



ConsultationResponse

FROM THE RSPCA IN WALES

The Welsh Government Prosecution Code

August 2017

Since its inception in 1824, and before the creation of the modern police force, the RSPCA has utilised the right of citizens and organisations in England and Wales to conduct private prosecutions¹. To this day the Society remains the prosecutor of the majority of offences regarding animal cruelty. Prosecutions are, however, usually a last resort.

In 2016, the RSPCA investigated 10,540 complaints of cruelty in Wales and 7,119 welfare or improvement notices were issued to prevent animals suffering. The evidence tells us these notices, accompanied by advice and other assistance, do work. In some circumstances however they are not always appropriate, for example if there has been a deliberate act of violence against an animal, or where people won't accept assistance, or in extreme cases of neglect. In Wales in 2016 the RSPCA secured 120 convictions, which was a significant rise on 89 in 2015. More information on these prosecutions and our work in general to prevent cruelty can be found in our Annual Summary for Wales² and our Prosecutions Report³.

The RSPCA does not prosecute any case without good reason. In our decision making we are continuing to consider whether it is in the public interest to prosecute or whether there is an alternative disposal available. Where alleged cases of cruelty pass both the evidential and public interests tests, a prosecution may be necessary, but our procedures for this have been, and continue to be, the subject of review⁴. Indeed the RSPCA's approach to prosecution reflects the principles of the The Code for Crown Prosecutors. As a Code issued by the Crown Prosecution Service, it is a public document, the principles of which the RSPCA has adopted. For this reason the consultation on a replacement Code in Wales, and whether there be an expectation the RSPCA, and other private prosecutors should adopt any new Code, is of central interest to the Society.

1. ARE THE ROLES OF THE COUNSEL GENERAL AND THE WELSH MINISTERS IN RELATION TO WELSH GOVERNMENT PROSECUTIONS EXPLAINED CLEARLY ENOUGH?

The Code does explain, in its preface, what a reference in the Code to "Welsh Government Prosecution" means and it further defines the meaning of "prosecutors" in the Code. This would appear to narrow the application of the Code.

However, there is a possibility that, although the scope of the Code appears intended to be comparatively narrow, it could create an expectation that the Code is applicable in Wales to any prosecution conducted by any agency or private prosecutor, notwithstanding the existence of the Code for Crown Prosecutors which does relate to both England and Wales.

¹ Section 6(1) of the Prosecution of Offences Act 1985.

² <https://www.rspca.org.uk/ImageLocator/LocateAsset?asset=document&assetId=1232740716566&mode=prd>

³ <https://www.rspca.org.uk/whatwedo/endcruelty/prosecution>

⁴ <https://www.rspca.org.uk/whatwedo/endcruelty/prosecution/review>

The applicability of the Code to cases other than Welsh Government Prosecutions could become an issue if any such case in which prosecutions might be conducted otherwise than by or on behalf of the Welsh Government.

By way of example, animal welfare offences could be subject to prosecution after investigation by APHA, Trading Standards officers for local authorities, the police or the RSPCA. Is there, or indeed should there be, an expectation that the same Prosecution Code should be utilised? Suspects might be entitled to expect the disposal of their case to receive exactly the same standard of consideration.

There might be some merit in the Code being more explicit regarding its applicability otherwise private prosecutors, such as the RSPCA (the primary prosecutor of animal welfare offences in Wales by virtue of volume), might consider themselves obliged to have regard for both the Code for Crown Prosecutors and the Welsh Government Prosecution Code before proceedings are instituted in Wales. The RSPCA would therefore welcome clarity as to the Welsh Government's expectation of use of the Code by the RSPCA for private prosecutions of criminal offences.

2. IS THE SUFFICIENT EVIDENCE STAGE OF THE PROSECUTION TEST EXPLAINED CLEARLY ENOUGH?

This part of the Code broadly replicates the the Code for Crown Prosecutors and the sufficient evidence test is clearly explained.

There may be merit in adding that this evidential test is different from the one that criminal courts apply.

3. IS THE PUBLIC INTEREST STAGE OF THE PROSECUTION TEST EXPLAINED CLEARLY ENOUGH?

This part of the Code broadly replicates the Code for Crown Prosecutors and the public interest test is clearly explained. It is noted, however, that there is no reference in this part of the Code to culpability or the physical or mental health of suspects although it is appreciated that the factors listed are not exhaustive.

The introduction of consideration of the environmental effect of offending is welcome. The RSPCA has encountered cases, for example, in which individuals have taken approx. 100 wild goldfinches from the wild, from a comparatively small area. This type of offending can have environmental consequences.

4. ARE THE PUBLIC INTEREST FACTORS EXPLAINED CLEARLY ENOUGH?

The explanation appears to be clear but there may be merit in adding that it is possible that one public interest factor alone may outweigh a number of factors which tend in the opposite direction. Factors tending against a prosecution do not necessarily mean that a prosecution should not go ahead.

5. IS THE RELATIONSHIP BETWEEN THE CODE AND THE CODE FOR CROWN PROSECUTORS EXPLAINED CLEARLY ENOUGH?

The explanation might not be clearly understood otherwise than by legal professionals and there could be merit in producing an explanation that is easier to understand by others who may have cause to consider the content of the Code and, in particular, its applicability to different types of cases and different types of prosecutors.

6. IS THERE ANY SECTION OF THE CODE THAT YOU THINK SHOULD BE EXPANDED, AND, IF SO, WHAT DO YOU THINK SHOULD BE INCLUDED?

None other than those indicated in the responses above.