authority than they have.

Although it may seem curious in the face of such criticism to propose the conferring of statutory powers on RSPCA inspectors, the review believes firmly that the way forward is a re-positioning whereby the RSPCA inspectors are given the tools to do the job but on the basis that current gaps in transparency and accountability are closed. If the RSPCA Council is minded to seek such re-positioning, it should

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<sup>18</sup> <http://www.cawc.org.uk/sites/default/files/CAWCRepsanctuaries.pdf>

consider the appropriate basis for doing so. Seeking such official status would bring the RSPCA more in line with counterparts in many other countries such as Scotland, Australia and New Zealand.

In short, the current arrangements for enforcement of the criminal law by the RSPCA need to be adjusted to meet 21<sup>st</sup> century expectations of public administration. RSPCA investigations need to be formalised on the basis of proper authority.

## **5.7 Recommendations**

1. *The RSPCA should work with ACPO to develop further operational guidance to assist constables and inspectors in circumstances where the latter seek assistance, particularly through the exercise of police powers, in relation to possible animal welfare offences.*
2. *The RSPCA should press HM Government (DEFRA) for implementation of a scheme of licensing and regulation along the lines proposed by the Companion Animal Welfare Council.*
3. *If such a regime is implemented, where intervention through the criminal law is necessary, the primary role should rest with the licensing or registration authority with RSPCA assistance as necessary. In the meantime the RSPCA might invite the CPS to consider such cases.*
4. *The RSPCA should review the complaints procedure applicable to the Inspectorate with a view to ensuring that complaints are thoroughly investigated at the earliest opportunity with substantive feedback and legitimate concerns being addressed. Where the complainant remains dissatisfied there should be escalation to a higher level including an external element.*

## **6 How the RSPCA discharges its prosecution function**

### **6.1 Introduction**

Chapter 4 reviewed the history and development of the RSPCA's enforcement role and described the sort of outward facing changes necessary to place the RSPCA on a proper basis as a de facto prosecuting authority. The starting point is that the Prosecutions Department performs soundly in terms of its case outcomes and enjoys good standing before the courts for the effective manner in which its cases are presented. Its staff are well motivated, conscientious and highly committed. The issues that have led to criticism in recent years arise from perceived over-reliance on prosecution as part of the enforcement strategy and lack of objectivity in the decision-making processes as the result of its continuing close identification with the Inspectorate and other interests of the RSPCA.

This chapter examines the internal structure and work of the Prosecutions Department and assesses how far its decision-making and the conduct of proceedings accord with those of a responsible and fair-minded prosecutor. It first describes the caseload and outcomes before considering the organisation and ethos of the Prosecutions Department and how it accords with the Philips Principle; subsequent sections consider the processes by which decisions are made and recorded; the application of the Code for Crown Prosecutors and prosecution policy (including the "undertaking" to Parliament in relation to section 9 of the 2006 Act); delays; the use of external solicitors and alternative ways of working. It concludes that there is an urgent need for the Prosecutions Department to be strengthened by the employment of qualified solicitors and barristers to provide broader experience and leadership, an in-house capacity for end-to-end conduct of cases and management oversight of the overall caseload. Some categories of cases should be left to other agencies. Consideration should be given to strengthening the separation of the prosecution function by establishing a discrete governance mechanism for the Prosecutions Department with an independent element which remains consistent with the overarching responsibilities of the trustees but avoids improper intrusion into prosecution policy and specific casework.

### **6.2 Caseload and outcomes**

The 2,174 case files received by RSPCA Prosecutions department in 2013 resulted in the prosecution of 1,548 defendants of whom 1,371 (88.6%) were convicted of one or more offences. These outcomes are not as favourable as previous years. The percentage of defendants convicted over the four-year period from 2010 to 2013 was 91.8%.

The proceedings in 2013 related to 5,345 alleged offences and 3,961 convictions were secured (74.1%). The percentage of offences charged resulting in conviction over the four year period from 2010 to 2013 was 72.5%.

A more detailed breakdown of the outcomes is contained in the table contained on the next page.

Prosecution Statistics 2010-2013								
	2013		2012		2011		2010	
Investigation by Inspectors	153,770		150,833		159,759		159,686	
Cases reported to Prosecutions Dept	2,174		2093		2018		1830	
Persons reported to Prosecutions Dept	(3,354)		(3181)		(3036)		(2771)	
Persons charged	1,548	46.15%	1677	52.71%	1454	47.89%	1204	43.45%
(Offences)	(5,345)		(5759)		(4401)		3377	
Persons convicted	1,371	88.56%	1552	92.54%	1341	92.20%	1086	90.20%
(Juveniles included in above)	(17)	1.09%	(28)	1.66%	(24)	1.65%	(24)	2.20%
(Convictions secured)	(3,961)	74.10%	(4168)	72.40%	(3114)	70.75%	(2441)	72.30%
Persons pleaded guilty (no trial)	1128	72.86% of all persons charged	1255	74.83%	1121	77.10%	894	74.30%
(Offences - from the persons pleaded guilty)	(3,055)	57.15% of all offences charged	(3161)	54.88%	(2538)	57.70%	(1992)	59.00%
Persons convicted after trial who had pleaded not guilty	287	61.85% of all PNG (inc defendants where proceedings wholly withdrawn / discontinued). 90.09% of all PNG going to contest	319	71.8% of all PNG. (90.6% of all PNG going to contest).	246	68.5% of all PNG. (90.8% of all PNG going to contest).	216	64.7% of all PNG. (88.5% of all PNG going to contest.)
Offences for which convictions obtained following not guilty pleas	(906)	16.95% of all offences charged	(990)	17.19%	(613)	13.92%	(460)	13.62%
Persons where all charges discontinued or withdrawn before or at trial	148	9.3% of all persons charged	92	5.48% of all persons charged.	88	6.05% of all persons charged.	90	7.47% of all persons charged.
Charges withdrawn or no evidence offered.	1,248	23.3% of all charges	1462	25.40%	1144	26.00%	815	24.13%
Persons wholly acquitted at trial (ie all charges dismissed)	29	1.8% of all persons charged. 9.20% of all PNG going to contest	33	1.90% of all persons charged. 9.4% of all PNG going to contest.	25	1.70% of all persons charged. 9.2% of all PNG going to contest.	28	2.30% of all persons charged. 11.5% of all PNG going to contest.
(No case to answer included in above)	6	20.68% of the persons wholly acquitted at trial	9	27.27%	5	20.00%	data unavailable	
(Offences)	125	2.33%	64	1.11%	89	2.02%	88	2.60%
Persons Cautioned	729	21.73%	525	16.50%	540	17.78%	472	17.03%
(Offences)	(1,152)		(729)		(780)		(595)	
No Proceedings	1,204	35.89%	974	46.53%	951	47.12%	981	53.60%



The headline percentages differ from that sometimes used by the RSPCA. As the note to the 2013 Annual Prosecution Report clarifies, that percentage concentrates on case outcomes where there has been a judicial determination and therefore excludes defendants whose cases were wholly discontinued or withdrawn. The table above is intended to show more clearly the breakdown of outcomes. It accords with the manner in which the CPS maintains its data although comparisons with CPS outcome have only limited validity.

The CPS national outcomes statistics are published on a monthly basis. However, the volumes are so large that the fluctuations are small. The CPS percentage of successful outcomes on a national basis for April 2014 at 83.9% was marginally on the low side and lower than the comparable RSPCA figure. During 2013 the typical monthly percentage for the CPS was fractionally under 85%.

There are three main factors that limit the validity of comparisons:

- The CPS figures include “administrative finalisations” (typically around two percent) which in reality are not outcomes at all. They represent cases where defendants have absconded and warrants remain unexecuted or summonses have been issued but could not be served because the defendants were not traceable. There is no such element in RSPCA data.
- Some cases may be charged by the police without reference to the CPS. A substantial proportion of cases also come to the CPS at an early stage where investigations are complete but for operational reasons (e.g. the need to seek a remand in custody) an initial decision has to be taken. There is an increased risk in such circumstances that the full file may not support the proposed charges and so the fact of withdrawal reflects less on the quality of the initial decision than one which is taken with the benefit of a fully concluded investigation. The latter is the usual position in RSPCA cases.
- The CPS national figures mask very substantial variations in the rate of successful outcomes for different types of offence. At one end of the spectrum, sexual offences and offences against the person have a conviction rate which, on a monthly basis, is typically in the range of 72% to 75%. By contrast, the conviction rates for drugs offences hovers around 93% to 97%. There is no reliable way of determining for comparison purposes with which broad category animal welfare offences should be compared.

Taking all these factors into account, the fairest conclusion is that underlying RSPCA performance in terms of prosecution outcomes is at least as good as the CPS and probably three or four percentage points better.

The only other broadly satisfactory comparator from which the review was able to obtain data was the Health and Safety Executive (HSE). In 2013, HSE prosecuted 597 cases, an increase of 45 from the previous year. A conviction was secured against at least one offence in 568 of those cases – a conviction rate of 95%.

Considerable caution must be exercised in drawing conclusions as to trends in the number of prosecutions (said by some RSPCA critics to be rising sharply) and in comparisons with other jurisdictions.

The 2,174 case files received in 2013 reflects a gradual increase of approximately 2.5% per annum from 2018 cases in 2011. Not all case files result in prosecution

but the Reviewer found this was probably the best indicator of trends. This gradual increase follows a steep rise between 2010 and 2011 from 1,830 to 2,018 (10%). Even so the 2011 figure remains remarkably similar to the 2,042 cases received as long ago as 1992. That also followed a period of sharp increases from 1,454 cases in 1988. These fluctuations transcend the introduction of the 2006 legislation and illustrate an underlying volatility in case loads.

Commentators have made comparisons between the work of the RSPCA and the Scottish Society for the Prevention of Cruelty to Animals (SSPCA). The SSPCA are clear that a proportion of cases prosecuted by the RSPCA would not be put forward by them for prosecution. One explanation advanced is the greater emphasis that the SSPCA considers that it places on education. Equally, it has been suggested that the SSPCA submit only the more serious cases because it has to compete for scarce resources within the Procurator Fiscal Service. The Crown Office was quick to reassure that there is no such filter. The RSPCA itself, whilst believing that it has the balance right, does acknowledge that there are scenarios where it would wish to see more enforcement activity and would itself be more inclined to prosecute than other agencies.

It has not been possible to test the position reliably by reference to data. In 2013 the SSPCA dealt with 66,000 incidents. Within that 20,111 related to investigations of alleged cruelty or abandonment. They gave rise to 157 prosecutions (0.23% of incidents and 0.78% of investigations and abandonments). The RSPCA points to its 2013 outcomes of 153,770 investigations giving rise to the prosecution of 1,548 defendants (1%). However, the Reviewer concludes that likely differences as to what triggers investigation in the two organisations limits the inferences that can safely be drawn.

In most other jurisdictions, prosecutions are carried on by the state law enforcement bodies. However, there is a comparator available in Australia where (Australian) RSPCA inspectors are authorised by the various State/Territory Governments to enforce animal welfare legislation<sup>19</sup>. This is the sort of arrangement that might usefully be explored as between the UK Government and the RSPCA. In 2012–13 Australian RSPCA inspectors investigated 49,861 complaints of cruelty reported by members of the public relating mainly to dogs, cats and equines. The Australian RSPCA laid 1,040 charges and finalised 358 prosecutions of which 343 were successful. As with Scotland, this represents a lower rate of prosecution activity per capita even allowing for the different sizes of population. But the many other variable factors militate against drawing any firm conclusions.

### **6.3 Organisation and ethos of the Department (including the Philips Principle)**

The Prosecutions Department was created in its present form following the report by Richard Crabb in 1993 (see Chapter 2.1). It comprises a Head of Society Prosecutions together with a deputy together with a flexible complement of five Senior Prosecution Managers and Prosecution Case Managers together with six legal support assistants and a Data and Costs Recovery Team comprising a manager and staff of three. The Prosecution Communications Officer reports direct to the Head of Society Prosecutions. The structure is set out in the organogram at annex 4.

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<sup>19</sup> Except in the Northern Territories where enforcement is the sole responsibility of the Territory Government.

Prior to the creation of the Prosecutions Department, cases had been referred upwards within the Inspectorate to four Legal Chief Superintendents who considered the papers and decided whether to initiate proceedings. When a prosecution was launched, the local inspector would engage a solicitor locally but the brief would emanate from the relevant Legal Chief Superintendent. Legal Chief Superintendents had the benefit of advice where necessary from a Senior Assistant Solicitor within the Legal Services Directorate. Legal Chief Superintendents reported, in a command sense, to the Chief Inspectorate Officer although they were “functionally accountable” to the Chief Legal Officer i.e. deferred to him on legal matters. The Crabb Review recommendations included:

- a Chief Prosecuting Solicitor should be appointed to head the new Prosecutions Department;
- the work of the Legal Chief Superintendents should be undertaken by lawyers;
- the Legal Chief Superintendents should eventually be redeployed.

Not all the above recommendations were implemented. A Head of Prosecutions was appointed and was succeeded in 2007 by a barrister who remained in post until 2012. At the time of the review, the Deputy Head of Prosecutions (a former Legal Chief Superintendent who had remained as a Senior Prosecution Case Manager) was Acting Head of Prosecutions. Although he brings a wealth of experience to the post, he is not a solicitor or barrister. The Head of Prosecutions reports to the Chief Legal Officer. A review of RSPCA structures generally was in progress during the review. It is important that the head of the Prosecutions Department should not report to anybody other than the Chief Legal Officer. There were effectively five Prosecution Case Managers in post at the outset of the review: one was a former police officer and the remaining four were former inspectors. Two left during the course of the review and, at the time of writing, one has yet to be replaced.

### 6.3.1 Separation of the functions: the Philips Principle

Critics assert that the role of the Prosecutions Department is inappropriate because the RSPCA is:

- an organisation that both investigates and prosecutes; and
- has other roles that are incompatible with its position as a *de facto* prosecuting authority.

The arrangements described above do provide separation of functions insofar as prosecution decisions are not taken by those who investigate. It was clear too that Prosecution Case Managers strongly assert their operational independence that prosecution decisions are for them alone and nobody else within the RSPCA. But, they do not accord with the Philips Principle as regards the separation of investigation and prosecution into different organisations in the same way as between the police and Crown Prosecution Service.

The lack of organisational separation is not an insuperable impediment to the RSPCA's prosecution role. There remain many other organisations whose responsibilities combine investigation and prosecution. Local authorities are a prime example. Other examples include the Health and Safety Executive and Transport for London. These are both public bodies. Each has clear and published statements of prosecution/enforcement policy. The Department for Business Innovation and

Skills (BIS) also owns and enforces a range of legislation relating to fraudulent trading and insolvency. It maintains general guidelines often based on financial thresholds, balancing prosecution against other disposals such as proceedings for company director disqualification (including by consent). Most have clearly defined arrangements for separating out the prosecution decision and ensuring that it is either taken by a suitably experienced lawyer or in some cases (e.g. Health and Safety Executive) by an administrator wholly unconnected with the investigation<sup>20</sup>. This may require careful handling – especially in circumstances (as with BIS) where statute vests the power to prosecute in the Secretary of State. It is therefore possible for the RSPCA to build on the existing arrangements in order to achieve similar safeguards but the current reliance on so many former inspectors within the Prosecutions Department does not sit comfortably with the Philips Principle.

The more important considerations relate to the second head of criticism and the need for decisions to be taken objectively and impartially and free from any extraneous and improper influence; and for that to be seen to be so. These are more problematic because, whereas all the organisations mentioned have policy responsibilities and other overarching activities, few have the level of campaigning and lobbying activity that the RSPCA does. Indeed, the activity of the RSPCA was an important driver in bringing about enactment of the Animal Welfare Act 2006 and the Hunting Act 2004. The former dominates its current work whilst the latter has recently seen several important and high profile prosecutions. In addition, the RSPCA remains heavily involved in campaigns which touch on the areas of law with which the RSPCA concerns itself – the transport of live animals and the badger cull, with prosecutions for badger interference being frequent. Moreover, the RSPCA statement of its strategic objectives until 2024 is an ambitious commitment to further improvement of animal welfare likely to involve significant changes in social attitudes.

Further potential for calling into question the objectivity and impartiality of RSPCA prosecutions arises from its open stance that some public authorities (including the courts who are frequently encouraged to tougher sentencing) are insufficiently robust in their enforcement of animal welfare laws. For example, as recently as March 2014 the RSPCA said in a press statement that it continued:

“...to have concerns on the inspection regime undertaken by Government veterinarians and believe our presence adds another layer of enforcement which is sorely needed in this trade.”

This stance could be taken to imply that the RSPCA would wish a different standard to be applied than that of the public authorities. Some would also infer that its application of the Code for Crown Prosecutors would also be likely to differ. Whilst the review found some instances where the application of the Code was flawed, that does sometimes occur in all prosecuting authorities. There is no direct evidence of extraneous influence but it is the perception that is crucial to public confidence. In addition, there is inevitability that the culture of the organisation will become imbued in the approach of the PCMs.

Prosecution Case Managers see no difficulty with the present arrangements, asserting that they are scrupulous in deciding each case fairly on its individual merits. Their bona fides is unquestionable. But the crucial question must surely be

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<sup>20</sup> Health and Safety Inspectors have statutory rights of audience and may therefore present their own cases in court. The role of the independent decision-maker is therefore important.

whether a reasonable and informed third party would be confident as to the impartiality and objectivity of decision-making.

This gives rise to a situation where, on any objective basis the RSPCA is best placed to undertake most of the prosecution work in terms of resources and technical expertise, but is compromised to some extent by its other roles. Even so, the difficulties can be overcome by some adjustment to the structure of the Prosecutions Department. Some categories of case should be referred elsewhere.

The review concludes that the time has come to complete the process started by the Crabb Review. The RSPCA should move incrementally to a position where all prosecution decisions are taken by or under the supervision of qualified solicitors and barristers. The first step will be to appoint a new Head of Prosecutions who should once again be a solicitor or barrister. The appointment should be undertaken by a panel comprising the Chief Legal Officer, an experienced criminal practitioner from independent practice, and an individual with senior management experience. The individual chosen should have substantial experience not only in conducting prosecutions but in managing a prosecution authority – or a division of one. There are other business reasons for a change of modus operandi that would place more reliance on in-house lawyers and the options are canvassed later in this chapter.

Arrangements for governance of the Prosecutions Department are considered in Chapter 10.

### **6.3.2 Ethos**

The starting point is that the Prosecutions Department currently has the benefit of a team who are dedicated, conscientious and experienced within their specialist sphere. Each is mindful that the *raison d'être* of the Prosecutions Department is to take decisions independently of the Inspectorate. This they achieve with great authority taking a firm grip on cases for which they are responsible. Prosecution Case Managers work on the basis that they are capable of making sole decisions in the vast majority of cases without referral. There is informal dialogue between colleagues for dissemination of information about developments and broad consistency as regards charging practice, policy and case management but no instructions as to what matters need to be referred to the Head of Prosecutions. This makes for strong individual case ownership including once it has been assigned to an external solicitor for prosecution. They work on a very clear solicitor /client relationship according to the instructions given by the Prosecution Case Manager and are expected to report at each stage of the process and take instructions on all significant decisions relating to the conduct of the case. The corollary of this approach is minimal internal accountability.

Despite the authority that it displays towards the Inspectorate, there is great empathy between the two units. This was confirmed in file examination where it was frequently reflected in the tone of the exchanges between PCMs and inspectors. PCMs routinely advise inspectors during the investigative stage in relation to the exercise of powers and the gathering of evidence. In one sense, this simply reflects best practice within the CPS where difficult investigations are the subject of ongoing advice and guidance. However, the modest compass of RSPCA work and the fact that a PCM is directly linked to a geographical group of inspectors means that the relationship inevitably becomes less detached than in a large organisation with a wide range of cases. Sir Richard Buxton<sup>21</sup> identified the risk that a private

<sup>21</sup> The Private Prosecutor as a Minister of Justice: [2009] Crim. L. R. 427.

prosecutor such as an interest group dedicated to the suppression of particular forms of allegedly criminal conduct “will almost by definition have a personal interest in the outcome of the case”.

There are variations of style even within the relatively small Prosecutions Department. But the overall handling of prosecutions is robust and the ethos of the Prosecutions Department does not welcome challenge or criticism. There is a tendency to dismiss any contrary view without meaningful consideration. It is unusual for external solicitors to question the sufficiency of the evidence although all indicated they would do so in appropriate cases. On the two occasions within the review’s file sample that an external solicitor raised doubts, the PCM demurred but was persuaded to seek an opinion from counsel who on each occasion confirmed that the evidence was insufficient. In one case the Society remained reluctant and a conference was held which was prefaced by the PCM telling counsel: “I am here to convince you the advice is wrong.”

These considerations reinforce the desirability that the Society should move towards a position where qualified solicitors or barristers with broad prosecution experience are responsible for the decision whether to prosecute. Many of the cases are quite tricky even though the offences are purely summary. They frequently raise sensitive public interest considerations. Costs tend to be relatively high giving rise to the judgement as to proportionality. A number have high profile. Some are suitable for handling by paralegals working under the auspices of a qualified lawyer. PCMs point to the recent return of responsibility for some minor cases from the CPS to the police but the type of cases handled by the RSPCA are different in quality to those currently being handled by police evidence review officers. The oversight of experienced prosecutors who have forensic experience at the coal face would also assist in managing some of the difficult relationships with the more challenging defence practitioners who specialise in defending animal welfare cases.

A striking feature of the review has been the level of mistrust between PCMs and those who defend which can at times seem disproportionate. There are undoubtedly some practitioners whose lack of efficiency is frustrating and who are uncompromising in the way they test the prosecution case – often deploying the same arguments in different magistrates’ courts. In some instances the memos and correspondence internally and with some external solicitors could be read as indicating an unhealthy animus. That is inappropriate and any irritation must be tempered by recognition that it is their role when defending to test the prosecution case. At the time of this review the Chief Legal Officer was engaging with defence practitioners with a view to improving relationships.

It is also fair to record that senior managers within the RSPCA had identified and were beginning to address the need for changes to improve greater accountability and transparency around its role; as well as consistency. The decision to commission this review might be viewed as part of that process. The Chief Legal Officer in particular is keen to nurture a prosecution unit that is better aligned to modern practice with stronger links to the professions.

### 6.3.3 The institution and conduct of proceedings – including application of the Code for Crown Prosecutors and prosecution policy

The RSPCA has publicly espoused the Code for Crown Prosecutors. However, the document setting out the “RSPCA approach to Crown Prosecution” is very basic. In particular:

- it is not accompanied by any supplementary guidance indicating how RSPCA prosecutors will weigh the factors most likely to arise in animal welfare cases; and
- it is not supported by any specific policy statements although some preliminary work has been undertaken.

The Animal Welfare Act 2006 substantially expanded the scope of the criminal law. Despite its “reasonable terms” it has a strong element of subjectivity. Moreover, many commentators have acknowledged that the preponderance of ill-treatment is through neglect rather than positive cruelty. A significant proportion of the cases considered by PCMs relate to individuals who are elderly, vulnerable (including with mental health issues) and with the chaotic lives associated with poor socio-economic background. It is important that such factors be weighed in a consistent manner. The development of supplementary guidance relating to the application of the Code and specific offences should become a priority so that similar scenarios are approached in a similar manner. Prosecution policy is most likely to command public confidence if it is developed through wide public consultation. In circumstances where the breadth of the offence leaves much to prosecutorial discretion, it is important that citizens should know with some certainty what is likely to lead to prosecution. Examples are not difficult to find.

The best example of the need for a clear, published, and transparent policy arises from the enactment of section 9 of the Animal Welfare Act 2006. It is contended by some defence practitioners that the RSPCA is bound by an undertaking given in 2004 to Parliament that amounts to a self-denying ordinance not to prosecute under section 9 without having first served notice on the individual concerned with a view to improvement. An alleged breach led to strong judicial criticism<sup>22</sup> although the RSPCA does not regard itself as having given any such undertaking.

The review has, with the assistance of a defence counsel specialising in animal welfare law who kindly provided a set of references to the evidence (a mix of written memoranda and oral hearings) of the Environmental Food and Rural Affairs Select Committee said to amount to the undertaking. I am grateful to counsel but do not consider the sequence of events can properly be described as an undertaking. Something much clearer and more direct would be required to amount to a binding commitment to Parliament. Rather, RSPCA officials provided evidence to the pre-legislative scrutiny<sup>23</sup> of a draft bill as to the Society’s likely approach to enforcement of a new and wide welfare offence. Thereafter,

<sup>22</sup> Judge Griggs at Exeter Crown Court: September 2013: *RSPCA v Hadley*: “We are concerned in this case that the RSPCA have prosecuted in what appears to be direct contradiction to the safeguards they made to the Parliamentary committee when the statute was considered that they would not prosecute for a welfare offence without due warning.” Per Exeter Express and Echo.

<sup>23</sup> This was a new procedure introduced in the early 2000s whereby Government published a draft bill and the Select Committee examined it with public consultation and submissions. The draft bill would then be revised by Government before being introduced as a Bill to undergo the usual legislative scrutiny – including Committee stages in both Lords and Commons.

the Bill was revised to include provision for improvement notices but without any requirement for a prosecutor to serve such a notice before proceeding in relation to the welfare offence. Annex 5 sets out the evidence before the EFRA Select Committee said to constitute the undertaking. Put simply, the statements made there are too remote from the legislation as enacted to constitute an undertaking – irrespective of the fact that one would expect anything amounting to an undertaking to Parliament to be in rather clearer and more formal terms; and not two years before the legislation was enacted. Also such statements could not be expected to bind indefinitely and irrespective of any changes in circumstances.

The high water mark of the argument is a written memorandum by the RSPCA in relation to what was then clause 3 of the draft bill. The substance was re-iterated on several occasions. The RSPCA asserts that it does broadly represent its current approach and only exceptionally would it bring proceedings for the welfare offence alone<sup>24</sup> without first giving a warning and opportunity to improve. There were three cases in the review's file sample where that was not the case although it was unclear why they were deemed exceptional. Although not amounting to an undertaking, there was a clear statement of intent by the RSPCA and it would be to everybody's advantage for the RSPCA to have a clearly stated and published position on this issue. The RSPCA in 2010 did revise its position on veterinary evidence in the light of experience to that point; and the review endorses that approach which is consistent with its own view that expert evidence should not be introduced unnecessarily.

By way of further example, the review highlighted as needing special care those cases involving neglect of an animal which is out of character and other animals well looked after. Some PCMs felt that demonstrating the ability to look after other animals well makes the neglect of another a greater crime because the individual must have a clear perception of the failure to provide proper and necessary care and attention. Others implied that failing an animal at the end of its life can be more serious. Clear and transparent statements as to how such issues are approached would ensure that the public knew what is expected of them.

The RSPCA is not the only prosecutor in relation to 2006 Act offences. The appropriate course would be for the RSPCA to initiate an exercise to develop supplementary guidance and an offence specific case work standards. Other relevant prosecutors (in particular the CPS) should be invited to participate.

#### **6.3.4 Evidential test**

During the course of the review, 62 files selected by the RSPCA on the basis of a criteria set by the Reviewer were examined. They included examples of cases involving guilty pleas as well as contested cases and included some where the decision had been to administer a caution or take no proceedings. A further 16 files were called for by the Reviewer.

The assessment of the evidence was satisfactory in 90% of the cases where it was relevant. Two cases selected by the RSPCA involved situations where the advice was simply that no formal investigation was justified.

The evidential test can represent a low threshold given the broad terms of the 2006 Act. It contains no actual definition of suffering save that it includes both physical and mental suffering. The only precedent is in Scottish law which makes it clear that it can include distress etc for even a very short period. Consequently, the words

<sup>24</sup> In the Hadley case (footnote 19) the original charges included the more serious offence of causing unnecessary suffering.



used in the veterinary statement are inevitably critical to the assessment of decisions about evidential sufficiency whenever suffering is an issue. A stock phrase in preface reports is often: “the vet will support suffering in respect of x for y weeks...”. Findings appear elsewhere about veterinary evidence. But it is appropriate to emphasis here the importance that veterinary evidence should be available at the earliest possible moment consistent with thoroughness and care needed not to strain the evidence. These issues are dealt with later (Chapter 7).

There were five cases where the review considered that the evidential test had not been properly applied. In two cases there had been insufficient analysis of the quality of the evidence with one case also raising issues as to legalities of seizure. In each case the prosecuting solicitor had raised doubts and persuaded the RSPCA to seek advice from counsel who confirmed that the evidence was insufficient. In the third case it was clear from the outset that there would be a serious issue as to causation. The initial instinct of the PCM seemed against proceedings but further veterinary opinion (far from strong) was obtained and proceedings launched. In the event, the prosecution failed on a submission of no case to answer although that related in part to other evidential factors which could not have been foreseen. In the fourth case, the principal charge was under section 1 of the Hunting Act 2006 in circumstances where the appropriate course would have been to proceed on the basis of offences relating to interference with badgers where the evidence was strong. The main charge was abandoned shortly before trial causing irritation to the court. In the fifth case, proceedings were launched on the basis of an unrealistic assessment as to the likelihood of critical evidence being admitted. It was not and the prosecution failed.

There were two further cases that caused the review serious concern. In one the CPS intervened to discontinue the main charges on the basis that there was insufficient evidence; that was a legitimate conclusion in relation to the charges as drafted and the problem lay in the earlier handling of the case and the selection of charges. In the other, the PCM did not adequately consider the nature of the likely defence. The defendant was acquitted after a District Judge had heard all the evidence – although the outcome might have been a learning point, it was simply dismissed as perverse.

Five of the above cases were within the RSPCA element of the sample whilst the remaining two were cases drawn to the attention of the review.

### **6.3.5 Public interest test**

The review acknowledges that the application of the public interest test to animal welfare cases can often be difficult. It also has serious implications for all concerned – the prospective defendant(s), the animal(s) and the Society which may be criticised if its actions appear either heavy-handed or an inadequate response to the situation.

The mischief at which most animal legislation is directed is the prevention of current and potential suffering. That is likely to be an important factor when weighing the public interest in most cases. But the factors are many and diverse reflecting the range of cases and circumstances that face the RSPCA. This will include the nature of any prior involvement of inspectors. A delicate balance may often have to be struck between the legitimate interests of the individual(s) and the animal(s).

Even allowing for these difficulties, the proportion of cases where the consideration of the public interest test was flawed was too high.

There are two striking features:

- PCMs are often required to take decisions on the basis of quite sparse information; the amount of information available on case files to inform decisions about the public interest is limited. It is very important that decisions relating to youth offenders, the elderly or vulnerable individuals should be taken on the basis of the fullest possible information particularly in regard to the risk of re-offending which should be assessed thoroughly.
- The predominance of the concern to secure orders for deprivation and disqualification.

The focus on securing deprivation and disqualification orders can eclipse consideration of important human factors (e.g. mental illness). Prosecution Case Managers point out that the prevention of suffering constitutes a part of the Society's charitable objectives. That does not mean that prosecutions should be brought where the public interest does not require it. Whilst there are many cases where securing disqualification is important, there are also cases where the need is rather less clear cut. More sophisticated risk assessment as to the likelihood to the further mistreatment of animals would be appropriate in certain categories of case.

The courts have a wide discretion whether or not to make deprivation and/or disqualification orders although reasons for not doing so must be given in open court and (in the case of a magistrates' court) recorded in the register. The position therefore contrasts to the position under the previous legislation (section 3 of the Protection of animals Act 1911) which required the court to be satisfied before imposing a deprivation order that the animal, if left with the owner, was likely to be exposed to further cruelty. It does not seem to the review that anything in the 2006 Act **requires** the court to make either a deprivation or disqualification order in circumstances where there is no or little likelihood of further offending. It is important to recognise that deprivation and disqualification orders are intended for the purpose of animal protection; they are distinct and separate from any fine or term of imprisonment and not to be regarded as part of the penalty. It follows that where the circumstances as a whole do not render a prosecution in the public interest, the seeking of either disqualification or deprivation alone should not tip the balance in favour of prosecution when there is no reason to suppose repetition is likely. Scenarios might include those where suffering has been confined to the end of life phase of an otherwise well looked after animal or where the neglect is out of character and other animals are well looked after. This is an aspect of enforcement that would benefit from a clear and transparent statement of policy developed after appropriate consultation.

There were rather more cases where the review had concerns about the application of the public interest test. In nine cases within the RSPCA sample, individual prosecutions either did not seem necessary in the public interest or were commenced without full consideration – notably where there did not appear to be liaison as regards youth offenders. There were at least three such cases in the random sample as regards the latter.

The RSPCA as an organisation developed an Intervention Programme. Its advisers point to the reduction in the number of youth offender prosecutions in 2013 as

evidence, if sustained, of the effectiveness of the programme. It includes the development of online and interactive resources and other focused interventions to be used by Youth Offending Teams (YOTs) and the Probation Service in conjunction with offenders responsible for animal cruelty or neglect. The RSPCA trains staff of these organisations but is not directly involved in delivery.

It is important that appropriate consideration be given to the possibility of diversion in all cases involving youth offenders with a presumption that advice will be sought from the relevant YOT as to whether the criteria for diversion is met. There may be circumstances where the PCM concludes that seeking advice from a YOT would not be justified. In such cases, the conclusion and the reasoning should be recorded.

File examination also showed a tendency for inspectors and PCMs to cast the net wide so as to include all who might be fixed with some legal responsibility for the relevant animal even where the interests of justice would be adequately served by proceeding against the individual with primary responsibility. Examples in the file sample included a youth charged with his mother, and a mentally ill woman charged with her partner who had owned the animal for many years prior to the relationship. In each case the public interest would have been served by the prosecution of the primary offender.

In a further case, a 79 year old man was prosecuted for offences relating to an excessive number of dogs kept in unsatisfactory conditions at the house where he lived with his daughter. The daughter owned the dogs and was responsible for acquiring the dogs in the numbers she did and the conditions in which they were maintained. She worked by day and relied on her father to look after them as best he could. The investigating inspector described the 79 year old as being fully co-operative and having only one eye and some arthritis in his hands. Despite this, she noted:

“He cannot remember the warning notice issued by... He is an elderly man and has got arthritis. He was not responsible for veterinary care, worming or grooming. He spent his days mopping up after the dogs and trying to keep the environment as clean as he could.”

In addition the report said:

“There is no doubt he worked very hard to try to keep the house as clean as possible, he was fighting a losing battle as the numbers had got completely out of hand.”

The PCM's memo did not properly address public interest. The father received a conditional discharge and a banning order, but it was difficult for the Reviewer to envisage further offending by the father (as opposed to his daughter whose role was the dominant one and who received a suspended sentence). It was difficult to see any public interest served by the proceedings against the elderly father.

Undue weight may also attach to a refusal to sign over animals which the RSPCA wish to take into their possession. There seems to be a presumption that, where suffering or neglect is established, prosecution will be in the public interest unless the individual has not only signed over the animals but also demonstrated complete remorse. In reality, the human factors may be more complicated. There appears to be a case for some wider use of proceedings under section 20 of the 2006 Act as an alternative to prosecution. Indeed, the assessment of the public interest might be less difficult if the RSPCA had available to it a wider range of disposals than is possible at present. That is a possibility to be addressed if, as the review

recommends elsewhere, the RSPCA's enforcement activities are placed on a formal footing with appropriate accountability.

The likely cost of a prosecution is also a relevant factor that must be weighed along with others such as the seriousness of the alleged offences, the role and responsibility of the alleged offender and his/her personal circumstances and attitude – as well as the likelihood of further offending. PCMs sometimes need to focus more explicitly on whether prosecution is a proportionate response in the circumstances of the particular case.

### **6.3.6 Relationship between public interest and charitable benefit**

Proportionality can extend beyond the likely costs of the prosecution and the personal circumstances of the prospective defendant to include the question of charitable benefit. The overarching principles to be considered by the trustees when considering whether enforcement activity should be undertaken in relation to specific aspects of animal welfare are considered at chapter 10. However, such considerations may also be applicable to individual cases. This is a manifestation of the duty (vested in the trustees but all staff should have regard to it) to act prudently in the best interests of the charity to secure charitable outcomes. It includes both value for money and aspects of detriment (e.g. lost opportunity costs) and harm particularly if the prosecution could take the Society into contentious areas of policy where reputational issues would arise. In short, it does not automatically follow that, because the public interest requires a prosecution, there will be a charitable benefit in the RSPCA undertaking the case.

In the vast majority of cases handled by the RSPCA, there is unlikely to be a tension. If the circumstances require a prosecution and there is no public authority prepared to take it on or with the skills and resources to do so effectively, there is likely to be charitable benefit. Prosecution Case Managers should be alert for those cases where the likely costs will be high in relation to the mischief involved or where there is a novel element so that guidance may be sought from the Head of Prosecutions and/or the Chief Legal Officer. Assuming that a Prosecution Oversight Group along the lines proposed in this report, it would be appropriate for that group to provide formal guidelines to assist the Head of Prosecutions.

## **6.4 Checks and balances: the right of the Director of Public Prosecutions to intervene**

Section 6 of the Prosecution of Offences Act 1985, in establishing the Crown Prosecution Service (which has a duty to assume responsibility for proceedings instituted by the police) preserved the right of other individuals and organisations to institute and carry on criminal proceedings<sup>25</sup>. It also empowered the Director of Public Prosecutions (as head of the CPS) to intervene and take over any such proceedings – whether to carry them on or to discontinue them.

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<sup>25</sup> Section 6: Prosecutions instituted and conducted otherwise than by the Service.

(1) Subject to subsection (2) below, nothing in this Part shall preclude any person from instituting any criminal proceedings or conducting any criminal proceedings to which the Director's duty to take over the conduct of proceedings does not apply.

(2) Where criminal proceedings are instituted in circumstances in which the Director is not under a duty to take over their conduct, he may nevertheless do so at any stage.

When the House of Commons debated the role of the RSPCA in Westminster Hall on 29 January 2013 the then Attorney General recognised the value of the provision as a safeguard and explained:

“The CPS will always consider a request to exercise that power and take over such a private prosecution, including from defendants, and has received requests in relation to some RSPCA cases. I will come back to that in a moment. The approach that the CPS will take in such cases is published on its website. It will review the case in accordance with the full code test contained in the Code for Crown Prosecutors and consider first whether there is sufficient evidence to provide a realistic prospect of conviction, and if there is, whether a prosecution is in the public interest. It will also consider whether there is a particular need for the CPS to take over the prosecution, either to stop it or to continue it. That is entirely a decision for the CPS. The DPP’s policy is that a private prosecution should be taken over and stopped if, upon review of the case papers, either the evidential sufficiency stage or the public interest stage of the full code test is not met. The Supreme Court has recently upheld the DPP’s policy on private prosecutions in the case of *Gujra*.<sup>26</sup>”

Although requests by defendants for the CPS to intervene in RSPCA cases are quite rare the incidence has increased as the result of greater awareness of the procedure. In 2012 and 2013 there were two such occurrences in each year. There has been no case where the CPS has intervened to discontinue all charges but on two occasions the CPS has intervened and discontinued the main charges with the result that the RSPCA itself decided not to pursue the remaining matter. The review considered those cases. The reasoning of the CPS was not wholly clear in either case and this left an unsatisfactory taste – especially since a separate reference (in another CPS area) produced a different outcome in a case that raised the same issues. The review believes that the procedure adopted by the CPS is procedurally flawed and does not accord with the principles of natural justice.

The practice of the CPS on receipt of a request for intervention is to request a copy of the papers from the prosecutor (RSPCA) and consider whether the case meets the evidential and public interest tests of the Code for Crown Prosecutors. If not, the CPS may intervene to discontinue. The RSPCA response is to co-operate fully with the supply of case papers and will occasionally, if it has not already done so, instruct counsel to provide an opinion as to the evidential sufficiency which is also made available to the CPS. However, it is not the practice of the CPS to provide to the RSPCA a copy of the request or details of the grounds of the application. The RSPCA therefore finds itself tilting at a windmill in that it is unsighted as to why the prosecution is alleged to be objectionable. There appears to be no procedure whereby the CPS, if it believes intervention may be appropriate, affords the RSPCA the opportunity to address any concerns. The first the RSPCA learns is when a decision has been taken and communicated to the defendant. The procedure need not be a protracted one but the least to be expected is that the RSPCA prosecutor should know the basis of the request for intervention and have the opportunity to address it and any other points that the CPS may consider material even if not identified by the applicant. In one instance, a case was discontinued on the basis that certain charges were bad for duplicity. The RSPCA had no opportunity to invite the CPS to consider a relevant authority from the Administrative Court which was the basis of their approach; and the position was compounded when a different area of the CPS took a different view in almost identical circumstances.

<sup>26</sup> <http://www.bailii.org/uk/cases/UKSC/2012/52.html>

The arrangements are in urgent need of review and the RSPCA's Chief Legal Officer should make an urgent approach to the CPS with a view to agreeing a protocol. There may be reluctance on the part of the DPP to do so but there are compelling reasons for doing so. Although routinely described as "private prosecutions", RSPCA cases are brought by the body relied on by the state to do so; a significant number will have started life as complaints to the police which the police have then referred on to the RSPCA. In addition, the Attorney General's endorsement of the procedure as a form of safeguard makes it likely that such requests will increase.

Lest it be suggested that the RSPCA should anticipate the possible concerns by reference to the CPS approach to such cases, it is to be noted that this is an aspect of criminal law where the CPS itself has no published guidance. This reflects its limited involvement in animal welfare cases. It also invites the question as to what yardstick the CPS adopts in such a specialist area – particularly as regards public interest. This report identifies elsewhere a need for a more consistent approach on the part of those responsible for prosecutions in this area. Even though the DPP is not attracted to the concept of a jointly developed policy, the RSPCA does need to have policies that it can apply with confidence.

The arrangements also seem anomalous in another respect. The CPS guidance on intervention in prosecutions seems to draw a distinction between "private prosecutors" and other prosecuting authorities. It clearly regards the RSPCA as being in the former category although it goes on to define a prosecuting agency as:

"A prosecuting authority includes, but is not limited to, an entity which has a statutory power to prosecute."

The general guidance is disapplied as regards other prosecuting agencies with a much more robust test being applied. The principle as regards exercise of the power to intervene is expressed as follows:

"The CPS has a statutory duty under section 3(2)(a) Prosecution of Offences Act 1985 (the Act) to take over proceedings instituted by or on behalf of the police. However, the CPS also has discretion to take over proceedings in any other case under section 6(2) of the Act.

Prosecutions are regularly brought by other prosecuting agencies where the body concerned has a particular expertise or statutory interest. In general the CPS will neither wish nor need to intervene in such cases."

When dealing with the question of active intervention, the guidance states:

In certain circumstances, the CPS will take the initiative and intervene in a private prosecution conducted by a body which regularly institutes criminal proceedings and which is recognised as possessing a particular expertise about matters in respect of which it prosecutes. It will be very unusual for the CPS to intervene in such a case, but the wider public interest may on rare occasions support intervention particularly where: [examples not material to present issue].

This scenario invites the question as to why the RSPCA is regarded as sufficiently expertise for the state to rely on it so extensively yet treated differently to other such prosecutors for the purposes of intervention. This report does make criticisms elsewhere of some aspects of RSPCA performance but this is an issue that has to be decided on principle. The current position is likely to prove problematic if, as seems possible, increasing numbers of defendants invite the CPS in effect to

second guess the RSPCA on its application of the Code for Crown Prosecutors. It reinforces the need for the role of the RSPCA in the enforcement of animal welfare law to be clearly defined with the establishment of properly structured accountability.

## **6.5 *The approach to charging***

Section 6 of the Code for Crown Prosecutors provides guidance on the selection of charges. It states that prosecutors should select charges which:

- reflect the seriousness and extent of the offending supported by the evidence;
- give the court adequate powers to sentence and impose appropriate post-conviction orders; and
- enable the case to be presented in a clear and simple way.

A significant proportion of cases viewed involved numbers of charges which seemed disproportionate to their complexity. This does not mean that the Reviewer is unaware of the pitfalls that can arise through complaints of duplicity etc. In striking the balance, due regard must be had to the adverse effects of cases becoming protracted and delayed. Several practitioners commented critically on this issue including some who prosecuted.

In addition, charges may extend to those who do not have primary responsibility for the animals or the misconduct but may have assumed some responsibility. Examples given earlier have included a mentally ill partner and a youth son. It is right to acknowledge that in some instances charges were withdrawn at a later stage, particularly if the primary offender had entered an acceptable plea. But it is important that public interest decisions look at individual circumstances from the outset.

Multiple charges relating to the same animal may consist of section 4 offences (suffering) with several charges each based on a different condition or omission (for example: section 4 charges in relation to a seriously emaciated animal might be supplemented by charges alleging causing suffering through failure to provide veterinary attention for things such as skin condition or flea infestation). The gravamen of the case is likely to be the starvation and, provided there is no suggestion that the skin condition or flea infestation contributed to the starvation, such charges would add little.

The position may be compounded if section 9 is also charged – possibly with multiple charges each specifying breaches of different aspects of the requirements (diet, environment etc) and different headings of the DEFRA Animal Welfare Codes. The position may be further complicated where there are multiple animals even though the precedents do allow for specifying more than one animal in a charge.

The Prosecutions Department does not have any formal charging guidance to assist PCMs in presenting the case in the most concise and straightforward manner. Although there may be informal consultation, each PCM tends to have his own approach. There is a tendency also for PCMs to maximise the number of section 4 (suffering) charges. This is an aspect of Prosecutions Department work which would benefit from further and more detailed consideration (possibly with the assistance of counsel experienced in the conduct of animal welfare cases) in order to identify the optimum approach to charging which would be more straightforward

whilst continuing to reflect the gravamen of the offending conduct and not falling foul of the rules relating to duplicity.

The exercise should seek to mitigate the adverse effects of multiple charges which seem to be:

- Inevitably lengthening cases and possibly complicating them by increasing the scope for expert evidence to get bogged down.
- Opening up the scope to challenge at both the veterinary and the legal level (exacerbated in some instances by the format of some veterinary statements).
- Delay: stripping cases to their element and focusing on the strongest charges could reduce delay, attract more guilty pleas, reduce veterinary costs and reduce the costs of boarding animals.

The old adage: “first, worst and last” has much to commend it. It hardly needs to be said that the exercise should seek broad consistency of approach but not become a straitjacket.

## **6.6 Case management**

Steps are needed to reduce the time case files take to reach the Prosecutions Department. It routinely exceeds the 21 day limit (from the time the case is commenced) stipulated in the Director of Operations memorandum of 12 January 2011. Recent internal research showed that the average time taken for a case file to reach the Prosecutions Department from the Inspectorate during the 90 days up to 1 December 2013 was 57 days from the time the case was raised – usually involving the seizure of animals. Performance varied widely between Inspectorate groups in the range of 27.9 days to 99.5 days. This indicates that, to a considerable degree, the problem is about people management since systemic issues would be likely to impact more uniformly.

Avoidable delay is unsatisfactory in any prosecution but especially so in relation to animal welfare cases where it inevitably drives up costs because of the need to care for case animals pending the proceedings and is not conducive to their welfare. Their interests are usually best served by early settlement of their long-term situation. Costs vary between species but total animal welfare costs (boarding and veterinary) for 2013 were £4.7 million. The review believes that, in addition to focusing on the timeliness of the file building within the Inspectorate, there is likely to be scope for efficiency savings from two sources:

- Improving the gathering of veterinary evidence (which is different from veterinary welfare costs) through more structured arrangements for engaging the services of vets; service level agreements which incorporate established timescales for the process and confining the use of expert veterinary evidence to where it is really necessary. This aspect is dealt with more fully in the next chapter.
- Giving consideration to a move away from the present ‘one size fits all’ approach under which case files are submitted only once the evidence is sufficient to sustain a contested case. In fact, 72.9% of defendants pleaded guilty in 2013 – albeit by no means all at the earliest opportunity. Speeding up



the early stages of the process and getting cases before the courts sooner could avoid the need to prepare all files to the standard required for a contest.

Most prosecuting agencies have such an arrangement. It would require early presentation to the Prosecutions Department of a report identifying the offences alleged to have been committed together with the basic evidence necessary to support the elements of the offence and background material necessary to inform the public interest aspect of the decision. It is axiomatic that the file would be sufficiently detailed for the prosecutor to open the facts to the court if a guilty plea was forthcoming. It is to be assumed for this purpose that, in the reasonably near future, the RSPCA will move to a system that gives inspectors access to e-mail, something they presently lack. Where the prosecutor is satisfied that the Code test has been met, the proceedings would be instituted by summons with as early a return date as possible. Where a not guilty plea is entered, the case would be prepared for contest in the usual way.

Although the review received representations from some members of the Inspectorate in favour of such an approach, PCMs expressed strong reservations – citing mainly that animal welfare cases frequently turn on some fine nuances of veterinary evidence. In addition some expressed concern that, where a not guilty plea is entered, the outstanding evidence gathering would not be undertaken according to the necessary timetable. The review recognises that there are aspects of the proposal that would not be straightforward. However, it is likely that such arrangements would fit more easily into the more flexible operating model suggested later in this chapter with in-house lawyers available to handle decision-making and ongoing requests for advice. It is therefore recommended that a system of early process based on abbreviated files is developed and tested in selected areas by the Prosecutions Department once it has the benefit of in-house solicitors and barristers – also recommended later in this chapter. There is undoubtedly some risk but the present situation whereby cases typically reach court some three or four months after the occurrence of the relevant events is untenable.

Prosecutors (including the RSPCA) of offences under the Animal Welfare Act 2006 benefit from a special regime instead of the usual six month time limit imposed by section 127 of the Magistrates' Courts Act 1980. Section 31(1)(b) of the 2006 Act stipulates that proceedings must be brought within three years of the offence and within six months of the date when "the evidence which the prosecutor thinks is sufficient to justify the proceedings comes to his knowledge". Section 31(2)(a) makes a certificate by the prosecutor conclusive evidence of the date when that arose. Judicial rulings have confirmed that for this purpose the prosecutor is the individual taking the decision (i.e. the PCM in the case of the RSPCA) and not the organisation.

Two consequences flow. First, it opens up the possibility of an artificially long time limit if there is a delay in papers reaching the prosecutor - however unjustified the delay. The review was assured that PCMs do not allow investigators to rely on the provision in this way. Secondly, some fine and often subjective judgements are needed as to the point at which the evidence might be regarded as sufficient. A prosecutor may have evidence on which a case could properly be brought but feel that it would be better to seek further evidence before proceedings so as to provide the strongest possible case.

In the interests of consistency, the review recommends that such certificates should be signed by the Chief Legal Officer or the Head of Prosecutions.

The Prosecutions Department benefits from the services of a cadre of experienced and highly committed PCMs who bring efficiency and professionalism to their work. The management of prosecutions conducted by the RSPCA is clearly more effective and thorough than found in most other prosecuting authorities including the CPS. However, the PCMs are mainly paralegals<sup>27</sup> (with most either having or studying for CILEX qualifications) rather than solicitors or barristers. This alone makes it appropriate that their work should be effectively supervised by a qualified Head of Prosecutions (section 6.3 above) irrespective of the additional need for good governance and accountability.

There are no structured arrangements as regards supervision or documented operating practices and procedures. Most supervision is informal with PCMs exercising their own judgment as to the circumstances in which they should refer cases upwards or seek advice. Clarity would be an advantage to all concerned and this should be addressed.

Recording of decisions and actions was poor. Although files may contain manuscript jottings by PCMs, there is usually no formal assessment of the evidence against the elements of the offence. Rather, the gist of the PCMs thinking may be recorded in a memorandum to the case inspector which conveys the decision about what, if any, charges should be preferred. The focus tends to be on the decision and on procedural issues rather than on the reasoning. This is not just a bureaucratic point. Prosecution is a serious matter and the reasons for decisions which have a real impact on individuals' lives should be properly recorded. CPS managers have placed considerable store on this issue over the years – albeit not always with the level of success desired.

It is rarely possible to ascertain from looking at a file whether or not the Head of Prosecutions has had any input or not. This reflects the same general lack of recording. At present, this is confined to the occasional file note. Files have no section for the routine recording of steps taken and this should be addressed. A protocol should be developed as to matters which should be referred to the Head of Prosecutions for decision and advice. Also, reasons for decisions should be recorded on the file so as to indicate how the evidential and public interest tests of the Code for Crown Prosecutors have been applied.

The Prosecutions Department does not retain a copy of the file when a local solicitor is instructed to conduct proceedings. This can make effective dialogue cumbersome, especially if the solicitor seeks guidance or a decision on a significant issue.

The RSPCA approach to retention of case animals seems both rigid and expensive. This attitude is behind a huge number of the complaints received. The Prosecutions Department seems routinely to take decisions about detained animals which in law are for the police. Prosecution Case Managers assert that the police will not take them. If correct, that confirms the need for clearer and more structured working arrangements with the police service as proposed earlier. It is not clear that steps taken are all absolutely necessary.

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<sup>27</sup> Those who have achieved fellowship of CILEX point out that they have practising certificates and are entitled to describe themselves as lawyers.

### 6.6.1 Prosecution disclosure

The review prefaces its comments on this topic by noting that the whole issue of prosecution disclosure has proved one of the most intractable problems in the criminal justice system for the past three decades. Mistakes in handling disclosure have precipitated the collapse of several major trials; in the magistrates' courts there has been a constant struggle to strike the right balance between, on the one hand a system of full and effective disclosure and, on the other hand proportionality in the construction of prosecution case files and the obligations placed on the prosecution.

The most recent development has been the publication in May 2014 by the Judicial Office of the report of a review commissioned by the Senior Presiding Judge. This alone is likely to require change in RSPCA procedures. As explained by the Senior Presiding Judge in his foreword to the report:

“the heavy frontloading placed upon the prosecution (both police and CPS) must be acknowledged but, if applied correctly, the benefits to all, prosecution, defence and court, should not be underestimated”.

Those comments would be equally applicable to the RSPCA as investigator and prosecutor. The most significant change is to require that in contested cases the schedule of unused material (or a report that states the exercise has taken place, together with any disclosable material if applicable) should be provided to the prosecutor such that it can be served at the first hearing, once the not guilty plea has been confirmed.

The procedure presently operated by the RSPCA does not accord strictly with the regime stipulated in the Criminal Procedures & Investigations Act 1996 and associated codes; and does not readily lend itself to the above. RSPCA investigators are not at any stage required to produce a list of unused material as envisaged by the Code.

Paragraph 6.2 stipulates that should be: “material which may be relevant to an investigation, which has been retained in accordance with this Code, and **which the disclosure officer believes will not form part of the prosecution case**, must be listed on a schedule”. The emphasis is that of the review.

RSPCA procedures presently involve the inclusion in the case file of a copy of all the material which has been generated in the course of the investigation. No attempt is made to distinguish between that which will form part of the prosecution case and that which is truly “unused material”.

Other differences are:

- The list is produced at the outset (i.e. prior to submission of the case file to the Prosecutions Department) rather than at the point where a not guilty plea is entered which, in RSPCA cases, can be a while later. There is a risk that it may have been overtaken by events.
- Certification whether there is disclosable material is by the PCM rather than the investigator.

The thinking behind the RSPCA procedures is that all material should be placed fully into the arena at the earliest moment to as to be available for consideration by the prosecuting solicitor who is responsible for the discharge of the statutory procedures. Some disadvantages have to be acknowledged:

- it is not always helpful to the defence to have a list of “unused material” when the majority of what appears may not belong there;
- it reflects the position at the time it came to the PCM and things may have moved on.

The Reviewer also has an anxiety based on the fact that file examination showed practically no cases where the material was certified as disclosable, PCMs might be taking too restrictive a view – albeit in good faith. An issue frequently mentioned by external practitioners related to the treatment of the many photographs routinely taken during the course of RSPCA investigations. The Prosecutions Department acknowledge that those selected to be adduced as part of the prosecution evidence are those that best support the prosecution case. The remainder will by definition be less supportive and it is a matter of degree as to how far that goes before they might be viewed as undermining or assisting the defence. In addition, investigators and prosecutors will not always appreciate whether something in the photograph might have significance for the defendant. On balance, the Reviewer would prefer to see such photographs assessed as disclosable. There should not be any significant practical or resource implications since the RSPCA routinely has electronic copies available should they be requested. It is simply a matter of being proactive rather than reactive.

The Reviewer did receive numerous adverse comments about prosecution disclosure but the experience of the Reviewer is that the incidence was no more than those routinely levelled at other prosecutors. Indeed the report published by the Judicial Office records (paragraph 66) – that a common theme was the prevalence of prosecution late or non compliance with its initial and/or continuing disclosure obligations. Paragraph 57 makes it clear that it is not uncommon for no schedule to have been served by the date of the summary trial. The comments in the Judicial Office report related to the generality of prosecutions rather than the RSPCA.

In terms of the effectiveness of the RSPCA approach, the Reviewer would not have been able without disproportionate effort and resources to drill down into individual criticisms. Responsibility for compliance with both the initial duty of disclosure and the continuing duty rests firmly with the external solicitors responsible for the conduct of prosecutions. The RSPCA responsibility is to ensure that all potentially disclosable material is available to them. In addition, it is important that sensitive material should not only be listed to assist the prosecuting solicitor but either copied to the solicitor or summarised in a manner that places him or her in a position fully to discharge the duty of continuing review which arises under section 7 of the Criminal Procedure & Investigations Act 1996. It requires ongoing consideration and disclosure of unused material as necessary until trial takes place or any sentence hearing takes place post trial. This is regardless of whether the defence provides a defence statement. If such a statement is served, then the prosecution must respond within 14 days.

The Reviewer recommends the following changes which should ensure compliance with the changes arising from the recent report:

1. The investigating inspector should prepare a list of unused material which excludes that which it is expected that the prosecution will rely upon; and keep that list updated throughout the proceedings to reflect additional material and other changes in circumstances.

2. Certification as to the existence of disclosable material should be carried out on the basis of a review which occurs at the point where a not guilty plea is indicated.
3. The prosecuting solicitor should be provided with a copy of the sensitive material or a description sufficient to enable him or her to discharge the duty of continuing review.

Although the practice of certification being undertaken by the PCM differs from that pertaining elsewhere, it does have advantages in that the PCMs have more experience of the handling of such issues than individual inspectors whom each conduct a relatively small number of cases per year.

Generally, there is scope for improvement in the structure of Inspectorate reports and supporting documentation received from inspectors to make it more user-friendly for the prosecution process. It follows a format developed in January 2011 and does ensure that all relevant documentation and information is provided to PCMs. Nothing should be held back from the Prosecutions Department. It does not adequately separate out the material likely to form the basis of the prosecution from the background material. This is compounded within the Prosecutions Department by simply adding subsequent documentation to the file. Some prosecuting solicitors commented that the first thing they do on receipt of a prosecution file is to sort it into component parts. The RSPCA is of course paying for that process!

## **6.7 Relationships with the Inspectorate**

There is a clear understanding between the Prosecutions Department and the Inspectorate as to their respective roles in decision-making. This does not preclude inspectors setting out forthright views (usually in the preface report) – especially when they are keen to see a prosecution instituted. Although PCMs are firmly in charge of the decision-making, they clearly share a common set of values with inspectors. Advice is routinely provided as to additional steps needed to strengthen the evidence or complete gaps in the evidential chain. This may well focus on peripheral defendants where, for example, there may be issues as to the extent that responsibility has been assumed for all or some of the animals.

The process frequently also includes feedback/commentary on the conduct of the investigation and the quality of the file submitted. This frequently includes fulsome praise for commitment where difficulties have been encountered along with more technical advice about investigative issues (e.g. the basis on which police have been invited to exercise powers of seizure or the manner in which interviews have been conducted) and any shortcomings in relation to RSPCA documentation.

There probably needs to be closer scrutiny of the manner in which police powers have been invoked and its potential impact on the admissibility of evidence.

PCMs are responsible for geographical areas and therefore acquire familiarity with the work of those inspectors. Such guidance and feedback is right in principle although some might emanate more appropriately from line management. (The evidence received was that line management within the Inspectorate is of variable quality). It is important that the combination of shared values (particularly evident when commenting on case outcomes) and close working relationships do not create a degree of empathy which might undermine the purpose of separating the prosecution decision-making from investigation. When faced with adverse

outcomes, both the PCMs and inspectors should be willing to review the handling of the case to see whether things might have been done differently; all too frequently, comments were either critical or dismissive.

## **6.8 *The business model for the Prosecutions Department***

When considering issues relating to the overall structure of the Prosecutions Department, the review concluded that the RSPCA should move incrementally to a position where all prosecution decisions are the responsibility of qualified solicitors and barristers. Although that will entail additional expenditure on the staffing budget the review also believes that it would be cost-effective for the Prosecutions Department to build an in-house capacity for end-to-end conduct of cases and management oversight of the caseload.

The first step should be to appoint a permanent Head of Prosecutions. The individual chosen should have substantial experience not only in conducting prosecutions but in managing a prosecution authority – or a division. Expertise is needed in the development and implementation of policy as well as the implementation of common systems and processes.

All cases considered by the Prosecutions Department are at present handled in the same manner. Following consideration by the relevant PCM and provision of any further evidence or information requested by him, a decision is taken whether to institute proceedings. Charges are drafted by the PCM and the necessary information forwarded to the investigating officer for laying at court. The PCM then writes a standard letter (but adapted to the circumstances) instructing the prosecuting solicitor who covers the area concerned. The file is sent to the prosecuting solicitor who then assumes full responsibility for the management of the case albeit reporting at every stage and seeking instructions on any significant issue. By the end of that process, the PCM has devoted significant time to the case and usually has it at his fingertips.

Much of the value of the work may be lost in that the prosecuting solicitor must again become familiar with the entirety of the case. That might be unavoidable but need not be so if the initial review was to be undertaken by an in-house lawyer who then presented the case in court. Whilst the use of in-house lawyers would not eliminate the risk of duplication (it frequently occurs within the CPS for example), it could reduce the resultant costs. The modest number of cases conducted by the RSPCA would make it easier to schedule lawyer time; and the associated support work would remain in-house. At present the work may be further replicated if counsel is instructed by an external solicitor either in the first instance or on appeal. Again, bringing work in-house could be beneficial.

Scrutiny of the invoices submitted suggests that many routine administrative tasks (e.g. warning witnesses and serving documentation) are routinely being undertaken by relatively high fee earning staff. This may not be cost effective.

The RSPCA needs to consider and evaluate other business models. Is it appropriate to pay at partner and other fee-earner rates for work that can often be done in-house and/or by paralegals? The two models which might have most potential are:

- a) The employment of one or more in-house lawyers to oversee prosecutions and themselves conduct those that are sufficiently proximate to be cost-effective.

- b) Conduct of cases being retained at RSPCA Headquarters with PCMs continuing to take decisions but under the direction of lawyers and then (as experienced paralegals) instructing and attending on counsel to conduct cases.

There may be scope to combine the two options above as reflected elsewhere in this report. The geographical distribution of the Society's work may render different options more cost-effective for some venues, thus requiring a flexible approach.

More detailed analysis of workflows and costings is required in order to develop a full business case. At the very least the arrangements would need to be self-financing but the current level of costs, £3.7 million paid to external lawyers in 2013, suggests significant scope for savings. Other advantages could include increased development opportunities for PCMs; closer oversight by senior managers in relation to high profile and sensitive cases; as well as providing paralegal staff with greater feel for cases through direct involvement with their ongoing management and attendance at court.

In order to ensure best value for money any direct instructions of counsel should be based on a comparison exercise undertaken to benchmark RSPCA fees to be paid to counsel against those paid by CPS and Legal Aid. The outcome should be a table of norms which would be the starting point for negotiation in individual cases. This might need in some cases to be higher than the CPS to ensure appropriate calibre – albeit lower than at present.

In the light of other recommendations, it will be necessary to ensure capacity within any new structures for initiatives such as the development of an overarching policy on prosecutions to guide application of the Code for Crown Prosecutors to animal welfare cases; offence specific guidance (to be developed in partnership with other relevant prosecuting authorities) and a prosecution procedures manual to cover all aspects of practice including the management of prosecution disclosure of unused material.

## 6.9 **Recommendations**

1. *In order to provide the degree of separation necessary to achieve confidence in the objectivity of decision-making and handling at all stages of cases, the Prosecutions Department should be established as a self-contained unit with its own discrete governance mechanism<sup>28</sup>.*
2. *The appointment of the Head of Prosecutions should be undertaken by a panel comprising the Chief Legal Officer, an experienced criminal practitioner from independent practice, and an individual with senior management experience.*
3. *The RSPCA should adopt a policy statement outlining the manner in which the Code for Crown Prosecutors will be applied to animal welfare offences; and also develop a set of offence specific standards.*

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<sup>28</sup> This might take the form of an oversight committee with external professional representation. Its membership and terms of reference would be constructed so as to accommodate the overarching responsibilities of the trustees but avoid intrusion into prosecution policy and specific casework.

4. *Prosecution decisions should be the responsibility of qualified barristers or solicitors.*
5. *A protocol should be developed as to matters which should be referred to the Head of Prosecutions for decision and advice.*
6. *Reasons for decision should be recorded on the file so as to indicate how the evidential and public interest tests of the Code for Crown Prosecutors have been applied in the particular case.*
7. *More information should be available to decision-makers to inform decisions relating to public interest.*
8. *Urgent steps are needed to reduce the time elapsing between the commission of offences and the receipt of a case file in the Prosecutions Department.*
9. *A system of early process based on abbreviated files should be developed and tested.*
10. *Certificates under section 31(2)(a) of the Animal Welfare Act 2006 should be signed by the Head of Prosecutions.*
11. *When considering public interest (in particular the need for a banning order) the risk of re-offending should be more thoroughly assessed and weighed against any human factors militating against prosecution.*
12. *RSPCA should develop more consistent arrangements for liaison in appropriate cases between the RSPCA and Social Services and Youth Offending Teams. There should be a presumption in favour of seeking advice from the relevant Youth Offending Team before taking a decision to prosecute a youth offender.*
13. *An exercise (as described at section 6.5) should be undertaken to create charging guidelines.*
14. *The Reviewer recommends the following changes in relation to prosecution disclosure which should ensure compliance with both existing requirements and the changes arising from the recent Judicial Office report:*
  - *The investigating inspector should prepare a list of unused material which excludes that which it is expected that the prosecution will rely upon; and keep that list updated throughout the proceedings to reflect additional material and other changes in circumstances.*
  - *Certification as to the existence of disclosable material should be carried out on the basis of a review which occurs at the point where a not guilty plea is indicated.*
  - *The prosecuting solicitor should be provided with a copy of the sensitive material or a description sufficient to enable him or her to discharge the duty of continuing review.*



15. *There should be a review of the business model to assess the case for greater use of in-house lawyers and develop a more structured approach to external fees.*
16. *Prosecution Case Managers should be vigilant to ensure a balance between constructive and supportive working with the Inspectorate and a degree of empathy that compromises objective consideration of the merits of challenge or adverse criticism.*

## 7 The gathering of veterinary evidence

Veterinary evidence is central to both investigation and prosecution in most animal welfare cases.

### 7.1 **Certification**

At the investigation stage, the certificate of a veterinary surgeon is required before animals can be seized under section 18(5) of the Animal Welfare Act 2006. The veterinary surgeon must be satisfied either that the animal is suffering or that it is likely to suffer if its circumstances do not change. RSPCA inspectors are therefore likely to be accompanied by a vet when it is anticipated that seizure of animals may be appropriate; where the need for a vet is not foreseen, one will usually be summoned.

The certification process is an important one since it is the legal basis for an indefinite and often lengthy retention of the animals with little scope for owners to challenge the position. Animals can be retained that have not been assessed as suffering but have been seized as “likely to suffer if circumstances do not change” even where the circumstances may since have changed for the better.

The norm is for the veterinary surgeon to attend. That is right and proper having regard to the serious implications of the certification both for the animal and the individuals concerned. However there are cases when the certificate is issued over the telephone or otherwise on the basis of a conversation with the inspector. The legal basis of this is not clear. The Administrative Court in *Gray v RSPCA* [2013] EWHC 509 (Admin) considered circumstances where a vet was in attendance but the number of animals so great that it was impractical to issue written certificates in relation to each one before seizure occurred. It ruled that certificates must be in writing but found that for other reasons associated with the circumstances of the case the seizures were lawful.

In any event, certification by a vet not present at the scene would seem inconsistent with the principles of certification promulgated by the Royal College of Veterinary Surgeons. Principle 1 states:

“A veterinarian should be asked to certify only those matters which are within his own knowledge, can be ascertained by him personally or are the subject of a supporting certificate from another veterinarian who does have personal knowledge of the matters in question and is authorised to provide such a supporting document. Matters not within the knowledge of a veterinarian and not the subject of such supporting certificate but known to other persons e.g. the farmer, the breeder, or the truck driver, should be the subject of a declaration by those persons only.”

This is an issue on which there should be consistency and the prudent course would be for the RSPCA to adopt a policy that section 18 certification should always be based on physical examination of the relevant animal(s). The Reviewer was told that telephone certification is now discouraged. That should be placed on a formal basis.

## **7.2 The use of veterinary surgeons as experts**

A striking feature of the review was the extent to which animal welfare cases based on relatively uncomplicated (and sometimes undisputed) factual scenarios could give rise to protracted and very costly proceedings as magistrates or a District Judge grappled with the conflicting opinions of veterinary witnesses.

Veterinary evidence falls into two broad categories:

First there is the 'case vet' who is asked to examine animals whether at a surgery or on site and, having assessed them, to set out his or her findings and the treatment necessary. That role is usually referred to as a 'professional' witness. Second, it may be appropriate to instruct an expert to give 'expert opinion/evidence' which is used and admitted where the court needs assistance due to a lack of necessary expertise. The expert witness's overriding duty is to the court, even if they are called and paid for by one of the parties to the case. This leads to an expert witness sometimes being referred to as 'independent' though the expert witness is instructed, paid and called by a particular party. What it means in practice is that the expert remains the witness of the party calling him or her but must acknowledge the overriding duty to the court to give objective evidence even when it is not in the interests of the party by whom he or she is called. The RCVS offers guidance linked to its code for professional conduct as to the substantive content of an expert report. Although a different format is likely to be required for criminal proceedings than for civil proceedings, its substance remains valid.

There may be overlap when a case vet is also asked to give an opinion based on his or her findings. That overlap can be complicated where the case vet is asked to go further and provide an opinion based on reading all the witness statements and other evidence which may well include any statement under caution made by the defendant. This can create a tension because it is unusual for a witness of fact to have access to the evidence of other witnesses or parties in the case. The role of the veterinary practitioner can become even more opaque if his or her report goes on effectively to opine on the guilt or otherwise of the defendant. The review case sample contained several such examples, one of which could have served as a skeleton argument for the Crown. Cases of alleged unnecessary suffering offer a good example of where veterinary surgeons may go beyond what is appropriate. It is certainly the role of the vet to give evidence as to the state of the animal and the nature and extent of the suffering that may flow – the difficulties in that respect are dealt with below. It may also be appropriate to assist the court by indicating how easily any suffering might have been prevented or alleviated but it does not necessarily follow that the issue of necessity is within the vet's expertise.

Expert evidence could be used more sparingly and focused more on specific issues where the court is likely to need assistance either because of the technicality of the issues involved or in order to interpret the facts. The tendency (on both sides) in animal welfare cases is to invite the vets to opine generally on whether offences have been made out whereas that is the very issue for the court to decide. The majority of issues in animal welfare cases are capable of being determined by the tribunal having regard to the facts established by the evidence and the relevant law including any applicable Code of Practice.

A contributory factor may be the manner in which veterinary surgeons are instructed by the RSPCA. They at present receive a standard letter of instruction from the investigating inspector. It is easier for all parties concerned, including the court,

when expert opinion is focused on those matters where it is truly necessary. Inspectors are discouraged from providing any a further steer or guidance as to the issues lest that be interpreted as in some way coaching or priming a witness. Such caution is understandable given the scepticism of some veterinary or legal practitioners towards vets instructed by the RSPCA. This review found nothing to call their integrity or bona fides into question. Nonetheless, in presentational terms it has to be acknowledged that most vets have an ongoing business relationship with the Society and an ongoing client commitment; they are therefore independent only in the sense that their expert status places upon them and their overriding duty to the court even though the relationship is not as structured as might be expected.

There is a strong case for addressing this by creating a system of formal accreditation linked to a service level agreement and to common standards in a manner analogous to other forensic providers would be beneficial. There would also be advantage in many cases if the RSPCA (through the Prosecutions Department) were to assist the investigator by providing a customised letter of instruction.

### **7.3 Suffering**

A further factor contributing to the propensity of animal welfare cases to become protracted is the difficulty which arises as regards the assessment of suffering. There is no statutory definition or established case law as regards England and Wales. Some practitioners adopt the definition contained within the Oxford English Dictionary. That defines suffering as “the bearing or undergoing of pain, distress or tribulation”; with tribulation being given a definition of “a condition of great affliction, oppression or misery”.

Legal practitioners sometimes seek assistance from a Scottish authority – *Patchett v McDonald*. The case is not binding on English courts but stated:

“The argument presented by the appellant appeared to assume that in the context the words “unnecessary suffering” was synonymous with the words “unnecessary pain”.

“I take leave to doubt this. In my opinion, the primary meaning of ‘unnecessary suffering’ in such a context imports the idea of the animal undergoing, for however brief a period unnecessary pain, distress or tribulation”.

Although several learned papers have been written, suffering has never been formally defined by the veterinary profession and in fact is not a term that is used by the veterinary profession in routine clinical work although many pet owners will ask veterinary surgeons when considering end of life decisions whether, in the view of the vet, the animal is suffering. Definitions which have been advanced include:

- “A set of negative emotions such as fear, pain, and boredom and recognised operationally as states caused by negative reinforcement”.<sup>29</sup>
- “Suffering is observable symptoms in response to any adverse stimuli to which an animal has been unable to adapt”.<sup>30</sup>

<sup>29</sup> Professor Marian Dawkins (Oxford University) *The Science of Animal Suffering*.

<sup>30</sup> Dr Colin Vogel: contribution to British Veterinary Forensic Law Association Seminar June 2012.

The latter definition has been robustly rejected by some vets, especially those associated with the RSPCA. They have particular difficulty with the reliance on observable symptoms. However, at Brighton Crown Court in 2014 Judge Griffith-Jones QC suggested in the case of *RSPCA v Gething* that to be sure an animal is suffering there must be some behaviour clearly related to an adverse experience. Once again, that ruling has only persuasive value and is not binding.

The absence of an accepted legal definition or one adopted by the veterinary profession means that expert veterinary evidence relating to suffering may be no more than a personal view. This is compounded by the absence of any common approach to assessments of suffering. Some vets were clearly more cautious than others. Some would give a bare opinion whilst others would outline the symptoms and other factors leading to the assessment. Unlike some other issues (e.g. emaciation where body score techniques may be invoked) there was no commonality to the approach and appeared to be no commonly recognised professional standard.

So long as this situation prevails, cases where unnecessary suffering is in issue are likely to prove lucrative for lawyers and forensic veterinary witnesses and a source of ongoing contention and mutual criticisms.

Given the absence of any commonality across the veterinary profession as to either the definition or the approach (and they are different) to suffering and the difficulties which can arise when vets are asked to give evidence as to both fact and opinion, it may be better for the RSPCA whenever possible to rely on case vets to confine their assessment and opinion to those based on the symptoms and conditions they have observed. Where the RSPCA believes that the court will need further expert evidence to assist it in determining the question of suffering or some other issue more tailored instructions should be drawn up with the assistance of the Prosecutions Department for that to be done. Such an approach will require a speeding up of the processes by which cases come to the Prosecutions Department. The issue of delay generally is dealt with elsewhere.

Some additional concerns emerged from the review's examination of files:

- The RSPCA maintains no panel of vets or system of accreditation. It is for individual inspectors to identify vets in the neighbourhood who are willing to undertake RSPCA work. That is not always straightforward because many vets do not welcome the potential disruption to their practice and others are positively disinclined to involvement in any form of litigation. The absence of a structured approach does exacerbate the absence of commonality. And critics point to the risk that inspectors requiring veterinary assistance will make their first approach to a vet who, on the basis of past experience, is less likely to be cautious in the assessment. The creation of a panel working to a service level agreement and a set of common standards would reduce the scope for such scepticism.
- Such an arrangement would ensure clarity as to the form and timeliness of veterinary reports to be provided and could benefit greatly on the timeliness of decisions and thus the expeditious progression of cases.
- The absence of a structured approach has resulted in some remarkably inexperienced vets being put forward as 'experts' because they have been

asked to give evidence which is both factual and opinion. The Prosecutions Department points out that some recently qualified vets have an advantage over the more experienced in that their knowledge base is more up to date. However, the approach suggested above whereby case vets might confine their evidence to matters based on their own observations would assist in relation to this issue.

- The RSPCA does not appear to have any clear approach or policy as to the circumstances which it would seek a second expert opinion as opposed to relying on the case vet.
- Veterinary evidence appears to be used in circumstances and in a manner beyond what is necessary, particularly in relation to section 9 offences. Veterinary experts frequently provide statements which contain opinion going way beyond veterinary matters on which they have expertise. It is not uncommon to find veterinary experts expressing an opinion that the owner of an animal has been guilty of a particular criminal offence. With respect to the veterinary profession, that is a matter for the court. As said earlier, some veterinary statements read more like a skeleton argument for the Crown. In fairness, it should be added that many forensic veterinary surgeons who work with defence practitioners are equally guilty. Indeed, one such practitioner commented to the review that it was “his duty to find weaknesses in the prosecution case”. With respect, the duty of an expert is to provide evidence on matters likely to assist the court.

The Reviewer noted the limited role of the RSPCA’s Chief Veterinary Officer in relation to these matters. His primary function seems to be to advise the Society as regards scientific issues relating to its policy consideration, its own husbandry practices and guidance to the public. Given the importance of veterinary evidence to the Society’s prosecution role, it would seem appropriate for the Chief Veterinary Officer to take the lead or be involved in an advisory capacity in addressing some of the issues raised in this chapter. They go not only to the role of the Prosecutions Department but to achieving a better overall handling of animal welfare cases through the criminal justice process. In addition, the RSPCA faces frequent challenges from a cadre of forensic veterinary practitioners who specialise in defending proceedings brought by the RSPCA. Addressing some of the concerns outlined above should reduce some of the scope for challenge.

#### **7.4 Recommendations**

- 1 Inspectors should be formally instructed not to seek certification by a veterinary surgeon under section 18 of the Animal Welfare Act 2006 unless the vet has examined the animal(s) in question.*
- 2 The RSPCA should take the lead in inviting the Royal College of Veterinary Surgeons and other practitioners to develop a common standard or guidance on the approach to assessment of suffering.*
- 3 The RSPCA should establish a panel of accredited veterinary practitioners (with known specialisms where practicable) to be drawn upon by inspectors requiring examination of case animals. Vets on the panel should be expected to work within a fee structure and to a service level agreed with the RSPCA.*

- 4 *The RSPCA should develop a policy as to the extent of its reliance on case vets as expert witnesses; and as to the circumstances in which further expert evidence should be sought. Where further such evidence is to be sought, instructions to veterinary surgeons should be case specific and developed by or in collaboration with the Prosecutions Department.*
  
- 5 *The Society's Chief Veterinary Officer should take the lead in providing advice and guidance to the Inspectorate and the Prosecutions Department in relation to the issues identified in this chapter.*

## 8 Costs

### 8.1 Overview

The total cost to the RSPCA of prosecutions in 2013 was £11,318k. The table below sets out the breakdown together with comparable figures for 2012.

<b>RSPCA Prosecution costs</b>		
	<b><u>2013</u></b> <i>0'000</i>	<b><u>2012</u></b> <i>0'000</i>
Direct costs <i>(Staff, solicitors, expert witnesses &amp; photographic costs)</i>	5,577	6,190
Support costs	367	380
Animal welfare, boarding and veterinary costs	5,374	4,681
<b>Totals</b>	<b>11,318</b>	<b>11,251</b>
<b><i>The direct costs can be broken down further:</i></b>		
<i>Prosecutions Department</i>	<i>881</i>	<i>913</i>
<i>Expert witnesses</i>	<i>948</i>	<i>898</i>
<i>Fees paid to external lawyers</i>	<i>3,747</i>	<i>4,379</i>

**Table 6 figures from page 24, Notes to the Accounts:  
RSPCA Trustees Report and Accounts 2013.**

The expenditure relates to proceedings against 1,548 individuals in relation to 5,345 alleged offences. All the offences were summary. 72.9% of those charged pleaded guilty and overall 88.6% were convicted of some or all of the offences.

Although the animal welfare costs make up nearly half of the overall costs, this chapter is concerned with the direct costs, in particular the expenditure on external legal services. The report identifies at Chapter 6.6 some aspects of the case management processes that can create upward pressure on costs. They relate to delay in the obtaining of veterinary evidence and the approach to file building.

The level of costs is important for three reasons:

- first, the RSPCA needs to be confident that it is receiving best value for money. That is especially important for a charity that is discharging a function that would ordinarily be funded out of the public purse;
- second, the Code for Crown Prosecutors identifies as one of the factors relevant to consideration of the public interest whether a prosecution would be a proportionate response. Decisions should not be taken on the basis of costs alone but they are a relevant factor.
- Third, the level of costs incurred by the RSPCA is seen as higher than those of other prosecutors for comparable cases and many consider that the level of prosecution costs has the potential to impact adversely on the overall fairness of proceedings.



## **8.2 RSPCA claims for costs: the elements**

The Prosecutions Department includes a Cost Recovery and Data Team formed in 2008 with a staff of four. One of its functions is to provide prosecuting solicitors with copies of all invoices relating to the case to ensure they seek as large as possible cost order at the conclusion of the case. The standard elements are:

- Investigation costs: the recorded time of the investigating inspector are charged at the relevant hourly rate to form the basis of this claim.
- Prosecutions Department costs: the Prosecutions Department claims a standard £100 for its role in management of the proceedings.
- External legal costs: these are claims by reference to the invoices submitted by the prosecuting solicitor.
- Welfare costs: these are costs associated with the boarding and veterinary treatment of animals who are the subject of the criminal proceedings.

Many cases involve the calling of veterinary surgeons and sometimes other expert witnesses. These are collated separately since they are the only aspect of the prosecution costs which may be recovered from central funds provided the court so directs. The sum thus recovered in 2013 was £431,451.

It is wholly appropriate that a charity such as the RSPCA should wish to recover as much as possible of its expenditure. Trustees might be regarded as failing in their duty if they did not do so. However, this approach inevitably means that claims will be substantial<sup>31</sup> – although it is ultimately for the court to decide what proportion, if any a convicted defendant should bear.

The RSPCA is probably more pro-active than other prosecutors in pursuing enforcement of costs. Since the creation of the Costs Recovery Team in 2008, the total amount recovered has increased by 41.2% from £659,716 to £1,121,198 including the sums ordered to be paid out of central funds. This has been achieved by the use of the ordinary powers open to all prosecutors but deployed more effectively. Typically, the RSPCA Cost Recovery Team will monitor the payment of smaller debts owed by defendants, liaising with courts where debtors default and providing assistance to court to take enforcement action to ensure future payments are made. In the case of larger debts, checks may be made to ascertain whether there are assets which might be used to secure them. Despite the RSPCA's more determined approach in pursuing enforcement of costs through the courts, criticisms suggesting routine forcing of the sale of properties to recover costs are not borne out. The number of final charging orders held by the RSPCA at the time of the review was 12 – ranging over the period from 2004 to 2012 and securing a total amount of £864,684.

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<sup>31</sup> RSPCA costs are unlikely to be less than around £1,400 for a guilty plea at first hearing in a relatively straightforward case involving no animal welfare costs; and can range up to several hundred thousand pounds in a complex case with high animal boarding and veterinary costs. The average cost of a guilty plea in 2011 was said to be around £1,200.

### 8.3 **Costs of external lawyers**

The relatively high level of costs incurred may in part be attributable to the model operated by the RSPCA as well as the actual level of fees for some solicitors and counsel.

### 8.4 **Operating model**

The review recommends at section 6.8 consideration be given to three options for an alternative operating model. More detailed work is needed on costings but it is reasonable to suppose that cost savings would be achievable.

#### 8.4.1 **The level of external fees**

Prosecuting solicitors representing the RSPCA are remunerated on the basis of a rate agreed with each individual firm – there is no standard rate. The charges range from **£90 per hour** to **£190 per hour**, with **£150** being a typical mid-range fee for a partner. These variations do not reflect any geographical pattern and some firms on the periphery of London offer more competitive rates than provincial counterparts. By comparison, the CPS would pay agents instructed to handle a list of cases in the magistrates' court at a **daily** rate of **£200**; for contested cases expected to last up to three days, the amount payable increases to **£250 per day**. These rates include preparation.

The review would not wish to rely on an unduly simplistic comparison because it is well known that the modus operandi of the CPS allows little time for agents to prepare (although this is charged separately by RSPCA solicitors) and the calibre is variable. The difference in the costs of magistrates' courts advocacy can be stark as regards the higher level of fee earners.

The CPS remunerate counsel in the Crown Court on the basis of a system of graduated fees whereby individual fees are determined by reference to a matrix based on the nature of the offence, the volume of evidence and the duration. Using cruelty to a person under 18 years (a category B offence) as a comparator, counsel conducting a contested case with up to 500 pages of evidence would attract a brief fee of **£1,000** and a **daily** rate for subsequent days of **£480**. A category C case such as failing to keep a dog under proper control thereby causing injury would attract a Brief fee of **£580** and a **daily** rate of **£430**.

By contrast, paperwork available to the review suggested that payments to counsel of between **£800** and **£1,200 per day** would not be uncommon in relation to cases that, although sensitive and tricky, would be unlikely to meet the criteria for category B above. Whilst some distinction usually exists between publicly funded and privately funded work, the differences do seem substantial. Moreover, the market at the Criminal Bar has changed in recent years and it is likely that the RSPCA could find good calibre counsel prepared to undertake the work more cost effectively.

There was a review of the panel of solicitors in 2009/2010 resulting in some revisions and reductions. However, the agreed rate for each firm continues usually to reflect its private client rate (albeit usually with a charity discount) and the variations are sometimes greater than one would expect for procurement of what is effectively the same service on a national basis. There does not appear to have been a real appreciation of how far the market has moved in relation to criminal work in recent years.

### 8.4.2 Proportionality and the wider impact of costs

It is inevitable that RSPCA costs will be higher than those of the statutory prosecutors given the basis on which they are assessed: there is judicial authority<sup>32</sup> for the proposition that when the same organisation both investigates and prosecutes, the 'prosecution costs' may also include those arising from investigation. There is also separate statutory provision in the Animal Welfare Act 2006 as regards claims for the welfare and veterinary costs of animals taken into possession. The RSPCA is therefore by no means alone in putting forward claims on this basis. Local authorities and the Health and Safety Executive also routinely do so.

CPS policy is also to apply for costs against convicted defendants unless the particular circumstances of a case mean that such an application would lack merit or an order for costs would be impractical. Claims for costs are made on the basis of national scales that provide guidance as to the average costs incurred in a wide range of cases. Individual claims may be adjusted to reflect the particular circumstances such as witness expenses and other specific costs. For an average case in a magistrates' court involving a summary offence the range would be from £85 (for proof in absence or an early guilty plea) to £775 in relation to a summary trial. Allowance must be made for the fact that the CPS has the benefit of economies of scale with advocates being present at court as a matter of routine; and also that the time CPS lawyers and agents are able to devote to preparation is more limited. Nonetheless, some of the differences seem large. Relatively straightforward guilty pleas in the review file sample attracted legal costs ranging from just over £1,400 to £1,800. One was a guilty plea and sentencing at first hearing; the second (and most expensive) related to an unrepresented defendant who pleaded guilty at first hearing and was sentenced on a later date. The third case involved the entry of a plea at the second effective hearing. For these purposes, investigation and animal welfare costs have to be ignored.

Efforts to find suitable benchmarks have had only limited success. Insofar as a comparison has been possible, the level of fees charged by those firms in the middle of the range is broadly comparable with those charged in relation to regulatory prosecutors (as opposed to general).

The level of claims for costs by the RSPCA has attracted comment from the senior judiciary as well as legal practitioners who described the resultant pressure on defendants to plead guilty – especially those who do not qualify for legal aid and, if acquitted, may only recover costs on a legal aid basis, thus being heavily out of pocket. Such comments seem mainly based on the fact that animal welfare offences are universally summary only and fall to be equated in terms of gravity with the more routine work of the magistrates' courts such as domestic violence, wounding and assault as well as violent and/or aggressive public disorder. The use of the scale approach merely emphasises the difference as regards contested cases.

PCMs are mindful of the level of costs involved in animal welfare cases although some seemed to view them as simply inevitable. Others emphasised the extent to which unnecessary challenges (and sometimes delays) by the defence could escalate costs in a matter which put pressure on the Society.

<sup>32</sup> R v Associated Octel Ltd (1997) 1 Cr App R (S) 435 [<http://www.magistrates-association-temp.org.uk/dox/Costing%20the%20Earth%20for%20MA%20with%20cover.pdf>]

These considerations emphasise the importance of bearing down on costs at all stages. It is also too easy to dismiss the potential pressure on defendants (who may genuinely believe they are not guilty) by being at risk of costs. PCMs specifically rejected the notion of any real pressure on the basis that the courts would only award costs in line with the defendants' ability to pay – this making the issue irrelevant except to the RSPCA.

Consideration of costs as an element of the public interest factor in individual cases is dealt with elsewhere in this report (section 6.3.5).

A further wider consideration is the extent to which individuals should face such different levels of claim depending on which agency has prosecuted. The RSPCA Council must therefore have regard to the reputational as well as the financial implications of the level of costs involved in RSPCA prosecutions given the way that they impact both on defendants and the RSPCA budget. As for the latter, the point on which the RSPCA Council needs to be satisfied (in terms of charitable benefit) is that the costs to the charity is justified because it can deliver more effective enforcement than the public authorities can (or are prepared) to do. In the final analysis, that is more likely to come down to the question of proportionality as opposed to a “yes” or “no” answer.

## **8.5 Comments**

Most of this is not new. It is pertinent to note that the 1993 Prosecutions Department Review undertaken by Richard Crabb (formerly Chief Crown Prosecutor for Kent) commented then as to the modus operandi and the use of external lawyers. His conclusions included:

1. The work of the Legal Chief Superintendents (equivalent of today's PCMs) should be undertaken by lawyers. He added “The time has not yet arrived when all prosecutions should be dealt with in-house although the new unit which I recommend should make a start with carefully selected cases. This subject should be reviewed in five years.”
2. The fees charged by prosecuting solicitors varied enormously with insufficient scrutiny of bills. Authorisation was based on whether they ‘look right’.
3. In addition, it was recommended that greater use of the Bar should be considered with the comment:

“There are also a number of Barristers' chambers who would be particularly interested in undertaking this work, at competitive rates, and here again the Chief Prosecution Solicitor would be able to negotiate competitive terms with them and brief them in appropriate cases.”

## **8.6 Recommendations**

- 1 *The review of the RSPCA Prosecutions Department business model recommended in Chapter 6 should include consideration of the use of in-house lawyers and direct instruction of counsel.*
- 2 *The level of fees paid to external lawyers should be reviewed in the light of changes in the market and to achieve a more consistent approach.*

## 9 RSPCA involvement in hunting prosecutions

### 9.1 *Introduction*

This section is deliberately positioned towards the end of the report. Earlier sections have dealt with important issues of principle and policy regarding the RSPCA approach to prosecutions and the environment in which it operates. They have persisted over a number of years and substantially pre-date the RSPCA involvement in cases arising from hunting activity on which they have only a limited bearing. Nonetheless, the prosecution of the Heythrop Hunt and other later hunting cases do raise some important issues albeit of a different nature.

The evidence reviewed leaves no room for doubt that, despite the 2004 legislation, traditional fox hunting remains “business as usual” in many parts of the country. Extensive flouting of the law risks bringing Parliament, the police and prosecuting authorities into disrepute. Widely publicised criticism of the RSPCA over the costs of the Heythrop Hunt case undoubtedly caused it reputational damage even though the prosecution itself was fully justified. Two further consequences are likely: first, public confidence is damaged when the authorities appear unable to uphold criminal law; secondly, there is a risk of public disorder and violence as the result of confrontations between on the one hand followers and supporters of hunting, and on the other hand those who seek to protest or gather evidence of suspected illegality.

The Prosecutions Department of the RSPCA afforded the review full access to all its papers relating to cases arising out of hunting activity, including those subject to representations from bodies such as the Countryside Alliance. This enabled the review to consider both the overall picture and specific cases – in particular to look for any evidence of political or other improper motivation. There was none. The review considered the overall approach of the Prosecutions Department to these cases and the quality of decision-making and case handling. Overall, the quality of the work was sound and professional even though there were some mistakes and lessons have been learned as to how things might be done differently in future – particularly as regards costs.

### 9.2 *Enforcement: legal and evidential issues*

Parliament legislated in 2004 to prohibit the hunting of wild mammals (including foxes) with dogs save in very limited circumstances. Annex 5 sets out the main provision of the Act together with the exemptions.

Enforcement of the legislation was never going to be easy, and its terms make enforcement very resource intensive – whoever undertakes the task. ACPO guidance on the enforcement of the Hunting Act 2004, comments:

“Although the Act is short this approach has created a rather complicated legal framework which seems likely to be under test in the courts for some time to come.”

Section 11(2) of the 2004 Act makes clear that hunting with dogs includes engaging alone or participating with others in the pursuit of a wild mammal where a dog is used in that pursuit. Hunting is an **intentional** activity and there can be no such thing as unintentional hunting. The terms “engage or participate” mean to take an active or direct part in the hunting for a mammal, as distinct from observing it. Given

the structure of hunts formally affiliated to the Masters of Foxhounds Association, the evidential implications can be significant. While a hunt is out in the country, it will be under the control of the Field Master. He directs the hunting and makes any necessary decisions, such as the direction of the hunt. There is also a Huntsman (usually a hunt employee) who, under the direction of the Field Master, is responsible for handling the hounds, assisted by the whippers-in. Those who follow a hunt, (including those on horseback) for the sake of observing the hunt are not technically hunting. Merely being a part of the gathering of a hunt is not a criminal offence.

It follows that the evidential burden on the prosecution is a substantial one; it is required to prove that specific individuals engaged or participated in a pursuit along with the fox hounds. This leaves it open to suspects to argue that, although they were following or associated with the hunt, they were not in pursuit of any fox but merely observing the acts of those involved in the hunt.

The legislative complexity is inevitably open to exploitation by those determined to continue fox hunting notwithstanding the legislation. Where the prosecution is able to prove that a pursuit occurred involving fox hounds, it is likely to be asserted that the pursuit was accidental and/or the hounds had spontaneously picked up the scent of a fox whilst following an artificial trail laid for the purpose of trail hunting.

The task of prosecutors became even more difficult following the decision of the Administrative Court in the joined cases of *DPP v Anthony Wright*; and the Queen (on the Application of Scott, Heard and Summerskill) v Taunton Dene Magistrates' Court [2009] EWHC105 (Admin). It was ruled that searching for an as yet unidentifiable wild mammal did not constitute hunting. Proving that members of a hunt were knowingly engaged in an exercises to flush out any fox who might be in the area did not fall within the ambit of the offence.

Securing the evidence necessary to mount effective prosecutions under the Hunting Act 2004 in respect of mainstream fox hunting activity therefore requires far more than merely sending a team of police officers to take the names and addresses of those at the hunt gathering. The evidence required is such that it is unlikely to be achieved through police presence and observations alone since behaviours would then be likely to change. In practice, most hunt prosecutions depend on the evidence obtained by non-governmental organisations (e.g. League Against Cruel Sports (LACS)) or other groups of hunt monitors who share a determination to see the law upheld. Such dependence brings its own difficulties in that evidence is then susceptible to challenge on the grounds of partiality. This is true whoever may be the prosecutor. As recently as June 2014 the Countryside Alliance wrote to the Attorney General to complain about the "disgraceful way that the CPS was conducting a prosecution for hunting because it was adducing evidence from a pressure group" (Western Daily Mail, 18 June).

Hunts who are affiliated to the Master of Foxhounds Association (MFA) continue to meet regularly during the winter months. Their activities can only be legal if they have adopted the practice of trail hunting which involves the laying of an artificial scent (made to resemble fox scent) some time before the hunt sets out from its gathering. Some hunts may well adopt that approach which is wholly lawful. However, the picture that emerged from the evidence contained within the case files was of a cat and mouse game between hunting participants and supporters and those endeavouring to gather evidence through observations and recording made

from public highways, footpaths and vantage points overlooking the private land on which hunting activity invariably takes place.

One notable feature of the files was the frequency with which hunts appeared to be accompanied by terrier-men usually mounted on quad bikes specially adapted with cages or containers to carry terrier dogs. Their use was routine in traditional fox hunting because of their suitability for flushing out foxes that had gone to ground. There is however no role for them in a lawful trail hunt. The explanation that may be offered was that they are present solely to flush out any foxes that might accidentally be found and chased by fox hounds (whilst lawfully following a trail) causing them to go to ground. In such circumstances they would be flushed out to be shot in accordance with the exemption provided under the Hunting Act. Perhaps the most apt description of such an explanation came from his Honour Judge Pert at Leicester Crown Court when dismissing appeals by individuals convicted under the Hunting Act and the Protection of Badgers Act in relation to offences associated with the Ferne Hunt. He commented: "It may be that they [hunt supporters] feel the day will come when this [Hunting] Act is repealed and they may be correct but the law is the law. Their conduct amounted to cynical subterfuge. They used a trail hunt as a cover."

### **9.3 Investigation and prosecution of offences under the Hunting Act 2004**

Primary responsibility for enforcement of the Hunting Act 2004 rests with the police service. The ACPO guidance effective from December 2010 contains the following significant points:

- Whilst the Government have indicated an intention to hold a free vote on whether to consider a repeal, the Act as it stands is the law of the land and as such we in the police are under a duty to enforce it.
- It is worth reminding readers that this duty to enforce is of course subject to the absolute necessity for the police to act impartially in this very controversial field – our duty is to the law, not to one lobby group or another.
- The general duty to enforce the law is of course subject to the normal discretion of Chief Constables who are required to balance resources and priorities; the Hunting Act is no exception to this principle.
- Gathering evidence of offending behaviour has proved a difficult task for the police, and with available resources it is likely to remain so. The police will accept initial evidence gathered by members of the public who are often organised for this purpose. In this very emotionally charged area it is not to be surprised to find that some organisations involved in such activities feel police investigations after receipt of evidence have not always been conducted in a professional and proficient manner. Any police investigations of the Act should be both professional and proportionate and are likely to be subject to detailed scrutiny.
- A number of organisations have staff, members or supporters who have been trained to some extent in evidence gathering techniques. As with any other case, the police will accept and deal with the evidence of any criminal offence but should not form a partnership with any organisation or an individual or individuals within or acting on behalf of or in support of any organisation which might be taken as encouraging or initiating surveillance of hunting activity. The police cannot accept

any responsibility for the admissibility of the evidence gathered in such circumstances which if challenged would be a matter for the court in due course.

- The police service has successfully developed techniques to assist in evidence assessment to avoid acrimonious, time consuming, frustrating and ultimately fruitless activities. These techniques will be more consistently applied in future. In certain circumstances the police may consider undertaking surveillance or related activity in order to prevent or detect offences under the Hunting Act 2004. In doing so regard will always be given to the requirements of the Regulation of Investigatory Powers Act 2000.

That approach is unexceptionable and if applied consistently across all police forces would provide a sound basis for effective enforcement of the Hunting Act 2004. However, the reality has proved rather patchy with the appetite for police forces to become involved in investigations relating to established hunts fluctuating over the years. In the early years, it was the LACS who took the initiative; at that stage the RSPCA received nothing to justify full investigation and prosecuted no cases relating to fox hunting. Between 2006 and 2008, LACS prosecuted some four such cases using external solicitors instructed for the purpose. The outcomes were mixed.

Following a review of its approach, the LACS decided to pull back from prosecution. Whilst they continued to use their own professional staff for investigations, their long term plan was to encourage the statutory agencies or the RSPCA to take cases forward based on evidence gathered by LACS investigators. This reflected an assessment that the task of routine prosecution was too great for a charity such as the LACS which had only modest income. Although heartened by the convictions they had achieved, they recognised the determined and well funded nature of the opposition.

Information provided by the LACS shows that four prosecutions were initiated during 2009 and 2010 based on their evidence. Convictions were recorded in three cases with an acquittal in the fourth. A further case was dealt with by a police caution.

#### **9.4 Approaches to the RSPCA**

During this period the RSPCA also received referrals from a number of organisations whose members were involved in monitoring hunt activity. Hunt monitors sought assistance from the RSPCA in the form of guidance as to the adequacy and type of evidence required. The hunt monitors had become disillusioned by their lack of success in persuading the police to act on video footage that had been submitted with a view to investigation and prosecution and which they thought contained cogent evidence. At a subsequent meeting, the then Head of Prosecutions and a Senior PCM provided general advice as to the evidential requirement i.e. not only that there was a pursuit of a fox by hounds but also the identities of specific individuals whose behaviours indicated that they were participating in that pursuit.

The hunt monitors indicated that they might already have such footage relating to the Heythrop Hunt in the 2010–2011 season and invited the RSPCA Prosecutions Department to review a selection of that material. The Head of Prosecutions quickly appreciated the potential evidential value of some of the material and that the hunt monitors might be relevant witnesses. That dialogue was therefore terminated and



the RSPCA Inspectorate invited to conduct a formal investigation. It is pertinent to note at this point that the decision to investigate the Heythrop Hunt substantially preceded the appointment of Gavin Grant as Chief Executive of the RSPCA. He has been widely portrayed in the media as the driving force behind the prosecution.

### **9.5 RSPCA Prosecutions Department handling of the Heythrop Hunt case**

The Reviewer had the benefit of reading the case file in full together with the discussion with several members of the prosecutions team as well as the defence solicitors. In addition, the Countryside Alliance identified this case as one giving particular concern to them for the following reasons:

- Political – Cameron’s local hunt, MP for Witney.
- POWA<sup>33</sup> passed footage to RSPCA.
- Long planned. Prosecuting solicitors present at a Hunting Act case in January 2011.
- Two defendants pleaded guilty as they could not have afforded to defend themselves because of the length of trial.
- Ridiculous number of summonses. 40 of 52 dropped.
- RSPCA spent £326,980.23 to bring the prosecution – Judge called the amount of money “staggering”. Subsequent RSPCA complaint against Judge rejected<sup>34</sup>.

*Countryside Alliance submission to the Independent Review.*

The Heythrop Hunt case differed from many others handled by the RSPCA in two respects.

- Firstly, it arose out of the approach from the hunt monitors for general advice about the collection of evidence. That was in no way inappropriate and the Head of Prosecutions was astute in terminating the dialogue once it became clear that there were matters which justified a formal investigation and they were potential witnesses.
- Secondly, it was clear because the case represented new ground for the RSPCA, that the investigators would require far more guidance from the Prosecutions Department during the investigation than would ordinarily be the case. That was especially so as regards the identification of a suitable expert and the gathering of expert evidence. The Prosecutions Department was itself on something of a learning curve and contacted CPS Leicestershire which was conducting proceedings against the Ferne Hunt arising out of evidence collected by the LACS. The sharing of experience and good practice between prosecutors is quite common place. This appears to be the basis of the third limb of the concerns expressed by the Countryside Alliance about the RSPCA presence at a hunting case in January 2011. The innuendo is quite unfounded.

<sup>33</sup> Protect Our Wild Animals (<http://www.powa.org.uk/about.html>)

<sup>34</sup> The Reviewer felt it right to record the concerns of the Countryside Alliance in the terms submitted. However, the RSPCA has categorically stated that it did not as an organisation, make any complaint. Its understanding is that some supporters, including one trustee (in a personal capacity) did so.

It is important to note that there were in fact two separate sets of proceedings relating to individuals associated with the Heythrop Hunt which subsequently merged. The first related to the 2010–2011 hunting season with proceedings being confined to the professional huntsman employed by the Heythrop Hunt. The second proceedings arose out of activities in the 2011–2012 hunting season against the same huntsman, three other individuals and the Heythrop Hunt itself as a corporate body.

### **9.5.1 *The 2010–2011 Proceedings***

Extensive preliminary work was undertaken. Professor Stephen Harris examined the hunt monitors' footage to assist in interpreting some of the activities depicted. Specifically, an expert would be able to recognise differences in conduct associated with the pursuit of a fox rather than a pre-laid trail. Similarly, an expert would understand and interpret the communications between members of the hunt and the significant but different uses of the horn and/or whip to call the hounds to particular activities such as flushing a fox out of cover. It would be for investigators to establish the exact provenance of the relevant footage, relate it to the geography of the area (through mapping where necessary) aided by the recollection of witnesses and their notes. Frequently, observers produced several items of footage showing the same conduct from different vantage points and it was necessary to cross-reference and assess the overall picture. All this evidence would need to be embodied in witness statements.

It became clear during this process that, in addition to the footage handed to the RSPCA for the purposes of advice, the hunt monitors possessed extensive footage covering successive meetings of the Heythrop Hunt during that season and earlier. From that point, the case began to expand. The additional material needed to be viewed by investigators, prosecutors and the expert from two perspectives:

- To ascertain whether it strengthened the case in relation to matters already under investigation or disclosed further potential offences; and
- Whether it contained any contra indications. The Prosecutions Department was mindful that all the available material needed to be sifted (irrespective of whether it appeared helpful to the prosecution) since in the event of contested proceedings, any material that could undermine the prosecution case or assist the defence would have to be disclosed.

Although the normal practice of the RSPCA Prosecutions Department is to take decisions on proceedings in-house and then instruct external lawyers, it was decided in this case to obtain external advice first. That reflected the sensitivity of the case and recognition that it was likely to be contested aggressively and publicly. In the event, it was decided to instruct a City firm whose expertise in litigation had impressed the RSPCA. They would in turn instruct counsel. This necessarily took time and on 2 August 2011 a summons was issued against the Huntsman of the Heythrop Hunt for two offences alleged to have been committed on 7 February 2011 and 14 March 2011. The case was prepared for trial and that included a proposed application to admit similar fact evidence/evidence of previous misconduct. That was scheduled to be determined on 3 August 2012 at Oxford Magistrates' Court. In the event, the second set of proceedings had by then been instituted and, for reasons that appear below the application was not heard. Instead the first prosecution was discontinued and the case focused on the 2011–12 season matters.

### **9.5.2 The 2011–12 Proceedings**

The hunt monitors had continued to attend, observe and record the meets of the Heythrop Hunt during the 2011–2012 season. Possibly because the monitors were now more attuned to the type of evidence required, the substantial further footage passed to the RSPCA proved sufficient when analysed to support charges against different combinations of defendants in relation to seven different hunt meetings spread across the period from November 2011 to March 2012.

The provision of this additional material did not obviate the need for the RSPCA to continue its preparation for the trial of the Huntsman who had pleaded not guilty in the first set of proceedings. It did however, complicate the position: it necessarily took a considerable time for the prosecution team to analyse all the further footage. They needed to consider whether they should seek to combine any further proceedings with the extant proceedings or seek two separate trials. There were also issues as to the extent to which evidence relating to earlier hunting seasons might also be admissible in relation to any proceedings relating to the 2011–2012 season. There was considerable time pressure because the earliest offences would have become statute barred by early May 2012. In the event, the decision was taken to proceed on a total of 57 charges. The prosecution alleged a course of continuing conduct involving 10 separate incidents of unlawful pursuit spread across seven dates but not all involving every defendant.

A priority from the prosecution perspective was to secure directions from the court as to the sequencing of the two sets of proceedings and whether all charges in the second proceedings were to be tried together. That would determine the manner in which the evidence would be marshalled and presented for trial.

Reference is made above in the context of the first proceedings to the need to coordinate and cross reference the evidence from different sources relating to the same charge. That assumed even greater importance in the second proceedings given the greater number of defendants and charges. The resultant material also had to be agreed with the defence. It involved complicated technical work which had to be outsourced and was done under the directions of the legal team as to the requirements for court presentation purposes. The logistical challenge was a substantial one, not least because the prosecution needed to secure the agreement of the defence to the edited compilations. These processes added significantly to the costs.

The proceedings were listed for a Case Management Hearing at Oxford Magistrates' Court on 3 August 2012. The prosecution successfully contended that all 57 summonses in the second proceedings should be tried together because they had in common the same factual basis and were likely to involve the same or substantially the same issues both in law and fact.

It was also accepted that the second set of proceedings would be tried first. The initial position of the RSPCA was that, even though it was unlikely to be in the public interest to require a second trial, a final view should await the conclusion of the proceedings in relation to the 2011–2012 summonses. Further consideration however, led to the conclusion that case management would be best served by withdrawing those proceedings at an early stage and that was done at the hearing at Oxford Magistrates' Court on 3 August 2012. It is unfortunate and unjust that a

sensible decision taken for very good reasons should subsequently have been characterised as a failed prosecution in some quarters. The second proceedings were set down for trial to commence in December 2012 with an estimated 35 days being required for trial.

### **9.5.3 Overtures by the defence**

In November 2012, some three months after the initial Case Management Hearing and following a further hearing on the 7 November 2012 the defence approached the prosecution on a without prejudice basis to propose a global settlement whereby Heythrop Hunt Ltd together with its Huntsman and a master would each plead guilty to four offences contrary to section 1 of the Hunting Act 2004. This represented four separate occasions. It was the first indication that the whole case would not be vigorously contested. The offer was dependent on the prosecution offering no evidence in relation to all other charges and not inviting the court to consider or make any orders other than those relating to fines and costs; (i.e. there would be no question of forfeiture of hunt property). The plea was to be tendered on the basis of excessive enthusiasm on particular occasions rather than a pre-planned breach of the Hunting Act. The defence also stipulated that, although it recognised that the prosecution would not accept the basis of plea, it would not invite the court to embark on a hearing to determine any factual issues (a Newton hearing).

Whilst the RSPCA considered the evidence was more than capable of leading to the conviction of all of the accused of all accusations on the summonses, the RSPCA considered the public interest would best be served by reaching a settlement (but not accepting the basis of the “excessive enthusiasm”) as the guilty pleas adequately reflected the criminality engaged by the summonses as a whole.

At the subsequent hearing in December 2012, District Judge Pattinson fined the master £450 for each of the four offences; and the Huntsman £250 for each offence. The Hunt itself (a corporate body) was fined £1,000 for each offence. The two individual defendants were each ordered to pay prosecution costs of £2,500 and the Hunt £15,000. The RSPCA costs amounted to £326,980.23 as against defence costs said in court to be £35,000.

He also noted that the cost to the RSPCA of bringing the prosecution was £326,980.23 which he described as “staggering”. District Judge Pattinson went on to say:

“Members of the public may feel that RSPCA funds can be more usefully employed. It is not for me to express an opinion but I merely flag it up but I do find it to be a quite staggering figure, especially as I was told by Mr Mott that the defence costs for all five defendants were in the region of £35,000 – so that’s not much more than one tenth of the prosecution costs.”

What followed can only be described as a propaganda war with the RSPCA being widely criticised for appearing to incur disproportionate costs. The RSPCA for its part reaffirmed its commitment to enforcing a law that it considers integral to its charitable purposes to “prevent or suppress cruelty to animals”. The war of words also included complaints to the Charity Commission and a Parliamentary debate. The Charity Commission said in January 2013 that they did not consider that the trustees had breached their duty of prudence in the case of this prosecution. It was accepted that the use of funds was a matter for the trustees of the RSPCA having

regard to its charitable purposes and the relevant charity law. In fact proper governance had been in place throughout the case with the trustees ensuring that there were charitable benefits. To complete the picture it should be recorded that the Office of Judicial Complaints concluded in relation to the complaint made by the trustee that District Judge Pattinson had been entitled to comment on the level of costs incurred by the prosecution; but he should not have expressed views on whether the funds might have been better used by the Society.

## **9.6 *Commentary on the RSPCA handling of the Heythrop Hunt case***

The Reviewer has no doubt that the Heythrop Hunt case was appropriately brought. Even so, the RSPCA must accept the criticism that the overall cost was much too high even allowing for the difficulties referred to earlier of the resource intensive nature of the preparatory work. This was the result of overkill both as to the resources deployed and, in some respects, the scope of the case. Notwithstanding the importance of the prohibition of hunting to the RSPCA's charitable objectives, there should have been greater awareness that the Society was dealing with offences punishable with a maximum fine of £5,000. And earlier prosecutions had signalled likely penalties towards the lower end of the range.

The Reviewer found nothing to support the contention of the Countryside Alliance that the prosecution was political, and that the Heythrop Hunt was targeted because it operated within the Parliamentary constituency of the Prime Minister; and there were suggestions that he had in the past been associated with the Hunt. The Reviewer is confident that the ethos of the Prosecutions Department is such that considerations of this nature, if advanced, would have been robustly rejected as irrelevant.

The Heythrop Hunt had been a subject for attention by hunt monitors long before the RSPCA became involved. This had led to a police investigation and a previous prosecution arising out of the activities of the Heythrop Hunt. Those proceedings were the responsibility of the CPS who subsequently discontinued them in circumstances which are not clear. It may well have been attributable to a review of the evidence following the judgement of the Administrative Court in *DPP v Wright* referred to earlier.<sup>35</sup> It was the outcome of the previous proceedings relating to the Heythrop Hunt together with the perceived police reluctance to act on other complaints resulted in the disillusionment which caused POWA to approach the RSPCA.

Although the RSPCA decision to investigate (and subsequently prosecute) was not politically motivated, it is undoubtedly the case that the proceedings quickly assumed a political dimension. That would have been so even if the prosecution had related to the activities of a different hunt. It is an inevitable consequence of the controversy which surrounded enactment of the Hunting Act 2004 and the continuing opposition to it. In practice, any attempt to enforce the legislation is likely to be characterised as political by those who seek its repeal and irrespective of who brings the proceedings.

<sup>35</sup> The outcome had also engendered suspicion because a discontinuance came quite shortly after an exchange of correspondence between Mr David Cameron MP and the then Attorney General. Attempts by individuals external to the RSPCA to gain access to that correspondence reliant on Freedom of Information legislation have proved unsuccessful.

Governance arrangements within the RSPCA are designed to ensure maximum independence of prosecution decision-making. The day to day management of the RSPCA's affairs is normally delegated to employed staff under the direction of the RSPCA's Chief Executive. But the trustees bear ultimate responsibility for the actions of the charity. In particular, they have a responsibility to ensure that they are entirely satisfied with the criteria for prosecutions and the associated costs as well as with the appropriate level of objective oversight and supervision. They also have a responsibility to consider the risks to the charity of reputational damage arising from adverse publicity.

The balance between respecting independence in prosecution decisions and proper governance is a delicate one but in some ways may be seen to echo the statutory responsibility of the Attorney General for superintendence of independent prosecuting authorities such as the CPS and the Serious Fraud Office. That is very much an arms-length relationship now governed by the protocol established in 2009 which makes it clear that even the Attorney General has no power to direct the DPP as regards decisions in individual cases. The initial consideration by the Prosecutions Department and its decision to invite the Inspectorate to undertake an investigation were rightly taken without involvement from other parts of the organisation.

The role of senior officers outside the Prosecutions Department was to authorise the expenditure involved in obtaining the necessary advice and, if appropriate, instituting and conducting the proceedings. The decision was within the scope of delegated authority and the Chief Executive was later able to assure the Charity Commission that the trustees had been repeatedly updated and discussed the ongoing proceedings against the Heythrop Hunt following decisions taken by the Prosecutions Department.

### **9.7 Charitable benefit**

In assessing the operation of the governance arrangements around this case, it is important to appreciate the distinction between the "public interest" test applicable to prosecutions and the concept of charitable benefit. The former is an integral part of the twin test prescribed in the Code for Crown Prosecutors and stipulates that proceedings should only be instituted where "prosecution is required in the public interest". Charitable benefit goes further and means that the proposed course of action must be in the "best interests of carrying out the charitable objects both now and in the future". It is therefore possible that a prosecution may be required in the public interest but that it would not be in the interests of a charity to pursue it; the proportionality of the likely costs may well be a likely factor. The fact that the Heythrop case was viewed as a test case would also be a significant factor. The Charity Commission recognises both the width of the discretion possessed by trustees and also that the bringing of test cases relevant to their purposes is a legitimate activity for charities.

The level of expenditure can give rise to issues. It is understood that the Charity Commission is currently considering some work with a view to guidance on such strategic litigation. Clarifying the law can be of benefit – so the RSPCA may well have been able to demonstrate charitable benefit from the Heythrop Hunt case even if it had been unsuccessful.

It is important that the RSPCA should take on board the learning points that arise from circumstances that enabled a successful prosecution to become such a publicity disaster for the Society. There are no easy answers. Although there was scope for the investigation and prosecution to be more tightly focused and for costs to be reduced, it was always going to be an expensive exercise if the full extent of the offending was to be placed before the court. Even if the costs had been reduced by 50%, many reasonable people would still regard that as disproportionate expenditure to secure convictions for summary offences attracting a maximum penalty of £5,000 fine – and in practice rather lower penalties.

Further comment is made on the relationship between public interest and charitable benefit in the part of this report (Chapter 10) dealing with governance more generally.

### **9.8 Learning points**

The Prosecutions Department has made it clear that they have already begun to apply some of the lessons learnt in the Heythrop Hunt case to cases referred to them involving other hunts. In particular, subsequent prosecutions have had a narrower scope and have been taken forward with smaller more specialist teams. The following section of the report analyses the outcomes.

Perhaps the most important learning point is for the RSPCA Council of Trustees in terms of the need to ensure that, whilst respecting the independence of the Prosecutions Department, there should be closer oversight of both the reputational and financial risks to the Society associated with prosecutions under the Hunting Act 2004. The extent of that risk is well illustrated by the dilemma that faced the prosecution team when considering whether to accept the pleas offered by the defence. It also demonstrates that prosecutions may assume a political dimension even though the prosecution has no political motivation. That is a reality that all prosecutors, including the CPS, have to face. Not accepting the proposed plea could have made the RSPCA look very unreasonable, especially if the defendants were to plead on the first day of the trial. Pressing on with the case would therefore give rise to substantial risk – especially if the outcome was adverse. Similarly, there was recognition that acceptance of the pleas would give rise to a major PR battle as it did. The effect of the dilemma was to give the RSPCA itself a direct interest in the decision whether or not to accept the plea. It is to the credit of the RSPCA that it accepted the advice of leading counsel. The public interest was well served by the acceptance of the pleas and the avoidance of a contested trial lasting 35 days.

In answer to the criticisms levelled by the Countryside Alliance, the decisions to mount an investigation based on footage received from hunt monitors and subsequently to institute proceedings against the Heythrop Hunt were fully justified. There was no political motivation. However, the costs incurred were in the event disproportionate and probably higher than they needed to be. It is important that the RSPCA should learn lessons from this case about the scoping and resourcing of such exercises; nor should they be surrounded by organisational publicity that has the potential to undermine its own Prosecutions Department.

### **9.9 Other hunting cases**

There tend to be two distinct types of offending under the Hunting Act 2004. Firstly there are those offences committed by traditional ‘red-coat’ hunts in the traditional

(and now illegal way); secondly there are those committed by individuals who derive pleasure from hunting, and killing various types of wild animals in a variety of ways. Official statistics do not distinguish between these categories and do not therefore assist in any assessment of the effectiveness of the Act as regards the first category of offending.

File examination included six cases in addition to the Heythrop Hunt case where the RSPCA had been asked to consider proceedings. In three cases the evidence was clearly insufficient.

The RSPCA initiated proceedings for offences under section 1 of the Hunting Act 2004 in each of the other three cases. In no case did the Society have the benefit of external legal advice prior to the commencement of proceedings. Changes of personnel meant that the cases could not be allocated to either of the individuals who had been so closely involved in the Heythrop Hunt case although the Senior PCM responsible for it was available to give overall advice in his capacity of Acting Head of Prosecutions Department. Of the three cases, one resulted in a guilty plea to the Hunting Act offence; the second resulted in a guilty plea to offences under the Protection of Badgers Act 1992 and the withdrawal of the Hunting Act offence; the third case was withdrawn in its totality. Details of the cases are contained in annexe 6.

### **9.10 *The way forward***

The RSPCA Council of Trustees will need to consider how to position the Society in relation to the future enforcement of the Hunting Act 2004.

The starting point must be that the law is law until Parliament says otherwise and it should be upheld. The CPS guidance in relation to the Hunting Act 2004 states that, providing the evidential test is met the public interest will require a prosecution other than in exceptional circumstances.

Despite that, the present situation is currently unsatisfactory. The volume of footage available leaves the objective viewer in no doubt on the balance of probabilities that it is “business as usual” for many hunts because enforcement is so difficult. Such widespread and public disregard for the law is likely to bring Parliament and the criminal justice system into disrepute.

The situation arises because of the limited enforcement by the public authorities of the relevant provisions of the Hunting Act 2004. Primary responsibility for investigation and prosecution rests with the police and the CPS. The stated position of ACPO referred to earlier is the perfectly proper one and was reaffirmed to the review. However, it was also emphasised that policing priorities are a matter for individual Chief Constables in conjunction with their local Police and Crime Commissioner. Priorities are therefore likely to vary on a national basis.

The preponderance of evidence indicated continuing widespread scepticism as to the commitment of the police and the CPS to the investigation and prosecution of alleged offences of hunting. Many suggested that the police and CPS did not have the necessary resources and skills. That was borne out by the one relevant CPS case observed by the Reviewer which was very poorly prepared and drew comment from the defences that it would have been more effectively conducted by the RSPCA. By contrast organisations such as LACS reported greater willingness on the part of police forces to engage when presented with evidence that had been



marshalled by professional investigators. All concerned commented that penalties imposed tended to be low in comparison with the maximum available.

The RSPCA did not involve itself in hunting cases before the Heythrop Hunt case. That case and the others mentioned above were all dealt with on an individual case basis. RSPCA Council of Trustees now needs to develop a policy on how far it will accept referrals relating to alleged hunting offences rather than direct individuals to the relevant police force.

There can be no doubt that the prosecution of offences under the Hunting Act 2004 fall within the RSPCA's charitable objectives. However, there are already publicly funded agencies (the police service and the CPS) who have primary responsibility. The RSPCA Council would therefore need to ensure that it could demonstrate some charitable benefit through any extension of its role to include routine intervention by the RSPCA in this field. It might not fall to be assessed in the same way as a test case such as the Heythrop Hunt. The main considerations are likely to be:

- Would such activity on a routine basis be in the best interests of the charity?
- Would it represent prudent use of resources?
- Have the trustees had regard to all relevant risks including financial and the risk of reputational damage?

The RSPCA cannot point to a situation (as with much animal welfare) where there are **no** enforcement activities. The CPS (acting on evidence emanating from the LACS) has had two relatively recent successes in relation to the Ferne Hunt (Leicestershire) and the Middleton Foxhounds (Yorkshire) and there are proceedings pending against the Devon and Somerset Staghounds – also based on evidence from the LACS. Demonstrating charitable benefit might therefore be dependent on showing that there would be better enforcement through RSPCA intervention either through an increase in the number of cases being investigated and prosecuted; or that the RSPCA was able to do a better job. In that context there is no organisation with a strong record of successful prosecutions under the 2004 Act relating to fox hunting activities. A prosecution of the Weston and Hanwell Harriers in early 2014 was unsuccessful because the District Judge, confronted with the conflicting expert opinions, was unable to determine which was the more reliable. This serves to illustrate the difficulty of such cases.

Hunting cases come in different shapes and sizes but experience so far indicates that any substantial case (i.e. one involving a course of conduct as opposed to a one-off event) is likely to be resource intensive. A reasonable overall conclusion might be the 2004 Act is workable but only at a cost (in terms of gathering and evaluating evidence and case preparation) that may be disproportionate to what convictions achieve in terms of punishment and/or changing behaviours. Hunting continues to be prevalent. Fines for individual offences under section 1 of the Hunting Act 2004 have remained over an eight year period within the range of £200 to £850 with the exception being the Heythrop Hunt case where the hunt itself was fined £1,000 in respect of each of the four offences. The direct impact of prosecutions is therefore limited.

This assessment seems likely to remain valid even with what the RSPCA has learned from the hunting cases so far undertaken about the value of stronger and more focused cases built up in a more cost effective way. Having said that, the

LACS point towards some indicators that hunts are finding it more difficult to operate – meets are no longer advertised and tend to occur away from public places. If the RSPCA trustees concur with the above assessment they may wish to consider an approach that draws on the RSPCA skills as a campaigning organisation to:

1. Put pressure on the police and CPS to ensure that the investigation and prosecution of breaches of the Hunting Act 2004 is more effective. This might include lobbying of Police and Crime Commissioners to raise the priority of illegal hunting. One approach could be to utilise RSPCA investigative experience to filter material derived from monitoring and present it to the police for full investigation of those cases that have real potential. There is evidence to such that cases which reach the police in a better prepared state are more likely to be taken forward.
2. Campaign for changes to the law that would make proper enforcement possible without disproportionate cost. This would necessarily be a longer term objective. It is clear from the disinclination of the present Government to proceed with the free vote on hunting legislation provided for in its last election manifesto that it would not support such a proposal.

Whilst the RSPCA would not generally be involved in such cases, it would always be open to the Society to step in with a private prosecution in the event of further failures by the public authorities to act. That was what in effect happened in the Heythrop case and is the traditional justification for the right to bring private prosecutions.

Finally, the Reviewer received a thoughtful proposal from within the RSPCA Inspectorate suggesting that a more collaborative approach might be tried with the hunting community. The essential ingredient would be a dialogue (possibly through the Master of Foxhounds Association) that would encourage hunts acting lawfully towards openness and transparency that could draw away the unwelcome attention they might otherwise receive. Such a constructive approach is commended, it is worth further consideration but would be unlikely to prove effective with those organisations determined to continue traditional as opposed to trail hunting.

### **9.11 Recommendation**

1. *The RSPCA Council of Trustees needs to develop a policy on how far it will accept referrals relating to alleged hunting offences rather than direct individuals to the relevant police force.*

## 10 Management and governance

### 10.1 *Introduction*

Sound governance for prosecution functions within the public sector requires a careful balance between on the one hand independence in individual decision-making and prosecution policy making and, on the other hand, proper accountability. That accountability must be sufficiently sophisticated to resist the pressures of interest groups and the fickleness of public opinion/media whilst sensitive and responsive to public underlying concerns.

The review would suggest that the scale of the RSPCA prosecution activity requires a similar approach. However the position is complicated by the Society's charitable status and the additional considerations which flow from it.

The current arrangements do respect the independence of the Prosecutions Department as regards decision-making in particular cases. A budget for the Prosecutions Department is set by the Council annually and, in line with most organisations, the Prosecutions Department has found constraints in recent years. The RSPCA Council receives reports advising on on-going high cost cases to aid their monitoring and supervision of the Prosecutions Department's work.

The balance is a delicate one. The RSPCA Council, as Trustees of the Society, has legal responsibilities for the overall activities of the Society and the manner in which it deploys its resources. The manifestation of these responsibilities seems for present purposes to fall under four broad headings:

- Ensuring that there is charitable benefit flowing from all the Society's activities, including prosecutions.
- That its activities are affordable.
- That its activities work to enhance and not diminish the reputation of the Society.
- That its activities support its wider external relationships, including Government.

In addition there is a legitimate view that the Council can make a proper contribution to the development of the public interest aspect of prosecution policies – albeit with final responsibility resting with the Prosecutions Department.

The arrangements for achieving this are at present limited. The position was noted in the Crabb Report which contained in recommendation (4) that there should be a prosecution policy committee comprising a small group of Council members (possibly two together with a co-opted member) who would meet senior officials of the Society from time to time together with the Chief Legal Officer and the Chief Prosecuting Solicitor to provide guidance. A memorandum dated October 1993 from the then Director General of the RSPCA<sup>36</sup> established a Prosecutions Review

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<sup>36</sup> Major General Peter Davies.

Committee comprising senior officials (but no members of Council) to provide oversight for cases of particular novelty, sensitivity, policy significance or likely to have a high profile. That arrangement no longer operates.

The thrust of this report has been that the RSPCA prosecution activity should be measured by the standards applicable to public prosecuting authorities including as to accountability; and that the Society should seek to formalise the basis on which it discharges its function. That points also to more structured arrangements for internal accountability. This might be achieved by a variant of the proposal contained in the Crabb Report which the Reviewer believes to have been focused too much on individual cases.

Consideration should therefore be given to arrangements for oversight of the Prosecutions Department based on a group which might be known as the Prosecutions Oversight Group which could be chaired by the Chief Legal Officer and comprise the Head of Prosecutions Department, two members of the RSPCA Council, two external members with relevant professional experience (possibly one lawyer and one veterinary surgeon) together with the Chief Inspectorate Officer. The full terms of reference would require detailed consideration.

Broadly speaking, the review envisages quarterly meetings based on a report by the Head of Prosecutions. This would include information about performance together with commentary on underlying trends and emerging issues. In addition to case work performance, the group would monitor expenditure against budget. Other functions of the group would be to ensure the development of appropriate prosecution policies and comment on them – with a particular reference to the public interest aspect of decision-making. The Head of Prosecutions' report should flag up those cases which, because of the anticipated expenditure, their novelty or high profile might impact on the responsibilities of the RSPCA Council. It would be proper but exceptional, for the Head of Prosecutions to seek views about the public interest dimension of a particular case. But this would be appropriate so long as the final decision rested with the Head of Prosecutions. Prosecutors do not have a monopoly on wisdom as far as public interest considerations are concerned.

The overall nature of the arrangement would be aimed at strengthening the current accountability in line with proposals elsewhere in the report. The process could be more thorough than would be feasible within a body as large as the RSPCA Council. The Council members on the Prosecution Oversight Group would simply report back periodically. The review believes that such an arrangement would enable a more effective discharge by the trustees of their responsibilities. To take account of the relationship between public interest and charitable benefit, it is possible to envisage a situation either in relation to a particular case or category of casework where the evidential and public interest tests were fully met but the Prosecution Oversight Group (or exceptionally Council itself) might conclude that it could not be justified on charitable benefit grounds. This might be because it was deemed more appropriate for the burden to fall on public funds rather than charitable funds which could be used to better effect.

The report contains recommendations elsewhere for the strengthening of oversight and accountability within the Prosecutions Department. The proposals set out above would require the RSPCA to review the management information collected in relation to prosecutions. It focuses at present on prosecution outcomes and that is fundamentally right. That should be supplemented by management information relating to the reasons for withdrawal/discontinuance of cases; timeliness of the

different stages of cases; and the costs of cases. Chapter 6 of this report sets out the difficulties of establishing a suitable benchmark given the quite specialist nature of the RSPCA's work and the review does not suggest the setting of targets. The value of the management information suggested is to enable trends to be monitored and changes investigated.

## **10.2 Complaint handling**

The need for an effective complaints procedure is discussed earlier in this report in relation to the Inspectorate where it is of greatest relevance. It is not however confined to the Inspectorate and work to develop an effective regime for investigating and responding to complaint should aim to produce a system that can be adopted universally across the Society.

## **10.3 Communication**

The RSPCA Council of Trustees would be right to infer from this report that there are many issues on which the RSPCA has a need to listen more closely to feedback about its approach and performance. It should require its communications department to review its strategy so as to put more emphasis on this. Publicity is very important for the RSPCA as a whole. The organisation is reliant on donations to carry out all its functions and cannot hide this. The work of the Prosecutions Department is valuable to the Society in this respect because it maintains its profile and some of the prosecutions are useful in reinforcing important messages to the public. It is therefore wholly appropriate that there should be a strong interaction between the Prosecutions Department and the Communication Division of the RSPCA on matters which reflect genuine public interest.

Equally, great care is needed on the part of prosecutors when dealing with matters of publicity. It has a purpose but, whether seeking to deliver particular messages or responding to enquiries, it is important that the tone remains consistent with the professional impartiality and objectivity expected of prosecutors. It is important that prosecutors should not appear triumphalist or unduly judgmental. Care is necessary that acquittals are not called into question. The review noted some press releases that seemed unduly emotive. This is a particularly difficult area in which to strike the right balance; but it is vital to do so, especially at the present time when the Society has no shortage of critics.

Some press statements relating to enforcement work have reflected some of the RSPCA's campaigning interests. It is unfortunate that from time to time press releases relating to prosecutions have been issued carrying what are routine logos/flyers soliciting donations. This would not have the approval of the Prosecutions Department. Even though unintended, the wrong impression can be created.

The tone of some of the press handling by the RSPCA and subsequent correspondence following the Heythrop Hunt case was unfortunate. They emanated from outside of the Prosecutions Department and could have been calculated to fuel the political climate which had developed around the case. That could only make the future task of the Prosecutions Department more difficult. Matters coming to the attention of the Reviewer included the drafting of a press release to follow the tendering of the guilty pleas which was couched in highly emotive language that had nothing to do with the proceedings and concluded:

“The vast majority of people love animals and respect the law. They can help the RSPCA and protect our wildlife and bring criminals to justice by donating to the RSPCA Legal Fighting Fund (to help us bring those who abuse animals to justice): to give £3 now text ....”

A supporter of the RSPCA who contacted the review drew attention to the uncompromising terms of a letter he had received from the RSPCA in response to his indication that, following the Heythrop Hunt case, he had cancelled his direct debit. In it the RSPCA wrote:

“Improving animal welfare through education, campaigning and enforcing the law, is as relevant today as it was in 1824 when the RSPCA was created. You cannot put a price on justice and the overwhelming majority of people in this country are opposed to hunting – it is time for those who still take part in this illegal activity to stop”.

It continued:

“Preventing cruelty and helping animals most in need remain the RSPCA’s absolute priorities”.

The respondee commented:

“The response that the RSPCA were on a mission to stamp out illegality and punish law breakers is not the same. As a charity I think they should have taken into account the net happiness of animals/value for money. Closing down illegal operations at huge cost may provide a sense of satisfaction for some but I feel differently. The phrase “you cannot put a price on justice” (para 2) is both emotive and uncritical; lack of resources create new forms of injustice. Therefore resources have to be managed in an objective way and should be conserved”.

Every contact with an organisation leaves a trace. It is therefore important that the RSPCA should not send out messages that suggest a culture of uncompromising zeal that is incompatible with its role as a prosecutor. It is not the reality but such tone almost invites that perception.

## 10.4 **Recommendations**

- 1 *Consideration be given to the establishment of a Prosecution Oversight Group along the lines set out in the body of this chapter*
- 2 *The Society needs to place more emphasis on external communications. Its communications strategy should be reviewed to increase its emphasis on capturing and responding to feedback.*
- 3 *The Society should reflect a more measured approach on press releases relating to prosecution*
- 4 *The Society should ensure that the review of complaints handling relating to the Inspectorate develops proposals which can be applied across the organisation.*

## 11 Conclusions

It would be easy to allow the unsatisfactory aspects of these findings about the RSPCA's investigation and prosecution activity to block the positive – which is also present in good measure. The RSPCA has carried on prosecutions to great effect for over 190 years. Despite the stinging criticisms of a protracted media campaign, it retains extensive public support. The reality is that society depends on the RSPCA to enforce a difficult aspect of the law. Even so, the current structures are outmoded. The RSPCA can no longer expect to operate as a specialist police force with an associated prosecution function without appropriate arrangements for accountability and transparency.

The RSPCA role in enforcement of animal welfare law needs to become part of a more coherent framework working rather more in partnership with the public authorities. It needs its role to be recognised and to be given the appropriate powers. Part of the accountability will be a more consultative approach with the public so that its policies and procedures are more attuned to the public on whose support it depends. It will also need to tailor its prosecution role to avoid any perception that the Society's other roles introduce inappropriate and extraneous factors into its decision-making and the conduct of cases. It must be more responsive to the feedback it receives and resist any inclination to dismiss criticism out of hand as unfounded.

The review cannot stress too strongly the crucial role that Government has in this. The RSPCA needs its support in discharging what is to all intents and purposes a public function. The fact that enforcement of animal welfare law is split between so many agencies is itself a reason for more structured and better co-ordinated arrangements so that all have a broadly similar approach and standards – allowing also for the undoubted differences that do also exist.

All this represents a substantial challenge but one that is well within the ability of an organisation that has achieved so much since its inception. The body of this report and its recommendations are intended to signpost the way forward.

**Recommendations are to be found at the end of the chapters that they refer to and a summary of recommendations is provided at the end of the Executive Summary.**

## ANNEXES

### 1. Amplification of the methodology adopted

This note provides additional information about the main stages of the review by reference to the stages described at Chapter 1.3 of the report.

#### 1. Initial research and gathering background information:

This phase involved the Reviewer in legal and other research to develop in-depth knowledge of specialist animal welfare law and familiarity with the culture and working processes of both the Prosecutions Department and the Inspectorate insofar as the latter is relevant to the prosecution process. It included review of evidence taken by the Environment, Food and Rural Affairs committee of the House of Commons during the pre-legislative stage of the Animal Welfare Bill and its passage through Parliament; identifying relevant interest groups; and assessing the distribution of responsibilities relating to animal welfare across the public and non-governmental sectors with particular reference to enforcement. Suitable comparators were identified where possible. This phase also included a logistical dimension such as the development of questionnaires and the establishment of the necessary infrastructure for communication and the public consultation exercise.

#### 2. Evidence form external stakeholders:

This was gathered through a combination of face-to-face interviews, telephone conversations, written representations and questionnaires.

Meetings were held with officials from the government departments with relevant responsibilities. These included the Department for the Environment, Food and Rural Affairs which has overall responsibility for animal welfare issues and the Attorney General's Office which has a general accountability to Parliament for prosecutions in England and Wales. It was important to establish the stance of each although positive contributions from central government were somewhat limited.

Input was received from members of the judiciary and members of the legal and veterinary professions. The former included solicitors and barristers who have prosecuted on behalf of the RSPCA as well as defence practitioners. The latter included vets who have worked for both the RSPCA and been instructed on behalf of defendants.

In order to obtain an assessment of the work of the Prosecutions Department, the review identified the 10 firms that handled the greatest number of RSPCA cases in 2013 and meetings were held with the relevant partner. The next ten firms were asked to complete questionnaires.



Representatives of the Crown Prosecution Service and other smaller prosecutor provided information about their operations – in particular the separation of prosecution and investigation and the safeguards to ensure the integrity of decision-making.

At the operational level, discussions were held with the police service (ACPO and the Head of the National Wildlife Crime Unit) and representatives of local government. Meetings with representatives of the Scottish Society for the Prevention of Cruelty to Animals and the Royal Society for the Protection of Birds also provided valuable comparisons.

### 3. A public consultation exercise:

It was important to afford the many interest groups and individuals associated with animal welfare an opportunity to contribute to the review and in particular to describe their experiences. They are a very diverse group.

A webpage was established that enabled individuals to complete a questionnaire covering their views as to the appropriate roles for the RSPCA in investigation and prosecution and comment on their performance. An additional e-mail address enabled interested parties to send comments and submissions. A total of 290 responses were received through these channels in addition to a number of written submissions and other representations on behalf of interested organisations and some members of Parliament. A few were followed up with individual meetings and telephone calls.

### 4. Examination of case files and management information:

The Prosecutions Department received 2,093 cases in 2012 and this resulted in 1585 individuals being prosecuted and 525 cautioned. No action was taken in relation to 974 individuals. This was the latest data available at the commencement of the review. The review initially proposed to examine 100 cases representing approximately 5% of the caseload. This would have been a relatively large file sample and constructed so as to provide a representative sample by reference to:

- each category of potential offence;
- a proportionate mix of decisions to prosecute; caution; and take no further action;
- a proportionate mix of contested and guilty plea cases;
- criticisms made of individual cases.

In the event, a total of 78 files were read comprising 62 selected in accordance with the criteria set out above and a further 16 that were called for by the Reviewer in response to matters drawn to his attention. The decision to reduce the file sample was taken when the Reviewer concluded that a consistent pattern was emerging and reading additional files would not add to what had been learned.

### 5. Identification of key issues:

A note was prepared for the benefit of the Reviewer in order to shape the approach to discussions with RSPCA managers and staff and focus discussions.

6. Interviews with RSPCA managers and staff to explore the issues identified during phases 2, 3 and 4:

All staff of the Prosecutions Department were afforded the opportunity to contribute through a series of individual or group meetings. Any individual who did not feel comfortable with a group meeting was able to opt for a private meeting.

The Reviewer held meetings with:

- the Chief Legal Officer, the Chief Inspectorate Officer and the Chief Veterinary Officer;
- other senior managers in the RSPCA including managers within the Inspectorate;
- members of the Council.

By the relevant stage of the review, the positions of Chief Executive and Deputy Chief Executive were both vacant.

7. Development and discussion of emerging findings:

In accordance with usual practice in a review of this nature, managers were provided with details of the emerging findings as a basis for discussion and comment.

8. Drafting of report and discussion:

This report has been finalised following discussion of the draft report with chief officers of the RSPCA. Their comments were taken into consideration and, where they were accepted, the report now reflects that.

## **2. List of those individuals who assisted the review of the prosecution activity of the RSPCA**

Evidence and assistance was received from the following members and staff of the RSPCA.

Richard Ryder (RSPCA Trustee)  
Christina Tomlinson (RSPCA Trustee)  
Ray Ings (RSPCA Trustee)  
Chris Laurence (RSPCA Trustee)  
District Judge David Thomas (in his capacity as a former Trustee)  
John Bryant (former Trustee)

Ray Goodfellow (Chief Legal Officer)  
Michael Flower (Acting Head of Prosecutions)  
Terry Stroud (Senior Prosecution Case Manager)  
Phil Wilson (Senior Prosecution Case Manager)  
Andy Shipp (Senior Prosecution Case Manager)  
Hamish Rogers (Prosecution Case Manager)  
Dave Long (Prosecution Case Manager)  
Jason Fletcher (Senior Prosecution Case Manager)

Sally Case (Former Head of Prosecutions)  
Rachel Newman (Former Head of Prosecutions and now Deputy Chief Executive of the League Against Cruel Sports)

Sue Collin (Manager: Costs Recovery and Data Team)  
Fiona Squires (Costs Recovery Officer)  
Leyla Edwards (Costs Recovery Officer)  
Sue Grogan (Data Officer)

Kevin Degenhard (Chief Inspectorate Officer)  
James Yeates (Chief Veterinary Officer)  
Dermot Murphy (Staff Officer: Inspectorate Department)  
Richard Seddon (Learning and Development)  
Barry Fryer (Chief Superintendent: Special Operations Unit)  
Mark Martin (Intelligence Manager: Special Operations Unit)

Mike McCahon (Inspectorate Services)  
Fiona Gerhard (Inspectorate Services)

David Bowles (Head of External Relations)  
David Cowdrey (Head of Communications)

In addition, the following either made themselves available for meetings, telephone discussion or submitted written comments:

Governmental and public bodies:

Susan Ellis (DEFRA)  
Christopher Burke (DEFRA)

Kenneth Dibble (Chief Legal Adviser: Charity Commission)  
Peter Clarke (Charity Commission)

John Turvill (Attorney General's Office)  
Kevin McGinty (Attorney General's Office)

Alison Saunders CB QC (Director of Public Prosecutions)  
Jim Brisbane (Chief Operating Officer: CPS)  
Simon Clements (CPS)  
Barry Hughes (Chief Crown Prosecutor: CPS South West)  
Arsha Gosine (CPS)  
Keith Milburn (CPS)

Sara Shaw (Head of Wildlife and Environmental Crime Unit, Crown Office, Edinburgh)

Deputy Chief Constable Gareth Pritchard (ACPO)  
PC Keith Evans (ACPO adviser)  
Nevin Hunter (Head of UK National Wildlife Crime Unit)  
Jon Palfrey (Retired Wildlife Crime Officer)

Mark Bowering (Department for Business, Innovation and Skills)

Peter McNaught (Health and Safety Executive)  
Katherine Cooper (Health and Safety Executive)

Stephanie Young (on behalf of the Local Government Association).  
Mark Berry (on behalf of the Local Government Association).  
Robert Jervis-Gibbons (on behalf of the Local Government Association)

Solicitors prosecuting on behalf of the RSPCA:

Andrew Wiles (Chancellors Lea Brewer of Bexleyheath)  
Paul Brown (Freeman Brown of Selby)  
Kevin Campbell (Freeman Johnson of Durham)  
David Nichols (Harris Cuffaro & Nichols of Old Harlow)  
Kevin McCole (Headleys of Lutterworth)  
Janita Patel (JP Law of Bedford)  
Andrew Davidson (Lupton Fawcett Denison Till of Leeds)  
Denise Jackman (McKeags of Gosforth)  
Judith Curry (McKeags of Gosforth)  
Nicholas Sutton (Nicholas Sutton Solicitors of Birmingham)  
John Ellwood (Tilly Bailey & Irvine of Hartlepool)

Twenty other prosecuting solicitors completed questionnaires at the request of the review.

Members of the judiciary and other legal practitioners:

Lord Thomas of Cwmgiedd (Lord Chief Justice)  
H. H. Judge Nicholas Hillyard QC (Common Serjeant of London)

Richard Atkins (Knights, Solicitors of Tunbridge Wells)  
Jeremy Cave (Counsel)  
Jamie Foster (Clarke Willmott, Solicitors of Taunton)  
Timothy Hayden (Clarke Willmott, Solicitors of Taunton)  
Sara George (a barrister now with Stephenson Harwood, London)  
Peter Glenser (Counsel)  
Sara-Lise Howe (Counsel)  
Jonathan Rich (Counsel)  
Timothy Ryan (Warners, Solicitors of Tonbridge)  
Noel Sweeney (Counsel)

Veterinary profession:

Dr David Martin  
Dr Colin Vogel

Other organisations:

Sir Barney White-Spunner (Countryside Alliance)  
Tim Bonner (Countryside Alliance)  
Peter O'Rourke (Federation Against Copyright Theft)  
Dr Mike Clarke (Royal Society for the Protection of Birds)  
Bob Elliot (Royal Society for the Protection of Birds)  
Darren Moorcroft (Royal Society for the Protection of Birds)  
Chris Boyce (British Bird Council)  
Anne Kasica (Self-Help Group for Farmers, Pet Owners and Others Experiencing Difficulties with the RSPCA (SHG)).  
Ernest Vine (SHG)  
Stuart Earley (Scottish Society for the Prevention of Cruelty to Animals)  
Mike Flynn (Scottish Society for the Prevention of Cruelty to Animals)

Individuals, MPS and academics:

Professor Mike Radford (University of Aberdeen)  
Dr Fiona Cooke (University of Aberdeen)  
Mr William Pumfrey  
Simon Hart MP  
Shailesh Vara MP  
Jim Shannon MP

In addition, many submissions were received by way of response to the public consultation. Such responses have been treated as confidential unless the individual or organisation has specifically indicated otherwise.

### **3. Extracts from 2004/5 Parliamentary proceedings advanced as the basis on an undertaking**

Section 6.3.3 of the report draws attention to contentions made by defence practitioners that the RSPCA is bound by an undertaking to Parliament that limits the circumstances in which proceedings may be brought under section 9 of the Animal Welfare Act 2006. This note identifies the material that appears to be relied upon in support of that contention; and the context in which it was generated. The review concluded that the statements made are too remote from the legislation eventually enacted to constitute a binding undertaking. They also lack the formality and certainty to be expected in a formal undertaking. It also comments that it would be to the advantage of all concerned for the RSPCA to have a clearly stated and published position on the point.

The context of the statements made by the RSPCA was the pre-legislative scrutiny given by the EFRA Select committee to a draft Animal Welfare Bill placed before the Committee in 2004. The Committee took written and oral evidence from many sources before producing a report. DERA, who sponsored the legislation, then produced a response and their Minister introduced a revised bill into Parliament. The revised bill then went through the ordinary legislative process.

The original draft bill introduced (as clause 3) what is now in substance section 9 of the Animal Welfare Act 2006 – a preventive provision that places an obligation upon keepers of animals to ensure their welfare. The absence of any supplementary provisions and concerns expressed that the new offence significantly lowered the threshold of criminality, caused the RSPCA to propose two safeguards in relation to the new offence. The **written memorandum from the RSPCA dated 24 August 2004** (Evidence to EFRA Committee page 13) described at paragraph 19 the high rate of compliance in relation to advice given by RSPCA inspectors and went on to state at paragraph 20:

“In order to ensure that the offence is relied on by the RSPCA only where appropriate, we intend to abide by two important safeguards and we recommend that they be incorporated into s3. First, we will not prosecute anyone under s3 unless they have first been advised in writing of how they have failed to meet their animal's welfare needs and been given a reasonable period in which to remedy their failure. Only if they ignore the advice and persist in failing to ensure the animal's welfare would we prosecute them.

Second, we will not prosecute anyone under s3 unless we have first obtained the evidence of a veterinarian or other appropriate expert to the effect that the animal in question's welfare needs are not being met. We understand that the government intends to create a national database listing individuals who are experts in the care of particular species and we anticipate that they, as well as vets, would be appropriate experts.”

In their oral evidence on **7 September 2004, Ms Jackie Ballard, Dr Arthur Lindley and Mr Michael Flower stated on behalf of the RSPCA** (Evidence page 25):

“We have also emphasised in our submission the need to introduce two safeguards and I hope this will go some way to convincing the Committee that the RSPCA is specifically not looking for new powers and we actually do want to safeguard the public more than is already on the face of the Bill. We want to put two new safeguards into the welfare offence so that it is seen to be fair and the public know

what is expected of them. The first is that no prosecution should be brought unless the animal keeper has first been told which of the five principles in clause 3(4) he/she has breached, in what way the breach can be remedied and how quickly. We believe this information should be given in writing. Secondly, we believe that no prosecution should be brought under the welfare offence without veterinary evidence that the animal's welfare needs have not been met."

**Michael Flower (Evidence page 27 Q57) confirmed** the RSPCA approach would be preventive:

"What we hope is that the welfare offence will create a regime of prevention rather than prosecution. We do not believe that the police are going to be called in on a frequent basis to exercise powers under the Bill."

The RSPCA submitted a **further memorandum dated 11 October 2004** (Evidence page 33) which stated at paragraph 7 and 8:

"7. Prosecution under the welfare offence would theoretically be able to occur without warning. However, the RSPCA has made it clear that we will prosecute only under two conditions:

- that the person has first been advised that they have failed to meet the animal's needs; and
- that a veterinary surgeon or other appropriate expert has given evidence that the welfare of the animal is not being met.

8. We believe that these safeguards will assist the courts in their assessment. We are happy to reiterate to the EFRA Committee our commitment to those two conditions."

The issue was the subject of further oral evidence from the RSPCA (Michael Flower and David Bowles) on 14 October 2004 as follows:

**David Bowles (Evidence 363 at Q932):**

"We have said that we think there will probably be an extra 100 or so prosecutions to begin with because as the duty of care welfare offence comes into effect that will increase, but in the long term what we should see happen is that the number of cruelty case prosecutions declines because the duty of care will be a precautionary approach, and we should see through the duty of care a more educational outlook being enforced by this legislation, so people should understand what they are doing before they get a pet animal and that should improve the conditions they are kept in."

**Michael Flower (Evidence 365 at Q941):**

"In terms of role and inspection, no. I do not believe it does because as I have mentioned we already receive a huge number of complaints each year, and it transpires that a very small percentage of those complaints result in an offence of cruelty being detected; so it therefore follows that in the remainder there may be a welfare or a perceived welfare issue as far as the complainant is concerned, and that gives our inspectors the ability to address an animal's welfare needs by way of advice and education which is how we achieve the majority of our direct animal welfare work at the moment. The significance of Clause 3 is that the advice and instructions an inspector may be able to give to an owner will now be backed up by, if you like, the threat of sanctions. Rather than our inspectors just acting in an advisory way hoping that someone will follow that advice, there will be a positive incentive for someone to do so to avoid falling foul of the law."

**The Minister for Nature, Conservation and Fisheries at DEFRA (Mr Bradshaw)** gave oral evidence to the EFRA Committee on 27 October 2004 and stated the government view that it should not be compulsory for any of those enforcing the welfare offence to always serve an improvement notice before prosecuting since in some circumstances that would not be appropriate.

The RSPCA submitted **a further supplementary memorandum dated 4 November 2004 (Evidence P369)** referring specifically to the Minister's evidence and sought to clarify the RSPCA position. It said (inter alia):

"As we have already explained, we already operate a welfare assessment scheme whereby if our inspectors believe that an animal's welfare needs are not being met, but the failure falls short of cruelty (for which we would prosecute), they leave the animal owner a written form explaining what the problem is. We should emphasise that we do not serve these notices in relation to the existing cruelty offence and that would not change if the Animal Welfare Bill becomes law. The notices are only used in poor welfare conditions.

Since we intend to continue serving these notices if the Animal Welfare Bill introduces a new welfare offence, we recommended to the Committee that it might be a useful safeguard if the service of such a notice was made a prerequisite to the bringing of a prosecution for the new welfare offence."

The memorandum then refers to the Minister's evidence and in particular the suggestion of a regime analogous to the Welfare of Farmed Animals (England) Regulations 2000 which created a discretion (on the part of the State Veterinary Service, as it then was) to issue improvement notices: the key difference was that failure to comply was of itself an offence. The RSPCA memorandum continued:

"In our view this gives too much power to the enforcer who, in effect, drafts the wording of the offence. We believe that the commission of the welfare offence should depend on the wording of the Bill as interpreted by the courts, and not the wording of an improvement notice drafted by an RSPCA, local authority or DEFRA inspector. In addition, we believe this provision would lead to satellite litigation to determine whether improvement notices had been properly drafted and properly served and this would unnecessarily complicate an area of the law which ought to be simple."

#### **The Animal Welfare Bill:**

In the event, the draft Bill evolved further before being formally introduced as a Bill and during the course of the legislative process was amended further.

The Bill did incorporate the welfare offence. It also contained additional provisions conferring on those appointed as inspectors under its provisions discretionary powers to serve improvement notices as an incentive mechanism to owners who were deemed not to be meeting their animal's welfare needs.

The EFRA Committee considered the Bill and took evidence leading to its further report in the 2005–2006 Session (HC683). A written memorandum from the RSPCA (Evidence 65) reaffirmed the value of the preventive scheme and confirmed that it believed the need for prosecutions would reduce if it was backed by the potential for legal proceedings.



**The Animal Welfare Act 2006:**

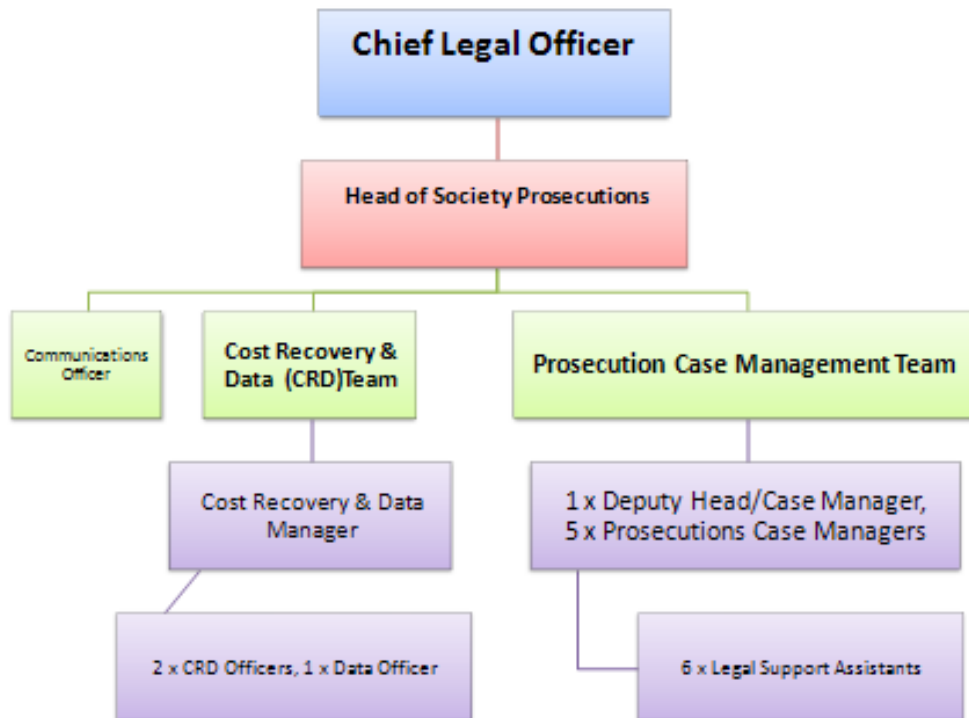
The welfare offence became section 9 of the 2006 Act. The legislation fell short of making an improvement notice compulsory but did act as a bar to proceedings in those circumstances where a notice had been served and complied with. Importantly, the ability to serve improvement notices was restricted by the legislation to inspectors appointed under the 2006 Act – not RSPCA inspectors.

**RSPCA position:**

The RSPCA told the review that it must have full regard to the government's view and the law as it stands. It is the RSPCA position that in the vast majority of cases non-statutory warning notices are issued prior to prosecution where proceedings relate only to welfare offences; the RSPCA would depart from that in exceptional circumstances.

The RSPCA position as regards veterinary evidence has been mainly to rely on veterinary evidence although during the period of post-legislative assessment in 2010 the RSPCA reported to DEFRA that, although all section 9 cases in the first two years had been based on expert evidence, the Society did not believe that would always be necessary in future.

#### 4. Organisation chart of the Prosecutions Department



## **5. Key provisions of Hunting Act 2004**

Section 1 of the Hunting Act 2004 provides:

“A person commits an offence if he hunts a wild mammal with a dog, unless his hunting is exempt”.

By virtue of section 4 of the Act, it is a defence for a person charged under section 1 to show that he reasonably believed that the hunting was exempt. The terms of the exemption are set out in Schedule 1 to the Act. The only exemption relevant for present purposes is the stalking or flushing of a wild mammal which would otherwise cause serious damage to livestock. It only applies where it is carried out by a landowner or person with his authority using no more than two dogs (which must not be below ground) with steps being taken to ensure that the wild mammal is shot dead by a competent person at the earliest possible moment. The exemption is intended to provide a lawful means of pest control for farmers and other landowners.

Section 6 prescribed a penalty on summary conviction of a fine not exceeding level 5 on the Standard Scale – at present £5,000.

## **6. Details of RSPCA hunt prosecutions other than the Heythrop case**

1. The Seavington Hunt: the Hunt was the subject of monitoring by the International Fund for Animal Welfare (IFAW) when it met at Ashcombe Barn in January 2013. The defendant was a huntsman whose role was to control the hunt and hounds. The direct evidence of observers together with video footage tracked his actions as the pack was guided toward the scent of a fox that had bolted. Following this pursuit, the hounds were seen to mark an area around a bank and the defendant was observed telephoning for terrier-men who arrived shortly afterwards and began digging out the bank – although the fox was not found. The Huntsman pleaded guilty and was fined £500 with a further £500 prosecution costs. The abundance of direct evidence and the tight focus of the case were key factors in the successful outcome.
2. Avonvale Hunt: the RSPCA instituted proceedings against four members of the Avonvale Hunt for contraventions of the Protection of Badgers Act 1992 by interfering with a badger sett. Hunt monitors were not involved. Local residents had observed the hunt in the vicinity of the badger sett and noted that attempts were being made to dig it out. Charges were also preferred against the four huntsmen and a master for hunting a fox in contravention of the 2004 Act. The basis of that charge was not wholly clear from a reading of the papers but appeared to rest on an inference that the hounds had followed a scent before marking the ground. That assessment was over optimistic and the proceedings should have been confined to the badger sett offences which attracted guilty pleas by the principal offenders. The Hunting Act charges were withdrawn. However, it is fair to record that a request by the defence that the CPS intervened under Section 6 of the Prosecution of Offences Act 1985 was declined (see Checks and balances section 6.4).
3. The Ledbury Hunt: the RSPCA commenced proceedings against a member of the Ledbury Hunt following observations undertaken by staff of the LACS. The decision appears to have been taken after the footage was considered by an expert who identified a fox apparently in flight and the monitor witness confirmed an ability to identify a huntsman. However, the prosecuting solicitor instructed by the RSPCA raised doubts about the adequacy of the evidence. When those doubts persisted, counsel was instructed and advised that the quality of the footage and the identification did not afford a realistic prospect of conviction, the case was withdrawn.

---End---