

Crown Office and Procurator Fiscal Service

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Wildlife and Environmental Crime Unit



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Dear Mr Gibson

WILDLIFE CRIME REPORT 2013

I refer to your letter addressed to Aileen McLeod MSP, Minister for the Environment, Climate Change and Land Reform, dated 5 December 2014.

Criminal proceedings

At paragraph 8 you state that the "rate of prosecution" might suggest that wildlife crime may be "insufficiently prioritised" by COPFS.

However, as is made clear at pages 33-34 of the 2013 Wildlife Crime Report, 25 of the 27 cases marked for "No action" in 2013 were unable to proceed due to factors such as insufficient admissible evidence, not constituting a crime, or being time-barred on receipt from the reporting agency.

These factors are outwith the control of the Crown.

The Crown had discretion to take action in 105 of the 130 cases reported to us in 2013 and took action in 103, or 98% of the whole. This figure reflects the fact that wildlife crime is, and will continue to be, a high priority for COPFS.

Vicarious liability

You indicate at paragraph 9 that the Committee is interested in how the vicarious liability provisions introduced in section 24 of the Wildlife and Natural Environment (Scotland) Act 2011 are operating in practice.

On 23 December 2014 the first vicarious liability prosecution in Scotland, under section 18A of the Wildlife and Countryside Act 1981, was concluded at Stranraer Sheriff Court. Mr Ninian Stewart, the landowner of Glasserton & Physgill Estates, was convicted of being vicariously liable for the criminal actions of Peter Finley Bell, including poisoning and killing a wild bird, on land owned by him and on which he held the shooting rights. He was fined a total of £675.

Mr Bell was formerly employed as Mr Stewart's gamekeeper when he committed the poisoning offence on 23 December 2012 at Glasserton Home Farm. He laced the carcass of a pheasant baited with Carbofuran and set the bait in a field. A birdwatcher passing the farm saw something flapping in the field and on closer inspection found that it was a common buzzard, lying on the ground, in the last throws of life. Subsequent forensic work showed that the buzzard had died as a result of ingesting the poisoned bait.

In this case there was no indication that Mr Stewart instructed the commission of Bell's offences or that he even knew about them being committed, but neither was there evidence that Mr Stewart took any steps to exercise due diligence in respect of shooting on his Estate.

Mr Stewart's conviction serves to highlight the proactive responsibility placed on those who employ gamekeepers to run shooting estates, to ensure that is done within the parameters of the law. It also demonstrates the potential serious consequences for those that fail to do so.

Custodial sentence in case against George Mutch

It may also be of interest to note the recent conviction and sentence of gamekeeper, George Mutch. He was convicted at Aberdeen Sheriff Court on 11 December 2014 of the use of traps for the purpose of taking wild birds and of the killing of a goshawk and the taking of another goshawk and a common buzzard on the Kildrummy Estate in late 2012.

On 12 January 2014, Mr Mutch was sentenced to four months imprisonment on each of the four charges, one offence under Section 5(1)(b) and three offences under Section 1(1)(a) of the Wildlife and Countryside Act 1981. The sentences will run concurrently.

I am copying this letter to Aileen McLeod MSP, Minister for Environment, Climate Change and Land Reform.

Yours sincerely



Sara Shaw
Procurator Fiscal
Wildlife & Environment