



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 13 January 2016

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RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
1st Meeting 2016, Session 4

CONVENER

*Rob Gibson (Caithness, Sutherland and Ross) (SNP)

DEPUTY CONVENER

*Graeme Dey (Angus South) (SNP)

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)

*Sarah Boyack (Lothian) (Lab)

*Alex Fergusson (Galloway and West Dumfries) (Con)

*Jim Hume (South Scotland) (LD)

*Angus MacDonald (Falkirk East) (SNP)

*Michael Russell (Argyll and Bute) (SNP)

*Dave Thompson (Skye, Lochaber and Badenoch) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Tom Dysart (Crown Office and Procurator Fiscal Service)

Assistant Chief Constable Malcolm Graham (Police Scotland)

Detective Chief Superintendent Sean Scott (Police Scotland)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Affairs, Climate Change and Environment Committee

Wednesday 13 January 2016

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Rob Gibson): Welcome to the first meeting in 2016 of the Rural Affairs, Climate Change and Environment Committee. I wish everyone a happy new year. I remind everyone to switch off their mobile phones, or at least to put them in silent mode. Committee members use tablets to read their papers, which are provided in digital format.

Agenda item 1 is a decision on whether to take in private items 4 and 5. Item 4 is consideration of the evidence that we will hear on “Wildlife Crime in Scotland 2014: Annual Report”, and item 5 is consideration of our draft report to the Finance Committee on the Scottish Government’s draft budget for 2016-17. Do we agree to take those items in private?

Members *indicated agreement.*

Land Reform (Scotland) Bill: Stage 2

10:01

The Convener: Agenda item 2 is consideration of a motion in my name on the committee’s timetable for stage 2 consideration of the Land Reform (Scotland) Bill. I invite members’ comments on the motion, which outlines the proposed order for consideration of the various parts of the bill.

I move,

That the Rural Affairs, Climate Change and Environment Committee considers the Land Reform (Scotland) Bill at stage 2 in the following order: Part 1, Chapters 1 and 2 of Part 2, Parts 3 to 10, Chapter 3 of Part 2, Part 11 (including, after section 102, the schedule) and the long title.

Michael Russell (Argyll and Bute) (SNP): It might be helpful to those who are not into the mysteries of bill consideration for you to explain the effect of the motion. As I understand it, if agreed to, the motion will move consideration of the tenant farming commissioner section of the bill until almost the end of the proceedings.

The Convener: Indeed. The attempt here is to allow us to discuss farming and tenancy matters together. As the tenant farming commissioner will be a member of the Scottish land commission, which is relevant to matters under part 10, we thought it most useful to take those matters and his or her responsibilities at the same time, hence the order in the motion.

Motion agreed to.

“Wildlife Crime in Scotland: 2014 Annual Report”

10:03

The Convener: Agenda item 3 is evidence on the Scottish Government’s “Wildlife Crime in Scotland 2014: Annual Report”. We are joined by a panel of witnesses: Assistant Chief Constable Malcolm Graham, major crime and public protection, Police Scotland; Detective Chief Superintendent Sean Scott, wildlife crime portfolio holder, Police Scotland; and Tom Dysart, specialist prosecutor, wildlife and environment crime unit, Crown Office and Procurator Fiscal Service. Good morning to you all.

I will kick off with a general question. It seems as though the recording of the data in the report was designed to suit the operational needs of Police Scotland and the Crown Office and Procurator Fiscal Service rather than the needs of those of us who require a picture of wildlife crime levels or trends. For example, prosecution may not happen in the same year as the crime was committed; a single crime may have more than one perpetrator; the criminal proceedings statistics record only the main or most serious charge; and charges can be altered during proceedings, which makes it difficult to track a case through the justice system.

What further improvements—within reason—in recording and reporting wildlife crime can be achieved in order to enhance the quality of the annual report? Who wants to kick off on that?

Assistant Chief Constable Malcolm Graham (Police Scotland): I am happy to kick off. Thank you for having us, and thereby allowing us to speak about all the developments and—I hope—improvements that have been made in the collective response to wildlife crime in the year since we spoke about the previous report.

On your question about data, I am inclined not just to agree with your opening comment that the recording system is designed more to fit operational needs than the needs of the committee and others who want information about wildlife crime, but to suggest that it does not suit any of our needs particularly well. It is true that the way in which data is recorded is largely a product of the way in which the different systems have evolved over many years. That is not unique to wildlife crime: it is also the case for those who are trying to examine or track crime and incident data on anything that comes through the criminal justice system in order to identify those who are vulnerable and to piece together different parts of the system.

Frankly, in some respects it should be easier to achieve a level of granularity and clarity for wildlife crime because the level of recorded incidents is so low. We are speaking about several hundred offences. One improvement that we can make is to go into a greater level of detail on each of the offences, which is what we have done during the year. In the report, and in correspondence from the minister, some improvements and enhancements to that level of detail are highlighted, and I hope that we can continue with that work. More specific pointers about exactly what is expected or would be helpful would assist us in that process.

With regard to some of the timing issues, that is just how things happen. A crime that is recorded in one year may not be prosecuted until the next year, and there are no easy answers with regard to how we can easily represent that.

The Convener: I will bring in the other witnesses, and then we will come back with some supplementaries.

Detective Chief Superintendent Sean Scott (Police Scotland): To build on Mr Graham’s comments, work is on-going not only in our performance unit but in the Crown Office and the Government to break down the data further into the six priority areas for wildlife crime. We will provide quarterly breakdowns so that we can achieve a bit more of the granularity that Mr Graham mentioned. Work is on-going to improve that data and make it more informative.

Tom Dysart (Crown Office and Procurator Fiscal Service): In some ways it is probably easier for the COPFS, rather than the police or other organisations, to provide the data because we deal with a relatively small number of cases. However, the aspects of a case can change over time. Several people may be involved in a particular incident; it is then investigated and a report may be submitted to the COPFS. The charges that are submitted by the police or any other reporting agency will be based on the reporting officer’s assessment of criminality. The COPFS will then assess the evidence, which will involve—based on the initial report that is submitted or after further investigation—deciding which charges are capable of being proved and should be prosecuted.

There is an on-going process of dialogue with reporting officers and obtaining further information, which continues until the trial. The character of a case can change, subject to the additional information that comes in. Of course, the conviction that comes out at the end might be different from the initial perception of the person who saw the crime.

Wildlife crime is a complicated area. It is not like accounting, where you put a pound into the bank and take a pound back out. Charges can be rolled up in complaints, and complaints can be rolled up together in prosecutions. The criminal justice system is concerned with and geared towards determining the guilt of individuals and punishing those individuals where that is appropriate, but behind all that is the process of identifying incidents, reporting crimes and raising prosecutions.

The Convener: One issue concerns the fact that only the main or most serious charge is recorded in the criminal proceedings statistics. That is a bit of a problem with regard to wildlife crime and other things that may go together. Members may want to ask questions about that in a bit. Is there any way of taking a more granular approach to that aspect?

Tom Dysart: Work with the Scottish Government is on-going, and we are discussing that issue. I suppose that the committee is interested to know about the activity that is taking place and the species that are being targeted by that activity. For example, section 1 of the Wildlife and Countryside Act 1981, which makes it an offence to kill, take or injure a wild bird, covers activities such as killing a golden eagle, trapping finches, poaching pheasants and even using a crow trap without a tag. The offence covers a huge range of criminality and offending behaviour, but all those things will be categorised as a bird offence. To get more information, we would need to delve down into the details of individual cases.

Graeme Dey (Angus South) (SNP): The figures for 2013-14 suggest that 255 wildlife crimes were recorded by the police, 125 were reported to the Crown Office and 28 were marked for no action. I do not want to go into those figures in detail because other members will explore them, but I have one question. Those figures pertain to 2013-14, but inevitably investigations will have continued, and some cases will have been resolved, in 2015. I would like to get a feel for how many of those 255 cases—as a ballpark figure—would not have been wrapped up during 2013-14. How many, as a percentage, would have been carried over into 2015?

Assistant Chief Constable Graham: That is a good question—it relates to the previous point, too. There is a difference in that the number of crimes recorded does not compare directly with the number of cases that are reported. A case might have multiple crimes in it—in fact, many of them do—which is why there is a big gap between 255 and 120-odd; there is also the number of crimes that the police considered, detected or cleared up over the year, although that does not appear in the report.

Looking back, it is a movable feast, as you suggest, and one is always looking at detection rates at a particular point in time. It might be that you can delve back into previous years. I understand that the number of cases that were resolved in the following year—that is, the year after the year that the report refers to—approached 70 per cent. However, last year—2014-15—the figure increased, with almost 75 per cent of crimes that were recorded being detected by the police.

Michael Russell: Excellent work is done by the police and by the Procurator Fiscal Service. As you know, I have a particular passion for the issue, having been involved at an early stage in establishing the partnership for action against wildlife crime in Scotland. One issue is the public understanding of what wildlife crime is, and one area that reporting perhaps does not pick up on is the link to other criminal activity, which is important in understanding wildlife crime. The image of wildlife crime might still be that it is an odd aberration by an otherwise wonderful gamekeeper, but that does not touch on some of the things that go on. I would like to know from all three of you what might be done to get that across, and whether the reporting system for convictions could assist us in helping the public to understand that such activity is often linked to other—sometimes very serious—criminality.

Assistant Chief Constable Graham: That is a fair challenge with regard to how we get that information across to people. I am not sure that, if we expanded or developed the system of recording and reporting crime and conviction data, that picture would necessarily come through. Tom Dysart might be able to say more about that.

At present, although there is a link with other types of criminality, including, sometimes, organised criminality, that does not apply to the majority of incidents. We want to push that message hard because it gives us an opportunity to intervene and identify individuals through other means—we spoke about that last year and might go on to speak about it today. Rather than focusing on the recorded crime and conviction data, we would probably do better if we pushed that message through public information campaigning, through our contact and engagement with other organisations and through the work that we routinely do in the media.

10:15

For instance, last year we ran a high-profile information campaign that targeted the priority areas and aimed to inform members of the public and other interested parties about what wildlife crime is, exactly as you describe, including the breadth of such crime, its nature as we understand

it and who is likely to commit it. That was an attempt to increase understanding among members of the public so that they can identify wildlife crime as or before it happens, and come forward and report it.

The feedback from the campaign, which we hope to repeat with Government support this year, has been extremely positive. That is probably a more fruitful way to progress the issue that you raise.

Detective Chief Superintendent Scott: I have been in post, with responsibility for this particular portfolio, for approximately six months, and I am hard-pressed to think of any incidents that have taken place in that time that were linked to organised crime in the classic sense of the phrase.

People are aware of a development in the trade in endangered species that is potentially cyber enabled—we are starting to see one or two more such incidents, which could have international links. There are a number of inquiries going on just now in that regard.

With regard to links to other crime, if I understand your question correctly, Mr Russell—

Michael Russell: It is not a question about all crime. Those who commit some wildlife crimes may often be involved in other levels of criminality. I am not saying that they are involved in organised crime, but the link is usually pretty well made with regard to wildlife crime. Presumably you would agree with that.

Detective Chief Superintendent Scott: Yes.

Michael Russell: Such crime is not an isolated incident. The public tends to think of wildlife crime as being something off to one side, but it is important to view it in the mainstream of criminality, if I may put it that way.

Tom Dysart: I agree, which brings us back to the convener's question about identifying some way of exploring granularity in relation to such cases. Depending on the type of offending, a person who commits the crime may have no criminal record and there may be no other forms of criminality involved, but it is not uncommon for a wildlife crime to be reported alongside other offences.

Typically, we identify firearms offences in such investigations. Some offending may involve threatening behaviour or assaults, or other charges that are not related to wildlife crime. Such offences are all prosecuted together because we look at the overall behaviour of an offender. Some offenders will have a fairly significant and wide-ranging criminal record that is brought to the attention of the court.

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): To follow on from that point, do you have any evidence of people hunting roe deer in particular in the environs of towns and cities, with dogs such as lurchers? I have heard that that is going on. I presume that that is not only for sport but for the meat, which can be sold to a restaurant or a butcher. That has ramifications for public health, if those animals are finding their way into restaurants through the back door. Have you any evidence of that or any comments on that practice?

Assistant Chief Constable Graham: We have certainly picked up intelligence on deer coursing with dogs, which we had not heard of before. It is uncertain whether people are doing that for commercial gain and whether the deer are entering the food chain. As far as I am aware, we have had no successfully detected cases on the basis of intelligence that we have received, but it is highly likely that such activity is happening.

Dave Thompson: I have been told that it is. People are reluctant to report it because the characters who are involved in that sort of thing are pretty unsavoury and you would not want to cross them, so there is a difficulty with getting evidence.

Detective Chief Superintendent Scott: Through our prevention processes and awareness raising, we encourage people to report cases and to have the confidence to do that. We are more than happy to receive any intelligence and reporting that come our way and we will investigate that with the appropriate vigour.

Assistant Chief Constable Graham: There have been investigations. This takes us back to Mr Russell's point about the wider connections to criminality. It is generally well held that, if people are willing to step over the line and break one law, they are more likely to break other laws. That is founded in academic research as well.

Our intelligence about and our experience in general of people who hunt with dogs—I am talking not about organised fox hunts but about hare coursing et cetera, and there is probably a read-across to the targeting of badger setts—suggest that they could be involved in other types of criminality. I fully accept that that might dissuade people from coming forward.

Claudia Beamish (South Scotland) (Lab): Good morning. I am not sure who is best placed to answer this question, so I put it to the whole panel. Can you share with us any information that is in the public domain about the possible export of birds of prey or eggs for use in hunting in other countries? Can you work and are you working with customs officers on the issue? I am interested to

know whether the anecdotal information that I have been given is accurate.

Assistant Chief Constable Graham: There has been intelligence on that. There have been cases where wildlife crime offences have been detected in what is happening or will happen to birds that have been kept in bird of prey centres. I am not aware of any cases in Scotland where we have identified an international market or trade in birds of prey or eggs, but we are alive to the issue and we have close relationships with the United Kingdom border force and the immigration authorities on the subject.

This links back to the endangered species issue. That is probably more prevalent in terms of intelligence and cases coming to our attention, but we could identify offenders through the same route. I do not know whether Sean Scott is aware of any cases that I am not aware of.

Detective Chief Superintendent Scott: We have one or two on-going investigations that broadly touch on the subject. On the issues and the international connection, we are working with the UK border force to develop and enhance our training in order to raise awareness and link into its work. There will be meetings shortly to develop our awareness-raising training. As I said, we have a couple of live investigations that loosely touch on what you asked about.

The Convener: We will move on to the next topic with Jim Hume.

Jim Hume (South Scotland) (LD): Good morning, everybody. We all appreciate the work that you are doing and we are seeing some improvements in the conviction figures, which have increased from 37 in 2013 to 46 in 2013-14. As Graeme Dey mentioned, in the past two reports, the numbers of recorded crimes have been in the same ball park and the numbers that are reported to the Crown Office and Procurator Fiscal Service have been fairly similar.

Previously, the committee has been concerned that a high percentage of wildlife crime cases are marked for no action in comparison with the percentages for other crimes. In that regard, there has been no improvement—in fact, the figures have gone slightly the wrong way, from 21 to 22 per cent. I am interested to hear your views on why there has not been the improvement that we would like to see. Why are so many cases marked for no action?

Tom Dysart: I should explain that, in last year's report, the COPFS figures covered the calendar year 2013. This year, we have provided figures that are in line with those of the other organisations that contribute, so they are for the financial year 2013-14. That means that there is a nine-month overlap, as the figures are for April

2013 to March 2014. One of the consequences is that the number of concluded cases has increased significantly, and that is reflected in the increased convictions figure. However, the cases that are marked for no proceedings are substantially the same cases as the committee discussed last year.

As I think my colleague explained then, the reason for taking no proceedings in wildlife crime cases is almost inevitably that there is insufficient evidence or that investigation identifies that no crime was committed. The percentage of wildlife crime cases that were marked "no proceedings" was about double the percentage overall for the COPFS in the same reporting period. However, the proportion of discretionary "no pro" markings was significantly less, which reflects the presumption that we apply—that prosecution will follow if we can establish sufficient evidence.

The difficulty with wildlife crime is that it is not always clear that a crime has been committed. For example, someone might report an offence on the basis that they have seen a bird or an animal in a trap or snare, but that fact might or might not constitute an offence, and it is often only after investigation that that is identified. The police will screen out cases before reporting to the COPFS. However, on the basis of our assessment of the information that is available and, more often than not, the further investigation that we require, we can identify that even some cases that are reported to us do not amount to a crime under wildlife crime legislation.

In other situations, it might be that a crime was committed but there is insufficient evidence to prove that it was committed or that a particular accused committed it. It is for those legal reasons, by and large, that cases are marked as "no pro". There is a perception issue, but there is also a legal issue, which is partly about the difficulties in securing evidence and partly about the fact that much of the wildlife crime legislation is subject to exceptions. Before proving an offence, we need to take account of the fact that the exception might be satisfied; if it is satisfied, no offence is committed.

Jim Hume: It would be interesting to hear from Sean Scott or Malcolm Graham as well.

Assistant Chief Constable Graham: Tom Dysart has covered a lot of the legal issues. I suppose that the question then is why it is difficult to get a sufficiency of evidence. It is the police's job to gather all the evidence available and to use every technique available in doing that. Wildlife crime does not lend itself to being readily reported, and we just spoke about the recording issue. In wildlife crime, there is no victim to come forward and report for themselves, because we are dealing with an animal or a plant. When it appears on the face of it that there has been a wildlife crime, quite

often it turns out that there are other explanations that cast doubt on that.

When we identify that a crime has occurred, identifying suspects can be difficult, because wildlife crimes are often identified some time down the line after they occurred. We have to look back at what happened in circumstances where, if there are witnesses, they will be more likely to have been involved in the crime than to have been innocent bystanders who would come forward. People commit wildlife crime in a predetermined rather than a random way. Given all those circumstances, it is quite a difficult crime type to gather evidence for.

However, it is remarkable that, in the face of all that, we manage to find ourselves in a position where roughly two thirds of the offences that are recorded are thereafter reported to the Crown. The threshold for the police doing that is high: we have to satisfy ourselves that a crime was committed and that there is a sufficiency of evidence technically for us to pass the case on to the Crown, which assesses whether the case is suitable for prosecution.

Graeme Dey: The police have built up a fair degree of expertise in this area. You have specialist wildlife crime officers and you make a judgment on whether there is a case to take forward. However, a high percentage of cases are still being rejected. Is there some sort of disconnect between the Crown Office and the police as to what is and is not appropriate?

Assistant Chief Constable Graham: I do not think so. What you describe is probably not uncommon across a range of crime types. I deliberately said that we assess whether, in our view, there is a technical sufficiency of evidence. The jobs of the police and the Crown are different, but we work closely and many cases result in the decision being made that we will report them. Such cases often involve a long-running or complex inquiry that has involved interaction between the police and the Crown during the investigation. That allows the Crown to assess all the complexity of the evidence in a considered way and perhaps to consult other people before making a judgment as to whether further inquiry is necessary or proportionate or whether a decision can be taken about prosecution.

I do not view it as a failure or breakdown in any sense that there is sometimes a difference in our assessment of technical sufficiency. We may err on the side of reporting an incident to the Crown and seeing what it takes to get the case into a courtroom—although that is not the job of the police—as opposed to making that judgment earlier and reporting less just to make the figures look more aligned.

10:30

Claudia Beamish: I am sorry if I have missed this point in the report but, for the record, will you say what proportion of the incidents that are drawn to your attention do not proceed because of insufficient evidence? What proportion do not proceed because what was reported was not a crime?

Assistant Chief Constable Graham: I do not have that data. We might be able to look at that for future years. The only way to get that information would be by going through each crime. Such data is not available for other types of crime, which occur in far greater magnitudes than the incidents that we are discussing.

If it would help people, and to respond to the convener's opening comments, we could consider including such information in future years, given the relatively low number of wildlife crimes. We could assess that, although it would require an individual look at every case.

Claudia Beamish: That would be helpful, as there might be resource implications. If there is insufficient evidence, a future committee or the Scottish Government might decide to examine what forms of evidence are valid—in discussion with you, of course.

Assistant Chief Constable Graham: If the assessment after investigation was that a crime that had been recorded was not a crime, and if there was evidence for that, the incident would be marked as not being a crime and would not be recorded as a crime in the figures down the line—although it might have been recorded as a crime during the investigation. That returns to the point that some of the figures are dynamic. That is the ethical and most appropriate way of recording crime; it is based on our understanding of what happened at the time and on taking at face value the reports that people made while we go through the investigation.

Jim Hume: I will finish off the issue by asking about different crime types. The Crown Office and Procurator Fiscal Service stated today that the number of wildlife crime cases that are marked for no action is—as I think we knew—about double that of normal cases. Malcolm Graham mentioned that there is a similarity with some other types of cases. I am thinking about environmental crimes and so on. Are there any other crimes that are similar in that it is difficult to find evidence?

Assistant Chief Constable Graham: Definitely. On detection rates, in cases where we have identified a suspect and we feel that there is a sufficiency of evidence to report the matter to the Crown, the case will be marked as solved. That applies to less than 40 per cent of all crime in Scotland. If we consider acquisitive crime such as

housebreaking—that is often a difficult crime to solve, perhaps for some of the same reasons—the figures will vary, although they are probably around 35 to 40 per cent in most areas.

On serious sexual crime, we receive about 2,000 reports of rape a year. That figure has increased dramatically over the past three years. We solve about 75 per cent of those cases. To get to that stage, we put in extensive effort in terms of resources and technique, and we work hand in glove with the Crown Office and other agencies.

For homicide, the figures are far lower, but the impact is obviously huge, with devastated families. Thankfully, the level has gone down to about 55 homicides a year in Scotland over the past two years or so. We would expect to solve 100 per cent of those cases, which at the moment we are doing, so there are differences with different types of crime.

For wildlife crime, solvency rates—in terms of sufficiency of evidence to report to the Crown—are higher than those for the vast majority of other crimes that are reported across Scotland.

The Convener: That is interesting.

Claudia Beamish: On penalties, I want to highlight for the record something from the 2014 report that the panel will be only too well aware of. As regards wildlife crime offences, the report records that, of the 60 cases with a charge proved, there was one custodial sentence, there were four community sentences, 43 people were fined and an “other” penalty was given in 12 cases. In the five years from 2009-10 to 2013-14, there have been three custodial sentences, with an average length of 134 days, and 164 fines at an average level of £420—I emphasise that figure.

I have highlighted those figures because my question to the panel is this. Are the low numbers of custodial sentences that are imposed by the courts and the low levels of fines sufficient to act as a deterrent? What is your view on the proposal in the recent Poustie report that the maximum penalties for wildlife crimes be increased? As you will know, the recommendation is that the increases should be significant. I would value your comments on those points.

Tom Dysart: I contributed to the Poustie report so I obviously agree with the recommendations.

The penalties for wildlife crimes are variable, but for some of what I regard as the more serious crimes, they are significantly lower than we would expect in other areas of criminal behaviour. As the report explains, the maximum penalty that is available sets the tariff for the very worst crime that could be committed by a persistent offender, so that is the starting point that the courts will take. If they are dealing with a first offender and taking

account of mitigation, the tariffs that are imposed in practice will generally be lower.

A significant development in the past year has been that a custodial sentence was imposed for raptor persecution. I am sure that that will alter behaviours. However, something’s ability to act as a deterrent is influenced by our ability to detect crimes and enforce the legislation and by the penalties. We need to consider that whole range of aspects.

Increasing sentences will have an impact. Some of the legislative changes that have been introduced over the past few years have changed behaviours and we and the police—as well as the Scottish Society for the Prevention of Cruelty to Animals—are working together to look at how we can improve detection, prosecution and conviction rates.

Assistant Chief Constable Graham: I am long enough in the tooth in a policing sense to know that it is never wise to start making comments about individual decisions on case disposals, but across the piece I agree with Tom Dysart. It is a helpful deterrent that there is a profile against cases such that there has been a proportionate outcome to a conviction, and I think that that has been the case. It is hugely positive that there has been a custodial sentence in a case. It received widespread publicity, and I do not think that we need many cases such as that one to get across a strong message that that outcome is likely to happen.

We are solving and reporting a sufficient number of cases that that is a deterrent. However, that is not necessarily the case across the range of crimes, some of which I discussed earlier. We heavily support the range of disposals being proportionate to the crimes and the suggestion that a consolidation of the legislation would assist with that.

Detective Chief Superintendent Scott: Another of the wildlife crime penalty review group’s recommendations is to link wildlife crime to the revocation of firearm certificates. Although firearms legislation is reserved to Westminster, we will use evidence from wildlife crime cases, where we can, to consider whether a firearm certificate should be issued or revoked. That is another positive step forward.

Claudia Beamish: That is helpful. I think that another member will pursue questions on licences later in our discussion.

I will move on seamlessly—I hope—to a question about resources. Will you comment on why the annual report does not provide information on the resources that are available to and used by Police Scotland and the Crown Office and Procurator Fiscal Service to combat wildlife

crime? What pressures will there be on those resources in the coming years and how do you plan to respond to them? I am particularly interested in the training of officers and the number of person days that are involved in investigations, but there might be other issues that you wish to cover.

Assistant Chief Constable Graham: I am happy to cover the police issues. We spoke about the subject last year as well.

The wider context is that, although it is hugely important and it is a driver for other officers in the organisation that we have a centralised leadership through me and Sean Scott co-ordinating the work with some limited but effective support, the structure is devolved out to the local areas and there is work within local policing teams to ensure that we do not create some sort of centralised national unit that works in isolation. That is important because of the different nature of the threat to urban areas and the different nature of offending in different parts of Scotland.

The way that policing operates in a partnership context in different areas means that I am certain that the devolved model of having a wildlife crime liaison officer in each division, some of whom are full time and some of whom are part time—an increasing number are full time compared with last year—is the right model. However, every officer in Police Scotland who is deployed on the front line needs to know that they have a role in tackling wildlife crime. Therefore, there is a scale of training and awareness raising that we do and will continue to do.

I do not feel that there is any increasing pressure on that. The establishment of Police Scotland has brought a real improvement in grip on the national co-ordination, a clarity to our intent and purpose in relation to wildlife crime and an ability to co-ordinate and coalesce people for training consistently but allow them to be deployed locally to support local officers to get on and do the work in their local areas. That is working well. It is working much better than it has done in the past, and we are getting the message through. Public awareness campaigns always have an internal aspect to them to ensure that our officers and staff are aware of what is happening.

You asked why that data is not recorded in the report. I checked to see because I thought that we had put something in the police section about the resource. There is no reason why we would not do that.

Claudia Beamish: Is it there?

Assistant Chief Constable Graham: I do not think that it is.

Claudia Beamish: No, I did not think that it was.

Assistant Chief Constable Graham: I was just looking to see. It was not omitted from a lack of intent or any reason that we would not want it to be there. If it is helpful to have some description of the policing model, the resource that is dedicated to it and the expectation of wildlife crime being a part of people's roles, I will be happy to include that in future years.

Claudia Beamish: That would be helpful to the committee.

Detective Chief Superintendent Scott: I will give the committee some reassurance on the training aspect, building on Mr Graham's comments. It will not be in the report but, in March last year, we held the first wildlife crime awareness course at the Scottish Police College. It was attended by officers from every division including the British Transport Police, and it was a basic introduction to wildlife crime.

All detective officers now receive an input on wildlife crime in their initial investigators training, and we are also building it into probationer training. We had a continuing professional development event on wildlife crime enforcement on 24 September. All the partners were there—the border force, the Crown Office, Science and Advice for Scottish Agriculture, and Scottish Natural Heritage—and a number of areas were covered.

10:45

There have also been a number of local training initiatives with partners across the country. I mentioned earlier our Convention on International Trade in Endangered Species of Wild Fauna and Flora course, which we are developing with the UK border force, and we have all the information on our intranet and guidance booklets. A raft of education and training is on-going, and that will continue into this year. I give the committee that reassurance.

Tom Dysart: It is easy to indicate what the resource at the COPFS is. I am a member of the unit, and our team has four lawyers. The area is of particular interest to the Lord Advocate, who receives fairly frequent briefings, and we have direct access to a senior Crown counsel, which is pretty unusual in the context of what is mainly summary crime.

I cannot pretend that our case load is not challenging, but we deal with only fewer than 200 wildlife and environmental cases a year among the four of us. That compares with around 300,000 cases across the COPFS. I think that we have between 300 and 400 lawyers in the department.

Therefore, there has been a significant allocation of resource to the unit by the COPFS.

Claudia Beamish: It would be helpful to take up the offer of the information being recorded for not only our successor committee but the Parliament, the Government and the public.

Assistant Chief Constable Graham: It might well be in future years. I do not wish to turn this into a discussion about the wider future and the funding pressures on Police Scotland but, as members will be aware, it might well be that, down the line, the operating model and the resource pressures on Police Scotland will change substantially. However, the approach is mainly led by police officers and, as members will be aware, the number of police officers in Police Scotland has been consistently high. The issue is what we use them for. That has already been described in relation to wildlife crime.

Claudia Beamish: Thank you. That is helpful.

Detective Chief Superintendent Scott: On our structure and our approach to wildlife crime, I attended the most recent meeting of the UK partnership for action against wildlife crime group in London. The group is chaired by Chief Constable Prince of Dyfed-Powys Police, who has the national lead. There were comments, which are in the minutes, about how envious people are of our structure and our approach to wildlife crime compared with those of our partners down south. I pass on that anecdotal praise from down south, which might give reassurance.

The Convener: Graeme Dey and Jim Hume have supplementary questions.

Graeme Dey: With the best will in the world, whatever resources the police put in, it is challenging to detect and deal with wildlife crime. Mr Graham touched on partnership working. What efforts—if any—have gone into engaging at a national level with the Scottish Gamekeepers Association, for example? What local initiatives might be developed to have gamekeepers assist us? I am aware of efforts that were made in the old eastern division of Tayside Police to establish that. Is any work going on in that context to help you with what you are trying to achieve?

Assistant Chief Constable Graham: That is hugely important to prevention and the identification of cases. We would not be able to do that if we did not work with the organisations that are leading and the people who are at the heart of where most wildlife crime arises. However, many partnership organisations in the area have different perspectives because of their *raison d'être*, and working collectively is sometimes challenging.

Mr Russell mentioned the establishment of the partnership for action against wildlife crime, which we are wholly committed to being a part of, and I would argue that it has made a continued contribution. Some of the organisations that have been mentioned are represented in the partnership and some are not, and there are some tensions between different organisations and some challenges. Our view is that we probably agree on 70 or 80 per cent of what needs to be done, and we need to get on and deal with that as opposed to the points that people perhaps disagree with.

We work closely with all the organisations that represent landowners and those who use land for gaming purposes to try to ensure that they are doing everything that they can, and we have probably seen a bit of a shift. To be honest, that is perhaps not because of police pressure but because of public pressure and the perception that some of those organisations were not doing enough, or were perhaps more part of the problem than part of the solution. We have seen a willingness for people to come alongside and actively contribute to getting messages out to their members.

Jim Hume: I heard what Sean Scott said about the big training event. Are new recruits who come into the police force given wildlife crime awareness training or other training on wildlife crime? If so, how much do they get?

Detective Chief Superintendent Scott: A review of the structure of probationer training is going on, and wildlife crime will certainly be part of that going forward. There is a training campaign to make sure that everyone from probationers to detectives knows what they need to know about first response and investigation.

Sarah Boyack (Lothian) (Lab): I would like to ask about hunting with dogs and fox hunting, which are mentioned in the annual report in the section on wildlife crime priority areas. Last summer, there was a presentation to parliamentarians from the League Against Cruel Sports. Following the viewing of the video, the minister passed it on to Police Scotland, I think, asking for comments and looking for action.

I have two questions. First, why have there not been any successful prosecutions of mounted hunts for hunting foxes with dogs? Secondly, what actions have the police taken since the minister raised the issue with you in the summer of 2015?

Assistant Chief Constable Graham: The issue has become a live and current one over the past year or so, so it is helpful that it is included in the report. We have been doing an awful lot of work to try to recognise where the opportunities are to identify where offences are being committed and

to do what we can to prevent them in the first instance. Sean Scott has dedicated a lot of his time and effort to working with the various groups, so I will ask him to speak about that.

On the information that was passed on, we have spent a lot of time and effort reviewing all the material that has been given to us. It is safe to say that what the minister passed on was only part of the picture. When we reviewed the wider evidence in the case, it did not lead to us being able to establish a crime. The nature of the legislation and what is required to prove offences mean that we have to look at all the available evidence, as we would in any case, and not just the evidence that is presented to us by one particular party.

There have been a number of cases—we have looked at such cases in conjunction with the Crown—in which, when we considered the whole circumstances, there has not been a sufficient set of evidence to prove that a crime has occurred. That might well lead us down the route of deciding that the legislation is not as effective as it might be in terms of its intended purpose. We were therefore pleased to support the decision that there would be a review of the legislation. That is now under way and we look forward to seeing the results.

I ask Sean Scott to say a bit about the specific work that we have done with some of the hunts and other groups on prevention and attempts to identify criminality.

Detective Chief Superintendent Scott: I suppose that the crux of the matter is the allegation that packs are not flushing to guns. That is one of the main areas of concern. I chaired a meeting with the heads of the Scottish mounted foxhound packs on 29 October, just to work with them on a voluntary basis and say, “Let’s demonstrate to the public that your fox control activities are legal and well intended, and that we’re working with you to make sure that that is clear.”

We are coming up with a voluntary protocol whereby they will identify a single point of contact that we can engage with on the day of a hunt and they will declare who the guns will be on the day. That will be prior to the hunt so that we can check and ensure that they are firearm or shotgun certificate holders and the hunt can be conducted in a proper and legal manner. They were receptive to that. The Scottish Countryside Alliance facilitated that meeting. The legislation does not require them to do that—it is a voluntary protocol. We will continue to work with them to ensure that all matters are and appear to be transparent and legal.

Sarah Boyack: It is good to hear about that partnership work. An issue for Lord Bonomy’s

review will be the extent to which the law is able to deal with fox hunting, given how it is crafted. Your work with different groups is interesting. It has been suggested to me that the absence of successful prosecutions does not mean that the law has not been broken; rather, because of how the law is worded, the flushing exemption might be being too widely interpreted, leading to that element of the law being difficult to enforce. It would be interesting, certainly for next year, to see what the consultation delivers in practice. I think that nine of the 10 former mounted fox hunts still operate in Scotland, and there is a lot of public awareness and concern about the issue.

Detective Chief Superintendent Scott: The review is a positive step. I do not know whether Tom Dysart has any thoughts on the legislation, but we will continue to engage and we will see how matters pan out.

Tom Dysart: Given that Lord Bonomy will carry out a review of the legislation, it would not be appropriate to comment at this point. All I would say is that, when we are assessing a case, we consider the evidence and apply it to the terms of the legislation that is in force. If it appears that, taking account of exemptions, the legislation is being breached, we will prosecute; if it is not being breached, we will not prosecute.

A difficulty in the perceived intention of the legislation was identified fairly quickly after it was passed. As I said, as prosecutors, whatever our personal views of what the law is or should be, we apply what the law is on paper.

Assistant Chief Constable Graham: As Sarah Boyack said, there is a wide level of public awareness about the matter. That has resulted in a significant volume of correspondence and contact with the police, so we are fully aware of the issue, too. That contact is not just from groups, including those were mentioned, that are against hunting, but from hunt organisations, which have a different opinion on the law that must equally be considered. We have done a lot of work around the issue, and we are acutely aware of the level of interest.

Sarah Boyack: I was keen to get those issues on the record, convener. Obviously, because of the timing, this will be a matter for consideration in the next session of Parliament. In the minister’s letter, it is clear that there are offences on flushing and the killing of foxes. We would probably want to focus on ensuring that that set of offences is being properly investigated and that the law is capable of being interpreted when those offences take place.

The Convener: I was not involved in the first parliamentary session when the law was passed. Do landowners agree to the routes over which mounted hunts take place?

Detective Chief Superintendent Scott: I am sorry, but I did not quite pick up your point.

The Convener: Do the owners of the land over which mounted hunts take place agree that their land may be ridden or hunted over?

Detective Chief Superintendent Scott: My understanding is yes. I do not have specific details about particular hunts, but I have not been made aware that any landowners are objecting to the hunts taking place. I can find out more about that.

The Convener: I was thinking less about them objecting and more about them encouraging hunts to take place over their land.

Detective Chief Superintendent Scott: Are they encouraging hunts to take place over their land? I do not know.

The Convener: Lord Bonomy might want to look at that. Does anyone else have a supplementary question?

Alex Fergusson (Galloway and West Dumfries) (Con): I do. I was going to ask a question, then I was not going to and now I have decided that I want to come in—I am in that frame of mind, convener.

I was the convener of the Rural Development Committee when the bill went through the Parliament. It is important to recognise that an element of predator control is involved—indeed, part of the reason for hunting as it exists is for predator control. The fox has no natural enemies, other than man. Therefore, I suspect that many landowners, farmers, tenants and others are very keen to have a bit of fox control carried out on their land by whatever method.

As I think that everyone has said, there is a high level of public interest in the issue, which is entirely understandable. Given that level of interest, there is also a high level of monitoring of mounted fox hunting activity by people with varying views on it. Even with that level of public interest and monitoring, there is no evidence to suggest that the mounted fox hunts that exist are acting outwith the legislation that is in place at the moment.

11:00

Detective Chief Superintendent Scott: That is correct.

Alex Fergusson: I just wanted to get that on the record. Thank you.

The Convener: Alex Fergusson mentioned landowners encouraging mounted hunts over their land in the interests of vermin control. The issue of vicarious liability has come up previously in relation to raptors and so on. The issue of crimes

taking place via the mounted hunt or whatever is one thing, but landowners who allow crimes to potentially take place on their land have a part in all this as well. Do you agree?

Assistant Chief Constable Graham: As Tom Dysart said, while the review of the legislation is on-going it would be best to let that play out and to interact with it if we get the opportunity to do so, rather than pre-empting things. If I take the point of your question correctly, you are suggesting that there might be a change in the legislation to replicate some of the responsibilities that relate to other wildlife offences.

The Convener: I am sure that Lord Bonomy will listen to all sorts of evidence, so perhaps some of the things that are said in this committee might contribute to his review.

Assistant Chief Constable Graham: I am sure that that will be the case.

Graeme Dey: I want to get Police Scotland's view on the issue of the suspension of general licences. Is that a useful tool? Will it act as a deterrent? In practical terms, how do you ensure compliance with the measures that are being brought in? I think that there are four cases so far.

Assistant Chief Constable Graham: In general, we are supportive of the facility for general licence restrictions to be put in place. General licences allow landowners or land managers to carry out a range of acts that would not be legal if they did not have the licence. Therefore, the removal of that licence imposes a substantial restriction on their ability to conduct the activities that they want to, commercially or otherwise. I think that that is probably a better deterrent than anything else that we have discussed previously in this field.

It is probably too early to judge the effectiveness of the measure as there has been only a small number of cases. We had to push hard with SNH to ensure that we arrived at the position that we are in. As you might be aware, some of that is still being tested in the courts in terms of the appeal process. We have not reached the point of monitoring yet, but we would be keen to ensure that we do that, once we get further down the line.

Graeme Dey: I am sure that you have given some thought to how that monitoring would be done. It could be quite challenging and resource intensive.

Assistant Chief Constable Graham: Yes. Sean Scott might want to comment further on that.

Detective Chief Superintendent Scott: It will be challenging. We will continue to work closely with SNH on that matter. Realistically, we rely on the help of others to do that. We will discuss the issue with others over the year and consult them

on the requirement for those who are using the licence to register with SNH, with us having access to that database. We will continue with that partnership working.

Graeme Dey: You referred to the need to push SNH to get the four cases that you mentioned. I think that 19 bird of prey crimes were committed in 2014. Without going into specifics—that is, naming names—are there any other cases pending?

Detective Chief Superintendent Scott: We have a number of investigations concerning birds of prey. We are hopeful of positive action in the not-too-distant future. Those are live investigations, so I would not want to say any more than that, but we have some positive action coming up.

Graeme Dey: Are those cases post 2013-14?

Detective Chief Superintendent Scott: Yes.

Graeme Dey: What about the ones that occurred in 2013-14? Could any of those be brought forward, or are there just those four cases out of the 19 crimes that were committed?

Detective Chief Superintendent Scott: In terms of reporting, I am not aware of any.

The Convener: We move on to another matter related to birds of prey.

Dave Thompson: This concerns the cases involving raptors up in Ross-shire. I have a couple of letters from Police Scotland in that regard, and I want to tease out one or two little points. One of the letters refers to the

“consequence of a ... use of a banned substance”

and to the belief

“that the raptors may not have been the specific target”.

The second letter makes it very clear regarding one case that

“there are limited opportunities to progress unless someone comes forward with information.”

You are probably aware that I have asked for some kind of interim report into the initial handling of that case. I was told in that letter that

“Police Scotland does not produce ‘interim reports’ during a live investigation”.

Given that the case in question could be live for the next 20 years, we are never going to get an opportunity to consider how things were initially handled in relation to the matter. There are concerns in the community and elsewhere that there was perhaps some unnecessary delay and so on. Given that there will be

“limited opportunities to progress unless someone comes forward”

with evidence, have you carried out, or do you plan to carry out, any internal investigation as to how the investigation itself was initially carried out? If so, have you learned any lessons from that? Will you be able to make any of that public at any point?

Assistant Chief Constable Graham: We had a fairly lengthy discussion last year about the current state of the case at that stage. Some similar points were raised about the handling of the matter in the media—that was about press statements, if I remember correctly. There was a desire to review our approach.

At the heart of the letter to which you have referred is the point that having the police produce a report is not necessarily the best way to address the issues. However, I would be very happy to be involved in something in future with a range of organisations and interested parties, including yourself, whereby we are able to sit down and gather what the concerns are. We are aware of most of them. We could work through how we could do things differently in future, and we could achieve that even within the scope of a live investigation, which would not require the police to produce a report as such. As I say, producing a report might not be the most effective approach.

As I reported last year, we have done a number of things internally to review the investigation at senior detective level, which is unprecedented in a wildlife crime investigation. We had what we call a major investigation advisory group meeting, with a process around that. That has been subject to both peer and senior officer review, assessment and support. Notwithstanding all that, we have not arrived at a position where we have been able to solve the crimes, as it were, although that is not to say that we will not in the future. Therefore, I would still be cautious in ensuring that we do not do anything to prejudice any potential future cases.

A lot of information is still being received about the case. Much of that is statements or reports along the lines of, “Everybody knows who’s done it”, “We all know what’s gone on”, or “Everybody knows where the police should be looking.” I can assure the committee that we have followed up every statement in which we can identify the individuals involved. That includes people coming to us or people whom we have been made aware of who have made such statements publicly or privately. The committee might have had feedback indicating that people are surprised when we have taken a statement from them after quite some time has passed.

Unfortunately, in every single case, the statement has turned out to be without substance. We have spoken to everybody we possibly could and, although there is a general perception that

everybody knows who did it, no one has been able to give us their names. Given the huge effort that has gone into—and continues to go into—the inquiry, we should have a caveat here because of public concern about perceived police inaction. The case is still sitting with the detective superintendent in Inverness, who is the lead investigator. I have been assured by him, as recently as last week, that there is still an active review and engagement on any potential lines of inquiry that come to light.

A short documentary was recently aired on the internet that interviewed a number of people. We picked up a number of lines from that, which were similar to previous statements in which people asserted that everybody knew who had done it. However, no one in the documentary knew who had done it, because we have spoken to them all.

Dave Thompson: You suggested a meeting between a range of bodies and parties, perhaps including myself. It would have to be before 23 March, because I am not standing again, although I am sure that my successor—whoever that is—would be happy to take part. Such a meeting would reassure people. Although the public accept that the police continue to look into the case and that they would dearly like to get any evidence that would allow them to conclude it, there are questions about how the police went about things at the beginning. Such a meeting would be really useful because frank discussions could take place and the issue could be talked through, without you having to divulge things that might prejudice the case. I would welcome such a meeting, if you are offering one.

Assistant Chief Constable Graham: I am, and I offer to do it before 23 March.

Graeme Dey: I want to get a feel for where we are at with raptor persecution. There is a view in some quarters that the extent of raptor persecution is way beyond that which is suggested by the recorded figures. Given their experience in this area, I would like to hear from ACC Graham and DCS Scott whether that is a fair view. What is your feeling about the issue in a general sense and not just in relation to the recorded figures? Is raptor persecution increasing or decreasing?

Assistant Chief Constable Graham: Again, we touched on this last year. The scientific or expert evidence about the absence of certain species appears to be mixed. I am not an expert in that and I am happy to listen to experts when they offer a view. If the absence of a species that we would expect to see in a certain area strongly indicates that a crime is happening, I am very interested to look at that. We have been doing that in those areas and through the raptor group. It may well be that there is more work to be done in that respect.

Set against that is the relatively low level of reporting, in the context of all crime. I do not wish to dismiss the importance of every crime that is identified or every dead bird that is found but, given the level of focus, which includes the dedicated focus of interested groups with a specific role in bird conservation or preservation or specific raptor groups, the low level of information that comes to us as intelligence or reports only leaves me thinking that, with all that effort, we are not missing the vast majority of what is going on here.

11:15

At a previous meeting, we had a discussion about the perception that reporting levels were the tip of the iceberg. My view on that has not changed. More work needs to be done and there is, undoubtedly, a level of underreporting and therefore underrecording, but we are catching a significant amount of it. We are doing everything that we can to increase public awareness and to work with those who potentially would have a motivation to commit such crimes to dissuade them from doing so and to make it an unattractive option for them.

It is increasingly likely that, if raptor crime is going on, we will hear about it. That leads me to think, in relation to your final point, that the problem is not increasing; rather, it is more likely to be the case that we are hearing about a greater proportion of cases and probably less crime is happening.

Graeme Dey: It was useful to get that on the record. Thank you.

Alex Fergusson: My question follows on quite well from the point about the steps that can be taken to further identify and prosecute wildlife crime. The issue goes back almost two years, to March 2014, when the Government produced a consultation document that looked at further powers for the SSPCA. As everyone will be well aware, various viewpoints were submitted.

After its discussion of the 2013 report, the committee wrote to the Government to express sympathy with Police Scotland's view that accountability issues could arise if the SSPCA were to be given greater powers. We concluded that letter by saying:

"The Committee looks forward to the Scottish Government's forthcoming decision".

We still look forward to that decision, because we have not had one yet. Are you aware of any further discussions that have taken place in the intervening time about the further involvement of the SSPCA? Are the discussions still live or has the proposal died in the water?

Assistant Chief Constable Graham: There have been on-going discussions, and I have spoken to the Government about the matter. We, too, still look forward to hearing about the decision. There is perhaps not a huge amount more substance to be added to the debate. I do not think that anything has changed in relation to our view or the context in which that view was placed when it was given.

Alex Fergusson: An interesting statistic in table 11 of the 2014 wildlife crime report is that the number of cases investigated solely by the SSPCA and reported to the Crown Office and Procurator Fiscal Service has reduced year on year. In 2009-10 the figure was 36; in 2013-14, it had halved. Is there a rationale for that reduction?

Tom Dysart: Before Mr Graham comments, I should mention that I have reviewed the figure in that period against the number of cases that COPFS received. According to the reports that we received, the number of cases was 10.

Alex Fergusson: What period were those 10 cases received in?

Tom Dysart: In the period 2013-14.

Alex Fergusson: You received 10 rather than 18 cases.

Tom Dysart: Yes.

Alex Fergusson: So the reduction is even greater.

Tom Dysart: It is.

Alex Fergusson: What is the reason for the reduction?

Tom Dysart: I simply observe that we received 10 reports, not 18. I found that out when I tried to reconcile our figures against those in the report more generally.

Alex Fergusson: Can anyone else comment on that?

Assistant Chief Constable Graham: The figures come from the SSPCA via the Government report, so I cannot add value, I am afraid.

Alex Fergusson: Has that difference, if you like, been made up for in other ways? In other words, does it leave a black hole in wildlife crime reporting or is the differential being taken up by people such as the police?

Assistant Chief Constable Graham: I suppose that the number is very small when we look at the difference, even if it is the difference between 18 and 10, across a year—

Alex Fergusson: It is between 36 and 10 cases over a five-year period.

Assistant Chief Constable Graham: Yes, but in relation to the cases that Police Scotland deals with, 26 cases will not put a significant resource burden on our approach, even in the context of 255 or 300 reports, as those are spread over a large number of officers. I am not aware that there has been any perception of an impact, or any reporting of one.

Alex Fergusson: To be fair, the question is probably more for the SSPCA than for you. It may have been a little unfair to have put that to you. The committee might want to follow up the issue in writing.

Claudia Beamish: I appreciate that the Scottish Government has not announced its response to the consultation, but can any of you comment on the possibility of further powers? I am a deputy convener of the cross-party group on animal welfare. We have had discussions, and I am aware that it has been highlighted that there could be a conflict of interests in relation to the SSPCA. So many challenges in relation to detection and prosecutions have been highlighted today, in your report last year—I was on the committee then—and over the years that I would have thought that an organisation as experienced as the SSPCA would be a valid partner to work with you on the issues. Do you have any comments on that?

Assistant Chief Constable Graham: To be clear, we are absolutely not saying that it is not a valid partner.

Claudia Beamish: I am not implying that in any way.

Assistant Chief Constable Graham: We are saying that it is a valid partner, and we work with it every day. We have an extremely good relationship with it, and I would not wish it to be characterised that our view on the additional powers suggested otherwise.

Claudia Beamish: I am certainly not implying that in any way.

Assistant Chief Constable Graham: If there is any room for an additional contribution to the combined effort to increase the detection of wildlife crime, we would do everything that we could to support that. However, that does not mean that that end will always justify the means of achieving it. I went into that in some depth last year and in our written responses to the SSPCA. We have to be very careful that, in going down that route, we do not undermine the validity, ethics and credibility of the end results because of the foundation on which they are based. Those are essentially the concerns that we have raised about the additional powers.

We work with the SSPCA in lots of ways, and we would be very happy to look at other ways in

which we could work with it. We have a good relationship with it, but that does not necessarily extend to our supporting the full extension to the powers that it sought, as members are aware.

Claudia Beamish: For the record, can you clarify for us what the concerns are about the possible additional powers?

Assistant Chief Constable Graham: Our open response to the consultation is already on the record.

Claudia Beamish: Can you clarify your concerns for the committee?

Assistant Chief Constable Graham: We felt that the checks and balances in governance were potentially not in place for an organisation such as the SSPCA, and that its role and purpose did not necessarily lend to its being given the powers that would allow it to progress investigations in the way that it sought without some additional governance being in place in the same way that it would be in place over everything that the police would do. We had concerns that there could be conflicts of interest. That is not to say that the SSPCA is not a really important part of what we do collectively. However, the effort and potential increased capacity that it could add to dealing with wildlife crime were overstated in its original submission, so the benefit certainly did not outweigh our concerns.

Claudia Beamish: Thank you. Could the governance issue be resolved if it were looked at? You are talking about a different level of governance for the consideration of additional powers to be possible.

Assistant Chief Constable Graham: We did not look into that in any great depth, but a superficial assessment is, I think, that it would be very challenging for a body that is constituted as a charity, in the way that the SSPCA is.

The Convener: Thank you very much. We will move on with Mike Russell.

Michael Russell: Vicarious liability was a contentious issue at one stage, but it seems to have been accepted as a normal part of the armoury for dealing with wildlife crime. In reality, there have been only three successful cases. Somebody pled guilty in one case and there were convictions in the other two, and the fines involved have been very low. One of the people involved went to jail, but that individual was not convicted under vicarious liability. As I understand it, that was because of the difficulty of identifying the beneficial owners of the estate.

I have two questions for you. First, if vicarious liability is a useful part of the armoury, are the penalties for it still too low, as in other areas that we have already discussed? Secondly, in relation

to identifying who might be charged, would it be helpful to have more information—not that you would ever say that that would be unhelpful—and would that perhaps result in more prosecutions? I ask Tom Dysart to start on that issue.

Tom Dysart: Vicarious liability is challenging to establish, although that may seem contradictory. The legislation is framed in a way that is concerned with the legal right to kill or take wild birds and the management or control of that right. The right to take wild birds passes with land ownership. In theory, whoever owns the land is the person who has that legal right. In fact, the right to kill birds may be the subject of a sporting lease—it may be somebody else who actually exercises the right. Identifying who owns the land may not identify the person who has the right to take or kill the birds. Sometimes, because of difficulties in penetrating the ownership and management structure of estates, identifying who actually controls the exercise of the right can be equally difficult. Where land is held by a trust or through a company, it also becomes difficult to identify who has the beneficial interest in the sporting rights.

Michael Russell: Can we be specific about the case in question here? I understand that there is now no possibility of the prosecution of the Kildrummy estate. Was that because it was difficult to find out who the beneficial owners were?

Tom Dysart: All that I can say is that no report was submitted to the COPFS and therefore we were not in a position to prosecute. I am aware that a fairly extensive investigation was undertaken by the police, but I cannot go further than that.

Michael Russell: Why not? There is no possibility of a prosecution now.

Tom Dysart: Our general approach is that questions of guilt or innocence are determined in the courts. If we canvass the facts of a case—and that sometimes means canvassing difficulties and establishing facts—the result is, essentially, trial by media, which is something that we guard against.

Michael Russell: In that case, the fact is that there was no prosecution in relation to vicarious liability: after the prosecution of Mr Mutch, his employer was not prosecuted.

Tom Dysart: That is right.

Michael Russell: In relation to the case of Graham Christie, who was fined, you have pointed out that somebody who has a sporting lease can have vicarious liability—they can be charged. Mr Christie leased the ground and was not the owner of the ground.

Tom Dysart: That is right.

Michael Russell: So more information might be helpful.

Tom Dysart: More information would be helpful in relation to where the right to kill the birds lies, and perhaps also in relation to the control arrangements within the landholding.

Michael Russell: I ask Mr Graham and Mr Scott whether they think that vicarious liability is an area of which more use can be made.

Assistant Chief Constable Graham: First, I agree that it is hugely useful as a tool in the armoury. As you said, the fact that we have had a number of prosecutions—a guilty plea and convictions—is in itself fantastic. That has sent out a very strong message; notwithstanding, as you have highlighted, that the numbers are low, I think from what we have seen that the impact has been high.

In the investigations that we have conducted, we have been on a learning curve. To go back to Mr Thompson's point, we always seek to improve and, in the early stages of legislation, we will inevitably be finding our way on the best way of gathering information. I do not think that it is the absence of information that has been the difficulty for us, so I do not think that the simple answer would be more information. It is the complexity of some of the ownership arrangements that makes it extremely difficult to demonstrate which individuals have the liability.

11:30

As a result of the Kildrummy investigation and other investigations, we are seeking to change the approach that we take and are looking at ways of attributing liability under the legislation in a broader sense than we did in our initial attempts. We can always identify people who are connected with land; we perhaps have to follow that route more closely through liability, the end point being the identification of absolute ownership. Surprising as it might sound, that is incredibly difficult to do, notwithstanding international efforts.

Michael Russell: The committee would not find that surprising, as one of the issues in land reform is the identification of ownership, and this appears to be a clear indication—I am glad that you are nodding in assent—that clarity on land ownership would be helpful in prosecution.

Let me follow up one point on vicarious liability. In many people's view, it is really important that somebody is seen to be responsible for bird poisoning in what are called the hotspots in Scotland. The media have produced a map on which those are identified. I presume that in future prosecutions for vicarious liability you will be mindful of the areas where there is a continuing

problem but where prosecutions of those involved have yet to be found possible. Will you pursue that line?

Assistant Chief Constable Graham: I can certainly speak for the investigations. We are acutely aware of where the hotspots are. We would not confine our investigations to them, but, inevitably, an investigation will follow the evidence trail, and the evidence will lie where the hotspots are, so that is where the investigations will be prioritised. Prosecutions are a matter for Tom Dysart and the Crown Office.

Michael Russell: It would be very useful to send out the message that vicarious liability is a tool to tackle the areas where there are a large number of bird poisonings for which nobody has been held responsible yet. One might say that the issue is not closed—is that right?

Assistant Chief Constable Graham: With the exception of the investigations that we have done round about the estates in question, that message has been very strongly landed with the individuals who are closely connected with and working on that land—if not, perhaps, ultimately with those who own the land, as we have said.

Detective Chief Superintendent Scott: To be honest, all the key pertinent points have been covered by Tom Dysart and Mr Graham. Tom and I discussed the matter the other day. The strapline for this is that legal transparency on land ownership is required—clearly and absolutely—and we need that delineation. It would be eminently helpful if we could get to that point, I think.

Michael Russell: That is very helpful. Thank you.

Claudia Beamish: I have a quick point on which I seek clarification. Does there have to be an individual prosecution for there then to be a prosecution under the law on vicarious liability?

Tom Dysart: No. The person who committed the substantive offence need not be prosecuted; in fact, they could be used as a witness. We need to prove that the offence was committed; we also need to prove the relationship between the person with the rights, or the control of those rights, and the person who committed the offence. However, there is no need for the person who committed the offence to be prosecuted and convicted.

Claudia Beamish: Thank you. That is helpful.

Angus MacDonald (Falkirk East) (SNP): The panel will be aware of Scottish Environment LINK's report "Natural Injustice", which was a review of the way in which four types of wildlife crime—the persecution of badgers, bats, freshwater pearl mussels and raptors—were being investigated. The report noted that, of the 148

confirmed wildlife crimes that were reported to the police between 2008 and 2013, 98, or 66.2 per cent, were known to have resulted in a follow-up investigation but only 20, or 13.5 per cent, resulted in a prosecution. In addition, a minimum of at least 111 crimes, or 75 per cent, failed to result in a prosecution. The report went on to make 20 recommendations, some of which were specifically addressed to Police Scotland and to the COPFS.

Given those figures, what is your response to the report's finding that there was an overwhelming lack of confidence among LINK members in the ability of the statutory agencies to adequately investigate wildlife crime and in the willingness of the judiciary to impose meaningful sentences that would act as a deterrent?

Assistant Chief Constable Graham: I am happy to try to cover some of the issues with LINK's report first. It came out in February last year, almost a year ago. I can remember the day it came out because I did not know that it was coming out before it arrived. I read about it on the news and I thought, "That's interesting; here's a whole lot of information about wildlife crime that doesn't seem to bear any resemblance to my understanding of what's going on in Scotland. I'm going to have to read this report closely."

I read both volumes of the report and was horrified when I read what was in there—not because it was an accurate representation of what was happening but because it was so inaccurate. We are here today speaking about the annual wildlife crime report that the Scottish Government is required to produce. We have spoken extensively over the years about the amount of effort that has gone into ensuring the credibility, validity and quality of the data in the annual reports and how we are seeking to improve that, working collectively. A range of organisations contribute to the reports, with a governance structure, and then there is parliamentary scrutiny. None of that applies to the Scottish Environment LINK report, which was done in isolation by the organisations that are part of LINK. I do not subscribe to the accuracy of either the data in the report or the assertions that are made based on the data.

Notwithstanding that, we work closely with the organisations that are part of LINK so, although I was grossly disappointed about the nature of LINK's approach and made that clear publicly at the time—as did a number of organisations, including SNH, which issued a strong public statement rebuking the way in which that report had been produced and indeed the quality of the data and the recommendations in it—I met the key members of LINK a short time afterwards. During that meeting, they acknowledged that how they had gone about producing the report and

attempting to launch it publicly was not helpful to our collective partnership approach to tackling wildlife crime. Although we were happy to address some of the issues that they had raised through on-going work, which we continue to do, I did not feel that it was helpful to put inaccurate data into the public domain and then expect to hold organisations to account through media reporting; indeed, that has not happened.

Tom Dysart: At the time, the Lord Advocate issued a robust—and, I think, unprecedented—rejection of the report's findings and commented that it was ill informed and based on flawed methodology. I think that that is as much as I can say.

Angus MacDonald: Ill informed or not, the report came up with 20 recommendations. Sean Scott has already touched on the one on probationer training, which is now being given, although that could well have happened anyway—it probably did. Are there any other recommendations in the report that have been taken on board?

Detective Chief Superintendent Scott: To build on what Mr Graham and Tom Dysart have said, one of the recommendations was for poaching offences to be removed from the wildlife crime category, which was criticised by the non-governmental organisations and other partners in PAWC.

On the subject of the recommendations, which obviously predate when I assumed this particular role, all the work that we currently do with our partners against wildlife crime, including all the work that we do on prevention and investigation, is as robust and as co-ordinated as it can be. We will take criticism where it is due and try to improve at every turn, but I have nothing to say on that report other than what I have just said and what Mr Graham and Tom Dysart have mentioned.

Sarah Boyack: Following the report, did you discuss all the points of criticism that had been made by LINK? The kind of suggestions in the report that we have in front of us were about delays in addressing initial incident reports, the disappearance of evidence, the failure to conduct covert searches, and the premature disposal of evidence prior to toxicology examinations. Those are just a few examples. Did you work through all those different criticisms and identify the extent to which people had valid concerns, and whether approaches had been taken towards future consultation and liaison?

Assistant Chief Constable Graham: Yes. To repeat myself, those were the assertions in the report and, to echo DCS Scott's point, as the national police service, we are open to and accustomed to receiving constructive criticism, as

you are aware. We have grown towards responding in an appropriate, open, transparent and engaging way because that is how we build a better service. It is not that we are saying, "Wait a minute. People are saying that the police haven't done a good job and we don't want to hear that." Nothing could be further from the truth.

I met Eddie Palmer from Scottish Badgers and Ian Thomson from RSPB investigations, who were at the heart of producing that report. They were somewhat less critical at that meeting than they were in the report. They were full of praise for the changes that have been brought about during the Police Scotland era. They acknowledged that the quality of evidence in the report was, at best, ad hoc and anecdotal, and they were not able to bring forward any instances that the recommendations were based on that I could pursue to establish whether changes needed to be made.

We worked through all the recommendations and, at the end of the meeting, I was satisfied that they were reassured that we were happy to work with them and listen to their complaints, that they understood that producing an ill-informed report was not the most effective way of doing things, and that we would not expect to see another report like that produced in the future because we will be working together to make sure that, if any one-off issues arise from time to time, they have a link to us and can pick up the phone and speak to us and we will get it sorted.

The Convener: Is NFU Scotland involved in PAW at long last?

Assistant Chief Constable Graham: I do not think that it is yet. I seem to remember that you asked the same question last year and I said that, from a police perspective—we are a part of PAW as much as anybody else, but we do not necessarily have leadership responsibilities beyond those of any of the other partners—NFUS would be welcome. I am not aware that it is pushing to get in; that certainly has not come to my attention at any of the meetings. If the suggestion is that it should be invited, I am happy to pursue that with those who orchestrate the various meetings.

On other fronts, the police are doing a huge amount of work with NFUS, particularly on rural crime, which the committee might be aware of from other forums. From time to time, there can be an overlap with the wildlife crime portfolio, although rural crime is more focused on acquisitive crime that particularly affects rural communities. NFUS has supported the effort that we have put into addressing the concerns that were raised about rural crime, and it has shown leadership in bringing those issues up and supporting our efforts with expertise and financially, and that has been hugely appreciated

and very effective to date. NFUS would be a welcome partner as far as I am concerned.

The Convener: What is the position of the RSPB and PAW?

Assistant Chief Constable Graham: The RSPB is in PAW; I am not aware that that has changed.

The Convener: Indeed, and discussion about all these issues ought to be much easier because it is inside the tent.

Assistant Chief Constable Graham: Yes.

11:45

The Convener: Thank you. A final question occurs to me. The UK spending review is leading to a much smaller Scottish block. Within that, the police service might be constrained, as you hinted earlier. Is the national wildlife crime unit, which is based in Livingston, likely to be affected in any way by constraints on cash in the police service?

Detective Chief Superintendent Scott: That was discussed at the last UK PAW meeting. Chief Constable Prince and Chief Inspector Martin Sims, who runs the unit, were to meet the minister on that day. There has been a proposal to look for three-year funding for the unit, and the minister is considering that just now. We have not had a final answer on that, but it is being considered.

The Convener: Is it a UK unit?

Detective Chief Superintendent Scott: It is in the Department for Environment, Food and Rural Affairs and that is where we get the funding for the unit. We host the unit at Livingston and will continue to support it, certainly for the foreseeable future. We will also support the funding of our secondees to the unit, which is jointly funded with SNH. At the moment, therefore, future funding for the unit is still in process of being decided, but the minister responsible is considering it just now.

The Convener: We will be interested to hear about that as soon as there is some direct information.

Thank you. That has been a good run round the subject. We realise that we talk about some of the same things year on year, but we thank you for your involvement and hope that we can give you the kind of backing that you require to do your job on behalf of the country as a whole. The new committee will no doubt wish to see you in the future.

At the next meeting of the committee, we will consider subordinate legislation on the microchipping of dogs as well as beginning our stage 2 consideration of the Land Reform (Scotland) Bill.

I now close the public part of the meeting. The committee will move into private session as agreed earlier.

11:47

Meeting continued in private until 13:16.

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