

# The Bat Crime Annual Report 2016



Main photo © Hugh Clark



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# 1. Introduction

This Bat Crime Annual Report 2016 outlines and analyses incidents and outcomes of the Bat Conservation Trust's Investigations Project over the 12 months from January - December 2016.

In 2016 153 allegations of bat crime were referred to the police. This is above the long-term average and is the second highest number of referrals ever made in a calendar year.

## 2. Why are bats in need of protection?

There are currently 18 species in the UK (17 of which are known to breed here). Bats are highly dependent on man-made structures, such as houses, churches and barns for roosting, and the surrounding habitats for foraging and commuting. This reliance makes them particularly vulnerable to development and general building works, e.g. conversions, demolitions, timber treatment and maintenance activities in buildings. Maternity roosts, often found in buildings, are particularly vulnerable as bat species have very specific nursery roost requirements and when a roost is destroyed an alternative suitable roost may not be readily available. In particular, if a roost is destroyed when mothers and young are present this can have a significant impact with the potential loss of the whole local breeding population.

Recent studies indicate that some species of bat found in the wild, in the UK, are now showing signs of recovering from population declines. Whilst this must be taken as good news, recovery to historic population levels have still to be achieved. For this reason it is important that all 18 species of wild bats found in the UK and their roosts continue to be protected by European and national laws making it an offence to:

- Deliberately capture, injure or kill a bat;
- Intentionally or recklessly disturb a bat in its roost or deliberately disturb a group of bats;
- Damage or destroy a bat roosting place (even if bats are not occupying the roost at the time);
- Possess or advertise/sell/exchange a bat (dead or alive) or any part of a bat;
- Intentionally or recklessly obstruct access to a bat roost.

A 15% increase from the previous year in the number of referrals made to the police in 2016 is cause for continued concern about levels of bat crime. It may be that rather than there being any increase in offending behaviour, the rise in the number of referrals can be explained by an increase in confidence in reporting such matters among those who find evidence of bat crime. However, the number of referrals made to the police each year since 2010 demonstrates an upward trend that needs to be addressed. Anecdotal evidence from bat workers, the general public and building and forestry professionals continues to indicate that these figures may represent only a drop in the ocean. The building, development and maintenance sector accounted for the vast majority of the incidents referred for investigation – again this is in line with findings from previous years.

### Working towards change in the built environment sector

Although development has been identified as a key component of many bat crimes, BCT acknowledges that many in the industry want to do the right thing. We regularly receive contact from builders who discover bats and are very anxious not only to comply with the law but also to ensure that their activities are not detrimental.

The BCT's Built Environment Officer re-launched industry awareness training courses in 2016 for a wide range of sectors, including roofing contractors, architects and facilities managers, covering legal responsibilities, how to mitigate to avoid likely impacts and also enhancement of the built environment for bat species. In addition, positive steps are being taken by organisations such as the Construction Industry Research and Information Association (CIRIA). Their work includes the BIG biodiversity challenge awards for biodiversity enhancements in developments that go above and beyond what is required in planning: <http://www.bigchallenge.info/>

## 3. About the Investigations Project

The Investigations Project has been working to prevent bat crime since its inception in 2001 as collaboration between Royal Society for the Protection of Birds (RSPB) and the Bat Conservation Trust (BCT). Since then, the Investigations Project has developed with the financial support of local bat groups. A part-time Investigations Officer, Pete Charleston, has led the project since 2010 and is involved in the following activities:

- Recording of bat-related crime.
- Providing support, training and advice for the police, CPS, SNCOs and bat workers to ensure incidents are reported, investigated, and the law enforced i.e. prosecutions are taken forward where appropriate.
- Targeting the groups and sectors that perpetrate bat related crime for education and awareness raising initiatives, such as the production of best practice guidelines to improve work practices.
- Improve areas of UK policy, in particular those that relate to planning and species licensing, to reduce opportunities for ignoring the legislative protection given to bats.

In 2016 funding obtained from the Esmée Fairbairn Foundation has secured the future of the bat crime investigations project for the next three years as well as investigations work relating to other European and nationally protected species.

## 4. UK wildlife crime priorities and the National Wildlife Crime Unit (NWCU)

In 2004 the persecution of bats was identified by the statutory conservation agencies as a wildlife crime priority for the police service of equal standing to the other priorities, including birds of prey persecution and the illegal trade in endangered species. In 2016 bat crime was once again identified as an area of concern.

During 2016 BCT have continued to work closely with the National Wildlife Crime Unit (NWCU) providing them with intelligence relating to all incidents that are referred for investigation. The National Wildlife Crime Strategic Threat Assessment continues to identify BCT as the unit's primary source of intelligence relating to bat crime. The threat assessment can be viewed at:

**<http://www.nwcu.police.uk/wp-content/uploads/2013/03/NWCU-Strategic-Assessment-2016-Not-Protectively-Marked.pdf>**

In order to ensure that BCT can continue to present a comprehensive assessment of bat crimes, we continue to request that bat groups and other interested groups provide information about any offences or other suspicious behaviour which they become aware of. BCT will, if necessary, commit to confidentiality and will not undertake further action without the consent of those who submit the information.

## 5. Legislation

BCT is committed to raising levels of knowledge amongst those charged with delivering the legal protection offered to bats. During 2016 BCT delivered training to the police at both the national wildlife crime foundation course and to groups of police forces. For some years investigations into bat crime had been complicated by the fact that planning permissions have been granted without bat surveys having been considered, or only with a condition that they should be conducted during the course of development. A court judgment in 2009 (on the application of Simon Woolley v Cheshire East Borough Council) reinforced the fact that planning permissions likely to have an impact on bats should not be considered without surveys being available to support and inform the planning decision. Should planning permissions be granted without such surveys, there is a real risk that the permissions might later be deemed invalid.

BCT consider that this judgment has significantly contributed to planning permissions stipulating the requirement for surveys to be considered. This is a very welcome situation that BCT will continue to monitor.

During 2014 the Law Commission undertook a review of wildlife crime legislation. The commission provided Defra with a draft Wildlife Bill. The government has since responded saying that at present there is no intention to take the work further.

The outcome of the referendum in June 2016 to leave the European Union has led to concerns being raised as to whether bats will continue to have the comprehensive protection under criminal law provided by the Conservation of Habitats and Species Regulations 2010.

In December 2016 the European Commission published its “Fitness Check” evaluation of the EU Habitats Directive. It was concluded that the Directive remained highly relevant and fit for purpose. Implementation, including enforcement, does however need improvement.

BCT will monitor the situation very closely and work towards maintaining or improving the level of protection provided to all species of bats found in the wild in the UK.

## 6. Incidents notified to BCT in 2016

In 2014, BCT ceased to record every allegation of bat crime on our investigations database. Considerable volunteer effort is required to record all these matters with less than half then being referred to the police for investigation. Because of this the decision was taken to only record those that had been researched by our investigations officer, this includes all referrals to enforcement agencies along with a number of other cases where, in the event, lack of evidence prevented referral.

In 2016 BCT recorded and researched 214 allegations of bat crime with 153 cases being referred to the Police. This is a 15% increase over 2015. Since 2010 the number of cases referred to the police year on year indicates an upward trend. Until 2010, all criminal offences relating to bats were investigated by the police and prosecuted by the CPS. Natural England has now decided to utilise powers granted to them by the Natural Environment and Rural Communities Act 2006 to investigate and, where necessary, to prosecute offences relating to breaches of bat licence conditions. In the remainder of the UK these matters are still referred to the police for investigation.

### 6.1 Reporting of incidents

Year on year, since 2010, the number of referrals made to enforcement authorities have shown an upward trend. We continue to hold the view that the level of recorded crime represents only a fraction of the number of incidents that involve bats. It is impossible to form judgments as to whether the amount of crime is increasing, decreasing or holding steady. We can, of course, only report on the number of incidents made known to us. The importance of maintaining records on the level of bat crime cannot be underestimated. It is the only information we can use to demonstrate to enforcers and legislators that bat crime is a problem that can affect conservation status requiring an appropriate and effective response.

Regular contact with the National Wildlife Crime Unit suggests that BCT becomes aware of most incidents of bat crime that are investigated by the police. Because of legislative restrictions, on occasion, we do not receive full details of incidents and there is no obligation for authorities to consult with us. It is for this reason that close contact between bat groups, bat workers and BCT is crucial if an informed view of the levels of bat crime is to be presented.

Many reports to BCT that disclose the possibility of criminal activity are from builders and householders who have come across bats whilst carrying out work on their property and in so doing have disturbed bats or caused minor damage to roosts. BCT choose not to refer the majority of these reports because, in our view, the conservation interest outweighs any benefit that might be gained from a criminal investigation.

Those builders and householders who call BCT regarding bat disturbance or minor damage are usually seeking advice as to what they need to do, and most are receptive to the advice that is provided. If BCT referred these calls to the police it could discourage these calls and ultimately the conservation of bats would suffer. The conservation interest therefore dictates that BCT do not refer them.

Every call BCT receives that identifies the possibility of an offence is screened to ensure that we do not refer inappropriate cases for investigation. Even though BCT may not refer some incidents for investigation, no suggestion of criminal offences is allowed to pass without being commented upon. Additionally, we make written or oral contact with the investigating officer in every case that is referred for investigation, offering legislative and investigative advice.

The National Bat Helpline staff act on behalf of Natural England to provide both oral and written advice and it is often the case that BCT will invite local bat groups and volunteer bat workers to become further involved.

## 6.2 Incidents by police area

The number of reported incidents varied throughout the UK police forces. Of the 153 incidents referred to the police last year, 131 were referred to English police forces, 7 to Police Scotland, 1 to the Police Service of Northern Ireland and 14 to the Welsh forces.

The geographic spread of reported cases was wide, with incidents referred to 39 of the 45 police forces in the United Kingdom. Therefore, on average each force was asked to investigate just 3 bat crimes annually. In reality, the average is somewhat lower in that 61 referrals were made to just six different police forces. There were six forces that, as far as BCT are aware, undertook no investigations into bat crime during 2016. This serves to explain why investigative experience in this area is scarce and underlines the value of our investigations project in being able to offer advice and guidance to forces and officers without experience in these matters.

The highest numbers of referrals were made to Devon and Cornwall Police (14), Hampshire Police (10), Metropolitan Police (9), North Wales Police, Police Scotland, Thames Valley Police and West Mercia Police each had 7 referrals. The variation in numbers of referrals can often be explained by factors such as the density of bat populations, the extent of development in those areas, the strength of the relationship between BCT, the local bat group and the police force, a greater awareness amongst police officers of the issues and even the confidence of the public in reporting such matters to the police.

## 6.3 International incidents

On occasion BCT is made aware of matters indicating the possibility of criminal offences, but are difficult to refer to the police for investigation because they are of an international nature and cannot be linked to an area covered by a specific UK force. In the past 12 months, there have been a number of such issues, which because of the difficulties outlined, have been dealt with by BCT's Investigations Officer.

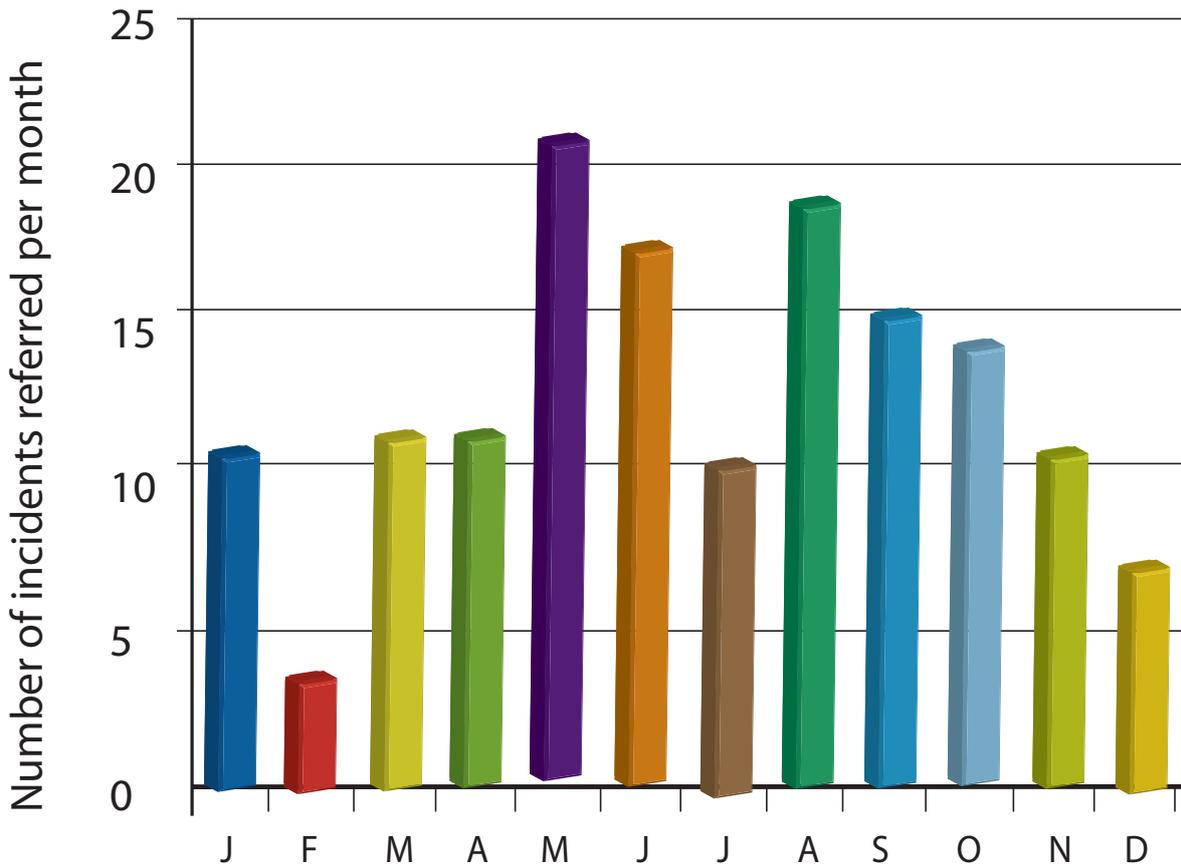
Trade in dead bats is one area that is often brought to our attention. Such trade may take place on internet auction sites or at markets and is usually (but not always) found to involve species that are not legally protected. Whilst many find such trade distasteful it is not currently illegal and therefore seldom of interest to the police.

The advertisement of deterrents to be used to clear houses of bats and advice on the exclusion of bats continues to be an issue. Of the cases that we have investigated it has been established that all of the websites are of North American origin where bats do not receive the same level of protection. In these cases, contact is made with the companies involved usually resulting in statements being placed on both sites pointing out the protected status of bats in the UK.

## 6.4 Incidents by month

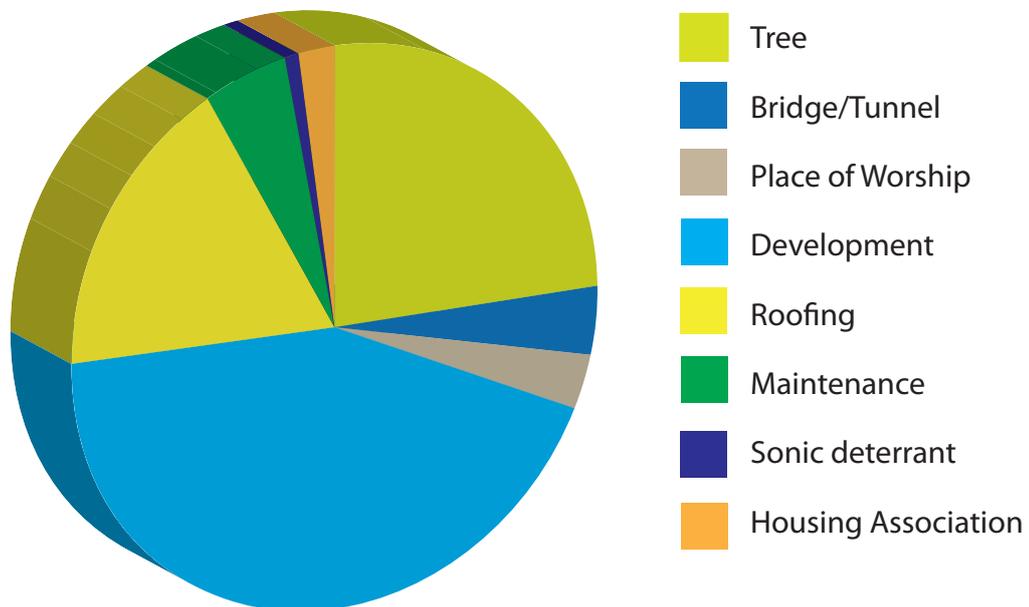
Incidents were reported throughout 2016; however, Figure 1 below shows that there are peak months for numbers of incidents being reported. Bats are most active between the months of March and October, which coincides with peak construction times. It is, therefore, of little surprise that most incidents of bat crime reported to the BCT take place during peak times of bat activity.

**Figure 1. Incidents referred for investigation by month in 2016**



Comparisons made between the activities taking place in reported incidents have shown that development remains the primary activity resulting in offences. That said, in 2016 there was a significant decrease in the number of cases associated with development. In an effort to try and gain a broader understanding of the factors involved in bat crime we have looked at each referral and identified key words. Many incidents reveal more than one of the key words. Percentages for these categories are detailed in Figure 2.

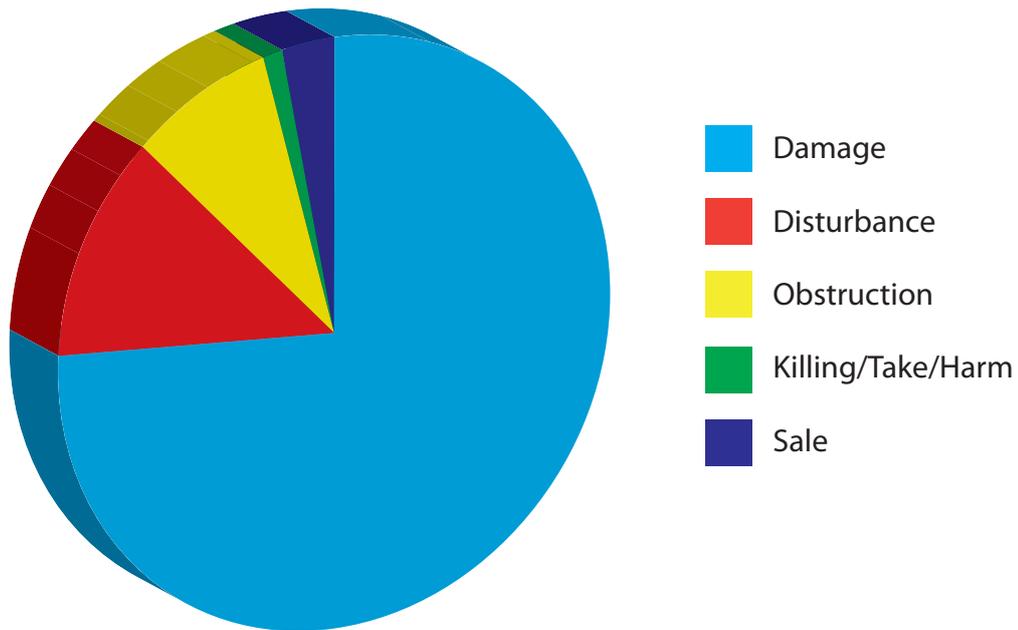
**Figure 2. Comparison of incidents categorised by activity in 2016**



## 6.5 Primary offences

The identification of primary offences is often a subjective process: instances of roost damage and obstructing access can also reveal offences of disturbance, whereas a killing offence will almost undoubtedly have arisen from an instance of roost destruction. Figure 3 details the types of offences referred to the police during 2016 and categorises them into primary offence type. The largest proportion of incidents reported related to damage or disturbance. The percentage of sales incidents is not considered to be a true reflection of the actual amount of trade being undertaken, in particular through internet auction sites.

**Figure 3. Incidents reported to the police in 2016 categorised by offence type**



## 6.6 Species subject of bat crime

All species of bats found in the wild in the UK receive the same legal protection. As such, identifying the species concerned is not a necessary part of any prosecution. However, that said, there is value in establishing which species are known to have been affected by criminal activity.

**Table 1. Bat species involved in referrals**

Species	Number of referrals
Not identified	102
Pipistrelle spp	20
Mixed roosts	14
Brown long-eared bat	8
Lesser horseshoe bat	4
Serotine	2
Whiskered bat	2

# 7. How the police dealt with incidents in 2016

## 7.1 Police procedures

This section outlines the outcome of cases reported to the police in 2016, also known as case disposal. Where BCT refer an incident to the police our Investigations Officer whenever possible has personal contact with the investigating officer offering an appropriate amount of advice and assistance. Contact is maintained with those officers until such time that BCT are advised of the result.

All instances reported to the police should be dealt with in a broadly similar manner. Decisions as to what action is taken will be made having regard to a number of factors and this can result in offenders or suspects being dealt with in a number of ways. Police officers have discretion as to how to deal with individual cases but BCT strives to ensure that investigating officers are able to make informed decisions on the best way to deal with bat crime.

If a police officer feels that there is sufficient evidence to bring a prosecution, papers will be sent to the Crown Prosecution Service (CPS) in order that a decision as to whether to bring such a prosecution can be made. CPS prosecutors will initially consider if there is a reasonable prospect of conviction and if there is they will then decide on whether it is in the public interest to bring a prosecution. The public interest test may lead to offenders being formally cautioned or warned rather than prosecuted.

The CPS have, in recent years established a network of regional wildlife crime prosecutors. BCT have provided training to many of these lawyers with some of them having now built up considerable expertise in this area of the law. Investigating officers are encouraged to seek charging advice from these specialist prosecutors at the earliest opportunity but are not obliged to do so.

Unfortunately, there have been a number of cases investigated in 2016 that should have been prosecuted but police failures prevented further action. Mistakes by police forces included basic errors such as failure to comply with standard codes of practice, allowing statutory time limits to expire and the application of incorrect legislation. Common features of such failed investigations have been the inexperience of investigating officers in dealing with wildlife crime and an apparent reluctance to engage with BCT and the NWCUs' investigative support officers.

Where failures are identified we have engaged with the forces concerned seeking to ensure that weaknesses in processes are addressed. We look to build up a working relationship that can often result in invitations to provide training. Such opportunities allow relationships to be built with individual officers that can lead to a willingness to seek advice in future cases.

In previous years we have reported satisfaction with the direction that the police are taking in relation to bat crime. It can still be reported that the majority of cases are dealt with in an adequate manner with some cases being dealt with in an exemplary fashion. However, a small number of failures can be seen as an indication of how wildlife crime is still seen by the police as crime with no victim and a low priority. There are far too many instances where cases are not being addressed within a reasonable time, or are being allocated to officers who either have no power to investigate or are not trained to undertake what can be complex investigations. We will continue to work with police forces and the NWCUs to address these concerns.

## Case study 1

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*In May 2016 BCT became aware of a report to the police alleging damage to a roost when the soffit on a building had been removed. A bat survey, undertaken just weeks earlier, had identified a roost being used by common pipistrelle bats.*

*The case was allocated to an officer with no experience of investigating wildlife crime. This officer was contacted by a force wildlife crime officer offering advice and assistance. Further offers of assistance were made by NWCU and BCT. Despite these offers the investigating officer chose to progress matters alone. Eventually BCT spoke to the investigators supervisory officer, shortcomings in the investigation up to that point were identified with further legislative advice being provided.*

*In October 2016 BCT were informed that the police had summonsed a suspect to appear at court. They had done so without reference to the CPS ignoring advice suggesting early contact with a specialist prosecutor instead choosing to exercise their right to commence proceedings for summary offences.*

*The CPS on receipt of the prosecution file immediately halted proceedings. The police had initiated prosecution by alleging that offences of damaging a bat roost under the Wildlife and Countryside Act 1981 had been committed. No such offence exists having been removed from the statute books in 2007.*

*The specialist CPS prosecutor, before deciding whether prosecution under the Habitats Regulations 2010 could be justified, asked for further enquiries to be undertaken. When completed a decision was taken that there was no realistic prospect of conviction, the matter was therefore discontinued.*

*The original investigating officer, for reasons believed to be unconnected to this matter, resigned from the police service prior to the final decision of the CPS.*

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## Case study 2

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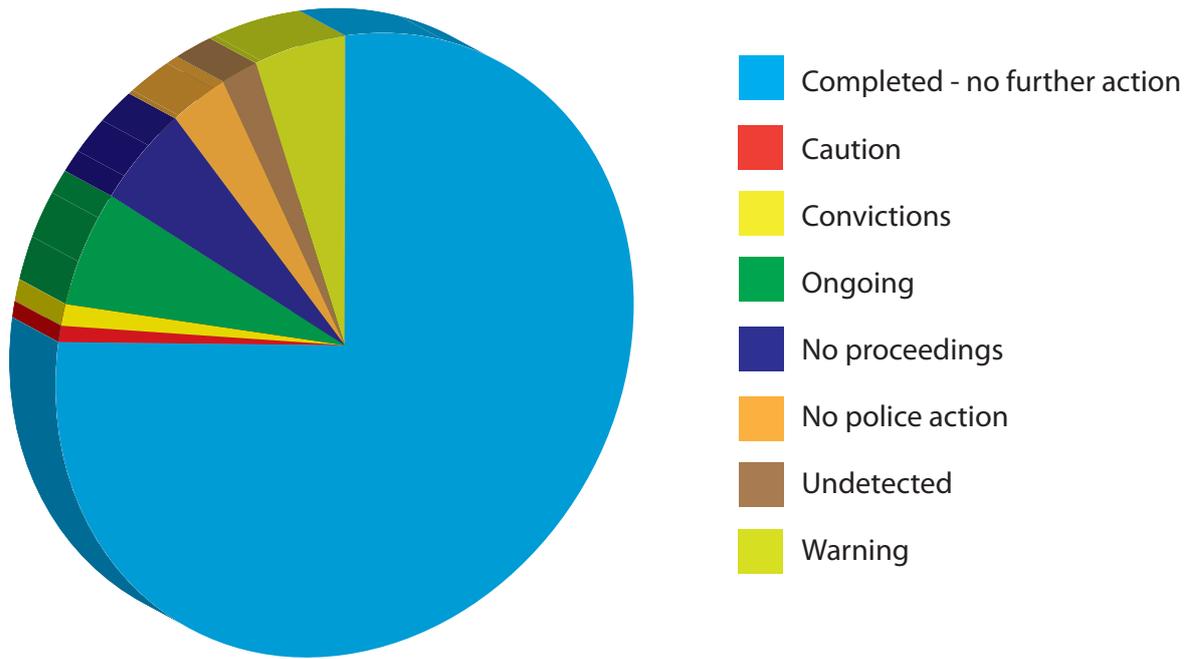
*In October 2015 BCT became aware of a case where a house known to contain both serotine and brown long-eared bat roosts had been demolished. A bat survey had been undertaken and developers informed of the need to obtain a licence. Despite this demolition took place without a licence application having been made.*

*The matter was allocated for investigation to a local police officer who was not a wildlife crime officer. Offers of assistance were made to that officer by both NWCU and BCT. Those offers were not taken up and the officer eventually submitted a file of papers to a specialist prosecutor within CPS. It was decided that there was a realistic prospect of convicting those responsible and proceedings were commenced. In addition, the prosecutor took the view that this was a case where a proceeds of crime order should be made if the defendant was convicted.*

*The case was initially listed and adjourned when the defence indicated the intention of their client to plead not guilty. However, prior to trial, problems with the police evidence were identified in that standard policing procedures when interviewing suspects had not been complied with. The situation was such that the CPS had no option but to discontinue proceedings.*

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**Figure 4 How the police dealt with incidents.**



## 7.2 Completed no further action

The fact that an incident is closed with no further action being required often hides the fact that valuable crime prevention work has been undertaken, aiming at longer-term protection of bats and their roosts. BCT anticipates that the investigating officer, to ensure knowledge of and future compliance with the law, will contact all potential suspects in any incident. The fact that such advice has been given would be taken into account should further offences be committed.

In many cases the intervention of the police prevents offences from happening. In 2016, 119 of the total of referred incidents resulted in no formal action being taken. Given that in the majority of cases advice will have been provided by a police officer, BCT have always claimed that many offences were prevented. We have again researched on how many occasions we can identify crime prevention advice has been provided. This year we identified 49 cases where crime prevention advice had been provided to parties involved. We cannot establish on how many occasions the provision of such advice actually prevented crimes being committed but undoubtedly some who are considering the commission of offences will have second thoughts once they know that the police have an interest in the matter. For this reason, it is very important that contact with the police is initiated as soon as there are suspicions that an offence has been committed or may be committed. Regular contact has to be continued until the incident has been closed.

In some instances, insufficient evidence was found by the investigating officer to warrant any further action. Most commonly this was as a result of allegations of a roost being damaged or destroyed having been made, but subsequent evidence was not available to support the allegation. Once again in 2016, the BCT received a number of allegations where it was suggested that development work was being undertaken that would impact on bat populations. Basic enquiries revealed either that bat roosts were present but were being properly considered or that there was simply no evidence to support the allegations being made. In order for BCT to remain credible with developers, the organisation needs to ensure that it does not become involved with people motivated to oppose development and seeking to raise unjustified concerns relating to bats. To this end BCT Investigations Officers spend considerable time carrying out background enquiries aimed at establishing whether there is a prima facie case that should be referred for investigation. During the year our investigations officer undertook research on 61 allegations of bat crime that, in the event, were not referred for police investigation.

### **7.3 On-going**

Bat crime 2015, when published in October 2016, revealed that there were four cases from 2015 that were still being investigated, suggesting that at least two were to be prosecuted. In the event none of these cases actually came to court, the circumstances of two of the matters having been detailed earlier.

At the time of writing (September 2017) there are 9 cases first reported to the police in 2016 that have yet to be finalised. We are aware that in one case the CPS have authorised proceedings but a court date has yet to be set. There are other cases that may also result in prosecutions.

Generally, police investigations into bat crime should be completed within six months but complex cases can take considerably longer. However, legislation states that prosecutions relating to bat offences must be commenced within two years of the date the offences were committed. There is a general expectation that any delay in concluding an investigation would be attributable to the offender rather than the police.

### **7.4 No police action**

In 2016 we made 5 referrals that, as far as we can tell, resulted in no police action whatsoever. Despite our attempts to keep in touch with investigating officers our calls and enquiries have not been responded to. Usually the reason for this is that the officer involved no longer works for the police. None of the incidents, it is felt, posed a threat of conservation concern. Had such a threat existed we would have pursued matters further with the force concerned.

### **7.5 Insufficient evidence**

Seven incidents in 2016 resulted in papers being submitted to prosecutors for a decision as to whether to take a case further. Specialist CPS prosecutors viewed each of these cases and directed against further action on the basis that there was insufficient evidence to secure a conviction.

BCT have been able to build up a relationship with many of the CPS specialist prosecutors who operate on a regional basis. We participate in a stakeholder's liaison group that provides us with an opportunity to raise any concerns we might have in relation to a particular case.

It is important to realise that CPS prosecutors are required not only to consider whether there is sufficient evidence to prosecute a case but also whether it is in the public interest to do so. Although BCT often work very closely with investigators and prosecutors there are occasions where there are facts that impact on public interest that are not made known to us and should not be made known to us.

We are aware of the circumstances of offending in each of the 2016 cases where prosecution was not authorised. Our views on each were sought prior to a final decision being made. When we reviewed these cases, we found it impossible to take the view that any of the decisions were incorrect.

### **7.6 Formal caution/Restorative Justice/Warnings**

In 2016 there were 9 incidents where investigating and/or prosecuting officers took the view that whilst there was sufficient evidence of offences against bats to prove a case to the criminal standard the public interest did not require prosecution. Often such cases relate to instances where the offence appears to have been committed accidentally with little or no conservation impact and a willingness to make amends.

In such cases it is possible for a case to be dealt with outside the criminal justice system, most commonly by an offender being formally cautioned or accepting restorative justice (also known as community resolution). Because these processes lie outside the Criminal Justice System, details cannot be made public.

A formal caution is not a criminal conviction, but it is noted on formal records and can be referred to should further offences be committed. The cautioned person is required to accept that if the matter had gone to court they would have been found guilty. A formal caution is of some value in that it is noted for future consideration. It does not however provide any conservation benefit. In 2016 one formal caution was issued.

Restorative justice is a policing initiative whereby officers are encouraged to exercise discretion and deal with minor criminal offences outside the criminal justice system. In relation to bats the first case of an offence being dealt with by restorative justice was recorded in 2010 and has become more commonly used since. Those who commit offences that are dealt with through restorative justice do not gain a criminal record. This type of disposal does allow conservation gain and is now sometimes used with the support of BCT. Conditions proportionate to the level of offending can be imposed. Previously such conditions have included donations to conservation organisations equal to the cost that would have been incurred had lawful process been followed. Other conditions that have been used are requirements for bat access to be reinstated or other mitigation provided or permission being provided to undertake long-term surveys of a roost. In 2016 there were 8 cases that were dealt with through informal resolution.

## 7.7 Prosecutions

In 2016 there were no convictions for bat crime. However, an offence committed in 2016 was heard by magistrates sitting at Leamington Spa Magistrates Court in April 2017. Unfortunately, in passing sentence the magistrates did great disservice to bat conservation and the fight against wildlife crime generally.

### *Case study 3*

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*Mr Keith Marchington aged 72 years, the owner of the property in question, and Mr Samuel John Taylor, aged 33 years, a builder contracted to renovate the property both pleaded guilty to destroying a roost and were fined just £83 and £153 respectively. Both were ordered to pay £135 costs and a £30 victim surcharge. The property in question was a bungalow and barn that were to be demolished and replaced by a new dwelling. There was a lengthy planning history relating to the site and survey work undertaken over a period of years identified and confirmed roosts of brown long eared and soprano pipistrelle bats.*

*Mr Marchington was advised on a number of occasions that he would need to obtain a licence from Natural England and would have to provide a bat house to which the bats could relocate. Despite this advice it seems that Mr Marchington decided to commence works during the spring of 2016 and asked an ecologist to obtain the required licence. When told that further survey work would be needed before a licence would be considered Mr Marchington, it was said, asked what the penalties for destroying a roost without a licence were and that he would be prepared to accept a fine. It was later found that the buildings had been demolished and the roosts destroyed. The matter was reported to the Police.*

*Following a lengthy Police investigation papers were submitted to the CPS and were considered by a specialist prosecutor who decided that matters should be prosecuted. The case was first listed for the 11th April with both Mr Marchington and Mr Taylor pleading guilty at the earliest opportunity. Credit for doing so must be given when sentences are imposed.*

*Unfortunately, most inappropriate sentencing occurs in cases where defendants plead guilty at the first opportunity. Such cases are prosecuted by lawyers with little or no experience or understanding of wildlife crime who through pressure of time have not had time to research and prepare the case. The defence in comparison are often represented by experienced solicitors who have clearly spent considerable time preparing their case. It was disappointing that a conservation impact statement prepared by BCT was not made available to the court.*

*What this case does do is to demonstrate once again the need for guidance on the sentencing of wildlife crime. Working with other partners BCT are pressing the Sentencing Council to produce such guidance. This sentence can only assist in making the case.*

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## 7.8 Confirmed offences

On average since 2014 about 20% of referrals made to the police have resulted in the view that offences had been committed. In 2016 22% of referrals have resulted in the investigating officers taking that view.

Ultimately, a far better measure of success from a bat conservation perspective would be to assess how well the legislation is being complied with, and how many bat crimes have been prevented. In 2016 49 of the cases referred to the police resulted in crime prevention advice being provided. It is impossible to know how many offences would have been committed had it not been for the intervention of the police. It is reasonable to assume that many of those receiving such advice will take particular care to ensure that they then comply with the legislation.

## 7.9 Burden of proof

Bat crimes are criminal offences and in order for a conviction to be gained the case must be proven beyond all reasonable doubt. Any question of doubt will normally result in acquittal. The CPS will not prosecute a case unless they are satisfied that there is a reasonable prospect of conviction. Prosecutions will not be taken unless this evidential test is passed and it is also considered to be in the public interest to proceed.

## 7.10 Evidence of roosts

One of the most common problems faced by investigating officers is that of evidencing the presence of a bat roost. Many allegations suggesting that developers have destroyed roosts are made, but often no evidence of a roost is available if a bat survey has not been undertaken as part of the planning process. For this reason, whilst recognising resource implications the BCT would suggest that surveys of roosts identified as being vulnerable to development should wherever possible be conducted on an annual basis. A survey carried out more than 12 months previously can be undermined by another more recent survey suggesting that the roost is no longer used.

## 7.11 Offenders acting on advice

There appears to be an increasing number of incidents where potential offenders when interviewed have said that they acted on the advice of others, for example, their ecological consultants. Most commonly, this seems to relate to work that involves damage to a roost where advice has been provided to the effect that the work can be carried out without the need for a licence. Where such advice had been provided (even if it was incorrect advice) by a competent person, it seems unlikely that any prosecution could follow. It does, however, seem likely that in some circumstances the liability of the ecologist will come under scrutiny to establish whether the provision of incorrect advice amounts to aiding and abetting or encouraging the offence.

## 7.12 Identification of offenders

Serious bat crimes are often carried out as part of commercial development and in such cases, it is important that the investigation properly identifies those responsible. Dependent upon lines of management and instructions provided, the correct offender can be anybody from a site labourer who physically commits the offence right through to the managing director or secretary of a company. The situation can become more complicated if sub-contractors are involved. If companies are to be summonsed for offences it is important that investigators identify and interview those who hold the corporate liability.

## 7.13 Time limits

Legislation allows for the prosecution of offences relating to bats only up to two years after commission. However, the reality is that such matters are considered by the Criminal Justice System to be minor in nature with investigations being straightforward. Although BCT know that neither statement is true, the fact is that these matters are dealt with by the lower courts, with prosecutors often taking the view that in the majority of cases, investigations should be completed within six months of the circumstances of the offence becoming known. Unwarranted delays might lead to cases being discontinued on the basis that prosecution would be an “abuse of process” interfering with the defendants right to a timely trial. There have been a small number of cases historically where prosecutions have not been pursued because of the abuse of process argument, and it is therefore relevant to consider the most common causes of delay that might lead to cases being discontinued.

It is sometimes the case that bat workers will delay reporting incidents of bat crime in the hope that alternative options can be worked out with developers or owners. Whilst the need for such deliberation is understandable, there is a risk that delays in reporting criminal offences to the police might be seen as unnecessary delay leading to consideration of the abuse of process argument. As such, BCT recommends that incidents should be reported to the police as soon as possible after the circumstances become known.

Bat crimes that are not investigated in a timely manner are more likely to be discontinued. Timely investigation means that it has been conducted in a manner where there has been no unreasonable delay. For example, if progress on an investigation is halted whilst the investigating officer is tasked to perform other prolonged duties, this may be considered an unreasonable delay, as would simply not advancing the investigation because of other workload demands. Delays would not be considered unreasonable where they are attributable to the suspects for instance where they fail to keep appointments for interviews or site visits.

## 8. Future work

- BCT will work with the National Wildlife Crime Unit, bat groups and bat workers to ensure that the extent of bat crime can be properly assessed. In order to facilitate this BCT will look at the role of the organisation as a conduit for the submission of intelligence to NWCU.
- BCT will argue for an overhaul of conservation legislation that will provide clear guidance as to the legal protection afforded to bats and their roosts, the introduction of measures designed to prevent offences and a more robust licensing system that is linked to professional standards and monitoring.
- BCT will continue to look for and take up opportunities to provide training on bat crime, in particular to enforcers and prosecutors.
- BCT will continue to engage with those in the building industry raising the awareness of bat crime and the implications of the legislation protecting bats.
- BCT will continue to work with enforcers to ensure that wherever possible early action is taken to prevent offences against bats.
- BCT will continue to monitor the manner in which cases referred to enforcement authorities are investigated with a view to establishing the main factors that prevent the completion of enquiries in a timely manner.
- BCT will liaise with enforcers to establish the reasons why cases are either not progressed by the CPS, or are not being referred for consideration of prosecution.
- BCT will consider how the investigations project might attract further support and in particular funding.

## 9. Bearing Witness for Wildlife

During the past six years BCT have worked with police forces across the UK providing assistance and advice aimed at preventing bat crime but also the effective investigation and prosecution of such offences and have developed an effective working relationship with the National Wildlife Crime Unit. In that time, we feel that significant numbers (in the hundreds) of offences have been prevented. We have also been effective in establishing a recording system that allows us to evidence levels of wildlife crime relating to bats. Despite our restricted resources our work has been influential in seeing an increased number of offences being prosecuted, with dissuasive sentences being imposed with increasing regularity. The recent application of proceeds of crime confiscation orders in relation to bat crimes is seen as a particularly significant development and one on which we are keen to build.

We are therefore delighted to have gained support and funding from the Esmée Fairbairn Foundation for a 3 year Conservation Wildlife Crime Project.

Over the next three years it is our intention to consolidate and expand on the work we began fifteen years ago. However, we recognise that there is little information available about levels of wildlife crime involving other species protected by the Habitats Regulations or the Wildlife and Countryside Act (except for birds, as the RSPB run a very effective investigations team). We therefore intend to expand the remit of what was our bat investigations project to include offending against other species protected by these pieces of legislation.

Our aim is to create a relationship between the police and those conservation organisations who represent species of conservation concern against which crimes are being committed to ensure that wildlife crime is (i) being recorded, (ii) wherever possible prevented and (iii) investigated and prosecuted effectively. We will also endeavour to ensure that penalties for this type of wildlife crime are dissuasive.

To achieve this, we will provide legislative and investigative advice to investigating officers. Importantly, we also intend to work with relevant organisations to facilitate expert ecological evidence on the conservation impact of these crimes being available to investigating officers and the CPS where needed.

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