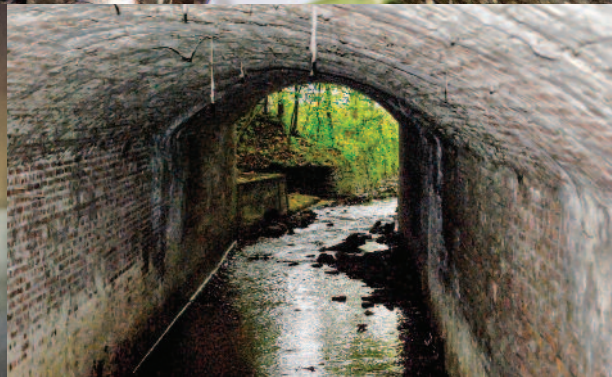


The Bat Crime Annual Report 2018



The Bat Crime Annual Report 2018

Contents

1. Introduction	2
2. Why are bats in need of protection?	2
3. About Bearing Witness for Wildlife - Wildlife Crime Project	4
4. UK wildlife crime priorities and the National Wildlife Crime Unit	5
5. Legislation	6
6. Incidents notified to BCT in 2018	7
6.1. <i>Reporting of Incidents</i>	7
6.2. <i>Incidents by police area</i>	8
6.3. <i>International incidents</i>	8
6.4. <i>Incidents by month</i>	8
6.5. <i>Primary offences</i>	9
6.6. <i>Species affected by bat crime</i>	10
7. How the police dealt with incidents in 2018	11
7.1 <i>Police procedures</i>	11
7.2 <i>Burden of proof</i>	12
7.3 <i>Evidence of roosts</i>	12
7.4 <i>Offenders acting on advice</i>	12
7.5 <i>Identification of offenders</i>	12
7.6 <i>Time limits</i>	13
7.7 <i>Completed, no further action</i>	13
7.8 <i>Ongoing</i>	14
7.9 <i>No police action</i>	14
7.10 <i>Insufficient evidence</i>	14
7.11 <i>Cautions/Restorative Justice/Warnings</i>	14
7.12 <i>Prosecutions</i>	15
7.13 <i>Sentencing</i>	16
7.14 <i>Confirmed offences</i>	17
8. Future work	18
9. Bearing Witness for Wildlife	19

1. Introduction

This Bat Crime Annual Report 2018 outlines and analyses incidents and outcomes of Bat Conservation Trust's (BCT) Bearing Witness for Wildlife – Wildlife Crime Project over the 12 months from January 2018 – December 2018.

In 2018 122 allegations of bat crime were referred to the Police. This is the lowest number of referrals made in recent years and represents a fall of 26% in comparison to 2017.¹

2. Why are bats in need of protection?

There are currently 18 species of bat present in the UK (17 of which are known to breed here). The majority of bat species are highly dependent on man-made structures, such as houses, churches and barns for roosting. They also need the surrounding habitats for foraging and commuting. This reliance makes them particularly vulnerable to development and general building works, e.g. conversions, demolitions and 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 on the local bat population with potential loss of the whole of a breeding population.

BCT in partnership with the Joint Nature Conservation Committee undertake a National Bat Monitoring Programme (NBMP). The NBMP's annual report for 2018 shows that from the baseline year of monitoring (1999 for most species) to 2018, Great Britain populations of the 11 species of bat surveyed appear to be stable or increasing. A few results need treating with some caution and there are regional and/or country differences. Species considered to have increased in Great Britain since the baseline year of monitoring are greater horseshoe bat, lesser horseshoe bat, common pipistrelle, and there is evidence from the Hibernation Survey that Natterer's bat is also increasing.

Even though these are encouraging results, these trends reflect relatively recent changes in bat populations. It is generally believed that during the early 20th century there were significant declines in bat populations. Possible drivers of the historical declines include agricultural intensification, loss of roosting and foraging habitat, persecution, pesticides including the use of toxic timber treatment chemicals within roosts, water quality, declines in invertebrate prey groups, development and land-use change and climate change.

While data from the NBMP indicates that populations of the bat species we monitor are stable or recovering, it should be remembered that these trends reflect relatively recent changes in bat populations (since 1999 for most species). It is generally considered that prior to this there were significant historical declines in bat populations dating back to at least the start of the 20th century. This suggests that current legislation and conservation action to protect and conserve bats is being successful, and it is vitally important that this continues.²

A 26% decrease in the number of allegations referred to the police may seem positive but it is very unlikely that this is due to increased levels of compliance. Other factors may be of greater influence. It may be that the levels of reporting to the police are a reflection of a lack of confidence that matters will be handled effectively. There have been numerous examples where BCT have been told that incidents have not been reported because of a perception that "nothing will be done". Anecdotal evidence from bat workers, the general public and those engaged in the building trades continues to indicate that these figures may represent only a drop in the ocean.

In 2018 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.

¹ 2017-165, 2016-153, 2015-135, 2014-158.

² <https://cdn.bats.org.uk/pdf/Our%20Work/NBMP/National-Bat-Monitoring-Programme-Annual-Report-2018.pdf?mtime=20190509100258>

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 and support our projects that meet shared conservation goals. One such project sees BCT work with a large environmental consultancy and construction company who are not just providing staff time in terms of ecological skills but also technical support to explore novel approaches to answer conservation queries for our bat species. BCT's Built Environment Manager has close links with this company and they often provide free conference facilities and staff support for the built environment technical symposiums, key to their success.

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. BCT's Built Environment Manager runs regular industry in-house awareness training courses for a wide range of professionals, including roofing contractors, architects and facilities managers, covering legal responsibilities, how to avoid likely impacts and also enhancement of the built environment for bat species. This course is also run at the National Self-Build and Renovation Centre where BCT has a permanent stand with QR codes for developers to gain further information. Uptake of courses and engagement from industry has been very good. In addition, positive steps are being taken by organisations such as the Construction Industry Research and Information Association (CIRIA) through activities like 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 Bearing Witness for Wildlife – Wildlife Crime Project

BCT has hosted the Investigations Project since 2001, when it was initiated as a collaboration between the Royal Society for the Protection of Birds (RSPB) and BCT with the aim of preventing bat crime. The Investigations Project was further developed with the financial support of local bat groups. A part-time Investigations Officer, Pete Charleston, has led the project since 2010, involved in the following activities.

- ★ Recording of bat-related crime.
- ★ Providing support, training and advice for the police, Crown Prosecution Service (CPS), Statutory Nature Conservation Bodies (SNCBs) 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.
- ★ Improving 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 was obtained from the Esmée Fairbairn Foundation for the Bearing Witness for Wildlife – Wildlife Crime Project, which secured the future of BCT's bat crime investigations work until November 2019. The project also includes investigations work relating to wildlife crime against other European and nationally protected species. BCT is now considering funding options to continue this important work.

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

In 2004 the persecution of bats was identified by the SNCBs 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. The wildlife crime priorities are reviewed biannually. A strategic wildlife crime threat assessment outlining how the priorities are to be addressed has been produced by the National Wildlife Crime Unit (NWCU)³.

During 2018 BCT continued to work closely with the NWCU, providing them with intelligence relating to all incidents that were referred for investigation. The latest National Wildlife Crime Tactical Threat Assessment identified that BCT was the unit's primary source of intelligence relating to bat crime.⁴

The police do not record wildlife crime, unlike most other types of crime, in a formal manner. BCT would like to see this situation change, with the Home Office requiring statistical returns as they do other offences such as theft, criminal damage or assault. In the past 12 months there has been some significant progress in this area. The National Police Chief Council, in 2018, produced a wildlife crime strategy⁵ that recognised the need for at least some of these offences to be recorded. Since then Defra has consulted with key stakeholders including BCT on the subject. We will contribute further to the work as opportunities arise. BCT, with other members of the Wildlife and Countryside Link (WCL)⁶, has been working hard over a number of years to persuade the police, politicians and civil servants to record wildlife crime. BCT contributed to the first two annual wildlife crime reports produced by WCL^{7,8}. The third, covering 2018, will be published later this year.

Until wildlife crime is formally recorded the only measure of the extent of bat crime is that produced by BCT. In order to ensure that we can continue to present a comprehensive assessment of bat crimes, we ask bat groups and other interested groups to provide information about any offences or suspicious behaviour. BCT will, if necessary, commit to confidentiality and will not undertake further action without the consent of those who submit the information.

3 <https://www.nwcu.police.uk/wp-content/uploads/2018/09/Strategic-Assessment-UK-Wildlife-Crime-2018-Public-Version.pdf>

4 <https://www.nwcu.police.uk/wp-content/uploads/2013/03/NWCU-Tactical-Assessment-Nov-2017-sanitised-version.pdf>

5 <https://www.npcc.police.uk/documents/crime/2018/NPCC%20Wildlife%20Crime%20Policing%20Strategy%202018%20%202021.pdf>

6 <https://www.wcl.org.uk/>

7 <https://www.wcl.org.uk/docs/LinkAnnualWildlifeCrimeReportApril18.pdf>

8 https://www.wcl.org.uk/docs/Link_Annual_Wildlife_Crime_Report_2017_FINAL.pdf

5. Legislation

It is a criminal offence criminal 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.

The legislation providing legal protection differs in different parts of the UK. In England and Wales the Conservation of Habitats and Species Regulations 2017, introduced in November 2017, and the Wildlife and Countryside Act 1981 (as amended) apply. Elsewhere the protection is provided by the Conservation (Natural Habitats & Co) Regulations 1994 with numerous amendments.

BCT is committed to raising levels of knowledge amongst those charged with delivering the legal protection offered to bats. During 2018 we delivered training to the police at both the national wildlife crime foundation course in addition to regional and individual 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. There have been a number of court cases where the validity of planning permissions have been challenged on the basis of their having been insufficient regard to biodiversity. The legal position is complicated and will depend on the specific circumstances of any particular case. Annually, BCT becomes aware of planning permissions where biodiversity has plainly been given sufficient attention but we also hear of instances where this is not the case. BCT does not have the resources that would permit our involvement in planning decisions or challenges. BCT has been leading The Partnership for Biodiversity in Planning project which is a group of 19 organisations representing the conservation, planning and development sectors, who are working together to simplify, streamline and improve the consideration of biodiversity in the UK planning process. They have developed the Wildlife Assessment Check for smaller developers who may be unaware that it is a statutory requirement for local authorities to consider the ecological impact of developments, and to promote a positive contribution to biodiversity.

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 enjoy the comprehensive protection under criminal law provided by the Conservation of Habitats and Species Regulations 2017. The past year has seen the introduction of a Statutory Instrument, the consequence of which is that the protection afforded to bats by the criminal law will remain unchanged.

Despite this commitment to continuing the legal protection for bats being unchanged, there is an ongoing challenge to the legal protection given to bats in places of worship. The Bat Habitats Regulation Bill is a private members bill that seeks to remove protection for bats in places used for public worship. The Bill was debated by the House of Lords in 2018 but has not progressed further. A similar private members bill introduced to the House of Commons has not received a second reading.

6. Incidents notified to BCT in 2018

In 2014, BCT ceased to record all allegations 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 matters that had been researched by our Investigations Officer (now Bearing Witness for Wildlife – Wildlife Crime Project Officer). This includes all referrals to enforcement agencies along with a number of other cases where, in the event, lack of evidence prevented referral to the CPS.

In 2018 BCT recorded and researched 137 allegations of bat crime with 122 cases being referred to the Police. This is a 26% decrease in the number of referred incidents compared to 2017.

Until 2010, all criminal offences relating to bats were investigated by the police and prosecuted by the CPS. Natural England can now 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 England. 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 can only speculate as to why the number of incidents coming to our attention fell significantly in 2018 but would suggest that it should not be regarded as an indication that levels of crime, rather than reported crime, have fallen. 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 not possible to make informed judgments as to whether, in reality, the amount of crime is increasing, decreasing or holding steady and we can only report on the number of incidents made known to us. The importance of maintaining records on the level of bat crime cannot be over-estimated. 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 NWCUC suggests that BCT becomes aware of most significant 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 chooses 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 does 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.

Bat Helpline staff currently 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 122 incidents referred to the police last year, 104 were reported to English police forces, 13 to Police Scotland, and 5 to the Welsh forces. We are unaware of any investigations into bat crime undertaken by the Police Service of Northern Ireland during 2018.

The geographic spread of reported cases was wide, with incidents referred to 35 of the 45 police forces in the United Kingdom. Therefore, on average each force was asked to investigate less than three bat crimes annually. In reality, just four forces investigated over 25% of bat crimes known to BCT in 2018. This serves to explain why investigative experience in this area is scarce among many forces, underlining the value of our Bearing Witness for Wildlife – Wildlife Crime 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 Police Scotland (13), Devon and Cornwall Police (9), West Mercia Police (7) and Hampshire Police (6). Five forces received five referrals each. 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 which 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 Wildlife Crime Project Officer.

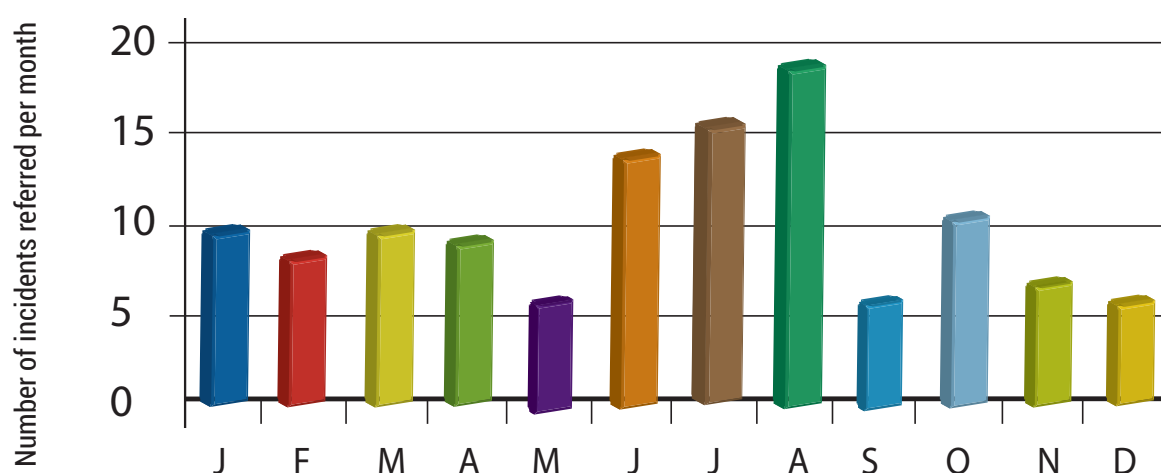
Trade in dead bats is one area that is often brought to BCT's attention. Such trade may take place on internet auction sites or at markets and is usually (but not always) found to involve species that are not legally protected. Whilst many find such trade distasteful it is not illegal and therefore not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

The advertisement of sonic deterrents to be used to clear buildings 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

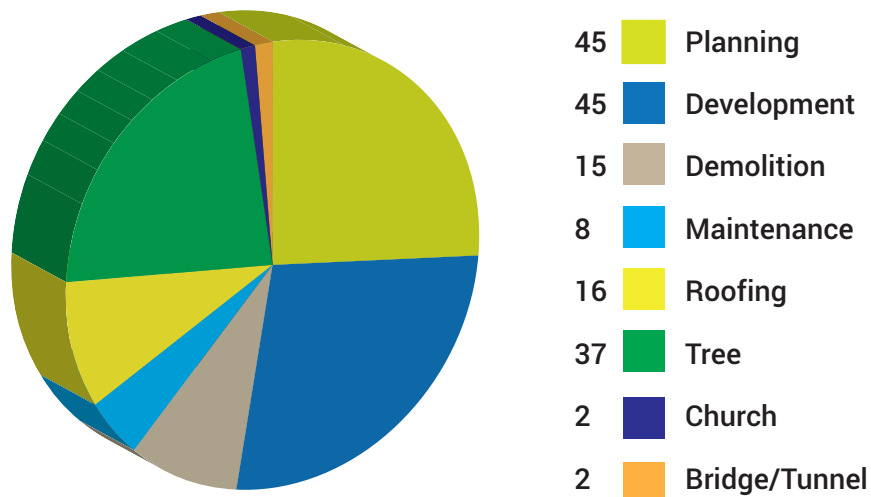
Incidents were reported throughout 2018, however Figure 1 below shows that there are peak months for numbers of incidents being reported. Bats are most active between the months of April and October, which coincides with peak times for construction works. Therefore, it is of little surprise that most incidents of bat crime reported to BCT take place during these months.

Figure 1. Number of referrals across 2018



Comparisons made between the activities taking place in reported incidents have shown that development remains the primary activity resulting in offences. 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. The number of occasions where specific words are recorded are detailed in Figure 2.

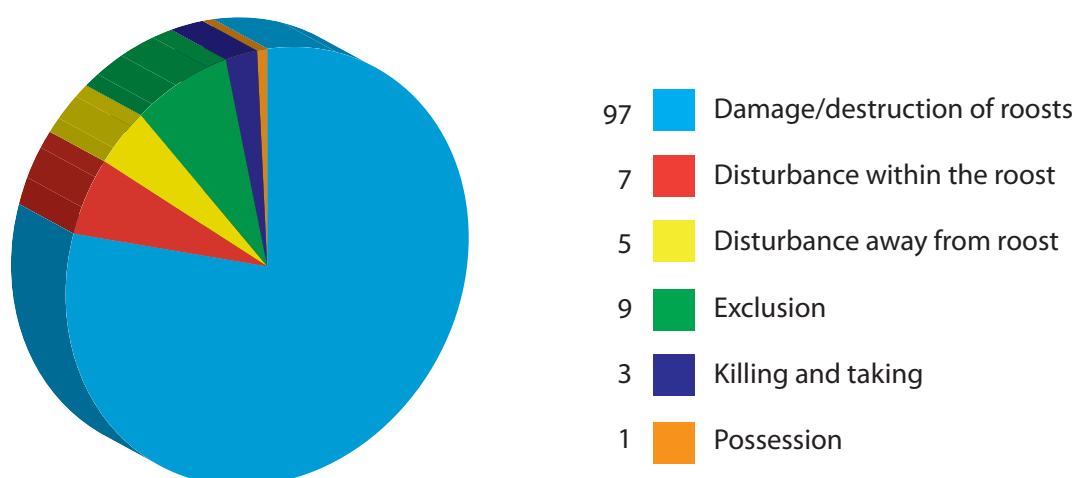
Figure 2. Number of incidents for different key words



6.5 Primary offences

A primary offence is the criminal offence that, in the view of the investigator or the prosecutor, is the most serious matter. For instance, sometimes we become aware of lead being stolen from roofs. Concern is raised that the removal of the lead will have damaged a bat roost or disturbed the animals. In such circumstances the primary offence would be the theft, the penalties are significantly more substantial and the offence is of wider public concern. 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 always have arisen from an instance of roost destruction. Figure 3 details the types of offences referred to the police during 2017 and categorises them into primary offence type. The largest proportion of incidents reported related to damage or disturbance.

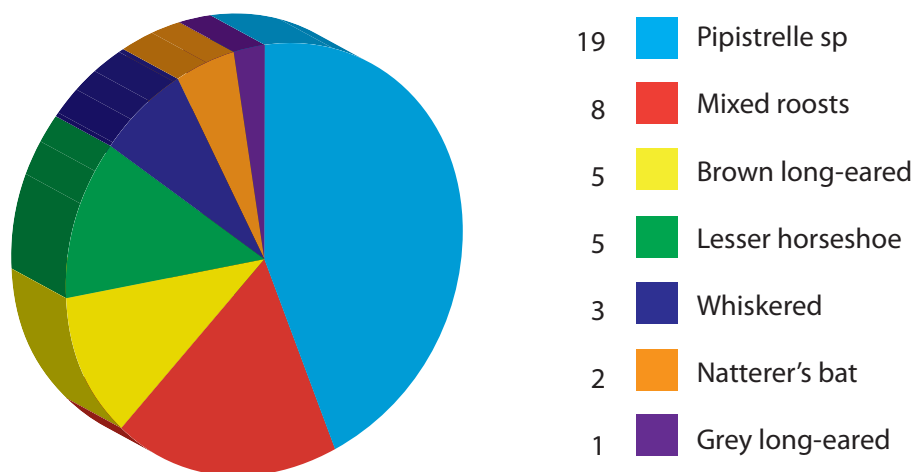
Figure 3. Incidents reported to the police in 2018 categorised by offence type



6.6 Species affected by bat crime

All species of bat 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. Seventy-nine referrals were for unidentified species, Figure 4 summarises the remaining data.

Figure 4. Referrals by species



7. How the police dealt with incidents in 2018

7.1 Police procedures

This section outlines the outcome of cases reported to the police in 2018, also known as case disposal. Where BCT refers an incident to the police our Wildlife Crime Project 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 is 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 CPS in order that a decision as to whether proceedings can be brought. 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.

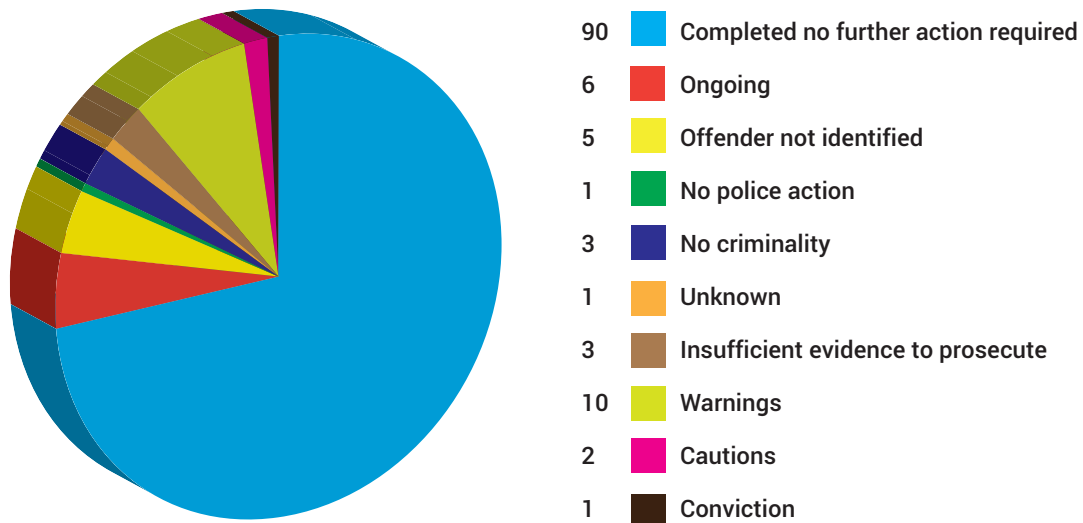
The CPS have, in recent years established a network of regional wildlife crime prosecutors. BCT has provided training to many of these lawyers with some of them having now built up considerable expertise in this area of the law. Investigating officers are encouraged to seek charging advice from these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

Unfortunately, as in previous years, there have been a small number of cases that have been the subject of inadequate investigations. These cases, once again, identify common features: the inexperience of investigating and supervising officers in dealing with wildlife crime and an apparent reluctance to engage with BCT and the NWCUC's 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.

Figure 5 shows how the police dealt with incidents. 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 NWCUC to address these concerns.

Figure 5. How the police dealt with incidents



7.2 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.

7.3 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 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.

7.4 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.

7.5 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.

7.6 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 and that investigations are straightforward. Although BCT knows 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.

7.7 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, aimed 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. In 2018, 90 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 has always claimed that many offences were prevented. We cannot establish on how many occasions the provision of crime prevention 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.

Once again, in 2018, 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, many of whom strive to ensure the right processes and outcomes for bats are core to their work, 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 staff 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 Wildlife Crime Project Officer undertook research on 15 allegations of bat crime that, in the event, were not referred for police investigation.

7.8 On-going

Bat Crime 2017, revealed that there were a number of cases referred to the police that remained under investigation. Three of those cases resulted in prosecution and conviction during 2018.

At the time of writing (July 2019) there are six cases first identified in 2018 where investigations are incomplete. We are aware of two cases where CPS have authorised proceedings. 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.

7.9 No police action

In 2018 we made one referral 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. The incidents, it is felt, did not pose a threat of conservation concern. Had such a threat existed we would have pursued matters further with the force concerned.

7.10 Insufficient evidence

CPS (or in Scotland the Crown Office Procurator Fiscal Service) prosecutors during 2018 examined a number of files relating to bat crime. In three of those cases decisions were made to the effect that proceedings could not be instituted on the basis that there was insufficient evidence to secure a conviction.

BCT has 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 works 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 2018 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.

7.11 Formal Caution/Restorative Justice/Warnings

In 2018 there were 12 incidents where investigating officers and/or prosecutors 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 instances 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. 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 2018 two formal cautions were 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 that have regard to the costs that would have been incurred had lawful process been followed. BCT as a matter of policy would not accept any such donations. In 2018 there were 10 cases that were dealt with through informal resolution or warnings.

7.12 Prosecutions

Reporting on the number of prosecutions in any given year may sound simple but, in reality, is really rather complicated. It is unusual for a case to be referred, investigated, prosecuted and concluded within 12 months.

In 2018 the courts heard four cases relating to bat crime, three of the cases related to investigations commenced in 2017. Only one case reported in 2018 resulted in a conviction in the same year. In the first six months of 2019 there have been three cases of bat crime heard by the courts. One of those cases was reported in 2017, another in 2018.

Case study 1

Landrose Developments was fined £18,820 at Brent Magistrates' Court today, Friday, 5 April after pleading guilty to destroying the breeding site / resting place of a European Protected Species (EPS), namely pipistrelle bat. The court heard how the company was involved in the demolition / re-development of a detached bungalow in Dennis Lane, Stanmore in October 2016. In 2011, plans were submitted to demolish and redevelop the property. A subsequent ecological survey of the premises revealed the presence of pipistrelle bats within the property. The presence of the bats meant that the building could not be demolished without a European Protected Species License (EPSL) and appropriate mitigation in place. The council imposed a condition stipulating that ecological features should be maintained within the premises. It was raised to the owner of the property that demolition without an EPSL or appropriate mitigation would destroy a roost and constitute an offence under the Conservation of Species and Habitat Regulations. Yet despite being aware of the existence of bats at the location, the property was demolished, under the authority of Landrose Developments, in October 2016 without any measures in place to protect the bats.

Police were alerted to the demolition of the property in July 2017 and an investigation commenced by the Met's Wildlife Crime Unit and Harrow's designated Wildlife Crime Officer. The development company was charged with destroying a bat roost on 12 September 2018 after attending a voluntary interview at Colindale Police Station.

DC Garry Redshaw, who led the investigation, said: "All 18 UK species of bats are European Protected Species (EPS) and are protected under the Conservation of Species and Habitats Regulations. This makes it an offence to capture, injure, kill or disturb an EPS or destroy their breeding site or resting place.

"The development company was clearly aware of the bats existence but proceeded to destroy their resting place anyway."

DC Sarah Bailey from the Met's Wildlife Crime Unit added:

"Although this is only the second ever Met case of its kind, sadly bat roosts are destroyed every year and go unreported to police. I would urge anyone who is aware of this criminality taking place, to report it to police."

Prior to this case the highest fine ever imposed for a single charge of destroying a bat roost was £5000. A fine of this size has been made possible by legislation that removed the statutory maximum of £5000 and allowed for unlimited fines to be imposed.

The Bat Conservation Trust provided investigative and legislative advice to the officers involved in this case. A conservation impact statement produced by our Head of Biodiversity received comment from District Judge Brennan as to how helpful it had been. We would like to thank all of those involved in the successful investigation and prosecution of this case, witnesses, the Metropolitan Police and the Crown Prosecution Service.

Case study 2

On Tuesday 30th May a person who undertook the development of Pembroke Farm, Brougham, Cumbria appeared before Carlisle Magistrates Court where he pleaded guilty to one charge of damaging or destroying a bat roost. He was fined £750, ordered to pay £85 costs and a £75 victim surcharge.

Planning permission was granted to allow for the renovation of the farmhouse at this address along with converting some outbuildings to residential use. The district council, as part of that process asked for a bat survey, which when undertaken, revealed a number of small roosts in some of the outbuildings used by common and soprano pipistrelle, brown long eared and Myotis bats. The bat survey report was clear in stating that a licence would be required to destroy any roosts. Despite this, earlier this year, Cumbria Police were alerted to the fact that one of the outbuildings had been demolished. The building in question had been identified as hosting a roost used by two soprano pipistrelle bats. A police investigation revealed that the destruction of the roost could not be viewed as a genuine accident and a prosecution was authorised.

Our thanks go to both Cumbria Police and the Crown Prosecution Service for investigating and prosecuting this matter. BCT provided a conservation impact statement which was read to the court. The court was also made aware of the recent judgement relating to a case last month where a developer in London was fined £18,000 for destroying a roost of similar size. In view of this a fine of £750, although by no means one of the smallest to be imposed, must be seen as disappointing. But neither the police nor the Crown Prosecution Service can be criticised for this. The court was provided with the information needed to make informed decisions. This outcome, instead, makes the case for a wildlife crime sentencing guideline to be produced by the Sentencing Council. Something that BCT as a partner of Wildlife and Countryside Link has, for some time, been pressing for.

BCT was not present at court. The matter seems not to have been reported locally. The identity of the offender is not known to us.

7.13 Sentencing

Those convicted of bat crime can face unlimited fines and/or six months imprisonment. In reality there has never been a case of bat crime where a custodial sentence has been imposed. Fines vary in size with the lowest recorded being a mere £35 to a high of £18,000. All too often the sentences imposed for bat crime have been insufficient to act as a deterrent resulting in the law being bought into disrepute as crime can be perceived as paying.

In 2016 a landmark case in Derbyshire saw the use of a Proceeds of Crime Act confiscation order that removed the financial gain made by a developer who illegally destroyed a bat roost. Similar orders, made after publication of Bat Crime 2016 have now been made by courts in Dorset and Kent in relation to bat crimes first reported in 2016. Not every case heard by the courts warrants the use of legislation designed to confiscate illegal financial gain. However, where it is inappropriate to take such action courts should be in a position to make informed sentencing decisions. In some instances, this can be brought about by the use of conservation impact statements that inform magistrates and judges of the conservation impact of offending.

What is needed is sentencing guidelines for wildlife crime. Over the past year BCT as a member of Wildlife and Countryside Link (WCL) worked in partnership lobbying for such guidance. The Sentencing Council for England and Wales during 2018 has undertaken public consultations, to which we responded, asking that conservation impacts of offending should be considered during sentencing deliberations. Those representations have, to some extent, been accepted and published in recent general sentencing guidance.⁹ The Scottish Sentencing Council is in the early stages of producing a wildlife crime sentencing guideline. Working with Scottish Environment Link we will provide all possible assistance to the council.

⁹ <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/general-guideline-overarching-principles/>

7.14 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 2018 a similar rate can be reported. 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 2017, 70 of the 165 reported cases 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.

8. Future work

- ★ BCT will work with the NWCUC, 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 NWCUC.
- ★ 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 for consultant ecologists, along with training and monitoring of outcomes.
- ★ 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 Bearing Witness for Wildlife – Wildlife Crime Project might attract further support and in particular funding.

9. Bearing Witness for Wildlife

During the past ten years BCT has 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 has developed an effective working relationship with the NWCUC. 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 resource 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 were therefore delighted in 2016 to have gained support and funding from the Esmée Fairbairn Foundation for a 3-year Conservation Wildlife Crime Project. During the funding period we are consolidating and expanding on the work we began fifteen years ago. However, we recognised 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 runs a very effective investigation team). We have therefore expanded 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 have provided legislative and investigative advice to investigating officers. Importantly, we also work with relevant organisations to facilitate expert ecological evidence on the conservation impact of these crimes being available to investigating officers and prosecutors where needed.

**Bat Conservation Trust,
Quadrant House,
250 Kennington Lane,
London, SE11 5RD
Telephone: 0345 1300 228
Email: enquiries@bats.org.uk
www.bats.org.uk**

Bat Crime Investigations Project: <https://www.bats.org.uk/our-work/bearing-witness-for-wildlife/bat-crime>

The Bat Conservation Trust is a registered charity in England and Wales (1012361) and in Scotland (SC040116).
Company Limited by Guarantee, Registered in England No: 2712823. Registered office: Quadrant House,
250 Kennington Lane, London SE11 5RD. Vat Reg No: 877158773.