Justice Committee

Inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service

Written submission from Scottish Badgers

Scottish Badgers is Scotland’s only charity dedicated to the protection and conservation of Scotland’s badgers, their setts and habitats. For many years we provided information for the National Wildlife Crime Unit intelligence database by recording all incidents involving badgers across the whole of the UK. We continue to record incidents involving badgers in Scotland. We are pleased to have this opportunity to comment on the Crown Office and Procurator Fiscal Service in Scotland.

Our recent analyses of evidence averages 60 reports of badger incidents per quarter – of which 40 are confirmed badger crimes. This is in stark contrast to the 7 badger crimes recorded in police statistics in the year 2013/14, none of which were brought to prosecution.

Badger crime (like all wildlife crime) differs from most other crime in that the victim cannot report incidents to the authorities themselves. Badger crimes are seldom witnessed and the victims rarely found, but the evidence is unambiguous – when crimes such as badger baiting, setting dogs on badgers and disturbing their setts are discovered they are attributable to sub-cultures who hold minority attitudes. They perpetrate behaviours against badgers against the law and in defiance of the will of the majority as expressed in the Scottish parliament.

There are two main categories of crimes against badgers, reflecting two main minority sub-cultures – comprising deliberate criminal badger baiting groups (increasing, largely in the Central Belt and Borders), and that of active dis-regard (turning a blind eye) which persists in some development and land management practices.

Both kinds of badger crime are serious offences affecting both the victim and the public - local communities live in an atmosphere of intimidation, threats and fear of speaking out either on behalf of the victims or as witnesses. The vast majority of communities across Scotland welcome the presence of badgers as their neighbours in their local landscape.

Individuals may be knowledgeable about local dog fighting practices, or about syndicates/ land managers who engage in active dis-regard of wildlife law, but are in total fear of speaking out, of reporting their suspicions or of giving evidence. Currently, they see no effective means by which they could be protected.

In some important respects the way we deal with badger crime is comparable to the ways child abuse and domestic violence were dealt with in decades gone by. We want to ask the question - what lessons can be learnt from the huge advances that have been made by our authorities in the procedures for dealing with child abuse and domestic violence in our communities. The major change is that victims and
witnesses now feel they are ‘doing the right thing’ to come forward, their evidence is believed and taken seriously, and they are protected from harm.

Question 1: The overall efficiency and effectiveness of the COPFS and how well it works with other stakeholders.

1.1 We welcome the appointments of specialist Procurator Fiscals to process wildlife crime reports from the police but we want to ask questions about the huge gap between the numbers of crimes involving badgers that are reported to the police and the very low number of prosecutions brought despite good intelligence.

1.2 We welcome the positive police attitude and effort in the past 1-2 years directed towards improving the effectiveness of their responses to wildlife incident reports, to training officers in the competencies to investigate wildlife incident reports and by involving Scottish Badgers. However, police resources had previously been taken to a low baseline and there is a crucial question to be asked about re-allocating to the police service the dedicated resources they need to be able to investigate wildlife incidents to the standard required by the Procurator Fiscal (PF).

1.3 We ask that the reasoning behind the statement “in the public interest” be set out transparently and in a discernible objective way. The public are victims of badger crime as well as the animals. Prosecuting badger crime has a potentially enormous public benefit. Domestic violence including child abuse, and other criminal behaviours such as drug dealing and illegal betting are associated with those people who bait badgers and allow dog fighting. Identifying those responsible by investigating and then prosecuting badger crime can be an effective part of stopping perpetrators from continuing their domestic violence and other criminal activities.

1.4 We ask for information about the use of the update to the Badgers Act, s12A whereby case-building is allowed 6 months “from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor’s knowledge”.

...... and about the use of the update to the Badgers Act, s12B whereby the corporate body as well as the individual is liable for prosecution and punishment (so-called vicarious responsibility).

Have these been used to enable positive case building work between the PF’s office and the police, to assist the police in their investigations and to improve the number of badger crimes brought to prosecution?

1.5 We make the observation that the very low number of badger prosecutions reveals that the status quo is not working. We understand that many are ‘lost’ along the way due to lack of investigative resources, procedural difficulties, loss of evidence and fear that prevents witnesses from speaking out. However, we
1.6 We ask if lessons can be learnt from examining the changes that have transformed dealing with child abuse, domestic violence and sex crimes in the past decade or two. Historically, child abuse perpetrators were often known but those who knew were frightened to speak out for fear being ostracised or intimidated. Victims couldn’t speak for themselves, or felt they wouldn’t be taken seriously. Attitudes have changed and keeping quiet is disapproved. Victims reporting to the police are now met with an atmosphere of belief and are dealt with by highly trained officers. Methodologies are used that enable victims and witnesses to tell their story without fear of further terror in court.

1.7 Calls to 101 to report suspected wildlife incidents are still dealt with inconsistently. Reports of badger incidents can still be met with (a) the belief that wildlife crime is not a crime and (b) a failure to issue an Incident Number. As a result, iceberg high proportion of wildlife incidents are never counted or investigated. For those that do receive an Incident Number problems arise when police officers, including those who are committed and trained to investigate wildlife crime are forced to put other priorities before wildlife crime. They carry large caseloads other than wildlife incidents.

Question 2: How well does COPFS work with other stakeholders?

2.1 Because of the nature of badger crimes i.e. often in remote or hidden locations and with the difficulty of obtaining evidence for prosecution, it is particularly important for an NGO working in this field to be positively considered as a valued partner and to have open channels of communication with the prosecuting authorities. In spite of our solid reputation and willingness to assist, Scottish Badgers has not been asked to provide support/input to the development of any badger case on the pathway towards prosecution. We do provide input to the police depending on circumstances – this is at the early stages of confirming badger field signs.

2.2 We ask that especially in the case of ‘difficult to prove’ cases that there is improved co-ordination between the NGOs within Scottish Environment LINK and the COPFS. We ask that the public interest objective be considered in all cases - to protect the public against the fear and threat engendered by the badger crime, perpetrated in its midst. Mutual new learning and appropriate responsiveness could be honed and developed. Currently, we hear about experiences of the Crown Office as a remote body shut off from others.

2.3 The Reports “Natural Injustice1” and “Natural Injustice 2” (February 2015) put together a picture from data gathered from SELINK members involved in receiving reports of wildlife incidents. This showed that (beyond attitudes to the law) resources and enforcement problems were the underlying factors resulting in cases stumbling before proceeding to being considered for prosecution.
Police Scotland has acted amicably and positively following mutual discussions based on these reports. The police are committed to improve and target resources to investigating badger crime – but they cannot do this alone with the limited resources at their disposal which are subject to competing demands. The COPFS also has a role and responsibility of altering old attitudes (e.g. that badger crime is not really a crime just a way of life). To address badger cases with the same high quality of scrutiny and gravity as child abuse or sex crime cases might send a sufficiently clear message.

2.4 We ask that attention be addressed to the content of the two “Natural Injustice” reports in a positive spirit. They are evidence-based, and their content is widely appreciated as being sound. In particular they make recommendations to build constructive partnerships across the appropriate agencies, with the purpose of sharing experience, and building towards an agreed dialog and procedures for recording and responding to wildlife crimes. We remind everyone concerned that badger crime is a national priority because of the extreme level of violence and cruel treatment of the victims – the animals themselves, and the public whose lives are blighted by that extreme violence; it is a public wellbeing issue.

Question 3: Does the COPFS have the resources, skillsets and technologies it needs to carry out its core role effectively into the future?

See 1.6 referring to methodologies.

Question 4: How well does the COPFS respond to the needs of victims of crimes and witnesses?

4.1 Local communities are victims of fear about badger crime. The COPFS has a key role in inspiring greater confidence in local communities. We point to several areas south of the Central Belt where there is wide knowledge about owners of dogs used for fighting/baiting, but people are in total fear of speaking out. These include small Borders towns, and the Clyde valley from Lanark to Glasgow. Tackling this issue requires a greater and long-term use of intelligence, and needs the COPFS to demonstrate that witnesses can be supported.

4.2 The COPFS and Police use modern technology and advanced protocols to protect victims and witnesses when they are reporting other crimes of violence which could be applied to badger crime. It would be helpful to examine how the methods used when dealing with incidents of child abuse and sex crimes could potentially be applied in dealing with badger crimes.

Question 5: The Inspectorate of Prosecution in Scotland

We have not interfaced with this service and make no comments.

Scottish Badgers
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