



**The RSPCA's response  
to the Wooler review of  
its prosecution activity**

**September 2014**

## 1. Introduction

1. The RSPCA is the principal prosecutor of animal cruelty legislation in England and Wales partially for historical reasons, as the Society was established nearly a decade before the first police force. This has led to misconceptions amongst the public, legislators and indeed other enforcement agencies about the role of the Society, its powers and even the uniform and ranking of its inspectors. In 2013, the RSPCA received 153,770 complaints of alleged cruelty from the public with approximately one percent being dealt with by prosecution. This represented 83 percent of all animal welfare prosecutions, the remainder being dealt with by the police, local authorities and the Animal Health and Veterinary Laboratories Agency (AHVLA). The vast majority of all prosecutions concerning companion animals were dealt with by the RSPCA.
2. The prosecution regime in England and Wales has changed considerably since the Society's formation; the position of Director Public Prosecutions was not established until 55 years after the RSPCA and the Crown Prosecution Service (CPS) only created 162 years after the RSPCA. The number of RSPCA prosecutions has declined from some 7,000 a year in the late 19th century to less than 1,550 in 2013. Although there was an increase in prosecutions on the back of the Animal Welfare Act 2006, which the Society anticipated, the number of prosecutions taken in 2013 was similar to those taken in 1989.
3. There has been an increasing public expectation that enforcement bodies will be transparent and accountable. The RSPCA recognises that requirement and the need to respond accordingly. The RSPCA is therefore committed to providing accountability and transparency in relation to its enforcement role that is reflective of that expectation and felt it both appropriate and timely to commission an authoritative and independent review of its prosecution activity. This comes in the background of critical comment by some members of the public and a sustained period of criticism from certain sectors of the media, which has been particularly prevalent since the RSPCA's successful prosecution of the Heythrop Hunt in December 2012. Despite that, the review makes it clear that the RSPCA maintains extensive public support.
4. This document provides the RSPCA's initial response to the review conducted independently by Stephen Wooler, the former Chief Inspector of HM Crown Prosecution Service Inspectorate. We thank Stephen Wooler for the breadth of his review, his insight and carefully thought-through conclusions, and his involvement of interested parties and public consultation in drawing the evidence together. The review gathered 290 responses of which 62 percent were supportive of the prosecutions work and 21 percent expressing concerns with it.

5. A fundamental finding of the review is that there is a lack of a defined Government strategy for the enforcement of animal welfare legislation in England and Wales, a situation that was not rectified by the introduction of the Animal Welfare Act 2006. This has resulted in some perceived differences of approach to enforcement from the statutory and non-statutory bodies.
6. The review both recognises and highlights the invaluable work that the Society undertakes, not only in making a huge contribution to animal welfare but also fulfilling a significant constitutional role. However, the RSPCA finds itself in a difficult position with the police and local authorities not having the personnel, budget or priority to focus on animal welfare. This results in those agencies being content to hand enforcement issues over to the RSPCA to deal with. The review states that without the RSPCA there would be little enforcement with regard to the welfare of companion animals. However, with this responsibility comes a recommendation that the Society now needs to become part of the wider criminal justice community. This would mean ensuring the Society has overarching policies and offence specific guidelines, as far as is possible, and is transparent and less defensive about its work, and has effective arrangements for dealing with complaints made about its inspectors and other staff.
7. The primary purpose of the review was to assess prosecution decisions (both positive and negative) and subsequent conduct of any proceedings so as to determine how far these accord with the standards of a reasonable, competent and objective prosecutor. It is important to stress the review concludes that the Prosecutions Department performs well in terms of its case outcomes; that the RSPCA enjoys good standing before the courts for the effective manner in which its cases are presented; that its staff are well motivated, conscientious and highly committed; 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; that there is no other body which could take on the RSPCA's current role which is too valuable to be lost and that the management of prosecutions conducted by the RSPCA is clearly more effective and thorough than found in most other prosecuting authorities including the CPS. With regard to the application of the Code for Crown Prosecutors, the file sample tested in the review showed that the assessment of the evidence was largely satisfactory. Whilst acknowledging that the application of the public interest test to animal welfare cases can often be difficult, the review considered the proportion of cases where consideration of the public interest test was flawed was too high and the review makes a number of observations that will help the RSPCA address this.
8. The review draws a number of conclusions and makes recommendations, as set out at the end of the relevant chapters (and at the end of the executive summary). The review's recommendations can be broadly defined as those that relate to internal changes – and so are within the RSPCA's control, and those which are dependent on the agreement of other agencies. Some of

these relate to the wider context of enforcement of animal welfare legislation in England and Wales where there is a fragmented division (described as “haphazard” in the review) of responsibility between public bodies and the RSPCA, a private charity, which has undertaken a voluntary role in enforcing this legislation over the last 190 years in furtherance of its charitable purposes.

9. In commissioning the review, the RSPCA has sought to identify how the RSPCA can carry out its investigative and prosecution functions even more efficiently and effectively, for the public benefit, in a manner consistent with 21st-century expectations for accountability and transparency. The review identifies a way forward for the RSPCA but notes that some key points will hinge on the Government’s approach.
10. The review has considered representations received from those who suggest that the RSPCA should abandon its long-standing prosecution role altogether and that its inspectors should simply refer cases to the CPS. They point to the example of the SSPCA in Scotland (where cases are referred to the Crown Office and Procurator Fiscal Service) and other charities in England such as the NSPCC and RSPB which have already relinquished their traditional, but significantly more limited, prosecution function. The RSPCA does not consider these examples to be analogous and the review affirms the valuable role the RSPCA plays in “filling the gaping hole” in the enforcement of animal welfare legislation in England and Wales: it does not recommend the RSPCA abandoning its prosecution role, rather it is implicit that it should not and it is recommended that its enforcement role should become part of a more coherent regulatory framework.
11. The review suggests the RSPCA may need to re-align its prosecution role in some areas, having regard to the charity’s wider work. For example, the review notes that the handling of animal sanctuary cases is intrinsically difficult and sensitive. The review considers that an effective licensing system for animal sanctuaries could reduce the need for interventions through the criminal law, and avoid the situation where one charity appears to regulate others, with the inevitable tensions that can give rise to.
12. The review provides an assessment of the RSPCA’s involvement in hunting prosecutions and considers why these have proved problematic for reasons largely outside the RSPCA’s control. The review comments that the evidence reviewed leaves no doubt that despite the introduction of the Hunting Act 2004, “traditional fox hunting remains ‘business as usual’ in many parts of the country”, and comments that extensive flouting of the law risks bringing Parliament, the police and prosecuting authorities into disrepute. The RSPCA currently investigates complaints about alleged illegal fox hunting which are referred to it by hunt monitors and the review recommends that the RSPCA develops a policy on how far it will accept such referrals in the future rather than directing the complaints to the police. It also suggests the RSPCA considers an approach whereby it puts pressure on the police and CPS to

ensure that the investigation and prosecution of breaches of the Hunting Act 2004 is more effective, whilst also campaigning for changes in the law to make proper enforcement of this legislation less problematic.

13. The RSPCA has taken only a very small number of prosecutions against traditional 'red coat' hunts. The review considered these cases and provides an in-depth analysis of the high-profile prosecution against the Heythrop Hunt. The review concluded the prosecution was fully justified and was not politically motivated. The review also concluded the overall cost of the case was much too high but acknowledged that the resource intensive nature of the preparatory work had added significantly to these costs. The RSPCA accepts the criticism regarding the high costs of the Heythrop case and has already implemented lessons learned in subsequent hunting prosecutions which have been conducted at vastly reduced expense.
14. The RSPCA has no statutory powers to assist it in its enforcement activities and has to rely on others, notably the police, to exercise powers (eg powers of entry) in appropriate circumstances on its behalf. For years, the RSPCA has considered this process to be a safeguard, in view of its own status as a private body. The review looks at this situation from a different angle and suggests that a lack of powers (and resulting lack of accountability) may actually be responsible for much of the dissatisfaction that has been aired. The review suggests working with the Association of Chief Police Officers (ACPO) on developing further operational guidance to assist RSPCA inspectors and police constables. It also recommends that RSPCA inspectors become "Inspectors" as defined in the Animal Welfare Act and so able to exercise powers under the Act. We will discuss this recommendation with Government.
15. The review suggests a number of changes to strengthen the RSPCA's internal processes and governance of its prosecution function (such as a new oversight committee with some external professional representation). The review concludes that the RSPCA's role in enforcement of animal welfare law needs to become part of a more coherent framework working closer in partnership with the public authorities. These and other recommendations which concern the operation and management of the Prosecutions Department will require a detailed examination of the current business model, and evaluation of the suggested alternatives, before further decisions can be made. We will pay special attention to those areas where the review concludes that current practice should be modified or requires strengthening.
16. The review recommends an enhanced complaints procedure which should include an external element. The RSPCA accepts this and will review its current procedure with a view to determining how it can be improved.
17. The review recommends a more harmonised approach to the use of veterinary expertise and recommends discussion with the Royal College of Veterinary Surgeons (RCVS) to determine whether a common standard on

the approach to assessing suffering can be agreed. This suggestion will be taken forward with the RCVS and other expert bodies.

18. We recognise there is significant public interest in this review. We are therefore publishing Mr Wooler's complete report together with our initial response.
19. In section 2 below, we provide a summary of the initial actions we are taking in response to the review's 33 recommendations. We will report back in 18 months' time on progress in implementing the recommendations that have been accepted and we will explain our reasoning in any instances where we may decide to take a different approach. We have already established an internal steering committee to coordinate this work. In the immediate future, we plan to discuss the outcome of the review with our regulator, the Charity Commission, and with relevant parts of the Government and other statutory enforcement bodies.
20. Finally, we take this opportunity to record our own thanks and appreciation, alongside those of Mr Wooler, to all who have assisted and given evidence to this review and, in particular, to our own committed staff who work tirelessly in furtherance of animal welfare.

Michael Tomlinson, Chair  
For and on behalf of the RSPCA Council

29 September 2014

## 2. RSPCA response to recommendations of the review

### 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 agrees its investigation and prosecution activities would benefit from formal recognition and we are opening a dialogue with Government on these matters.**

### 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.*

**We agree further and more detailed operational guidance would be beneficial concerning the exercise of police powers when assisting RSPCA inspectors and we will be discussing the review's findings with ACPO.**

**We agree there is a case for the effective regulation of animal sanctuaries. This is a matter we will take up with Government. In the meantime, we acknowledge the sensitivity highlighted by the review and will discuss the recommendation with the CPS.**

**We accept the concerns expressed regard our complaints procedure and are considering what steps can be taken to improve the position.**

### **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.*
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 [of the review]) 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.*

**We are initiating a review of the Prosecutions Department's business model and internal management structure in order that recommendations 6–21 are given detailed consideration. The RSPCA's current refocusing of its work and organisational structure requires a coordinated response.**

### **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 [of the review].*

**The RSPCA's Chief Veterinary Officer is opening discussions with the Royal College of Veterinary Surgeons and other expert bodies in relation to these issues. We are going to address the other recommendations in this section alongside the review of the RSPCA's business model for its prosecution activity.**

### **Costs**

27. *The review of the RSPCA Prosecutions Department business model recommended in Chapter 6 [of the review] 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.*

**We are including these issues in the review of the Prosecutions Department business model.**

### **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.*

**The RSPCA will discuss this recommendation with the ACPO and the CPS and, in the light of this, will develop a policy relating to its involvement in hunting prosecutions.**

### **Management and governance**

30. *Consideration be given to the establishment of a prosecution oversight group along the lines set out in the body of chapter 10 [of the review].*

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.*

**We will discuss the review's recommendation for the establishment of an oversight group with the Charity Commission.**

**We will carry out a review of our communications strategy, and develop best practice guidelines for the press team when dealing with prosecution cases.**

**We accept the concerns expressed regarding our complaints procedure and are considering what steps can be taken to improve the position.**

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