

Written evidence from RSPCA (PPS0010)

THE ROLE OF PRIVATE PROSECUTIONS AND SAFEGUARDS AGAINST INJUSTICES

Summary

The RSPCA has been undertaking private prosecutions since 1824 to enforce animal welfare offences. The Animal Welfare Act 2006 in England and Wales is primarily enforced by the RSPCA, accounting for around 85% of enforcement effort under the Act. The RSPCA undertakes this task as it has nearly 200 years experience, it fills a gap in the provision of public service, it meets its charity objectives. The Governments in England and Wales are content for it to fulfill this role. The RSPCA follows the guidance set out in the CPS Code for Crown Prosecutors and applies the two DPP tests to conduct prosecutions and has an annual success rate of around 92%. Since 2016 the RSPCA has put in a number of additional safeguards to ensure there is transparency, review and redress in its prosecution work.

The way in which large organisations conduct private prosecutions

1. The RSPCA has been undertaking private prosecutions since 1824 to enforce animal welfare offences. The Animal Welfare Act 2006 in England and Wales is primarily enforced by the RSPCA, accounting for around 85% of enforcement effort under the Act. The RSPCA carries out this function because it currently meets its charitable objective and fills the gap on enforcing this area of law because the public prosecuting body currently only does a small quantity. The Animal Welfare Act 2006, under which the majority of these prosecutions occurs, does not make its enforcement a statutory responsibility, for either local authorities or the police.
2. Decisions to prosecute are decided by a stand alone dedicated prosecution department. Once the investigation is completed the file is sent to the Prosecutions department. The Prosecutions department adheres to the provisions of the Code for Crown Prosecutors when assessing a case file of evidence. There are two principal tests:
 - that there must be sufficient evidence to provide a realistic prospect of a conviction against each suspect on each charge; and
 - it must be in the public interest to prosecute.Following an assessment under the two tests the decision is made that there is a realistic prospect of conviction then the summons would be sought and proceedings commenced.

The effectiveness of existing safeguards that regulate private prosecutions

3. The Law Commissioners did consider the position of private prosecutors in 1998 and concluded that there were adequate safeguards in place to ensure the right to bring private prosecutions was not abused¹. Those safeguards in place are;
 - Anyone subject to a private prosecution by the RSPCA has the right to request that The Director of Public Prosecutions (DPP) intervenes with that prosecution. They

¹ "Consents to Prosecution" (report no 255)

apply a review process and can take the case over either to continue it or to stop it. It is essentially cost free to the defendant as a referral can be made completely independent of an instructed lawyer.

- The judicial process in itself provides for a further layer of oversight. From the Magistrates court there is an automatic right to appeal to the Crown Court providing another layer of scrutiny of the evidence in the case.
- The court's powers to make costs orders which punish a party who pursues unjustified proceedings.
- The right to bring a civil claim for malicious prosecution.
- The case can be referred to the Criminal Cases Review Commission for their scrutiny and review at the end of the judicial process.

Alternative legal and administrative safeguards that could be used to regulate the way in which large organisations use the right to bring private prosecutions

4. The RSPCA considers that there are a number of additional safeguards which they have in place to ensure there is transparency, review and redress in its prosecution work namely;
 - Following the recommendations made in a 1981 report from the Royal Commission on Criminal Procedures the person who is responsible for the decision to prosecute should not be the same person who investigates the crime. That principle is reflected in the separation of function and structure of the Inspectorate and Prosecutions departments within the RSPCA.
 - When the RSPCA commences a prosecution it instructs lawyers in private practice to conduct the prosecution on its behalf. Those lawyers are officers of the court. They are asked to provide an *independent assessment* on whether the evidential and public interest tests have been met. This provides two things: firstly, another level of separation to the case and secondly, a further level of review and scrutiny of the RSPCA decision making process providing further assurance to the public.
 - The RSPCA has a robust complaints procedure which includes an external reviewer. Having a clear well publicised appeals process is also one of 20 recommendations in the Regulators Code² issued by the Government's Better Regulation Delivery Unit which is followed by the other enforcement agencies. The Independent Complaints Reviewer (ICR) judgement is independent. It can include a recommendation to compensate. The RSPCA acts on its findings.
 - In 2017 the RSPCA created an Independent Oversight Panel to monitor the performance of the RSPCA's prosecution function. The panel conducts a review and audits the cases the Society prosecutes, looking at the application of the DPP code tests, the investigatory processes and drawing up reports for the Society to act on if changes are required. Their findings are published on the RSPCA website.
 - The Charity Commission can investigate the RSPCA and ascertain if they are operating legally and in line with their charitable objects.

² <https://www.gov.uk/government/publications/regulators-code>

- The RSPCA has membership with the Private Prosecution Association which launched a Code for Private Prosecutors in July 2019 which provides guidance and standards regarding the conduct of private prosecutions. There are currently 140 members of the Association who follow this code.

Whether the existing investigatory standards and duties of disclosure that apply to private prosecutions are effective

5. The RSPCA believe the standards and safeguards can be met by;
 - Training and learning and development around this area of both the investigators and decision makers
 - The second review which takes place with the independent legal providers instructed to conduct RSPCA prosecution work.

The effectiveness of different safeguards in preventing miscarriages of injustice resulting from the right to bring private prosecutions

6. The safeguards as outlined above should provide sufficient safeguards but additionally;
 - A magistrates court may order defence costs from central funds when a case does not proceed.
 - If following a private prosecution the defendant is acquitted the court may order the prosecutor to pay all of, or a proportion of, the defendant's costs if the court considers that the case was improperly brought.

The role of the Crown Prosecution Service in taking over private prosecutions and the role of the Attorney General in supervising private prosecutions;

7. The CPS provide oversight when requested as they have the power to intervene and take over a case at any time. Normally the CPS will only take over and discontinue a case if it believes that either the evidential and or public interest tests are not met.
8. Private prosecutors need to be cognisant of the quality of the review and who conducts that within the CPS . This varies from area to area so decisions can be inconsistent and have been known to be wrong after it has been discontinued and the communication between them and the prosecutor before a decision is communicated can be wanting depending on which CPS area deals with the review.
9. The RSPCA is not aware that the Attorney General has direct oversight over private prosecutions unless one is referred to the Law Office for consideration as an unduly lenient sentence.

The role of the courts in private prosecutions

10. Cases are subject to scrutiny by lawyers representing defendants and by the independent arbiter of the court itself who adjudicate on guilt or innocence and the propriety or otherwise of the prosecution case. There is an appeal process which adds in additional scrutiny.

The way in which private prosecutions are regulated in other jurisdictions

11. Investigations and prosecutions on domestic animals in England and Wales are undertaken by the police, RSPCA and local authorities. In Ireland investigations are undertaken by the Irish SPCA, local authorities and Gardai and prosecutions by the Gardai and Department of Agriculture. In Scotland investigations are undertaken by the Scottish SPCA and police and prosecutions undertaken by the Procurator General. In Northern Ireland investigations and prosecutions are undertaken by the local authorities. Despite these different models, the per capita rate of cases and convictions and success rates are similar.

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