

Justice Committee

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

Written submission from the Scottish Environment Link Wildlife Crime Subgroup

LINK is the forum for Scotland's national third sector environmental bodies, over 35 organizations representing a broad spectrum of environmental interests with the common goal of contributing to a more sustainable society. LINK provides a forum for these organizations, enabling informed debate, assisting co-operation within the third sector, and acting as a strong voice for the environment.

LINK's wildlife crime subgroup is the focus of collective effort by some of these organizations to raise the profile on wildlife crime and in particular on the need for existing powers of enforcement to be applied in Scotland. LINK members appreciate the many pressing priorities for attention of, and demands on, the justice system. Their request is that crimes against wildlife, and the culture around these, be addressed in a way appropriate to 21st century Scotland.

This evidence is submitted on behalf of the subgroup members (listed at the foot), and responds briefly to Questions 1-4 in the Committee's Call for Evidence. In respect of Question 5, LINK members are aware of the Inspectorate of Prosecution in Scotland (IPS), but are not aware of an IPS role in relation to wildlife crime issues, nor of invitations to input views in relation to any IPS inspection.

In February 2015, Scottish Environment LINK published a commissioned report, entitled *Natural Injustice*. This report was commissioned by the then LINK Wildlife Crime Taskforce with the purpose of providing decision-makers with a succinct overview of the current enforcement picture with regard to wildlife crime in Scotland.

In 2008, the Scottish Government had published a report entitled *Natural Justice* containing the results of a joint thematic inspection of the arrangements for preventing, investigating and prosecuting wildlife crime. The Government report made a number of recommendations for improvement. However, six years after the publication of that report, many environmental non-Governmental organisations (ENGOS) with direct experience of the uncovering, monitoring and reporting of wildlife crime felt that enforcement measures remained inconsistent and, in many cases, weak and ineffective. It was on this basis that the LINK Taskforce then commissioned LINK's *Natural Injustice* report, reviewing wildlife crime investigations in Scotland in 2008-13.

On analysis of evidence provided by LINK members, several of which are also members of the Partnership Against Wildlife Crime in Scotland (PAWS), it was apparent that a large proportion of reported wildlife crime incidents were either not fully investigated, no suspect was identified, or there was insufficient evidence to instigate proceedings. Indeed, of 148 wildlife crime cases examined, all confirmed by either

Scottish Government laboratory testing or corroborated witness testimony, only 20 (13.5%) resulted in a prosecution. In some instances, the failure to prosecute was recognised as a result of the innate problems associated with investigating crime in remote areas, where witnesses are rare or may be reluctant to speak out, and where evidence may decompose or become affected by weather.

As part of the evidence-gathering process for the LINK report, LINK members were asked to outline their experiences in their dealings with the Crown Office and Procurator Fiscal Service. It was widely recognised that the establishment, in 2011, of a full-time Wildlife and Environmental Crime Unit, within the Crown Office, with three full-time prosecutors was a very positive step forward. This was widely welcomed by LINK members, with the expectation that full-time staff would have a greater knowledge and understanding of a complex area of law. LINK respondents commented that the prosecution of cases has become considerably more professional and knowledgeable.

In recent years LINK members have experienced examples of very good liaison between Procurators Fiscal and partner agencies, and witnessed excellent presentations of cases and subsequent well-informed prosecution narrations following guilty pleas.

However, significant concerns were raised by LINK members in relation to a number of wildlife crime cases. These specifically related to three main areas:

1) Lack of communication and engagement by prosecutors with organisations who had played key roles in wildlife crime investigations during considerations of plea resolutions and/or means of case disposal.

A significant issue of concern is, on occasion, a complete lack of transparency and clarity by the Crown Office regarding the decision-making process in the consideration of cases. There have been a number of cases where organisations have invested a considerable amount of time and resource into investigations, only for decisions to be made with no subsequent rationale provided. While in no way wishing to influence the independence of the Crown Office in making such decisions, a failure to communicate this and thus facilitate partnership-working, creates a damaging legacy from which partner agencies are unable to learn and understand.

2) Failure to recognise the conservation impact of the crime and to communicate this to the court.

This point was recognised by the recent review of wildlife crime penalties undertaken on behalf of the Scottish Government – it is to be hoped that better use, by prosecutors, of expert impact statements will enable the courts to make better informed decisions when considering sentencing.

3) Failure to hold debriefing sessions with those same organisations to help identify learning opportunities arising from investigations and subsequent prosecutions.

Recommendation 22 of the Scottish Government's Natural Justice report was that "*The Wildlife and Habitats Crime Prosecution Forum initiate debriefs following significant wildlife crime investigations and prosecutions, either locally with partners or where appropriate nationally*". Unfortunately, since the creation of the Wildlife and Environmental Crime Unit within the Crown Office in 2011, this forum has ceased to meet. Therefore, there are no opportunities given so that "*the maximum operational and policy benefit can be gained from open and forthright debriefing of cases between the relevant agencies*" (Natural Justice Report Recommendation 2)

LINK members remain disappointed that recommendations for COPFS, published in the Scottish Government report in 2008, are yet to be implemented. However, they are somewhat more concerned by the Lord Advocate's response to the publication of our own report in 2015 in which he very publicly, steadfastly refused to discuss or acknowledge any of the evidenced concerns we published, or to engage with LINK.

We welcome this opportunity to have input to the inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service, and would welcome the opportunity to meet with the Justice Committee to further discuss our evidence.

This submission is supported by:

Froglife

RSPB Scotland

Scottish Badgers

Scottish Raptor Study Group

Scottish Wild Land Group

Scottish Environment Link Wildlife Crime Subgroup

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