



Prosecution Policy

INCORPORATING PROSECUTION CHARGING GUIDELINES AND GUIDANCE
FOR APPLICATION OF THE CODE OF CROWN PROSECUTORS

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The Prosecution Policy of the Royal Society for the Prevention of Cruelty to Animals

1. Introduction

The Royal Society for the Prevention of Cruelty to Animals (RSPCA) charitable purposes are to promote kindness and to prevent or suppress cruelty to animals.

The purpose of this prosecution policy is to inform the public of the RSPCA's prosecution role and to demonstrate that this aspect of the RSPCA's work is carried out in a fair and consistent manner.

This policy applies to all prosecutions brought by or on behalf of the RSPCA and plays no part in the prosecution process applied by the Crown Prosecution Service.

2. RSPCA Aims and Objectives

The RSPCA prevention aim is:

We will prevent cruelty and promote kindness by building better understanding of animal needs, supporting those that require help and enforcing the law where appropriate.

RSPCA Strategy 2017–2020

The RSPCA objectives are to:

Promote kindness to animals and to prevent or suppress cruelty to animals by all lawful acts as the Society may consider conducive or incidental to the attainment of those objectives.

The RSPCA considers the prosecution of offences relating to the welfare of the animals as an integral part of its function and a means by which its objectives can be achieved.

The RSPCA recognises the preventative and public benefits derived from its prosecution role.

3. The RSPCA Prosecution Function

The RSPCA has investigated and prosecuted animal welfare offences since its founding in 1824.

The RSPCA believes it is self evident that if legislation to protect animals is to be effective it must be adequately enforced.

The RSPCA considers its prosecution function to be integral to the advancement of its charitable purposes for the public benefit. The Society has a long established expertise in the prosecution of cases involving animal welfare and has built up a useful body of precedent and case law.

The authority of the RSPCA Council Trustees to institute criminal proceedings pursuant to the Royal Society for the Prevention of Cruelty to Animals Act 1932 is delegated to the Prosecutions Department under the control and management of The Chief Legal Officer and Head of Prosecutions.

The RSPCA prosecute offences without the benefit of statutory powers and by way of private prosecutions. The right of a private individual/body to prosecute exists in common law and this right was preserved by Section 6(1) of the Prosecution of Offenders Act 1985.

Investigations carried out by the RSPCA Inspectorate may result in the detection of criminal offences. The RSPCA will consider the prosecution of individuals who have committed offences where animals have been neglected or abused or where the welfare of animals has been, or is likely to be, compromised. Alternatives to prosecution will also be considered.

Legislation commonly used by the RSPCA to prosecute offences includes:

- Animal Welfare Act 2006
- Dangerous Dogs Act 1991
- Protection of Badgers Act 1992
- Wildlife and Countryside Act 1981
- Deer Act 1991
- Hunting Act 2004

The above list is not exhaustive. The RSPCA may also prosecute other offences (beyond those contained in the above list of statutes) in furtherance of its charitable purpose.

Any individual summonsed by the RSPCA may, by virtue of a S6(1) of the Prosecution of Offences Act 1985, refer the case to The Crown Prosecution Service for a review of the decision to prosecute. Following a review the CPS can discontinue the case if it considers that the case does not pass either the evidential or public interest tests, or the CPS can take the prosecution over and continue with it if there is a particular need for them to do so.

4. The Prosecutions Department

The Prosecutions Department is entirely separate from, and independent of, the RSPCA Inspectorate.

The review and decision function is undertaken by Prosecution Case Managers [PCM] under the overarching governance of the Chief Legal Officer [CLO] and Head of Prosecutions [HOP].

The Prosecutions Department will normally only consider cases that have been subject to investigation by RSPCA inspectors. Other cases will normally be referred to the relevant investigating or prosecuting authority.

When a decision to prosecute is taken, it is usual for PCM's to arrange for the charges to be laid at court. Unless the case and advocacy is to be conducted by an RSPCA employed Barrister/ Solicitor or a Chartered Legal Executive lawyer, the RSPCA will instruct solicitors in private practice to conduct the prosecution on the RSPCA's behalf, including all advocacy before the courts. This may include the instruction of counsel from the self-employed Bar in appropriate cases. They provide legal oversight and an independent assessment of the decision to prosecute, as well as advice on the continued progress of the case, as it develops.

5. Prosecution Principles

Prosecution principles include:

- Fair and effective prosecution is essential to the maintenance of law and order and prosecutions can and have a positive beneficial effect in advancing animal welfare.

- Prosecutions will not be instituted by the RSPCA for political or campaigning purposes. A decision whether or not to prosecute will not be influenced by any possible political advantage or disadvantage to any political party, interest group, section of the community or individual.
- Even if the case is serious it does not mean that a prosecution will automatically follow even if there is sufficient evidence.
- The RSPCA recognises that the decision to prosecute a person suspected of an offence is an important and serious matter, given the seriousness of a criminal conviction and the penalties that may be imposed. A full analysis and review of the evidence will be done before the decision to commence proceedings is made.
- PCMs must be fair, impartial and objective in the conduct of their duties. They must not let their own personal views about ethnic origin, gender, religion, political beliefs, sexual orientation of suspected offenders play any part whatsoever in the consideration of any matter, nor must they be affected by improper or undue influence.
- PCMs will strive to ensure that the proper defendant is identified and select charges which reflect the seriousness and extent of the offending and enable the case to be presented in a clear and straightforward way. In so doing, PCMs will apply the principles set out in this policy, act in the interests of justice and not solely for the purpose of obtaining a conviction.
- PCMs will consider alternative means of dealing with an individual (other than a prosecution) in appropriate circumstances.
- The Prosecutions Department will do all that is possible to ensure that prosecutions are conducted fairly, expeditiously and in accordance with legal requirements.
- PCMs will continuously review all cases in liaison with the instructed solicitor or barrister.
- PCMs will have regard to the following factors in considering whether proceedings should be discontinued:
 - New and compelling evidence not previously available, including new information which may or may not be contained in a defence case statement,
 - Insufficient evidence to continue with the prosecution,
 - or
 - Exceptional circumstances where it is considered not to be in the public interest or the interests of justice to continue the proceeding.
- Defendants may offer to plead guilty to some, but not all, of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious, charge because they are admitting only part of the crime. PCMs should only accept the defendant's plea if they think the court is able to pass a sentence that matches the seriousness of the offence(s); they must not accept a guilty plea simply because it is convenient. In considering whether the pleas offered are acceptable, PCMs should consider whether it is in the public interest to accept the plea, having considered advice from the prosecuting solicitor or barrister as appropriate. In cases involving multiple defendants PCMs may accept guilty pleas from one and withdraw proceedings against others provided that the criminality of the case is appropriately reflected and it is in the interests of justice.

6. Offence Specific Charging Policy

6.1 Hunting Act 2004

RSPCA policy dictates that cases involving traditional (red coat) hunts will be referred, after partial investigation to determine its viability, to the police who will be invited to conclude the investigation before passing the file to the CPS.

If the police decline to complete the investigation the RSPCA may continue.

6.2 Cases involving farm animals on commercial premises

Cases of this type and in particular establishments operating in conjunction with the RSPCA assured scheme will be referred to the relevant Trading Standards Department who will be invited to proceed with any prosecution arising. If that invitation is declined the RSPCA may continue with the prosecution.

6.3 Escalated prosecution decisions

If a case involving traditional (red coat) hunts, farm animals on commercial premises or an animal sanctuary is dealt with by the RSPCA, a PCM decision to prosecute will require ratification from both the Chief Legal Officer and Head of Prosecutions.

7. Retention Policy and Sensitive Personal Data

Files of evidence received from Inspectors by the Prosecutions Department will be securely retained for the following periods prior to security shredding:

- in the case of no prosecution or a conclusion by way of a RSPCA caution: for a seven year period
- in the case of a prosecution: for a seven year period or the duration of any period of disqualification imposed by a court, whichever is the greater.

Sensitive personal data is handled in accordance with an internal Prosecutions Department restricted material policy.

The Prosecution Department adheres to the Data Protection Act 1998 and personal information is processed in accordance with those provisions.

8. Costs Awarded to the RSPCA

The RSPCA Prosecutions Department will take reasonable steps by such means as are lawfully available to them via the courts in relation to the recovery of costs awarded to the RSPCA by the courts.

The RSPCA will seek payment from debtors as ordered by the court via the courts who may instruct County Court Bailiffs to recover debt and through charging orders upon land or property.

9. RSPCA Council Oversight

Prosecutions involving significant cost or public interest will be notified to the RSPCA's governing body, the RSPCA Council, which has legal responsibility for the administration of the RSPCA's affairs.

Information on prosecution costs and potential high profile cases may be provided to the RSPCA Council so the trustees may exercise objective oversight over the budget spending of the Prosecutions Department in order to maintain public confidence and reputation of the charity.

10. Prosecutions Annual Report

To assist transparency and understanding of the public benefit derived from the RSPCA's prosecution function, the RSPCA will publish an annual report relating to its prosecution activity.

The RSPCA accepts that publicising outcomes of the cases in which the RSPCA are involved in helps to increase public trust and confidence of the RSPCA's prosecution of offenders within the criminal justice system.

Case studies published by the RSPCA in the Prosecutions Department Annual Report will be anonymised.

11. Prosecution Oversight Panel

The Prosecution Oversight Panel is an independent panel of external professionals who review casework and casework decisions carried out by the Prosecutions Department and report on their findings.

The Prosecution Oversight Panel serves in an expert advisory capacity and provides independent external expert advice on the RSPCA's prosecution function to the Chief Executive and to the Trustees (the RSPCA Council) to fulfil their governance responsibilities.

This includes ensuring the effectiveness of the function's internal control systems, its risk management, decision making and governance processes.

The findings of the [Prosecution Oversight Panel](#) following each review of RSPCA prosecution casework are published on the RSPCA website.

12. Complaints Handling

All complaints will be dealt with in accordance with the [RSPCA National Complaints Procedure](#).

This procedure is part of the Complaints Policy which has been approved by the RSPCA Council and will be periodically reviewed. Any amendments will be reflected in the policy and published as appropriate.

The RSPCA publishes a copy of its [complaint procedure](#) and the Complaints Policy on its website.

RSPCA Prosecutions Charging Guidelines

13. Introduction

PCMs are responsible for evaluating evidence submitted by an RSPCA inspector. PCMs consider whether the evidence is sufficient to provide a realistic prospect of conviction and, if it is, then they consider whether it is in the public interest to prosecute.

It is accepted that each and every case must be considered on its own merits. PCMs must ensure that the right person is prosecuted for the right offence and that appropriate charges are selected.

The RSPCA will only institute a private prosecution if:

- the evidence shows that there is a realistic prospect of conviction (“the evidential test”); and
- it is in the public interest to prosecute (“the public interest test”).

Case decisions will be reviewed and assessed having regard to the current edition of the CPS Code for Crown Prosecutors as issued by the Director of Public Prosecutions under section 10 of the Prosecution of Offences Act 1985.

13.1 Charging guidance

- Animals include both domesticated and wild living species.
- The RSPCA Inspectorate during the course of their work may liaise and collaborate with other agencies including the police, local authorities and other charitable organisations.
- PCMs can provide advice and guidance about possible lines of enquiry, evidential requirements or any additional steps which can be taken to remedy deficiencies to an inspector at any stage of the investigation to assist the inspector with their investigation and to build the prosecution case.
- Each and every case must be assessed on its own merits; there can be no presumption that a particular type of case will always be disposed of in a particular manner.
- The right person should be prosecuted for the right offence.
- Although a full review is required before a suspect is charged, the review of a case is a continuing process intended to take account of any change of circumstance and which may lead to reassessment of either or both of the evidential and public interest tests.
- There must be no overcharging, and charges should be proportionate to the offences. Animal welfare cases can create a number of separate offences but charges should reflect the seriousness and extent of the offending.
- It is not a requirement that all offences disclosed during an investigation will be subject to a charge. It is generally sufficient that the charges reflect the overall seriousness of offending.
- The offences charged must provide the court with adequate sentencing powers having regard to all of the circumstances of the case.
- The respective levels of culpability of each suspect must be taken into account, as some cases may involve more than one suspect.

- Different suspects in a case can be dealt with by different means of disposal.
- Cases should be prosecuted effectively and in the interest of justice.
- Current sentencing guidelines, relevant Welfare Codes of Practice and the youth offender gravity factor matrix may be considered to assist decision makers.
- PCMs should provide advice to an inspector to terminate investigations at an early stage if it is apparent that the evidential or public interest test will not be capable of being met.
- If the evidential test is met but the public interest test is not, consideration should be given to utilising an out of court disposal.
- If the evidential test is not met no action will be taken.

The application of the Code for Crown Prosecutors to the prosecution of animal welfare offences

The policy is intended to set out the criteria which the RSPCA applies the Code for Crown Prosecutors to animal welfare offences.

The RSPCA supports and applies the principles contained in the Code for Crown Prosecutors.

14. The Code for Crown Prosecutors

This sets out the general principles for prosecutors to follow. In particular:

- Each case must be considered on its own merits
- Prosecutors must be fair, independent and objective
- Prosecutors must act in the interests of justice

The code also provides guidance regarding the decision to prosecute. It confirms that:

- The police and other investigators are responsible for conducting enquiries into alleged crime
- That a prosecution should only start if the full code test has been satisfied
- That the review of a case is a continuing process and account must be taken of any changes in circumstances

The code sets out a two stage test:

1. The evidential stage

Prosecutors to be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge

2. The public interest stage

Prosecutors to decide whether the public interest requires a prosecution.

14.1 Application of the Code

14.1.1 Evidential test.

Prosecutors must always ensure that the evidence is sufficient to provide a realistic prospect of conviction in respect of each offence and for each individual.

Prosecutors must ensure that evidence is admissible, reliable and credible and can be used in court. Consideration should be given to the following:

- Can the identity of the owner(s) or person(s) responsible for the animal be established?
Are the suspect(s) identified sufficiently?
- If consideration is being given to signing a S31 certificate (to commence proceedings outside the 6 month time limit by virtue of S31 Animal Welfare Act 2006) does it comply with the current legal position relating to such certification?
- Are there any legal issues which need to be considered? Any relevant case law which supports, or damages, the case?
- If there is an expert's report has it considered the welfare issues sufficiently and adequately described why there is suffering (S4) or a breach of an animal's welfare needs (S9) where necessary?
- Did the police execute warrants under the correct Police and Criminal Evidence Act 1984 provisions [PACE] and if not what effect that would have on the admissibility of the evidence?
- Consideration should be given to any S78 application (application to have evidence ruled as inadmissible if it has been obtained unlawfully) as a result of any PACE breaches relating to entry and seizure of evidence (including animals).
- Is there hearsay evidence which will require a Criminal Justice Act 2003 application to be made e.g. for any business documentation?
- Is the suspect known to the RSPCA? Has he or she received any welfare notices previously? Does he or she have any previous convictions or cautions for animal welfare offences and does the RSPCA need to consider making a bad character application? – Does this affect the decision – does it show a pattern of offending and/or is the offending escalating?
- Can reference be made to the Welfare Codes of Practice? Are they relevant to establish that the animal's welfare has been compromised or it has fallen below the minimum standards of care?

Prosecution case managers must be aware of the essential elements of an offence. The precise nature of evidence will be variable and dependent on the particular offence concerned.

14.2 Public interest test

A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour.

The Code provides guidance regarding the factors that might be considered when applying the public interest test. These include seriousness, culpability, harm caused, age and infirmity of the suspect and proportionality.

PCMs should have regard to the following factors:

(This list is not exhaustive; none of the factors are dependent on each other and not all of these factors will apply to every case)

A. How serious is the offence committed?

The more serious an offence the more likely it is that a prosecution will be appropriate. Some of the factors that may increase the level of seriousness in animal welfare cases are:

- Death or serious injury/harm to the animal(s).
- A high level of suffering.
- Prolonged, gratuitous, deliberate or malicious suffering.
- Organised or gang based cruelty.
- Large scale professional operation with the cruelty/suffering committed for financial gain and profit.
- Use of another animal to inflict death, injury or harm to another animal.
- Use of a weapon or household object upon the animal.
- Planned or premeditated.
- Adult involving child in offending.
- Animals kept for livelihood.
- Number of animals or wildlife affected.
- Filming the incident and using technology to promote cruelty.
- Previous convictions and relevance of those to the current offence.
- Failure to comply with advice and previous welfare notices given by the RSPCA or other enforcement agency.
- Failure to comply with previous court orders.
- Offence committed whilst on bail or committed whilst on supervision or licence.
- Offence motivated by presumed characteristics of the owner who is not party to the commission of the offence based on his religion, sexual orientation, race, disability or transgender identity.
- Distress caused to the owner or the person responsible for the animal.
- An inexperienced person allowed to have care of the animal(s).
- The animal requires significant intervention to recover due to serious veterinary condition requiring either urgent veterinary attention or long term care and treatment.
- The animal is being used in public service or is an assistance animal.

Factors reducing seriousness (or personal mitigation)

- No previous convictions or good character.
- Remorse or significant acceptance of wrongdoing.
- Cooperation during the investigation.
- Voluntary surrender of animals to authorities.
- No outstanding animal welfare concerns, including potential concerns on future ownership.
- Isolated incident.
- Age or lack of maturity where it affects the responsibility of the owner.
- Mental health or learning disorder where it is not linked to the commission of the offence.
- Was the suspect motivated by an older family member or person?
- Was the person committing it subject to coercion or domestic violence?
- Age or lack of maturity where it affects the responsibility of the owner.

B. Culpability of the suspect might be demonstrated by:

- The suspect's involvement – Was he or she the main offender or did he or she play a lesser role in the offending? Was he or she the sole or primary carer?
- Ill treatment in a commercial context and what part did the suspect play?
- The leading role in the criminal activity
- Whether the offence was planned or premeditated
- Adult(s) involving a child in the offending
- Offender was at the time in a position of authority
- Mental health or learning disorder where it is not linked to the commission of the offence

Factors reducing culpability:

- Well intentioned but incompetent care
- Mental disorder or learning disability, where linked to the offending
- Offender has been given an inappropriate level of trust or responsibility

C. What are the circumstances of and the harm caused to the victim/witness?

In terms of the victim in an animal welfare offence this can be considered having regard to the following:

The animal:

- What is the extent and level of the harm/injury/suffering caused to the animal? Was it prolonged?
- Did the injury or the cause of harm/neglect or suffering require a significant recovery with any long lasting behavioural problems?
- Did the animal have to be euthanised due to the extent of the harm/suffering/injury?

The owner of the animal or a witness not involved in the commission of the offences against the animal or wildlife:

- What level of distress has been caused to the owner(s) or witness?
- What has been the impact on them at the loss of their animal or on members of the family particularly to a child or young person of the family?
- Was the offence/attack committed against an assistance animal and therefore has the loss/impact to the owner been particularly significant?
- Was the offence/attack committed against a working dog and therefore was the loss/impact on the owner/carer particularly significant?
- In terms of a witness what did they see? What was the impact on them on seeing an act of cruelty committed against an animal? Have they made an impact statement and if so what do they say about the incident?
 - e.g if an animal is attacked and killed gratuitously in front of them how did they feel about that? What effect did it have on them?
- Was the offence motivated by an owner's race, gender, sexual orientation, transgender identity or religion?
- What impact did the offence have on the environment?
 - e.g if large amounts of breeding birds, eggs or animals are taken from the wild what impact does that have on the species if any?

D. Was the suspect under the age of 18 at the time?

The RSPCA recognises that wherever possible younger persons should be diverted from the criminal justice system.

However, where an offence is of a very serious nature, the RSPCA may prosecute in appropriate cases. The RSPCA will not avoid a decision to prosecute simply because of a suspect's age and there may be circumstances in which there is no suitable alternative to prosecution.

If any offence committed by a child or young person is in a category that falls short of requiring a prosecution but is of a type that cannot be ignored the RSPCA will liaise with the police with a view to determining whether an out of court disposal might be appropriate.

In such circumstances the RSPCA will refer the case to the RSPCA education team who will work with the relevant Youth Offending Teams and carry out some intervention work with the young person with their consent.

E. What was the impact on the community?

- Was there an impact on individuals or agencies? if so what was it? Would it have any bearing on whether it was in the public interest to prosecute?
- Has it affected the offender(s) or the offender's family within the community?
- If it is an offence committed against wildlife what was the environmental impact of that offence?

F. Is the prosecution a proportionate response?

- Elderly or vulnerable persons – The RSPCA recognises the general principle that if the suspect is elderly or vulnerable, the less likelihood there may be that prosecution will be considered appropriate. Consideration will be given to the age of the suspect at the time of the offence. However, there are offences committed by the elderly or more vulnerable persons that may be of a more serious nature and in such circumstances a prosecution may still be appropriate. Being elderly cannot, in itself, be regarded as a defence to the committing of a crime. There may exist compelling factors, from an animal welfare point of view, weighing in favour of a prosecution.
- Do animals need safeguarding in the future from the offender? The RSPCA will in all cases give consideration to the effect of ancillary orders such as deprivation and confiscation of animals and disqualification from various activities involving animals, including owning and keeping them, which the courts may make upon conviction.
- Will the offender's physical or mental health be seriously compromised by a prosecution?
- Whether the consequences of any conviction would be disproportionate, unduly harsh or oppressive in relation to the level or type of offending having regard to the likely sentence which may be imposed on conviction.
- Whether the likely cost of bringing the prosecution would be a reasonable and effective use of charitable resources having regard to the circumstances and merits of the case.
- Would an alternative disposal be appropriate in all of the circumstances and meet the needs and seriousness of the case?

G. RSPCA caution in appropriate circumstances.

RSPCA caution for adult offenders – This is an internal procedure only and should not be confused with a caution or conditional caution offered by the police. The RSPCA caution is a specific form of warning where an individual admits committing an offence and the evidential test is met. The RSPCA caution is non-statutory and non recordable and it may be used in cases where a prosecution could otherwise be brought but there are strong public interest factors that weigh against prosecution.

PCM will have regard to the Ministry of Justice guidance on criteria for cautioning when disposing of a case in this manner.

Cautions administered by the RSPCA are not recorded on the Police National Computer and need not be disclosed for any purpose by the individual concerned.

However, the RSPCA may apply to cite details of such a caution, as bad character, if the individual commits a further offence and is subject to prosecution. An RSPCA caution is not disclosable as a part of any DBS (Disclosure and Barring Service) check and the RSPCA Data Protection Policy applies to any RSPCA caution issued.

H. Do sources of information require protection?

In some cases the RSPCA receive information from sources or members of the public who want to remain anonymous for fear of reprisals.

In those circumstances consideration will be given as to whether the identity of that person would be at risk of being disclosed if there was a prosecution and the need to safeguard them should be balanced against whether it is in the public interest to prosecute. The seriousness of the offence(s) will have to be considered against the risks of disclosing a source and the consequences for that individual if such information is disclosed.